Legal Positivism Place in the Organs of the United Nations

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Abstract

Schools of jurisprudence are an integrated set of legal beliefs incorporating common goals and foundations. Considering the origin of validity and binding nature of legal rules, different fields of jurisprudence could be divided into two schools of 'natural law' and 'legal positivism'. Each of the schools has had their own specific followers and supremacy during different time intervals. Meanwhile, legal positivism has had manifestations in the realms of international law and principal organs of international community such as Security Council and International Court of Justice. Although there are major problems and inconsistencies in this viewpoint and its position, legal positivism theory is manifested through foundations of international legal system. Nowadays it has become clear that many international legal rules stem from their 'positivistic' nature. A general glance at views of scholars and specialists in the field of 'legal positivism' reveals the fact that the government stands as the central pivot. The article casts a brief look at legal positivism, definitions, views and position in the principal and main organs of the United Nations Organization.

Keywords

Organs of the United Nations, Legal Positivism, International Society, International Law.

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Principle of Proportionality in Judicial Review over Exercising Discretionary Powers in UK Administrative Law

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Abstract

Discretionary powers are granted to administrative authority under the law and for dynamic of administration. Since these competencies are lawful, there is always the danger of abuse. Judicial review on discretionary powers is one of the important issues in administrative law. The question of this article is that "How to apply the principle of proportionality in judicial review on discretionary powers in the UK administrative law?". This research aims to study the principle of proportionality in judicial review on discretionary powers. This article is based on library research method. The principle of proportionality as a structural principle is trying to make government actions appropriate and necessary and as far as possible, not infringe individual's rights. Achieving proportionality between the legal measures and goals is often thought to be the essence of the principle of proportionality. The substantive perceptions of the rule of law and the adoption of the 1998 Human Rights Act have facilitated the application of the principle of proportionality in the UK administrative law.

Keywords

Principle of Proportionality, Rule of Law, Discretionary Power, Human Rights Act 1998, Wednsbury.

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The Potential of International Community for Confrontation with Daesh Takfiri Terrorist Group (Challenges and Hopes)

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Abstract

During recent decades and in parallel with ascending trend of terroristic actions at international level, the necessity for taking anti-terrorist reactions was perceived and international conventions and treaties were concluded and ratified. These measures have been referred to require governments to criminalize terroristic actions in domestic law, jurisdiction of national criminal courts and predict measures to prevent these actions. Actions committed by the so-called Daesh group reflect its threatening nature to peace and international security, originated from terrorism itself as threat to international peace and security. Thus, identifying the nature of this group, examination of criminal and legislative policy of United Nations, particularly Security Council in criminalization of the perpetrated measures and also method of prosecution and proceeding of actions which have been done by Daesh takfiri terrorist group by international criminal courts are the objectives of the present article.

Keywords

Terrorism, International Criminal Court, Islamic State of Iraq and Syria (ISIS), United Nations, Security Council.

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Reflection on Legal Obligations of Government for Delocalization of Tehran

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Abstract

One of the most essential challenges in Tehran could be seen in centralization, which has roots in legal-political structure as well as in the thoughts of the governing group. The main reason of high density in Tehran is its political-administrative centralization in political-administrative affairs which has gotten out of hand. In fact, without any centralization, there will be no density either. Legal delocalization of Tehran city contains legislation capacity rather than mere passing of executive rules. The research is descriptive-analytical in methodology and practical. The main question with respect to current investigation is: what are the basic causes of fail to fulfill the delocalization in legal-administration? The main hypothesis of the current thesis, in which is aligned to search for the main reasons of delocalization coming true in Tehran, might be cited in for key statements: A- The vast and focused legal-administration structure in Capital; B- Authoritarianism of ruling authorities and penetration of center-based political culture in their minds. C- The restrictive interpretation of Guardian Council on scope of qualification of local offices; D- Non-attempt to implement law related to delocalization.

Keywords

Spatial Planning, Delocalization, Centralization, E-Government, Government Miniaturization.

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Limiting Clauses and their Role in International Treaties

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Abstract

The State sovereignty in international law refers to a dual situation: on one hand, the classic teachings of the international law on the law of treaties such as commitment to international treaties and the rule of law by granting unconditional freedoms to States are in conflict with maintaining of the national interests and the other hand, in critical and certain situations and also because of the nature of some of the international treaties, some authorities must be considered for States to preserve their essential interests. To solve this dual condition and reconciliation between international cooperation and unilateralism of the States, Clauses named "Limiting Clauses" were accepted in international law. These clauses create the mechanism which helps to the participation of States in expanding the legal order and concluding of international treaties and also predicts authority and practical freedom for releasing of the State from international commitments when it is facing a super danger.

Keywords

States, Limiting Clauses, International Treaties, National and Essential Interests.

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Factors of Human Dignity in Thought of Allameh Tabataba'i

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Abstract

Human dignity is the most fundamental concept in the formulation of human rights and this concept in most political systems has been accompanied by disagreements between scholars and jurists. This article with an emphasis on Allameh Tabataba'i thought, deals with concept, definition, explanation and factors of human dignity and show the communications of them. This article contains the privileged status of human dignity, which is defined in the Allameh Tabataba'i thought of dignity which has been posed in the process of mankind's creation and all people have it potentially. As a conclusion, human dignity with this definition is recognized with nine factors on Allameh Tabataba'i thought. The first one is "The inherent integrity of existence", then "excellent human creation", "situation of human for other human beings", "fitrah", "intellect", "science", "choice". These nine factors are known as reasons for human dignity with special hierarchic on Allameh Tabataba'i thought.

Keywords

Choice, Excellent Human Creation, Intellect, Allameh Tabatabae'i, Fitrah, Human Dignity.

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Prevention and Confrontation of Daesh in International Law

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Abstract

The main aim of terrorist attacks is creating extreme horror which attracted attention to the necessity for prevention and confrontation of this phenomenon after World War II. The main reasons for those attacks are continuation of colonization, exploitation and independence. Most of the terrorist attacks in protest against ruling system before 9/11 were in the form of "hijacking, bombing, vandalism, kidnapping and assassination". Daesh is a terrorist group which their main aim is creating horror. Security Council in resolution 2249 (2015) expressly recognized Daesh operations as terrorist. The aim of this paper is answering this question by applying analytic-descriptive method, what is the role of States and international governmental and non-governmental organizations especially United Nations (UN), Amnesty International and Human Rights Watch for prevention and confrontation of Daesh? Given that international peace and security, civilian's life and freedom and also friendly relationship of States are endangered by Daesh, international entities can demand Security Council not only to determine any threat to the peace, breach of the peace and security and take the measures which are necessary but also requests the International Criminal Court for putting Daesh criminals on trial.

Keywords

International Humanitarian Law, Human Rights Watch, United Nations, Security Council, Amnesty International, Daesh Terrorist Attacks.

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Dispute Settlement Mechanisms of the Exclusive Economic Zone and their Challenges

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Abstract

Given that specific legal regime of the exclusive economic zone which is prone to disputes *per se*, some mechanisms have been devised for settlement of these disputes in UNCLOS. However, in after years of the adoption of the Convention, owing to being imprecise and ambiguous, these mechanisms have been proved inefficient, in a way that if concepts mentioned in them remain undefined, it can be said that there is no difference if they exist or not. Maybe it is the reason for judicial bodies including the ITLOS, not being interested in these mechanisms at all. This article intends to firstly, examine the flaws of the mechanisms in general, and secondly, analyses specifically two common and different in nature disputes arising in connection with the exclusive economic zone, namely military activities and offshore bunkering. Based on this analysis, some suggestions are given in order to solve other possible disputes arising out of this zone.

Keywords

Due Regard, ITLOS, Military Activities, Bunkering, Exclusive Economic Zone, Article 59 of the Convention.

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Reflection on Legal Challenges of Water Ownership at Zayanderood Basin from the perspective of Public Law

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Abstract

Presenting technical shortages of water at Zayanderood, this paper demonstrates legal challenges and background of possession of water at this basin. Researches show that by raising technical problems of providing water and its shortage, the established order upon Sheikh Bahaei's scroll and legal arguments on water ownership and government role in management of water becomes more serious. Some people believe that Zayanderood is a kind of public property and allow government to do whatever it wants. This article deals with analysis of legal dimensions of water ownership at this basin and its influences on justice in development process, ownership of persons, public order and right to water. This article is written from human rights perspective on international resources of water, internal laws, Jurisprudential sources, definition of public and governmental ownership and examination of Sheikh Bahaei's scroll, announce the management of Zayanderood as the government's right but announce that the ownership of natural Zayanderood and joining water of the first tunnel of Koohrang belongs to the water right holders and sharehplders and take it out of public property sphere.

Keywords

Water Right, Zayanderood, Water Ownership, People Rights, Public and Governmental Ownership.

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Reflection on the Legal Consequences of Ratification of the Paris Agreement on Climate Change by the Islamic Republic of Iran

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Abstract

The most recent document, which has been agreed under the Framework Convention on Climate Change is the Paris Agreement. According to their domestic circumstances and capabilities, all parties to the Paris Agreement are required to submit their Nationally Determined Contributions (NDCs), which includes measures taken by each party to mitigate emissions and adapt to the impacts of climate change. This paper examines the nature of the Paris Agreement and legal consequences of ratification of this agreement by looking at other related instruments. After examining the nature and content of the Paris Agreement, it has become apparent that some of the obligations contained in the Paris Agreement have already been accepted in other relevant documents and on the other hand, most notably by submitting NDCs, the Paris Agreement will, in particular, impose new commitments on parties. Furthermore, the Paris Agreement requires parties to conduct specific tasks pertaining to the monitoring and compliance mechanism required therein. Therefore, in order to fully implement the Agreement, it is necessary for the Parties to take appropriate measures to achieve the goals and obligations contained in the agreement. Consequently, Parties may enjoy benefits of participation in international cooperation and facilitation contained in the agreement, and thereby they will avoid facing the negative consequences of non-compliance with the agreement.

Keywords

Nationally Determined Contributions (NDCs), Kyoto Protocol, Climate Change, Paris Agreement, UN Framework Convention on Climate Change.

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Implementation of Global Navigation Satellite Systems in Iran, Opportunities and Challenges

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Abstract

Development of new technologies and its growing trend in the last years of the twentieth century, led to the use of satellites in aircraft navigation. The implementation of Global Navigation Satellite Systems benefits all countries, including the Islamic Republic of Iran, but at the same time confronts them with political and legal challenges. The most important challenges for our country by implementing satellite-based navigation systems are the possibility of discrimination in providing the services and the possibility of violations of the sovereignty as a result of the exclusive control of the systems by the United States and Russia. Although, at first glance, the creation and development of a new satellite system which is controlled by an international, independent and civil organization seems to be a good solution, but considering the costs for implementation of a new system, this solution will not be welcomed. Therefore, the best way to solve the challenges arising from implementation of these systems is that ICAO, by establishing a proper legal arrangement regarding Navigation Satellite Systems, should control these systems with the participation of all countries and within the framework of an international organization.

Keywords

Continuity of Services, Sovereignty, Global Accessibility, Quality of Services, GNSS.

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Cultural and Sovereignty Restrictions of Rational Human Rights

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Abstract

Human Rights is a transnational and transgovernmental value and it is a rational discourse that prevails to most social and political negotiations at the present time. It has still serious rivals called sovereignty and culture (national values and traditions). The truth is that Human rights challenged them and it derives from the rational element of "transnational human rights". This article deals with transnational human rights values through the "nature" and related "documents" in this field for solving this challenge naturally and its purpose is based on achieving a peaceful coexistence with the victory of human rights on domestic sovereignty and antihuman culture. This article is based on the assumption that “the sovereignties and cultures that are challenged with human rights are restricted everyday”. For Evaluating of recent assumption, this paper examines national cultures and States sovereignty with regard to this topic.

Keywords

Human, Right, Sovereignty, Human Rights, Rational, Culture.

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