

## Sanctioning the DPRK? This Time It's All about Implementation Not Design

Written by Catherine Jones

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CATHERINE JONES, MAR 14 2016

In the wake of the nuclear and missile tests by the Democratic People's Republic of Korea (DPRK or North Korea) calls were renewed for further sanctions on the regime in Pyongyang. It was claimed, as it was in 2006, 2009, and 2013, that with China fully on board these sanctions had a chance of greater success in producing a cessation of the DPRK's nuclear ambitions. The weeks of discussion between the US and China to craft the sanctions also indicated that the 2016 resolution would be a landmark agreement. Surprisingly then, in the immediate assessments, it may be that for the first time it is Russia (rather than China) that has become the 'wild card' regarding sanctions and the DPRK.

However, there are reasons to doubt whether extended sanctions will produce the outcomes that key players want to achieve and also how much of a step change these sanctions actually present. The reason for my caution is two-fold. First, this claim is based on a judgement that China's interests are now more in-step with the US and other powers than they had previously been (and that Russia won't be a problem). Second, it suggests that a key stumbling block was in the scope and scale of the sanctions rather than their implementation.

It should be well noted that there has been *cause celebre* for the sanctions imposed in resolution 2270. This resolution extends the requirements for states to inspect and interdict, it also widens and deepens the types of materials and equipment included – notably to small arms. The resolution also directly cites the importance of front companies and evasion tactics of the DPRK, and includes training of DPRK personnel in member states.

This suggests that the design of these sanctions *could* lead to a return to the six party talks and a gradual de-escalation of tensions on the Korean Peninsula. However, there are some sentences that suggest reason to modify the level of celebration. For example, in paragraph 16, regarding front companies, the resolution calls for the Committee alongside the Panel of Experts, to "identify individuals and entities engaging in such practices and, if appropriate, designate them to be subject to measures imposed in resolutions 1718(2006), 1874(2009), 2087(2013), and 2094(2013)." Whilst on the one hand this is a reasonable and responsible caveat, on the other hand, a previous problem has been that names and entities proposed by the Panel (or at other junctures) have struggled to be accepted by the committee and therefore have not been subject to the sanctions regime. A further point of concern may be found in paragraphs 21 and 22 of the resolution, where implementation and inspection will (at least partially) depend on whether there is "information that provides reasonable grounds to believe...". The problem here is that the issue of evidence may be a political rather than a practical concern. Whether these sanctions can breathe new life into negotiations with Pyongyang will depend (more than ever before) on how the resolution is implemented.

Moreover, one concerning lesson from previous sanctions is that the longer it takes for the first round of discussions (between China and the US) to come to an agreement the weaker or more permeable the sanctions will be. On this round – the fifth round of sanctions against the regime under this cycle – it took seven weeks for these initial discussions to result in a document that can be reviewed and amended by the other permanent Security Council members (at the time this was delayed by Russia) before being unanimously agreed by all Council members. This line of argument could then also suggest that the intentions of the key players or their interests are not as in-sync as would be necessary for sanctions to produce a halt to the nuclear developments within the DPRK – a key problem

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with the implementation of previous sanctions.

A key concern, then, is which interest is the priority for Beijing (and Moscow). Within the resolution and the meeting there are indications that the issues of Beijing's interests still lie in maintaining the peace and stability of the peninsula. This argument would then be supported by the issue of the deployment of THAAD in the region that was raised by both China and Russia in Security Council meeting on 2<sup>nd</sup> March. Furthermore, the delay of the Council meeting because of Russia's desire to contribute to amendments suggests that Russia may have sought to safeguard its own interests regarding its own trade relationship with the DPRK. This may be even more significant as the trade activities and related patterns of dependencies Russia has, may be being gradually altered because of other sanctions regimes.

The second reason that optimism may be mislaid in this case is that the 2013 sanctions resolution 2094 already contained a catch-all provision regarding items that could be used for the development of nuclear weapons. They also contained an enhanced list of persons and entities that were to be sanctioned – this was a significant step forward from the 2009 resolutions where these entities were not specified in the UNSC document but left to the committee. I say it was a step forward, but in reality this may have made additions to this list a more drawn out process.

A problem with these measures is that they make additions to the list of sanctioned entities and persons an even more political rather than practical issue, and therefore a change in the name rendering from Hangeul to Simplified Mandarin, or English, or Japanese, is not a simple addition to the listing but requires even further discussion and agreement to modify the resolution (see above).

Furthermore, the decision of what comes into the 'catch-all' provision is wide open. Some states like Japan have a very wide and encompassing view of the scope of items that can be included in this, but within China's implementation the scope of these items is much narrower, as most of the goods' final destination involve transiting through parts of China before arriving in or exiting from North Korea. However, a key step forward in resolution 2270 is that it seeks to ensure that goods are interdicted before they get to China, to avoid the problem of a low-threshold of implementation in China (the floor is open to debate whether this in China's interests too), this may not help with the issue of nuclear weapons development because of the nature of the good needed. In a previous UNSC document it was noted that because of the level of development of the system in DPRK it is possible to use lower quality equipment and therefore goods could slip through the catch-all net. Once again the potential problem is not necessarily with the design but with the ability or capacity of states to implement the framework to achieve the stated goals.

Finally, a further key issue in this current sanctions regime is said to concern the movement of DPRK flagged ships. The issue here is that to reflag a ship you only need a short amount of time and an internet connection. Hence, in theory to reflagging a vessel a number of times to evade detection by implementers requires adept use of the internet. This, given the cyber capabilities that the DPRK is rumoured to have, may not constitute a major barrier to their trade.

In the new extended regime the inclusions also relate to a harder approach to the catch-all provisions, but this doesn't remove or negate the previous implementation problems. The new regime also includes more persons and entities on the listings but here, again, questions remain as to whether all the aliases of these entities are included.

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