

Precautionary Principle: A Customary Principle in the EU?

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Abstract

The precautionary principle has been widely discussed in academic, legal and political areas. Debates stem due to various definitions and wordings of the principle and the fact that it has been reflected in both binding and nonbinding international instruments in various fields. The role of the European Union and its members is undisputed in the evolution of the principle. It can be found in different contexts; from its statements in international disputes to Jurisprudence of its judicial organs. This paper, with an analytical-descriptive approach, examines the situation of the precautionary principle in Domestic legal systems of European countries, primary and secondary rules of the EU and the jurisprudence of general courts, ECJ and ECHR to prove or deny the customary nature of the principle in this region.

Keywords

The precautionary principle, environment and public health, secondary rules, European Court of Justice, a regional Customary Principle.

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The Effect of Hebert Hart Legal Theory in Philosophical Analysis of International Law

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Abstract

Based on a hermeneutic approach towards legal rules, Herbert Hart believes that: in order to understand a legal system, we should have an introspective and conceptual analysis of legal rules, therefore he introduces a theory in which he separates primary rules from secondary rules in order to better understand a legal system. Based on Hart's point of view, considering the structure of the international community and its lack of secondary rules which actually makes it very unique, international law cannot be counted as a very well-regulated system of law. In this article with a descriptive-analytical approach, and by analyzing Hart's theories and new approaches in philosophy of law, we try to prove that international law shall also be considered as a system of law. The article concludes that Hart's theory has had a tremendous effect on understanding international law and with his theory jurists are able to study international law as a regulated set of rules.

Keywords

Hart, International Law Order, Legal System, Legal Rules, Analytic Philosophy.

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Legal Review of the Role of Tax in Political Development and Democracy

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Abstract

Political development and democracy are concepts that despite being political terms have serious links and relations with law. Therefore it can be said that democracy is the exact basis and foundation of the principle of rule of law and is a mean for guaranteeing citizen rights by legal instruments. A look at the history of formation of democratic states shows that regulating paying taxes and how and where the taxes are being used, accompanied with public satisfaction has been a main factor for moving towards achieving democracy. The reason why Democratic states pay so much attention to taxes is not solely to create a supervisory right for citizens or to give them a right to seek answers from the political system but beyond that it is a sign of existence of legal arrangements for making such procedures possible. Democracies in addition to having financial needs to taxes for managing ongoing governmental affairs, due to the welfare obligations that they undertake, they require and very much depend on taxes. The main question of this research is whether tax is considered as a mean for democracy and political development? Studies and researches show that taxation and fully relying on tax incomes is not the only sign of political development and democracy or a sign of a move towards democracy, and that the way of collecting taxes and how the taxes are being used can also be effective in improving democratic indexes. Our research method is analytical-descriptive based on interdisciplinary studies. The data have been collected based on the library method.

Keywords

ax, Democracy, Political Development, Public Satisfactory, Citizenship Rights.

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The International Law Governing Nuclear Power Sources (NPS) in Space

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Abstract

Recent evolutions, due to the universality of Space activities and emerging the use of Nuclear power sources (NPS) for travelling to deep space, has reached its peak since 4th of January 2004. Recently a project known as Prometheus which studies nuclear fission reactors is being done by (NASA). These reactors can provide the Propulsion needed for these journeys by producing thousands of Watts of electricity (we). As solar energy and other kinds of energies do not produce enough electricity for a journey to deep space. Using (NPS) in USA and the Soviet Union started 40 years ago which was mostly in the form of (RTGs) and (RHGs). The aim of this article is to study the treaties and rules in international law especially international space law which are enforceable for space nuclear power sources. In this paper by applying an analytic -descriptive method of research, we are about to answer this question that what are the obligations and responsibilities of Committee on the peaceful uses of outer space (COPUOS) and the states who are carrying out or licensing these kinds of space activities to prevent the potential risks?

Keywords

international space law, Nuclear power sources (NPS) for space, Committee on the peaceful uses of outer space (COPUOS), international responsibility

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Relations between Governments and Individuals as Well as the Relations between International Relief Organizations and Affected States in Natural Disasters

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Abstract

Nowadays Human Rights pays a great deal of attention to protection of people affected by natural disasters, because such incidents occur every year around the world and with them comes a lot of human and financial losses. Nevertheless, this issue raises many questions regarding the relations between governments and individuals, as well as relations of international relief organizations with affected states. The question we are trying to answer in this contribution, is that what is the nature of the protection of people against natural disasters, and if such protection is a fulfillment of human rights, should it only be asked from the government, or that it can also be a demand from the international community, and in particular from international relief organizations? Based on the studies, the affected state has the main obligation to protect the victims of natural disasters, and in case the state is unable to or unwilling to give an effective relief and a violation to the fundamental rights of victims occurs, then the international community will be responsible to protect them, via international relief organizations.

Keywords

Natural disasters, affected state, Relief, International relief organizations, Humanitarian assistance.

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A Comparative Study of the Right to Self-Determination and the Rights of Minorities in International Law and the Legal System of Islamic Republic of Iran

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Abstract

The right of self-determination, as a well-established obligatory principle of international law, consists of all political, economic, social and cultural rights and may be reviewed on both national and international scale. In its national perspective, the said right protects citizens, including all groups of minorities. The scope of the right of self-determination, however, does not extend to declaration of separation and independence. It refers to the elimination of all forms of discrimination against minorities, securing their political participation in the government as well as providing them with rights they must enjoy as citizens. The Constitution of Islamic Republic of Iran recognizes the right of participation in governmental structures, such as the right to elect representatives in the Parliament, the right to establish political parties and the freedom to mark religious ceremonies.

Keywords

Self-determination, Principles of International Law, Minorities, Constitutional Law of Islamic Republic of Iran, Political Participation

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Challenges and Oppositions of European Union's and Member States' Competences in Police and Criminal Matters Related to the Area of Freedom Security and Justice of the European Union

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Abstract

After the treaty of Lisbon, the structure of the pillars of the European Union was abandoned. European community emerged into European Union and the single institutional framework was established. But the function of the other two pillars continues. One of the pillars is the police and judicial co- operation in criminal matters which merged into the area of freedom security and Justice of the EU. Structure of this area is intergovernmental. Police and criminal matters are interrelated to the communities of the member states' public order. Thus, states has refrained to confer vast powers in this area upon the EU. While they have relinquished from huge content of their sovereignty and powers of their own in other policies and matters of EU and conferred them upon it. Criminal and police policies in EU aim to combat with impunity of criminals and escape from justice because of lenient legal systems of some member states, to protect people rights and even the criminals . Thus the EU has attempted to lay down minimum regulations, so as refrain from aggression to the states sovereignty as well as guaranteeing the EU objectives. This contribution intends to, in an analytic- descriptive manner, explore the interaction and opposition of EU's and member states' competences, and analyze the role of states' sovereignty in minimum legislative acts, and shape readers' thinking by offering a concise summary of ECJ practice, structure, function and agencies of the Area of FSJ, and finally conclude that fundamental differences between definition of public order and opinions about sovereignty of states have been caused measures and decisions in this area, possess basis and minimum features.

Keyphrases

Criminal matters- member states- principle of conferral- principle of subsidiarity.

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Analysis of the Concept of Public Supervision on Power Based on Two Relation Claim-right and Liberty-right

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Abstract

The result of preserving the independence of dignity and human rights in society has caused right discourse is common at the present time. The right of Self-determination as the basis of many rights and freedoms requires in order that the one has power for Continuous monitoring and prosecution powers to limit it and guarantee the human rights and freedoms. Relation caused by the right of public oversight to power as many rights dispute. This different look requires the right of public oversight to power has been examined more. To determine the scope of necessary limitations of unnecessary restrictions. This would also make the content of right clear. In the present study component ruling on Hohfled's bilateral relations and the elements of the right of public oversight to power will be analyzed. This attempt will be done to distinguish relations and rights and assignments. The result of this analysis shows that the analysis of legal relations and legal positions of claim-right and liberty-right can be used in analysis of right of public oversight to power.

Keywords

Right, claim, liberty, public oversight, legal relation, legal position.

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International Responsibility of the States Providing Finance to Terrorism

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Abstract

Financing terrorism, defined as securing any form of financial or logistical resources as well as providing permanent and temporary loans for terrorists, can be regarded as one of the clear examples of state sponsored terrorism. In spite of various existing rules and regulations in prohibition of such financing practices, not only this phenomenon has not been restrained or reduced but due to the current monetary transactions at terrorist groups' disposal, it has gradually become a greater, more complex issue. The global appearance of new terrorist groups, especially in Middle East, serves as an evidence to this claim. As the International Law Commission's Draft Articles on Responsibility of States³ lacks the recognition of financial support as an adequate measure demonstrates, the impracticality of the prevalent rules and regulations to cease such practices can be traced to the inability to attribute acts of terrorism to sponsor states. This article attempts to study the responsibility of sponsor states in light of the mentioned rules and ultimately suggests means of improvement.

Keywords

Providing Terrorism Finance, International Responsibility of States, Prevalent Rules and Regulations, The Draft Articles on Responsibility Wrongful Acts-, 2001.

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From Natural Law to Natural Rights: Conceptual Analysis and Historical Evolution

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Abstract

A close reading of academic literature reveals different approaches to the correlation between 'natural/human rights' and 'natural law'. One approach, maintains that there is an unbridgeable gap between the mentioned concepts. While highlighting the fact that the emergence of natural rights was subsequent to the rise of natural law, this view articulates that there is no conceptual consistency between the two notions: natural rights' propositions are morally neutral claims which identify our liberties while natural law principles are duty-based moral obligations. By critical analysis, this paper argues for a close connection between a doctrine of natural, or in other words human, rights and the tradition of natural law from the historical and conceptual perspective. The essay concludes with the suggestion that the emergence of natural rights doctrine roots in, and has evolved from, the longstanding tradition of Scholastic natural law theory.

Keywords

Natural right, Natural law, human rights, permissive natural law, morally neutral.

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Scrutinizing the Necessity of ‘Derivative Responsibility’ In Light of ILC Works

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Abstract

To regulate the framework of the law of international responsibility, the International Law Commission (ILC) recognizes two methods of attribution; Independent Responsibility (responsibility of the wrongful state or international organization) and Derivative Responsibility (responsibility of states or international organizations in connection with the act of another state or international organization). However, the mentioned concepts, which have not been explored in Persian literature to the full extent, bear ambiguities on certain issues. The present paper reviews both institutions, studies their emergence by evaluating ILC documents, scrutinizes their origins and ultimately while reaching the conclusion that derivative responsibility is supplementary to independent responsibility, it notes cooperation, moralism, accountability and recognition of international organizations as active actors of international community, as the most vital contributing factors to its establishment as well as its increasingly important status. Needless to say, the growing regard for the mentioned aspects of derivative responsibility, furthermore necessitates its existence as a means to secure justice.

Keywords

International Responsibility, Responsibility in connection with act of another party, Derivative Responsibility, State, International Organization.

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The Status of Causation in International Law

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Abstracts

Enshrined in all disciplines of science, Causation is a rational concept from which Law benefits as well. This notion is the basis of many rules regarding state and individual responsibility in international law. It simultaneously fills the existing gaps as a general principle of law. While some believe that causation is a raw concept with legal contributions in the form of agency and complicity in international criminal law as well as in the realm of responsibility of states, others believe it to be distinct from both agency and complicity. This view maintains that in the absence of rules stemming from causation, the concept itself can be regarded as a source of international law. With a focus on the latter argument, this article seeks to study the status of causation by evaluating it in the context of domestic law along with its extent in international law.

Keywords

Causation, Responsibility, Agency, International law, General principle of law.

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The Fundamentals and Inherent Implications of Prohibition of Weapons of Mass Destruction in Jurisprudential and Legal research

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Abstract

As Sharia, Narratives and human intellect provide, the right to life, as the most important of all human rights, cannot be denied or annihilated. Although under certain circumstances and in certain periods, war and defense appear inevitable, detailed evidence found in sharia and narratives as well as human intellect and the common soul of humanity, regardless of race, religion, etc...., regard weapons of mass destruction and instances such as Hiroshima and Nagasaki as unforgivable violations of human and environmental rights. Such acts are forbidden in political, legal and moral teachings of Islam. This article seeks to prove the prohibition of production, multiplication, accumulation and use of weapons of mass destruction with a focus on existing rules based on the close association of human nature and Jurisprudence.

Keywords

nature, sharia, wisdom, primary and secondary rules.

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