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Conceptual Framework of Derivative Responsibility of International Organizations in International Law

Ahmad Momenirad^{1*}, Mohammad Setayeshpur²

Abstract

Increasing international organizations as active subjects of international law, their role in the commission of internationally wrongful acts has also increased. Organizations not only have committed internationally wrongful acts independently but also playing a role in wrongful acts committed by States or other international organizations in some way. This has led to address the international responsibility of international organizations in connection with the act of State or other international organizations in addition to the independent responsibility of international organizations. It has been known as derivative responsibility and has been addressed in the field of State responsibility before. While International Law Commission (*hereinafter* I. L. C.) has not clarified it well in its Draft Articles on Responsibility of International Organizations (2011) (*hereinafter* ARIO), there are considerable difference which need to be explained, despite the similarities between the concept of derivative responsibility of international organizations and the said conception in the field of State responsibility. Aid or assistance, direction and control, coercion and circumvention are regarded as four exclusive situations in the scope of derivative responsibility of international organizations in which the contribution (also known as distribution) of responsibility is not similar in each of the situations in question. The spectrum of the said distribution is very broad so relatively in responsibility and also circumstance in precluding wrongfulness would be observed.

Keywords

International Organization, Derivative Responsibility, International Responsibility, Indirect Responsibility, Secondary Responsibility.

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Judicial Review of the Non-Ratification of the Executive Regulations in Iran in the Light of Comparative Administrative Law

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Abstract

Sometimes legislator confers to the administrative bodies the ratification of the executive regulations. In such cases, the refrainment or procrastination of the administration would be contrary to the rule of law and would infringe the rights of the citizen. In these situations, is it possible to sue the administration through the Court of the Administrative Justice and compel the administration by injunction to pass executive regulations? In some countries like France and Spain, citizens can refer the case to the administrative courts and receive the injunction order against the administration, but in Iran none of the three laws enacted in 1982, 2006 and 2013 about the Court of Administrative Justice is not considered this problem and so it is not possible to sue the administration. In order to empower the Court of the Administrative Justice to hear such cases, it is necessary to amend the Law on the Organization and the Procedures of the Court of the Administrative Justice (2013). The research method is analytic and based on comparative studies.

Keywords

Injunction, Administrative Acts, Court of the Administrative Justice, Conseil D'État, Executive Regulations.

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Immunity of Iranian Military Advisers in Iraq and Syria

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Abstract

Following the start of the internal war in Syria and its expansion to Iraq, the Iranian government sent its military advisers to these countries on invitation of the Iraqi and Syrian governments. Therefore, their presence was following the consent and invitation of the host government and under international law. The main issue in this article is the immunity of Iran's military advisers to the courts of host governments. According to the Convention on Special Missions that nowadays accepted as international customary, International Law Commission draft about Immunity of State Officials from Foreign Criminal Jurisdiction and the existence of numerous military contracts, in which refer to the military advisers immunity (which are part of the armed forces), Iran's military advisers should be immune from the Iraqi and Syrian courts.

Keyword

Military Contracts, International Law Commission, Military Advisers, Immunity, Special Mission Convention.

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Legal Assessment of Organizational Structure and Functions of Competition Council

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Abstract

At the time of market failure, competition policy and intervention of competition rights institutions are inevitable. The establishment and recognition of "Competition Council" under Article 53 of Law on Implementation of General Policies of Principle 44 of the Constitution, providing duties and powers for that as well as the presence of high-ranking judges with special powers among its members, expresses legal and institutional support of Iranian legislative to values and the requirements of free-market economy and fair competition. Although most of its members are governmental, the presence of a small number of private sector representatives, lack of legislative support for the principle of independence of the Council and its decisions, the relative heterogeneity of the prohibitions and legal prohibited cases, interference with the duties and powers of the Council with other legal entities and the practical ambiguities related are great obstacles in the way of objective realization of its goals.

Keywords

Competition Law, Competition Policy, Competition Council, The Act of Article 44, Institution.

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Military Necessity as an Exception in Law of Armed Conflicts

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Abstract

Military necessity is an important concept in both *Jus ad Bellum* and *Jus in Bello*. *Jus ad Bellum* refers to the legal norms which restrict the circumstances in which States can resort to the use of force, while *Jus in Bello* refers to the placing of limits on how hostilities are conducted. In the past, it was often claimed that a belligerent party is at liberty to deviate from the law of international armed conflict. This claim, which means that military necessity is superior to the law, is now completely defunct. At present, it is indisputable that if ‘necessity knows no law’, then there is no law. Military necessity can only be considered as an exception to the humanitarian rules, but of course, there are some requirements for this exception that military necessity cannot be achieved without them.

Keywords

Exception, Additional Protocol I 1977, Law of Armed Conflicts, Military Necessity, Military Objective.

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The Genealogy of the Basics of Right and Assignment and their Effects in Legal Positivism (Case Study of the Concept of Legal Justice)

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Abstract

Applying formal and material objective derived from philosophical foundations of positivism, on human law, which are framed based on authenticity of feeling and the possibility of experimental observation on the one hand and on the differentiating the realms of objective truths and negating the possibility of rational knowledge of legislation and practical wisdom on the other hand, has formed the frame of rights and duties released from all kinds of ideological value constraints and commitment to the closed circle of mankind's will and commands without being able to move out to its own supernatural. Preventing the inconsistency between the two abovementioned issues will reduce positivism, as a formalist theory based on the conventional-lingual analysis method to a Kelsen-Hume(ic) expression and therefore it has consequently encountered to relativism and inaccuracy. Accordingly, the concept of justice in public law has been conceptually transformed into the characteristics of having no criteria, personalization and being separated from the positive law. Nevertheless, the existing fallacies through ordering the introduction and uncommittable results have caused failure of the mentioned school through law and legal justice.

Keywords

Linguistic Analysis, Right and Assignment, Justice, Descriptivism, Justice, Materialism, Is and Ought.

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The Case of Uganda in ICC; the Victory of Justice at the Price of Peace and State Sovereignty

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Abstract

The State of Uganda has referred the situation of the Ugandan rebels to the International Criminal Court after failing to defeat the LRA militants and failing to conduct peace talks with them. Rebel leaders returned to the negotiating table under new circumstances expedient to continue peace talks with the government of Uganda. The Ugandan State welcomed the situation, but rebels conditioned the signing of a final peace treaty on the extradition from the ICC and the revocation of the rebel leaders' order. The Ugandan State has responded to the demand by signing a final peace deal and accepting traditional justice mechanisms. While the Ugandan State was preparing to launch a domestic trial of rebel leaders, the preliminary court was admitted the case to the ICC and considered itself competent. With this approach, the preliminary court has shown that justice is more important to him in the struggle for peace and justice, and no case can be stopped or revoked without the provisions of the Statute of the ICC.

Keywords

Struggle between Peace and Justice, LRA Rebels, International Criminal Court, Uganda.

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Norm in the Context of Legal and Social Order

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Abstract

In the imperative orders (moral order, social order, legal order and the political order) norm has its own meaning that having diversity in concept, each has its own definition in the objective process. Social sciences and law, as the knowledge of imperative science, have their own orders that in the process of creating social and legal order, “Norm” is the practice standard and the basis of social and legal order formation. Since the legal order is like a garment that covers social order stature and must interact with each other, measured knowledge of propositions and the cornerstone of the two disciplines should be presented. Considering the importance of cognition of norm in the social and legal orders- in the context of the science of sociology and law –it is necessary to explain the nature, compare the characteristics and components of creating norms and reliability (longevity) of them in different fields, as well as to review and to check conformity of them. In this paper, with documentary method and analytical-comparative approach, quiddity of norm is contemplated and the concept, origin and substantive and procedural properties of norm are analyzed in the context of the social and legal order and their similarities and differences are explained.

Keywords

Social Grammar, Legal Grammar, Order, Norm, Normative Geometry.

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The Mutual Effect on National Criminal Courts Decisions and International Criminal Courts under *Ne bis in idem*

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Mohammadali Ardebili⁴

Abstract

The prerequisite of judicial security or justice is that no one to be prosecuted or punished more than once for a unique crime or misconduct. *Ne bis in idem* is one of the most important criminal procedures rules in local legal jurisdiction which has been entered into international law and has a special status. This rule has been explicitly mentioned in the statute of the international criminal tribunals including temporary, ad-hoc and permanent ones. Due to the preference of international jurisdiction rather than internal jurisdiction and assumption or possibility of impartial and free of undue influence proceedings, the orders of international tribunals shall absolutely be obeyed by national tribunals; but the reverse manner is not absolute and if a Government proceed against the international accusations of a person in national tribunal, the international criminal tribunals can re-trial the latter again under specific conditions. The reason is nothing except preservation of some of the most significant qualifications of impartial jurisdiction and prevention form perpetrators of gross international crimes to be remained unpunished. However, by expanding the basis of retribution and renewed punishment because of the international society circumstances, and existed conflict between national competency of governments and international tribunals, the question arises as to: passing sentence in national criminal tribunals based on some different conditions of criminalization of international crimes, rather than international tribunal (obviously international criminal tribunal), what effect does it have on the trial or proceeding of international criminal tribunal? It is clear from the statutes of the international tribunals that sentence based on such conditions has no effect on the re-trial by the tribunal. In the present research, the aforementioned rule from the perspective of the international tribunals' statutes with a view to Iranian laws has been analyzed in a descriptive-analytical way.

Keywords

Crime, Conduct, Ne bis in idem, National and International Criminal Courts.

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Environmental Liability System in the EU with Due Consideration to the 2004 Directive

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Abstract

Environmental law in the EU is one of the most comprehensive and concrete environmental laws in the world. The legislative system on environmental issues in the EU incorporates a series of principles, regulations and directives which not only must be observed by the EU's institutions, legal and natural persons but also have to be taken into account in all policies of the EU. So the liability law of breach of these laws and principles has been arranged strictly. In this contribution, we intend to establish Persian literature on this topic and also, in an analytic-descriptive manner, we will study the dominated principles on the liability of persons and States in preservation of environment in the EU. To do so, first, we skim through the liability of the EU essential principles, after that, we study the content and context in the 2004 directive and in the last part we will analyze the method of implementation and success of this directive in fulfilling its objectives.

Keywords

Environmental Damage, Polluter, EU Law, Directive, Liability.

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Margin of Appreciation of the Enforcement of the Security Council Sanctions Resolutions: A Case Study of Iran

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Abstract

United Nations Security Council (SC) resolutions adopted under Chapter VII of the UN Charter are binding. Whenever SC adopts a resolution under Chapter VII, it will consider significant situations indicated in article 39 and in order to reach to this end, requesting the mere final result from addressees of the resolutions. In this regard, UN member States to enforcement the resolutions select their own available means to achieve the goal of the resolution. Whether and to what extent member States the margin of appreciation to enforce the SC decisions have, would be the main point of this paper which, in turn, will be analyzed from the SC resolutions, States practice and case law perspective with emphasis on sanctions stipulated by SC on Iran.

Keywords

Iran, Margin of Appreciation, Case Law, States Practice, Security Council Resolutions.

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EU Human Rights Mechanism in Transnational Interactions, from Theory to Practice

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Abstract

This paper aims to provide an accessible and primarily descriptive introduction to the issue of respect for human rights as a general objective of the EU's external action. We are seeking to answer this question, whether the human rights measures and instruments of the EU is harmonized and without complicated or EU is suffering from inclusion and integrity. Because of the value of human rights in the Union, all the mechanisms of this organization which involved in some way, have addressed the issue of human rights in a way that instead of creating a coherent system in this field, new rules and actors have been added. They caused the complexity of the mechanism involved. European instruments and diplomacy for transnational interactions is not a political tool but the EU also has to apply legal requirements in transnational interactions.

Keywords

EU Political and Legal Instruments, EU, Transnational Interaction, Human Rights, Human Rights Foreign Policy, EU Human Rights Mechanisms.

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The Legal Status of Activities Affecting Underwater Cultural Heritage

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Abstract

Although much of the information derived from underwater remains is the result of activities whose primary object has not been the protection of underwater cultural heritage, UNESCO's Convention on Underwater Cultural Heritage (2001), in principle, was not designed to address activities incidentally affecting underwater cultural heritage. Only article 5 of the Convention explicitly addresses this issue while these activities are implicitly referred to in several regulations. In maritime zones lying within 12 miles from the baseline, these activities are not subject to the provisions of the Convention and thus fall under the general provisions of the 1982 Convention. In those maritime zones beyond 12 miles, in practice, any activity may activate the reporting, notification and protection mechanisms of the treaty; there is no distinction between the types of state activities undertaken in these different maritime zones.

Keywords

Activities directed at UCH, Activities Affecting UCH, 1982 Convention on the Law of the Sea, UNESCO's 2001 Convention, Maritime Zones.

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Substance and Basis of Obligation to Ensure Respect Humanitarian Law on the View of Islam and International Law

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Abstract

In spite of normative development of international humanitarian law, ensuring respect and implementation of its rules and regulations is one of the main or the main challenge of this system. Although common article one of Geneva Conventions (1949), obliges all State members, not only to respect but also to ensure respect these Conventions, States practically do not welcome so much this requirement. This is while the interpretation of this obligation has been so controversial. Comparative study on the basis and nature of the obligation to ensure respect humanitarian law on the viewpoint of Islam and international humanitarian law is the subject of the present article. Analyzing facts and data available in legal sources, instruments and practices, based on principles, rules and norms of international law, make it possible to justify ensure respect obligation according to the model of Erga Omnes obligations. This is while there are more deep and basic roots and grounds for this obligation in Islamic thoughts and Shari'a. Some important Islamic principles like "Help and Protect Oppressed Peoples", "Collaborating for Accomplishing the Good" and "Enjoining Good and Forbidding Wrong" are concerned in this respect.

Keywords

Ensure Respect, Humanitarian Law, Islamic Law, International Law.

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Palestine, UNESCO and the Protection of the Cultural Heritage against Destruction from the Point of View of International Law

Maysam Haghseresht¹, Alireza Arashpuor^{2*}

Abstract

Unique places and cultural property in the Palestinian territories have been subjected to destruction alongside Israeli Jewish policies. When cultural property is destroyed, the relationship between the past, the present and the future, and the historical identity disappears. In such a situation, the conflict between the imperatives of war on the one hand and the preservation of cultural heritage for future generations will lead countries with conflicting goals. On the other hand, in the current situation, the fundamental question is raised about how far the international human rights regime can preserve and protect cultural property appropriately during occupation, colonialism and armed conflicts? According to UNESCO's inherent duty to protect cultural property and heritage and also Palestine membership in this organization, this issue is becoming more and more important. Therefore, this paper seeks to ensure that, in view of the ongoing conflicts and acts of terrorism in Palestine against cultural property and heritage and deliberate actions beyond the Israeli military's imperative to destroy this heritage, examines the role of UNESCO and international law in preventing or reducing the destructive effects of these actions.

Keywords

UNESCO, 1954 Hague Convention, Palestine, Cultural Heritage, Historical Identity.

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Deprivation of Nationality of Bahraini Nationals from the Viewpoint of International Human Rights

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Abstract

Nationality is a description that determines a person's relation to a State. This relationship has political nature and each State determines its nationals according to this matter. However, by issuance of the Universal Declaration of Human Rights and other human rights instruments, the nationality became a fundamental right for individuals, furthermore, any deprivation of the nationality must be evaluated according to the principles of international human rights. From this perspective deprivation of nationality is forbidden and in exceptional cases it should be done based on law, otherwise this deprivation will be marked as arbitrary deprivation and contrary to international human rights. In this article, we have discussed the right to nationality and its deprivation under conventional laws and customary international law. Subsequently, we have assessed the deprivation of nationality for Bahraini Nationals. It seems, deprivation of Bahraini Nationals is an arbitrary deprivation and is breach of international commitments of State of Bahrain. It is necessary to adopt decisive measures by international organizations especially Human Rights Council, in order to stop this process and treatment of the State of Bahrain.

Keywords

Nationality, Deprivation of Nationality, Bahrain, Human Rights, International Law.

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The Right to Public Health in the Light of Development of Intellectual Property Enforcement Rules

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Abstract

New trends in national and international levels indicate an ongoing development in the context of intellectual property enforcement. This development may affect public health of societies. Although border and customs measures play an important role in ensuring the movement of medicines and prevention of their counterfeiting and smuggling, their excessive expansion may make their movement and accessibility difficult. The paper aims at studying the negative implications of intellectual property enforcement development on reducing access to medicines. Pursuing the TRIPS-Plus trend by certain countries and conclusion of ACTA may have negative effects on the public health field. Making a balance in applying the enforcement as a new strategy, along with other intellectual property flexibilities may be a proper solution to improve access to medicines.

Keywords

Customs Measures, TRIPS-Plus, Counterfeit and Smuggle, Intellectual Property Enforcement, ACTA Agreement.

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Examining the Rules Governing the Destruction of Cultural Heritage in Non-International Armed Conflicts, with Emphasis on ISIL's Performance

Seyyed Hesamoddin Lesani^{1*}, Yalda Naghizadeh²

Abstract

Increasing internal conflicts within the borders of the sovereign States after the Second World War, the cultural property has not been immune from the destruction of military strikes. An illustrative example of this claim is the targeted attacks of the Islamic State of Iraq and Syria against the cultural heritage. Effective protection of cultural property began with the 1954 Hague Convention but most of conventions are dominated the international armed conflicts and not with the non-international armed conflicts. This paper attempts to review the most important international treaties related to cultural heritage protection while focusing on the dimensions of the enforcement and protection of these documents, the weakness of the rules in this field. Definitely, the compilation and the development of more binding rules and the establishment of a more comprehensive protective framework are necessary for the more effective protection of cultural property.

Keywords

Cultural Property, Protection, ISIS, Syria, Iraq, 1954 Hague Convention, Non-International Armed Conflict.

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