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The Use of Straight Baselines in Maritime Delimitation; with Special Reference to Maritime Delimitation between Iran and Kuwait

Sassan Seyrafi*

Abstract

The equidistance method has an essential place in the current law of maritime delimitation. According to the Law of the Sea Convention, the equidistant line must be drawn and calculated from the territorial sea baselines of the opposite and adjacent States. What is unclear is whether the equidistant line can be drawn and calculated from straight baseline. This question was one of the issues that have been raised in negotiations on maritime delimitation between Iran and Kuwait. Iran believed that its system of straight baselines must be taken into account in the determination of the maritime boundary between exclusive economic zone and continental shelf of the two States. The findings of this article suggest that international judicial and arbitral bodies have always refused to give effect to straight baselines when it comes to maritime delimitation. This approach is generally confirmed by the treaty practice of coastal States. Therefore, the usefulness of Iran's position with regard to this subject, whether in future negotiations or in case of submission of the matter to third-party settlement is doubtful.

Keywords

Maritime Boundary, Three Stage Delimitation, Straight Baselines, Equidistance Method, Treaty Practice of Coastal States.

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Reflection on the Jurisdiction of the Expediency Discernment Council of the System in Confirmation of Acts which are Contrary to the Constitution

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Abstract

Expediency Discernment Council of the System was formed in 1988 by order of Imam Khomeini (Rahmatullah). During the revision of the Constitution in 1989, the Council was recognized in the Constitution. With the formation of this body, where the Guardian Council deems the act of parliament contrary to sharia law or Constitution and on the other hand parliament insists on the need to approve the legislation, it falls within the jurisdiction of the Council. With the formation of expediency discernment mechanism by the Council, one of the questions that have been raised was on jurisdiction of it to fulfill this role. This article seeks to answer the question of whether the Council can confirm any act that the Guardian Council deems it inconsistent with the Constitution -if it is explicitly inconsistent with the Constitution. The authors explored this matter in an analytical-descriptive manner and finally based on principles of the Constitution and fundamental rights, gave negative answer to it. Therefore, the jurisdiction of the Council is limited to the acts which are not explicitly contrary to the Constitution.

Keywords

Guardian Council, Constitution, Expediency Discernment Council, Islamic Consultative Assembly, Expediency.

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The Approach of International Law to Hostile Propaganda for War

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Abstract

Following the development of communicational technologies, countries gradually found out about the unexpected role of propaganda in manipulating people's mind in global relations. So, throughout history countries and people started broadcasting propaganda to convince the world that their hostile and illegal acts are necessary or humanitarian. Propaganda was specifically used to incite to war and its examples could be seen in United States invasion of Iraq, the case of Ukraine and ISIS propaganda. The purpose of this article is to explain the dimensions and status of hostile propaganda for war in international law by an analytical-descriptive method. Unlike what people might think, it has been repeatedly mentioned and condemned in international law. The most important example is article 20(1) of the International Covenant on Civil and Political Rights. It is also indicated in the procedures of international tribunals and the resolutions of international organizations. In order to confront such increasing process, it is essential to study the approach of international law on propaganda for war.

Keywords

Freedom of Expression, Hostile Propaganda, International Law, International Covenant on Civil and Political Rights, Armed Conflict.

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Foundation for Government Intervention in Contracts: Corrective Justice or Distributive Justice?

Hasan Lotfi*

Abstract

The governments increasingly have intervened in contracts in recent decades. The nature and the foundation of these new interventions have been controversial and different viewpoints have been raised about them: the first viewpoint treats these interventions as continuation of early ones in contracts by government and bases them on corrective justice. But, according to the second viewpoint, these interventions are considered as a new paradigm and different from early interventions, so they are interpreted in line with distributive justice. This viewpoint results in emergence of the rule of rules by the nature of public law in some areas of traditional contract law, and in other words, the influence of public law in the realm of private law. Finally, this article concludes in favor of the second viewpoint after scrutiny of different viewpoints.

Keywords

Public Law, Intervention, Contracts, Distributive Justice, Corrective Justice.

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Principle of Reasonable Water Use in Iran and International Water Law

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Abstract

Optimum use of water resources is an obligation which expressly mentioned in municipal and international law. According to the rules and regulations of water allocation in agricultural sector of Iran, optimum and economic amount of water should be determined and illegal and overuse of water would lead to termination of usage license. According to this study, the method of determination of optimum water use in agricultural sector of Iran is not compatible with sustainable management of water resources. Despite some revision of law and regulation of water allocation for agricultural purpose have been made so far, wasteful use of water is being seen mainly due to non-volumetric delivery of water, lack of water user participation, lack of guarantees and little cooperation of related public organizations. Revising national water document due to the reduction in available water, volumetric delivery of water, shorten the time period for usage licenses and reviewing water tariffs are some suggestions for protection and sustainable use of water resources in agriculture sector of Iran.

Keywords

Reasonable Use, Sustainable Development, Water Resources, Agriculture, Water Recourses.

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The Impediments to Remedy for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law: Contemporary Developments in International Law

Abdollah Abedini*

Abstract

Due to their international personality, States and international organizations in current legal system are able to bring an international claim as to injuries resulting from breach of obligations. The system in which international law intertwined with it, during its evolutions experiences novel transformations intellectually and virtually. On the one hand, the system is thinking to place human as the ultimate benefit of law, and on the other hand, its hands have tackled with States sovereignty. However, reparation and remedy and directly bringing lawsuit have partially been realized in human rights law and humanitarian law regimes. International system is attempting to cross the impediments which are largely procedural to benefit human from the right of direct filing lawsuit -such as European Union legal system- against States. In this regard, international doctrines have endeavored to enhance the issue. The prominent value in current international system is full remedy and the possibility of bringing lawsuit for human. However, it seems States sovereignty as an impediment in various forms such as immunity with respect to human rights law and humanitarian law breaches are trying to ignore the reparation for related victims in contemporary international law.

Keywords

Reparation, Right of Persons to Access to Justice, International Human Rights, International Humanitarian Law, Statute of Limitation, State Immunity.

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Places of Worship Similar to Public Space? Reflection on How Government Facing Administration and Supervision of Public Places

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Abstract

"Public Sphere" is regarded as middle of private place and superior sovereignty of government and it is one of the tools of democracy. "Material Public Space" is objective element related to Public Sphere which as an outer reality covers the material aspect of Public Sphere. In Islamic Republic of Iran, the places of worship - specialty mosques- are among obvious instances of public physical spaces that may regard as mediator link for reducing gap between people and government and also a place for thinking and discussion of citizens on concepts such as: "Public Good" and "Public Interest" and provides for the realization of religious democracy. The present article reveals minimum approach of government and also self-control and public administration of religious places; bring self-religious and self-sovereignty of citizens. In fact, citizens as a result of places of public worship, practice collective participation in smaller scale for finally implementing it as their own democracy.

Keywords

Places of Worship, Public Sphere, Islamic Government, Public Space, Democracy, Mosque.

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United Nations Efforts in the Field of Development with Emphasis on the United Nations Millennium Declaration about Development (2000)

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Abstract

Since 1960s, the United Nations have commenced its efforts regarding international development. These efforts are composed of numerous declarations and resolutions of General Assembly of United Nations, creation of special institutions in the field of development including United Nations Conference on Trade and Development (UNCTAD), United Nations Development Program (UNDP), four decades of development strategy (from 1960 to 2000) and also United Nations Millennium Declaration about Development (2000). It seems that exact consideration of this declaration which enumerates obstacles of development in detail and finds out the extent to which these goals are achieved within the specified time frame clearly can display amount of success of the United Nations in relation to development. Despite diligences of United Nations in relation to development, it couldn't entirely attain to goals which have envisaged in this realm. Reasons which should be noted in this regard are: lack of institutionalized instrumentation, lack of binding international document and lack of scrutiny of charter of United Nations.

Keywords

Millennium Declaration about Development, Development, United Nations, Developed Countries, Developing Countries.

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The Precedent in Contemporary Public Law

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Abstract

Law as the regulatory science of society has to change the methods and approach according to the transformation of social communication. Developments especially in the field of public law, at a rate that does not allow legislation to adapt with them; make the other sources of law, such as precedent, have different functions. This article sought to investigate and analyze whether the precedent had notable changes in contemporary public law? If the answer is positive, in what forms? Finding shows that the results of positive answer to this question which is following the developments in the contemporary world and their impact on the science of law recognize the jurisdiction of the precedent in three parts: make new norms, complete the existing norms and protecting the rights and freedoms of individuals. Consequently, changing in the status of judicial practice among the sources of public law and its promotion has happened.

Keywords

Rights and Freedoms, Public Law, Precedent, Making Rules, Norm.

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Complementarity Jurisdiction of the International Criminal Court in Addressing Internal Violence in Kenya State Passivity

Javad Salehi*

Abstract

Kenyan domestic violence gave the first opportunity to exercise complementarity jurisdiction at the International Criminal Court due to the Kenyan government's unwilling in investigating and prosecuting the accused in ICC. Prosecutor used the first opportunity to conduct research in Kenyan case according to his own discretion. Unwillingness of Kenyan government in prosecuting authorities over their international crimes has different criteria which are recognized with the "same person/same conduct" criterion in this case. Kenyan government challenged the jurisdiction of the International Criminal Court in accepting Kenyan case because of its ambiguities. But prosecutors and judges of the Court used this criterion to prove that the Kenyan government did not investigation or prosecution against those individuals accused in the Court or they did not prosecute the related conduct of them. The question is whether the criteria for identifying "the same person, the same conduct" as considered by ICC, is ambiguous and precludes exercise complementarity jurisdiction in Kenya situation? Determinants of this criterion in Kenya situation indicate that the Kenyan government has not used its Criminal jurisdiction appropriately. Therefore, International Criminal Court has complementarity jurisdiction in this case.

Keywords

Unwillingness, International Criminal Court, Kenyan Government, Judicial Procedure, Complementarity Jurisdiction, Same Person/Same Conduct.

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Extraterritorial Application of European Competition Law

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Abstract

During globalization era and interconnection of cultural, economic, political and social areas, the connection between people of the world and their countries is becoming vaster and also closer. Such proximity, particularly, in economic areas may cause collision, opposition and conflict of laws of the States. The laws which their application has been knotted to countries interests. Occasionally these interests are beyond the borders of a country. Applying municipal law to the matter which is beyond the border of a country faces many obstacles. Apart from conflict of jurisdictions, the sovereignty of states is one of the obstacles which prevent to enforcement of the law of one country in another country. On the other hand, rules such as competition one which has been knotted to public and economic order of the countries, enjoy such importance which if been violated beyond their borders, they wouldn't bear this easily. In this paper, through an analytical-descriptive and comparative approach, the European Union's precedent to extraterritorial enforcement of competition law within the limits of sovereignty of States in preventing extra-territorial enforcement of the rules of this law and also how to pass a sentence and its effects, as well as how they implement is being examined.

Keywords

European Union, Sovereignty, Competition Law, Extraterritorial Approach, Precedent, Domain of Law.

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Cyber War and Development of International Law of Non-Use of Force in Cyberspace

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Abstract

Use of cyberspace for rapid and effective achievement of strategic goals has today become a new significant warfare tool for all actors. For this reason, the distributive and interactive nature of cyberspace together with low costs of accountability has increased the effective function of attacks in the cyberspace. Moreover, anonymity in this space has facilitated rapid operations in a wide geography which in turn leads to attacks, destructions and crimes in this environment results in violation of territorial integrity and national security of States. In absence of effective rules and provisions has left the issue of international responsibility for these crimes and their legal prosecution in a vague situation. This article deals first with the definition of cyberspace and emphasizes upon the fact that though in the circumstances as stand now resort to cyber-attacks is considered as use of force in international law, nevertheless identification of their legal territory faces many obstacles in different circumstances including in the law of war, resort to force and self-defense making the entering into this issue of international law difficult.

Keywords

Use of Force, Cyber Attacks, International Law, Self-Defense, United Nations Charter.

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