



GUIDELINES FOR THE REHABILITATION AND RELEASE OF VESSELS IMPOUNDED OR SEIZED

United Nations Security Council Sanctions: North Korea

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26 April 2019



Guidelines for the rehabilitation and release of vessels impounded or seized by Member States in conformance with United Nations Security Council sanctions against North Korea.

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Introduction

Under Chapter V, article 25 of the United Nations Charter all signatories (Members) “agree to accept and carry out the decisions of the United Nations Security Council” in accordance with the Charter. This means that all Member States are obliged to implement the measures promulgated by Security Council resolutions. The Security Council is empowered to call upon Member States to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression. The use of mandatory sanctions is intended to apply pressure on a State or entity to comply with the objectives set by the Security Council without resorting to the use of force. Sanctions thus offer the Security Council an important instrument to enforce its decisions. The universal character of the United Nations makes it an especially appropriate body to establish and monitor such measures. The Council has resorted to mandatory sanctions on North Korea as an enforcement tool when peace has been threatened and diplomatic efforts have failed.¹

1718 Committee

All committees are comprised of the fifteen members of the Security Council. Such committees are chaired or co-chaired by designated members of the Council who are announced on an annual basis by the President of the Security Council. To monitor the sanctions measures relating to the Democratic People’s Republic of Korea (DPRK) – the formal name of North Korea, a committee was established pursuant to resolution 1718

¹ Extracts from the United Nations website available at <https://www.un.org/securitycouncil/content/functions-and-powers>

(2006) on 14 October 2006.² It is known as the 1718 Committee and is supported by technical group of eight experts drawn from eight different countries, established pursuant to resolution 1874 (2009), known as the 1874 Panel of Experts (POE). The Committee Secretary can be contacted at sc-1718-committee@un.org and the POE can be contacted via email at: dpa-poe1874@un.org.³

United Nations Security Council maritime sanctions measures: North Korea

Vessels seized or impounded. Paragraph 12 of resolution 2270 (2016) affirmed that “economic resources” (as referred to in paragraph 8 (d) of resolution 1718 (2006)) includes assets which potentially may be used to obtain funds, goods, or services, such as vessels (including maritime vessels). Vessels impounded or seized by Member States can technically be considered to be a case of “asset freeze” in this regard.⁴

According to paragraph 9 of resolution 2397 (2017) Member States must seize, inspect, and freeze (impound) any vessel in their ports, and may seize, inspect, and freeze (impound) any vessel subject to its jurisdiction in its territorial waters, if that Member State has reasonable grounds to believe that the vessel was involved in activities, or the transport of items, prohibited by the resolutions. It also encourages Member States to consult with the flag States of relevant vessels once they are seized, inspected, and frozen (impounded). Six months after such vessels that have been frozen (impounded), the Committee may then decide upon request of a flag State, to release the vessel if ***adequate arrangements have been made to prevent the vessel from contributing to future violations*** of the resolutions. However, once a flag State de-registers the vessel, it no longer resides under the Member State’s jurisdiction, and since it would be a violation to re-register any vessel de-registered by another Member State, it is thus unlikely to expect the flag State will submit a request for a seized or impounded vessel to be released. See Annex 20 of the 1874 Panel of Experts’

² See the Committee website at <https://www.un.org/securitycouncil/sanctions/1718>.

³ See more on the POE at: https://www.un.org/securitycouncil/sanctions/1718/panel_experts/work_mandate

⁴ See <https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/assets-freeze>

(DPRK) report S/2019/171 of 5 March 2019 concerning the Panel's proposal for an amended delisting procedure for vessels seized or impounded to be released.

Companies. Paragraph 16 of resolution 2270 (2016) notes that the DPRK frequently uses front companies, shell companies, joint ventures and complex, opaque ownership structures for the purpose of violating measures imposed in relevant Security Council resolutions, and, in this regard, directs the Committee, with the support of the Panel, to identify individuals and entities engaging in such practices. Identification of the vessel's true or 'beneficial owner' is therefore crucial to the rehabilitation of vessels found to be impounded under UN resolution 2397 (2017) paragraph 9 for conducting ship-to-ship transfer activities prohibited under UN resolution 2375 (2017) paragraph 11.

De-registration. Paragraph 12 of resolution 2397 (2017) reaffirms paragraph 24 of resolution 2321 (2016) that each Member State shall de-register any vessel it has reasonable grounds to believe was involved in activities, or the transport of items, prohibited by resolutions.

Insurance. Paragraph 11 of resolution 2397 (2017) reaffirms paragraph 22 of resolution 2321 (2016) where each Member State shall prohibit its nationals, persons subject to its jurisdiction and entities incorporated in its territory or subject to its jurisdiction from providing [insurance or re-insurance services](#) to vessels it has reasonable grounds to believe were involved in activities, or the transport of items, prohibited by the resolutions.

AIS operation. Paragraph 13 of resolution 2397 (2017) expresses concern that DPRK-flagged, controlled, chartered, or operated vessels intentionally disregard requirements to operate their Automatic Identification Systems (AIS) to evade UN sanctions monitoring by turning off such systems to mask their full movement history and Member States are called upon to exercise enhanced vigilance regarding such vessels conducting activities prohibited by resolutions.



Guidelines

These guidelines have been developed by Neil Watts and are intended to assist vessel owners implement sanctions measures as they relate to North Korea (DPRK) and outline the steps necessary to rehabilitate their vessels, in order to make adequate representation to the 1718 Committee for consideration, on a case-by-case, consensus basis. If appropriate, with the consent of the 1718 Committee, the next phase will be approaching the relevant Member State that has affected impounding or seizure of the vessel (not designated) in compliance with the United Nations Security Council resolutions. The procedure outlined below provides guidelines for the preparation by vessel owners to obtain release of such vessels and their resumption of unrestricted operations.

1. Proof of Ownership

The process to verify identification of the vessel's true or 'beneficial owner' includes but is not limited to:

- 1.1. *Full identification* of the owner – establish credibility/bona fides of the owner, to verify eligibility of the Member State, to apply to the 1718 Committee on behalf of the owner by means of*:
 - 1.1.1. National Identification Document or Passport
 - 1.1.2. Proof of residence
 - 1.1.3. Proof of legitimate Company physical address and contact details
- 1.2. *Proof of purchase* of the vessel by the owner mentioned in line 1 above.
- 1.3. *Proof of vessel registration* with the last flag registry
- 1.4. *Proof of payment* for the vessel from an account of the owner, mortgagee or lender

(*Notarised copies)

2. Rehabilitation for activities in violation of the resolutions

The measures taken to prevent the vessel from contributing to future violations of the resolutions by vessel's owner, that include but are not limited to the following actions:

- 2.1. **Company:** sanctions compliance training undergone by the **owner and company** officials.
- 2.1.1. *Company Regulations* show implementation of UN sanctions measures.
 - 2.1.2. *Crew contracts* show implementation of UN sanctions measures.
 - 2.1.3. *The Sanctions Handbook* kept on site.
 - 2.1.4. Appointed *ISM manager* for the vessel tasked for *confirming compliance* regarding UN sanctions measures.
 - 2.1.5. Appointed *Class Society* for the vessel to assist by *confirming compliance* regarding UN sanctions measures, particularly AIS operation and maintenance (as per IMO regulations).
 - 2.1.6. *Certificate of Sanctions Compliance* for the company.
- 2.2. **Vessel:** sanctions compliance training undergone by the captain and crew of the vessel
- 2.2.1. *Company instructions* to the Captain showing implementation of UN sanctions measures.
 - 2.2.2. The *Automatic Identification System* (AIS) must remain in operation at all times within the jurisdiction of the Tokyo MOU. Instructions for its status must be included in the Captain's contract and the Owner's instructions to the Captain. The owner is to monitor the vessel's AIS transmissions and query periods where it is off, cross-checking position data with LRIT, and hourly reports of the vessel's position and movement data in areas where AIS data is not available.
 - 2.2.3. *Daily reports* to include mention adherence to compliance through due diligence checks of receiving vessels prior to ship-to-ship transfers.
 - 2.2.4. *Captains Standing Orders* showing implementation of sanctions compliance for all officers, including AIS operation.
 - 2.2.5. *The Sanctions Handbook* kept on onboard, endorsed by the owner and acknowledged by the captain and officers.
 - 2.2.6. *Certificate of Sanctions Compliance* for the vessel.

3. Application to the 1718 Committee

The 1718 Committee makes case-by-case determinations for exemption requests. Such requests must be made to the Secretary of the Committee, at email: sc-1718-committee@un.org. A letter to make representation to the 1718 Committee in respect of rehabilitation and release of the vessel must be formulated in respect of:

- 3.1. Proof of ownership.
- 3.2. Rehabilitation measures regarding future compliance.
- 3.3. Contrition – an explanation of economic losses incurred by the owner to demonstrate “sufficient punitive hardship” on the owner for the period that the vessel was impounded.
- 3.4. Specific requests for the following:
 - 3.4.1. Exemption from de-registration restriction in order to re-register the vessel.
 - 3.4.2. Exemption from denial of classification services.
 - 3.4.3. Exemption from denial of bunker services (since it could be considered having cargo onboard, the transfer of which to the DPRK would be prohibited).
 - 3.4.4. Publication/listing on the 1718 Committee website as a rehabilitated vessel for which all restrictions imposed or called for by the measures under the resolutions no longer apply.

4. Submission to the Member State formally requesting release

Once the Committee has approved the request for release and it is reflected so on the Committee website:

- 4.1. Submit a letter to the Member State requesting permission for the vessel to bunker and then depart without prejudice.
- 4.2. Request Class inspections if certificates have expired.
- 4.3. Re-register the vessel.
- 4.4. Vessel departs and resumes operations unrestricted.



Enclosure: Extract from the Panel of Experts’ (DPRK) report S/2019/171 of 5 March 2019

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Annex 20: The Panel's proposal for an amended delisting procedure for vessels

Paragraph 9 of resolution 2397 (2017) encourages Member States to consult with the flag States of relevant vessels once they are seized, inspected, and frozen (impounded). Six months after such vessels were frozen (impounded), the Committee may decide upon request of a flag State to release the vessel if adequate arrangements have been made to prevent the vessel from contributing to future violations of the resolutions. However, once the vessel has been de-registered by a flag State in compliance with the resolutions (and therefore no longer under its jurisdiction), and since it would be a violation for flag States to re-register any such vessel that has been de-registered by another Member State, it is unlikely that a flag State will submit a request to the Committee to re-register the vessel and then submit a request for a seized or impounded vessel to be released.

To resolve this conundrum and to lessen the burden on Member States seizing or impounding a vessel in compliance with the resolutions, the Panel recommends that the Committee introduce a procedure whereby:

- 1) After a six-month period the vessel owner⁵ may be permitted to make representation to the Committee for approval to have the vessel de-listed and released, provided that:
 - a) proof of ownership of the vessel is provided; and
 - b) adequate arrangements have been made to prevent the vessel from contributing to future violations of the resolutions.
- 2) If approved, the vessel is then de-listed from the Committee's list of designated vessels and the re-registration of the vessel approved.⁶
- 3) Once a period of six months has elapsed and no request for de-listing has been tendered within 31 days from that date, the Member State may approach the Committee for approval to submit the vessel for public auction to defray costs incurred.

In addition, this procedure should be published on the Committee's website under "Procedures for delisting" at <https://www.un.org/sc/suborg/en/sanctions/1718/materials>.

⁵ A vessel's beneficial owner is in the best position to ensure that adequate arrangements have been made to prevent the vessel from contributing to future violations of the resolutions since they are directly impacted by loss of trade.

⁶ The Committee's website should not remove the vessel's name, but rather indicate the date that the vessel has been de-listed in order to provide verification for flag States and companies providing vessel services.