

**American University Washington College of Law**

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**From the Selected Works of Claudio M. Grossman**

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1984

## Book Review of *El Jus Cogens International* (Estudio Histórico-Crítico)

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to development, rather than pointing at the emergence of international development as a fundamental goal of the international community, like peace or national autonomy.

Such doubts, however, concern tactical choices and do not address the heart of the matter. Whatever the exact approach adopted, it remains all-important to stress that development is becoming today a fundamental dimension of the international legal order. We must be grateful to Professor R.-J. Dupuy, "co-ordinator" of this workshop, for focusing attention on the issue.

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*El Ius Cogens Internacional (estudio histórico-crítico)*. By Antonio Gómez Robledo. Mexico: Instituto de Investigaciones Jurídicas, Universidad Autónoma de México, 1982. Pp. 227.

Whoever thinks that all *jus cogens* is really about is to reduce peremptory norms to a single, agreed list, and that almost everything about its general theoretical aspects has already been said, will be pleasantly surprised by this latest critical historical study by the outstanding author and Mexican diplomat, Dr. Antonio Gómez Robledo.

Dr. Gómez Robledo's book is a remarkably complete analysis of *jus cogens*, one that permits a general vision of the concept in the present phase of international society. The discussion is divided into useful categories. Following the Aristotelian method, the author expounds on and analyzes the early history of *jus cogens* (nationally and internationally), as well as the legislative history of the relevant provisions of the Vienna Convention on the Law of Treaties; the outstanding modern doctrinal expressions of the legal theory of *jus cogens*; the interpretation of the pertinent provisions of the Vienna Convention; the sanction of nullity that violation of the norms of *jus cogens* carries with it; the procedural questions (such as the powers of the International Court of Justice to pass a judgment on which norms constitute *jus cogens*); the identification of peremptory norms; and the philosophy of, or ultimate reasons for, this important legal concept.

In controversial problems like the effects of the opposition of a minority of states to peremptory norms, the application of *jus cogens* beyond conventional law, and the value of UN General Assembly resolutions, Gómez Robledo, besides referring to the different alternatives advanced in doctrine, presents his own tests, whose juridical logic will not escape the reader.

On the question of the legal effect of General Assembly resolutions, it would have been interesting to know the opinion of the author as to whether we should be able to go beyond the question itself, on which the doctrine seems stalled, to see if some Assembly resolutions might constitute a phase in the formation of customary legal norms.

Gómez Robledo, in spite of his comprehensive approach (historical, doctrinal, systemic procedural, philosophical), seems to be disappointed at not having concluded his work with a substantive definition of *jus cogens*—a disappointment

not shared by the reader. Even for those who believe that substantive questions can be defined, the difficulties in the case of *jus cogens* are still immense, considering that *jus cogens* ultimately requires universal recognition of values regarded as essential for the survival of the international community. That this is a dynamic and controversial question, no one would dispute. If, following Cervantes, we accept that the road is better than the inn, we cannot but conclude that Gómez Robledo's book advances a good stretch of the way.

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*Decisions of International Institutions before Domestic Courts.* By Christoph C. Schreuer. London, Rome, New York: Oceana Publications, Inc., 1981. Pp. xiii, 407. Index. \$35.

This volume is a substantially revised and updated version of a book first published in German in 1977 and 2 years later approved by the Yale Law School for the JSD degree. While the organization and language unmistakably identify the work as a New Haven product, those readers less than enthusiastic about the "policy-science" school of jurisprudence with its unique verbiage should put aside their reservations and join this reviewer in profiting from the vast amount of data and frequent insights contained in the book, which is based upon an evaluation of over four hundred cases examined by the author in their original English, German, French, Italian and Spanish texts (p. 3). Even if the status and application of decisions of international institutions in domestic courts had previously attracted widespread attention, which, except in the case of the European Communities, they have not (p. 168), this volume would represent a leading treatment of its subject.

The author notes at the outset that

[a]lthough an increasing number of tasks and competences [are assigned to international institutions] for authoritative decision-making, they [are] in most cases not also endowed with the capacity to make these decisions controlling through effective enforcement procedures. The implementation of the measures decided by them is nearly always dependent on the co-operation of State organs [p. 14].

Prominent among such organs, of course, are domestic courts. Yet such courts, the author rightly concludes, often "avoid a decision on the merits in cases with prominent international elements either by adopting a restrictive interpretation of the parties' *locus standi* or by relying on the doctrine of political questions and on other arguments" (p. 17). "Another indirect way to oppose an international decision," he adds, "is to claim that it is in conflict with the domestic law of the forum State and hence cannot be applied. In this case too, the formal authority of the international decision remains intact but its effectiveness can be completely frustrated" (p. 27).

As the leading example of the difficulties that often arise when the decisions of international institutions are sought to be enforced through domestic courts, the author repeatedly (pp. 20, 79, 201, 238, 293, 297, 324 and 325) returns