Boko Haram's Insurgents' Actions in the Framework of the Human Rights and Humanitarian Law

Reza Islami[1], Seyed Kazem Mohammadpour[2*]

Abstract

Boko Haram is among the radical Sunni insurgent groups who are opposed to the secular government of Nigeria. The insurgents of this group resort to violence and different kinds of crimes to advance their goals. The current study, through a descriptive-analytical approach, has sought to determine why, though limited to the borders of Nigeria, Boko Haram's actions have taken an international nature to them. In the current study, the actions and approach of the insurgents of this group, which violates the human rights principles and humanitarian law and threaten the international peace and security, have been investigated. On the other hand, it seems Boko Haram is a terrorist insurgent group which ignores the international laws and principles. Finally, the results of the study indicate that, in addition to the governments, the insurgents of the rebel groups such as Boko Haram are also bound to the humanitarian law principles and observance of the minimum fundamental and unenlightened humanitarian rights in domestic struggles.

Keywords

Boko Haram, Commitments, Human Rights, Humanitarian Law, Insurgent Group, Nigeria.

1. Associate Prof, Faculty of Law, University of Shahid Beheshti, Tehran, Iran.
Email: someal@yahoo.com
2. Ph.D. Student, Faculty of Law, University of Shahid Beheshti, Tehran, Iran (Corresponding Author).
Email: s_kazem44@yahoo.com
Received: December 12, 2017 - Accepted: March 18, 2018

The Realization of Cyberterrorism and its Relationship with the Inherent Right of Self-Defense in Article 51 of the Charter of the United Nations

Seyed Bagher Mir Abbasi[1], Majid Kourakinejad[2*]

Abstract

Terrorism has begun with the emergence of human societies and according to the progress of societies has developed with increasing speed. The most modern forms of terrorism, which today has attracted a lot of attention is cyberterrorism. Cyberterrorism, which suffers from the vagueness of traditional terrorism and lack of definition and agreement on it, due to the unique context of the realization of it i.e. cyberspace, has further questions, which answers to these questions are necessary for further examinations. In this article, we have tried to use the available data to prove the existence of such a phenomenon and thus we examined its relationship with the self-defense principle set out in article 51 of the charter of the United Nations. Since the use of the term "armed attack" for cybercrimes is another major challenge for these actions, which may have many consequences.

Keywords

Terrorism, Cyberterrorism, Armed Attack, Self-Defense, Cyberspace, Article 51 of the Charter of the United Nations.

1. Prof., Department of Public and International Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran. Email: mirabbasi@ut.ac.ir
2. MA. in International Law, Department of Public and International Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran (Corresponding Author).
Email: majid.gharaee1369@gmail.com
Received: February 5, 2016 - Accepted: April 20, 2016

Non–Reviewable Acts in the Legal Systems of Constitutional and Islamic Republic of Iran

Seyed Mohammad Mahdi Ghamami[1], Kamal Kadkhodamoradi[2*]

Abstract

Limitation on State power and protecting the rights and freedoms of citizens are the major concerns of public law, in particular, constitutional and administrative law. In this regard, the establishment of the judicial review of the government's actions as a mechanism to prevent its arbitrariness was established. However, despite these concerns, in different legal systems, including the constitutional and legal system of the Islamic Republic of Iran, some of the government's actions -for some reasons- have been excluded from the scope of judicial review. Accordingly, in this article, the authors intend to answer in a comparative-analytical way the question of which are the bases of non–reviewable acts of the two constitutional and the Islamic Republic legal systems. In other words, what actions and why are not in the scope of judicial review in each system and how can this withdrawal be evaluated? Principle 44 of the Constitution of the Constitutional legal system explicitly states that "the King is innocent of responsibility....", Moreover, in that system, other than Principles 89 and 71, there is no other Principle about judicial jurisdiction. With the exception of Principles 156 and 173, different institution's actions under the control of the executive branch, as well as some of the functions of other institutions, are not under judicial review.

Keywords

Islamic Republic of Iran, Court of Administrative Justice, Constitutional Monarchy, Judicial Review, Non–Reviewable.

1. Assistant Prof., Faculty of Islamic Studies and Law, Imam Sadiq University, Tehran, Iran. Email: ghamamy@isu.ac.ir
2. MA., Faculty of Islamic Studies and Law, Imam Sadiq University, Tehran, Iran (Cprresponding Author). Email: kadkhodamoradi@gmail.com
Received: January 1, 2017 - Accepted: April 30, 2017

The Role of the Oil and Gas Industry in Limiting the Rights of Indigenous Peoples to Land and Cultural Properties

Jafar Nory[1*], Zohre Teymori[2]

Abstract

Today, because of the increasing development of global energy demand, energy resources such as oil and gas are more important than before. However, achieving these significant resources requires the use of the lands and properties of the people who live around these resources. These people have special conditions, which place them in a distinct group and should be considered. Religious and traditional affiliation, subsistence and other cases make these lands important for the indigenous people. In this article, how the industry should enter the lands of indigenous people and whether these people can play a part in choosing these projects are questions that we are seeking to answer. Obtaining consent and consultation with indigenous peoples are requirements that international law has determined for the protection of indigenous peoples rights, which may lead to State responsibility.

Keywords

The Rights of Indigenous People, Cultural and Traditional Properties, Lands and Properties, Oil and Gas Industry.

1. Assistant Prof., Department of Public and International Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran (Corresponding Author). Email: jafarnory@ut.ac.ir
2. MA. in Oil and Gas Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran. Email: z.taimoori@gmail.com
Received: May 10, 2017 - Accepted: January 8, 2018

The Relationship of "Martens Clause" & Human Rights in the Contemporary International Legal System

Shahram Zarneshan*

Abstract

Although the structure and foundation of contemporary international legal system, often based on the opinions and ideas of the schools of positivist and therefore the sovereignty of States is central for making the rules of international law, but it should not forget that the existence and validity of human rights which we often talk about it, has not risen from will of the States. Human rights today are a new version of the natural law yesterday. Apart from this, more and more influence of principles & opinions of natural law on the body of contemporary international legal system became more obvious manifestation when the traditional system of making rule could no longer meet the requirements and needs of the international community in all areas -specifically the human rights area- so the declaration of "Martens clause" was ratified by the States. Thus we have witnessed new development in the field of construction and modification of the most important sources of international human rights law, which is in response to the needs of the day, and a manifestation of the link between Martens Clause and human rights in the new legal order.

Keywords

Natural Law, Customary Law, Martens Clause, Sources of International Law.

* Member of Faculty of Bu-Ali Sina University, Hamedan, Iran. Email: sh.zarneshan@basu.ac.ir
Received: August 21, 2017 - Accepted: October 2, 2017

Thinking about the Effects of Annulment of Regulations Contrary to the Law

Moslem Aghaei Tough*

Abstract

Nullity of regulations is one of the main sanctions of the rule of law in administrative law of Iran as well as other different countries. However, the fact that after the annulment of an administrative act, what time it effects will be nullified, is one of the most important issues of administrative law. This is important at least for four reasons: the conceptual analysis of annulment, requirements of the rule of law and compensation of the breached rights are consistent with the retroactive effects of the annulment. On the other hand, legal security and acquired rights are more consistent with the prospective effects of the annulment. Article 13 of the Structure and the Process of the Court of Administrative Justice Act (2013) has considered the effect of the annulment since the issuance of a judgment except in cases of conflict with the Sharia or when it is not suitable for the restoration of breached rights. Although this article is on the side of legal security and acquired rights, it is contrary to the legal understanding and the rule of law. The precedent of the Court of Administrative Justice shows that it doesn't have a good supportive approach to the breached rights of persons. The method in this study is analytic- comparative.

Keywords

Annulment, Nullity, Administrative Law, Court of Administrative Justice, Regulations.

* Assistant Prof., University of Judicial Science and Administrative Services, Tehran, Iran.
Email: moslemtog@yahoo.com
Received: June 19, 2016 - Accepted: October 2, 2017

The International Regime for Liability for Pollution Arising from Offshore Drilling Activities

Abdolhossein Shiravi[1], Farideh Shabani[2*]

Abstract

Drilling of oil and gas wells located at sea (offshore) may result in transboundary pollution outside the country in which activities have been performed and damage to the territory of other countries. Compensating the damage to affected States requires the wrongful acts of States of operation which makes it difficult to compensate promptly and adequately. Therefore, it is required to address the regime for liability arising from lawful but hazardous activities under international law. Although offshore drilling activities are dangerous, they are lawful under international law and generally, they are being performed by private actors. Channeling international liability to the responsible private actor for hazardous activities which lead to transboundary pollution prevents from lack of compensation for victims of pollution. Hence, we examine the elements which have the key roles in the effective international civil liability regime related to pollution arising from offshore drilling activities.

Keywords

Transboundary Pollution, Compensation, Oil & Gas Wells, Offshore Drilling Activity, Liability.

1. Prof., Faculty of Law, University of Tehran, Tehran, Iran. Email: ashiravai@ut.ac.ir
2. Assistant Prof., Faculty of Law and Political Science, University of Kharazmi, Tehran, Iran (Corresponding Author). Email: faridehshabani@gmail.com
Received: June 20, 2017 - Accepted: October 2, 2017

Judicial Independence of Supreme Court of India

Hoda Ghafari[1*], Maziar Khademi[2]

Abstract

The necessity of the institution for the protection of the Constitution is based on the adoption of this law at the top of the hierarchy of legal rules so as to have the capacity to review the ordinary law and annul it in the event of conflict. In some countries, this is the responsibility of judicial bodies. One of the important issues is the independence of Constitutional Courts, which is directly related to their correct function. In India, protection of the Constitution is conducted through the two institutions of the Supreme Court at the national level and High Courts in the States. Judicial independence in these Courts has emerged as organizational independence and personal independence. The Constitution of India and the Supreme Court's opinions in the issue of organizational independence have eliminated the influence of other branches of government and in the issue of personal independence, although not at the level of structural independence, have considerably predicted the mechanisms of using of judicial independence by judges.

Keywords

Judicial Independence, High Court of India, Supreme Court of India, Institution for the Protection of the Constitution.

1. Assistant Prof., Faculty of Law and Political Science, University of Allameh Tabataba'i, Tehran, Iran (Corresponding Author). Email: hodaghafari@yahoo.com
2. MA. Student in Public Law, Faculty of Law and Political Science, University of Allameh Tabataba'i, Tehran, Iran.
Received: January 21, 2017 - Accepted: January 8, 2018

"Common Concerns of Humankind": From the Emergence to Evolution in International Environmental Law

Shima Arab Asadi[1*], Amir Hossein Ranjbarian[2]

Abstract

The concept of "Common Concerns of Humankind" has emerged in the context of international environmental law in the 1990s. It was set forth in order to find a way to deal with global environmental challenges as well as to address disputes arising between States over the concept of "Common Heritage of Humanity". Then, the concept went beyond its original contexts, namely biodiversity and climate change, and led to other instances of common concerns to be discussed. In this article, while recognizing the scope and elements of Common Concerns of Humankind, the position of this concept in international law, especially in the framework of the basic principles of international environmental law and the erga omnes obligations, will be examined.

Keywords

International Community, Common Interests, Common Heritage of Mankind, Global Environment, Common Concerns of Humankind, International Cooperation.

1. Assistant Prof., Faculty of Law and Political Science, University of Mazandaran, Babolsar, Iran (Corresponding Author). Email: sh.arabasadi@umz.ac.ir
2. Associate Prof., Department of Public and International Law, Faculty of Law and Political Science, Tehran, Iran. Email: aranjbar@ut.ac.ir
Received: November 9, 2016 - Accepted: April 30, 2017

Cyber Operations as Use of Force

Farideh Shaygan[1*], Seyed Hamed Safavi Koohsareh[2]

Abstract

The internet has changed the game rules in different fields, and use of force is no exception. Increasing number of cyber attacks against States and their ever more sophistication in recent years may suggest a dramatic and uncertain future. This article, after considering the traditional concept of the use of force, will address the question that, whether the existing rules on analogue technologies are applicable to modern digital ones. This study will indicate that, to what extent the cyber force is reconcilable with contemporary jus ad bellum. A key question to be answered is that, whether the use of cyber force can be regarded as a use of force under article 2(4) of the UN Charter. To answer this question, this analysis relies on the interpretation techniques included in the Vienna Convention on the Law of Treaties, as well as, the current doctrinal debates regarding cyber force. Finally, this article will end with a brief consideration of practical prospect with respect to regulation of this novel form of coercion. Integrating the existing approaches, the authors will provide their own coherent opinion regarding the use of cyber force.

Keywords

Cyber Exploitation, Use of Force, Cyber Attack, Cyber Operations, Cyber Intervention.

1. Assistant Prof., University of Tehran, Kish International Campus, Iran (Corresponding Author).
Email: farideh.shaygan@ut.ac.ir
2. Ph.D. Student in International Law, University of Tehran, Kish International Campus, Iran.
Email: hf.safavi@ut.ac.ir
Received: July 12, 2017 - Accepted: October 2, 2017

Cultural Destruction from the Point of View of International Law with Emphasis on Israeli Actions in the Occupied Territories

Maysam Haghseresht[1], Alireza Arashpuor[2*]

Abstract

Cultural destruction (cultural genocide) is one of the aspects of genocide, however cultural genocide has not been included in international treaties, in particular, the Convention on the Prevention and Punishment of the Crime of Genocide (1948). The examination of the precedents of the international criminal courts, including the *Akayesu*, *Krstić*, and *Al Mahdi* cases, indicates that the genocide is not limited to the physical dimension, so criminalization of cultural genocide is essential in order to protect fundamental human rights. This research, responds to the question of what is the legal nature of cultural genocide in international criminal law, and can it be recognized as an international crime? The international jurisprudence, the status of the occupied territories and the Israeli regime's performance in destroying of various Palestinian cultural dimensions have examined.

Keywords

Israel, International Law, Occupied Territories, Genocide, Cultural Destruction.

1. Department of International Law, Azad University, Najafabad Branch, Nagafabad, Iran.
Email: Mhaghseresht@gmail.com
2. Assistant Prof., Faculty of Law, University of Isfahan, Isfahan, Iran (Corresponding Author).
Email: rezaarashpour@gmail.com
Received: July 24, 2017 – Accepted: January 8, 2018

Legal Challenges of Protecting Underwater Cultural Heritage in Exclusive Economic Zone and Continental Shelf

Mohammad Razavirad[1], Janet Elizabet Blake[2*], Seyed Ghasem Zamani[3], Mehran Mahmoudi[4]

Abstract

The UN Convention on the Law of the Sea (1982) addressed the protection of underwater cultural heritage partly in the "Area" and "Contiguous Zone" while, in other maritime zones, the protection of related heritage remained under the general provisions of the Convention. With regard to these latter zones, because of the need to establish a "delicate balance" between the rights and jurisdictions of coastal and other States, protection of underwater cultural heritage in the exclusive economic zone and continental shelf is challenging and a matter of great importance and sensitivity. On the other hand, the UNESCO's 2001 Convention which was developed in order to Compensate for the perceived deficiencies and gaps of the 1982 Convention regime with regard to protecting this heritage, because of disagreements over the rights and jurisdictions of coastal State, has provided for a complex and ambiguous, but also conservative mechanism, so that the general framework of the 1982 Convention remains intact.

Keywords

Challenges, Flag States, Coastal State, 1982 United Nations Convention on the Law of the Sea, UNESCO's 2001 Convention, Continental Shelf, Exclusive Economic Zone, Underwater Cultural Heritage.

1. Ph.D. Student of Public International Law, Department of Public & International Law, College of Law and Political Science, Science and Research Branch, Islamic Azad University, Tehran, Iran.
Email: mohammad_razavi_rad@yahoo.com
2. Associate Prof., Department of Public & International Law, College of Law and Political Science, Science and Research Branch, Islamic Azad University, Tehran, Iran (Corresponding Author).
Email: j-blake@sbu.ac.ir
3. Associate Prof., Department of Public & International Law, College of Law and Political Science, Science and Research Branch, Islamic Azad University, Tehran, Iran.
Email: drghzamani@gmail.com
4. Assistant Prof., Department of Public & International Law, College of Law and Political Science, Science and Research Branch, Islamic Azad University, Tehran, Iran.
Email: dr.m.mahmoudi@gmail.com
Received: April 29, 2017 - Accepted: October 2, 2017