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The Negative Effects of Sanctions on Human Rights: North Korea as a Case Study

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ABSTRACT

Sanctions have become the principal means of international governance. As such, greater attention should be paid to their “unintended” consequences, particularly their humanitarian and human rights impact on the populations of the target country. Taking into consideration the human rights and humanitarian negative impacts of sanctions should serve as a fundamental criterion in assessing their legitimacy, while also challenging the dominant narrative that portrays sanctions as a peaceful and bloodless alternative to war. Integrating the human rights and humanitarian dimensions into sanctions framework should further guide the development of this area of international law. Despite the growing reliance on sanctions by States and international organizations, the legal framework governing their use remains in fact significantly underdeveloped and insufficiently regulated, resulting in a striking lack of accountability for their adverse consequences. This thesis focuses specifically on the case of the Democratic People’s Republic of Korea (DPRK), which has been subjected to one of the most extensive and enduring sanctions regimes in the world. Nevertheless, limited attention has been given to the adverse effects these measures have had on the North Korean population. This neglect stems both from the prevailing perception of sanctions as inherently non-violent tools and from the prioritization of non-proliferation objectives over human rights concerns, particularly in the context of authoritarian regimes. By providing a comprehensive overview of the sanctions imposed on North Korea, this thesis aims to address this gap in the literature and to demonstrate the significant negative consequences that such measures are having on the country’s population.

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INTRODUCTION

Following the conclusion of World War I, US President Woodrow Wilson described sanctions as a 'peaceful, silent, deadly remedy' which would ultimately make the use of force no more needed in the future.[1] Despite this optimistic prevision, sanctions have proved to be more 'deadly' than a true 'remedy'[2]. In most cases, they are not even peaceful but considered tools of warfare[3] for their coercive and aggressive nature, as well as for the severe impact they can have on their targets. Many scholars and humanitarian organizations have highlighted the "unintended" consequences of sanctions on civilian populations, with the case of Iraq becoming emblematic of the broader debate surrounding sanctions and human suffering. However, comparatively little attention has been devoted to the detrimental effects of sanctions imposed on the Democratic People's Republic of Korea (DPRK, hereinafter North Korea), despite the country being subjected to one of world's longest standing and most comprehensive sanctions regimes.

Several factors may explain this gap. First, the closed nature of the DPRK and its (self-)imposed isolation would prevent NGOs as well as UN agencies from producing thorough reports based on reliable data. In fact, a substantial body of empirical and qualitative knowledge on North Korea does exist, having been accumulated in over 70 years of humanitarian engagement and through the testimonies of defectors.[4] This body of knowledge is sufficient to support accurate assessments of the human rights situation in the DPRK, as well as of the impact caused by sanctions.

Second, a clear-cut causality between sanctions and human rights severance is generally difficult to establish, as well as the extent to which a certain humanitarian situation can be linked primarily to sanctions, even in cases in which access is fully guaranteed. For instance, often there were controversies concerning the number of deaths directly attributable to the sanctions. However, Bossuyt noted that 'much of the controversy around the number of deaths – and therefore on the recognition of a direct causality link between sanctions and the negative impact on human rights – is only serving to obfuscate the fact that any deaths at all caused by the sanctions regime indicate serious

[1] Joy Gordon, "The Hidden Power of the New Economic Sanctions," *CrossCurrents* 118, no. 804 (2019): 3.
[2] Ibid.
[3] Ibid.
[4] Frank Ruediger, "The Political Economy of Sanctions Against North Korea," *Asian Perspective* 30, no. 3 (2006): 32.

breaches of humanitarian law and are unacceptable'.[5] A correlation between the two certainly exists and that constitutes an element worth of serious consideration, especially from institutions such as the United Nations and the European Union that are committed to uphold human rights and humanitarian principles.

Another factor is the priority given in sanctions design and implementation to non-proliferation and security concerns, resulting in human rights being put aside: 'The international community is, naturally, most of all concerned with North Korea's behavior in the nuclear question'.[6] This is not to imply that nuclear concerns are not important or do not constitute a real threat to international peace and security, but rather to give duly attention also on the *manière* in which sanctions are employed with regard to their consequences on human rights. From this perspective, serious flaws in the sanctions system are noticeable, as well as a general tendency to overlook the legal framework, defining limits and principles within which sanctions should function.

If there is agreement over the legitimate employment of sanctions by nuclear powers 'as means to prevent other states from developing nuclear arsenal', [7] a further question arises: once such weapons are no longer an hypothesis but a reality – as is the case of North Korea - how long individual states or international organizations may legitimately maintain their sanctions on a targeted country, given the evident failure to achieve their primary objective, particularly when such measures result in prolonged harm to innocent civilians? The gravity of the threat posed by North Korean nuclear development should not exempt from duly and periodic review of sanctions and it should not free targeting countries from being held accountable for their actions when they violate fundamental human rights and humanitarian norms. Given the extensive knowledge on the effects of sanctions on human rights collected in other sanctions regimes, those same or similar effects on North Korean citizens must not be ignored and no political objective justifies overshadowing the detrimental effects of these measures.

Consequently, the human rights and humanitarian costs of sanctions should be recognized and constitute an important variable to be considered before their application and when evaluating their effectiveness. This stems from the fact that the wrongdoings of a country's government do not justify the violation of basic economic, social and cultural rights of its inhabitants through the imposition of sanctions. In other words, 'the inhabitants of a given country do not forfeit their basic […] rights by virtue of any determination that their leaders have violated norms relating to international peace and

[5] Marc Bossuyt, *The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights*, UN Sub-Commission on the Promotion and Protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/2000/33 (June 21, 2000), 16.

[6] Ruediger, "The Political Economy of Sanctions," 12.

[7] Cécile Fabre, *Economic Statecraft: Human Rights, Sanctions, and Conditionality* (Cambridge, Massachusetts: Harvard University Press, 2018), 2.

security', and 'lawlessness of one kind should not be met by lawlessness of another kind which pays no heed to the fundamental rights that underlie and give legitimacy to any such collective action'.[8]

The use of sanctions becoming more common among States and international organizations, their effectiveness has grown into being object of a large debate. The criteria employed for such assessments may vary and multiple perspectives coming from different fields of study may be adopted as well, making the debate around sanction inherently multidisciplinary and cross-cutting. In this thesis, a legal and, particularly, a rights-based approach will be predominant in evaluating the impact, assessing the effectiveness and ultimately problematising the morality and legitimacy of the sanctions imposed on the DPRK.

Starting from Chapter 1, "Sanctions in the International Legal System", the legitimacy of sanctions will be analysed, while also exploring the legal limits to their imposition and implementation derived from international law. This examination is not only intended to give a proper legal framework to sanctions, but also to critically reassess the assumption of existing sanctions' legitimacy, often taken for granted, and ultimately challenge the mainstream narrative of sanctions as a "peaceful alternative to war". Gordon emphasizes that 'if we are committed to human rights, the right to economic development, the right to freedom from want, respect for sovereignty, and a world order that is both just and stable, then this is the conversation that needs to take place'.[9] Chapter 2 will present a chronological overview of the multiple and overlapping sanctions regimes imposed on North Korea and Chapter 3 will examine their compounding and detrimental effects on human rights and humanitarian assistance. The assessment of sanctions effectiveness will keep the humanitarian costs of sanctions at its core, in light of the imperative to further integrate human rights and humanitarian considerations into the broader international dialogue on sanctions.[10]

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[8] Committee on Economic, Social and Cultural Rights, *General Comment No. 8 (1997): The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/1997/8 (December 12, 1997), 4-5.

[9] Joy Gordon, "Economic Sanctions: Accountability, Legality, and Legitimacy," in *Economic Sanctions from Havana to Baghdad*, ed. Joy Gordon (Chicago: Cambridge University Press, 2025), 490.

[10] Committee on Economic, Social and Cultural Rights, *General Comment No. 8*, 3.

CHAPTER 1
SANCTIONS IN THE INTERNATIONAL LEGAL SYSTEM

Sanctions have become a major instrument of international governance. Originally conceived as national means of warfare, they underwent a profound 'conceptual transformation' after the First World War, evolving into mechanisms of international peace and security for the whole international community.[11] Sanctions came to represent 'a middle route, something more substantial than mere protest or denunciation, yet not violent, in contrast to military intervention.'[12] Moret listed the following factors contributing to sanctions' popularity: sanctions help to encourage 'a shift in direction on the part of a target's behaviour or curtail its access to vital resources,' 'they allow for flexibility in showing displeasure at another's actions' while stigmatising targets 'through their "naming and shaming" function,' they are typically less costly than military action and could represent an alternative or complement to diplomacy, they can be combined with other policy instruments and are useful leverage tools.[13] This transformation was accompanied by a significant institutional shift, whereby sanctions system evolved from a largely unilateral and decentralized practice into a system cantered on a "competent social organ", namely the United Nations Security Council.[14] However, this process seems to have entered recently a new phase of decentralization. The growing recourse to autonomous and unilateral sanctions reflects, in part, the limitations of the United Nations collective security system and the increasing difficulty of achieving consensus within the Security Council. While the Council's sanctions activity has stagnated in recent years, States and regional organizations have increasingly relied on autonomous sanctions regimes to tackle global challenges and emerging security threats.[15] Some scholar has contended that such decentralization is not a recent phenomenon but rather an inherent feature of the international legal system, which has

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[11] Joy Gordon, "Reconsidering Economic Sanctions," in *Soft War: The Ethics of Unarmed Conflict*, ed. Michael L. Gross and Tamar Meisels (Cambridge: Cambridge University Press, 2017).
[12] Ibid.
[13] Erica Moret, "Preface," in *International Sanctions in Practice*, ed. Antonio Bultrini, Francesco Giumelli, Clara Portela, and Mirko Sossai (Oxon: Routledge, 2025), 2.
[14] Georges Abi-Saab, "The Concept of Sanction in International Law," in *United Nations Sanctions and International Law*, ed. Vera Gowlland-Debbas (The Hague: Kluwer Law International, 2001), 32–33.
[15] Moret, "Preface," 3.

always been characterized by the absence of a centralized enforcement authority.[16] This perspective helps explain why sanctions have historically been employed primarily by powerful States or by actors possessing comparable political and economic leverage. Such a reality inevitably raises concerns regarding double standards, selective targeting, and the unequal application of coercive measures.[17] As a matter of fact, observable patterns in the imposition of sanctions show that sanctioning States are predominantly developed Western countries, while the targets are more often developing states. At the same time, the increasing reliance on unilateral and autonomous sanctions remains controversial because these measures generally enjoy a lower degree of international legitimacy than sanctions adopted by the UN Security Council or measures implementing Security Council Resolutions. In the following section, a legal framework to the different types of sanctions will be given, with special regard to the limits to their indiscriminate and arbitrary use, as well as the featural and structural changes these means have undergone due to their adverse humanitarian effects.

1.1 Definition and Typologies of Sanctions

As a premise, it must be highlighted that there is no unique authoritative legal definition of sanctions in international law, resulting in the employment of the term along with various synonyms each having different connotations based on the legal position of the person who refers to them and/or the entity employing them. This terminological inconsistency will arise in several instances and arguably reflects the unresolved debate around the legitimacy of sanctions as means of international governance. There is yet no agreement on whether sanctions should be considered indeed a "peaceful" alternative to the use of force or rather a coercive and violent tool capable of causing equivalent, long-lasting harm. This is not merely a moral question, but in fact a fundamental preliminary issue which grounds sanctions different legal framings. Generally, sanctions correspond to measures adopted by a sanctioning entity upon another one, the target, against its will, with the aim of obtaining behavioural change and/or compliance. The term entity is used here to include individual states but also international institutions such as the United Nations or the European Union, as well as the private individuals and organizations or enterprises that may be subjected to sanctions. From an international law perspective, Hofer also defines sanctions as 'means to coerce a change in behaviour, signal commitment to norms or punish wrongdoing.'[18]

[16] Antonio Bultrini, "Foreword," in *International Sanctions in Practice*, ed. Antonio Bultrini, Francesco Giumelli, Clara Portela, and Mirko Sossai (Oxon: Routledge, 2025), xx.
[17] Ibid.
[18] Alexandra Hofer, "Unilateral Sanctions as a Challenge to the International Legal Order," in *International Sanctions in Practice*, ed. Antonio Bultrini, Francesco Giumelli, Clara Portela, and Mirko Sossai (Oxon: Routledge, 2025), 63.

Sanctions can be distinguished based on what are their objectives, their subject matter, and who is the so-called sender. By objective, there can be nuclear, human rights and comprehensive or targeted sanctions. Nuclear sanctions are aimed at preventing the development and proliferation of nuclear weapons and WMD-related materials. Sanctions directed against North Korea are mainly of this nature. Human rights sanctions relate to sanctions imposed because of human rights violations by the government of a target State against its own population. This type of sanctions is in certain respects more controversial and paradoxical, in that while addressing and denouncing human rights violation by targeted governments, they may as well result into exacerbating and violating the same people's human rights they ostensibly attempt to uphold and protect.[19] As a result, their legitimacy and morality can be seriously undermined. In the last decade, the European Union has developed a rights-based sanctions regime which has been directed also against North Korea.

Based on their scope, it is possible to further distinguish between wide-range or comprehensive sanctions, and targeted or "smart sanctions", developed in the 1990s to avoid the indiscriminate and disproportionate harm on innocent people caused by comprehensive sanctions. Targeted sanctions, rather that applying to the country as a whole, they affect specifically government's officials, individuals, or certain economic goods or sectors. The evolution from comprehensive to smart sanctions and the debate revolving around the alleged minimized humanitarian impact of the latter will be later addressed; however, mention of their existence was made here to ensure a comprehensive account of all types of sanctions.

In terms of subject matter, namely what are the sanctioned activities, entities, or products, it is possible to distinguish economic, travel, military, diplomatic, and cultural sanctions. Economic sanctions, the most used and often considered the most effective, are sanctions that 'interfere in economic relationships between consenting economic parties.'[20] They can be further divided into trade sanctions and financial sanctions.[21] As listed by Fabre, trade sanctions may consist of export and import restrictions such as tariffs or wholesale embargos.[22] On the other hand, financial sanctions comprise freezing target's assets held abroad, limiting access to financial markets and restricting loans and credits, banning investment from or in the targeted country, but also the freezing of development aid.[23] Travel sanctions may target certain individuals or groups of people such as members of military juntas or non-governmental groups, and they generally impede such individuals to leave the country through visa denials. Travel sanctions may also affect aircrafts owned, leased or

[19] Fabre, *Economic Statecraft,* 3.
[20] Fabre, *Economic Statecraft,* 32.
[21] Ibid.
[22] Ibid.
[23] Ibid.

operated by or on behalf of these groups which are banned from landing or taking off from or in certain areas. Sanctions involving arms embargoes or the termination of military assistance or training are considered military sanctions.[24] Diplomatic sanctions, affecting mainly diplomats and political leaders, usually entail the revocation of visas, the withdrawal of diplomatic personnel or prohibition to participate in international bodies and organization, such as the case of Russia excluded from the Council of Europe in 2022. Finally, cultural sanctions, generally considered less impactful but with a strong symbolic effect, include banning athletes from the target country to participate in international sports competitions, as is the case of Russian athletes at the Olympics, and may as well concern artists or musicians excluded from cultural exhibitions and events or having had their educational and tourist travel restricted.

Based on who is the sender, it is also possible to distinguish UN Security Council's multilateral sanctions, EU restrictive measures, and unilateral coercive measures. In the following section all three will be analysed in detail.

1.2 Legal Basis and Limits to the Imposition and Implementation of Sanctions

International sanctions draw on different but often intersecting legal grounds which determine also the degree of their legitimacy. According to this logic, the legitimacy of sanctions is directly proportionate to how solid are the legal grounds based on which sanctions are adopted. Comparably, UN sanctions are believed to enjoy a higher degree of legitimacy because of the solid and universally accepted mandate of the Security Council for those situations falling within the scope of UN Charter's Chapter VII, namely threats to the peace, breaches of the peace or acts of aggression affecting international peace and security. Palestini identified three other criteria often used to argue the legitimacy or illegitimacy of international sanctions, namely the legitimacy of the norm (the status of the norm that has been violated), the legitimacy of the enforcer (who has the right to impose sanctions), and the legitimacy of the measure (whether the measures adopted are proportionate and appropriate).[25] According to Palestini, the higher the degree of legitimacy or status of the norm that has been violated, the more legitimate sanctions imposed to enforce that norm will be.[26] In terms of the legitimacy of the enforcer, the sanctioning power and authority of the UN Security Council is the most accepted and undisputed, to the point that some have argued only UNSC sanctions can be

[24] Bossuyt, *The Adverse Consequences of Economic Sanctions*, 6.

[25] Stefano Palestini, "The Elephant in the Room: Legitimacy and (De)Legitimation of International Sanctions," in *International Sanctions in Practice*, ed. Antonio Bultrini, Francesco Giumelli, Clara Portela, and Mirko Sossai (Oxon: Routledge, 2025), 48.

[26] Palestini, "The Elephant in the Room," 49-50.

considered legal under international law.[27] At the same time, there is no absolute monopoly of the legitimate use of sanctions in the contemporary international order neither a single centralized sender. Even the UN Security Council faces contestation because of its sanctions, especially when they depart from the core of its mandate, or when they cause adverse and unintended consequences on the population of the target country.[28] As will be further discussed below, the UNSC membership and the decision-making procedure based on the veto system also raise concerns and some accusations of political motivation which contribute to the delegitimating of the intent behind the imposition (or not imposition) of sanctions.[29] Those that enjoy the highest legitimacy problem are single States, due to the fact that often both the sender and the target of sanctions are two independent and sovereign States, meaning that the imposition of sanctions can be regarded as violating the principle of equal sovereignty of States and the principle of non-intervention. Furthermore, Palestini noticed 'unilateral sanctions appear as intimately linked to the "national interest" of the sender and therefore claims of the universality or at least the collective character of the norm violated are less credible than similar claims made by the UNSC or a regional' international organization.'[30] Importantly, unilateral sanctions are adopted based on the jurisdiction and domestic law of the sender, while being normally 'opaque' for the target and other States.[31] Finally, to assess the legitimacy of the measures taken against the target two elements are particularly relevant, namely the proportionality of such measures and their unintended consequences. These two are 'entangled and normally manifest through (de)legitimation disputes about the level of comprehensiveness of the sanctions.'[32]
The three legitimacy problems enunciated by Palestini represent core issues within the sanctions debate and will continue to be raised throughout the work of this thesis.

1.2.1 United Nations Sanctions

The UN Security Council is considered having primary responsibility in the fields of international peace and security, and consequently in the implementation of international sanctions adopted under Chapter VII of the UN Charter.[33] As a collective body entrusted by the UN Charter to maintain and restore international peace and security, the Security Council is empowered to take the measures

[27] Palestini, "The Elephant in the Room," 51.
[28] Palestini, "The Elephant in the Room," 51-52.
[29] Ibid.
[30] Palestini, "The Elephant in the Room," 53.
[31] Ibid.
[32] Palestini, "The Elephant in the Room," 55.
[33] Philippe Achilleas, "United Nations and sanctions," in *Economic Sanctions in International Law and Practice*, ed. Masahiko Asada (Oxfordshire: Routledge, 2020), 26.

necessary to fulfil this mandate, including by the adoption of sanctions. As previously mentioned, the Security Council is generally regarded as the only institution possessing clear international legal authority to impose sanctions on behalf of the international community. Accordingly, sanctions adopted under Chapter VII of the UN Charter are generally considered the only universally recognized form of multilateral sanctions and are often regarded as enjoying the highest degree of international legitimacy.

The UN sanction mechanism begins when the Security Council assesses the presence of a threat to peace, breach of peace, or act of aggression. Following such estimation, the Council can either make recommendations or adopt measures relevant to Articles 41 (not including the use of force) or 42 (including the use of force) to maintain or restore international peace and security. Under Article 40, the Security Council may also take provisional measures. Even though the term "sanctions" is not explicitly mentioned, various UNSC Resolutions refer to the relevant measures of Article 41 with such denomination, suggesting practical and semantic equivalence between the two.

Looking specifically at the UN Charter, Article 24 provides the conferral to the Security Council by Member States of the duty to maintain or restore international peace and security and the power to act on their behalf on this matter.[34] Chapter VII of the Charter includes the specific powers granted to the Security Council for the discharge of its duties, namely Articles 39, 41 and 42. In particular, Article 39 recites that the United Nations Security Council (UNSC) has the mandate to 'make recommendations, or decide what measures shall be taken […] to maintain or restore international peace and security.'[35] Measures not involving the use of armed force under Article 41 include 'complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.'[36] Under Article 41, UN members states are compelled to implement UNSC Resolutions adopted based on Chapter VII. Conversely, when the Security Council adopts mere recommendations, they are not legally binding to Member States, even though they produce certain legal effects. Namely, the possible wrongfulness of measures taken to implement UNSC recommendations is believed to be precluded because of the *opinion juris* held by Member States that such measures are not unlawful.[37] Finally, Article 42 provides that whether the Security Council deems the measures taken insufficient or inadequate, it can resort to the use of force.[38]

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[34] *Charter of the United Nations*, June 26, 1945, 1 U.N.T.S. XVI, art. 24.

[35] *Charter of the United Nations*, art. 39.

[36] *Charter of the United Nations*, art. 41.

[37] Asada Masahiko, "Definition and Legal Justification of Sanctions," in *Economic Sanctions in International Law and Practice*, ed. Masahiko Asada (Oxfordshire: Routledge, 2020), 8.

[38] *Charter of the United Nations*, art. 42.

The Security Council holds the monopoly over the imposition (or termination) of multilateral sanctions in the UN system, meaning its sanction power is exclusive and discretionary. In contrast, the General Assembly cannot adopt sanctions in cases pertaining to Chapter VII but is only limited to a recommendation power which enables it to request or urge the Security Council to act accordingly to Chapter VII and the principles and purposes of the Charter. The absence of a judicial review mechanism for UN Security Council sanctions reflects the broad discretion enjoyed by the Council in determining what constitutes a threat to the peace, a breach of the peace, or an act of aggression under Chapter VII of the UN Charter. This considerable interpretative authority has enabled the Security Council to play a central role in shaping and expanding the scope of situations relevant to Chapter VII. As noted by Achilleas, the Council has progressively broadened the concept of a "threat to the peace" to encompass a wide range of circumstances, including the denial of the right to self-determination, internal armed conflicts, arms proliferation, serious human rights violations, the undermining of democratic legitimacy, and terrorism.[39] As a result, the range of situations in which sanctions may be adopted pursuant to Article 41 of the Charter has expanded significantly.

Despite this broad discretionary power granted to the Security Council, the UN Charter poses a series of limits to its action.

- Article 1: Article 1 of the UN Charter provides that the United Nations, in fulfilling its mandate of preventing, removing threats to the peace, suppressing acts of aggression or other breaches of the peace, should act 'in conformity with the principles of justice and international law'.[40] Therefore, all collective measures taken to this end, including sanctions, must be just and respect international law, and should also be effective. To guarantee sanctions are just and effective, the former Sub-Commission on the Promotion and Protection of Human Rights recognized the need of constant evaluation and review: 'Ineffective or unjust sanctions or those that violate other norms of international law may not be imposed or must be lifted if they have been imposed'.[41] Moreover, sanctions should respect the principle of equal rights and self-determination of people in strengthening universal peace, which implies sanctions that violates such rights and freedoms are to be considered illegitimate;[42] the United Nations should 'solve issues of a pressing humanitarian nature, not […] cause them'.[43]
- Article 24: Article 24 of the UN Charter affirms that 'in discharging [its] duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations'.[44] It

[39] Achilleas, "United Nations and sanctions," 28.
[40] *Charter of the United Nations*, art. 1.
[41] Bossuyt, *The Adverse Consequences of Economic Sanctions*, 8.
[42] *Charter of the United Nations*, art. 1 par 2.
[43] Bossuyt, *The Adverse Consequences of Economic Sanctions*, 8.
[44] *Charter of the United Nations*, art. 24.

can consequently be inferred that *ultra vires* resolutions adopted beyond the scope of the Charter do not entail obligations for Member States and do not produce any legal effect.[45] Purposes and Principles of the United Nations are those enunciated in Article 1 of the UN Charter.

- Article 27: Article 27 of the UN Charter deals with decision-making within the Security Council, providing that any non-procedural resolution, including the adoption of sanctions, should be adopted through 'an affirmative vote of seven members including the concurring votes of the permanent members'.[46] Therefore, the veto system constitute a practical limit to the imposition of sanctions. As demonstrated in the past during the Cold War period, it can prevent the adoption of any sanction acting against the interests of one of the permanent members or its allies.
- Article 39: The mandate given to the Security Council by Article 39 is to act on behalf of all Member States to maintain or restore international peace and security. It derives that measures adopted under Chapter VII must not necessarily concern a breach of international law but only those acts, both lawful or unlawful, that constitute, according to the Security Council, a breach of the peace, a threat to the peace or an act of aggression. This signifies that sanctions adopted under Chapter VII 'represent a political response to the violation of international peace and not a legal response for the violation of international law'.[47] Nevertheless, determining which situations fall within the scope of breaches of or threats to peace is highly discretionary. Additionally, since there is no judicial review mechanism, it could be argued that, provided the permanent members agree, any violation could be regarded as such, thereby effectively nullifying the real force of this legal limitation and making it politically contingent.
- Article 55: Article 55, building on Article 1, requires the United Nations to promote 'a. higher standards of living, full-employment, and conditions of economic and social progress and development, b. solutions of international economic, social, health, and related problems, and educational cultural and educations cooperation and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'.[48] Whether the impact of sanctions results in lowering or aggravating economic standards, creates health problems or is detrimental to the observance of human rights would constitute a violation of Article 55.

[45] Bossuyt, *The Adverse Consequences of Economic Sanctions*, 8.
[46] *Charter of the United Nations*, art. 27.
[47] Achilleas, "United Nations and sanctions," 24.
[48] *Charter of the United Nations*, art. 55.

Beyond the UN Charter, UNSC action should also be respectful of *jus cogens*. As Focarelli and Conforti argue, customary and conventional international law do not limit completely the Security Council in peace and security matters.[49] When adopting Resolutions in response to a breach of the peace or a threat to the peace, the Security Council may in fact require Member States to implement measures that, in another circumstances, would be considered unlawful. It is in sanctions being *per se* unlawful the need to be legally justified.[50] When implementing a UNSC Resolution imposing an embargo on a targeted State, Member States may be required to act inconsistently with obligations arising under trade treaties concluded with that State and with other third countries. In such case, mandatory UN sanctions prevail according to Article 103 of the UN Charter over interstate obligations. However, in the absence of any limit, the Security Council would risk being reduced to a tool of Member States to evade international responsibility and circumvent their international obligations. According to Focarelli and Conforti, peremptory norms may constitute the ultimate boundary that the Security Council cannot overrun.[51] As a result, Resolutions in contrast with *jus cogens* would automatically be invalidated and Member States would no longer be required to implement them. The resulting issue would then be to identify which norms can be considered peremptory, a hard task that requires the recognized existence of both subjective belief among most States that a norm is non-derogatory, *opinion juris*, and a sufficient praxis confirming such belief. Focarelli and Conforti conclude by considering another possible limit to the Security Council sanction power, that is a special customary humanitarian norm relevant to measures under Article 41 which would interdict the Council from targeting survival goods through sanctions. According to the two authors, the UN Charter would not have provided *ab origine* such humanitarian limit for measures relevant to Article 41, being it excessive to view the Charter as a treaty that assigns absolute priority to human rights, even at the cost of, where necessary, sacrificing the requirements of international peace and security. The respect of human rights was clearly subordinate to enhancing global peace and security. Hence, they affirm that such minimum and non-derogable humanitarian threshold, regardless of the Security Council's interests at stake, goes beyond the Charter and is grounded in a customary rule that developed after its entry into force.[52]

Moreover, General Comment N. 8 of the Committee on Economic, Social and Cultural Rights remarked that the provisions of the Covenant on Economic, Social and Cultural Rights 'cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken

[49] Benedetto Conforti and Carlo Focarelli, *Le Nazioni Unite*, (Milano: Wolters Kluwer, 2023), 306.
[50] Masahiko, "Definition and Legal Justification of Sanctions," 5.
[51] Conforti and Focarelli, *Le Nazioni Unite*, 308.
[52] Conforti and Focarelli, *Le Nazioni Unite*, 309.

that considerations of international peace and security warrant the imposition of sanctions.'[53] When expecting compliance and respect by the targeted State of the rights enshrined in the Covenant, the Committee believes the international community that imposes sanctions should 'do everything possible to protect at least the core content of the economic, social and cultural rights of the affected peoples of that State.'[54] This obligation is derived from Article 1 of the UN Charter establishing the United Nations' commitment to the promotion of human rights. Moreover, since most of the non-permanent members of the UNSC and all the Permanent Members, except for the United States, have ratified the Covenant, they would be directly bound to conform with its objectives 'by all appropriate means.' Additionally, some of the principles of the Covenant have become part of general international law, thus applying also to States which are not parties to the Covenant. The outcome is not for the Security Council to place human rights considerations before peace and security imperatives, but rather to take into account human rights in the drafting, design, and implementation of sanctions, which may contribute to make them more legitimate tools, and consequently render the action of the Security Council more legitimate as well.

In terms of limits to the implementation of UN sanctions, the Security Council, similarly to the European Union, cannot directly implement its sanctions but it needs the cooperation of Member States. Political reluctance and the national law of Member States may thus hinder sanctions implementation.[55] Some measures adopted by States and the European Union resulting from UN Resolutions have been also subject of an appeal, challenging the obligation of States to implement Security Council's sanctions when they violate fundamental principles and values.[56] An example is the so-called *case Kadi*, by which the Court of Justice of the European Union established that EU restrictive measures, even when implementing UN Resolutions, should be subject to judicial review of their lawfulness, and consequently that the pursue of international peace and security cannot be contrary to core human rights. This case will be addressed specifically in subparagraph 1.5.3.

1.2.2 Unilateral Sanctions

Unilateral sanctions have various denominations. The denomination "unilateral restrictive measures" is used to refer to unilateral sanctions adopted by the European Union whereas "unilateral coercive measures" is generally preferred by the United Nations to name unilateral sanctions adopted outside

[53] Committee on Economic, Social and Cultural Rights, *General Comment No. 8*, 3.
[54] Ibid.
[55] Pavel Šturma, "Introduction," in *International Sanctions and Human Rights*, ed. Pavel Šturma (Cham: Springer Nature Switzerland, 2024): 11
[56] Achilleas, "United Nations and sanctions," 27.

the UN Security Council framework. The terms "unilateral coercive measures" may also encompass sanctions taken autonomously by the European Union, also called "autonomous EU sanctions" to underline the fact that they are adopted *proprio motu*. On the contrary, those supplementing UNSC resolutions are called "unilateral restrictive measures." Finally, when unilateral sanctions are adopted in reaction to a violation of international law committed by the targeted country, such measures may fall within the scope of "countermeasures." This section will address each of these terms in detail, except for those referring to EU sanctions which will be deferred to subparagraph 1.2.3.

As defined by the Human Rights Council Advisory Committee, "unilateral coercive measures" are 'economic, trade or other measures taken by *a State, group of States or international organizations acting autonomously* to compel a change of policy of another State or to pressure individuals, groups or entities in targeted states to influence a course of action *without the authorization of the Security Council*' [emphasis added].[57] According to this definition, the unilateral character of this type of sanctions lies first in the fact that they are not adopted by the UN Security Council and secondly to the fact that they act without its authorization. Sanctions implementing UNSC Resolutions are thus excluded from the scope of the definition, which refers exclusively to sanctions taken "autonomously" by States or international organizations. Another feature of the Advisory Committee's definition to take into consideration is the use of the attribute 'unilateral' to encompass not only those unilateral sanctions imposed by single States, but also those adopted by regional organizations such as the European Union, regardless the latter would have a *stricto sensu* multilateral nature. The differentiation between UNSC sanctions as *multilateral* and non-UNSC sanctions as *unilateral* would exist to recognize 'the primary responsibility of the United Nations Security Council (UNSC) to maintain international peace and security' and thus the different 'political impetus' behind UNSC sanctions on the one hand, and unilateral sanctions on the other.[58] As previously explained, UN sanctions adopted by the Security Council under Chapter VII are taken on behalf of all UN Member States thus representing a collective response to a threat to the peace, a breach of the peace or an act of aggression. In contrast, unilateral coercive measures may 'pursue a much wider range of goals and objectives which are autonomously defined by the sanctioning states or [regional organizations] according to their own individual foreign policy interests.'[59] Unilateral sanctions are not based on a multilateral treaty whereby States grant the organ of an international or regional organization with the authority to adopt sanctions, but are adopted pursuant to State's own national and executive

[57] Human Rights Council, *Research-based progress report of the Human Rights Council Advisory*, U.N. Doc. A/HRC/28/74 (February 10, 2015), 5.

[58] Charlotte Beaucillon, "An Introduction to Unilateral and Extraterritorial Sanctions: Definitions, State of Practice and Contemporary Challenges," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 4.

[59] Ibid.

powers.[60] The degree of objective legal qualification of unilateral sanctions is therefore different, arguably lower, than that of a 'competent social organ' which makes its assessments based on its constitutive instruments.[61] 'It is this debate, particularly within the United Nations, which has seen the flourishing of the notion of 'unilateral coercive measures,' a terminology that emphasizes the political purpose of these measures – coercion – and raises the question of the legitimacy of the use of such instruments, particularly between states whose relations should be devoid of such constraints on the grounds of their sovereign equality.'[62] It is also for this reason that those traditionally against unilateral coercive measures, in particular members of the Non-Aligned Movement, consider legitimate only multilateral sanctions adopted by the Security Council. Moret has also highlighted that when unilateral sanctions are mandated by a Resolution of the Security Council, this makes the adoption of such measures *obligatory* for UN Member States, whereas the adoption of unilateral non-UNSC sanctions, that is unilateral coercive measures, is *voluntary* or at most conditional. This further implies that the legitimacy of such a decision is not derived from the "main" UNSC measure, but in fact remains to be ascertained.[63] Evidently, there is a legitimacy gap between the two. When they implement UNSC decisions, 'the legal question insofar as international law is concerned will focus on whether the UN sanctions themselves are lawful' and not on the lawfulness of the implementing unilateral sanctions.[64] On the contrary, the legal grounds of unilateral coercive measures remain particularly shaky, ambiguous and still very debated. For this reason, governments often resort to terminological escamotages to gain more flexibility and deniability when adopting sanctions: 'specific challenges are also implicit in the use of 'sanctions by other names' or measures by those governments that do not make public the political or juridical processes that underlie their use, rendering them less accountable.'[65] From this perspective, tying the adoption of sanctions to the objectives of a UNSC Resolution may cover under a veil of legitimacy what is in fact a unilateral coercive measure taken according to individual interests and generally considered unlawful. Thus, it is important, despite how a state might present it, to determine the real character and legal basis of unilateral measures with a case-by-case approach.[66]

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[60] Hofer, "Unilateral Sanctions as a Challenge to the International Legal Order," 65.
[61] Ibid.
[62] Beaucillon, "An Introduction to Unilateral and Extraterritorial Sanctions," 4.
[63] Erica Moret, "Unilateral and Extraterritorial Sanctions in Crisis: Implications of Their Rising Use and Misuse in Contemporary World Politics," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 20.
[64] Jean-Marc Thouvenin, "Articulating UN Sanctions with Unilateral Restrictive Measures," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 157
[65] Moret, "Unilateral and Extraterritorial Sanctions in Crisis," 22.
[66] Beaucillon, "An Introduction to Unilateral and Extraterritorial Sanctions," 7.

Moret considers unilateral sanctions that are not implemented pursuant to a UNSC Resolution and therefore fall within the category of unilateral coercive measures to be illegitimate and inappropriate instrument of enforcement in the international system for several reasons. Although such measures are often justified as a means of pursuing justice, Moret argues that they constitute 'deeply unjust tools' as their adoption is inconsistent and selective and they can have humanitarian consequences resulting in perpetuating injustice upon the civilian population of the targeted country.[67] Moreover, unilateral sanctions are inherently punitive in nature, whereas punishment is ill-suited to the horizontal, decentralized structure of the international order.[68] The practice of unilateral coercive measures is hierarchical and generates resentment in targeted states, whose governments perceive themselves as being punished rather than induced to alter their behaviour or comply with international norms.[69] The perceived illegitimacy of sanctions by targeted States can be counterproductive to the efficacy of coercive measures.[70] Demonstrating that unilateral measures are genuinely intended to induce compliance with international law – rather than punish the target country – would allow them to be classified as countermeasures, namely 'recognized circumstances precluding wrongfulness' under the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), thereby providing a potential basis for their legal justification.[71] Indeed, the law of countermeasures has frequently been invoked to legitimize sanctions regimes, especially the imposition of '*per se* illegal autonomous sanctions.'[72]

However, several scholars, most notably Hofer, contend that the existing countermeasures framework is unable to accommodate the diversity and evolution of contemporary unilateral sanctions, creating a "rift between theory and practice." [73] In this view, a tension exists between a formal and restrictive legal regime and a state practice that has become increasingly flexible and politically driven. [74] Furthermore, even where sanctions are presented as instruments designed to induce compliance, it remains difficult to demonstrate that they are not also intended to punish the target State, thereby raising the same normative and legal concerns associated with punitive measures. Distinguished scholar and former special relator of the ILC James Crawford clarified that countermeasures should in fact not be purported to punish the targeted State for its violation of international law but must be

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[67] Hofer, "Unilateral Sanctions as a Challenge to the International Legal Order," 65.
[68] Ibid.
[69] Ibid.
[70] Hofer, "Unilateral Sanctions as a Challenge to the International Legal Order," 69.
[71] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001), art. 22, in *Yearbook of the International Law Commission*, 2001.
[72] Masahiko, "Definition and Legal Justification of Sanctions," 11.
[73] Hofer, Unilateral Sanctions as a Challenge to the International Legal Order," 188.
[74] Alexandra Hofer, "The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?" *Nordic Journal of International Law* 89, (2020): 401.

intended as instrumental to induce an arrest of the illicit act and provision of duly reparation.[75] This would explain why the term "sanction" was put aside by the ILC in favour of the more neutral term "measure." If the underlying intent of coercive measures is in fact punitive, the International Law Commission's characterization of sanctions as inducive measures in the Articles on State Responsibility (ARSIWA) fails to reflect reality and is ill-suited to regulate such situations fairly, thereby reinforcing the target's resentment toward the sender and its inclination toward non-compliance. Continuing to 'dress up' sanctions as non-punitive tools may further exacerbate the risk of arbitrary enforcement and ultimately it does not appear to be a viable means of addressing the legitimacy gap surrounding unilateral sanctions.[76] Especially among Members of the Non-Aligned Movement and former targeted states, the discourse has gone as far as considering sanctions mere neocolonial, biased tools available to the richest and most powerful countries while serving their national interests. Historically, during the drafting of the UN Charter, Brazil first proposed to include coercive measures within the meaning of force as per Article 2(4), but its proposal was ultimately rejected.[77] On their part, the International Law Commission and the UN General Assembly remarked in multiple occasions and Resolutions their condemnation of unilateral coercive measures and economic coercion. Some scholars have come to argue that the majoritarian support in the UN General Assembly for the legal position recognizing unilateral sanctions as unlawful would prove the emergence of a new customary law prohibiting the adoption of such measures. However, there would not be sufficiently recognized State practice and/or *opinion juris* to suggest a prohibition of unilateral coercive measures has been elevated to customary international law.

Nevertheless, assessing the legitimacy of unilateral sanctions as countermeasures requires an examination of the international obligations governing the legal relationship between the sanctioning State and the targeted State.[78] When unilateral measures do not violate existing international obligations between the sender and the target, they are considered simply retorsions, which are unfriendly but lawful acts against a similar, often harmful, act of another State.[79] However, if sanctions do violate existing international obligations, the sanctioning State 'will engage its international responsibility unless it can demonstrate that these measures are justified as countermeasures.'[80] Contrary to UN sanctions which can be levied against in reaction to *any* act as

[75] James Crawford, "The Relationship Between Sanctions and Countermeasures," in *United Nations Sanctions and International Law*, ed. Vera Gowlland-Debbas (The Hague: Kluwer Law International, 2001), 59-60.
[76] Hofer, "Unilateral Sanctions as a Challenge to the International Legal Order," 198-199.
[77] Pierre-Emmanuel Dupont, "Unilateral Sanctions as Unilateral Coercive Measures: Discussing Coercion at the UN Level," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 367.
[78] Ibid.
[79] Ibid.
[80] International Law Commission, *DARSIWA*, art. 22.

long as the Security Council regards it as a threat to the peace, breach of the peace or act of aggression, countermeasures can be legitimately resorted to only in reaction to a previous breach of international law, whereby the sanctioning country or international organization is to be considered "injured" and the target "responsible" of the breach of international law. This relationship must be demonstrated: 'it is not sufficient for states or REIOs [Regional economic integration organizations] to declare that they are reacting to a violation of international law by the target of unilateral sanctions for that violation to be established.'[81] Moreover, countermeasures are instruments only applicable to inter-state relations which means that to qualify as such they must be adopted in reaction to a *state*'s prior unlawful behaviour. When it comes to targeted sanctions against *non-state actors* it might be difficult to establish their qualification as countermeasures, in that to be considered as such they must be directed against at least state officials, agents, or organs whose actions can give rise to the responsibility of the State under ARSIWA, Part I, Chapter II.[82] In addition, 'sanctions that target non-state actors in their private capacity are a response to the *private actions of individuals that do not engage direct state responsibility*, although the actions of individuals may contribute to an internationally wrongful act' [emphasis added].[83] Thus, unilateral targeted sanctions hardly fall within the scope of countermeasures.

Article 50 of ARSIWA sets further legal limits, namely 'countermeasures shall not affect a) the obligation to refrain from the threat or use of force […]; b) obligations for the protection of fundamental human rights; c) obligations of humanitarian character prohibiting reprisals; d) other obligations under peremptory norms of general international law.'[84] Moreover, countermeasures must be limited in time and lifted as soon as the responsible State ceases the illicit act and complies with its obligations derived from international responsibility.[85] Countermeasures must also be proportionate.[86] Finally, countermeasures shall be taken only after a series of actions have been attempted first, namely calling upon the responsible State to fulfil its obligations, notifying it of any decision to take countermeasures and offering to negotiate, provided that 'the injured State may take such urgent countermeasures as are necessary to preserve its rights.'[87]

Scholars and institutions that recognize the possibility of third-party countermeasures, including the Institut de droit international, generally maintain that such measures should be subject to conditions

[81] Beaucillon, "An Introduction to Unilateral and Extraterritorial Sanctions," 7.
[82] Hofer, "Unilateral Sanctions as a Challenge to the International Legal Order," 190-191.
[83] Ibid.
[84] ARSIWA, art. 50.
[85] ARSIWA, artt. 52, 53.
[86] Ibid.
[87] Ibid.

analogous to those applicable to an injured State under Article 50 ARSIWA.[88] Accordingly, third-country countermeasures would be unlawful whenever they interfere with the prohibition on the use of force, fundamental human rights, or other obligations deriving from peremptory norms of international law.[89] Third-party countermeasures arise when unilateral sanctions are adopted by States other than the directly injured State and are justified on the basis of violations of collective interests, such as serious human rights abuses committed by a government against its own population. According to Tanaka, 'careful consideration must be given to the question of whether the protection of community interests […] should be entrusted to individual States, acting on the basis of their own assessment of legality.'[90] Examples provided of unilateral sanctions adopted in reaction to violations *erga omnes* and *erga omnes partes* are US sanctions levied against Venezuela for the violation of obligations *erga omnes partes* arising from the International Covenant on Civil and Political Rights (1966) of which Venezuela is a Member State, and those levied against Russia, especially from the European Union, for the violations of obligations *erga omnes* and *jus cogens* such as the prohibition of aggression.[91] The protection of community interests has increasingly been invoked by States to justify the use of confrontational enforcement measures, including unilateral targeted sanctions.[92] According to Ventura, this phenomenon reflects a spontaneous remedial response to the paralysis or limitations of centralized enforcement mechanisms, particularly the United Nations Security Council. From this perspective, community interests provide an appropriate legal basis for targeted unilateral measures and supposedly support a gradual shift from a bilateral system based on reciprocity towards a decentralized international public order centred on the protection of universal values, especially human rights.[93] Provided that they comply with general principles of law, most notably proportionality, such measures cannot be regarded as inherently unlawful. At the same time, several scholars question whether the ARSIWA countermeasures regime provides an adequate legal framework for rights-based sanctions. Many contemporary sanctions target conduct that is not attributable to a State and are frequently imposed with punitive rather than compliance-inducing objectives. Consequently, reliance on the law of countermeasures may obscure rather than clarify

[88] Yoshifumi Tanaka, "The Legal Consequences of Obligations Erga Omnes," *Netherlands International Law Review* 68, no. 1 (2021): 17.
[89] Pierre-Emmanuel Dupont, "An Overview of Some Legal Issues Concerning Unilateral Sanctions," in *Economic Sanctions from Havana to Baghdad*, ed. Joy Gordon (Chicago: Cambridge University Press, 2025), 276.
[90] Tanaka, "The Legal Consequences of Obligations Erga Omnes," 18.
[91] Pavel Šturma, "The Notion of "Sanctions" and "Countermeasures" in International Law," in *International Sanctions and Human Rights*, ed. Pavel Šturma (Cham: Springer Nature Switzerland, 2024), 22-24.
[92] Daniel Ventura, "'Community Interests' as an Appropriate Legal Basis for the Implementation of Unilateral Targeted Measures," in *International Sanctions in Practice*, ed. Antonio Bultrini, Francesco Giumelli, Clara Portela, and Mirko Sossai (Oxon: Routledge, 2025), 11.
[93] Ventura, "'Community Interests' as an Appropriate Legal Basis," 19.

their legal basis. As Dupont observes, 'the legality of third-party countermeasures, that is to say, taken by a state other than the state affected by the wrongful act, and of collective countermeasures or countermeasures "in the common interest," remains a matter of controversy.' [94] ARSIWA nevertheless recognizes that States other than the injured State may invoke responsibility when '(a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group [also known as *erga omnes partes* obligation]; or (b) the obligation breached is owed to the international community as a whole [an obligation due *erga omnes*].'[95] Whenever an obligation *erga omnes* is violated, a *legal interest* to invoke the responsibility of the violating State is generally recognized to all the members of the international community, provided that the responsibility regime will not be the same as the one invokable by the injured State. As Crawford noted during the drafting process of ARSIWA, '[a]ccepting, on the basis of the *Barcelona Traction* dictum, the proposition that there is a legal interest of states at large in respect of violations of certain obligations, to conceive that legal interest in the same way as the subjective rights of an individual state in a bilateral relationship with another state seems a fundamental error.'[96] Accordingly, Article 49 entitles non-injured States to seek cessation of the wrongful act, guarantees of non-repetition, and performance of reparation obligations in the interest of the injured State or the beneficiaries of the breached obligation.[97] Article 54 further provides that non-injured States may take 'lawful measures' to ensure cessation of the breach and reparation.[98] The meaning of this provision remains controversial. While it appears to leave open the possibility of countermeasures adopted by non-injured States in response to violations of obligations *erga omnes* or *erga omnes partes*, the International Law Commission deliberately refrained from endorsing such a right. The Commission concluded that third-party countermeasures lacked sufficient support in both state practice and *opinio juris* and therefore left the matter to the future development of international law. [99] Hofer reaches a similar conclusion, arguing that contemporary sanctions practice, being largely dominated by a limited number of predominantly Western States, does not satisfy the requirement of a "general practice" capable of establishing a rule of customary international law. [100]

Finally, it must be highlighted that despite unilateral sanctions having become increasingly popular, especially within international organizations and Western developed countries face to a Security

[94] Dupont, "An Overview of Some Legal Issues Concerning Unilateral Sanctions," 275.
[95] ARSIWA, art. 48.
[96] Crawford, "The Relationship Between Sanctions and Countermeasures," 67-68.
[97] ARSIWA, art. 48.
[98] ARSIWA, art. 54.
[99] Alexandra Hofer, "Unilateral Sanctions as a Challenge to the Law of State Responsibility," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 188.
[100] Hofer, "Unilateral Sanctions as a Challenge to the Law of State Responsibility," 194.

Council often locked by the veto system,[101] this surge has not been accompanied by concurrent legal evolution in the field of sanctions, which remains 'one of the least developed areas of international law.'[102] In its Basic Principles on the Use of Restrictive Measures (Sanctions), the Council of the European Union declares that 'if necessary, [it] will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance.'[103] Moreover, State practice in adopting unilateral sanctions seems to follow political considerations rather than purely legal arguments.[104] This demonstrates how decisions to adopt sanctioning measures are, in reality, highly politicized and largely monopolized by the executive branch, leaving only a limited role for the legislative and judicial branches at this stage. Such politicization in sanctions decision-making generates challenges both at the UN and at the unilateral level. In the latter case in particular, it lends support to critics of unilateral sanctions, who argue that such measures are not genuinely adopted in the defence of a collective interest nor strictly in response to violations of international law, but rather on the basis of states' own assessment of the situation and of the appropriate response. States may 'not even invoke a breach of specific obligations under international law […and] prefer the indeterminacy of the concept of sanctions, which gives them flexibility in pursuing their political goals.'[105] This, however, is considered 'a dangerous trend in international relations, which puts some powerful actors in a position where they unilaterally interpret and enforce what they consider to be international law, regardless of the existing rules of state responsibility and the related rules and limits of countermeasures.'[106] This approach clearly prioritizes political considerations over strictly legal ones.

The unresolved debate surrounding the true nature of sanctions is significant and explains the 'rift' identified by Hofer. In the absence of a preliminary and fundamental agreement on how sanctions should be conceptualized, the outcome risks being hindering to the positive development of this area of international law, particularly in terms of effectively integrating humanitarian and human rights considerations into the definition of the legal basis of sanctions and avoiding a further deepening of the divide between sanctions theory and practice. This is true especially for unilateral sanctions, but can be extended also to Security Council Resolutions, which are not void of criticism. Beaucillon

[101] Hennie Strydom, "South Africa's position and practice with regard to unilateral and extraterritorial coercive sanctions," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 53.
[102] Hofer, "Unilateral Sanctions as a Challenge to the Law of State Responsibility," 186.
[103] Council of the European Union, *Basic Principles on the Use of Restrictive Measures (Sanctions)*, doc. 10198/1/04 REV 1, PESC 450 (Brussels, June 7, 2004), 2.
[104] Šturma, "Introduction," 11.
[105] Šturma, "The Notion of "Sanctions" and "Countermeasures"," 21.
[106] Ibid.

observes that 'while unilateral and extraterritorial sanctions have become and will continue to be indispensable instruments in the conduct of international relations, they stand today at a crossroads between strategic instrumentalization and uncontrolled effects on human rights.'[107] Moreover, as is often the case, sanctioned countries tend to perceive unilateral sanctions imposed against them as unlawful, thereby justifying non-compliance and reducing their effectiveness. Rather than inducing targets to comply, the resentment generated by being subjected to what is perceived as an unlawful measure may instead motivate them to 'reject stigma and to find means through which […] to circumvent the costs imposed.' [108]

In terms of reach, namely practical and legal limits to the implementation of unilateral sanctions, UNSC sanctions are in theory more far-reaching than unilateral sanctions. Whereas multilateral sanctions must be implemented by all Member States under Chapter VII of the UN Charter, unilateral sanctions bind only those within the sanctioning state's territorial and personal jurisdiction.[109] The same goes for EU sanctions. Obtaining broad compliance limits the possibility for the target to resort to alternative partners or circumventive practices thus maximizing the pressure and the coercive force of sanctions and ultimately increasing their overall effectiveness. Due to the limited reach of unilateral sanctions, individual states (and organizations) designed various techniques to extend the capability of such tools, including 'the use of extraterritorial legislation and the multilateralization […] through contractualization or informal diplomatic alignment.'[110] More specifically, Beaucillion identifies two main strategies used by States to achieve a broad and effective application of unilateral sanctions. The first one consists of diplomatic efforts 'to make […] partners mirror their [of the sanctioning states] unilateral sanctions through more or less formalized legal mechanisms ranging from de facto domestic implementation to contractualization through international agreements.'[111] The second strategy is expanding sanctions extraterritorial reach by overstretching to often a controversial extent the territorial and/or personal nexuses through which the jurisdiction is established. This represents one feature of extraterritoriality in unilateral sanctions, the second being the (unlawful) adoption of secondary sanctions.

Whereas primary sanctions operate within the sanctioning entity's jurisdiction, therefore applying to 'individuals and entities located on the territory or bearing the nationality of the state or group of states imposing unilateral sanctions,' secondary sanctions act beyond jurisdictional boundaries 'to impede (trade or other) relations between the targeted state and third states.'[112] Controversially,

[107] Beaucillon, "An Introduction to Unilateral and Extraterritorial Sanctions," 2.
[108] Hofer, "Unilateral Sanctions as a Challenge to the Law of State Responsibility," 200.
[109] Beaucillon, "An Introduction to Unilateral and Extraterritorial Sanctions," 5.
[110] Beaucillon, "An Introduction to Unilateral and Extraterritorial Sanctions," 4.
[111] Beaucillon, "An Introduction to Unilateral and Extraterritorial Sanctions," 5-6.
[112] Dupont, "An Overview of Some Legal Issues Concerning Unilateral Sanctions," 273.

secondary sanctions are imposed on de facto innocents, “guilty” solely of pursuing ‘their relationships with unilaterally sanctioned individuals, entities or states’.[113] Secondary sanctions are considered inadmissible under international law in that they ‘disproportionately impact third states […], infringe upon their rights to trade and to conduct their foreign policy freely, thereby interfering in their external affairs in a manner that is incompatible with the principle of non-intervention.’[114] Even in the countermeasure framework, these sanctions are illegit in that ‘countermeasures can *only* be taken against the responsible State (and therefore must not affect the rights of third parties).’[115]

Secondary sanctions often consist of access restrictions imposed on sanctioned entities, particularly restrictions to the entry in the domestic market, to the use of financial institutions or to the access to the territory of the sanctioned country. In particular, they aim ‘to deter, restrict or prohibit the economic or financial interactions between a third State […] and the primary sanction’s target State,’ with the objective of economically or financially isolating and amplifying the pressure on the primary target State. [116] Secondary sanctions are extraterritorial in that they aim to govern transactions carried out by foreign entities outside the territory and jurisdiction of the sanctioning State. Access restrictions can be implemented almost immediately by the sanctioning State, in that they do not require lengthy judicial or administrative proceedings. More specifically, through domestic legislation, such as a decree or regulation, the sanctioning State establishes that companies or individuals, including those located abroad, are prohibited from trading or accessing the market or financial institutions of the sanctioning State if they continue to do business, such as investing or trading, with a country subjected to the primary sanctions regime. In such a manner, the sanctioning State exerts pressure upon foreign companies and individuals ‘to choose between continue trading with the primary sanctions target and face one of the consequences [of secondary sanctions] or cease their transactions with the latter.’[117] While it is accepted that a State may choose to permit or prohibit trade between its nationals and a secondary party, interference in trade relations between two foreign nations and claiming authority over persons and actions that have no nexus, or no sufficient nexus, with the sanctioning State is more problematic and, according to many, contrary to international law.[118] The US, for example, has forced the boundaries of its jurisdiction by relying on the principle of active personality to claim jurisdiction over foreign companies owned or controlled by a US

[113] Beaucillon, “An Introduction to Unilateral and Extraterritorial Sanctions,” 5.

[114] Hofer, “The Proportionality of Unilateral “Targeted” Sanctions,” 408.

[115] Hofer, “The Proportionality of Unilateral “Targeted” Sanctions,”. 411.

[116] Felipe Rodríguez Silvestre, “The Jurisdictional Intricacies of Secondary Sanctions Consisting of Access Restrictions,” in *International Sanctions in Practice*, ed. Antonio Bultrini, Francesco Giumelli, Clara Portela, and Mirko Sossai (Oxon: Routledge, 2025), 85.

[117] Silvestre, “The Jurisdictional Intricacies of Secondary Sanctions,” 86-87.

[118] Joy Gordon, “Extraterritorial and Secondary Sanctions and Overcompliance,” in *Economic Sanctions Under International Law*, ed. P. Sean Morris (New York: Routledge, 2025), 261.

person.[119] However, the control theory would have been largely rejected in favour of the incorporation doctrine. In similar ways, States adopting secondary sanctions generally deny the extraterritoriality of the measures and the fact that they act beyond jurisdiction, although functionally such restrictions substantially interfere in target and third countries trade or other relations. A prominent example is the Cuban Democracy Act (the "Torricelli Act"), adopted by the United States in 1992. The Act prohibited any vessel that had called at a Cuban port from entering a U.S. port for a period of approximately six months, regardless of the vessel's flag State, thereby extending the effects of US sanctions to third-country operators. Ships delivering goods, including food and humanitarian supplies, to Cuba often also relied on access to the US market. As a result, being denied entry to U.S. ports for six months represented a significant economic cost that many shipping companies could not afford to bear, thereby creating a strong incentive to refrain from engaging in trade with Cuba.[120] Secondary sanctions have historically been developed and employed almost exclusively by the US, detaining significant economic leverage based on the fact that the financial system is US dollar-based and that the US market enjoys a hegemonic position in global trade.[121] In effect, to guarantee the effectiveness of such secondary sanctions, the State whose market is being restricted must have significant economic leverage.[122]

The UN Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights expressed concern regarding: 'the proliferation of secondary sanctions as a means to enforce unilateral sanctions against States or key economic sectors, or to target foreign companies, organizations or individuals […] for their presumed cooperation or association with sanctioned parties or for helping them to circumvent sanctions.'[123] However, despite international criticism, US extraterritorial and secondary measures not only remained in place but also expanded their scope. Nearly every member of the General Assembly has participated in denouncing US practices as violations of international law, most recently in November 2023, when 187 countries voted against US Cuba embargo.[124] Moreover, such practices have triggered responses by countries through the adoption of so-called blocking statutes or regulations, consisting of domestic normative

[119] Mirko Sossai, "Legality of Extraterritorial Sanctions," in *Economic Sanctions in International Law and Practice*, ed. Masahiko Asada (Oxfordshire: Routledge, 2020), 68.
[120] Gordon, "Extraterritorial and Secondary Sanctions," 262.
[121] Silvestre, "The Jurisdictional Intricacies of Secondary Sanctions," 88.
[122] Silvestre, "The Jurisdictional Intricacies of Secondary Sanctions," 87.
[123] United Nations Human Rights Council, *Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and over-compliance with sanctions: Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan*, U.N. Doc. A/HRC/51/33 (July 15, 2022), 3
[124] "General Assembly Votes Overwhelmingly against US Cuba Embargo," *UN News*, November 2, 2023, accessed June 20, 2026, https://news.un.org/en/story/2023/11/1143112.

acts intended to neutralize foreign laws that extend a State's jurisdiction beyond limits recognized by international law.[125] Blocking statutes further compel domestic companies and individuals to disregard foreign sanctions regime of such character as well as any foreign enforcement actions based on them.[126] Gordon cites the reimposition of U.S. sanctions against Iran in 2018 as a prominent example. These measures were adopted despite Iran's compliance with the Joint Comprehensive Plan of Action (JCPOA), which provided for the lifting of sanctions in exchange for restrictions on and cooperation regarding its nuclear programme. According to Gordon, the U.S. withdrawal from the agreement and the subsequent reintroduction of sanctions undermined the reciprocal framework established by the JCPOA, under which sanctions relief was conditional upon Iranian compliance.[127] While the EU and others terminated their sanctions and resumed trade with Iran, given its compliance and accordingly to the JCPOA, the US reimposed sanctions affecting not only US nationals, but also third-country nationals engaging in trade with Iran and also with the US market and financial system. The EU interpreted such act as violating its sovereignty and the rights of its nations, thereby approving a blocking legislation to prohibit compliance with the new US measures against Iran. However, such blocking legislation put 'nationals engaged in international business in an untenable position'.[128] From the one hand, by doing business with Iran, they risked facing penalties by the US; on the other hand, if they did not engage in business with Iran because they feared US penalties, they violated EU blocking law. This is called the "catch-22" dilemma, where complying with one law leads to sanctions under the other. As a result, European companies eventually terminated their trade with Iran (or other target countries), while asserting such decision was unrelated to the US extraterritorial laws, so that to not violate EU regulations. Ventura notices that the deterrent effect of blocking statutes such as the EU's is significantly lower than that of the foreign sanctions they oppose due to inadequate penalties for violating such blocking statutes that are often perceived as a minor risk compared to the multi-billion-dollar fines or exclusion from the US market imposed by OFAC (the Office of Foreign Assets Control under the Treasury Department).[129] In general, companies tend to prioritize access to the US financial system and the dollar over compliance with domestic blocking rules. Moreover, in cases such as Mamancochet Mining in the UK and others in Germany, courts have ruled that if a company terminated a contract with a sanctioned entity out of fear of secondary sanctions, this is a free commercial decision and not a direct compliance with a foreign law, thereby considering the blocking

[125] Daniel Ventura, "Contemporary Blocking Statutes and Regulations in the Face of Unilateral and Extraterritorial Sanctions," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 221.
[126] Ibid.
[127] Gordon, "Extraterritorial and Secondary Sanctions," 264.
[128] Ibid.
[129] Daniel Ventura, "Contemporary Blocking Statutes," 228.

statute inapplicable. Moreover, given most blocking statutes apply exclusively to specific foreign laws listed in an annex, some foreign laws are selectively excluded. For example, despite having frequently criticized US secondary sanctions, the EU initially omitted the 2017 "Countering America's Adversaries Through Sanctions Act" (CAATSA) from its blocking regulation, likely because it was politically aligned with the primary sanctions it implemented against Russia and North Korea and did not want to compromise political alignment on those specific targets.[130] For all such reasons, Ventura argues that blocking statutes suffer from inherent structural flaws undermining their efficacy and that they possess more of a diplomatic and symbolic value.

1.2.3 European Union Restrictive Measures and Autonomous Sanctions

The European Union is among the main actors in the field of sanctions, being it 'the second most prolific user of unilateral sanctions in the world.'[131] Similarly to other countries, such as the United States, the EU has increased over the years its use of unilateral sanctions within the realm of the Common Security and Defence Policy (CSDP), implementing important corrections as to minimize sanctions humanitarian impact and to provide guarantees of due process and respect of the rights of the targeted entities. This occurred in parallel to expanded and upgraded activities of the EU in the international arena in areas such as security, terrorism, proliferation of weapons of mass destruction (WMD), human rights and democracy. Particularly, following a global trend, the EU has established a new human rights-specific sanctions regime, outside the realm of UN-led sanctions, specifically allowing sanctions, typically asset freeze and travel bans, against individuals and entities allegedly responsible for human rights violations and abuses without actions necessarily being taken against the State of origin of the human rights violations.[132] The US started the trend by adopting the Global Magnitsky Human Rights Accountability Act in 2016, followed by other Western countries, including Canada and the United Kingdom, and also by the European Union in 2020, through the establishment of an EU Global Human Rights Sanctions Regime (EUGHRSR or European Magnitsky Act).[133] In contrast with the legislative procedure to target a natural or legal person, the European Magnitsky Act provides a simpler procedure to blacklist human rights violators.[134]

The European Union action in the field of CSDP is value-driven and so is its sanctions practice, in that it is 'guided by the principles which have inspired its own creation, development and enlargement,

[130] Daniel Ventura, "Contemporary Blocking Statutes," 224.
[131] Moret, "Unilateral and Extraterritorial Sanctions in Crisis," 23.
[132] Annalisa Ciampi, "Human Rights-Specific Sanctions' Contribution to Human Rights," in *International Sanctions in Practice*, ed. Antonio Bultrini, Francesco Giumelli, Clara Portela, and Mirko Sossai (Oxon: Routledge, 2025), 182-183.
[133] Ibid.
[134] Ciampi, "Human Rights-Specific Sanctions' Contribution to Human Rights," 186.

and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.'[135] Article 3(5) of the Treaty on European Union also remarks that 'in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens.' [136]

Regarding denominations, the term "unilateral sanctions" cannot be found in the Treaty on European Union (TEU) neither in the Treaty on the Functioning of the European Union (TFEU). Article 215 of the TFEU refers to "unilateral restrictive measures", which is the principal denomination used within the European Union.

The adoption of restrictive measures is a two-phase process which begins with an unanimously-approved Decision of the Council defining 'the approach of the Union to a particular matter of a geographical or thematic nature' under Article 29 TUE,[137] followed by a Regulation adopted under Article 215 TFUE by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.[138] The Regulation provides the necessary restrictive measures to implement the Council Decision and is directly enforceable by Member States. The Council Decision thus functions as a 'clause habilitante' the adoption of the implementing Regulation, provided the intended measures will fall within the EU competences.[139]

This two-phase process leading to the adoption of restrictive measures reflects the hybrid nature of the European Union as both a 'composite international actor' and a 'global' one, particularly in its effort to strike a balance between the need for structured, unified, and effective EU action and the respect for national sovereignty and the individual interests of the Member States.[140]

'Bien que politiquement et juridiquement compréhensible, ce double fondement juridique est un facteur de complexité et de limitation de l'autonomie d'action de l'Union : en effet, même si la mesure adoptée sur le fondement de l'article 215 TFUE requiert un vote à la majorité qualifiée au sein du Conseil, ce dernier se trouve en situation de compétence liée par le respect de la décision PESC préalablement adoptée à l'unanimité.' [141]

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[135] *Treaty on European Union* (consolidated version), OJ C 202, June 7, 2016, art. 21.
[136] *TEU*, art. 3 par 5.
[137] *TEU*, art. 29.
[138] *TEU*, art. 125.
[139] Isabelle Bosse-Platière, "Les Mesures Restrictives Adoptées Par L'union Européenne," *Annuaire français de relations internationals* XVII, (2016), 451.
[140] Bosse-Platière, "Les Mesures Restrictives," 450.
[141] Bosse-Platière, "Les Mesures Restrictives," 452.

Regarding the subject matter of unilateral restrictive measures, they generally entail 'the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries'[142] 'to bring about a change in policy or activity by the target country, part of country, government, entities or individuals, in line with the objectives set out in the CSDP Council Decision.'[143] More specifically, restrictive measures include '*inter alia*, freezing of funds and economic resources, restrictions on admission, arms embargoes, embargoes on equipment that might be used for internal repression, other export restrictions, import restrictions, and flight bans.'[144] Furthermore, bans on the provision of financial services and on the export of certain products as well as investment bans are also employable.[145] Finally, 'sectoral bans or measures to prevent the misuse of equipment, technology or software for monitoring and interception of the Internet or of other forms of communication have also been used.'[146]

There is no formal distinction between EU restrictive measures that 'are multilateral in essence and result from a decision of the United Nations Security Council (UNSC) under Chapter VII of the Charter of the United Nations' and 'unilateral sanctions […] decided *proprio motu* by the EU.'[147] It is the preamble of the Council Decision functioning as the legal instrument for the consequent adoption of restrictive measures that provides the necessary information to distinguish between these two situations.[148] This is coherent with the Council Guidelines on the Implementation and Evaluation of Restrictive Measures: 'When imposing restrictive measures, the legal context of the measures should be set out. In addition to relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union, this may include references to any relevant UN Security Council resolution, or other applicable provisions of international law. For reasons of clarity and transparency, efforts should be made to present these references as fully as possible.'[149] Accordingly, if the restrictive measures are adopted to implement a UNSC resolution, mention will be made in the preamble to the relevant UNSC resolutions to which it is intended to give effect. When restrictive measures are adopted by the European Union on its own initiative, the preamble will express the political reasons provided by the Council justifying the imposition of unilateral sanctions. If the EU

[142] *Treaty on the Functioning of the European Union* (consolidated version), OJ C 202, June 7, 2016, art. 125.
[143] Council Guidelines on the Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy, p. 5 par. 4.
[144] Council Guidelines, 8 par 14.
[145] Ibid.
[146] Ibid.
[147] Charlotte Beaucillon, "The European Union's Position and Practice with Regard to Unilateral and Extraterritorial Sanctions," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 110.
[148] Ibid.
[149] Council Guidelines, 7 par. 8.

restrictive measures supplement UNSC Resolutions by adding autonomous unilateral sanctions, the preamble will refer both to the relevant resolutions and the Council conclusions regarding the decision to adopt additional unilateral sanctions. For the sake of clarity, this thesis will also use the following terminology of "autonomous EU sanctions" to specifically refer to measures adopted independently by the European Union outside the UNSC framework.

Similarly to unilateral sanctions in general, when implementing UNSC Resolutions, EU restrictive measures' legitimacy is partially 'inherited' in that they stand on the same legal grounds provided by the UNSC Resolution they seek to execute. Even though the European Union is not a Member of the United Nations, it is obliged to respect the UN Charter and implement and conform to its Resolutions as per Article 21 TUE already mentioned, specifically in the part where it reads the EU should act in 'respect for the principles of the United Nations Charter and international law.'[150] According to Article 34 TUE, EU Member States should bring and uphold the Union's positions and coordinate their action in other international organisations and international conferences, including the United Nations.[151] Additionally, EU obligations under the UN Charter and international law include Article 103 and Article 25 of the UN Charter. The first is recognized having a customary value and recites that 'in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.' Article 25 relates to the obligation of Member States to implement the Resolutions of the Security Council. Additionally, the Council Guidelines provide the EU should not only implement UNSC Resolutions but do it promptly and with 'the minimum possible delay.'[152]

'A cet égard, l'inscription de son action dans un cadre respectueux du droit international vient légitimer son action : cette dernière repose sur la promotion d'un « multilatéralisme véritable » qui accorde un rôle primordial aux organisations internationales, notamment l'Organisation des Nations Unies (ONU), et promeut le droit international comme cadre de référence de la sécurité internationale.'[153]

EU sanctions are indeed complementary to the United Nations actions; however, it is also true that the European Union has expanded significantly its autonomous sanctions regimes. In early 2010, out of 25 restrictive measures regimes in force, 13 were autonomous unilateral sanctions, showing 'that

[150] *TEU*, art. 21.
[151] *TEU*, art. 34.
[152] Council Guidelines, 16 par. 38.
[153] Bosse-Platière, "Les Mesures Restrictives," 459.

the practice of unilateral sanctions by the EU is well established and considered a common foreign policy tool.'[154] The legitimacy of such unilateral autonomous regimes is, however, debated.

One of the main legal limits to the adoption of unilateral restrictive measures is the respect of the principles of competence, which regulates the circumstances and the extent to which the EU can rightfully intervene within the multiple areas related to the CFSP. The Council Guidelines clearly state that 'where restrictive measures are being considered, a case-by-case assessment needs to be made of the European Union competence, taking into account the attribution of powers to the Union provided for in the Treaties'.[155]

'Il n'en demeure pas moins que, dans un tel domaine, la capacité d'action de l'Union est nécessairement limitée et que les sanctions ne peuvent être adoptées qu'en étroite complémentarité avec ses Etats membres. Bien plus, l'Union est souvent dépendante de ses Etats membres, aussi bien au stade de l'adoption des mesures restrictives qu'à celui de leur mise en œuvre, ce qui n'est pas sans conséquence, y compris pour leur contrôle juridictionnel.'[156]

Furthermore, restrictive measures violating fundamental rights and contrary to the values and principles of the EU Treaties are not legitimate.

'Le respect des droits de l'homme n'est pas seulement une valeur ou un objectif que l'Union cherche à promouvoir ou à imposer aux tiers ; il est également une exigence interne à l'Union, qui conditionne la légalité des mesures adoptées, ainsi qu'en témoigne l'abondant contentieux conduisant le juge de l'Union à contrôler et, le cas échéant, à annuler des mesures restrictives pour violation de certains droits fondamentaux.'[157]

EU sanctions should also be temporary and subjected to a periodic reassessment 'in function of the developments with regard to the stated objectives and the effectiveness of the measures in that respect.'[158]

Considering that EU unilateral autonomous sanctions have a certain degree of extraterritoriality, when analysing their scope, it is worth mentioning the European Union stance regarding the extraterritorial reach of its restrictive measures, mindful of the criticism, also from the part of the EU itself, directed against US extraterritorial and secondary sanctions. The criterion for the extraterritorial enforcement of unilateral sanctions is EU's jurisdiction. Accordingly, EU restrictive measures will apply to all Member States and their territories and will also be capable of transcending EU borders through the nationality of natural or legal persons. These rules are expressly set out in the Council Guidelines:

[154] Beaucillon, "The European Union's Position and Practice," 112.
[155] Council Guidelines, 19 par 49.
[156] Bosse-Platière, "Les Mesures Restrictives," 454.
[157] Bosse-Platière, "Les Mesures Restrictives," 460.
[158] Council Guidelines, 14 par 32.

'EU restrictive measures should only apply in situations where links exist with the EU. Those situations […] cover the territory of the European Union, aircrafts or vessels of Member States, nationals of Member States, companies and other entities incorporated or constituted under Member States' law or any business done in whole or in part within the European Union.'[159] The EU adopts a clear stance against 'instruments having extra-territorial application in breach of international law.'[160] At the same time, recognizing that the effectiveness of a sanctions regime depends on its widespread application, it favours sanctions adopted in the framework of the UN and, where this is not possible, it seeks 'the broadest possible support from the international community to exert pressure on the targeted country.'[161] To this end, remaining within the limits of jurisdiction and legality, the Union resorts to the multilateralization of its unilateral sanctions, which is strictly connect to its political influence in third countries. A formal way to achieve multilateralization is through treaties in which the EU and the other party coordinate their actions against a certain target. In addition, Baeucillon identifies two types of informal practices of multilateralization employed by the EU, namely the export of measures to third parties and the import of lists of targets from third parties.[162]

The first practice takes the form of an invitation to third countries to adopt similar measures as those adopted by the EU, therefore corresponding to 'a voluntary application of the Union's unilateral sanctions by a third country.'[163] To enable a uniform and consistent interpretation and effective implementation of UN sanctions regimes 'EU and its Member States should actively and systematically communicate on EU sanctions.'[164] The second practice consists in importing individual target lists from third countries. More specifically, either it is the Union requesting third-party state authorities to provide lists of individuals whom they wish to be targeted by EU unilateral sanctions or the authorities themselves make listing requests to the Union.[165] Before officially including these names in the sanctions lists, 'the Court requires the Council of the European Union to verify that the decisions of the third authorities on which it relies to include a person on a list of targets of unilateral sanctions are adopted in a way that guarantees the protection of the fundamental rights of the persons concerned.'[166] When such multilateralization practices are respectful of the rules of international law governing the competences of states and international organizations, it remains to be established whether they are compatible with international human rights law, especially if they

[159] Council Guidelines, 20 par 51.
[160] Ibid.
[161] Council Guidelines, 21 par. 56.
[162] Beaucillon, "The European Union's Position and Practice," 123.
[163] Beaucillon, "The European Union's Position and Practice," 124.
[164] Council Guidelines, 21 par. 57, 58.
[165] Beaucillon, "The European Union's Position and Practice," 124.
[166] Ibid.

implement measures against lists of individuals, the so-called "blacklists" or thematic/horizontal sanctions.[167]

1.4 Human Rights and Humanitarian Consequences of Sanctions

A first and preliminary study on sanctions' impact was made by scholar Johan Galtung with regard to the impact of those imposed on Southern Rhodesia in 1965, comprising of a unilateral British arms and oil embargo supported by Security Council Resolution 216 and 217.[168] Galtung's conclusions were not intended to be absolute and definitive, but rather 'a pilot study for a more thorough investigation both of the general theory of economic sanctions and other sanctions in the international system.'[169] However, his work anticipated many soon-to-be issues related to sanctions, uncovering many of their "unintended" consequences. Firstly, the rally-around-the-leaders phenomenon, when the imposition of sanctions has the inadvertent effect of uniting the population affected around their authoritarian leaders against the external threat or pressure represented by sanctions. Secondly, the strongest sanctions regimes often lead and force target governments to develop subversive and criminal practices to circumvent their effect without ameliorating but rather making more vulnerable the conditions of civilians. Thirdly, in causing an impoverishing and detrimental damage on civilians, the collective nature of sanctions may result in impacting 'the innocent along with – and far more than – the guilty.'[170]

At the time of Galtung's research, the international community could rarely resort to sanctions due to the mutual veto powers of the permanent members, which, shaped by Cold War dynamics, effectively paralyzed collective action and limited the impact of sanctions. Moreover, as Gordon reported, 'at the end of the 1980s, sanctions were widely seen as a humane and effective route to political reform',[171] also due to the fact that sanctions 'were unlike warfare – there were no places, bombs, or bullets involved.'[172] Thus, there was little discussion about the humanitarian impact of sanctions, at least until the Gulf War. After the Iraqi invasion of Kuwait, a heavy comprehensive sanctions regime was imposed, weighing especially on oil exports and consequently on the imports of food and infrastructural equipment, to which Iraq was highly dependent.[173] Even when full restrictions on the

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[167] Beaucillon, "The European Union's Position and Practice," 128.
[168] Johan Galtung, "On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia," *World Politics* 19, no. 3 (1967).
[169] Ibid.
[170] Ibid.
[171] Joy Gordon, "The Hidden Power of the New Economic Sanctions," *Current History* 118, no. 804 (2019): 4.
[172] Gordon, "The Hidden Power of the New Economic Sanctions," 1.
[173] Gordon, "The Hidden Power of the New Economic Sanctions," 4.

selling of oil were slightly relieved to enable the purchase of humanitarian goods, there was no carburant for the delivery trucks and UNSC sanctions still impeded imports which could be used to rebuild the country's infrastructure.[174] The humanitarian consequences directly or indirectly inflicted to Iraqi civilians became intolerable and the increasing public outrage around comprehensive sanctions pushed for a change, leading to the emergence of targeted or "smart sanctions."

On a more general level, this initiated two parallel trends: on the one hand the increasing use of restrictive measures; on the other the gradual humanisation of sanctions, whereby 'the latter may potentially contribute to enhancing the legitimacy of the former.'[175] The latter trend is rooted in the recognition of the negative effects sanctions may have on human rights, especially on the most vulnerable populations. Increasing awareness and sensitivity to the adverse impact of sanctions prompted the need to integrate human rights considerations into the imposition and implementation of sanctions, not only from a moral perspective, but also on legal grounds.

On these premises, the international community worked to find a better definition and design of sanctions that could limit their negative humanitarian impact. In the following sections, space will be given to assessing this new humanitarian-based reforms, namely "smart sanctions", humanitarian exceptions, and the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights.

1.4.1 Targeted Sanctions: From "Smart" to Sectoral

During the 1990s, sanctions were made more targeted and selective purportedly to avoid the indiscriminate and disproportionate harm on innocent populations caused by the comprehensive sanctions and to address the objection raised over the decades about their lack of effectiveness in getting the target state to comply. On this matter, new transnational and non-government threats and types of warfare also required to rethink sanctions: terrorism, armed conflict, the proliferation of weapons of mass destruction, climate change, and pandemics.[176] As Carisch, Rickard-Martin, and Meister observed, 'national borders do not serve as clear demarcations for an armed non-government group, and trade benefitting individual groups is not easily discernible.'[177] Thus, at the end of the Cold War clear deficiencies in the UN sanctions practices made it necessary to ameliorate sanctions design, making it more direct, effective, and humane.

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[174] Ibid.

[175] Katarzyna Urszula Gałka, "Making Exceptions Not Exceptional: Humanitarian Exemptions in Sanctions Regimes Under International and EU Law," *International Community Law Review* 27, (2025): 486.

[176] Moret, "Unilateral and Extraterritorial Sanctions in Crisis," 19.

[177] Enrico Carisch, Loraine Rickard-Martin, and Shawna R. Meister, *The Evolution of UN Sanctions: From a Tool of Warfare to a Tool of Peace, Security and Human Rights* (Cham: Springer Nature Switzerland, 2017), 52.

In defining the "smart sanctions", Gordon described them as consisting of 'narrowly tailored financial restrictions and *asset freezes*, *commodity and arms embargoes*, and *travel restrictions* […], envisioned as a means of having a powerful impact on *individual wrongdoers'* (emphasis added).[178] As discernible from this definition, "smart sanctions" especially focus on individuals and 'aim at piercing the veil of the state in directly touching physical and legal persons who are identified as having the power to influence the state's behaviour.'[179]

Targeted sanctions can also take the form of sectoral sanctions. This type of sanctions is purported to have a direct and targeted effect on a *state's core economic sector* and precisely 'imply economic restrictions on specific sectors of the domestic economy, such as arms, oil, gold or precious wood.'[180] Beaucillion includes within sectoral sanctions also traffic constraints, the downscaling of diplomatic relations, and boycotts of cultural and sporting events.[181]

In the first 2000s, there were multiple forums, encouraged by the at-the-time UN Secretary General Kofi Annan, gathering diplomats, sanctions experts, and academics in discussing targeted sanctions. The first of these forums was the Swiss Interlaken Process, focused on financial sanctions. The Swiss initiative was followed by a similar project held by Germany, the Bonn-Berlin Process on arms embargoes and travel restrictions; soon after Sweden organized its Stockholm Process focusing on sanctions' implementation and monitoring.

The common narrative presenting targeted measures as designed to minimize indiscriminate harm to the population and focus pressures on wrongdoers has been challenged by Gordon. According to this author, the assumption that 'any damage to vulnerable populations is unintended, and any "collateral damage" is marginal' would not hold true in practice.[182] Bringing the examples of US sanctions on Cuba and the joint US-European Union sanctions on Iran, Gordon suggests they have been "targeted" in a very different sense than it was originally advertised. With special regard to sectoral sanctions, they have often focused on critical and essential economic sectors, financial systems and infrastructural networks of targeted countries, inflicting widespread harm on the entire population. In this view, sanctions would be "smart" not because they reduce humanitarian impact, but because they would be precisely calibrated to maximize pressure and undermine those systems upon which whole societies depend.[183] Thus, human damage should not be considered for real "incidental" or "unintended", but in fact embedded in the design and implementation of these sanctions themselves.

[178] Gordon, "The Hidden Power of the New Economic Sanctions," 4.
[179] Beaucillon," An Introduction to Unilateral and Extraterritorial Sanctions," 5.
[180] Ibid.
[181] Ibid.
[182] Gordon, "The Hidden Power of the New Economic Sanctions," 4.
[183] Gordon, "The Hidden Power of the New Economic Sanctions," 6.

Moret reports how the 2010s have been marked by a 'return to de facto comprehensive sanctions', given the expansion 'to an unprecedented degree' of US and EU sectoral sanctions on Iran, Syria, North Korea, Libya, Russia/Ukraine, Venezuela and Cuba.[184] This corroborates Gordon's thesis on the comprehensive effect of sectoral sanctions, which goes hand in hand with the severance of the humanitarian situations and human rights of the people targeted.

The UN Special Rapporteur on the negative effects of unilateral coercive measures on the enjoyment of human rights shared the same concerns in 2018:

'It may be questioned whether multiple sanctions regimes all claiming to be 'smart' do not add up to comprehensive sanctions in effect, as is the case for the 52 packets of sanctions currently targeting Syria. […] Are we not witnessing the de facto reintroduction of comprehensive sanctions amounting to an embargo, in contradiction of the claims mentioned above? It has been observed in that regard that 'restrictive measures with a broad scope will almost inevitably affect the economy of the target', so that the right to development may arguably be affected, and possibly other human rights.'[185]

In this context, the original juxtaposition of sanctions with "peaceful" and "bloodless" tools began to be gradually questioned. At the same time, the idea that negative impacts of sanctions on human rights were always "unintended" was challenged, which explains the use of the quotation marks.

1.4.2 The Humanitarian Exceptions

Humanitarian exceptions represent another means to mitigate the negative impact of sanctions on human rights. As was previously seen, the move from comprehensive to targeted sanctions determined the first step in this direction, contributing to what Theodor Meron defined as the 'humanisation of international law', signifying an increased sensitivity and awareness within the international community about the negative impact sanctions can have on populations.[186] However, 'changing the nature of sanctions and making them targeted is […] not in itself sufficient to mitigate the negative humanitarian impact of sanctions.'[187] The previous section showed how sectoral sanctions, despite being targeted, may in fact have significant negative impact on core sectors of a country's economy and infrastructure, thus affecting the entire population of that country, especially

[184] Moret, "Unilateral and Extraterritorial Sanctions in Crisis," 28.

[185] United Nations Human Rights Council, *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his mission to the European Union*, U.N. Doc. A/HRC/39/54/Add.1 (July 17, 2018), 9.

[186] Theodor Meron, *International Law in the Age of Human Rights* (Maubeuge: Martinus Nijhoff Publishers, 2004).

[187] Veronika Bílková, "Humanitarian Exceptions and Sanctions," in *International Sanctions and Human Rights*, ed. Pavel Šturma (Cham: Springer Nature Switzerland, 2024): 100.

the most vulnerable. Bílková considers humanitarian exceptions one of the possible ‘avenues’ to explore to advance such humanitarian redefinition of sanctions.[188]

Similarly to sanctions, there is no legal definition of humanitarian exceptions in international law, and the term is employed differently by the United Nations, the European Union and States with frequent reference to other synonyms such as humanitarian exemptions, derogations, carve-outs. One general definition that might encompass all the term’s possible meanings interprets humanitarian exceptions as provisions, motivated by humanitarian concerns, that enable otherwise restricted actions to be carried out. [189] A more extended definition of Galka considers humanitarian exceptions ‘a label encompassing various legal solutions that allow for avoiding or minimising the possible negative impact of restrictive measures on funding and delivery of humanitarian aid by enabling, for humanitarian reasons, the carrying out of certain actions that would otherwise be restricted under sanctions regimes.’[190]

Between humanitarian exceptions granted upon request by targeted individuals and entities on humanitarian grounds – such as when sanctions are excessive and interfere with their basic needs – and those designed for impartial humanitarian actors, aimed at ‘carving out a space in sanctions regimes for impartial humanitarian actors and/or impartial humanitarian activities,’ the latter are the most referred to.

On procedural grounds, it is possible to distinguish between standing exceptions, exceptions subject to notification and exceptions granted upon request. An example of standing exception is UNSC Resolution 2664 adopted in 2022, where the Security Council decided that ‘the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by the United Nations […] are permitted and are not a violation of the asset freezes imposed by this Council or its Sanctions Committees.’[191] Standing exceptions are in fact ‘general exceptions available to a whole category of actors/activities/ products’ which won’t have to undergo any formal and individual process to operate.[192] Exceptions upon notification or request are subject to the control of a competent authority, being it the Sanctions’ Committee at the UN level, or the European Commission at EU level, operate on an *ad hoc* basis generally ‘to a limited set of actors/activities/products indicated in the notification or request and remain typically in force for a limited, albeit usually prolongable, period.’[193]

[188] Ibid.
[189] Gałka, “Making Exceptions Not Exceptional,” 459.
[190] Gałka, “Making Exceptions Not Exceptional,” 462.
[191] United Nations Security Council, *Resolution 2664 (2022)*, U.N. Doc. S/RES/2664 (December 9, 2022), 2.
[192] Bílková, “Humanitarian Exceptions and Sanctions,” 105.
[193] Ibid.

Bílková noticed the dual effects behind *ad hoc* humanitarian exceptions: from the one hand, they 'allow those drafting the regulation to take the concrete situation under each sanction regime into account;' on the other they may create situations where certain activities are permitted under some regimes but not under others, consequently raising uncertainty and increasing the risk for humanitarian or other actors to inadvertently violate sanctions regimes.[194] Burci similarly questions this case-by-case approach of the UN Sanctions Committees, noting that it may come 'to the cost of inconsistencies within and between sanctions regimes.'[195] Adding to this 'the virtual lack of any mechanism of accountability,' this attitude would 'have generated a rather haphazard and unpredictable jurisprudence, which sometimes reflects shifting political attitudes by individual members against the target State.'[196] The fact that Sanctions Committees decision-making is by consensus, thus assigning a veto power to every member and considerable leverage to the main sponsors of certain sanctions, makes such bodies extremely politicized and explains the often 'prevalence of the "symbolism of power" over considerations of pragmatism and viability.'[197]

For these reasons, humanitarian exceptions have proved to be quite flawed and limited in many circumstances. Among such circumstances, the response to the 2023 earthquake in Turkey and Syria is a prominent example of how humanitarian actors may struggle because of the cumulative and overlapping effects of multiple sanctions regimes: as a matter of fact, 'the absence of a coherent and cross-cutting humanitarian exemption framework among different sanctions regimes significantly obstructed the delivery of essential humanitarian aid in Syria.'[198] The UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, brought up the response to the coronavirus disease pandemic as another example for the ineffectiveness of humanitarian exceptions. The dual-use nature of the items and the requirements set forth in the sanctions themselves for humanitarian exemptions made the authorization process costly and lengthy, despite 'the emergency nature of a crisis such as the Covid-19 pandemic.'[199] For instance, under the European Union sanctions regime against Syria, with regard to respirators, disinfectants, hand sanitizers or detergents, there was the need to provide assurance that they would be used for medical purposes and 'not to fabricate chemical weapons or conduct internal repression.'[200]

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[194] Bílková, "Humanitarian Exceptions and Sanctions," 106.

[195] Gian Luca Burci, "Interpreting the Humanitarian Exceptions Through the Sanctions Committees," in *United Nations and International Law*, ed. Vera Gowlland-Debbas (The Hague: Kluwer Law International, 2001), 145.

[196] Ibid.

[197] Ibid.

[198] Gałka, "Making Exceptions Not Exceptional," 464.

[199] United Nations General Assembly, *Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights: Note by the Secretary-General*, U.N. Doc. A/75/209 (July 21, 2020), 19-20.

[200] Ibid.

It follows that when it is the case of multiple sanctions regimes each providing separate humanitarian exemptions, 'the burden falls on humanitarian actors [as well as financial or banking operators] to ensure that any given activity is permitted under all applicable regimes.'[201] Such complexity has often led humanitarian and other private economic actors to be cautious or avoid undertaking operations that are not permitted under all regimes. Such phenomenon is called "chilling effect," namely the deterrence of lawful activities due to uncertainty, perceived legal risks, or fear of penalties. Excessive avoidance of risk has also generated the closely-related phenomenon of overcompliance, meaning applying sanctions more restrictively than required by law to avoid legal, financial or reputational risks, often leading to bank refusing to process humanitarian transactions regardless they are explicitly exempted from sanctions, or financial institutions closing all accounts held by nationals of a sanctioned country, even though they are not designated persons, or shipping companies refusing to transport food to a sanctioned State despite authorization under sanctions regulations. Galka recognizes the underlying reasons for both practices as stemming from 'caution or fear of breaching sanctions, including concerns over potential legal, reputational, and financial consequences.'[202] This fragmentation in humanitarian exceptions and more in generale in sanctions regimes both contribute to the ineffectiveness of humanitarian exemptions. When humanitarian actors are affected by such "chilling effect" consequent to complex regulatory frameworks, meaning they sometimes may 'choose to err on the side of caution and self-regulate beyond what is in fact legally and contractually required,'[203] their practice challenges the impartiality and fundamental efficacy of humanitarian action, with the most direct and adverse consequences weighing on the populations in need of aid.[204] In the case of private economic actors, the phenomenon of overcompliance specifically refers to when 'banks, exporters and pharmaceutical, transport and insurance companies, based on de-risking considerations, are reluctant to engage in transactions, including with humanitarian actors, involving a targeted state, fearing most of the time very severe secondary sanctions against them for inadvertent, unintentional or even small-scale violations of primary sanctions.'[205] Overcompliance may involve blocking transactions that are authorized under humanitarian exemptions or otherwise fall outside the scope of sanctions, as well as discouraging legitimate transactions through excessive documentation requirements, additional fees, or significant delays.[206] It can also lead banks to freeze non-sanctioned

[201] Gałka, "Making Exceptions Not Exceptional," 465.
[202] Ibid.
[203] Alice Debarre, "The Negative Impact of Sanctions on Humanitarian Aid," in *Economic Sanctions from Havana to Baghdad*, ed. Joy Gordon (Chicago: Cambridge University Press, 2025): 222.
[204] Ibid.
[205] Ioannis Prezas, "From Targeted States to Affected Populations: Exploring Accountability for the Negative Impact of Comprehensive Unilateral Sanctions on Human Rights," in *Research Handbook on Unilateral and Extraterritorial Sanctions*, ed. Charlotte Beaucillon (Cheltenham: Edward Elgar, 2021), 388.
[206] Gordon, "Extraterritorial and Secondary Sanctions," 266.

assets or deny banking services to individuals solely on the basis of their nationality, even when they are not targeted by sanctions. The Special Rapporteur on the human rights impact of unilateral coercive measures noted the difficulties for the delivery of urgent specialized medicine and medical equipment, as well as interfering in the transfer of funds for medical operations in countries under sanctions, all of which related to overcompliance: 'Due to overcompliance and excessive de-risking, countries under sanctions often struggle to maintain supply chains or develop new ones and face serious delays and exorbitant costs in the delivery of even basic goods. Therefore, products that should normally not be sanctioned end up in practice being subject to restrictions as if they were legally prohibited under the sanctions regulations.'[207]

Thus, this tendency of financial institutions to exceed, essentially, the legal requirements of sanctions regimes may seriously hinder humanitarian work, adding to the complicacies of humanitarian exceptions requirements. For humanitarian actors, additional procedural burdens such as the need to require prior authorization under different legal systems may cause delay or even block urgent and critical humanitarian interventions, all of which is aggravated if the phenomenon of "chilling" and "overcompliance" is also present and prevents necessary exempted goods from reaching people in need.[208] In conclusion, regulatory complexity and lack of clarity can impede humanitarian action, as well as induce the withdrawal of private economic actors from otherwise lawful engagements perceived as risky. [209]

1.4.3 The UN Special Rapporteur on Unilateral Coercive Measures and Human Rights

The UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights was first established in 2014 with Human Rights Council Resolution 27/21. The UNHR Council mandated the Special Rapporteur 'a) to gather all relevant information […] relating to the negative impact of unilateral coercive measures on the enjoyment of human rights; b) to study trends, developments and challenges […] and to make guidelines and recommendations on ways and means to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights; c) to make an overall review of independent mechanisms to assess unilateral coercive measures to promote accountability; d) to contribute to strengthening the capacity of the Office of the High Commissioner to provide affected countries with technical assistances and advisory services to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights',

[207] United Nations General Assembly, *Secondary Sanctions, Overcompliance and Human Rights: Note by the Secretary-General*, U.N. Doc. A/78/196 (September 4, 2023), 5
[208] Gałka, "Making Exceptions Not Exceptional," 465.
[209] Ibid.

and further ‘a) to draw the attention of the Human Rights Council and the High Commissioner to those situations and cases regarding the negative impact of unilateral coercive measures on the full enjoyment of human rights; b) to cooperate with other relevant United Nations bodies […] with the aim to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights.’[210] The Special Rapporteur has since drafted numerous reports on the negative impact of unilateral coercive measures, promoting the view that such measures are ‘contrary to international law, international humanitarian law, the Charter and the norms and principles governing peaceful relations among States.’ [211]

The Special Rapporteur represents an important step forward in terms of increasing awareness and acknowledging the detrimental impacts of sanctions on human rights. However, in remaining limited to unilateral coercive measures, their mandate falls short in addressing the sanctions practice of the UN Security Council itself, whose resolutions are supportive of a great number of states and international organizations’ sanctions regimes and often cause similar if not greater harm to innocent populations. In this sense, this mandate is intrinsically forgetful of the negative impacts caused by UNSC multilateral sanctions and it does not consider the legitimacy of sanctions as a tool itself, regardless of who is imposing them. It seems to not have caught up the discourse and criticism that had triggered the first wave of reforms that brought to targeted sanctions.

1.5 Accountability Mechanisms and Human Rights Protection in Sanctions Regimes

1.5.1 The War on Terror and the Emergence of Thematic/Horizontal Sanctions

This last section will relate sanctions undermined legitimacy with the lack of proper accountability mechanisms. Accountability should not be understood solely in terms of enforcement, namely the imposition of legal consequences in response to human rights or other violations. In this sense, international responsibility encompasses cessation of the wrongful act, guarantees of non-repetition, and reparation. Accountability should also be conceived in terms of answerability – that is, the obligation to provide reasons and ensure transparency – as well as review mechanisms. All three elements should be taken into account when assessing the level of accountability associated with the imposition of sanctions.

[210] United Nations Human Rights Council, *Human Rights and Unilateral Coercive Measures*, U.N. Doc. A/HRC/RES/27/21 (October 3, 2014), 5 par. 22, 23.
[211] United Nations Human Rights Council, *Human Rights and Unilateral Coercive Measures*, 1.

This will require continuing to work at least on two if not three different levels, namely the UN level, the EU level and States level. When different entities impose sanctions, do they impose them in full transparency and providing reasons for their decisions? Is there a review mechanism of the adopted measures that can verify whether sanctions respect international law? Finally, when sanctions result in human rights violations, are there ways through which holding sanctioning entities accountable for their actions?

The second section of this Chapter already gave a partial answer to these questions, by showing how the gradual integration of human rights and humanitarian considerations into sanctions framework may contribute to strengthen the legitimacy of such tools thus making them more acceptable and promoting accountability. Prezas identifies a trend within the UN in 'expanding accountability mechanisms to cover the adverse impact of comprehensive unilateral sanctions.'[212] For example, 'although sanctions are usually politically motivated, the possibility of judicial review should lead states and international organizations to apply them in accordance with international law.'[213] This is not only preferable, but necessary in the face of UN, EU and states practice which has evolved toward a more frequent use of sanctions as means of international governance. This humanization process is, however, not without obstacles and is in fact hampered by States practice which often appears not sufficiently careful and sensitive to indirect negative impacts of sanctions, rather prioritizing political and/or national interests.

In particular, this section will explore how sanctions design and implementation have been informed by accountability mechanisms derived from human rights concerns.

The UN Special Rapporteur noted with regard to unilateral sanctions that 'the availability of judicial review for obtaining remedies and redress for unilateral coercive measures is a requirement that stems from a number of multilateral human rights instruments, to which the main users of sanctions are parties', including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, The Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[214] While the Security Council might be considered exempt by virtue of Article 103 of the UN Charter, its commitment to the promotion of human rights, as enshrined in Article 1 of the UN Charter, together with the human rights obligations binding upon its Member States, should nevertheless exert a concrete influence on sanctions decision-

[212] Prezas, "From Targeted States to Affected Populations," 393.

[213] Šturma, "Introduction," 11.

[214] United Nations Human Rights Council, *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his mission to the European Union*, U.N. Doc. A/HRC/39/54 (September 10-28, 2018), 6-7.

making and implementation. On this basis, the Special Rapporteur is of the view that 'mechanisms to guarantee due process, and the availability of judicial review for obtaining remedies and redress for unilateral coercive measures, should be available to:

1. Impacted groups whether the impact is intended or unintended (by comprehensive or sectoral sanctions), and;
2. Individuals and legal persons and entities targeted (by targeted sanctions) but found not to have been given a chance to benefit from due process.'[215]

The Special Rapporteur further affirms that the lack of accountability through judicial review, remedies and redress for victims amounts to a denial of justice.[216] Despite this, there are still very few *fora* where individuals can challenge the violations inflicted upon them by sanctions and hold the sanctioning authority accountable. Listing-based sanctions have undergone the most significant improvements in terms of accountability, particularly within the European Union. Nevertheless, violations of other or similar human rights in different sanctions regimes largely remain beyond effective accountability for those affected. This is especially true for individuals indirectly affected by comprehensive or sectoral sanctions.[217] In such cases, the possibility of obtaining remedies is even more limited, also due to the so-called "causality conundrum," namely the difficulty of establishing a clear causal link between sanctions and the violation of specific rights of identified groups or individuals. Moreover, it is often difficult to make a clear and transparent assessment of the actual impact of sanctions on the human rights of non-targeted individuals, although accountability relies on such assessment. This challenge is further compounded by the "herculean task" of distinguishing the specific effects of each of multiple and overlapping sanctions regimes, which in turn makes it extremely difficult to attribute responsibility for a given human rights violation to a single sanctioning entity.

Another relevant issue is whether human rights treaties provide extraterritorial obligations upon their Member States owed to individuals outside their territory and jurisdiction. In other words, are sanctioning entities under a duty to respect human rights, such as the right to life or economic and social rights of persons living in the targeted state, and how? Many of the human rights instruments provide that States have the obligation to ensure respect for human rights to all individuals who are within their territory and jurisdiction, to the maximum extent of foreign areas and persons that are under their effective control and authority. However, some other human rights instruments provide no such limitations, such as the International Covenant on Economic, Social and Cultural Rights.

215 Ibid.
216 Ibid.
217 Prezas, "From targeted states to affected populations," 393.

According to its Committee, 'when an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population.'[218] However, this interpretation of States' responsibility arising also from extraterritorial human rights violations beyond jurisdiction and against non-targeted individuals is not clearly recognized by international courts and bodies. This results in an accountability gap in which civilians are without effective protection and access to justice. Finally, despite significant progress in terms of answerability and review, international responsibility for violations of human rights arising from sanctions is still very limited.

1.5.2 Judicial Review and Due Process: De-Listing Mechanisms in the UN

After the 9/11 attacks, the United States interpreted them as an act of war and invoked the right to self-defence provided by Article 51 of the UN Charter. The United Nations, in its Resolution 1368 of September 12, 2001, recognized 'the inherent right of individual or collective self-defence in accordance with the Charter', calling on 'all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks', and on 'the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions.'[219] The Resolution is argued to have given the United States extensive discretionary freedom on the measures to be taken against terrorism, despite not authorizing explicitly the following military actions pursued by the US. As is well known, the United States led a military alliance to invade Afghanistan in 2001, soon after expanding the war in Iraq in 2003 based on Iraq's collaboration with the terrorist organization Al Qaida and alleged Iraq's possession of weapons of mass destruction. US President Bush then escalated the situation declaring a war against the "Axis of Evil," which included Iraq, Iran, and North Korea.

According to Carisch, Rickard-Martin, and Meister, the War on Terrorism initiated by the United States had a double effect on sanctions: firstly, it caused a paradigm shift and, consequently, it led to a paradigm paralysis.[220] The paradigm shift entailed a regression from the progress made during the 1990s which had tried to improve sanctions into "smarter" and more equitable tools with respect to human rights. All the efforts and focus given until then to prevent sanctions' negative impact on innocent civilians and on the refinement of financial and travel measures were in fact put aside, given

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[218] Committee on Economic, Social and Cultural Rights, *General Comment No. 8*, 4.
[219] United Nations Security Council, *Resolution 1368 (2001)*, U.N. Doc. S/RES/1368 (September 12, 2001).
[220] Carisch, Rickard-Martin, and Meister, *The Evolution of UN Sanctions*, 67.

the new, primary objective of counterterrorism. Sanctions then regressed to an aggressive and punitive tool of economic warfare. Consequently, this paralysed the international system in its ability to review and correct mistakes and led the sanctions system into becoming more inefficient and unjust, other than unable to act in line with those principles enshrined in the UN Charter. [221]

Thousands of individuals, organizations and companies alleged to have committed, or threatened to commit, or supported terrorism were targeted by an 'avalanche of sanctions' from the US National Security Council and included in the so-called blacklists.[222] This phenomenon also gave birth to a new type of sanctions, that is thematic or horizontal sanctions. Their main feature is that they do not have a specific targeting state or 'any territorial link,' rather focusing on 'individuals or entities related to specific objectives,' such as transnational criminal networks like Al-Qaeda (entity) in the fight against terrorism (theme). [223] These sanctions established blacklists, although targeted individuals were often listed without sufficient evidence for their actual culpability and 'the most perfunctory fact-checking.'[224] Failures emerged in the listing process, involving both technical difficulties in the implementation of sanctions – stemming from the lack of basic identifying information for listed individuals – and due process concerns affecting those wrongfully targeted. This new sanctions' design did not in fact provide for sufficient legal guarantees for targeted individuals, resulting in the infringement of their rights.

Particularly relevant for this new type of sanctions is the employment of data mining systems to analyse open-source information and identify Politically Exposed Persons to be listed along with an entire network of affiliates among which, due to predictive mode settings, innocent individuals became wrongfully flagged, regardless the absence of direct evidence for their wrongdoing.[225] Once casually entering commercial compliance databanks, normal transactions of such innocent targets would trigger alerts with most banks, with some even having their assets frozen or being unable to travel, and some of this measures remaining in place for many years.[226]

The invention of horizontal individual sanctions during the War on Terror thus 'created a whole new legal dynamic of accountability in international law especially under the principle of due process.'[227] What became particularly evident was the absence of any provision for revoking or lifting individual sanctions and thus of a review or appeal mechanism. Moreover, the War on Terror had no apparent end, or a sort of termination reference which contradicted 'the underlying purposes of sanctions as a

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[221] Ibid.
[222] Ibid.
[223] Beaucillion, "An Introduction to Unilateral and Extraterritorial Sanctions," 5.
[224] Carisch, Rickard-Martin, and Meister, *The Evolution of UN Sanctions*, 67.
[225] Carisch, Rickard-Martin, and Meister, *The Evolution of UN Sanctions*, 72.
[226] Ibid.
[227] Prezas, "From Targeted States to Affected Populations," 393.

temporary, preventive-protective coercive tool against imminent threats to international peace and security'.[228] UN sanctions looked in fact 'open-ended and semi-permanent measures.'[229]

With 2005 Resolution 60/1 the UN General Assembly made a clear call to the Security Council for 'improvements in evidentiary standards for targeting, attention to collateral effects, and adherence to […] clear and fair procedures,' as well as in periodic review mechanism.[230]

'We call upon the Security Council, with the support of the Secretary-General, to improve its monitoring of the implementation and effects of sanctions, to ensure that sanctions are implemented in an accountable manner, to review regularly the results of such monitoring and to develop a mechanism to address special economic problems arising from the application of sanctions in accordance with the Charter.

We also call upon the Security Council, with the support of the Secretary General, to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.'[231]

In essence, there were no legal guarantees related to the fundamental right of due process for individuals listed and allegedly responsible to have violated norms of international peace and security.

1.5.3 Judicial Review and Human Rights Protection in EU Sanctions Regimes

A relevant and pivotal case has been the one initiated by Saudi Arabian businessman Yassin Abdullah Kadi before the EU Court of Justice for his designation in UN sanctions and consequently in EU Regulations. Among such Regulations, (EC) No 467/2001 and (EC) No 881/2002 which prohibited the export of certain goods and services to Afghanistan - strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan - and imposed certain restrictive measures against natural and legal persons associated with Usama bin Laden, the Al Qaeda network and the Taliban.[232] This case is especially pivotal in that it introduced guarantees of due process in the EU sanctions system, particularly related to the listing and de-listing mechanisms, establishing that restrictive measures, even those implementing UNSC decisions, should be subjected to judicial review, ensuring their respect for fundamental human rights and values on which the EU is built.

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[228] Carisch, Rickard-Martin, and Meister, *The Evolution of UN Sanctions*, 74.
[229] Ibid.
[230] Ibid.
[231] United Nations General Assembly, *Resolution adopted by the General Assembly on 16 September 2005, 60/1. 2005 World Summit Outcome*, U.N. Doc. A/RES/60/1 (October 24, 2005), 26.
[232] Court of Justice of the European Union, *European Commission and Others v Yassin Abdullah Kadi*, Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, Judgment of 18 July 2013.

For the purposes of this thesis, this case is particularly relevant as it sets fundamental guarantees within the EU legal order applicable not only to thematic counterterrorism sanctions, but also to measures – including listing and de-listing procedures – aimed at countering proliferation, thereby extending due process protections to listed North Korean individuals as well. At the UN level, however, comparable safeguards do not exist for all types of measures; they are primarily developed in the context of counterterrorism sanctions, leaving those designated under proliferation regimes with significantly fewer guarantees.

Going back to the specific case, Mr. Kadi appealed the EU General Court seeking the annulment of those Regulations that concerned him on the following grounds: infringement of the right to be heard, the right to respect for property and the principle of proportionality, and also of the right to effective judicial review. In its first-instance judgement, the General Court dismissed Kadi's request, holding that Regulations implementing UNSC Resolutions 'could not be the subject of judicial review of its internal lawfulness and thus enjoyed immunity from jurisdiction, except as regards its compatibility with rules falling within the ambit of *jus cogens'*.[233] In this regard, the General Court stated it could not 'review indirectly whether Security Council Resolutions are compatible with such fundamental rights [in particular, the right to effective judicial review] […], nor to verify that there had been no error of assessment of the facts and evidence relied on by the Security Council in support of the measures it had taken, nor, again, to review indirectly the appropriateness and proportionality of those measures.'[234]

However, this judgement was set aside by the EU Court of Justice in 2008. According to the Court, international agreements did not prejudice the constitutional principles set in the EC Treaty, including the respect for fundamental rights, their 'respect constituting a condition of their lawfulness which is for the Court to review.'[235] Hence, EU acts implementing UNSC Resolutions did not enjoy immunity from jurisdiction. Consequently, 'the competent European Union authority is bound to communicate the grounds for the contested listing decision to the person concerned and to provide that person with the opportunity to be heard in that regard'.[236] The Court added that 'since the Council had neither communicated to Mr Kadi the evidence relied on against him to justify the restrictive measures imposed on him nor afforded him the right to be informed of that evidence within a reasonable period after those measures were enacted, Mr Kadi had not been in a position effectively to make known his

[233] Court of Justice of the European Union, *European Commission and Others,* 6.
[234] Ibid.
[235] Ibid.
[236] Ibid.

point of view in that regard, with the consequence that the rights of defence and the right to effective judicial review had been infringed.'[237]

1.5.4 The UN Focal Point and Ombudsperson

The ruling affirming the full judicial control by the ECJ over EU restrictive measures pressured the UN into establishing a UN Ombudsperson for the Al-Qaida sanctions regime, remaining that there is no possibility of judicial review of UNSC Resolutions by the International Court of Justice, neither for individuals nor for State applicants.[238] Concerns over the lack of any review mechanism and the possible infringement of individual due process rights through UN sanctions emerged especially with the arrival of targeted horizontal sanctions and the Sanctions Committees' proving to be 'institutionally ill-suited to individualised administrative action […] prone to causing serious human rights infringements.'[239]

So far, the UN provides only administrative redress through the UN Focal Point for De-Listing, established by Resolution 1730 (2006), and the already mentioned UN Ombudsperson for the Al-Qaida sanctions regime, established by Resolution 1904 (2009). Such administrative redress is limited in scope.

The UN Focal Point was born in 2006 after some criticism coming from within the United Nations, particularly from the UN General Assembly and former UN Secretary General Kofi Annan. The latter proposed four basic elements to promote fair and transparent sanctions procedures, namely '(i) the right of a person against whom measures have been taken to be informed, (ii) the right of such a person to be heard, (iii) the right to review by an effective review mechanism and (iv) a periodic review of sanctions by the Security Council.'[240] The UN Focal Point then established has been mandated to receive de-listing requests from individuals under any sanctions regime, except the so-called IDAQ regime (ISIL or Da'esh and Al-Qaida), for which the competence was forwarded to the Ombudsperson in 2009. After facilitating dialogue between reviewing States, the Focal Point sends the results of such consultations to the relevant Sanctions Committee, thus acting like a "transmission post." The Focal Point receives also requests for assets freezes or travel ban exemptions.[241] However, given the absence of time limits for review by the Committee, the lack of any obligation to provide reasons for its decisions, and the fact that the Focal Point has no authority to recommend or discourage

[237] Court of Justice of the European Union, *European Commission and Others,* 7.

[238] Lóránt Havas and Frank Hoffmeister, "The Review of Targeted Sanctions of the UN and the EU at the International Level," in *International Sanctions and Human Rights*, ed. Pavel Šturma (Cham: Springer Nature Switzerland, 2024), 211.

[239] Havas and Hoffmeister, "The Review of Targeted Sanctions," 218.

[240] Havas and Hoffmeister, "The Review of Targeted Sanctions," 218.

[241] Havas and Hoffmeister, "The Review of Targeted Sanctions," 219.

delisting to the Sanctions Committee, its role remain limited.[242] Although 'the transmission of information and the facilitation of communication are a very welcome development in the process, increasing transparency and helping reduce the mental distance between the petitioning individual and the committee, the status of the Focal Point acting as a 'glorified mailbox' has earned it some criticism.'[243]

The Ombudsperson, born as consequence of the ECJ Kadi ruling, replaced the Focal Point with regards to the IDAQ regime and its role was considerably expanded, though remaining limited to the scope of UNSR 1267, leaving the other regimes with the only Focal Point. The right for individual petitioners to receive a decision within a reasonable time of 8-16 months was firstly introduced, along with the right to be heard, to know the reasons for the listing and to answer the allegations moved against them, and finally the availability of pro bono legal assistance. A direct interaction with the petitioners was then established and most importantly the Ombudsperson could make recommendation to the 1267 Committee on delisting requests, which the Committee could not reject if not by unanimous vote. The Ombudsperson mechanism provided listed individuals under the 1267 IDAQ regime with improved procedural guarantees and due process rights compared to those provided under other UN sanctions regimes.[244] However, other than being limited in scope, the Ombudsperson mechanism remains anchored to the political decision of the Sanctions Committee and the UNSC, which undermines the independent nature of the review.[245]

[242] Havas and Hoffmeister, "The Review of Targeted Sanctions," 220.
[243] Ibid.
[244] Havas and Hoffmeister, "The Review of Targeted Sanctions," 221.
[245] Havas and Hoffmeister, "The Review of Targeted Sanctions," 222.

CHAPTER 2
HISTORY OF SANCTIONS AGAINST NORTH KOREA

Most of the sanctions imposed on North Korea stemmed from non-proliferation first and then denuclearization imperatives. However, sanctions failed to refrain North Korea nuclear development and have not obtained yet its denuclearization. For this reason, sanctions against North Korea have been considered ineffective, although failure in reaching their goals did not fundamentally pose into question the prolonged, durable and apparently unending regime of sanctions and neither pushed towards a lifting or a reduction of such measures. Despite growing public sensitivity, human rights have remained so far a marginal issue when evaluating sanctions and their effectiveness. Proliferation is in fact the main concern in sanctions decision-making with regards to North Korea.

Sanctions against North Korea can be divided in three phases: the first one coincides with the Cold War period and US unilateral containment; the second relates to the first decade of the 2000s and is characterized by the multilateralization and "targetization" of sanctions; the third phase started in 2016-2017 and represented a reversion to more comprehensive sanctions, increased and constitutionally-enshrined North Korean nuclear weapons status, and failure in multilateral talks for denuclearization.[246]

The 2.1 section will preliminarily provide an overview of North Korea nuclear policy, on the reasons for which it embarked in nuclearization and placed it at the centre of its survival strategy face to major regional powers and external threats. The subsequent paragraphs will present in temporal order and within an evolving historical and political context the sanctioning measures levied against North Korea, providing detailed analysis of the provisions included therein.

[246] Daniel Wertz, "Special Report: Understanding U.S. and International Sanctions on North Korea" (Washington, DC: The National Committee on North Korea, November 2020), 1.

2.1 North Korea’s Nuclear Streategy: Self-Reliance and Regime Survival

Among the main reasons believed to have led North Korea to develop nuclear capacities is the feeling of insecurity from both external and internal threats. North Korea’s response to this twofold threat seems to have been constantly one: the development and then retention of nuclear weapons. As a matter of fact, the regime’s nuclear development is necessary both because it enhances internal legitimacy and, externally, because it prevents and deters ‘allied pre-emptive or decapitation attacks, inhibit allied military responses to North Korean actions, degrade allied invasion plans, threaten the U.S. homeland, and potentially provide the means for Pyongyang to reunify the peninsula on its terms.’[247] Regarding the last point, Kim Jong-un decided from 2023 to abandon the reunification objective, recently modifying the Constitution to introduce territorial clauses previously inexistent and including among its neighbouring states the Republic of Korea, thus recognizing its status as a separate sovereign state.

Nuclear capabilities are core to the regime’s survival strategy and became early embedded in the so-called *juche* policy under Kim Il-sung. Such term is multi-faceted and hard to translate. A more immediate translation of *juche* is ‘self-reliance and independence in politics, economics, defense, and ideology.’[248] However, Cumings’ closer inspection reveals how *juche*’s true meaning is in fact less accessible and stays within ‘a pool of everything that makes Koreans Korean, and therefore it is ultimately inaccessible to the non-Korean.’[249] In this sense, it is the ultimate embodiment of Korean-ness and ‘the opaque core of the North Korean national solipsism.’[250] It is not by chance that during Kim Il-sung era, *juche* remained the only untranslated word in the English publications of DPRK propagandists.[251] To understand *juche*, it might be helpful to define it in negative terms, by looking at its opposite, namely *sadaejuui*, which is flunkeyism, being subservient or reliant on a foreign, greater power. Finally, *juche* represents North Korea’s national ideology and identity. From a less philosophical perspective than Cumings, Hwang notices that in fact ‘the lofty *juche* rhetoric of fierce autonomy and nativism that accompanied the North’s isolationism […] compensated for the fact that North Korea the country, and Kim Il Sung the leader, began with and were sustained by external assistance.’[252] In fact, this ‘nominally reigning ideology’ remotely reflects an entirely autarkic economy but rather masks North Korea’s actual substantial dependence on outside actors, especially

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[247] Bruce W. Bennett et al., “North Korea’s National Strategy: Looking Beyond Nuclear Capability,” *in Countering the Risks of North Korean Nuclear Weapons*, Perspective (Santa Monica, CA: RAND Corporation, 2021), 11.
[248] Bruce Cumings, *Korea’s Place in the Sun*, (New York, London: W. W. Norton & Company, 2005), 413.
[249] Cumings, “Korea’s Place in the Sun,” 414.
[250] Ibid.
[251] Cumings, “Korea’s Place in the Sun,” 428.
[252] Kyung Moon Hwang, *A History of Korea*, (London: Red Globe Press, 2021),184.

China after the collapse of the Soviet Union.[253] Nevertheless, nuclear weapons are justified as they realize *juche*, namely nuclear-weapons power are presented as means through which North Korea can be politically independent, self-reliant, and thus proudly itself. More concretely, nuclear capabilities provide standing in foreign fora by functioning as a 'great equalizer' and guarantee the security and safety of the North Korean population face to the regime's main external threat, that is the United States. As a matter of fact, they are justified by a certain portrayal of North Korea's external enemy, that is the United States, as a constant threat to the sovereignty and security of North Korea and its people, exemplified by US-South Korean military drills or the imposition of sanctions.[254] In other words, 'presenting North Korea as a victimized state within a discriminatory US-led international order provides the domestic population with a cause around which to rally in support of the regime-state's nuclear programme.'[255] Other than for deterrence and international prestige, nuclear capabilities are also intended for coercive diplomacy and have been strategically and instrumentally used to pursue North Korea's foreign relations within the so-called brinkmanship diplomacy, consisting of bringing relations to the brink of rupture through a considerable increase of tensions to maximize concessions.

However, Howell stresses that 'the domestic foundations and audiences of the nuclear programme' must not be overlooked in that they constitute 'a vital element in understanding the motivations behind North Korea's nuclear programme as a means to ensuring regime-state survival.[256] Deterrence cannot fully comprehend the value of North Korea's nuclear programme. Howell believes that nuclear weapons are embedded within domestic state discourse and constitute a part of the State's identity, which is transmitted to the population through the personality cult of the "Great Leader". In particular, by embedding the state's nuclear doctrine within state ideology, North Korean authoritarian regime justifies the cost of nuclear weapons to the populations, while maintaining domestic support.[257] To some extent, *juche* and such nuclear ideology can be understood as both solipsistically defining North Korea's state identity and are characterized by a certain degree of tautology.

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[253] Stephan Haggard and Marcus Noland, *Hard Target: Sanctions, Inducement, and the Case of North Korea*, (Stanford, California: Stanford University Press, 2017), 31.
[254] Edward Howell, "The juche H-bomb? North Korea, nuclear weapons and regime-state survival," *International Affairs* 96, no. 4 (2020): 1060.
[255] Howell, "The juche H-bomb," 1061.
[256] Howell, "The juche H-bomb," 1052.
[257] Howell, "The juche H-bomb," 1055.

2.2 From US Unilateral Containment to the Agreed Framework (1950-2001)

At the end of the Second World War in 1945, the Korean peninsula, previously under Japanese colonial rule, was liberated North by the Soviet Union and South by the United States, which were to occupy temporarily the territory to guide the population to independence. However, Cold War logics led to the Korean War after which the DPRK and the Republic of Korea were born, setting the division of the peninsula along the 38th parallel. North Korea became subject to sanctions since its very birth. At the time, the United States began unilaterally imposing sanctions on different grounds, as part of a broader strategy to contain the expansion of communism in East Asia. Importantly, US laws underpinning first US sanctions were not originally designed to target especially North Korea, nor were they immediately linked to proliferation concerns. In fact, such legislation resulted in applying later and automatically to North Korea once its conduct fell within its ambit, much like 'a bewildered animal stepping on a hunter's trap'.[258]

For example, the "Trading with the Enemy Act," adopted during World War I and restricting trade with nations hostile to the US during wartime. Initially directed against Axis states, at the beginning of the Korean War North Korea became an enemy country and thus subjected to restrictions posed by the "Trading with the Enemy Act." Similarly, the "Export-Import Bank Act" of 1945, providing the Export-Import Bank to facilitate trade between the US and foreign countries through the provision of loans. This Act excluded to trade with Marxist-Leninist countries, thus later applying to North Korea. In 1949, the US passed the "Export Control Act," especially devised to enforce strategic embargoes against Communist countries after World War II, thus 'paving the way toward another sanctions trap into which North Korea fell following its invasion of South Korea only a year later.'[259]

Three days after the outbreak of the Korean War, the United States invoked a total embargo on exports to North Korea on the basis of the "Export Control Act."[260] The "Export Control Act" was then superseded by subsequent legislation (Export Administration Act of 1969 and EAA of 1979), but North Korea remained among the listed countries to which restricted trade was applied because of its support to international terrorism. In 1950, national emergency was declared through "Proclamation No. 2914," by which President Truman invoked additional sanctions against North Korea under then existing laws. Moreover, with the "Trade Agreement Extension Act" of 1951, the United States suspended the Most-Favoured-Nation status (later replaced by the Normal Trade Relations status) for

[258] Semoon Chang, "The Saga of U.S. Economic Sanctions Against North Korea," *The Journal of East Asian Affairs* 20, no. 2 (2006): 109.

[259] Chang, "The Saga of U.S. Economic Sanctions," 111.

[260] Sun Hi Kim and Semoon Chang, "Preface," in *Economic Sanctions Against a Nuclear North Korea*, ed. Sun Hi Kim and Semoon Chang (North Carolina: McFarland & Company, Inc., Publishers, 2007), 1.

all communist countries except Yugoslavia, setting the highest rates for imports from North Korea, thus effectively banning 'imports of North Korea products to the U.S. market even if they [could] be allowed under other provisions.'[261] In 1955, following the 1953 armistice that halted the Korean War, the Department of State issued the first "International Traffic in Arms Regulation" (ITAR) by which it denied exports and imports of defence articles and services to or from certain countries, including North Korea.

US sanctions expert Dianne Rennack recapitulates five main different grounds, or "legal traps," based on which the US has imposed sanctions against North Korea: (1) North Korea poses a threat to US national security; (2) North Korea is a state sponsor or supporter of international terrorism; (3) North Korea is a Marxist-Leninist state; (4) North Korea is responsible for the proliferation of weapons of mass destruction (WMD); (5) North Korea is pursuing a military nuclear programme and has executed multiple nuclear tests.[262] North Korea became subject to sanctions also because of its money laundering activities and international counterfeiting.[263] Acts of US laws previously mentioned and consequently adopted can be reconducted to these five rationales.

Since the early years of the Cold War, the US, concerned about the dangers of atomic weapons proliferation, began to adopt measures specifically aimed at preventing the spread of nuclear materials that could be used for the development of nuclear weapons. The first of such non-proliferation measures was the "Atomic Energy Act" of 1954, which prohibited 'the transfer of nuclear materials, equipment, or sensitive technology from the United States to any non-nuclear-weapon state that the President finds to have detonated a nuclear explosive device, terminated or abrogated safeguards of the International Atomic Energy Agency (IAEA), materially violated an IAEA safeguards agreement, or engaged in the manufacture or acquisition of nuclear explosive devices.'[264] North Korea will become subject to this law after its first nuclear test in 2006. For the moment, it did not have yet a nuclear program of any kind, being it still recovering from the Korean War and thus remaining largely dependent on external aid for reconstruction - mainly coming from the URSS. Pollack suggests that, although Kim Il-sung may already have had contemplated the potential value of nuclear weapons - particularly in light of the US deployment of nuclear weapons in South Korea from the 1950s until 1992 – 'the war's horrific destruction, the imperatives of post-war reconstruction, and the North's

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[261] Semoon Chang, "A Chronology of U.S. Sanctions Against North Korea," *Economic Sanctions Against a Nuclear North Korea*, ed. Sun Hi Kim and Semoon Chang (North Carolina: McFarland & Company, Inc., Publishers, 2007), 37.
[262] Dianne E. Rennack, *North Korea: Economic Sanctions*, CRS Report for Congress RL31696 (Washington, DC: Congressional Research Service, January 12, 2007), 1.
[263] Ibid.
[264] Chang, "A Chronology of U.S. Sanctions," 38.

modest scientific base made the prospect of a nuclear capability, at best, a distant aspiration.'[265] Nonetheless, North Korea began showing interest in nuclear science quite early on, as exemplified by the establishment of the Atomic and Nuclear Physics Research Institute in 1955 and the opening of nuclear physics departments at Kim Il-Sung University. In 1957, a ten-year plan for science and technology was promulgated, advocating 'an active programme of research in atomic energy, the training of scientific personnel, and pursuit of nuclear applications to the DPRK's economic development.'[266] North Korean scientists were sent to Moscow to receive nuclear advanced training as well. Soviet expertise and knowledge sharing were particularly indispensable for North Korea. In 1956, nuclear cooperation with the Soviet Union was pursued through multiple agreements on the peaceful uses of atomic energy and on research collaboration in nuclear science, culminating with the conclusion of a protocol enabling joint nuclear undertakings in 1959.[267] Interestingly, some regard Soviet Union's availability to provide knowledge sharing and nuclear training to North Korea as a means to develop bloc solidarity, but also to offer assistance to the socialist bloc as that provided by the US to the Western world through nuclear-sharing arrangements within NATO.[268] This early-stage North Korean nuclear program was built around the city of Yongbyon and was initially based on the reprocessing of spent fuel to produce plutonium. Yongbyon will become the centre of North Korea plutonium-based program.

In the second half of 1960s, precisely in 1968, North Korea signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which 'marked the beginning of a long confrontational journey of North Korea's nuclear weapons program'.[269] North Korea officially acceded to the Treaty in 1985 but did not reach a safeguards agreement with the International Atomic Energy Agency (IAEA) until 1992, despite it being required under Article III within an 18-month time limit from ratification. As a matter of fact, North Korea premised such arrangement on the withdrawal of US nuclear weapons from South Korea.[270]

Importantly, in the 1960s, Kim Il-Sung enunciated the "Four Point Military Guideline," a strategic and policy framework to pursue economic and military development. Despite being presented as coequal objectives, investment patterns revealed a prioritisation of the military over economic development, which will be made explicit in 1998 with Kim Jong-Il's adoption of the "military first"

[265] Jonathan D. Pollack, *No Exit: North Korea, Nuclear Weapons, and International Security*, (Oxon, New York: Routledge, 2011), 45.
[266] Pollack, "No Exit," 48.
[267] Pollack, "No Exit," 50.
[268] Pollack, "No Exit," 52.
[269] Chang, "The Saga of U.S. Economic Sanctions," 115.
[270] Chang, "A Chronology of U.S. Sanctions," 41.

policy.[271] Pollack observes that 'though nuclear weapons were not yet a realistic possibility, Kim's longer-term vision presumed equivalence with the major powers. If nuclear capabilities were appropriate for others, then they could not be excluded from the DPRK's strategic future.'[272] The militarization of the North Korean system was justified by increasing inter-Korean tension, which also served to demand more weapons, economic assistance, and nuclear technology transfer from Russia. The deterioration of relations with China during the Cultural Revolution in 1967, with Chinese troops even crossing the North Korean border in 1969, 'underscored the potential dangers that Kim faced in dealings with far more powerful neighbours, even ones linked by a shared past and by treaty obligations.'[273] The fact that North Korea was not able yet to break free from either the Soviet Union or China highlighted the 'the inherent vulnerabilities faced by a small state sandwiched between far larger powers and already prone to paranoia.'[274] This became even more evident during the 1970s and the diplomatic realignment of both major communist powers with the United States under the Nixon Administration. President Nixon's Guam Doctrine and rapprochement with China had a significative impact in East Asia, therefore also in the Korean peninsula. In South Korea, President Park Chung-Hee was caught by fear of abandonment due to Nixon's intention to withdraw 50% of the US forces stationed in South Korea, which led him into attempting covert nuclear-weapons development, though immediately detected by US intelligence. According to Pollack, 'it seems possible that the DPRK's nuclear aspirations were triggered at least in part by the South Korean programme,' although 'North Korea, already in arrears on debt repayment to Moscow and highly dependent on Soviet economic and technological support, had motives but not the means for rapid nuclear advancement.' [275] Kim Il-Sung then sought to diversify North Korea's diplomatic relations, including also the capitalist world, for example marketing weapons in the Middle East and Africa, receiving aid and acquiring advanced technology from Western Europe and Japan. It is in 1974 that the Bureau 39 was established, a body which will become responsible of 'smuggling, drug-trafficking, and counterfeiting to garner foreign exchange for the central leadership's programmes and needs.'[276] Bureau 39 is particularly relevant when discussing sanctions against North Korea, since such bureau is the main responsible for the illicit activities of the regime which brought about sanctions while also functioning as a means to evade them.

In 1978, another non-proliferation US law was passed, namely the "Nuclear Non-Proliferation Act," which 'promoted the establishment of a framework for international cooperation in developing

[271] Pollack, "No Exit," 61.
[272] Pollack, "No Exit," 63.
[273] Pollack, "No Exit," 69.
[274] Ibid.
[275] Pollack, "No Exit," 80-81.
[276] Pollack, "No Exit," 84.

peaceful uses of nuclear energy; authorized the U.S. government to license exports of nuclear fuel and reactors to countries that adhere to nuclear non-proliferation policies; provided incentives for countries to establish joint international cooperative efforts in nuclear non-proliferation, and authorized relevant export controls.'[277] In other words, it established strict US controls over nuclear exports to prevent the spread of nuclear weapons while promoting peaceful nuclear energy. It mandated IAEA safeguards encouraging the Non-Proliferation Treaty universal ratification and required countries to adopt non-proliferation policies to receive US nuclear fuel.

At the end of 1980s, North Korea is believed to have successfully completed independently the construction of its first graphite-moderated reactor. Its nuclear development process was facilitated by the fact that North Korea, unlike the South, had abundant natural resources. Moreover, it completed the entire nuclear fuel cycle, meaning it was able to produce fissile material to build nuclear weapons. Despite its apparent commitment to non-proliferation suggested by its participation to the NPT, satellite photos revealed a new construction at a nuclear complex near Yongbyon in 1989 which led US intelligence to suspect that North Korea could have been in the early stages of producing an atomic bomb.[278] This suspicion was strengthened by the fact that North Korea had not allowed yet any inspection of its nuclear facilities. The year 1989 was particularly pivotal in that it marked also the dissolution of the Soviet Union and consequently the end of the Soviet Union's economic aid to North Korea. The cessation of Soviet aid had severe repercussions on North Korean agricultural sector leading to the mid-1990s major famine.

In 1991 both North and South Korea became members of the United Nations and signed the "South-North Joint Declaration on the Denuclearization of the Korean Peninsula," which was made possible by the US removal of its nuclear weapons from South Korea. The Declaration certifies the two countries agreement not to 'test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons […and] nuclear reprocessing and uranium enrichment facilities.'[279] Moreover, mutual inspections were provided by the agreement. President Bush decision to withdraw US nuclear weapons from South Korea also paved the way for the conclusion of a comprehensive safeguards agreement between North Korea and the IAEA, six years after North Korea's signing of the NPT.

Between 1992 and 1993 IAEA inspectors noticed discrepancies in North Korea's declared plutonium production, for which it demanded special inspections of two suspected nuclear waste sites of Yongbyon. The Agency's failure in detecting Iraq nuclear activities before the Gulf War of 1991 led to stricter reporting requirements and more intrusive inspections, and North Korea became the first

[277] Chang, "The Saga of U.S. Economic Sanctions," 116.
[278] Chang, "A Chronology of U.S. Sanctions," 42.
[279] Ministry of Foreign Affairs of the Republic of Korea, "Joint Declaration on The Denuclearization of The Korean Peninsula," accessed May 17, 2026, https://www.mofa.go.kr/eng/brd/m_5476/view.do?seq=305870.

‘test case.’[280] However, North Korea blocked IAEA inspectors, accusing the Atomic Energy Agency of being under the control of the US and strongly contesting special inspections on the ground that no other country except from North Korea had been subjected to such inspections before and that they would have violated its sovereignty. Tensions continued to rise almost to the point of overt military hostilities. The Clinton Administration proposed the multilateral imposition of sanctions through the Security Council while the North Korean Foreign Ministers threatened to withdraw from the NPT and warned that North Korea would have interpreted sanctions against it as an act of war. The crisis was averted thanks to the intervention and mediation of former President Carter. What would be remembered as the First Nuclear Crisis came to an end with the conclusion of the “Agreed Framework” of 1994 between the United States and the DPRK. The agreement provided the freeze of the nuclear program and the dismantling of North Korean nuclear facilities, including also permission for IAEA special inspections. The US would provide North Korea with annual heavy fuel oil to compensate the energy production forgone by the suspension of the graphite-moderated reactors. Additionally, it would gather a multinational consortium called KEDO (Korean Peninsula Energy Development Organization) to finance and build two light water reactors (LWRs). The LWRs, as well as the procurement of heavy fuel oil, were urgent needs face to North Korean collapsing economy and deepening electricity crisis. The Agreed Framework was followed by new US Department’s Foreign Assets Control Regulations (FACR) authorizing ‘travel-related transactions, greater telecommunications, news bureaus, banking, and the importing of magnesite from North Korea.’[281] In 1996, North Korea will be confronted with a huge crisis, affecting severely agriculture and causing a deadly famine. In the same period, floods and natural disasters deteriorated the situation. For the first time, North Korea accepted humanitarian aid from international organizations and capitalist countries, including the United States, being ‘an aid-based strategy […] integral to North Korea’s survival.’[282] The Department of the Treasury issued Foreign Assets Control Regulations authorizing donations for basic human needs in North Korea. A World Food Programme was established with the food aid delivered to North Korea peaking at 1.5 million tonnes in 2001 [283].
However, this period was not void of provocations and challenges, such as North Korea shooting down a US helicopter near the Demilitarized Military Zone (DMZ) in 1994. In 1996 the US added largely symbolic sanctions against Iran and North Korea for missile technology-related transfers. Other targeted sanctions were imposed in 1998 for the transfer of missile technology and components from North Korea to Pakistan. Despite these, in August, North Korea fired a Taepodong rocket

[280] Pollack, “No Exit,” 108.
[281] Chang, “The Saga of U.S. Economic Sanctions,” 120.
[282] Pollack, “No Exit,” 122.
[283] Ibid.

missile in the Pacific Ocean over Japan. Clearly, missile development and transfer became another important concern sanctions were intended to address.

After the resolution of the First Nuclear Crisis, as part of the United States' engagement with North Korea under the 1994 Agreed Framework, and in exchange for North Korea's moratorium on missile testing, President Clinton initiated a period of sanctions' easing, with the lifting of most export restrictions. Rennack reports how 'many items that previously had required a license were now eligible for export without a license' and that some previously included in the Commerce Control List were moved 'from a policy of denial status to case-by-case review.'[284] However, several restriction remained active against North Korea, especially anti-terrorism and non-proliferation export controls.

In fact, following the easing of trade and travel sanctions, some expected that North Korea would also be removed from the list of state sponsors of terrorism (SST), something which North Korea was particularly interested about being it a necessary precondition to its application for membership in the World Bank and the International Monetary Fund. North Korea was included in the SST list by the US State Department in 1988 after causing the explosion of Korean Air Lines 858. Such designation as a terrorist country made it subject to sanctions and trade restrictions under the "Arms Export Control Act" of 1968 and the "Export Administration Act" of 1979. The "Arms Export Control Act" denied arms-related export or financial support to any country that the President determined having committed or supporting international terrorism; the "Export Administration Act" prohibited most elements of trade, including sales of items on the US Munitions List, foreign aid, Export-Import Bank funding, and support in international financial institutions to countries found to be supporting international terrorism. On the same basis, North Korea was denied most non-humanitarian assistance under the "Foreign Assistance Act" of 1961. In essence, being listed as a terrorist country resulted in heightening North Korea's economic isolation and prevented its integration in the global economic system or world economic order. The United States was obliged by law to oppose membership in the international financial institutions of, or financial support to, terrorist states.[285]

In terms of remaining non-proliferation export controls, the US adopted as safeguards measure the "North Korean Threat Reduction Act," which prohibited exports of nuclear material or technology from the US to North Korea without previous presidential examination of North Korean compliance with international agreements, including the Agreed Framework. Moreover, controls were maintained under the Enhanced Proliferation Control Initiative (EPCI). In particular, the Enhanced Proliferation Control Initiative (EPCI) marked a significant shift in the United States' approach to counter-

[284] Rennack, "North Korea: Economic Sanctions," 10.
[285] Rennack, "North Korea: Economic Sanctions," 11.

proliferation. Introduced in the 1990s, the initiative expanded the scope of traditional export controls by enabling US authorities to target not only explicitly listed goods, but also dual-use items suspected of contributing to weapons of mass destruction programmes or goods to be sold or transferred to countries or entities allegedly involved in proliferation. This was possible by the introduction of the so-called "catch-all" clause, which enabled the imposition of preventive and anticipatory controls on both the recipient (end-user) and the intended use (end-use) of the goods. The EPCI also reinforced the extraterritorial dimension of US non-proliferation policy, allowing for measures against foreign entities engaged in transactions with sanctioned actors. In doing so, it laid the groundwork for subsequent developments in financial sanctions and secondary sanctions, which would become central tools in addressing North Korea's nuclear ambitions.

In the same period, the new South Korean President Kim Dae-jung adopted the so-called Sunshine Policy, a new approach to inter-Korean relations based on proactive and constructive engagement, which eventually led to the First Korean Summit in 2000. This period of diplomatic and humanitarian engagement was to meet soon its end with the advent of the Bush Administration in 2001 and a total review of US policy towards the DPRK.

2.3 The Failure of Diplomatic Engagement and the Six-Party Talks (2002-2005)

The presidential transition to the Bush Administration brough about a 'sea change' in US-North Korean relations through a complete review of US policy.[286] Significantly, what had initially been a unilateral US containment strategy began to expand into a multilateral non-proliferation effort. Conversely, the United States increasingly deferred the North Korean issue to the international community, thereby substantially reducing its own unilateral engagement and intervention in line with its new national security strategy.

After the 2001 terroristic attacks, President Bush included North Korea among the countries of the "axis of evil" along with Iran and Iraq. Tensions continued to deepen following North Korea's announcement that it was renewing its nuclear weapons programme, thus violating the 1994 Agreed Framework. This came after US intelligence had uncovered that North Korea had initiated a uranium-enrichment programme through collaboration with other countries, including Pakistan, Libya, and Syria. As Pollack writes, 'at the very time that its own plutonium programme remained frozen, Pyongyang was facilitating the spread of nuclear technology to one or more countries beyond its borders.'[287]

[286] Chang, "The Saga of U.S. Economic Sanctions," 124.
[287] Pollack, "No Exit," 136-137.

The US, Japan, and South Korea decided to halt the heavy fuel oil supplies promised under the Framework following North Korea's violations. In 2003, North Korea withdrew officially from the NPT. The Bush Administration called for multilateral sanctions and proposed that the Security Council managed the crisis, but the latter declined to consider a resolution of condemnation or sanctions, reportedly because of the opposition of Russia and China. The US would refuse bilateral diplomacy until North Korea's first nuclear test in 2006.[288] As a matter of fact, Nephew notices that while the US had acted mainly unilaterally until 1990, in the post-Cold War period 'the proportion of unilateral to multilateral cases shifted significantly in favor of increased reliance on international cooperation,' resulting in more engagement with international partners through the UN Security Council or groups of like-minded states.[289] These developments came in parallel with US imminent invasion of Iraq, which substantially caught most of US's attention and resources. From this moment onwards, North Korea's standing as a nuclear-armed state would not only become overt and explicitly undertaken, but also integral to North Korea's diplomatic and survival strategy. Relevant to this, events in the Middle East arguably justified DPRK's pursuit of nuclear weapons. In the words of some North Korean diplomats to their US counterparts, 'we've watched what you're doing in Iraq...The lessons that we're getting out of that is that Iraq does not have weapons of mass destruction and you invaded them. So, we're going to reprocess the spent fuel rods, we're going to take them and create a nuclear deterrent so you cannot invade us.'[290]

Under US pressure and worrying a regional crisis, China took the role of mediator between North Korea and the US by organizing a first trilateral dialogue. This trilateral dialogue evolved into the "Six-Party Talks" reuniting also South Korea, Russia, and Japan in Beijing. The "Six-Party Talks" would last until 2009, when North Korea officially withdrew, and proved to be fundamentally unsuccessful. Haggard and Noland identified divergence in strategy among the five members as underlying the negotiations over the years.[291] In particular, the divergent role of China and its refusal to use North Korea's economic dependence as a strategic and diplomatic leverage is believed to have hampered the overall effectiveness of sanctions, underlying the cooperation problem between the six members.[292] As a matter of facts, while the United States hardened economic sanctions against North Korea, China, in order to maintain continued access to North Korean leaders in Pyongyang and coax them into multilateral talks, tripled its energy exports to North Korea between 2002 and 2007 while

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[288] Pollack, "No Exit," 133.

[289] Richard Nephew, "Implementation of Sanctions: United States," in *Economic Sanctions in International Law and Practice*, ed. Masahiko Asada (Oxfordshire: Routledge, 2020), 97.

[290] Pollack, "No Exit," 141.

[291] Haggard and Noland, "Hard Target," 19.

[292] Ibid.

also doubling other forms of assistance.[293] Conversely, Haggard and Noland's analysis of the trade between China and the DPRK revealed there was no reduction neither pause in Chinese exports to North Korea after the imposition of multilateral sanctions. In fact, despite 2006 sanctions, trade between the two countries increased, with China becoming the main and sole supplier of luxury goods.[294] China's support was enacted also within the Security Council with Chinese opposition, or general reluctance, to the adoption of any resolution imposing sanctions on North Korea. Arguably, the US had little economic leverage against North Korea, given its trade with the country was already reduced to a minimum because of its long-standing and extensive sanctions regime. The same goes for Japan. On the contrary, the role of China and South Korea could seriously put pressure on North Korea. Regarding China, 'while the United States was seeking to form a multilateral coalition of restraint that included China as a crucial player, […it] was effectively pursuing a strategy of "deep engagement" that was strikingly similar to South Korea's Sunshine Policy.'[295] And the South Korean governments of Kim Dae-jung (1998-2003) and Roh Moo-hyun (2003-2008) were not interested in pursuing a comprehensive sanctions strategy and were rather focused on engagement and constructive dialogue, based on the separation of politics and economics. As Haggard and Noland observed, 'the diplomacy of the progressive South Korean presidents tended to limit the scope of possible sanctions, including the multilateral sanctions put in place after 2006, or to undermine them indirectly by maintaining commercial economic ties and foreign aid.'[296]

2.4 The Emergence of the UN Sanctions Regime (2006)

Chinese diplomatic efforts eventually could not overcome the nuclear impasse encountered within the "Six-Party Talks" and the numerous obstacles to the negotiations. In 2005, North Korea announced publicly for the first time to have manufactured nuclear weapons for self-defence to cope with the alleged Bush Administration's policy of isolating and crushing the DPRK. North Korea stressed the equal standing of its nation compared to the United States, especially now that it had become a nuclear-weapon State. The September 2005 talks produced an agreement where the six members agreed over 'verifiable denuclearisation of the Korean peninsula in a peaceful matter' and in which North Korea committed to 'abandoning all nuclear weapons and existing nuclear programmes and returning, at an early date, to the Treaty on the Non-Proliferation of Nuclear

[293] Pollack, "No Exit," 144.
[294] Haggard and Noland, "Hard Target," 63-67.
[295] Haggard and Noland, "Hard Target," 181.
[296] Haggard and Noland, "Hard Target," 171.

Weapons and to IAEA safeguards.'[297] Rather than concrete and major policy shifts, the joint statement is said to have caused 'generalised expectation' ultimately not met by reality.[298] This was also consequent to the fact that the United States and North Korea interpreted differently the terms of the agreement. The United States expected complete, verifiable and irreversible dismantlement of the nuclear programme, which would have meant for North Korea to disassemble the weapons it claimed to possess. In contrast, North Korea, through changing and overall unreliable declarations, proved in essence not willing to abandon its nuclear programme, which in fact is now enshrined in its Constitution.

In the same year, additional steps were taken by President Bush to target North Korea's illicit activities related to drug smuggling and currency counterfeiting, activities believed to provide significant foreign revenue to the country. Such initiative was pursued by putting economic pressure on North Korea through targeted financial sanctions imposed on three North Korean entities: the Korea Mining Development Trading Corporation (generally known as Changgwang Sinyong Corporation or with the acronym KOMID), North Korea's premier arms dealer and primary exporter of ballistic missiles and conventional weapons; the Korea Ryonbong General Corporation, a key defence industrial entity focused on procuring materials for DPRK military-related program; the Tanchon Commercial Bank, acting as the financial agent for KOMID by managing funds and transactions related to the export of ballistic missiles and conventional weapons. KOMID had already been targeted by US sanctions before under the "Iran Non-proliferation Act" of 2000, which will be amended in 2005 to also include Syria and North Korea, thus becoming "Iran, North Korea, and Syria Non-proliferation Act". The "Iran Non-Proliferation Act" authorized the President to impose sanctions against 'every foreign person with respect to whom there is credible information indicating that the person […] transferred to Iran goods, services or technology the export of which is controlled for the purposes of the non-proliferation of material that could be used in the development of weapons of mass destruction.'[299] Reportedly, KOMID had been targeted by US economic sanctions from early 1996 for its activities related to missile and WMD proliferation. The most prominent result of US financial thwarting occurred in September, when the US Treasury Department, using the authority provided by the Patriot Act of 2001, froze North Korean financial assets at the Macau-based bank Banco Delta Asia, found to be involved in North Korea's distribution of counterfeit US currency and also money laundering. The Macau Money Authority froze approximately 25 million dollars in North

[297] U.S. Department of State, "Joint Statement of the Fourth Round of the Six-Party Talks," September 19, 2005, https://2001-2009.state.gov/r/pa/prs/ps/2005/53490.htm.
[298] Ibid.
[299] Chang, "The Saga of U.S. Economic Sanctions," 123.

Korea funds.[300] Remarkably, President Bush also launched the so-called "Proliferation Security Initiative" (PSI), an international initiative to which States could voluntarily participate and aimed at combating proliferation and prevent the transfer of WMD-related materials through cooperation in the interdiction and inspection of suspect shipments.[301] While not targeting directly North Korea, the latter became subject to it quite soon. Noticeably, such initiative was focused on enforcement and underlined by a preventive and operational strategy against WMD proliferation. Finally, through the adoption of the "North Korean Human Rights Act" in 2004, the Bush Administration also changed its approach to humanitarian aid, making the provision of aid conditional and based on improvements on human rights. Some have denoted President Bush' tendency 'to see aid in more narrow terms, emphasizing the risks of moral hazard and seeking more effective monitoring and even progress on human rights.'[302] Despite being formally unrelated to the nuclear issue, US aid reportedly fell in both 2003 and 2004 because of monitoring issues in the World Food Program.

North Korea insisted that it would not return to the talks until sanctions were lifted. Such US financial sanctions are of particular significance, as they signalled Washington's growing awareness of the power inherent in instrumentally denying or restricting access to the US-dominated financial system, especially in relation to North Korea, thereby contributing to the economic isolation of targeted countries. In other words, 'the sanctions regime demonstrated the degree to which the United States had understood new global realities with respect to the latent power of its economy and the threat of its denial.'[303] This awareness gave rise to a new trend characterised by the increased use of both primary financial sanctions and (often illicit or controversial) secondary sanctions against institutions – particularly banks, but also insurance companies, shipping firms, industrial actors, and a wide range of service providers – engaging in business with sanctioned entities. This, in turn, has generated significant side effects, including the so-called chilling effect, the phenomenon of overcompliance, and de-risking. Regarding, for example, Banco Delta Asia, Taylor reports that 'while the amount of funds frozen was relatively small, this action had wider repercussions in making banks around the world less willing to deal with North Korea.'[304] More concretely, it caused other global financial institutions to shut down North Korean accounts for fear of being subject to similar penalties.[305]

Having North Korea's economic needs grown acute after the imposition of sanctions against its bank accounts in Macau, Kim Jong-Il paid a visit to China demanding more economic collaboration but

300 Wertz, "Special Report," 3.
301 Haggard and Noland, "Hard Target," 177.
302 Haggard and Noland, "Hard Target," 175.
303 Nephew, "Implementation of sanctions: United States," 110.
304 Brendan Taylor, "Chapter Two: Sanctioning North Korea," *The Adelphi Papers* 49, no. 411 (2009): 33.
305 Wertz, "Special Report," 3.

returned empty handed.[306] Consequently, North Korea embarked in an extensive series of ballistic-missile tests, including the long-range missile Taepodong-2, thus ending its moratorium on missile launching.

2.4.1 UNSC Resolutions 1695 & 1718

The multilateral diplomatic failure in preventing the crisis as well as China's frustration over North Korea's behaviour, which made it less opposed to the imposition of sanctions, led to the adoption of the first UN Resolution on North Korea. On July 15, 2006, the United Nations Security Council adopted UNSCR 1695. It condemned North Korea's break of missile launching and testing moratorium, the execution of ballistic missile testing without prior notice to regional neighbours, the withdrawal from the NPT and the violation of the 2005 agreement.[307] It called for the resumption of the "Six-Party Talks", inviting North Korea and the other State Parties to find a peaceful solution to the crisis.[308] Concerned by the potential use of ballistic missiles as 'means to deliver nuclear, chemical or biological payloads', affirming that 'such launches jeopardize peace, stability and security in the region and beyond, particularly in light of the DPRK's claim that it has developed nuclear weapons,' under its responsibility for the maintenance of international peace and security, it required Member States to 'exercise vigilance and prevent missile and missile-related items, materials, goods and technology being transferred to DPRK's missile or WMD programmes.' Other than this, it also called upon Member States to prevent the transfer of financial resources in relation to DPRK's missiles or WMD programmes.[309] Additionally, it demanded the immediate suspension of North Korea's missile ballistic missile programme and the re-establishment of the moratorium on missile launching.[310] Finally, it urged North Korea to return to the negotiating table at the "Six-Party Talks" 'without precondition', to work towards the expeditious implementation of the 2005 Joint Statement, in particular to abandon all nuclear weapons and existing nuclear programmes, and to return at an early date to the NPT and International Atomic Energy Agency's safeguards.[311]

The situation continued to escalate until North Korea's first nuclear test in October, which brought about the adoption of UNSC Resolution 1718. Such resolution is lengthier and more detailed, thus establishing a more concrete sanctions regime against North Korea. Significantly, compared to Resolution 1695, UNSCR 1718 explicitly refers to Article 41 of the UN Charter, whereby

[306] Pollack, "No Exit," 147.
[307] United Nations Security Council, *Resolution 1695 (2006)*, U.N. Doc. S/RES/1695 (July 15, 2006).
[308] UNSC, *Resolution 1695*.
[309] Ibid.
[310] Ibid.
[311] Ibid.

determining that North Korea's nuclear and missile programme constitutes a threat to international peace and security. In determining the presence of such threat, the UN Security Council condemns North Korea conduct and decides the suspension of all DPRK's activities related to the ballistic missile programme and the abandonment of all nuclear and other weapons of mass destruction and existing nuclear or ballistic missile programmes 'in a complete, verifiable and irreversible manner.'[312] This is particularly significant in that the Security Council demanded the DPRK abandoned *all* nuclear programmes, something that was not required under the NPT. Moreover, in demanding the DPRK return to the NPT, for the first time it attempted to force a State to join a treaty with a resolution under Chapter VII.[313] From an international law perspective, Borlini has clarified that North Korean 2006 missile and nuclear tests did not *per se* violate international customary or treaty law, in that North Korea was not part of the NPT and because missile testing is not prohibited in high seas if missiles do not carry weapons.[314] Moreover, no injury nor harm was made to other States that could justify the adoption of countermeasures. However, 'while the DPRK may have been legally entitled to leave the NPT and run the afore-mentioned (missile and nuclear) tests, it could not lawfully escape the bounds of the UN Charter regarding international peace and security.'[315] Importantly, from 2006 onwards, 'by qualifying the situation in North Korea as a "clear" threat to international peace and security, the Council resolutions have been central to the international community's composite attempts to deal with such a situation and central to such resolutions is the non-proliferation regime.'[316]

More specifically, the Resolution requires all Member States to prevent and ban transfer of items related to North Korea's WMD and ballistic programmes, dual-use items and luxury goods; to freeze funds and financial assets of entities associated with such programmes and prohibiting involved individuals from travelling abroad.[317] Paragraph 8 clarifies the items subject to such trade ban, namely 'any battle, tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missiles systems, […] or related materiel including spare parts or items as determined by the Security Council or the Committee', 'all items, materials, equipment, goods and technology […] which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes', and luxury goods.[318] Moreover,

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[312] United Nations Security Council, *Resolution 1718 (2006)*, U.N. Doc. S/RES/1718 (October 14, 2006).
[313] Leonardo S. Borlini, "A Dangerous Cat-and-Mouse Game: The North Korean Nuclear Proliferation and the UN Security Council," *Bocconi Legal Studies Research Paper*, no. 3010751 (2017): 5.
[314] Borlini, "A Dangerous Cat-and-Mouse Game," 1-23.
[315] Leonardo Borlini, "The North Korean gauntlet, international law and the new sanctions imposed by the Security Council," *Italian Yearbook of International Law* 26, no. 1 (2017): 329.
[316] Ibid.
[317] UNSC, *Resolution 1718*.
[318] Ibid.

'all Member States are called upon to take […] cooperative action including through inspection of cargo to and from the DPRK' under suspicion of illegal weapons material shipment.[319] According to Taylor, such provision formalised the US-led Proliferation Security Initiative (PSI), the US-led multilateral export-control initiative to prevent the proliferation of WMD and related materials that was previously mentioned.[320] Arguably, such measures represented 'the stick to the carrot of the six-party talks, and perhaps because the international community's goal was to induce negotiations, little was done to enforce' them.[321] To validate such interpretation, the absence of a list of items to be considered luxury goods or of individuals/entities' funds or assets to be frozen and subjected to financial and travel sanctions. It is only in 2009, after the second nuclear test, that the Security Council explicitly designated the entities, individuals, and goods to sanction.

Resolution 1718 further provides some exemptions and establishes a Sanctions Committee. The exemptions set out in the Resolution relates to financial or other assets or resources 'that have been determined by relevant States: (a) to be necessary for basic expenses including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes […] after notification by the relevant States to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Committee within five working days of such notification; (b) to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant States to the Committee and has been approved by the Committee; or (c) to be subject of a judicial, administrative or arbitral lien or judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgement provided that the lien or judgement was entered prior to the date of the present resolution, is not for the benefit of a person referred to in paragraph 8 (d) above or an individual or entity identified by the Security Council or the Committee, and has been notified by the relevant States to the Committee.'[322] Travel bans are exempted 'where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligations, or where the Committee concludes that an exemption would otherwise further the objectives of the present resolution.'[323] The Sanctions Committee is formed by all members of the Security Council and is mandated to seek from all States information regarding the actions taken to implement the measures imposed by the Resolution, to examine and take appropriate action in case of alleged violations of such measures, to evaluate and decide upon requests for exemptions, to determine

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319 Ibid.

320 Taylor, "Chapter Two," 29.

321 Sue E. Eckert, "United Nations Nonproliferation Sanctions," *International Journal* 65, no. 1 (Winter, 2009-10): 74.

322 UNSC, *Resolution 1718*.

323 Ibid.

eventually additional individuals or entities to be subjected to the measures, to promulgate if necessary guidelines on the implementation of the Resolution, and to report every 90 days minimum the Security Council on its work.[324]

Contextually, it is worth mentioning that, although UN sanctions regime against North Korea was first imposed in 2006, the Security Council had already taken upon itself a role in preventing and countering WMD[325] proliferation since 2004 through both 'reactive case-oriented action' and 'thematic efforts.'[326] In particular, it had adopted Resolution 1540 by which it affirmed that 'proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security.'[327] Resolutions 1695 and 1718 were in fact adopted in light of Resolution 1540. Additionally, UNSR 1540 called upon states to 'refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.'[328] Moreover, it required States to adopt proper legislation to prevent proliferation, including effective national border controls. Resolution 1540 clearly did not establish any sanctions regime; however, it is considered to have strengthen and supplemented the already existing multilateral treaties such as the NPT by making compelling not only to signatory States, but to all Member States of the United Nations the obligations of such treaties.[329] By focusing on non-State actors, it also addressed the 'gap in existing non-proliferation treaties and arrangements, which do not apply to nonstate actor.'[330] Eckert considers Resolution 1540 in the realm of non-proliferation as analogue of Resolution 1373 in the counterterrorism one, as they both establish 'an overarching counterterrorism [and non-proliferation] policy and architecture in which sanctions play an integral part'.[331] In other words, 'reactive measures such as sanctions are part and parcel, and mutually supportive, of the overall preventative architecture to address WMD proliferation through resolution 1540'.[332] Interestingly, Eckert has also identified a series of challenges to UN non-proliferation sanctions which could be still considered valid: first, the question of legitimacy of sanctions adopted by only a restricted number of UNSC Member States and consequently the criticism over Security Council's authority as a global legislator; secondly, the uncertainties about fairness and clarity of sanctions designations and delisting procedures, which, as already mentioned in the previous Chapter,

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[324] Ibid.
[325] Weapons of Mass Destructions
[326] Eckert, "United Nations Nonproliferation Sanctions," 77.
[327] United Nations Security Council, *Resolution 1540 (2004)*, U.N. Doc. S/RES/1540 (April 28, 2004).
[328] Ibid.
[329] Eckert, "United Nations Nonproliferation Sanctions," 78.
[330] Ibid.
[331] Eckert, "United Nations Nonproliferation Sanctions," 77.
[332] Eckert, "United Nations Nonproliferation Sanctions," 79.

stem from the lack of due process guarantees and review mechanisms comparable to those provided by the Ombudsperson in the counterterrorism regime; thirdly, the lack of unity and political will, which often results in 'watering down' sanctions measures thus hindering their implementation and effectiveness; strictly connected to this is the lack of effective monitoring of member states' implementation and enforcement of non-proliferation sanctions and of legal consequences in case of targets' continued violations of the Council's demands, which undermines sanctions' overall credibility; finally, the need to address the long-term perception of the Security Council as 'a tool for the multilateralization of US domestic sanctions,' arguably generating from the seemingly biased imposition of sanctions on certain countries while leaving others aside.[333] Moreover, North Korea belongs to the so-called "hard targets" category, namely authoritarian regimes which are particularly hard to coerce if not through 'sanctions targeted quite narrowly at the leadership', in that they can repress and impose the costs of more comprehensive sanctions on their populations, and sanctions may even incentivize them to do so.[334] The lack of effective implementation coupled with the "hard" nature of North Korea as a target hinders in practice sanctions effectiveness.

An important change brought about in this period is related to Japan, one of the main regional powers in East Asia. The year 2005 marked a shift in Japanese policy from one of general reluctance and opposition to the imposition of sanctions to one increasingly relying on sanctions to address the North Korean nuclear and missile issue. Starting from the 1960s, Japan was one of the major trading partners of North Korea[335] and the only exemption to its traditional sanctions abstinence had been in 1998, after the launch of the Taepodong ballistic missile, following to which Japan suspended its funding to KEDO, as well as food aid to North Korea and normalization talks.[336] Taylor relates such stance to legal limitations under Japan's Foreign Exchange and Foreign Trade Control Law, which meant that Japan could apply sanctions only in the event they were authorized by a UN resolution or as a result of a multilateral agreement.[337] In 2003, the Foreign Trade Control Law was amended, initiating a period of intensifying use of sanctions against North Korea. Particularly significant was another emendation in 2005 which required all foreign vessels weighing over 100 tonnes to be insured to be allowed to enter Japanese ports. Taylor noted that only 2,5% of the 1,000 North Korean vessels passing through Japanese ports were insured, this measure essentially resulting in a *de facto* sanction against North Korea.[338] Another means to sanction North Korea more directly was reducing the level of Japanese remittances permitted to the DPRK. From this moment onwards, Japan will become 'one

[333] Eckert, "United Nations Nonproliferation Sanctions," 80.
[334] Haggard and Noland, "Hard Target," 6.
[335] Wertz, "Special Report," 2.
[336] Taylor, "Chapter Two," 38.
[337] Ibid.
[338] Taylor, "Chapter Two," 39.

of – if not the – most frequent users of [sanctions] against that country.'[339] Japan became also a strong supporter of UNSC Resolutions against North Korea, working in close cooperation with the United States – also by been a prominent member of the Proliferation Security Initiative. Moreover, it implemented assiduously UNSC resolutions. Among the reasons for the imposition of sanctions, to induce and bargain for a resolution of the abductees issue, namely of those Japanese citizens abducted by North Korea during the 1970s and 1980s, to demonstrate Japan's value as an American ally and its leadership role in regional and global affairs.

After this Second Nuclear Crisis, the US, which had taken a step back in its unilateral action by supporting multilateral efforts within the UN Security Council, continued regardless to use the lifting of sanctions, particularly financial, to influence the course of Korean nuclear development and related talks.[340] Between 2007 and 2008, President Bush eased some sanctions previously imposed, such as those on North Korean accounts held at Banco Delta Asia and those imposed under the "Trading with the Enemy Act". Importantly, President Bush also removed North Korea from the list of States sponsors of terrorism, a major impediment to the latter's application to global financial and economic institutions such as the World Bank and the IMF. As a matter of fact, the United State could not support by law the entrance of States listed as sponsors and supporters of terrorism in such institutions. Noticeably, US sanctions have served multiple objectives. First, in times where talks stalled, to coerce North Korea back to the table; second, to influence North Korea's decision-making by targeting its elite; third, sanctions also served domestic interests functioning as a balance between conflicting sides within the State Department, namely those who preferred engagement and those who pushed for a regime change and a tougher approach towards North Korea.[341] Moreover, the US used sanctions to influence third parties, such as Iran, as means to send a message of deterrence, but also to influence potential allies in East Asia, for example seeking to put distance between China and North Korea by obtaining China's support to UN sanctions.[342] Indeed, the US has 'consistently urged Beijing to use its close relationship with the North to influence Pyongyang's nuclear policies,' especially given North Korea's growing economic dependence upon China.[343] However, China has shown particularly reluctant due to security and economic concerns over potential negative consequences coming from the imposition of sanction to the often unpredictable North Korea.

[339] Taylor, "Chapter Two," 37.
[340] Taylor, "Chapter Two," 34.
[341] Taylor, "Chapter Two," 35.
[342] Taylor, "Chapter Two," 37.
[343] Taylor, "Chapter Two," 45.

2.5 Expansion of Multilateral Sanctions (2009-2013)

At the beginning of his mandate, President Obama attempted to pursue a policy of engagement, which however immediately clashed with North Korea's nuclear assertion of 2009. In particular, North Korea abandoned its denuclearization commitment and refused to continue its moratorium on missile testing. In April of that year, it attempted a satellite launch, refusing to comply with UN Security Council Resolutions 1695 & 1718 which forbade additional long-range missile tests. Given Japan could not secure support for a resolution within the Security Council, a Presidential Statement was issued. The latter condemned the satellite launch, which contravened UNSCR 1718 (2006). Moreover, the Security Council mandated the Committee to adjust the measures imposed under previous Resolutions by designating entities and items to sanction, thus marginally expanding the scope of the previous sanctions regime.[344] Accordingly, the Committee designated three additional North Korean firms. Regardless, North Korea conducted a third nuclear test, to which followed the adoption of UNSC Resolution 1874. After the nuclear test of May 2009, North Korea also decided to officially withdraw from the "Six-Party Talks," refusing to rejoin them if sanctions were not lifted and a peace treaty was signed with the US to formally end the Korean War.[345] Reportedly, North Korea insisted 'that the denuclearisation of the Korean peninsula would require the United States to disengage from its security commitments in Northeast Asia, remove its nuclear umbrella from South Korea, withdraw US military forces from the peninsula, and develop a US-DPRK strategic relationship paralleling the US-ROK alliance.'[346] Consequently, for North Korea, normalization had necessarily to precede denuclearisation. On the contrary, the United States would not negotiate normalization prior to complete denuclearization.

2.5.1 UNSC Resolution 1874 (2009)

Resolution 1874, reaffirming that North Kores's nuclear programme constituted a threat to international peace and security, denies any acceptance of North Korea as a nuclear-weapon state. Citing explicitly its authority under Chapter VII and Article 41 of the UN Charter, it condemns the last nuclear test and demands the DPRK suspends all activities related to nuclear development and ballistic missile testing and re-establishes its moratorium. It decides that 'the DPRK shall abandon all

[344] United Nations Security Council, *Statement by the President of the Security Council*, U.N. Doc. S/PRST/2009/7 (April 13, 2009).
[345] Taylor, "Chapter Two," 26.
[346] Pollack, "No Exit," 160.

nuclear weapons and existing nuclear programs in a complete, verifiable and irreversible manner and immediately cease all related activities.[347] Member States are required to inspect all cargo and vessels to and from North Korea, with the consent of the flag State and even in high seas, if there are 'reasonable grounds to believe that the cargo of such vessels contains items the supply, sale, transfer, or export of which is prohibited.'[348] Prompt reports must be sent to the Committee. According to Eckert, such specific measures for the inspection of North Korea's cargo vessels marked 'an important development in the Security Council's requirements for inspection of proliferation-suspected vessels.'[349] Moreover, the Resolution bans the provision of fuel or supplies to North Korean vessels if the supply, sale, transfer, or export of the items they carry is prohibited under previous Resolutions, 'unless provision of such services is necessary for humanitarian purposes or until such time as the cargo has been inspected, and seized and disposed of if necessary.'[350] The latter is one of the three humanitarian clauses present in the Resolution. Another one is an overarching formulation at the beginning of the Resolution stating that 'measures […] are not intended to have adverse humanitarian consequences for the civilian population of the DPRK.'[351] By providing stricter cargo inspections, the Resolution seems to formalize even more than with UNSCR 1718 the US-led Proliferation Security Initiative (PSI) previously mentioned.[352]

In Resolution 1874, financial other than trade restrictions on arms, WMD and missile-related goods are tightened, particularly in paragraphs 18, 19, and 20. Namely, Member States are called upon 'to prevent the provision of financial services or the transfer […] of any financial or other assets or resources that could contribute to the DPRK's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programs or activities, including by freezing any financial or other assets or resources on their territories or that hereafter come within their territories, or that are subject to their jurisdiction or that hereafter become subject to their jurisdiction, that are associated with such programs or activities and applying enhanced monitoring to prevent all such transactions in accordance with their national authorities and legislation.'[353] In paragraph 19, it required Member States, as well as international financial and credit institutions, 'not to enter into new commitments for grants, financial assistance, or concessional loans to the DPRK, except for humanitarian and developmental purposes directly addressing the needs of the civilian population, or the promotion of

[347] United Nations Security Council, *Resolution 1874 (2009)*, U.N. Doc. S/RES/1874 (June 12, 2009).
[348] Ibid.
[349] Eckert, "United Nations Nonproliferation Sanctions," 75.
[350] UNSC, *Resolution 1874*.
[351] Ibid.
[352] Haggard and Noland, "Hard Target," 206.
[353] UNSC, *Resolution 1874*.

denuclearization.'[354] The Resolution mandates the Committee to adjust Resolution 1718 by designating additional entities, goods, and individuals subject to sanctions. As supplement to those designated by the Committee, the US, as well as the European Union, Japan, and Australia made 29 additional autonomous designations of North Korea firms.[355] Moreover, the United States appointed an ambassador for sanctions enforcement to travel and encourage regional parties to implement the Resolution.[356]

A noteworthy addition is the creation of a Panel of Experts, a consultative organ under the direction of the Committee, mandated to '(a) assist the Committee in carrying out its mandate […]; (b) gather, examine and analyze information […] regarding the implementation of the measures imposed […]; (c) make recommendations on actions the Council, or the Committee or Member States, may consider to improve implementation of the measures imposed in resolution 1718 (2006) and in this resolution.'[357]

Finally, the focus of Resolution 1874 is on effective monitoring and implementation, perhaps as a result 'of the growing impatience of the permanent five, especially China, with North Korea's continued intransigence.'[358] In this sense, the adoption of Resolution 1874 is believed to mark a turning point in the history of sanctions against North Korea, representing a greater international consensus to enhance and enforce sanctions.[359] Accordingly, UNSCR 1874 goes beyond UNSCR 1718 in both the scope of items and entities covered and the means of enforcement.

2.5.2 UNSC Resolutions 2087 & 2094 (2013)

After a second missile launch in July 2009, the Obama Administration reviewed its approach to North Korea and redefined it as 'strategic patience,' a two-track policy which pushed for a tightening of multilateral sanctions against North Korea through the UN Security Council, as well as for reengagement within the "Six-Party Talks" on the basis of the 2005 Agreement. This strategy had little success given North Korea responded with further escalation, showing not willing to resume talks. More in general, now that the "Six-Party Talks" had almost collapsed, negotiations became less structured and institutionalized, creating a pattern of 'escalation, mutual recrimination, sanctions, and further escalation.'[360] North Korea was firmly defending its status as a nuclear-weapon state, denying

[354] Ibid.
[355] Haggard and Noland, "Hard Target," 206.
[356] Ibid.
[357] Ibid.
[358] Eckert, "United Nations Nonproliferation Sanctions," 75-76.
[359] Ibid.
[360] Haggard and Noland, "Hard Target," 201.

rejoining talks if there were preconditions and demanding prior or parallel negotiation for a peace regime. Importantly, in 2013 the *byungjin* line was formalized, that is a policy committing North Korea to both economic development and continued pursuit of the nuclear programme. Such stance represented, however, a 'nonstarter' for negotiations with the United States and the other parties.

The passage of UNSCR 1874 initiated a new phase of escalation by North Korea. At this time, China embarked in a strategy of "deep engagement," initiated by Chinese Prime Minister Wen Jiabao's visit to North Korea, then reciprocated by Kim Jong-il visits to China during 2010 and 2011.[361] As a result of such interchange, Prime Minister Wen agreed on the construction of a new bridge across the Yalu River, signed diplomatic accords, including for the provision of new aid, designated 2010 as the "Year of Sino-Korean Friendship," and planned two joint economic development zones on islands in the Yalu River. Chinese firms, especially those from the Northeast, were also encouraged to direct foreign investment in North Korea, generating deeper cross-border ties and 'an effective lobby for closer North Korean relations and the provision of supporting infrastructure on the Chinese side of the border.'[362] Such "deep engagement" efforts had the inevitable result of undermining sanctions effectiveness and the prospects for a resumption of the "Six-Party Talks".[363] The backdrop in Inter-Korean relations consequent to the so-called "Cheonan incident" further limited such possibility. New South Korean President Lee Myung-Bak had departed from the engagement policy which had characterized its predecessors. In particular, his new approach was to provide aid on conditional basis, namely in exchange for opening reforms in North Korea, progress in North-South relations, or a return to the obligations and commitments on denuclearization taken under the agreements reached within the "Six-Party Talks."[364] In response, North Korea made a series of military provocations along the disputed North-South maritime border in the Yellow Sea, also known as the Northern Limit Line (NLL), thus increasing tensions. South Korea then decided to join the Proliferation Security Initiative (PSI). In March 2010, tensions peaked with North Korea allegedly being responsible for the sinking of South Korean Cheonan warship in the Yellow Sea, to which President Lee reacted by imposing the "May 24 measures." This sweeping new sanctions regime included further trade restrictions and the suspension of humanitarian aid except for that directed to vulnerable people, other than changes in South Korean military strategy towards the North, especially after the shelling of Yeonpyeong Island later that year. The United States endorsed South Korean approach and joined in by declaring a tightening of its sanctions regime through President Obama's Executive Order 13551. The latter targeted entities that 'facilitated North Korean arms trafficking, import of luxury goods, or other illicit

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[361] Haggard and Noland, "Hard Target," 208.
[362] Haggard and Noland, "Hard Target," 209.
[363] Ibid.
[364] Haggard and Noland, "Hard Target," 210.

activity on behalf of Pyeongyang, […] including money laundering, counterfeiting of goods and currency, and cash smuggling associated with the notorious "Office 39" of the Korean Workers' Party, believed to be a source of slush funds to the top leadership, including through receipts from illicit activities'.[365] China's invitation to an emergency session of the "Six-Party Talk" was rejected by both South Korea, the United States, and Japan. The US was not willing to restart negotiations and diplomatic dialogue with North Korea unless it announced freeze on nuclear and missile tests and a verifiable, transparent, and open-to-monitoring suspension of the enrichment programme. Moreover, it conducted joint naval exercises in the Yellow Sea with South Korea, which also undertook a massive civil defence drill.

Nonetheless, signals of a deepening food crisis in North Korea and another Chinese diplomatic initiative set the stage for a last attempt for engagement. In 2011 the United States negotiated a "food for freeze" deal which would be announced immediately after the death of Kim Jong-Il in 2012. However, the so-called Leap Day Deal did not last long, given Kim Jong-un announcement of an imminent satellite launch that the international community considered as 'a thinly veiled step in the buildup of the country's long-range missile program.'[366] Even though it failed, it sparked international condemnation and sanctions, along with another Presidential Statement. The latter affirmed that 'any launch that uses ballistic missile technology, even if characterized as a satellite launch or space launch vehicle, is a serious violation of Security Council resolutions 1718 (2006) and 1874 (2009),'[367] thereby 'closing the 'missile-satellite distinction that North Korea had sought to exploit.'[368] North Korea furthered escalation by executing a second more successful satellite launch in December 2012, to which followed the adoption of UNSC Resolution 2087. The latter designated three new more persons under the travel ban and affirmed the right of States to seize and destroy cargo of items suspected to be involved with North Korean nuclear weapons programme.

On February 12, 2013, North Korea did another nuclear test, consequently setting into motion negotiations within the Security Council that would bring about the adoption of Resolution 2094. The UN Security Council condemned North Korea's nuclear test, demanded a cessation of nuclear testing, ballistic missile launching, and WMD development. It called upon North Korea to return to the NPT, cooperate with the international community and meet its international obligations. More specifically, UNSCR 2094 expanded the list of people and entities targeted by financial and travel sanctions, as well as the list of prohibited items related to ballistic missile and WMD. Moreover, it provided a non-

[365] Haggard and Noland, "Hard Target," 212.
[366] Haggard and Noland, "Hard Target," 202.
[367] United Nations Security Council, *Statement by the President of the Security Council*, U.N. Doc. S/PRST/2012/13 (June 19, 2012).
[368] Haggard and Noland, "Hard Target," 205.

exhaustive list of luxury goods which includes jewellery such as pearls, gems, and semi-precious stones or metal, and transportation items, including yachts, luxury and racing cars.[369] Financial sanctions purported to prevent financing to North Korean illicit programmes were now applying also to bulk cash transfers, including those handled through cash couriers. There were two further elements of novel in Resolution 2094. First, provisions aimed at effectively isolate North Korea from the international banking system by calling upon States 'to take appropriate measures to prohibit in their territories the opening of new branches, subsidiaries, or representative offices of DPRK banks, and also […] to prohibit DPRK banks from establishing new joint ventures and from taking an ownership interest in or establishing or maintaining correspondent relationships with banks in their jurisdiction to prevent the provision of financial services if they have information that provides reasonable grounds to believe that these activities could contribute to the DPRK's nuclear or ballistic missile programmes, or other activities prohibited by [previous and this] resolutions.'[370] Such provision made possible the adoption of US unilateral sanctions against North Korea's Foreign Trade Bank, one of the country's key institution for foreign exchange.[371] Such move was considered a warning to Chinese commercial banks and other financial institutions doing business with North Korea.[372] However, because of the "credible information" clause, there remained substantial discretion upon States in sanctions' enforcement. More in general, Jordan noticed that the enforcement of this and previous resolutions greatly relied on the willingness of States to enforce them, especially China, crucial in being the first and main trading partner of North Korea.[373] However, by acting similarly as it did with the "deep engagement" policy, China challenged the effective and full implementation of UN sanctions. The second element was that States should exercise 'enhanced vigilance' over North Korean diplomatic personnel to tackle illicit activities conducted under the cover of diplomatic immunity.[374]

Similarly to what occurred after previous resolutions, the latest resolution had no mitigating effect but caused further escalation, while also overlapping with the launch of the *byungjin* policy. At the same time, the United States, South Korea, and Japan were continuing the so-called "strategic patience", meaning they would not offer any inducement until North Korea had signalled intent by meeting existing obligations before talks could resume. On its part, North Korea insisted on

[369] United Nations Security Council, *Resolution 2094 (2013)*, U.N. Doc. S/RES/2094 (March 7, 2013).
[370] Ibid.
[371] Wertz, "Special Report," 3.
[372] Haggard and Noland, "Hard Target," 218.
[373] Klara Tothova Jordan, "Introductory Note to United Nations Security Council Resolution 2094 on Nuclear Nonproliferation in North Korea," *International Legal Materials* 52, no. 5 (2013): 1198.
[374] UNSC, *Resolution 2094*.

negotiating a peace regime before anything else and would only discuss denuclearization on a global level and not limited to the Korean peninsula.

In 2013, particularly noteworthy is the establishment of the Commission of Inquiry on Human Rights in the DPRK by a resolution of the UN Human Rights Council with the mandate to investigate systematic, widespread and grave violations of human rights in the Democratic People's Republic of Korea 'with a view to ensuring full accountability, in particular for violations which may amount to crimes against humanity.' [375] More specifically, the Commission was required to investigate violations pertaining 'to the right to food, those associated with prison camps, torture and inhumane treatment, arbitrary detention, discrimination, freedom of expression, the right to life, freedom of movement, and enforced disappearances, including in the form of abductions of nationals of other States'.[376] The Commission consisted of three members, including Marzuki Darusman, the former Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea. Despite the lack of access to the country, through public hearings, confidential interviews, and written submissions by Member States, the Commission of Inquiry was able to collect relevant information based on "reasonable grounds" standard of proof and, in 2014, published a 372-page landmark report with numerous recommendations, including the referral of the situation to the International Criminal Court.[377] Mention of this report was made here because it arguably reflected a trend within the international community and its institutions, in particular the United Nations, of considering North Korea's human rights abuses as basis for sanctioning it and when evaluating the possible best approaches towards it. Proliferation and nuclear issues had constantly been the priority over human rights concerns in most negotiations and talks involving the US and the other regional parties such as South Korea, Japan, and China. This was perhaps also due to the concern that advocating human rights could hamper engagement and dialogue efforts. North Korea's refusal to provide access to human rights and humanitarian investigative bodies is linked to its conception of sovereignty as authority, rather than responsibility, the latter being an interpretation coherent with the emergent Responsibility to Protect (R2P) doctrine. [378] Anyhow, the establishment and work of the UN Commission of Inquiry is arguably relevant in that it reflect a surge in human rights investigations, also with regards to North Korea violations. In other words, human rights entered the discourse and

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[375] Office of the United Nations High Commissioner for Human Rights, "Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea," accessed May 17, 2026, https://www.ohchr.org/en/hr-bodies/hrc/co-idprk/commission-inquiryon-h-rin-dprk.

[376] Ibid.

[377] United Nations Human Rights Council, *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, U.N. Doc. A/HRC/25/CRP.1 (February 7, 2014).

[378] Hun Joon Kim, "The Role of UN Commissions of Inquiry in Developing Global Human Rights: Prospects and Challenges," *The Korean Journal of International Studies* 14, no. 2 (August 2016): 250.

became, though still remaining highly marginal, part of the negotiations and bargaining. Accordingly, Haggard and Noland argued that 'Parties were reluctant to lift sanctions that had accumulated during the prior period, and negotiations were complicated over the course of 2014 by complex human rights politics associated with the UN Commission of Inquiry.'[379]

2.6 Sectoral Sanctions and Economic Isolation (2016)

The year 2016 was particularly critical and pivotal regarding both North Korea nuclear and ballistic missile-related testing and UN Security Council's reactive resolutions. Namely, North Korea completed two nuclear tests, one in January 2016 and one in September of the same year, successfully fired long/medium-range ballistic missiles and placed a second satellite in orbit, showing significant improvements in its delivery system. In response, the Security Council adopted the nearly comprehensive Resolutions 2270 and 2321, thereby marking an important transition away from targeted sanctions.

2.6.1 UNSC Resolutions 2270 & 2321

By Resolutions 2270 and 2321, the picture of UN sanctions regime against North Korea significantly changed establishing 'the most comprehensive, legally binding, sanctions regime imposed against a State since Iraq in the 1990s.'[380] Previous resolutions adopted in 2009 and 2013 operated within the framework of UNSCR 1718, expanding the scope of sanctions on arms and WMD-related activities and putting increasing restrictions on North Korea's financial institutions, yet 'refraining from extending sanctions to sectors of the North Korean economy not directly connected to its WMD programs.'[381] However, starting from UNSCR 2270, UN resolutions imposed much broader economic, financial, and transportation measures, marking the gradual transition from targeted sanctions towards more comprehensive forms of economic pressure.

Acting under the authority conferred by Chapter VII of the UN Charter, the Security Council adopted Resolution 2270 on March 2, 2016, after North Korea's fourth nuclear test. The Council reaffirmed that 'proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security.'[382] While re-establishing some existing

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[379] Haggard and Noland, "Hard Target,", 225.
[380] Borlini, "The North Korean gauntlet," 321.
[381] Wertz, "Special Report," 3.
[382] United Nations Security Council*, Resolution 2270 (2016)*, U.N. Doc. S/RES/2270 (March 2, 2016).

sanctions, Resolution 2270 'was intended to go further […] and to impose the toughest sanctions yet.'[383] In this sense, while earlier sanctions had been relatively narrow and mainly focused on weapons of mass destruction and ballistic missile technology, Resolution 2270 explicitly addressed chemical and biological weapons as well.

More in detail, an embargo on conventional arms-related trade was lifted, 'including [of] small arms and light weapons and their related materiel.' Financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms and related materiel were prohibited as well.[384] States should also prevent the sale, supply or transfer to the DPRK of materials, also dual-use, which could be used by the DPRK to pursue its nuclear and ballistic missile programmes, namely 'any item, except food or medicine, if the State determines that such item could directly contribute to the development of the DPRK's operational capabilities of its armed forces.'[385] Great discretion was granted to States in determining such products. The Resolution also clarified that even activities presented as civilian space cooperation or satellite launches were prohibited if they involved ballistic missile technology. Moreover, paragraph 29 prohibits trade of coal, iron, and iron ore, except when 'the procuring State confirms on the basis of credible information' that coal 'has originated outside the DPRK and was transported through the DPRK solely for export from the Port of Rajin (Rason),' provided that the State shall notify the Committee and that such transactions should not generate revenue for the DPRK's nuclear or ballistic missile programmes.[386] Transactions are allowed if it is determined 'to be exclusively for livelihood purposes and unrelated to generating revenue for the DPRK's nuclear of ballistic programs or other activities prohibited.'[387] The focus on restricting coal, iron, and iron ore imports from North Korea was due to the fact that from such exports the regime used to gain significant revenue, with China being the primary buyer of coal. In 2015, China acquired 17 million metric tons of coal, which generated at least one billion US dollars in revenue that the US argued were being used for North Korean illicit programmes.[388] In this regard, attention should be given to the "livelihood" carve-out in that, because of the lack of any clarification on its meaning, wide interpretative margin was left to States. Such ambiguity was particularly exploited by China by arguing that, since the coal was used to produce energy, its import was allowed under the "livelihood purposes" exception.[389] The Resolution failed to clarify whether

[383] Victoria Sutton, "Introductory Note to United Nations Security Council Resolution 2270," *International Legal Materials* 56, no. 3 (June 2017), 628.
[384] UNSC, *Resolution 2270*.
[385] Ibid.
[386] Ibid.
[387] Ibid.
[388] Borlini, "The North Korean Gauntlet," 338.
[389] Ibid.

the relevant criterion concerned the final use of the coal, or, rather, the economic impact of the transactions on the North Korea regime. This ambiguity allowed China to continue importing North Korean coal. Moreover, another trade ban was lifted on gold, titanium core, vanadium ore, rare earth materials, as well as on jet, rocket, and aviation fuel, except the latter is allowed up to a quantity sufficient to North Korean civilian passenger aircraft to make a round-trip flight from foreign territory to the DPRK and back. [390]

The Security Council further strengthened financial sanctions. Previously, it had mainly targeted selected individuals and entities through asset freezes and travel bans. Lists of such designated individuals and entities were expanded in Annex I and II; however, sanctions were now targeting also representative offices of designated entities, and prohibited joint ventures with sanctioned actors, as well as the opening and operation of new branches, subsidiaries, and representative offices of DPRK banks. The Resolution obliged States to expel individuals working on behalf of or at the direction of a designated individual or entity or assisting the evasion of sanctions. Concerned by North Korea's record of abuse of its privileges and immunities under the Vienna Conventions on Diplomatic and Consular Relations, the Security Council decided 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, […] the Member State shall expel the individual from its territory for the purpose of repatriation to the DPRK.'[391] The Resolution explicitly acknowledged North Korea's systematic use of shell companies, opaque ownership structures, and diplomatic channels to circumvent restrictions, thereby broadening international obligations to identify and disrupt such networks.

An important innovation concerned maritime and transportation controls. Earlier resolutions had encouraged cargo inspections, but Resolution 2270 made inspections effectively mandatory for cargo originating from or destined to North Korea, including goods transiting through ports, airports, and free trade zones. It also imposed new restrictions on North Korean vessels, including prohibitions on leasing, chartering, registering, insuring, or providing crew services to DPRK ships. States were additionally empowered to deny port access and overflight permissions where prohibited materials were suspected.

Interestingly and perhaps as a consequence of the international growing attention on rogue states' violation of human rights against their own populations, this latest Resolution gave some more space to humanitarian phrasings, such as when 'underlying […] the importance of the DPRK respond to other security and humanitarian concerns of the international community', or 'expressing deep

[390] UNSC, *Resolution 2270*.
[391] Ibid.

concern at the grave hardship that the DPRK people are subjected to', and when 'expressing great concern that the DPRK's arms sales have generated revenues that are diverted to the pursuit of nuclear weapons and ballistic missiles while DPRK citizens have great unmet needs.'[392]

Furthermore, while becoming more comprehensive in their scope, provisions of Resolution 2270 include numerous humanitarian exceptions to be granted mostly by the State on its own discretion. For instance, in paragraph 8, the supply, sale or transfer of an item is not precluded if 'the State determines that such activity is exclusively for humanitarian purposes or exclusively for livelihood purposes, […] provided that the State notifies the Committee in advance of such determination.'[393] Regarding the provision of expelling individuals, diplomats, or government representatives involved in the DPRK's illicit activities, the latter does not apply if 'the presence of the individual is required exclusively for medical or other humanitarian purposes.'[394] However, it is not clear whether it is the State or the Committee that has to determine such humanitarian purposes.

On November 30, 2016, after North Korea's fifth nuclear test, the UN Security Council adopted another Resolution, namely Resolution 2321, thus imposing 'potentially suffocating international economic sanctions on North Korea.'[395] To the provisions of the UNSC Resolution, secondary, unilateral, and supplementary sanctions must be accounted for as well, compounding the effects of multilateral measures. Although North Korea has been targeted by sanctions from its inception in 1950, it is only in the last decade, from 2016 onwards and especially in the 2016-2017 biennium, that the international community has went as far as almost imposing a 'complete, worldwide economic embargo' on North Korea, although highly dependent on States' implementation.[396]

Wertz believes North Korea's fourth nuclear test having constituted a turning point in US sanctions policy as well. As a matter of fact, the Congress adopted the "North Korea Sanctions and Policy Enhancement Act" in 2016, outlining 'how U.S. sanctions against North Korea are to be implemented and the general conditions under which they can be removed or suspended.'[397] This piece of legislation represented a move away from "strategic patience" towards more active pressure. Particularly, it required the President to designate and apply sanctions on North Korea not only based on nuclear and WMD development and proliferation, but also for human rights abuses, to prevent and block prohibited trade, and cut funding for the Kim regime. In this sense, US sanctions are multi-

[392] Ibid.
[393] Ibid.
[394] Ibid.
[395] Meredith Rathbone and Pete Jeydel, "Introductory Note to United Nations Security Council Resolutions 2321, 2371, & 2375, 2321," *International Legal Materials* 56, no. 6 (December 2017): 1176.
[396] Ibid.
[397] Wertz, "Special Report," 10.

layered and encompass multiple rationales.[398] Moreover, US sanctions system was further complicated by the increasing use of secondary sanctions targeting foreign enables of North Korean illicit activities and increasingly relied on the US dollar central role in international trade and finance, which secured the United States considerable economic leverage in putting economic pressure on North Korea despite the lack of direct economic ties with the country.[399] US measures thus expanded, supplemented, and broadened significantly the scope of the UN sanctions regime.

In Resolution 2321, the Security Council set an annual cap to the total exports to all Member States of coal originating in North Korea, provided that the procurements should not involve designated individuals or entities, or individuals or entities acting on behalf or at the direction of designated actors, should be unrelated to generating revenue for the DPRK's nuclear and ballistic missile programmes and should be exclusively for livelihood purposes of DPRK nationals. With Resolution 2321, the Security Council attempted to overcome ambiguities present in the previous Resolution related to the "livelihood" carve-out. Borlini observes that the practice of closing a proliferator's primary export commodity market through sanctions was not new to the Security Council, which in fact had applied similar restrictions on Iranian oil. However, 'whereas Iran had approximately ten major State-based foreign markets for its oil, North Korea [had] only one for its coal,' meaning the success of the measures depended almost entirely on China and on it suspending the imports of hundreds of its firms, especially those in Liaoning and Jilin Provinces.[400] Moreover, under Resolution 2321, Member States were required to suspend technical and scientific cooperation with persons sponsored or representing North Korea 'except for medical exchanges' and if the Committee determined such cooperation did not contribute to the DPRK's nuclear and missile ballistic programmes. Member States should also restrict access or transit through their territories of members and officials of the DPRK Government and armed forces if the State determined they were involved in illicit activities related to the DPRK nuclear and missile programmes. UNSCR 2123 calls upon States to reduce the number of staff at DPRK mission in their territory, with a limit of one bank account per each DPRK mission, consular post, and diplomat in their territory.

A trade ban was lifted on copper, nickel, silver and zinc originating in North Korea. An humanitarian exemption was accompanying the provision to close representative offices, subsidiaries or banking accounts in the DPRK unless 'the Committee determine[d] on a case-by-case basis that such offices, subsidiaries or accounts [were] required for the delivery of humanitarian assistance or the activities of diplomatic missions in the DPRK or the activities of the United Nations or its specialized agencies

[398] Ibid.

[399] Ibid.

[400] Borlini, "The North Korean gauntlet," 339.

or related organizations.'[401] Aware of the impediments sanctions could pose on the delivery of humanitarian assistance, the Security Council reaffirmed Resolution 2321 was 'not intended to have adverse humanitarian consequences for the civilian population of the DPRK or to affect negatively […] the work of international and non-governmental organizations carrying out assistance and relief activities in the DPRK for the benefit of the civilian population of the DPRK' and decided that the Committee should decide on case-by-case basis whether to grant exemptions to facilitate the work of such organizations.[402] The fact that the granting of humanitarian and other exemptions was now entrusted mainly to the Sanctions Committee, and not left to States' discretion, suggests a stronger emphasis on effective enforcement and on ensuring the uniform implementation of sanctions measures. This development reflected the Security Council's growing awareness that the effectiveness of the sanctions regime ultimately depended on the consistent implementation of its provisions by all Member States. As a matter of fact, the Security Council called upon States to 'redouble efforts to implement in full the measures […] and to cooperate […] particularly with respect to inspecting, detecting and seizing items the transfer of which is prohibited by these resolutions.'[403] Moreover, it reaffirmed States' obligation to take and enforce effective measures domestically, mindful of the non-self-executing nature of most of the measures imposed through UNSCR 2321. Perhaps, this is also related to uneven enforcement practices that, combined with North Korea's sophisticated sanctions-evasion techniques, had repeatedly undermined the effectiveness of previous resolutions. Consequently, the Security Council adopted more stringent and centralized mechanisms under Resolution 2321, relying less on State discretion and increasing international oversight to reduce loopholes and strengthen compliance. At the same time, the Sanctions Committee has no enforcement powers and cannot function as a 'coercive mechanism vis-à-vis States.'[404] The latter is rather 'designed […] to work co-operatively with States to help them meet their obligations.'[405] Despite having gained undoubtedly an active role in monitoring and facilitating the implementation of sanctions, as well as in providing recommendations on how to render measures more effective, the Sanctions Committee's role and power remain limited, as explained more broadly in the previous Chapter. Additionally, the sophisticated tactics of evasion developed by North Korea make the monitoring and implementation of such complex and extensive resolutions particularly challenging and resource-intensive both for Member States and the Committee – as well as the Panel of Experts in its role in assisting the Sanctions Committee with regards to monitoring, promoting and facilitating

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[401] United Nations Security Council, *Resolution 2321 (2016)*, U.N. Doc. S/RES/2321 (November 30, 2016).
[402] Ibid.
[403] Ibid.
[404] Borlini, "The North Korean Gauntlet," 341.
[405] United Nations, Report of the Secretary-General, *Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy*, U.N. Doc. A/60/825 (April 27, 2006), para. 82.

the implementation of sanctions.[406] Again, solving coordination and implementation gaps between Member States seems to be 'key to ultimately isolating North Korea sufficiently to cut off nuclear proliferation supplies and expertise.'[407] Finally, it is worth mentioning that it is in this Resolution that the Security Council began to acknowledge with concern the practice of North Korean nationals working abroad to earn hard currency whereby financing North Korea's nuclear and ballistic missile programmes, calling upon States to 'exercise vigilance.' In 2017, the US government made an estimation of 100,000 North Korean overseas workers able to earn over 500 million dollars each year for the regime.

2.7 The Peak and Subsequent Stagnation of UN Sanctions (2017)

2.7.1 UNSC Resolutions 2371, 2375 & 2397

Resolutions 2371, 2375, and 2397 were all adopted in 2017, respectively on August 5, after North Korea's ballistic missiles tests of July, on September 11, after another nuclear test executed at the beginning of the same month, and on December 22, after a missile ballistic launch at the end of November.[408]

The three resolutions are escalatory and gradually more comprehensive, including each additional sectoral sanctions, thereby potentially compromising North Korea trade and source of revenue. The Security Council has provided additional designations of individuals and entities to be subjected to asset freezes and travel restrictions, directing the 1718 Committee to further expand the list of prohibited goods, WMD-related dual-use and conventional arms-related items, materials, equipment, goods and technology. Moreover, 'States are required to inspect cargo (including personal luggage) transiting through their territory to or from North Korea, as well as any other cargo linked to North Korea or its nationals, and to seize and dispose of any prohibited items found in their territory.'[409]

In terms of transportations, permission to take off from, land in, or overfly Member States' territory is denied to North Korean aircraft believed to carry prohibited goods. Regarding North Korean maritime sanctions evasion, they are even more extensive in that they impose 'interlocking

[406] Borlini, "The North Korean gauntlet," 341.
[407] Sutton, "Introductory Note to United Nations Security Council Resolution 2270," 628.
[408] United Nations Security Council, *Resolution 2371 (2016)*, U.N. Doc. S/RES/2371 (August 5, 2017); United Nations Security Council, *Resolution 2375 (2017)*, U.N. Doc. S/RES/2375 (September 11, 2017); United Nations Security Council, *Resolution 2397 (2017)*, U.N. Doc. S/RES/2397 (December 22, 2017).
[409] Wertz, "Special Report," 8.

mechanisms that make it more difficult for North Korean ships to obscure their ownership and that enable the interdiction of suspect vessels.'[410] In Resolution 2371 the Committee is required to designate vessels 'for which it has information indicating they are, or have been, related to activities prohibited' and 'all Member States shall prohibit the entry into their ports of such designated vessels,' eventually de-flagged them, direct them to a designated port for inspection, or impound them.[411] In Resolution 2375, Member States are required to inspect, seize, and impound vessels if there are reasonable grounds to believe they are carrying prohibited items and to cooperate on such inspections.[412] Additionally, the Security Council also prohibits ship-to-ship transfers to or from DPRK-flagged vessels. In Resolution 2397, 'it notes with great concern' that such deceptive maritime practice is used to illicitly export coal and other prohibited items.[413] For such a reason, it requires Member States to seize, inspect, and freeze any vessel in their ports or subject to their jurisdiction if there are reasonable grounds to believe that the vessel was involved in such activities and, whether there is suspicion, that Member States may request additional maritime and shipping information from other relevant Member States. Moreover, it reaffirms the prohibition of providing insurance or re-insurance services to vessels owned, controlled, or operated by North Korea, inasmuch it makes it 'harder for North Korean vessels to conduct business or enter foreign ports,' and eventually directs Member States to de-register such vessels, thus 'denying [them] the use of foreign flags of convenience and the relative anonymity that comes with them.'[414] The Security Council expresses its concern over DPRK-flagged, controlled, chartered, or operated vessels' practice to evade controls and inspections by turning off their automatic identification systems and calls upon States to 'enhance vigilance' on such practice. The resolutions contain also provisions for the inspection of suspected vessels in high seas, which must be conducted with the flag state consent and cooperation. If the latter elements are not present, the use of force is not permitted, therefore the matter is referred to the Committee which may consider the designation of such vessels.

All three resolution contain sectoral sanctions. Namely, Resolution 2371 poses a ban on the imports from North Korea of coal, iron, iron ore, seafood, lead and lead ore.[415] Resolution 2375 prohibits States' imports of textiles from North Korea and their exports to North Korea of condensates and natural gas liquids to prevent North Korea from importing substitutes to refined fuel.[416] Moreover, States' exports of refined petroleum products is only allowed within a 2,000,000 barrels cap per year

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[410] Ibid.
[411] UNSC, *Resolution 2371*.
[412] UNSC, *Resolution 2375*.
[413] UNSC, *Resolution 2397.*
[414] Wertz, "Special Report," 8.
[415] UNSC, *Resolution 2371*.
[416] UNSC, *Resolution 2375*.

starting from January 2018 and provided monthly States' notification to the Committee of such transactions, that the supply, sale, or transfer of refined petroleum products does not involve individuals or entities associated with the DPRK's nuclear or ballistic missile programmes and that they transactions are exclusively 'for livelihood purposes of DPRK nationals and unrelated to generating revenue for the DPRK's nuclear or ballistic missile programmes.'[417] Prohibited as well is the export to North Korea of an amount of crude oil that excesses 'the amount that the Member States supplied, sold or transferred in the period of twelve months prior to the adoption of this resolution.'[418] States are also prohibited from providing work authorizations for DPRK nationals. Resolution 2397 limits the export of crude oil to the DPRK to 4 million barrels or 525,000 tons in the aggregate per month, corresponding to the estimated amount of annual Chinese crude oil exports to North Korea via pipeline,[419] prohibiting also the export of industrial machinery, transportation vehicles, and of an amount of refined petroleum products exceeding 500,000 barrels per year – thus reducing DPRK's imports of all refined petroleum to one-ninth of their level in 2016.[420] DPRK's export of food and agricultural products, machinery, electrical equipment, earth and stone including magnesite and magnesia, wood, and vessels is prohibited. Finally, Resolution 2397 imposes on Member States the obligation to repatriate to the DPRK all DPRK nationals earning income in Member States' jurisdiction. Such sectoral sanctions amounted to prohibiting imports of virtually all North Korea's major merchandise exports, especially with regards to coal, textiles, and seafood.[421]

UNSCR 2397 remains the latest multilateral sanction adopted at the UN level against North Korea. This can arguably be explained by two main reasons. First, the first Trump Administration, beginning in 2017, was not particularly inclined toward multilateralism, but rather favoured President Trump's highly personalistic approach to foreign policy. As a result, the North Korean nuclear issue was largely managed through bilateral diplomacy, albeit with limited success, in a series of summits such as the 2018 Singapore Summit and the 2019 Hanoi Summit between the United States and North Korea. Simultaneously, the Trump Administration implemented some of the most far-reaching unilateral sanctions ever imposed on the DPRK, relying on a combination of congressional legislation, executive orders, and Treasury designations targeting North Korean entities and third-country actors. The most important legislative development was the "Countering America's Adversaries Through Sanctions Act" (CAATSA) of 2017, which substantially expanded the "North Korea Sanctions and

417 Ibid.
418 Ibid.
419 Wertz, "Special Report," 6.
420 UNSC, *Resolution 2397*.
421 Wertz, "Special Report," 6.

Policy Enhancement Act" (NKSPEA) of 2016.[422] The NKSPEA had introduced several mandatory sanctions, meaning compelling the President to sanction individuals and entities involved in nuclear and ballistic missile proliferation, arms sales, cyberattacks, human rights violations, and illicit trafficking generating income for the regime.[423] It also strengthened significantly the financial pressure on North Korea by granting the Treasury with the power to designate financial institutions facilitating North Korea's operations, exclude such institutions from the US financial system, and limit relations between corresponded banking and foreign banks involved in North Korean transactions.[424] Moreover, it authorized asset freezes and other restrictions also to non-North Korean entities involved in activities prohibited by US sanctions.[425] Given some measures had extraterritorial effects, they can be considered the precursor of the more aggressive extraterritorial and secondary sanctions adopted under the Trump Administration. In September 2017, President Trump further adopted Executive Order 13810, imposing additional sanctions against North Korea after the launch of an intercontinental ballistic missile in July and the nuclear test in September. What distinguished the sanctions policy under the Trump Administration was particularly the extensive use of secondary sanctions. Such policy of "maximum pressure" paradoxically coexisted with direct diplomacy through the unprecedented leader-to-leader summits with Kim Jong-Un. Since then, the United States and North Korea have not resumed meaningful high-level talks, as the parties have been unable to agree either on the preconditions for negotiations or on the issues to be negotiated. North Korea has consistently refused to discuss denuclearization, in contrast with the longstanding US demand for the complete, verifiable, and irreversible dismantlement of the North Korean nuclear programme. This approach ultimately led to a stalemate that has yet to be overcome. Under the Biden Administration, the United States returned to a more traditional and alliance-oriented diplomatic approach, yet without achieving significant progress in restarting negotiations with Pyongyang. Moreover, the new military and economic alliance between Russia and North Korea after the outbreak of the war in Ukraine potentially reduced the chances for a new dialogue with the US or other regional actors such as South Korea.

The second reason for the UNSC sanctions stagnation is related to the fact that both the multilateral and unilateral sanctions regimes currently in force against North Korea have reached a very high degree of extensiveness and are widely considered nearly comprehensive. Consequently, there appears to be limited additional leverage available through sanctions for the UN, the United States,

[422] *Countering America's Adversaries Through Sanctions Act*, Pub. L. No. 115–44, 131 Stat. 886 (2017); United States Congress, *North Korea Sanctions and Policy Enhancement Act of 2016*, Pub. L. No. 114–122, 130 Stat. 93 (February 18, 2016).
[423] Ibid.
[424] Ibid.
[425] Ibid.

and the European Union to further coerce North Korea. Portela described this related specifically to the EU situation, even though it is equally applicable to any situation of protracted and extensive sanctions regimes, as a "trap situation" in which the EU is 'deprived of any leverage to advance its objectives but also of any suitable pretext to the lift of penalties.'[426]

2.8 The European Union's Autonomous Sanctions Regime Against North Korea

The European Union policy towards North Korea went through three phases: active engagement between 1995 and 2002, "critical engagement" starting from the early 2000s, and active pressure from 2013 onwards.[427] The Cold War period was characterized by low levels of engagement and Europe's marginal role in East Asia, since the region was monopolized by the US-URSS ideological and hegemonic conflict and by the so-called "camp diplomacy."[428] After the Korean War, little economic exchange existed between Western European countries and North Korea mainly on a private level. North Korea sought foreign aid for economic development through multilateral diplomacy, expanding its relations with Asian countries first, such as Burma, Indonesia, and Japan, and then with European countries, such as Sweden, the United Kingdom, and West Germany.[429] Another reason was related to the need for Kim Il-Sung to balance its dependence on the Soviet Union and China, coherently with the *juche* policy. The emerging dispute between its two allies also represented an opportunity to gain a more independent policy vis-à-vis the powerful neighbours.[430] The level of trade with Europe grew significantly in the late 1960s but failed to develop into government-level exchanges.[431] In 1994, the EU participated through EURATOM in KEDO, the consortium mandated to build two light-water reactors as provided by the Agreed Framework. EU contribution to KEDO amounted approximately to 120 million euros. In the same year, the Commission had issued "Towards a New Asia Strategy," a strategy based on 'paternalistic, "teacher-pupil" relationship,' later in 2001 developed into the "Europe and Asia: A Strategic Framework for Enhanced Partnerships," a more structured approach, realistic and partnership-based, that intensified

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426 Clara Portela, "The EU's Use of 'Targeted Sanctions'," *CEPS Working Document*, no. 391 (March 2014): 33.

427 Mario Esteban and Clara Portela, "EU Sanctions Against North Korea: Making a Stringent UN Sanctions Regime Even Tougher," in *The Routledge Handbook of Europe-Korea Relations*, ed. Nicola Casarini, Antonio Fiori, Nam-Kook Kim, Jae-Seung Lee and Ramon Pacheco Pardo (Oxon, New York: Routledge, 2022), 383.

428 Yoo-Joung Kim, "The Evolution of Europe and Korea Relations During the Cold War (1950-1990)," in *The Routledge Handbook of Europe-Korea Relations*, ed. Nicola Casarini, Antonio Fiori, Nam-Kook Kim, Jae-Seung Lee and Ramon Pacheco Pardo (Oxon, New York: Routledge, 2022), 25.

429 Ibid.

430 Kim, "The Evolution of Europe and Korea Relations," 26.

431 Kim, "The Evolution of Europe and Korea Relations," 27.

relations with Japan, China and South Korea.[432] With the advent of the famine in North Korea at the end of the 1990s, the EU became also a major provider of humanitarian aid and assistance through all the last decade of XIX century, reportedly contributing with over 360 million euros in the form of food aid, medical, water, sanitation assistance, and agricultural support. In mid-90s, the European Union attested itself as the DPRK's third-largest trading partner. In 1998, the EU and North Korea launched a bilateral dialogue to discuss North Korea's nuclear programme, regional security and North Korea's human rights situation, and formalised their relations in 2001.[433] Arguably, the fact that the EU was not directly involved in the political and historical tensions inherited from the Korean War and the Armistice gave it a degree of impartiality, consistency and credibility.[434] This enabled the EU to focus not only on denuclearization but also on needs-based assessments of the humanitarian situation in North Korea, beginning with the launch of a fact-finding mission in 2001 to determine the most suitable form of technical assistance.[435] Consequently, most of the EU economic activities directed to North Korea from that moment forward 'have been channelled around the question of humanitarian support.'[436] Hiroshi identified seven reasons for EU's successful engagement towards North Korea: 1) the EU was a 'distant power' with no strategic interests in the region; 2) it had no colonial legacy on the Korean Peninsula, unlike Japan; 3) it could play the mediator role and was prepared to leave sensitive issues undiscussed if necessary; 4) they maintained diplomatic relations; 5) it supported South Korea's Sunshine policy; 6) it was an important trading partner; 7) it was generous in providing humanitarian and food aid.[437] In other words, the EU could have been a potential political and economic partner for the DPRK in that 'provided an avenue through which North Korea could enter the international community and offered a way for North Korea to accept assistance in addressing its famine and economic difficulties without the direct involvement of the USA.'[438]

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[432] Ramon Pacheco Pardo, "Contemporary Korea-EU Relations: 1991-2020," in *The Routledge Handbook of Europe-Korea Relations*, ed. Nicola Casarini, Antonio Fiori, Nam-Kook Kim, Jae-Seung Lee and Ramon Pacheco Pardo (Oxon, New York: Routledge, 2022), 32.

[433] Pardo, "Contemporary Korea-EU Relations," 38.

[434] Zsuzsa-Anna Ferenczy, "The EU, North Korea and the Shifting Global Discourse on Human Rights," in *The Routledge Handbook of Europe-Korea Relations*, ed. Nicola Casarini, Antonio Fiori, Nam-Kook Kim, Jae-Seung Lee and Ramon Pacheco Pardo (Oxon, New York: Routledge, 2022), 275.

[435] Virginie Grzelczyk, "EU-North Korea Economic Ties: Old Legacies and Future Prospects," in *The Routledge Handbook of Europe-Korea Relations*, ed. Nicola Casarini, Antonio Fiori, Nam-Kook Kim, Jae-Seung Lee and Ramon Pacheco Pardo (Oxon, New York: Routledge, 2022), 132.

[436] Ibid.

[437] Inooka Hiroshi, "EU Normative Sanctions on Burma / Myanmar and the DPRK: Out of the Effective Range of EU Democracy Promotion?" *EUIJ-Kyushu Review*, no. 1 (2011): 78.

[438] Min-Hyung Kim, Jinwoo Choi, "What Kind of Power is the EU? The EU's Policies Toward North Korea's WMD Programs and the Debate About the EU's Role in the Security Arena," *Asia Europe Journal* 18, no. 1 (2020): 9.

However, North Korean nuclear issue and growing international concern related to proliferation deteriorated EU and North Korea's relations. The EU began gradually to reduce its humanitarian and economic involvement with North Korea and became one of the main supporters of UNSC sanctions. Starting from 2003, the EU launched the policy of "critical engagement," whose goals were 'to support a lasting diminution of tensions on the Korean peninsula and in the region, to uphold the international non-proliferation regime, and to improve the situation of human rights in North Korea.'[439] The policy aimed at putting pressure through sanctions while maintaining open communication and dialogue with the North Korean regime. Formally, such policy was still in place as of 2021; however, some have argued that since 2013 or later in 2016 with the new "Asia Security Strategy," the European Union has adopted a more punitive stance 'increasingly reliant on sticks' thus inconsistent with the "critical engagement" approach.[440] The nuclear programme coupled with the human rights situation made North Korea less attractive to EU donors, consequently causing an important reduction of EU aid. Moreover, economic pressure on North Korea continued to increase substantially starting from 2016, with EU implementing and autonomous sanctions covering almost the entire North Korean economy. This made almost impossible for European individual states to carry out a relationship with North Korea that would not be affected by sanctions: 'slowly, what had started as an apolitical process, one that was concentrating on the DPRK's needs and that provided critical engagement, started to become one involving pressure.'[441] As a matter of fact, as of 2020, EU and North Korea's political and economic relations were 'almost non-existent' but rather 'defined by an extensive EU sanctions regime.'[442] Fairly, it must be kept in mind that the reduction in humanitarian assistance depended also on North Korea's decision to expel humanitarian agents, particularly starting from 2015. In other words, both self and non-self-isolating practiced came into play.

The EU provisions against North Korea identified by Grzelczky demonstrate how the European Union carefully transposed UN Security Council resolutions into the EU sanctions regime:

- Export and import restrictions (arms, dual-use goods, gold, precious metals, diamonds, minerals, coal, iron, iron ore, lead, lead ore, statues, helicopters and vessels, banknotes and coinage, luxury goods, textiles, aviation and rocket fuel, petroleum, crude oil, condensates and natural gas liquids, seafood)
- Prohibition on import from the North Korea of food, agricultural products, machinery
- Prohibition on the export to the North Korea of industrial machinery, transportation vehicles

[439] Ibid.
[440] Pardo, "Contemporary Korea-EU Relations," 39.
[441] Grzelczyk, "EU-North Korea Economic Ties," 132.
[442] Pardo, "Contemporary Korea-EU Relations," 41.

- Restriction on the provision of certain services to the DPRK
- Restriction on financial support for trade
- Prohibition on investment by the North Korea
- Prohibition on financial assistance by member states to the DPRK Prohibition on the transfer or clearing of funds to and from the DPRK
- Prohibition for North Korea to opens branches, subsidiaries and banking relations
- Prohibition on the trade of North Korea bonds
- Inspection and information-sharing
- Prohibition to facilitate ship-to-ship transfers
- Prohibition to provide bunkering of ship supply services
- Prohibition on leasing, chartering, crewing services, vessel or aircraft services, insurance and re-insurance, and registering of vessels and aircraft
- Prohibition to admit persons designated by the United Nations Obligations
- Monitoring of financial activities of financial institutions
- Inspection and information-sharing
- Supply pre-arrival and pre-departure information for access, landing, taking off and overfly
- Seizing and impounding of any vessel
- Suspension of technical and scientific cooperation
- Restrictions on offering residence to North Korea representatives
- Freezing of all funds and economic resources of persons designated by the United Nations
- Prevent specialised teaching or training of North Korea nationals
- Not to provide work authorisations for North Korea workers
- Seizing and disposal of prohibited items[443]

First EU autonomous measures and designations were introduced in 2009 and were gradually expanded. In 2017, when implementing UNSCR 2375, the EU particularly strengthened the sanctions regime by adding a total ban on EU investment in the DPRK in the mining, refining, and chemical industries, metallurgy, metalworking, and aerospace sectors, as well as in any services linked to mining, manufacturing, and refining industry.[444] Additionally, a ban was lifted on all refined petroleum products and crude oil.[445] As of 2020, EU's autonomous sanctions list included 57

[443] Grzelczyk, "EU-North Korea Economic Ties," 131.
[444] Jina Kim, "EU-Korea Cooperation in Non-Proliferation and Disarmament," in *The Routledge Handbook of Europe-Korea Relations*, ed. Nicola Casarini, Antonio Fiori, Nam-Kook Kim, Jae-Seung Lee and Ramon Pacheco Pardo (Oxon, New York: Routledge, 2022), 377.
[445] Esteban and Portela, "EU Sanctions Against North Korea," 389.

individuals and 9 entities. Between 2022 and 2024, 14 individuals and 7 entities were autonomously designated.[446]

Supplement areas included in the EU sanctions regime related mainly to DPRK human rights violations, ICT, and cyber security, given the growing threat originating from North Korean cyberattacks.[447] In particular, the EU has adopted cyber sanctions in 2020 and human rights sanctions in 2021. Such autonomous sanctions paralleled a significant political disengagement between the European Union and North Korea. With regards to the non-proliferation regime, the contribution of the EU remained modest and primarily consisting in supporting initiatives led by the US and the UN.[448]

As highlighted in the previous Chapter, EU foreign policy (CFSP) remains convincedly rights-based and value-oriented. Likewise, also the European Union's approach towards North Korea was shaped by EU fundamental values and principles, which translated into posing particular attention on North Korea's violations of human rights against its own citizens. The European Union has been particularly vocal on the human rights situation in North Korea. In 2001 and 2002 it held two human rights dialogues with North Korea, and 13 political dialogues before the fourth nuclear test in 2016. Such combination of bilateral dialogues and multilateral approaches consistently focused on promoting human rights. Moreover, the EU had initiated multiple human rights resolutions at the Commission on Human Rights, the Human Rights Council, and the UN General Assembly.[449] In 2013, the EU and Japan were the co-sponsors of the UN Human Rights Council Resolution that led to the establishment of the Commission of Inquiry, representing 'the first concrete step in challenging North Korea on its human rights record and providing evidence of the inhumane human rights situation on the ground.'[450] The Commission found North Korea committed 'unspeakable crimes' and suggested referring them to the International Criminal Court (ICC) as crimes against humanity. The EU and Japan then drafted and introduced a resolution to the UN General Assembly endorsing the Commission's report and calling for the Security Council to refer North Korea to the ICC. Following to these resolutions, 'the UN Security Council discussed for the very first time the human rights situation of North Korea during its December 2014 meeting.'[451] With the aim of continuing investigating human rights

[446] Council of the European Union, "Timeline – EU Sanctions against North Korea," accessed June 21, 2026, https://www.consilium.europa.eu/en/policies/sanctions-against-north-korea/timeline-eu-sanctions-against-north-korea/.

[447] Michael Reiterer, "The European Union and Regional Integration in Northeast Asia," in *The Routledge Handbook of Europe-Korea Relations*, ed. Nicola Casarini, Antonio Fiori, Nam-Kook Kim, Jae-Seung Lee and Ramon Pacheco Pardo (Oxon, New York: Routledge, 2022), 309.

[448] Esteban and Portela, "EU Sanctions Against North Korea," 383.

[449] Esteban and Portela, "EU Sanctions Against North Korea," 388.

[450] Agatha Kratz, "North Korea: A Role for the EU on Human Rights," *European Council on Foreign Relations*, January 6, 2016, accessed May 17, 2026, https://ecfr.eu/article/commentary_north_korea_a_role_for_the_eu_on_human_rights/.

[451] Kratz, "North Korea: A Role for the EU on Human Rights."

violations in North Korea, increase pressure on the regime, and pursue engagement with all concerned governments, a field office of the Office of High Commissioner for Human Rights was opened in Seoul in June, 2015.[452]Another example of EU activism in the human rights field is the 2020 UN Human Rights Council resolution condemning North Korea's human rights violations, which was submitted by the EU.[453] Noticeably, proliferation concerns were certainly part, but not the sole and main reason for the adoption of EU restrictive measures. However, as was briefly mentioned previously in this Chapter, according to most of the main actors involved in the region, addressing and focusing excessively on DPRK's human rights violations was not considered the best approach to be adopted towards North Korea. For South Korea, for example, unification takes priority over human rights issues.[454] China promotes instead a global alternative narrative on human rights which undermines the UN human rights mechanisms more broadly, and which applies also to North Korea. In particular, China favours focusing on national sovereignty rather than government accountability, in line with its Five Principles on Peaceful Coexistence, including the principle of non-interference. Adding to this a growing trend within emerging countries of questioning the universality of human rights to the benefit of a relativist approach, the result has been a diversion of the attention from the human rights situation in North Korea to exclusively more practical nuclear and security issues.[455] A divergence thus emerges in the global human rights discourse opposing the EU stance and the views of other parties, especially China, while all contributing to influence the international approach to North Korea.[456] By highly focusing on human rights, the European Union appears, on the one hand, to have self-marginalized and reduced its role in and potential engagement with North Korea. The EU initiatives appear to have had a cost in terms of engagement with North Korea. From North Korea's perspective, every criticism on human rights has been generally rejected as based on 'unconfirmed information fabricated and spread by forces hostile to the DPRK.'[457] And, EU support to multilateral sanctions only contributed to entrench North Korean perception of the EU as a "follower" of the United States.[458] Hence, with North Korea not willing to discuss or accept engagement on human rights, the European Union has lost the position of relevant interlocutor. On the other hand, the EU has maintained a certain importance by contributing 'in shaping the global human rights discourse on North Korea, including by facilitating engagement with the UN Human

[452] Kratz, "North Korea: A Role for the EU on Human Rights."
[453] Sunhee Park, "EU-Korea and the International Community: The United Nations, the G20, and the Asia-Europe Meeting," in *The Routledge Handbook of Europe-Korea Relations*, ed. Nicola Casarini, Antonio Fiori, Nam-Kook Kim, Jae-Seung Lee and Ramon Pacheco Pardo (Oxon, New York: Routledge, 2022), 246.
[454] Ibid.
[455] Ferenczy, "The EU, North Korea and the Shifting Global Discourse," 274.
[456] Ferenczy, "The EU, North Korea and the Shifting Global Discourse," 267.
[457] Ibid.
[458] Pardo, "Contemporary Korea-EU Relations," 40.

Rights Council mechanisms.'[459] Although with considerable limits and challenges, the EU continues to pursue its role as an 'impartial and consistent driver of international human rights advocacy concerning North Korea.'[460] According to some author, 'despite a lack of any hard power implication in the region, there may indeed be a continued role for the EU as a constructive soft security player in North East Asia.'[461] However, the way in which EU restrictive measures have contributed to limiting humanitarian aid and have directly or indirectly negatively affected the very human rights whose violation prompted their imposition appears contradictory and particularly disturbing. Moreover, it corroborated the idea that the EU has moved away from its "critical engagement" strategy, towards a more punitive approach that supports and supplement UN non-proliferation regime.

[459] Ferenczy, "The EU, North Korea and the Shifting Global Discourse," 267.
[460] Ferenczy, "The EU, North Korea and the Shifting Global Discourse," 275.
[461] Kratz, "North Korea: A Role for the EU on Human Rights."

CHAPTER 3
HUMAN RIGHTS CONSEQUENCES AND THE EFFECTIVENESS OF SANCTIONS AGAINST NORTH KOREA

3.1 Humanitarian and Socio-Economic Impact of Sanctions

Assessing the impact of multilateral and bilateral sanctions on the welfare of North Koreans faces a 'dauting – and probably insurmountable' problem, which is the impossibility to disentangle the effects of sanctions from all other factors driving the protracted humanitarian crisis in the country.[462] Clearly, among these factors are the government's policies that have prioritized military over social spending and isolated the country from the world economy, particularly affecting the welfare of North Koreans. After the Covid-19 pandemic, assessing sanctions effects on human rights and their humanitarian consequences has become even more arduous, given the border closure enacted in 2020. Despite this, Haggard and Noland identified three channels through which the impact of sanctions on livelihoods in the DPRK can be observed.[463] First, through their macroeconomic effects, such as reducing overall growth and consequently reducing employment and income, although the authors consider this has been exacerbated greatly from 2020 by the regime's COVID-related border closure. Second, through poor targeting, meaning expanding the scope of sanctions to include commercial trade more broadly, including core export-oriented and labour-intensive sectors. Third, by hindering and restricting humanitarian operations, especially by generating 'a low tolerance for risk on the part of banking institutions and supplies, thus making it difficult for humanitarian organizations to pay staff or counterparts or to secure goods for which there was financing.'[464] Similarly, the Korea Peace Now's report "Human Costs and Gendered Impact of Sanctions" has made the following three key findings about the adverse consequences of sanctions in North Korea: 1) although they were

[462] Stephan Haggard and Marcus Noland, "Economic Sanctions During Humanitarian Emergencies: The Case of North Korea," *Asia Pacific Issues*, no. 157 (January 2023): 2.
[463] Ibid.
[464] Haggard and Noland, "Economic Sanctions," 6.

ostensibly not intended to have adverse humanitarian consequences, sanctions have been impeding the ability of the DPRK and international humanitarian organization to meet the 'urgent and long-standing' humanitarian needs of the most vulnerable groups of the population, mainly because of the inefficient case-by-case exemptions mechanism that has caused 'fatal delays' in the delivery of life-saving aid and the phenomenon of overcompliance affecting financial institutions and depriving humanitarian organization of a banking channel; 2) sanctions have undermined the tentative North Korean economic development and recovery after the famine period, resulting in the collapse of the country's trade and engagement with the rest of the world; 3) sanctions have had a gendered impact on the North Korean society, meaning they have caused a destabilization of the North Korean society that have had a disproportionate impact on women, 'resonating with patterns observed in other sanctioned countries,' particularly by exacerbating rated of domestic violence, sexual violence, and the trafficking and prostitution of women.[465] From this, it is possible to observe a tension inherent to sanctions policies against North Korea, especially when considering the causal relationship between those sanctions and human rights.[466] While having little effects on North Korea's nuclear and missile programmes, they have proven counterproductive in many respects, above all because they have resulted having the most and disproportionate impact on the North Korean population, rather than the governing elite. For such reasons, sanctions have also been considered a moral failure.[467] Drawing on *jus in bello* analogies, Smith analysed sanctions against North Korea using the criteria of effectiveness, necessity, and proportionality, concluding that they are neither effective nor proportionate, and are, therefore, unethical.[468] Just war analogies are premised on the assumption that sanctions inevitably cause harm to innocent civilians. However, the mere existence of such harm does not, in itself, render sanctions illegitimate. Rather, their legitimacy depends on whether the harm inflicted exceeds an acceptable threshold, assessed in light of the criteria of effectiveness, necessity, and proportionality outlined above.[469] In the North Korea case, the criterion of effectiveness would not be fulfilled as the DPRK remains a nuclear State and sanctions did not bring about denuclearization. Smith argues they were never likely to achieve their stated goals. For example, authoritarian regimes, or a "hard target" like North Korea, tend to develop political resilience face to economic pressure and to absorb enormous costs to protect core objectives like regime security. Such resilience is pursued through adaptation and evasion techniques. Lim has also challenged the stereotyped image of North Korea as

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[465] Korea Peace Now, "The Humanitarian Costs and Gendered Impact of Sanctions on North Korea," (October 2019): IV.
[466] Haeyoung Kim, "Stifled Growth and Added Suffering: Tensions Inherent in Sanctions Policies Against North Korea," *Critical Asian Studies* 46, no.1 (2014): 92.
[467] Sojin Lim, *International Aid and Sustainable Development in North Korea*, (Oxon: Routledge, 2023), 38.
[468] Hazel Smith, "The Ethics of United Nations Sanctions on North Korea: Effectiveness, Necessity, and Proportionality," *Critical Asian Studies* 52, no. 2 (2020): 182-203.
[469] Smith, "The Ethics of United Nations Sanctions on North Korea," 183.

a "strong" regime, as from a development perspective North Korea is in fact a dysfunctional fragile State with an apparatus unable or unwilling to provide basic services, public goods, and social welfare to its population.[470] Such fragility is often overlooked by senders, who tend to focus exclusively on traditional security threats. This is called denuclearization-first rhetoric.[471] Moreover, whereas it might be difficult to prove a clear causal link between sanctions and humanitarian severance, Smith observes that neither the UN nor the US articulated a clear causal logic for how economic pain would lead to a change in nuclear policy.[472] Secondly, the necessity criterion would not be entirely fulfilled either since diplomatic contact has only intermittently reached the level of meaningful negotiation. Most of all, it is the criterion of proportionality having been seriously breached, as the post-2016 comprehensive sanctions have arguably reintroduced the conditions that had caused the 1990s famine, deliberately and negligently harming the civilian population to an unacceptable degree.

The 2021 Panel of Experts' report about the deteriorating humanitarian situation in North Korea emphasized once again the fact that sanctions were not intended to cause adverse humanitarian effects on the DPRK civilian population, that the UNSC did not prohibit food aid and humanitarian assistance, and that the North Korean government had the primary responsibility to fully provide for the livelihood needs of its people.[473] However, sanctions have both directly and indirectly caused hardship for the civilians of North Korea and negatively impacted on their human rights, including the rights to life, food, health, and development.[474] Article 25 of the Universal Declaration on Human Rights precisely recognizes everyone's 'right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'[475] Similarly, Article 11 of the International Covenant on Economic, Social, and Cultural Rights also affirms the right to an adequate standard of living, including adequate food, clothing and housing, as well as the continuous improvement of living conditions.[476] In General Comment 12 of 1999, the Committee on Economic, Social, and Cultural Rights clarified that the right to food is realized when every individual enjoys physical and economic access at all times to adequate food or to means for its procurement.[477]

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[470] Lim, *International Aid and Sustainable Development in North Korea*, 2.

[471] Ibid.

[472] Smith, "The Ethics of United Nations Sanctions on North Korea," 185.

[473] Panel of Experts Established Pursuant to United Nations Security Council Resolution 1874 (2009), *Final Report*, U.N. Doc. S/2021/211 (March 4, 2021).

[474] Korea Peace Now, "The Humanitarian Costs," 2.

[475] United Nations, *Universal Declaration of Human Rights*, adopted December 10, 1948, G.A. 2179 (III), art. 25.

[476] United Nations, *International Covenant on Economic, Social and Cultural Rights*, adopted December 16, 1966, 993 U.N.T.S. 3, art. 11.

[477] Committee on Economic, Social, and Cultural Rights, *General Comment No, 12: The Right to Adequate Food (Art. 11)*, U.N. Doc. E/C.12/1999/5 (May 12, 1999).

States are therefore required to take all appropriate measures to ensure access to adequate food, refrain from actions that impede such access, and avoid discrimination in the distribution of food and related resources. In this respect, the North Korean government is primarily responsible of undermining North Koreans' right to food through economic policies that have constrained the country's economic growth, discriminatory practices in food distribution, restriction on access to humanitarian assistance, and prioritization of resources for its nuclear and missile programmes. However, this assumption does not abrogate the responsibilities of senders. Against this background, this Chapter examines how multilateral and bilateral sanctions on the North Korean economy have further contributed to food insecurity and humanitarian hardship. To this end, a first preliminary overview of the history of humanitarian assistance in the country will be provided, describing the background within which assistance in North Korea was established and highlighting recurring patterns and challenges that have been further exacerbated by the imposition of sanctions. Indeed, humanitarian assistance in North Korea encountered a series of obstacles and challenges since its inception. Sanctions compounded natural hazards, such as floods, and a political system highly suspicious of foreign agencies, including humanitarian organizations and their teams.

3.1.1 The Beginning of Humanitarian Assistance to North Korea

Humanitarian assistance in the DPRK started precisely in 1995 with North Korea's first public appeal for humanitarian aid to the international community on the grounds of unprecedented natural disasters in the form of widespread severe flooding that deteriorated the already incumbent food crisis and eventually caused a deadly famine of at least half a million casualties.[478] A nutrition survey carried out in 1998, towards the end of the famine, registered 64% of North Korea's children under seven suffering from stunting and 21% from wasting.[479] The United Nations responded to North Korean appeal with the World Food Program (WFP), WHO, UNICEF and FAO in 1996, along with US, European, and South Korean humanitarian organizations that stepped on North Korean soil for the first time, thus breaking the hermetic isolationism that the North Korean regime had inherited from its predecessor, the "Hermit Kingdom" of the twentieth century. Such isolationism had been ideologically sustained by *juche*, which claimed, encouraged and purported North Korea's self-reliance and autarky. The collapse of communism at the end of the Cold War had exacerbated North Korea's isolation and left its leaders 'with the unenviable job of shepherding a failed ideology and

[478] Hazel Smith, *International Humanitarian Aid to North Korea: Progress, Results, and Controversy*, Dialogue on the North Korea Economy (Sejong: Korea Development Institute, December 2023), 8.
[479] Smith, *International Humanitarian Aid to North Korea*, 21-22.

system, bereft of the socialist goodwill of its closes neighbors, which had been the foundation for the country's relative economic stability through the 1980s.' [480] As a matter of fact, when the government requested international aid intervention, it described the crisis as a product of "natural disasters," which is a synonym for "bad weather condition," referring to the severe floods occurred in 1995. However, it did not acknowledge it as the result of chronic economic problems that had in fact caused it and never admitted the failure of the self-reliance policy.[481] To question the myth of self-sufficiency would have meant questioning the legitimacy of the State and the Kim family.[482] As a matter of fact, the emphasis on economic self-reliance not only has served to minimize the exposure of economic frailties to adversaries, but most of all to assert the ideological supremacy of the North Korean government and political system to its population.[483]Although conditions were worsened by such "natural disasters" and were certainly made acute by the end of subsidized trade from former Communist allies, the food crisis in North Korea was largely systemic and linked to chronic disfunctions already affecting the agricultural sector.[484] The latter proved unable to withstand extreme weather conditions and domestic food production failures, thereby reflecting the fragility and unproductiveness of the national economy, which was incapable of generating sufficient export earnings to pay for food imports and other essential agro-industrial inputs, particularly oil, needed to fill food shortages.[485] This remained especially true after the 2017 UN sanctions drastically curtailed North Korea's export sector by banning products that accounted for more than 90 per cent of the country's exports.[486]

Despite the reality of a systemic agricultural failure, the North Korean government, while relying heavily on UN WFP assistance with which it could diminish the structural pressure to engage in system reforms, it continued to follow the same failed economic policies and made no major changes to its agricultural system.[487] Particularly failing had been the national food distribution system, namely the Public Distribution System (PDS), proved unable to deliver food to large segments of the population and particularly discriminatory in distributing food first to trusted citizens and members of the elite. Ordinary people were banned from buying and selling grain but forced to rely on the

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480 Scott Snyder, "Chapter 1: The NGO Experience in North Korea," in *Paved with Good Intentions: The NGO Experience in North Korea*, ed. Gordon Flake and Scott Snyder (Westport: Praeger Publishers, 2003), 2.

481 Smith, *International Humanitarian Aid to North Korea*, 6-7.

482 Hazel Smith, "Explaining Food Insecurity in North Korea: The Self-Sufficiency Fallacy," *Global Asia* 16, no.3 (2021): 64.

483 Smith, "Explaining Food Insecurity," 63.

484 Gordon Flake, "Chapter 2: The Experience of U.S. NGOs in North Korea," in *Paved with Good Intentions: The NGO Experience in North Korea*, ed. Gordon Flake and Scott Snyder (Westport: Praeger Publishers, 2003), 21.

485 Smith, *"International Humanitarian Aid to North Korea*, 6-7.

486 Ibid.

487 Snyder, "Chapter 1," 7.

state's distribution system for their most basic needs.[488] Thus, the PDS was the primary provider of food for the population. Consequent to its failure, the spread of farmers markets (*jangmadang*) as an alternative mechanism for procuring food 'rendered the PDS increasingly irrelevant as either a control mechanism or a source of sustenance to the population." [489]

Symbolically, the voluntary opening to international humanitarian operators represented an 'unprecedented public admission of the Pyongyang leadership's inability to meet the needs of its people' and challenged the notions of *juche*.[490] Accordingly, aid workers where perceived as a threat 'to the myth of juche upon which the North Korean ideology was built and threatened to undermine the central role of the state', thus constituting 'a mortal danger to [the regime's] ability to maintain political control and loyalty among the people'.[491] For such reason, North Korea's primary objective had been to minimize contact between aid workers and ordinary people by establishing controlled channels of communication and, at the same time, drawing in as many resources as possible.[492] Interactions between humanitarian workers and the North Korean population were consistently mediated by North Korean officials, as humanitarian personnel with knowledge of the Korean language were prohibited from entering the country. In several cases, humanitarian workers suspected that interpreters deliberately omitted parts of conversations during translation, thereby affecting their assessments of the population's needs. Interactions between the government and the NGOs were managed by a government bureaucratic organ, the Flood Damage Rehabilitation Committee (FDRC). Such interactions were adversarial and complicated because of the overwhelming infrastructure and logistics needs of the FDRC, apparently concerned primarily to watch the international food monitors and only secondarily to help them ensure the assistance was delivered to end users.[493] For example, random site visits were often not allowed, as well as uncontrolled interactions between aid recipients and ordinary North Korean villagers. Moreover, aid workers could not access freely or visit all villages and inhabitants of certain counties, especially those connected with North Korea's military establishment or unexplainedly "sensitive". Human Rights Watch reported that WFP was banned from visiting 43 out of 203 counties, or 13% of the North Korean population, citing security reasons.[494] The WFP and other NGOs believed those areas were the most at risk considering their geographic inaccessibility and relative lack of supply lines.[495] The strict controls over travel and

[488] Human Rights Watch, *A Matter of Survival: The North Korean Government's Control of Food and the Risk of Hunger* (New York: Human Rights Watch, May 2006), 2-3.
[489] Snyder, "Chapter 1," 9.
[490] Snyder, "Chapter 1," 2.
[491] Snyder, "Chapter 1," 3.
[492] Ibid.
[493] Snyder, "Chapter 1," 6.
[494] Human Rights Watch, *A Matter of Survival*, 12.
[495] Snyder, "Chapter 1," 7.

access affected not only humanitarian actors' movement but also that of North Korean people trying to escape to northeastern China. Challenging physical terrain and lack of transportation infrastructure caused serious limitations, especially for the more vulnerable people weakened by hunger, showing both political and logistical obstacles.[496] According to a NKHR report, the border closure and international sanctions have significantly impacted the use of cars and the broader transportation landscape in North Korea, leading to a pronounced fuel shortage and prompting authorities to demand a shift towards other non-motorized means of transport, such as ox carts and bicycles.[497]

Another challenge for humanitarian organizations related to aid monitoring, on which North Korea imposed very limiting and obstructing restrictions. For example, since food aid allocated by NGOs and the WFP could be distributed only through the Public Distribution System, the international staff could verify whether aid items had reached the Public Distribution System, but not whether the PDS effectively distributed those items to the designated target groups, nor the ultimate use of those supplies.[498] In contrast with other countries that had been affected by famine and which the ONGs had already some experience of, the North Korean situation differed greatly, above all in that the state was omnipresent in food distribution and in all main aspects related to humanitarian assistance.[499]

Lack of access to people in need and the impossibility to monitor food assistance, thus lack of accountability, were among the main reasons that led many NGOs to withdraw between 1997 and 1998, namely Médecins Du Monde, Médecins Sans Frontières, Action Contre la Faim, Oxam, and the US Private Voluntary Organization Consortium.[500] Explanatory is the experience of MSF, which found that, contrary to official statements, its nutritional programs did not reach the target group of severely malnourished children and did not cover all institutions in the given geographic areas, often leaving aside those institutions which were in fact mostly frequented by many of the acutely malnourished children.[501] Other than being an essential part of any effective humanitarian effort, verification of both North Korea's real needs and of the distribution of food within the country constituted a political necessity, especially given donors' general distrust of the DPRK regime.[502] Nevertheless, the North Korean government seemed to have fallen into a 'fundamental schizophrenia', on the one hand reaching out for humanitarian assistance, while on the other 'wrapping itself up to

[496] Flake, "Chapter 2," 21.

[497] Andrew S. Natsios et al., *Is There a Famine in North Korea?* (College Station, TX: Bush School of Government and Public Service, Texas A&M University, revised ed., June 17, 2025), 68.

[498] Michael Schloms, "Chapter 3: The European NGO Experience in North Korea," in *Paved with Good Intentions: The NGO Experience in North Korea*, ed. Gordon Flake and Scott Snyder (Westport: Praeger Publishers, 2003), 53.

[499] Ibid.

[500] Snyder, "Chapter 1," 7.

[501] Schloms, "Chapter 3," 56.

[502] Flake, "Chapter 2," 25.

protect its people from external influence'.[503] The deep mistrust cultivated for decades by the DPRK towards the outside world and its archenemy, the United States, contributed to this outcome.[504] Additionally, the pride originating from *juche* and the desire to save face and not be treated as an impoverished "third world" country resulted in North Korean officials' selectivity or pickiness when it came to the quality and quantity of aid that humanitarian organizations were to provide in exchange of being granted access. Within such paradoxical framing, the DPRK successfully came across not as a beggar but instead as a 'recipient of entreaties from the outside world', while 'would-be donors, the NGOs, became the supplicants, asking the DPRK for the "privilege" of helping the North Korean people.'[505] This became particularly evident when NGOs began to push for development assistance, rather than just short-term emergency assistance, based on the idea that "teaching a man how to fish will feed him for a lifetime." On the contrary, North Korea not only affirmed its ability to fish, 'but that Kim Il Sung had invented fishing!'[506] In other words, 'while NGOs were used to dealing with countries in chaos and government officials who had been humbled in some respect by their national failure, the average North Korean official remained, at least in public, fiercely defensive of the DPRK regime.'[507] Aid to North Korea has always been mainly humanitarian rather than development assistance, focusing on the provision of food rather than on the underfunded health, education, and water/sanitation sectors.[508] Smith reported that out of the 800 million dollars of UN humanitarian assistance donated to North Korea in the post-famine years between 1998 and 2004, only 40 million were directed to agriculture, health, education, water, and sanitation, the remaining majority being used for food aid.[509] The reason why North Korea was provided aid was because of the food emergency and not because it was underdeveloped economically. Additionally, the focus on humanitarian assistance, especially food aid, was also linked to donor governments' caution in giving assistance that could be understood as assisting the North Korean government and elite rather than the population in need; non-food aid was in fact perceived as more at risk of being diverted to fund the nuclear and missile development programmes.[510] Furthermore, the fact of having to rely and abide to North Korean authorities rules and restrictions, as well as delivering aid through the traditional government distribution system, challenged the fundamental humanitarian principles of impartiality

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[503] Flake, "Chapter 2," 16.
[504] Flake, "Chapter 2," 35.
[505] Flake, "Chapter 2," 39.
[506] Flake, "Chapter 2," 41.
[507] Ibid.
[508] Smith, *International Humanitarian Aid to North Korea*, 9.
[509] Ibid.
[510] Ibid.

and neutrality, contributing in raising further 'questions about whether international assistance was being used for political purposes to prop up a regime that might be on the verge of collapse.[511] Politicization of aid was indeed a particularly relevant issue in the North Korean case, contributing to the suspicion of North Korean officials, unused to concepts like "nongovernmental" and often considering NGOs as a Trojan horse or as spies, while potentially undermining humanitarian organizations' credibility and their ability to negotiate access.[512] Lastly, 'the lack of experience of most U.S. NGOs in dealing with North Korea, the relative success of the DPRK government's efforts to limit and control NGO activities within North Korea, and the continuously difficult political and security environment all served to impede NGO efforts and capacity to work effectively in North Korea.' [513] On the other hand, despite the limited NGOs' reach, multilateral aid actors such as the United Nations Development Programme (UNDP), the WFP, UNICEF, and FAO could provide significant and more effective aid, given they also became resident in the 1990s and had more structured mechanisms of compliance and monitoring.[514] In the words of Smith, 'of the multilateral humanitarian agencies, the United Nations agencies are the most important, and the most ubiquitous, because they have the size and the reach to respond quickly and effectively to large-scale emergencies.' [515] Between 1998 and 2001 there had been the peak of humanitarian aid to North Korea, with 800 million dollars of UN aid and 110 million dollars coming from NGOs.[516] Bilateral aid from governments and the European Union amounted to additional 100 million dollars. The WFP is reported to have fed up to a third of the North Korean population, prioritizing the most vulnerable people, such as children, nursing and pregnant women, and the elderly.[517] Eventually, in the 1998-2004 period, North Korea received approximately a billion dollars' worth of humanitarian assistance, which contrast sharply with the 14 million dollars of aid of 2021 and the 2 million dollars of 2022.[518] As a matter of fact, after 2001 humanitarian assistance gradually decreased to about 50 million dollars annually until 2005,[519] when the DPRK requested aid agencies to leave.[520] This is to say that even before UN sectoral sanctions of 2016 and 2017 and the DPRK closure of its borders in 2020 due to the COVID-19 pandemic, which significantly hampered the delivery of humanitarian assistance, the volume of international aid was already lowered. This is arguably and in part related to what Smith

[511] Snyder, "Chapter 1," 9.
[512] Flake, "Chapter 2," 16.
[513] Flake, "Chapter 2," 17.
[514] Smith, *International Humanitarian Aid to North Korea*, 8.
[515] Smith, *International Humanitarian Aid to North Korea*, 16.
[516] Smith, *International Humanitarian Aid to North Korea*, 9.
[517] Human Rights Watch, *A Matter of Survival*, 12.
[518] Smith, *International Humanitarian Aid to North Korea*, 10.
[519] Smith, *International Humanitarian Aid to North Korea*, 10.
[520] Human Rights Watch, *A Matter of Survival*, 2.

identified as a change over the years on the level of international awareness and compassion for vulnerable North Koreans in recent years, when food insecurity and shortages persist, compared to the famine years.[521] Whereas the initial global response to the food emergency in North Korea was altruistic and made a clear distinction between the North Korea population and the government, despite the comparably more information available about the country and the credible reports of starvation from North Korea emerged since 2019, 'today North Korean children are receiving next to no international humanitarian assistance' and there seems to be a general lack of international interest and reduced visibility of the North Korean humanitarian situation.[522] In 2022, the United Nations even removed North Korea from the annual global humanitarian appeal, meaning that it would no longer receive a dedicate UN-coordinated humanitarian funding target, that humanitarian operations in the country would likely be downsized or limited, a decrease of donor visibility and political attention, more difficulty for NGOs in mobilizing funds, and, overall, a reduced international presence in the country.[523] Contributing to this outcome was not only the severe access restrictions imposed by the North Korean government and related difficulties in monitoring aid distribution, neither the departure of international staff in 2020 with the border closure during the COVID-19 pandemic, but also the obstacles to humanitarian assistance from the imposition of sanctions.

3.1.2 Sanctions as an Obstacle to Humanitarian Assistance

Despite the UNSC sanctions regime not being imposed until 2006, US sanctions were already active and affecting humanitarian assistance. Flake and Snyder particularly refer to the inclusion of the DPRK in the government list of State Sponsors of Terrorism and it being subject to restrictions posed by the Trading with the Enemy Act.[524] While the provision of humanitarian assistance was possible, the existence of such sanctions and legal limitations complicated the work of US organizations. For example, the fact that North Korea and the US had not established diplomatic relations made particularly difficult for aid workers to obtain entry visas. Moreover, the level of political tensions between the two countries had inevitably influenced 'even the most apolitical of the US NGOs working in North Korea', proving once again how engagement with North Korea remains 'a political and legal minefield,' especially for the US.[525]

[521] Smith, *International Humanitarian Aid to North Korea*, 13.
[522] Smith, *International Humanitarian Aid to North Korea*, 14.
[523] Smith, *International Humanitarian Aid to North Korea*, 11.
[524] Flake, "Chapter 2," 43.
[525] Flake, "Chapter 2," 43.

The imposition of multilateral sanctions starting from 2006 contributed to the isolation of North Korea, further complicated the work of aid organizations, and marked an important shift towards a 'denuclearization-first' paradigm prioritizing security concerns over North Koreans' human rights and suffering.[526] Smith believes this is also due to not distinguishing between humanitarian aid and development aid. As already explained, North Korea is beneficiary mainly of humanitarian aid, which is a short-term, emergency aid aimed at saving lives, thus unconditional. In contrast, development assistance is 'medium to long term economic assistance, designed to support economic growth and improve the social welfare of a given society,' therefore inherently conditional in that recipient governments must adhere to donor conditions.[527] This is not the type of assistance the DPRK primarily needs and that is under discussion. North Korean humanitarian situation would still require an emergency response, focused on the most fundamental human needs. Such basic aid must not be denied to vulnerable, suffering populations based on the actions of their government, which is also a fundamental principle of international human rights law. On the contrary, there seems to be an 'unpleasant an unfeeling assumption that for the sake of punishing the government it's acceptable to inflict deprivation, including precipitating the return of starvation, on the already very long-suffering population of North Korea.'[528] Despite the lack of access, especially after the already mentioned borders closure in 2020 during the Covid-19 pandemic, it is still possible to evaluate the extent and impact of reduced food availability on the North Korean population thanks to many organizations that provide food supply analyses based on diversified data, such as remote sensing, satellite data, weather pattern analysis, and modelling techniques.[529]

As was briefly mentioned above, humanitarian assistance in North Korea was particularly affected by UN sanctions imposed in 2016 and 2017, in that they were not targeted measures tied to the nuclear and missile programmes as before, but in fact comprehensive measures no more differentiating between the military and civilian sector economies. Although UN resolutions are on words 'not intended to have adverse humanitarian consequences for the civilian population of the DPRK' or hinder 'the work of international and non-governmental organizations carrying out assistance and relief activities in the DPRK,' they undoubtedly do have adverse humanitarian consequences. During the Covid-19 period, the Panel of Experts investigated the impact of sanctions on humanitarian aid along with the challenges posed by the pandemic and the border closure. In 2021, despite the impossibility to provide quantitative assessments and the scarcity of accurate data, the Panel

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[526] Lim, "International Aid and Sustainable Development," 2.

[527] Smith, *International Humanitarian Aid to North Korea*, 2.

[528] Smith, *International Humanitarian Aid to North Korea*, 28.

[529] Hazel Smith, "The Impact of UNSC Sanctions on Food Security in the DPRK," in *Economic Sanctions from Havan to Baghdad*, ed. Joy Gordon (Cambridge: Cambridge University Press, 2026), 34.

concluded that 'the combination of the COVID-19 pandemic, environmental disasters, sanctions and the mismanagement of social and economic policies have food shortages, led to price spikes and panic buying and further limited the availability of medical supplies and services.'[530]

A particularly recurrent issue raised by humanitarian organization is the absence of a banking channel, which makes money transfer to North Korea particularly difficult. Such problem originates from the frequent phenomena known as chilling effect and de-risking, affecting banks through which humanitarian agencies manage the purchase and delivery of goods to the DPRK. When the agencies inform banks that the purpose of their transfers is to help North Korea, banks often reject it for fear of penalties or secondary sanctions. This situation forced humanitarian organizations to rely on staff to carry cash on their person when travelling to the country and rendered particularly difficult to pay national staff and maintain humanitarian structures on the ground.[531] In November 2019, US, South Korean, European NGO and UN agencies met at the International Conference on Humanitarian Cooperation and Peaceful Development of the Korea Peninsula to discuss the humanitarian impact of international sanctions on North Korea. During the Conference, it was noted that 'the delayed humanitarian aid [had] increasingly resulted in unnecessary deaths in hospitals and the DPRK urgently need[ed] comprehensive medical aid, from addressing communicable diseases [...] to building capacity for efficient health policies/administrations'.[532] According to a statement from an NGO involved in the 2022 Panel of Experts humanitarian survey, 'as per UN sanctions applicable in DPRK, the lack of a banking channel has been severely impacting the availability of in-country cash to support operations and programme implementation.' [533] Overall, 'due to absence of international staff in the country (owing to the border closure due to COVID-19) and the lack of sufficient cash (owing to UN sanctions), [NGO] programme implementation and operational capacity has been severely impacted causing over 60% budget allocations to remain unutilized during the last two years'.[534] Covid-19-related restrictions and the absence of a banking channel enabling humanitarian operations remained particular concerns throughout 2022 and 2023.[535] Another organization in 2023 reported that 'the absence of a banking channel along with the unwillingness and overcompliance of

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[530] *Final Report of the Panel of Experts*, U.N. Doc. S/2021/211.

[531] Panel of Experts Established Pursuant to United Nations Security Council Resolution 1874 (2009), *Final Report*, U.N. Doc. S/2019/171 (March 5, 2019).

[532] Dong Jin Kim and June-Hee Kwon, *A Report on the 2019 International Conference on Humanitarian Cooperation and Peaceful Development on the Korean Peninsula* (New York: Korean Sharing Movement, 2019).

[533] Panel of Experts Established Pursuant to United Nations Security Council Resolution 1874 (2009), *Final Report*, U.N. Doc. S/2022/132 (March 1, 2022), 382.

[534] Ibid.

[535] Panel of Experts Established Pursuant to United Nations Security Council Resolution 1874 (2009), *Final Report*, U.N. Doc. S/2023/171 (March 7, 2023).

banks and suppliers have made it almost impossible to continue funding programs in the country [North Korea], including Covid-19 response activities.' [536]

3.1.3 Food Security and Public Health Consequences

According to Korea Peace Now's report, 'some of the DPRK's greatest humanitarian challenges include chronic food insecurity; lack of access to basic health services; declining conditions in water, sanitation, and hygiene (WaSH); and high vulnerability to natural disasters.'[537] Indeed, the most adversely affected sectors by sanctions are agriculture and public health. Beginning with the impact of sanctions on the DPRK food economy, Smith has particularly focused on this issue, describing in detail how sanctions have affected agriculture and diminished domestic food production.

First, it must be acknowledged that hunger, as well as the imbalance between food production and demand, does not derive exclusively from sanctions, but rather stems from an already fragile and inefficient agricultural and food distribution systems, characterized by discrimination and irregularities, and shaped by poor political decisions driven by ideology, particularly the policy of self-reliance. North Korea's pursuit of self-sufficiency has in fact complicated external aid efforts. This is especially noticeable by the North Korean government's decision to close its borders and trade with China during the Covid-19 pandemic, while also refusing international aid. This has been theorized by Moon as the "vaccine paradox".[538] At the same time, the government restricted private market activities and centralized food distribution by expanding state-run grocery stores.[539] For the first time since their legalization in 2003, the *jangmadang*, North Korean black markets that had emerged to cope the 1990s famine were subjected to a first important restriction.[540] In 2024, when Putin offered humanitarian assistance after devasting floods that occurred in July, Kim Jong-un declined, emphasizing that the country was capable of overcoming the crisis on its own.[541]

Another preliminary observation is that given the predominance of food crops over non-food crops in the North Korean agricultural sector, agricultural production largely corresponds to food production. Consequently, affecting agricultural production directly means affecting food production. In times when domestic production cannot provide enough food to meet the nutritional requirements

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536 *Final Report of the Panel of Experts*, U.N. Doc. S/2023/171, 432.

537 Korea Peace Now, "The Humanitarian Costs," 6.

538 Yechan Moon, "The Paradox of Vaccines; North Korea's COVID-19 Response and Implications," *Asia-pacific Journal of Convergent Research Interchange* 10, no. 9 (September 30, 2024): 312.

539 Sophia Brachtendorf, "Food Security in North Korea Remains Critical," *Welthungerhilfe Global Food Journal*, April 2025, accessed June 15, 2026, https://www.welthungerhilfe.org/global-food-journal/rubrics/crises-humanitarian-aid/food-security-in-north-korea-remains-critical.

540 Brachtendorf, "Food Security in North Korea Remains Critical."

541 Brachtendorf, "Food Security in North Korea Remains Critical."

of the North Korean population, the DPRK generally fills the gap through food imports. It becomes evident North Korea's import dependence, despite it remains constantly unacknowledged by the North Korean government.[542] Sanctions have impacted negatively in both DPRK's ability to maintain a sufficient level of food production and have also limited the DPRK access to food imports necessary to fill this domestic gap.

North Korea does not produce natural gas nor oil. The one is a crucial component of fertilizer; the other, especially diesel and kerosene, is an essential commodity in food production because it fuels agricultural and irrigation machinery, crop drying and storage facilities, it provides means to transport crops, seeds, food, and labour and comprises a necessary component of fertilizer and agricultural chemical production. Without nitrogen fertilizer derived from natural gas or oil, the agricultural yield drastically declines, especially in the case of North Korea, whose intensive agricultural system is premised by little arable land and strong dependence on industrial inputs. By targeting North Korea's imports of natural gas and oil, namely banning the provision of all condensates and natural gas liquids in Resolution 2375 (September 2017) and capping the imports of crude oil at 4 million barrels aggregate per year and of refined petroleum at 500,000 barrels a year in Resolution 2397 (December 2017), sanctions have impacted not only the energy sector, but indirectly also agriculture and food production. Smith observes that the amount of crude oil and refined petroleum allowed before the latest UNSCR 2397 was already low compared to the needs of the North Korean economy and in world terms.[543] Moreover, UNSCR 2397 prohibited exports to the DPRK of all industrial machinery, transportation vehicles, iron, stell, and other metals, which in fact are extremely needed in the North Korean farming sector, especially for farm and irrigation equipment, vehicles, tractors and trailers. By banning the imports of equipment, spare parts, vehicles, and anything with metals (screws, nails, hammers), the North Korean agro-industrial manufacturing capacity was severely hampered.

The Panel of Experts 2019 Final Report noticed as well that UNSCR 2397 'covers several goods which are vital to agriculture or public health programs, including a variety of agricultural machinery and medical equipment […] and parts for food processing factories; pumps, filters, pipes, and drilling equipment necessary to address critical humanitarian needs, such as providing clean water to prevent diarrhea, one of the main killers of children in the DPRK, and food security to reduce high malnutrition rates.'[544] Smith concludes that 'while direct data is not available, given that all sectors of the food economy rely on banned imports including machinery, spare parts, and vehicles, as well as the heavily restricted oil and oil product imports, and given that the food economy is not exempt

[542] Smith, "Explaining Food Insecurity," 63.
[543] Smith, "The Impact of UNSC Sanctions," 39.
[544] *Final Report of the Panel of Experts*, *Final Report*, U.N. Doc. S/2019/171, 361.

from sanctions, it would be defying logic if the food economy had not been negatively impacted by expanded UN sanctions.'[545] As a matter of fact, in 2018, the FAO and the WFP registered that North Korea's domestic food production plummeted, later not recovering and continuing to stagnate even after 2022.[546] Sanctions were reported as consequential in the decrease in food production in that, without access to agro-industrial imports, such as oil, fertilizer, or technology, due to sanctions, the food production on which North Koreans relied upon to survive could not recover. The FAO/WFP Korea Rapid Food Security Assessment of 2019 explained that the reduced level of agricultural mechanization led to the use of substitutes such as manual labours and animals, thus causing delays that limited the cropped area an increased post-harvest losses.[547] Particularly, 'the deterioration of infrastructure, reduction in electricity supply and wearing out of machinery and equipment undoubtedly results in the levels of post-harvest losses increasing year after year.'[548] Smith observed how 2016 and 2017 sanctions essentially reproduced the conditions that had caused the famine in the 1990s.[549] Similarly, the decrease in imported inputs consequent to Russia and China's charging market prices for North Korean exports had caused the domestic food production to fall and a severe food crisis.[550] At the time, the crisis could be overcome with humanitarian food aid which filled the food gap. In 2017, the food gap corresponded to an 802,000-metric-tons food import requirement left from a total domestic food production fallen at 4,72 million metric tons (compared to the 5 million metric tons a year reached during a slow recovery from 2008 and 2016).[551] Consequent to the implementation of UN sanctions, domestic production continued to decline, generating a food import requirement of 1.55 million metric tons in 2019.[552] Compared to 2016's level, food production declined 16%.[553] This amount corresponded to about two-thirds of the US annual food aid donation for the entire world.[554] Between 2017 and 2020, such systemic food crisis appeared particularly alarming given food imports could not fill persistently the high food gaps.[555] In 2019, in its Rapid Food Security Assessment Report, FAO and the WFP estimated 10 million people being food

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[545] Smith, "The Impact of UNSC Sanctions," 40.
[546] Smith, "The Impact of UNSC Sanctions," 32.
[547] Food and Agriculture Organization of the United Nations and World Food Programme, *Democratic People's Republic of Korea (DPRK): FAO/WFP Joint Rapid Food Security Assessment* (Bangkok: FAO and WFP, May 2019).
[548] FAO and WFP, *Joint Rapid Food Security Assessment*, 14.
[549] Smith, "The Impact of UNSC Sanctions," 35
[550] Ibid.
[551] Food and Agriculture Organization of the United Nations, "GIEWS Update: The Democratic People's Republic of Korea Food Supply and Demand Outlook in 2017/18 (November/October)," July 9, 2018.
[552] FAO and WFP, *Joint Rapid Food Security Assessment*.
[553] United Nations Resident Coordinator for the Democratic People's Republic of Korea, *Needs and Priorities Plan 2019* (Pyongyang: United Nations Country Team in the DPRK, 2019), 5.
[554] Smith, "The Impact of UNSC Sanctions," 42.
[555] Smith, "The Impact of UNSC Sanctions," 40.

insecure and in need of urgent food assistance, as 'agriculture annually falls short of meeting the needs by approximately one million tons, due to shortages of arable land, lack of access to modern agricultural equipment and fertilizers, and recurrent natural disasters.'[556] The availability of food import was further constrained by trade sanctions and the 2020 border closures which limited the informal border trade, mainly with China. The latter had contributed to avert a famine in 2019 by providing an amount of food aid estimated between 410,000 and 1 million metric tons, but such imports became almost none in 2021. They began to increase again in 2023, but arguably they remained still not enough to prevent the deteriorating of the food crisis in North Korea.[557] Brachtendorf reported that although the borders with China have reopened, imports amounted to 210 million dollars in 2024 compared to 250 million dollars pre-pandemic.[558] Although the decline of approximately 40 million dollars between 2019 and 2024 may not appear dramatic in absolute terms, it remains significant in the context of North Korea's highly constrained and sanction-affected economy, particularly considering the country's dependence on Chinese imports for essential goods and the depreciation of the North Korean currency, which increased the real cost of imports.[559] Moreover, neither the new partnership with Russia, started in 2023 and deepened during 2025, seems to have significantly improved North Korea's food security.[560] At first, Russia food shipments were seen as potential price stabilizers but some have been of a different opinion, considering that the high prices for grains even after the imports from Russia would indicate ongoing food shortages and reduced availability of staple food.[561] Although it might have not resolved the country's chronic food insecurity, it nevertheless provided an immediate economic lifeline for the North Korean regime. Remittances from North Korean soldiers deployed in Ukraine as well as of North Korean workers abroad offered the 'cash-strapped regime' some financial relief.[562]

According to some author, estimates by UN agencies tend to overstate the importance of the public food distribution system, arguing that market prices would not suggest a food crisis or an emergency occurring in North Korea.[563] The practice of referring to market prices to assess the situation of the North Korean economy has increased in parallel with the apparent North Korean population's

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[556] FAO and WFP, *Joint Rapid Food Security Assessment*, 14.

[557] Eun-Jung Kim, "N. Korea's Food Crisis Is Still Grave Despite Imports from China: Unification Minister," *Yonhap News Agency*, July 10, 2023, accessed June 15, 2026, https://en.yna.co.kr/view/AEN20230710005001325.

[558] Brachtendorf, "Food Security in North Korea Remains Critical."

[559] Brachtendorf, "Food Security in North Korea Remains Critical."

[560] Brachtendorf, "Food Security in North Korea Remains Critical."

[561] Brachtendorf, "Food Security in North Korea Remains Critical."

[562] Unique Kim, *Transnational Repression and Exploitation of North Korean Workers in Russia: Revisiting Conditions amid Sanctions and Geopolitical Tensions* (Seoul: Database Center for North Korean Human Rights, 2024), 19.

[563] Benjamin Katzeff Silberstein, "Between Sanctions, Drought and Tensions: How Bad is North Korea's Food Situation?" *38 North*, November 14, 2017, accessed June 15, 2026, https://www.38north.org/2017/11/bksilberstein111417/.

increased reliance on black markets for the supply of food in place of the PDS. After the 1990s famine, the population have become particularly adaptable and resilient in procuring food on its own, without exclusively relying on a system that has often failed them. This would have led to the phenomenon of marketization, which flourished and expanded significantly under Kim Jong-un due to the Leader's general tolerance of such informal private market practices. However, UN agencies like FAO primarily monitor the formal food production and distribution in cooperation with the North Korean authorities, therefore they focus on food distributed through the Public Distribution System. In such a manner, they would not account for informal food production or other sources, including the centrality of markets in supplying food. In other words, 'the fact that FAO cannot freely monitor private market activities likely causes them to overestimate the public's reliance on official channels such as the PDS.'[564] However, in 2019 it became clearer that while market prices of basic goods appeared to have remained relatively stable, anecdotal reports observed the decline in foreign trade had led to shortages of foreign currency and thus had reduced market activity.[565] After 2020, the impact of UNSC sanctions, the border closure, and the country's agricultural cycle caused prices of the so-called 'barometers' for the country's economic stability, namely that of rice and corn, to spike, reaching 7,000 KPW per kilogram of rice both in 2021 and 2023 in the region of Hyesan.[566] Corn and fuel prices followed similar patterns. The fact that prices have yet to return to pre-spike levels after years indicate that the food security situation is deteriorating; even with new harvest, the supply is not meeting the demand.[567]

Food shortages affect differently the population, impacting disproportionately on the most vulnerable and those who cannot help themselves, namely elderly, people with disabilities, pregnant and nursing women, and children. According to Smith, years of failed food harvest and UN sanctions not exempting food production and health services from trade bans have seriously affected child nutrition gains in North Korea, despite considerable improvements recorded in 2017, when the percentage of stunted children had fallen to 19% (in contrast with 64% in 1998 and percentages in other countries such as India, Pakistan, and the Philippines between 30 and 38%) and that of wasted children to 3%.[568] Child stunting relates to children under the age of five who have low height for their age, reflecting chronic long-term developmental undernutrition, while child wasting describes the condition of children under the age of five who have low weight for their height, reflecting acute

[564] Silberstein, "Between Sanctions, Drought and Tensions."
[565] Ha Yuna, "Sanctions Lead to Continued Stagnation of North Korean Markets," *Daily NK*, August 9, 2019, accessed June 15, 2026, https://www.dailynk.com/english/sanctions-lead-to-continued-stagnation-of-north-koreas-markets/.
[566] Natsios et al., *Is There a Famine in North Korea?* 57
[567] Ibid.
[568] Smith, *International Humanitarian Aid to North Korea*, 22; FAO and WFP, *Joint Rapid Food Security Assessment*; Smith, "The Impact of UNSC Sanctions," 45.

undernutrition. High wasting rates suggest immediate humanitarian emergencies, while high stunting rates generally indicate structural and chronic food insecurity. In the 2024 Global Hunger Index, North Korea ranked 118th out of 127 States, presenting alarming rates of undernourishment (affecting one third of the population), serious levels of child wasting (the figure raised to 6.5% in 2025) and moderate child mortality rates in the country.[569] Generally, a 6.5 rate is considered low by emergency standard; however, 16.6% of child stunting in 2025 shows that North Korea remains affected by a critical level of chronic structural malnutrition rather than acute famine conditions.[570]

The fact that the government has responded to this new food crisis by increasing labour intensity without adequate technology, fertilizer, and chemicals, denying its dependence on imports and affirming its ideological claim of self-reliance, does not condone or support the imposition of UN sanctions in disregard of their impact on food production and public health. While it is true that the North Korean government holds the primary responsibility for the welfare of its population, outside actors are not exempt from ethical and legal responsibilities deriving from their actions, namely the imposition of sanctions. The UN agencies have long recognized how such expanded measures on North Korea have negatively affected the humanitarian situation, but this has not led so far to conduct a review of their impact or a discussion on the possibility of a partial lifting.

Moving to the health sector, the North Korean healthcare system improved considerably in the last decade, from being described as 'crumbling' in 2010 to being considered highly efficient and cost-effective in 2019, although still affected by numerous challenges.[571] Amnesty International in 2010 denounced widespread and chronic malnutrition which reduced people's immune system and contributed to the spread of epidemics and outbreaks of illnesses or infections related to poor diet.[572] The limited access to clean water and sanitation also increased the risk of spreading of infectious diseases such as tuberculosis or pneumonia and other communicable diseases. Amnesty estimated 5% of the population was affected by tuberculosis, for which malnutrition is a major risk factor.[573] In 2009, UNICEF included North Korea among 18 countries with the highest prevalence of stunting among children under the age of five, many of whom were also wasted and underweight.[574] North Korea was also reported underspending in healthcare, resulting in poor infrastructure and equipment and health workers' knowledge below international standards. North Korea could not provide basic

[569] *Global Hunger Index*, "Korea (DPR)," accessed June 15, 2026, https://www.globalhungerindex.org/korea-dpr.html.

[570] *Global Hunger Index*, "Korea (DPR)."

[571] Kee B. Park and Haeyoung Kim, "First Do No Harm: The Impact of Sanctions on Public Health in North Korea," *The Asia-Pacific Journal* 18, no. 3 (January 15, 2020): 4.

[572] Amnesty International, *The Crumbling State of Health Care in North Korea* (London: Amnesty International Publications, 2010).

[573] Amnesty International, *The Crumbling State of Health Care in North Korea*.

[574] United Nations Children's Fund, *Tracking Progress on Child and Maternal Nutrition: A Survival and Development Priority* (New York: UNICEF, November 2009), 11, 104.

health services to the population. Despite being the North Korean health care system free by Constitution, medical personnel, consequent to often not receiving salaries, were reportedly illegally charging for their services, affecting the access of the poor to full medical care, especially surgery and medicines, the latter eventually purchased at markets.[575]

In contrast, the situation in 2019 appeared significantly improved. Before the border closure and the advent of the Covid-19 pandemic, the North Korean healthcare system had been described as more efficient and well-organized, with rural clinics, district hospitals, regional hospitals and specialty hospitals covering a good proportion of the territory and population.[576] Park mentioned the successful campaign for the detection and treatment of tuberculosis carried out by the Ministry of Public Health with the funds from UNICEF and WHO and that achieved one of the largest reductions in mortality from tuberculosis at half the cost of other countries.[577] Another notable achievement was reportedly the 25% reduction of infant and children under-five's mortality in 2019 compared to ten years before.[578] However, access to high-level health services had been limited in rural areas. In the 2019 Need and Priorities Report, the UN Resident Coordinator for the DPRK reported around 9 million people still having limited access to quality health services.[579] This was also due to sanctions-related shortage of fuel that limited the delivery of health services. As observed by Park and Ham, fuel is vital in the health sector for daily hospital operations, patient transportation and supply replenishment.[580]

In terms of healthcare workforce density, North Korea's of 2021 was particularly high, with a ratio of 3.5 doctors per a thousand of people that surpassed that of 2.4 of South Korea.[581] However, despite a robust workforce and investments on public health programs by the government, the North Korean healthcare system continued to face considerable challenges, including the inaccessibility of health services for rural communities, a lack of medical equipment and medications, and financial constraints. In all three domains sanctions have had an indirect hampering role. First, in limiting significantly the provision of fuel, necessary both to the agricultural and the health sectors. Second, in contributing to the low availability of medicines and medical supplies, such as scalpels, gloves, and gauze - forcing healthcare workers to reuse them after cleaning and sterilization – and of items for the repairment of medical equipment, such as x-ray machines, by limiting and complicating their

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575 Amnesty International, *The Crumbling State of Health Care in North Korea*.
576 Park and Kim, "First Do No Harm," 3.
577 Park and Kim, "First Do No Harm," 4.
578 Korea Peace Now, "The Humanitarian Costs," 7.
579 U.N. Resident Coordinator for the DPRK, *Needs and Priorities Plan 2019*, 7
580 Kee B. Park and Edward I. Ham, "North Korea's Surprisingly Robust Healthcare System," *Global Asia* 16, no. 3 (September 2021).
581 Ibid.

import and procurement.[582] The list of banned humanitarian-sensitive items includes sterilizers, UV lamps for disinfection, ambulances, carriages and orthopaedic appliances for disabled persons, ultrasound and cardiograph machines, syringes, needles, catheters, artificial respiration machines, X-ray machines, microscopes, pumps, water heaters, and more.[583] Third, by cutting North Korea's national economy and trade, causing a decrease of trade volume of 48.8% in 2018.[584] Beyond their adverse humanitarian consequences, sanctions have indeed negatively impacted the country's economic development. It must be also kept in mind that, as mentioned in the previous sections, health and sanitation assistance to the DPRK has been generally restrained compared to food aid, because of the dual-use nature of many healthcare items and the donors' perception that health assistance is riskier in that it could be more easily diverted to the regime's elite. The Sanctions Committee' guidelines require single and dual/multiple-use items containing metal components be approved for exemption on a case-by-case basis. However, most of the health-related procurements have metal components and are classified as multiple use. Hence, humanitarian organizations are required each time to go through the Sanctions Committee for exemptions, which has resulted in delays or cancellation of procurement over the years. Moreover, humanitarian organizations involved in the strengthening of the DPRK health facilities were not able to replenish the necessary items after the implementation of sanctions, causing a deterioration of service provision and a negative impact on the health of the population.[585] This is consistent with the argument that sanctions, by constraining humanitarian support to the healthcare sector, may have contributed to leaving the healthcare system insufficiently prepared to respond to public health emergencies such as the COVID-19 pandemic. A concrete example of the difficulties encountered in importing humanitarian medical equipment containing metal components following the adoption of Resolution 2397 is provided by the experience of the NGO Ignis Community and its Pyongyang Spine Rehabilitation Center (PYSRC) programme, which focused on the treatment of children with developmental disabilities.[586] Since the imposition of UNSCR 2397, because they contained metal, Ignis Community had to apply for and receive humanitarian exemptions to ship the necessary medical equipment to treat children with developmental disabilities at the new PYSRC ward at the Pyeongyang Medical School Hospital. As a result, the opening of the Center and the treatment of thousands of children with developmental disabilities in the DRPK was delayed because of sanctions and the slow and inefficient sanctions

[582] Park and Kim, "First Do No Harm," 3.
[583] UNSC, Resolution 2397.
[584] Park and Ham, "North Korea's Surprisingly Robust Healthcare System."
[585] Panel of Experts Established Pursuant to United Nations Security Council Resolution 1874 (2009), *Final Report*, U.N. Doc. S/2024/215 (March 7, 2024).
[586] Korea Peace Now, "The Humanitarian Costs," 13.

exemption mechanism. The problem of humanitarian exemptions was further compounded by over-compliance, as Ignis' bank decided to close all of Ignis' accounts.

In 2019, Doctor Park, Director of the North Korea Programs at the Korean American Medical Association, spoke with the Korea Policy Institute Executive Board Member Kim about his work in North Korea, particularly about the health system and how sanctions have impacted on public health and human security. Importantly, it must be reminded that such interview took place before the border closure of 2020, thus the situation underwent important changes compared to that period. Being Dr. Park American-based, he provided useful information about the role of US sanctions within and beyond the UN framework, reflecting how humanitarian actors do not only have to deal with UN provisions, but also comply with domestic measures, in this case with US unilateral sanctions involving the Bureau of Industry and the US Treasury. The first one issues import and export licenses and decides which and the amount of goods that is allowed to be brought in North Korea. The second, through the Office of Foreign Assets Control (OFAC), issues authorizations for financial transactions and decides when it is appropriate to use US money on North Korea.[587] Such licenses are time-bound, lasting about two years, after which a new application must be submitted. The fact that each agency applies its own criteria, which are not transparently disclosed, makes the licensing process particularly uncertain, inconsistent and difficult to navigate. Some scholars and aid workers argue that such vagueness is intentional and depending on the political context; the agencies can tighten or ease sanctions application through more or less stringent licensing approvals criteria, without the need to formally amend the law.[588] On the contrary, the bureaucratic struggle for humanitarian workers is not minimal and results in only large groups or UN agencies organizations being able to pay for the necessary lawyers and administrative staff to handle the paperwork and go through the lengthy licensing process.[589] Such delays have real consequences and may prevent aid from being delivered in time and save lives. Dr. Park provides also a real example of overcompliance by an Indian banking institution through which the World Health Organization financed the operation of its office in Pyeongyang, meaning, for example, paying local staff and rent. With the imposition of US financial unilateral sanctions, the bank in India blocked the transactions directed to North Korea fearing to be hit by the US Treasury and US secondary sanctions. The closure of such banking channel meant money from India to North Korea could not be sent anymore, regardless the humanitarian purposes of such transactions. For similar reasons, other humanitarian organizations such as the Finnish

[587] Park and Kim, "First Do No Harm," 5.
[588] Ibid.
[589] Ibid.

International Development Agency and Handicap International decided to withdraw from North Korea.[590]

The outbreak of the COVID-19 pandemic represented a major turning point that fundamentally altered the framework of humanitarian assistance to North Korea, further compounding the adverse effects of sanctions. Due to the North Korean Covid-19 quarantine measures and strict border closures, all international aid workers were forced to leave the country as of March 2020. The chronic situation of humanitarian need of North Korea in 2020, as per the UN DPRK Country Team report, appeared with about 40% of the North Korean population suffering from food insecurity and with a high prevalence of treatable diseases such as tuberculosis. According to the Global Tuberculosis Report of 2019, in North Korea 513 people out of 100,000 were affected by tuberculosis, with estimated 20,000 deaths annually.[591] The WFP estimated 11.8 million people, corresponding to over 45% of the North Korean population, were undernourished and requiring nutrition support between 2020 and 2022.[592] Limited access to clean water increased the risk of infection and death and is directly linked to the high prevalence of diarrhea and other diseases, as well as undernutrition.[593] In 2019, 9.75 million people (out of approximately 25 million people in total) did not have access to drinking water and 36.6 % of the population did not have other alternative but to drink contaminated water.[594] Even hospitals and other facilities often struggled to maintain consistent water and electricity supplies, putting patients at increased risk of infection and death.[595] The impact of the Covid-19 pandemic likely exacerbated this situation, potentially causing a health crisis. Moreover, international sanctions constituted a persistent obstacle to the provision of Covid-19-related assistance, particularly because they complicated financial transactions and procurement procedures. According to Kim, these constraints contributed to a reduction in available health assistance and highlighted the need for broader sanctions exemptions to facilitate the delivery of vaccines and other essential medical supplies.[596] A core issue for vaccines and medicines distribution in North Korea is that of transportation and infrastructure, which have been severely hit by sanctions, particularly after 2017. The previous Chapter explained in detail how such measures lifted an almost complete embargo on

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[590] Park and Kim, "First Do No Harm," 8.
[591] World Health Organization, *Global Tuberculosis Report 2019* (France: WHO), 8.
[592] World Food Programme, *Democratic People's Republic of Korea: Annual Country Report 2021, Country Strategic Plan 2019-2022* (Rome: WFP, 2022).
[593] WHO, *Global Tuberculosis Report 2019*, 8.
[594] Central Bureau of Statistics of the DPR Korea and UNICEF, *DPR Korea Multiple Indicator Cluster Survey 2017: Survey Findings Report* (Pyongyang: Central Bureau of Statistics and UNICEF, June 2018), tab. WS 1.7, 148.
[595] WHO, *Global Tuberculosis Report 2019*, 198.
[596] Dong Jin Kim and Andrew Ikhyun Kim, "Global Health Diplomacy and North Korea in the COVID-19 era," *International Affairs* 98, no. 3 (2022): 927.

fuel, thereby severely affecting the operation of hospitals and ambulances.[597] Park has also talked about the delays sanctions have caused to international aid agencies providing clean water, affecting directly the health of the people and especially of the most vulnerable with infectious diseases, namely pneumonia and diarrhea.[598] These adverse consequences of sanctions on humanitarian operations were further compounded by the COVID-19 pandemic and related regulations. Mindful of this, UN Special Rapporteur Quintana in his 2021 report to the General Assembly on the situation of human rights in the DPRK, emphasized the Security Council should 'not lose sight of the adverse consequences of the severe sanctions regime […]' which had affected humanitarian assistance and the basic economic and social rights of North Korean population, who in fact bears 'much of the burden of sanctions'.[599] Moreover, he encouraged the UNSC Permanent Members to adopt 'a rationale that embraces universal human rights emanating from the Charter of the United Nations' when exercising their veto power. Finally, he suggested taking a more holistic approach to peace and security that accounts for human rights and the effects of comprehensive sanctions on the people of the DPRK.[600] In acknowledging the presence of a food emergency across North Korea and the intensification of food insecurity particularly in border regions and among vulnerable groups, the Committee for Human Rights in North Korea (HRNK) included among its key findings the concurrent role of sanctions in combination with domestic policies, the Covid-19 pandemic, and falling production.[601]

Multiple reasons have been provided to explain the drastic decision of the North Korea government to close its borders and especially to refuse twice humanitarian aid and vaccines from COVAX, a WHO-led multilateral initiative funded by developed countries and mandated to distribute vaccines to low-income countries.

First, one factor related to political sovereignty, which grounds North Korea's 'longstanding strategy of prioritizing regime security over external assistance, particularly in the context of public health crises.'[602] Accepting the external involvement of COVAX and allowing humanitarian workers into the country to oversee vaccine distribution could have represented a factor of risk undermining the regime's control over the population while also potentially appearing as a tacit acknowledgement of North Korea's dependence on foreign aid, contrary to the narrative of self-reliance. A former UN

[597] Park and Kim, "First Do No Harm," 4.
[598] Park and Kim, "First Do No Harm," 7.
[599] United Nations Human Rights Council, *Situation of Human Rights in the Democratic People's Republic of Korea: Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, Tomás Ojea Quintana*, U.N. Doc. A/HRC/46/43 (January 25, 2021).
[600] Ibid.
[601] Natsios et al., *Is There a Famine in North Korea?* 6.
[602] Moon, "The Paradox of Vaccines," 316.

official who had worked in the DPRK explained precisely that COVID played into the fears of the North Koreans, particularly the fear of the outside.'[603] North Korea was greatly concerned about the potential power relations between donors and beneficiaries, 'seeing international aid as prompted by ulterior motives of intervention in its domestic affairs with potential damage to its national security', especially in the context of increasing tension in the peninsula.[604] When it came to US and South Korea NGOs, the potential hidden agenda on their part made North Korea reluctant to accept their aid offers.[605] North Korea's suspicions were not entirely unfounded, as international assistance has at times been incorporated into broader diplomatic strategies by donor states. For example, in 2018, the Trump Administration offered economic assistance and development opportunities as incentives for denuclearization while simultaneously maintaining a policy of "maximum pressure" through sanctions. Although such measures should be distinguished from humanitarian aid strictly speaking, they may have reinforced North Korean perceptions that external assistance can serve political as well as humanitarian purposes.[606]

Second, while Park had emphasized the resilience and relatively extensive reach of the North Korean healthcare system, Moon highlighted its severe infrastructural shortcomings compared to the requirements of a nationwide Covid-19 vaccination campaign. Particularly, poor healthcare infrastructure would have hampered the effective Covid-19 vaccine distribution, the latter requiring a functioning 'cold chain system' where vaccines could be stored and transported at the right temperatures.[607] Shafik presented a more nuanced picture of North Korea's vaccine distribution system, arguing in fact the presence of cold chain storage, but nevertheless admitting that national immunization programmes could have been possible only with the assistance of international organizations.[608] The 2021 DPRK Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development reported 'the lack of the capacity of health personnel, low technical foundation of pharmaceutical and medical appliance plants and shortage of essential medicines.'[609] Some have further emphasized the limited energy and financial resources, irregular

[603] J. Kim and I. Kim, "Global Health Diplomacy and North Korea," 925.
[604] J. Kim and I. Kim, "Global Health Diplomacy and North Korea," 926.
[605] Ibid.
[606] Motoko Rich, "Trump dangles aid before North Korea. But does Kim Jong-un want it?," *New York Times*,
June 1, 2018, accessed June 15, 2026, https://www.nytimes.com/2018/06/01/world/asia/trump-north-korea-economic-aid.html.
[607] Moon, "The Paradox of Vaccines," 316.
[608] Nagi M. Shafik, C. Yoonhee Ryder and Kee B. Park, "North Korea's Vaccination Capabilities: Implications for a COVID-19 Campaign," *38 North*, August 5, 2021, accessed June 15, 2026, https://www.38north.org/2021/08/north-koreas-vaccination-capabilities-implications-for-a-covid-19-campaign/.
[609] Government of the Democratic People's Republic of Korea, *Democratic People's Republic of Korea Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development* (Pyongyang: Government of the Democratic People's Republic of Korea, June 2021).

water supply and decaying infrastructure, and the unevenness of health service delivery and access.[610] However, North Korea's healthcare system was not rendered ill-prepared solely by government mismanagement, but also by the adverse effects of sanctions, which further constrained its capacity to respond to public health challenges, such as the Covid-19 pandemic, and its ability to access medical supplies, equipment, and humanitarian assistance. In 2022, an NGO affirmed that the 'prolonged sanctions have resulted in the country's health system remaining weak' and lacking 'the resources to develop strategies that would be able to prevent and mitigate shocks and emergencies such as the COVID-19 pandemic.'[611] In its 2019 final report, a year before the border closure, the UN Panel of Experts reported that UN agencies and humanitarian organizations continued to experience unintended consequences on their humanitarian programmes 'that [made] it impossible to operate normally' and assure the delivery of humanitarian-sensitive items in the DPRK.[612] Based on communication from Member States and humanitarian organizations, the Panel identified six main areas of concern, namely delays in receiving exemptions, the collapse of the banking channel, delays in customs clearance, a decrease in willing foreign suppliers, the increased cost of humanitarian-related items and operations, and diminished funding for operations.[613] Such challenges have persisted throughout the Covid-19 pandemic. According to Moon, the lack of necessary infrastructure to implement a large-scale public health intervention, such as refrigerators with thermometers installed or working transportation, would have ultimately motivated North Korea to refuse vaccines, in that it would have also potentially disrupted its border control measures and quarantine protocols. The fact that North Korea had reacted similarly with border closure during the previous pandemic of SARS (Severe Acute Respiratory Syndrome) in 2003 and the outbreak of Ebola in 2014 suggests its pandemic strategy is used to rely greatly on preventing a virus from getting into the country and thus on border closure, severe quarantine measures, and restriction of movement.[614]

Although some high-level humanitarian visits resumed in 2024, such as the visit of the FAO Director-General Qu Dongyu in July, and limited shipments of humanitarian supplies were allowed into the country, North Korea had not, as of 2026, authorized the return of international UN and humanitarian personnel on a permanent basis.[615] Consequently, humanitarian operations continue to be severely

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[610] J. Kim and I. Kim, "Global Health Diplomacy and North Korea," 921.

[611] Panel of Experts Established Pursuant to United Nations Security Council Resolution 1874 (2009), Final Report, U.N. Doc. S/2022/132 (March 1, 2022).

[612] *Final Report of the Panel of Experts*, U.N. Doc. S/2019/171, 67.

[613] Ibid.

[614] Park and Ham, "North Korea's Surprisingly Robust Healthcare System."

[615] Food and Agriculture Organization of the United Nations (FAO), "FAO Director-General Visits Mongolia and DPRK Reaffirming FAO's Commitments to Supporting Sustainable Agrifood Systems Transformation in Developing Countries," *FAO Newsroom*, July 17, 2024, accessed June 15, 2026, https://www.fao.org/newsroom/detail/fao-director-general-

constrained by the absence of in-country international staff and independent monitoring, as well as by the extensive sanctions restrictions. For instance, in October 2022, UNICEF was able to send a large humanitarian shipment that included medical supplies. However, once that, as any other humanitarian shipment, crossed the border, it remained unclear when the health and nutrition supplies would have reached the people in need in the DPRK, given the absence of international staff on the ground. Moreover, lack of transparency and monitoring not only constitutes a major obstacle to the efficient disbursement of humanitarian assistance but also influences donors' anxieties and reluctance. At the same time, if, from the on hand, humanitarian organization increased efforts on due diligence and risk management procedures may help placating donors' risk aversion and fulfil their restrictive requirements, on the other hand it might lead to "technocratic drift" in which the access and support to populations in need appear to be subsidiary to compliance concerns.[616] Moreover, such zero-tolerance approach is particularly unrealistic in contexts in which humanitarian actors operate, because they would require a considerable degree of flexibility in face of rapidly changing situations.[617]

In its last report of 2024, the Panel of Experts once again recognized that, 'even as the relative influence of sanctions has lessened since early 2020, there can be little doubt that United Nations sanctions and their implementation have unintentionally affected the humanitarian situation and some aspects of aid operation, exacerbating the problem caused by the country's inefficient and ineffective economic policies.'[618] Specifically, such unintended effects include:

'(a) The country's response to sanctions, through which the elites have tightened economic, social and political control, centralized economic management and depressed grass-roots marketization and the market sector;

(b) In response to a 90 per cent decline in recorded export earnings after the adoption of the Security Council resolutions in 2016 and 2017 […], the Democratic People's Republic of Korea likely prioritized the procurement of military-related commodities and technologies over imports of consumer items and food, although the Panel does not have the necessary financial data; […]

(c) Against the background of the country's import priorities, commodity import restrictions contributed to ongoing, albeit lessened in 2023, shortages of agricultural equipment and fuel, exacerbating the low level of agriculture;

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visits-mongolia-and-dprk-reaffirming-fao-s-commitments-to-supporting-sustainable-agrifood-systems-transformation-in-developing-countries/en.

[616] Debarre, "The Negative Impact of Sanctions on Humanitarian Aid," 222.

[617] Ibid.

[618] *Final Report of the Panel of Experts*, U.N. Doc. S/2024/215.

(d) Procurement of other machinery items such as some water, sanitation and hygiene and irrigation equipment, spare parts and related materials may have also been similarly affected;
(e) The import restriction on refined petroleum may have had an impact on the operation of coal-powered thermal plants, possibly contributing to energy shortages, although some statistics show steady total energy production […]. Import restrictions may have further affected already extremely limited transportation capacity;
(f) Decreases in sources of livelihood for those employed in industries affected by sanctions and the persistence of resulting unemployment […];
(g) Disruptions in medical supply chains resulting from a decrease in export earnings and a direct import ban on metals and equipment, against the background of the country's import priorities;
(h) In some cases, overcompliance with sanctions by some actors involved in performing deliveries of consumer and humanitarian goods, even those not restricted by United Nations sanctions.'[619]

While the primary causes for the departure of humanitarian personnel are believed to be the anti-Covid-19 measures taken by North Korea, Kim emphasizes the need to consider the 'concurrent impact of restrictions caused by sanctions' and of the geopolitical context in order to resume health aid to North Korea.[620] The UN Special Rapporteur on the situation of human rights in the DPRK, Elizabet Salmón, emphasized in her latest report in 2025 to the UN Human Rights Council that international cooperation is a human rights obligation and can play a key role in assisting the government in the implementation of the recommendations, through capacity building, technical assistance, and other support.[621] With specific regard to the US and aside from the borders closure imposed by the North Korean government, Headrick denounced how the United States have contributed in hindering humanitarian engagement with the country, having 'the greatest impact on ordinary North Koreans.'[622] Mainly, such obstructions have taken the form of licenses or passport denials and include also the Department of State asking NGOs to withdraw their license applications, thereby actively discouraging the provision of aid to North Korea. During the 'maximum pressure' campaign under the first Trump Administration, humanitarian assistance became part of the target.[623]

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[619] Ibid.
[620] J. Kim and I. Kim, "Global Health Diplomacy and North Korea," 925.
[621] United Nations Human Rights Council, *Situation of Human Rights in the Democratic People's Republic of Korea: Report of the United Nations High Commissioner for Human Rights,* U.N. Doc. A/HRC/60/58 (September 4, 2025).
[622] Austin Headrik, "The Case for Enabling Nongovernmental Engagement with North Korea," *38 North*, March 24, 2026, accessed June 25, 2026, https://www.38north.org/2026/03/the-case-for-enabling-nongovernmental-engagement-with-north-korea/.
[623] Keith Luse, "Maximum Pressure Could End U.S. Humanitarian Assistance to North Koreans," *National Committee on North Korea (NCNK)*, October 11, 2018, accessed June 15, 2026, https://www.ncnk.org/news/keith-luse-maximum-pressure-could-end-u.s.-humanitarian-assistance-north-koreans.

US pressure was also said to have influenced the Global Fund's decision to close its North Korea healthcare programmes in 2018.[624] Moreover, in 2024, the US Treasury's emendation of the "North Korea Sanctions Regulations", which added some humanitarian exemptions to broaden the activities and transactions authorized, including the delivery of medical supplies or the support of agricultural projects, was accompanied by a new pre-activity reporting mechanism that gave authority to the Department of State to deny exemptions according to its own judgement and based on unclear criteria.[625] The National Committee on North Korea reported that years of restricted access would have eroded critical relationships with North Korean counterparts and assessed the need for a streamlined policy from the US government that would enhance humanitarian preparedness.[626] Overall, such *de facto* block on licenses, exemptions, and special validation passports by the United States has further limited the few openings existing.[627]

3.1.3 Humanitarian Exemptions in Practice

The increased impact the latest sanctions could have in humanitarian assistance began to be explicitly recognized in UNSC Resolutions when recalling that measures were not intended 'to affect negatively or restrict those activities, including economic activities and cooperation, food aid and humanitarian assistance […] and the work of international and non-governmental organizations carrying out assistance and relief activities in the DPRK for the benefit of the civilian population of the DPRK.' This way, the Security Council moved beyond the overarching, general, and almost epithetic formulation of simply 'measures are not intended to have adverse humanitarian consequences for the civilian population of the DPRK'. However, as affirmed by Smith, 'the misleadingly termed "humanitarian exceptions" provisions of the sanctions resolutions were not designed [neither able] to protect the population of 26 million people from the impact of sanctions.'[628]

The North Korea's humanitarian exemptions system comprises the standing humanitarian exemption provided by Resolution 2264 (2022) related to 'payment of funds, other financial assets, or economic resources […] necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs' and those exemptions approved by the 1718 Sanctions

[624] Ibid.
[625] Headrik, "The Case for Enabling."
[626] National Committee on North Korea (NCNK), *NCNK Humanitarian and Development Conference Report 2025* (Washington, DC: National Committee on North Korea, 2025), accessed June 15, 2026, https://ncnk.org/news/ncnk-humanitarian-and-development-conference-report-2025.
[627] Headrik, "The Case for Enabling."
[628] Smith, "The Impact of UNSC Sanctions," 33.

Committee on a case-by-case basis[629] In 2024, when asked about any cases of exemptions relevant to Resolution 2264, humanitarian organizations were not aware of them, and one noticed the need for the implications of the Resolution to be well articulated and itemized 'so all stakeholders fully understand the opportunities it is providing to support humanitarian interventions'.[630] This suggest the limited impact and use in practice of such standing exemption system for asset freezes exemptions compared to the centrality of the Sanctions Committee in granting *ad hoc* humanitarian exemptions for all other humanitarian-related activities. The Sanctions Committee is indeed the bureaucratic channel to which humanitarian organizations mainly appeal and file applications for conducting their activities in North Korea.[631] More specifically, according to the latest version of the "Implementation Assistance Notice No. 7" (IAN No.7), humanitarian organizations cannot submit an exemption request directly to the Committee; instead, they must proceed through Member States or, alternatively, through either the Office of the United Nations Resident Coordinator in the DPRK or the Committee Secretary, in cases where a Member State is unable or not in a position to transmit such a request to the Committee.[632] Second, applicants are required to provide extensive written documentation regarding the proposed humanitarian assistance. This includes a description of the project and its intended civilian beneficiaries, the criteria used to select recipients, and the reasons why the Committee's exemption is necessary. Organizations must also submit detailed technical information on all goods and services to be provided, including quantities, specifications, manufacturers, and models. Furthermore, exemption requests must indicate the planned date, route, and method of transfer, the ports of departure and entry, all parties involved in the shipment, and the financial transactions associated with it. Finally, applicants must demonstrate how they intend to ensure that the assistance is used for its intended humanitarian purposes and is not diverted to activities prohibited under the sanctions regime, for example through monitoring and verification mechanisms.[633] The Committee then approves each requests on a case-by-case basis 'as quick as possible' and 'within a reasonable timeframe', given the 'time-sensitive nature' of humanitarian assistance.[634] The extensive reporting requirements place a significant administrative burden on humanitarian actors seeking to operate in the DPRK. Indeed, the application process is often described as particularly 'stringent and time-consuming', especially due to the requirement of detailed written justifications for every item

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[629] UNSC, *Resolution 2264*.
[630] *Final Report of the Panel of Experts*, U.N. Doc. S/2024/215.
[631] UNSC, *Resolution 1718*.
[632] United Nations Security Council Committee established pursuant to Resolution 1718 (2006*), Implementation Assistance Notice No. 7: Guidelines for Obtaining Exemptions to Deliver Humanitarian Assistance to the Democratic People's Republic of Korea* (updated June 2, 2023; originally issued August 6, 2018), 4.
[633] 1718 Committee, *Implementation Assistance Notice No. 7*, 2-3.
[634] 1718 Committee, *Implementation Assistance Notice No. 7*, 4.

made of a prohibited material and intended to be sent or used in North Korea.[635] Although the 1718 Committee updated the IAN No.7 in 2020 and in 2023 in response to humanitarian organizations' concerns regarding the excessively limiting and restrictive nature of the regulations, the humanitarian exceptions system still requires humanitarian agencies to 'argue in writing for why each and every component of a prospective aid project that included metals […] should be exempt from the sanctions.'[636] Moreover, according to Dr. Park, although the review process of exemption requests had been accelerated and decisions were delivered within two weeks, the case-by-case review requirement for each exemption request remained unpractical, hindering, and highly contested.[637] Some organizations have also proposed the creation of permanent exemptions for humanitarian organizations, including a whitelist for medical and agricultural equipment, so that to overcome the "case-by-case" constraint and allow humanitarian organizations to 'adequately provide pandemic, medical, and agricultural relief to the DPRK' without hinder and in a timely manner.[638]

Since 2018, when the IAN No. 7 was issued by the Sanctions Committee to provide humanitarian organizations with some detailed guidelines to facilitate application for exemptions, the Panel of Experts consistently reported humanitarian organizations had been experiencing various challenges because of sanctions, particularly referring to the considerable amount of time required for planning shipments of humanitarian goods, 'including locating suppliers and financial agents willing to bid or contract for the provision of goods and services before an exemption is obtained'.[639] The fact that any changes to such planning could invalid the exemption request caused significant uncertainty and delays consequent to the amendment or renewal of the application. Such changes were not rare, considering also the hesitancy of shipping companies to carry humanitarian goods to North Korea due to the complicated and strict inspection, penalty, and possible entry restrictions into other ports. The extended time necessary to get exemption approval increases the risk of shipping companies, suppliers, or donors pulling back, and can be long enough to include price changes which can reduce the quantity of supplies that aid agencies are able to purchase. This way, the approval process of humanitarian exemptions 'adds another layer to the huge logistical challenges of bringing the much-needed relief assistance to the people in a timely manner.'[640] For this reason, the Panel of Experts suggested expediting the review and approval by the Sanctions Committee of the exemption requests

[635] Smith, "The Impact of UNSC Sanctions," 33; United Nations Security Council Committee Established pursuant to Resolution 1718 (2006), *Guidelines of the Committee for the Conduct of Its Work* (New York: United Nations, December 31, 2014).
[636] Smith, "The Impact of UNSC Sanctions," 34.
[637] Park and Kim, "First Do No Harm," 6.
[638] *Final Report of the Panel of Experts*, U.N. Doc. S/2022/132, 395.
[639] *Final Report of Panel of Experts*, U.N. Doc. S/2019/171, 360.
[640] *Final Report of the Panel of Experts,* U.N. Doc. S/2023/171, 443.

for humanitarian programs, so that to alleviate the suffering of civilians and advised the Committee to be more flexible regarding the technical specifications of planned shipments, the parties involved and the frequency of requests and submissions, considering also the estimated six months necessary for offshore procurement and aid delivery.[641] Delays could also arise with Member States before they reach the Committee, especially since NGOs have little visibility and no control over when Member States submit their request to the Committee.[642] In 2019, the Panel listed all the humanitarian exemption requests received during the reporting period, namely 25 requests, of which 16 got approved and 7 remained under the Committee evaluation (two were withdrawn).[643] Significantly, half of the humanitarian exemption requests were approved with 'significant delay', hindering the implementation of humanitarian activities in the DPRK.[644] Such requests related to essential supplies required for gravity-fed water systems, units of ambulance vehicles and spare parts of vehicles used to distribute tuberculosis and malaria supplies, refrigerators, medical equipment for maternal and neonatal emergencies, assistive and mobility devices such as wheelchairs, walking stick, hearing aid and glasses, veterinarian kits, distribution and consumption equipment (bowls, cups, water tanks, tricycles etc), and equipment and tools for the micro-scale project for people living with disabilities. The delay caused to the agency involved in the gravity-fed water systems placed over 60 thousand people, including approximately 4,300 children under five, at risk of diarrheal death associated with drinking contaminated water.[645] The delay in exempting the provision of refrigerators resulted in the requesting agency having to reduce the number of refrigerators purchased for its health program because of price increases before the approval.[646] This occurred because humanitarian agencies cannot initiate offshore procurement before having received the exemption letter. All these factors resulted in delaying multiple times the delivery of urgent humanitarian items up to 10 months, despite the urgent nature of humanitarian needs.[647] In the case of veterinarian kits, for example, it meant that veterinarians did not have essential medicine and equipment for the 2019 spring, a particularly sensitive period for goats' health. Livestock mortality and morbidity have significant impacts on the nutritional status of vulnerable people, especially children.[648] Face to the many complaints and the Panel of Experts' suggestion, the Committee indeed accelerated the exemption approval time. In 2020, the Sanctions Committee approved for the first time updates to IAN No. 7 to reduce administrative

[641] *Final Report of Panel of Experts*, U.N. Doc. S/2019/171, 376.
[642] *Final Report of Panel of Experts*, U.N. Doc. S/2019/171, 363-368.
[643] Ibid.
[644] Ibid.
[645] Ibid.
[646] Ibid.
[647] Ibid.
[648] Ibid.

burdens while ensuring aid delivery to the DPRK civilian population. The standard duration for approved humanitarian exemptions was increased from six to nine months and applicants seeking to extend their exemption now had to submit formal request with explanations at least 10 business days prior to the exemption's expiration.[649] UN agencies, the Red Cross, or organizations that had successfully received two or more exemptions in the preceding 18 months could submit requests directly to the Committee Secretary rather than relying on State sponsors.[650] In the following final reports from 2020 to 2024, the humanitarian organizations that answered to the Panel of Experts' survey noted significant progress in reducing the processing time for humanitarian exemption requests submitted to the Committee. However, some organization noticed the problem of US sanction exemptions remained, especially related to obtaining the US Treasury License. As a matter of fact, organizations usually have to obtain US licenses before applying for a UN exemption.[651] Such observation is very relevant and highlights once again how overlapping sanctions regime and different humanitarian exemptions criteria complicate and hinder severely the work of humanitarian organizations in North Korea, with a significant role being played by the United States. The complex cumulative effects of the number and multiple types of sanctions, according to some organization, 'seem to influence political willingness to fund humanitarian operations in DPRK' by generating hesitancy among donors and private actors, especially banks, to have any involvement with the country.[652] Some organizations suggested a general exception of humanitarian aid in UNSC resolutions would avoid misinterpretation and reduce overcompliance and highlighted the need for a permanent banking channel for humanitarian funding.[653] This view was shared among a considerable number of humanitarian organizations, asking the Committee to streamline the sanctions mechanism with wider inclusion to cover humanitarian supplies destined to the most vulnerable and create a banking channel that facilitates the continuity of the humanitarian work. The Panel of Experts continued suggesting a simplification of the exemption application and the no-objection procedures.[654]

To better understand the lead time involved in the approval of humanitarian exemptions and how States can effectively delay exemption approvals, it is useful to look at the 2014 "Guidelines of the Committee for the Conduct of its Work," which provide a detailed explanation of the procedures and

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[649] United Nations Security Council Committee established pursuant to Resolution 1718 (2006*), Implementation Assistance Notice No. 7: Guidelines for Obtaining Exemptions to Deliver Humanitarian Assistance to the Democratic People's Republic of Korea* (updated November 30, 2020; originally issued August 6, 2018).

[650] Ibid.

[651] *Final Report of Panel of Experts*, U.N. Doc. S/2022/132, 394.

[652] *Final Report of the Panel of Experts,* U.N. Doc. S/2023/171, 432.

[653] Ibid.

[654] Panel of Experts Established Pursuant to United Nations Security Council Resolution 1874 (2009), *Final Report*, U.N. Doc. S/2020/151 (March 2, 2020).

decision-making process governing the Committee's activities.[655] The Committee decides by consensus, with every member holding veto power. In absence of objections to a proposed decision within 5 working days (or less in urgent cases), a proposed decision is deemed adopted. However, States may pose a matter of the proposal on hold and request additional information, thereby not objecting, but leaving the decision pending for a maximum of 6 months. After this period, if the holding State has not lifted or turned its hold in objection, the proposed decision is automatically adopted. In 2025, the US has reportedly put on hold the majority of requests for humanitarian exemptions sent to the Sanctions Committee, leaving humanitarian projects stalled for months.[656] In early 2026, the Committee eventually approved exemptions for 11 humanitarian projects, many of which had been pending since the first half of 2025.[657] Due to the US policy of holding on all exemptions requests, only one was approved in 2025. However, the practice of posing exemptions on hold has been present since 2017, contributing to the disruption of humanitarian operations of US and international NGOs, as well as UN agencies. Such delays posed the risk of exemptions expiration before the humanitarian deliveries could be completed, especially of childhood vaccinations and maternal immunizations for pregnant women and newborns against preventable illnesses.[658] Despite the significant challenges in terms of bureaucratic, administrative, and monitoring burdens, humanitarian actors have consistently provided evidence of the negative impact of sanctions and of the need for better protections and streamlined procedures, but have continued to face requests for evidence by donors and sanctioning countries, which tend to view the humanitarian sector as vulnerable and high risk.[659] Such risk, however, should be shared among humanitarian organizations, donors, governments, and the private sectors, and not burden exclusively the humanitarian side.[660] On the contrary, humanitarian organizations have to engage in extremely technical discussion to try to mitigate the impact of sanctions on their work, the burden of proof remaining upon their shoulders.[661] Conversely, sanctioning entities and the Sanctions Committee do not tend to provide convincing evidence or justifications when denying humanitarian exemptions. The lack of transparency is evident along with the absence of accountability. Debarre concludes that humanitarian exemptions are far from ideal, 'as they are neither compliant with IHL [international humanitarian

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[655] 1718 Committee, *Guidelines of the Committee for the Conduct of Its Work.*

[656] Security Council Report, "DPRK (North Korea), November 2025 Monthly Forecast," *Security Council Report*, November 1, 2025, https://www.securitycouncilreport.org/monthly-forecast/2025-11/dprk-north-korea-32.php.

[657] United Nations Security Council Committee Established pursuant to Resolution 1718 (2006), "Humanitarian Exemption Requests," accessed June 15, 2026, https://main.un.org/securitycouncil/en/sanctions/1718/exemptions-measures/humanitarian-exemption-requests.

[658] Headrik, "The Case for Enabling."

[659] Debarre, "The Negative Impact of Sanctions," 226.

[660] Debarre, "The Negative Impact of Sanctions," 227.

[661] Debarre, "The Negative Impact of Sanctions," 226.

law] nor in line with the humanitarian principles, and hamper the flexibility of the humanitarian response'. Moreover, the neutrality and independence of humanitarian actors is continuously challenged by the fact they need the approval for their work from political bodies, such as the Sanctions Committee.[662]

As of March 2026, the 1718 Committee has approved 122 humanitarian exemptions in accordance with paragraph 25 of UNSCR 2397 (2017).[663] In January 2025, the UN granted exemptions to send aid shipments to North Korea, allowing FAO and UNICEF to provide technical support for better feed production and wheat and barley cultivation and to bring in materials and equipment for health and sanitation facilities, including cold chain technology, steel, and vehicles.[664] However, scepticism toward humanitarian assistance to the DPRK persists, often leading critics to question both the effectiveness and the transparency of aid operations in the country. For instance, former USAID (United States Agency for International Development) Administrator Andrew Natsios argued that the FAO may have inadvertently contributed to strengthening the North Korean regime by benefiting state institutions rather than the broader population and the most vulnerable groups. Such criticisms illustrate how the concerns over aid diversion, accountability, and regime manipulation that emerged during the famine years continue to shape donor perceptions of humanitarian assistance in North Korea.[665]

3.1.4 Gendered Impact of Sanctions in North Korea

The North Korean society is governed by Confucian patriarchal norms which determine also the socio-economic status of women. Formally, the North Korean legal system supports gender equality through a series of legal pieces such as the Law on Sex Equality of 1946, which abolished arranged marriages and concubinage and guaranteed women equal rights in employment and education, the Socialist Constitution of 1972 asserting the equal social status and rights of men and women, or the Law on the Protection and Promotion of the Rights of Women of 2010 which aligned the country with international treaties like CEDAW (the Convention on the Elimination of All Forms of Discrimination Against Women). In theory, North Korean women supposedly have equal access to education, healthcare, and employment opportunities. However, despite representing over half of the total North Korean workforce, the division per economic sector is highly gendered, with women

[662] Debarre, "The Negative Impact of Sanctions," 225.
[663] UN Security Council 1718 Committee, "Humanitarian Exemption Requests."
[664] UN Security Council 1718 Committee, "Humanitarian Exemption Requests."
[665] Brachtendorf, "Food Security in North Korea Remains Critical."

dominant especially in health and welfare services, fisheries, and textiles.[666] In 2008, the national census recorded 86% of all workers in the clothing sector were indeed women, and the number has likely grown.[667] In contrast, they are underrepresented in leadership position within the Workers' Party of Korea and other institutions, logically dominated by men, as well as in other sectors such as the heavy industry.[668] In reality, government control, social expectations, and economic hardships severely restrict women's rights and opportunities. The gendered differentiation in employment has derived from the post-Korean War period, characterized by industrialization and economic recovery, during which women were encouraged to enter the workplace. Initially, the socialization of reproductive work facilitated women's employment by lightening the burden on domestic labour.[669] However, the economic collapse and the famine of the 1990s caused a significant reduction of the State's welfare services, thereby transferring in practice most of the care burden on women. As a result, they became subjected to dual expectations and double burden, having to care both for their families and communities, while maintaining their official workplace. In North Korea all men – unless they serve in the military – and unmarried women are in fact required to work at State-owned enterprises, with any absences punishable by law.[670] At the same time, married women became to dominate the emergent private economy of North Korean black markets, the so-called *jangmadang*, and the informal trade along the Sino-North Korean border. Due to poor salaries and the collapse of the North Korea's state-run economy in the 1990s, women had to turn towards informal market activities to support their families, reflecting another gendered division of labour. The *jangmadang*, or informal markets, have thus provided a means for economic opportunities and livelihood since 1990s, making women effectively the breadwinners for the household.[671] Income generation in the DPRK became heavily reliant on market activities, with a reported 75% of income deriving from these sources.[672] Kim and Gray acknowledge differences of opinion as to the extent to which the process of marketization had led to an improvement in the socio-economic status of women in North Korean society.[673] Women cannot be reduced to a homogenous and monolithic bloc when in fact their

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[666] Suzy Kim and Kevin Gray, "The Gendered Impact of Sanctions on the DPRK," in *Economic Sanctions from Havana to Baghdad*, ed. Joy Gordon (Cambridge: Cambridge University Press, 2025), 130.
[667] Kim and Gray, "The Gendered Impact," 131.
[668] United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea,* U.N. Doc. A/HRC/43/58 (February 25, 2020).
[669] Kim and Gray, "The Gendered Impact," 131.
[670] Office of the High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/60/58 (2025).
[671] Ibid.
[672] Chae Eun Lee, "N. Korean Farmers Show Mixed Reactions to Tractors Gifted by Kim Jong Un," *Daily NK*, March 24, 2021, accessed June 15, 2026, https://www.dailynk.com/english/north-korean-farmers-show-mixed-reactions-tractors-gifted-kim-jong-un/.
[673] Kim and Gray, "The Gendered Impact," 132.

experiences are multiple and diversified from one another, including that related to marketization. If, from the one hand, the growing market participation of women may have brough about an increase in their personal freedoms and responsibilities by granting them more decision-making power within the family; on the other hand, it cannot be said to have led to a substantial improvement in their social and political status, considering also that 'many women remained on the margins of poverty and food insecurity' [674] Lankov and Kim have argued that marketization was largely a positive and empowering development for women as they came to occupy important positions within the emergent private economy and constituted the majority in the newly-emerged entrepreneurial class known as *donju*.[675] However, patriarchal traditions continued to pervade the North Korean society, making women among the most vulnerable groups in the country. Domestic and gender-based violence are widespread, normalized, and largely unreported due to cultural stigma and inadequate legal protection.[676] By participating in markets activities, women are more likely to be arrested for "economic crimes" and exposed to increased gender-based discrimination, inspections, and exploitation, often having to face predatory officials and the penal system.[677] Whereas the government had initially tolerated markets and facilitated their expansion, after 2020, private commercial activities were labelled "anti-socialist behaviour" and the informal markets were reduced in size from over 23,000 square meters of new market space in 2019 to 630 square meters by 2021.[678] Such sharp reduction illustrates 'the broader economic strains faced by provincial economies under the dual pressures of the Juche policy and external sanctions.'[679] As engaging in private commercial activities is not fully legal, women are thus more vulnerable to abuse by authorities, which often harass or detain women in the markets, including by extracting bribes in the form of sexual demands. In its landmarking 2014 report, the Commission of Inquiry found that 'the male dominated state, agents who police the marketplace, inspectors on trains, and soldiers are increasingly committing acts of sexual assault on women in public spaces' which has been described as 'the male dominated state preying on the increasingly female-dominated market.'[680] Cases of sexual and gender-based violence

[674] Kim and Gray, "The Gendered Impact," 133; Hazel Smith, *North Korea: Markets and Military Rule* (Cambridge: Cambridge University Press, 2015), 229.

[675] Andrei Lankov and Kim SeokHyang, "Useless Men, Entrepreneurial Women, and North Korea's Post-Socialism: Transformation of Gender Roles since the Early 1990s," *Asian Journal of Women's Studies* 20, no. 2 (2014): 68–96, 70.

[676] OHCHR, *Report of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/60/58 (2025).

[677] Kim and Gray, "The Gendered Impact," 132.

[678] OHCHR, *Report of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/60/58 (2025).

[679] Natsios et al., *Is There a Famine in North Korea?* 55

[680] Human Rights Council, *Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, U.N. Doc. A/HRC/25/63 (February 7, 2014).

by law enforcement officials have been also documented by the Office of the High Commissioner for Human Rights.[681]

The burden of care work borne by women within the family and the wider community, their standing in society and job insecurity is further exacerbated by the imposition of sanctions, particularly during periods of economic, food, or public health crises,[682] as their 'economic disadvantage and burden to provide for one's family and community become more acute.'[683] During the COVID-19 pandemic, for example, women often had to travel long distances each day to secure clean water and food for their families, while also exposing themselves to significant risks through their involvement in cross-border trade activities.[684] Conducting cross-border trade exposed women to trafficking, forced marriage with Chinese men and prostitution. Additionally, government's restrictions already limited private market activities which represented women's main source of income. International sanctions, especially those targeting the industries in which women work and reducing the activity of the markets in which they trade, have seriously undermined women's livelihood. Restrictions on market activities, such as those imposed during the COVID-19 pandemic, affected women disproportionately, given their predominant role in the informal market sector. Women reportedly experienced declining sales as a result of reduced consumer purchasing power caused by economic stagnation and the tightening of sanctions. Moreover, border closures disrupted traditional income-generating activities, including cross-border trade and smuggling, which had largely been carried out by women. As a result, financial pressures intensified for those dependent on the informal economy for their livelihoods—a category that encompasses a significant share of the North Korean population, and women in particular.[685] Sanctions have contributed to intensifying pre-existing inequalities, 'leaving the most vulnerable groups – primarily the rural poor and urban low-income earners [including women] – increasingly desperate and economically insecure'[686] and narrowing women's "space to maneuver."[687]

The imposition of sectoral sanctions on textiles in 2017 had undoubtedly gendered consequences in that female workers were predominant in that sector. Such sectoral ban on textile exports reportedly caused a decline of almost 100% of textile exports, corresponding to 582 million dollars approximately. The export of clothing manufactures had been also a key growth area within the Sino-

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681 OHCHR, *Report of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/60/58 (2025).
682 Korea Peace Now, "The Humanitarian Costs," 24.
683 Korea Peace Now, "The Humanitarian Costs," 23.
684 United Nations Children's Fund, *Analysis of the Situation of Children and Women in the Democratic People's Republic of Korea* (Pyeongyang: UNICEF, 2019).
685 Natsios et al., *Is There a Famine in North Korea?* 61.
686 Natsios et al., *Is There a Famine in North Korea?* 52.
687 Kim and Gray, "The Gendered Impact," 135.

North Korea trade, having increased from 186.52 million dollars in 2010 to 799.3 million dollars in 2015, accounting for 33% of the DPRK's total exports. Redirecting to the domestic market the apparel originally produced for exports had significant limits due to the low purchasing power of North Korean consumers. Furthermore, the closure due to sanctions of the outsourcing centre for apparel production in North Korea located in the Inter-Korean Kaesong Industrial Complex brought about the dismissal of 50,000 female workers, thus having a significant negative impact on the local economy and especially women.[688] Seafood, another sector in which women were predominant, had also seen a rapid increase, reaching 190-million-dollar's value in 2016, but was then equally negatively impacted by the imposition of sectoral sanctions.[689] Sanctions had practically a direct impact on women employed in the sectors producing sanctioned goods, including electrical equipment (women represented 34% of all workers employed in that sector), machinery and equipment (35%), minerals (36%), agricultural goods (53%), seafood (53%), textiles (82%), as well as on women involved in international trade and domestic retail trade (89%). It is thus undeniable that sanctions, also due to the gender-ascribed roles that women play in North Korea, have disproportionately and adversely affected them, as well as their employment and livelihood. Women are very unlikely to have had influence over the decisions that have led to sanctions, yet 'they bear a disproportionate burden of coping with the disruptions and deprivations sanctions are causing in North Korea society.'[690]

3.2 Effectiveness of Sanctions Against North Korea

The general discussion about the effectiveness of sanctions and the one focusing specifically on the effectiveness of the sanctions levied against the DPRK are particularly prolific and involve multiple perspectives. Regardless the kind of criteria adoptable to assess the effectiveness of sanctions against North Korea, the conclusion remains the same and is negative. Evidently, the primary objectives of obtaining North Korea's denuclearization and a moratorium to its ballistic missile testing have not been reached, with very little improvements also regarding secondary objectives, such as inducing North Korea to respect human rights and embrace the international community's system of values. Some have argued that sanctions should be evaluated not only based on their ability to fulfil their objectives but also considering their symbolic role in signalling misconduct and denounce acts that are contrary to international law and principles. However, the human rights and humanitarian costs

[688] Kim and Gray, "The Gendered Impact," 130.
[689] Korea Peace Now, "The Humanitarian Costs," 15.
[690] Korea Peace Now, "The Humanitarian Costs," 31.

for the DPRK population appears to be too high to justify the imposition of nearly comprehensive measures merely for symbolic signalling purposes. That is why sanctions against North Korea are believed to represent a moral failure. By purportedly promoting human rights and acting based on their violations by the North Korean government, they actually result in harming innocent people and contribute deteriorating an already fragile economy. On a more practical and less moral level, sanctions effectiveness has been undermined by North Korea's evasion techniques along with cooperation problems within the implementing States, especially China and Russia. Suffice it to recall how North Korea's dependence on imports was first sustained by the Soviet Union's economic support during the Cold War and later by China in the 2000s. The targeted nature of the pre-2016 sanctions narrowed the impact on North Korea's economy and enabled the country to offset sanctions just by maintaining trading relations with its allies and benefitting from to the porous nature of the Sino-North Korean border that allowed for illegal/informal trade. It was only in 2017 that the introduction of new sectoral sanctions, amounting to a near-comprehensive sanctions regime, generated a significant macroeconomic shock and brought North Korea close to an economic blockade. These measures targeted key sectors that had driven the country's modest economic growth, including textiles, minerals, and seafood exports, and their impact was amplified by China's comparatively robust enforcement of UN sanctions. China's change of approach had been attributed to its increasing impatience with North Korea's nuclear weapons programme as well as US secondary sanctions aiming at Chinese companies and suspected financial institutions.[691] However, the undeniable significant pressures sanctions placed on the North Korean economy after 2017 did not break North Korea's strong commitment to self-reliance and nuclear and ballistic missile development. Neither with the outbreak of the Covid-19 pandemic North Korea renounced to its nuclear and economic policies.

3.2.1 North Korea's Sanctions Evasion Strategies

Since its establishment in 2009 pursuant to UNSCR 1874, the UN Panel of Experts played a crucial role in monitoring the implementation of UN Resolutions, particularly in reporting cases of sanctions evasion activities, highlighting emerging trends, and documenting North Korea's progress on its nuclear and ballistic missile programmes. Its work was purported to inform the Sanctions Committee and the Security Council's assessments and decisions concerning sanctions. Specifically, the Panel produced two key documents every year, namely the midterm and the final report. The Panel's

[691] Woo-Jun Min and Sukhee Han, "Economic Sanctions Against North Korea: The Pivotal Role of US-China Cooperation," *International Area Studies Review* 23, Issue 2 (March 19, 2020): 7.

membership comprised of eight independent experts from five UNSC Permanent Member States, Japan, South Korea and a country of the "global South". The increased complexity of the sanctions regime against North Korea and its vast array of provisions made the Panel's work and monitoring mandate more prominent and challenging. The Panel's reports constituted a useful tool identifying enforcement loopholes and rapidly changing but persistent evasion practices responsible of sanctions erosion. When read together, 'they outline[d] how North Korea [had been] advancing its nuclear weapons and ballistic missile capabilities, and adapting its evasive practices to minimize the impact of restrictions on its access to trade and finance.'[692] As a matter of fact, the tightening of the sanctions regime has had the major and unintended result of strengthening North Korea's resilience and ability to constantly elaborate new strategies for sanctions evasion. Nephew describes designing a sanctions regime as building a complex maze. The maze's quarry, that is the target, is pressured and supposed 'to move this way and that, all in accordance with the sanctioners' interest and with the intent of the target reaching the exit.'[693] However, Berger notices that while UN reports may help outlining the contours of the walls and how North Korea is trying to climb them, few observers seems to have a clear idea of what a realistic path to the exit looks like.'[694] This reflects the paradox of a sanctions regime that endures with little reassessment, even though the literature on sanctions increasingly suggests that their coercive effectiveness declines the longer they remain in place without achieving their intended objectives but imposing significant economic and humanitarian costs. Sanctions appear having become 'an end in themselves, ostensibly to punish the DPRK and give the appearance that something is being done.'[695] Moreover, the purported exit of a "complete, verifiable, and irreversible" denuclearization is argued by many not existing anymore.

Before presenting the various techniques to which North Korea reportedly has resorted to evade sanctions, it must be considered that the prominent role of the Panel of Experts in monitoring and observing sanctions' implementation has ended in 2024 with Russia's veto to the Resolution addressing its renewal. As a result, today, the monitoring mechanism of sanctions appears severely undermined and weakened. In being grounded in UNSC Resolutions and in the institutional legacy of the United Nations, the mandate of the Panel was particularly strong compared to other organizations and enjoyed a high degree of autonomy to investigate cases of non-compliance. Under UNSC Resolution, Member States and other relevant parties were urged to cooperate fully with the

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692 Andrea Berger, "Walls and Ladders: The Latest UN Panel of Experts Report on North Korea Sanctions," *War on the Rocks,* March 28, 2018, accessed June 15, 2026, https://warontherocks.com/walls-and-ladders-the-latest-un-panel-of-experts-report-on-north-korea-sanctions/.

693 Richard Nephew, *The Art of Sanctions: A View From the Field* (New York: Columbia University Press, 2023).

694 Berger, "Walls and Ladders."

695 Stephanie Kleine-Ahlbrandt, "Maximum Pressure Against North Korea, RIP," *38 North,* October 7, 2019, accessed June 15, 2026, https://www.38north.org/2019/10/skleineahlbrandt100719/.

Panel, especially by providing information on evasion activities. Countries and private sector institutions relied on cases outlined in the Panel's reports to inform their own domestic rules and regulations related to implementation. Such cases have also provided clarity on 'sometimes complex and vague obligations, together with practical information for countries to pursue legal and criminal enforcement', especially those countries that lacked sufficient resources for sanctions implementation, an often-costly endeavour.[696] Arnold further highlighted that, 'in the absence of a direct enforcement mechanism, the reports have acted as something of an incentive for countries to follow UN sanctions through naming and shaming', given also that countries wanted to avoid being named in a report.[697] Ms. Maiko Takeuchi, former member of the Panel, underlined the significance of the Panel of Experts in having being able to garner the cooperation of the countries within the highly politicized environment that governed the Security Council sanctions regime. As an impartial body, the Panel conducted investigations regardless the geographic locations or the scale of the cases concerned. Collaborating in the Panel's investigations and inquiries could be justified as cooperating with a neutral international body and as part of the implementation of UNSC resolutions, aspects that 'made cooperation easier to explain and defend, both externally in relations with North Korea or other concerned countries and also internally within government decision-making processes.'[698] As Takeuchi pointed out, '[i]f a request for information on sanction violations were made by one country (or a group of countries) to another country, cooperation would require a diplomatic or political decision, or even a bilateral arrangement' considering that there would be no general obligation to respond. In contrast with the Panel's reports, those published by other countries or entities often reflects specific interests, themes or are subjected to budget constraints, making it potentially difficult for governments and individuals to cooperate in investigations 'driven by the national interests of individual countries.'[699]

Nevertheless, the Panel could not be considered completely free from constraints and had its own limitations. Takeuchi acknowledges that political confrontations and differences of diplomatic positions among States, especially the UNSC Permanent Members, were often reflected in the Panel's investigations and reports, whose work had been reportedly impeded by certain members, leading to questions by some countries on its impartiality.[700] In effect, Russian and Chinese membership of the

[696] Aaron Arnold, "Russia Just Gutted the UN Panel of Experts on North Korea – What Now?" *RUSI*, April 3, 2024, accessed June 15, 2026, https://www.rusi.org/explore-our-research/publications/commentary/russia-just-gutted-un-panel-experts-north-korea-what-now.

[697] Ibid.

[698] Maiko Takeuchi, "Beyond the UN Panel of Experts: Sanctions Implementation Challenges and the Role of the MSMT on North Korea," *Korea on Point*, December 22, 2025, accessed June 15, 2026, https://koreaonpoint.org/articles/article_detail.php?topic_idx=199&idx=529&start=.

[699] Ibid.

[700] Ibid.

Panel and their veto power in the Sanctions Committee had been often used to prevent from public UN reporting of sanctions violations by Russian and Chinese entities.[701] Moreover, the recommendations of the Panel had not led to the adoption of any new designation since 2019. The Sanctions Committee resulted unable to agree to new designations because of the Committee's Member States 'almost reflexively' putting on hold and then blocking requests of other Member States to list a new individual or entity, dispensing from the original practice of providing a justification.[702] The role of the Panel through its reports and recommendations was in fact supposed to be particularly critical in identifying new targets for the Sanctions Committee to designate, but eventually became undermined by national interests and political considerations of the Member States that used their veto and other means to reduce the scope and scale of the Panel's influence, independence, and impact.[703] This demonstrate and unveils that the Sanctions Committee is not neutral nor impartial, but actually a highly politicized body affected by the same limiting and restricting mechanisms that govern the UN Security Council on a higher level. It comes with no surprise that the Panel became disliked and opposed by Member States, especially those that were being exposed by the Panel for their suspected sanctions violations and breaches. Takeuchi observed that 'when the Panel's investigative findings do not lead to new sanctions designations by the UN, and when the relevant governments do not undertake law enforcement actions under their domestic legal frameworks based on the Panel's investigations, the Panel ultimately failed to produce tangible effects' and was not able to contribute effectively to the Committee's work.[704] For example, when in 2018 the US informed the Committee that the 5000,000-barrels import cap for oil had been reached, other Member States intervened by questioning the validity of the information provided in support of such assessment. The US, due to the difficulties of gathering and declassifying relevant information on the DPRK's ship-to-ship transfers, was unable to make available the evidence to counter the questions raised about its determination. Given the Committee's stalemate, the US expected the Panel to make that determination without including the concerns about data and calculations raised by other Member States, but such highly politicized deadlock was not (and, realistically, neither could be) overcome by the Panel.[705] The practice of shedding doubts and questioning the validity of information attesting responsibilities in breaches of sanctions measures by Member States became particularly popular, especially among China and Russia, and was consistently reflected in the Panel's reports.

701 Christopher J. Watterson, "The New Face of North Korean Sanctions Monitoring: Can the MSMT Pick Up Where the Panel of Experts Left Off?," *38 North,* April 16, 2025, accessed June 15, 2026, https://www.38north.org/2025/04/the-new-face-of-north-korean-sanctions-monitoring-can-the-msmt-pick-up-where-the-panel-of-experts-left-off/.
702 Kleine-Ahlbrandt, "Maximum Pressure Against North Korea."
703 Ibid.
704 Takeuchi, "Beyond the UN Panel of Experts."
705 Kleine-Ahlbrandt, "Maximum Pressure Against North Korea."

Furthermore, Berger and Cotton had noted that although the same names kept appearing in UN Panel investigations of cases of potential sanctions violations, relevant States, including China and Russia, continued to fail to take action to inhibit these individuals' behaviour.[706] Evidently, the mandate of the Panel was being seriously undermined and hampered even before Russia's veto for its termination. Moreover, the disagreement stemming from politicized dynamics in the Sanctions Committee significantly hampered the enforcement of sanctions measures. The Committee evidently lacked real, enforcement, authoritative power comparable to an independent jurisdictional body able to hold accountable those States found to be violating UN measures or to be negligent towards their due diligence obligations. In reality, sanctions violations by Member States, their citizens or entities with their nationality remained generally unpunished and without consequences, if not for limited reputational damage deriving from being nominated in the Panel's reports.

Without the Panel of Experts, there remains regional organizations, non-governmental bodies, as well as government-based monitoring mechanisms, such as the Multilateral Sanctions Monitoring Team (MSMT), established by 11 like-minded states approximately half a year after the Panel's termination in 2024. According to Takeuchi, the fact that such mechanisms are not grounded in UNSC Resolutions may provide some potential advantages. First, in being more flexible, they could pursue deeper, larger in scope, and more sustained investigations that would not otherwise be possible under the stricter UN framework. Russia and China do not enjoy the same power they detain in the UN system, which would suggest the MSMT reports could be 'more forthcoming regarding […] violations.'[707] Second, teams such as the MSMT can issue reports in a timely manner and take immediate action to leverage the value of the report through joint designations. Third, the possibility to expand the membership of such bodies can demonstrate 'solidarity in countering North Korea's nuclear and missile development.'[708] Despite this, the absence and higher unlikability of the Panel's reinstatement have had, overall, negative consequences for the UN sanctions regime. Arnold argues that it has not only deprived countries the possibility to access to authoritative sources of information, but that it also potentially meant that 'the sanctions against North Korea will now persist in a zombie-like state – neither updated nor monitored.'[709] Without an effective monitoring mechanism that could garner the same level of "universal trust" that the Panel reports were able to do, countries may be less incentivised to implement sanctions as robustly.[710] Some question how 'can a new body operating outside of the UN and without the participation of North Korea's two largest trading partners establish

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[706] Berger, "Walls and Ladders."

[707] Watterson, "The New Face of North Korean Sanctions Monitoring."

[708] Takeuchi, "Beyond the UN Panel of Experts."

[709] Arnold, "Russia Just Gutted the UN Panel of Experts on North Korea."

[710] Ibid.

itself as an effective and consequential alternative to the Panel.'[711] Even more as those partners, namely Russia and China, appears uncommitted and willing to disengage in monitoring and sanctions implementation. However, multiple other States are responsible of lax enforcement. Those accused of violating sanctions by trading arms or military-related equipment with North Korea include Angola, Cuba, Democratic Republic of Congo, Eritrea, Iran, Mozambique, Myanmar, Namibia, Sri Lanka, Syria, Uganda, and the United Republic of Tanzania.[712]

Due to the elimination of the Panel of Experts, conducting an effective sanctions monitoring face to increasing transgressions has become significantly harder. Watterson argued that fear of Russia or China's retaliation may prevent member states of the MSMT from targeting or naming Russian and Chinese entities involved in sanctions evasion, resulting in potentially weaking the Team's capability of comprehensively reporting on sanctions violation.[713] Takeuchi assessed the two public reports issued by the MSMT in May and October 2025, noticing that the second provided more detailed descriptions of the modus operandi and information about the actors involved in sanctions evasion. However, the level of detail of the information provided appeared to vary significantly depending on the contributing Member State, which seems to corroborate Watterson's opinion that governments may refrain from making certain information public based on external political considerations. The lack of names or details of the entities involved significantly undermines the usefulness of such reports not only for governments, but for all frontline actors, including financial institutions and private companies.[714] The latter would in fact require concrete information, such as names of specific individuals, entities, or locations.[715] On their part, governments without strong intelligence and law enforcement capacities are particularly reliant on such sharing of information by other States.[716] North Korea's sophisticated sanctions evasion practices can easily fool countries who devote few resources or do not have enough capabilities to monitor effectively North Korean networks.[717] The only actor benefitting and taking advantage of this structural limitation in enforcement and from 'the weakening of a critical, if imperfect, source of pressure' has been precisely North Korea.[718] Finally, such findings of the MSMT did not translate into concrete actions yet.[719]

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[711] Watterson, "The New Face of North Korean Sanctions Monitoring."
[712] David Albright et al., *Countries Involved in Violating UNSC Resolutions on North Korea*, (Washington: Institute for Science and International Security, December 5, 2017), 1.
[713] Watterson, "The New Face of North Korean Sanctions Monitoring."
[714] Takeuchi, "Beyond the UN Panel of Experts."
[715] Ibid.
[716] Ibid.
[717] Berger, "Walls and Ladders."
[718] Kleine-Ahlbrandt, "Maximum Pressure Against North Korea."
[719] Takeuchi, "Beyond the UN Panel of Experts."

The US, France, Japan, South Korea, and the UK criticized Russia's actions as 'an affront to upholding global non-proliferation norms' and representing an attempt to silence independent, objective investigations which concerned also Russia and its acquisition of conventional weapons from North Korea.[720] In effect, this reflect the new political alignment with North Korea, meaning Russia is evidently more defensive of North Korean interests and against further enforcement of the anti-North Korean sanctions. The two countries had signed a bilateral mutual defence treaty in 2024 and since then North Korea had been reportedly sending troops to Russia to fight the war in Ukraine. In return, North Korea is believed being preparing to receive advanced Russian technology, especially in the field of space technology, to further develop its nuclear and missile programmes.[721] Aoki suggests also that the cooperation with Russia could reduce the perceived outside pressure of North Korea, encouraging it to be more assertive, aggressive, and overt in pursuing its illegal activities.[722] As a matter of fact, the termination of the Panel of Experts came at a time when the implementation of UN sanctions against North Korea has been facing significant challenges coming both from massive programs of state-sponsored sanctions violations, especially Russia and North Korea's military cooperation, and increased 'sophistication, resilience, and efficacy of the North Korean sanctions evasion tradecraft.'[723] Despite decades of restrictions, North Korea continues to access easily the international financial system and trade prohibited goods and services. What seems to emerge from literature, reports, and articles is a mismatch between enforcement and monitoring tightening and the evasion practices employed by North Korea. The latter are continuously and rapidly evolving while adapting to new restrictions. In contrast, international sanctions enforcement and monitoring mechanisms, given the political paralysis at the UN Security Council and Sanctions Committee, seems not to evolve and adapt at the same speed, thereby not keeping the pace with North Korea sanctions evasion.[724]

North Korean sanctions evasion mechanisms are based on a two-tiered economic system consisting of a "people's economy", the official government-led planned economy, and a "second economy", functioning in parallel and dedicated to sustaining the regime and its strategic objectives, including the ballistic missile and WMD programmes.[725] North Korea can be considered the only government that actively promotes and engages in large-scale criminal activities. The shadow economy, named

[720] Arnold, "Russia Just Gutted the UN Panel of Experts on North Korea."

[721] Naoko Aoki, "Dealing with North Korea as It Deepens Military Cooperation with Russia," *RAND Corporation*, March 4, 2025, accessed June 15, 2026, https://www.rand.org/pubs/commentary/2025/03/dealing-with-north-korea-as-it-deepens-military-cooperation.html.

[722] Ibid.

[723] Watterson, "The New Face of North Korean Sanctions Monitoring."

[724] Wertz, "Special Report," 19.

[725] Kim, "Transnational Repression and Exploitation," 34.

also the "royal court economy," operates with priority over the people's economy, having preferential access to resources, labour, and electricity, effectively functioning as a "second Cabinet" outside the formal State economic plan. Importantly, since the North Korean won is non-convertible and useless outside North Korean borders, the second economy constantly requires foreign hard currency.[726] The main managing entity of North Korea's illicit money and illegal activities is the Office 39, which reportedly raises billions of dollars annually for the Kim family regime that are kept separate from the official state budget, thus remaining invisible to public reports.[727] Through a network of front companies and illicit financial channels, these "ruling funds" are redirected to Pyeongyang 'for supporting the Kim family's lavish lifestyle, rewarding elites to maintain their loyalty, and facilitating strategic programs like the development of nuclear weapons and ballistic missiles.'[728] Hereafter, an overview of these techniques and practices employed by North Korea to evade sanctions and gain hard currency.

Since the 2005 U.S. Treasury measures against Banco Delta Asia in Macao, North Korean banking and trading networks have become increasingly sophisticated and diversified, placing greater emphasis on concealing the North Korean origin of bank accounts, commercial entities, and traded goods and creating a sort of offshore economy.[729] To this end, front companies and foreign facilitators have enabled sanctions-evasion networks to operate under the guise of Chinese, Russian, or Southeast Asian businesses. By routing transactions through third countries, these networks obscure the true origin and destination of trade flows, allowing governments and commercial actors to maintain the appearance of not engaging directly with North Korea. The case of Mansudae Overseas illustrates this dynamic. Following its designation under international sanctions, the company sought to preserve its activities in Africa through cooperation with the Chinese contractor Qingdao Construction, which assumed Mansudae's contracts and workforce in Namibia. Subsequently, the company continued operating through newly established entities, including Tritonia Holdings.[730] More broadly, North Korean commercial networks frequently disguise themselves as Chinese, South Korean, Russian, or Southeast Asian enterprises through complex corporate structures, nominee ownership arrangements, and other forms of commercial camouflage.[731] The complexity of North Korean networks makes it particularly challenging to trace the true ownership of front companies or the exact route and origin

[726] Ibid.

[727] Bruce E. Bechtol, "North Korean Illicit Activities and Sanctions: A National Security Dilemma," *Cornell International Law Journal* 51, no. 1 (2018): 59.

[728] Kim, "Transnational Repression and Exploitation," 37.

[729] Bechtol, "North Korean Illicit Activities and Sanctions," 41.

[730] Andrea Berger, "North Korea: Design, Implementation, and Evasion," in *Economic Sanctions in International Law and Practice*, ed. Masahiko Asada (Oxfordshire: Routledge, 2020), 170.

[731] Berger, "Walls and Ladders."

of funds or other transactions.[732] North Korean diplomatic personnel also carry out a wide variety of illicit activities all over the world, including counterfeiting, cash transfer, and illegal drug trafficking. Furthermore, North Korea has been proven particularly ingenious at circumventing maritime sanctions purported to stop illegal shipping and maritime trade. North Korea's maritime sanctions evasion tactics have specifically enabled the country to continue importing fuel in volumes that exceed UN limits and circumvent international bans on its exports of coal and other commodities.[733] In order to camouflage the North Korean origin of the cargo, vessels are reported pretending to have called and loaded it in a non-North Korean port by loitering around and then falsifying their shipment documentation to reflect a fake port call, before sailing onward to their destination. Port authorities are told the cargo (coal) had originated in either Russia or China. Also, another method is transhipping coal via Russian ports: vessels load coal in North Korea, sail to Russia and unload it at a Russian port; then, another vessel would pick it up and transport it to the final destination (Japan or South Korea) and declare the cargo as Russian-origin. Another method is ship-to-ship transfers in the East China and Yellow Seas to evade sanctions on petroleum imports. North Korean vessels obscure physical identifiers on their hulls, including their name, flag and IMO number (assigned to a ship and attached to it for its lifespan).[734] Furthermore, re-flagging of ships is another very common practice, consisting of using flags of convenience, such as flags of Mongolia, Kiribati, Tanzania or Tuvalu, to carry North Korean goods and services to other nations in contravention with UN sanctions prohibiting third countries from registering ships linked to the DPRK. Such practice occurs in collusion with front companies and has allowed North Korea to avoid the detection and inspection of its merchant ships.[735] The Panel of Experts in 2024 continued to observe suspect vessels transmitting falsified or inconsistent identifiers on AIS, the automatic identification system, reporting false destinations.[736] Other techniques includes vessel identity laundering, vessel disguise, fraudulent registration of ships, and falsified documentation. In 2023, the overall recorded trade volume of North Korea surpassed that of 2022, with the trade volume of the first three quarters of the year corresponding to 51% of the total trade volume registered in 2019, and the trade volume for the third quarter of 2023 corresponding to 76% of the trade volume for the same period in 2019 and 186% that of 2022, reflecting North Korean trade is gradually increasing to reach the 2019 level.[737] In that year, trade volume reached approximately 3,000 million dollars, while in 2023 it attested a little over than 1,500 million

[732] Bechtol, "North Korean Illicit Activities and Sanctions," 41.
[733] Wertz, "Special Report," 19.
[734] Berger, "Walls and Ladders."
[735] Bechtol, "North Korean Illicit Activities and Sanctions," 70.
[736] *Final Report of the Panel of Experts*, U.N. Doc. S/2024/215, 23.
[737] *Final Report of the Panel of Experts*, U.N. Doc. S/2024/215, 25-27.

dollars.[738] 98% of the North Korea's trade in 2023 was with China, demonstrating the close economic ties between the two countries have survived the pandemic period, as well as sanctions tightening.[739] In addition, trade with Russia has amounted to 28 million dollars in the same year. Significantly, such statistics of the Panel of Experts did not include good illicitly imported and exported.[740]

Increasingly sophisticated and profitable cyber operations have become a major source of revenue for North Korea, directed by the Reconnaissance General Bureau, including Kimsuky, the Lazarus Group, Andariel, and BlueNoroff. By targeting financial institutions, cryptocurrency exchanges, supply chains, as well as other commercial entities, these attacks enable the country to generate substantial income at relatively low cost while circumventing sanctions restrictions.[741] The DPRK was responsible for 58 cyberattacks against cryptocurrency-related companies between 2017 and 2023, resulting in estimated losses of approximately 3,5 billion dollars.[742] Among the most notorious cases are Lazarus' cyberattack to Sony Pictures in 2014 and the hacking of the SWIFT software in 2016 to move money from the Central Bank of Bangladesh to North Korea accounts. Lazarus was also allegedly responsible of the WannaCry ransomware attack in 2016 targeting computers with Microsoft Windows operating system. This growing cyber trend reflects the growing importance of cyber-enabled sanctions evasion as a means of securing foreign currency and financing state activities. According to the Panel of Experts, such cyber intrusions can also serve to obtain intellectual property or other information that can be used for the WMD and ballistic missile programmes and be sold to further generate revenue.[743]

Arnold and Salisbury have examined how international sanctions evaders in the post-Covid era have adapted to a "work-from-home" or remote model that does not require a physical presence but allows actors to operate remotely from sanctions jurisdictions or low-risk third countries, leveraging new technologies and information systems to circumvent restrictions.[744] Such evasive "remote" tactics include the deployment of high skilled IT workers, primarily located in China and Russia, who operate as freelance networks providing legal services to unsuspecting businesses globally using stolen identities and falsified identification documents. Virtual Private Networks (VPNs) and Virtual Private Servers (VPSs) make North Korean IT workers appear as if they are working from within the United States or other non-sanctioned countries, hiding their true location. Moreover, they have been

[738] Ibid.
[739] Ibid.
[740] Ibid.
[741] Kleine-Ahlbrandt, "Maximum Pressure Against North Korea."
[742] Wertz, "Special Report," 19.
[743] *Final Report of the Panel of Experts*, U.N. Doc. S/2024/215, 41.
[744] Aaron Arnold and Daniel Salisbury, "Remote Sanctions-Busting: A Post-COVID New Normal?" *The Washington Quarterly* 47, no. 4 (2024): 63-77.

harnessing and adopting AI-powered tools, such as deep-fakes and AI-altered documents to bypass identity verification processes during the hiring phase. It has estimated that each worker is capable of generating over 300,000 dollars annually. These remote tactics provide North Korea with a low-risk, high-rewards environment that is increasingly difficult for traditional enforcement mechanisms and agencies to monitor or disable.

Labour export, as well as the remittances acquired through it, are an important part of the hard currency generating apparatus employed to sustain the Kim regime. This system relies on a complex web of institutions within the Workers People Party, the State, and the military. Precisely, North Korea sends national workers abroad, particularly Russia, with non-work visas, and diverts their wages to finance its WMD programme. Evidence of such evasion practice began to emerge in the mid-2010, as exemplified by UNSC Resolutions first calling upon States to exercise vigilance over this practice [745] and later prohibiting the provision of work authorizations for DPRK nationals and the repatriation of all existing North Korean workers abroad within two years.[746]According to NKDB (Database Center for North Korean Human Rights) 2025 report, rather than ending such practice, 'these sanctions inadvertently drove it underground,' with an estimated 15,000 North Koreans continuing to work in Russia on non-work visas (out of 100,000 North Korean overseas workers total estimated in 2024 by the Panel of Experts[747]), and 'perversely exacerbated the human rights crisis for the tens of thousands of North Korean workers who remain in Russia.'[748] The adverse effects of sanctions have ultimately increased the level of precariousness of North Korean workers' situation. This occurs contextually with the North Korea's deepening strategic alliance with Russia, which has facilitated the systemic exploitation and transnational repression of North Korea workers by creating a more permissive environment.[749] Similarly to the shift towards informal trade networks observed along the Sino–North Korean border following the disruption of formal banking channels by financial sanctions, sanctions prohibiting work visas for North Korean workers not only failed to dismantle North Korea's labour export system, but also entrenched its most exploitative features through sanctions-evasion practices employed by Russia and North Korea.[750] NKDB considers it one of the world's most institutionalized systems of transnational repression, falling within the scope of force labour as defined by the International Labour Organization (ILO). It includes deception such as no employment contracts, retention of identity documents, withholding of wages up to 90%, abusive living and working conditions, and restriction of movement. As such practices result into profound

[745] UNSC, *Resolution 2321*.
[746] UNSC, *Resolution 2375*; UNSC, *Resolution 2397*.
[747] *Final Report of the Panel of Experts*, U.N. Doc. S/2024/215, 49.
[748] Kim, "Transnational Repression and Exploitation," 7, 16.
[749] Kim, "Transnational Repression and Exploitation," 17.
[750] Kim, "Transnational Repression and Exploitation," 11.

loss of personal autonomy and the inability to change one's position, the NKDB argues they can be also considered a form of servitude as per the jurisprudence of bodies like the European Court of Human Rights and would meet the legal threshold for the crime against humanity of enslavement based on Article 7 of the Rome Statute.[751] The loss of personal autonomy was reinforced by the seizure of wages, the confiscation of passports after customs clearance, the presence of state security agents at the worksite, and restrictions requiring official authorization for travel beyond designated worksites and residences.[752] Particularly, give the ban on work visas, North Korea shifted to fabricated student visas, obtained through deals with Russian universities. The cost of tuition and bribes to, for example, fabricate attendance records, are passed to workers through inflated wage deductions.[753] This has been also institutionalized through intermediaries such as the Intergovernmental Migration Center connecting the North Korean embassy, Russian universities, and Russian employers while extracting commission fees. Moreover, a 2020 amendment of Russian domestic law allowing foreign students to work without separate permits contributed to facilitating and codifying such informal and clandestine channels.[754] When partnerships are not possible, workers are instructed to use photocopies of others' student visas, meaning they are left completely undocumented and particularly vulnerable to extorsion by Russian police, who have to be bribed to overlook such visa irregularities. The 'informal and opaque student visa scheme' evidently expose workers to abuse, harassment, and exploitation by local police and labour brokers, even more considering that the fear of being classified as immigration offenders discourage them from reporting abuse or seeking aid.[755] Returning workers are reported investing their earnings and bringing back goods to sale in the black markets, thus contributing to marketization and motivating more workers to go abroad, an already very competitive job because of the higher level of pay that can be earned compared to official workplaces. Since the imposition of the ban on work visas, a large number of North Korean workers were repatriated. However, some question 'whether closing off the possibility for such work is in those workers' best interests, particularly in the context of the lack of alternative means to secure their livelihoods within the DPRK.'[756]

Finally, an assessment of financial sanctions against North Korea. US financial sanctions increased significantly from the beginning of 2000s reaching the peak in 2017 with President Trump's policy of "maximum pressure", targeting not only North Korea but potentially any actor or third party involved, directly or indirectly, in trading goods, services, or technology with the country.

[751] Kim, "Transnational Repression and Exploitation," 9-10.
[752] Kim, "Transnational Repression and Exploitation," 16.
[753] Kim, "Transnational Repression and Exploitation," 9.
[754] Kim, "Transnational Repression and Exploitation," 8.
[755] Kim, "Transnational Repression and Exploitation," 9.
[756] Korea Peace Now, "The Humanitarian Costs," 18.

There are different and opposing interpretative views on financial sanctions against North Korea. Some consider them potentially effective means but undermined by lax enforcement, especially by China.[757] More specifically, financial sanctions are believed particularly effective in isolating rogue regimes like North Korea by excluding them from the US-based financial and banking system and generating chilling and overcompliance effects on third-party banking institutions. The most prominent example of "successful" financial sanctions against North Korea has been the US Treasury's action against Macao's Banco Delta in 2005. Bechtol argues also the need of tightening secondary sanctions against third-party (Chinese) banks suspected of or found to be facilitating North Korea illicit trafficking.[758] Such view is particularly concerning insofar as it focuses almost exclusively on the practical effectiveness of financial sanctions while paying little attention to the broader legal and humanitarian concerns they raise. In particular, it overlooks the contentious status of secondary sanctions under international law, a measure frequently criticized for its extraterritorial reach and its interference with the sovereign economic relations of third States. As a result, broader questions of legality and human welfare risk being subordinated to narrow political and economic considerations. Others, particularly Lee and Gray, have taken an interestingly more sceptical view that challenged the widespread optimism and enthusiasm regarding financial sanctions against North Korea, arguing that such measures have rather had the counterproductive effect of pushing Sino-North Korean trade toward informal channels, including barter arrangements and cash-based settlement mechanisms. In doing so, financial sanctions would have complicated, rather than facilitated, the monitoring and tracking of cross-border transactions, actively undermining the broader objectives pursued by sender States.[759] When discussing financial sanctions, the authors often refer specifically to US secondary sanctions, 'proscribing third-party banks from engaging in financial dealings with [North Korean] entities, and more broadly, by enforcing global norms and standards on international banks regardless of their geographical location' and, from a legal perspective, regardless of territorial or personal jurisdiction.[760] While Bechtol explicitly considers China the main responsible for financial sanctions' limited effect in countering illegal trafficking, Lee and Gray noted that despite China's attempts of regularizing cross-border trade by encouraging the settlement of trade through the official banking system, the US aggressive financial measures have hindered those attempts, indirectly leading traders to favour cash payments rather than bank transfers. As a matter of fact, after the US adopted financial sanctions against North Korea's main foreign exchange banks,

[757] Bechtol, "North Korean Illicit Activities and Sanctions."
[758] Bechtol, "North Korean Illicit Activities and Sanctions."
[759] Jong-Woon Kim and Kevin Gray, "Cause for Optimism? Financial Sanctions and the Rise of the Sino-North Korean Border Economy," *Review of International Political Economy* 24, no. 3 (2017).
[760] Kim and Gray, "Cause for Optimism? Financial Sanctions," 425.

such as Kwangson Bank in 2009 and the Foreign Trade Bank in 2013, many Chinese banks terminated and avoided doing business with North Korea's banking institutions, impacting on North Korea's ability to engage in financial dealings with the outside world. Due to the dollar's status in the world's economic and financial system, accounting for over 85% of the world's foreign exchange transactions, banks could not avoid using a US-based dollar payment system through a US bank. For such a reason, risk assessments lead them to cut ties with North Korea banks and discouraged any transactions settled through the banking system. As a result, 'the growing prevalence of financial sanctions has led to the failure of the cross-border banking system to develop in line with the expansion of cross-border trade and investment.'[761] Moreover, the bilateral sanctions imposed by South Korea and Japan further increased North Korea's reliance and dependence on China as its key economic partner. With the tightening of sanctions, local Chinese middlemen and private firms found doing business with North Koreans clients even more lucrative since the increased risk associated with informal activities could justify an increase of their fees, resulting in incentivizing rather than hindering procurement activities.[762] In other words, tightening of financial sanctions meant that North Korea financial institutions increasingly utilised informal cross-border networks, challenging the effectiveness of financial sanctions and calling for a greater consideration of how actors can or are induced to deploy strategies of evasion.[763] This is not to deny that China's lax enforcement of trade sanctions has been overall irrelevant or marginal to the broader failure of the international sanctions against North Korea, but to shed light on the unintended and counterproductive effects of financial sanctions, especially US secondary sanctions, which may encourage the development of sanctions-evasion practices techniques. A Treasury Department study in 2023 demonstrated a certain awareness in the US regarding the unintended consequences of de-risking on the overall effectiveness of unilateral and secondary financial sanctions, coherently with the many concerns raised by NGOs, human rights organizations, and the UN Special Rapporteur. De-risking would in fact undermine 'several key US government policy objectives by driving financial activity out of the regulated financial system, hampering remittances, preventing low- and middle-income segments of the population, as well as other underserved communities, from efficiently accessing the financial system, [and] delaying the unencumbered transfer of international development funds and humanitarian and disaster relief.'[764] Building on this, it could be further argued that the most adverse consequences of US financial sanctions will be borne by the North Korean population. As a matter of fact, by restricting access to

761 Kim and Gray, "Cause for Optimism? Financial Sanctions," 444.
762 Bechtol, "North Korean Illicit Activities and Sanctions," 69.
763 Kim and Gray, "Cause for Optimism? Financial Sanctions," 426.
764 U.S. Department of the Treasury, "AMLA: The Department of the Treasury's De-Risking Strategy" (2023), Executive Summary.

formal banking channels and legitimate financial transfers, these measures create significant obstacles for humanitarian organizations helping people in need in North Korea. Clearly, humanitarian agencies cannot resort to the informal or illicit means often used to circumvent sanctions. Hence, financial restrictions may indirectly and disproportionately affect ordinary North Koreans, while the political elite and state institutions often retain greater capacity to adapt to or circumvent such constraints.

Lee and Gray further questioned the ability of financial sanctions to dissuade the DPRK from pursuing its nuclear and WMD programmes. This argument finds support in the fact that North Korea has neither abandoned its nuclear ambitions nor altered its long-standing commitment to maintaining its status as a nuclear-weapon State. They also argued that financial sanctions failed to exert a significant impact on the North Korean economy and instead contributed to the expansion of the country's economic ties with China. Moreover, North Korea's reliance on cash-based networks, intermediaries, and smaller financial institutions would have reduced the effectiveness of measures targeting its access to major banks. The Panel of Experts further stated in 2019 that 'financial sanctions remain some of the most poorly implemented and actively evaded measures of the sanctions regime'.[765] North Korean financial institutions have continued to routinely conduct international dollar-based transactions despite US efforts to block them, in parallel with maritime smuggling operations and the use of diplomats, foreign intermediaries, and front companies to access the international system clandestinely. As a result, North Korean financial institutions could maintain covert networks of foreign branches and overseas accounts.

However, the impact of U.S. financial measures, especially within the framework of the Trump Administration's "maximum pressure" campaign, should be considered alongside the substantial economic constraints imposed by the multilateral sanctions regime established by the United Nations Security Council. Moreover, whether financial sanctions might not have had a significant impact on the North Korean government, the elite, and the military, given their circumvention capabilities, it certainly had a significant, disproportionate impact on North Koreans' human rights and humanitarian condition, also by hindering the work of humanitarian organizations and obstructing the money transfers aimed at conducting the humanitarian operations in the country. NKDB concluded that the security-centric approach in sanctions design and implementation that treated human rights as peripheral proved too narrow and counterproductive in practice. For example, protecting the right of North Korean workers by ensuring control over earnings, possession of identity documents, and freedom of movement could have arguably 'undermine[d] the state's ability to extract foreign currency, weaken the apparatus of coercion that sustains the regime, and reduce[d] the incentives for

[765] *Final Report of the Panel of Experts*, U.N. Doc. S/2019/171.

illicit networks that facilitate sanctions evasion.'[766] Importantly, 'the fulfilment of human rights is not only a moral obligation but also a pathway to diminishing the structural conditions that threaten global peace and security.'[767]

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[766] Kim, "Transnational Repression and Exploitation," 31.
[767] Ibid.

CONCLUSION

International sanctions have become one of the principal instruments of international governance. Their evolution has been characterized by an initial process of centralization, whereby the authority to impose sanctions was concentrated within the United Nations Security Council, followed by a gradual process of decentralization marked by the proliferation of unilateral sanctions alongside a multilateral system increasingly constrained by political divisions and institutional deadlock. The sanctions regime on North Korea represents the most long-lasting, enduring, comprehensive sanctions regime in the world. Begun in the 1950s when North Korea was just born as a sovereign State after World War II, it expanded and changed significantly over the years. From US unilateral containment particularly influenced by Cold War logics, to a multilateral regime gradually more aware of the unintended humanitarian effects of sanctions and consequently implementing a new more targeted sanction design. However, especially in the North Korean case, the last decade witnessed a re-emergence of nearly comprehensive measures on core economic sectors, disproportionately affecting North Korean women and the most vulnerable population. US hegemony in the global market, accompanied by the US dollar-based financial system, made the employment of financial and secondary sanctions particularly convenient, especially by countries such as the US which could exert great economic leverage. Chronic food insecurity and public health inefficiencies were further exacerbated by the imposition of sanctions, especially those adopted by the UN and the US in 2016 and 2017. In the North Korea case, areas of concern include delays in receiving exemptions, collapse of the banking channel, decrease in willing foreign suppliers and increased cost of humanitarian-related items and operations, and diminished funding. With the advent of the Covid-19 pandemic, the North Korean government barricaded the country from the outside world, including by expelling humanitarian actors on the ground and refusing humanitarian aid. This has severely impacted humanitarian work which has yet to recover to the pre-pandemic level. The primary responsibility of the North Korean government in causing harm to its population is undeniable and generally acknowledged, but arguably an excessive focus on such responsibility tend to overshadow the concurrent effect of sanctions and often seems not to distinguish between the regime and the population in need. The government's policies and actions do not imply that the population has forfeited their rights to food and adequate life and even if the sanctions did not cause the underlying humanitarian problems, they undoubtedly exacerbated them, and the responsibility for that additional impact lies with those imposing the sanctions. Moreover, when sanctions undermine key sectors of the economy on which the population's livelihood depends, it becomes difficult to see, and almost dishonest to expect that the government could adequately provide for its people, even if it were willing to do so. What emerges is the almost complete absence of *de facto* accountability upon senders. The absence of a centralized sanctions system whose measures can be subjected to effective judicial review further contributes to this problem, ultimately undermining the legitimacy of sanctions themselves. Another important factor is the difficulty of establishing a direct causal link between sanctions and deteriorating socio-economic conditions. Accountability mechanisms are generally evidence-based, yet obtaining such evidence can be particularly challenging in highly restricted environments such as North Korea, where humanitarian organizations have largely lost access to the country. Nevertheless, the persistent demand for conclusive proof often serves as a convenient excuse for avoiding responsibility. Humanitarian organizations are expected to meet burdensome compliance requirements and provide extensive documentation, frequently at the expense of effective humanitarian action and the principles of neutrality and impartiality. Meanwhile, sanctioning States and donors enjoy considerable discretion in granting exemptions, maintaining restrictive measures, or adopting comprehensive sanctions, despite the risk that such policies may contribute to violations of the economic and social rights of civilian populations. After decades of sanctions practice, the adverse humanitarian consequences of sanctions can no longer be regarded as unforeseen or incidental. Historical experiences, most notably the Iraqi sanctions regime of the 1990s, have already demonstrated the potentially devastating impact that broad economic restrictions can have on civilian populations. In this respect, the continued demand for ever more evidence of harm risks obscuring a reality that has been repeatedly documented in both academic literature and policy practice. Rather than evolving into instruments capable of preventing adverse humanitarian consequences, sanctions regimes are still struggling to develop effective remedial mechanisms. To proactively and preventively tackle this problem sanctioning entities need to engage with humanitarian organizations and put the focus on the people in need. This would imply upholding the fundamental human rights and humanitarian principle of proportionality that balances sanctions' scope and their humanitarian consequences. Despite some efforts having been put on ameliorating exemptions procedures and, although just for a short period in the 1990s, on narrowing as much as possible the impact of sanctions on those directly responsible rather than affecting the whole population, sanctions remain an imperfect and mainly ineffective instrument. The absence of a banking channel due to de-risking and overcompliance, a monitoring system undermined by lax enforcement and the termination of the Panel of Experts in 2024, sanctions busting, exemptions mechanisms particularly burdensome, lengthy and inefficient: all of these factors continue to hinder humanitarian work and only contribute to aggravating and adversely affecting the human rights of the North Korean population. Conversely, over seventy years of such sanctions have not produced significant changes or improvements in the North Korea nuclear issue. Thus, sanctions result essentially unjust tools as they affect disproportionately those who are not responsible. Furthermore, the fact that sanctions are punitive is considered incompatible with the decentralized and horizontal international order made of equal sovereign States. Selectivity and biases inherently dominate the imposition of sanctions and decision making, undermining even more sanctions legitimacy to the eyes of those who should comply and of the international community in general. Today's sanctions practice seems not to reflect an international order where single States act beyond their individual and national interests to defend the collective interests and values of the international community. It seems rather to depict an unequal, biased, and decentralized system where sanctions are mainly available to the most powerful States and mostly directed against the poorest countries while "unintendedly" affecting the vulnerable population. The way forward remains uncertain and marked by significant challenges, particularly whether international law will be able to effectively regulate the sanctions practices of sender States and restore human rights to a more central position within the legal and policy framework governing sanctions.

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