

Governing Law in International Intellectual Property Claims

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Abstract

In every international claim, the governing law needs to be determined. To determine the governing law, special methods are usually used which become more important and complicated in private international law. Intellectual property claims are not exempt from this procedure. However, in these claims, it is impossible to merely use conventional conflict of laws rules on properties to determine the governing law. Intellectual Property (IP) rights are considered as intangible property and for having such characteristics, it becomes more difficult to determine the governing laws in these claims. Creation of rights, transfer of rights, breach of rights and protection of rights in the IP law needs special rules for determining the governing law. In this research, it will be shown that along with the conventional rules of determining the governing laws in property claims, there are other specific rules such as the *lex originis*, *lex delictis*, the national law of the creator and other laws that can be used in these cases, and it needs more expertise and knowledge of these rules to settle these cases.

Keywords

Intellectual Property Rights, Conflict of Laws, Governing Law, Private International Law, Breach of Right, Nationality, Domicile.

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Conflict of Laws in Multimodal Transport of Goods

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Abstract

With the advent of science, new transport modes have been developed. One of the most common of these modes is international multimodal transport which is used especially in the transport of goods. The important issue regarding this mode is the applicable law governing multimodal transport. The non-existence of an international uniform law and the non-existence of internal laws in many legal systems concerning multimodal transport have resulted in a fundamental challenge in international transport law. This essay suggests an application of the network system and the use of existing unimodal conventions' regulations as a solution. Although in some cases, there are some overlaps and conflicts among these conventions' rules, the application of conflict of laws' rules in some unimodal conventions and regulations in Article 30 of 1969 Vienna Convention on the Law of Treaties can be useful. In addition, using the standard contracts within the framework of applicable law in multimodal transport may prevent some conflict of laws.

Keywords

Conflict of Laws, International Transport Contract, Multimodal Transport, Applicable Law.

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**Legal Framework of WTO from the Perspective
of Game Theory in International Law**

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Abstract

Game theory in international law is one of the innovative perspectives in the field of philosophy of international law. The distinctive nature of this perspective is that instead of merely theorizing, it has a goal to explain international rules and structure in a logical and practical manner. In 1944, in the field of economy, this theory was proposed for the first time by von Neumann, a mathematician, in partnership with Morgenstern, an economist. But since then, it has gradually entered into other academic fields such as international relations, sociology, etc. In recent years, for the first time in international law, two great researchers namely Jack L. Goldsmith and Eric A. Posner, applying this theory, have explained the manner of formation and due respect of international customs. In international law, this issue has been considered as a new approach and has successfully drawn attention to its own. In this article, it has been tried to analyze the legal framework of the World Trade Organization (WTO) from the perspective of this theory. It is believed that our findings in terms of game theory help researchers to understand the framework of that organization more easily. The research methodology used in this article is analytical. For this purpose, the required rules from game theory are introduced and briefly explained and then from the perspective of what was said, we will survey a number of items and agreements from the total collection of WTO and will prove a logical stand that will be applicable to the whole legal framework of WTO.

Keywords

Game Theory in International Law, Liberalization of Trade, Cheating in the Game of Liberalization of Trade, Behavioral Form of Trade Liberalization, Legal Framework of WTO.

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**The Continuation of Discriminatory Justice and Legal Relationships
Between the International Criminal Court and the Security Council**

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Abstract

Under the UN Charter, the Security Council is the primarily responsible organ for keeping international peace and security. For this end, it has taken a variety of actions, one of which is the establishment of international criminal courts such as the International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda. The purpose of these courts is to punish international criminals to maintain or stabilize peace. In addition, International Criminal Court has been established to combat impunity of great criminals. Overlapping functions of these two, on the one hand, and the dependency of International Criminal Courts on States and the Security Council together with the negligence on the part of the Security Council in its primary responsibility given by the Charter, on the other, underlie the interference of the Security Council in jurisdiction of the mentioned courts and lead to the non-realization of international criminal justice and the perpetuate continuation of justice practice based on discrimination in international criminal law. This article aims to study the relationship between these two important international institutions and has come to this conclusion that in their interrelationship, the priority is given to the promotion of international peace and security over universal criminal justice.

Keywords

International Peace and Security, Impunity, Great Crimes, International Criminal Courts, Security Council.

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**Reasonableness in the Statute of the ICC and Its Explanation
by Pre-Trial Chambers**

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Abstract

In the Statute of ICC, several criteria have been stipulated that the process of examination of any case requires their verification. These criteria establish limitations on the prosecutor and pre-trial chambers in order to fulfill ideals and purposes of establishment of ICC that is addressing the most serious international crimes. These criteria have been established based on reasonableness; there should exist a reasonable basis or ground so that suspected person be introduced before the prosecutor or be summoned to the pre-trial chamber. A legitimate expectation of ICC procedure reasonableness requires clarification of the challenging concept of the reasonableness. The objective of this study is to investigate these criteria in view of the concept of reasonableness, from initiation of the preliminary examination to confirmation of charges of the suspected person before the pre-trial chamber. This article concluded that if legal concepts contained in the Statute of the ICC are not clear, it probably leads to different interpretations and the issuance of contradictory verdicts which in turn challenges the credibility of ICC.

Keywords

International Criminal Courts, Reasonableness, Preliminary Examination, Warrant of Arrest, Confirmation of Charges.

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Prosecuting ISIS Leaders Before the International Criminal Court

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Abstract

One of the main impediments of the International Criminal Court in dealing with the issue of the so-called Islamic State of Iraq and al-Sham/Greater Syria ("ISIS" *aka* "ISIL", "Daesh" or "IS") is its power to exercise jurisdiction. The Court has jurisdiction to deal with crimes as follows: 1- A State Party refers the situation to the Court pursuant to Article 14. 2- If under Chapter VII of the UN Charter, the Security Council refers a situation. 3- If, according to Article 15, the prosecutor, on his own initiative, opens an investigation upon notification of the crime subject to the jurisdiction of the Court. Furthermore, since Iraq and Syria are not Parties to the Rome Statute, the lack of co-operation could hinder the pursuit of ISIS members before the International Criminal Court. Thus, the only possible option in the prosecution of ISIS could be the United Nations Security Council. This paper aims to study the question of possibility or predictability of investigating this terrorist group leaders before the International Criminal Court and challenges facing such an investigation.

Keywords

Prosecution, ISIS (Daesh), Terrorist Group, Criminal Justice, Jurisdiction, International Criminal Court.

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**The Right to the Minimum Social Welfare
in International Human Rights System**

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Abstract

Protection of human dignity requires guaranteeing freedoms, privileges and equal rights for individuals and the imposition of positive and negative obligations on members of international community and the establishment of human rights bodies for monitoring implementation of those rights. However, enjoyment of a minimum level of social welfare is the precondition to realizing the guaranteed rights. This article seeks to answer the questions as to the recognition, content, and elements of the right to the minimum level of social welfare, as well as its normative place among rules of international law. An overview of international human right law instruments and scholarly thoughts reveals that certain elements of the right have already been recognized in international law i.e. the right to food, housing, health, clothing, and social security, although the expression of "right to social welfare" is not referred to in human rights instruments. It seems that the rules governing certain elements of such a right have found their way to become *jus cogens*.

Keywords

Human Rights, Right to Minimum Welfare, Social Welfare, Poverty.

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Death Penalty for Drug-Related Offences in Iran's Legal System under International Human Rights Norms: Abolition or Maintenance?

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Abstract

Iran legal system like some other legal systems recognizes and applies the death penalty for drug-related offenses. On the other hand, many States have abolished the death penalty in their laws or practice or at least do not apply it in cases relating to drug-related offenses. So, the main question of this article is whether or not Iran's criminal policy in this regard is compatible with international human rights norms. Present studies show that under international human rights law, especially under the International Covenant on Civil and Political Rights, the application of capital punishment, while not prohibited, is restricted in exceptional ways. The death penalty may be imposed only for the most serious crimes under some requirements. The studies show that drug-related offenses do not have exceptional feature and they are not an instance of "most serious crimes", and so could not be subject to capital punishments. Thus, Iran has to abolish the death penalty for drug-related offenses in the light of its international and human rights obligations which would be more compatible with constitutional and Islamic foundations of its own legislation.

Keywords

Drug-Related Offenses, Death Penalty, International Human Rights, Abolition of Capital Punishment, Right to Life, Narcotic Drugs.

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Exploitation by Private Persons of the Objects Situated Beyond the National Jurisdiction of States and the Related Mechanisms

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Abstract

The right of exploitation of objects outside of States' sovereignty is granted to private persons based on natural right and human right in form of enjoyment of the blessings of nature. High Seas, Atmosphere, Outer Space, and Antarctica are the examples of areas situated outside of States' sovereignty. Fish stocks, mineral resources, satellite orbits, transit benefits, and land animals are the resources and benefits of these areas. The exploitation mechanism of private persons including natural and legal persons is generally directed through States' channel and States shall supervise their nationals. In addition, specific international entities such as the International Seabed Authority (ISBA) have the authorization to issue the licenses of exploitation to and supervision on the States and its natural and legal persons. Such persons shall meet the international and national regulations related to such exploitation.

Keywords

High Seas, Atmosphere, Outer Space, Antarctica, Common Heritage of Mankind, Private Persons, International Seabed Authority (ISBA).

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The Role of Umbrella Clause in Settlement of Foreign Investor and Host State Disputes in the Light of ICSID Arbitral Jurisprudence

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Abstract

Investment arbitration usually has its legal basis in the bilateral investment treaty (BIT), regional or multilateral treaties or in an investment contract. Some treaties cover only disputes relating to obligations under these kinds of agreements, i.e. only for claims of treaty violations. Some others create an international law obligation, according to which the host state shall observe any binding obligation with respect to investments. These and other similar provisions are commonly called “umbrella clause”. Although other formulations have also been used, clauses of this kind have been put into treaties to provide additional protection to investor and are directed for covering investment agreements that host countries frequently conclude with foreign investors. In most of the investment treaties, the umbrella clauses are not always with the same wording, so arbitral tribunals have given different interpretations and reached conflicting conclusions. This study gives an overview of the origin and significance of the wording of this Clause in BITs, then looks at the effect, scope, and conditions of application of the Clause as interpreted by ICSID arbitral tribunals and tries to analyze ICSID arbitral jurisprudence on the basis of restrictive or extensive interpretation of the Clause.

Keywords

Umbrella Clause, Investment Treaties, Investment Contracts, Arbitral Jurisprudence, ICSID.

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**The Observance of International Humanitarian Law by Autonomous
Military Robots and the Responsibility for Their Actions**

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Abstract

The multiple benefits of military robots compared with human combatants have caused these robots to be widely used in armed conflicts. Some of these robots that can act without remote control are Autonomous Military Robots. These robots have yet to find such a feature to totally observe rules of International Humanitarian Law such as the principle of discrimination and the principle of proportionality. According to the roles of multiple persons including producer, designer, programmer and warlords with respect to the actions of the robots, theories about their absolute responsibility, shared responsibility and absolute responsibility of persons have emerged. Due to the robot's full compliance with the program for which they are written, only human responsibility could be accepted for their actions. Therefore, despite the acceptance of primary responsibility of the person that uses robots, attribution of their conduct is generally based on the causal relationship between behavior and its cause of creation including incorrect programming or mechanical features of the robot.

Keywords

Military Robot, International Humanitarian Law, Responsibility, Armed Conflict, Autonomous Robot.

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**EU Law and Member States' Investment Treaties:
With Reference to the Lisbon Treaty**

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Abstract

After entry into force of the Lisbon Treaty and the extension of European Union's jurisdiction to foreign investment, certain conflicts between investment agreements and EU rules have appeared, causing difficulties to third States and even to the EU Member States. The European Union tried to resolve its problems with third States through a specific Regulation. However, with respect to the investment treaties concluded between the Member States, the European Union made its mission to terminate these treaties. On the other hand, referral of investment disputes to an arbitration involving the EU Member States has led to a decision by the respective arbitral tribunals on the basis of international law rather than EU Law. This has caused opposition by the EU institutions, the strongest of which was made in the *Micula* Case. The European Commission expressed the view that the enforcement of the arbitration award was unlawful as it constituted State aid, which is prohibited under the EU law. However, despite the European Commission's opposition, the award remains enforceable under the ICSID system. In summary, the EU law in this area contains ambiguities and is capable of generating uncertainty as to the fate and enforceability of certain bilateral investment treaties.

Keywords

Lisbon Treaty, Bilateral Investment Treaties, European Commission, *Micula* Case, State Aid.

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The Consequences of Constitutional Reading of International Law

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Abstract

Although it is not possible now to have a claim on the existence of an “international (codified) constitution” or a decisive list of international constitutional rules, constitutionalism as an approach for reading and interpretation of international law has developed its foundation. Such understanding of international law – that its main function is the regulation of relations between equal sovereign States - leads to the evolution of perception of this legal system. This analytical–descriptive study shows that constitutional reading promotes hierarchical tenets of international law and so, causes transparency and integrity for its subjects and affects the interpretation of the rules. Furthermore, both national sovereignty and international governance face practical constraints in the light of constitutional rules.

Keywords

Constitutionalism, International Law, Normative Hierarchy, Interpretation, Sovereignty, International Governance.

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