

The right to freedom of assembly: An analysis of the performance of Un's special rapporteur

Nasim Zargarinejad¹, Amir Hosein Ranjbarian^{2*}

Abstract

Universal Declaration on Human Rights and International Covenant on Civil and Political Rights have endorsed the preexisting right to freedom of peaceful assembly for all citizens regardless of the location of such assemblies and the message which they try to proclaim. However, since peaceful turnouts may be a causative factor for public disturbance and are usually used as an instrument to protest against State's policies, governments do not seem pleased when a demonstration plans on taking place in public. In order to recognize and secure the right to assembly, the externat to which people can enjoy this right and the circumstances in which governments are allowed to interfere with an assembly should be clarified. Even though international efforts to define the aforementioned right initiated years before Human Rights Council took any steps, the common understanding of what the right to freedom of assembly really is have greatly improved after its involvement and the spotlight on events in a number of Arab countries since 2011.

Keywords

demonstration, peaceful, Human Rights Council, International Covenant on Civil and Political Rights, the Right to Freedom of Assembly, universal declaration on Human Rights.

1. MSc. in International Law, Alborz Campus, University of Tehran, Iran.
Email: n.zargarinejad@gmail.com

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

Received: November 11, 2015-Accepted: February 6, 2016

The jurisdiction of Administrative Justice Court in connection with the complaints arising from the public employment contracts

Morteza Nejabatkhah^{1*}, Farhang Faghih Larijani²

Abstract

According to clause (3) of article (10) of Administrative Justice Court's code, public employees' claims against administrative bodies regarding violations of employment rights are under The Court's jurisdictions. Even though The Public Services Code states them as one of the main formats of public employment in governmental bodies, contracts don't fall under the above-mentioned court's jurisdiction. As a result, an essential question emerges: what is the basis of Administrative Justice Court's jurisdiction in accepting claims based on contractual employment? To reach an answer, this essay intends to recognize a distinction between contractual employments and private contracts that are not under The Court's jurisdiction in accordance to the decision of its general board. The argument is that the employment's contract has a law-based nature. All conditions, consequences and regulations of an administrative contract are determined by the law. Any alterations to its content depend on enacting new provisions and finally, parties' consent is irrelevant to conclude an administrative contract.

Keywords

Administrative Justice Court, employment contract, employment rights, public employment, public services code.

-
1. Assistant Professor, Faculty of Law and Political Sciences, University of Mazandaran, Babolsar, Iran (Corresponding Author). Email: nejabatkhah@gmail.com
 2. Assistant Professor, Faculty of Law and Political Sciences, University of Mazandaran, Babolsar, Iran.

Received: November 10, 2015-Accepted: April 25, 2016

Emerging international responsibility of states due to compromise and tolerance towards terrorist groups with an emphasis on Afghanistan

Seyed Bagher Mirabasi^{1*}, Amir Famil Zavar Jalali²

Abstract

Traditionally and historically, if considered as an official or a practical component of a given State or its representative or under the control and leadership of that State, non-state actors and their actions are attributed to the State in question. The same outcome is expected when a government chooses to overtly accept acts of a non-state actor and receive them as its own. Since 9/11, there have been adjustments to principles mentioned above which in turn has resulted in creation of a grey area in the subject. The question at hand is whether or not acts of a non-state actor regarded as a State's, if the State is considered to be in tolerance with those actors. i.e. has given them refuge. Based on precedent, the Security Council's resolutions and international rules of responsibility, Study suggests that although in this case attribution is out of reach, it's possible for the State to be held responsible for its failure to fulfill the obligation to fight against terrorism.

Keywords

Afghanistan, attribution, compromising and tolerance, responsibility of the state, terrorist groups.

1. Professor, Public and International Law Department, Faculty of Law and Political Sciences, University of Tehran, Iran (Corresponding Author). Email: amirjalali0131@yahoo.com

2. MSc, in International Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran.

Received: December 8, 2015-Accepted: April 25, 2016

Prevention of environmental damages according to International Law Commission's Draft Articles on prevention of trans boundary harm from hazardous activities (2001)

Ali Mashhadi¹, Atiyeh Shahhosseini^{2*}

Abstract

Despite the fact that there might be a lack of prohibition in International Law, States activities within their sovereign rights are not limitless. The current approach dictates that not only States are responsible for their wrongful acts, they may also be liable for causing a risk of trans boundary damages. i.e. Preventing and minimizing the damage resulted from the activity. As they prevent damages to the environment and expenses of compensation, from both economic and environmental perspectives, scientific studies suggest that States should consider preventive measures to protect the environment as "The Golden Rule". It is an essential fact that the main purpose of all International environmental instruments is to safeguard the environment from destruction and pollution. Given the significance of the environmental issues in modern times and in order to fulfill its obligation to codify and develop International Law, Ever Since the 1970s, the ILC began its efforts for preparations of a comprehensive Draft Articles on prevention of trans boundary damages to the environment.

Keywords

environmental damage, the International law Commission, non-prohibited acts, prevention, States responsibility.

1. Associate Professor, Public and International Law, Faculty of Law, University of Qom, Qom, Iran.

2. MSc in International Law, Faculty of Law, University of Qom, Qom, Iran (Corresponding Author). Email: shahhosseini.Atieh70@yahoo.com

Received: November 7, 2015-Accepted: April 25, 2016

Internal and international legal necessities to reform some provisions of the civil code regarding the nationality of women

Hamid Alhooii Nazari¹, Majid Kourakinejad^{2*}

Abstract

In the course of transformation in the notion of nationality, changing the related rules is inevitable. With the manorial system abolished, nationality is no longer defined as loyalty towards a particular individual, but rather a legal status which assures mutual rights and obligations between a person and a State. The term "nationality" is a description of requirements of membership in a community based on culture, history, ethics, political beliefs and common values shared. As a result, International Law does not hold a strong position to interfere with the recognition of nationality by States. However, as a decisive factor, nationality retains significant functions in international relations. It determines the extent of rights and obligations of states towards each other and towards the international community. As an act of sovereignty with international consequences, acknowledgement of nationality is followed by concepts such as personal jurisdiction in international criminal law and diplomatic protection in international tribunals. According to modern international law everyone has the right to a nationality. Although it is not intended to conclude that based on this right individuals are entitled to a specific nationality, however, it is also not within its interpretation that States, based on their sovereignty, have the right to regulate the rules of nationality with complete disregard for developments of international law and especially Human Rights. Based on internal and international aspects of the concept of nationality, this study evaluates Iran's domestic regulations regarding Women's nationality. As a finding of the paper, some articles of The Civil Code appear to be in conflict with The State's sovereign rights as well as International Law.

Keywords

civil law, general principles of law, sovereignty, women's nationality.

1. Assistant Professor, Law and Political Science, University of Tehran, Iran.

Email: soohan@ut.ac.ir

2. MSc. in International Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran (Corresponding Author). Email: Majid.Gharaee1369@gmail.com

Received: August 11, 2015-Accepted: January 30, 2016

Protection of "Maternity rights" in social security system

Ahmad Rezvanimofrad^{1*}, Shahram Zarneshan²

Abstract

One of the fundamental rights for women is the right to motherhood. Islam concurs the essential role of family in societies and on the account of the important role of mothers in the development and education of children, the rights and responsibilities of mothers holds a prominent position in Sharia Law. Principal Human Rights documents mention the right to motherhood and articulate the measurements regarding its protection. Under the influence of religious doctrine and international instruments, Iranian domestic law has incorporated protective maternity laws. This article seeks to study the provisions mentioned above in the context of Iran's social security obligations to provide medical care and monetary benefits for mothers.

Keywords

breastfeeding, mother, pregnancy-related care, social security.

1. Assistant Professor, Law Department, Buali Sina University, Hamadan, Iran (Corresponding Author). Email: rezvanimofrad@yahoo.com

2. Assistant Professor, Law Department, Buali Sina University, Hamadan, Iran. Email: szarneshan@yahoo.com

Received: December 26, 2015-Accepted: April 25, 2016

Application of the law of neutrality in cyberspace

Farideh Shaygan¹

Abstract

Rapid increase in the use of cyberspace and its unique characteristics, including interconnectivity of cyber infrastructure around the world and absence of any borders on the world wide web, on the one hand; and the possibility of using cyber infrastructures of other States to employ cyberspace and its capabilities for cyber-attacks and transmission of cyber weapons, on the other; makes the observance of neutrality in international armed conflicts, if not impossible, difficult at the very least. In such situation, inviolability of the territory of neutral States becomes extremely vulnerable and the probability of involvement of the neutral State in the ongoing conflict enhances. Which is the very consequence that the law of neutrality seeks to avoid? Thus, the study of the applicability of the law of neutrality to cyberspace in general and obligations of belligerents and neutral States in particular, their implementation, and the consequences of their violations seems necessary.

Keywords

cyberspace, international armed conflict, law of neutrality, obligation of belligerents, obligations of neutral States, prevent the violation of neutrality, sovereignty over cyberspace, terminate the violation of neutrality.

1. Assistant Professor, Kish International Campus, University of Tehran, Kish, Iran.

Email: farideh.shaygan@ut.ac.ir

Received: November 18, 2015-Accepted: December 25, 2015

The distinctions and similarities of democracy and its elements with the system of Velayat-e-Faqih based on theories of election (Ayatollah Montazeri) and selection (Ayatollah Mesbahyazdi)

Iman Mokhtari^{1*}, Mohsen Esmacili²

Abstrac

Some experts of Selection and Election theories believe that fundamental similarities and dissimilarities exist between Velayat-e-Faghih as a system of governance and democracy and its elements. However, as it is based on the Islamic school of thought, the system of Velayat-e-Faghih (Leadership) and its inherent requirements and democracy in its customary or Human Rights-based form, are different by nature. This discussion seems necessary due to the fact that in the course of their careers a number of scholars in both doctrines have revised their views. Based on a descriptive analysis review of perspectives portrayed by two academics who value the fore mentioned theories, this article finds that in one hand achieving democracy and its elements as intended in customary and Human Rights based regimes is not possible through a theocracy, On the other hand, both hypothesis only acknowledge democracy, its elements and its establishment through Velayat-e-Faghih's system.

Keywords

democracy, election theory, element of democracy, selection theory, Shiite.

1. MSc. Student of Public Law, Faculty of Law, University of Tehran, Farabi Campus, Qom, Iran (Corresponding Author). Email: iman.mokhtari@ut.ac.ir

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

Received: October 20, 2015-Accepted: April 25, 2016

Comparative study of transsexuals' social rights in international instruments, common law and Iranian legal system

Mohsen Safari^{1*}, Seyed Mehrdad Amir Shahkarami²

Abstract

The transsexual community is exposed to social and legal injustice Due to its members' sexual identity. Discrimination, violation of their privacy and inaccessibility to high quality health care are just some of many instances among the injustice they face. The rights mentioned are considered important in all international documents and in legislative systems of civilized societies. International documents recognizes sexual identity as an independent agent in their defense against discrimination and explicitly protect transgenders' right to privacy and their right to an accessible heath care. While United Kingdom and The United States have adopted numerous protective bills, Iran's domestic law lacks a distinct set of provisions in this regard. With this legal gap resulting in the exclusion of the transsexual community from the society, legislative consideration for the matter deems necessary. The primary solution is to interpret general constitutional rights in favor of their absolute rights, however, as mentioned the need to pass new laws specified to include all rights of the transsexual community cannot go unnoticed.

Keywords

contextualizing Yogyakarta principles, gender recognition act 2004, insurance right, nondiscrimination, privacy, right to health, transsexual.

1. Assistant Professor, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran (Corresponding Author). Email: safarimohsen@ut.ac.ir

2. MSc. in Private law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran.

Received: November 23, 2015-Accepted: April 25, 2016

The notion of the “Spirit of Brotherhood” in article 1 of the Universal Declaration of Human Rights: Conceptual challenges in liberal societies

Reza Mousazadeh¹

Abstract

According to Article 1 of the Universal Declaration of Human Rights the notion of “Fraternity” is recognized as a human duty and as it stipulates: “All human beings ... should act toward another in the spirit of brotherhood”. While The Declaration is partially influenced by religious terms such as “Fraternity”, most of its concepts are based on Western individualistic philosophy which suits the social and economic structure of liberal societies. This paper is an attempt to find whether the notion of Fraternity which requires “to be responsible toward others”, “sense of human unity”, “generosity” ... could be applied in liberal societies and accepted as moral values. For this purpose, it studies the concept from three different perspectives: Philosophical, Ontological and Values of the liberal societies.

Keywords

fraternity, individualism, liberalism, liberal society, spirit of brotherhood, universal declaration of Human Rights.

1. Associate Professor, School of International Relations, Tehran, Iran.

Email: rmousazadeh8@gmail.com

Received: January 25, 2016-Accepted: April 25, 2016

Medical privacy of the victims of use of chemical weapons in Iran-Iraq war

Aramesh Shahbazi¹

Abstract

The use of chemical weapons in Iran-Iraq war left many soldiers and civilians dead or severely injured. Provisions of binding international instruments and international customary law were breached and Iraq violated the principles of distinction, separation and use of conventional weapons during a conflict. While international humanitarian law regulates the conducts of the hostilities during the time of war, the principles of Human Rights are obligatory in both war and peace. This article will consider the right of victims of chemical weapons to privacy as an obligation for the medical teams, legal advisers, governmental and non-governmental entities and also by the judiciary branch.

Keywords

the charter of the patients, human rights, Iran-Iraq war, the right to privacy, victims of use of chemical weapons.

1. Assistant Professor, International Law Department, Faculty of Law and Political Sciences, Allameh Tabatabaiee University, Tehran, Iran. Email: shahbazi@atu.ac.ir
Received: February 10, 2015-Accepted: April 25, 2016

Semantics of conscience of humanity in international instruments

Masoud Raei Dehaghi¹, Mohammad Aghayan Hosaini^{2*}

Abstract

The Phrase “Conscience of Humanity” has been used in some international instruments. This phrase, with its own special meaning, is intended to fill the legal gaps in international law and has worked as a criterion for assessing the rules of the international legal system. Thereby humanitarian developments in international law, is understandable. The focus of this research is the applications of the concept of "Conscience of humanity" in international instruments in its semantic representation with the purpose of finding the place of the above mentioned concept within the sources of international law.

Keywords

conscience of humanity, international instruments, legal gaps, semantics, sources of international law.

1. Assistant Professor, Law and Theology Department, Faculty of Law, Theology and Islamic Sciences, Islamic Azad University, Najafabad Branch, Esfahan, Iran.
2. PhD Candidate in International Law, Faculty of Law, Theology and Islamic Sciences, Islamic Azad University, Najafabad Branch, Esfahan, Iran (Corresponding Author).
Email: aghayanhoseini@yahoo.com
Received: July 1, 2015-Accepted: February 6, 2016