

Forum:	Advisory Panel
Issue:	The question of humanitarian exemptions on the sanction regimes of the DPRK
Student Officer:	Erik Chen
Position:	Chair of the Advisory Panel

Introduction

In today's political climate, with the increasing fear of North Korea and its nuclear weapon program, there has been a large onslaught of multilateral and bilateral sanctions levied against the government of the DPRK. The aim of these sanctions is to pressure Pyongyang's government to change its behavior, but they may also have the unintended side effect of causing even more hardship for the already suffering North Korean people. Sanctions, such as the ones placed by former President Obama in Executive Order 13722, can prevent humanitarian aid from reaching innocent bystanders in the hostilities. Although these sanctions may seem harsh, however, they are necessary to combat North Korea's nuclear threat without resorting to violence. For example, with respect to UN sanctioned regimes, such as North Korea, member states are required to ensure that "their nationals or any persons within their territories" do not make available "any funds, financial assets, or economic resources" to or for any individuals or entities that are enumerated by the Security Council. This is elaborated on in UNSCR 2161, which claims that "costs incurred with respect to transportation and lodging" count as handing over economic resources to said sanction regimes. This makes providing humanitarian aid extremely difficult, and is why humanitarian exemptions are needed. In relation to most sanction regimes, the Security Council has not expressly exempted humanitarian actors for such embargos and sanction, leaving it up to the interpretation of member states in regard to providing aid. Thus, when actions such as Executive Order 13722 are taken, they often specify what they mean in terms of humanitarian aid.

Definition of Key Terms

Humanitarian Exemptions

Humanitarian exemptions are exemptions to sanction regimes for humanitarian organizations and their actors so that they can help the citizens of sanctioned nations. This type of exemption is sectoral, meaning that it allows an entire sector of principled humanitarian actors to deliver their services to a sanction regime without breaking any relevant treaties. These actors must follow strict guidelines and codes, however, in order to prevent serious breaches in sanction.

Principled Humanitarian Action

Principled humanitarian action is defined by the principles of impartiality, neutrality, and humanity (helping people in need). Thus, an organization that provides food and shelter to support one party over another would not qualify as “principled humanitarian action.” Principled humanitarian action is generally aimed at helping civilians, and people that are not involved in the hostilities. It primarily involves the provision of medical care, food, water, and other supplies necessary for survival.

Sanctions

Sanctions are actions taken by a state in order to coerce another one to conform to its will. They are usually done with approval from the international community and together with many other nations as to achieve the maximum effect on the sanctioned regime. Countries generally use economic sanctions, such as embargos, and other minor sanctions, such as banning a country from an international sports event, however, in severe cases, countries can use the threat of military action in order to coerce them into conforming with international convention or law.

Sanction regimes

A sanction regime is a state, persons, or entities that have sanctions imposed on them at any time by any large global actors such as the US, the EU, or the UN, often for not complying to international regulation and law. The UN Security Council has currently identified 13 sanction regimes such as North Korea, Côte d’Ivoire, and Al-Qaeda.

Embargo

One common and effective method of sanctioning is embargoing. An embargo is an official ban on trade or other commercial activities, such as investing, with a particular country. This can be a hindrance to humanitarian actors who find it difficult to help people in embargoed countries without breaking the embargo.

General Overview

Current Sanction Against North Korea

Sanctions against North Korea can be classified into two categories: ones implemented by single countries, and those implemented by the United Nations. Often, sanctions by the UN will be enforced or elaborated on through sanctions by individual countries. The UN has so far adopted 9 major sanctions resolutions since North Korea’s nuclear test in 2006. Each consecutive resolution condemns their violation of UN security council resolutions on nuclear proliferation, and call for North Korea to re-join the Nuclear Non-Proliferation Treaty, as well as imposes increasingly harsh sanctions, such as embargos. They also give member states the authority to interdict and inspect North Korean cargo within their territory, and subsequently seize and dispose of illicit shipments. They also prevent countries from supplying North Korea with nuclear materials and weapons, by authorizing countries to search, seize, and destroy material suspected to or from North Korea for purposes of weapon development. Bans on transport of other materials such as textiles, crude oil, and an assortment of metals are included in this. Aside from hindering weapon development, sanctions also harm North Korea in other ways, such as by preventing bulk transfers of cash

and restricting their ties to the international banking system, which hinders their ability to participate in international trade.

Although the UN has placed sanctions on North Korea, it is up to individual countries to enforce them and compound them with their own sanctions. For example, the United States enacted the North Korea Sanctions and Policy Enhancement Act of 2016, which passed the House and Senate with almost unanimous support. It requires the president to sanction entities that have contributed to the North Korean regime, either by exporting materials to them, or importing materials from them. Financial sanctions have also been imposed, preventing companies from doing business in North Korea, and preventing North Korean companies from doing business in the US.

Why Humanitarian Exemptions Are Necessary

North Korea is one of the worst, and most overlooked, humanitarian crisis of the modern world. In a report issued by U.N.'s senior resident official in Pyongyang claims that "chronic food insecurity, early childhood malnutrition and nutrition insecurity" run rampant in the DPRK. There are more than 10 million malnourished people in DPRK, about 41 percent of the North Korean population, and it's ranked 98th out of 118 countries in the 2016 Global Hunger Index. This was, in part, due to the "regular disruption" of banking channels caused by punitive sanctions, which made it extremely difficult to transfer funds into the country. Furthermore, these sanctions also increased requirements for licenses needed to provide aid to the DPRK and the time taken to determine whether an actor has violated a sanction, which has caused considerable delays that have forced agencies to "reprioritize" their aid activities. Thus humanitarian exemptions may be necessary in order to provide legal clarity about the provision of humanitarian aid. Principled humanitarian actions are there to help those in need, and thus, many actors have need for developed internal policies and procedures to prevent the aid from being used for other purposes, such as supporting a despotic regime. These policies put in place by exemptions can help limit the resources being leaked out, and thus, in the event that some money does go to sanctioned individuals and entities, the impact will be minimal compared to the alleviation of human suffering.

Problems with Humanitarian Exemptions

Limiting Humanitarian Actions

One problem with humanitarian exemptions is that they may ultimately result in limiting humanitarian actions. The creation of explicit exemptions implies that exemptions must be present for humanitarian aid to be allowed to happen. Thus, the lack of an explicit exemption could signify to humanitarian actors that humanitarian aid is not allowed. This means that if sanction regimes are not addressed by humanitarian exemptions or if such exemptions cannot be negotiated, humanitarian aid could end up being restricted. Furthermore, some humanitarian actors fear that should the sanctioned regime offer exemption to the actor, it could be interpreted by some to be endorsement by the governments of the world. Such an endorsement, could tarnish the actors' reputation of neutrality and thus hurt them in the long run. Reputation is one of the

main currencies of a humanitarian organization, and thus, being perceived as dishonorable can ultimately inhibit the organization's ability to assist people in need.

Helping the Sanctioned Country

Some opponents of humanitarian exemption oppose it on the grounds of state security. Humanitarian exemptions could be used as a loophole by actors pretending to be providing aid, in order to assist the DPRK. This could happen, for example, if actors tried to use the exemptions to smuggle weapons into the DPRK, help develop their nuclear weapon program, or help the despotic regime.

International Model of Exemption

The international model of humanitarian exemptions involves the U.N Security Council creating exemptions for the world as a whole. This can be seen in examples such as Somalia and Eritrea established in UNSCR 1916, which establishes that humanitarian organizations granted observer status by the General Assembly, are allowed the payment of funds, other financial assets or economic resources in order to provide assistance to people in need. This model, could easily be applied to DPRK and could help to alleviate some of suffering going on in it. However, any model relying on the UN may be difficult to maintain properly, as they require assistance of individual frameworks from individual countries in order to be effective. Although legally obligated to carry out the decisions of the Security Council, many countries do not change domestic laws to incorporate their obligations. Without sufficient protection on a national level, humanitarian actors are often still at risk.

UN Involvement, Relevant Resolutions, Treaties and Events

The United Nations Security Council has declared the DPRK to be a sanction regime, and has levied sanctions on it through all member states. In September 2017, they increased sanctions in response to the sixth nuclear test. However, it wasn't until August 7th, 2018, that the Security Council approved of Russia's initiative to create a humanitarian exemption mechanism. This model of humanitarian exemption states that UN member-states, non-governmental and international organizations involved in humanitarian activities in the DPRK will be able to apply to the UN Security Council's for exemptions, to be reviewed on a case by case basis. According to the notice by the UN Security Council, it is "intended to provide a clear explanation of its comprehensive humanitarian exemption mechanism, as authorized in paragraph 25 of Security Council resolution 2397, by offering guidance and recommendations on how to submit humanitarian exemption requests to the Committee in accordance with the relevant resolutions." This will allow humanitarian actors to work more freely in the DPRK, and help the citizens of the country receive the aid that they so desperately need.

However, humanitarian exemptions aren't only present on a global scale, often times, countries themselves must react quickly without the UN in order to help out people in need. The same day that President Obama issued executive order 13722, which outlined sanctions on North Korea, the US Treasury Department released General License Number 5, which outlines humanitarian exemptions to such sanctions. These exemptions involve any task

surrounding providing basic necessities to the Korean people, building democracy in the region, supporting education, and environmental protection.

Despite this, many countries do not have specific laws regarding humanitarian exemptions. South Korea, for example, has no clear exemption laws, and requires shipments to be approved on a case by case basis. This severely hampers humanitarian efforts, as can be seen by the case of the Eugene Bell Foundation, where they were forced to make an appeal to the UN court itself. The Eugene Bell Foundation provides tuberculosis medicine to the DPRK, and they found it difficult to get through the layers of bureaucracy surrounding aid to North Korea. They protested, and were eventually let through by the Ministry on Unification, but only after. This raised large concerns from many humanitarian organizations as well many countries about how sanctions in South Korea could significantly hinder the work of aid organizations.

Possible Solutions

Solving possible limitations to humanitarian aid

When creating humanitarian exemptions, it is necessary to avoid the possibility that creating additional such exemptions could be used as a reason to deny aid in situations where there are no exemptions, as it would imply that exemptions are necessary for humanitarian aid. This could be addressed by ensuring that in any additional exemption, a reference be created that the existence of that exemption does not signify that humanitarian aid should not be given in cases with no exemptions. That tactic still would not necessarily resolve the issue entirely, however. It would require the creation of large scale exemptions or large quantities of small scale exemptions to completely circumvent this problem.

Solving the problem of security risks

Solving the problem of security risks, is an exceptionally difficult task, as one would need to craft long, lengthy, and complicated mechanisms to prevent sectoral humanitarian exemption from being abused for the purpose of supporting sanctioned regimes such as the DPRK. To be useful, however, this mechanism must also be crafted in such a way as to not impede legitimate humanitarian operation and to not impose unworkable measures on humanitarian actors.

Thankfully, some measures have been devised by the UN to some degree of success. In UNSCR 1916, the United Nations Humanitarian Aid Coordinator for Somalia has to report on exemption to the Security Council every 120 days, including humanitarian organizations' requests and "any impediments to the delivery of humanitarian assistance in Somalia." According to the such reports, this resulted in UN agencies in Somalia to have adopted risk-mitigation measures such as external audits of NGO-funded projects, a minimum standard of collection of partner information; and the creation of a Risk Management Unit. The power of this unit has increased over time due to the establishment a Risk Management Team and the inclusion of an Investigations Liaison Officer from the UN Office

of Internal Oversight Services. This helps the Unit provide risk-management advice, training, risk assessments to existing humanitarian actors within the region.

Another possible way of risk managing is enforcing the adoption of the appropriate due diligence measures. One model for such would be the UN's human rights due diligence policy. This policy describes steps UN entities must take before providing support to actors not affiliated with the United Nations. The UNO must perform a risk assessment and create framework for implementation that involves includes monitoring the non-UN actors, as well as reporting back on challenges faced. Elements of this model could be adapted for the creation of a due diligence policy for humanitarian action. This model would also require punishments levied against those failing to perform due diligence, as well as those found guilty of non-principled aid. This would severely decrease the likelihood of organizations deliberately funding acts of terrorism or taking part in bribery.

Bibliography

King, Katie, et al. *UNDERSTANDING HUMANITARIAN EXEMPTIONS: U.N. SECURITY COUNCIL SANCTIONS AND PRINCIPLED HUMANITARIAN ACTION*. Harvard Law School Program on International Law and Armed Conflict, Apr. 2016, blogs.harvard.edu/pilac/files/2016/04/Understanding_Humanitarian_Exemptions_April_2016.pdf.

Boydston, Kent. "Humanitarian Exemptions to North Korea Sanctions." *PIIE*, 6 Sept. 2018, piie.com/blogs/north-korea-witness-transformation/humanitarian-exemptions-north-korea-sanctions.

Fifield, Anna. "Punishing North Korea: A Rundown on Current Sanctions." *The Washington Post*, WP Company, 22 Feb. 2016, www.washingtonpost.com/news/worldviews/wp/2016/02/22/punishing-north-korea-a-run-down-on-current-sanctions/?noredirect=on&utm_term=.ca5f5f1dc5fe.

Talmadge, Eric. "U.N.: Sanctions Disrupt Humanitarian Aid to North Korea." *USA Today*, Gannett Satellite Information Network, 24 Mar. 2017, www.usatoday.com/story/news/world/2017/03/24/un-sanctions-disrupt-humanitarian-aid-north-korea/99571664/.

"UN Approves Creation of Humanitarian Exemption Mechanism Regarding Sanctions against DPRK." *TASS*, 7 Aug. 2018, tass.com/world/1016252.

"Embargo." *Merriam-Webster*, Merriam-Webster, www.merriam-webster.com/dictionary/embargo.