Peremptory Norms in International Law
Alexander Orakhelashvili

Description
This monograph analyzes 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 criticized and even more often approached with skeptical 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 analyzed 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.

Contents

I Identification of Peremptory Norms
1. Peremptory Norms as International Public Order
2. The Criteria of Identification of Peremptory Norms and their Specific Groups
3. Distinctive Characteristics of Peremptory Norms: Absolute Character, Non-Derogability, and the Effect-Oriented Profile
4. Concepts Cognate to Peremptory Norms
5. Sources of Peremptory Norms

II Effect of Peremptory Norms in General International Law
6. Impact of Peremptory Norms in the Law of Treaties
7. Peremptory Norms and the Validity of the Actions of States
8. The Effect of Breaches of Peremptory Norms
9. The Impact of Peremptory Norms in Customary Law
10. The Problem of Subsequent Validation of Breaches of Peremptory Norms
11. Peremptory Norms and Time: Inter-temporal Aspects

III Peremptory Norms and the Powers of International Organisations
12. The Applicability of Peremptory Norms to the Acts of International Organisations
13. The Types of Conflicts of the Acts of International Organisations with Peremptory Norms
14. Peremptory Norms and the Ascertainment of the Intention of the Organs of International Organisations
15. Invalidity of Acts of International Organisations Offending Against Peremptory Norms and the Remedies Against Such Acts
IV Peremptory Norms and the Powers of International Tribunals
17. Peremptory Norms and Illegal Jurisdictional Reservations
18. Peremptory Norms and Admissibility of Claims: the issues of legal interest, absent third party, and mootness
19. Peremptory Norms and Provisional Measures
20. Peremptory Norms and Friendly Settlement and Discontinuance of Cases
21. Peremptory Norms and Counter-Claims
22. Peremptory Norms and the Remedial Competence
23. Effect of Peremptory Norms in National Legal Systems
V Conclusion