An Analysis of Provisional Application of Energy Charter Treaty in Light of "Yukos shareholders vs. Russia ", and a Comparison with the Iranian legal system

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Abstract

Due to the necessity of a fast application and development of its rules and provisions regarding the role of energy in economic development, Energy Charter Treaty (ECT) has established the "provisional application" process. Article 45 of this treaty, while articulating the application of this principle, expresses some exceptions. Existing ambiguities as well as divergence in its interpretation, bring about some controversies on the aforementioned issue on an international level. One of the most important disputes in this regard is the case of "Yukos shareholders vs. Russia ". In this award, the arbitral tribunal and judicial courts involved have raised various interpretations of article 45, relying on ECT and Russian law and have ultimately adopted different approaches. Examining all aspects of "provisional application" in the mentioned case, in addition to expressing the latest legal point of views on this subject may help legal authorities and legislators of countries, like Iran, who are willing to be members of ECT, in their future legal policies. This paper reviews the provisions of ECT regarding its provisional application and discusses different decisions of courts in Yukos shareholders vs. Russia to explain the contradictions and inconsistencies of the Iranian legal system withECT , in case the Treaty is signed by Iran and provisional application commences.

Keywords

Treaty Charter Energy :"Yukos shareholders vs. Russia ", Provisional Application, Permanent Court of Arbitration, Iranian legal system.

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Legal Status of Acts of the Supreme National Security Council in the Regime of Constitutional Law of Iran

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Abstract

One of the most important strategies of establishing national security, is to create ultra-judicial institutions with the competency of making binding decisions on all defense and security affairs. Introduced into Iran's constitutional regime during the revision of the Constitution ,the Supreme National Security Council carried the mentionedrole . According to Article 176 of the Constitution, the Council's decisions are applicable and may be implemented after confirmation from the supreme leader. Instruments, such as the views of the Guardian Council vas well as decisions of judicial courts, indicate that acts of the Supreme National Security Council are considered to hold a statutory status while ,due to the independent structure of their approval, they may not be subject to repeal. However, as ambiguities regarding the legal status of these acts exist ,relying on the descriptive-analytical method, the present article aims to review the mentioned status and its nature by studying the different aspects of the topic.

Keywords

National security, Jurisdictions, Acts, law, Guardian Council.

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The Legal Status of Historic Waters in the Law of the Sea

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Abstract

The doctrine of historic waters was introduced in the early twentieth century in international law of the sea. After more than a century of its implementation in between states, the doctrine is now witnessing progress. Regulations of the Conventions on the Territorial Sea and the contiguous zone as well as the Convention on the Law of the sea, do not address the matter of historic waters. However, in today's international law, a large number of states are seeking to expand their jurisdictional ambit based on the doctrine of historic waters. But the lack of clear and specific rules concerning the issue at hand, has led to differences on an international level. The fundamental question in this regard is that how the concept of historic waters fits in the international law of the sea? Conducted studies seem to indicate that if the claimant state's continued sovereignty over historic waters has been sustained within a lengthy duration in comparison to its jurisdiction over the State's internal waters, and provided that other states do not object the mentioned sovereignty, the claimed zone will be considered as the Claimant State's internal waters. Furthermore, the same rule also applies in the case of historic waters and territorial sea.

Keywords

historic waters, Convention on the Law of the Sea, juridical regime of historic waters, historic title, Historic bays.

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Intervention of Non-governmental Organizations as a "Friend of the Court" in the International Tribunal of the Law of the Sea

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Abstract

One of the means of participation for international non-governmental organizations in international proceedings is their intervention as a "Friend of the Court". Through this legal institution, these organizations can present their remarks, in writing or by oral address, on the facts and the laws governing the claim to the court. While International judicial and quasi-judicial authorities have reacted differently, unlike the International Court of Justice who have refused to accept the remarks of Friends of the Court, the International Tribunal for the Law of the Sea has taken a flexible approach towards this institution. The current paper this aims at presenting the flexibilities in judicial procedures of the International Tribunal of the Law of the Sea in light of its recent precedent.

Keywords

NGOs, friends of the court, international court of justice, International Tribunal of the Law of the Sea, International Union for the Conservation of Nature (IUCN), Green peace.

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Studying the Conceptual Definition of the Constitution's Terminology Government in the definition of "Government or Ruling Class"

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Abstract

In the Constitution of the Islamic Republic of Iran, the term "government" has been used to express five distinct concepts. Each of these concepts places the state in a special legal status, which, in order to identify the rights and duties of the state and the people in the constitution, should be taken into account in the particular concept of government in each principle. If we do not define the government correctly in principles of the Constitution, it is possible that the principle in question is devoid of content or incompatible with the purposes of the constitution. Therefore, the concept of government in each principle must be derived from the general principles and evidences used for regulating the said Principle. In this study, the term "government" in Principles 3, 8, 9, 11, 14, 17, 21, 28, 30, 31, 41, 49, 53 and 55 refers to the terms, state or ruling class. The method used in this article for understanding this definition of the term Government, would be analytical, and should the Principle require a study from the standing point of history, literature and wording shall also be used.

Keywords

Government, State, Ruling Class, Constitution.

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The EU as a Special Regime: Features and Effects

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Abstract

Establishing the European Union which goes back to 1950s and its success in achieving valuable goals puts forward this question that whether those successes can transfer to international legal order. In fact, advent of some regimes gradually in international legal order has led to so-called phenomenon of special or self-contained regimes. One of the best and prominent instances in this regard is the European Union. This regional organization has constituted effective norms and mechanism under which any invocation to general international law is on the wide extent limited. This paper is seeking to draw the characterization of EU legal order itself as a legal system and as a special regime in international law. In this respect, analysis of latter particular effect in the context of general international law will be present.

Keywords

General international law- Legal order- European Union- Special regime- European Court of Justice.

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Efficiency and its Obstacle to Competition law in Iran

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Abstract

Whereas competition law prevents monopoly and encourages small business, it can create efficiency. This research studies the concept of efficiency, its types and the factors affecting it, and examines one of the most important non-economic factors, with high effects on this concept, the rule of law in the area of business deals. This research aims to study the special features of the rule of law in the area of business deals i.e.: Predictability, providing opportunities and equal treatment and fair governance, reduce transaction costs, lack of red tapes, and also studies the barriers in Iran's Competition Law and tries to find solutions in order to overcome the legal barriers blocking the effectiveness of Iran's competition law.

Keywords

Competition law, Efficiency, Business condition, Predictability, providing opportunities and equal treatment and fair government, Reduce transaction costs, lack of red tape.

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Legal Analysis of Security Council Resolution 2231 and Its Relationship with the JCPOA

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Abstract

Considering the JCPOA as a gentlemen agreement, this article aims to analyze United Nations Security Council Resolution 2231 (2015), endorsing the comprehensive solution to the Iranian nuclear issue reached in Vienna on 14 July 2015. Therefore, the non-binding nature of the JCPOA demands an analysis of the relationship between this document and the Resolution. Unlike Chapter VII resolutions of the SC, the language of the 2231 Resolution is soft and there is no mentioning of Chapter VII therein. The practice of the Council demonstrates that when it issues a chapter VII resolution, the Council expressly would state that its resolution is in accordance with Chapter VII. Iran has recently conducted some missile tests raising different views regarding annex two to the Resolution, i.e., it has highlighted the connection between the Resolution and the JCPOA. Despite the fact that the JCPOA is annexed to the Resolution, they constitute two different instruments. While the approval of the Resolution means approval of the JCPOA, the reverse is not true. Finally, under Article 103 of the UN Charter, in case of conflict between obligations of States under the Charter with those of other international agreements, the former shall prevail.

Keywords

JCPOA, Law of Treaties, International Law, 2231 SC Resolution, Gentlemen Agreements.

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The role of science in evaluation of HSE measures in international arbitration processes

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Abstract

Since the environmental situation of the planet earth is continuously becoming more deteriorated, and as the importance of sustainable development and the rules governing the world trade system in growing; all countries have the right to introduce legislative acts to support and improve public health, safety and environment of their own. Such right and the risks threatening the host government in trade system, brings about the issue of defending the health, safety and environmental measures against international disputes settlement authorities. Whereas HSE regulatory measures should be based on science and scientific rules, in arbitrations of disputes resulting from this measure, the role of science and its limitations are of importance. Therefore this paper tries to survey the subject that due to the limitations of science and scientific disagreements between scientists, under which circumstances and how could the scientific findings be used in HSE measures arbitrations? Scrutiny's indicate that despite the scientific limitations scientific uncertainty in some cases, science is the main axis in moving towards sustainable development; because it provides an objective basis for the development of HSE standards. So through emphasis on the process of production of science, scientific methods and scrutiny, a measure could be formed, relying on which the validity of scientific investments could be assessed.

Keywords

Science, Health, Safety and Environmental Measures, Sustainable Developmen**.**

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Security Council Action in Confronting with Ebola phenomenon, a New Approach in Public Health Area

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Abstract

In 2014, a massive outbreak of the Ebola virus on the African continent, made headlines. Meanwhile, the Security Council issued Resolution 2177 on 18 September 2014 Ebola outbreak in West Africa as a threat to international peace and security and thereby to influence the efforts to maintain peace in the geographical zone announced. The Security Council's responsibility by relying on Article 24 of the Charter extended interpretation of the concept of peace after the end of the Cold War, entering the this body of UN in different fields that it is possible to be considered as a threat to peace. The performance of Security Council in issuing of resolutions in accordance with the principles and objectives defined in the UN Charter and observance of state governance framework, ،may be uses as a valid source of general international law.

Keywords

Resolution 2177, Ebola Virus, Security Council, The World Health Organization, International peace and security

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The Legitimacy of States Evaluation in implementation of Sanction United Nations Resolutions with Emphasis on European Union Performance

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Abstract

In the history of the United Nations, in many cases, the Legitimacy of Security Council Resolutions, has been challenged. These challenges has been raised by states that has been affected by the Security Council's decisions. Notwithstanding that states are responsible for implementing the Security Councils' Resolutions, they impose their will and interpretation on implementation of Security Council Decisions. Interpretation by states may raise concerns about questioning Security Council role and efficiency in international peace and security maintenance. Growing in the number of Security Council resolutions and the question of violation of certain fundamental human rights by these resolutions has led to brought actions against these resolutions before courts of the European Union. In their judgments, The Courts have examined the legality of measures under the resolutions that has resulted. Although these judgments have not resulted in nullifying a Resolution, they have led to fragmentation of the international law.

Keywords

power of evaluation, United Nations Charter, Security Council Resolutions, Judicial Review, European Union.

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Legal analysis of Violence against the Muslims of Myanmar; as a crime of genocide

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Abstract

For decades, Myanmar Muslims that known as Rohingya in Rakhin state, are exposed to systematic violence by the state and state actors. The intensity of this violence occurred in June 2012 and drew the attention of the international community towards Myanmar. Processes of violence, discrimination, forced migration and legitimize them, whether before or after June 2012, under the genocide as a crime is surveyable, because acts of violence resulting in the killing and displacement of Muslims, the intention of destroying this minority group makes to mind. In this article, we explain the wretched situation of Muslims in Myanmar, the elements of the crime of genocide against Muslims in Myanmar prove to be criminal under international law. Also, due to the need for urgent action by the international community, especially the Security Council, ways on how to prosecute and punish the perpetrators of the crime of genocide against Muslims in Myanmar are offered.

Keywords

The Muslims of Myanmar, Rohingya, Genocide, International Criminal Law, Security Council.

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