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Sanctions Against North Korea and Humanitarian Exemptions

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The international community including the UN have granted humanitarian exemption of a sanction, as a means to mitigate its negative consequences on the civilian population of the sanctioned country. Concerns are raised, however, that humanitarian exemptions fail to function properly in many sanctions regimes. As a response, efforts are underway to improve the mechanism of humanitarian exemption, most notably in two ways. First is to introduce standing humanitarian exemption. Second is to improve both understanding on humanitarian exemption and the access to information on the criteria and procedures to gain an exemption approval. Such changes are reflected in a set of guidelines recently adopted by the UN Security Council Sanctions Committee on North Korea, known as the 1718 Sanctions Committee. Taken into account such background, the Guidelines for Obtaining Exemptions to Deliver Humanitarian Assistance to the Democratic People's Republic of Korea should be interpreted as a measure to facilitate humanitarian activities, rather than posing as an obstacle. Therefore, UN Member States and international and non-governmental organizations need to more actively pursue humanitarian activities in accordance with the Guidelines.

On August 6, 2018, the UN Security Council Sanctions Committee on North Korea, also known as the 1718 Sanctions Committee, adopted the Guidelines for Obtaining Exemptions to Deliver Humanitarian Assistance to the Democratic People's Republic of Korea (hereinafter referred to as "Guidelines on Humanitarian Assistance to North Korea"). In the Guidelines, the 1718 Sanctions Committee provided criteria and procedures in detail for UN Member States, international and non-governmental organizations that seek to obtain humanitarian exemptions for the purpose of relief and assistance activities for North Koreans. Issued amid rising concern over a decline in humanitarian assistance for North Koreans in the face of international sanctions, the Guidelines are expected to facilitate humanitarian activities for civilian population in North Korea. Yet, it takes an enhanced understanding on the concept of humanitarian exemption for the adoption of the Guidelines to be translated into actual actions.

Necessity for Humanitarian Exemption

Sanctions have frequently been used as a replacement of war or the use of military force. However, at times, sanctions come with unintended consequences—the suffering of ordinary citizens who cannot affect their government's policy decisions. The representative case may be the United Nation's Security Council (UNSC)'s sanctions against Iraq, which were evaluated as having caused "a humanitarian disaster comparable to the worst catastrophe of the past decades (UN Doc. E/CN.4/Sub.2/2000/33, para.63)." As a response, the international community including the UN have sought to minimize the sanctions' negative effects on civilians, most notably in three ways. First, a targeted sanction can be introduced to selectively apply to certain individuals, groups, sectors, and regions instead of a comprehensive sanction that wreaks havoc on the entire economy of a specific country, thereby causing indiscriminate damage. Second is to monitor and evaluate sanction's impact on the civilian population. Last is to grant humanitarian exemption.

All sanctions adopted by the UNSC since 1994 take the form of targeted sanctions, and so do most unilateral sanctions (those imposed by an individual state or a group of states to coerce policy change of the targeted country except for UNSC sanctions taken under Article 41 of the UN Charter). The evolution toward

a targeted sanction can be viewed as a meaningful change as it considers both having the goal of sanctions met and minimizing the unintended consequences. Targeted sanctions on key sectors, however, can be nearly as formidable as comprehensive ones. In addition, a combination of UN sanctions and unilateral ones may cause a devastating effect almost as same as that caused by comprehensive sanctions. Thus, regardless of the form, it is crucial to continuously monitor and evaluate sanction's impact on ordinary people and review its appropriateness accordingly. In addition, exemptions need to be approved for humanitarian purpose as a safety measure that can mitigate unintended impacts on the civilian population.

Since the first adoption of humanitarian exemption to the sanctions regime against Southern Rhodesia in 1968, the UNSC has included the humanitarian exemption in all the sanctions regime. Nevertheless, a controversy over exemption mechanism has been going on for decades. Proponents argue that the exemption facilitates smooth provision of humanitarian support and assistance by providing legal clarity. On the other hand, opponents claim that such exemption in official texts may mislead people into wrong interpretation that humanitarian assistance cannot be carried out without written approval, ultimately curbing humanitarian support. There is also concern over potential abuse caused by such exemption as a means to finance targeted individuals or entities. However, it should be noted that critics do not question the need for humanitarian action itself. Therefore, it may be desirable to approach this issue from the perspective of figuring out what might be the best design and the effective implementation of the exemption mechanism, rather than arguing for abolishing the institutional humanitarian exemption.

Improving Humanitarian Exemption

After the end of the Cold War, it was revealed that humanitarian exemption mechanism had failed to function properly in multiple sanctions regimes. To that end, there has been a strong demand for humanitarian exemption mechanism's reform from the late 90s. In 1997, the UN Committee on Economic, Social and Cultural Rights (CESCR) pointed out in General Comment No. 8 that "It is commonly assumed that

these exemptions ensure basic respect for economic, social and cultural rights within the targeted country” and that “However...these exemptions do not have this effect” failing to meet expectations in reality. In the Comment, the CESCR admitted that “The exemptions are very limited in scope,” and “tend to be ambiguous and are interpreted arbitrarily and inconsistently.” It also stated “Delays, confusion and the denial of requests to import essential humanitarian goods cause resource shortages.” In Resolution 51/242, adopted in 1997, the UN General Assembly pointed out that guidelines for the formulation of humanitarian exceptions should be made, “bearing in mind that the humanitarian requirements may differ according to the stage of development, geography, natural resources and other features of the target country.” The Resolution also emphasized the need for more standardized approach and speedy processing of exemption requests. As a result of such discussion, humanitarian exemption mechanism has made progress over time, most notably in two directions. First is to introduce standing humanitarian exemption. Second is to improve both understanding on humanitarian exemption and the access to information on the criteria and procedures to gain an exemption approval.

Concerning the first change’s background, the Sanctions Committee usually approves humanitarian exemptions on a case-by-case basis. This approach has been consistently criticized for causing significant delay in humanitarian activities. As an alternative, standing humanitarian exemption was recently introduced. This newly-adopted exemption is specified in the resolution itself and therefore no longer needs an approval of humanitarian exemption from the Sanctions Committee. A case in point is the Somalia/Eritrea regime. In Resolution No. 2111(2013), the UNSC clarified that asset freezing “shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, and their implementing partners.” Although the standing humanitarian exemption has its limitation of not being able to cover all humanitarian groups, it is deemed to enhance the efficiency of humanitarian measures. There has been a recent call for a wider

adoption of standing humanitarian exemption for humanitarian actors based on humanitarian exemption model of sanctions imposed against Somalia. Furthermore, there is an ongoing discussion on the possibility of applying a broader-based and more long-lasting humanitarian exemption.

As for the second change, there are mainly two reasons why humanitarian action is rather inactive in sanctioned countries despite the institutionalized exemption mechanism. First, there is little understanding on what types of humanitarian activities are allowed under the exemption. This causes either violation or over-compliance of sanctions for related actors, resulting in an unnecessary hindrance to humanitarian intervention. Second, the criteria and procedures to obtain humanitarian exemptions are difficult to have access to. Lack of information on the usage and range of the exemption mechanism may undermine its efficiency. Some Sanctions Committees have recognized this issue and tried to tackle it by adopting their guidelines on the humanitarian exemption mechanism and making them available on committee's website. The recently adopted Guidelines on Humanitarian Assistance to North Korea are part of those efforts.

Key Contents of Guidelines on Humanitarian Assistance to North Korea

In the sanctions regime against the DPRK, the 1718 Sanctions Committee approves humanitarian exemptions on a case-by-case basis. First, the Guidelines recommend that UN Member States and international and non-governmental organizations seek an exemption approximately every six months, and submit a form that contains the following elements:

- Nature of humanitarian assistance proposed to be provided to the DPRK for the benefit of the civilian population of the DPRK;
- Explanation of the DPRK recipients and criteria employed to select beneficiaries;
- Reasons for requiring a Committee exemption;
- Detailed description with quantities and relevant specifications of the goods and services to be provided within the next six months to the DPRK for what purpose and to whom;

- Planned date(s) of proposed transfer to the DPRK within the next six months;
- Planned route(s) and method(s) of transfer including ports of departure and entry to be used for shipments;
- All parties involved in the transfers that can be identified at the time of submission of the application;
- Financial transactions associated with the transfers;
- Annex containing itemized list of all planned transfers of goods and services with quantities and planned shipment date; and
- Measures to ensure that assistance to be provided to the DPRK are used for the intended purposes and not diverted for prohibited purposes;

The Guidelines also set out three ways for international or non-governmental organizations to request exemptions. As an exceptional case, UN agencies, the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC), and the International Olympic Committee (IOC) may submit exemption requests directly to the Committee.

1. Member States: Because the resolution imposes obligations on Member States, it is Member States that should submit exemption requests to the Committee on behalf of international or non-governmental organizations seeking to deliver humanitarian assistance to the DPRK.
2. United Nations: If a Member State is unable to route such a request to the Committee, the Office of the United Nations Resident Coordinator in the DPRK may serve as a liaison for the international or non-governmental organization to send exemption requests to the Committee.
3. Committee Secretary: If both Member States and the Office of the United Nations Resident Coordinator in the DPRK are unable to submit exemption requests to the Committee on behalf of an international or non-governmental organization, the international or non-government organization may submit an exemption request directly to the Committee Secretary. The Committee Secretary will forward exemption requests to the Committee when they meet the following criteria:
 - The requesting entity is an international or non-governmental organization with a track record of having delivered aid to the DPRK or other countries in the past and/or the non-governmental organization is nationally recognized by relevant Member States.
 - The nature of assistance planned to be provided to the DPRK is for humanitarian purposes and benefits the civilian population of the DPRK.

- The exemption request addresses the informational requirements outlined above.

In addition, the Guidelines mentioned the 1718 Committee's commitment to processing exemption requests as quickly as possible to provide decisions within a reasonable timeframe.

Evaluation and Outlook

Guidelines on Humanitarian Assistance to North Korea provide a very detailed explanation on the elements required in exemption request letters and request and approval processes, compared to guidelines provided in other sanctions regimes. Taken into account the need for humanitarian exemptions and the background of the Guidelines' adoption in the sanctions phase, the Guidelines on Humanitarian Assistance to North Korea should be interpreted as a measure to facilitate humanitarian activities, rather than posing as an obstacle. Therefore, UN Member States and international and non-governmental organizations need to more actively pursue humanitarian activities in accordance with the Guidelines. The 1718 Committee also needs to ensure that exemptions are approved in a manner that is neither arbitrary nor inconsistent, while enhancing access to related criteria and procedures for such exemptions. ©KINU 2018

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