

The “Principle of Prevention” in international environmental law

Seyed Fazlollah Mousavi¹, Alireza Arashpour^{2*}

Abstract

The “principle of prevention” in respect of economic benefit and ecological aspect is a golden rule. The reasons for this are as follows: 1. because of legal and technological reasons, establishing a relationship between the harmful act with damages to the environment is so difficult, 2. due to special nature of the environment, the compensation for such damages is often impossible, and in case of possibility, it would require exorbitant cost as well as long period of time. By considering the above facts, deployment of new environmental principles, especially ‘The precautionary principle’ for protecting the environment and strengthening deterrence policy has gained a central importance. In this paper, an attempt has been made to explain this principle from different dimensions and its position in international environmental law.

Keywords

environmental harm, international environmental law, precautionary principle, prevention, principle 15 of the Rio Declaration.

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

2. Assistant Professor, Faculty of Law and Political Sciences, Isfahan University, Isfahan, Iran (Corresponding Author). Email: alirez_aarashpour@yahoo.com

From privatization of public law to publicization of private law: legitimacy and intervention of Liberal Capitalist State in the thought of Habermas

Ali Mashhadi*

Abstract

Base, scope, extent and manner of government intervention in social and economic era is one of the most fundamental issues in public law. This paper explores one aspect of the recent work of Jürgen Habermas on legitimating crisis and its relationship with intervention of state in public sphere. It focuses on Habermas's claim that the pre-capitalist moral values on which capitalism has hitherto relied has become progressively displaced by the growth of the capitalist economy. This has caused critical problems for the state management of the economy, in the absence of an established internalized set of values which could act both as restraints upon economic demands and as reinforcements to an ethic. The conclusion of the paper is that while rational discussion of values is important, this does not entail that the possibility agreement is required to make sense of this activity. This article examines the relationship between legitimacy and scope of government intervention as a central issue in contemporary philosophy of public law.

Keywords

capitalist state, legitimate law, legitimating crisis, liberal democracy, philosophy of public law, privatization of public law, publicization of private law.

* Assistant Professor, Public Law Department, Faculty of Law, Qom University, Iran.

Email: mashadiali@yahoo.com

Received: February 1, 2014 - Accepted: May 5, 2015

Systemic relations of Article 51 UN Charter

Hamid Alhooii Nazari*

Abstract

Systemic approach relies deeply on wholism notion holding that investigation into a totality displays not only a comprehensive depiction of that whole and its attitude, but also it is the only means of its real understanding. In charter of UN as a system, understanding of any one of the articles doesn't lead to a full scale understanding of charter. Systemic approach to charter goes along with relationship notion of charter articles. The bond of charter articles involves self-organizing system entity. Systemic relations are essential for any dynamic system. Self-organizing system relations include evolutionary, structure and control. This article studies these relations in terms of article 51 UN charter.

Keywords

Article 51 UN Charter, case law of the International Court of Justice, relationship, systemic approach, use of force.

* Assistant Professor, Public Law Department, Faculty of Law and Political Sciences,

University of Tehran, Tehran, Iran. Email: soohan@ut.ac.ir

Received: March 11, 2015 - Accepted: June 7, 2015

Adjustment in administrative contracts

Vali Rostami*

Abstract

Adjustment in contract is one of the most important and controversial issues in general rules of contracts in administrative law of some countries like France. It is anticipated in administrative contracts, against private contracts, to ensure the public interests due to the long duration and special conditions of these contracts. But in legal system of Iran, it has been accepted just in rare and exceptional cases. One of these cases is clauses of contractual price adjustment in public construction contracts. However, in administrative law in Iran, anticipation of adjustment in this kind of contracts is more controversial due to lack of a comprehensive system of administrative contracts and unknown factor of appearance of adjustment in administrative contracts i.e. "theory of unforeseeable affairs". Legal aspects of this issue will be studied in this article.

Keywords

adjustment in contract, administrative contract, contractual adjustment, judicial adjustment, legal adjustment, public contract.

* Associate Professor, Public Law Department, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran. Email: vrostami@ut.ac.ir

Received: January 12, 2015 - Accepted: April 11, 2015

Admissibility and value of witness and expert witness in the case-law of the International Court of Justice

Seyed Hossein Sadat Meidani*

Abstract

The parties to a case, before international Court of Justice, do have a broad freedom in presenting evidence, including hearsay evidence such as witness and expert witness. However, the Court will treat such hearsay evidence with particular cautious and only under certain circumstances will accord evidential weight to these documents. This article reviews those cases in which the parties relied on the evidence by witness or expert witness in order to sustain their own cases. The probative value of them is also analysed.

Keywords

expert witness, evidence, international adjudication, law of evidence, International Court of Justice, proof, witness.

* Lecturer of International Law, School of International Relations, Iran.

Email: hossen_sadat@yahoo.com

Received: March 28, 2015 - Accepted: April 28, 2015

The evolution of state formation criteria: from effectiveness to legitimacy?

Amir Hossein Ranjbarian¹, Mahsa Farahzad^{2*}

Abstract

States are one of the main subjects of international law. There is no all-agreed definition for the concept of state. The only document that defines the elements of state is the Montevideo Convention on the Rights and Duties of States, known as Montevideo Convention 1933, in which a State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states. There is no agreement on the limits and ambit of such traditional qualifications. The increase in the number of states, especially in the second half of the twentieth century onward, with the absence of some of the above qualifications, indicates the formation of new criteria based on legality and legitimacy. Such novel qualifications are jus cogens rules of international law, including the formation of new states based on the “right of self-determination” and the principle of the prohibition of “use of force”.

Keywords

international law, legality, prohibition of use of force, self-determination, state, legitimacy.

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

2. PhD in International Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran (Corresponding Author). Email: aranjbar@ut.ac.ir

Received: December 16, 2014 - Accepted: May 3, 2015

The position of the special representative of the UN Secretary General and its role in Afghanistan's course of events

Abdolaziz Danesh*

Abstract

The United Nations was established as an international organization to guard international peace and security in an un-united world. Among its subordinate institutions and agencies, the U.N. has also taken advantage of the Special Representative of the Secretary-General to avert threats against peace and settle conflicts. The Special Representative has played a key intervening role in bringing peace especially after the uni-polarization of the world. The measures undertaken by the U.N. throughout the prolonged crisis and chaos in Afghanistan has been mainly through the U.N. Secretary General's Special Representative. This dissertation aims to explicate and analyze the legal principles and status of the U.N. Secretary General's Special Representative in Afghanistan before and after the 9/11, particularly its pivotal role in establishing a new government and coordinating the world community contributions.

Keywords

Afghanistan crisis, establishing a new government, peace building, special representative of S.G., UNAMA, United Nations.

* PhD, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran.

Email: salam239@gmail.com

Received: December 31, 2014 - Accepted: April 21, 2015

The role of ICC in dealing with the criminal acts of Zionist regime in Gaza war (22-day war)

Esmacil Rajabi*

Abstract

In 22-day war in Gaza (December 27, 2008) by the Zionist regime, crimes against humanity and the oppressed Palestinian people occurred whereby 1400 Palestinian civilians were martyred and more than 6,000 people, mainly children were wounded. The logic of international law, also the logic of occupiers who once considered themselves as victims of racism, necessitates a fair consideration of their accusation. For the first time in a detailed report, Goldstone, the UN Reporter on Human Rights Council, accused Zionist regime of committing war crimes. Today with the advent of the International Criminal Tribunal for Former Yugoslavia and Rwanda and the International Criminal Court, the ground has been provided for trial and punishment of such criminals in international criminal law.

Keywords

aggression, crimes against humanity, Gaza, genocide, international criminal court, jurisdiction, war crimes.

* PhD, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran.

Email: rajabi21@yahoo.com

Received: December 3, 2014 - Accepted: March 14, 2015