



Journal of Social and Political Sciences

Afriyie, Frederick Appiah. (2019), Legislative Authority of U.S Unilateral Economic Sanctions Against the Democratic People's Republic Of North Korea (DPRK). In: *Journal of Social and Political Sciences*, Vol.2, No.3, 570-581.

ISSN 2615-3718

DOI: 10.31014/aior.1991.02.03.99

The online version of this article can be found at:
<https://www.asianinstituteofresearch.org/>

Published by:
The Asian Institute of Research

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Legislative Authority of U.S Unilateral Economic Sanctions Against the Democratic People`s Republic Of North Korea (DPRK)

Frederick Appiah Afriyie¹

¹ Zhongnan University of Economics and Law

Correspondence: Zhongnan University of Economics and Law. Email: kaaf0712@gmail.com

Abstract

Unilateral economic sanctions have become one of the most significant foreign policy tools used by most powerful developed nations across the globe. Some of these countries include Japan, Canada, Australia, and others. However, the United States (US) and European Union (EU), in particular, are very ardent users, having placed unilateral sanctions on North Korea, Iran, Venezuela, and partially on Russia, among others. It is an alternative to military intervention, war, or conflicts. Among these strong nations, the US is one country that applies unilateral sanctions than any other country in the world. Also, various successive US administrations have used this foreign policy tool one way or the other. Further, unilateral sanctions have become more popular in recent decades, and currently, the US has nearly 8000 sanctions in place worldwide, Iran and North Korea by far the largest state target. Though sanctions have existed for a long time, they still remain controversial international foreign policy tools. Notwithstanding, US application of unilateral economic sanctions by both present and previous successive administration is backed by legal authority including the trading with the enemy act (TWEA), the United Nations Participation Act (UNPA), the International Emergency Economic Powers Act (IEEPA). Nevertheless, there is legal controversy surrounding unilateral sanctions among critics and proponents, who are entrenched in the position that the developed countries used sanctions against smaller countries, including North Korea. What is more, this argument of controversy is still ongoing, and there seems to be no agreement between critics and proponents. This paper, therefore, provides a legal basis for unilateral sanctions used by the US against other countries, in particular, North Korea. Also, we will elaborate on the justification or otherwise of the legitimacy of US unilateral sanctions against North Korea. The paper is divided into four sections. The first section of this paper elaborates on the introduction, relations between North Korea and the US. Also, it highlights a general overview of unilateral sanctions and US unilateral sanctions on North Korea. The second section deals with the questions: Why do countries such as the US impose unilateral economic sanctions? What other bodies impose sanctions on North Korea? The third part deals with international concern about North Korea, and the fourth part also talks about certainties and issues that make North Korea a worldwide concern. The final part looks at U.S. Legislative Authority and justification or otherwise of the legitimacy of U.S unilateral sanctions

Keywords: Legislative Authority, Unilateral Economic Sanctions, Foreign Policy, Denuclearization, Demilitarized Zone, Dictatorial Regime

1. INTRODUCTION

Economic sanctions have turned out to be considerably increasingly prevalent in late decades. During the 1990s, for instance, sanctions regimes were presented at an average rate of around seven every year. Of the 67 cases in that decade, 66% were unilateral economic sanctions enforced by the United States. During Bill Clinton's administration, it is estimated that around 40% of the total world populace, or 2.3 billion individuals, were liable to some type of US unilateral economic sanctions. The incredible dominant part of sanctions is imposed by enormous nations against little nations. Right now, the US has about 8,000 unilateral economic sanctions set up around the world, with Iran by a wide margin the biggest state target. They have been applied substantially more frequently unilaterally or multilaterally as instruments of foreign policy (world economic forum,2019). However, unilateral sanctions are the international strategy instrument of choice for some developed countries over the globe. Sanctions influence access to a state's commercial and financial markets to pressure foreign governments to align their conduct with the sanctioning state's standards and desires. The more noteworthy a state's regional or worldwide economic importance, the more excruciating – and compelling – its sanctions might be. The United States and the European Union specifically are zealous users, having placed unilateral sanctions on North Korea, Iran, Venezuela, and partially on Russia, among others.

All the same, unilateral sanctions are often utilized by a few, and their legality is perpetually questioned by others. At the point when sanctions are enforced unilaterally, there exist headache that they are being utilized to accomplish the quirky foreign policy objectives of the sanctioning state, regardless of whether these are to the greatest advantage of the international community which would be required to talk about and endorse any sanctions by means of the current international forum gathering, for example, the United Nations. Similarly, pundits frequently charge that intruding in the internal issues of another state through sanctions, especially those having extraterritorial impacts, violates international law. Indeed, the principles of non-interference, comity, and the sovereign equality of states – lodestars in the public international law firmament – would, whenever paid attention to, dictate that unilateral sanctions lack legitimacy. While other international law principles can militate in favor of unilateral sanctions, in any event, their validity is fervently questioned. Conversely, multilateral sanctions enforced through the United Nations Security Council (UNSC), bridge this authenticity gap. At the point when sanctions result from a multilateral procedure, the concern that they are not being utilized to accomplish the best advantages of the international community disperses.

Likewise, the criticism that sanctions violate non- intervention and related international law norms does not hold in the multilateral context: written into the UN Charter – consented to by all Member States – is that the UNSC has the option to take measures, including hindering economic relations, so as to keep up global harmony and security. (Borovikov, Dentons, Nychay, 2018).

2. RELATIONS BETWEEN NORTH -KOREA AND THE U.S

The United States and Korea's Joseon Dynasty set up diplomatic relations under the 1882 Treaty of Peace, Amity, Commerce, and Navigation, and the first U.S. Diplomatic emissary showed up in Korea in 1883. U.S.- Korea relations proceeded until 1905 when Japan assumed direction over Korean foreign affairs. In 1910, Japan started a 35-year duration of colonial rule over Korea. Following Japan's relinquish in 1945 toward the cease of World War II, the Korean Peninsula was partitioned at the 38th parallel into two occupation zones, with the United States in the South and the Soviet Union in the North. The initial hopes for a unified and united Korea were not fulfilled, and in 1948 two separate States were established - the Republic of Korea (ROK) in the South and the Democratic People's Republic of Korea in the North (DPRK)(U.S Department of State,2018)

On June 25, 1950, North Korean forces attacked South Korea. Led by the United States, a United Nations Alliance of 16 nations undertook the defense of South Korea. Following China's entrance into the war for the benefit of North Korea soon after that, a stalemate turned out for the last two years of the battle until a ceasefire was agreed on July 27, 1953. All the same, a peace treaty has never been agreed upon North and South Korea, who have had

a troublesome and, now and again, an unpleasant relationship since the Korean War. The two nations are isolated by a demilitarized zone. During the postwar era, both Korean governments have over and over avowed their craving to reunify the Korean Peninsula, but until 1971, the two governments had no immediate, official connection or another contact. North Korea has been led by consecutive generations of Kim II Sung's family, and its political and economic structure is peripherally controlled. The United States underpins the tranquil reunification of Korea on terms satisfactory to the Korean citizenry and perceives that the fate of the Korean Peninsula is an issue for them to determine. The United States conceive that a valuable and genuine discourse among North and South Korea is important to improve between Korean relations and to resolve outstanding issues. The United States has been engaged in a few rounds of diplomacy to remove the nuclear risk presented by North Korea. In 1994, the United States and North Korea arrived at a concession on a guide for the denuclearization of the Korean Peninsula. In 2003, the United States proposed multilateral talks on the North Korean nuclear issue. Several rounds of Six-Party Talks were held, with the last round happening in 2009. Albeit, North Korea has on occasions said it would take steps toward denuclearization. Meanwhile, it kept on conducting tests infringing upon international law, including three intercontinental ballistic missiles (ICBMs), and its biggest-ever nuclear test in 2017 alone. The United States has approached North Korea to take concrete, irreversible denuclearization steps toward satisfaction of the 2005 Joint Statement of the Six-Party Talks, abide by international law including United Nations Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2371 (2017), 2375 (2017), and 2397 (2017) and stop provocative practices. In 2017, the United States instituted a global economic and diplomatic pressure campaign on the DPRK to force them into negotiations on denuclearization. International focus prompted new international diplomatic commitment with DPRK leader Kim Jong Un, incorporating summits with South Korea, China, and the United States. Furthermore, on June 12, 2018, President Trump became the first US president to meet with North Korean leaders when he met with Kim Jong-un in Singapore. The leaders of two countries signed a joint proclamation that consented to the total denuclearization of the Korean Peninsula, security guarantees for the DPRK, its commitment to working toward a peaceful regime, and the recuperation and quick repatriation of POW/MIA remains (U.S Department of State, 2018). What is more, on 30th June 2019 Trump making the first crossing of any sitting U.S. president into North Korea and also shook hands across the demarcation line between the two Koreas. It is a symbolic milestone between the two countries (Lee, 2019)

3. GENERAL OVERVIEW

3.1.1 Unilateral Economic Sanctions

Unilateral economic sanctions are by and large alluded to as economic sanctions without the U.N. Security authorization. Unilateral sanctions could be applied by a state or multi-states. Unilateral economic sanctions are not approved by the Security Council, and therefore their legitimacy is quite often questioned. Some argue that "almost all unilateral economic sanctions fail almost all the time" (Collins and Bowdoin, 1999). Inversely, multilateral sanctions are more likely to be considered effective. Even though the likelihood that multilateral sanctions can cause more damage than unilateral ones is higher, the polarity is by all accounts of constrained utility in that economic haram does not guarantee the accomplishment of sanctions (Hosseini G. Askari et al. 2003). The U.N. Charter bans the utilization of force aside from in self-defense or with the endorsement of the Security Council under Chapter VII (Article 2(4) and 51 of the U.N. Charter. The Charter, nonetheless, does not have any provision prohibiting unilateral intervention, where sanctions are enforced by individual states. The conventional principle of state sovereignty incorporates "the national economic liberty to trade with different countries (Forlati,2004). States are entitled to applying "trade embargoes or blacklists in any way, shape or form, including simple economic coercion to advance national political or economic interests against those of other states(Forlati,2004). Then again, the General Assembly impulse individual states not to enforce economic sanctions that transgress international law and the U.N. Charter, and not to utilize unilateral coercive measures "as apparatuses for political or economic pressure against any nation, especially against developing nations, on account of the negative impacts on the acknowledgment of every human rights. Customary international law doesn't ban the international community or individual states from utilizing economic sanctions to advance conformity with

international standards or some other strategy. In general, the imposition of sanctions to promote human rights can be allowed, since the promotion of human rights is one of the main objectives of the United Nations (Article 1, (3) of the Charter). Experiences demonstrate that numerous states, including the U.S., have as often as possible imposed economic sanctions, for example, import and import prohibitions, and financial limitations (Malloy 2001). The International court of justice (ICJ) holds that state sovereignty stretches out to the zone of its international policy, and there is no customary international law to keep a state from picking and conducting an international policy in coordination with that of another state (Military and Paramilitary Activities para 265). The ICJ further expresses that economic sanctions don't violate the customary norm of non-intervention (Military and Paramilitary Activities para 245). The ICJ pronounces that one mediation banned by international law is the "one bearing on issues in which each state is allowed, by the principle of state sovereignty, to choose freely (Military and Paramilitary Activities para 205) " In a broad sense, economic sanctions are permissible by international law.

3.1.2 Unilateral sanctions on North Korea

Various nations and international bodies have imposed sanctions against North Korea. At present, numerous sanctions are concerned about North Korea's nuclear weapons program and were imposed after its first nuclear test in 2006. The United States enforced sanctions during the 1950s and tightened them further after international bombings against South Korea by North Korean agents during the 1980s, including the Rangoon and the bombarding of Korean Air Flight 858. In 1988, the United States added North Korea to its list of state supporters of terrorism. Sanctions against North Korea began to ease during the 1990s when South Korea's then-liberal government pushed for engagement policies with the North. The Clinton administration signed the Agreed Framework with North Korea in 1994. Be that as it may, the unwinding of economic sanctions was ephemeral. North Korea proceeded with its nuclear program and formally pulled back from the Nuclear Non-Proliferation Treaty in 2003, making nations restore via several sanctions. UN Security Council Resolutions were passed after North Korea conducted nuclear tests in 2006, 2009, 2013, 2016, and 2017. At first, sanctions were centered around bans on weapons-related materials and goods but extended to extravagance merchandise to focus on the elites. Further sanctions extended to cover financial assets, related resources, banking transactions, and general travel and trade (Lee, Yong Suk'2018). In July 2017, after the demise of tourist Otto Warmbier, the United States government prohibited US residents from visiting North Korea without exceptional approval beginning 1 September 2017 (Torbati, Yeganeh; Lee, Se Young 2017). On 21 September 2017, President Donald Trump issued Executive Order 13810 enabling the United States to cut from its financial system or freeze assets of any businesses, organizations, associations, and people trading merchandise, services, or technology with North Korea. Likewise, any aircraft or ship upon entering North Korea is restricted for 180 days from entering the United States. A similar limitation applies to ships that conduct ship-to-ship transfers with North Korean ships. Treasury Secretary Steven Mnuchin expressed that "foreign financial institutions are currently on notice that going ahead they can choose to work with the United States or North Korea, but not both." An announcement from the White House said "foreign financial institutions related must pick between working with the United States or facilitating trade with North Korea or its assigned supporters. (Borak, Donna, 2017).

4. WHY DO COUNTRIES SUCH AS THE UNITED STATES IMPOSE UNILATERAL ECONOMIC SANCTIONS?

To begin with, it is mostly on the grounds that resolutions that the U.S. seek after now and again are not welcomed by other Security members. The U.S., for instance, sought after a U.N.- ordered ban against Libyan oil, yet the Western nations that required oil restricted it (Geoff Simons, 1999). In the mid-1990s, the U.S. looked for a lot harsher U.N. sanctions against North Korea, but China opposed it. Where multilateral economic sanctions are obstructed in the Council, the U.S. pursues unilateral economic sanctions with or without the involvement of other states. Secondly, imposing unilateral sanctions is a decent route for politicians to pacify the requests from NGOs and constituents to do something (Collins et al., 1999, at 9.). Satisfying domestic voters or making a moral declaration by imposing emblematic unilateral economic sanctions is very alluring for politicians. One of the issues identified with unilateral economic sanctions is whether they are successful as foreign policy tools or more

compelling than multilateral economic sanctions. On the whole, the more noteworthy the number of nations expected to execute sanctions, the more noteworthy the economic trouble of the target nation will be. Therefore, the majority opinion contends that multilateral sanctions are more compelling than unilateral economic sanctions or economic sanctions are once in a while effective (Collins, 1999). In the global economy, unilateral economic sanctions tend to bring higher costs to the sanctioning state than the target country, and target countries can often find alternative sources of supply and financing (Simons, 1999). If the target country is heavily dependent on the sanctions country, the target country is more likely being hurt. Even in this situation, it is contended that financial challenges the objective nation get do not guarantee the accomplishment of economic sanctions. Dictatorial regimes in the target nation become progressively restrictive, and positive socioeconomic advancements can't be simulated. Actually, the economic challenges that economic sanctions imposed against Haiti and Cuba couldn't change their behavior (Collen, 1999). The U.S. has tried to upgrade the efficacy of unilateral economic sanctions by intimidating secondary sanctions against those third parties reluctant to sanction the target country (Hass, 1998). Where secondary sanctions are embraced, sanctions apply to abroad firms that contravene the terms of the U.S. enactment. This strategy has some hindrance consequences for people and firms that look to violate activities by the enactment are faced with extraordinary difficulties from other countries. On the contrary, it is contended that multilateral sanctions are not more powerful than unilateral sanctions (Gary Clyde Hufbauer et al., 2007). It is asserted that worldwide help for a sanctions strategy can damage odds of achievement by "weakening the degree and effect of the common sanctions in the process of securing understanding among the senders." Accordingly, international endeavors set up to collaborate don't yield alluring results (Gary Clyde Hufbauer et al., 2007). It is an incongruity that regardless of its efficiency, states are still employing unilateral sanctions. The United States has overpowered different nations in the numbers of unilateral economic sanctions against different nations. During the Cold War, the United States could accomplish a moderately high state of achievement with less cooperation (Gary Clyde Hufbauer et al., 2007). After World War II, the U.S. kept up the most powerful economy, supporting war-stricken western economies. Until the 1960s, the U.S. provided developing nations with economic assistance. These components contributed to the level of success. The developing worldwide economy, in any case, undermined the adequacy of unilateral sanctions. As Europe and Japan have appeared as competitive economic superpowers, the U.S. position on the global economy has declined. Nevertheless, even in the post-Cold War, the significance of unilateral economic sanctions have not lessened as a policy tool of the United States (Hass). The objectives of economic sanctions by the United States fluctuate including discouraging the proliferation of weapons of mass destruction, promoting human rights, ending support for terrorism, thwarting drug trafficking, and discouraging armed aggression.

5. WHAT OTHER BODIES IMPOSE UNILATERAL ECONOMIC SANCTIONS ON NORTH-KOREA?

U.S allies Japan and South Korea, just as the European Union, have likewise sanctioned North Korea beyond the measures enforced by the UN Security Council. Some South Korean leaders have kept up a firm stance against North Korea, while others, including the present president, Moon Jae-in, have selected a progressively mollifying methodology, endeavoring to grow bilateral exchanges as a way toward serene concurrence. Seoul gave Pyongyang \$7 billion in help somewhere in the range of 1991 and 2015, frequently as food and medical assistance. A few analysts contend that such strategies have weakened the impacts of sanctions. Moon, while supporting international sanction and increased defense participation with the United States, has attempted to improve North-South ties, meeting with Kim multiple times. Moon has endorsed humanitarian aid disbursements, revived a hotline between the two Koreas, reestablished family reunions, opened a joint liaison office, and received a UN sanctions exemption to lead a joint review for a potential railway between the two Koreas (Eleanor, 2019). Also, in 2010, South Korea enforced sanctions against North Korea in what is known as the May 24 measures. These sanctions included: Prohibiting response to the sinking of the South Korean maritime ship, the ROKS Cheonan and North Korean boats from South Korean regional waters, suspending inter-Korean trade aside from at in the Kaesong Industrial Zone and prohibiting most cultural exchanges (Anna 2016).

Japan, Tokyo has additionally restricted commercial and diplomatic exchanges with North Korea, enforcing sanctions beginning in 2006. It lifted some of them in 2014 to instigate Pyongyang to investigate the vanishings

of Japanese nationals in the 1970s and 1980s. Japan imposed new sanctions in February 2016, and again in August and December 2017, in response to North Korean nuclear and missile tests. These measures freeze certain North Korean and Chinese assets, ban the entry of North Koreans, and restrict settlements worth more than \$880. North Korea declined to collaborate in the investigation of abducted Japanese citizens until these sanctions are lifted. Japan likewise plays sanctions monitoring role, tracking North Korean cargo transfers in regional waters (Eleonora, 2019).

What is more, In 2016, Japan imposed sanctions against North Korea, including: Anna 2016]. Banning settlements, with the exception of those made for helpful purposes under ¥100,000 in value. Banning North Korean residents from entering Japan. Restoring the prohibition on North Korean ships entering Japanese ports and extending it to incorporate different ships that have visited North Korea (Anna 2016). Banning nuclear and missile technicians who have been to North Korea from entering Japan. (Mina 2016).

The European Union supplemental economic restriction ban the admission and residency of individuals who have encouraged the DPRK's weapons program, deny North Koreans access to specialized training, ban the export of extravagance items ranging from purebred houses to ski equipment, ban EU investment across North Korean economic sector, and cap remittance settlements to North Korea. (Eleanor, 2019).

Further, over the years, the European Union has imposed a progression series of sanctions against North Korea since 2006. These include:(Anna,2016) banning arms and related materials; prohibiting the export of aviation and rocket fuel to North Korea, prohibiting the exchange of gold, valuable metals, and diamond with the North Korean government; restricting the import of minerals from North Korea, with certain exemptions for coal and iron ore; restricting the export of extravagance merchandise. Limiting investment and financial activities with North Korea; examining and observing cargoes imported to and sent out from North Korea; disallowing certain North Korean people from entering the EU(European Union External Action,2016).On 21 September 2017, EU restricted oil export and investment in North Korea(Borger, Julian 2017).

6. GLOBAL CONCERN ABOUT NORTH KOREA

Bruce Cummings portrays North Korea as "a particular and astounding country that opposes simple depiction (Cummings, 2005). North Korea is a socialist nation and hence has attributes normal to the communist world, for example, Concentration of power, which legitimizes the totalitarianism of the low class. (Korea Institute for National Unification (KINU,2005). The North Korean Constitution (Dae-Kyu Yoon,2004) pronounces that, "the state will adhere to a policy of class, and secure individuals' democracy system and socialism from our adversaries by reinforcing individuals' people's democratic totalitarianism" (Article 12 of the North Korean Constitution of 1998). All of North Korea's activities are performed under the leadership of the Korean Workers' Party (Article 11 of the Constitution). Further, North Korea is more reliant on its leader than some other socialist nation. The Constitution proclaims itself a Kim Il Sung Constitution (Article 11 of the Constitution). It is an instrument to secure the smooth transition of the progress of the dynastic leadership to Kim Jong Il, the son of Kim Il Sung. Total allegiance and acquiescence to the leader are supreme virtues in North Korea (The 10 Great Principles of the Unitary Ideology System,' proclaimed in 1974). While before the disintegration of the Eastern Coalition and the Cold War, North Korea had been one of the socialist nations; these days, it is an authoritarian nation with a singular belief system. Even with extraordinary starvation and widespread infringement of human rights in other countries would have created regime changes, or if nothing else riots or massive social agitation. Indeed, even an economic failure or wretchedness, or minor human rights infringement could result in regime changes. For instance, in 1960 the corrupt authoritarian South Korean regime was toppled by student protest when Kim Chu Yol, a middle school student, who had been murdered in a police shooting, was hauled out of Masan harbor. (Cummings, supra note 1, at 349). Be that as it may, the gargantuan starvation in the mid-1990s and gross human rights infringements in North Korea have not resulted in any social agitation or civil disobedience, let alone regime. The primary reason that any social agitation or civil disobedience isn't probably going to occur in North Korea is a lack of a private sector. No privately owned businesses, no private news media, no NGOs, no opposition party,

and no private affiliations are permitted in North Korea. The regime owns and controls everything. Under these conditions, North Korea has been a global concern principally for two reasons: weapons of mass destruction and security, and human rights concerns, both menacing universal tranquility and security. Since North Korea's invasion into South Korea in 1950, North Korea has been censured for being a risk to international tranquility and security. North Korea joined the Non-Proliferation Treaty (NPT) system in 1992. However, it denied special investigation access to two sites by the International Atomic Energy Agency (IAEA). Reacting to international pressures requesting exceptional investigations, in March 1993, North Korea reported its goal to pull back from the non-proliferation treaty (NPT). Despite the fact that in October 1994 the United States and North Korea achieved a consent to freeze North Korea's nuclear program, it broke after the inauguration of President George W. Bush in 2002. North Korea, alongside Iran and Iraq, was named as "an axis of evil, that be, aiming to undermine the tranquility of the world" (Bush, 2002). North Korea has affirmed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and, therefore, along, is under the commitment to respect the human rights of North Koreans under the Covenants. It has officially demanded that the ICCPR has a similar impact as a domestic law. North Korea claims it effectively uphold the human rights perceived by the ICCPR and ICESER its duty. In reality, human rights infringement in North Korea is widespread and systematic. The regime has a special mechanism to keep up its power, which produces widespread human rights infringement.

7. CERTAINTIES AND ISSUES THAT MARK NORTH KOREA GLOBAL CONCERN

7.1.1 Act of Aggression

North Korea has been a global headache for a long time. It has occupied with animosity just as the advancement of weapons of mass destruction and gross human rights infringement. On 19 June 25, 50, North Korea attacked South Korea. Around the same time, the security Council embraced a resolution requiring the quick end of threats and calling upon North Korea to pull back its military. The resolution additionally called upon members to render help to the U.N. in the execution of the resolution and to abstain from offering help to North Korea. (Seung Jin Oh, 2008). The U.S. considers North Korea a risk to its national security. In December 1950, President Truman proclaimed a national emergency regarding the Korean War under the Trading with the Enemy Act. At the point when the Korean War finished completely in 1953, 520,000 North Korean troopers and 36,000 U.S. fighters had been murdered or injured (Oberdorfer, 2001). On July 27, 1953, the ceasefire was reached. With the end of the war, the U.N. Security Council resolution satisfied its mandate, but the U.S. has kept on denying all U.S. economic contacts with North Korea. In fact, North Korea has been at war with the U.S. and, South Korea throughout the previous 50 years in light of the fact that no peace treaty has never been agreed upon. The U.S.-North Korea relations were commonly antagonistic after the war. In January 1968, the North Koreans held onto the U.S. spy ship Pueblo together with its crew. In August 1976, two U.S. officials were murdered by North Korean soldiers in the Demilitarized Zone. During the Clinton administration, be that as it may, the U.S. and North Korea promised "no antagonistic intent" toward one another (Madeleine, 2003). North Korea needed to have typical relations with the U.S that would shield the nation from the U.S. menace (Jeffries, 2006). Many policymakers in the U.S contended that a summit between the U.S. also, North Korea, which may have normalized the relations, would legitimize North Korea's devilish leaders.

7.1.2 Weapons of Mass Destruction

The North Korean nuclear program is one of the primary concerns that the global community has been managing for a long time. The nuclear controversy has decided the picture of North Korea according to the international community. It is perplexing and has a long history. In 1991, South and North Korea signed the Korean Peninsula Non-Nuclear Agreement, swearing not to "test, make, produce, import, possess, store, send, or use" nuclear weapons and not to utilize waste processing or uranium advancement facilities for those purposes (McCormack, 2004). It created the impression that the Korean peninsula would be free from nuclear dangers. In any case, in March 1993, Pyongyang declared its withdrawal from the Non-Proliferation Treaty (NPT).

Accordingly, the Clinton administration wanted to demolish North Korea's nuclear facilities by bombarding. The task was halted at last. In June 1994, the Geneva "Agreed Framework" was ended. It gives that North Korea will remain in NPT and freeze its nuclear reactor program; the Korean Peninsula, Energy Development organization, will supply with two light-water reactors by 2003 and a yearly supply of 3.3 million barrels of overwhelming oil until the completion of the reactors; the United States and North Korea will move towards full normalization of their political and economic relations; the United States will give formal assurances to North Korea against the risk or the utilization of nuclear weapons. Faced with solid resistance by a Republican-ruled Congress, the Clinton administration was hesitant to commit. (McCormack, 2004). Under the administration of President George W. Bush and after September 11, 2001, the U.S. view toward North Korea changed totally. In January 2002, George W. Bush announced North Korea part of the "axis of evil" as one with Iran and Iraq. On January 9, 2002, North Korea declared its withdrawal from the NPT. On October 9, 2006, Pyongyang reported that it had effectively tested a nuclear gadget. The U.N. Security Council adopted resolutions asking North Korea to desert its nuclear program and imposed economic sanctions against North Korea. As of December 15, 2006, the U.S., China, Japan, Russia, and the two Korea's have been having six-path talks to solve the North Korean nuclear issue. The North Korean nuclear program is the key issue that the international community has engaged with for a long time. It has had priority over the human rights issue, which is to be approached after the nuclear issue is cleared. Without the resolution of the nuclear revolution, the North Korean human rights circumstance too seems hard to determine.

7.1.3 Violations of Civil and Political Human Rights

The seriousness of the general human rights circumstance in North Korea has been known through the declarations of North Korean defectors to China and South Korea since the mid-1990s. As a result of Pyongyang has not permitted human rights NGOs or global associations to visit North Korea and assemble data on different human rights issues, a great deal of contention encompasses the definite condition of human rights in North Korea. Also, enlightened the North Korean human rights circumstances are significant with the end goal of giving better alternatives to the international community, individual states and NGOs for solving North Korean nuclear issues and improving human rights in North Korea (Jin Oh (2008)). While human rights infringement by the regime is extreme and far-reaching, the North Korean regime has stayed stable even after the breakdown of socialism. The regime uses both physical force and psychological propaganda to control and alienate the general population. The fundamental strategy that supports the regime to stay in power is the complete disconnection of the general population from the outside world and their repeated brainwashing by the Juche ideology. North Koreans come to realize that they have been hoodwinked by the regime simply subsequent to coming to China or catching wind of the outside world. One of North Korea's contentions against the international criticism of the North Korean human rights circumstance depends on cultural relativism: for example, the standard of human rights in a nation ought not to be decided by comparison with that of Western democracy. Pyongyang demands: "No individuals on the planet completely appreciate genuine human rights as the Korean individuals do under the man-centered communist arrangement of Korean style, where the well-known masses have turned out to be real masters of the nation and everything in the general public is made to serve them." Pyongyang likewise guarantees that it would solidify the Korean-style, man-centered system of guaranteeing communist human rights "under the pennant of the Juche thought. North Koreans are purportedly "appreciating authentic rights and freedom under the man-centered communist system where the entire nation forms a major amicable family and the leader, the Party, and the majority are single-heartedly joined together." (Korea Central Agency, April 20, 2004). Pyongyang sees human rights through their own eyes and denies their all universality. The quirk of the North Korean idea of human rights is that it is in light of the "principle of collectivism." (Article 63 of the Constitution). The North Korean Constitution stipulates that the rights and the obligations of the citizens depend on the standard of "one for all and all for one (Article 63 of the Constitution). They would prefer not to perceive the truth of their human rights circumstance, and they see things just through the Juche philosophy. North Korean individuals and their general public have never been exposed to the international community and democracy. Consequently, the efficient strategies to improve the North Korean human rights circumstance, ought to be to liberate North Koreans from the Juche belief system, to diminish the degree of segregation from the outside world, and to provide North Koreans data on democracy and universal value and convictions, while not deliberately ignoring on the prompt human

rights infringement in the nation. The seclusion of North Korea is just fortifying the regime in light of the fact that, even in outrageous hardship, the North Korean people don't have the foggiest idea of how to oppose the regime, and the regime will utilize foreign isolation or sanctions as a pretext to control over the general population(Jin Oh (2008).

8. UNITED STATES LEGISLATIVE AUTHORITY

8.1.1 The Trading with the Enemy Act (TWEA)

Trading with the Enemy Act (TWEA) of 1917 is a United States law that restricts trade with countries hostile to the nation. The TWEA authorized the use of economic sanctions against foreign nations, citizens, and nationals of foreign countries, or other persons aiding a foreign country. The law gives the President the power to oversee or restrict any trade between the U.S. and its enemies in times of war.

Furthermore, Unlike U.N. based multilateral sanctions, unilateral sanctions have their bases in domestic enactments. Section 5(b) of the TWEA delegates to the President the power of economic sanctions during the times of announced war. (0 U.S.C. app. Section 5(b).The TWEA is the essential source that the President could use to sanction states declared adversaries of the U.S. After the North Korean intrusion into South Korea, the U.S. imposed financial and commercial sanctions against the People's Republic of China and, North Korea under the TWEA. The U.S. kept up economic sanctions against North Korea under the Foreign Assets Control Regulations declared under TWEA section(5) in 1950 until 2000 (Malloy, 2001)

8.1.2 The U.N. Participation Act (UNPA)

UNPA isn't an act that approves unilateral sanctions. However, a U.S. domestic enactment for applying domestically the U.N. approved economic sanctions. Section 5 of the UNPA gives authority to the President to apply economic sanctions against a target nation under a required U.N. Security Council choice. (22 U.S.C. Section 5).The UNPA is a lawful premise to implement multilateral sanctions in the U.S. under Article 41 of the Charter. After the Cold War, the U.S. implements under the UNPA Security Council resolutions in light of the Iraqi attack of Kuwait in 1990(Ex. order No. 12, 724, 55) Jin Oh (2008).

8.1.3 International Emergency Economic Powers Act,

The International Emergency Economic Powers Act, which we call IEEPA, is an incredibly powerful authority that allows the U.S president to declare a national emergency concerning any unusual and extraordinary threat to the national security foreign policy or economy of the United States that has its source, in substantial part, from overseas. So as long as the president declares that there is such a threat and identifies that threat, he can then invoke IEEPA and can take, really, a staggering range of economic actions and impose severe economic penalties on people or entities or countries that are designated as being associated in some way with that threat. Over the years various presidents have applied IEEPA against North Korea in the form of Executive Order 13810; Imposing Additional Sanctions with Respect to North Korea, EO 13722; Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea, EO 13570; Prohibiting Certain Transactions Concerning North Korea.EO 13382; Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters (US department of states,2009/17)

9. JUSTIFICATION OR OTHERWISE OF LEGITIMACY OF U.S UNILATERAL SANCTIONS

The legality of advancing human rights and halting mass destruction program, arms trade, terrorism, in North Korea using unilateral sanctions relies upon the legitimacy of these sanctions under international law. As such, unilateral sanctions ought to be utilized with incredible consideration, after close investigation, and only as a last resort just if all else fails. Unilateral sanctions have regularly been condemned for coming into strife with various international law principles.

Critics of unilateral sanctions argue that such infringe the customary international law guideline of state sovereignty, which is enshrined in the United Nations Charter.¹⁸¹ Likewise, free trade advocates contend that general human rights sanctions against a member country run counter to the General Agreement on Tariffs and Trade (GATT)/WTO agreement. Also, activists inside the human rights community question the advancement of civil and political rights to the detriment of economic, social, and cultural rights (Nyun,2008).

The essential question emerging from the interplay between unilateral sanctions and international law is this: Do the unilateral sanctions contravene the state sovereignty principle shielded under the United Nations Charter and customary international law?

The state sovereignty standard would one say is one of nonintervention, which perceives the privilege of states to be free from foreign impedance in issues of absolutely domestic concern.¹⁸⁴ In North Korea sanctions setting, and the critical question is: Do the U.S. comprehensive unilateral sanctions, by endeavoring to coerce human right change and relinquished in North Korea, establish unlawful intervention into North Korea domestic issues? The appropriate response is most probably "no." Critics of the U.S. sanctions against North Korea argue that meddling with the North Korea economy to achieve noteworthy behavioral change inside the administration adds up to unlawful intervention into North Koreans domestic politics.¹⁸⁵ In order to protect the sovereignty of a state, customary international law has in the past prohibited a coercive or totalitarian intervention one state in the internal affairs of another state. However, owing to the growing interconnection of economies among nations, non-forcible economies compulsion accomplishes indistinguishable goals as forcible or authoritarian interventions and ultimately led to a powerful state that determines the internal policies of a fragile state. Therefore, the economic pressure that the sending country applies to trigger policy and behavioral changes within the target country and its government adds up intervention whether or not to use force to intervene.

Proponents of the North Korea sanctions, any other way, could raise various contentions. To begin with, the U.S. unilateral sanctions against North Korea are in line with the United Nations Charter.¹⁸⁸ It isn't contested that the United Nations Charter perceives the principle of state sovereignty; notwithstanding, Article 2(7) is constrained to activities by the United Nations—not by its member states. Similarly, Article 2(4) prohibits unilateral "threat or use of force" rather than unilaterally burden of non-coercive economic sanctions. ¹⁹⁰ Besides, the "UN Charter" empowers the Security Council to enforce multilateral economic sanctions to protect the peace and security international framework. Secondly, customary international law does not prohibit the United States from using economic coercion to promote North Korea's human rights. The long history of economic statecraft in international relations, coupled with the fact that the United States often uses unilateral sanctions for various purposes, shows that there is no customary international law norm against the use of unilateral sanctions. Similarly manner, customary international law does not put any confinements on a state's entitlement to trade with another state.¹⁹⁴ Furthermore, the customary international law of noninterference is not practicable, because compulsion misses the mark on the coercive or tyrannical standard. At last, the protection of human rights is an issue of international concern, not restricted to domestic circumspection. The United Nations Charter makes a lawful obligation on member states not to perpetrate human rights infringement(Nyun,2008)

10. CONCLUSION

Inferring from the study, it unquestionable the fact that unilateral economic sanctions have become a unique international foreign policy tool in the contemporary time. It is mostly used by powerful nations against the lesser countries and from decades to date, the US is the major user in the world. It can be recognized that unilateral economic sanctions are not just imposed on a country in a vacuum, but most often they are used to deter leaders from acting wrongful. Also, they are used to prevent conflicts and avert countries that posed a perilous threat to the peace and security of the world-wide.

Conversely, North Korea is not exceptional to this threat posed to the world. The unilateral sanctions imposed on them by the United States and its allies are as a result of its act of aggression, and violation of civil and human

rights. Lastly, its involvement in the development of weapons of mass destruction threatens the stability of Asia and the world as a whole.

However, controversy surrendering the legal authority of United States unilateral sanction against North Korea and other countries is questioned by activists, advocates, and hot debates in academia. Proponents and critics are in crucial debate on US legal authority and other users for using unilateral sanctions. While others believe it conforms with the United Nations Charter, others also hold the opposite opinion which doesn't conform to UN Charter in International law.

From the writers perspective, unilateral economic sanctions have been the best alternative to any military intervention that the outcome could be catastrophic. Further, it deters evil leaders from their implementing their evil plans against its citizenry and the world. Nevertheless, the conclusion that can be drawn is that the argument of the legitimacy of unilateral sanctions used by the US and other countries seem to have an unceasing end and it continues to be debated among critics and proponent. In our best and realistic opinion, we think the legality of US unilateral economic sanctions does not go against the UN Charter.

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