

Korea Focus

Unintended Consequences of the European Union's Sanctions Regime Against North Korea

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Working Paper No. 08
2020

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ISBN: 978-3-96001-007-4

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1. Introduction

Sanctions have become an ever more important tool for the EU to react politically to regional and global crises without the immediate risk of getting involved in direct military confrontations. Officially, the EU adopts sanctions to promote the core objectives of the Common Foreign and Security Policy (CFSP), i.e. peace, democracy and the respect for the rule of law, human rights and international law. Brussels' sanctions regime against North Korea is based on the rationale that the DPRK's nuclear and ballistic missile-related activities "represent a serious threat to international peace and security" and "undermine the global non-proliferation and disarmament regime" strongly supported by the EU. Encompassing both the transposition of mandatory UNSCRs as well as additional autonomous sanctions, the EU's sanctions regime against North Korea developed in successive episodes, from most targeted measures adopted in the aftermath of North Korea's first nuclear test in 2006 to ever-more comprehensive measures since 2016. Today, the EU's sanctions regime against North Korea is among the most restrictive in operation. While EU sanctions are officially designed as "targeted sanctions" so as to minimize adverse consequences for the civilian population or for legitimate activities, the sanctions regime against North Korea illustrates the fact that well-intended actions can have severe unintended consequences. Yet, North Korea's reticence and the low level of attention paid by the international community leave the problem of the unintended consequences of EU sanctions against North Korea largely unnoticed. Building on a comprehensive overview on the development and main characteristics of the EU's sanctions regime against North Korea, the study discusses some of these unintended political, economic and humanitarian consequences. It is shown that the restrictive measures, in their current form and especially against the backdrop of the global struggle against the Covid-19 pandemic, are not only contrary to the very values postulated by Brussels itself, but also aggravate the already very tense humanitarian situation in North Korea, contribute to the disruption of North Korea's 'marketization process' actually supported by the EU, and further weaken the EU's political and diplomatic role as a credible security actor in the region.

On Sanctions and the Official Stance of the EU

As there is no commonly agreed upon definition of the term 'sanctions' under international law, it comes as no surprise that scholars operate on different understandings of the concept.¹ For instance, Hufbauer et. al. (2007: 3) refer to sanctions as the "deliberate, government inspired withdrawal, or threat of withdrawal, of customary trade or financial relations." However, in addition to the disruption of economic relations, sanctions may also involve a variety of non-economic measures (Portela 2018: 7). The present study therefore conceives of sanctions as "measures imposed by an individual or collective sender that interrupt normal relations or benefits that would otherwise be granted in response to perceived misconduct by the target" (Portela 2010). This rather broad definition includes economic and financial restrictions as well as diplomatic sanctions (Ibid., see also: Biersteker, Eckert and Tourinho 2016; Doxey 2009).

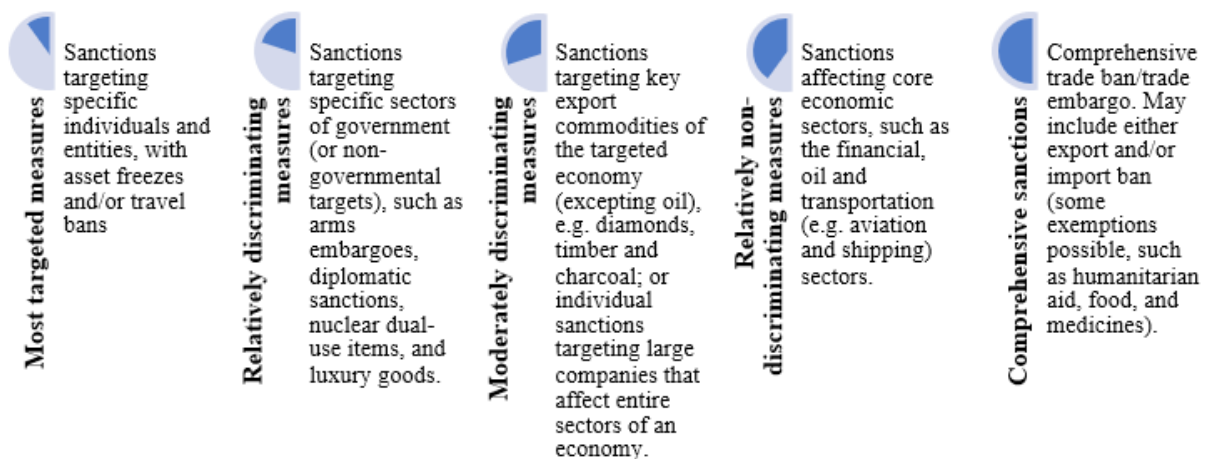
¹ In EU parlance, sanctions have traditionally been referred to as 'restrictive measures' or 'mésures negatives' in French, even though in recent times the term 'sanctions' is used as well.

Another crucial aspect in defining sanctions refers to the difference between targeted sanctions vs. comprehensive embargos. The idea of targeted measures emerged in response to negative experiences with comprehensive trade embargoes in the mid-nineties, especially following the international outcry over the humanitarian catastrophe in Iraq triggered by the UN embargo (e.g. Portela 2018: 7). In response to the “legitimacy crisis of sanctions” (Portela 2018: 8), the five permanent members of the UNSC issued a ‘non-paper’ announcing that “any future sanctions regime should be directed to minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries” (UNSC 1995). What primarily differentiates embargos from targeted sanctions is the different degree of their discriminatory nature, i.e. “their ability to affect specifically those responsible for objectionable actions” (Ibid.). The aim is to apply coercive pressure on transgressing parties, government officials and elites who support them, while avoiding any impact on others. Biersteker, Eckert and Tourinho (2016: 26) distinguish five main types of targeted sanctions:

- financial sanctions, such as investment bans or freeze of Central Bank assets
- sectoral sanctions, such as aviation bans or arms embargoes
- commodity sanctions covering oil, diamonds, charcoal or luxury goods
- diplomatic sanctions, such as limitation of diplomatic staff
- individual sanctions, consisting mostly of travel bans and assets freezes.

Beyond this useful classification, the authors categorize targeted sanctions according to their degree of discrimination, as is visualized in Figure 1:

Figure 1
Discrimination scale of sanctions



Source: Biersteker, Eckert and Tourinho 2016 (adapted)

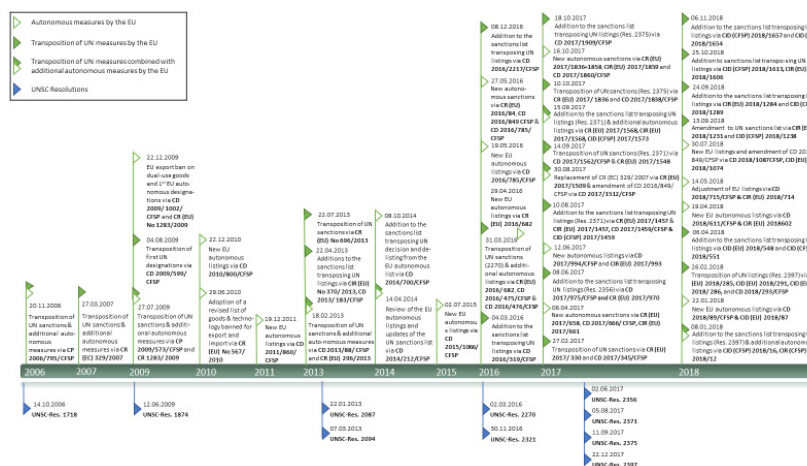
EU sanctions practices are commonly differentiated along the lines of three different strands (Biersteker and Portela 2015): Firstly, the EU may decide and implement its own autonomous sanctions in the absence of a UN Security Council (UNSC) mandate. The EU has reached consensus on a number of sanctions regimes in the absence of pre-existing UNSC resolutions,

thus developing a rich autonomous sanctions practice that has become more frequent and more sophisticated over the years. Secondly, the EU implements sanctions regimes decided on by the UNSC, which are mandatory. Here, the EU acts in effect as an implementing agency of the UNSC. The EU's writ to implement UNSC sanctions is derived from the duty that individual EU member states assume as members of the UN to comply with Security Council resolutions and is justified on the basis of its responsibility to prevent distortions in the common market as well as considerations linked to the efficacy of implementation. Thirdly, the EU frequently supplements UNSC regimes with sanctions that move beyond the former, a phenomenon often labeled as 'gold-plating' (Taylor 2010). According to Biersteker, Eckert and Tourinho (2012), in a total of 82% of the cases, UN sanctions were preceded or supplemented by other sanctions.

The EU's Sanctions Regime against North Korea: An Overview on Sanctions Episodes

The EU's sanctions regime against North Korea is multilayered and complex. Relating to various offences by the DPRK against the international order, it developed successively from most targeted sanctions to ever more comprehensive restrictive measures. EU sanctions against North Korea today encompass financial, sectoral, commodity, diplomatic and individual sanctions, attempting to hit different North Korean targets by different means (diplomatic, economic, financial). The basic rationale for the EU's sanctions regime against North Korea is the DPRK's nuclear and ballistic missile-related activities which are said to "represent a serious threat to international peace and security" and to "undermine the global non-proliferation and disarmament regime"² strongly supported by the EU. Against this background, the EU first implemented restrictive measures against North Korea following the country's first nuclear test in 2006. The EU's sanctions regime against North Korea encompasses both the transposition of mandatory UNSCRs as well as the imposition of additional autonomous sanctions.

Figure 2
The EU Sanctions Regime against North Korea



Source: Author

2 EU Restrictive Measures against North Korea, available at: <http://consilium.europa.eu/en/policies/sanctions/history-north-korea/>

As Figure 2 illustrates, the EU's sanctions regime developed in several phases or episodes, to use the adequate terms from sanctions literature. While a total of five sanctions episodes can be distinguished, the following discussion distinguishes between the (mostly) targeted sanctions between 2006 and 2015 and the (most) comprehensive sanctions from 2016 onwards.³

Targeted Sanctions (2006-2012)

Following the DPRK's first nuclear test on October 9, 2006, the UNSC adopted Resolution 1718 under Chapter VII of the UN Charter on October 14, which demands from North Korea to suspend all ballistic missile activities and to abandon its nuclear program and all other existing weapons and ballistic missile programs in a "complete, verifiable, and irreversible" manner. UNSCR 1718 also prohibits member states from supplying North Korea with luxury goods and heavy weaponry and related spare parts, materials and technologies that could contribute to North Korea's WMD programs and ballistic missile related activities. Member states are furthermore required to freeze the funds or financial assets of entities designated by the UNSC as providing support for North Korea's nuclear, missile, and other WMD programs.

On October 17, 2006, the Council of the EU strongly condemned the nuclear test of the DPRK, stating that it would fully implement the provisions of all relevant UNSC Resolutions and notably those of UNSCR 1695 (2006) and UNSCR 1718 (2006). The EU accordingly introduced restrictive measures against North Korea on November 20, 2006 with the adoption of Common Position 2006/795/CFSP. While much of the Common Position (CP) is concerned with the transposition of UNSCR 1718, the Council clarified that the CP may be amended if deemed appropriate. In fact, the EU immediately chose to complement UNSCR 1718 with additional autonomous measures and CP 2006/795/CFSP included a more comprehensive ban on conventional weapons than UNSCR 1718, covering all goods and technology on the EU Common List of Military Equipment. The CP led to the adoption of Council Regulation (EC) No 329/2007 on March 27, 2007,⁴ which codified the provisions of the Common Decision.

Following North Korea's second nuclear test on May 25, 2009, the UNSC adopted UNSCR 1874, which extended the UN-mandated partial arms embargo and the ban on technical assistance into a full arms embargo except for small arms and light weapons and it banned the provision of any financial services that could in any way contribute to the DPRK's WMD programs. Moreover, the Resolution banned the provision of new grants, financial assistance or concessional loans to the DPRK except for humanitarian and development purposes, and gave authorization for states to inspect North Korean vessels suspected of carrying items banned under the embargo and to seize and dispose such items if found.⁵

The EU implemented Resolution 1874 with supplementary entries in the list of prohibited items which could contribute to DPRK's nuclear-related, ballistic missile-related or other WMD-related programs and are therefore subject to the export ban. On August 4, 2009, the EU transposed the UN's decision to list the first 5 persons and 8 entities subject to asset freezing and travel bans. On December 22, the EU adopted an export ban on dual-use goods and technology and also autonomously designated the first 13 persons and 4 entities subject to asset freezing and

³ For a comprehensive analysis of the individual episodes of the EU sanctions regime against North Korea, see Ballbach 2020.

⁴ Many EU restrictive measures are enacted by a combination of a decision and a regulation. Measures laid down in a binding CFSP Council Decision, such as arms embargos or travel restrictions, are adopted by unanimity under Article 29 TEU and implemented directly by the member states. On the other hand, every decision concerning CFSP under Chapter 2, Title V of the TEU, i.e. economic sanctions such as export bans, require additional implementing legislation in the form of a Council regulation - directly applicable and binding on individuals and companies in the EU - which sets out the detailed scope of the measures and the means of their implementation.

⁵ Also significant was the creation of the Panel of Experts to investigate non-compliance with the sanctions and progress on implementation.

to a travel ban either because of their promotion or support of DPRK's nuclear-related, ballistic missile-related and other WMD-related programs or because they provide financial services or transfer financial or other assets or resources that could contribute to those programs.

On January 22, 2013, following the DPRK's December 2012 launch of the Kwangmyongsong-3 satellite, the UNSC unanimously adopted UNSCR 2087, which tightened existing sanctions with additional listings of institutions and individuals and imposed further restrictive measures against the DPRK, including an amendment of the scope of the ban on exports, imports, and purchase of certain goods and technology as well as an obligation on member states to exercise vigilance and restraint regarding the entry into or transit through their territories of individuals working on behalf or at the direction of designated individuals or entities.

The EU also adopted a number of additional autonomous measures, most notably a ban on export of certain goods relevant to the DPRK's WMD-related programs, especially certain types of aluminum, a ban on trade in gold, precious metals and diamonds with the government of the DPRK, a prohibition on issuing or purchasing DPRK public or public-guaranteed bonds, a prohibition on the opening of new branches, subsidiaries, or representative offices of DPRK banks in the EU, and on the establishment of new joint ventures or the taking of an ownership interest by the DPRK banks with banks in the EU.

Moderately discriminating measures (2013-2015)

Leading up to 2013, UN sanctions consisted of (mostly) targeted sanctions (asset freeze and travel ban) against high-ranking party and military officials in addition to an arms embargo (against combat-related goods) and restrictions on dual-use technologies as well as luxury items. These rather narrowly targeted sanctions were directed at the North Korean leadership with the objective of avoiding harm to ordinary civilians. Since 2013, a first shift from those targeted sanctions occurred when the UNSC agreed on more comprehensive sanctions. Accordingly, UNSCRs 2094, 2270, 2321, 2371, and 2375 all have implemented a more holistic approach by including sanctions on money transfers, export bans on textiles, seafood, coal, iron, iron ore, gold, vanadium, titanium, copper, nickel, silver, zinc, and rare earth metals, sectoral sanctions on minerals and refined petroleum products and a ban on future DPRK laborers used to generate foreign remittances. For example, with UNSCR 2094, all UN member states were now required to "freeze or block" any financial transactions or monetary transfers if such activities are deemed to help North Korea's nuclear and ballistic missile programs. Moreover, new financial measures were aimed at cracking down on bulk cash transfers and also at restricting the financial network of North Korean banks accused of being involved in illicit activities. In addition, interdiction and inspection of all suspicious ships and cargos became mandatory, a notable development since China and Russia had opposed to such measures in the past. For the first time, the UNSC expanded the scope of its target to include North Korean diplomats in order to monitor their involvement in illegal activities.

The EU again not only transposed UNSCR 2094, but imposed a row of further restrictive measures against the DPRK, including, among others, restrictions for EU financial institutions on establishing and maintaining correspondent banking relationships with DPRK banks and enhanced vigilance over DPRK diplomatic personnel.

(Most) Comprehensive Sanctions since 2016

From 2016 onwards, the EU's sanctions regime against North Korea underwent the most far-reaching qualitative change since its inception. That is, against the general trend in both UN and EU sanctions regimes towards more targeted sanctions, from 2016 the sanctions regime against North Korea developed ever more towards a full embargo – with all the negative and unintended consequences that come along. Following the detonation of a nuclear device on January 6, 2016, the UNSC imposed UNSCR 2270, which, among others, bans the export of coal, iron (except for livelihood purposes), gold, vanadium, titanium, and rare earth metals, imposes sectoral sanctions on fuel, expands the ban on luxury items, expands the arms embargo and non-proliferation measures to include small arms and light weapons, implements new cargo restrictions (including but not limited to mandatory inspection on cargo destined to and originating from the DPRK) and enforces new financial restrictions (including but not limited to an asset freeze on the North Korean government as well as prohibiting DPRK banks from opening branches abroad and vice versa).

Following the transposition of UNSCR 2270 in March 2016 via CR 2016/682 and CD 2016/475 and 476, the Council, in May 2016, adopted its most comprehensive autonomous measures against the DPRK to that date. While Brussels' autonomous sanctions against North Korea thus far encompassed additional autonomous listings, the Council now decided on comprehensive autonomous restrictions on trade, financial services, investment and transport. These included, among others,

- in the trade sector: prohibition of the import of petroleum products and luxury goods from the DPRK, prohibition of the supply, sale or transfer to the DPRK of additional items, materials or equipment relating to dual-use goods and technology and a ban on any public financial support for trade with the DPRK;
- in the financial sector: prohibition of transfers of funds to and from the DPRK, unless for certain predefined purposes and authorized in advance;
- in terms of investment: prohibition of all investment by the DPRK in the EU; prohibition of investment by EU nationals or entities in the mining, refining and chemical industries sectors as well as in any entities engaged in DPRK's illegal programmes;
- in the transport sector: prohibition on any aircraft operated by DPRK carriers or originating from the DPRK from landing in, taking off or overflying EU territory; prohibition on any vessel owned, operated or crewed by the DPRK from entering EU ports.

The adoption of these autonomous sanctions constituted a watershed moment, for it *qualitatively* moved the EU's sanctions regime beyond that of the UNSC. An accompanying press release points to the EU's conclusion "to further expand its restrictive measures targeting the DPRK's nuclear, weapons of mass destruction and ballistic missile programmes."

A nuclear detonation on September 9, 2016 led to the adoption of UNSCR 2321 in late November of the same year, which most notably caps the amount/value of coal, iron and iron ore exports from the DPRK, bans exports and imports of statues, copper, nickel, silver, and zinc, expands the existing arms embargo and tightens restrictions on fuel ban, in the transport sector, and on the DPRK's diplomatic missions and consular posts abroad, including capping the number of staff. Moreover, the legal acts also provide for member states to suspend scientific

and technical cooperation involving persons or groups officially sponsored by or representing the DPRK except for medical exchanges.

On February 27, 2017, the Council transposed UNSCR 2321 and thus further tightened existing restrictions in the transport sector as well as in the financial sector, for example by prohibiting any of the DPRK's diplomatic missions and diplomats to have more than one bank account in the EU. On April 6, 2017, the Council adopted new autonomous restrictive measures against the DPRK, which expand the prohibition on investments in the DPRK to new sectors, namely the conventional arms-related industry, metallurgy and metalworking, and aerospace. The Council also agreed to prohibit the provision of computer services and services linked to mining. In the accompanying press release, the Council holds that it took these additional restrictive measures considering that the actions of the DPRK violate multiple UNSC resolutions and constitute a grave threat to international peace and security in the region and beyond. The EU again called on the DPRK to re-engage in a credible and meaningful dialogue with the international community, to cease its provocations, and to abandon all nuclear weapons and existing nuclear programs as well as other weapons of mass destruction and ballistic missile programs in a complete, verifiable and irreversible manner.

The UNSC adopted Resolution 2371 following the test of an ICBM by North Korea on July 4, 2017, which targets the DPRK's main exports, imposing a total export ban on coal iron, iron ore, fish and seafood, lead and lead ore. The sanctions also target North Korea's arms smuggling, expands financial sanctions (e.g. by forbidding Joint Ventures with North Korean companies) and places further restrictions on North Korea's Foreign Trade Bank's ability to generate revenue and to access the international financial system. In addition, North Korean nationals were banned from working in EU member state territories, which were also prohibited from expanding existing and opening new joint ventures with any entities and individuals from the DPRK.

Following the launch of a ballistic missile on August 29 as well as a thermo-nuclear weapon on September 3, 2017, UNSC adopted Resolution 2375, which encompasses, among others, a ban on the sale of natural gas liquids to the DPRK, the imposition of an annual cap of 2 million barrels per year of all refined petroleum products and crude oil, a ban of all North Korean textile exports (of which the international community expects financial losses to the tune of roughly 800 Million US-Dollar), a prohibition for EU member states to provide work authorizations to DPRK nationals, an end to all joint ventures with North Korea and the imposition of an asset freeze on the most important North Korean governmental institutions. The transposition of the UNSCR 2375 sanctions was followed by further autonomous measures by the EU, which include a total ban on EU investment in the DPRK, in all sectors,⁶ as well as on the sale of refined petroleum products and crude oil to the DPRK, which were only subject to certain limitations under UNSCR 2375. Brussels furthermore lowered the amount of personal remittances transferred to the DPRK from € 15 000 to € 5 000, and, with a view to eliminating remittances to the DPRK, prohibited the renewal of work authorizations for DPRK nationals on EU territory, except for refugees and other persons benefiting from international protection.

UNSC Resolution 2397 (2017) further strengthened the export ban to the DPRK of all refined petroleum products by reducing the amount of barrels that may be exported from 2 million barrels to 500,000 barrels per year, banned imports from the DPRK of food and

⁶ The ban was previously limited to investment in the nuclear and conventional arms-related industry, in the sectors of mining, refining and chemical industries, metallurgy and metalworking and aerospace.

agricultural products, machinery, electrical equipment, earth and stone, and wood, banned exports to the DPRK of all industrial machinery, transportation vehicles, and implemented further maritime restrictive measures against vessels when there are reasonable grounds to believe that the vessel has been involved in the breach of UN sanctions. Moreover, all member states are required to repatriate all DPRK workers abroad within 24 months.

Unintended Consequences of the EU's Sanctions Regime against North Korea

The discussion in the previous chapter shows how the EU's sanctions regime against North Korea transformed from targeted to ever more comprehensive sanctions. While it is not hard to imagine the economic impact of these sanctions, there are a number of unintended consequences that come along. This chapter addresses some of these unintended consequences, focusing on unfavorable or even outright negative political, economic and humanitarian consequences of the EU's sanctions regime against North Korea.

Unintended Political Consequences

The EU's sanctions regime against North Korea is, as acknowledged by Brussels itself, the most stringent EU sanctions regime currently in place. While both the EU's and the UN's sanctions regimes were initially designed as most targeted sanctions regimes, they have successively become ever more restrictive, eventually evolving to a most comprehensive sanctions regime bordering on a full-fledged embargo. This, however, stands in stark contrasts to the values postulated by the EU itself. Although early European sanctions have often included very wide-ranging measures, such as the embargo on Argentine imports in 1982 following the country's occupation of the Falkland Islands, both the UN and the EU have shifted their respective sanctions policies towards more targeted approaches (Russell 2018: 2-3). This idea of targeted measures emerged in response to the negative experiences with comprehensive trade embargoes in the mid-nineties, especially following the international outcry over the humanitarian catastrophe in Iraq triggered by the UN embargo (e.g. Portela 2018: 7). In response to the "legitimacy crisis of sanctions" (Portela 2018: 8), the five permanent members of the UNSC issued a 'non-paper' announcing that "any future sanctions regime should be directed to minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries" (UNSC 1995). EU sanctions therefore aim to have maximum impact on the persons responsible for the behavior concerned – typically, the political and military leaders of a regime – while minimizing adverse humanitarian effects wherever possible. For this reason, the most commonly applied EU sanctions are visa bans, asset freezes and arms embargoes, for such measures can cause considerable inconvenience to targeted individuals and organizations without directly affecting the general population. As will be discussed further throughout this chapter, however, the effect of EU sanctions against North Korea in their current configuration do not and are not aimed solely at the DPRK's elite and decision-makers, but are designed to have a broad societal impact. Marking a departure from the EU's carefully targeted

sanctions policies of recent decades, they represent de facto comprehensive measures widely associated with negative humanitarian impacts. Apart from the fact that the sanctions in their present form do not correspond to their own values, these sanctions also have negative political and diplomatic consequences for Brussels. In specific, the EU's sanctions-only approach to North Korea has two decisive weaknesses:

Firstly, the EU's sanctions-based approach did not contribute to achieving the Brussels' declared policy goals vis-à-vis North Korea, namely to support a lasting reduction of tensions in the Korean peninsula and in the region through a denuclearized North Korea, to strengthen the international non-proliferation regime and to improve the human rights situation in North Korea. With no lasting peace agreement in sight, no progress in the denuclearization of North Korea, an ever more weakened non-proliferation regime and the human rights situation in North Korea remaining unchanged it is no overstatement to argue that the EU did not achieve a single one of its foreign policy objectives in Korea. This does not, of course, mean that the objectives as such are erroneous, but rather that the method of relying solely on sanctions for achieving them is flawed.

Secondly, the EU's sanctions-only policy also have *negative strategic consequences* for the EU. With the increasing focus on sanctions as the central means of dealing with North Korea, accompanied by a noticeable containment of diplomatic initiatives, the strategy promoted an increasingly passive and reactive policy of the EU. Even more so, the EU directly linked progress on the nuclear issue with progress in other areas of relations with North Korea. Due to the extremely limited diplomatic influence of the EU on the nuclear issue, the sanctions regime has therefore contributed to further limit the EU's strategic room for maneuver and further decimated the (credibility of the) EU's role in security issues in North East Asia. This is arguably best exemplified by Brussels' decision to halt the Political Dialogue with North Korea. First held in December 1998, and thus, amid Brussels' active engagement period, the senior-level political meetings aimed at improving bilateral relations. Held a total of 14 times since 1998,⁷ this particular dialogue became one of (if not) the most important resource for Brussels toward the DPRK. The parties have discussed multiple issues at said dialogues, including North Korea's WMD programs, the human rights situation in North Korea, North and South Korean relations, ways to reduce tension on the Korean peninsula, and the EU's food and humanitarian assistance to North Korea. The political dialogue between the EU and Pyongyang was upheld during the second North Korean nuclear crisis (from 2003 onwards), and even persisted after North Korea's first (2006), second (2009), and third (2013) nuclear tests, attesting to the EU's persistent pursuit of a policy of engagement toward North Korea until that time (Kim and Choi 2019). However, the EU canceled the dialogue in line with its active pressure strategy, an element of which is to scale down official dialogue with North Korea. With the geopolitical framework conditions once again shifting since 2018, the EU should pressingly reconsider this decision and resume the dialogue as soon as possible. In fact, in 2018 North Korea has proposed such a resumption – an offer that, while supported by some member states, was rejected by the majority within the EU. Yet, the EU has much to gain from such a resumption. On the most basic level, the political dialogue with the DPRK provides a rare opportunity for Brussels to directly address those issues that are deemed particularly important to Brussels, such as a peaceful and diplomatic settlement of the nuclear conflict, non-proliferation issues or human rights.

⁷ The 14 dialogues were held three times in Brussels and eleven times in Pyongyang and took place in December 1998 (Brussels), November 1999 (Brussels), November 2000 (Pyongyang), October 2001 (Pyongyang), June 2002 (Pyongyang), December 2003 (Pyongyang), November 2004 (Pyongyang), March 2007 (Pyongyang), December 2007 (Pyongyang), May 2008 (Brussels), March 2009 (Pyongyang), October 2009 (Pyongyang), December 2011 (Pyongyang), and June 2015 (Pyongyang).

Aside from the embassies of EU member states in Pyongyang, there is currently no official platform to discuss those issues with the DPRK in an official and institutionalized manner. To get closer to the actual decision-makers in North Korea, Brussels should even consider the possibility of upgrading the dialogue from the senior officials to a higher diplomatic level. This might contribute to a better understanding of North Korean motives and objectives, while at the same time “[exposing] North Korean officials to European thinking and perhaps challenge their preconceptions about Western aims” (Bond 2013). An institutionalized dialogue channel between the EU and the DPRK might very well contribute to improving both the understanding among and the level of trust between the two sides, which would have positive effects regardless of whether current negotiations between North Korea and the US, as well as between the two Koreas, are successful or not (Esteban 2018: 37).

Unintended Economic Consequences

North Korea’s economy consists of two sectors: the strategic sector, which includes military and heavy industry, and the non-strategic sector, which includes light industry and local industry (Lim 2017: 1-2). While the former is supported by planned economy mechanisms, since the end of the Cold War the non-strategic sector has been increasingly characterized by market economy processes and mechanisms, which are expressed, among other things, in greater freedom for the markets, as well as greater freedom of action for the farmers with regard to the production and sale of their products (Lim 2017: 2). The government investment strategy of the North Korean leadership clearly focuses on the strategic sector and has allowed the “marketization” of the non-strategic sector since the early 2000s (Lim 2017: 2). What is noteworthy is the fact despite international sanctions first implemented in 2006, North Korea’s economy has experienced a considerable growth in the following years. According to observers, this was mainly due to a number of strategic decisions taken by the North Korea, such as the substitution of its imports in the military industries, an increasing investment in the civilian economy, a number of reformist economic management measures as well as the rapid increase of trade with China (Lim 2017: 3-4). Overall, before the adoption of UNSCR 2270 in 2016, both UN and EU sanctions focused on blocking trade directly related with WMD development, which resulted in the North Korean civilian economy remaining relatively untouched from these sanctions regimes. However, with the adoption of UNSCR 2270, the international society now explicitly targeted North Korea’s civilian trade. A crucial factor that explains the EU’s support for these drastic measures is not least due to the fact that no EU member state has serious economic relations with the DPRK and consequently there were no economic repercussions disrupting their trade relations. Since the implementation of the first sanctions in 2006 to the latest sanctions in 2018, the trade volume decreased from roughly 280 million Euros to only about 9 million. While the EU’s imports from North Korea decreased from 154 million Euros in 2006 to around 2 million Euros in 2019, the EU’s exports to North Korea fell from 127 million Euros in 2006 to around 5 million Euros in 2019. Hence, while the EU was North Korea’s third-largest trading partner as late as 2001 (Frank 2002: 93), it is currently ranked 15 with regard to North Korea’s most important trade partners. In turn, to the EU, North Korea ranks at 192 with regard to the Union’s most important partners in total trade in 2019 (See: Eurostat 2019: 3). Resolution 2371 imposes a full import ban on North Korea’s most important export products and a ban on the employment of North Korean workers. In view of the expected monetary consequences, the North Korean leadership will face the challenge of generating foreign exchange. Given limited opportunities, it can be assumed

that the North Korean leadership will be to absorb domestic foreign currency in the market (Lim 2017: 5). This will place a massive burden on the North Korean economy on both the production and consumption side, as markets in North Korea are rooted in foreign currency and an expected siphoning off of foreign currency from the markets by the North Korean government would not only bring transactions in the markets to a standstill, but also prevent further investment by the so-called *donjus*, a class of traders and entrepreneurs that some observers call the “new middle class.” Rüdiger Frank rightly points out the negative effects on these market economy processes, which drive those very sections of the population back into the arms of the state: According to Frank (2017), sanctions are suffocating the North Korean market economy and the forces of change in North Korea.

Unintended Humanitarian Consequences

During a meeting of the UNSC in late May 2020, Germany’s ambassador to the UN Heusgen stated that the narrative that sanctions are detrimental to the humanitarian situation in North Korea must be countered and that the DPRK bears the sole responsibility for the humanitarian situation in the country. This, however, is a distorted representation of reality and there is a “moral complexity” in the charged relationship between sanctions and humanitarian considerations (Browning and Friedrich 2017: 9). All available information point to the direction that sanctions in their current comprehensive form in fact do, both directly and indirectly, further aggravate an already tense humanitarian situation marked by “urgent and long-standing unmet humanitarian needs” (Féron et.al 2019: 6).⁸ Among the greatest humanitarian challenges facing the DPRK are chronic food insecurities, the lack of access to basic health care for large sections of the population, deteriorating water, sanitation and hygiene conditions and the country’s high vulnerability to natural disasters. According to the latest Needs and Priorities Report (2020) annually compiled by the UN Country Resident Coordinator, some 10.1 million and thus about 40% of the population are estimated to be “food insecure” and are in urgent need of food assistance. An estimated 10.4 million people are in urgent need for nutrition support with one in five children suffering from stunting (chronic malnutrition) and many lack access to safely-managed drinking water services. (see also: FAO 2019). According to a joint FAO/WFP Assessment Mission, a reduced harvest, the lowest in a decade, coupled with increased post-harvest losses, along with significant crop losses over successive seasons, led to an uncovered food deficit of 1.36 million metric tons after considering the commercial import capacity of the country (FAO/WFP 2019; Needs and Priorities 2020: 28) The FAO/WFP report explicitly points out that international sanctions directly and indirectly affect agricultural production, most obviously through restrictions on the import of certain necessary items such as fuel, machinery and spare parts for equipment, but also fertilizer and many others (FAO/WFP 2019: 14). While food supply has been a long-standing problem in North Korea that precedes the current sanctions regime of the international community, the data from international aid organizations shows that the situation has considerably worsened since the comprehensive sanctions of 2016. For example, total food production in 2018 was only 4.95 million tons, 9 percent less than in 2017 and 16 percent less than in 2016. Especially the broad sectoral sanctions immediately affect the import of items needed to address the humanitarian crises affecting the North Korean population. The UN Panel of Experts highlighted the particular impact of paragraph 7 of Resolution 2397, which prohibits the transfer to the DPRK of all industrial machinery,

⁸ North Korea’s socio-economic challenges are due not least to the country’s structural crisis since the 1990s, which has manifested itself in four major shortcomings, the interplay of which is hampering the country’s economic development and which complicates the humanitarian situation: the shortage of food, goods, capital and energy.

transportation vehicles, and iron, steel, and other metals. It noted that this prohibition “covers several goods which are vital to agriculture or public health programs, including a variety of agricultural machinery and medical equipment.” The UN Panel compiled a long list of humanitarian-sensitive items prohibited under paragraph 7, showing that the sanctions were interpreted to ban any item containing any amount of metal components. It also noted that other humanitarian-sensitive items may be prohibited under other sanctions provisions. There is as yet no comprehensive list of all such affected items.

In addition to these direct consequences, sanctions also have negative indirect effects. Most notably, the existing sanctions regime of the international community has an unintended, negative effect on the work of aid organizations operating in North Korea. As is pointed out by the UN Resident Coordinator in Pyongyang, “humanitarian agencies continue to face serious unintended consequences on their programmes, such as lack of funding, the absence of a banking channel for humanitarian transfers and challenges to the delivery of humanitarian supplies.” Moreover, sanctions are causing significant delays in aid. As an example, al-Hussein cited sanctions on international payment transfers that cause delays in the delivery of humanitarian aid by UN agencies on the ground. The UN commissioner called on the Security Council to analyze the humanitarian consequences of the sanctions. Tapan Mishra, the previous Resident Coordinator of the UN Country Office in North Korea, pointed out the difficulties of money transfers and goods transport caused by the sanctions, which lead to massive delays, which are particularly critical in emergency situations. As a result, several agencies have already been forced to scale back their programs. For example, the UN Country Team’s Annual report shows that the 2019 Needs and Priorities plan was only 27 per cent funded (at \$32.9 million), being the lowest in amount and the third lowest in percentage globally. Handicap International is now the third NGO to have ceased its activities in North Korea within a few months with explicit reference to the sanctions regime of the international community as the main factor that hinders their activities in North Korea. Without structural changes in the sanctions regime, it is near-inevitable that more humanitarian institutions will have to cease operation that serve as a lifeline for millions of people. And the global Covid-19 pandemic will further add to the humanitarian challenges in North Korea. A new Global Health Security Index, the first comprehensive assessment of health security and related capabilities across 195 countries, found that North Korea is amongst the least prepared states to handle an epidemic or pandemic outbreak. This leaves the country in a situation in which the further demarcation from the global community is the only viable strategy, which, in turn, will further aggravate the situation in the country.

Recommendations for the EU

- Support a political solution to the nuclear crisis by strengthening and institutionalizing interactions between the EU and North Korea (especially by resuming the Political Dialogue between Brussels and Pyongyang) and facilitating dialogue between major international players and North Korea on such issues as denuclearization, trust-building and reconciliation or the establishment of a peace regime on the Korean peninsula.

- Critically review all EU autonomous restrictive measures in light of the EU's fundamental (sanctions policy) principles, especially with regard to the unintended humanitarian and economic consequences of the autonomous restrictive measures by the EU on the civilian population.
- Establish an institutional mechanism to monitor the effects of the EU's sanctions regime against North Korea aside from the regular review process conducted by the relevant Council working parties and committees.
- Establish an independent external advisory body consisting of academic experts on sanctions and North Korea experts as well as humanitarian aid agencies/ NGO's operating in and/ or with North Korea for regularly exchanging views to ensure the efficiency of management of restrictive measures regimes, including of their humanitarian provisions.

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