Introduction

As United Nations sanctions, adopted by the Security Council under Chapter VII of the Charter, have come to be used so much more frequently in recent years, they have attracted more attention and have led to controversies, but more in regard to their feasibility and their effects and usefulness than on the issue of their exact legal nature. If law was introduced into the discussion, then it was generally limited to querying the legal basis on which sanctions were adopted, rather than analysing the legal basis on which derived measures were carried out.

One reason for this is the relative secrecy surrounding the work of the bodies performing important intermediary functions (sanctions committees\(^1\)), but until recently this aspect of the global question of sanctions has been low in relevance. As long as something else was frustrating the envisaged scenario, it was assumed that this missing link was available and ready to function. It is only when at least some of those other obstacles were removed that it has become painfully clear that this is not the case.

\(^1\)These will be referred to infra with their more usual colloquial names (e.g. Yugoslavia sanctions committee), but for the record the official names of the seven presently existing committees are: Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait; Security Council Committee established pursuant to resolution 724 (1992) concerning Yugoslavia; Security Council Committee established pursuant to resolution 748 (1992) concerning the Libyan Arab Jamahiriya; Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia; Security Council Committee established pursuant to resolution 864 (1993) concerning the situation in Angola; Security Council Committee established by resolution 918 (1994) concerning Rwanda; Security Council Committee established pursuant to resolution 985 (1995) concerning Liberia. Three such committees are now defunct; there were established by resolutions 253 (1968) on Rhodesia, 421 (1977) on South Africa and 841 (1993) on Haiti.
Our focus here must be on legal relationships and problems. This is not to deny that there are many practical problems involved in trying to translate the will of the Security Council into effective workable measures on the ground. There is no lack of work on national implementation, at least not in Western countries. It is rather the link in between, the legal space normally occupied by a subsidiary organ of the Council, which has not been the object of enough analysis.

In this article, we will first try to clarify the basic legal relationships in the matter and then turn to a number of the more prominent legal problems. As will quickly be seen, it is in fact the lack of clarity in regard to those basic relationships which gives rise to the problems and reduces the chance of solving them.

Lack of space precludes any descriptive introduction to this area, but classical works like those of Doxey and Combacau cover United Nations sanctions at the level of the Council, and an up-to-date and brief introduction has been provided by Schrijver. An up-to-date anthology treating a wide variety of sanctions aspects has been edited by Cortright and Lopez. Works on sanctions committees have been published by Koskenniemi, by Scharf and Dorosin, and by Conlon.

The Basic Legal Relationships

Sanctions regimes commence when the Security Council adopts a binding decision of measures against a target State and calls upon some 185 odd States to implement them. This classical way of conceptualising the matter assumes that it were here a question of a simple discreet act. In reality, “sanctions”

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