

Fulfillment of criminal justice in Africa; barriers and solutions

Mohammad Hossein Ramazani Ghavamabadi¹, Mansoor Bahmaei^{2*}

Abstract

The International Criminal Court (ICC), is a new legal structure which has competence to prosecute perpetrators of international crimes and violators of human rights. In addition to national courts, The International Criminal Court has complementary jurisdiction. Therefore, the ICC has a complementary competence which complies with national legal system and national Legislative bodies and means that states have the jurisdiction and the primary obligation to investigate and punish international crimes. Considering the fact that the ICC is a young court, it's not fair to judge the efficiency of this court, nevertheless, several governments' position on the ICC could be subject of contemplation. The position of several African government and the African Union, is threatening to withdraw from the Statute of the Court and establishing new alternative independent authority which can undermine the ICC competence, all of which may lead to difficulty in the path of achieving criminal justice in the international community.

Keywords

the African Union, crime, criminal justice, the International Criminal Court, investigation, statutes, noncooperation.

1. Associate Professor, Faculty of Law, Shahid Beheshti University, Tehran, Iran, Email: ramazanighavm@yahoo.com.

2. Ph.D. Candidate in International Law, Faculty of Law, Shahid Beheshti University, Tehran, Iran (Corresponding Author), Email: bahmaeimansoor@yahoo.co.uk.

Received: August 13, 2016 - Accepted: January 2, 2017

Legal basis of party subsidies

Bizhan Abbasi^{1*}, Maghsud Ebadibashir²

Abstract

Political parties in current democracies are considered as the fundamental institutions which have various functions such as expressing the will of citizens, forming awareness, introducing the election candidates and providing the government's future plans. In recent decades, due to the reluctance among people for joining political parties, their financial resources have decreased. Therefore financing parties from state resources has been put forward as an alternative but such idea has faced oppositions. This article introduces the direct and indirect general financing programs of political parties and also examines opponents and adherents views in descriptive and analytical manner as well as the necessity of parties' financing. The finding of this contribution indicates that protection and safeguarding of human rights, legitimacy and effectiveness of the government, depends on state aids to the parties.

Keywords

corruption, democracy, party subsidies, political parties, state aid.

1. Associate Professor, Public and International Law Department, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran (Corresponding author), Email: babbasi@ut.ac.ir.

2. Ph.D. Candidate in Public Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran, Email: magsudebadi@ut.ac.ir.

Received: June 1, 2016 – Accepted: November 10, 2016

Nature of “JCPOA” from perspective of international law

Omid Molla Karimi^{1*}, Mahmoud Jalali²

Abstract

The Joint Comprehensive Plan of Action (JCPOA) can be considered both as an international agreement or non-binding agreements. To answer this question whether should we refer to text of the JCPOA or provisions of international law and parties' national rules and law. Although the text of the JCPOA lacks any reference to it as a treaty, it can be viewed as an international agreement in international and national context. The United States, both before and after the disclosure of the JCPOA's text and its confirmation by the Congress and by the Iranian parliament, ceaselessly argued that JCPOA is not an international treaty. The Iranian authorities have taken the same position. In this article the relation between JCPOA and Security Council Resolution no. 2231 will be studied in order to clarify the reason that confirm the JCPOA should be considered as a gentlemen agreement.

Keywords

gentlemen agreement, international law, JCPOA, security council, treaties.

1. Ph.D. Student in International Law, Islamic Azad University, Isfahan (Khorasgan) Branch, Isfahan, Iran (Corresponding Author), Email: mollakarimi.omid@gmail.com.

2. Associate Professor, Law Department, University of Isfahan, Isfahan, Iran, Email: m.jalali@ase.ui.ac.ir.

Received: September 10, 2016 – Accepted: January 2, 2017

Analyzing the principle of non-indifference in the attitude of African Union

Abbas Ali Kadkhodaei^{1*}, Naser Sargaran², Maryam Abidinia³

Abstract

In spite of inflation in norms regarding human rights and humanitarian law, today's world witnesses the violation of these laws in a great deal. The main reason can be found in the lack of effective and appropriate procedures for complying with these laws. In the beginning of 21st century, principle of non-indifference was formed by African Union, for helping people facing gross violation of human law and humanitarian law. The principle formed at the same time that the principle of responsibility to protect was established, as a response to the social needs of Africa continent. This research, with an exploratory method, clarifies the boundary between the principle of non-indifference and the other same principles and doctrines or seemingly contradictory ones, and through this path, answers this fundamental question that whether the principle of non-indifference was regarded as a substitution for the non-intervention's principle?

Keywords

African Union, peace and security council, principle of non-indifference, principle of non-intervention, principle of responsibility to protect, the statute of African Union.

-
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. Ph.D. Student in International Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran, Email: n99sargaran@gmail.com.
 3. Ph.D. Student in International Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran

Received: September 16, 2016 – Accepted: October 30, 2016

Conceptual approach to codification and its difference from depuration

Moslem Aghaei Togh^{*}

Abstract

After more than 50 years of codification in Iran, we still have problems in this field. One of these problems is the confusion between two concepts: macro (Tadwin/codification) and micro (Tanqih/Depuration). Generally they are regarded to have same importance or even same meaning erroneously. In our legal literature and even in the legislative system these two concepts are alternatively misused. Etymological and comparative studies, however, reveal that the best translation for “Codification” is Tadwin. Tanqih is one of the components of Codification framework, the task of which is to depurate and expurgate obsolete or contradictories from an official legislative text. Codification own other aspects like systematizing the legal system and filling the gaps which are not necessarily concerned with depuration

Keywords

code, codification, compilation, depuration, hyper lexis, legislation.

^{*} Assistant Professor, Department of Public Law, University of Judicial Sciences and Administrative Services, Tehran, Iran, Email: moslemtog@yahoo.com.

Received: June 19, 2016 – Accepted: January 2, 2017

Basis for measures taken by coalition against ISIS according to law of the armed conflicts

Hamid Alhooyee Nazari^{1*}, Amir Famil Zavar Jalali²

Abstract

Islamic state of Iraq and Syria or ISIS, is a political and military terrorist organization which has been hitting the headlines since 2014. This group which has a large domination over Iraq and Syria, announced a caliphate of an Islamic state in 29th of June 2014, led by Abou Bakr Albaghdadi, chosen Raqqa as its capital. Since then, and after it began imposing its strict and widespread measures in occupied areas and also with its constant attacks and progress toward different cities in Iraq and Syria and following international community's response against this terrorist group, including the security council, a coalition led by US was formed in order to fight against ISIS. Today, in the second year of its activities, analyzing the nature of the conflict in Iraq after arrival of the coalition forces and the legal basis of their presence is mandatory. The result of this study indicates that formation of the coalition is not against international law.

Keywords

International Coalition against ISIS, International Humanitarian Law International Humanitarian Law, Iraq, ISIS, use of force.

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

2. M.A. Student in International Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran, Email: azjalali@alumni.ut.ac.ir.

Received: July 4, 2017 – Accepted: November 16, 2016

Necessity of fulfilling election promises by candidates and fight against empty election promises and their Jurisprudential principles

Mohsen Esmaeili¹, Seyed Ahmad Habibnezhad^{2*}

Abstract

Election campaigns in Iran fail to create a worthy national model, and candidates tend to make rash and empty promises. In spite of the fact that in religious teachings, fulfilling promises is controversial, adherents of necessity of election promises fulfillment present more irrefutable proofs than the opponents. There is lack of legal basis for this issue in Iran but we can interpret several constitution article and provisions of “the general policies on election act” as a legal basis for this issue. Enforcements should base on rule of law and be supplemented by fair legal process and trial and justification as well.

Keywords

campaign promises, competence, election campaign, primary conditions, rule of law, social commitment.

1. Associate Professor, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran, Email: Esmaeili1344@ut.ac.ir.

2. Assistant Professor, Faculty of Law, College of Farabi, University of Tehran, Qom, Iran (Corresponding Author), Email: A.habibnezhad@ut.ac.ir.

Received: May 24, 2016 – Accepted: January 2, 2017

Legal basis for International Organizations Cooperation in implementing the UN Security Council Decisions

Mahdi Haddadi^{1*}, Ali Ahadi Karnagh²

Abstract

International organizations have strong instruments to implement the decisions of the UN Security Council. In order to participate in implementing such decisions, they will require relevant legal basis. The legal basis for participation of international organization in implementing the UN Security Council decisions falls into two general categories: 1- The regulations of international organizations 2- The provisions of the Charter of the United Nations. Statute of international organizations, practices and implied powers are placed in the first category. The provisions of the Chapter VII (Article 48(2)) and Chapter VIII of The Charter go with the second category.

Keywords

Chapter VII of the Charter, Chapter VIII of the Charter, implied powers, International Organizations, practice, security council decisions, statute.

1. Assistant Professor, Faculty of Law, College of Farabi, University of Tehran, Tehran, Iran, (Corresponding Author), Email: mhaddady@ut.ac.ir.

2. PhD Student in International Law, Faculty of Law and Political science, University of Tehran, Tehran, Iran, Email: Ahadia48@gmail.com.

Received: January 30, 2016 – Accepted: July 25, 2016

Dialectic of peace and barbarism: Studying and criticizing the liberal theory of international law

Alireza Ebrahimgol^{1*}, Siamak Karimi²

Abstract

International law reviews the origins of the rules, institutions and practices that international law based on. That's why "Theory" in law is able to give legitimacy to certain procedures and rule. From this standpoint, the "Liberal Theory of International Law" has an important place in international law. Confirmed by various studies, this theory plays an important role in forming "Peaceful" approach to international law and set aside classical approaches that recognized nothing but "Legitimacy of War". Nevertheless, the core elements of this theory, reveals the fact that not only the liberal theory of international law helps to achieve the peaceful approach in international law, but also helps to justify use of force. This article studies the dualities and contradictions in the context of liberal theory of international law.

Keywords

equal sovereignty, liberal democrat state, liberal theory of international law, peace, use of force.

1. Assistant Professor, Faculty of Law, College of Farabi, University of Tehran, Tehran, Iran (Corresponding Author), Email: alirezaebrahimgol@hotmail.com.

2. Ph.D. Student in International Law, Faculty of Law and Political Sciences, University of Tehran, Iran, Email: Karimi.sia@gmail.com

Received: August 4, 2016 – Accepted: January 2, 2017

The reason and the scope of derogation from right due to the emergency theory

Ahmed Momeni-Rad^{1*}, Arian Petoft², Mojtaba Sabeti³

Abstract

One of the controversial issues in the area of Human Rights is “Emergency Theory”. According to the emergency theory, exercising certain rights in crisis situations may harm public order and security; so the government will have no choice but temporary derogation from certain citizens’ rights. Such act draws attention: First public order and security take priority over individual rights, and second, the way of justification of derogation from human rights based on the threats to public order and security in emergency situations. Basically, such theory may lead to abuse of power and tyranny which results in individuals rights violation. This paper examines the approaches of emergency theory adherents in order to establish a convincing basis to justify derogation from individual rights in emergency situations; it also determines frameworks and limits of state’s authority in this area.

Keywords

crisis situations, derogation from right, emergency theory, public Security.

-
1. Assistant Professor, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran (Corresponding Author), Email: momenirad@ut.ac.ir.
 2. Ph.D. Candidate in Public Law, Faculty of Law and Political Sciences, Allameh Tabataba’i University, Tehran, Iran, Email: arian_petoft@ut.ac.ir.
 3. M.A. Student in Public Law, Faculty of Law and Political Sciences, University of Tarbiat Modares, Tehran, Iran, Email: msshahed88@gmail.com.

Received: June 14, 2016 – Accepted: September 18, 2016

International commitments of states to ensuring the right to social security in the context John Rawls theory

Azadeh Sadat Taheri^{1*}, Majid Mazloom²

Abstract

Commitments of states to ensure the right to social security are accepted in international instruments and most of the valid theories. But there is no consensus on nature and volume of states' international commitments. This article will probe the nature of states' commitments (domestic and international) to ensure the right to social security based on the thought of John Rawls. Contractualism of John Rawls justify state's domestic commitments to ensure such right, but leaves the international commitments ambiguous. Results show that Rawls accepted limited international assistance in certain circumstances.

Keywords

human rights, international obligations of states, John Rawls, right to social security, social security.

1. Assistant Professor, Faculty of Humanities, University of Semnan, Semnan, Iran (Corresponding Author), Email: azadetaheri@semnan.ac.ir.

2. M.A. in Public Law, Tarbiat Modares University, Tehran, Iran.

Received: July 14, 2016 – Accepted: November 16, 2016

Contemplating the legitimacy of using drones in armed conflict from perspective of international humanitarian law

Seyyed Hesamoddin Lesani^{1*}, Mahvash Monfared²

Abstract

Technology progress in 21st century has led to invention of flying war crafts that Unmanned Aerial Vehicles (hereinafter UAVs or drones) are a clear example. Regarding the fact that such War crafts have created challenges in the context of international Humanitarian Law (hereinafter IHL), independent legal assessment on the issue seems necessary. It is necessary to study and get familiar with challenges in deploying such war crafts in armed conflicts. This paper, studies existing ambiguities and challenges in deploying such technologies in armed conflicts, and assesses the function of UAVs in armed conflict under IHL's fundamental principles like principle of Distinction, Proportionality and precautionary principle in conducting attacks.

Keywords

distinction principle, International Humanitarian Law, precautionary principle, proportionality principle, Unmanned Aerial Vehicles.

1. Assistant Professor, Hazrate Masoumeh University, Qom, Iran (Corresponding Author), Email: lesani77@yahoo.com.

2. PhD Student in Public International Law, Tehran University. Iran.

Received: April 12, 2016 – Accepted: July 25, 2016