

The analogue structure of international law

Abbas Ali Kadkhodaei¹, Amir Maghami^{2*}

Abstracts

Since its beginning, International legal order has been based on trade-offs and reciprocity among States. Such order in substantive law and the Law of Responsibility is similar to the structures of private law. This similarity is the main obstacle to achieving a constitutional order that has the ability to provide adequate protection for individuals' fundamental rights by relying on hierarchical standards. The development of International Law towards a new order is a result of humanitarian ideals which entered the legal system. Consequently, the future outlook suggests that development in the structure of the Law of Responsibility and implementation of responsibility is possible in the light of such adjustments.

Keywords

international community, law of responsibility, law of treaties, obligations erga omnes, structure.

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The first electoral law and the establishment of the first Constitutional Parliament

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Abstract

One of the key issues in pathological study of the Constitutional System is the process of codification and enforcement of the first Electoral Law and the impact of this law on the first Constitutional Parliament. Due to its possible influence on the future of the Constitutional Regime, This Subject is highly important. In this regard, topics such as the compilation and the enforcement of the aforementioned law and its effect on the establishment of the first Majlis (Parliament) will be investigated. Hence, the main purpose of this article is to determine the practical and theoretical obstacles and deficiencies that the first electoral law encountered as well as the internal difficulties faced by the new parliament- affected by these deficiencies- in its process of establishment. As this study would suggest, it appears that the Constitutional System faced many obstacles since its dawn and eventually it was the failure to overcome the same obstacles that resulted in its collapse.

Keywords

constitution, deputies, electoral law, establishment of Majles, social class.

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Application of the doctrine of responsibility to protect in the International Disaster Response Law (IDRL)

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Abstract

While in conditions of combat assistance to victims based on the provisions of binding humanitarian law often takes place easily, there are no similar provisions in terms of natural disasters. This legal vacuum provides a fertile ground for abuse of the traditional principles of sovereignty and non-intervention in order to prevent international relief. In the meantime, International Disaster Response Law as a new branch of Public International Law is looking to log-on in to the basics of humanitarian assistance provided in such events to fill the void. The doctrine of the responsibility to protect, seems as an appropriate justification for this purpose. The international community has yet to reach a consensus about the applicability of the aforementioned doctrine in cases of disaster. However, results of this study suggest that even if a consensus is reached by the international community, it will not create a significant and effective change in the international relief to the victims of such events by itself.

Keywords

humanitarian law, human rights, international Disaster Response law, natural disasters, responsibility to protect.

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The position of religion in the governmental system of Iraq

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Abstract

This research is an attempt to assess and explain the position of religion in the governmental system of Iraq. In this regard, the paths where current governmental system and the concept of religion cross, have been traced. On the other hand, to compare “what is” (the current status of religion in the governmental system of Iraq) and “what should be” (as desired conditions), it is required to measure them via determined parameters. As a result, the main enquiry of this article is the compliance -or lack thereof- of the legal system of Iraq with the mentioned parameters. To this end, the basic issues and substantive aspects are reviewed briefly. The parameters in this research are based on the viewpoints of Allameh Seyyed Mohammad Baqir al-Sadr. After surveying the evolution of religion’s position in the constitution laws of Iraq and the history of relevant developments in response to the main question, the review of the components (demographic structure, constitution, international approach and ideological basis of government) shows that despite aiming to institutionalize the rules of religion in the Government, The country still faces fundamental gaps between implementing the religion sentences and establishing good governance. In addition, the comparison of "what is" and "what should be" implies that attempts to define an appropriate position for religion has not been successful. Other factors such as foreign interference, demographic structure and theoretical approach of religion scholars and authorities, have also contributed to the mentioned outcome.

Keywords

Ayatollah Mohammad Baqer al-Sadr, Ayatollah Sistani, constitution, Iraq, the Iraqi Governmental System, religion.

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The Seizure of fossil resources from the view of humanitarian International law

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Abstract

Occupation of countries without the permission of the UN's Security Council- As the Authority to permit the Use of Force- have occurred on several occasions in the History of the United Nations. During the years of ongoing armed conflict between ISIS and the States of Syria and Iraq, in addition to invading parts of the territories of the two states, the mentioned group has also seized a number of oil and gas fields as well as related infrastructures. As a result, ISIS stands to gain benefits by selling crude oil which is one of the most important sources of its revenue. Israel has also exploited the marine oil and gas resources unilaterally by occupying Palestine since 1995. The issue of occupation is subject to International Law of Belligerent Occupation. As a legal situation, belligerent occupation is followed by legal effects which will in turn raise new issues in the field of Occupation. Hence, whether the occupant has the right to seize and use oil and gas reservoirs and infrastructures and if so, to what extent the rules and regulations of the Law of Belligerent Occupation protect the oil and gas reservoirs and infrastructures as governmental properties, are some of the consequential questions in need of an answer. In this study, the rules of The 1907 Hague Convention and the fourth Geneva Convention of 1949- both in association with properties- are considered to determine the situation of oil and gas reservoirs and infrastructures in the Occupied State and also to provide a commentary on the efficiency and usefulness of these rules and regulations.

Keywords

Belligerent occupation, international law, oil and gas, oil reservoirs and infrastructures.

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A confrontation between two legal perspectives: Analysis of the legal interaction and conflict between the I.R. Iran and the United Nations Human Rights Council

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Abstract

The United Nations Human Rights Council (UNHRC) is an inter-governmental body within the United Nations System, and is one of the most prominent institutions of the United Nations which monitor human rights records in member states. The UNHRC is the successor to the United Nations Commission on Human Rights (UNCHR), and is a subsidiary body of the United Nations General Assembly. It has addressed human rights status in Iran mostly through UPR and Special Rapporteur. The Council works closely with the Office of the High Commissioner for Human Rights (OHCHR) and engages the United Nations' Special Procedures. The state of human rights in the Islamic Republic of Iran and many other countries have been addressed both by UNHRC and NCHR. The Council and its predecessor have had confrontational and partly normal interactions with the I. R. of Iran since 1979. This article reviews the mentioned interactions and focuses on their confrontational legal status on torture, execution, Islamic Punishments and etc. It is believed that part of the confrontations stem from differences in legal systems and ambiguities in some of Iran's Penal Law.

Keywords:

UNHRC, NCHR, Iran, Human Rights, Torture, Islamic Punishments

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The legal regime governing the budget of war in Iran

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Abstract

War, constitutes an important part of the Human history. This is one of the most important reasons behind the exclusion of exemptions in computational law. As a result, the legal system governing the mentioned exemptions, is complex and perpendicular to secondary logic. The main issue in understanding the legal system in command of the Budget of War, is to discover those principles and sources that govern the topic. This research is an attempt of legal approach to the related rules and regulations in order to analyze the Budget of War with a focus on the Iran-Iraq war. In addition to raising a new issue in the Public Finance Law, Results of this study seek to express the necessary needs, principles and guidelines in order to reform the Legal System of war budget.

Keywords

expense, external credits of the inclusion, outstanding conditions, public audit act, war budget.

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Status of doctrine of responsibility to protect within the crisis of Syria

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Abstract

The doctrine of Responsibility to Protect is the result of human catastrophes which were raised by systematic violations of Human Fundamental Rights in the 1990s as well as activities that according to the Security Council's Resolutions, are considered as threats against Peace. Eventually, the Responsibility to Protect was adopted in paragraphs 138 and 139 of the General Assembly's Declaration of the Heads of States in 2005 as a response to the known principle of "Non-Intervention" alongside the aim to prevent abuses such as war crimes, crimes against humanity, genocide, impotence of States to protect their own citizens rights and continuous violations of said rights by States. In the Case of Syria, Events that have been unfolding since the February of 2011 are illustrations of systematic violation of rights of citizens by the hands of Syrian government forces and armed rebels. Although the principal duty of the Security Council is to provide international peace and security and perhaps due to conflicts of interest among the permanent members of the Council, the ability to enforce the mentioned principle in order to protect Syrian citizens against frequent and catastrophic violations of their fundamental human rights, is unfortunately even less accessible.

Keywords

The Doctrine of the Responsibility to Protect, threat against Peace, Security Council, Syria and Fundamental Human Rights.

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Public law's considerations in the school of thomism with an emphasis on the rule of law in religious states

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Abstract

The existence of government as a natural, religious and legal phenomenon is a necessity. According to the theory of Thomas Aquinas, the consideration of a religious government under the rule of a divine law is an accepted module. He hypothesizes two main pillars: The government as a symbol of political authority, ruled by the King and the religious affairs that are ruled under the command of the Church. King, as a symbol of political authority, has the duty to pave the way for people to move toward a prosper eternal life reaching God. Although, he knows the political and religious institutions as two relatively independent phenomena, he emphasizes on the adherence of the Political Institution to its religious counterpart. This is the most challenging part of the Thomism's school. This paper shows that by considering the macro approaches of Thomism philosophy, such as ontology, epistemology, anthropology, it is possible to achieve the rule of a law and a State with religious beliefs under the issues of Public Law.

Keywords

faith, natural rights, religious state, the rule of law, Thomas Aquinas, Thomism, wisdom.

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The Impact of Critical Legal Studies (CLS) on the evolution of the theoretical reflections of legal scholarship

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Abstract

The historical foundations of CLS were founded as a result of the failure of the mainstream legal scholarship at the end of the Victorian era's optimism which was simultaneous to the beginning of the First World War. One of the characteristics of CLS, which to some extent was created as a result of the development of legal realism in the USA, is to open legal jurisprudence to other disciplines and to reject the thought that CLS is merely a philosophical discussion of the concept of law. CLS, firstly, throws a shadow of doubt on the attitude of the mainstream legal scholarship premised upon the belief that law is perfect, autonomous, and logical. In ultimately rejecting this belief, CLS shows that the so-called triumphs of the conventional legal mainstream are ambiguous. By acknowledging the risk of scepticism and by advancing its ideals according to this, CLS has provided conditions, and therefore means, for the social world to continuously reconsider itself.

Keywords

CLS, legal formalism, legal positivism, legal realism, legal scholarship.

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International space law and the necessity of protection of the environment of the outer space

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Abstract

History of the development of International Space Law demonstrates that when the five major Space treaties were concluded, Issues such as peaceful use of Space and State responsibility for Space activities were predominant topics while protection of the Space environment was considered merely as a marginal issue. However, States have nowadays come to the conclusion that protection of Space is essential for sustainable Space activities. Any exploration and use of Space as well as any development and advancement achieved by Space technology, must be in an equitable manner free from excessiveness. In addition, the fact that future generations, too, have the right to enjoy the Space Environment should be taken into consideration. Use of Space by current generation should not cause unrepairable damage to the Space Environment making its use impossible. To efficiently prevent pollution arising from space debris and of nuclear power sources in Outer Space, different strategies including creation of a framework convention together with additional protocols, resort to environmental principles such as sustainable development and finally establishment of an International Space Agency, must be taken into account.

Keywords

common heritage of mankind, international space law, outer space, space debris, the space environment.

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The conditions of suspension of human rights in armed conflicts (Case study: the Israeli-Palestinian crisis)

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Abstract

Human rights and fundamental freedoms have formed the main core of the struggle against injustices for centuries. The aim of these efforts is to provide individuals with basic rights. However, Contrary to Humanitarian Law that applies only in armed conflicts, Human Rights are indispensable at all times, in war and peace alike. But since armed conflicts are a threat to the survival of the State, Questions then arise: Can governments derogate from Human Rights in time of such conflicts? If so, is this suspension absolute or conditional? If conditional, under what circumstances can governments employ such measures? Ultimately, if a State chooses to apply the suspension Clause, to what extent is it in compliance with its conditions? This article attempts to answer the questions above with a focus on the Israeli-Palestinian conflict.

Keywords

armed conflict, emergency, derogation, Human Rights, Israel, Palestinian.

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