

The Limits of UN Sanctions under International Law: The Case of North Korea

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North Korea's nuclear weapons and ballistic missile programs have been a concern of the international community for many years. In response to North Korea's first nuclear test in 2006, the Security Council adopted one of the most controversial sanctions regimes in the history of the UN. After further nuclear tests in 2009, twice in 2016, and in 2017, the Security Council unanimously adopted even more new resolutions according to Chapter VII of the UN Charter, condemning North Korea's behavior and demanding, inter alia, that it refrains from future nuclear and ballistic missile tests. The Security Council has tightened these sanctions over the years with a total of 10 resolutions. The UN sanctions imposed on North Korea raise many political, ethical, and legal questions. This article tries to answer them from the perspective of international law by examining the legal limits of the UN Security Council under Chapter VII of the UN Charter.

Keywords

North Korea, UN Sanctions, Security Council, Chapter VII, UN Charter, Legal Limits under International Law, International Human Rights

“The DPRK sanctions is the most comprehensive - and most likely the most complicated sanctions regime to date.”¹

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1. Introduction

The UN sanctions imposed on the Democratic People's Republic of Korea (DPRK), also referred to as North Korea, have become one of the most contentious sanctions regimes in postwar history. The North Korean leadership has even labelled the United Nations (UN) sanctions as an “act of war.”² North Korea views these sanctions as not only brutal but also a rampant violation of its sovereignty and constituting genocide.³ Some years ago, the DPRK Mission to the UN stated that the sanctions “have no legal basis at all” and violate the country’s “lawful rights.”⁴

Even though they have been imposed with precautions against causing human suffering, experts are warning that the sanctions are still hurting the human rights of North Korea’s citizens. Specifically, they may have detrimental effects on ordinary people’s livelihoods and access to medical care. According to a report published in 2024 by Human Rights Watch, international sanctions have contributed to the worsening of human rights in North Korea.⁵ In a recent article, Korean scholars arrived at the same conclusion that there is a correlation between sanctions and the dire humanitarian situation in the DPRK. In their unique study, they analyzed the data and literature related to the humanitarian situation in North Korea.⁶

While there is common agreement that the North Korean economy is in particularly bad shape, no one knows how poor North Korea actually is, due to lack of reliable, quantitative information.⁷ In April 2021, Kim Jong Un warned that there could be an economic crisis of historic proportions. Some experts argue that the COVID-19 pandemic, in conjunction with the international sanctions, have pushed

¹ UNSC, Chair’s Statement: Open Briefing of the 1718 Committee, https://main.un.org/securitycouncil/sites/default/files/open_briefing_chair_statement_presentation_9_feb_2018.pdf.

² See *North Korea: New UN sanctions ‘an act of war’*, BBC NEWS (Dec. 24, 2017), <https://www.bbc.com/news/world-asia-42470390>.

³ Andrew Griffin, *North Korea Says Latest Sanctions Imposed by the UN Are an ‘Act of War,’* INDEPENDENT (Dec. 24, 2017), <http://www.independent.co.uk/news/world/asia/north-korea-act-of-war-un-sanctions-latest-kim-jong-un-kcna-nuclear-weapons-a8126966.html>.

⁴ *North Korea Warns Joint US-South Korea Military Exercises Are Pushing Region to ‘Nuclear Disaster,’* ABC NEWS (Mar. 7, 2017), <http://www.abc.net.au/news/2017-03-07/nkorea-us-skorea-exercises-leading-to-nuclear-disaster/8330554>.

⁵ Human Rights Watch, *A Sense of Terror Stronger than a Bullet: The Closing of North Korea 2018-2023* (Mar. 2024), at 134-6, https://www.hrw.org/sites/default/files/media_2024/03/northkorea0324web_0.pdf.

⁶ Kwang Moon et al., *A Study on the Correlation between Sanctions and Humanitarian Situation: Did Sanctions Lead to the Crisis in North Korea?*, 39(1) PAC. FOCUS 134-67 (2024).

⁷ Jesus Crespo Cuaresma et al., *What Do We Know about Poverty in North Korea?*, 6 PALGRAVE COMM. 1-8 (2020).

the North Korean economy to the edge.⁸ According to the Food and Agriculture Organization (FAO)'s "State of Food Security and Nutrition" in the World 2023 report, half of the North Koreans, around 12 million people, are undernourished.⁹ The economic situation worsened when North Korea closed its border to China because of the COVID-19 pandemic. As pointed out by the UN Special Rapporteur Tomás Ojea Quintana, "Prolonged COVID-19 prevention measures have resulted in a drastic decline in trade and commercial activities and severe economic hardship to the general population, causing increased food insecurity."¹⁰

Sanctions should not amount to collective punishment or create obstacles to the delivery of humanitarian aid. In response to the COVID-19 pandemic of 2020, the UN High Commissioner for Human Rights Michelle Bachelet called for an easing or suspension of the UN sanctions in general, and those on North Korea in particular, because sanctions could impede medical efforts to prevent the disease spread.¹¹ In 2019 and 2021, there had been calls from China and Russia that lifting some sanctions could ease humanitarian concerns and break the deadlock in the denuclearization talks between the DPRK and the US.¹² In March 2024, Russia vetoed the UN Security Council draft resolution that would have renewed the mandate of the North Korean sanctions panel, the so-called UN Panel of Experts (PoE),¹³ while China abstained from the vote. In the past, both China and Russia, as permanent members of the Security Council, vetoed any attempts to introduce new sanctions. Furthermore, Russia called for a sunset clause because of the "indefinite nature" of the sanctions

⁸ Kyung-min Lee, *Sanctions Push N. Korean Economy to the Brink*, KOREA TIMES (Mar. 4, 2020), https://www.koreatimes.co.kr/www/biz/2024/09/602_264778.html; Thomas Byrne, *The Coronavirus Has Pushed North Korea's Economy to the Edge*, FOREIGN POL'Y (Apr. 27, 2020), <https://foreignpolicy.com/2020/04/27/coronavirus-north-korea-economy-bonds-crisis>.

⁹ FAO, THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD 2023, 182 (2023), <https://openknowledge.fao.org/items/445c9d27-b396-4126-96e9-50b335364d01>.

¹⁰ See *UN Rights Official Warns of Starvation, Poverty in North Korea from Long COVID-19 Lockdown*, RADIO FREE ASIA (Mar. 12, 2021), <https://www.rfa.org/english/news/korea/quintana-03122021180112.html>; See also Report of the Special Rapporteur, *Situation of Human Rights in the Democratic People's Republic of Korea*, U.N. Doc. A/75/388 (Oct. 14, 2020), at 5-7, <https://documents.un.org/doc/undoc/gen/n20/266/19/pdf/n2026619.pdf>.

¹¹ OHCHR, *Bachelet Calls for Easing of Sanctions to Enable Medical Systems to Fight COVID-19 and Limit Global Contagion* (Mar. 24, 2020), <https://www.ohchr.org/en/2020/03/bachelet-calls-easing-sanctions-enable-medical-systems-fight-covid-19-and-limit-global>.

¹² *China, Russia Say Lifting Some UN Sanctions on North Korea Could Help Break the Deadlock*, CNBC (Dec. 17, 2019), <https://www.cnbc.com/2019/12/18/china-russia-say-lifting-some-un-sanctions-on-north-korea-could-help-break-the-deadlock.html>; Kelsey Davenport, *China, Russia Propose North Korea Sanctions Relief, Arms Control Association* (Dec. 2021), <https://www.armscontrol.org/act/2021-12/news/china-russia-propose-north-korea-sanctions-relief>.

¹³ UN Documents for DPRK (North Korea): Sanctions Committee Documents, https://www.securitycouncilreport.org/un_documents_type/sanctions-committee-documents/?ctype=DPRK%20%28North%20Korea%29&ctype=dprk-north-korea.

regime.¹⁴ Observers fear that Moscow plans to completely dismember the sanctions regime against the DPRK.¹⁵

This research addresses the compatibility of the UN sanctions imposed on North Korea under international law.¹⁶ This paper is composed of five parts including Introduction and Conclusion. Part two will provide a factual background for the UN sanctions imposed on the DPRK. Part three will summarize the debate on whether the sanctions have been effective. Part four will assess the legality of the UN sanctions regime, particularly under international human rights law.

2. The UN Sanctions Regime Imposed on North Korea

Following North Korea's first nuclear test in 2006, the UN Security Council adopted a broad array of sanctions on the country. Since then, the Council has imposed stricter sanctions after further nuclear tests were conducted in 2009 and 2013, twice in 2016, and in 2017.¹⁷

The wide-ranging UN sanctions adopted by the Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017), and 2379 (2017) include, *inter alia*, a ban on trade of arms and military equipment as well as dual-use technology; travel ban and asset freezes for individuals involved in North Korea's nuclear and ballistic missile program; ban on the importation of certain luxury goods; and ban on the export of electrical equipment, coal, minerals, seafood, food and agricultural products, wood, textile, earth, and stones. Furthermore, there is a cap on North Korean labor exports, cap on oil and all refined petroleum products, ban on natural gas imports, and restrictions on fishing rights.¹⁸ Pursuant to the Security Council Resolution 2397 of December 22,

¹⁴ Sang Ho Song, *Seoul Envoy Says Russia Vetoes U.N. Panel Mandate Extension to Hide its 'Dark Spot'*, YONHAP NEWS AGENCY (Apr. 12, 2024), <https://en.yna.co.kr/view/AEN20240412000300315>.

¹⁵ Victor Cha & Ellen Kim, *Russia's Veto: Dismembering the UN Sanctions Regime on North Korea*, Center for Strategic and International Studies (Mar. 29, 2024), <https://www.csis.org/analysis/russias-veto-dismembering-un-sanctions-regime-north-korea>; Eric Ballbach, *After Russia's Veto: The Future of the Sanctions Regime against North Korea*, 38 NORTH (Apr. 12, 2024), <https://www.38north.org/2024/04/after-russias-veto-the-future-of-the-sanctions-regime-against-north-korea>.

¹⁶ For details on the UN sanctions from an ethical point of view, see Hazel Smith, *The Ethics of United Nations Sanctions on North Korea: Effectiveness, Necessity and Proportionality*, 52(2) CRITICAL ASIAN STUD. 182-203 (2020).

¹⁷ Eric Yong Joong Lee, *Can the SC Resolution 2270 Stop North Korea's Nuclear Dilemma? From the Geneva Agreed Framework to the Washington Communiqué*, 9(1) J. EAST ASIA & INT'L L. 262-3 (2016).

¹⁸ For a complete list of the UN sanctions, see UNSC, Security Council Committee Established Pursuant to Resolution

2017, the UN member states should expel all North Korean workers within a period of two years.

In addition to the UN sanctions, individual states, including Australia, Japan, South Korea, and the US, as well as the European Union, have adopted their own individual sanctions in response to North Korea's alleged cyberattacks, money laundering, and human rights violations.¹⁹ In May 2024, South Korea and Japan adopted new sanctions regarding individuals, organizations, and ships related to Russia's weapons deals with North Korea in violation of the UN sanctions regime.²⁰

3. The Effectiveness of the UN Sanctions

It is extremely difficult to credibly assess to what extent the UN sanctions have impacted North Korean regime's nuclearization policy.²¹ Obviously, North Korea has not changed its attitude toward developing missiles and nuclear weapons.²² Since 2006, the DPRK has conducted six nuclear tests and launched ballistic missiles on numerous occasions in defiance of the most comprehensive and targeted sanctions

1718 (2006), <https://main.un.org/securitycouncil/en/sanctions/1718>.

- ¹⁹ See e.g., Australian Department of Foreign Affairs and Trade, Republic of Korea (North Korea) Sanctions Regime, <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/democratic-peoples-republic-korea-sanctions-regime>; EU, EU Sanctions against North Korea, <https://www.consilium.europa.eu/en/policies/sanctions-against-north-korea>; Ministry of Foreign Affairs of Japan, Measures Taken by the Government of Japan against North Korea (Feb. 10, 2016), https://www.mofa.go.jp/a_o/na/kp/page4e_000377.html; US Department of State, Democratic People's Republic of Korea Sanctions (Sept. 19, 2024), <https://www.state.gov/democratic-peoples-republic-of-korea-sanctions>; Laura Geigenberger, *US Imposed Highest Number of Sanctions on DPRK under US President Biden Last Year*, DAILY NK (Feb. 14, 2024), <https://www.dailynk.com/english/us-imposed-the-highest-number-of-sanctions-against-the-dprk-under-us-president-joe-biden-last-year>; Seung-yeon Kim, *S. Korea Imposes Sanctions on 11 Vessels over N. Korea's Illegal Ship-to-Ship Transfers*, YONHAP NEWS AGENCY (Jan. 17, 2024), <https://en.yna.co.kr/view/AEN20240117000800315>.
- ²⁰ *South Korea, Japan Unveil Sanctions over Alleged Russia-North Korea Arms*, REUTERS (May 24, 2024), <https://www.reuters.com/world/asia-pacific/south-korea-imposes-sanctions-north-koreans-two-russian-vessels-2024-05-24>.
- ²¹ Daniel Salisbury, *Why Did Sanctions against North Korea's Missile Program Fail?*, CONVERSATION (July 8, 2017), <https://theconversation.com/why-did-sanctions-against-north-koreas-missile-program-fail-80666>.
- ²² For the debated at the UN Security Council, see UNSC, Democratic People's Republic of Korea Continues Nuclear Weapons Programme, Violating Resolutions, Assistant Secretary-General Warns Security Council, U.N. Doc. S/2023/15504 (Nov. 27, 2023), <https://press.un.org/en/2023/sc15504.doc.htm>; UNSC, Democratic People's Republic of Korea's Unannounced, New Satellite Launch, Threatens Peace, Denuclearization Efforts, Speakers Warn Security Council, U.N. Doc. S/2024/15715 (May 31, 2024), <https://press.un.org/en/2024/sc15715.doc.htm>; UNSC, Pyongyang's Pursuit of Nuclear Weapons Continues to Undermine Global Disarmament, Non-Proliferation Regime, High Representative Warns Security Council, U.N. Doc. S/2024/15755 (June 28, 2024), <https://press.un.org/en/2024/sc15755.doc.htm>.

regime in the UN history.²³

While some observers suggest that the sanctions have had a detrimental effect on trade and are biting,²⁴ many experts conclude that the UN sanctions did not prevent the development and execution of North Korea's nuclear program. In September 2024, there have been reports about the existence of a second uranium enrichment facility in Kangson.²⁵ Moreover, Pyongyang is involved in smuggling and black-market activities, earning millions of dollars per year through the illicit arms trade. "[A]s the sanctions regime expands, so does the scope of evasion," a UN report noted.²⁶

The DPRK circumvents sanctions by using North Korean diplomatic personnel, agents, and intermediaries. Over the past 18 years, North Koreans have become very skillful and entrepreneurial in exploiting loopholes. According to the UN, the 100,000 North Korean workers abroad could have sent up to USD 500 million to the North Korean government in 2023.²⁷ In February 2018, a UN report accused North Korea of earning almost USD 200 million from exporting oil and other banned commodities in the previous year. John Bowden said: "[North Korea] is already flouting the most recent resolutions by exploiting global oil supply chains, complicit foreign nationals, offshore company registries and the international banking system."²⁸ The country has, for example, used its embassy in Berlin for acquiring nuclear technology and equipment, according to German intelligence.²⁹ North Korea has also allegedly

²³ For additional readings on the legality of North Korea's missile tests under international treaty law and customary international law, see Eric Yong Joong Lee, *Legal Analysis of the 2006 U.N. Security Council Resolutions against North Korea's WMD Development*, 31(1) *FORDHAM INT'L L. J.* 1 (2007); Michael Schmitt & John Trammazo, *A Legal Assessment of North Korean Missile Tests*, *LIEBER INS.* (Aug. 11, 2023), <https://lieber.westpoint.edu/legal-assessment-north-korean-missile-tests>.

²⁴ Jae-kyoung Kim, *Sanctions on North Korea Are Biting*, *KOREA TIMES* (Feb. 1, 2018), http://www.koreatimes.co.kr/www/news/nation/2018/01/103_241806.html; *Sanctions Having an Impact on North Korea: Tillerson*, *STRAIT TIMES* (Nov. 21, 2017), <http://www.straitstimes.com/world/united-states/sanctions-having-an-impact-on-north-korea-tillerson>; Byung-yeon Kim, *The Effect of Sanctions*, *KOREA JOONGANG DAILY* (Jan. 28, 2018), <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3043920>.

²⁵ Colin Zwirko, *North Korea Appears to Confirm Existence of Second Uranium Enrichment Plant*, *NK PRO* (Sep. 13, 2024), <https://www.nknews.org/pro/north-korea-appears-to-confirm-existence-of-second-uranium-enrichment-plant>.

²⁶ Colum Lynch, *U.N. Report: Sanctions Aren't Stopping North Korea's Nuclear Program*, *FOREIGN POL'Y* (Sept. 7, 2017), <http://foreignpolicy.com/2017/09/07/u-n-report-sanctions-arent-stopping-north-koreas-nuclear-program>.

²⁷ Eugene Whong, *100,000 North Koreans Work Abroad, Earning US\$500 Million a Year: UN*, *RADIO FREE ASIA* (Mar. 21, 2024), <https://www.rfa.org/english/news/korea/workers-03212024162926.html>; Jiha Ham & Christy Lee, *Despite Sanctions, North Korea Runs More than 50 Restaurants in China*, *VOA NEWS* (Mar. 14, 2024), <https://www.voanews.com/a/despite-sanctions-north-korea-runs-more-than-50-restaurants-in-china-7528335.html>.

²⁸ John Bowden, *UN Accuses North Korea of Violating Sanctions: Report*, *HILL* (Mar. 2, 2018), <http://thehill.com/policy/international/372153-un-accuses-north-korea-of-violating-sanctions-report>.

²⁹ *See North Korea's Berlin Embassy Used to Acquire Nuclear Tech, Says Spy Chief*, *GUARDIAN* (Feb. 4, 2018), <https://www.theguardian.com/world/2018/feb/04/north-korea-berlin-embassy-nuclear-tech-germany-spy-chief>.

supplied arms to Syria and Myanmar in violation of these sanctions.³⁰ In addition, North Korea has sold munitions, ballistic missiles, and other weapons to Russia in its war against Ukraine.³¹ According to the UN PoE, the DPRK could sell millions of tons of coal. Cyberhackers are stealing millions of dollars through cyberoperations, and third-party mediators are doing business on behalf of the Kim Jong Un regime.³² The UN PoE investigated 58 suspected cyberattacks or cryptocurrency-related companies between 2017 and 2023, valued at around USD 3 billion. In 2023 alone, the DPRK may have acquired USD 750 million from cryptocurrency thefts.³³ The North Korean regime also manages to smuggle luxury goods, such as new foreign motor vehicles, into the country.³⁴

It has been pointed out that sanctions would never work because the nuclear program is a major tool of regime survival. Some argue that the UN sanctions may have little effect because of North Korea's state-controlled and closed economy. Joseph de Thomas argues that sanctions are a "hammer without nails," and "they are not appropriate to the size of policy objective they are supposed to achieve."³⁵ For Andrei Lankov, a leading expert on North Korea, there is no way to stop Kim Jong Un.³⁶ "North Koreans would rather 'eat grass' than [*sic*] give up their nuclear weapons programme," according to Russian President Putin.³⁷ North Korea justifies its nuclear program as self-defense against the US's potential armed aggression.³⁸ Han Tae Song, North Korea's ambassador to the UN, explained in 2017 the need for

³⁰ See *North Korea Supplied Arms to Syria and Myanmar, UN Sanctions Report Finds*, GUARDIAN (Feb. 2, 2018), <https://www.theguardian.com/world/2018/feb/02/north-korea-broke-un-sanctions-to-earn-nearly-200m-in-commodity-exports>.

³¹ Jung Pak, *Russia's Cover up of Its Dangerous Dealings with North Korea Leaves Us All Less Secure*, DIPLOMAT (May 9, 2024), <https://thediplomat.com/2024/05/russias-cover-up-of-its-dangerous-dealings-with-north-korea-leaves-us-all-less-secure>.

³² UNSC, Report of the Panel of Experts Established Pursuant to Resolution 1874 (2000), U.N. Doc. S/2020/151 (Mar. 2, 2020), at 5, <https://documents.un.org/doc/undoc/gen/n20/060/67/pdf/n2006067.pdf>.

³³ UNSC, Final Report of the Panel of Experts, U.N. Doc. S/2024/215 (Mar. 7, 2024), at ¶ 181, <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S%202024%20215.pdf>.

³⁴ *Id.* at ¶ 87.

³⁵ Joseph DeThomas, *Sanctions' Role in Dealing with the North Korean Problem*, 38 NORTH (Jan. 2016), at 8-9, <https://www.38north.org/wp-content/uploads/2016/01/NKNF-DeThomas-Sanctions-Role.pdf>.

³⁶ Katherine Lam, *North Korea Expert: 'No Way to Stop' Kim Jong Un's Regime*, FOX NEWS (Sept. 14, 2014), <http://www.foxnews.com/world/2017/09/14/north-korea-expert-no-way-to-stop-kim-jong-uns-regime.html>.

³⁷ Samuel Osborne, *Putin: North Koreans 'Will Eat Grass but Will not Give up Nuclear Programme'*, INDEPENDENT (Sept. 5, 2017), <http://www.independent.co.uk/news/world/asia/putin-north-korea-nuclear-programme-eat-grass-russia-president-test-missilies-icbm-a7930916.html>.

³⁸ Mike Hanna, *North Korea Says Missile Programme Is Self-defence*, AL JAZEERA (Dec. 16, 2017), <http://www.aljazeera.com/news/2017/12/north-korea-missile-programme-self-defence-171216104336443.html>.

“the nuclear deterrent to cope with the nuclear threat from America.”³⁹ In October 2024, Kim Jong Un even threatened:

‘if’ the enemy, seized with extreme foolishness and recklessness, or attempted to use armed forces encroaching upon the sovereignty of the DPRK, full of excessive ‘confidence’ in the ROK [South Korea]-US alliance in disregard of our repeated warnings, the DPRK would use without hesitation all the offensive forces it has possessed, including nuclear weapons.⁴⁰

Kim Jong Un is afraid if his leadership could end up like that of Libyan dictator Moammar Gaddafi, who was overthrown after he had given up Libya’s weapons of mass destruction (WMDs) program. In September 2023, North Korea amended its constitution to bolster and expand its nuclear force.⁴¹

It has also been argued that Seoul’s policy of engagement has diluted the effects of sanctions.⁴² A common explanation for the failure of the UN sanctions is that China and Russia lack full commitment in implementing the sanctions, because they fear regime collapse or North Korea becoming unstable. In 2023, South Korean President Yoon Suk-yeol urged both countries to enforce their own UN Security Council resolutions.⁴³ There have been allegations against Moscow that, among others, Russia is transferring military technology and providing North Korea access to financial markets.⁴⁴ In 2024, China-based individuals and entities have been accused of helping Pyongyang in the procurement of items necessary for its ballistic missile and space programs.⁴⁵ China could be the key for resolving this crisis because Beijing is a major

³⁹ Stephanie Nebehay, *Exclusive: North Korea Rules Out Negotiations on Nuclear Weapons*, REUTERS (Nov. 18, 2017), <https://www.reuters.com/article/us-northkorea-nuclear-envoy-exclusive/exclusive-north-korea-rules-out-negotiations-on-nuclear-weapons-idUSKBN1DH108>.

⁴⁰ *See Respected Comrade Kim Jong Un Inspects Training Base of Special Operation Units of KPA in Western Area*, KCNA WATCH (Oct. 4, 2024), <https://kcnawatch.xyz/newstream/1727995188-641031895/respected-comrade-kim-jong-un-inspects-training-base-of-special-operation-units-of-kpa-in-western-area>.

⁴¹ Soo-Hyang Choi & Hyonhee Shin, *North Korea Amends Constitution on Nuclear Policy, Cites US Provocations*, REUTERS (Sept. 28, 2023), <https://www.reuters.com/world/asia-pacific/north-korea-parliament-amends-constitution-enshrine-nuclear-policy-kcna-2023-09-27>.

⁴² Eleanor Albert, *What to Know About Sanctions on North Korea*, Council on Foreign Relations (July 16, 2019), <https://www.cfr.org/background/what-know-about-sanctions-north-korea>.

⁴³ Hyun-woo Nam, *Yoon Urges Russia, China to Enforce UN Resolutions on N. Korea*, KOREA TIMES (Sept. 7, 2023), https://www.koreatimes.co.kr/www/nation/2024/05/113_358696.html.

⁴⁴ Troy Stangarone, *What Comes after the Panel of Experts*, KOREA TIMES (May 8, 2024), https://www.koreatimes.co.kr/www/opinion/2024/09/137_374232.html.

⁴⁵ Sang-ho Song, *US Sanctions China-base Individuals Accused of Supporting NK Missile, Space Programs*, YONHAP NEWS AGENCY (July 25, 2024), <https://en.yna.co.kr/view/AEN20240725000200315>.

trading partner of North Korea.⁴⁶

There has also been lax enforcement by other UN member states. According to a report by the Institute for Science and International Security, around 50 countries have been violating sanctions.⁴⁷ States accused of violating sanctions by trading arms or military-related equipment include Angola, Cuba, Democratic Republic of the Congo, Eritrea, Iran, Mozambique, Myanmar, Namibia, Sri Lanka, Syria, Uganda, and the United Republic of Tanzania. There have also been allegations of sanctions violations against countries that facilitate front companies and business activities.

Furthermore, the DPRK has received shipping assistance from several countries, including through the practice of re-flagging vessels. Over time, the North Koreans have become masters in evading sanctions in the areas of banking, export, and trade. Another important aspect is that North Koreans are used to economic hardship and enduring chronic food insecurity. It is estimated that nearly half of its population is undernourished.⁴⁸ The situation for millions of people living in the DPRK is grim. As pointed out by the milestone UN report “The Price is Rights,” especially vulnerable groups suffer from food insecurity, undernutrition, and lack of access to safe water.⁴⁹ According to the report, the government of North Korea “continues to fail to take steps to the “maximum of its available resources” to progressively realize the right to an adequate standard of living or fulfil its core obligations with immediate effect.”⁵⁰

Policy options regarding how to address North Korea’s nuclear crisis are seriously debated including continued diplomatic talks, new six-party talks, interpersonal exchanges, more cooperation in the field of economics and culture, ending of North Korea’s diplomatic isolation, deployment of the Terminal High Altitude Area Defense anti-missiles to South Korea, acceptance of North Korea as a nuclear power, easing of UN sanctions, containment, and regime change to pre-emptive military strikes.⁵¹ As regards the UN sanctions, there are many open questions: Do sanctions

⁴⁶ Members of the UN and the international civil society have called upon the UN Security Council to address the precarious human rights situation in North Korea as a threat to international peace and security. However, China objects to this proposal because it does not consider the UN Security Council as the right forum to address human rights issues. For the debate at the UN in summer 2024, see U.N. Doc. SC/15726 (June 12, 2024), <https://press.un.org/en/2024/sc15726.doc.htm>.

⁴⁷ David Albright et al., *Countries Involved in Violating UNSC Resolutions on North Korea*, Institute for Science and International Security (Dec. 5, 2017), at 1, http://isis-online.org/uploads/isis-reports/documents/Countries_Involved_in_Violating_NK_UNSC_Resolutions_5Dec2017_Final.pdf.

⁴⁸ Ifang Bremer, *Almost Half of North Korea’s Population Undernourished due to Food Shortages*: UN, NK News (July 14, 2023), <https://www.nknews.org/2023/07/almost-half-of-north-koreas-population-undernourished-due-to-food-shortages-un>.

⁴⁹ OHCHR, *The Price is Rights: The Violation of the Right to an Adequate Standard of Living in the Democratic People’s Republic of Korea* (2019), at 15, https://www.ohchr.org/Documents/Countries/KP/ThePriceIsRights_EN.pdf.

⁵⁰ *Id.* at 12.

⁵¹ For a discussion of the different policy options, see John Nilsson-Wright, *North Korea’s nuclear tests: How should Trump respond?*, BBC News (Sept. 4, 2017), <https://www.bbc.com/news/world-asia-41143589>; North Korea: *What can*

require a different strategy?⁵² Are there other suitable or vulnerable areas of the North Korean economy that could be still targeted? Should sanctions simply be imposed for a longer period to become effective? Are sanctions focusing on the wrong areas? What stronger role could Russia and China play? What kind of mechanisms need to be established for improving compliance? How can the international community fill the cracks in the existing sanctions regime and close loopholes? How can illicit ship-to-ship transfers be stopped? When would it be appropriate to relax UN sanctions?⁵³

Proponents of sanctions point out that sanctions need more time and better enforcement before they can produce the desired effect. Anthony Ruggiero suggests tailoring sanctions that target more non-North Korean and Chinese entities. John Bolton, former US ambassador to the UN, argues that it is too late for additional sanctions “because North Korea is more like a huge prison than a real country that can be hurt by sanctions.”⁵⁴ It has been reported that North Korea requested sanctions relief during the second summit between the US President Trump and North Korea’s leader Kim Jong Un in Hanoi.⁵⁵ For some experts, this is an indication that sanctions are effective.

Critics of sanctions argue that sanctions help the regime stay in power, because the leadership can control the flow of money to privileged individuals. John Delury views North Korea as “futile, counterproductive and dangerous.” He suggests a different path that would help North Korea out of its isolation.⁵⁶ For Troy Stangarone, it appears that Pyongyang has already taken “the strategic decision that the cost

the outside world do?, BBC NEWS (July 4, 2017), <https://www.bbc.com/news/world-asia-39216803>.

⁵² See e.g., Kate Hewitt, *Rethinking North Korean Sanctions: Lessons and Strategies for Long-Term Planning*, 38 NORTH (Jan. 16, 2018), <https://www.38north.org/2018/01/khewitt011618>; Marcus Noland, *North Korea: Sanctions, Engagement and Strategic Reorientation*, 14(2) ASIAN ECON. POL’Y REV. 189-209 (2019); Jungyeop Woo, *How to Make International Sanctions on North Korea Effective. Cooperation or Coercion?*, 51(1) KOREA OBSERVER 53-69 (2020).

⁵³ For details, see Bruce Klinger, *Time for “Shock and Awe Sanctions” on North Korea*, Heritage Foundation (Oct. 10, 2017), at 2-15, <https://www.heritage.org/defense/report/time-shock-and-awe-sanctions-north-korea>; John Park, *The Key to the North Korean Targeted Sanctions Puzzle*, 37(3) WASH. Q. 199-214 (2014); John Park & Jim Walsh, *Stopping North Korea Inc: Sanctions Effectiveness and Unintended Consequences* 43-60 (MIT Security Studies Program, Aug. 2016), https://web.mit.edu/SSP/people/walsh/Stopping%20North%20Korea%20Inc_Park%20%20Walsh_FINAL.pdf; Marcus Noland, *The (Non) Impact of UN Sanctions on North Korea* 9-11 (Peterson Institute for International Economics, Working Paper Series 08-12, Dec. 2008), <https://piie.com/sites/default/files/publications/wp/wp08-12.pdf>; Joshua Stanton, *The Myth of Maxed-Out Sanctions*, 2(1) FLETCHER SEC. REV. 20-31 (2015), https://docs.wixstatic.com/ugd/c28a64_82a6a04a9f314a67bd434ad7b3dc5490.pdf.

⁵⁴ Pete Kasperowicz, *John Bolton: Sanctions Useless against North Korea ‘Prison Camp’*, WASH. EXAMINER (Sept. 4, 2017), <https://www.washingtonexaminer.com/news/2093240/john-bolton-sanctions-useless-against-north-korea-prison-camp>.

⁵⁵ Tae-jun Kang, *North Korea’s Internal Struggles Hint that Sanctions Are Working*, DIPLOMAT (Apr. 8, 2020), <https://thediplomat.com/2019/04/north-koreas-internal-struggles-hint-that-sanctions-are-working>.

⁵⁶ John Delury, *North Korea Sanctions: Futile, Counterproductive and Dangerous*, CNN (Dec. 2, 2016), <https://www.cnn.com/2016/12/01/opinions/north-korea-sanctions-delury/index.html>.

of sanctions does not outweigh the strategic benefits of verifiably workable nuclear weapon.”⁵⁷ Despite the options and desire to apply further economic and diplomatic pressure, tougher sanctions may actually backfire and cause more hostile behavior or trigger an armed conflict on the Korean peninsula. They may drive North Korea over the edge. The DPRK already views the UN sanctions as an “act of war” and threatens to retaliate against the US sympathizers who support them.⁵⁸

4. The Legality of the UN Sanctions

A. The Legal Framework of the Security Council Sanctions under the UN Charter

In general, legal scholars have not agreed on a definition of sanctions. According to Georges Abi-Saab, former judge at the International Court of Justice, “sanctions are coercive measures taken in execution of a decision of a competent social organ, i.e., an organ legally empowered to act in the name of the society or community that is governed by the legal system.”⁵⁹ International lawyers have addressed sanctions from different perspectives,⁶⁰ which are also relevant as regards the UN sanctions regime imposed on North Korea:⁶¹

What is the legal basis for UN sanctions according to the UN Charter?;

Under what circumstances can the UN Security Council adopt sanctions?;

Are there any substantive limits to UN sanctions under international law?;

How do international human rights apply to UN sanctions?; and

⁵⁷ John Hudson & David Francis, *Why Did Sanctions Fail against North Korea?*, FOREIGN POL’Y (Sept. 9, 2016), <http://foreignpolicy.com/2016/09/09/why-did-sanctions-fail-against-north-korea>.

⁵⁸ Faith Karimi & James Griffiths, *North Korea Calls Latest UN Sanctions ‘An Act of War,’* CNN (Dec. 24, 2017), <https://edition.cnn.com/2017/12/24/politics/north-korea-un-resolution-response/index.html>.

⁵⁹ Georges Abi-Saab, *The Concept of Sanction in International Law*, in UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW 38 (Vera Gowlland-Debbas ed., 2001).

⁶⁰ For an overview on sanctions and international law, see Boris Kondoch, *Sanctions in International Law*, Oxford Bibliographies (Sept. 28, 2016), <https://www.oxfordbibliographies.com/display/document/obo-9780199743292/obo-9780199743292-0191.xml>.

⁶¹ Space does not permit a more detailed analysis of all legal aspects. For further reading, see e.g., Markus Jürgens, *Enforcement of Security Council Resolutions: The Judgment of the Administrative Court of Berlin in the City Hostel Case*, 63(1) GERMAN Y.B. INT’L L. 747-57 (2020); James Kraska, *Maritime Interdiction of North Korean Ships under UN Sanctions*, 37(2) BERKELEY J. INT’L L. 369-98 (2019); Mihoko Takeuchi, *Smart Language: How to Address an Inherent Weakness Undermining the Implementation of U.N. Sanctions on North Korea*, 96(1) INT’L L. STUD. 58-78 (2020), <https://digital-commons.usnwc.edu/ils/vol96/iss1/3>.

How do the legal principles of necessity and proportionality provide legal limitations?

The Security Council enjoys a wide margin of discretion about when and how to act. The UN Charter does not specifically mention the term “sanctions.” However, the Security Council may adopt legally binding sanctions as measures to restore or maintain international peace and security. Based on Chapter VII, the Security Council must have determined the existence of a threat to the peace, breach of peace, or act of aggression.⁶² Sanctions adopted under Article 41 of the Charter are legally binding upon the UN member states.⁶³

In the wake of North Korea’s first nuclear test, the UN Security Council acted explicitly under Chapter VII of the Charter and unanimously adopted the Security Council Resolution 1718⁶⁴ on October 14, 2006.⁶⁵ It determined that the nuclear test proclaimed by the DPRK amounted to a clear threat to international peace and security.⁶⁶ During the discussion of Resolution 1718, all Council members not only shared this assessment, but also stressed that the resolution was not aimed at the people of North Korea.⁶⁷ The Security Council also reaffirmed that the “proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security.”⁶⁸

In Resolution 1718, the Security Council demanded, among others, that “the DPRK not conduct any further nuclear test or launch of a ballistic missile and return to the Treaty on the Non-Proliferation of Nuclear Weapons and International Atomic Energy Agency (IAEA) safeguards.” Furthermore, the Council decided that “the DPRK shall abandon all nuclear weapons and existing nuclear programmes in a complete, verifiable and irreversible manner.”⁶⁹ The Council also imposed a sanctions regime that included an arms embargo, economic sanctions, assets freeze, and travel ban.⁷⁰ After further nuclear tests and ballistic missile launches by the DPRK, subsequent

⁶² UN Charter art. 39.

⁶³ *Id.* art. 25.

⁶⁴ For a legal analysis of UN Security Council Resolution 1718 and the previous UN Security Council resolution 1695, which addressed North Korea’s missile launches of 5 July 2006, *see* Lee, *supra* note 23.

⁶⁵ U.N. Doc. S/RES/1718 (Oct. 14, 2006).

⁶⁶ For further reading on the concept “threat to the peace,” *see* TAMSIN PAGE, PETULANT AND CONTRARY: APPROACHES BY THE PERMANENT FIVE MEMBERS OF THE UN SECURITY COUNCIL TO THE CONCEPT OF ‘THREAT TO THE PEACE’ UNDER ARTICLE 39 OF THE UN CHARTER 13-32 (2019).

⁶⁷ U.N. Doc. S/PV.5551 (Oct. 14, 2006).

⁶⁸ UN Charter art. 25.

⁶⁹ *Id.* at ¶¶ 2-7.

⁷⁰ *Id.* at ¶¶ 8-10.

UN Security Council resolutions expanded the existing sanctions. The wide-ranging UN sanctions were adopted by the Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017), and 2397 (2017).⁷¹ These sanctions include, *inter alia*, a ban on trade of arms and military equipment as well as dual-use technology; travel ban and asset freezes for individuals involved in North Korea's nuclear and ballistic missile program; ban on import of certain luxury goods; and ban on the export of electrical equipment, coal, minerals, seafood, food and agricultural products, wood, textile, earth and stones. In addition, there is a cap on North Korean labor exports, cap on oil and all refined petroleum products, and ban on natural gas imports and restrictions on fishing rights.

B. Legal Limits to the UN Sanctions

The most contentious issue from the perspective of international law relates to whether there are any legal limits applicable to the UN sanctions when adopted by the Security Council under Chapter VII of the Charter. While no international treaty addresses this question, most legal scholars agree that legal limits can be found in *jus cogens* norms,⁷² international human rights law, international humanitarian law, and the principle of proportionality.⁷³ In discharging these duties, the Security Council shall act in accordance with the Purposes and Principles of the UN.⁷⁴ The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

C. The North Koreans' Sanctions Regime and Human Rights

The UN Human Rights High Commissioner Zeid Ra'ad Al-Hussein has called upon the Security Council to assess the human rights impact of the current sanctions regime by pointing out that "controls over international banking transfers have caused a slowdown in UN ground operations, affecting the delivery of food rations, health kits and other humanitarian aid."⁷⁵

⁷¹ U.N. Doc. S/RES/1718 (Oct. 14, 2006); U.N. Doc. S/RES/1874 (June 12, 2009); U.N. Doc. S/RES/2087 (Jan. 22, 2013); U.N. Doc. S/RES/2094 (Mar. 7, 2013); U.N. Doc. S/RES/2270 (Mar. 2, 2016); U.N. Doc. S/RES/2321 (Nov. 30, 2016); U.N. Doc. S/RES/2356 (June 2, 2017); U.N. Doc. S/RES/2371 (Aug. 5, 2017); U.N. Doc. S/RES/2375 (Sep. 11, 2017); U.N. Doc. S/RES/2397 (Dec. 22, 2017).

⁷² *Jus cogens* can be defined as a norm "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." See Vienna Convention on the Law of Treaties, art. 53.

⁷³ ERIKA DE WET, THE CHAPTER VII POWERS OF THE UNITED NATIONS SECURITY COUNCIL 178-255 (2004).

⁷⁴ U.N. Charter art. 1.

⁷⁵ OHCHR, Statement at the Security Council Briefing on the Situation in the DPRK, Statement by Zeid Ra'ad Al Hussein,

In this regard, the UN Special Rapporteur on Human Rights in North Korea, Tomas Ojea Quintana, has raised concerns that “sanctions might have a negative impact on vital economic sectors, and therefore, a direct consequence on the enjoyment of human rights.”⁷⁶ This assessment has been reaffirmed by the UN PoE report of 2019 which identified six key areas that are negatively affecting the ability to carry out humanitarian-related programs. The six main areas of concern are delays in receiving exemptions, collapse of the banking channel, delays in customs clearance, decrease in willing foreign suppliers; increased cost of humanitarian-related items and operations, and diminished funding for operations.⁷⁷ According to the last report of the UN PoE,⁷⁸ negative implications of sanctions might also include the following:

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

(b) In response to a 90 per cent decline in recorded export earnings after the adoption of the Security Council resolutions in 2016 and 2017;

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

(d) Procurement of other machinery items such as some types of water, sanitation and hygiene and irrigation equipment, spare parts and related materials may have also been similarly affected;

(e) The import restriction on refined petroleum may have had an impact on the operation of coal-powered thermal plants, possibly contributing to energy shortages. Import restrictions may have further affected already extremely limited transportation capacity;

(f) A decrease in the sources of livelihood for those employed in industries affected by sanctions and the persistence of resulting unemployment;

(g) Disruptions in medical supply chains resulting from a decrease in export

UN High Commissioner for Human Rights (Dec. 8, 2017), <https://seoul.ohchr.org/en/node/192>.

⁷⁶ Margaret Besheer, *UN Rights Expert: North Korea Sanctions Could Unintentionally Hurt Human Rights*, VOA (Oct. 26, 2016), <https://www.voanews.com/a/expert-says-north-korea-sanctions-could-unintentionally-hurt-human-rights/4087856.html>.

⁷⁷ U.N. Doc. S/2019/691 (Aug. 30, 2019), § vi, at 32, <https://documents.un.org/doc/undoc/gen/n19/243/04/pdf/n1924304.pdf>.

⁷⁸ UNSC, Final Report of the Panel of Experts, U.N. Doc. S/2024/215 (Mar. 7, 2024), at ¶¶ 198-220, <https://www.securitycouncilreport.org/un-documents/document/s-2024-215.php>.

earnings and a direct import ban on metals and equipment, against the background of the country's import priorities; and

(h) In some cases, overcompliance with sanctions by some actors involved in performing deliveries of consumer and humanitarian goods, even those not restricted by United Nations sanctions.

According to a Council of Foreign Relations report, “sanctions and extended periods of drought have left many of North Korea’s 25 million people malnourished and impoverished.”⁷⁹ The authors of a 2017 report by the Konrad Adenauer Foundation concluded that the UN sanctions have grave humanitarian consequences for the life of ordinary North Koreans, for example, miners and fishers.⁸⁰ The UN Office for the Coordination of Humanitarian Affairs also pointed out that the UN and bilateral sanctions have unintentionally impacted humanitarian operations.⁸¹ “The Human Cost and Gendered Impact” report concluded that the current sanctions regime may not be reconcilable with international law, especially the international human rights and humanitarian law norms.⁸²

Most commentators agree that the UN sanctions have a negative impact on the human rights of ordinary North Korean citizens, despite humanitarian exemptions. The UN sanctions imposed on the DPRK affect, among others, the right to life,⁸³ right to health,⁸⁴ right to food,⁸⁵ and rights of the child.⁸⁶ Sanctions may also have other negative impacts on human rights. Kyung-ok Do and Sangme Baek point out that “[C]ondemning the sanctions as an external threat to the nation, Pyongyang may arrest and detain more civilians who express their opposition to government policy. Therefore, it is necessary to focus on signs of deterioration in the right against torture

⁷⁹ Lyon Nishizawa et al., What to Know about the Sanctions on North Korea, Council on Foreign Relations (July 27, 2022), <https://www.cfr.org/backgrounder/what-know-about-sanctions-north-korea>.

⁸⁰ Victoria-Charlotte Browning & Stefan Friedrich, *The United Nations and North Korea: A Balancing Act between Sanctions and Humanitarian Assistance* 10 (Kas Büro New York – Insights NR. 4, Sept. 18, 2017), <https://www.kas.de/en/web/newyork/single-title/-/content/the-united-nations-and-north-korea>.

⁸¹ UNOCHA, Global Humanitarian Overview 2020, <https://www.unocha.org/global-humanitarian-overview-2020>.

⁸² Henri Féron, *The Human Costs and Gendered Impact of Sanctions on North Korea*, Korea Peace Now (Oct. 2019), at 31-4, <https://koreapeacenow.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf>.

⁸³ International Covenant on Civil and Political Rights, art. 6; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2; African Charter of Human Rights, art. 4.

⁸⁴ See e.g., International Covenant Economic, Social Cultural Rights, art. 12.

⁸⁵ On the right to food, See e.g., OHCHR, Fact Sheet No. 34: The Right to Adequate Food (Apr. 1, 2010), at 7-9, <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-34-right-adequate-food>.

⁸⁶ UN Convention on the Rights of the Child, arts. 6&24. According to Articles 6 and 24 of the Convention, every child has the inherent right to life and the right to the highest attainable standard of health and access to medical services.

and other inhuman treatment; the right to life, liberty and security of person; and freedom of speech in North Korea.”⁸⁷ Even though sanctions are not intended to have adverse humanitarian consequences for the people of North Korea,⁸⁸ one could argue that the UN sanctions are illegal because of the negative side effects on human rights. However, it is unclear how much of the humanitarian situation can be attributed to the UN sanctions or to other factors, such as North Korea’s policy of spending a large amount of its financial resources on WMDs and the extreme weather conditions. Unfortunately, North Korea does not provide relevant and reliable data on the impact of sanctions. The UN Special Rapporteur on Human Rights in North Korea, Tomas Ojea Quintana said that the DPRK “should seek every opportunity to engage in meaningful analysis.”⁸⁹ However, North Korea has not shown any interest in such a project and remains one of the most closed societies in the world.

D. The Principle of Proportionality

One key question is whether the UN sanctions imposed on North Korea comply with the principle of proportionality, which is a general principle of international law.⁹⁰ In the context of sanctions, any legal analysis must consider the effects of sanctions. As mentioned above, international experts are divided in their opinions on whether the UN sanctions are effective. Are the so-called unintended humanitarian consequences of the UN sanctions imposed on North Korea in proportion to the threat to peace posed by the DPRK?⁹¹ In general, the UN sanctions are estimated to detrimentally affect 90% of North Korea’s reported export products. Sanctions on the export of textile products may cost USD 800 million annually.⁹² However, it remains to be seen whether any kind of sanctions will actually produce the desired outcome of compelling Pyongyang to abandon its nuclear program.

On the one hand, the UN sanctions have not achieved their intended goal, namely, denuclearization of the DPRK, even after 18 years. For Hazel Smith, the UN

⁸⁷ Kyung-ok Do & Sangme Baek, *The Impact of Sanctions on the Enjoyment of Human Rights* 50 (2019), KINU Report, <https://repo.kinu.or.kr/bitstream/2015.oak/10544/1/%5BStudy%20Series%2019-02%5D%20The%20Impact%20of%20Sanctions%20on%20the%20Enjoyment%20of%20Human%20Rights.pdf>.

⁸⁸ U.N. Doc. S/RES/2397 (Dec. 22, 2017), at ¶ 25.

⁸⁹ U.N. Doc. A/72/394 (Sept. 18, 2017), at ¶ 6.

⁹⁰ For further reading, see Emily Crawford, *Proportionality*, in THE MAX PLANCK ENCYCLOPAEDIA OF PUBLIC INTERNATIONAL LAW 533 (Rüdiger Wolfrum ed., 2012); Judith Gardam, *Proportionality in International Law*, Oxford Bibliographies (Mar. 30, 2017), <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0147.xml>.

⁹¹ JEREMY FARRALL, *RULE OF LAW WEAKNESS IN THE UN SANCTIONS SYSTEM* 223-9 (2007).

⁹² Moon et al., *supra* note 6.

sanctions have been neither effective and necessary nor proportionate. She heavily criticizes the UN sanctions, saying that they have jeopardized the lives of millions of innocent civilians and do not meet the proportionality criterion.⁹³ The failure of the UN sanctions could have been anticipated. However, the sanctions regime imposed on North Korea ruled out diplomatic efforts.

On the other hand, North Korea has been one of the gravest threats to peace and security of Northeast Asia and the world in the UN history. One could argue that many of the UN sanctions, such as targeted sanctions including an arms embargo, assets freeze, and travel bans of certain entities and individuals, make perfect sense. Considering that North Korea is a grave threat to international peace, one has to accept that the UN sanctions are having a certain destructive impact on the humanitarian situation in the DPRK. If scholars agree with this conclusion, it needs to be stressed that these UN sanctions can only work under the condition that all members of the UN implement these measures. In case North Korea complies with the demands of previous Security Council resolutions in the future, the Council should consider the suspension, reduction, or lifting of sanctions.

5. Conclusion

What are the policy options for the UN and the international community in dealing with North Korea's threat to international peace and security? There is no masterplan yet. Should the UN and the international community return to diplomatic efforts? In summer of 2024, Rafael Grossi, Director General of the IAEA, called upon the world to pursue dialogue with North Korea despite its violation of sanctions and international law.⁹⁴ Arguably, these steps will not promise any success. Neither the so-called six-party talks nor the diplomatic talks between former US President Donald Trump and Kim Jong Un have brought an end to North Korea's WMDs program. North Korea's nuclear policy has been added to its constitution in 2023. North Korean leader Kim Jong Un has also expressed his wish for more advanced nuclear weapons to counter the perceived military threat from Washington, Seoul, and Tokyo. Denuclearization is not up for deal. In the words of Kim Yo Jong, Kim Jong Un's sister, "the sovereignty

⁹³ Smith, *supra* note 16. I do not agree with Hazel Smith's legal opinion that there is no settled international law on the allowable impact of sanctions.

⁹⁴ See *UN's Nuclear Chief Says World Needs to Pursue Dialogue with N. Korea over Nuclear Weapons*, KOREA TIMES (Sept. 7, 2024), https://www.koreatimes.co.kr/www/nation/2024/09/103_383230.html.

of an independent state can never be an agenda item for negotiations, and therefore, the DPRK will never sit face to face with the US for that purpose.”⁹⁵

Should South Korea develop their own nuclear weapons as a reputed deterrence?⁹⁶ The Yoon Suk Yeol administration of South Korea considers even pre-emptive strikes under the so-called “kill chain” system if an imminent attack from North Korea is detected. The use of military force would arguably be illegal under international law and lead to the escalation of violence in North East Asia.⁹⁷ Are the UN sanctions an effective policy tool against North Korea’s nuclear development program? For Peter Wallenstein, “the use of sanctions suggests that the world is in need of a tool placed somewhere between words or war.”⁹⁸

In this article, I have tried to summarize the problems related to the implementation of and ongoing debates regarding the effectiveness of the UN sanctions imposed on North Korea. Sanctions could be a solution to potential nuclear crises if all the UN members, including Russia and China, comply with the existing sanctions regime. There is also a need for an updated report examining the implementation of the sanctions by the UN member states. In the past, there were obstacles to such a report, as pointed out by Andrea Berger, who is a senior analyst in the Canadian Privy Council Office.⁹⁹ An important aspect is that the Security Council cannot act above international law and ignore international human rights law when adopting enforcement measures under the UN Charter. Whether this has been the case as regards the DPRK because of the unintended humanitarian effects of sanctions for the civilian population remains open for debate.

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⁹⁵ Jee-hun Lee, *Kim Yo-jong Says N. Korea Will Never Sit Down with US for Dialogue*, HANKYOREH DAILY (Dec. 1, 2023), https://english.hani.co.kr/arti/english_edition/e_northkorea/1118763.html.

⁹⁶ Yeon-soo Kwak, *Debate over S. Korea’s Nuclear Option Resurfaces Amid NK’s Continuing Threats*, KOREA TIMES (May 25, 2024), https://www.koreatimes.co.kr/www/nation/2024/09/103_375283.html; Mitch Shin, *The Great Debate over South Korea Developing Nuclear Weapons Is Back*, DIPLOMAT (May 16, 2024), <https://thediplomat.com/2024/05/the-great-debate-over-south-korea-developing-nuclear-weapons-is-back>.

⁹⁷ Boris Kondoch, *North Korea and the Use of Force in International Law*, 18(2) KOREAN J. SEC. AFF. 4-30 (2013).

⁹⁸ Peter Wallenstein, *Institutional Learning in Targeting Sanctions*, in TARGETED SANCTIONS: THE IMPACTS AND EFFECTIVENESS OF UNITED NATIONS ACTION 263 (Thomas Biersteker et al. eds., 2016).

⁹⁹ Andrea Berger, *A House Without Foundations: The North Korea Sanctions Regime and its Implementation*, RUSI (June 9, 2017), <https://rusi.org/explore-our-research/publications/whitehall-reports/house-without-foundations-north-korea-sanctions-regime-and-its-implementation>.