

## IV. International non-proliferation sanctions against North Korea

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The long-running efforts of the Democratic People's Republic of Korea (DPRK, or North Korea) to develop nuclear weapons and their ballistic missile delivery systems continue to draw strong international condemnation and demands that the country immediately halt all activities related to these programmes. In 2017 North Korea conducted a sixth nuclear test explosion and 23 test launches of ballistic missiles, including new long-range missile systems.<sup>1</sup> The tests prompted the United Nations Security Council, as well as individual states, to impose additional financial sanctions and sanctions on key sectors of the North Korean economy, and to tighten enforcement of the existing arms embargo.<sup>2</sup> At the same time, significant difficulties remained in implementing and enforcing the sanctions, which continued to be vulnerable to circumvention by an increasingly sophisticated range of smuggling activities and deceptive practices.

### United Nations Security Council sanctions

By the end of December 2017 the Security Council had adopted nine resolutions imposing sanctions and other restrictive measures on North Korea in response to the country's nuclear weapon and ballistic missile tests since 2006 (see table 7.2). All nine resolutions were adopted unanimously and cited Chapter VII of the UN Charter in demanding that North Korea abandon its nuclear weapons and nuclear weapon programmes in a complete, verifiable and irreversible manner and immediately cease all related activities.<sup>3</sup> The Security Council monitors implementation of the sanctions through a committee established by Resolution 1718 (of 2006) and a panel of experts established by Resolution 1874 (of 2009).<sup>4</sup> The panel produces regular reports on the status of the sanctions and their enforcement.

In 2017 the Security Council adopted three new sanctions resolutions in response to North Korea's nuclear weapon and ballistic missile tests during the year. Resolution 2371 was adopted unanimously on 5 August following North Korea's test launches in July of two long-range ballistic missiles. The

<sup>1</sup> See chapter 6, section IX, in this volume.

<sup>2</sup> On the arms embargo see chapter 10, section II, in this volume.

<sup>3</sup> Chapter VII powers ('action with respect to threats to the peace, breaches of the peace, and acts of aggression') must be used for the establishment of Security Council-mandated sanctions regimes, although an explicit reference to the chapter is not essential. Charter of the United Nations, signed 26 June 1945, entered into force 24 Oct. 1945.

<sup>4</sup> For the text of the United Nations Security Council resolutions mentioned in this section see United Nations, 'Security Council resolutions'.

**Table 7.2.** Summary of UN Security Council sanctions resolutions in response to North Korea's nuclear and ballistic missile tests

Date	Resolution	Main provisions
14 Oct. 2006	1718	Condemned 9 Oct. 2006 nuclear test; called on states to inspect cargo shipments to and from North Korea suspected of trafficking WMD-related material; established a sanctions committee to monitor and review sanctions and report to the Security Council
12 June 2009	1874	Condemned 25 May 2009 nuclear test; expanded sanctions to ban all weapon exports from North Korea and most imports except for small arms; prohibited financial transactions, technical training or assistance for the provision, manufacture, maintenance or use of WMD and missile systems; established a 7-person panel of experts to assist the sanctions committee established by Resolution 1718
22 Jan. 2013	2087	Condemned 12 Dec. 2012 long-range rocket launch; designated new subjects of sanctions measures previously adopted by the Security Council
7 Mar. 2013	2094	Condemned 12 Feb. 2013 nuclear test; added to the prohibited list of equipment and technologies and made new entities and individuals subject to sanctions; authorized states to inspect all cargo transiting through their territories to and from North Korea
2 Mar. 2016	2270	Condemned 6 Jan. 2016 nuclear test; banned North Korea's exports of coal and iron, except for 'livelihood purposes'; banned North Korea's exports of gold, titanium and rare earth metals
30 Nov. 2016	2321	Condemned 9 Sep. 2016 nuclear test; banned North Korea's exports of non-ferrous metals (copper, nickel, silver and zinc); placed limit on North Korea's exports of coal; restricted activities of North Korean diplomats and diplomatic missions
5 Aug. 2017	2371	Condemned test launches of long-range ballistic missiles on 3 July and 28 July 2017; banned North Korea's exports of lead, iron and seafood; imposed new restrictions on North Korea's Foreign Trade Bank; prohibited new joint ventures between North Korea and foreign partners
11 Sep. 2017	2375	Condemned nuclear test of 3 Sep. 2017; limited North Korea's imports of crude oil and refined petroleum products; banned all North Korean textile exports; required termination of joint ventures with North Korean entities; prohibited new work permits for North Korean nationals to work in foreign countries
22 Dec. 2017	2397	Condemned test launch of long-range ballistic missile on 28 Nov. 2017; imposed new limit on North Korea's annual import of refined petroleum products; required the repatriation of all North Korean nationals earning income abroad within 2 years; strengthened maritime interdiction measures targeting North Korean vessels

WMD = weapon of mass destruction.

Source: United Nations, Security Council, Committee established pursuant to Resolution 1718 (2006), 'Resolutions'.

resolution banned the export by North Korea of several materials that previous sanctions resolutions had restricted the export of, such as coal, iron and iron ore, lead and lead ore, and seafood. It also imposed new sanctions against North Korean individuals and entities, including the Foreign Trade Bank (FTB), and prohibited new joint ventures between North Korea and foreign partners.<sup>5</sup>

On 11 September 2017 the Security Council unanimously approved Resolution 2375 in response to North Korea's sixth nuclear test explosion, thought to be a hydrogen bomb, which was conducted on 3 September.<sup>6</sup> The resolution contained several measures that strengthened sanctions on the North Korean economy. Specifically, it imposed an annual ceiling on imports by North Korea of refined petroleum products (gasoline, diesel, heavy fuel oil, etc.) while freezing imports of crude oil at the current level. The resolution also banned the supply to North Korea of all natural gas and natural gas condensates in order to prevent it from obtaining substitutes for refined petroleum products. It banned the export by North Korea of all textiles—targeting the country's largest economic sector which the Security Council had not previously restricted. The resolution also eliminated a major source of revenue by prohibiting UN member states from issuing new permits for North Korean nationals to work in their jurisdictions.<sup>7</sup> Finally, the resolution contained strengthened maritime provisions enabling countries to counter North Korean smuggling activities of prohibited exports by sea.<sup>8</sup>

On 28 November 2017 North Korea test launched a new type of long-range ballistic missile. In response, on 22 December the Security Council unanimously approved Resolution 2397, which further tightened sanctions against the country.<sup>9</sup> The resolution reduced by 75 per cent the annual cap on the supply of refined petroleum products to North Korea imposed by Resolution 2375, to a maximum of 500 000 barrels in 2018; and it capped crude oil imports in 2018 at the current level of 4 million barrels.<sup>10</sup> The resolution called for UN member states to repatriate all North Korean nationals earning income within their jurisdictions, with some humanitarian exceptions, within two years. Finally, the resolution strengthened maritime interdiction measures to prevent sanctions evasion, including a new requirement for countries to seize and impound ships caught smuggling illicit items such as oil and coal.

<sup>5</sup> UN Security Council Resolution 2371, 5 Aug. 2017.

<sup>6</sup> UN Security Council Resolution 2375, 11 Sep. 2017. See also chapter 6, section XI, in this volume.

<sup>7</sup> According to a US Government estimate, c. 100 000 North Koreans were working abroad and generating more than \$500 million in revenue for the North Korean Government each year. US Mission to the United Nations, 'UN Security Council Resolution 2397 on North Korea', Fact sheet, 22 Dec. 2017.

<sup>8</sup> UN Security Council Resolution 2375 (note 6).

<sup>9</sup> UN Security Council Resolution 2397, 22 Dec. 2017.

<sup>10</sup> US Mission to the United Nations (note 7).

*Divergent views on sanctions*

The negotiations on the Security Council resolutions were marked by disagreements between China and Russia on one side and the United States on the other over the scope and severity of the proposed sanctions. The USA sought to impose stringent measures, calling for the ‘strongest possible’ sanctions against North Korea during the negotiation of Resolution 2375.<sup>11</sup> China and Russia consistently rejected US calls to impose stringent sanctions targeting North Korea’s economy as ineffectual and potentially destabilizing. Chinese officials in particular reportedly feared that an oil embargo or similar measures risked causing social unrest inside North Korea that could spill over its border with China.<sup>12</sup> This concern was supported by reports during the year about the steady deterioration in living conditions for ordinary North Koreans.<sup>13</sup> The USA eventually dropped several proposed measures—including a total oil embargo—in order to win the support of China and Russia.<sup>14</sup>

China and Russia emphasized that the tightening of economic and financial sanctions on North Korea must be accompanied by serious diplomatic efforts to advance the prospects for reaching a comprehensive political settlement.<sup>15</sup> They continued to express support for a Chinese-proposed ‘freeze-for-freeze’ deal as an interim step. This would involve North Korea agreeing to cease all nuclear weapon testing and missile launches in exchange for the USA reducing its military presence on the Korean peninsula and ceasing all joint military exercises with the Republic of Korea (South Korea).<sup>16</sup> However, the US ambassador to the United Nations dismissed the freeze-for-freeze proposal as ‘insulting’ following North Korea’s sixth nuclear weapon test.<sup>17</sup>

*UN panel of experts midterm report*

In September 2017 the panel of experts established by Resolution 1874 issued a mid-term report conveying to the Security Council its most recent findings and recommendations.<sup>18</sup> The panel reported that North Korea had

<sup>11</sup> Smith, D., ‘North Korea “begging for war” says US, calling for strongest possible sanctions’, *The Guardian*, 4 Sep. 2017.

<sup>12</sup> Rahn, W., ‘Why China won’t help US against North Korea’, *Deutsche Welle*, 15 Sep. 2017;

<sup>13</sup> E.g. McCurry, J., ‘“Too many soldiers to feed”: North Koreans fear more sanctions as drought threatens famine’, *The Guardian*, 23 Aug. 2017.

<sup>14</sup> Sengupta, S., ‘After US compromise, Security Council strengthens North Korea sanctions’, *New York Times*, 11 Sep. 2017.

<sup>15</sup> Nichols, M., ‘UN Security Council unanimously steps up sanctions on North Korea’, *Reuters*, 11 Sep. 2017.

<sup>16</sup> Nichols (note 15). For a description of the freeze-for-freeze proposal see Russian Ministry of Foreign Affairs, ‘Joint statement by the Russian and Chinese foreign ministries on the Korean Peninsula’s problems’, Press Statement 1317-04-07-2017, 4 July 2017.

<sup>17</sup> Haley, N., US Permanent Representative to the United Nations, ‘Remarks at an emergency UN Security Council briefing on North Korea’, US Mission to the United Nations, 4 Sep. 2017.

<sup>18</sup> United Nations, Security Council, ‘Midterm report of the panel of experts established pursuant to Resolution 1874 (2009)’, 4 Aug. 2017, S/2017/742, 5 Sep. 2017.

made significant technological progress in its nuclear and ballistic missile programmes ‘in defiance of the most comprehensive and targeted sanctions regime in United Nations history’. Its investigation revealed that North Korea continued to violate the financial sanctions through the use of a range of illicit activities and deceptive practices. It also revealed that North Korea continued to violate the sanctions on various sectors of its economy through the export of almost all of the commodities prohibited in the resolutions, using indirect channels and third countries to evade sanctions. According to the panel, these developments showed that ‘as the sanctions regime expands, so does the scope of evasion’.<sup>19</sup>

The panel’s report stated that, despite an increased rate of submission of national implementation reports to the Security Council, ‘the actual implementation of the sanctions lags far behind what is necessary to achieve the goal of denuclearization’.<sup>20</sup> It argued that this was due in part to the ‘lack of appropriate domestic legal and regulatory frameworks’ in some UN member states.<sup>21</sup> The practical consequence was that ‘Lax enforcement of the sanctions regime, coupled with [North Korea’s] evolving evasion techniques are undermining the goals of the resolutions that [North Korea] abandon all weapons of mass destruction and cease all related programmes and activities’.<sup>22</sup>

### **Other national and international sanctions**

In 2017 several countries and the European Union (EU) imposed autonomous sanctions against North Korea. In some cases, these went beyond the measures contained in UN Security Council resolutions.

On 20 September a US executive order blocked from the US financial system any foreign business, organization or individual that facilitated trade with North Korea.<sup>23</sup> The new measure was reportedly designed to counteract sanction-evasion tactics and was aimed at Chinese financial institutions in particular.<sup>24</sup> China has opposed unilateral US sanctions that go beyond Security Council sanctions, especially those that impose de facto long-arm jurisdiction over Chinese entities and individuals.<sup>25</sup>

<sup>19</sup> United Nations, S/2017/742 (note 18), p. 4. See also Abrahamian, A., ‘The art of sanctions: Can North Korea navigate expanded measures?’, 38 *North*, 21 Mar. 2016. See also chapter 10, section II, in this volume.

<sup>20</sup> United Nations, S/2017/742 (note 18), p. 5.

<sup>21</sup> United Nations, S/2017/742 (note 18), para. 60.

<sup>22</sup> United Nations, S/2017/742 (note 18), p. 5.

<sup>23</sup> White House, Presidential Executive Order on imposing additional sanctions with respect to North Korea, 20 Sep. 2017.

<sup>24</sup> Reiss, M., ‘With new North Korea sanctions in place, all eyes are on China’, *Lawfare*, 22 Sep. 2017.

<sup>25</sup> Meyers, J., ‘China denounces US sanctions on North Korea trade’, *Los Angeles Times*, 20 Aug. 2017.

The USA had previously imposed unilateral sanctions against North Korea in response to cyberattacks attributed to it, human rights violations, money laundering and other activities.<sup>26</sup> In August 2017 the US Congress approved a controversial law, the Countering America's Adversaries Through Sanctions Act, that imposes new or expanded sanctions on North Korea as well as on Iran and Russia.<sup>27</sup> Among other provisions, the law tightens US restrictions on North Korea's cargo and shipping as well as its use of forced labour.<sup>28</sup>

On 16 October 2017 the Council of the European Union adopted new autonomous EU measures to complement and reinforce those in UN Security Council Resolution 2375. These include banning all EU investment in North Korea; banning the sale of refined petroleum products and crude oil to North Korea; reducing the amount of personal remittances that can be transferred to North Korea; and prohibiting the renewal of work permits for North Korean nationals currently employed in EU member states. The EU also added individuals and entities to the lists of those subject to an asset freeze and travel restrictions.<sup>29</sup>

In November and December 2017 the Japanese Government approved measures freezing assets of additional individuals and entities, including some based in China and Russia, which it had identified as assisting North Korea to circumvent UN Security Council sanctions.<sup>30</sup>

### **The impact of sanctions**

The year 2017 ended with international sanctions of unprecedented scope and severity in place against North Korea but no indication that the country was prepared to abandon its nuclear weapons or halt their development. Following the adoption of UN Security Council Resolution 2397, the North Korean Government issued a statement denouncing the sanctions as 'an act of war' that had been 'rigged up by the US and its followers'.<sup>31</sup> The statement vowed that, despite the 'worn out "sanctions"', North Korea would 'further consolidate [its] self-defensive nuclear deterrence aimed at fundamentally eradicating the US nuclear threats, blackmail and hostile moves'.

<sup>26</sup> Albert, E., 'What to know about sanctions on North Korea', Backgrounder, Council on Foreign Relations, 3 Jan. 2018.

<sup>27</sup> Countering America's Adversaries Through Sanctions Act, US Public Law 155-44, signed into law 2 Aug. 2017; and Rampton, R. and Zengerle, P., 'Trump signs Russia sanctions bill, Moscow calls it "trade war"', Reuters, 2 Aug. 2017.

<sup>28</sup> Countering America's Adversaries Through Sanctions Act (note 27), sections 314–15, 321; and Korean Central News Agency (KCNA), 'US sanctions racket slammed', Naenara, 2 Aug. 2017.

<sup>29</sup> Council of the European Union, 'North Korea: EU adopts new sanctions', Press Release 575/17, 16 Oct. 2017.

<sup>30</sup> Kyodo news agency, 'Japan to ratchet up economic sanctions on North Korea', *Japan Times*, 7 Nov. 2017; and 'Japan expands unilateral sanctions against North Korea', BBC News, 15 Dec. 2017.

<sup>31</sup> Korean Central News Agency (KCNA), 'Statement by the DPRK Foreign Ministry spokesman', 24 Dec. 2017.

The statement heightened the debate among Western analysts about how effective sanctions can be in compelling North Korea to halt and eventually give up its nuclear weapon and ballistic missile programmes. Some analysts argued that the robust enforcement of increasingly stringent financial and economic sanctions would eventually compel the North Korean leadership to seek a denuclearization deal in order to preserve the current political system.<sup>32</sup> Others argued that sanctions alone would not force the leadership to change its strategic cost–benefit calculations about nuclear weapons.<sup>33</sup> In particular, the available trade data indicated that sanctions had not worked to date and were unlikely to force North Korea to abandon its nuclear weapon programme and related activities even if they were tightened further.<sup>34</sup> The enforcement of existing UN sanctions remained problematic, as evidenced by North Korea’s reported use of cargo ships to circumvent restrictions on the export of oil to the country.<sup>35</sup> This in turn suggested that the international community needed to give greater attention to non-punitive diplomatic options for engaging with North Korea to address concerns about its nuclear programme.

<sup>32</sup> Stanton, J., Lee, S. and Klinger, B., ‘Getting tough on North Korea: How to hit Pyongyang where it hurts’, *Foreign Affairs*, May/June 2017.

<sup>33</sup> Delury, J., ‘North Korea sanctions: Futile, counterproductive and dangerous’, CNN, 2 Dec. 2016; and Alcaro, R. and Greco, E., ‘The challenge from North Korea: Fostering regional security and nonproliferation’, International Institutions and Global Governance Program, Council on Foreign Relations, 29 Nov. 2017.

<sup>34</sup> Frank, R., ‘Engagement, not sanctions, deserve a second chance’, 38 North, 13 Oct. 2017.

<sup>35</sup> ‘North Korea: South seizes ship amid row over illegal oil transfer’, BBC News, 29 Dec. 2017.