The role and function of international Non-Governmental Organizations as a "Friend of the Court" in the international system of disputes settlement

Seyed Bagher Mirabbasi[1], Aghil Mohammadi[2]*

Abstract

The "Friend of the court" is a natural or legal person that although not a party to the dispute, still expresses its oral or written remarks on the facts and the law governing the claim. A review of the jurisprudence reveals Non-Governmental Organizations as the key players of this field. However, their participation in the dispute settlement process is faced with many challenges and obstacles. This article argues that despite the fact that a number of courts such as the International Court of Justice have avoided this legal concept, as it has been received in areas such as Human Rights as well as Trade and Investment Arbitrations, the mentioned practice can assist courts to improve the accuracy and quality of decisions with its perceived advantages.

Keywords

access to documents, hearings, human rights courts, International Court of Justice, investment arbitrations, third party participation.

1. Professor, Public and International Law Department, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran. Email: mirabbassi@parsilo.com.
2. PhD Student, International Law, Faculty of law and political Sciences, University of Tehran, Tehran, Iran (Corresponding Author). Email: Mohammadiaghil10@yahoo.com
Received: June 9, 2015 - Accepted: November 2, 2015

Remarriage of the mother, custody and the best interest of the child

Seyyed Mohammad-Hadi Saei[1], Niloufar Kamyab Mansouri[2]*

Abstract

According to the Iranian Civil Code, remarriage serves as a legal obstacle to the mother's right to custody, which would lead to the father's sole custody of the child. As it is enshrined in international instruments on the rights of a child, the intended function for custody of children is to safeguard their best interest. Consequently, and to that end, said interest should be evaluated per case. Given that remarriage is classified as an obstacle for custody and not a ground to lose the right, the same logic of case-by-case examination applies. Accordingly, the best interest of the child comes to light as the determining factor.

Keywords

child's best interest, custody, losing custody, obstacles of custody, remarriage.

1. Assistant Professor, Private Law Department, Imam Khomeini International University, Iran
2. PhD Student, Faculty of Law and Political Science, Allameh Tabataba'i University, Tehran, Iran (Corresponding Author). Email: niloofarkamyab@yahoo.com

Received: April 10, 2016 - Accepted: July 25, 2016

The position of the threshold of Non-International Armed Conflicts under the Additional Protocol II

Seyed Fazlollah Mousavi[1], Seyed Majid Tafreshi Khameneh[2]*

Abstract

The threshold of non-international armed conflicts is a criterion in terms of which the internal disturbances and tensions e.g. riots, and both isolated and sporadic acts of violence, are no longer characterized as civil wars. This term was introduced into the literature of International Law in 1949, following the formation of the Common Article 3 of the Geneva Conventions. The impact of the above-mentioned concept is directly in connection with the sovereign rights of States, particularly the exclusive jurisdiction of the national judicial authorities. Consequently, its effect on managing the conflicts and dealing with the operations of anti-government armed forces, has always been one of the most controversial parts of different diplomatic conferences, including those led to the creation of the Common Article 3, Article 8 of the Rome Statute and especially the Additional Protocol II to Geneva conventions.

Keywords

additional protocol II, Article 8 of Rome statute, Common Article 3, International Committee of the Red Cross, sovereign rights, threshold.

1. Professor, Public and International Law Department, Faculty of law and Political Sciences University of Tehran, Tehran, Iran. Email: fmoosavi@ut.ac.ir
2. PhD in International Law, Faculty of law and Political Sciences University of Tehran,Tehran, Iran (Corresponding Author). Email: Sm.tafreshi.k@gmail.com
Received: January 23, 2016 – Accepted: July 25, 2016

Resistance of palestinians based on the Right to self-determination and the Obligations of International Community in this regard

Tavakol Habibzadeh*

Abstract

Deprived of their right to self-determination, Palestinians have lived under military occupation in the most deplorable inhuman conditions for over half a century. None of the peaceful efforts with respect to achieving independence and liberty for the Palestinian people has been successful in the past. Despite how the nature of their resistance is viewed by a number of Western countries, international instruments including Human Rights documents and Resolutions of the UN General Assembly, have recognized the right to self-determination as the right to independence and the right of establishment of a State by populations under colonization and foreign occupation in a general sense, as well as acknowledged these rights for the people of Palestine in particular. As a result, these instruments have legitimized the right of these populations to resist, using all necessary means and methods in accordance with principles of the UN Charter, in order to attain independence. Since the right to self-determination is considered *erga omnes* as well as *jus cogens*, not only the resistance of the people of Palestine is lawful and legitimate, but the moral support and material aid of other States are authorized in international instruments.

Keywords

international community, right to resistance, right to self-determination, Palestine, United Nations.

* Assistant Professor and Director of Public law Department, Faculty of Law, Imam Sadiq University, Tehran, Iran. Email: habibzadeh@isu.ac.ir

The right of access to Justice in the European convention on Human Rights

Jmashid Momtaz[1], Sirous Motevassel[2*]

Abstract

As in the case of national law, respect and protection of Human Rights is only effective if the executive legal systems can ensure access to an effective remedy. When such right is violated, access to the justice system is essential for the victim. Although the European Convention on Human Rights refers to some aspects of a Fair Hearing, there is no clear reference to the right of hearing within the concept of access to an effective remedy or the right to proceedings. The jurisprudence has broadened the scope of the mentioned subject matter beyond just the right to a fair and effective process system to the right to proceedings. However, provided that the restriction is subject to a legitimate purpose, the principle of proportionality is awarded and that the limitation has no effect on the nature of the stated right, the right of access to justice has proven not to be absolute in some instances.

Keywords

access to Justice, European Convention on Human Rights, Human Rights, legitimate purposes, margin of appreciation.

1. Professor, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran.
2. PhD in International Law, Shahid Beheshti University, Tehran, Iran (Corresponding Author). Email: Legal6@gmail.com

Arming the Syrian opposition from the perspective of international law

Maryam Ahmadinejad[1]*, Mohsen Mataji[2], Yaser Aminalroaya[3]

Abstract

It has been over five years since the Syrian crisis has begun. Financial and logistical support of regional and trans-regional States have played a key role in the prolongation of this upheaval. Arming the Syrian opposition not only violates the principle of prohibition on use of force, but also falls short of the imaginable scope of both the principle of humanitarian intervention and the principle of counter-intervention. Additionally, as Bashar Al-Assad was elected president in the 2014 elections, the mentioned act is also illegitimate under the principle of the right of nations to self-determination. Based on a descriptive method, this article provokes international principles to argue against justifications applied to aid the Syrian rebels.

Keywords

armed groups, arming, humanitarian intervention, use of force, self determination.

1. Assistant Professor, University of Alzahra, Tehran, Iran (Corresponding Author). Email: m.ahmadinejad@alzahra.ac.ir
2. PhD Student in International Law, Faculty of Law, Mofid University, Qom, Iran.
3. PhD in International Law, Faculty of Law and Political Sciences , Allameh Tabataba'i University, Tehran, Iran.

Received: April 6, 2016 - Accepted: July 25, 2016

Safeguarding the indigenous people's intangible cultural heritage: In search for the most appropriate legal approach

Amir Hosein Ranjbarian[1], Mohammad Saeedi[2]*

Abstract

Indigenous people are the people who, from olden days and especially prior to the colonization era, have sustained a common history as well as bonds and traditions that allow them to stand out from the mainstream society and enjoy their own unique practices, set of values and cultural experience. Living under the rules and framework of the central governing authority, these people have emotional and spiritual bond with their territory and place of residence. They also consider protection of their culture and intangible heritage, mostly carried through oral traditions, tantamount to the survival and continuation of their identity and furthermore securing their heritage from merging in other dominant societies in the surrounding world to the point of being lost. The legal approaches that have been proposed to protect the intangible heritage of indigenous people can be classified as two categories: First, the private and intellectual property laws that regards the mentioned heritage as of economic value, offers solutions relying on various dimensions such as copyright, patent, trademark law, the law of contracts and the law of responsibility. Secondly, the Human Rights that introduce new mechanisms to safeguard the indigenous people's right to their intangible heritage and folklore, based on the framework of "Cultural Rights" in addition to the doctrines pertaining Human Rights which have reflected well in international documents and tribunal case laws. The extent of approval in this approach has even led some to consider the right of indigenous people to protect their intangible heritage as a part of their identity as a principle of customary human rights rule.

Keywords

cultural rights, human rights, indigenous people, intangible cultural heritage, intellectual property law, private law.

1. Assistant Professor, Department of Public and International Law, Faculty of Law and Political Science, Tehran, Iran
2. PhD in International Law, Faculty of law and Political Sciences, University of Tehran, Tehran, Iran (Corresponding Author). Email: mohammadsaeedi13612012@gmail.com
Received: February 12, 2016 – Accepted: July 25, 2016

The prudentially of the constitution in the definition of political offense

Ghodratollah Rahmani*

Abstract

Despite the recognition of the concept of political offense and even in the golden ages of the leniency regime in favor of political offenders, the Western Law has never provided a set of unambiguous laws regarding political offenses or in determination of who qualifies as a political offender. None of the main legal systems including France, as the founder of the concept of separation of political and non-political offenses, at any time, have incorporated the definition of political offense. However, mainly in cases of "extradition", the Courts have traditionally taken upon themselves to determine the offenders of crimes of such nature. The historical custom of "avoiding the legal definition of political offenses" which, contrary to the popular belief, is not a result of frustration or compulsion by the legislator's part, but due to respect of free will and expedience by legal systems. The Constitution of the Islamic Republic of Iran, has required the legislator to define the concept of political offense which is a practical approach by the Constitution. The Law on Political Offense is yet to be approved after more than two decades of continuous efforts to realize the mandate of Article 168. Nevertheless, it deems necessary to disregard the mentioned stipulation and choose the expedient approach.

Keywords

constitutional law, expedient approach, Iranian law, legal definition, political offense.

* Assistant Professor, Department of Public Law, Faculty of Law and Political Science, Allameh-Tabataba'i University, Tehran, Iran. Email: gh.rahmani@atu.ac.ir

Received: August 20, 2016 - Accepted: September 26, 2016

Jus Post Bellum and the responsibility to protect victims of armed conflicts

Pouria Askary*

Abstract

The theory of "Just War" belongs to ancient times that even precede the era of Jus Gentium. This theory had three distinct sections i.e. the Jus ad bellum, with main focus on State's right to wage to war; Jus in bello, which revolved around means and methods of warfare; and finally, Jus post bellum, which dealt with justice after war. In this article, the main argument is that the modern concept of the Responsibility to Protect is rooted in the theory of "Just War". As a result, all obligations raised from the mentioned theory must exist in this new concept to protect the war victims. The article discusses the three pillars of R2P and eventually argues that on the basis of R2P's Responsibility to Rebuild, in addition to the State and the party to conflict who violates the rules of jus in bello, the International community, also has a responsibility to protect the victims of war.

Keywords

international humanitarian law, international human rights law, just war theory, responsibility to protect, victims of armed conflict.

* Assistant Professor, Department of International Law, Faculty of Law and Political Science, Allameh Tabataba'i University, Tehran, Iran. Email: pouria.askary@gmail.com
Received: February 19, 2016 - Accepted: July 25, 2016

A comparative study of the extent of standing (Locus standi) in environmental litigations

Mohammad Hosein Ramazani Ghavamabadi[1], Javad Javadmanesh[2]*

Abstract

Locus standi defines as having the right to bring a legal action before the court. This doctrine restricts the citizens' access to justice, a right which identifies as a key principle. Nevertheless, each legal system has several criteria used by its courts to decide if a plaintiff, in fact, has standing to litigate. Against this background, the present study seeks to answer this fundamental question regarding environmental claims: Can citizens and/or Non-Governmental Organizations (NGOs) bring cases against contamination and/or destruction of the Environment -especially in lieu of direct and personal interest - to court? Today, as most countries have realized the potential capacities of operating the public as a mean of protecting the Environment, they tend to view standing in said cases in a different light. As a result, litigation on the basis of common interests (distinctive from the collective interest), has been provided as a possibility in both developed and developing States.

Keywords

environmental claims, environmental law, Locus standi, plaintiff, public interest.

1. Associate Professor, Faculty of Law, Shahid Beheshti University, Tehran, Iran.
2. Ph.D. Student, Faculty of Law, Shahid Beheshti University, Dubai Branch, Dubai (Corresponding Author). Email: javadmaneshj@yahoo.com
Received: April 20, 2016 - Accepted: November 16, 2016

Assessment of States' Commitment to prevention and cooperation against international crimes in the light of Arms Trade Treaty

Saeed Hakimiha*

Abstract

Eradication of arms trafficking, as a transnational organized crime and a ground for other international offenses, plays a key role in prevention of such crimes in International Criminal Law. The considerable number of conventions against offenses relating to arms in instruments of International Criminal Law on the one hand, and conventions on disarmament in International Law on the other, is a testament to the importance of said role. With ratification of the Arms Trade Treaty (ATT) in 2013, The United Nation's General Assembly reshaped the efforts to prevent the deviation in Arms Trade towards black markets as the Treaty imposes obligations on member States to that end. Although previously incorporated in documents such as Merida, Palermo and the Geneva Conventions to some extent, the obligation to cooperate seems to have been materialized by the rules and standards of the ATT against arms contraband. Naturally, the Treaty's rules are applicable in international judicial bodies. However, in terms of practicality, lack of adequate measures of evaluation concerning the performance of States in their commitment to prevention of crimes with a global nature and their cooperation in that capacity, serves as a potential obstacle to the sufficiency of ATT's standards.

Keywords

arms, cooperation, crimes, criminal, international, obligation, prevention.

* Assistant Professor, Imam Hossein Comprehensive University, Tehran, Iran. Email: hakimiha@yahoo.com

Received: December 21, 2015 - Accepted: January 4, 2016

The theory of normative hierarchy in the light of Human Rights Rules with emphasis on International Jurisprudence

Homayoun Mafi[1]*, Vahid Bazzar[2]

Abstract

Based on the Theory of Normative Hierarchy, the relationship among legal norms in a legal system is hierarchical. When first examined, International Law, as opposed to national laws, appears to entail of a set of horizontal norms of which no one rule is superior to another. Nonetheless, especially when concerned with Human Rights, international authorities as well as international instruments have applied concepts such as fundamental rules, Jus cogens, erga omnes and inviolable principles. In view of recent developments in the mentioned realm, this article seeks to identify the hierarchy relationship -or lack thereof- among the existing norms of International Law.

Keywords

Human Rights, International Case Law, normative hierarchy, Jus cogens, obligations.

1. Associate Professor, University of Judicial Sciences and Administrative Affairs, Tehran, Iran (Corresponding Author). Email: hmynmafi@gmail.com
2. PhD Student in International Law, Faculty of Law and Political Sciences, Allameh Tabataba'i University, Tehran, Iran. Email: vahidbazzar@gmail.com

Received: May 13, 2016 - Accepted: July 25, 2016