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An Examination of the Impact of Precautionary Principle in Cross-Sectorial Trade-Environment Dispute Settlement on the Unity of International Law

Janet Blake¹, Fatemeh Rezaeipour^{2*}

Abstract

International law has developed via conclusion of special agreements in diverse fields like international environmental law and international trade law. However, this development has been accompanied by the worries about fragmentation of international law since in cross-sectorial trade-environment dispute settlement, due to divergent goals of these two regimes, the dispute settlement bodies may be biased and settle the dispute to their own benefit. The present article aims to, via the examination of environment-trade disputes; introduce the impact of different application of environmental precautionary principle in international law regime as a challenge to the unity of international law.

Keywords

Precautionary Principle, Divergent Goals, Fragmentation, Unity.

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The Logic of Legal Discovery in the System of Revelation

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Abstract

The discussion about the absence of "logic of legal" and the expression of the type, nature, function, and dimensions of it, to explain and rationally interpret the rights and avoid the cruelty, is one of the most important fundamental issues in each legal system. In this regard, each of the legal systems has devised a specific logic. In this research, the main issue is the explanation of the specifications of logic governing the legal system of revelation and the expression of the rules governing the understanding of law in order to attain its ends from a rational and reasoning path. In this paper, using a descriptive-analytical method and in response to the question of which logical system of revelation for legal perception is logical? The logic of rights and the stages of proper understanding of the legal system of the divine are explained. The summary of the findings and the results of the research is that by relying on the logic of intermingling and strengthening the role of reason and inspiration from the "Fourth Travel" and ascending from the material to the source and the origins of the foundations, principles, and rules of law, and the explanation of material and legal provisions in the light of the rules of the ruling logic, can be argued, arranged, and coordinated.

Keyword

Rational Reasoning, Legal Behavior, Justice, Logic of Legal, Legal System, System of Revelation.

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Effects of Islands on the Delimitation of Maritime Zones from the Perspective of International Jurisprudence

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Abstract

Border disputes between States along the water like the lands are various and sensitive. In most of these conflicts, islands are present and differences of opinion in the way of influence on delimitations would prevent the States to reach an agreement. Not reaching an agreement would provide a background to determine applicable laws on the subject and would lead the States to arbitral and judicial courts. The articles of the Law of the Sea Convention are too few in order to determine the rules which regulate maritime zones delimitation between opposite or adjacent States. There are also no regulations in terms of the role of islands in this process. Instead, international jurisprudence has tried to fill this gap. This article aims to find the given effect to the islands in international arbitral and judicial judgments and awards, and discuss and analyze the side taken by these courts and tribunals. The methodology of this research is descriptive-analytical which was done with the help of library sources.

Keywords

Relevant Circumstances, Three-Stage Delimitation, Islands, The Law of the Sea Convention, Base Point.

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Evaluation of Principles of "Right to Defense" and "Openness" of Tax Trial in the Legal System of Iran and UK

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Abstract

“Right to defense” and “Openness” are important citizen's rights at the tax trial. In the British legal system inspired by old ideas “Procedural Fairness” and “Natural Justice”, observation of these rights with other concepts and principles of a fair trial, was devoted to civil and criminal matters. Developing of human rights approach and efforts of judges, particularly from the nineteenth century onwards, observation of these criteria in administrative proceedings, including the tax authorities have become an undeniable necessity. Right to defense incorporated in regulation of tax tribunals. In the Iranian legal system, elements of right to defense have significant faults and some of them aren't recognized by taxpayers. Openness not mentioned in tax dispute resolution commission trails and supreme council tax. The procedural review of tax trials by Administrative Justice Court is done in camera. Shortcomings in Iran legal system is about fairness of tax trials. So, it is essential for legislator to think about recognition and incorporated whole components of right to defense and openness in tax trials.

Keywords

Right to Defense, Tax Tribunals, Supreme Council Tax, Openness, Tax Dispute Resolution Commission.

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From Legal Absolutism to Legal Relativism Criticizing Bruno Oppetit's Analysis of Antinomic Legal Trends to the Paradigm of Legal Modernity

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Abstract

The existence of antinomic currents within the paradigm of modern law, can lead to its crisis and passing that as well. Bruno Oppetit, considers the formation of European law, the elevation of the place of the custom being source and the elevation of the role of the judges in the legal order as influencing factors of the legal relativism. He believes that relativism or pluralism is at odds with modern law. However, the theoretical framework of the modern law of Oppetit is only substantial legal positivism. Rejecting this theoretical framework and insisting on the fact that modern law must be explained, either in the context of metaphysical rationality or within the framework of spontaneous social rationality, this article aims to answer this question: Are the factors set out by Bruno Oppetit is contradicted to modern law? Or have they come to the resurgence of this law after a period of dominance of legal positivism?

Keywords

Bruno Oppetit, Modern Law, Legal Absolutism, Legal Relativism.

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Diplomatic Protection under International Investment Treaties

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Abstract

With the rise of investment treaties, Investor-State arbitration became the main solution to adjudicate the investment disputes and therefore diplomatic protection claims have declined in numbers. Most investment treaties also provide that each treaty party can bring a State-State arbitral claim against another treaty party concerning disputes about the interpretation or application of the treaty. Furthermore, home State of investor can bring a diplomatic protection claim for violations suffered by its nationals against the host State. Due to the applicable investment treaty between the dispute's parties, these kinds of diplomatic protection claims are subject to distinct rules and prerequisites, governed by the treaty rather than by customary international law. A peculiar focus is placed hereby on the necessity to exhaust local remedies before proceedings and on mixed claims that entail espoused claims as well as claims for an own and direct violation of the State.

Keywords

Nationality, State-State Arbitration, Investor-State Arbitration, Exhaustion of Local Remedies Clause, Preponderance Test.

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Pathology of the Legal System Governing the Processes of Monitoring the Elections for Islamic Consultative Assembly in the Light of General Election Policies

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Abstract

In the legal system of Iran, the "Guardian Council" is an election observer organization that in the framework of general election policies, the regulatory requirements of this institution have been announced to enhance the electoral system of the country, achieve desired status and fair monitoring system. The present text seeks to answer the question with the descriptive-analytical method: "To what extent the mechanism of the Guardian Council's supervisory processes provides the provisions of general election policies?" By reviewing general policy, it seems that there are some deficiencies and gaps in the laws governing supervision that need to be reviewed and reformed based on these policies. In this paper, with a pessimistic view, the Guardian Council's supervisory process analyses based on the principles and criteria derived from the general policies governing election observation. Finally, corrective suggestions are given according to deficiencies and gaps in the monitoring mechanisms.

Keywords

Elections, Guardian Council, General Election Policies, Islamic Consultative Assembly, Supervision.

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Discovery of Legal Rule through Analogy by the International Court of Justice

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Abstract

Analogy in international legal system is one of the complex and multifaceted concepts that been widely used in the International Court of Justice proceedings on various occasions. Although the Court, in most cases, has been silent about resorting to analogy in its methodology; but analysis of ICJ judgments and opinions regarding this concept, in particular, helps us to understand the nature of the concept and assess its scope in a better way. The Court has made effective inferences by using the capacities of analogy and its effective role in the interpretation process, clarifying the content of the rules, blowing the spirit of innovation and the element of advancement into the international law as a whole, and filling gaps, eliminating the ambiguity and brevity in the international provisions, that make it possible to understand the content, functions and its legal criteria. This paper, while considering the philosophical-legal aspects of the concept of analogy and proper understanding of its capacities for the development, dynamism, and integration of international law, is focused on analyzing the role of analogy in the judicial procedure of the ICJ.

Keywords

Legal Reasoning, International Law, ICJ, Silence and Gap in Law, Legal Rule, Analogy.

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Considering the Obstacles to the Realization of the Principle of the Public Trial in Iranian Law

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Mohammad Jalali⁴

Abstract

The principle of the Public Trial, which is taken into account in international documents, principles 165 and 168 of the Constitution and some other ordinary laws, is one of the basic features and characteristics of a fair trial and also one of the most important guarantees of that. However, the fact is that in spite of the undeniable nature of the principle of the Public Trial, this principle has not been fully implemented in Iranian law and its implementation has encountered many obstacles and challenges, so, the necessity of discussing obstacles to the realization of this principle is inevitable. In this regard, the present article analyzes the barriers to the realization of the mentioned principle in descriptive and analytical method, including theoretical and legal barriers. Identifying these obstacles in Iran's legal system and making some suggestions to eliminate them are effective steps towards real and desirable realization of this principle.

Keywords

Principle of Public Trial, Trials, Fair Trial, Theoretical Barriers, Legal Barriers.

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Study of Appeal Facility in International Investment Arbitration

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Abstract

One of the main reasons for choosing the mechanism of arbitration by the parties to the international investment disputes is the "principle of finality" in the arbitration awards; that is generally they cannot be appealed on the merits. But at the same time, the principle of finality has led to different investment arbitration tribunals make contradictory and sometimes mistaken decisions (final and binding), which, of course, cannot correct them in merits. Issuing such decisions by the tribunals has caused a crisis of incoherence and inconsistency in the international arbitration awards. In order to resolve this crisis, commentators and scholars have proposed various reforms to the international arbitration system that one of the most prominent of which is the creation of an appeal mechanism. This research seeks to analyze the basis and potential advantages and disadvantages of an appellate mechanism and its possible effects on the principle of "finality". Finally, it concludes that existing international or regional mechanisms could be used to resolve investment disputes to make future reforms to the international investment arbitration system.

Keywords

Principle of Correctness and Justice, Principle of Finality, ICSID, Appealing Arbitration Awards, International Investment Arbitration.

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Legal Measures to Ensure the Financial Health of Political Parties

Maqsd Ebadi Bashir*

Abstract

In general, the issue of the relationship between economic and political power has attracted the attention of many scholars of law and politics. The major concern is that political power can also be achieved by economic power and democracy falls to the hands of affiliates of wealth. The uncontrolled flow of money and financial resources into the political arena and electoral competitions can seriously endanger the core democratic values. One of the channels for the entry of these resources into the political scene is the donation of the wealthy to political parties, which also threatens the perceived influence on public decisions, and endangers the principle of equality of persons. In this article, a descriptive-analytical method was used to examine the measures to ensure parties' financial interests. It was found that to achieve this goal, the limitation for donations to parties, election costs, disclosure and, finally, financial monitoring and reporting by parties is essential.

Keywords

Political Parties, Election Health, Donations, Supervision, Expenses.

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The Status of Syrian Migrants under International Law and Assessment the Measures Taken by the Host States

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Abstract

Following the outbreak of crisis in Syria and the subsequent internal armed conflicts, a large number of Syrians had to leave their home country to save their lives. Some fled to the neighboring countries and some went to the European ones. In the present article, we will first discuss certain international law concepts to see which is more suitable to classify Syrian migrants thereunder. Then we will proceed to identify the rules of international law applicable to them. Finally, a legal assessment will be made of the measures undertaken by the host countries in response to the Syrian migration flow into their soil.

Keywords

International Law and Forced Migration, Host Countries and Syrian Migrants, Forced Migration, Syrian Migrants.

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Reprisals against Cultural Property in International Humanitarian Law

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Abstract

Since the cultural property of nations is an irreplaceable heritage of all humanity, the need to prohibit reprisals against these properties is inevitable. The most important conventional and customary international documents in this regard are article 4 (4) of the 1954 Hague Convention, article 53 (3) of the First Protocol 1977, and Rule 147 of the Customary International Humanitarian Law (2005). Despite these documents, the hostile parties still do reprisals against the cultural property of the nations and destruct them continuously. An example of this claim is the reprisals by Iraq against Iran's cultural property during the war of Iran and Iraq and also such actions in the ancient city of Dubrovnik during the Yugoslavia wars. The present study indicates the structural weakness of the existing rules and the need to focus on the guarantee of the implementation of these documents.

Keywords

Reprisals, Cultural Property, Additional Protocol I 1977, The 1954 Hague Convention, Armed Conflicts.

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Legal Development, Iran's National Development, and Challenges to the Rule of Law

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Abstract

Development in our country has faced many ups and downs. Iranians' general feeling and historical experience imply that national development faces fundamental challenges. From the past to the present time, this question has been raised in public and among the elites: 'Why Iran has not been developed as it ought to be or has not reached sustainable development? And what is the main impediment in its way to progress? To answer the above-mentioned questions this paper tries to show that lack of institutionalization and establishment of rule of law should be regarded as the main barrier to Iran's national development. We believe that the root causes of challenges to the rule of law rest on the underdevelopment of the legal system. Studying the interconnection between the main concepts such as rule of law, legal development, and national development leads to the conclusion that 'the way of Iran's national development goes through the country's legal development'. This paper has taken advantage of the theoretical framework and conceptual model of rule of law and the concept of legal development. The main approach of this article includes a novel viewpoint based on the concept of 'law as dispositif', 'Constitutional amendment,' 'codification and purification of general policies, rules and regulations', and 'securing and regulating fundamental citizenship rights'.

Keywords

Legal development, National Development, Rule of Law, Rechtsstaat, Law as Dispositif.

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Reciprocal Effect of Non-Proliferation Nuclear Armaments' Rule and JCPOA

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Hatam Sadeghi Ziaee⁴

Abstract

Substantial issue of this research based on enumerating of reciprocal effect of Non-Proliferation Nuclear Armament's Rule and Iran Nuclear Deal (JCPOA & UNSC RES. 2231) through the interpretation and possible change of obligations of mentioned Rule and Deal for Iran and international nuclear law system. For this purpose, identification and analysis of obligations of Non-Proliferation Nuclear Armament's Rule, Iran Nuclear Deal and reciprocal effect of two variants to each other become under consideration. In spite of, obligations of the rule applied immediately and completely and explicit ignorance of procedural effect of mentioned deal to the rule, but, the effect becomes clear in three separate scopes. First, in technical field; restrictions in uranium enrichment, heavy water and totally nuclear fuel full cycle and second, in international nuclear law system; main related issues are admitted through "Additional Protocol", "Modified Code 3.1 of the Subsidiary Arrangement to Iran's Safeguards Agreement" and "Roadmap for Clarification of Past and Present Outstanding Issues". Third scope is admission and performance of non-legal and soft regime such as Nuclear Supply Group (NSG) and Missile Technology Control Regime (MTCR) and Proliferation Security Initiative (PSI).

Keywords

JCPOA, International Law, UN Security Council Res. 2231, Non-Proliferation Nuclear Armaments.

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Customary Rule of Immunity of Heads of States: An Appraisal of Article 27 of International Criminal Court Statute in the Light of Sudan Situation

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Abstract

The article 27 of the ICC statute does not recognize immunity of Heads of States as an obstacle for punishing them. This matter is correct about the States parties to this statutes, because they have implicitly abandoned from immunity of heads of States by accepting being a party to statutes if they were committed the crimes within the jurisdiction of the court. The problem is where the Security Council refers the situation to the prosecutor under article 13(b). In this case, some of international law principles such as “imposing an obligation to the Third States” and “customary rule of immunity of Heads of States” can be against “possibility for dealing with international crimes” and creates challenge of how article 27 should apply to such States? Of course, the court faces another article in the statute i.e. the article 98(1) in which it explicitly states that court must obtain the cooperation of that Third State for punishing its head. The fact is that the article 27 should be considered in the light of others rules of international law and it can be said that court cannot deal with the crimes which committed by the Heads of States that not party to the statute, even by referring the security council, unless it applies the article 98(1).

Keywords

International Criminal Court, United Nations Security Council, Non-Party States, Article 27 of the Statute, Immunity of Heads of States.

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International Law and Deportation of Enemy Aliens in Armed Conflicts

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Abstract

Enemy alien is used to refer to those aliens that are nationals of a country that you are fighting with. Theory and practice rightly distinguish between expulsion of alien in peace and war. War will make nationals of your opposite State to enemy aliens. The belligerent State may consider it convenient to expel all of the aliens present in its country, including permanent or temporal residents. However this act may seem hard and unfair to aliens, but this has been accepted that this act is justifiable. International humanitarian law studies different situations including deportation or transfer of citizens such as aliens which are related to an armed conflict. However, States use this right largely by the excuse of internal security and public order. But the power of expulsion of aliens should be considered a special one and be used in special situations. In this article, after examine international humanitarian law documents, international and regional human rights documents, customary international law, judicial practice, and doctrine, it is concluded that restrictions on the deportation of aliens in peacetime should also be observed in armed conflicts.

Keywords

Enemy Alien, Deportation, Aliens, Humanitarian Law, International Law, 1949 Geneva Conventions, Armed Conflicts.

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Necessity for Establishment of an International Harmonized Legal System against Crimes in Cyberspace

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Abstract

Area of law is affected by globalization and stages of change which in some areas inevitably have to be happened quickly to take advantage of globalization. In the areas of criminal laws especially cyberspace law and the crimes committed in this space applying coordinated and unified international regulations strongly needed. The borderless cyberspace has created the physical and parallel world that in fact, law control cannot be under control of sovereignty. So, we need coordination and international regular assistance that can control this space and rule it not to remain unpunished any guilty. This will not obtain without developing a coordinated and unified international regulation. Since, the crimes committed in this space left behind their traditional and geographic boundaries and because of their characteristics, it could be considered as an international crime. In this regard, it is necessary to create universal jurisdiction. Despite various activities, international organizations have not met their goals yet to submit proposed regulations to homogenization and synchronization regulations relating to cybercrimes. So, uniform regulations that rectify deficiencies of other provisions, be in force and can obtain universal acceptance are essential.

Keywords

Computer Crimes, International Criminal Law, Globalization of Law, Cyber Space, Legal Uniformity.

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