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THE PENIN

## North Korea Sanctions and the Fungibility Problem

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*'It is prohibited to attack, destroy, remove, or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to*

The 2017 UN sanctions imposed a complete ban on natural gas exports to North Korea and severe restrictions on oil exports, especially on the export of refined petroleum products, including diesel and gasoline. The 500,000 barrels *annual* limit to refined petroleum product exports, even if combined with maximal theoretical output from North Korea's decrepit oil refineries, is more or less equivalent to South Korean consumption of these products in just *one day*.

Energy export bans were accompanied by an expansive interpretation of what could be interpreted as dual use goods. In addition, about 90 per cent of North Korea's exports were banned, thus limiting capacity to import legally permitted goods.

North Korea has no indigenous natural gas and oil resources. As everywhere in the world, these commodities provide non-substitutable, essential components of agricultural production. Broader sanctions prevent the export to North Korea of agricultural equipment and goods not explicitly banned by the 2017 sanctions. Entirely foreseeably, there were large falls in agricultural production in 2018. The impact of sanctions was thus to increase the threat of hunger to those least able to look after themselves, including the sick, the elderly, the children, the poorly connected and the poorest families, all of whom disproportionately rely on local food production.

The negative impact of sanctions on the civilian economy is often rationalised by the 'fungibility' thesis. This is the idea that broad sanctions are necessary because a variety of imported goods could be diverted for military use i.e., they are 'fungible'. This is a superficially plausible idea, especially at the highest level of generality into which it often devolves, which is that all imports make life easier for the government so all import restrictions on any commodity are justified.

One problem with the argument is factual. Natural gas and refined petroleum products, the commodities on which the tightest restrictions fall are, it turns out, not very fungible at all.

The main problem of the fungibility thesis is not its straightforwardly refutable argumentation, but that it justifies actions that have been deemed so ethically abhorrent by every state in the world, all of which have signed the Geneva Conventions, that if these

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practices were to occur in war time, they would be automatically considered crimes against humanity. Once the generalities are stripped away, the fungibility thesis is exposed as a rather threadbare cover for the advocacy of a deeply shameful policy, especially for the democratic states who advertise foreign policy as based on humanitarian and rights-based principles.

### *A Faulty Premise*

In its technical or economic sense, fungibility means that a good or asset can be readily interchanged for another. Money, because of its role as a medium of exchange, is the item most often cited to explain fungibility. A dollar earned as tax revenue can just as easily be spent to improve healthcare as to support a weapons program.

The refined petroleum (oil) products restricted by the 2017 UN sanctions, however, are not in fact fungible in the technical sense, as these commodities can only be used for specific purposes. It is of course true that oil imports could be used for civilian and military activities, but it is also true that they cannot readily be used for every military purpose. Natural gas and diesel are not directly interchangeable with, for example, rocket fuel.

On the other hand, oil products do not possess 'reverse' fungibility. Domestic energy resources like coal cannot substitute for oil products in the production of fertiliser, pesticide and agricultural chemicals nor as fuel for agricultural and irrigation equipment and the transport of fertiliser, pesticides, equipment, seeds, crops, food and labour.

The core rationale of the fungibility thesis is that oil sanctions are designed to handicap the military. Best estimates of sectoral energy consumption in 2010 indicate that of the 31 per cent of refined oil products that constituted the military share of demand, about a third went to the 2.5-ton trucks that can be seen everywhere in the country and which provide significant carrying capacity for the civilian as well as the military economy. The 2017 sanctions no doubt reduced the operational capacity of military trucks but in so doing they also handicapped agricultural and food production and distribution.

The argument is also made that the 2017 sanctions provided the only option to ensure that oil resources were denied to the North Korean military, but this is not accurate. Prior to the 2017 sanctions, military related oil exports to the DPRK, including jet fuel, were already banned. A combination of previous UN sanctions, the 42 country Wassenaar Arrangement that included both the United States and the Russian Federation and 2002

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Chinese bilateral export controls already prohibited military grade fuel exports to the DPRK. If the purpose is to block oil supplies to the military, there are many alternative options.

### *Justifying the Unjustifiable*

North Korea's agricultural sector recovered after the famine years that had killed around half a million people to the extent that by 2017 the nutritional status of North Korean children was better on average than that of children living in the poorer countries of Asia such as Laos or Nepal and some richer countries, like India.

Since the catastrophic reduction in agricultural production in 2018, food production has not recovered. In 2019 and 2020, our best information suggests that the population was saved from humanitarian crisis by food and fuel aid from China and Russia. Because of COVID induced limits to access, we have little knowledge of the food security status of North Korean families in 2021, but stories, which cannot be verified, are emerging of the re-occurrence of the threat of starvation in some parts of the country.

The United Nations resolutions reiterate that sanctions are not intended to harm civilians and that if there is any negative impact on the population, this is entirely the fault of the North Korean government because it refuses to denuclearise. It is absolutely correct that the North Korean government has primary responsibility for the welfare of its population. It is also correct that the government is in breach of international law. Neither of these propositions justify what in war time constitutes a crime against humanity.

The 1977 Additional Protocol of the Geneva Convention specifically forbids actions that destroy agricultural production '*whatever the motive*'. In peace time, we have no analogous legislation, partly because the framers of the Conventions could not have envisaged the highly interdependent world of today in which the ability to starve populations comes about through the denial of essential imports, not only through bombing rice fields and dams.

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## Return to the Peninsula