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Summary

The Exercise of Public Authority in International Law – the 1267 Sanctions Regime and Its Legal Framework

The goal of this thesis is to take a closer look at the exercise of public authority on the international level and to find rules governing such exercise under the aspect of legitimacy. There is a need for such a perspective because the ongoing globalization is experienced as a gradual shift of national competences to the international level leading to more and more norm-setting-activities by international organizations. This raises questions of legitimacy which become particularly urgent where individuals are directly or indirectly affected by such norm-setting. Especially states with high human rights standards seemed to hesitate in carrying out the obligatory national implementation in such cases. International organizations are thus under pressure to justify such action in order to secure the acceptance and cooperation by the nation states and their citizens indispensible for the functioning of the organizations. On the international level the legitimacy of actions and thus their acceptance is more difficult to achieve than on the national level where it can be established by democratic election. Therefore, the international level has to rely on mechanisms of control such as guaranteeing the rule of law and effective remedies. How this can be achieved is demonstrated by this study using the example of the 1267 UN sanctions regime as the object of research.

Within the detailed analysis, the focus is set on the exercise of public authority on the international level. Public authority is defined here as the legal capacity to determine others and to reduce their freedom, i.e. to unilaterally shape their legal or factual situation.

When trying to find a legal framework for the exercise of public authority on the international level the global governance approach and the global administrative law approach turn out to be of little help since they are rather political and descriptive in nature. The approaches of an international administrative law and the constitutionalization of international law appear more adequate as a basis of such a legal framework.

However, as long as they do not take into consideration each other's reasoning, they run the risk of taking a narrow national perspective which is not sufficient in an international context. A public law approach proves to be the most appropriate for the identification of principles governing the exercise of public authority on the international level which cumulatively draws on the approaches of an international administrative law, international institutional law and the theory of constitutionalization of international law in the form of an internal constitutionalization on the basis of the constitution of the respective international organization.

By means of this public law approach, this study first examines whether the UN Security Council is bound by human rights and the rule of law. Previous approaches to this question all unfold suitable reasoning. But it is obvious that the grammatical and systematic arguments *pro* and *contra* a human rights obligation of the UN Security Council of those who rely on the individual articles of the UN Charter are more or less equally convincing while those who base their arguments on customary international law or general principles of law encounter the problem that international organizations are separate legal entities which would rather object to a human rights obligation of the UN Security Council. Thus, although all these approaches appear to be plausible they are not completely convincing in the end.

This reasoning can be strengthened by means of the internal constitutionalization as an instrument of the public law approach. Within this framework, the principle of "UN loyalty" can be derived from a comparison of the European Union law, the national constitutional law and several articles of the UN Charter. In the 1267 sanctions regime the principle of UN loyalty generates a duty of the UN to respect the interests of UN member states. Worldwide legal challenges of the UN listings of individuals as terrorists and several initiatives to improve the rule of law standard in the 1267 regime show clearly that member states claim respect for the universal human rights and the rule of law. To define the precise content of the human rights and rule of law standards to be observed by the UN in the context of the 1267 regime one can draw on resolution 1597 (2008) of the Parliamentary Assembly of the Council of Europe. This resolution is tailored to the 1267 regime and based on the universal human rights. So, as a regional document, it can be seen as representative for at least a large part of the international community and especially for those states which uttered human rights concerns with respect to the sanctions regime.

A close scrutiny under these standards of the successive resolutions gradually modifying the 1267 regime brings to light that there is only a minor need for improvement of the burden of evidence with respect to presentation of the preconditions for being listed and the right to be notified promptly and fully informed. But speaking of the clear definition of the preconditions for sanctions, of the giving of reasons for the imposition of sanctions, the right to be heard and a time limit for each listing, there is still obvious need for the current rules to be amended. The most important aspect to be improved, however, is the review of the listing itself: an independent and impartial control panel must be established here and specific rules must be found which take care of the fact that intelligence information plays a major role in the 1267 regime.

As further principles for the exercise of public authority in the 1267 sanctions regime the principle of proportionality and the principle of cooperation which includes an extended group of international actors may be identified.

The search for principles for the judicial protection in the multilevel system of the 1267 regime in application of the public law approach results in the conclusion that also in this sector the idea of loyalty generating duties of cooperation and respect prevails. The principle of loyalty in the multilevel system thus proves valid also in the field of legal protection as the principle of "justice loyalty" and therefore confirms its suitability and efficacy in the context of the exercise of public authority on the international level.

Against the background of these results the public law approach to the legal framework for the exercise of public authority may be recommended for application in other fields of international law as well.

Specifically, the study answers the following questions:

1. How can a legal framework be accomplished for the exercise of public authority on the international level in order to increase the legitimacy of such public authority?
2. How can it be argued in this context that the Security Council is bound by human rights and the rule of law?
3. The 1267 sanctions regime as one example of the exercise of public authority on the international level: Which rule of law developments are visible there so far and how may existing deficits be fixed?
4. What does the legal protection of the individual in the multilevel system of the 1267 regime look like (with and without a control panel

on the UN level) and how may conflicts between jurisdictions in this multilevel system be avoided?