The role of subsequent practice of states in the interpretation of treaties: The judgment of the International Court of Justice in the "Application of the Interim Accord of 13 September 1995" Case

Seyed Ali Sadat Akhavi*

Abstract

Under the Vienna Convention on the law of treaties, when interpreting a treaty, there shall be taken into account any subsequent practice in the application of the treaty which establishes the agreement of the Parties regarding its interpretation. A large number of treaties have reached a certain age and they need to be adapted to the current situation. One way to this end is to interpret the treaties by means of the subsequent practice of the parties. Over the recent years, International Law Commission has paid particular attention to this topic and various international tribunals have resorted to the subsequent practice in order to interpret the treaties. In its Judgment of 5 December of 2011 in the "Application of the Interim Accord of 13 September 1995" case, the International Court of Justice addressed the question of subsequent practice and its role in the interpretation of treaties. The present article examines the compatibility of the above judgment with both the 1969 Vienna Convention and the previous case-law of the Court.

Keywords

1969 Vienna Convention, international court of justice, interpretation of treaties, law of treaties, subsequent practice of states.

* Assistant Professor, International Relations Department, Faculty of Law and Political Sciences, University of Tehran, Iran. Email: a_sadat@ut.ac.ir

Received: November 1, 2014 - Accepted: February 7, 2015

Respect to law in Plato's idea

Omid Ahmadi*

Abstract

One central issue in philosophy of law is "respect to law": what arguments can be given, under normal circumstances, to justify obeying the law and conversely, are there any circumstances under which we are morally justified in disobeying? Typically, reading of Plato's views includes an authoritarian and unquestionable obedience to law which are deprived of reasonable foundation. In this essay, the author criticizes cited interpretations and will try to investigate the authority of law from a virtue ethical perspective. In this recent view, citizens obey the law simply because it helps them to gain moral virtues. In those cases whereby citizens can't construct a dialogue with law, they have civil disobedience option.

Keyword

civil disobedience, dialogue, law, virtue, authority.

* PhD in International Law, University of Tehran, Tehran, Iran.

Email: ooahmadi@gmail.com

Received: November 26, 2014 - Accepted: February 7, 2015

State immunity and jus cogens: A new exception?

Abbasali Khadkhodaei[1], Abdollah Abedini[2*]

Abstract

International law is the product of sovereignties and in a real sense, of agreements among states. But it has nowadays been asserted that humanity and laws and rights belong to it, to the extent that we can talk about the humanity of international law. In other words, it has been spread in every areas of international law such as international humanitarian law, international criminal law, diplomatic and consular law, international environmental law etc. Therefore, the possibility of conflict between norms and rules of international law is visible in some legal regimes and its branches, and in a wider scope, in international legal order. In this regard, what is controversial in contemporary era of enforcement of international law is conflict and contrast between state immunity and jus cogens norms. This would be seen as a discussion between value and reality. Hence, the current paper aims to address this point and also contemporary transformations regarding these norms.

Keywords

international community, international law, international legal order, jus cogens, state immunity, value and reality.

1. Professor, Public and International Law Department, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran

2. Ph.D. in International Law, University of Tehran, Tehran, Iran (Corresponding Author). Email: s_abedini_a@ut.ac.ir

Received: October 23, 2014 - Accepted: February 7, 2015

Scope of legislative supervision of the decisions of the council of ministers, emphasis upon Articles 85 and 138 of the Constitution of the Islamic Republic of Iran

Kheirollah Parvin[1], Arian Petoft[2]

Abstract

Legislative Supervision under Articles 85 and 138 of the constitution is granted to the President (Speaker) of the Parliament and the approval of the Council of Ministers, along with the notification to the device must be informed to the Chairman of the Parliament. The authority of the Speaker and the decisions of the monitoring mechanism of this kind are of great importance in this regard. The important question raised here is whether the approval after legal deadline will become legally void, if it is criticized by the Speaker and there is no amendment by the Council of Ministers? This paper aims to explore, describe and analyze the scope and manner of such monitoring to make it a useful step for future legislation and regulations in this field.

Keywords

constitution, Council of Ministers, legislation, legislative supervision, president of parliament.

1. Associate Professor, Public and International Law Department, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran.

2. PhD Candidate in International Law, University of Tehran, Tehran, Iran (Corresponding Author). Email: arian_petoft@ut.ac.ir

A review of the law of war and peace from the viewpoint of Hugo Grotius

Moosa Moosavi Zonooz*

Abstract

Hugo Grotius has been called by many, the father of international law. His treatise on "the Law of War and Peace; De Jure Belli ac Pacis" is said to contain a general theory of international law. This paper aims at reviewing Grotius' ideas on the relationship between natural law and positive law, war and ethics, as well as human will and natural justice. His perspectives in both "jus ad bellum" and "jus in bello" may at first sight seem obsolete, with no practical uses at the present time. However, the fact is that they have had a major role in the evolution of the philosophy of law. Furthermore, with the increasing relevance of human rights in international law, particularly over the past half century, natural law and ethics are gaining a new stance in the system. Studying Grotius' ideas in the context of the circumstances prevailing in his time, we can dismiss much of the criticism made against what he rendered lawful belligerent rights, through the concept of "permission". Taking this approach, we can even track down the early traces of "universal jurisdiction" in his writings.

Keywords

Hugo Grotius, law of war and peace, natural law, philosophy of law, positive law.

* Ph.D. in International Law, University of Tehran, Tehran, Iran.
Email: moosaviz@ut.ac.ir

Received: November 1, 2014 - Accepted: February 7, 2015

Etebarian theory of Allameh Tabatabai and the legal-political system of the community

Yahya Bouzarinejad[1]*, Elahe Marandi[2]

Abstract

Allameh Tabatabai is one of the great Islamic scholars whose Etebarian theory established a great development in the field of epistemology significantly influencing different areas of humanities, especially, public law. He discusses social Etebarian to explore concepts and issues which are considered to be important elements in the area of public rights somehow reflecting Tabatabai's ideas on political system and governance structure. Etebarian here refers to concepts that are being made in the field of human society, politics and the discussion of practical wisdom. The fundamental question raised here is that, according to the Etebarian theory of Tabatabai, what is his opinion about the legal system- and what political model of governance has he approved?

Keywords

Etebarian, governance model, government, Tabatabai, public law.

1. Associate Professor, Faculty of Social Sciences, University of Tehran, Tehran, Iran (Corresponding Author). Email: y_bouzarinej

2. PhD Candidate, University of Tehran, Tehran, Iran.

Received: November 1, 2014 - Accepted: February 7, 2015

Determining the outer limits of the continental shelf: An examination of Article 76 of the Law of the Sea Convention

Sassan Seyrafi*

Abstract

Article 76 of the Law of the Sea Convention is one of the longest and most complicated articles of this Convention. The said article contains a set of substantive and procedural provisions regarding the determination of the outer limits of the continental shelf. The basis of entitlement to the continental shelf is distance from the coast or natural prolongation. On the basis of the distance criterion, to a distance of 200 nautical miles from the baseline of the territorial sea, each coastal state is entitled to a continental shelf which is termed inner continental shelf. But according to the natural prolongation criterion, if the outer edge of the continental margin extends beyond 200 nautical miles, then the continental shelf continues to the outer edge of the continental margin which is termed outer continental shelf. In order to determine the outer limits of the outer continental shelf, article 76 provides a series of scientific and technical criteria. Application of these criteria is supervised by the United Nations Commission on the Limits of the Continental Shelf.

Keywords

article 76 of the law of the Sea Convention, commission on the limits of the continental shelf, constraint line, continental margin, formula line, inner continental shelf, outer continental shelf.

* Ph.D. in International Law, University of Tehran, Tehran, Iran.

Email: sassan.seyrafi@gmail.com

Received: November 26, 2014 - Accepted: February 7, 2015

International economic crisis, states anti-crisis emergency measures and the means of settlement of international investment disputes arising from the reform

Ahmad Momenirad[1], Majid Ghasemzadeh[2]*

Abstract

Financial crisis the first signs of which started to spark off in 2005 at the residential property market of the United States and continued to grow at the various parts of the west European Economy in 2008 altered the economic face of the whole world and hasn't been receded until this moment. Despite the fact that states concerted attempts via inter-state cooperation as well as international organizations such as the World Bank, International Monetary Fund (IMF) and performing concrete programs like the latter's "Financial Sector Assessment Program (FSAP)" to hinder the progressive expansion process of the crisis, it spread gradually throughout the global markets and forced governments to devise national economic measures in parallel with the international steps. Carrying out these plans unconcerned about international obligations and need for prompt action against the crisis led to a series of damages incurred by various subjects of the international investment law including international investor individuals and corporations. Current article aims at identifying, tracing back and classifying states anti-crisis measures, to summarily compare international trade law dispute settlement mechanisms with their newish rival in international investment law, to scrutinize the means of taking legal action and compensation for these measures in investment dispute settlement tribunals, to compare them with each other, to extract their basic elements and ultimately analyze correlations thereof.

Keywords

bilateral and multilateral investment treaties, fair and equitable treatment standard, international financial crisis, international investment law, international trade law, national treatment standard, non-discrimination principle.

---

1. Associate Professor, Public and International Law Department, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran.

2. PhD Candidate in International Law, University of Tehran, Tehran, Iran

(Corresponding Author). Email: majid.ghasemzadeh@ymail.com

Received: November 6, 2014 - Accepted: February 7, 2015