

NOT TARGETED BUT PROPORTIONATE
A NEW PERSPECTIVE ON UN SANCTIONS AND EXEMPTION CLAUSES

Master of Laws in International Law Capstone Project

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April 25, 2017

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1. Introduction

The use of sanctions has been common in international relations for centuries. Sanctions have been unilaterally deployed for various strategic ends.¹ With regard to multilateral sanctions, states may take non-military measures including sanctions to maintain or restore international peace and security in accordance with Article 41 of the UN Charter. During the Cold War, however, UN sanctions were seldom imposed: the Security Council established only two sanctions regimes until 1990. This trend dramatically changed in the 1990s, which scholars describe as the “Sanctions Decade.”² The end of the ideological confrontation between the two superpowers made it possible for states to cooperate in restoring peace and security in an unstable world. Following a historic sanctions case on Iraq for its invasion of Kuwait, an unprecedented number of sanctions regimes were established. Ironically, however, this proliferation of sanctions invited criticism and skepticism on the legitimacy of UN sanctions. In the early 1990s, the Security Council imposed comprehensive sanctions on several countries. These sanctions regimes were quite robust in scope and suspended a wide range of economic activities, which led to severe suffering of the general populations in those countries, as well as neighboring third parties. The sanctions regime on Iraq, the first post-Cold War sanctions case, was especially problematic. As the socio-economic situation in Iraq deteriorated, humanitarian concerns with the people of Iraq grew in the international community. The destruction of industrial infrastructure by the coalition forces and the severe economic restrictions imposed by the sanctions resulted in a catastrophic situation in Iraq.

The painful experience in Iraq changed the trend of UN sanctions: comprehensive sanctions were

¹ Matthew Craven, “Humanitarianism and the Quest for Smarter Sanctions,” *European Journal of International Law* 13, no. 1 (February 2002): 43, accessed March 3, 2017, <https://doi.org/10.1093/ejil/13.1>.

² David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO: Lynne Rienner Publishers, 2000).

blamed for a wide range of unintended consequences, especially negative humanitarian impacts on civilians, and the doctrine of targeted or “smart” sanctions has been developed as an alternative means of economic statecraft. It has been argued that comprehensive sanctions entail collective punishment and suffering, inflicting “collateral damage” on those who are not responsible for wrongdoing. In contrast, targeted sanctions are ostensibly designed to minimize unintended consequences by hitting the political elites of a targeted country.³ This new trend has been fit for the increasing use of sanctions as a counterterrorism measure because the traditional country-based approach was not able to capture non-state actors. In recent years, the sanctions debate has focused on protection of designated individuals and procedural matters related to sanctions designation including listing standards, fair trial, and due process.

The targeted sanctions approach, however, does not answer a fundamental question of balancing pain and gain in sanctions regimes. As UN sanctions are deployed in harder cases which require tougher sanctions to change targets’ behavior, the tension between effectiveness and humaneness is being intensified. This paper argues the concept of targeted sanctions fails to explain today’s sanctions practice and is no longer effective to regulate UN sanctions regimes. Instead, it proposes *proportionate sanctions* as an alternative concept. Proportionate sanctions are designed to balance possible gain and pain of sanctions, while they effectively protect core human rights, especially the right to life. This paper also introduces a new typology of exemptions from sanctions which reject a misperception that all exemptions are humanitarian ones. Moreover, I present an analytical framework in which the dynamics of sanctions is understood as a political and rhetorical fight over application of the proportionality principle. The theoretical part is followed by a case study on the North Korean sanctions regime and its unique “livelihood purposes” exemptions. Through the case study, I demonstrate how the idea of proportionate sanctions helps to understand today’s sanctions

³ Mikael Eriksson, *Targeting Peace: Understanding UN and EU Targeted Sanctions* (Farnham, Surrey: Ashgate Publishing, 2011), 3.

practice.

Following this introduction, Chapter 2 critically analyzes the doctrine of targeted sanctions and defines proportionate sanctions and two types of exemptions. Chapter 3 overviews the sanctions regime on North Korea, focusing on Resolution 2270 and 2321, and analyzes “livelihood purposes” exemptions included in the resolutions. Chapter 4 shows the conventional approach fails to understand the North Korean case and reinterprets it through the lens of proportionate sanctions. Finally, the conclusion discusses some implications of the new approach in the current trend of the sanctions debate.

2. Targeted Sanctions and an Alternative Approach

2.1. Targeted Sanctions: Theory and Practice

There are two ways to calibrate the effects of sanctions and mitigate their negative impacts: granting exemptions⁴ and limiting the scope of the sanctions regime. These two elements are not mutually exclusive. In fact, almost all of the current sanctions regimes adopts both of them. It is not a novel idea to put exemptions in UN sanctions. The sanctions imposed on Southern Rhodesia in 1968 already included exemption clauses. For example, Resolution 253 adopted in May 1968 provided that trade embargoes does not target “supplies intended strictly for medical purposes,

⁴ Sometimes *exemptions* are distinguished from *exceptions*: exemptions do not require the approval of the Sanctions Committees, while exceptions require it. See Thomas J. Biersteker, et al., *Targeted Financial Sanctions: A Manual for Design and Implementation* (Providence: Thomas J. Watson Jr. Institute for International Studies, 2001), 20, accessed March 4, 2017, <http://www.watsoninstitute.org/pub/TFS.pdf>; Michael Brzoska, ed., *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the “Bonn-Berlin Process”* (Bonn: Bonn International Center for Conversion, 2001), 55, accessed March 4, 2017, http://www.watsoninstitute.org/tfs/CD/booklet_sanctions.pdf. In practice, however, such distinction has not been widely accepted.

educational equipment and material for use in schools and other educational institutions, publications, news material and, in special humanitarian circumstances, food-stuffs.”⁵ The Iraqi sanction regime, which has been regarded as a typical comprehensive regime with devastating unintended consequences, also included such exemptions. Under comprehensive sanctions, exemptions were intended to calibrate negative effects, admitting that sanctions would inflict hardship on general populations to some extent.

The disastrous humanitarian situation of Iraq in the 1990s, however, showed such exemptions were not effective enough to protect human rights and people’s livelihoods in a targeted country. A study submitted to the UN General Assembly in 1996 stated that humanitarian exemptions tended to be “ambiguous” and were “interpreted arbitrarily and inconsistently,” and that the effect of resource shortages caused by sanctions tended to “fall most heavily on the poor.”⁶ Another report issued by the Committee on Economic, Social and Cultural Rights (CESCR) noted:

4. ... the sanctions regimes established by the Security Council now include humanitarian exemptions designed to permit the flow of essential goods and services destined for humanitarian purposes. It is commonly assumed that these exemptions ensure basic respect for economic, social and cultural rights within the targeted country.

5. However, a number of recent United Nations and other studies which have analysed the impact of sanctions have concluded that these exemptions do not have this effect. Moreover, the exemptions are very limited in scope. They do not address, for example, the question of access to primary education, nor do they provide for repairs to infrastructures which are essential to provide clean water, adequate health care, etc.⁷

⁵ *Security Council Resolution 253 (1968)*, S/RES/253, May 29, 1968, para. 3 (d).

⁶ *Impact of Armed Conflict on Children: Note by the Secretary-General*, A/51/306, August 26, 1996, para. 128.

⁷ *General Comment No. 8 (1997): The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights*, E/C.12/1997/8, December 12, 1997.

The limited effects of exemptions urged states to turn on sanctions which are more targeted in scope. Targeted sanctions often designate particular individuals, business entities, political parties, and non-state actors as targets. Travel bans and asset freezes are typical examples of this category. These sanctions are by definition the most selectively applied. Second, targeted sanctions are applied to specific sectors of a target's economy or a target's government activities. Arms embargoes, commodity bans, and financial sector restrictions are such examples. Third, targeted sanctions can be imposed only on part of a country or a region under the control of rebel groups.⁸ Apart from the third category, which presupposes civil war or internal conflicts in a targeted state, a typical sanctions regime on a state party consists of individual/entity sanctions and sectoral sanctions. Even among sectoral sanctions measures, some are more discriminating and others are less so. For example, arms embargoes are applied only to weapons and related materials and thus have less impacts on civilians, while commodity sanctions ban trades of particular items important to a target's economy. Sanctions imposed on core economic sectors affect a broader range of people and thus are closer to comprehensive sanctions.

Another vital point of targeted sanctions is that senders have to discriminate between "bad guys," that is, those who are responsible for illicit activities, and "good guys," namely, innocent populations, and to refrain from inflicting undue hardship on the latter. This argument is deeply related to a question of how sanctions work. Sanctions, by definition, inflict inconvenience, constraint, and pain on a target, and then the targeted state faces a choice between changing its behavior and enduring the hardship. What has been debatable is the relationship between the pain sanctions inflict and the change of the target's behavior. A traditional understanding of sanctions presumes a *transmission* mechanism: pressure on civilians will translate into pressure on a targeted regime and change its behavior.⁹ In this formula, the interconnection between political gain for

⁸ Eriksson, *Targeting Peace*, 13.

⁹ Arne Tostensen and Beate Bull, "Are Smart Sanctions Feasible?," *World Politics* 54, no. 3 (April 2002): 375,

senders and civilian pain for a target constitutes a continuum. On the one end, sanctions have minimal or negligible humanitarian impacts, while the effect of the sanctions is also very limited: to be effective, they need to inflict more damage on the target. On the other end, sanctions will generate serious humanitarian consequences in a targeted state, while they may change even an insensitive regime's mind.¹⁰ Within the wide range of possible effects and consequences, policy makers have to make a decision on the balance of gain and pain.

This pain-gain approach has been criticized for its naïve assumptions.¹¹ Critics of the conventional understanding of sanctions suggest that political elites who are responsible for illicit activities and civilians should be distinguished in applying sanctions measures. According to this *separation* model, the transmission assumption is invalid and comprehensive sanctions are a “blunt instrument”¹² because a non-discriminative application of sanctions measures is normatively unfavorable and can bring about unintended results.¹³ Under an authoritarian regime, on which

accessed March 3, 2017, <http://www.jstor.org/stable/25054192>; Marc Bossuyt, *The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights: Working Paper Prepared by Mr. Marc Bossuyt*, E/CN.4/Sub.2/2000/33, June 21, 2000, para. 48.

¹⁰ Weiss et al., *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions* (Lanham, MD: Rowman and Littlefield Publishers, 1997), 19-20.

¹¹ Tostensen and Bull, “Are Smart Sanctions Feasible?,” 375-377.

¹² *Supplement to an Agenda for Peace*, A/50/60, January 25, 1995, para. 70.

¹³ The database codebook of the Targeted Sanctions Consortium (TSC), an international research group on targeted sanctions, lists the following possible unintended consequences, both positive and negative: increase in corruption and/or criminality; strengthening of authoritarian rule; strengthening instruments of the security apparatus of senders; rally round the flag effect; increase in human rights violations; harmful effects on neighboring states; strengthening of political factions; enhancing stature of targeted individuals; increase in international regulatory capacity in different issue domains; increase in international enforcement capacity different issue domains; resource diversion; increase in the growth of the state role in the economy; significant

sanctions are often imposed, it is difficult to expect that pressure on ordinary people translates into pressure on the regime because it lacks a democratic process in which the public opinion is formed and communicated. It has also been argued that third-party states harmed by sanctions would have incentives to defy them, which undermines the effectiveness of the sanctions regime.¹⁴ Moreover, less targeted sanctions can arguably have the *rally-round-the-flag effect*, i.e., strengthening the power of elites as they attribute domestic hardship to external pressure. Sanctions can arguably defeat their purpose “by provoking a patriotic response against the international community, symbolized by the United Nations, and by rallying the population behind the leaders whose behaviour the sanctions are intended to modify.”¹⁵ The separation assumption has provided a theoretical ground for the rise of targeted sanctions because it suggests even less invasive measures with less negative impacts can, if carefully designed, change the behavior of targets.

2.2. The Flawed Dichotomy of Comprehensive and Targeted Sanctions

Notwithstanding a universal support for targeted sanctions, this concept has some theoretical and practical shortcomings. First, although there is no agreed definition of targeted sanctions, they often refer to sanctions other than comprehensive ones consisting of total bans on trade and financial transactions. To date, it is generally recognized that the Security Council has imposed comprehensive sanctions in only four cases: South Rhodesia, Iraq, Yugoslavia, and Haiti. In this sense, all UN sanctions except these four regimes are by definition targeted sanctions. The

burden on implementing states; humanitarian consequences; human rights implications for sending states; decline in the credibility and/or legitimacy of UN Security Council; Reduction of local institutional capacity; widespread harmful economic consequences; and others. See Thomas J. Biersteker, Sue E. Eckert, and Marcos Tourinho, eds., *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action* (Cambridge: Cambridge University Press, 2016), 378-380.

¹⁴ Bossuyt, *The Adverse Consequences*, para. 57.

¹⁵ *Supplement to an Agenda for Peace*, para. 70.

dichotomy of comprehensive and targeted sanctions causes confusion in understanding UN sanctions practice because different aspects of sanctions have been discussed from different perspectives under the banner of “targeted sanctions.” When it comes to targets, some sanctions are imposed on individuals, while others target a state as a whole. As for scope and functions, some sanctions prevent designated individuals from entering other countries, while others hinder trade of a wide range of goods and commodities, from statues to diamonds. Ironically, such a sweeping definition of targeted sanctions seems to be growing skepticism about them. Daniel W. Drezner argues, “Smart sanctions are less promising in coercing the target government into making concessions.”¹⁶ The latest empirical study on targeted sanctions found an “overall low rate of effectiveness of targeted sanctions.”¹⁷ Some critics further argue that it is not clear “whether the move toward targeted sanctions is due to a view that they work as or more effectively than general economic sanctions or simply a response to concerns about the humanitarian impact of sanctions when there is no certainty that they work at all.”¹⁸ These negative conclusions can be partly attributed to the ambiguous scope of targeted sanctions because it is impossible to discuss the whole range of measures without any theoretical criteria.

Second, in terms of negative consequences, the distinction between comprehensive and targeted sanctions is a relative one. Comprehensive sanctions are not necessarily inhumane if they grant sufficient exemptions, while targeted sanctions can have as negative impacts as comprehensive sanctions do. For instance, commodity sanctions which prohibit a target from exporting an item

¹⁶ Daniel W. Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice,” *International Studies Review* 13, no. 1 (2011): 102, accessed March 4, 2017, <https://doi.org/10.1111/j.1468-2486.2010.01001.x>.

¹⁷ Biersteker, Eckert, and Tourinho, *Targeted Sanctions*, 266.

¹⁸ Simon Chesterman and Beatrice Pouligny, “Are Sanctions Meant to Work? The Politics of Creating and Implementing Sanctions through the United Nations,” *Global Governance* 9, no. 4 (October–December 2003): 506, accessed March 4, 2017, <http://www.jstor.org/stable/27800499>.

constituting its main source of revenue would seriously damage the target's economy and inflict hardship on its civilian population even if other economic sectors are intact. On the other hand, comprehensive sanctions with ample exemptions for essential goods and financial resources might successfully manage unintended consequences.

Third, the assumption of separation between “bad guys” and “good guys,” on which the doctrine of targeted sanctions is based, is at least debatable in practice. Sectoral sanctions inevitably disrupt legitimate economic transactions by blocking flows of certain goods or services. Even if sanctions target particular individuals or entities, innocent people cannot be left unaffected. For example, if a target's leadership are deprived of their economic resources by sanctions such as asset freezes, they are likely to compensate their loss at the expense of the citizens by exercising their arbitrary power in the country. Targeted sanctions might not directly violate people's rights, but they end up depriving them of economic or other resources. Advocates of targeted sanctions might argue they are aware of such *unintended* consequences of sanctions, but the burden shift by a target's leadership can be logically expected and thus is an *intended* consequence of sanctions. In other words, any sanction on a target's elites has direct or indirect impacts on innocent people's livelihood and enjoyment of human rights. Moreover, the rally-round-the-flag effect, which advocates of targeted sanctions often cite to deny the transmission model, is difficult to empirically verify unless the effects of sanctions can be analyzed independently of other factors. Even if such an effect were observed, it would not necessarily mean sanctions are ineffective. What matters is not whether sanctions help a targeted regime to consolidate its domestic power but whether sanctions change the behavior of the target.

In summary, the dichotomy of comprehensive and targeted sanctions is hardly valid in practice, and the theoretical basis on which the distinction relies is fragile. The concept of targeted sanctions only requires senders to avoid imposing comprehensive sanctions and to minimize collateral damage, while it does not provide any standard on how much pain is permissible in certain

situations because civilian hardship is, by definition, one of the unintended consequences of sanctions. Advocates of the concept are rights in that greater pain does not always lead to greater gain, but it does not mean gain can be obtained without pain. Since pressure on elites inherently inflict harm on civilians, there is an inevitable trade-off of pain and gain.

Nevertheless, these flaws of the sanctions debate have been almost ignored over years for several reasons. First, the memory of the disastrous consequences of harsh sanctions in the 1990s was so vivid that it might have been difficult to face up to the inherent trade-off between political gain and civilian pain.¹⁹ The comprehensive sanctions cases were almost psychological trauma for the international community, which compelled it to focus on eliminating any harmful element in sanctions rather than balancing conflicting factors. Second, the Security Council has developed UN sanctions as a counter-terrorism measure which targets individual terrorists and related entities. This new trend brought about several policy challenges involving more procedural aspects of sanctions such as delisting innocent people and protecting human rights of listed individuals, which divert attention from more fundamental problems. Third, current sanctions regimes have not inflicted serious humanitarian hardship because they are “targeted” enough, i.e. primarily imposed on particular individuals and entities. As comprehensive sanctions became an unrealistic option for the Security Council, concern for serious side effects has also waned.

¹⁹ Although most of the literature on targeted sanctions mention the Iraq case as a reference point, one should keep in mind the uniqueness of the case. First, Iraq is one of the main oil exporters and thus had no difficulty in obtaining the strategically important resource even under comprehensive sanctions. Second, the Iraq sanctions were imposed after a military measure was taken. Typically, sanctions are expected to be imposed before military enforcement. Third, the objective of the Iraq sanctions regime changed over time, which renders a consistent analysis difficult. As Drezner points out, “Iraq was an extreme outlier on multiple dimensions” and “is a dangerous case for inductive generalization.” Drezner, “Sanctions Sometimes Smart,” 104-105.

2.3. Proportionate Sanctions and Two Types of Exemptions

Although the Security Council has a wide discretion in exercising its Chapter VII powers, including the authority to impose sanctions, most scholars agree that there are certain legal constraints.²⁰ Advocates of targeted sanctions have rightly argued that the Security Council must respect human rights in imposing sanctions, but this requirement comes not from the concept of targeted sanctions but from the nature and limits of sanctions as an enforcement measure under the UN Charter. First of all, it is widely accepted that the Security Council is bound by *jus cogens*.²¹ In addition, Article 24 (2) of the UN Charter provides that the Security Council must act in accordance with the purposes and principles of the United Nations. These interpretations strongly suggest the Security Council should respect basic human rights norms in imposing sanctions. The problem is to what extent human rights must be preserved. A difficulty in applying international human rights law to sanctions is that “human rights law may demand too much” because any sanctions regime would in some way, directly or indirectly, undermine human rights.²² If no derogation from human rights norms were permitted, states would find it unrealistic to comply

²⁰ August Reinisch, “Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions,” *The American Journal of International Law* 95, no. 4 (2001): 853–863, accessed March 4, 2017, www.jstor.org/stable/2674632; Michael J. Matheson, *Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues after the Cold War* (Washington, D.C.: United States Institute of Peace Press, 2006), 94-96; Vera Gowlland-Debbas, ed., *United Nations Sanctions and International Law* (Hague: Kluwer Law International, 2001), 13-14; Bruno Simma et al., eds., *The Charter of the United Nations: A Commentary*, 3rd ed. (Oxford: Oxford University Press, 2012), 1:809-811; Erika de Wet, *The Chapter VII Powers of the United Nations Security Council* (Portland, OR: Hart Publishing, 2004), 182-187.

²¹ Simma et al., *Commentary*, 1:818.

²² Ali Z. Marossi and Marisa R. Bassett, eds., *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences* (Hague: T.M.C. Asser Press, 2015), 99-100, accessed March 4, 2017, <http://link.springer.com/book/10.1007%2F978-94-6265-051-0>.

with the norms in imposing sanctions. Since sanctions inevitably inflict some harm on civilians and violate their human rights to some extent, it should be examined how much harm is justified.

The starting point to articulate the limit of sanctions would be the right to life, which is “the supreme right from which no derogation is permitted even in time of public emergency.”²³ The right to life, if interpreted broadly, can include a variety of elements to ensure survival of human beings such as water, food, and medicine. Therefore, for example, a total blockade which denies any access to essential goods would be illegal because it threatens the right to life in a broad sense. Sanctions must be designed not to violate the right to life of the most vulnerable people in a targeted country.

A more controversial issue is which human rights should be protected beyond the minimum threshold of the right to life. If sanctions are imposed on particular individuals, the question would directly affect their enjoyment of human rights because each measure by definition hinders part of their rights. For example, if the Security Council imposes a travel ban on a target’s government officials, exemptions for travels for medical purposes are necessary to ensure their right to health. On the other hand, in the case of sectoral sanctions imposed on a whole country, listing specific human rights is less relevant because a causal relationship between particular measures and human rights is very remote. If a ban on timber exports is imposed, it is not clear to what extent the measure will undermine people’s enjoyment of the right to health or education. It depends on a wide range of factors including the country’s industrial structure, its economic trends, and its people’s living standards. Also, the level of damage the sanctions cause would vary from person to person. Therefore, it is realistic to take a holistic approach rather than to make a long list of specific human rights which should be protected.

²³ *Human Rights Committee General Comment No.6: The Right to Life (Article 6)*, Thirteenth session (1981), HRI/GEN/1/Rev.6, 127.

If the right to life in a broad sense sets a minimum standard of human rights protection under sanctions, what other legal principles are available to determine the design of sanctions? Some lawyers suggest international humanitarian law provides several legal principles which economic sanctions regimes should follow. Technically speaking, international humanitarian law only applies to armed conflicts, but it has been argued that the basic principles of international humanitarian law such as necessity, distinction, and proportionality can be applied, by analogy with war, to sanctions outside armed conflicts.²⁴ The principle of necessity demands sanctions measures should be limited to those which are necessary to achieve the objectives of the sanctions. At the same time, this principle allows sanctions to be strengthened if they are not effective to achieve their objectives.²⁵ It also requires senders to choose the least harmful measure among possible options.²⁶ The principle of distinction prohibits sanctions regimes from targeting civilian populations. Yet an absolute distinction between those responsible for misconduct and those not responsible is, in practice, impossible in sanctions as well as in war. Therefore, this principle should be understood to call for “all *feasible* precautions” so as to spare civilians as much as possible.²⁷ The principle of proportionality, in the context of sanctions, obliges senders to “compare the likely results of a sanctions policy with the anticipated advantage, and in comparing

²⁴ W. Michael Reisman, "Sanctions and International Law," *Intercultural Human Rights Law Review* 4 (2009): 11, accessed March 4, 2017, https://heinonline.org/HOL/Page?handle=hein.journals/ichuman4&start_page=9&collection=journals&id=22; Marossi and Bassett, *Economic Sanctions*, 97-103, 114-116; W. Michael Reisman and Douglas L. Stevick, "The Applicability of International Law Standards to United Nations Economic Sanctions Programmes," *European Journal of International Law* 9 (1998): 94-95, accessed March 4, 2017, <http://www.ejil.org/pdfs/9/1/1485.pdf>.

²⁵ Mary Ellen O'Connell, "Debating the Law of Sanctions," *European Journal of International Law* 13, no. 1 (2002): 78, accessed February 1, 2017, <http://www.ejil.org/pdfs/13/1/473.pdf>.

²⁶ Reisman and Stevick, "International Law Standards," 130.

²⁷ Marossi and Bassett, *Economic Sanctions*, 120.

those two data points, ensure that the harm to civilians is not disproportionate.”²⁸ Therefore, “[T]he principle of proportionality under international law caps the quanta of damage that the necessity inquiry suggests,” and “even if necessary, a sanctions programme cannot exceed the somewhat broadly construed bounds of proportionality.”²⁹ The applicability of this principle is supported by various sources including the UN Charter and the law of countermeasures.³⁰

Whether consciously or not, many scholars and policy makers have realized the importance of the proportionality approach. The 2005 World Summit Outcome expressed a resolution to “ensure that sanctions are implemented in ways that balance effectiveness to achieve the desired results against the possible adverse consequences, including socioeconomic and humanitarian consequences, for populations and third States.”³¹ Some scholars assert “when political gain is evident, civilian pain seems tolerable and justifiable.”³² It is also argued that unintended consequences “are an inevitable element of sanctions that should be considered in the cost-benefit analysis that violates (or invalidates) sanctions as s the policy instrument of choice in specific situations.”³³ A report by the UN Secretary-General vividly addressed the fundamental paradox of sanctions:

The international community should be under no illusion: these humanitarian and human rights policy goals cannot easily be reconciled with those of a sanctions regime. It cannot be too strongly emphasized that sanctions are a tool of enforcement and, like other methods of enforcement, they will do harm. This should be borne in mind when the decision to impose them is taken, and when

²⁸ Ibid., 121.

²⁹ Reisman and Stevick, “International Law Standards,” 131.

³⁰ Simma et al., *Commentary*, 2:1260; Vera Gowlland-Debbas, *United Nations Sanctions*, 72-73; Kenneth Manusama, *The United Nations Security Council in the Post-Cold War Era: Applying the Principle of Legality* (Leiden: Martinus Nijhoff, 2006), 122-123.

³¹ *2005 World Summit Outcome*, A/RES/60/1, October 24, 2005, para. 106.

³² Weiss et al., *Political Gain and Civilian Pain*, 233.

³³ Biersteker, Eckert, and Tourinho, *Targeted Sanctions*, 270.

the results are subsequently evaluated.³⁴

Therefore, an alternative to the targeted sanctions approach consists of two guiding principles. The main principle is the proportionality principle. Sanctions should be designed and implemented taking into account their objectives, purposes, and negative impacts on civilians. Objectives and purposes are sometimes confused. In this context, however, a purpose is defined as a way in which sanctions intend to influence targets and distinguished from an objective, i.e., a policy goal senders want to achieve.³⁵ Purposes of sanctions can be categorized into three types: *coercing*, *constraining* and *signaling (stigmatizing)*.³⁶ Coercion is to force a target to change their behavior. Constraining sanctions are designed to hinder a target from engaging in specific activity by, for example, denying access to essential resources or increasing costs of action. Sanctions are also imposed to signal a target or other actors about the violations of international norms.³⁷ Thus, sanctions can be imposed for different purposes to achieve the same objective.

The meaning of proportionality is twofold. On the one hand, sanctions must be strong enough to achieve their goals. In this sense, the proportionality principle is deeply related to the necessity

³⁴ *Report of the Secretary-General on the work of the Organization*, A/53/1, August 27, 1998, para. 64.

³⁵ See Biersteker, Eckert, and Tourinho, *Targeted Sanctions*, 39.

³⁶ Francesco Giumelli, *Coercing, Constraining and Signalling: Explaining UN and EU Sanctions after the Cold War* (Colchester: ECPR Press, 2011), 32; Thomas J. Biersteker, Sue E. Eckert, and Marcos Tourinho, *Designing United Nations Targeted Sanctions: Initial Findings of the Targeted Sanctions Consortium (TSC)* (Targeted Sanctions Consortium, August 2012), 9, accessed March 3, 2017, http://www.watsoninstitute.org/pub/Designing_UN_Targeted_Sanctions_FINAL.pdf.

³⁷ In terms of the mechanisms through which each sanctions measure works, coercing sanctions are to change the target's policy objective; constraining sanctions impair the operational capacity of the target; and signaling sanctions highlight the absence of broad international social acceptability of the target's policy. Biersteker, Eckert, and Tourinho, *Targeted Sanctions*, 22-23.

principle. On the other hand, states have to take appropriate measures to mitigate negative impacts of sanctions. These two requirements are not necessarily competing, but there are some tensions between them. In short, the proportionality principle requires an appropriate balance of pain and gain.

The other principle is respect for human rights. Sanctions should distinguish core human rights to which a proportionality test is not applied from other derogable rights and give the former an absolute protection. In the case of individual/entity sanctions, these rights can be specifically articulated in accordance with human rights norms, while compiling such a list of human rights is beyond the scope of this paper. As for other types of sanctions including sectoral bans, the minimum standard is the right to life, while it should be broadly interpreted so as to include a variety of elements which are necessary to ensure people's survival and dignity.

I would call sanctions following the two guiding principles *proportionate sanctions*. The concept of proportionate sanctions overcomes the dichotomy of comprehensive and targeted sanctions and provides a theoretical basis on which sanctions are designed, implemented, and evaluated in a consistent manner. It recognizes some sanctions inherently inflict hardship on civilian populations and demands such pain be appropriately calibrated. It does not exclude the applicability of "comprehensive sanctions" *per se* if they are proportionate and have an effective mechanism to protect core human rights.

Under proportionate sanctions regimes, exemptions play a greater role because less targeted measures can have more devastating impacts on civilians. The concept of proportionate sanctions implies two categories of exemptions from sanctions measures: *humanitarian exemptions* to protect core human rights, especially the right to life, and *calibrating exemptions* to fine-tune negative effects of sanctions in accordance with the proportionality principle. It should be noted that exemptions arguably for humanitarian purposes are not necessarily humanitarian exemptions

in this sense. In fact, the conventional understanding assumes all exemptions are for humanitarian purposes and thus fails to recognize different implications of each exemption.

Today's UN sanctions "invariably include a possibility to grant exemptions."³⁸ Exemptions become ineffective when they are not properly executed by member states. On the one hand, in order to ensure exemptions are made available for those who need them, broader exemptions are desirable and the granting procedure should be as simple as possible. On the other hand, states which do not prefer rigorous sanctions would exploit exemptions to mitigate negative impacts on a target. In other words, exemptions can be used as a loophole to undermine the effectiveness of sanctions by a variety of actors. In this case, exemptions should be narrowly applied and rigorous administration of exemption procedure is required. Therefore, sanctions design needs to balance the two conflicting dimensions of exemptions.

In the trend toward targeted sanctions, however, the primary concern of the international community has been the effective execution of exemptions, and exemptions are generally regarded as for humanitarian purposes. Actually, typical exemption clauses in today's sanctions focus on the protection of core human rights. One example is an exemption for the humanitarian needs of targeted individuals. Most of the current sanctions regimes designate specific individuals or entities as targets. In such cases, the Security Council often grant exemptions for those individuals to get an access to certain goods or services in response to their humanitarian or other needs.³⁹

³⁸ Thomas J. Biersteker and Sue E. Eckert, *Strengthening Targeted Sanctions Through Fair and Clear Procedures* (Providence: Thomas J. Watson Jr. Institute for International Studies, 2006), 10, accessed March 5, 2017, http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf.

³⁹ For example, Resolution 2140, which established a sanctions regime on Yemen, provides that travel ban shall not apply: (1) where the Committee determines on a case-by-case basis that such travel is justified on the

Another type of current exemptions is an exemption for humanitarian actors such as international organizations or NGOs engaging in humanitarian action.⁴⁰ The risk of the exploitation of exemptions has been almost ignored in recent discussion over exemptions. Arne Tostensen and Beate Bull are well aware of the risk of misuse and attribute the ignorance of it to “wishful thinking:”

When considering humanitarian exemptions, one cannot overlook that they are a form of sanctions “leakage” and thus undermine the effectiveness of a sanctions regime; implementing a humanitarian program in a sanctions environment represents a fundamental paradox. The near unanimous claim that humanitarian exemptions do not undermine the effectiveness of sanctions regimes is questionable—and ultimately a matter that can be ascertained only through empirical investigation. It may be the reflection of wishful thinking or the desire to maintain the legitimacy of sanctions as an instrument of peaceful coercion in international relations that leads advocates to view the reduction of damage resulting from humanitarian exemptions as not weakening what is a punitive instrument.⁴¹

grounds of humanitarian need, including religious obligation; (2) where entry or transit is necessary for the fulfilment of a judicial process; (3) where the Committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Yemen; and (4) where a State determines on a case-by-case basis that such entry or transit is required to advance peace and stability in Yemen and the States subsequently notifies the Committee within forty-eight hours after making such a determination. *Security Council Resolution 2140 (2014)*, S/RES/2140, February 26, 2014, para. 16.

⁴⁰ Resolution 1916 on Somalia and Eritrea provides that asset freeze shall not apply to “the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners.” *Security Council Resolution 1916 (2010)*, S/RES/1916, March 19, 2010, para. 5.

⁴¹ Tostensen and Bull, “Are Smart Sanctions Feasible?,” 382.

The distinction of humanitarian and calibrating exemptions makes it possible to examine what political implications different types of exemptions can have. Generally speaking, the interpretation and implementation of calibrating exemptions are more prone to politicization because the proportionality principle does not provide a decisive answer on the balance of pain and gain, while humanitarian exemptions are relatively less controversial in application because they have only a very limited aim. As there is only a fine line between human rights which cannot be violated under any sanctions regime and those which can be limited, the two types of exemptions could sometimes overlap and the judgement might be debatable. Still, such distinction is useful because most scholars think all exemptions are for humanitarian purposes and fail to recognize different implications of each exemption clause.

2.4. UN Sanctions as a Political Process: the Sanctions Cycle

All sanctions are fundamentally political.⁴² Those imposed by the United Nations are “the result of a political bargaining process among the very diverse and conflicting power interests represented in the Security Council.”⁴³ This political aspect of sanctions is poorly understood in the conventional sanctions debate, and normative constraints are often discussed without examining a political process in which sanctions are operated in reality. Mere advocacy of the proportionality principle as a legal concept is not effective in regulating sanctions “because the appreciation of the means-ends relation is highly subjective, and also because the Council enjoys a broad margin of appreciation (or discretion) in this respect.”⁴⁴ In other words, it is impossible to make sanctions proportionate without taking into account political dynamics among states because a proportionality test is actually a policy judgement based on a variety of political factors rather

⁴² *Compendium of the High-level Review of United Nations Sanctions*, A/69/941-S/2015/432, June 12, 2015, 18.

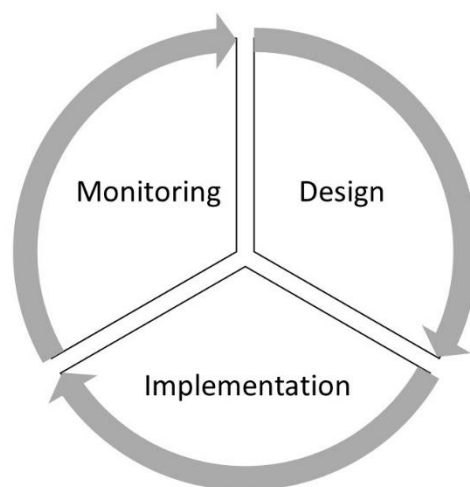
⁴³ Tostensen and Bull, “Are Smart Sanctions Feasible?,” 378.

⁴⁴ Simma et al., *Commentary*, 1:820.

than a legal one.

The concept of proportionate sanctions provides an analytical framework of UN sanctions by focusing on *who* applies a proportionality test at different stages of the political process. For the sake of analysis, it would be useful to divide the process of UN sanctions into three phases: *design*, *implementation*, and *monitoring*. The three stages constitute a circular relationship or the *sanctions cycle*. There are three categories of actors eligible to apply a proportionality test. First, the Security Council determines the whole design of sanctions through a drafting process. Second, sanctions committees often apply a proportionality test in granting exemptions and advising states. Third, each member state has discretion in executing sanctions in their jurisdictions. As explained below, the Security Council applies a proportionality test in the design phase, while sanctions committees and member states do so in the implementation phase. The validity of proportionality is examined in the monitoring phase. In this stage, each actor is held accountable for their decision on proportionality. The evaluation made in the final phase affects debates in the design phase or the implementation phase of a new cycle.

Figure 2-1 Sanctions Cycle



Several factors are considered in applying a proportionality test. First, the more important the objective of sanctions is, the greater pain states are willing to inflict on a target. Second, if they have a close relationship with a targeted country, they are not likely to put strong pressure on it. On the contrary, if they regard a target as an adversary, they are happy to choke it up. Third, if they are sensitive to human rights norms, they are not willing to harm innocent people. In short, states consider a desirable balance of pain and gain based on a comprehensive calculation of their national interests. Each state applies a proportionality within its margin of appreciation and execute sanctions according to its decision. If it deviates from the range of its discretion, it is considered to fail to comply with a resolution. There is only a fine line between discretion and non-compliance, and the line is inter-subjectively determined through the interaction of relevant actors. Even outside the range of discretion, “compliance is not an on-off phenomenon,” and “there is a considerable zone within which behavior is accepted as adequately conforming.”⁴⁵ If the Security Council imposed a coal ban without any exemption, even one kilogram of coal imports from a target would violate the resolution. Yet one million tons of coal imports would be absolutely unacceptable, while one kilogram would be an ignorable violation.

Design

In the design phase, the Security Council identifies a threat to international peace and security, and states open negotiations to draft a resolution to impose sanctions. The drafting process of Security Council resolutions is criticized for its lack of transparency. States often agree to vague wording in resolutions because they seek to obtain the maximum support and resolutions are drafted in a time sensitive atmosphere.⁴⁶ Language compromises and constructive ambiguity conceal different

⁴⁵ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, MA: Harvard University Press, 1996), 17. Although they focus on treaties, their observation is applicable to Security Council resolutions.

⁴⁶ Michael P. Scharf and Joshua L. Dorosin, "Interpreting UN Sanctions: The Rulings and Role of the

goals and purposes and build internal contradictions in a resolution.⁴⁷ Thus, resolutions contain “a myriad of open ended and undefined terms.”⁴⁸ Since veto power gives the P-5 countries disproportionate leverage, the drafting process involves tougher negotiations when some of the P-5 have conflicting interests in sanctions.

In this phase, the Security Council applies a proportionality test as a collective body. It balances pain and gain by combining different sanctions and incorporates the result of its calculation into the text of a resolution. The negotiation process is almost a black box, and states, both members and non-members of the Council, try to insert preferable terms into a draft. They determine the objectives and purposes of sanctions and choose specific measures. At the same time, they discuss possible negative consequences and balance possible gain and pain. If some sanctions measures are expected to violate core human rights, humanitarian exemptions from those measures are granted. Similarly, if sanctions are expected to inflict excessive damage on targets, calibrating exemptions are included in resolutions to fine-tune their effect. The result of the negotiations is adopted as a resolution.

Implementation

Adopted sanctions resolutions need to be fully and faithfully implemented by states.⁴⁹ They are not self-executing and thus have to be translated into national legal systems. Hence, the prime

Yugoslavia Sanctions Committee," *Brooklyn Journal of International Law* 19, no. 3 (1993): 812-813, accessed March 5, 2017,

http://heinonline.org/HOL/Page?handle=hein.journals/bjil19&g_sent=1&collection=journals&id=779.

⁴⁷ Biersteker, Eckert, and Tourinho, *Targeted Sanctions*, 269.

⁴⁸ Scharf and Dorosin, “Interpreting UN Sanctions,” 812.

⁴⁹ Traditionally, states have the prime responsibility to implementation sanctions, but the range of sanctions implementation actors is expanding. See *Compendium of the High-level Review*, 11.

responsibility to interpret sanctions resolutions and enforce them is left to individual states.⁵⁰ In this sense, they enjoy an inherent margin of appreciation in applying a proportionality test to each sanctions regime. Since the range of this margin is mostly dependent on the wording of resolutions, one can expect those which do not prefer tougher sanctions pursue ambiguous terms in the design phase. Moreover, the Security Council often gives states more discretion by authorizing them to grant exemptions from sanctions.

The discretion of each state is, however, not unchecked. UN sanctions often expect some interactions between individual states and the Security Council, and sanctions committees play an important role as “the primary interface between the UN sanctions system and Member States.”⁵¹ Sanctions committees are established as subsidiary organs of the Security Council and consist of the same members of the Council.⁵² They make decisions by consensus, which means each member has an effective veto and can reject any adverse decision.⁵³ They discharge a variety of tasks such as advising the Security Council on the effectiveness of sanctions, advising states on the scope of their obligations, investigating and reporting to the Security Council violations of sanctions; and administering exemptions.⁵⁴ In short, in the implementation process, both member states and sanctions committees have the authority to apply a proportionality test, and the distribution of the authority depends on the design of resolutions

⁵⁰ See Vera Gowlland-Debbas, ed. *National Implementation of United Nations Sanctions: A Comparative Study* (Leiden: Martinus Nijhoff Publishers, 2004), 51-52.

⁵¹ *Compendium of the High-level Review*, 20.

⁵² The sanctions regimes established by Resolution 1054 on Sudan and by Resolution 1701 on Lebanon did not set up sanctions committees.

⁵³ Scharf and Dorosin, “Interpreting UN Sanctions,” 813.

⁵⁴ Gowlland-Debbas, *United Nations Sanctions*, 144.

Some resolutions authorize sanctions committees to approve exemptions. In this case, sanctions committees function as an authoritative interpreter of sanctions resolutions.⁵⁵ Since sanctions committees make decisions by consensus, however, a single or a few member states can refuse to grant exemptions. Delayed decision-making in sanctions committees has been a source of complaints. To streamline the process, the Security Council has innovated new practices such as the no-objection procedure, under which an exemption request is circulated to the members and approved if no state make objection to such application.⁵⁶ Other resolutions, as mentioned above, authorize states to grant exemptions in accordance with the conditions prescribed in the resolutions but often oblige them to notify to sanctions committees. In this case, misuse of exemptions is more likely because each state interprets exemption clauses on their own, but exemptions can be approved in a timely manner.

Monitoring

Sanctions monitoring is important to maintain both the effectiveness and humaneness of sanctions. In the monitoring phase, sanctions regimes are reviewed and evaluated in terms of proportionality, and actors are held accountable for their interpretation and implementation. The United Nations has established several mechanisms to monitor the implementation of sanctions. Sanctions resolutions often require states to report on measures they have taken to implement the sanctions. Sanctions committees are in charge of monitoring states' implementation and investigating violations. Recently, panels of experts have been established to conduct further investigation of sanctions implementation.

Beyond these formal institutions, however, there is an informal monitoring mechanism consisting of relevant actors. Because of the decentralized structure of the international community, such

⁵⁵ Scharf and Dorosin, "Interpreting UN Sanctions," 825.

⁵⁶ Gowlland-Debbas, *United Nations Sanctions*, 150.

evaluation is made inter-subjectively, and no single actor has an absolute power to determine the legality and legitimacy of sanctions. Marc Bossuyt contended in his famous report on humanitarian consequences of sanctions that “[T]he reaction of Governments, intergovernmental bodies, non-governmental organizations, scholars and, of course, the public must be taken into account in evaluating sanctions regimes.”⁵⁷ In this informal mechanism, each actor selectively uses a variety of discourses to justify its application of the proportionality principle.

Those trying to dilute sanctions appeal to the international community for more generous treatment, while pro-sanctions actors deny such concern and accuse the opponents’ violations of resolutions. The most powerful rhetoric against sanctions is blaming them for serious humanitarian consequences and human rights violations. In the case of Iraq, strong criticism against the cruelty of comprehensive sanctions led to the trend toward targeted sanctions. Concern for negative impacts on legitimate economic activities is also used as an argument against sanctions since the concept of targeted sanctions distinguishes civilians from those responsible for wrongful conduct. Targeted states often try to draw attention to people’s sufferings and attribute all the sufferings to the sanctions imposed on themselves. Thus, “[I]mages of this suffering can be a potent tool of foreign policy.”⁵⁸ In order to compete with such propaganda, on the other hand, senders of robust sanctions need to deploy “coordinate propagandic programmes that justify the continuation of sanctions to politically relevant strata whose support is necessary for the sanctions regime.”⁵⁹

⁵⁷ Bossuyt, *The Adverse Consequences*, para. 47.

⁵⁸ Gowlland-Debbas, *United Nations Sanctions*, 209. A statement by the Foreign Minister of Iran, which was under less powerful UN sanctions at the time than those on North Korea, shows an all-out version of such counterarguments. *Statement by H. E. Dr. Hassan Rouhani President of the Islamic Republic of Iran at the Sixty-eight Session of the United Nations General Assembly*, General Assembly of the United Nations, September 24, 2013, accessed March 10, 2017, https://gadebate.un.org/sites/default/files/gastatements/68/IR_en.pdf.

⁵⁹ Reisman and Stevick, “International Law Standards,” 139.

3. The North Korean Sanctions Regime and Exemption Clauses

3.1. China's Strategy and the Evolution of UN Sanctions on North Korea

The establishment of the sanctions regime on North Korea goes back to 2006. North Korea launched several ballistic missiles into the Sea of Japan in July 2006. The UN Security Council condemned this provocation and adopted Resolution 1695, which required all Member states to prevent missiles and missile-related technology from being transferred to and from North Korea.⁶⁰ However, this resolution did not mention Chapter VII of the UN Charter and thus was not regarded as a sanctions resolution. The Security Council first imposed sanctions on North Korea when it adopted Resolution 1718 following its first nuclear test in October 2006. It mentioned Chapter VII and imposed several types of sanctions including an arms and related materials embargo, a travel ban, a luxury goods ban, and an assets freeze.⁶¹ The sanctions regime has been reinforced on several occasions as North Korea repeated provocative acts. Resolution 1874 adopted right after North Korea's second nuclear test expanded the arms embargo to all arms and related materials except the import of small arms and light weapons.⁶² Resolution 2087 adopted in January 2013 further tightened sanctions.⁶³ After North Korea carried out its third nuclear test, the Security Council adopted Resolution 2094 and imposed targeted financial sanctions and expands the list of prohibited items.⁶⁴

The North Korean sanctions regime is unique in several aspects. First, the targeted state is surrounded by superpowers. Most of the ongoing and terminated UN sanctions have been imposed on countries geographically remote from the power centers of the world. North Korea is, however,

⁶⁰ *Security Council Resolution 1695 (2006)*, S/RES/1695, July 15, 2006, paras. 3, 4.

⁶¹ *Security Council Resolution 1718 (2006)*, S/RES/1718, October 14, 2006.

⁶² *Security Council Resolution 1874 (2009)*, S/RES/1874, June 12, 2009.

⁶³ *Security Council Resolution 2087 (2013)*, S/RES/2087, January 22, 2013.

⁶⁴ *Security Council Resolution 2094 (2013)*, S/RES/2094, March 7, 2013.

next to the world's most populated country. It is also surrounded by Russia and, across the sea, Japan. Second, China, one of the superpowers surrounding the target, has a unique relationship with the target's regime and effectively controls its economic activity. Third, the objective of the sanctions regime is denuclearization of a target which has already acquired nuclear weapons. The Security Council established three sanctions regimes with the aim of promoting non-proliferation: Iraq, Iran, and North Korea. The original concern with Iraq was not about nuclear weapons. Iran has officially denied the will to pursue nuclear arsenals, while North Korea explicitly declared its status as a nuclear-weapon state. The strategic implications of nuclear weapons and the unique geopolitical environment render the sanctions regime a "big case" where sanctions are highly politicized and superpowers make an all-out effort to pursue their goals. It provides an interesting case study to test the validity of the proportionality approach because it exhibits political dimensions of sanctions which have been ignored in the current sanctions debate.

Among the P-5 and North Korea's neighbors, China has been the most reluctant to use and reinforce sanctions to pressure North Korea. China and North Korea have kept a close relationship traditionally described as "lips and teeth." China has longstanding ties with the Korean Peninsula and intervened in the Korean War. In 1961, the two countries signed the Mutual Aid and Cooperation Friendship Treaty and entered into a formal alliance relationship. The traditional relations have experienced a significant change of environment when communism failed and China normalized relations with South Korea in 1992, but nevertheless Beijing has maintained a unique relationship with Pyongyang both in politics and economy.

Beijing's rationale for covering North Korea is a fear for the regime collapse in North Korea, which would generate a large number of refugees crossing the border into northeastern China. China is also afraid of a unified Korea under the control of South Korea and the United States.⁶⁵ North

⁶⁵ Thomas Plant and Ben Rhode, "China, North Korea and the Spread of Nuclear Weapons," *Survival* 55, no.

Korea has long functioned as a strategic buffer against the western powers, and China has believed that the loss of the Korean Peninsula would pose an imminent threat to its sovereign integrity. Therefore, the most urgent goal of the Chinese policy on the Korean Peninsula is to stabilize the region in any way. Of course, China has consistently supported the goal of denuclearization of the Korean Peninsula,⁶⁶ but that issue does not take precedence over the stability of the region. The remarks by Chinese Ambassador to the United Nations Liu Jieyi summarizes the Chinese view:

China consistently stands for the denuclearization of the Korean peninsula and insists that it be kept peaceful and stable and that solutions be sought through dialogue and consultation. We shall not allow the peninsula to be torn asunder or riven with turmoil in any circumstances. Our position is in line with the common interests of the international community and all parties, and should be the common goal of everyone's efforts. ... The top priority for the moment is to resume dialogue and negotiations among the parties as soon as possible, reopen the Six-Party Talks, jointly safeguard the process of denuclearizing the peninsula and make a genuine effort to ensure stability and peace on the peninsula. China will push for dialogue and consultation so as to resolve the relevant issues on the peninsula within the framework of the Six-Party Talks, in order to make a positive and constructive contribution to stability and peace on the peninsula at an early date.⁶⁷

From an economic point of view, North Korea is heavily dependent on China. China is North Korea's largest trading partner, with a trade volume accounting for about 90 percent of North Korea's total foreign trade.⁶⁸ Russia, the second largest trading partner, only accounted for 1.35

2 (2013): 61-62, accessed March 5, 2017. <http://dx.doi.org/10.1080/00396338.2013.784467>.

⁶⁶ Some experts doubt China's commitment to this goal. See Joshua Stanton, "UN report finds extensive evidence that China hosts N. Korea's proliferation networks" One Free Korea, March 15, 2017, accessed March 18, 2017, <http://freekorea.us/2017/03/15/un-report-finds-extensive-evidence-that-china-hosts-n-koreas-proliferation-networks/>.

⁶⁷ *Security Council 7830th meeting*, S/PV.7830, December 9, 2016, 2.

⁶⁸ Note that statistics by the South Korean government or entities often exclude inter-Korean trade from the definition of North Korean trade.

percent in 2015.⁶⁹ For China, trade and investment sustain the North Korean regime and would encourage it to open its economy and to follow the path of the Chinese economic miracle.⁷⁰ For North Korea, trade with China is almost the only channel to satisfy its trade needs because of its geographical isolation and unilateral sanctions by major economies such as the United States, EU, and Japan. Interestingly, South Korea had been one of the major “trading partners” for North Korea despite the continuing tension between the two Koreas. Inter-Korean trade hit a record high in 2015, reaching \$2.71 billion.⁷¹ In February 2016, however, the South Korean government announced the shutdown of the Kaesong Industrial Complex, a symbol of economic cooperation between the two Koreas. Since a large part of inter-Korean trade was related to Kaesong, the trade volume dramatically dropped to \$330 million, which was almost one-tenth of the previous year’s record and the smallest figure since 1998.⁷² As a result, the significant decrease in inter-Korean trade accelerated North Korea’s economic dependency on China.

The United States, Japan, and South Korea have consistently claimed that China should play a core role in persuading or pressuring North Korea to abandon its nuclear programs by utilizing its political and economic leverage. China has repeatedly emphasized, however, that its leverage over North Korea has been exaggerated and that the United States has the prime responsibility to negotiate with North Korea. On the other hand, although China still appears to hesitate to press

⁶⁹ Korea Trade-Investment Promotion Agency (KOTRA), 2015 북한 대외무역 동향 (Seoul: KOTRA, 2016), 12, accessed March 5, 2017,

<http://news.kotra.or.kr/common/extra/kotranews/globalBbs/249/fileDownload/39367.do>.

⁷⁰ Plant and Rhode, “China, North Korea,” 62.

⁷¹ “Inter-Korean trade hits record high in 2015,” *Korean Herald*, January 21, 2016, accessed February 19, 2017, <http://www.koreaherald.com/view.php?ud=20160121000303>.

⁷² “Suspension of Gaeseong Complex Marks 1st Anniversary,” KBS World Radio, February 12, 2017, accessed February 19, 2017,

http://world.kbs.co.kr/special/northkorea/contents/news/news_view.htm?No=30803&lang=e.

North Korea, it is concerned that further development of North Korea's nuclear programs would undermine its security interests and reputation. Pyongyang's provocation has provided a good excuse for the United States to strengthen the U.S.-ROK alliance and accelerate U.S. rebalancing policy.⁷³ Recently many Chinese academics have called for changing its close ties with North Korea.⁷⁴ In essence, China has been pursuing a subtle balance between the goal of denuclearization and the stability of the Korean Peninsula.⁷⁵

3.2. Resolution 2270 and the Interpretation of “Livelihood Purposes”

In spite of a sequence of sanctions resolutions, North Korea did not suspend an aggressive course of action. In September 2016, North Korea declared that it implemented its fifth nuclear test. The Security Council started an intensive discussion on countermeasures but could not easily reach a conclusion. In the end, it took 56 days to adopt a new resolution, while it took only 5 days for Resolution 1718 and 23 days for Resolution 2094.⁷⁶ The new Resolution 2270 strengthened the existing provisions and introduced a wide range of new sanctions measures. Among the newly imposed measures, the most prominent one is the introduction of two sets of sectoral bans on exports from North Korea. One is a ban on exports of gold, titanium ore, vanadium ore, and rare earth minerals, and this provision has no exemption.⁷⁷ The other is a ban on exports of coal, iron, and iron ore with two exemptions. The first one allows North Korea to export coal that has not

⁷³ Ren Xiao, “Old Wine in a New Bottle? China’s Korea Problem,” *Asia Policy* 23 (2017): 87, accessed March 5, 2017, <https://muse.jhu.edu/article/647789>.

⁷⁴ Emma Chanlett-Avery, Ian E. Rinehart, and Mary Beth D. Nikitin, *North Korea: U.S. Relations, Nuclear Diplomacy, and Internal Situation* (Congressional Research Service, January 15, 2016), 9, accessed March 6, 2017, <https://fas.org/sgp/crs/nuke/R41259.pdf>.

⁷⁵ Xiao, “China’s Korea Problem,” 89.

⁷⁶ Kent Boydston, “Sanctions Watch II,” Peterson Institute for International Economics, November 29, 2016, accessed January 20, 2017, <https://piie.com/blogs/north-korea-witness-transformation/sanctions-watch-ii>.

⁷⁷ *Security Council Resolution 2270 (2016)*, S/RES/2270, March 2, 2016, para. 30.

originated in the country and was transferred solely for export from Rajin Port if the transactions do not generate revenue for North Korea's prohibited activities.⁷⁸ This exemption was inserted by Russia, which has been investing in the transshipment project in Rajin.⁷⁹ The second, and more controversial, exemption is a "livelihood purposes" exemption which allows transactions "that are determined to be exclusively for livelihood purposes and unrelated to generating revenue for the DPRK's nuclear or ballistic missile programs or other activities prohibited by resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or this resolution."⁸⁰ Surprisingly, the resolution authorizes each state to determine whether coal imports from North Korea are for livelihood purposes or not and does not require any involvement of the sanctions committee in the process, while the exemption clause for coal exports from Rajin requires prior notification to the sanctions committee.

"Livelihood purposes" is an unprecedented term in exemption clauses of UN sanctions resolutions. Since the resolution does not provide any definition of "livelihood purposes," interpretation is necessary to execute the trade ban. Regarding the methodology of interpretation of Security Council resolutions, it has been accepted that the factors laid out in the Vienna Convention on the Law of Treaties (VCLT) should be taken into account, though the VCLT itself is not applicable to Security Council resolutions.⁸¹ The ICJ's Advisory Opinion on the *Kosovo* case addresses additional factors that help interpretation:

While the rules on treaty interpretation embodied in Articles 31 and 32 of the Vienna Convention on the Law of Treaties may provide guidance, differences between Security Council resolutions

⁷⁸ *Resolution 2270*, para. 29 (a).

⁷⁹ Andray Abrahamian, "The Art of Sanctions: Can North Korea Navigate Expanded Measures?," 38 *North*, March 21, 2016, accessed February 20, 2017, <http://38north.org/2016/03/aabrahamian032116/>.

⁸⁰ *Resolution 2270*, para. 29 (b).

⁸¹ Simma et al., *Commentary*, 1:798.

and treaties mean that the interpretation of Security Council resolutions also require that other factors be taken into account. ... The interpretation of Security Council resolutions may require the Court to analyse statements by representatives of members of the Security Council made at the time of their adoption, other resolutions of the Security Council on the same issue, as well as the subsequent practice of relevant United Nations organs and of States affected by those given resolutions.⁸²

Therefore, resolutions shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their contexts and in the light of its object and purpose. In addition, interpreters have to consider other relevant factors such as statements by states, other resolutions on the same issues, and the subsequent practice of UN organs and of states.

One of the definitions of “livelihood” as a noun given in the Oxford English Dictionary is “a (person's) means of living.”⁸³ A literal reading of paragraph 29 seems to suggest “livelihood purposes” means something more than or different from that the transactions are not related to generating revenue for North Korea’s nuclear and missile programs. Although resolutions are not necessarily drafted in a consistent way,⁸⁴ it is necessary to examine the usage of “livelihood purposes” in other provisions to interpret the exemption on coal trade. Resolution 2270 mentions “livelihood purposes” in three paragraphs except paragraph 29 [underlines added]:⁸⁵

⁸² *Accordance with International Law of the Unilateral Declaration of Independence In Respect of Kosovo* (Advisory Opinion of 22 July 2010), para. 94, accessed April 17, 2017, <http://www.icj-cij.org/docket/files/141/15987.pdf>.

⁸³ *Oxford English Dictionary*, 3rd ed., s.v. "livelihood, n.1," accessed February 23, 2017, <http://www.oed.com/view/Entry/109310>.

⁸⁴ Michael C. Wood, “The Interpretation of Security Council Resolutions,” *Max Planck Yearbook of United Nations Law* 2, no. 1 (1998): 82, accessed March 6, 2017, http://www.mpil.de/files/pdf2/mpunyb_wood_2.pdf.

⁸⁵ *Resolution 2270*, paras. 8, 19, 20.

8. *Decides* that ... this provision shall cease to apply to the supply, sale or transfer of an item, or its procurement, if:

(a) the State determines that such activity is exclusively for humanitarian purposes or exclusively for livelihood purposes which will not be used by DPRK individuals or entities to generate revenue, and also not related to any activity prohibited by resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or this resolution, provided that the State notifies the Committee in advance of such determination and also informs the Committee of measures taken to prevent the diversion of the item for such other purposes, or ... ;

19. *Decides* that ... this provision shall not apply with respect to such leasing, chartering or provision of crew services notified to the Committee in advance on a case-by-case basis accompanied by: a) information demonstrating that such activities are exclusively for livelihood purposes which will not be used by DPRK individuals or entities to generate revenue, and b) information on measures taken to prevent such activities from contributing to violations of the aforementioned resolutions;

20. *Decides* that ... this measure shall not apply to activities notified in advance by the Committee on a case-by-case basis, following provision to the Committee of detailed information on the activities, including the names of individuals and entities involved in them, information demonstrating that such activities are exclusively for livelihood purposes which will not be used by DPRK individuals or entities to generate revenue and on measures taken to prevent such activities from contributing to violations of resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or this resolution;

Paragraph 8, 19 and 20 provide for exemptions from an arms embargo and transportation sanctions. First of all, the text of paragraph 8 (a) suggests that “livelihood purposes” should be distinguished from “humanitarian purposes” because the two terms are used in a parallel way in the same sentence. Second, “livelihood purposes” in those three paragraphs is followed by the description “which will not be used by DPRK individuals or entities to generate revenue.” It is a little strange those paragraphs do not specify the scope of “revenue,” while paragraph 29 provides that coal export should be “unrelated to generating revenue for the DPRK’s nuclear or ballistic missile programs or other activities prohibited” by a series of resolutions. It is difficult to suppose that

economic activities do not generate any revenue even if they are exclusively for “livelihood purposes.” Yet, it can be misleading to pay too much attention to inconsistencies in the use of terms and ungrammatical constructions in resolutions, though one cannot ignore such matters.⁸⁶ Also, the connection between “livelihood purposes” and “which will not be used by DPRK individuals or entities to generate revenue” is not clear: if the two phrases mean exactly the same thing, “livelihood purposes” is no longer necessary; if they have different meanings, it is necessary to find another definition of “livelihood purposes.” Third, in terms of implementation, the three paragraphs above make it difficult for each state to abuse the exemptions by requiring states to notify the sanctions committee in advance when they apply the exemptions.

As the examination of those exemption clauses does not clarify the meaning of “livelihood purposes,” it is necessary to look at other part of the resolution. Preambles of UN Security Council resolutions give guidance on their object and purpose and assist in interpretation, though they can also be used as “a dumping ground” for proposals removed from the operative paragraphs in the drafting process.⁸⁷ The preamble of Resolution 2270 includes several paragraphs which should be read with the operational paragraphs on “livelihood purposes” exemptions. First, it underlines “measures imposed by this resolution are not intended to have adverse humanitarian consequences for the civilian population” of North Korea.⁸⁸ Actually, this expression was included in the operational paragraphs of Resolution 2094 and 2087,⁸⁹ while in the earlier resolution it was in the preamble.⁹⁰ Therefore, it is not necessarily clear what the Security Council intended by moving this paragraph into the preamble in terms of mitigating humanitarian consequences of the sanctions.

⁸⁶ Wood, “Interpretation,” 89.

⁸⁷ Wood, “Interpretation,” 86-87.

⁸⁸ *Resolution 2270*, preambular para. 5.

⁸⁹ *Resolution 2094*, para. 31; *Resolution 2087*, para. 18.

⁹⁰ *Resolution 1874*, preambular para. 7.

Second, Resolution 2270 points out North Korea is diverting financial, technical and industrial resources toward developing its nuclear weapons and ballistic missile programs.⁹¹ Considering that this expression was not included in previous resolutions on North Korea, it appears probable that “industrial resources” refers to natural resources including coal and iron, which are explicitly mentioned in Resolution 2270. It also indicates that the purpose of the newly introduced export bans is to reduce revenue diverted to prohibited activities rather than to harm the North Korean economy. Third, in the preamble, the Security Council expresses “deep concern at the grave hardship that the DPRK people are subjected to.”⁹² It is worth noting the Security Council does not specify the meaning nor cause of the hardship. This paragraph can be read in two contradictory ways. One interpretation is that it is intended to encourage states to implement sanctions in a less harmful manner to the North Korean economy by emphasizing the deteriorating socio-economic situation in North Korea. The other reading is that it is intended to condemn the North Korean authoritarian regime for its abuse of human rights and to urge states to put more pressure on it.

In addition to the preamble, an operational paragraph of the resolution also addresses possible unintended consequences and the intention of the Security Council to manage them. Paragraph 46 underlines that sanctions imposed by a series of resolutions “are not intended to have adverse humanitarian consequences for the civilian population of the DPRK or to affect negatively those activities, including economic activities and cooperation, that are not prohibited . . . , and the work of international organizations and non-governmental organization carrying out assistance and relief activities in the DPRK for the benefit of the civilian population of the DPRK.”⁹³ The first part on possible adverse humanitarian consequences is similar to the preambular paragraph mentioned above, but it clarifies further that the sanctions should not affect negatively legitimate

⁹¹ *Resolution 2270*, preambular para. 6.

⁹² *Resolution 2270*, preambular para. 7.

⁹³ *Resolution 2270*, para. 48.

economic activities in North Korea.

As the ICJ suggested in the *Kosovo* advisory opinion, statements by member states at the time of the adoption of a resolution may assist in interpretation. On March 2, 2016, the UN Security Council adopted Resolution 2270, and representatives of each member state made a statement right after the adoption. US Ambassador to the United Nations Samantha Power noted “North Korea generates a significant share of the money it uses to fuel its nuclear and ballistic-missile programmes by mining natural resources” and “[T]hat is why the resolution we have adopted today limits and, in some instances, bans outright North Korea’s exports of specific natural resources, making it tougher for the Government to get the money it needs to keep funding its illicit weapons programmes.” She also stated “the purpose of the resolution is not to inflict greater hardship on the people,” condemning the North Korean regime’s abysmal human rights record. In her statement, she suggested the export ban was designed to target the export revenue diverted to North Korea’s illicit activities and not intended to affect negatively the general population. Other members expressed similar views on this point, though China did not mention the exemptions nor possible adverse effects of the sanctions. French Ambassador stated that the sanctions had “targeted goals,” namely, hindering the North Korean nuclear and ballistic missile programs and shutting off the diverted revenue of the North Korean regime to fuel illicit activities at the expense of its people. The Russian Ambassador noted that the resolution “should not be used to choke off the North Korean economy” and expressed concerns about *unilateral* sanctions on North Korea which could have negative humanitarian consequences “for the many millions of inhabitants of the country, especially those who are most vulnerable,” urging the international community to pay attention to this aspect. South Korean Ambassador Oh Joon condemned the North Korean regime for diverting its scarce resources to the development of nuclear weapons and made it clear that the resolution did not “target the North Korean population or intend to negatively affect their livelihood.”⁹⁴

⁹⁴ *Security Council 7638th meeting, S/PV.7638, March 2, 2016, 14.*

Finally, “the subsequent practice of relevant United Nations organs and of States” is also a factor to be considered in interpreting resolutions.⁹⁵ The sanctions committee notes that the rationale to introduce the sectoral bans on mineral products is that “they constitute an outstanding source to fund North Korea’s illicit activities.”⁹⁶ It also stated “[T]hese measures were designed to reduce the DRPK export of such materials related to the DPRK’s nuclear and ballistic missile programs or other activities prohibited by the resolutions.”⁹⁷ As a main importer of North Korean coal, China’s practice is worth examining. According to its Implementation Report submitted to the sanctions committee, the Chinese Ministry of Commerce and the General Administration of Customs have announced an import ban on the prohibited items, while they have stipulated exemptions for transactions that “have been determined to be exclusively for the purposes of people’s livelihood and unrelated to generating revenue for the nuclear or ballistic missile programmes or other activities of the Democratic People’s Republic of Korea prohibited by the resolutions.”⁹⁸ In accordance with the literal reading of paragraph 29, China distinguishes that imports are exclusively for “livelihood purposes” from that they are not related to illicit activities, while the briefings by the sanctions committee did not explicitly address the point.

⁹⁵ *Kosovo*, para. 94.

⁹⁶ Chair of the 1718 Sanctions Committee, *Open briefing to Member States on 16 March 2016*, 1718 Sanctions Committee, March 16, 2016, accessed February 20, 2017, https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/open_briefing_chair_statement_presentation.pdf.

⁹⁷ Chair of the 1718 Sanctions Committee, *Open briefing to Member States on 2 February 2017*, 1718 Sanctions Committee, February 2, 2017, accessed February 23, 2017, https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/open_briefing_chair_statement_presentation_2_feb_0.pdf.

⁹⁸ *Report of China on Implementation of United Nations Security Council Resolution 2270 (2016)*, S/AC.49/2016/34, June 29, 2016, para. 3 (e).

Overall, the coal ban prescribed in Resolution 2270 is designed to block the stream of revenue diverted into illicit activities by the North Korean regime including nuclear and missiles programs, and the exemption clause on coal trade is intended to exclude from its scope coal trade not related to those activities. On the other hand, the text of the resolution strongly suggests “livelihood purposes” puts an additional condition on the exemption. In other words, there can be coal imports from North Korea that are not related to prohibited activities but still considered inconsistent with the provision. Taking into account that the Security Council as well as member states have repeatedly emphasized the sanctions are not intended to negatively affect the general population and that the resolution is also designed to hold the authoritarian regime accountable, it can be construed that coal imports generating revenue for North Korean people engaging in legitimate economic activities are permitted, while it is not allowed for the ruling elites to benefit from the exemptions. As the resolution explicitly distinguishes “humanitarian purposes” from “livelihood purposes,” it is intended not only to secure basic human rights and people’s minimum living standards but also to protect broader economic interests of the North Korean society. The interpretation of the “livelihood purposes” exemption in Resolution 2270 seems to lead to quite a reasonable conclusion despite its ambiguity and novelty.

Such interpretation might help to understand why the Security Council chose “livelihood purposes” rather than more common terms in sanctions resolutions. For example, “civilian” has been widely used in exemption clauses to exclude legitimate economic activities or people’s access to essential goods from the scope of sanctions. “Civilian” as an adjective means “of or relating to civilians; not in or of the armed forces; non-military.”⁹⁹ The resolutions on North Korea refer to “civilian population” but do not have such “civilian” exemptions. One possible explanation is North Korea’s longstanding militarism. Since the army is involved in almost every aspect of the North Korean

⁹⁹ *Oxford English Dictionary*, 3rd ed., s.v. “civilian, n. and adj.,” accessed March 6, 2017, <http://www.oed.com/view/Entry/33577>.

society, civilians, strictly speaking, occupy a relatively small portion of its economy. Therefore, if the Security Council inserted, for example, “civilian purposes” or “civilian needs” instead of “livelihood purposes,” the scope of the exemptions would be too narrow to mitigate negative impacts on legitimate economic activities. On the other hand, as further elaborated below, such interpretation inherently entails the risk of the North Korean army’s misuse of the exemptions. Another possible wording for the exemption clauses is “developmental purposes,” which is distinguished from “humanitarian purposes.” Resolution 1874 called upon states and 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.”¹⁰⁰ The scope of this term, however, would also be too narrow to include more general economic activities that are not related to prohibited activities nor economic development and thus insufficient to address negative impacts of the sanctions.

3.3. Resolution 2321 and an Annual Cap on Coal Imports

Despite the reinforced sanctions imposed by Resolution 2270, North Korea carried out its fifth nuclear test on September 9, 2016. The Security Council began to work immediately on further measures on North Korea, but it took much longer to conclude the negotiation. It finally adopted Resolution 2321 on November 30, 2016, eighty-two days after the nuclear test.¹⁰¹ The resolution introduced an annual cap on coal exports from North Korea,¹⁰² while it maintained the previous provision on exports of iron and iron ore. It enables states to import coal from North Korea, provided that total exports of coal originating in North Korea do not exceed \$400,870,018 or

¹⁰⁰ *Resolution 1874*, para. 19.

¹⁰¹ Boydston, “Sanctions Watch II.”

¹⁰² The resolution maintains the exemption for coal exports from Rajin Port independently of the annual cap.

7,500,000 metric tons per year, whichever is lower,¹⁰³ and that the coal procurements (1) involve no individuals or entities that are associated with North Korea's prohibited activities and (2) are exclusively for livelihood purposes of North Korean nationals and unrelated to generating revenue for North Korea's prohibited activities.¹⁰⁴ The resolution also provides for a very detailed procedure of monitoring the exports of coal. Member states have to notify the sanctions committee of the aggregate amount of the volume of imported coal every month. Then the sanctions committee makes publicly available on its website the volume and the calculated value of imported coal reported by states. The sanctions committee secretary has to notify states when an aggregate value or volume of coal procurements of 75, 90 and 95 percent of the aggregate yearly amount has been reached. In the last case, states must immediately cease importing coal from North Korea for the year.¹⁰⁵ The "livelihood purposes" exemption is left in the text, but it has become no longer relevant in practice with the introduction of the quantitative limit.

Resolution 2321 also grants a possible exemption from any measure including the coal ban. Paragraph 46, part of which is identical to paragraph 48 of Resolution 2270, authorizes the sanctions committee to grant an exemption from any measure in resolutions on a case-by-case basis if such an exemption is necessary to facilitate the work of international and non-governmental organizations carrying out assistance and relief activities for the benefit of the civilian population of North Korea or "for any other purpose consistent with the objectives of these resolutions."¹⁰⁶

¹⁰³ Between November 30 and December 31, 2016, the cap is set at \$53,495,894 or 1,000,866 metric tons, whichever is lower.

¹⁰⁴ *Security Council Resolution 2321 (2016)*, S/RES/2321, November 30, 2016, para. 26.

¹⁰⁵ *Ibid.*, para. 26.

¹⁰⁶ *Ibid.*, para. 46.

In addition to the ban on coal and iron trade, the Security Council introduced a ban on exports of copper, nickel, silver, zinc, and statues, which has no exemptions.¹⁰⁷ Except the paragraphs on the import bans, “livelihood purposes” is included only in one paragraph which grants an exemption from a ban on insurance or re-insurance services to North Korean vessels when “the Committee determines on a case-by-case basis that the vessel is engaged in activities exclusively for livelihood purposes which will not be used by DPRK individuals or entities to generate revenue or exclusively for humanitarian purposes.”¹⁰⁸

On the adoption of Resolution 2321, U.S. Ambassador Power noted that the “the extremely rigorous and important” resolution broke new and important ground by imposing new restrictions on the sources of hard currency, making it much harder for North Korea to use diplomats to advance its prohibited programs, and restricting the flow of illicit materials into North Korea. She also stated that the new resolution introduced a binding cap on North Korea’s coal exports because under Resolution 2270, which had the “livelihood purposes” exemption from the coal export ban, the coal revenue was used not “to help the people of North Korea” but “to further build up the regime’s illegal weapons programmes.” The Japanese Ambassador pointed out the flaw of the previous resolution in a more explicit manner, noting that some of the livelihood exemptions for the North Korean people had been “misused” and the new resolution would close the gaps.¹⁰⁹

Despite the adoption of Resolution 2270, China’s import of coal from North Korea actually increased. In August 2016, China imported 2.465 million tons of coal, which marked the largest volume for a single month.¹¹⁰ Following the adoption of Resolution 2231, China announced it put

¹⁰⁷ Ibid., paras. 28, 29.

¹⁰⁸ Ibid., para. 22.

¹⁰⁹ *Security Council 7821st meeting*, S/PV.7821, November 30, 2016, 6.

¹¹⁰ Clyde Russel, “China Buys Record North Korean Coal as Sanctions Ignored,” Reuters, September 26, 2016,

a temporal ban on imports of coal from North Korea on December 11, 2016.¹¹¹ However, China's coal imports from North Korea for December 2016 amounted to over two million tons, which three times exceeded the limit for the month and marked the highest in value in 2016,¹¹² according to data reported by China itself to the sanctions committee.¹¹³ Nevertheless, China argued "[t]he Chinese side have taken measures in line with the requirements of the resolution and fulfilled its own international obligation."¹¹⁴ On February 18, 2017, China suddenly announced that it would suspend all coal imports from North Korea for the rest of the year.¹¹⁵ Although it has yet to be seen whether China continues to comply with the resolution, the possible effect of the new coal ban would be robust if fully implemented. Coal exports made up forty-two percent of the total value of North Korean exports in 2015. The loss of trade income caused by the new sanctions would amount to 3 to 7 percent of North Korea's GDP, increasing its trade deficit by anywhere from 150 to 230 percent.¹¹⁶

accessed March 1, 2017, <http://www.reuters.com/article/us-column-russell-coal-china-idUSKCN11W0CO>.

¹¹¹ Michael Martina, "China Puts Temporary Ban on North Korean Coal Imports," *Reuter*, December 11, 2016, accessed March 1, 2017, <http://www.reuters.com/article/us-northkorea-nuclear-un-china-idUSKBN14007R>.

¹¹² Victor Cha, "The Meaning of China's Coal Ban on DPRK," *Center for Strategic and International Studies*, February 20, 2017, accessed March 10, 2017, <https://www.csis.org/analysis/meaning-chinas-coal-ban-dprk>.

¹¹³ "Procurement of DPRK Coal by Member States," 1718 Sanctions Committee, February 20, 2017, accessed March 1, 2017, <https://www.un.org/sc/suborg/en/sanctions/1718/procurement-of-dprk-coal-by-member-states>.

¹¹⁴ "Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on January 26, 2017," *Ministry of Foreign Affairs, People's Republic of China*, January 26, 2017, accessed March 10, 2017, http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1434397.shtml.

¹¹⁵ Choe Sang-hun, "China Suspends All Coal Imports from North Korea" *New York Times*, February 18, 2017, accessed April 17, 2017, <https://www.nytimes.com/2017/02/18/world/asia/north-korea-china-coal-imports-suspended.html>.

¹¹⁶ David von Hippel and Peter Hayes, "DPRK Coal Exports to China under New UN Sanctions: Potential Impacts and 'Work-arounds,'" *NAPSNet Special Reports*, February 14, 2017, accessed March 1, 2017, <http://nautilus.org/napsnet/napsnet-special-reports/dprk-coal-exports-under-new-un-sanctions-potential->

4. Proportionate Sanctions in Practice

4.1. The Limited Validity of Targeted Sanctions

The North Korean case poses several challenges to the targeted sanctions approach. First, the coal ban on North Korea cannot be regarded as “targeted” in any sense. Coal is the most important export product for North Korea, and potential impacts of the sanctions are devastating. Second, the “livelihood purposes” exemption in Resolution 2270 does not involve the sanctions committee in its granting process, and senders do not need any notification nor explanation about their decisions. Such a let-alone style of exemption management is truly exceptional and problematic because there is no means to hold states accountable for their interpretation and implementation of the exemption. Third, the very nature of bans on imports from a target requires an effective scheme to track North Korea’s export revenue, but the sanctions regime lacks such a mechanism.

Trade bans are one of the most destructive means of sanctions because they are usually imposed on a whole country and do not discriminate between those responsible for misconduct and innocent people. It is worth noting that humanitarian problems with trade sanctions often occur not because the sanctions prohibit the flow of essential goods into a target but because they prevent the target from exporting and earning hard currency to buy those goods.¹¹⁷ Bans on imports from a target are referred to as a kind of *trade* sanctions, but the main purpose of them is shutting off the source of revenue rather than blocking the flow of commodities. In that sense, they are *money* sanctions in most cases. Therefore, a question of what exemptions from import bans should be granted is identical to that of how much money should be provided for a target to mitigate unintended consequences.

It is a serious implementation challenge to track a target’s export revenue. In the case of bans on

impacts-and-work-arounds/.

¹¹⁷ Gowlland-Debbas, *United Nations Sanctions*, 243.

export to a target, exempted goods cannot generate revenue for a target as long as the export of such items is prohibited. Of course, the risk of the misuse of dual-use items is of serious concern for every sanctions regime, but it is still possible to reject the import of such items. When it comes to financial sanctions, it is basically possible to distinguish illicit transactions from legitimate ones by tracking and investigating them, though the risk of evasion remains. Without a certain mechanism, however, the Security Council cannot know whether a target's revenue from exempted trades is used for the purposes proscribed in the resolutions. Thus, import bans demand more carefully designed exemptions than other types of sanctions.

Resolution 2270 lacks such an effective mechanism to prevent revenue diversion by North Korea. It is impossible to achieve the purpose of the sanctions even if all states are willing to faithfully implement them and the sanctions committee is involved in the exemption process. To be brief, there is no way to know how the revenue from coal exports is used in North Korea unless the Security Council establishes an invasive scheme in which the export revenue is tracked and controlled. In such a closed society as North Korea, exporting entities with illicit purposes would have no difficulty in disguising themselves as legitimate exporters. Even if exporters are legitimate entities, the government can collect the revenue after the transactions. Taking into account the fact that the purpose of the sanctions is arguably to prevent North Korea from diverting export revenue to its nuclear and missile programs, it is surprising that the Security Council introduced an exemption which is fundamentally impossible to implement as intended.

The conventional perspective of sanctions, which is based on the separation model and call for targeted sanctions, is not able to solve this paradox. In terms of targeted sanctions, the "livelihood purposes" exemption from the coal ban in Resolution 2270 is desirable because it is intended to distinguish illicit activities by the ruling regime and legitimate economic activities by citizens and to avoid inflicting damage on the latter. The exemption is, in practice, open-ended because there is no way to prevent North Korea from diverting exempted export revenues and rendered the coal

ban ineffective in reducing such revenues. In contrast, Resolution 2321 nullified the exemption and instead introduced an annual cap on coal imports. The cap is ostensibly a narrow version of the “livelihood purposes” exemption to mitigate unintended consequences because Resolution 2321 still require the exempted coal imports to be unrelated to illicit activities and exclusively for “livelihood purposes.” If the separation assumption were strictly applied, the cap would be high enough to mitigate all negative impacts on the civilian population. The fact that the cap is very low as compared to the average volume of recent years, however, means the Security Council defies the doctrine, failing to pay due attention in designing the resolution to mitigate possible negative effects the concept of targeted sanctions requires.

Another interpretation of the cap is that it is still a loophole or leeway in the sanctions regime. If so, Resolution 2321 faces the same impossibility as Resolution 2270: without an effective mechanism to track export revenue, a ban on imports from a target cannot function as intended. When North Korea obtains less export revenue but still sticks to nuclear and missile development, the most likely strategy of the North Korean regime is prioritize its nuclear development over civilian needs. In this case, the annual cap on coal imports functions as a loophole through which North Korea gains a certain amount of money the Security Council decided, while civilians are deprived of the benefit of the “livelihood purposes” exemption. In other words, the Security Council calibrated the amount of revenue North Korea would obtain, knowing it would significantly reduce money available to the general population. This is clearly an unreasonable and unacceptable conclusion from the view point of targeted sanctions.

In terms of *realpolitik*, it is never surprising that the Security Council does not actually care about the principle of targeted sanctions, intending to inflict hardship on the North Korean economy as a whole; that the “livelihood purposes” exemptions and the annual cap on coal imports are both the product of compromise between pro-sanctions countries and the opponents; and that it is meaningless in practice to ask the consistency between the doctrine of targeted sanctions and the

sanctions regime on North Korea. If the concept of targeted sanctions is only a matter of rhetoric and no longer useful as an analytical and policy tool, it is necessary to establish another approach because the lack of any discipline of sanctions leads to the Security Council's unrestrained exercise of power in designing sanctions.

4.2. Reinterpretation of the North Korean Sanctions Regime

The concept of proportionate sanctions helps to understand the North Korean sanctions regime and the dynamics of the ban on coal imports. As a matter of norm, it does not deny the applicability of sanctions which inherently inflict hardship on civilians. Considering the importance of nuclear disarmament and non-proliferation, a certain amount of pain is permissible if people's right to life is effectively preserved. The coal ban on North Korea is a robust measure, but the sanctions regime still allows it to import essential goods and to earn a significant portion of its export revenue.

When it comes to the "livelihood purposes" the annual cap on coal imports, the proportionality approach makes it possible to understand these unique provisions as the product of the debate over the application of a proportionality test. The "livelihood purposes" exemption can be seen as a calibrating exemption because it is designed to calibrate North Korea's export revenue well beyond the minimum threshold of core human rights. In the design phase of Resolution 2270, states agreed to introduce new sanctions on natural resources, but they could not reach agreement on the level of calibration, namely, how much trade volume should be exempted from the measure. Although the drafting process was confidential, pro-sanctions countries probably argued for a more strict exemption because they thought the objective of the sanctions regime was very important and justified greater pain. On the other hand, China should have called for generous treatment because it prioritized the stability of the North Korean regime and wanted to avoid disorder in the society. Also, it had a different threat perception from other countries of North Korean nuclear weapons because it remained in alliance with North Korea and thus unlikely to be attacked by its nuclear arsenal. The Security Council bridged the gap by authorizing states to exempt coal imports on

certain conditions without any involvement of the sanctions committee. In other words, it allowed states to apply their own proportionality test when they interpret and implement the resolution in their jurisdiction. Considering China's dominant share in trades with North Korea, the Security Council delegated to it the sole responsibility to calibrate the effect of the coal ban. China had a bargaining advantage as a permanent member with veto power in the negotiation process and successfully obtained the unique status in the sanctions regime.

As some countries suggested in the Security Council, China was blamed for abusing the "livelihood purposes" exemption of Resolution 2270. In terms of proportionate sanctions, however, the dynamics should be understood as a debate over a proper balance of pain and gain rather than a case of sanctions evasion. First, given that North Korea gives top priority to nuclear development, it is natural to expect North Korea to continue to divert the limited export revenue from coal exports to illicit activities. The Security Council has known that exempted revenue is not used exclusively for civilian populations and that most of it would be diverted. Second, import bans are impossible to implement as intended without monitoring of export revenue of the target, regardless of the intention of senders. No traders declare their shipments to be for illicit purposes. Given this impossibility, senders have few choices. One option is to block all coal trades because they cannot make sure any trade is for "livelihood purposes" and not related to illicit activities. Another option is to exempt all trades which are declared by traders to be for "livelihood purposes." The other, and realistic option is to exempt some of the trades according to their own proportionality test. Third, considering China's long-standing policy on the Korean Peninsula, it is natural to expect it to adopt less strict criteria in executing the exemption clause.

One might argue China actually knew some of the coal imports are for illicit purposes and thus it violated the resolution, but it was an open secret: all states were aware of North Korea's revenue diversion. It is true that China tried to maximize its own interests by exempting as many coal imports from North Korea as possible, but it was exactly what the Security Council intended. In

short, China acted to pursue its interests within its discretion under the resolution. It does not necessarily mean that China opposed the aim of the sanctions regime: it just judged that a complete ban on coal trades was too much for its political goal. For pro-sanctions countries, the coal ban provision with the “livelihood exemption” was the product of inevitable compromise.

Nevertheless, China’s discretion was not open-ended. In the monitoring phase, China was held accountable for its implementation. Many governments, media outlets, think tanks, and scholars pointed out China’s loose implementation of the exemption undermined the effectiveness of the sanctions. After North Korea’s fifth nuclear test, China could not make a persuasive argument for its special status because the sanctions regime was proven to be insufficient to achieve its goal. As a result, the Security Council established a new arrangement to shift the balance of pain and gain. In Resolution 2321, pro-sanctions countries successfully deprived China of the authority to apply a proportionality test on its own and fixed a desirable balance of pain and gain by introducing the annual cap on coal imports from North Korea. Under the new resolution, China is compelled to respect the result of the proportionality test the Security Council collectively applied in the design phase.

4.3. Filling the Gap between Rhetoric and Reality

The unprecedented exemption clause of Resolution 2270 was effectively modified in Resolution 2230 by imposing a binding cap on coal trade. The newly introduced measures, if fully implemented, would slash twenty-five percent of the entire export revenue,¹¹⁸ which will render the North Korean sanctions regime the most invasive one in the last decade. This qualitative shift in sanctions measures might change the rhetorical landscape regarding the North Korean sanctions regime. As sanctions are strengthened and possible negative effects increase, pro-sanctions countries have to address growing humanitarian concerns. Since the concept of targeted sanctions

¹¹⁸ *Security Council 7821th meeting*, 4..

denies the applicability of comprehensive sanctions and upholds the separation assumption, those who support more pressure tend to ignore such concerns to justify tougher sanctions.

The humanitarian situation in North Korea has long been an issue of concern for the international community. Although the assessment of the indicators on the North Korean economy is mixed,¹¹⁹ some strata of the North Korean society are believed to be faced with a humanitarian crisis. Some international organizations have already expressed concern for the negative impacts of sanctions, though their concern is mainly about possible impediments to their activities.¹²⁰ Quite interestingly, it is pro-sanctions countries such as the United States, Japan and South Korea that have emphasized how serious the humanitarian situation in North Korea is. When Resolution 2270 was adopted, U.S. Ambassador Power pointed out “one in every four children” in North Korea “suffers from stunted growth as a result of chronic malnutrition,” citing the data of the World Health Organization. Japan also stated “three-quarters of its population are in need of some form of humanitarian assistance and that the total humanitarian funding requirement of the United Nations and other non-governmental organizations reaches \$145 million.”¹²¹

The logic of those countries is the mixture of humanitarian and human rights discourses: North Korea is engaged in illicit activities at the expense of people in a humanitarian crisis and the sanctions are intended to protect their human rights by hindering such activities. In recent years,

¹¹⁹ Andrei Lankov, “Is North Korea a Third World country?,” NK News, February 24, 2016, accessed February 25, 2017, <https://www.nknews.org/2017/02/is-north-korea-a-third-world-country/>.

¹²⁰ See *Situation of human rights in the Democratic People’s Republic of Korea: Report of the Secretary-General*, A/71/439, October 7, 2016, paras. 73, 77 (d); *2016 DPR Korea: Needs and Priorities*, UN Country Team in DPRK, April 19, 2016, accessed February 20, 2017, <http://reliefweb.int/sites/reliefweb.int/files/resources/2016%20DPRK%20Needs%20and%20Priorities%20FINAL%20DRAFT%20140416.pdf>.

¹²¹ *Security Council 7830th meeting*, 8.

international concern for human rights violation in North Korea has been continuously growing, and pro-sanctions countries are actively backing this trend.¹²² In their discourse, North Korea's nuclear and missile development, the humanitarian concern in North Korea, and the human rights violations by the North Korean government are all in the same formula. For example, the United States pointed out "North Korea generates a significant share of the money it uses to fuel its nuclear and ballistic-missile programmes by mining natural resources, often exploiting workers in slave-like conditions and selling those resources abroad."¹²³ A joint statement issued by the United States, Japan and South Korea in September 2016 noted "North Korea's provocative actions are further deepening its isolation and undermining the needs of its people, who suffer greatly at the hands of the regime."¹²⁴ South Korean Ambassador for Human Rights Lee Jung-hoon emphasized both nuclear development and human rights violations "are directly linked to North Korea's regime-survival tactics."¹²⁵ Their assertion was incorporated in the text of Resolution 2321, too.

¹²² For example, the UN Commission on Human Rights established the Special Rapporteur on the situation of human rights in North Korea in 2004 and its mandate has been renewed on an annual basis. The General Assembly has adopted a resolution on situation of human rights in North Korea every year. The most recent development in this field was the establishment of the Commission of Inquiry on Human Rights in North Korea (COI). The COI was mandated to investigate the systematic, widespread and grave violations of human rights in North Korea and published a report in February 2014. In December 2014, the human rights situation in North Korea was adopted by the Security Council as a separate agenda item from the non-proliferation issue for the first time.

¹²³ *Security Council 7638th meeting*, 3.

¹²⁴ "Joint Statement Following the U.S.-Japan-ROK Trilateral Ministerial Meeting in New York," U.S. Embassy & Consulate in Korea, September 18, 2016, accessed February 26, 2017, <https://kr.usembassy.gov/021617-u-s-rok-japan-foreign-ministerial-joint-statement-situation-north-korea/>.

¹²⁵ "Panel Discussion 'Human Rights Situation in the DPRK: Current Situation and Initiatives by the International Community,'" *Japan News*, December 2016, accessed March 10, 2017, <http://www.yomiuri.co.jp/adv/rachi/>.

Instead of two preambular paragraphs in Resolution 2270 on “the grave hardship” of North Korean people and on its diversion of financial, technical and industrial resources,¹²⁶ a new operational paragraph was inserted in the new resolution:

45. Reiterates its deep concern at the grave hardship that the people in the DPRK are subjected to, condemns the DPRK for pursuing nuclear weapons and ballistic missiles instead of the welfare of its people while people in the DPRK have great unmet needs, and emphasizes the necessity of the DPRK respecting and ensuring the welfare and inherent dignity of people in the DPRK;¹²⁷

Compared to the previous provisions, the new paragraph strongly suggests the connection between the people’s hardship and North Korea’s illicit activities. Also, “inherent dignity” implies human rights violation by the North Korean regime, which has never been explicitly addressed in relevant resolutions.

Such arguments help pro-sanctions countries to justify imposing stronger measures in spite of the devastating humanitarian situation. On the other hand, however, they are running the risk of ignoring humanitarian concerns they should address by arguing “these sanctions are not meant to target ordinary North Korean citizens.”¹²⁸ Instead, the proportionality approach allows them to declare sanctions may damage the North Korean economy to some extent, while they are obliged to ensure that the core human rights of North Korean people will be secured and that the economic hardship they will be faced with is proportionate to the aim of the sanctions regime.

The other side of the coin in this rhetorical twist is the risk of North Korea’s exploitation of humanitarian concerns. Regarding Resolution 2270, North Korea claimed that the sanctions

¹²⁶ *Resolution 2270*, preambular paras. 6, 7.

¹²⁷ *Resolution 2321*, para. 45.

¹²⁸ *Security Council 7821th meeting*, 6.

“pursue the heinous goal to deprive the DPRK of its right to existence, subsistence and development by blocking the regular economic activities of the DPRK through all despicable means and methods” and “[T]he ongoing economic sanctions imposed by the US are indeed the toughest of all time, and they are vicious hostile acts seeking to suffocate the overall economy of the DPRK, undermine the people’s livelihood and ultimately isolate and stifle the DPRK.”¹²⁹ Following the adoption of Resolution 2321, it made a statement which explicitly mentioned the “livelihood purposes” exemptions:

This time the US and other hostile forces cooked up a blockade-style “resolution on sanctions”, totally blocking sea lanes, to say nothing of trade and scientific and technical cooperation, discarding even the hypocritical signboard of excepting economic activities related to people’s lives that they put up in the past, in the wake of adopting Security Council “resolution on sanctions” 2270 (2016) for the purpose of isolating and stifling the DPRK.¹³⁰

The targeted sanctions approach would not be able to effectively cope with such rhetorical challenges because North Korea’s demand for more humane sanctions is legitimate from the perspective. In contrast, the proportionate sanctions approach would reject North Korea’s argument because it admits that sanctions inflict costs on both the ruling elites and the general populations and that the damage is proportionate to the goal of denuclearization.

¹²⁹ *Letter dated 22 November 2016 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the Secretary-General, S/2016/988, November 22, 2016, 7-8.*

¹³⁰ *Letter dated 22 December 2016 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the Secretary-General, S/2016/1097, December 28, 2016, 2.*

5. Conclusion: the Turn of the Sanctions Debate?

Since comprehensive sanctions were discarded as a blunt instrument, scholars and policy makers have been discussing how to maintain UN sanctions as a legitimate and effective policy tool, while the focus of the sanctions debate has continued shifting. From the mid-1990s to the early 2000s, there was a debate on humanitarian impacts of sanctions in which questions such as how to restrain the Security Council's power in imposing sanctions, what unintended consequences comprehensive sanctions brought about, and how to satisfy humanitarian needs of civilians were intensively discussed. Targeted sanctions emerged in the debate as an alternative approach in response to the loss of legitimacy of comprehensive sanctions as a policy option.

Although the humanitarian impact debate continues until today, the international community came to pay more attention to sanctions which are literally "targeted" on specific individuals and entities such as terrorists, dictators, and rebel groups as the Security Council began to use sanctions more actively as part of counter-terrorism strategy. The core issues in this new debate included due process, listing standards, and delisting procedures. In terms of humanitarian concerns, it became an important task for the Security Council to make essential goods and services available for designated individuals. The increasing focus on targeted measures provided advocates of targeted sanctions with a perfect opportunity to demonstrate their cause because most of those measures by definition inflicted little, if any, harm on innocent people and did not generate any significant unintended consequences.

Recently, scholars have noticed "a return to the use of broader or relatively more comprehensive sanctions."¹³¹ In response to this trend, advocates of targeted sanctions contend that "while public discourse reflects the belief that widening sanctions is the most effective way to strengthen them, deepening them might be more efficacious (and certainly more normatively desirable, given the

¹³¹ Biersteker, Eckert, and Tourinho, *Targeted Sanctions*, 270.

fact that they remain more targeted.)”¹³² As I argue in this paper, however, the dichotomy of the two kinds of sanctions is misleading, and the essence of sanctions is not in “targetedness” but in proportionality.

Moreover, the targeted sanctions approach has failed to recognize a cold reality that sanctions constitute “a necessary middle ground between war and words.”¹³³ Given the role of sanctions in the UN Charter as a means of enforcement, coercion is the primary purpose of sanctions and likely to require states to deploy more invasive measures than those just annoying targets. When sanctions fail, the UN Charter expects military enforcement as the next step. War inevitably entails the loss of life, as well as a widespread destruction of infrastructure. If the Security Council took a restrictive view on sanctions, it would have to resort to force more often, which could eventually inflict greater harm on innocent people. Recent debates over a military option on North Korea’s nuclear threat remind us of dreadful consequences of the failure of sanctions. Before starting a bloody war, it is necessary and legitimate to exhaust all possibilities of sanctions.

As the North Korean case shows, the “re-comprehensivization”¹³⁴ of sanctions has posed significant challenges to the concept of targeted sanctions because it claims targeted measures are more preferable than comprehensive ones but does not provide any standards or principles on which senders can rely. The concept of proportionate sanctions fills the gap by providing an alternative perspective on the reality of sanctions as a political process. Clarifying who applies a proportionality test in each phase of the sanctions cycle can actually improve the accountability of UN sanctions. Also, the proportionality approach as well as the typology of the two exemptions

¹³² Ibid.

¹³³ *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, March 21, 2005, para. 109.

¹³⁴ Biersteker, Eckert, and Tourinho, *Targeted Sanctions*, 278.

can contribute to effective protection of human rights by articulating where states can and cannot exercise their discretion. A normative argument that all human rights should be protected in implementing sanctions is dangerous because it can result in a hypocritical claim that sanctions inflict no harm.

Bibliography

Biersteker, Thomas J., Sue E. Eckert, and Marcos Tourinho, eds. *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*. Cambridge: Cambridge University Press, 2016.

———, Sue E. Eckert, and Marcos Tourinho. *Designing United Nations Targeted Sanctions: Initial Findings of the Targeted Sanctions Consortium (TSC)*. Targeted Sanctions Consortium, August 2012. Accessed March 3, 2017.
http://www.watsoninstitute.org/pub/Designing_UN_Targeted_Sanctions_FINAL.pdf.

——— and Sue E. Eckert. *Strengthening Targeted Sanctions Through Fair and Clear Procedures*. Providence: Thomas J. Watson Jr. Institute for International Studies, 2006. Accessed March 5, 2017. http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf.

———, Sue E. Eckert, Peter Romaniuk, Aaron Halegua, and Natalie Reid. *Targeted Financial Sanctions: A Manual for Design and Implementation*. Providence: Thomas J. Watson Jr. Institute for International Studies, 2001. Accessed March 4, 2017.
<http://www.watsoninstitute.org/pub/TFS.pdf>.

Brzoska, Michael, ed. *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the "Bonn-Berlin Process."* Bonn: Bonn International Center for Conversion, 2001. Accessed March 4, 2017.
http://www.watsoninstitute.org/tfs/CD/booklet_sanctions.pdf.

Chanlett-Avery, Emma, Ian E. Rinehart, and Mary Beth D. Nikitin. *North Korea: U.S. Relations, Nuclear Diplomacy, and Internal Situation*. Congressional Research Service, January

15, 2016. Accessed March 6, 2017. <https://fas.org/sgp/crs/nuke/R41259.pdf>.

Chayes, Abram, and Antonia Handler Chayes. *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge, MA: Harvard University Press, 1996.

Chesterman, Simon, and Beatrice Pouligny. "Are Sanctions Meant to Work? The Politics of Creating and Implementing Sanctions through the United Nations." *Global Governance* 9, no. 4 (October–December 2003): 503-518. Accessed March 4, 2017. <http://www.jstor.org/stable/27800499>.

Cortright, David, and George A. Lopez. *The Sanctions Decade: Assessing UN Strategies in the 1990s*. Boulder, CO: Lynne Rienner Publishers, 2000.

Craven, Matthew. "Humanitarianism and the Quest for Smarter Sanctions." *European Journal of International Law* 13, no. 1 (February 2002): 43-61. Accessed March 3, 2017. <https://doi.org/10.1093/ejil/13.1.43>.

de Wet, Erika. *The Chapter VII Powers of the United Nations Security Council*. Portland, OR: Hart Publishing, 2004.

Drezner, Daniel W. "Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice." *International Studies Review* 13, no. 1 (2011): 96-108. Accessed March 4, 2017. <https://doi.org/10.1111/j.1468-2486.2010.01001.x>.

Eriksson, Mikael. *Targeting Peace: Understanding UN and EU Targeted Sanctions*. Farnham, Surrey: Ashgate Publishing, 2011.

Giumelli, Francesco. *Coercing, Constraining and Signalling: Explaining UN and EU Sanctions after the Cold War*. Colchester: ECPR Press, 2011.

Gowlland-Debbas, Vera, ed. *National Implementation of United Nations Sanctions: A Comparative Study*. Leiden: Martinus Nijhoff Publishers, 2004.

———, ed. *United Nations Sanctions and International Law*. Hague: Kluwer Law International, 2001.

Hippel, David von, and Peter Hayes. "DPRK Coal Exports to China under New UN Sanctions: Potential Impacts and 'Work-arounds.'" NAPSNet Special Reports, February 14, 2017. Accessed March 1, 2017. <http://nautilus.org/napsnet/napsnet-special-reports/dprk-coal-exports-under-new-un-sanctions-potential-impacts-and-work-arounds/>.

Korea Trade-Investment Promotion Agency (KOTRA). 2015 북한 대외무역 동향. Seoul: KOTRA, 2016. Accessed March 5, 2017. <http://news.kotra.or.kr/common/extra/kotranews/globalBbs/249/fileDownload/39367.do>.

Manusama, Kenneth. *The United Nations Security Council in the Post-Cold War Era: Applying the Principle of Legality*. Leiden: Martinus Nijhoff, 2006).

Marossi, Ali Z., and Marisa R. Bassett, eds. *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences*. Hague: T.M.C. Asser Press, 2015. Accessed March 4, 2017. <http://link.springer.com/book/10.1007%2F978-94-6265-051-0>.

Matheson, Michael J. *Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues after the Cold War*. Washington, D.C.: United States Institute of Peace

Press, 2006.

O’Connell, Mary Ellen. “Debating the Law of Sanctions.” *European Journal of International Law* 13, no. 1 (2002): 63-79. Accessed February 1, 2017.
<http://www.ejil.org/pdfs/13/1/473.pdf>.

Plant, Thomas, and Ben Rhode. “China, North Korea and the Spread of Nuclear Weapons.” *Survival* 55, no. 2 (2013): 61-80. Accessed March 5, 2017.
<http://dx.doi.org/10.1080/00396338.2013.784467>.

Reinisch, August. “Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions.” *The American Journal of International Law* 95, no. 4 (2001): 851–872. Accessed March 4, 2017.
www.jstor.org/stable/2674632.

Reisman, W. Michael. "Sanctions and International Law." *Intercultural Human Rights Law Review* 4 (2009): 9-20. Accessed March 4, 2017.
https://heinonline.org/HOL/Page?handle=hein.journals/ichuman4&start_page=9&collection=journals&id=22.

——— and Douglas L. Stevick. “The Applicability of International Law Standards to United Nations Economic Sanctions Programmes.” *European Journal of International Law* 9 (1998): 86-141. Accessed March 4, 2017. <http://www.ejil.org/pdfs/9/1/1485.pdf>.

Scharf, Michael P., and Joshua L. Dorosin. "Interpreting UN Sanctions: The Rulings and Role of the Yugoslavia Sanctions Committee." *Brooklyn Journal of International Law* 19, no. 3 (1993): 771-827. Accessed March 5, 2017.

http://heinonline.org/HOL/Page?handle=hein.journals/bjil19&g_sent=1&collection=journals&id=779.

Simma, Bruno, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, and Nikolai Wessendorf (asst. ed.), eds. *The Charter of the United Nations: A Commentary*. 3rd ed. Vols. 1 and 2. Oxford: Oxford University Press, 2012.

Taylor, Brendan. *Sanctions as Grand Strategy*. Abingdon, Oxon: Routledge, for the International Institute of Strategic Studies, 2010.

Tostensen, Arne, and Beate Bull. "Are Smart Sanctions Feasible?" *World Politics* 54, no 3 (April 2002): 373-403. Accessed March 3, 2017. <http://www.jstor.org/stable/25054192>.

Wallensteen, Peter, Carina Staibano, and Mikael Eriksson eds. *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options*. Uppsala: Department of Peace and Conflict Research, 2003. Accessed March 5, 2017. http://pcr.uu.se/digitalAssets/173/c_173853-1_1-k_final_report_complete.pdf.

Weiss, Thomas G., David Cortright, George A. Lopez, and Larry Minear, eds. *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions*. Lanham, MD: Rowman and Littlefield Publishers, 1997.

Wood, Michael C. "The Interpretation of Security Council Resolutions." *Max Planck Yearbook of United Nations Law* 2, no. 1 (1998): 73-95. Accessed March 6, 2017. http://www.mpil.de/files/pdf2/mpunyb_wood_2.pdf.

Xiao, Ren. "Old Wine in a New Bottle? China's Korea Problem." *Asia Policy* 23 (2017): 83-

89. Accessed March 5, 2017. <https://muse.jhu.edu/article/647789>.