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Negotiated Settlement through Sanctions Relief: Options for the Korean Peninsula

By Thomas J. Biersteker & David Lanz

The possibility of nuclear proliferation, and indeed nuclear confrontation, emanating from the Korean peninsula remains a serious threat to global security. The United Nations and major states have thus taken strong actions to counter the nuclear program of the Democratic People's Republic of Korea (DPRK). Their response has vacillated between diplomacy and pressure, with sanctions as a key component. While the US has had a broad range of restrictive measures in place against North Korea since the Korean War in the 1950s, the UN Security Council only imposed sanctions on the country in 2006. However, it has since expanded sanctions “by an unprecedented number and scope of restrictions,” which have “effectively rendered the DPRK sanctions regime comprehensive.”¹

Neither diplomacy nor sanctions have been successful in preventing DPRK from acquiring nuclear weapons as well as projection capabilities through its ballistic missile program. According to researchers from Stanford University, by 2019, DPRK had sufficient material to produce approximately 35 nuclear weapons as well as delivery capability via medium-range missiles capable of reaching all of South Korea and Japan.²

¹ Biersteker, Thomas, Zuzana Hudáková, and Marcos Tourinho, *SanctionsApp*, Computer software, iOS and Android app, July 2018, ‘DPRK, episode 8’.

² Siegfried S. Hecker, Robert L. Carlin and Elliot A. Serbin, “North Korea’s Denuclearization: Status and Prospects”, April 2019, online document available at https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/hecker_carlin-serbin_denuc2019fin.pdf.

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Nonetheless, the status quo is not beneficial for the DPRK. The country declares that it wants to advance its economic development, but it is isolated on the international stage and its civilian population faces serious economic problems, partly attributable to international sanctions. However, the “maximum pressure” approach to sanctions has not led DPRK to change its behavior and is unlikely to do so in the future. It is clear: the denuclearization of the Korean Peninsula requires a negotiated settlement.

Some cautious steps in this direction have been undertaken since 2018, resulting in several meetings between South Korean president Moon Jae-in and North Korean leader Kim Jong-un, as well as two summits between US president Donald Trump and Kim Jong-un. However, the flurry of summits has failed to kickstart detailed negotiations, and the process has been in a lull for over a year.

One impediment is that DPRK and the US are trapped in maximalist demands, including on sanctions. Kim Jong-un declared in late 2018 that the “vicious sanctions” imposed by “hostile forces” stand in North Korea’s way “toward promotion of peoples’ well-being and development.”³ Although the foreign minister of the DPRK indicated in a press conference following the Hanoi Summit in 2019 that his government wanted only partial sanctions relief for shutting down its main nuclear complex (Yongbyon), the list of UN sanctions he wanted removed included all of the UN sanctions adopted since 2016.⁴ The US, conversely, has so

³ Kelsey Davenport, “North Korea Pushes for Sanctions Relief” Arms Control Association, available at <https://www.armscontrol.org/act/2018-12/news/north-korea-pushes-sanctions-relief>.

⁴ These are by far the most extensive sanctions applied by the UN since it first imposed restrictive measures on

far considered significant sanctions lifting the final step, contingent on the complete, verifiable, and irreversible elimination of nuclear weapons in DPRK.

This Policy Brief argues that neither position is feasible. It makes concrete suggestions for a pragmatic middle-of-the-road approach, where some sanctions relief is granted in exchange for progress towards de-nuclearization of the Korean Peninsula, with full termination of sanctions and the creation of a nuclear-free zone as the end goals. This is in line with an incremental negotiation strategy where the parties negotiate several agreements each building on the last, until they reach a final settlement satisfying their core interests in the area of disarmament, security guarantees, political normalization, and economic cooperation. It is also in line with a more strategic utilization of existing sanctions to advance policy goals through a carefully calibrated bargaining framework.

SANCTIONS RELIEF TO ADVANCE SETTLEMENT NEGOTIATIONS

Sanctions are restrictive measures imposed against individuals, organizations and states to achieve specific political goals in international relations, ranging from counterterrorism, non-proliferation, conflict resolution, protection of civilians, democracy support, and human rights.⁵ The attention of policymakers and scholars has generally focused on sanctions threats and imposition, rather than sanctions relief. However, it is often through relief that the

DPRK in 2006. The DPRK had long since managed to adapt to the significantly less extensive measures applied before 2016.

⁵ Thomas J. Biersteker, Marcos Tourinho and Sue E. Eckert, “Thinking about United Nations Targeted Sanctions”, in Biersteker, Eckert and Tourinho, eds., *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, Cambridge University Press, 2016, pp. 11-37.

objectives of sanctions are ultimately achieved. Four types of relief measures can be distinguished.

- First, sanctions relief can include the easing, or **voluntary relaxation of implementation** of particular restrictive measures. For example, the US could announce that it backs off from applying secondary sanctions on firms located in third countries for their evasion of its unilateral measures in a particular case.
- Second, sanctions relief can refer to the **adjustment** of existing measures in order to lessen their impact on targeted actors, but without suspending or terminating sanctions altogether. One example would be to introduce caps on sectoral trade restrictions, allowing a sanctioned country to import or export a defined volume of a prohibited good or commodity. Another example would be to ease the facility with which exemptions could be granted.
- Third, sanctions relief can involve the **suspension** of sanctions that remain formally and legally in place, for example in the form of temporary travel ban exemptions. Suspensions can be time-bound, for example suspending an oil import embargo for a defined period. There can also be conditional suspensions, or open-ended suspensions, taking effect for example when a state adheres to a specific treaty or agreement.
- Fourth, sanctions relief can ultimately entail **termination**, or a permanent lifting of different types of sanctions, either partially (sector by sector) or the

termination of the entire sanctions regime overall.

Having different types of relief in mind, we can now think about how sanctions relief can facilitate political negotiations. Looking at past cases, sanctions relief can contribute to overcoming four obstacles in negotiation processes.

- A first obstacle is the **high threshold to start negotiations** due to legal obstacles or because parties insist on certain pre-conditions before they come to the table. Sanctions relief can be effective in this context by removing physical obstacles for talks, for example by suspending travel bans and asset freezes of participants. Relief also has symbolic value, signaling that political engagement with a group or a state under sanctions is acceptable. In Afghanistan, for example, the UN Security Council's delisting of certain Taliban associates between 2010 and 2014 helped to kickstart negotiations with the group.
- A second obstacle is the **lack of trust** between conflict parties, which makes it difficult for them to engage in negotiations in good faith. Mistrust stems from a history of violence and conflict, but also from previous failed negotiation attempts. Sanctions relief counteracts this dynamic, allowing parties to signal that they are serious and can be trusted. For example, in the negotiations with Iran, the E3 + 3 provided partial sanctions relief as part of an interim agreement reached in November 2013, allowing Iran to import spare parts for aircraft repair, among other measures. This helped to build trust

and paved the way for the comprehensive nuclear deal signed in July 2015.

- A third obstacle is a **lack of momentum** in negotiations. This refers to a scenario where parties are negotiating with each other, but they are unable to conclude a settlement because contentious issues remain unresolved. The promise of sanctions relief can act as an incentive, nudging the parties towards an agreement. For example, an agreement with Libya became possible when the UN Security Council in August 1998 specified that sanctions against Libya would be suspended if the Qadhafi government handed over the Lockerbie suspects to be tried in a court in The Hague, which it did the following year.
- A fourth obstacle to a negotiated settlement is a **lack of compliance**. This refers to a situation when parties conclude an agreement, but because of insufficient guarantees and lingering mistrust, they renege on their commitments during implementation. Well-calibrated sanctions relief can help make agreements stick. This was a central component of the Iran nuclear deal of 2015, which made sanctions suspension conditional on Iran's continued compliance and gave parties to the agreement the option to trigger a dispute resolution procedure leading to the "snap-back" of sanctions against Iran as long as they remained parties to the agreement.

Combining the two sets of categories, it is possible to think about how different types of sanctions relief can contribute to overcoming negotiation obstacles. The follow-

ing section applies this framework to future settlement negotiations concerning the Korean Peninsula.

SANCTIONS AGAINST DPRK AND STAGES IN FUTURE SETTLEMENT NEGOTIATIONS

DPRK is the target of far-reaching sanctions. Most notable are the UN sanctions, applied since 2016 in response to the progressive development and testing of DPRK's nuclear and ballistic missile programs. As of today, UN sanctions on DPRK are the most expansive set of restrictive measures applied by the United Nations since the comprehensive sanctions regime against Iraq in the 1990s. All other UN sanctions regimes are much more targeted, sanctioning only individuals, imposing arms embargoes, and limited to restricting one or two sectors of the economy.

The DPRK sanctions regime, by contrast, includes not only individual sanctions and arms embargoes, but sweeping restrictions on the country's major exports and imports. Specifically, the UN has direct prohibitions in place against DPRK in the form of individual sanctions (travel bans and asset freezes) on 75 corporations, 80 individuals, and 59 vessels; restrictions on diplomatic personnel; import bans on arms, proliferation-related goods, luxury items, petroleum, iron, steel, other metals, and industrial machinery; export bans on coal, iron, most valuable metals and minerals (including gold), wood, textiles, seafood, food and agricultural products; transportation restrictions (including the import and export of vessels and transportation vehicles and restrictions on ports and particular vessels); financial sector bans, and restrictions on the export of labor. The UN also has a variety of condi-

tional measures in place, in effect requiring states to take action if they have reason to suspect vessels may be carrying proscribed goods or that financial or other transactions may indirectly benefit the operational capacity of DPRK's military or nuclear programs.

Despite the lack of reliable economic indicators from DPRK, sanctions surely have a deep impact on the economy and society in DPRK. This makes sanctions a central issue in settlement negotiations. As explained in the introduction, the incompatible positions of the US and DPRK pose a serious obstacle to these negotiations. However, their far-reaching nature also provides ample opportunities to utilize sanctions relief for strategic bargaining in future negotiations, helping to build trust between the parties, incentivize compromise, and ensure compliance with agreements. The focus here is on the bilateral relationship between the US and the DPRK, but the steps outlined below could be undertaken in a multilateral framework, such as the Six Party Talks or some alternative negotiation format. There is some debate among US foreign policy analysts as to whether a multilateral approach would be feasible at this stage, however, due to the increasingly complicated relationship between the US and China.⁶

Concrete propositions for using sanctions for strategic bargaining requires thinking about how negotiations would play out and what stages a process would need to undergo. Drawing in part on a report from

⁶ Participants in the nuclear talks with Iran indicated that Iran's major focus during the talks was on its relationship with the US, hence the appropriateness of the bilateral focus as a starting point with a gradual broadening of the negotiations later on. This could also apply to the DPRK, partly because Pyongyang may want to be less dependent on China. The caveat, however, is that references to the Iran nuclear deal apparently fall flat with the DPRK leadership. Given their possession of nuclear weapons, they view themselves as in a different position from Iran.

the International Crisis Group⁷ and a recent paper by Toby Dalton and George Perkovich,⁸ six stages can be imagined.

- Stage 1: The first step is to create a **conducive environment** through unilateral measures on both sides, which create sufficient trust for DPRK and the US to commence formal negotiations.
- Stage 2: The challenge is then to launch a **formal and structured negotiation process** by clarifying the main parameters and objectives of the talks.
- Stage 3: The negotiations would first produce an **interim agreement**, which should not take too long to negotiate following the onset of formal talks. This agreement could formalize DPRK's current freeze of nuclear and long-range missile testing and add a freeze on the production of fissile material and nuclear-capable delivery vehicles, in exchange for further sanctions relief and other measures. The agreement could also spell out a framework for a final settlement, in particular what de-nuclearization entails and what DPRK would obtain to satisfy its interests in terms of security, political normalization and economic cooperation.
- Stage 4: A **second agreement**, which would take longer to negotiate, could focus on introducing a cap on DPRK's nuclear arsenal and on creating trans-

⁷ International Crisis Group: "Deep Freeze and Beyond: Making the Trump-Kim Summit a Success", United States Report No. 1, June 2018.

⁸ Toby Dalton and George Perkovich, "Thinking the Other Unthinkable: Disarmament in North Korea and Beyond", Livermore Papers on Global Security No. 8, July 2020.

parency in the form of a monitoring and verification regime, with the IAEA covering nuclear elements and an ad hoc regime established to cover nuclear-capable missiles in DPRK. In exchange, the US and other states could grant further sanctions relief, deepen economic cooperation, and take steps towards political normalization, including providing some security guarantees, such as a declaration of non-aggression, and begin the process to establish formal diplomatic relations with DPRK.

- Stage 5: The third agreement would be a **final agreement**, whereby DPRK commits to nuclear disarmament and agrees to international inspectors verifying the elimination of its nuclear weapons, in exchange for suspension of most sanctions, an agreement on dual-use activities, further economic cooperation and legally binding security guarantees, including the signing of a peace treaty.
- Stage 6: The final step is achieved when the **final agreement is implemented**, as DPRK's compliance with its commitment to nuclear disarmament is confirmed by international inspectors. In exchange, all non-proliferations sanctions would be terminated and relations with the US fully normalized.

CONTRIBUTIONS OF SANCTIONS RELIEF TO FUTURE SETTLEMENT NEGOTIATIONS

It is now possible to think how different forms of sanctions relief can be applied during each stage of future settlement

negotiations, helping to incentivize compromise and gradually advance the negotiation process until the core interests of all parties are satisfied and the full denuclearization of the Korean Peninsula is achieved.

Stage 1: Creating a conducive environment for negotiations

To create a conducive environment for negotiations, some voluntary relaxation of the implementation of existing recommended or additional measures could be undertaken. In particular, the US would have to depart from its declared strategy of “maximum pressure” and relax some of its additional limitations on DPRK diplomatic staff, facilitate COVID-19 relief through blanket exemptions for supplies and vaccines, and create a safe banking channel for humanitarian goods. As an additional measure to build trust and signal US openness, DPRK could be invited to participate as an observer in regional development bank meetings. These sanctions relief measures could be accompanied by a continued suspension of US and ROK military exercises and by encouragement of a joint Korean participation in the Tokyo Olympics.

Stage 2: Launching formal negotiations

More significant forms of sanctions relief will be required to get formal negotiations underway. The US could begin with a public declaration to limit the application of US secondary sanctions on third parties to violations of the ban on imports of nuclear and ballistic missile components only. The comprehensive ban on all coal exports could be scaled back and adjusted by imposing a cap on allowable coal exports from DPRK. The current cap on petroleum imports could also be increased and the deadline for the full repatriation of all DPRK workers extended. This would

make a virtue out of a necessity, given that these measures are currently not fully observed by neighboring states. Some term-limited suspensions of sanctions could be introduced as a further incentive, for example a two-year suspension on the bans on textile exports, the import ban on condensates and natural gas liquids, and the ban on transfers of fishing licenses. Finally, the US and the EU could offer public declarations that they will apply no further sanctions on DPRK, as long as negotiations are continuing in good faith (as they did with Iran). Conversely, DPRK could issue a non-proliferation commitment, halting the export of nuclear material and technology. It might also be desirable to establish liaison offices in Washington and Pyongyang at this stage, and the US could remove DPRK from its list of state sponsors of terrorism.

Stage 3: Reaching interim agreement to consolidate and expand freeze

Reaching a first interim agreement, which would consolidate DPRK's current freeze on nuclear and ballistic missile testing and add a new freeze on the production of fissile material and nuclear-capable delivery vehicles, will require more significant sanctions relief measures. In terms of voluntary relaxation in implementation, the restrictions on military contacts and training could be eased. Adjustment of the existing sanctions regime could include additional delistings of persons and corporate entities outside of the nuclear domain, particularly some in finance, which would be necessary to facilitate trade-related relief. The cap on petroleum imports could be raised again. At this stage, suspensions should be time-limited, with a possibility of renewal or extension if all negotiating parties agree, in order to maintain the momentum for DPRK to stay at the negotiation table and implement the interim

agreement. One-year suspensions on the export of seafood could be introduced at this stage, along with a one-year suspension of the ban on coal exports and the export of other commodities. The import ban on transportation vehicles (civilian aircraft, public transport, and sea vessels) could also be suspended for a year. A one-year suspension of some financial sector restrictions on investment, joint ventures and financial transfers could be introduced. The US restriction on support for DPRK in the international financial institutions could also be suspended for a year, or possibly longer. The same could apply to sport and cultural restrictions. As an additional economic incentive, multi-year infrastructure plans could be drawn up in the planning stages.

Stage 4: Reaching agreement on a verifiable cap and on transparency

In this phase, DPRK would formally agree to a cap of its nuclear arsenal and agree to the establishment of an international monitoring and verification regime, granting access to international inspectors, presumably from the IAEA, based upon their request. The US and DRPK would also hammer out an agreement on a verification regime related to nuclear-capable missiles. In exchange for these developments, DPRK would obtain more extensive sanctions relief. Additional delistings of individuals and corporate entities engaged in non-nuclear activities could be undertaken during this phase, including delistings of some additional financial institutions. A continuation of the previous suspension of sanctions for an additional year could be accompanied by a significant expansion of one-year suspensions to cover all commodities. The bans on cultural and sports exchanges could be terminated at this stage to signal that suspensions are a prerequisite to and can lead to formal sanc-

tions termination. Finally, the US could issue a declaration of non-aggression vis-à-vis DPRK and begin the process to establish full diplomatic relations. In addition to the continuation of infrastructure development, educational and training exchange programs could be initiated.

Stage 5: Reaching final agreement on nuclear disarmament

In this phase, the US and DPRK would sign a final agreement that upon ratification would become a formal treaty with legally binding security guarantees. DPRK would agree to nuclear disarmament in all aspects and to international inspectors verifying the elimination of its nuclear weapons. The agreement would also need to define what civilian nuclear activities are permissible, for example in the energy sector.⁹ As a result, sanctions could be adjusted with the full delisting of individuals and entities not associated with DPRK's nuclear and missile technology programs. Significantly, the term-based, annual suspensions of diplomatic, commodity (other than nuclear-related), transportation, and financial sector sanctions could be converted to open-ended suspensions. In addition, some diplomatic, commodity, transportation, and financial sector sanctions could be formally terminated at this stage. A final agreement would also include a range of security, social and economic measures, including the expansion of educational programs.

Stage 6: Implementing agreements

Implementation will be achieved once the signatories confirm that they are in full compliance with their obligations under the agreement negotiated in the preceding stage and international inspectors confirm

⁹ For a list of challenges related to dual-use activities as part of a nuclear disarmament process, see Dalton and Perkovich, "Thinking the Unthinkable", pp. 21-24.

nuclear disarmament is proceeding as stipulated. At this stage, proliferation and the remaining arms sanctions can be suspended one year after the agreement, conditional on DPRK's continued compliance. Once the DPRK returns to the Non-Proliferation Treaty, the full termination of remaining diplomatic, commodity, transportation, and financial sector sanctions can be undertaken. This means that all UN and EU nuclear sanctions will be terminated, followed by the termination of all US nuclear sanctions. In addition, the parties would ratify a formal peace treaty to replace the 1953 armistice, make a legally-binding nuclear non-deployment pledge for the entire Korean peninsula, establish full diplomatic relations, including the formal opening of embassies. A Northeast Asian energy infrastructure grid for production and distribution could also be launched at this point, in an effort to integrate DPRK further into the regional framework.

CONCLUSION

Given the extensive variety and current scope of the sanctions imposed on DPRK, there is a rich menu of sanctions relief possibilities that could be employed to facilitate denuclearization on the Korean Peninsula. The proposed sequencing of the negotiation process and combinations of corresponding sanctions relief measures introduced in this Policy Brief should be viewed flexibly. Other combinations are of course possible so long as the core interests of the parties are satisfied. Also, the negotiation process imagined here is rather schematic, which should not obscure the fact that in reality negotiations will be hugely complex. What is important is to appreciate that a negotiated settlement will not materialize through a "big bang," but

take shape gradually. The main message of this Policy Brief is that sanctions relief should be utilized strategically to that end. It is clear that a settlement seems far away from today's perspective, as it is unclear whether the parties are willing to make the difficult compromises necessary to achieve a settlement and whether achieving full nuclear disarmament is even a realistic end goal.

However, the advent of the Biden administration in the US may offer new opportunities, and, in any case, negotiations will need to happen at some point, because the alternative is in no one's interest. It is important to be prepared for that moment and articulate possibilities to utilize sanctions relief strategically, rather than improvise in the midst of a crisis.

The Asia-Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament (APLN) is an advocacy group that aims to inform and energize public opinion, especially high-level policymakers, to take seriously the very real threat posed by nuclear weapons, and to do everything possible to achieve a world in which they are contained, diminished and eventually eliminated.

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