In this article we will try to briefly analyze this work.

Keywords
Legal Methodology, Method, International Law.

Book Review:
Seven Lodgings of Reason in the Methodology of International Law
A brief analysis of the book:
The Flow of Reason in the International Legal System

Goudarz Eftekhar Jahromi [1]

Persian Text pp. 383 - 405

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"my words fly up,
my thoughts remain below
words without thoughts
never to heaven go."
W. Shakespear, *Hamlet*, III, 3.

Abstract

Legal methodology is formal and has nothing to do with the substance. Legal methodology devotes as much to the practical methods implemented in the legislative assemblies as to those specific to administrative authorities. It devotes itself to all that is useful to the solution of legal problems. So, it pays no attention to problems and solutions; but focuses on ways to identify problems and to find solutions. Never more than this time of complex, ephemeral and often contradictory overregulation, of technical and social upheavals arising out of interpretation of various legal systems, national and international, the identification and the application of the methods of law appear to be so essential. They are indispensable to the determination and resolution of disputes, to the arguments of the parties to the trial, to the negotiation and the conclusion of contracts by the practitioners. Even more, in international law there has been some legislative inflation: more and more social areas are governed by the law, more and more rules are issued, judgments, commentaries and scientific studies are multiplying.

Ihering, Portalis, Geny, Demogue were the great precursors of legal methodology: recent works by Castberg, Bergel, Maarten, Bos, Corten, testify to the development of this particular discipline. In our country, Iran, this branch of legal research is not sufficiently studied. It seems to us that the work of Prof. Hedayatollah Falsafi, written in seven chapters has to some extent filled this gap.

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Validity of Unilateral Jurisdiction Clauses in the International Commercial Arbitration

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Abstract

Today, referring to arbitration is a common practice in commercial dispute resolution. One of the conditions incorporated into arbitration agreements is a condition called unilateral, one-sided, optional, asymmetrical and hybrid arbitration clause. The purpose of such a condition is to make both arbitration and judicial proceedings available to the parties so that they can choose the one which best meets their benefits and has more guarantees to enforce a judgment against the other party's assets. A review of case law in different jurisdictions reveals significant disagreement among courts. While a number of courts have declared such conditions to be either invalid or of essential deficiency, other courts, respecting the parties' agreement, have treated them as valid and enforceable. Accordingly, in this article, in addition to a review of the reasons for invalidity of these conditions, a theory is studied which considers these conditions valid unless inconsistent with public order, commutative justice, equity or mutuality of obligations. Of course, each of these reasons, in accordance with the applicable law governing the contract will prevent the validity of these clauses.

Keywords

ArbitrationClause, Unilateral Arbitration Clause, Unilateral Judicial Clause, Optionality of the Condition, Mutuality of Obligations, Unreasonableness.

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Comparative and Analytical Survey of Conditions of Application of Equity in International Commercial Arbitrations

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Abstract

It is now common that most national arbitration legislation and international arbitration instruments provide settlement of disputes by *amiable compositeur* and *ex aequo et bono.* This decision-making method is a contractual waiver of the parties in dispute as to benefits of applying legal rules and it authorizesthe arbitrators to decide by ignoring strict techniques of law. However, arbitrators will be authorized to act as *amiable compositeur* exclusively when the parties in conflict explicitly ask them so. The purpose of the present article is to investigate the condition of parties' agreement as well as its necessity and scope and also to analyze arbitrator's power limit in this regard as well as consequences of ignoring this condition withdue regard to rules, the legal doctrine, and arbitration awards.

Keywords

Principles of Equity, Arbitration Clause, Equity, Dépeçage, EquitableArbitration, Applicable Substantive Law, *amiable compositeur*, *ex aequo et bono.*

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Analysis of the Margin of Appreciation Doctrine in Non-Human Rights Treaties with Emphasis on Trade and Investment Treaties

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Abstract

At first, it was assumed that the Margin of Appreciation Doctrine exists only in the human rights treaties and particularly in the European Convention on Human Rights, while the Margin of Appreciation Doctrine is considered as a right for States in many non-human rights treaties due to specific conditions and rules that govern some international treaties such as the existence of optional obligations or ambiguity, insertion of non-precluded measures clauses and existence of positive obligations. Therefore, in international treaties, the granting of this right to States would enable them to choose and adopt the best decision, according to the circumstances and necessities related to the public interest. Accordingly, the traditional views which believed in the conflict of the margin of appreciation doctrine with adherence to international obligations have been adjusted. There are concerns about the abuse of freedom of action, and powers granted to the States, that leads to an opposition with authorities granted under the framework of the margin of appreciation doctrine to States. Of course, these concerns were obviated somewhat with regard to the fact that, international judicial courts have relied on review standards to supervise on State powers.

Keywords

Non-Human Rights Treaties, Review Standards, Freedom of Action and Authorities,Commercial Treaties,Investment Treaties.

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The Fragility of the Borders of Precautionary and Preventive Principles

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Abstract

Some legal principles have a close conceptual boundary between them so that researchers sometimes become confused in applying such principles. In this article,using the descriptive-analytic method,it has been tried to recognize the conceptual boundaries of precautionary and preventive principles from each other and to explain that the precautionary principle concerns scientific uncertainty from effects of the act and is exercisedbefore the start of the act. Whereas the preventive principle is applicable in the stage before the start of the act too, it is exercised when there is no scientific certainty to effects of the act. Therefore, in recognizing the boundaries of these principles, in spite of the longitudinal relationship existing between the two principles, there is a fragile boundary between them due to the existence of similar mechanisms and legal consequences.

Keywords

Precautionary Principle, Preventive Principle, Scientific Certainty, Scientific Uncertainty, Damage.

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Preventing and Countering Cyber Terrorism: A Comparative Study of Iranian Criminal Law and International Legal Instruments

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Persian Text pp. 237 - 267

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Abstract

The prevention of cyber-terrorism is in order to protect its victims.However, among most legal systems in the world, its criminalization is not specifically andclearlydealtwith. The review of legal sources in IranianCriminal Law shows that there is no specific regulation on the prevention of this crime, but based on some general laws such as the Computer Crime Law and the Islamic Penal Code, one could mention the preventive provisions of Iranian Criminal Law in the field of prevention of this crime and supportingits victims. Thus,the Iranian legal regime hasn't criminalized terrorism and its crimes independently and Iran'sCriminal Law is based on exemplary policiesthat can be distinguished from the ones that arecompatiblewith it. The need to take preventive measures is felt to prevent any damages to the country's information infrastructure.By considering International instrumentson cyber crimes and terrorism and variousresolutions issued by universal and regional international organizations,especiallythe United Nations, it could be argued thatcounter-terrorism strategies have never been sufficiently implementedforthe prevention of cyber terrorism. Thus,international bodies need to be more active for the criminalization of this dangerous offense which can victimize many innocent people around the world.

Keywords

Cyber Terrorism, Criminalization, Prevention, Victims of Terrorism, Iranian Law, International Documents.

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Compensation for Damages Sustained Due to Illegal Imposition of Sanctions against Persons by the European Union

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Abstract

Economic and financial sanctions have been among the significant foreign policy instruments used by the European Union ("EU") throughout the last two decades. These sanctions must be in compliance with binding legal rules and principles contained in EU Treaties and other instruments and in this regard, are subject to the judicial control of the courts of the EU. One of the said principles is the "legality" in theimposition of sanctions. Given the jurisprudence of the General Court and the Court of Justice of the European Union in cases related to sanctions against the I.R. Iran, especially *Fulmen and Mahmoudian v. Council* and *Safa Nicu Sepahan v. Council*, this Article seeks to analyze the conditions under which imposition of sanctions might be rendered as illegal, the conditions required for the EU to bear non-contractual liability and the types of Court orders the applicant may seek (annulment of sanctions and compensation for damages).

Keywords

Illegal Imposition of Sanctions, Compensation, The European Union, Restrictive Measures, Right to an Effective Judicial Protection.

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Access to Foreign Government's Data Center Information in Contradiction to the Principles of Territorial Criminal Jurisdiction and the Exercise of the Sovereignty in International Law

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Abstract

Cloud computing is one ofthe emerging features of cyberspace. Accordingly, personal data is generated and exchanged in the account of the user or user environment in the cyberspace. This data is transmitted to and stored by overseas datacenters in the control and use of electronic service provider companies. The crime itself and the criminal transmission of data are no exception to this process.Criminal investigations in this area are in conflict with the territorial jurisdiction and sovereignty of the foreign government. On the one hand, the provider of the intranet services does not disclose the information of its users to the authorities by justifying privacy. On the other hand, The Data Center State also does not accept the criminal jurisdiction of the government requesting the criminal data by justifyingthe interference with its sovereignty.This situationin the relevent judicial precedent in Microsoft case has led to a conflict between the application of the principle of territorial jurisdiction and the exercise of the sovereignty of the foreign government. The issuance of the order for the Microsoft by the United States Court to justify the intrinsic territoriality of its center of operation to disclose information stored in a datacenter located in Ireland has faced with the challenge of extending jurisdiction beyond territorial boundaries and intervening in thirdState affairs. Criminal investigations based on the use of internal (territorial) judicial authorizations for access to data stored in the territory of the foreign State has encountered with a deadlock on the requirements of international criminal law.The solution to this situation is to resort to a treaty of reciprocal legal cooperation. However, this cooperation also requires the observance and separation of domestic and foreign criminal jurisdiction and respect for the exercise of the sovereignty of the foreign government in its territory.

Keywords

Cloud Computing, Data Center, Principle of Territorial Jurisdiction, Principle of Sovereignty, Cybercrime.

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The Study of Theory, Meta-Theory, Method and Methodology in International Law

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Abstract

Human beings' communication with each other and with the peripheral environment has been continuously changed. Hence, transformation is an indispensable feature of human life. These developments lead to the creation and elimination of various social phenomena and their relationships as the subject of science of law. By understanding this, legal scholars are committed to formulate ideas and theories that best fit these phenomena and by designing and resorting to the best techniques, in the best way, to describe and guide the order among them or, in the absence of such an order, to help regulate the relationships of these phenomena and at the same time direct them to the desired horizons ahead.

The theoretical issues of international law as the battlefield for encountering of different views, require more intelligence and coherency. Tools, methods and techniques of these characteristics should be followed in the content and method of studying international law. Accordingly, in this paper, the four concepts of theory, meta-theory, method and methodology with the aim of taking a small step towards the consciousness of scholarship in the field of research in international law will be studied, and thus the importance of theoretical and methods of legal theorization in the field of international law, with emphasis on the usefulness and necessity of studying multi-methods in the field, are redefined with the help of technique of legal meta-theory.

Keywords

Theory, Meta-Theory, Method, Methodology, International Law.

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The Antarctic Security in the International Legal Regime of the Third Millennium: Realization of a Promoted Paradigm in States' Partnership Towards the Compliance with the International Obligations and Establishment of Effective Enforcement Measures

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Persian Text pp. 135 - 160

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Abstract

Nearly 60 years have passed since the ratification and entry into force of the Antarctic Treaty.The legal regime of the Antarctic and the way States accede to the Antarctic Treaty, and in general, the Antarctic TreatySystem, as well as the legal system that protects the environment all possess unique character. Meanwhile, one of the most significant issues seems to be the security dimension of the Antarctic legal system. The question of how security in the Continent is shaped and the quality of its institutionalization within the international legal system of Antarctica is a matter that requires careful and scrupulous attention.

The author believes that the above-mentioned legal system, in particular its security dimension, can be regarded as a miniature of the realization of the superior model of international law and the emergence of an ideal form of an international legal system through which the participation of the Statesin the compliance and ensure compliance with their international obligations are provided *inter alia* through the provision of effective enforcement measures. Hence, issues such as the provisions in which the Antarctic Treaty, in general, and the Antarctic Treaty System, in particular, have envisaged and regulated regarding thesecurity of the Continent and how effective they are in Antarctica;and disadvantages and shortcomings therein that need to be modifiedareamong the most important issues that are discussed and evaluated in this paper.

Keywords

International Law, Law of the Sea, Antarctic Treaty, Antarctic Security, Antarctic Treaty System, Legal Regime of the Antarctic.

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Supervision Mechanisms on Compliance and Implementation in the Paris Agreement

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Abstract

Paris Agreement has developed a Supervisory System that is necessary for ensuring effective implementation of its provisions and also assessing collective progress towards its long-term goals. This system acts in the framework of communication, transparency, cooperation,and contribution as the top-down component of the binary structure of the agreement. This supervisory system operates in two approaches: 1) receiving information through Monitoring, Reporting, Verification (MRV) and 2) developing a mechanism for promoting compliance and facilitating implementation. In the first approach, all obligations taken by States on a differentiated basis and according to their different capabilities will be transparent and their collective progress will be assessed in global stocktake and in the second approach, the mechanism will examine non-compliance to legally binding obligations and non-implementation of non-binding obligations by parties to the agreement. The present study will analyze the existing legal provisions on compliance and implementation in the Paris Agreement based on dogmatic method. Considering the type of obligations in the Paris Agreement, the results prove future actions in compliance mechanism not being adversarial and punitive and indicate that joining the Paris Agreement would not result in imposing new sanctions against Iran.

Keywords

Paris Agreement, Climate Change, Compliance Mechanism to Promote and Facilitate the Implementation, Transparency, Global Stocktake.

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Prosecuting the Use of Chemical Weapons in Syria by the International Criminal Court

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Abstract

The Syrian Arab Republic has been the scene of political protests since early 2011, which soon became a non-international armed conflict. In these clashes, chemical weapons were used, the most important of which happened on 21August 2013, with more than 1,400 people killed. Legally speaking, it was argued whether the use of chemical weapons (CW) in the internal conflicts of Syria was considered an international crime under the Court's jurisdiction, in light of the fact that the use of CW was not counted as a crime in the Statute of the International Criminal Court (ICC); and is it possible for the Court to exercise jurisdiction over Syria's situation in light of the fact that Syriais not a party to the Rome Statute of the International Criminal Court? In this paper, the researchers have considered the use of CW in Syria's internal conflicts as a war crime, by analyzing the subject, interpreting the Statute and applying it to elements of the crimes under the jurisdiction of the ICC. Also, the study indicates that, according to the amendments to the Statute of the ICC in Kampala, Uganda, in June 2010, if the Security Council refers the "situation" of Syria to the ICC, it will be possible for the Court to exercise its jurisdiction.

Keywords

Chemical Weapons, Syria's Internal Conflicts, War Crimes, International Criminal Court, Jurisdiction.

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The Role of National Courts in International Commercial Arbitration in Iranian and French Law

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Persian Text pp. 35 - 68

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Abstract

The international commercial arbitration is considered as the best and the most efficient mechanism for the settlement of international trade disputes. Meanwhile, this method of dispute settlement still is not an independent and self-sufficient method because it is exposed to various interferences of national jurisdictions for the purposes of supervising and controlling arbitration or assisting thereto. Although, nowadays, there is an obvious tendency towards confining the interferences of national jurisdictions, playing their role in retaining sovereignty of States and their public order, on the one hand, and maintaining the dignity of arbitration and honor to the free will of parties, on the other, is inevitable. In this essay, in order to be inspired by other States' experience and practice with respect to the promotion of international commercial arbitration in Iran, the role played by national courts in international commercial arbitration has been compared in the Iranian and French jurisdictions as an example of the States in question.

Keywords

International Commercial Arbitration, International Trade Disputes, National Jurisdiction (Court), Jurisdiction (Court's) Control, Assistance by Jurisdiction (Court).

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Theories of States' Compliance with International Law: A Question of Persuasion

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Abstract

It is a commonly held belief that States, almost all of the time, comply with the norms of international law. The international system lacks a central mechanism to ensure enforcement of international law, but why despite this fact, States do comply with the rules of international law? This is a peculiar question which has puzzled many thinkers in the fields of international relations and politics as well as international law. From a particular viewpoint, the issue of compliance of States with international law could be studied through three different mechanisms: cost and benefit analysis, acculturation, and persuasion. Each of these mechanisms in isolation is unable to describe the reason for which,in each case,States comply with international law; hence being complementary. Among these mechanisms, the role of persuasion is peculiar because this particular mechanism produces compliance with international law on its own and also through the other mechanisms.

Keywords

International Law, Compliance Theories, Cost and Benefit Analysis, Acculturation, Persuasion, Sanctions, Reputation, Managerial Model, Fairness Theory, Transnational Legal Process.

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