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Legal Challenges of Protecting Underwater Cultural Heritage in the Light of Salvage Law and Law of Finds

Mohammad Razavirad[1], Janet E. Blake[2*]

Abstract

Salvors and finders seek to maximize the economic benefits of their actions while archaeologists seek to provide optimal conditions for the protection of underwater cultural heritage. The contradiction between the goals of these two groups is obvious and reconciling their conflicting goals is very difficult. National laws and international documents have taken two general approaches to this challenge: some of them completely prohibit the application of salvage law and the law of finds to underwater archaeological and historical remains, and others explicitly authorize the implementation of these laws in the field of underwater cultural heritage. In the meantime, The UNESCO Convention on the Protection of Underwater Cultural Heritage (2001) has tried to create a compromise between the conflicting positions of these two approaches. Article 4 of this Convention provides for the implementation of salvage law and law of finds subject to certain conditions. The compatibility of this provision with Article 303(3) of the 1982 Convention is ambiguous and its compatibility with the provisions of the International Convention on Salvage (1989) is possible under certain conditions.

Keywords

Domestic Law, Salvage Law and Law of Finds, International Convention on Salvage (1989), 1982 UN Convention on the Law of the Sea, UNESCO's 2001 Convention, Underwater Cultural Heritage.

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Legal Challenges of Solitary and Joint Commitments of the European Union Member States toward the Refugees and Immigrants

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Abstract

Confronting Syrian refugee crisis, the European Union has tried to cohere the member States approaches by setting a common asylum system and to transfer the burden of responsibility to the third States by the outsourcing policy. The legal basis of the international protection of refugees is international and European treaties. In this descriptive-analytical article, we have analyzed these documents and legal principles derived from them. We also have examined the judicial procedures of the European courts regarding the interpretation of these rights. Deducing from resources mentioned above demonstrates that the Europeans reaction to this crisis is different and in some cases conflicting, mainly because of the influence of the quantitative and qualitative variables such as number, age, gender and special conditions of refugees. Therefore fundamental reforms, both in decision-making and legislation system is necessary, such as creating common legal system based on the European human rights norms, accelerating the process of analyzing the refugee requests and facilitating of its grant conditions, and refraining from "safe countries procedure" despite in special situations.

Keywords

European Union, Syrian Asylum Crisis, Refugee law, ECHR, ECJ.

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Non- Judicial Methods to Resolve Administrative Disputes in the Contemporary Legal Systems

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Abstract

The issue of indicators for resolving administrative disputes such as compromise, mediation, arbitration and other forms of providing social justice is one of the most prominent government actions in public service missions. The aim of this research is studying the necessity of non-judicial methods in contemporary legal systems, which is likely to be seen in the practice of government. Research methodology based on the purpose is practical and has been subjected to a non-experimental descriptive method in terms of the nature and method of collecting data and contents. Based on the findings of the research, it was found that these methods all have common traits that are distinguished from the formal justice structure. The patterns of this process are simpler and more informal than judicial procedures. In most cases, the proceedings are flexible, without official formalities and extensive rules of procedure. In the Iranian administrative law system, the institutionalization of these practices has been proposed alongside the judicial authority, especially with the administration of the State's "administrative contracts", in order to reduce the number of judicial cases and the continuous improvement of public services.

Keywords

Ombudsman, Facilitation of Dispute, Dispute Resolution, Conciliation, Policy Making Conference, Negotiation.

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The Relation between Functional Protection of Staff in International Organization and Diplomatic Protection

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Abstract

One of the most important features of the law governing the work relationships of staff in international organizations is its protective character. Functional protection of staff in cases such as protecting them from interference, arbitrary actions of States or even their international organizations. Functional protection of staff in international organizations demonstrated in matters relating to immunities or compensation for damages were done in their area of rights and organizational duties. In the case of damage to the staff in international organizations, the right to exercise functional protection by an organization for its staff is recognized and, on the other hand, the State of the affected employee of the organization can exercise diplomatic protection for his nationals. Functional protection by the organization is not a barrier to exercise diplomatic protection by the State for its national and hasn't inherent superiority to diplomatic protection. So there may be synchronization between them, which must be resolved in any particular case by an agreement, in such cases, none of two types of protection is superior to another at the same time.

Keywords

Reparation, Functional Protection, Diplomatic Protection, International Court of Justice, Staff in International Organizations.

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Collective Recognition of Palestine

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Abstract

According to the statutes of international organizations, the precondition for membership in those organizations is that the applicant institution should be a State. According to article 4 of the United Nations Charter, only States can become member of the United Nations. When a State becomes a member of the United Nations, other States that have voted in favor of new member, acknowledge new member as a State and recognize it. After the adoption of resolution 67/19 by United Nations General Assembly, the status of Palestine was enhanced to Non-member Observer State. One of the major issues that have generally been raised since the issuance of the recent resolution was the collective recognition of Palestine by the UN General Assembly. In this sense, the States that voted in favor of resolution 67/19 have also somehow recognized the Palestinian State since with their positive vote; they acknowledge the existence of the Palestinian State. In the author's opinion, voting in favor of membership of a State in international organizations, especially the United Nations, implicitly recognize a new member. In the case of Palestine, although it has not become a member of the United Nations, the resolution acknowledges Palestine as a State that implicitly leads to recognized Palestinian as a State through the General Assembly of the United Nations.

Keywords

Non-member Observer State, Recognition, Collective Recognition, Palestine, Resolution 67/19.

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The Necessity of "State Succession on International Responsibility" in the Perspective of International Law: Conception and Challenges

Mostafa Fazaeli[1], Mohammad Setayeshpur[2*]

Abstract

Consequences of succession of States in respect of international responsibility or State succession on international responsibility has been dealt with doctrines of international law. The issue was postponed by international law commission (ILC) for many years, due to the highly controversial and dubious thoughts. There is a fundamental debate on the concept and existence, not merely the domain of State succession on international responsibility. Clarifying the conceptual framework, following the limitative categorization on the basis of legal deterioration or continuity of original State, the present paper sought to illuminate the conception in question has been in the process of rulemaking and showed that this international legal perception, despite the prima facie contradiction between the said conception and two main principles of international law, the principles of independent responsibility and clean slate, in fact, has been in harmony with its essence. The necessity of reparation and the linkage between population, territory and the Successor State and the objectivity of rights and obligations, requires transferring responsibility to the Successor State. The said perception is regarded as another exception to the mentioned principles logically.

Keywords

State Succession, Separation, Clean Slate, Independent Responsibility, International Responsibility.

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The Right to Privacy of Public Figures in the New Information Space, with a glance at Judicial Precedent of European Court of Human Rights

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Abstract

In the new information and communication space, ordinary people that equipped with communicative technologies, have the ability to discover the real personality of public figures or satisfy their own curiosity by revealing their private information and photos. This situation arises from a set of rights including the right to know, free access to information and freedom of expression in the new communicative space. But public and famous figures claim to have privacy that is contradictory with the rights aforementioned. This article with an analytical method surveys relative conceptions and the judicial precedent of European Court of Human Rights and discuss the relation between the right to privacy of public figures especially politicians and the modern information and communication space. The judicial precedent of countries and European Court of Human Rights propose a criterion for resolving aforementioned contradiction. This article by distinguishing between politicians and other famous figures conclude that disclosure of private information and photos of public figures according to the circumstances won't be contradictory with the privacy right, if it is for more clarification of their personality and comparing their private behavior with their formal positions in order to establish a debate containing a public interest.

Keywords

Freedom of Expression, Public Figures, Privacy, Information Space, Public Officials.

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The Applicability of International Humanitarian Law in Cyber Warfare

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Abstract

In the information age, since the battlefields are shifted, the international community is threatened by cyber warfare. Today, cyber-attacks are considered as a separate category of warfare and at the same time, they can represent a novel type of use of force since they may lead to impacts such as massive damages to the critical infrastructure of a State, property damages, and loss of human lives. Therefore, when using this novel method of confliction, whether a war operation in a conflict solely consists of cyber-attacks or cyber warfare is a part of a military conflict with several tactics, principles of international humanitarian law must be applied and the States are obligated by the obligation according to which, the new means and methods they use in cyber warfare must be in accordance with the existing principles of international humanitarian law. This article aims to prove that until specific principles of international humanitarian law in cyber warfare are not developed, by means of resorting to the existing principles and rules, cyber conflicts can still be defined within the framework of the principles of international humanitarian law.

Keywords

Resort to Force, Cyber-Attack, International Humanitarian Law, Means and Methods of Warfare.

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Proportionality in the Delimitation of the Maritime Zones from the Perspective of International Jurisprudence

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Abstract

"Proportionality" has an important role in implementing the "Equity" in the delimitation of the Maritime Boundaries. This principle is considered as a criterion for equitable maritime delimitation. Proportionality and developments of this principle in delimitation of maritime boundaries is indebted to judicial procedure which International Court of Justice and other courts and tribunals in their judicial procedure has presented it with different approaches and crystallized it. In this research, development of Proportionality in delimitation of maritime boundaries from judicial decisions perspectives have been investigated and by reasoning in international courts decisions, it was determined that international judicial decisions in presentation and progressive development has had a vital role and has made it as an equitable standard of delimitation of maritime boundaries.

Keywords

Proportionality, Equity, Delimitation, Maritime Zones, International Jurisprudence.

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Legal Challenges of Economic Convergence in International Trade Law with Emphasis on European Union and European Free Trade Association (EFTA)

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Abstract

States tendency to establish regional economic unions besides some major international organizations which are based on economic and political reasons, either at the beginning of formation and during activity are facing legal berries. Globalization in addition to political aspects comprises legal issues such as unification of legal rules. Some international organizations like UNCITRAL, UNIDRIOT seek to reduce legal systems differences. But, in addition to this, other issues like the principle of sovereignty of states, parallel judicial proceeding on trade disputes, exception of foreign arbitral awards and judgments enforcement and development of internal court's jurisdiction hinder economic convergence. In this article, these factors will be examined in the context of European Union and European Free Trade Association (EFTA) trade system.

Keywords

European Union, European Free Trade Association, International Trade Law, Economic Convergence, Unification.

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Compensation for Damage to Deep Sea Area Environment in Customary International Law and the Inconsistent Approach of Seabed Disputes Chamber of International Tribunal for the Law of the Sea

Javad Salehi*

Abstract

Provisions of the United Nations Convention on the Law of the Sea 1982 involve the necessary tools for the protection and support of the resources of the Deep Sea Area. But international obligations prescribed in the Convention on the Law of the Sea for the safeguard and protection of the Deep Sea Area environment should be interpreted in a way that covers other existing regulations in the customary international law. Although in the Convention on the Law of the Sea provisions is no hinder to extend the international customary law obligations on the States parties to the Convention, but branches of International Tribunal for the Law of the Sea are reluctant to extend to the law of the sea. The approach of Seabed Disputes Chamber of International Tribunal for the Law of the Sea in 2011 advisory opinion indicates the responsibility of the Member State in protection of the sea environment is limited solely to the provisions of the Convention on the Law of Sea and its executive agreements and the doctrines of customary international law do not work directly in this area. This contradictory approach of Seabed Disputes Chamber with the teachings of customary international law has led its advisory opinion not applicable to the non-treaty States.

Keywords

Compensation, Customary International law, Convention on the Law of Sea, Member State Responsibility, Sea Environment, Deep Sea Area.

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International Responsibilities of States for Damages of Using Replaced Energy Resources, Case Study: Technology of Carbon Capture and Storage under Seabed

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Abstract

During the time and with improvements in science, consumptions of energy and using natural resources have been greatly increased. But using energy leads to the destruction of environment. Also according to increase in fossil fuel usage and combustion of these fuels, the concentrations of greenhouse gases have been notably increased. Such new technology for confronting with the phenomenon of warmness or controlling it to have ecological balance is Carbon Capture and Storage under sea beds. Also, there might be some disasters because of incorrect guidelines in using this or other technologies in environment. Thus there may be need for some rules and laws of responsibilities in environmental damages in order to claim international responsibilities of States and Non-State actors. In this research, we want to discuss replacing energies and the technology of Carbon Capture and Storage and analyze the possible damages to the environment by referring to principles and concepts of environment international law and finally, we get to discuss the international responsibilities of States in using this technology.

Keywords

Carbon Capture and Storage, International Law, Technology, Global Warming, State Responsibility, Environment, International Responsibility.

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The Obligation of States for Acceptance and Sending Humanitarian Assistance during Natural Disasters

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Abstract

States have the obligation to protect the people who live in their territory and assist them during natural disasters because they have sovereignty. But the reality is that all of the States have not the same power and so humanitarian assistance without the cooperation of other States and international organizations is impossible. ILC has studied on this subject for some years and finally completed the draft articles and sending it to the States for getting their opinions. Under ILC draft, affected State has an obligation to make available humanitarian assistance for its people and its consent is the essential element for sending humanitarian assistance, although cannot object to humanitarian assistance arbitrarily. The Responsibility to Protect is the most important reason that makes States send humanitarian assistance for affected States.

Keywords

Affected State, Natural Disasters, International Law Commission, Responsibility to Protect, Humanitarian Assistance.

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Resistance Economy and Sustainable Development: Similarities and Differences

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Abstract

After the victory of the Islamic Revolution and the rise of international economic pressure, over the course of four decades, the Supreme Leader of the Islamic Revolution in 2010 developed a concept in the economic literature, called "Resistance Economy", in which economic progress and getting out of international crisis are dependent on the implementation of policies and general indicators of the Resistance Economy. In this regard, international assemblies and at the head, the United Nations, since its foundation so far, in order to reduce poverty and progress in underdeveloped or developing countries created a concept called sustainable development and adopted various documents in this regard, the most recent of which is the 2015 United Nations Document on Sustainable Development and its 17th goals. The question of this research is that what is the legal relationship between the general document of Resistance Economy and Sustainable Development, in which both of them introduce indicators for progress? and in other words, what are the similarities and differences between these two documents?

Keywords

Resistance Economy, Sustainable Development, Legal Relationship, Similarities, Differences.

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Constitutive Elements of the Law and the Approach of Islamic Legal System

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Abstract

It is proportional to the various epistemological foundations of the constructive elements and the identity of the law, and in legal systems, it does not apply to a single proposition. This also affects the differences in attitudes and perceptions of the law. The present article seeks to answer the question of what constitutive elements and the identity of the law are? And how do the legal systems understand and analyze the law? If in a legal system, emphasized on the content element of the law, the non-autonomous approach and, if the structural element is to be considered, the independence approach becomes prioritized to the law. The hardcore of Islam's legal system is the wise will of lawgiver. Therefore, the law and all the internal components and concepts of this system define itself with this hardcore and define it on its horizon. In the legal system of Islam, the law has two substantive-content and form-structure atoms and viewed with non-independent approach.

Keyword

Law, Constitutive Elements, Epistemic Principles, Islamic Legal System.

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Reflections on the Legal Status of Drone Strikes against Terrorism

Seyed Mohammad Hosseini[1*], Mehrdad Mohammadi[2], Yaser Mokarrami Ghartavol[3]

Abstract

In recent decades, the Middle East has been the scene of armed conflicts between ultra-regional powers and some regional States and Non-State actors, such as terrorist groups. During the past decade, the use of drones for bombing, assassination, detection, and espionage by ultra-regional States has been prevalent under various pretexts in the Middle East region, which has mostly led to the violation of State sovereignty of regional States. This violation of sovereignty has always been legally justified by the ultra-regional governments. The major part of such justifications has been based upon the legal challenges on the rules governing the use of drones. They are in fact, considered as coverage for illegal activities of these States. These challenges have largely been in line with the interpretation of the provisions against the use of force and self-defense, the rules governing the conflicts and the rules of humanitarian law and fight against terrorism. Therefore, a clear understanding and interpretation of these challenges and resolving them according to international legal rules can provide a realistic picture of the status quo and leads to a more accurate understanding of the international law in this field.

Keywords

Drones, International Human Rights Law, Law of Armed Conflicts, International Humanitarian Law.

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