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1977

# Book Review. The Concept of Jus Cogens in the Law of Treaties by C. L. Rozakis

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### Recommended Citation

Fatouros, A. A., "Book Review. The Concept of Jus Cogens in the Law of Treaties by C. L. Rozakis" (1977). *Articles by Maurer Faculty*. Paper 1861.

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## BRIEFER NOTICES

*The Dynamics of International Law.* By Georg Schwarzenberger. (South Hackensack: Fred B. Rothman & Co.; London: Professional Books Limited, 1976. Pp. xii, 139. Index. \$15.) This book, short as it is, says a great deal on several major themes treated more extensively in the author's longer works. Because it is concise, it has a sharpness that suits its tough thesis of international law as a system of power politics, open or disguised. Professor Schwarzenberger, relying on Article 38 of the ICJ Statute, hits hard at the pretensions of international bodies, especially the United Nations, to create law. He is also sceptical of transnational law, international criminal law, *jus cogens*, some ICJ opinions, and human rights treaties with wide escape clauses. But he skims over the uncertainty of Article 38 criteria and he minimizes—and sometimes mocks—the recent collective demands for a more decent world and their formative impact on law-creation.

Schwarzenberger is not without idealism and his own brand of “soft law.” Equity, the “*jus aequum*,” broadly defined as good faith and reasonableness, is exalted as an element of international law. His evidence of equity goes back to Hittite-Egyptian relations in the 14th century B.C., treated here in fascinating detail. Although the “*jus aequum*” still seems elusive to this reader, the author's audacious use of historical models and his proposals for comparative history of international law open up new vistas for teaching and research. With his prodigious learning and intellectual vigor, Professor Schwarzenberger, better than anyone, can lead the way.

OSCAR SCHACHTER

*The Concept of Jus Cogens in the Law of Treaties.* By Christos L. Rozakis. (Amsterdam, New York, Oxford: North Holland Publishing Co., 1976. Pp. xiv, 206. Dfl.70, \$26.95.) In this book, based on the author's doctoral dissertation, the notion of *ius cogens* is studied in the framework of the Vienna Convention on the Law of Treaties. The first three chapters are devoted to substance: the function, identification, and modification of *ius cogens* norms; and the last two to procedure: the “sanctioning power” of the norms and the settlement of disputes.

Rozakis sees the introduction of public policy restrictions on the contractual autonomy of states as a step forward in the growing “institutionalization” of the international legal order. A needed “vertical” element is thus imported in the traditional horizontal structure of international law rules. He approves, with few reservations, of the “double consent” test for the identification of *ius cogens* norms provided in Article 53 of the Vienna Convention: They must be rules of general international law and accepted as *ius cogens* by “the international community of States as a whole.” He finds the test flexible and durable, properly responsive to the consensual basis of international law yet strict enough and little susceptible to abuse, thereby safeguarding the security of international transactions. On the other hand, he criticizes as unrealistically strict the Convention's requirement that only norms of the same nature may modify existing *ius cogens* norms.

The author reserves his strongest criticism for the Convention's procedural provisions. Proper procedural machinery for implementing the substantive assertion of *ius cogens* must confront, according to him, two basic issues: the "interpretation and application" of the related legal provisions and "the realization of the sanction" of invalidity. He finds that Articles 65 and 66 of the Convention deal effectively with the former issue but fail with respect to the latter, by limiting the ability to invoke a treaty's illegality only to states party to it and by not adequately providing for compulsory settlement of all possible related disputes. He concludes that, here as elsewhere, "bold intentions of substantive changes have been neutralized by weak procedures" (p. 193).

This is a valuable study of an elusive and controversial topic. Dr. Rozakis' analysis is perceptive, thorough, and very clear. His critique of the Vienna Convention is made with full awareness of the constraints on states participating in the Conference and of the necessities of compromise, yet he does not fail to note points of recurrent confusion in the deliberations. Not all readers will share his positivist predilections for a "more centralized world order" or for treaty law as having "the advantage of providing clear and unambiguous rules" (p. 64). Indeed the last assertion comes as a surprise after the author's penetrating discussion of the obscurities, ambiguities, and other shortcomings of the Vienna Convention. Yet all readers are bound to find his careful and effective analysis instructive and stimulating.

A. A. FATOUROS

*Studi in Onore di Manlio Udina.* Pubblicazioni della Facoltà di Giurisprudenza della Università di Trieste. *Tomo I, Diritto Internazionale Storia delle Relazioni Internazionali; Tome II, Diritto Internazionale Privato Altre Scienze Giuridiche.* (Milan: Dott. A. Giuffrè Editore, 1975. Pp. xxviii, 1860.) Two splendid volumes of articles, written by scholars, most of them in Italian, some in French and German, and a few in English and Spanish, pay affectionate homage to Manlio Udina whose distinguished academic career in international law has spanned almost half a century from his first appointment at the University of Bari to his long and creative work at the University of Trieste, where he became Dean of the Faculty of Jurisprudence and Director of the renowned Institute for International Law and Comparative Legislation.

Volume I is devoted to studies of international law and the history of international relations while Volume II deals with Private International Law/Conflict of Laws and other jurisprudential matters. On the whole the articles of Volume I, which hold more interest for students of international law, are of remarkably good quality for a compendium of this sort. Issues touching the peculiar legal status of Trieste understandably are highlighted in three studies, but subjects like international norms for multinational corporations, international prevention of the hijacking of aircraft, liability for violation of the European Human Rights Convention, uniform law for aliens, the expatriation of nationals, and innocent passage through international straits have also been addressed. In addition a number of articles on such topics as the Organization of African Unity, the Commission of the European Community, the question of abstention in votes by the permanent members of the UN Security Council, and the historical framework for the evolution of international agencies provide valuable insights for the student of international organization.