

8 Implementation of sanctions

Japan

Machiko Kanetake

Introduction

Economic sanctions are one apparatus available for States and international organizations to coercively steer other countries and nonstate actors in certain policy directions, yet not all States with economic and political leverage consider economic sanctions their own unique means to pursue political agendas. The US government notably situates economic sanctions as its own strategic foreign policy tools, through which it exerts its political and economic leverage.¹ Economic sanctions also constitute a proactive element of the EU's common and foreign security policy.² By contrast, at least until the beginning of the twenty-first century, the Japanese government had not fully characterized economic sanctions as part of its autonomous policy options. Instead, economic sanctions had been applied within the framework of the UN or the initiatives of like-minded States as part of Japan's "international cooperation."

Nevertheless, the traditionally modest assumption that the Japanese government had about economic sanctions has undergone a proactive change. This has happened in response to a series of ballistic missile tests by North Korea since the mid-1990s, which has helped shift the domestic political climate in favor of the more proactive use of economic sanctions in order to safeguard the country's own security. Such a proactive turn came on July 5, 2006, when the Japanese government applied its first unilateral sanctions outside the framework of international cooperation that had traditionally confined the scope of such coercive measures.³

Against this background, this chapter aims to provide an overview of Japanese approaches to economic sanctions from both legal and political standpoints. The chapter begins by providing the political background that has defined the Japanese approach to economic sanctions (Section I). The chapter then goes on to examine the legal and administrative frameworks for applying economic sanctions (Section II). This will be followed by specific analyses of how the Japanese government instigated economic sanctions against North Korea outside the UN Security Council's enforcement measures (Section III-1). The chapter also gives an account of the piece of legislation that Japan adopted in 2014 to give effect to the UN's counterterrorism sanctions. Internationally, or at least within the EU, the implementation of the UN's counterterrorism sanctions gave rise to the concern

that the designation of specific targets disregarded norms of due process.⁴ In the Japanese legal and political discourse, however, the issue of due process attracted little attention (Section III-2). By accounting for economic sanctions through the lens of the Japanese political and legal contexts, this chapter highlights how international political pressures necessitated and justified greater changes in domestic legal practices.

I. Development of Japan's cooperative and proactive approaches to sanctions

As noted in the introduction, the Japanese government's approach to economic sanctions has traditionally been characterized by the spirit of international cooperation. Until the beginning of the twenty-first century, economic sanctions had not been considered part of the government's autonomous foreign policy instruments. In principle, economic sanctions have been adopted to implement the sanctions regimes adopted by the UN Security Council. While the government has applied certain restrictive measures outside the UN's framework, such measures have followed the international initiatives taken by other major States. For instance, during the Gulf War in 1991, the Japanese government employed economic sanctions against Iraq before the UN Security Council adopted Resolution 661 and imposed nonmilitary enforcement measures under Chapter VII of the UN Charter,⁵ yet Japan's non-UN measures against Iraq at that time still fell under the framework of international cooperation, inasmuch as they were in line with the initiatives of the US government and several other like-minded States.⁶

In the spirit of international cooperation, the Japanese government was still reluctant to impose autonomous economic sanctions even in the wake of a series of provocations by North Korea from 1993–1994.⁷ On March 12, 1993, North Korea declared its intention to withdraw from the Nuclear Non-Proliferation Treaty.⁸ On May 29 and 30, the country launched a Nodong-1, a medium-range ballistic missile, into the Sea of Japan. Despite the calls of the International Atomic Energy Agency (IAEA) to accept comprehensive safeguards according to its Safeguard Agreement,⁹ North Korea took steps to defuel a research reactor in May 1994.¹⁰ Nevertheless, this series of provocations did not lead to autonomous economic sanctions by Japan outside the framework of the UN and like-minded States.

The Japanese government's alignment with international initiatives is reflected in the country's domestic legal framework on economic sanctions. Japan does not have general enabling legislation equivalent to the United Nations Act 1946 in the UK or the United Nations Participation Act 1945 in the US to implement the UN's economic sanctions regimes.¹¹ Instead, Japan implements them on a patchwork basis by applying existing pieces of legislation, which have a much wider use than in the context of economic sanctions. The main legal basis to give effect to economic sanctions is the Foreign Exchange and Foreign Trade Act ("FEFT Act").¹² The act was enacted in 1949 for the sake of ensuring equilibrium in the international balance of trade and currency stability by controlling foreign exchange, foreign trade, and other foreign transactions.¹³

Initially, the FEFT Act was designed for the pursuit of economic objectives, as opposed to the maintenance of international peace and security. The problem with legislative objectives of an economic nature became apparent in the *COCOM* case that was decided by the Tokyo District Court in 1969.¹⁴ In this case, the plaintiff was a group of manufacturers called *Nikkoten* that applied for governmental approval of the export of certain goods to the People's Republic of China for display at the Beijing-Shanghai Japanese Industrial Exhibition. The Minister of International Trade and Industry (MITI) at the time declined to approve the request, inasmuch as the goods in question fell under the controlled materials of the COCOM (Coordinating Committee for Multilateral Export Control), which was the Western Bloc's export control regime during the Cold War. Under the COCOM, the scope of controlled items was formulated in the context of a competition of military capability between the Western and Soviet Union blocs as a set of strategic items.¹⁵ One of the questions raised by the plaintiff was whether the minister's decision fell within the purview of the Export Trade Control Order, an administrative instrument enacted according to the FEFT Act. Under the Order, the Minister could deny an export license if it was found necessary for ensuring "the maintenance of equilibrium in the international balance of trade and the sound development of foreign trade and national economy."¹⁶ In the 1969 decision, the Tokyo District Court observed that the denial of approval was not for the sake of economic rationales as envisaged in the Order, but instead in the pursuit of international political objectives. Accordingly, the Tokyo District Court found that the Minister had acted illegally, going beyond the bounds of his discretionary power.

The decision of the Tokyo District Court in 1969 did not immediately lead to the fundamental modification of the FEFT Act. It was only in 1979 that the Japanese Diet amended the act to better align its objectives with those of economic sanctions. The 1979 amendment, which became effective in 1980, allowed the government to restrict capital and service transactions if they "prevent the sincere fulfilment of treaties and other international agreements Japan has concluded" or "impair international peace and security."¹⁷ At least with respect to capital and service transactions, this amendment formally acknowledged noneconomic objectives as grounds for imposing licensing requirements. In this regard, the amendment has altered the basic characteristics of the FEFT Act.¹⁸ At the same time, the 1979 amendment did not go as far as adding noneconomic objectives with regard to the export restriction of goods in general.¹⁹ The overall aim of the FEFT Act, as articulated in Article 1, also remained confined to that of an economic nature.²⁰

A further legislative change came in 1987, after substantial political backlash against Toshiba Machine Co. involving the company's breach of COCOM rules. It was revealed in 1987 that the firm had exported parts and computer programs for propeller milling machines to the Soviet Union without obtaining the approval of the MITI. The controversy stemmed from the fact that the exported items could have been used to cut submarines' propellers and make their operation quieter and more difficult to detect. Amid the Cold War, the revelation triggered an outcry

in the US. *The New York Times* criticized the “avarice” of Toshiba and the Japanese government’s “lackadaisical supervision” of militarily sensitive exports.²¹ The incident eventually led the Tokyo District Court to impose a fine on Toshiba Machine Co. and order the imprisonment of its two senior staff.²² In response to political pressure, the Japanese government amended the FEFT Act in 1987 in order to allow “the maintenance of international peace and security” as one of the bases for restricting the export of goods,²³ and it introduced a more stringent penalty for noncompliance.²⁴ Still, however, the overall economic purpose of the FEFT Act, as provided in Article 1, remained unchanged. This was presumably because of the assumption that restrictions on the freedom of foreign exchange should be kept to a minimum. Namely, to alter Article 1 and expand the act’s overall aim would have invited criticism that the government was overly restricting such freedom in the name of international peace and security.

In 2004, Article 1 of the FEFT Act was amended to embrace the element of “peace and security” as part of its overall legislative purpose. The amendment formally added “the maintenance of peace and security in Japan and in the international community” to Article 1.²⁵ The 2004 amendment marked an important turning point, not only because of the changes in the overall economic narrative but also due to the novel reference to peace and security “in Japan.” Namely, the amendment allowed the government to restrict foreign payment, capital, and service transactions, outward direct investment, or the export of goods when such restriction would be particularly necessary for the maintenance of national – not just international – peace and security.²⁶ Such an extension gained political support, especially since the incident in December 2001, involving the exchange of fire between Japanese Coast Guard vessels and an unidentified ship that turned out to be a North Korean spy vessel.²⁷ On July 5, 2006, the Japanese government instigated its unilateral sanctions against North Korea, as will be described further in Section III. This marked the first proactive sanctions that the Japanese government had applied outside the UN’s sanctions measures and beyond the framework of international cooperation with like-minded States.

II. Legal and administrative frameworks

1. Statutory and executive orders

(1) Foreign exchange act

As overviewed in the previous section, the FEFT Act has been the basic vehicle through which the Japanese government has applied not only sanctions adopted by the UN Security Council or like-minded States but also those autonomously initiated by the Japanese government. There are several key provisions of the Foreign Exchange Act relevant to the application of economic sanctions, including the implementation of UN sanctions regimes.

To begin with, Article 16(1) of the FEFT Act allows the government to restrict payments to a foreign State or nonresident.²⁸ Article 16(1) is implemented

together with Article 6(1) of the Foreign Exchange Order (“FE Order”) issued by the Cabinet.²⁹ Under these provisions, the Minister of Finance or the Minister of Economy, Trade, and Industry may impose an obligation on a resident or nonresident to obtain permission to engage in making a designated payment to a foreign State or to a nonresident.³⁰ For instance, following the establishment of the UN’s sanctions on Libya in February 2011 under Resolution 1970,³¹ the Ministry of Foreign Affairs (MOFA) published a list of individuals designated as targets of asset freeze measures.³² The MOFA’s notice was accompanied by a public notice from the Ministry of Economy, Trade, and Industry (METI, formerly MITI) that required permission for making payments involving the listed individuals.³³

On top of the payment restriction, Article 21(1) of the FEFT Act provides the basis for restricting capital transactions within the framework of economic sanctions.³⁴ Together with Article 11(1) of the FE Order, Article 21(1) of the FEFT allows the Minister of Finance to implement international or Japanese autonomous sanctions by imposing an obligation on a resident or nonresident to obtain permission to engage in designated capital transactions.³⁵ In addition, with regard to “specified capital transactions,” the Minister of Economy, Trade, and Industry is in charge of imposing a requirement to obtain permission according to Article 24(1) of the FEFT Act and Article 15 of the FE Order.³⁶ Such capital transactions are those that directly accompany the import or export of goods or that pertain to the transfer of mining or industrial property rights.³⁷ For instance, on November 7, 2014, the UN Security Council’s Sanctions Committee on Yemen designated three individuals as targets of asset freeze and travel ban measures under UN Security Council Resolution 2140.³⁸ After the adoption of the resolution, the MOFA of Japan published, on December 17, 2014, the list of the designated individuals,³⁹ and, pursuant to the METI’s public notice released on the same day, it became mandatory to seek permission from the Minister of Economy, Trade, and Industry for specified capital transactions pertaining to the designated individuals.⁴⁰

Likewise, “service transactions” can also be subject to restrictions in giving effect to UN sanctions, those instigated by like-minded States, and Japan’s autonomous sanctions. For instance, in October 2006, the UN Security Council instigated economic sanctions against North Korea.⁴¹ Under paragraph 8(c) of Resolution 1718, Member States were required to prevent any transfers, to or from North Korea, of technical training, advice, services, or assistance regarding the manufacture or use of military items.⁴² The Japanese government imposed the requirement to obtain permission with regard to such service transactions according to Article 25(6) of the FEFT Act and Article 18(3) of the FE Order.⁴³

Finally, if sanctions regimes aim to restrain the export and import of goods in general, Article 48 of the FEFT Act serves as a basis for restricting exports, while Article 52 provides a ground for regulating imports.⁴⁴ Article 48(1) of the act provides the legal basis for regularly applied export control over military and dual-use items as listed in the Export Trade Control Order.⁴⁵ In addition, Article 48(3) of the act can cover a wider range of goods subject to export control, which allows the government to give effect to export restrictions under UN sanctions, those initiated by like-minded States, and Japan’s autonomous economic sanctions.⁴⁶

Import restrictions are given effect by the Import Trade Control Order⁴⁷ and the METI public notices issued in accordance with the Control Order.

(2) *Other legal frameworks*

The FEFT Act, however, does not serve as an adequate legal basis for certain circumstances envisaged by UN sanctions.⁴⁸ For instance, in the early 1990s, the limitations of the FEFT Act became evident in the context of implementing the Yugoslavia sanctions regime under UN Security Council Resolution 820. The resolution obliged all States to “impound all vessels, freight vehicles, rolling stock, and aircraft in their territories.”⁴⁹ As the FEFT Act is meant to regulate the cross-border transfer of capital and goods, the act did not serve as a sufficient legal basis for confiscating these properties in Japan. In the absence of appropriate legal bases, the Japanese government simply prevented the relevant properties from being present in Japan in the first place by resorting to the Immigration Control and the Refugee Recognition Act, so that the country would not be in breach of the UN sanctions.⁵⁰

A more pressing limitation of the FEFT Act became evident, however, in the course of implementing the UN’s counterterrorism sanctions. The UN Security Council established the so-called 1267 sanctions regime targeting specific terrorist organizations. Resolution 1267 is the first of a series of UN Security Council resolutions that imposed economic sanctions against the Taliban and, subsequently, Al-Qaeda and the Islamic State in Iraq and the Levant.⁵¹ In 2011, the 1267 sanctions regime was split into two, with one regime for Al Qaeda⁵² and another for the Taliban.⁵³ On top of the specific counterterrorism regime, the UN Security Council adopted Resolution 1373 in 2001, which aimed to impose on Member States a series of general obligations to criminalize terrorist financing acts and freeze the assets of those involved in terrorist acts.⁵⁴ Initially, the Japanese government relied upon the FEFT Act to give effect to the UN’s counterterrorism sanctions, yet such a conventional recourse proved to be inadequate. This is precisely because the UN’s sanctions regimes aim to eradicate the financing of terrorist acts by regulating not just cross-border transactions but also those of a *domestic* nature.⁵⁵ The FEFT Act, which literally aims to regulate certain “foreign” transactions, could not be invoked by the government to restrict payment made for the benefit of its own nationals who have residency in Japan.

In November 2014, the Japanese Diet took steps to remedy the gaps between the UN’s counterterrorism sanctions and Japan’s legal frameworks. The Diet enacted a new piece of legislation,⁵⁶ which became effective in October 2015, to implement the 1267 sanctions regime, the 1988 sanctions regime against the Taliban, and the 1373 counterterrorism measures (“2014 Counter-Terrorism Act”). The legislation was, in part, motivated and justified by external pressure from the Financial Action Task Force (FATF), which had, in its 2008 report, pointed out the “gaps” remaining in Japan’s implementation of counterterrorism sanctions.⁵⁷ The FATF recommended that the Japanese government “review and modify its [asset] freezing system to fully implement UNSCRs 1267 and 1373.”⁵⁸ The 2014 Counter-Terrorism Act was one of the responses following the FATF’s criticisms.

Under the 2014 Counter-Terrorism Act, it became possible for the government to regulate *domestic* transfers involving international terrorists, at least in the course of implementing the 1267 and 1988 sanctions regimes. Under these mechanisms, the UN Security Council's sanctions committees are responsible for designating specific individuals and entities as targets of asset freezes and travel bans. In Japan, under the 2014 act, persons designated by the UN would be publicly notified⁵⁹ and would be required to obtain permission from Prefectural Public Safety Commissions – which are part of the police organization – if such persons intended to receive, for example, a donation of assets subject to regulation,⁶⁰ a lease of the assets,⁶¹ or a payment in consideration of the sale, loan, or other disposition of the assets.⁶² In turn, no one could donate or sell such assets, etc., to those designated by the sanctions regimes.⁶³ These restrictions can be imposed even for domestic transactions conducted solely among residents in Japan. By contrast, regarding the 1373 sanctions regime (which leaves the designation of targets to each Member State), the scope of regulation is still in tune with the FEFT Act. Namely, under the 2014 act, those who are autonomously designated by the Japanese government ought to have been engaged with outbound payments or those made by residents to nonresidents.⁶⁴

2. *Agencies*

When it comes to the implementation of economic sanctions, the national legislature tends to play a very limited role, and Japan is no exception in this regard. Different ministries are responsible for giving effect to UN and non-UN economic sanctions. The MOFA disseminates the general information on sanctions and publishes the list of individuals and entities designated as the targets of asset freezes and travel bans, yet the MOFA is by no means the only ministry working for the domestic implementation of economic sanctions. For instance, an entry ban on individuals is administered by the Ministry of Justice, while an entry ban on ships is controlled by the Ministry of Land, Infrastructure, Transport, and Tourism.

When it comes to arms embargo and asset freeze measures, the METI and the Ministry of Finance (MOF) are responsible for administering the FEFT Act in order to give effect to such restrictive measures. Broadly speaking, the METI is responsible for regulating restrictions on goods and services, while the MOF administers the restriction of financial transactions insofar as they do not accompany the export and import of goods.⁶⁵ For example, when the UN Security Council imposed an arms embargo on Libya under Resolution 1970 in 2011,⁶⁶ the Japanese METI issued a public notice in accordance with the Import Trade Control Order.⁶⁷ The notice was meant to update the METI's earlier public notice, which had listed the items subject to import restrictions.⁶⁸

On top of administering the export and import restrictions of goods, the METI is also in charge of specified capital transactions under Article 24(1) of the FEFT Act, insofar as such transactions are incidental to exports and imports.⁶⁹ In a similar vein, the METI administers restrictions on payments under Article 16(1) of the FEFT as long as such payments are directly linked to the export or import of

goods.⁷⁰ Other payments fall under the responsibility of the MOF.⁷¹ For example, after the UN Security Council instigated asset freezes on Yemen under Resolution 2140 in 2014,⁷² the Japanese MOFA disseminated the list of individuals designated by the Yemen Sanctions Committee.⁷³ The METI then issued a public notice regarding the restrictions on specified capital transactions with those individuals,⁷⁴ and the METI and MOF imposed further restrictions on payments to them.⁷⁵

On top of these ministries regularly working for the implementation of economic sanctions, the 2014 Counter-Terrorism Act added another player within the context of implementing the UN's counterterrorism sanctions. The act essentially entrusted the National Public Safety Commission, which is part of Japan's national *police* apparatus, with the authority to implement the UN's 1267 and 1373 sanctions regimes. The Commission, established by the Police Act,⁷⁶ aims to secure certain democratic oversight of the activities of the National Police Agency. The Commission Chairman is nominated by the Prime Minister, who also appoints the Commission's members with the consent of both houses of the Diet. The Commission then supervises the overall activities of the National Police Agency and appoints its Commissioner General as well as the chiefs of prefectural police organizations.

Under the 2014 Counter-Terrorism Act, the National Public Safety Commission has the authority to administer both UN and non-UN lists for the purpose of imposing asset freeze measures. Under Article 3 of the act, the National Public Safety Commission publicly notifies the individuals and entities designated by the UN under the 1267 and 1988 sanctions regimes.⁷⁷ On top of this, under Article 4, the Commission has the authority to independently designate individuals and entities as international terrorists under Security Council Resolution 1373.⁷⁸ The non-UN list is drawn up in the light of the practices of the US and other like-minded States. In October 2015, after the act entered into force, the National Public Safety Commission published a list of seven individuals and 18 entities designated as the targets of asset freeze measures according to Article 4 of the Counter-Terrorism Act.⁷⁹

The central role that the police organization has in the implementation of the UN's counterterrorism sanctions fits in with the narrative of the UN that the acts of terrorism are "criminal and unjustifiable."⁸⁰ Security Council Resolution 1373 mandates that States criminalize the financing of terrorism,⁸¹ and the 1267 sanctions regime also anticipates that criminal proceedings would be taken by Member States against those listed by the 1267 Sanctions Committee.⁸² The UN Security Council reiterates that the restrictive measures under the 1267 sanctions regimes are "preventive in nature" without relying on national criminal standards.⁸³ Yet, in practice, the UN's sanctions list has been helping Member States' authorities to establish the involvement of designated individuals in terrorism under domestic criminal proceedings.⁸⁴ The UN Security Council's narrative, which combines its targeted sanctions with domestic criminal proceedings, is reflected in the counterterrorism legislation in Japan, which has empowered the body in charge of overseeing the country's police system.

The responsibilities entrusted to various executive bodies come with the limited presence of parliamentary oversight in this field of law and politics. While this is

not surprising, there are certain issues that demand greater democratic input. It must be noted that the 2014 Counter-Terrorism Act does not contain any provision that obliges the relevant ministries to report to the Diet. The limited involvement of the legislative body is problematic, especially in light of the fact that the counterterrorism legislation may impose significant restrictions on the fundamental rights of individuals subject to asset freeze measures, as will be further discussed in Section III-2 of this chapter.

3. Penalties and consequences

The violations of restrictive measures that give effect to economic sanctions can trigger both criminal penalties and administrative dispositions. Over the years, the penalties have been strengthened by a series of amendments to the FEFT Act, which reflects the greater political weight given to the prevention of export control violations. Should a person export goods without obtaining the necessary permission under Article 48(3) of the FEFT, the person is subject to imprisonment for up to five years, a fine of up to ¥10 million (\$90,090 USD), or a combination of both.⁸⁵ The maximum fine may be higher if the amount of five times the price of the exported goods exceeds ¥10 million.⁸⁶ The maximum fine was doubled by the amendment of 2017.⁸⁷ If a payment is made without the necessary permission under Article 16(1) of the FEFT Act, the violation triggers a punishment of imprisonment for up to three years or a fine of a maximum of ¥1 million (\$9,091) (or three times the value of the transaction).⁸⁸ On top of these penalties, corporations may face a fine of a maximum of ¥500 million (\$4.5 million) or five times the price of the items in question.⁸⁹

In addition to these penal measures, the METI Minister can take administrative dispositions against those who have exported or imported goods without the necessary license. The METI can prohibit them from exporting or importing goods for up to three years.⁹⁰ The 2017 amendment extended the maximum duration of the administrative disposition from one year to three.⁹¹ Dispositions would be published on the METI's website, as a result of which the companies or individuals involved would suffer from reputational sanctions in practice.

There are several cases in which violations of the FEFT Act have led not only to administrative sanctions prohibiting exports but also to criminal convictions.⁹² For example, in 2009, a representative director of a secondhand car sales company was arrested for an alleged violation of the FEFT Act.⁹³ The director reportedly exported two tank trucks to North Korea in 2008 in breach of the Japanese export control regulation. Such trucks were subject to export control, as they could have been used as missile launchers. The director also exported 34 pianos to North Korea, despite the prohibition imposed on the export of "luxury goods" to North Korea, according to UN Security Council Resolution 1718.⁹⁴ In response, the METI prohibited the company from exporting any goods for a duration of 16 months from February 2010. Eventually, the director was sentenced to three years in prison, and the company was subject to a fine of ¥5 million (\$45,455).

III. Implementation of sanctions

1. North Korea

As mentioned in Section II, one of the turning points in the Japanese approach to economic sanctions came in July 2006, when the government initiated unilateral sanctions against North Korea.⁹⁵ The Japanese government applied its autonomous sanction in response to North Korea's launch of a series of ballistic missiles on July 5, 2006. Shortly after the launch of missiles, the Japanese government took steps to ban the entry of a North Korean cargo-passenger ship (Man Gyong Bong 92) into Japanese ports.⁹⁶ The government also prohibited the entry of North Korean officials and decided to assess the entry of non-officials in a more stringent manner. These entry bans were the first proactive sanctions that the Japanese government took outside the initiatives of the UN or like-minded States. While the UN Security Council also condemned the launch of missiles by North Korea, it did not go as far as imposing economic sanctions.⁹⁷ The UN Security Council merely requested that Member States prevent the transfer of any financial resources in relation to North Korea's missiles or its weapons of mass destruction (WMD) programs.⁹⁸ This request was, nevertheless, still given effect by the Japanese government, which imposed restrictions on payment and capital transactions with respect to 15 specific entities and one individual involved in the development of missiles or WMDs.⁹⁹

In October 2006, the unilateral sanctions were further expanded in response to North Korea's first nuclear test on October 9. On October 13, the Japanese government extended the entry ban to all North Korean vessels.¹⁰⁰ This was accompanied by a general import ban on goods originating in North Korea¹⁰¹ as well as restrictions on service transactions¹⁰² and payments.¹⁰³ An entry ban was also introduced with respect to North Korean nationals except under special circumstances.¹⁰⁴ After North Korea conducted its second nuclear test on May 25, 2009, the Japanese government imposed a general export ban on goods destined for North Korea,¹⁰⁵ except for those for humanitarian purposes.¹⁰⁶ The autonomous export ban was much more comprehensive than the bans imposed under UN Security Council Resolutions 1718 and 1874, according to which UN Member States were obliged to prevent the export of "luxury goods" as well as other materials, goods, and technology related to weapons of mass destruction.¹⁰⁷ In June 2010, a special piece of legislation was also introduced to strengthen the inspection of cargo bound to, or originating in, North Korea that contained materials relevant to weapons of mass destruction or weapons.¹⁰⁸ This special legislation was in line with UN Security Council Resolution 1874, which calls on Member States to inspect cargo, not only within their territory but also "on the high seas," if States have information that provides reasonable grounds to believe that the cargo contains prohibited materials.¹⁰⁹ Japan's special legislation allows the Japan Coast Guard to inspect the cargo of a vessel on the high seas, with the consent of the flag State,¹¹⁰ if there are reasonable grounds to believe that the vessel carries cargo consisting of prohibited materials.¹¹¹

In July 2014, Japan eased its autonomous sanctions following both countries' diplomatic talks and the launch of the Special Investigation Committee to inquire into cases of abduction of Japanese nationals. The government lifted the entry ban on North Korean nationals and allowed the entry of North Korean flag vessels for humanitarian reasons.¹¹² Nevertheless, the restrictive measures were reinstated in February 2016, as a result of North Korea's fourth nuclear test and the ballistic missile launches on January 6 and February 7, 2016, respectively.¹¹³ Furthermore, the Japanese government introduced a prohibition on payment to individuals who have domiciles in North Korea and expanded the scope of targets subject to asset freeze measures.¹¹⁴ These unilateral measures were followed by the adoption of UN Security Council Resolution 2270 in March 2016,¹¹⁵ which was implemented through the FEFT Act.

Part of the non-UN restrictive measures that Japan took includes targeted sanctions against the specifically designated entities and individuals on the basis that they are involved in the development of weapons of mass destruction. While the UN's 1718 Sanctions Committee on North Korea designates the specific targets of the UN's sanctions, the Japanese government has its own list of targeted individuals and entities as part of the international measures taken among like-minded States. As of December 28, 2018, the list included 56 entities and 62 individuals, including many not on the UN's list.¹¹⁶

2. Counterterrorism sanctions and due process concerns

As described in Section II of this chapter, in 2014, the Japanese Diet adopted a piece of legislation to strengthen the domestic regulations on terrorist financing and give a fuller effect to the UN's 1267 sanctions regime and Security Council Resolution 1373. The initial domestic implementation measures to restrict terrorist financing relied primarily on the FEFT Act,¹¹⁷ which fell short of restricting domestic transactions among residents of Japan.¹¹⁸ The 2014 act was enacted in order to extend the coverage of asset freeze measures, which simultaneously augmented the role of the police organization in Japan to implement the UN's counterterrorism sanctions.¹¹⁹

Within the EU, the expansion of the UN's 1267 sanctions regime after the September 11 terrorist attack in New York City triggered a wide range of due process concerns. An asset freeze has a significant impact on the listed individual's right to property, as well as their privacy, reputation, and family rights. Given that no hearing is institutionalized before, or shortly after, the designation of specific targets, criticism has been leveled against the UN Security Council for failing to ensure the right to a fair hearing and the right to an effective remedy for those who are targeted by the Security Council and its sanctions committees.¹²⁰ *Kadi* and a series of litigations brought before the courts of the EU have highlighted deficiencies in the process at the UN when designating particular individuals and entities as global targets of asset freezes and travel bans.¹²¹ The proceedings and decisions of EU courts have incrementally facilitated improvements at the level of the UN with regard to its listing processes.¹²²

In contrast to the attention given to due process concerns at the level of the EU, it is fair to say that due process issues have garnered little attention in the Japanese legal and political discourse concerning the implementation of counterterrorism sanctions. The varying degrees of attention given to the due process associated with sanctions are somewhat reflected in the narratives of the Member States that participated in the meetings of the UN Security Council. For instance, one of the procedural steps taken by the Security Council to ameliorate due process concerns was to establish, in 2009, the Office of the Ombudsperson for the 1267 Sanctions Committee, who was entrusted with receiving delisting requests from designated individuals and entities and assisting the Sanctions Committee's consideration of such requests in an independent and impartial manner.¹²³ The establishment of the Ombudsperson's Office was welcomed by Member States, including Japan, but there remained differences in the narratives. At the Security Council meeting in May 2010, for instance, the Japanese delegation characterized the establishment of the Office of the Ombudsperson solely as a matter of ensuring the effectiveness of the 1267 sanctions regime and the credibility of the UN's list of targeted individuals and entities.¹²⁴ In other words, the human rights narrative was missing from the statement. The Japanese delegation's narrative contrasted with the statement of the delegation of the EU during the same Security Council meeting, which described the UN's procedural development as an incremental effort to better ensure due process and respect for the fundamental rights of designated persons.¹²⁵

The adoption of the 2014 Counter-Terrorism Act in Japan did not radically change the level of attention paid to the issue of due process associated with the UN's targeted sanctions. In theory, the act would impose significant restrictions on the rights of targeted individuals. Once designated under the act, individuals and entities would be prevented from withdrawing money from their bank accounts without permission.¹²⁶ Likewise, the targeted persons would be restricted from borrowing money, securities, land, buildings, automobiles, and other controlled assets, or receiving a consideration for the sale or lease of their assets.¹²⁷

Despite the material impact that the 2014 act would have on individuals' rights, the human rights compatibility of designation processes and asset freezes was rarely on the agenda during the deliberations of the Japanese Diet. When one of the members of the House of Councilors raised concerns over the compatibility of asset freezes and the designation processes with the constitutional right to property and due process,¹²⁸ the government summarily dismissed such due process concerns.¹²⁹ In the end, the Counter-Terrorism Act was adopted less than two months after the bill had been presented to the Japanese Diet without any substantive deliberations regarding due process.

That said, the 2014 Counter-Terrorism Act provides certain procedural safeguards, at least regarding the implementation of Resolution 1373. Under the 2014 act, the National Public Safety Commission can only designate individuals or entities for a specified period of time up to three years, and the list of targets ought to be renewed on a three-year basis.¹³⁰ At least one of the criteria of designation is based on a criminal act; a person may be designated if the person is found to

have committed, intended to commit, or assisted in a criminal act for the purpose of intimidating the general public and governments, and if there are sufficient reasons to believe that there is a clear danger that the person will commit, or assist in, criminal acts again in the future.¹³¹ Although criminal conviction is not required for the sake of designating particular persons, the Commission's decision is guided by the criminal act's definition. Furthermore, the National Public Safety Commission must conduct a hearing when listing a person subject to asset freezes.¹³² A designation can still be made without the hearing if it significantly jeopardizes the enforcement of asset freeze measures, yet the designation would be treated as provisional, and the Commission would have to conduct a hearing of opinions within 15 days from the date of the public notice of provisional designation.¹³³

At the same time, these procedural safeguards do not alter the fact that there was little parliamentary debate on the impact of asset freeze measures on fundamental rights or whether the existing safeguards would be adequate. The requirement to conduct hearings is not applicable to the implementation of the 1267 sanctions committee though, inasmuch as designation is in the hands of the UN's sanctions committee, and Member States may have little discretion to decide whether to designate individuals. The relatively small amount of attention paid to due process concerns may be explained, at least in part, by the assumption of the Japanese Diet that relevant assets would rarely be present in the Japanese jurisdiction and that the 2014 act would, therefore, not be fully in use. At the same time, the presence of relevant assets in Japan and the full application of the 2014 act in the future may not necessarily trigger a greater debate over the question of due process. It would be particularly difficult to garner domestic political attention for issues of procedural safeguards in the absence of *Kadi*-type judicial proceedings to contest the validity of domestic implementation measures based on concerns about violations of fundamental rights.

Conclusion

Overall, economic sanctions have increased their strategic presence over the years in Japanese foreign and security policies. The series of legislative reforms of the FEFT Act best illustrates the changes in the role of economic sanctions in the wider Japanese political environment. Until July 2006, prior initiatives by the UN or other key political partners have guided the Japanese decisions to instigate economic sanctions, and, before the 2004 amendment, the FEFT Act did not specifically envisage the adoption of measures to safeguard Japan's own national security. Nevertheless, a series of missile and nuclear tests by North Korea, as well as the political stalemate on the matter of the abduction of Japanese nationals, paved the way for the more proactive use of economic sanctions.

The FEFT Act remains the primary medium through which the Japanese government gives effect to both UN and non-UN economic sanctions at the domestic level. At the same time, in the context of counterterrorism sanctions, the FEFT Act turned out to be inadequate in regulating the domestic transfer of funds involving

residents in Japan. The Japanese Diet enacted a specific piece of legislation to implement the UN's 1267 sanctions regime and the measures under Security Council Resolution 1373 in 2014. The enactment of such a piece of legislation was made possible at the domestic level, not necessarily by the UN Security Council resolutions *per se* but by the nonbinding yet effective recommendations of the FATF.

Overall, the development of economic sanctions entails not only shifts in a country's foreign policies but also several critical alterations in its domestic legal frameworks. In Japan, such changes have augmented the powers of various executive bodies, including the police apparatus, in the context of implementing the UN's counterterrorism measures. Due in part to the assumption that the targeted individuals and entities might not reside in Japan, the act was readily adopted without sufficiently addressing the impact of the counterterrorism measures on the rights and interests of designated individuals and entities. This happened despite the history of court challenges in the EU and elsewhere against the implementation measures of the UN's 1267 sanctions regime. As demonstrated by the differences in the level of attention given to due process concerns, economic sanctions are applied in a highly fragmented process in which each country's laws and politics construct the effectiveness and critical assessment of economic sanctions.

Notes

- 1 See Chapter 6 of this book.
- 2 Martin Russell, "EU Sanctions: A Key Foreign and Security Policy Instrument," *European Parliamentary Research Service*, PE 621.870 (May 2018), pp. 3–4. As of February 2019, the EU Sanctions Map listed 25 non-UN sanctions, available at <<https://sanctionsmap.eu/#/main>> (accessed February 1, 2019).
- 3 See Section II.1 of this chapter.
- 4 See Machiko Kanetake, *The UN Security Council and Domestic Actors: Distance in International Law* (2018), pp. 99–117, 136–146 (Sections 6.3 and 7.3).
- 5 U.N. Doc. S/RES/661 (August 6, 1990).
- 6 Glenn D. Hook, *Militarisation and Demilitarisation in Contemporary Japan* (2003), p. 84.
- 7 See Daniel W. Drezner, "Bargaining, Enforcement, and Multilateral Sanctions: When Is Cooperation Counterproductive?" *International Organization*, Vol. 54 (2000), p. 87. On the first North Korean nuclear crisis in 1993 and 1994, see Masahiko Asada, "Arms Control Law in Crisis? A Study of the North Korean Nuclear Issue," *Journal of Conflict and Security Law*, Vol. 9 (2004), pp. 334–338.
- 8 U.N. Doc. S/25407 (March 12, 1993), Annex (Statement of DPRK Government); David Fischer, *History of the International Atomic Energy Agency: The First Forty Years* (1997), p. 290.
- 9 U.N. Doc. A/RES/48/14 (November 1, 1993).
- 10 Fisher, *supra* note 8, p. 290.
- 11 United Nations Act 1946, 9 and 10 Geo. 6, Chapter 45; United Nations Participation Act 1945, Public Law 79–264.
- 12 Foreign Exchange and Foreign Trade Act, Act No. 228 of December 1, 1949, last amended June 8, 2018 (effective April 1, 2019).
- 13 FEFT Act, Act No. 228 of December 1, 1949, Article 1 (as of December 1, 1949).

- 14 Judgment of July 8, 1969, Tokyo District Court, Case No. 1969 (Gyo U) 30. See Hisashi Owada, "Japan," in Vera Gowlland-Debbas ed., *National Implementation of United Nations Sanctions: A Comparative Study* (2004), pp. 286–287; Chin Kim, "The CoCom Case," *Journal of World Trade Law*, Vol. 4 (1970), p. 604; Shinya Murase, "Trade Versus Security: The COCOM Regulations in Japan," *Japanese Annual of International Law*, Vol. 31 (1988), pp. 5–6.
- 15 Ian Anthony, "The Evolution of Dual-Use Technology Controls: A Historical Perspective," in Oliver Meier ed., *Technology Transfers and Non-Proliferation: Between Control and Cooperation* (2014), pp. 26–28.
- 16 Export Trade Control Order, Cabinet Order No. 378 of December 1, 1949, as amended in 1968, Article 1(6).
- 17 FEFT Act, Act No. 228 of December 1, 1949, as amended by Act No. 65 of December 18, 1979 (effective December 1, 1980), Articles 23(2)(iv) (capital transactions) and 25(ii) (service transactions).
- 18 Murase, *supra* note 14, p. 9.
- 19 FEFT Act, Act No. 228 of December 1, 1949, as amended by Act No. 65 of December 18, 1979 (effective December 1, 1980), Article 48.
- 20 *Ibid.*, Article 1.
- 21 See "Submarined by Japan and Norway," *New York Times* (June 22, 1987), available at <www.nytimes.com/1987/06/22/opinion/submarined-by-japan-and-norway.html> (accessed February 1, 2019).
- 22 Tokyo District Court, Judgment, March 22, 1988, Case No wa-1547 (1987), *Hanrei-jihō (Judicial Reports)*, No. 1271, p. 30, translation available in *Japanese Annual of International Law*, Vol. 31 (1988), pp. 206–211.
- 23 FEFT Act, Act No. 228 of December 1, 1949, as amended by Act No. 89 of September 11, 1987 (effective November 10, 1987), Article 48(1).
- 24 *Ibid.*, Article 69–6.
- 25 FEFT Act, Act No. 228 of December 1, 1949, as amended by Act No. 1 of February 16, 2004 (effective February 26, 2004), Article 1.
- 26 *Ibid.*, Article 10.
- 27 On the 2001 incident, see Atsuko Kanehara, "The Incident of an Unidentified Vessel in Japan's Exclusive Economic Zone," *Japanese Annual of International Law*, Vol. 45 (2002), p. 116.
- 28 FEFT Act, *supra* note 12, Article 16(1). Article 16(1) provides as follows: "The competent minister may . . . impose the obligation to obtain permission for a payment or payment, etc. on a resident or non-resident who intends to make a payment from Japan to a foreign state or a resident who intends to make a payment, etc. to a non-resident when the competent minister deems necessary for the sincere fulfillment of obligations under treaties or other international agreements which Japan has signed or when he/she deems particularly necessary to enable Japan to contribute to international efforts to achieve international peace, or when a cabinet decision set forth in Article 10, paragraph (1), has been made, except where the payment, etc. pertains to a transaction or act for which the obligation to obtain permission or approval is imposed from the same standpoint as the above."
- 29 Foreign Exchange Order, Cabinet Order No. 260 of October 11, 1980, last amended November 9, 2018 (effective January 9, 2019), Article 6(1).
- 30 FEFT Act, *supra* note 12, Article 16(1); FE Order, *supra* note 29, Article 6(1).
- 31 U.N. Doc. S/RES/1970 (February 26, 2011).
- 32 MOFA Public Notice No. 75 of 2011 (March 8, 2011).
- 33 METI Public Notice No. 34 of 2011 (March 8, 2011).
- 34 FEFT Act, *supra* note 12, Article 21(1). Article 21(1) provides as follows: "When the Minister of Finance finds that a resident or non-resident engaging in capital transactions . . . without any restrictions will prevent Japan from sincerely fulfilling its obligations under treaties and other international agreements it has signed or from making its contribution to international efforts to achieve international peace, will make it difficult

- to achieve the purposes of this Act, or, when a cabinet decision set forth in Article 10, paragraph (1), has been made, he/she may impose the obligation to obtain permission to engage in said capital transactions on the resident or non-resident, pursuant to the provisions of Cabinet Order.”
- 35 FEFT Act, *supra* note 12, Article 21(1); FE Order, *supra* note 29, Article 11(1).
- 36 FEFT Act, *supra* note 12, Article 24(1); FE Order, *supra* note 29, Article 15(1). Article 24(1) of the FEFT Act provides as follows: “When the Minister of Economy, Trade and Industry finds a resident engaging in specified capital transactions . . . without any restrictions will prevent Japan from sincerely fulfilling its obligations under treaties and other international agreements it has signed or from making its contribution to international efforts to achieve international peace, will make it difficult to achieve the purposes of this Act, or when a cabinet decision set forth in Article 10, paragraph (1), has been made, he/she may impose the obligation to obtain permission to engage in the specified capital transactions on the person, pursuant to the provisions of Cabinet Order.”
- 37 FEFT Act, *supra* note 12, Article 24(1); FE Order, *supra* note 29, Article 14. The pertinent transactions have been specified by the Public Notice issued by the METI: METI Public Notice No. 193 of 2003 (last amended by METI Public Notice No. 194 of 2017, August 16, 2017).
- 38 U.N. Doc. S/RES/2140 (February 26, 2014); UN Press Release SC/11636 (November 7, 2014).
- 39 MOFA Public Notice No. 394 of 2014 (December 17, 2014).
- 40 METI Public Notice No. 246 of 2014 (December 17, 2014) (amending METI Public Notice No. 193 of 2003).
- 41 U.N. Doc. S/RES/1718 (October 14, 2006).
- 42 *Ibid.*, para. 8(c).
- 43 FEFT Act, *supra* note 12, Article 25(6); FE Order, *supra* note 29, Article 18(3); Ministry of Finance Public Notice No. 100 of 1998, March 30, 1998, as amended. Article 25(6) of the FEFT Act provides as follows: “When the competent minister finds that if service transactions between a resident and a non-resident . . . or transactions related to the buying and selling, leasing or donating of goods involving the movement of goods between foreign states . . . are carried out without any restrictions, it will cause a situation that prevents Japan from sincerely fulfilling obligations under the treaties and other international agreements it has signed or from making its contribution to international efforts for achieving international peace, which will make it difficult to achieve the purpose of this Act, or when a cabinet decision set forth in Article 10, paragraph (1), has been made, he/she may impose, pursuant to the provisions of Cabinet Order, on a resident who intends to carry out the service transactions, etc., the obligation to obtain permission for the implementation of the service transactions, etc.”
- 44 FEFT Act, *supra* note 12, Articles 48(3), 52. Article 48(3) provides as follows: “the Minister of Economy, Trade and Industry may impose the obligation to obtain approval to the extent necessary to maintain equilibrium in the international balance of trade, achieve the sound development of foreign trade and the national economy, sincerely fulfill obligations under the treaties and other international agreements Japan has signed, allow Japan to contribute to international efforts to achieve international peace, or to implement a cabinet decision set forth in Article 10, paragraph (1), on a person who intends to export specific kinds of goods or to export goods to the specified regions or a person who intends to export goods through specified transactions pursuant to the provisions of Cabinet Order.” Article 52 provides as follows: “For the purpose of achieving the sound development of foreign trade and the national economy, sincerely fulfilling obligations under the treaties and other international agreements Japan has signed, making Japan’s contribution to international efforts for achieving international peace, or implementing a cabinet decision set forth in Article 10, paragraph (1), any person who intends to import goods may be obliged to obtain import approval pursuant to the provisions of Cabinet Order.”

- 45 FEFT Act, *supra* note 12, Article 48(1); Export Trade Control Order, Cabinet Order No. 378 of December 1, 1949 (last amended November 21, 2018; effective on September 1, 2019), Appended Table 1.
- 46 FEFT Act, *supra* note 12, Article 48(3).
- 47 Import Trade Control Order, Cabinet Order No. 414 of December 29, 1949 (last amended June 6, 2003).
- 48 Owada, *supra* note 14, p. 291.
- 49 U.N. Doc. S/RES/820 (April 17, 1993), para. 24.
- 50 See Owada, *supra* note 14, pp. 280–281; Immigration Control and Refugee Recognition Act, Cabinet Order No. 319 of October 4, 1951.
- 51 U.N. Doc. S/RES/1267 (October 15, 1999); U.N. Doc. S/RES/1989 (June 17, 2011); U.N. Doc. S/RES/2253 (December 17, 2015). For an overview of the 1267 sanctions regime, see Machiko Kanetake, “United Nations Security Council 1267 on Measures Against the Taliban, 15th October 1999 (UN Doc S/RES/1267 (1999)),” *OXIO* 33 (April 1, 2016), in *Oxford International Organizations* (Oxford University Press, 2017).
- 52 U.N. Doc. S/RES/1989 (June 17, 2011).
- 53 U.N. Doc. S/RES/1988 (June 17, 2011).
- 54 U.N. Doc. S/RES/1373 (September 28, 2001).
- 55 See, with respect to the 1267 sanctions regime, e.g., U.N. Doc. S/RES/1390 (January 28, 2002), para. 2; U.N. Doc. S/RES/1989 (June 17, 2011), para. 1(a); U.N. Doc. S/RES/2161 (June 17, 2014), para. 1(a).
- 56 Act on Special Measures concerning the Freeze of Assets of International Terrorists and Other Measures Conducted by the Government Taking into Consideration United Nations Security Council Resolution 1267, etc., Act No. 124 of November 27, 2014 (effective October 5, 2015).
- 57 Financial Action Task Force, “Third Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism, Japan,” (October 17, 2008), available at <www.fatfgafi.org/media/fatf/documents/reports/mer/MER%20Japan%20full.pdf> (accessed February 1, 2019), para. 38.
- 58 FATF, *ibid.*, p. 247.
- 59 2014 Counter-Terrorism Act, *supra* note 56, Article 3(1).
- 60 *Ibid.*, Article 9(i).
- 61 *Ibid.*, Article 9(ii).
- 62 *Ibid.*, Article 9(iii).
- 63 *Ibid.*, Article 15.
- 64 *Ibid.*, Article 4(1)(i).
- 65 Cabinet Order to Determine Competent Ministers in the Foreign Exchange and Foreign Trade Control Act, Cabinet Order No. 259 of 1980, last amended July 14, 2017 (effective October 1, 2017).
- 66 U.N. Doc. S/RES/1970 (February 26, 2011), para. 9.
- 67 Import Trade Control Order, *supra* note 47, Article 3(1); METI Public Notice No. 36 of 2011 (March 8, 2011).
- 68 Public Announcement on the Items of Goods Subject to Import Quotas, the Places of Origin, or Places of Shipment of Goods Requiring Approval for Import, and Other Necessary Matters Concerning Import of Goods, the Ministry of International Trade and Industry Public Notice No. 170 of 1966, April 30, 1966, as amended.
- 69 FEFT Act, *supra* note 12, Article 24(1); FE Order, *supra* note 29, Article 15(1).
- 70 Cabinet Order No. 259 of 1980, *supra* note 65; FEFT Act, *supra* note 12, Article 16(1); FE Order, *supra* note 29, Article 6(1).
- 71 *Ibid.*
- 72 U.N. Doc. S/RES/2140 (February 26, 2014).
- 73 MOFA Public Notice No. 394 of 2014 (December 17, 2014).

- 74 METI Public Notice No. 246 of 2014 (December 17, 2014). The public notice updated the list of specified capital transactions subject to permission: METI Public Notice No. 193 of 2003 (May 31, 2003).
- 75 METI Public Notice No. 245 of 2014 (December 17, 2014). The public notice updated the list of payments subject to permission; METI Public Notice No. 229 of 2009 (July 7, 2009). Likewise, the MOF updated the list of payments subject to permission: MOF Public Notice No. 97 of 1998 (March 30, 1998) (last updated July 29, 2016).
- 76 Police Act, Act No. 162 of June 8, 1954 (last amended December 2, 2016; effective June 1, 2017), Articles 4–16.
- 77 2014 Counter-Terrorism Act, *supra* note 56, Article 3.
- 78 2014 Counter-Terrorism Act, *supra* note 56, Article 4.
- 79 National Public Safety Commission Public Notice No. 36 of 2015 (October 30, 2015).
- 80 U.N. Doc. S/RES/1269 (October 19, 1999), para. 1.
- 81 U.N. Doc. S/RES/1373 (September 28, 2001), para. 1(b).
- 82 U.N. Doc. S/RES/2253 (December 17, 2015), para. 12.
- 83 E.g., U.N. Doc. S/RES/1735 (December 22, 2006), preamble para. 10; U.N. Doc. S/RES/2253 (December 17, 2015), paras. 44, 58.
- 84 E.g., *Sixth Report of the Analytical Support and Sanctions Monitoring Team Appointed Pursuant to Security Council Resolutions 1526 (2004) and 1617 (2005) Concerning Al Qaeda and the Taliban and Associated Individuals and Entities*, U.N. Doc. S/2007/132 (March 8, 2007), para. 36, box 1.
- 85 FEFT Act, *supra* note 12, Article 69–7(1)(iv). Calculated as USD 1 = JPY 110.
- 86 *Ibid.*
- 87 FEFT Act, Act No. 228 of 1 December 1949, as amended by Act No. 38 of May 24, 2017 (effective October 1, 2017), Article 69–7.
- 88 *Ibid.*, Article 70(1)(iii).
- 89 *Ibid.*, Article 72(1)(iii).
- 90 *Ibid.*, Article 53(2).
- 91 FEFT Act, Act No. 228 of 1 December 1949, as amended by Act No. 38 of May 24, 2017 (effective October 1, 2017), Article 53(2).
- 92 The summary of major cases in Japan can be found on the website of the Center for Information on Security Trade Control (CISTEC), *available at* <www.cistec.or.jp/export/ihanjirei/index.html> (accessed September 1, 2018).
- 93 *Ibid.*
- 94 U.N. Doc. S/RES/1718 (October 14, 2006).
- 95 For the details of the North Korean sanctions, see Chapter 9 of this book.
- 96 Cabinet Notice No. 3 of 2006 (July 5, 2006); Act on Special Measures concerning Prohibition of Entry of Specified Ships into Ports, Act No. 125 of June 18, 2004, Article 3(1).
- 97 U.N. Doc. S/RES/1695 (July 15, 2006).
- 98 U.N. Doc. S/RES/1695 (July 15, 2006), para. 4.
- 99 Measures to Prevent the Transfer of Assets Concerning the North Korean Missiles or WMD Programs under the FEFT Act (September 19, 2006), *available at* <www.mofa.go.jp/mofaj/area/n_korea/abd/shikin.html> (accessed February 1, 2019).
- 100 Cabinet Notice No. 4 of 2006 (October 13, 2006); Act on Special Measures concerning Prohibition of Entry of Specified Ships into Ports, Act No. 125 of June 18, 2004, Article 3(3).
- 101 METI Public Notice No. 308 of 2006 (October 13, 2006).
- 102 METI Public Notice No. 311 of 2006 (October 13, 2006).
- 103 METI Public Notice No. 310 of 2006 (October 13, 2006).

- 104 Cabinet Decision of October 13, 2006.
- 105 Export Trade Control Order, Cabinet Order No. 378 of December 1, 1949, as amended by Cabinet Order No. 160 of June 16, 2009 (effective on June 18, 2009); FEFT Act, *supra* note 12, Article 48(3).
- 106 METI, “Notice” (June 16, 2009), *available at* <www.meti.go.jp/policy/external_economy/trade_control/01_seido/04_seisai/downloadNK/20090616oshirase.pdf> (accessed February 1, 2019).
- 107 U.N. Doc. S/RES/1718 (October 14, 2006), para. 8(a); U.N. Doc. S/RES/1874 (June 12, 2009).
- 108 Act on Special Measures concerning Cargo Inspections, etc., Conducted by the Government Taking into Consideration United Nations Security Council Resolution 1874, etc., Act No. 43 of June 4, 2010 (effective July 4, 2010).
- 109 U.N. Doc. S/RES/1874 (June 12, 2009), para. 12.
- 110 Act on Special Measures concerning Cargo Inspections, etc., *supra* note 108, Article 8(1).
- 111 *Ibid.*, Article 3(2).
- 112 “Partial Lifting of Japan’s Measures Against the DPRK Based on Japan-DPRK Agreement in May 2014,” (July 4, 2014), *available at* <www.kantei.go.jp/jp/tyoukanpress/201407/_icsFiles/afieldfile/2014/07/04/20140704siryou2_1.pdf> (accessed February 1, 2019) (in Japanese).
- 113 “Measures Taken by the Government of Japan Against North Korea,” *MOFA* (February 10, 2016), *available at* <www.mofa.go.jp/a_o/na/kp/page4e_000377.html> (accessed February 1, 2019).
- 114 *Ibid.*
- 115 U.N. Doc. S/RES/2270 (March 2, 2016).
- 116 The list is available on the METI website at <www.mof.go.jp/international_policy/gaitame_kawase/gaitame/economic_sanctions/list.html>.
- 117 See, e.g., “Japan: Report to the Counter-Terrorism Committee Pursuant to Paragraph 6 of Security Council Resolution 1373 (2001) of September 28, 2001,” U.N. Doc. S/2001/1306 (December 27, 2001), p. 8.
- 118 See Section II.1(2) of this chapter.
- 119 See Section II.2 of this chapter.
- 120 Kanetake, *supra* note 4, pp. 101–105 (Section 6.3.2).
- 121 *Ibid.*, pp. 136–146, 160–164, and 181–218 (chapters 7.3 and 8.3.1, and Annexes I and II).
- 122 *Ibid.*, chapter 8.
- 123 U.N. Doc. S/RES/1904 (December 17, 2009), paras. 20–21, Annex II.
- 124 U.N. Doc. S/PV.6310 (May 11, 2010), p. 14 (Mr. Okuda of Japan).
- 125 *Ibid.*, p. 27 (Mr. Serrano on behalf of the EU).
- 126 2014 Counter-Terrorism Act, *supra* note 56, Article 9.
- 127 *Ibid.*
- 128 Question No. 84 of the 187th Diet (Extraordinary Session), from Taro Yamamoto (November 18, 2014), *available at* <www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/187/meisai/m187084.htm> (accessed February 1, 2019) (in Japanese).
- 129 Written Answer No. 84 of the 187th Diet (November 25, 2014), *available at* <www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/187/meisai/m187084.htm> (accessed February 1, 2019) (in Japanese).
- 130 *Ibid.*, Articles 4(1) and 6(1).
- 131 *Ibid.*, Article 4(1)(ii)(a).
- 132 *Ibid.*, Article 4(4).
- 133 *Ibid.*, Articles 8(3) and (5).