The Interaction between Contractual Prohibition of Genocide and *Jus Cogens* of Prohibition of Genocide

Sattar Azizi & Muhammad Hadji

Persian text pp. 13-51

Abstract

Undesirable consequences of inadequacies of the Convention on the Prevention and Punishment of the Crime of Genocide which, on one hand, is more the result of historical revolutions and emergence of jus cogens of genocide prohibition, and on other hand, impunity of genocide perpetrators which is the direct result of weaknesses of genocide convention which ultimately led to promotion of doubts and claims as to contractual prohibition of genocide. Moreover, it led to raising claims by some for the nullification of genocide convention for its conflict with existing jus cogens of genocide prohibition. In case this claim is approved, it would deprive international community from a valuable legal document such as genocide convention. In contrast, some writers supported by the present authors are of the opinion that there are several answers to these claims which leave no room for them any longer. Thus, it basically seems that the attempt to nullify the treaties, specially human rights ones, due to the conflict with jus cogens is not well grounded, since there is neither any agreement as to the content of jus cogens nor the effects and consequences of the jus cogens are the same.

Keywords: Genocide, Contractual of Genocide Prohibition, Jus Cogens, Political Groups, International Court of Justice.

Extension of International Responsibility Regime
to Non-State Actors with Emphasis on Secessionists

By S.Ghasem Zamani & S.Yasser Ziaee

Persian text pp. 53 - 83

Abstract

The law of international responsibility is one of the branches of international law which deals with the principles governing international actors to stop wrongful acts and to compensate for the damages. The law of international responsibility was born when international law was limited to interactions of states, and non-state actors were seen just as the victims of states wrongful acts. At present, classic roles in international relationships have changed, and an increasing tendency in internal wars makes it important to review non-state actors' status in light of the law of international responsibility. Nowadays, non-state actors are not only victims of international law, but also violate international law themselves. The current study shows the possibility of raising international responsibility of non-state actors and explain it on international responsibility of secessionists. Secessionist insurgents as the main cause of non-international armed conflicts are prone to violate international law especially humanitarian law. Furthermore, contrary to the past studies, which concerned claims against states, this study is an attempt to assess the possibility of bringing a claim against the secessionists.

Keywords: International Law of Responsibility, Non-state Actors, Insurgents, Secessionists, Responsibility of Military and Civil Superior, Humanitarian Law.

Rejection of the Jurisdiction of State Courts & Arbitration Tribunals in Case of A.D.R Agreement

Yousef Darvishi Hoveyda

Persian text pp. 85 - 103

Abstract

Alternative dispute resolution (non-judicial) known as A.D.R is a major and traditional rule in which the agreement of both parties for referring any disputes to the mentioned methods may not prevent governmental courts or arbitration tribunals from considering the case. In other words and in contrast with arbitration agreement, an A.D.R agreement may not cause the jurisdiction of governmental courts or arbitration tribunals to be rejected. Then parties may refer their claim to governmental courts and/or arbitration resource (in case of any arbitration agreement) while ignoring the A.D.R agreement. However, this condition is under adjustment. In most cases national courts and arbitration tribunals with respect to parties agreement have rejected their temporary jurisdiction and have pended hearing the cases based upon the necessity of taking efforts in friendly settlement of disputes. This paper intends to study any traditional attitude of most governmental courts and arbitration tribunals in ignoring their jurisdiction and denying hearing any claims in case of an A.D.R agreement.

Keywords: Arbitration, Alternative Dispute Resolution (A.D.R), State Courts, Arbitration Agreement, A.D.R Agreement.

General Scope of Application of the Rotterdam Convention:
Conflicts of Application with Other Conventions

Dr. Hossein Simaee Sarraf & Meysam Yari

Persian text pp. 105 - 138

Abstract

The scope of application of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, has some complicated provisions that are in line with the new demands in the field of transportation. Contrary to those of The Hague and Hambourg, this convention not only applies on the carriage of goods by sea, but also it applies on the other legs of carriage and as a result, extends the period of responsibility of carriers. Consequently, the scope of its application has been extended. Increasing containerized transport necessitates such an extension; however, there are other international conventions that extend their scope, based on some circumstances, beyond their boundaries. As a result of such extensions, scope of conventions may overlap. In order to overcome these overlaps, Rotterdam Convention provides some provisions within its articles. These provisions have been arranged in chapters 6 and 17. In this article, we want to study the general scope of the application of the Rotterdam Convention, and then analyze the extended scope of its application which, in this regard, causes it to become a multimodel convention on the field of transportation. After that, for the purpose of completing the issue of scope of the convention, we will deal with conflict-avoiding and conflict-resolving provisions. The result of this research will be culminated into removal of domestic legislator's worry about the scope of application of this convention which may be resulted from Article 90 that permits no reservation to the convention. We believe that the acceptance of this convention even without any reservation causes no

conflict with the scope of other conventions to which our country is a party, such as Warsaw, CMR and CIM or will be a party at the future such as Montreal and CIM 1999.

Keywords: Rotterdam Convention, Scope of Application of the Rotterdam Rules, Conflicts of Application and Their Settlement, Carriage of Goods by Sea, Door-to-Door Transportation, Multimodal Transportation.

La règle Ne bis in idem en droit Pénal Iranien et son Conflit avec les Instruments Internationaux

Abdol-Ali Tavajjohi & Mahdi Ghorbani Ghelejloo

Persian text pp. 139 - 173

Résumé

Pas de deux poursuites pour la même infraction. Telle est la substance originelle de la règle *ne bis in idem*. Selon une définition généralement acceptée, le principe *ne (non) bis in idem* veut dire que lorsqu'une personne a été acquittée ou condamnée, elle ne peut plus être jugée et sanctionnée à nouveau pour les mêmes faits ou pour la même infraction dans le cadre d'une nouvelle procédure. Cette règle a pour origine le droit romain, le Code justinien et l'enseignement islamique *(indirectement)*. L'application du principe *ne bis in idem* est garantie par le droit international depuis l'adoption du Pacte international relatif aux droits civils et politiques, fait à New York le 19 décembre 1966 dont l'article 14 -7 consacre ce principe lequel trouve son fondement dans le souci de protéger la liberté individuelle et de la sécurité juridique.

Aujourd'hui, tous les Etats ont, plus ou moins solennellement, intégré la règle à leur droit interne. Qu'on lui consacre une valeur constitutionnelle, comme en République Fédérale d'Allemagne, ou bien une valeur plus diffuse, comme en France. En Iran, avant la Révolution de 1979, le législateur a ratifié le Pacte international relatif aux droits civils et politiques en 1975 et a adopté l'alinéa 5 de l'article 3 du Code pénal concernant les conditions du principe de la compétence personnelle active. Mais, lors de l'adoption du nouveau Code pénal islamique, le législateur iranien n'a pas respecté le Pacte international susmentionné et a modifié les conditions de l'alinéa 5 de l'article 3 du Code pénal. Cependant, il a changé de position en ratifiant l'accord de

coopération judiciaire conclu avec deux pays musulmans (Syrie & Kuwait) en 2002 & 2005. En plus, ce principe a été accepté sous certaines conditions à propos des peines dites «*Tazirat*» dans le nouveau Code pénal iranien récemment adopté.

Dans cette recherche, nous allons examiner certaines contradictions dans le système pénal iranien et dans les instruments internationaux concernant la double punition.

Mots clés, ne (non) bis in idem, le principe de l'autorité de la chose jugée, la reconnaissance et la validité des jugements pénal étrangers, le droit pénal international, le droit iranien, la loi de coopération judiciaire.

Self - defence in the Post - 9/11:
An Examination of the Jurisprudence of the ICJ

Ali Ghasemi & Victor Barin Chaharbakhsh

Persian text pp. 175 - 194

Abstract

In the new millennium, the scope and limits of the use of force in international relations are still the subject of strong debate. It is generally accepted that resort to force in self - defence is lawful under contemporary international law, but several doctrines have been advanced in recent decades as to the meaning and scope of this right. Some legal scholars and states representatives favour an expanded interpretation of the right of self - defence. It is certainly true that September 11 generated a new dimension in legal and political discourse. The International Court of Justice after 9/11 dealt with disputes involving the use of force, allegedly in self - defence, in the case concerning oil platforms, the Palestinian Wall advisory opinion and the Armed Activities case. We conclude that the ICJ reaffirmed and outlined the conditions for the legitimate use of self - defence established in the Nicaragua case, namely the existence of an armed attack; proportionality and necessity of the actions taken, and employment of force in self – defence against a military target. The court strengthened the condition of an armed attack, on the basis of treaty and customary law, thereby opting for a restrictive interpretation of the right of self - defence.

Keywords: Self-defence, Judgment, Jurisprudence, Armed Attack, Target, Proportionality, Necessity, Aggression.

The Evolution of Victims Rights under the Laws of the International Criminal Court

Behzad Razavifard & Hassan Faghih Mohammadi

Persian text pp. 195 - 233

Abstract

Keeping pace with developments of victims' rights in the second half of the twentieth century, the International Criminal Court granted them a high position which had never been experienced by the other international criminal tribunals. Based on Article 68 of the Rome Statute and in accordance with the relevant rules of The Rules of Procedure and Evidence, victims - whether in fact natural persons or organizations and institutions - can, either by themselves or by their legal representative, participate in the proceedings of the Court and seek reparations. The victims' right to participate - if considered appropriate by judges of the Court - has been recognized and is applicable in all stages of the proceedings. The provisions of the Court are general as to victims' participation, and this has enabled judges to adopt an expanded approach to the subject. The judges of the Court have permitted the participation of victims in the proceedings without disclosure of their identities to the parties.

Keywords: Victims – International Criminal Court, Reparation, Representation, Participation.

Official Corruption and Its Effect on Development: Causes and Solutions

Abdolrahman Afzali

Persian text pp. 235 - 264

Abstract

Official corruption is a phenomenon that can be seen in the most of the countries in all of the world. However, its kind, shape, rate and extent is different from country to country. Now, the official and financial reform has culminated to a global dilemma and governments are aware that the corruption has caused many damages, so that it would be very irregular. This dilemma can handicap the domestic economy and disorder the development process and also threaten the democratic structures and damage the law governance principle. It can be led to other threats on the national security including the transnational crimes and terrorism. After the Islamic revolution in Iran, the reform of official system as an undoubted principle and necessity has been discussed and emphasized. This matter led to the historical command of Iran's Leader on 30 April 2001 to combat against it. This article tries to clarify the role of official corruption in the societies and its effect on governments and development. Therefore, at first a lateral definition of corruption is presented especially official corruption which that is the main obstacle for development process and as the source of other corruptions. Then, its different levels, kinds and effective causes are mentioned and finally the meaning of corruption in international documents is studied. Also the effective causes and factors on official corruption is mentioned. Then in continues to make a comparative study on corruption situation between Iran and other countries of the world and then its consequences and solutions are examined and presented.

Keywords: Official Corruption, Clarification, Bribe, Effectiveness, Organized Corruption, Acute Corruption, Development.