



Mapping the UN Sanctions Regime : A Case Study of Sanctions on North Korea

Kumar Gaurav

Department- Center for International Politics, Organisation, and Disarmament (School of International Studies), Jawaharlal Nehru University, India

Abstract :- The paper discusses the United Nations sanctions by problematizing the institutional and legal approach to sanctions. The rise of UN sanctions gets its legitimacy from Chapter VII of the United Nations charter. The charter explicitly highlights the underlying reason behind establishing sanctions regime, i.e., international peace and security. The paper is divided into three sections. The first section discusses the historical development of UN sanctions and the associated institutional-legal mechanism. The second section of the paper engages in understanding UN sanctions on North Korea and tries to develop a more critical outlook towards implementing non-proliferation sanctions. Finally, the concluding part tries to form a pluralistic understanding of sanctions that considers a holistic perspective to make sanctions more effective in international politics as a tool for controlling rogue nations.

Keywords :- UN sanctions, North Korea, Economic Sanctions, Non-Proliferation Sanctions, China.

Introduction- The idea of sanctions in the international arena is rooted in the disciplinary discourse of what constitutes a good state or how should a good state behave. The rise of nuclear weapons in the cold war has meant that the behavioural impact of rogue nations is not just confined to regional conflicts but a more significant catastrophic world event. The practical use of sanctions at the international level can be traced to the retributive theory of punishment. This makes the United Nations Security Council (UNSC from hereafter), the principal organ that deals with peacekeeping, enacting sanctions, and authorizing military action, crucial. The use of sanctions as a mechanism to bring about peace and order amidst chaos remains a contested debate. A plethora of arguments are presented on either side of the sanctions debate. The non-feasibility of military intervention and diplomatic efforts make sanctions one of the most frequently used tools to bring about harmony. However, the actual reasons are not always about establishing peace and order. The role of great power politics and domestic political considerations cannot be left unquestioned. Some legal experts even question the validity of sanctions per international law and find it to be shaky. Gordon (1999) takes the argument even forward and equates it with a form of warfare. The paper tries to look at the provision of sanctions by reviewing the literature on the UNSC and evaluates the mechanism and

rationale used to enforce sanctions. The essay attempts to historically trace the different types of sanctions to understand the UN sanctions regime.

The perennial question that haunts the international community has remained the same, how to make rogue nations follow the liberal international principles while minimizing the cost to humanity and human rights violations. At the same time, there are also questions about when is the right time to impose sanctions and how specific can sanctions be? The paper limits itself by analyzing cases related to nuclear proliferation. The particular case of North Korea is used to explore the intricacies associated with non-proliferation sanctions. Have sanctions led to a change in the behaviour of nations breaking the rules is the larger question that the paper tries to explore. These questions further lead to other inquiries on how motivated a state is by internal vs external factors?¹

Historical Development of UN sanctions- The use of sanctions as a coercive tool can be traced to the ban by Pericles on Megaran traders from Athens in 432 B.C. The formal use of sanctions can be traced to the formation of the League of Nations, and the first case of multilateral sanctions being imposed by the league of nations was in response to cross border aggression by Yugoslavia (1921), Greece (1925) and Italy (1935) (Hufbauer et al. 2009). The most extensive study of sanctions has been done by taking 116 case studies of sanctions that have happened since world war I, and generally, it is presumed that sanctions have been successful as a tool for foreign policy objectives.²

The UN resolutions related to mandatory multilateral sanctions get their legal authority from part VII of the Security Council, which is concerned with threats to the peace, breaches of the peace or acts of aggression, within the purview of Chapter VII of the UN charter and includes articles 39 through 51 (Repertoire of the Practice of the Security Council 2016-17). Part VII itself is divided into ten sections. If the Council under article 39 considers any issue a threat, breach of the peace or an act of aggression, it may take any of the provisional measures (Article 40) to the use of brutal force (article 42) (Friedrich-Ebert-Stiftung 2011). The area of concern in sanctions can be further narrowed down to section III, containing article 41. Article 41 does not mention the word “sanctions” per se but

1. See Victor D. Cha, “Korea’s Place in the Axis,” *Foreign Affairs*, Vol. 81, No. 3 (May/June 2002), pp. 79–92; and David C. Kang, “International Relations Theory and the Second Korean War,” *International Studies Quarterly*, Vol. 47, No. 3 (September 2003), pp. 301–324.

2. Gary Clyde Hufbauer, Jeffrey J. Scott and Kimberly Ann Elliott in *Economic Sanctions reconsidered: History and Current Policy* (Washington, D.C.: Institute for International Economics, 1990) analysed 116 cases on sanctions post World War I in detail to form a nuanced approach to understand the efficiency of sanctions. They came to the conclusion that sanctions were successful in 40 percent of the cases which was much greater than what was earlier anticipated and challenged conventional wisdom against the use of sanctions.

delineates the situation explicitly. While the conditions laid out are not exhaustive, they provide a base upon which sanctions have found their place in international politics. Article 41 states, The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

The use of sanctions remained limited in the cold war era. The Security Council imposed sanctions on South Africa (1963) and Southern Rhodesia (1965), which later became mandatory sanctions. Resolution 253 (1968) was imposed on Rhodesia when it tried to declare independence from the UK unilaterally. Targeted sanctions were imposed on South Africa due to its nuclear development and the presence of the inhuman apartheid regime. The replacement of comprehensive sanctions by targeted sanctions to minimize the adverse impact of sanctions. The security council first recognized the nature of “the special economic hardships” in the case of Zambia, where resolution 326(1973) was imposed. The success of sanctions in South Africa became one of the reasons for the popularity of sanctions in the post-cold war era (Gottemoeller 2007). In the post-cold war era, from 1990 until the early 2000s, the number of sanctions increased substantially.

The use of sanctions can be classified into five broader categories (Special Research Report 2013). These are conflict resolution, Non-proliferation, Counter-Terrorism, Democratisation, and the Protection of Civilians. These categories, however, need not be neatly present and can overlap. The security council first imposed sanctions for the proliferation of weapons of mass destruction on Iraq in 1990. After that, two sanctions have been imposed upon the Democratic Republic of North Korea (DPRK) and Iran. Resolution 1718 was imposed on DPRK on 14 October 2006 due to DPRK testing nuclear weapons on 9 October 2006. Resolution 1737 of 23 December 2006 was concerned with the imposition of sanctions on Iran due to lack of compliance with the IAEA guidelines earlier mentioned in resolution 1696 on 31 July 2006.

When we look at the institutional approach to sanctions, we need to look at security council resolutions and sanctions committee along with the panels and group of experts or monitoring groups that help these committees. Earlier, it was not common to have a sanctions committee and a panel/expert or monitoring group being included with the authorized resolution but now, it has become common. It becomes important as the lack of such a mechanism often gives the notion that the intent for implementation of sanctions is missing. The Security Council under the UN charter first resorts to Chapter VI (Peaceful Settlement of disputes) when confronted with a conflict. However, when the conflict escalates, more robust measures are needed and thus, they resort to Chapter VII which may choose sanctions and design regimes that usually involves an arms embargo

and a mix of targeted measures (Friedrich-Ebert-Stiftung 2011). The passing of sanctions resolution then leads to the establishment of a sanctions committee under rule 28 of the Security Council. The Committees are normally chaired by an elected state member of the Council. There are 15 members from the Council who are part of the committee. This committee monitors the sanctions regimes, looks at the efforts that are taken by states to address the conflict, and also considers exemption request in regards to sanctions from states. The decision in the committee is taken consensually.

The Council also appoints a panel of experts which assists the committee members in their work. The panel gathers information and conveys it to the committee that helps improve the efficiency of sanctions. Generally, panels are formed for 6 months with a membership of five to eight, with each member being an expert in different areas concerning sanctions. To avoid any kind of political pressure, they are formally only responsible for the work they are doing by maintaining high methodology and focusing on evidence with the review, comments, and response allowed to the violators.³

Apart from the security council, sanctions committee and the panel of experts, there is also the principal UN secretariat which is situated in the security council affairs division (SCAD). The secretariat is headed by a secretary that is assigned to each committee. Their most important functions are providing support to both the committee and the expert panel, thereby establishing an institutional continuity between the committee and the panels. The validity of institutional measures and their importance demands that the member states comply with the measures that are taken by the security council. Article 25 of the UN charter warrants compliance with the sanctions by the member states. At the same time, the enforcement of sanctions is not possible if other states do not give the active support needed for the enforcement of the sanctions regime.

The United Nations, in conformity with Chapter VIII of the UN charter on Regional Cooperation, can also enforce the sanctions that are imposed by regional organizations (Ngobi 1995).

Sanctions on North Korea- The sanctions on North Korea were first considered in the year 1993-1994. Back then, there was fear amongst the United States, Japan, and South Korea of a possible preemptive strike by North Korea if the sanctions are imposed.⁴ There was also no political support from Russia and China which would have made the whole exercise futile in the security council. However, things had changed considerably by July 2006. China had stopped supplying oil to North Korea briefly (Funabashi 2007). China had also warned North Korea to not go ahead with July missile

3 .United Nations (2007): Best Practices and Recommendations for improving the Effectiveness of United Nations Sanctions [Based on the report of the Security Council Informal Working Group on General Issues of Sanctions (2006), S/2006/997]

4 .The North Korean warning of turning South Korea into “a sea of fire” had prompted South Korea to alert its’ military forces in 1994.

firings. With support from Russia and China in the security council, Resolution 1695 was used to impose targeted sanctions on North Korea. A further threat of a stricter sanction was also given to North Korea when it announced its' intention of going ahead with testing a Nuclear device in October 2006 (Choi and Lee 2007). When North Korea paid no heed to the warnings and went ahead with the tests, Resolution 1718 was passed relatively easily in the security council.

The administration of sanctions was not strictly defined and was left for each state to decide on their own. Article 42 of Chapter VII which favours use of military force was not part of the resolution due to opposition from China. The sanctions intrinsically were inspired by the following goals: improving the condition of human rights, ensuring peace, averting the spread of nuclear weapons, and if possible, a unification of South Korea and North Korea in future (Frank 2006). The sanctions were imposed differently by different countries. Russia stopped the export of "luxury goods" which was defined in a manner that the impact was not much. South Korea also stopped food and fertilizer aid in addition to sanctioned material. China had stopped the export of weapons but it did not give an exhaustive and explicit list of items it had stopped exporting. China and South Korea had also not explicitly listed things that would be part of sanctioned "luxury goods".

Park and Walsh (2016) in their study of sanctions against North Korea raise three questions:

1. Are Sanctions effective in controlling or halting WMD procurement?
2. Is there any unintended positive or negative consequence of sanctions against North Korea?
3. How can the effectiveness of sanctions be improved?

The prevalent literature that addresses the sanctions on North Korea can be divided into 3 schools based on their opinion about the effective way to halt the WMD program of North Korea (Park and Walsh 2016). The first school believes that North Korea is a heavily armed state which is a threat to international peace and security and there is still enough scope for expanding sanctions. The second school while not questioning sanctions theoretically is concerned with the implementation of sanctions and questions the institutional approach which has grave flaws due to its overt reliance on other member nation-states without which the sanctions are not going to be effective in containing North Korea. The third school focuses on the trade relationship between China and North Korea. It draws on how China economically provides an outlet to North Korea when international pressure is being built through sanctions. Haggard and Noland (2012) point out Chinese firms provide credit to North Korean companies. Early (2015) in *Busted Sanctions* calls the Chinese firms "third-party spoilers".

The most important distinction in terms of using sanctions is the peculiar socio-economic and political condition of each country. In the case of North Korea, the sanctions and the condition of the two countries were very different. Iran due to its dependence on international sales of oil was more vulnerable to targeted sanctions, while North Korea almost exclusively relies on Chin for the sale of

commodities and coal (Iran Project on benefits and cost of international sanctions against 2012). North Korea's dependence on international financial institutions makes it less susceptible to economic sanctions (Park and Walsh 2016).

The core concern that remains at the very heart of any sanctions regime is the humanitarian cost associated with sanctions which often leads to resentment domestically in the country being targeted and is used as a tool by the political leader of the country to mobilize support and strengthen their hold. However, such a view is often not true in the case of authoritarian regimes since citizens do not have substantial control over the decisions that affect the institutional apparatus (Mack and Khan 2015). All this often leads to a rhetorical question on whether to engage with North Korea or contain it using sanctions. The answer somewhat lies in how much of North Korea's behaviour is impacted by external factors i.e., if North Korea is insecure, and predictable or internal factors i.e. if instead, it is fundamentally aggressive and unpredictable. The first one calls for using engagement and carrot while the other one should be dealt with by going for isolation and deterrence.

Conclusion- The use of sanctions and their efficiency remains a puzzle to the international community. Any unilinear view towards the efficacy of sanctions only provides us with an unclear picture of the UN sanctions regime. A broader more critical approach towards sanctions by taking into consideration not just the state's behaviour but also the humanitarian impact and understanding not from an abstract idea of whether it is democratic or authoritarian but rather focusing on what citizens of the country feel is important in any productive engagement with a rogue nation. While not neglecting North Korea's continuing nuclear and military behaviour, we need to take into consideration its overall relations with the world. The use of sanctions needs to be done along with humanitarian assistance. Kang (2011) in his analysis summarizes three prevailing pieces of literature on North Korea to challenge the dominant view about the peninsular state.⁵ He first looks at the institutions and bureaucracy within North Korea and presents a picture that might be in line with the dominant. Using principal-agent theory, he says that even authoritarian regimes governed by dictators have to rely on agents who themselves can delay, modify, and resist the decisions of the principal actors (Miller 2005). McEachern (2010) using conducts an empirical study to conclude that much like any other state, North Korea and its institutions are not sui generis and are open to systematic scholarly inquiry. He finds three key institutions in North Korea: the Korean People's Army (KPA), the Korean Workers' Party (KWP), and the cabinet. Through his rigorous exploration of 4,400 speeches spanned across 1994-2009, he concludes that the country has evolved

5. Kang reviews Patrick McEachern's *Inside the Red Box: North Korea's Post Totalitarian Politics* (2010), Stephen Haggard and Marcus Noland's *Famine in North Korea: Markets, Aid, and Reform* (2007), and Suk-Young Kim's *Illusive Utopia Theater, Film, and Everyday Performance in North Korea* (2010)

institutionally and the outcomes within the country are not preordained. He also says that coercive apparatus may not be the way forward since it leads to abandoning the diplomatic path.

Secondly, Kang (2011) looks at the economy of North Korea to delve deeper into how has the state been able to survive so far. The general argument around this revolves around the impact of expanding economic relations on the strength of the state. Lankov (2008) argues that the economic engagement would lead to loosening of the grip that authoritarian regime has over their citizens and would open the space to ideologies that would compete with the regime. On the other hand, some like former U.S commander of forces in Korea B. Bell argues that it would further elevate the life of the regime. Haggard and Noland (2007) analyze the change that has happened within North Korea after the great famine of the mid-1990s and concluded that North Korea now is more open, more penetrated, and marketized than any other time in the past.

Lastly, the issue of human rights is one that needs is addressed by Kang. While not refuting the presence of prison camps, the stories of people who have escaped and the inhumane condition, most people themselves do not consider their lives to be abnormal. Kim (2010) argues that the state uses media in the form of “theatre, film, and everyday performance” to entertain as well as ideologize them so that they can be organized and mobilized whenever the need be. The important point that needs to be drawn from here is how the state is not static, it is authoritarian and uses myths and propaganda but the static representation of the state renders any step towards tacking with it pointless.

The above three ways of looking at North Korea are essential in dealing with states that have an authoritarian perspective. The top-down approach towards sanctions while containing the behaviour to a certain extent have not been efficient enough to make long-lasting changes. The sanctions need to be more informed not only about the citizens of the country on which sanctions are imposed, but also institutions, geography, and the socio-political environment. The role of P5 is also crucial to it and any sanctions regime will not lack the necessary measures if it is not backed by the great powers. Lastly, to quote Bruce Cummings (2005) who wrote about North Korea, “We look at it and see ourselves”. Thus, there is a need to look at North Korea not with a predisposed lens but one that talks about them on their terms. It is more than just a country which is building nuclear weapons and missile.

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