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報告番号	※　　第　　号

主　論　文　の　要　旨

論文題目

Judicial and Quasi-Judicial Control over Targeted Sanctions Imposed by the Security Council

（安全保障理事会による標的制裁に対する（準）司法的統制）

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論　文　内　容　の　要　旨

The whole study follows a pragmatic approach to show the difficulties and possibilities in exerting certain judicial and quasi-judicial controls over targeted sanctions imposed by the Security Council ("SC") of the United Nations ("UN") through different mechanisms and approaches.

The legal control over the SC conduct is not a new issue. Since the time when the deadlock of the SC had been broken, the discussions on the issue had existed such as the discussions about legality or legitimacy of the SC's involvement in situations without transborder elements; the delegation of its Chapter VII power to specific Member States ("MS") (such as the response to the Iraq's invasion to Kuwait); and the establishment of *ad hoc* criminal tribunals (such as International Tribunals for Rwanda and for the former Yugoslavia). The issue attracted academic attention especially after the *Lockerbie* case on the topic of whether judicial review of the SC should be conducted by the International Court of Justice ("ICJ").

However, the uprising of the SC's targeted sanctions regime refreshed the story. The targeted sanctions regime leaves little discretion to the MS for the implementation. It means there is no way for the MS to compromise between their obligations of human rights protection and their obligations under the UN Charter if the sanctions are implemented as instructed by the SC. Moreover, the de-listing mechanism provided by the sanctions committee is not enough to fulfill the due process requirements for the affected individuals to argue their cases and seek remedies.

The ideal model of judicial review of the SC's conduct needs reforms of the whole UN system, which is not the object of this study. The present judicial organ of UN, the ICJ is not capable in doing the work of judicial review in general although it is competent to do the incidental review in some specific cases. Although there is no mechanism to do judicial review of the SC's targeted sanctions, the national or regional implementing measures were brought before the respective national, regional courts or/and the human rights body. From a practical view, these cases give new implications and enlightenments in terms of arguments and approaches for the issue of judicial and quasi-judicial review of the SC's targeted sanctions regime.

In a case where an international organization ("IO") is a respondent party, the immunity of the IO is the first barrier that the applicant or the court should encounter if a substantial review of the case is intended. The most enlightening trend in this issue is the "reasonable alternative means" jurisprudence. In the two-fold examinations (legality of the purpose and the proportionality of the limits) on the propriety of granting immunity to the IO in a certain case, whether there is equivalent protection provided by the IO is a determinative element to judge the proportionality of the limitations to right to court. However, the prevalence of this jurisprudence is limited to the scope of the European Convention on Human Rights membership and even in those countries, the substantial check on the quality of the alternative means is still rare. Moreover, the jurisprudence has its origin from cases involving employment. Therefore, its applicability to other cases of a different nature (such as the targeted sanctions cases) is still uncertain.

In fact, the immunity issue only arises when an IO is directly brought before a judicial institution. But the mechanisms provided to the individuals or the states directly disputing an IO's conduct are very few apart from employment cases.

For the targeted sanctions regime, there are sanctions committees established by the respective SC Resolutions to manage the regime. The 1267 sanctions committee has a developing history from monitoring implementation to doing self-revision, and now the Office of Ombudsperson is the most recent mechanism that the targeted persons can directly have access to. The progress the Office of Ombudsperson has to be recognized as a promising signal for the individuals to pursue their case directly. Taking into consideration the *Nada* judgment which considers that the states are obliged to support the individuals' case in the sanctions committee's de-listing procedures if the individual is found innocent by the domestic judicatures, the case in this sense can be pushed forward by the initiatives of the individuals or the states.

Apart from the sanctions committee inside the sanctions regimes, there is no settled mechanism through which the individuals can access and directly dispute the decision of the

SC. If the *Mothers of Srebrenica* case could be one example that the UN was directly sued before the national courts, the case was declined because of the immunity of the IO without considering any reasonable alternative means. The European Court of Human Rights ("ECtHR") pointed out that there was just a random connection between the UN and the State in that case, which could not justify the jurisdiction. The same can be said about the case concerning the targeted sanctions if the affected persons bring the case before national courts directly disputing the SC's conduct.

From the examination of the possible mechanisms, refuting the implementing measures is the most adopted approach in cases before the EU Courts, ECtHR, the Human Rights Committee ("HRC") and the national courts. This approach releases these institutions from the problem of justifying their jurisdiction in reviewing the SC conduct and then the question of the human rights obligations of the SC. However, the use of the approach is problematic because of the lack of margin of appreciation.

The developing process of the self-revision procedure inside the sanctions committee shows that judicial and quasi-judicial review exercised by the national, regional courts and the HRC on the implementing measures is an important driving force for the establishment of the focal point and the Office of Ombudsperson. Refusal of effectiveness at the domestic level would be substantially detrimental to the SC's sanction regime, and this refusal is happening in many cases domestically and internationally.

Moreover, the decisions or views delivered from the judicial or quasi-judicial institutions of states, regional organizations or human rights treaty-bodies can offer good arguments on the problem of legality of the SC's targeted sanctions and serve as the driving force to refine the sanctions regimes from the perspective of human rights, which is an indispensable part of the rule of law.