

International community and universal criminal justice

Seyyed Ghasem Zamani^{1*}, Haleh Hosseini Akbarnezhad²

Abstract

There are some important and remarkable developments in the international law common aspect of which is the humanity considerations. The rise of the notion of international community implies fundamental interests and values of the community and this approach is considered as a fundamental goal in the modern world. States and other actors such as international organizations in the international community have proposed and used many different means for protecting these values but some of them aren't effective and suitable and it seems that the criminal guarantee is needed for the stability of community. Therefore, the rise and development of international criminal law is one of the most important issues in this century and there are some intended and unintended consequences of the rise of international criminal law. So, mutual interaction between international criminal law and international community is true. Some other notions such as international legal order, public order and common good also play notable roles in this relationship and the practice of the International criminal tribunals and national courts is very important.

Keywords

fundamental values, international community, international criminal court, international criminal law, universal criminal justice.

1. Associate Professor, Public and International Law Department, Faculty of Law and Political Sciences, Allameh Tabatabaei University, Tehran, Iran. (Corresponding Author).
Email: drghzamani@gmail.com

2. University Professor and Researcher

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Analysis of the role of executive bodies beyond the parliament-approved powers in the Islamic Republic of Iran and the principle of independence of powers

Milad Ghotbi^{1*}, Tavakol Habibzadeh²

Abstract

Article 57 of the Constitution of the Islamic Republic of Iran recognized the independence of branches of government under the leader. The three branches must interact within the legislative, executive, and judicial competences maintaining their independence. In this regard, we are witness to the establishment of institutions such as the Council of the regulatory bodies whose membership included representatives of the three branches of the legislative and executive powers, violating their independence and accountability. The main question raised in this study, which applies a descriptive and analytical method, is whether the legal system of administrative institutions with independence of powers overlap or not? The Guardian Council by adopting the balance of Substantive jurisdiction index to invoke the principle of the independence of these institutions, the balance of power, considers these powers to be contrary to the basic principles, including Articles 57, 58 and 60 of the Constitution. But according to the principle of independence and Division of the tasks of system of power in Iran and the necessity of establishing constructive interaction of the powers with each other, the relationship between the balances seems to be necessary; therefore, utilizing political interaction in order to establish coordination between the branches of Government would be a suitable solution.

Keywords

authority structure, councils beyond the powers, independence of powers, interaction of powers, substantive jurisdiction.

1. MA in Public Law, Emam Sadegh University, Tehran, Iran. (Corresponding Author).
Email: m.ghotbi110@gmail.com

2. Assistant Professor, Public Law Department, Faculty of Law, Emam Sadegh University, Tehran, Iran. Email: thabizade@gmail.com

An introduction to Koskenniemi's Regressive Analysis in the structural study of international law

Abbas Ali Kadkhodaei^{1*}, Amir Abbas Amirshakeri²

Abstract

The approach followed by Martti Koskenniemi particularly in his "From Apology to Utopia" is one example of "regressive analysis". This approach could also be labelled as "deconstructive". Koskenniemi does not use the very technical conceptual apparatus of structuralism, semiotics or deconstructive philosophy. He situates his approach within the broad framework of those fields only to highlight its holistic, formalistic and critical character. For him, expressing international legal arguments, doctrines and "schools of thought" are kinds of parole which refer back to an underlying set of assumptions, capable of being explicated as the langue or "deep-structure" of the law. A deconstruction of international legal argument will then inevitably relate the argument to a historically conditioned "code"– or "conceptual scheme". Koskenniemi makes it explicit that hidden code bears a "critical potential".

Keyword

critical theory of international law, deconstruction, deep-structure, Martti Koskenniemi, regressive analysis.

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

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Scope of compatibility of the Iranian Law-Maker's approach with the unified provisions against corruption in Merida convention

Mahmoud Jalali¹, Vahid Ghasemi²

Abstract

Due to the phenomenon of globalization and its consequences, new opportunities have been created for the offenders and new forms of crime have been emerged which, in turn are considered as threats to peace, security, stability, sustainable development of human society and the rule of law. Also, increasing regional co-operations among states and companies and other institutions, are making crimes and their effects transnational, particularly in organized and economic crimes. For this reason, the international society and its various institutions, feeling insecure, have reacted in different ways. An international approach has been taken towards national crimes. National crimes, gradually and in an increasing manner, are becoming international crimes whose control requires international cooperation. In this line of argument, and considering the common approach taken by international community, the subject of combating corruption considered as international responsibility, came into the agenda of the United Nations in 1975 when the General Assembly adopted a resolution on the subject. Finally, the issue of adoption of an independent binding convention against corruption was raised in 2000 in the GA Resolution 55.61. As the first steps, an expert committee and a secretariat and office of crime prevention and control of narcotic drugs, were established at the UN Organization which in turn led to the adoption in 31 October 2003 by the UN of the Convention against Corruption (Merida). The Convention was signed by the Islamic Republic of Iran on 10 November, 2003 and in October 2005 a bill on the accession of the country to the Convention submitted to the Iranian Parliament, Majlis. Due to the objections raised by the Guardianship Council, its final ratification was done by the Expediency Council in accordance with Principle 112 of the Constitution on 23 September 2008. Now, taking into account the Iranian membership of the Convention, a comparative analysis of the obligations arising from the Convention with those of the Iranian criminal system, seems necessary. Although there is no fundamental conflict between the Iranian and the Convention provisions and since Iran is obliged to comply with the objectives of the Convention, some amendments to the national laws are required.

Keywords

convention against corruption, International Criminal Law, Iranian Legal System, United Nations.

1. Associate Professor, Law Department, University of Isfahan, Isfahan, Iran (Corresponding Author). Email: m.jalali@ase.ui.ac.ir

2. LLM in Criminal Law and Criminology, Iran. Email: vahidghasemi529@yahoo.com

Functions of the council institution in the Islamic Republic of Iran's legal system

Firouz Aslani¹, Ali Sohrablu^{2*}

Abstract

The council institution was established in various structures of the three branches of Iran's constitution and specific institutions such as the National Security Council and the Expediency Council. This shows the high importance of this institution for the legislative power. In discussion of the council's functions, it is understood that this institution cannot be limited to one function (regulatory or advisory). Council has all legislative, regulatory and advisory functions in the legal system of the Islamic Republic of Iran regarding its situations. So in this paper, to prove the mixed function of council institution, after defining the council concept, its legislative, regulatory and advisory functions are examined in laws and regulations and Islamic Republic of Iran.

Keywords

consultation, council, function, legislation, supervision.

1. Assistant Professor, Public and International Law Department, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran. Email: Aslanif@ut.ac.ir

2. Graduate Student of Public Law, Faculty of Law and Political Sciences, University Of Tehran, Tehran, Iran. (Corresponding Author). Email: Asohrablu@yahoo.com

The 2013 Arms Trade Treaty and its verification methods

Reza Najafi¹

Abstract

The 2013 Arms Trade Treaty, in the light of development in states' responsibilities, human rights law and humanitarian law, is the result of international efforts for regulating conventional arms trade in the form of a legally binding treaty which after the failure of the 2012 and 2013 diplomatic conferences and finally by a General Assembly decision turned into a treaty. One of the most important elements of arms treaties is the verification methods for compliance of the states parties to their obligations. The aim of the present article, while reviewing the process of the conclusion of the Arms Trade Treaty, is to answer this question: are there proper methods to verify the compliance of the states parties with the 2013 Arms Trade Treaty provisions?

Keywords

Arms Trade Treaty, conventional arms, humanitarian law, human rights, reporting, verification.

1. PhD, Iran's Ambassador and Permanent Envoy to the International Atomic Energy Agency (IAEA). Email: r.najafi@pmiran.at

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Theoretical aspects and objective traces and impacts of natural law in human rights instruments and judgments

Mohammad Javad Javid¹, Morteza Rostami^{2*}

Abstract

As the most substantive and fundamental rights of individuals, natural rights are of an ancient history and are not surrounded by a particular school of thought. Natural law has been founded on nature and reason of human beings; of and from which no legal system can be independent and indifferent. Meanwhile, it has always been controversial whether contemporary human rights are also rooted in natural law. This paper seeks to examine the claims of proponents of natural rights. Once it explains the major instances of natural rights, it theoretically analyzes the possibility and impact of such rights on human rights in general, and highlights the objective traces and impacts of natural rights in the Universal Declaration of Human Rights, the UN Charter of Human Rights and the human rights judgments issued by the International Court of Justice.

Keywords

judgments of the International court of justice, natural rights, human rights, UN charter of human rights, universal declaration of human rights.

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

2. PhD Student of Public Law, University of Tehran, Tehran, Iran (Corresponding Author).
Email: rostami300@ut.ac.ir

The role of international court of justice in dispute settlement of international organizations

Amir Maghami^{1*}, Sara Ansari²

Abstract

Development of number and role of international organizations in international relations has led to development of legal system governing them. This development required evolution of legal methods of dispute settlement. This paper deals with the role and precedent of international court of justice in dispute settlement of international organizations. It shows that, despite legal restrictions, advisory opinions play a special role in dispute settlement and development of legal system; contentious procedures, moreover, despite the explicit prohibition of the statute, have capacities for this purpose. However, modification of the statute and interpolation of jurisdiction for organizations disputes is imperative.

Keywords

international court of justice, international organizations, settlement of international disputes, statute of the court, United Nations Charter.

1. Assistant Professor, Faculty of Law and Theology, University of Shahid Ashrafi Esfahani, Isfahan, Iran. (Corresponding Author). Email: amir.maghami@live.com
2. MSc, University of Shahid Ashrafi Esfahani, Isfahan, Iran.

A comparative perspective on the role of national courts in enforcing international law

Ali Ezadi¹

Abstract

Today, international law is not confined to regulating the relations between the states and has recognized numerous rights for persons. Nevertheless, there are no effective enforcement mechanisms for these rights. Due to lack of central enforcement agencies, including executive, legislative and judiciary, international community has no centralized authority; thereby international law relies heavily on the actions of national agencies. A judiciary that is independent of the national Government and employs international standards is indeed a perfect forum to interpret, apply and develop international norms. The present article tries to examine practices and approaches of national courts towards the enforcement and development of international law.

Keywords

international customary law, monism, dualism, national approach, transnational approach, treaty.

1. Ph.D. in International Law, University of Tehran, Tehran, Iran. Email: ut.izadi@yahoo.com

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