

The Sanctions Regime against North Korea: The Mudubong Cargo Ship Detained in Mexico on Orders of the UN Security Council

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On Thursday, May 29, 2015, the UN Security Council's 1718 Sanctions Committee was to present its mandated periodic 90 day report to the UN Security Council. Instead of a written report and an open presentation as has often been the case in the past, however, there were closed consultations and no public written report. One might ask what is going on that has necessitated the Security Council secrecy on the subject of 1718 Sanctions actions?

On May 8 an article was published by the Korean Central News Agency (KCNA) and reprinted on May 9 by the Xinhua News Agency. It was reported that "On May 6 the 1718 Committee of the UN Security Council took a step for freezing Mudubong, a trading cargo ship of our company....(T)he 1718 Committee decided to freeze Mudubong...without any legal grounds."(1)

The article quoted the manager of the Mudubong Shipping Co Ltd, of the Democratic People's Republic of Korea (DPRK). He asked that the Mexican authorities on humanitarian grounds allow the ship and its crew to safely leave the Mexican Port where it is being detained.

Background

A month earlier, on April 8, 2015, North Korean diplomats at the United Nations held a press conference at their mission for a few journalists who are part of the UN press corps. The subject of the press conference was the fate of the North Korean cargo ship, the Mudubong.

The DPRK spokesperson for the press conference was An Myong Hun, the DPRK's Deputy Permanent Representative at the UN. Ambassador An explained that the ship was being detained by the Mexican government under pressure from the US Government.

The Mudubong had run aground on a coral reef off of the Gulf of Mexico on July 14-15 2014. The ship had to be removed from the reef, but then the ship was held by the Mexican government to negotiate the payment for the damage. When the ship ran aground, there were no sanctions on the Mudubong by the United Nations Security Council. The process of working out how to free the ship from the coral reef and indemnify the Mexican parties for the damage was a bilateral matter.

The process should have continued to be one where a settlement was decided through negotiations between the two nations. On July 28, 2014, however, the 1718 Sanctions Committee at the United Nations, a subsidiary committee established by the UN Security

Council to implement sanctions against North Korea, decided to add the Ocean Maritime Management Company (OMM) to a list of sanctioned North Korean Companies maintained by the Security Council.(2)

The sanctions against the OMM were not restricted to forbidding the shipping company from participating in matters related to nuclear proliferation as one might expect. Instead the 1718 committee sanctions forbid the OMM from pursuing all business activity, including normal commercial activity. The list the UN Security Council submitted to UN member states about the entities that were under sanctions on July 28, 2014 included the OMM, but not the Mudubong. (See “Consolidated List of Entities and Individuals, July 30, 2014, List collected by Panel of Experts”.) There was no Security Council reference to any sanctions against the Mudubong.

Two days later, on July 30, the US Treasury Department announced US sanctions on the OMM forbidding US companies from any business relations with the OMM. The US Treasury Department said that the action by the Security Council against the OMM would insure that the sanctions were carried out not only in the US but also elsewhere around the world. The US Treasury Department included in its announcement the Mudubong as one of 18 ships the US Treasury Department claimed were owned by the OMM alleging these ships to be under the sanctions against the OMM. (3) By its unilateral sanctions against the Mudubong, the US interjected itself and the UN, into an otherwise bilateral process between Mexico and the DPRK.

The DPRK contests that the Mudubong is a ship owned by OMM or that OMM controls it. According to a statement by the manager of the Mudubong Shipping Co. Ltd published by KCNA, the ship is owned by a social cooperative organization set up in October 2008 with the money invested by individuals under the laws of the DPRK. The manager explains that though OMM is hired to perform some management functions, it is inappropriate to claim that a management company is the owner of the ship.

At its April press conference, North Korea said that Mexico had been ready to release the Mudubong in January 2015. The negotiations between the countries over payment for damage to the coral reef had been settled. But since the US pressured Mexico not to release the ship, Mexico asked the Security Council for a decision by the 1718 Sanction Committee on whether there was some action by the Security Council against the ship. Up to this point there had been no decision by the 1718 Sanction Committee about any action to be taken against the ship.

In February 2015 a group called the Panel of Experts appointed by the UN Secretary General to assist the 1718 Sanctions Committee, issued a Report. The Report contained allegations related to the claim that the Mudubong was under the control of OMM. It is important to keep in mind that the Panel of Experts is not an impartial body investigating an allegation. It is an enforcement body to advise the Security Council on how to better enforce its sanctions against North Korea. The Security Council provides no process of investigation into North Korea’s side of the conflict or opportunity to defend itself. And its Panel of Experts merely produced a Report making many allegations with no impartial entity to investigate the matter.

Before the Security Council decided whether it would act against the Mudubong, it had no basis to freeze a commercial ship as ships were not included among the so called assets of a sanctioned entity. Only after Mexico’s letter to the Security Council asking it for a decision

about sanctions against the Mudubong, did the 1718 Sanctions Committee offer a rationale to claim a commercial ship can be considered to be an asset that is somehow subject to sanctions. This is months after Mexico was pressured to detain the ship while awaiting a Security Council decision on the issue.

Sanctions Regime

An article by Tim Johnson published by the McClatchy News Service on April 23, 2015,(4) describes a visit to Mexico by some members of the 1718 Sanctions Committee Panel of Experts. Albert Orozco, the Harbor Master at the Port of Tuxpan where the ship was moored to a wharf, accompanied them in an inspection of the ship. He reports that they found the cargo holds empty. According to Orozco, the ship was on its way to pick up a cargo of fertilizer in Mexico when it ran aground on the coral reef. The fact that the ship was not carrying any forbidden cargo, and was engaged in ordinary commercial trade, however, did not stop some members of the 1718 Sanctions Committee from recommending seizing the ship.

The McClatchy article quotes a former chief of the Northeast Asia division of the US State Department's Bureau of Intelligence and Research, John Merrill. Merrill calls the UN Sanction Committee's efforts to freeze a ship engaged in normal commercial activity "misguided."

"People have to make a distinction between things that are prohibited and normal commercial activity," says Merrill. "It seems a little bit ridiculous to keep holding these guys, and it's going to have consequences," Merrill warned referring to Mexico's holding the ship.

The McClatchy article also cites a source who disagrees. William J. Newcomb was a former member of the UN Security Council's Panel of Experts on North Korea sanctions. Newcomb's view, according to the McClatchy article, is that "If sanctions are not enforced, then there's no pressure at all on North Korea."

Looking at the background of how such sanctions against North Korea have evolved leads to serious questions about the soundness of such a statement, and helps to shed light on the otherwise hidden actions of the UN Security Council and the impact they have toward supposedly impeding proliferation.

Looking at the role played by William J. Newcomb, who the McClatchy article cites as one of the experts on this matter, helps shed light on what is happening with the Mudubong. Newcomb provides an important link for clarifying the problem represented by Security Council Resolutions against the DPRK in 2006 and continuing as with the sanctioning of the Mudubong. Newcomb was part of the 1718 Panel of Experts from 2011 until June 2014. What is interesting about his biography, is that the 1718 Panel of Experts is not his first experience with North Korea and with activity that provoked North Korea to carry out its first nuclear test in October 2006. In the book "Treasury's War" by Juan Zarate, the author describes his own activity for the US Treasury Department in 2003 when he had his first meeting with two State Department officials, David Asher and William J. Newcomb. (Zarate, p. 230) Asher and Newcomb were part of a State Department group referred to as the North Korea Working Group. One should keep in mind that in 2003 North Korea had not carried out any nuclear tests. In fact this was also a time when the six-party talks to provide for negotiations to resolve conflicts on the Korean Peninsula and North East Asia were in the process of formation.

The Six Party Talks

Initiated in August 2003, the six-party talks included the two Koreas, the Democratic People's Republic of Korea (DPRK) and the Republic of Korea (ROK), Japan, US, Russia, and China. In the fourth negotiating session of the six-party talks, which took place from September 13 through September 19, 2005, an agreement was achieved. It was announced on September 19, 2005. It consisted of a set of agreements that provided a foundation for negotiations to resolve the conflicts in the region. (See Appendix I for text of the set of agreements.)

It is in this context that an Interagency Group including the State Department North Korea Working Group and a group from the Treasury Department acted to sabotage the Agreement that had just been reached by the representatives at the six-party talks. Newcomb's biography indicates that from 2002 through 2005 he was Deputy Coordinator of the US State Department's North Korea Working Group. It was this group working with a group in the US Treasury Department that worked out how to use a provision in the Patriot Act, known as Section 311, to freeze \$25 Million of North Korean funds and also to deny North Korea access to the International banking system. [For a more in depth account see "North Korea's 25 Million and the Banco Delta Asia (5) and also "Behind the Blacklisting of Banco Delta Asia".(6)]

The provision of the Patriot Act used was Section 311, a Section ostensibly created to combat financing terrorism. The use the section was put to, however, turned out to be very different and a demonstration of the abuse possible by government officials under the Patriot Act.

Section 311 provided the US Treasury Department with the ability to accuse of wrong doing a financial institution in another nation's regulatory system, using an administrative procedure in the Executive Branch of the US Government rather than having to go through an appropriate judicial legal proceeding.

Under Section 311, the accused was presumed to be guilty and the burden was on the accused to prove his or her innocence without knowing the evidence or the charges. The US Treasury Department brought charges against the Banco Delta Asia (BDA) bank in Macau in September 2005 just as the six-party agreement was reached and announced to the public. North Korea had \$25 million in an account in the BDA. The Treasury Department action against the BDA resulted in the freezing of North Korean funds in the BDA account and blocking North Korea from being able to use the international financial system.

At the time of the US Treasury Department action against the BDA, North Korea had not carried out any nuclear tests. The provisions of the September 19, 2005 six-party agreement provided a foundation for the peaceful resolution of differences over nuclear questions.

But all this was changed by the US Treasury Department action against the BDA. Essentially the action taken by the US Treasury Department in collaboration with the State Department North Korea Working Group provoked North Korea to carry out its first nuclear test.

An article published in the Washington Post around this period written by Glenn Kessler helps to provide an understanding of the rationale operating within the US government during this 2005-2006 period. (7) Kessler writes:

At many points, the United States found itself at odds with other partners in the six-party process, such as China and South Korea, which repeatedly urged the Bush administration to show more flexibility in its tactics. Meanwhile, administration officials were often divided on North Korea policy, with some wanting to engage the country and others wanting to isolate it.

Kessler notes that there were those in the US government at the time wanting North Korea to carry out a nuclear test. He writes, "Before North Korea announced it had detonated a nuclear device, some senior officials even said they were quietly rooting for a test, believing that it would finally clarify the debate within the administration."

The US Treasury Department action had the effect of derailing the six-party talks agreement. North Korea left the talks and said it would not return until its access to its \$25 million account in the BDA and its access to the international banking system were restored. North Korea's ability to use the international banking system was essential for its normal international commerce and for supporting its embassies around the world. China encouraged North Korea to negotiate with the US. But the US refused to negotiate. Left with few alternatives, North Korea carried out the test of a missile in July 2006 and in October, 2006, it carried out its first nuclear test.

The UN Security Council passed resolutions against North Korea in response to these actions. In July 2006 the Security Council passed Resolution 1695 and in October 2006 it passed Resolution 1718. The Security Council made little effort at the time to investigate what led North Korea to carry out these tests. Nor was the UN Charter provision (Chapter V, Article 32) implemented which states that the Security Council was obliged to invite North Korea into the discussion in the Council leading to the passage of the resolutions against North Korea.

The Charter states:

"Any member of the United Nations which is not a member of the Security Council...if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute."

It is also significant that the US is the pen holder in the drafting of UN Security Council resolutions against North Korea.

In his article describing the activity in the Bush administration toward pressuring North Korea to carry out a nuclear test, Kessler quotes Condoleezza Rice's claim that it was very unusual and quite significant that China supported the Security Council resolutions, especially Resolution 1718 against North Korea.

I don't care how many times you visited Pyongyang," Rice says, referring to a trip made by then Secretary of State Madeline K. Albright to the North Korean capital in 2000. "China had to be part of this regime to deal with the North Korea nuclear problem, and you're seeing it....Not bad for a couple years' work.

But China had been part of the non-punitive six-party talks, and the September 19, 2005 six-party agreement. So were North Korea, South Korea, Russia, Japan and the US. And that

agreement was to prevent nuclear tests, not to provoke them. The actions that Condoleezza Rice, William J. Newcomb, and other US government officials were involved with during the years of the George W. Bush presidency (2001-2008) were actions provoking proliferation, not curtailing it.

In fact, as David Asher explained to a Congressional hearing during this period, the action against the BDA freezing \$25 million of North Korean funds and leading to North Korea losing access to the international banking system was aimed at achieving certain political objectives, not to stop any alleged illegal activity. As Asher explained to the US Congress:

“Banco Delta Asia was a symbolic target. We were trying to kill the chicken to scare the monkeys. And the monkeys were big Chinese banks doing business in North Korea...and we’re not talking about tens of millions, we’re talking hundreds of millions.”

The purpose of the action against the BDA, Asher clarified was not only to target North Korea, and its access to the international banking system. But also to send a message to China. Hence the action was a carefully crafted political action. And the result was that it left North Korea with the need to find a means to defend itself against being used as a political football in the US policy against China.

Subsequently, in 2009 (under Resolution 1874) the Panel of Experts was appointed to advise the 1718 Sanctions Committee, and thus the Security Council, on how to implement the sanctions against North Korea. In 2011 William J. Newcomb who had been part of the US State Department and Treasury Department activities against North Korea, was appointed a member of the Security Council 1718 Panel of Experts.

It is important to keep in mind that the Panel of Experts (PoE) was not created to play an impartial role investigating a conflict. The PoE “has a mandate to gather, examine, and analyze information from States, relevant United Nations bodies regarding the implementation of the measures imposed in resolutions 1718 (2006), 1784 (2009), 2087 (2013) and 2094 (2013), In particular incidents of non-compliance.” So the panel of experts is in no way obligated to seek the facts, but instead is part of the Security Council efforts to build a case against North Korea and to ensure all UN member states comply.

In the article by Tim Johnson, William J. Newcomb is quoted saying that, “If sanctions are not enforced then there’s no pressure at all on North Korea.” But reviewing the history of the use of sanctions against North Korea, both by the US and then by the UN Security Council, the opposite proves true. Sanctions were used to sabotage the implementation of the September 19, 2005 six-party agreement so that even ten years later, the agreement has not been implemented. Sanctions continue to be used to ensure the continuing impossibility of any negotiation to resolve the conflicts on the Korean peninsula.

Another UN sanctions committee is the 1267 Committee. This Committee is used by the UN Security Council to bring sanctions against individuals and entities accused of being connected with al Qaeda. But European courts ruled that taking away property or rights from individuals or entities without due process and failing to provide the right to self defense before an impartial body are contrary to human rights treaty obligations of European states and not permitted even if the UN Security Council requires such actions

With the 1267 Committee, the Security Council had run afoul of the legal obligations of

European states. (8) The European Courts would not allow European states to enforce the 1267 sanctions until the Security Council modified its procedures.

The US Uses the UN

While little attention has been paid by the Security Council in how it applies sanctions, the Mudubong situation provides an example of how the US acts to use the UN to bypass legal obligations and to spread the process to other countries. An important example of this problem is described by IF Stone in his book "The Hidden History of the Korean War".

Stone notes that the US took military action in South Korea in 1950 before any action had been authorized by the UN Security Council. By doing so it created a situation where other countries on the Security Council were obliged to support the Security Council taking military action in South Korea. Otherwise those countries would have appeared to be opposing the US. Such appearance of opposition might have had negative consequences for them.

Conclusion

The case of the UN Security Council actions against the Mudubong once again demonstrates how the US turned a ship that ran aground on a coral reef into a long contorted effort to claim the right of the UN Security Council to seize a commercial ship flying under the flag of the DPRK with no due process rights accorded to the DPRK or the owner of the ship for self defense. The obligation of the Security Council is to inform and publicly post information about any entity it sanctions. No such post has been made by the Security Council about the Mudubong. But through ad hoc processes the 1718 Sanction Committee supposedly agreed to action against the Mudubong.

This may seem inconsequential. But when one looks back at how Security Council Resolution 1718 was obtained it becomes evident that there is a pattern of action by some members of the UN Security Council to abuse the sanction process in order to carry out political objectives contrary to the obligations of member nations under the UN charter.

Recall how North Korea was provoked into carrying out a nuclear test by the US putting sanctions on a bank in Macau holding North Korean funds, and subsequently also preventing North Korea from having access to the international banking system. When Condoleezza Rice was challenged about these US government activities leading to a nuclear test, her response was that there was a positive result as the nuclear test led China to support chapter 7 sanctions against North Korea. Harming a state in order to provoke self defense and then using that act of self defense as an excuse for Security Council sanctions, is an act contrary to the obligations of the UN Charter.

In testimony before the US Congress, one of the planners of the Banco Delta Asia sanctions explained how the motive was a political one, that the target was not merely North Korea but China as well. The UN Security Council is obligated to help resolve conflicts peacefully, not to provoke them. If its processes are abused, there is a need for attention to the problem and to find a way to stop such abuse.

Notes

1. http://news.xinhuanet.com/english/2015-05/09/c_134222872.htm

2. <http://www.un.org/press/en/2014/sc11499.doc.htm>
 3. <http://www.treasury.gov/press-center/press-releases/Pages/jl2594.aspx>
 4. <http://www.mcclatchydc.com/2015/04/23/264224/mexicans-hold-n-korean-freighter.html>
 5. http://english.ohmynews.com/articleview/article_view.asp?no=362192&rel_no=1
 6. http://english.ohmynews.com/ArticleView/article_view.asp?no=351525&rel_no=1
 7. <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/21/AR2006102100296.html>
 8. <http://www.heise.de/tp/artikel/28/28217/1.html>
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Appendix A

Six party Sept 19 2005 agreement

<http://m.state.gov/mc15455.htm>

The Fourth Round of the Six-Party Talks was held in Beijing, China among the People's Republic of China, the Democratic People's Republic of Korea, Japan, the Republic of Korea, the Russian Federation, and the United States of America from July 26th to August 7th, and from September 13th to 19th, 2005.

Mr. Wu Dawei, Vice Minister of Foreign Affairs of the PRC, Mr. Kim Gye Gwan, Vice Minister of Foreign Affairs of the D.P.R.K.; Mr. Kenichiro Sasae, Director-General for Asian and Oceanian Affairs, Ministry of Foreign Affairs of Japan; Mr. Song Min-soon, Deputy Minister of Foreign Affairs and Trade of the R.O.K.; Mr. Alexandr Alekseyev, Deputy Minister of Foreign Affairs of the Russian Federation; and Mr. Christopher Hill, Assistant Secretary of State for East Asian and Pacific Affairs of the United States attended the talks as heads of their respective delegations.

Vice Foreign Minister Wu Dawei chaired the talks.

For the cause of peace and stability on the Korean Peninsula and in Northeast Asia at large, the Six Parties held, in the spirit of mutual respect and equality, serious and practical talks concerning the denuclearization of the Korean Peninsula on the basis of the common understanding of the previous three rounds of talks, and agreed, in this context, to the following:

1. The Six Parties unanimously reaffirmed that the goal of the Six-Party Talks is the verifiable denuclearization of the Korean Peninsula in a peaceful manner.
The D.P.R.K. committed to abandoning all nuclear weapons and existing nuclear programs and returning, at an early date, to the Treaty on the Nonproliferation of Nuclear Weapons and to IAEA safeguards. The United States affirmed that it has no nuclear weapons on the Korean Peninsula and has no intention to attack or invade the D.P.R.K. with nuclear or conventional weapons.
The R.O.K. reaffirmed its commitment not to receive or deploy nuclear weapons in accordance with the 1992 Joint Declaration of the Denuclearization of the Korean Peninsula, while affirming that there exist no nuclear weapons within its territory.
The 1992 Joint Declaration of the Denuclearization of the Korean Peninsula should be observed and implemented. The D.P.R.K. stated that it has the right to peaceful uses of

- nuclear energy. The other parties expressed their respect and agreed to discuss, at an appropriate time, the subject of the provision of light water reactor to the D.P.R.K.
2. The Six Parties undertook, in their relations, to abide by the purposes and principles of the Charter of the United Nations and recognized norms of international relations. The D.P.R.K. and the United States undertook to respect each other's sovereignty, exist peacefully together, and take steps to normalize their relations subject to their respective bilateral policies. The D.P.R.K. and Japan undertook to take steps to normalize their relations in accordance with the Pyongyang Declaration, on the basis of the settlement of unfortunate past and the outstanding issues of concern.
 3. The Six Parties undertook to promote economic cooperation in the fields of energy, trade and investment, bilaterally and/or multilaterally. China, Japan, R.O.K., Russia and the U.S. stated their willingness to provide energy assistance to the D.P.R.K. The ROK reaffirmed its proposal of July 12th 2005 concerning the provision of 2 million kilowatts of electric power to the D.P.R.K.
 4. The Six Parties committed to joint efforts for lasting peace and stability in Northeast Asia. The directly related parties will negotiate a permanent peace regime on the Korean Peninsula at an appropriate separate forum. The Six Parties agreed to explore ways and means for promoting security cooperation in Northeast Asia.
 5. The Six Parties agreed to take coordinated steps to implement the aforementioned consensus in a phased manner in line with the principle of "commitment for commitment, action for action".
 6. The Six Parties agreed to hold the Fifth Round of the Six-Party Talks in Beijing in early November 2005 at a date to be determined.

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