

Jus Cogens International Law And Social Contract

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The Law of Treaties
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international law (in English only) Peremptory Norms in International Law The Role of Ethics in International Law International Law in Domestic Courts Jus Cogens The Power and Purpose of International Law The Fundamental Rules of the International Legal Order Principles of Islamic International Criminal Law The Sources of International Law

Understanding Jus Cogens in International Law and International Legal Discourse

The Author examines the considerable advances undergone by the right of access to justice in the domain of the international protection of the rights of the human person in recent years. The right of access to justice is understood, *lato sensu*, as encompassing not only the formal access to a tribunal or judge, but also the guarantees of due process of law, the right to a fair trial, and to reparations (whenever they are due), and the faithful execution of judgments. The evolving international case-law on the matter is examined in detail, including cases concerning victims in situations of the utmost adversity (e.g., abandoned or

International Law as a Belief System

Although customary international law has long been an important source of rights

and obligations in international relations, there has been extensive debate in recent years about whether this body of law is equipped to address complex modern problems such as climate change, international terrorism, and global financial instability. In addition, there is growing uncertainty about how, precisely, international and domestic courts should identify rules of customary international law. Custom's Future seeks to address this uncertainty by providing a better understanding of how customary international law has developed over time, the way in which it is applied in practice, and the challenges that it faces going forward. Reflecting an interdisciplinary mix of historical, empirical, economic, philosophical, and doctrinal analysis, and containing chapters by leading international law experts, it will be of use to lawyers, judges, and researchers alike.

The Nature of International Law

The goal of this book is to minimize the misunderstandings and conflicts between International law and Islamic law. The objective is to bring peace into justice and justice into peace for the prevention of violations of human rights law, humanitarian law, international criminal law, and impunity.

The Oxford Handbook of International Human Rights Law

This work, the outgrowth of a joint reflection by French and German international lawyers, attempts to reconceptualize the doctrine of hierarchy in international law by emphasizing that a clear distinction should be drawn between primary rules, which encapsulate precepts for the protection of the basic values of the international community, and secondary rules, which determine the regime of legal consequences flowing from a breach of such rules of conduct.

The Function of Public International Law

The world is poised for another important transition. The United States is dealing with the impact of the Afghan and Iraq wars, the use of torture and secret detention, Guantanamo, climate change, nuclear proliferation, weakened international institutions, and other issues related directly or indirectly to international law. The world needs an accurate account of the important role of international law and *The Power and Purpose of International Law* seeks to provide it. Mary Ellen O'Connell explains the purpose of international law and the power it has to achieve that purpose. International law supports order in the world and the attainment of humanity's fundamental goals of peace, prosperity, respect for human rights, and protection of the natural environment. These goals can best be realized through international law, which uniquely has the capacity to bind even a superpower of the world. By exploring the roots and history of international law, and by looking at specific events in the history of international law, this book

demonstrates the why and the how of international law and its enforcement. It directly confronts the notion that international law is "powerless" and that working within the framework of international law is useless or counter-productive. As the world moves forward, it is critical that both leaders and their citizens understand the true power and purpose of international law and this book creates a valuable resource for them to aid their understanding. It uses a clear, compelling style to convey topical, informative and cutting-edge information to the reader.

State Accountability Under International Law

The Concept of Jus Cogens in the Law of Treaties

This collection of essays is the outcome of the proceedings of the Centre for Research and Study in International Law and International Relations of the Hague Academy of International Law in the summer of 1983.

Customary International Law

The prohibition of the use of force in international law is one of the major achievements of international law in the past century. The attempt to outlaw war

as a means of national policy and to establish a system of collective security after both World Wars resulted in the creation of the United Nations Charter, which remains a principal point of reference for the law on the use of force to this day. There have, however, been considerable challenges to the law on the prohibition of the use of force over the past two decades. This Oxford Handbook is a comprehensive and authoritative study of the modern law on the use of force. Over seventy experts in the field offer a detailed analysis, and to an extent a restatement, of the law in this area. The Handbook reviews the status of the law on the use of force, and assesses what changes, if any, have occurred in consequence to recent developments. It offers cutting-edge and up-to-date scholarship on all major aspects of the prohibition of the use of force. The work is set in context by an extensive introductory section, reviewing the history of the subject, recent challenges, and addressing major conceptual approaches. Its second part addresses collective security, in particular the law and practice of the United Nations organs, and of regional organizations and arrangements. It then considers the substance of the prohibition of the use of force, and of the right to self-defence and associated doctrines. The next section is devoted to armed action undertaken on behalf of peoples and populations. This includes self-determination conflicts, resistance to armed occupation, and forcible humanitarian and pro-democratic action. The possibility of the revival of classical, expansive justifications for the use of force is then addressed. This is matched by a final section considering new security challenges and the emerging law in relation to them. Finally, the key

arguments developed in the book are tied together in a substantive conclusion. The Handbook will be essential reading for scholars and students of international law and the use of force, and legal advisers to both government and NGOs.

Legal Consequences of Peremptory Norms in International Law

The centrality of treaties to the international legal system requires little emphasis. Not only is the treaty a source of law that the International Court of Justice (ICJ) is bound to apply when resolving international disputes, but it is also the medium through which the vast preponderance of international legal intercourse is now conducted. The essays contained in this informative volume disclose a wide variety of opinion on a broad range of issues concerning the conclusion, application and termination of treaties.

Peremptory Norms of General International Law (Jus Cogens) and the Prohibition of Terrorism

The purpose of this book is to explore what role ethical discourse plays in public and private international law. The book seeks (1) to delineate the role of ethical investigation in creating, sustaining, challenging and changing international law and (2) to open up a conversation between two related disciplines - public and

private international law - that frequently labor in different vineyards. By examining the role of ethical discourse in international law's public and private dimensions, this volume will hopefully open new avenues for cross-disciplinary exchange in these important fields and related disciplines. The chapters in this book show that there is a way to engage the ethical dimension of international law without seeking to use ethics as raw politics and the will to power.

The Oxford Handbook of the Use of Force in International Law

When is a norm peremptory? This is a question that has troubled legal scholars throughout the development of modern international law. In this work, Daniel Costelloe suggests - through an examination of State practice and international materials - that it is the legal consequences of a norm which distinguish it as peremptory. This book sheds new light on the legal consequences that peremptory norms have, for instance, in the law of treaties, international responsibility and state immunity. Unlike their substance or identification, the consequences of peremptory norms have remained under-studied. This book is the first specifically on this topic and is essential reading for all scholars and practitioners of public international law.

The Global Prosecution of Core Crimes under International Law

Fiduciaries of Humanity

International Law as a Belief System considers how we construct international legal discourses and the self-referentiality at the centre of all legal arguments about international law. It explores how the fundamental doctrines (e.g. sources, responsibility, statehood, personality, interpretation and jus cogens etc.) constrain legal reasoning by inventing their own origin and dictating the nature of their functioning. In this innovative work, d'Aspremont argues that these processes constitute the mark of a belief system. This book invites international lawyers to temporarily suspend some of their understandings about the fundamental doctrines they adhere to in their professional activities. It aims to provide readers with new tools to reinvent the thinking about international law and combines theory and practice to offer insights that are valuable for both theorists and practitioners.

Custom's Future

This book takes an inductive approach to the question of whether there is a hierarchy in international law, with human rights obligations trumping other duties. It assesses the extent to which such a hierarchy can be said to exist through an

analysis of the case law of national courts. Each chapter of the book examines domestic case law on an issue where human rights obligations conflict with another international law requirement, to see whether national courts gave precedence to human rights. If this is shown to be the case, it would lend support to the argument that the international legal order is moving toward a vertical legal system, with human rights at its apex. In resolving conflicts between human rights obligations and other areas of international law, the practice of judicial bodies, both domestic and international, is crucial. Judicial practice indicates that norm conflicts typically manifest themselves in situations where human rights obligations are at odds with other international obligations, such as immunities; extradition and refoulement; trade and investment law; and environmental protection. This book sets out and analyses the relevant case law in all of these areas.

Realizing Utopia

Jus cogens is a formidable yet elusive concept of international law. Since its incorporation in the Vienna Convention on the Law of Treaties some 35 years ago, it has made tentative inroads into international legal practice. But its role in international law is arguably less prominent than might have been expected on the basis of its powerful potential and in view of wider developments in international law that call for constitutionalisation and hierarchy, including the processes of

fragmentation and humanization. This volume of the Netherlands Yearbook of International Law sets out to clarify the concepts and doctrines relevant to jus cogens and to sharpen the debate on its theoretical foundations, functions and legal effects. To that purpose, the volume brings together contributions on the genesis and function of jus cogens, on the application of jus cogens in specialised areas of international law and on its enforcement and legal consequences. Together, they reinforce the understanding of jus cogens as a hierarchical concept of international law and shed light on its potential for further development.

International Law for Humankind

General Principles and the Coherence of International Law offers a comprehensive analysis of general principles of law, assessing their role in guaranteeing the coherence of the international legal system.

Environmental Human Rights in Earth System Governance

This book addresses fundamental aspects of the concept of public international law in both theory and practice. The argument developed by the author is that, underlying the traditional, horizontal, structure of public international law, a vertical structure of the concept of law may be discerned. This vertical structure is

seen unfolding into two, mutually exclusive, frameworks: a framework of obligation, accounting for obligations, and a framework of authorization, accounting for rights. The problem then arising is that a concept of public international law which only admits either rights or obligations cannot be regarded as coherent. The author, however, takes and substantiates the position that coherence can be achieved by suppressing the mutual exclusivity of both frameworks. This move paves the way to formulating the function of public international law in terms of the constituting of international society. Since in public international law the theoretical aspects profoundly affect practice, this book is not only of interest to academics, but also for practitioners, such as officials of foreign offices and international institutions.

The Law of Treaties Beyond the Vienna Convention

The Nature of International Law provides a comprehensive analytical account of international law within the prototype theory of concepts.

International Law in the U.S. Legal System

The Oxford Handbook of International Human Rights Law provides an authoritative and original overview of one of the key branches of international law. Forty

contributors comprehensively analyse the role of human rights in international law from a global perspective, examining its origins and principles, and measuring its impact on the world.

Netherlands Yearbook of International Law 2015

Realizing Utopia is a collection of essays by a group of innovative international jurists. Its contributors reflect on some of the major legal problems facing the international community and analyse the inconsistencies or inadequacies of current law. They highlight the elements - even if minor, hidden, or emerging - that are likely to lead to future changes or improvements. Finally, they suggest how these elements can be developed, enhanced, and brought to fruition in the next two or three decades, with a view to achieving an improved architecture of world society or, at a minimum, to reshaping some major aspects of international dealings. Contributions to the book thus try to discern the potential, in the present legal construct of world society, that might one day be brought to light in a better world. As the impact of international law on national legal orders continues to increase, this volume takes stock of how far international law has come and how it should continue to develop. The work features an impressive list of contributors, including many of the leading authorities on international law and several judges of the International Court of Justice.

Hierarchy in International Law: The Place of Human Rights

This book gathers the contributions presented to the first edition of the Gaetano Morelli Lectures, held in the Spring of 2014 on “the Present and Future of Jus Cogens”. The first two Chapters reproduce the two general courses by Christian Tomuschat and by Pierre-Marie Dupuy. Two short Chapters, by Enzo Cannizzaro and by Beatrice Bonafé, address topics dealt with in the final seminar class.

The Right to Life in International Law

This book provides a comprehensive political and legal examination of jus cogens, a complex doctrine essential to contemporary international society.

The Access of Individuals to International Justice

The Oxford ILDC online database, an online collection of domestic court decisions which apply international law, has been providing scholars with insights for many years. This ILDC Casebook is the perfect companion, introducing key court decisions with brief introductory and connecting texts. An ideal text for practitioners, judges, government officials, as well as for students on international law courses, the ILDC Casebook explains the theories and doctrines underlying the

use by domestic courts of international law, and illustrates the key importance of domestic courts in the development of international law.

The Present and Future of Jus Cogens

Robert Kolb, one of the leading international scholars of his generation, offers a seminal survey of the question of peremptory international law. The author analyses and systemises different questions, such as: the typology of peremptory norms beyond the Vienna Convention on the Law of Treaties; here he distinguishes between 'public order' jus cogens and mere 'public utility' jus cogens. Furthermore, what about relative jus cogens, such as regional jus cogens norms or conventional jus cogens norms? What about some consequences of jus cogens breaches in the law of State responsibility: are they themselves jus cogens? Thus, can individual war reparations be renounced by lump-sum agreements? What happens if different jus cogens norms are in conflict? Is there a difference between the scope of jus cogens in inter-State relations and its scope for other subjects of law, such as the UN and its Security Council? Is jus cogens necessarily predicated on the concept of a hierarchy of norms? What is the exact extent of the peremptory nature of some rules? Sometimes, only the core of a principle is peremptory, while its normative periphery is not. Also, in the use of force, the peremptory character of the provision is compatible with agreements falling under the recognised exceptions, such as collective self-defence. These and other unusual questions are discussed in

the present book.

Peremptory Norms (jus Cogens) in International Law

General Principles and the Coherence of International Law

This new edition of Hugh Thirlway's authoritative text provides an introduction to one of the fundamental questions of the discipline: what is, and what is not, a source of international law. Traditionally, treaties between states and state practice were seen as the primary means with which to create international law. However, more recent developments have recognized customary international law, alongside international treaties and instruments, as a key foundation upon which international law is built. This book provides an insightful inquiry into all the recognized, or asserted, sources of international law. It investigates the impact of ethical principles on the creation of international law; whether 'soft law' norms come into being through the same sources as binding international law; and whether jus cogens norms, and those involving rights and obligations erga omnes have a unique place in the creation of international legal norms. It studies the notion of 'general principles of international law' within international law's sub-disciplines, and the evolving relationship between treaty-based law and customary

international law. Re-examining the traditional model, it investigates the increasing role of international jurisprudence, and looks at the nature of international organisations and non-state actors as potential new sources of international law. This revised and updated book provides a perfect introduction to the law of sources, as well as innovative perspectives on new developments, making it essential reading for anyone studying or working in international law.

The Peremptory Norms of General International Law (jus Cogens) Under the Vienna Convention on the Law of Treaties

In *Peremptory Norms of International Law and Terrorism (Jus Cogens) and the Prohibition of Terrorism*, Aniel de Beer evaluates the role of peremptory norms of international law or jus cogens in the fight against terrorism.

Norms of Jus Cogens in International Law

This volume is an updated and revised version of the General Course on Public International Law delivered by the Author at The Hague Academy of International Law in 2005. Professor Cançado Trindade, Doctor honoris causa of seven Latin American Universities in distinct countries, was for many years Judge of the Inter-American Court of Human Rights, and President of that Court for half a decade

(1999-2004). He is currently Judge of the International Court of Justice; he is also Member of the Curatorium of The Hague Academy of International Law, as well as of the Institut de Droit International, and of the Brazilian Academy of Juridical Letters.

Peremptory International Law - Jus Cogens

This book considers the extent to which States are held accountable for breaches of jus cogens norms under international law. The concept of State accountability is distinguished from the doctrine of State responsibility and refers to an ad hoc practice in international relations that seeks to ensure States do not escape with impunity when they violate norms that are considered fundamental to the interests of the international community as a whole. State Accountability under International Law sets forth a definition of State accountability and establishes a threshold against which the existence, or not, of State accountability can be determined. Using a Foucauldian influenced interpretive methodology, this book adopts a novel construction of State accountability as having legal, political and even moral characteristics. It argues that the international community seeks to hold States accountable utilising a variety of traditional and non-traditional responses that cumulatively recognise that the institutions that comprise and legitimise the State were instrumental in the particular breach. Using case studies taken from State practice from throughout the twentieth century and covering a range of geographic

contexts, the conclusion is that there is evidence that State accountability, as it is conceptualised here, is evolving into a legal principle. The book draws together the many academic theories relating to accountability that have arisen in various areas of international law including environmental law, human rights and trade law before going on to examine an emerging practice of State accountability. A variety of ad hoc attempts and informal mechanisms are assessed against the threshold of State accountability established, with emphasis being given to practical examples ranging from the accountability of Germany and Japan after World War Two to the current attempts to seek accountability from Russia for former crimes of the USSR.

Peremptory International Law - Jus Cogens

This book deals with the prosecution of core crimes and constitutes the first comprehensive analysis of the horizontal and vertical systems of enforcement of international criminal law and of their inter-relationship. It provides a global jurisprudential exposition in assessing the grounds for refusal of surrender to the International Criminal Court and of extradition to another State. It also offers insights into legal perspectives which improve the prevailing enforcement regimes of various models of criminal justice, including hybrid criminal tribunals, special criminal courts, judicial panels and partnerships, and other budding sui generis judicial and/or prosecutorial institutions. The book espouses a human rights law-oriented critique to the enforcement of domestic, regional and international

criminal justice and is aimed at legal practitioners (prosecutors, defence lawyers, magistrates and judges), jurists, criminal justice experts, penologists, legal researchers, human rights activists and law students. Christopher Soler lectures Maltese criminal law, international criminal law and public international law at the University of Malta. He obtained his Ph.D. from the University of Amsterdam in The Netherlands.

The Law of Treaties

This monograph analyses the questions raised by the legal effects of peremptory norms of international law (jus cogens). A comprehensive study of this problem has been lacking so far in international legal doctrine. Peremptory norms, although often criticised and even more often approached with sceptical nihilism, nevertheless attract growing doctrinal and practical attention and have increasing importance in determining the permissible limits on the action of State and non-State actors in different areas. In view of this overriding impact on what might otherwise be instances of the law-making process, peremptory norms concern a constitutional aspect of international law. Peremptory norms are non-derogable norms, and the concept of derogation is among the key concepts analysed here. Derogation from peremptory norms can be attempted in a wide variety of situations, but if peremptory norms are to operate as norms and not merely as aspirations they must generate consequences that are also peremptory. This

effects-oriented character of peremptory norms is examined in a variety of fields. Despite the growing relevance of peremptory norms in practice, doctrine has failed to treat the issue comprehensively and has often been limited to examining specific aspects of the problem, such as the impact of peremptory norms in the law of treaties. This fresh effort to examine and explain the phenomenon of peremptory norms in key areas fills an important doctrinal gap through presenting in a systematic way the effects of peremptory norms and reappraising the significance of such effects, bearing in mind their overall nature. It also demonstrates that the hierarchical superiority of peremptory norms is not limited to the sphere of primary legal relations but becomes most crucially relevant after a specific peremptory norm is breached. A norm's peremptory character is relevant not only for its substance but also for its consequences; peremptoriness consists primarily in the capacity to impact through its effects upon conflicting acts, situations and agreements.

Rapports Et Travaux: The concept of Jus Cogens in international law (in English only)

Peremptory Norms in International Law

This book sets out to articulate a comprehensive theory of customary international law that can effectively resolve the conceptual and practical enigmas surrounding it. It takes a multidisciplinary approach and draws insights from international law, legal theory, political science, and game theory. It is anchored in a sophisticated ethical framework and explores the interrelationships between customary international law and ethics.

The Role of Ethics in International Law

Robert Kolb, one of the leading international scholars of his generation, offers a seminal survey of the question of peremptory international law. The author analyses and systemises different questions, such as: the typology of peremptory norms beyond the Vienna Convention on the Law of Treaties; here he distinguishes between 'public order' jus cogens and mere 'public utility' jus cogens. Furthermore, what about relative jus cogens, such as regional jus cogens norms or conventional jus cogens norms? What about some consequences of jus cogens breaches in the law of State responsibility: are they themselves jus cogens? Thus, can individual war reparations be renounced by lump-sum agreements? What happens if different jus cogens norms are in conflict? Is there a difference between the scope of jus cogens in inter-State relations and its scope for other subjects of law, such as the UN and its Security Council? Is jus cogens necessarily predicated on the concept of a hierarchy of norms? What is the exact extent of the peremptory nature of some

rules? Sometimes, only the core of a principle is peremptory, while its normative periphery is not. Also, in the use of force, the peremptory character of the provision is compatible with agreements falling under the recognised exceptions, such as collective self-defence. These and other unusual questions are discussed in the present book.

International Law in Domestic Courts

Public international law has embarked on a new chapter. Over the past century, the classical model of international law, which emphasized state autonomy and interstate relations, has gradually ceded ground to a new model. Under the new model, a state's sovereign authority arises from the state's responsibility to respect, protect, and fulfill human rights for its people. In *Fiduciaries of Humanity: How International Law Constitutes Authority*, Evan J. Criddle and Evan Fox-Decent argue that these developments mark a turning point in the international community's conception of public authority. Under international law today, states serve as fiduciaries of humanity, and their authority to govern and represent their people is dependent on their satisfaction of numerous duties, the most general of which is to establish a regime of secure and equal freedom on behalf of the people subject to their power. International institutions also serve as fiduciaries of humanity and are subject to similar fiduciary obligations. In contrast to the receding classical model of public international law, which assumes an abiding

tension between a state's sovereignty and principles of state responsibility, the fiduciary theory reconciles state sovereignty and responsibility by explaining how a state's obligations to its people are constitutive of its legal authority under international law. The authors elaborate and defend the fiduciary model while exploring its application to a variety of current topics and controversies, including human rights, emergencies, the treatment of detainees in counterterrorism operations, humanitarian intervention, and the protection of refugees fleeing persecution.

Jus Cogens

International Law in the U.S. Legal System provides a wide-ranging overview of how international law intersects with the domestic legal system within the United States, and points out various unresolved issues and areas of controversy. Curtis Bradley covers all of the principal forms of international law: treaties, decisions and orders of international institutions, customary international law, and jus cogens norms. He also explores a number of issues that are implicated by the intersection of U.S. law and international law, such as foreign sovereign immunity, international human rights litigation, war powers, extradition, and extraterritoriality. This book highlights recent decisions and events relating to the topic (including decisions and events arising out of the war on terrorism), while also taking into account relevant historical materials, including materials relating to the U.S. Constitutional founding.

Written by one of the most cited international law scholars in the United States, the book is a resource for lawyers, law students, legal scholars, and judges from around the world.

The Power and Purpose of International Law

The Fundamental Rules of the International Legal Order

Whilst the concept of jus cogens has grown increasingly more important in public international law, lawyers remain hugely divided both over what precisely confers a jus cogens status on a norm, and what this conferral implies in terms of legal consequences. In this ground-breaking book, Ulf Linderfalk clearly and succinctly explores the reasons for this divide in order to facilitate more rational and productive future discourse.

Principles of Islamic International Criminal Law

This book offers a comprehensive analysis of the law of treaties as it emerges from the interplay between the 1969 Vienna Convention on the Law of Treaties and customary international law. It revisits the basic concepts underlying the provisions

of the Vienna Convention, so as to determine the actual state of the law and its foreseeable development. In doing so, it examines some of the most controversial aspects of the law of treaties. The book first explores the influence exerted by the Vienna Convention on pre-existing customary law. Certain rules of the Convention which, at the time of its adoption, appeared to fall within the realm of progressive development, can now be regarded as customary international rules. Conversely, a number of provisions of the Convention, in particular those which have been the subject of subsequent codification work by the International Law Commission, have become obsolete. It then examines the impact exerted by the Vienna Convention on the development of other fields of international law, such as the law of international responsibility and the law of international organizations. The last section of the book is devoted to cross-cutting issues, with particular reference to the notion of jus cogens - a concept first used in the Vienna Convention in connection with the problem of the validity of treaties and which, afterwards, has acquired a legal significance going well beyond the Convention. Written by a team of renowned international lawyers, this book offers new insight into the basic concepts and methodology of the law of treaties and its problems.

The Sources of International Law

Environmental rights are a category of human rights necessarily central to both democracy and effective earth system governance (any environmental-ecological-

sustainable democracy). For any democracy to remain democratic, some aspects must be beyond democracy and must not be allowed to be subjected to any ordinary democratic collective choice processes shy of consensus. Real, established rights constitute a necessary boundary of legitimate everyday democratic practice. We analyze how human rights are made democratically and, in particular, how they can be made with respect to matters environmental, especially matters that have import beyond the confines of the modern nation state.

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