

William Newcomb, Cooperative Threat Reduction Programs for the Next Ten Years and Beyond
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Sanctions Evolution & The Case of North Korea

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Sanctions Authority

CHARTER OF THE UNITED NATIONS

AND

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE



SAN FRANCISCO • 1945

Legal Foundations

- ◆ Chapter I – Purpose and obligation
- ◆ Chapter V – The Security Council
- ◆ Chapter VII – Threats to Peace
 - Article 39 – Authority
 - Article 41 – Non-kinetic options
 - Article 48-50 – Implementation and assistance

*While sanctions in general are often perceived as highly charged and controversial policy measures, their potential as a constructive, humanitarian or protective tool is often overlooked. **The fact is that sanctions are the international community's most frequently employed mechanism to resolve a conflict short of military engagement as prescribed under Article 42 of the UN Charter.***

Sanctions on North Korea (DPRK) and Iran: How to comply with the United Nations Non-Proliferation Regimes Practitioner's Handbook
BY COMPLIANCE AND CAPACITY SKILLS INTERNATIONAL, LLC
ENRICO CARISCH Author LORAINÉ RICKARD-MARTIN Editor

CHAPTER VII: ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39 The Security Council shall determine the **existence of any threat to the peace**, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41 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.

Comprehensive ➔ Targeted Sanctions

Unintended consequences, particularly costs imposed on vulnerable populations, and ineffectiveness in achieving policy goals led to a fundamental review and reassessment of sanctions, notably the Swiss sponsored Interlaken Process, the German-sponsored Bonn-Berlin Process, and the Swedish-sponsored Stockholm Process.

Use of discredited Comprehensive Sanctions gave way to the adoption of Targeted Sanctions or “so-called” Smart Sanctions.

DPRK Sanctions Objectives

Prevent proliferation of weapons of mass destruction

Buy time for diplomatic solutions

Limit unintended consequences for the economy and population through use of target measures

Sanctions Measures--1

The UNSC has imposed sanctions on the DPRK 9 times

--Eight resolutions invoked Chapter VII, nearly all followed a nuclear test

UNSCR 1718 (2006)

UNSCR 1874 (2009)

UNSCR 2087 (2013)*

UNSCR 2094 (2013)

UNSCR 2270 (2016)

UNSCR 2321 (2016)

UNSCR 2356 (2017)

UNSCR 2371 (2017)

UNSCR 2375 (2017)

***Uses language of but does not specifically invoke Chapter VII; references to other measures have authority of Chapter VII.**

Sanctions Measures--2

Resolutions build one upon another, increasing in scope and complexity

- Prohibit trade in arms and related material**
- Put an embargo goods and technology relevant to nuclear-, ballistic missile-, and other WMD-related programs**
- Ban joint ventures, financial transactions, tech training & specialized teaching, services (including brokering), scientific and technical cooperation & assistance to prohibited programs**
- Bans or otherwise restricts imports of fuel**
- Direct states to freeze assets of designated entities and freeze assets and impose a travel ban on designated individuals**
- Set out a range of financial constraints to restrict transfers of funds and operation of banks**
- Seek to reduce earnings from exports of natural resources and other commodities and sources used to fund prohibited programs**
- Require states to inspect cargo to, from, or brokered by DPRK, including luggage and checked baggage, and DPRK-flagged aircraft and report inspection to committee**
- Authorize and require states to seize and dispose of prohibited items**
- Ban leasing, chartering of vessels/aircraft and provision of crew services**

Problems in Implementation

Sluggish implementation by Member States

--As of 9 September 2017, 1 of 192 Member States reported implementation of UNSCR 2371 (2017), 80 reported implementation of UNSCR 2321 (2016), and 96 reported implementation of 2270 (2016)

--Examination of implementation reports shows **too few states describe implementation in required detail**

Enforcement and vigilance by authorities, banks and firms **is lax**

Despite an unambiguous obligation, **not all incidents of inspection (interdictions) are reported**

Nonetheless

According to the most recent report by the
Panel of Experts,

***North Korea's circumvention
techniques and inadequate
compliance by member-states are
combining to significantly negate the
impact of the resolutions***

Sanctions Evasions Patterns: Trade in Goods

- ◆ Legitimate trade is often used as cover
- ◆ Multiple layers of intermediaries, shell companies and financial institutions, use of small companies
- ◆ Falsification of cargo manifest documentation
- ◆ Transshipments
- ◆ Dual-use items

=> **Legitimate companies, including manufacturing suppliers, air carriers, sea carriers, freight handlers and banks, can become involved in sanctions violations**

Observations

Most identified trade evasion violations involve maritime transportation but air cargo violations show employment of similar techniques

Trans-shipment of cargo through a neighboring trans-shipment hub

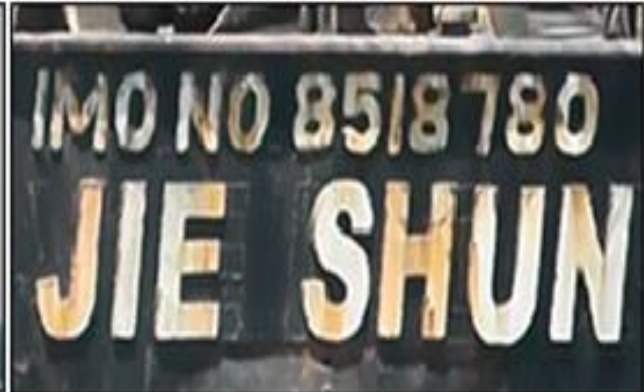
(none of the mainstream shipping companies call at DPRK ports)

Various tactics to avoid detection (physical concealment, false-declaration, etc)

Egypt, August 2016

Interdiction of ammunition aboard the vessel *Jie Shun*

30,000 PG-7 rocket propelled grenades and related subcomponents in wooden crates concealed under about 2,300 tonnes of limonite (iron ore)



Challenges

Easy to hide the real nature of the goods

- Very limited information is provided to shipping companies
- extensive use of false labeling
- false-declaration to hide the identity of the consignor

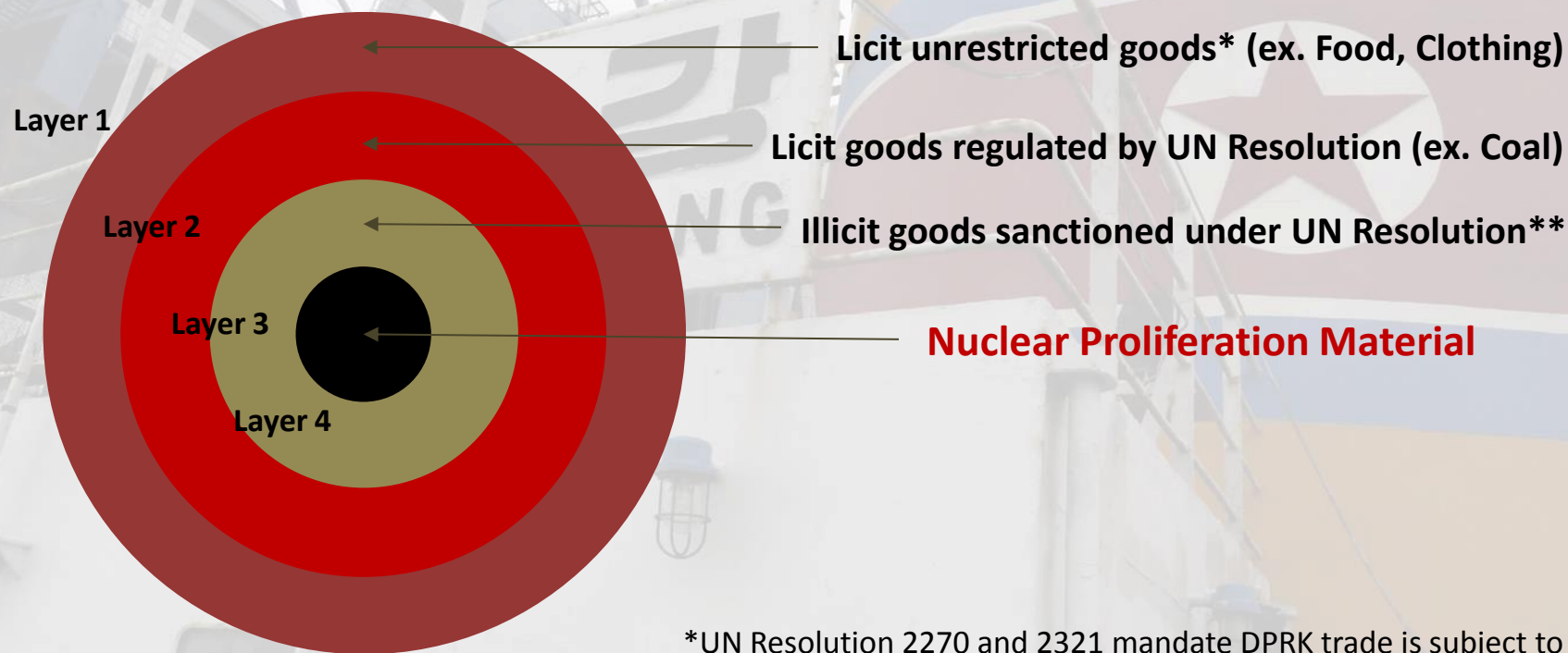
Rate of detection is low

- <2% of containers are inspected

Problems of inspecting trans-shipment cargo

Hidden Within the Licit System

DPRK overseas networks launder illicit flows within the licit system



*UN Resolution 2270 and 2321 mandate DPRK trade is subject to cargo Inspection

** (ex. Conventional arms, Luxury goods)

Simplified Sanctions Evasion System

A shell game of middlemen and brokers

International



Procurement Company

- May be unwillingly supplying dual-use material to sanctioned North Korean entity
- Likely believes that China is the end destination for goods.

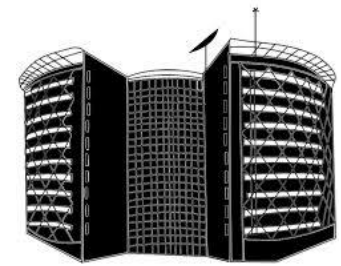
China



Chinese Middleman

- Holds an account for North Korean Company based on sale of licit or semi-licit goods
- Handles financial relationship with procurement companies

North Korea



Sanctioned entity

- Procurement order issued by North Korean Agency
- Goods (ex. Coal) shipped to middleman to Act as transfer of payment

Payment ←

→ **Illicit Material**

Goods ←

→ **Illicit Material**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY26
2016 SEP 24 P 9:46

UNITED STATES OF AMERICA,

Civil Action No.

Plaintiff,

**VERIFIED COMPLAINT
FOR FORFEITURE IN REM**

v.

1. ALL FUNDS IN THE ACCOUNTS OF
BLUE SEA BUSINESS CO., LTD.,
FANWELL, LTD., FULLY MAX
TRADING, LTD., DANDONG
HONGXIANG INDUSTRIAL
DEVELOPMENT CO., LTD., AND
SUCCESS TARGET GROUP, LTD. AT
CHINA MERCHANTS BANK, ACCOUNT
NUMBER XXXXXXXXXXXXX632-601,
XXXXXXXXXXXXXXXXXX2-108,
XXXXXXXXXXXXXXXXXX032-601,
XXXXXXXXXX5-001,
XXXXXXXXXXXXXXXXXX2-105, OR ANY
PROPERTY TRACEABLE THERETO;
2. ALL FUNDS IN DANDONG
HONGXIANG INDUSTRIAL
DEVELOPMENT CO., LTD.'S
ACCOUNTS AT AGRICULTURAL BANK
OF CHINA, IN ACCOUNT NUMBER
XXXXXXXXXXXXXXXXXX0-127,
XXXXXXXXXXXXXXXXXX0-050, OR ANY
PROPERTY TRACEABLE THERETO;
3. ALL FUNDS IN CARBUNCLE
BUSINESS CO., LTD.'S ACCOUNTS AT
SHANGHAI PUDONG DEVELOPMENT
BANK, ACCOUNT NUMBER
XXXXXXXXXXXXXXXXXX1-191, OR ANY
PROPERTY TRACEABLE THERETO;
4. ALL FUNDS IN DANDONG
HONGXIANG INDUSTRIAL

Extract

6. To facilitate this conduct, MA, DHID, and officers and employees of DHID used front companies to establish numerous bank accounts at various banks in China. As set out in more detail below, following KKBC's August 11, 2009 designation by OFAC, these front companies and their related accounts were involved in a money laundering scheme that allowed DHID and its officers to evade U.S. economic sanctions by conducting transactions through the U.S. on behalf of KKBC. For the reasons set out below, all of the defendant property associated with DHID and its front companies is forfeitable to the United States as property involved in money laundering.

Follow-up on Targeted Sanctions

In 2014-15, the governments of Australia, Finland, Germany, Greece, and Sweden, partnering with Brown University's Watson Institute and Compliance & Capacity International, conducted a **High-Level Review** to examine ways UN sanctions might be made more effective.