

UNRAVELLING THE MYSTERY OF *JUS COGENS* IN INTERNATIONAL LAW

By ABIF HAMIED*

ABSTRACT

Jus cogens is a mysterious body of international law. For decades, international lawyers have sought to answer a range of questions about *jus cogens*. Yet uncertainty persists. This essay makes a start in unravelling the mystery by addressing a basic question: how *jus cogens* is made, changed, or unmade. Prominent in existing explanations of *jus cogens* law-making is the idea of consent. Many attempts have been made to show that *jus cogens* is consensually made, or that it is not. I suggest that we should abandon consent-based explanations; consent is not a useful lens through which to analyse *jus cogens* law-making. At the same time, existing accounts which do reject consent are not persuasive either. I seek to show how we can more effectively explain *jus cogens* law-making without relying on the idea of consent. In essence, a rule of international law becomes *jus cogens* because it is believed by certain legal officials – principally states – to be morally paramount. These moral beliefs are social facts which go to the weight of the rule, with the consequence that the rule's weight increases. *Jus cogens* rules are weighty rules in international law. This explanation of *jus cogens* law-making draws upon familiar insights in the philosophy of law, and circumvents the problems which trouble existing approaches.

Keywords: *jus cogens*, presumptive norms, law-making, sources of law, legal positivism.

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Chapter 2 Sherlock Holmes And The Mystery Of Jus Cogens

**Maarten den Heijer, Harmen van der
Wilt**



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Jus Cogens Dinah Shelton, 2021-05-20 The doctrine of peremptory norms jus cogens is a set of core obligations in international law In this volume in the Elements of International Law series Dinah Shelton explores its origins and history its revival in the twentieth century and its place in international and domestic jurisprudence Providing a fresh objective and non argumentative approach to the discipline of international law the Elements series is an accessible go to source for practicing international lawyers judges and arbitrators government and military officers scholars teachers and students Beginning with the writings of Grotius Vattel and Suarez Shelton shows how the theory of jus cogens drew upon Roman law for its foundations In the subsequent chapter she considers the emergence of positivism and its rejection of any non consensual basis for binding States to international norms She then turns to the re emergence of jus cogens in theories of the twentieth century and its place in the modern law of treaties The volume includes extensive analysis of the interpretation of jus cogens obligations by international courts and tribunals as well as by various domestic courts including those of Italy Greece Canada the US and the UK The volume concludes with a consideration of the place of jus cogens in modern scholarship

Netherlands Yearbook of International Law 2015 Maarten den Heijer, Harmen van der Wilt, 2016-08-04 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 **Tracing Value**

Change in the International Legal Order Heike Krieger, Andrea Liese, 2023 The international legal order is undergoing a crisis of unusual proportions This book brings together multiple interdisciplinary contributors to explore whether the values underpinning international law itself are changing the processes and mechanisms through which changes might be taking place and how these changes can be negotiated **Intervention in Civil Wars** Chiara Redaelli, 2021-02-25 This book investigates the extent to which traditional international law regulating foreign interventions in internal conflicts has been affected by the human rights paradigm Since the adoption of the Charter of the United Nations foreign armed interventions in internal conflicts have turned into a common practice At first sight it might seem that state practice has developed in a chaotic fashion however on closer examination specific patterns emerge The book charts these patterns by examining the

traditional doctrines of intervention and testing them against state practise The book has two aims Firstly it seeks to clarify the current legal framework regulating interventions in internal conflicts Secondly it plots the emergence of new trends and investigates whether they are becoming part of positive international law By taking this dual focus it offers the first truly comprehensive examination of foreign interventions in internal conflicts The Sign of the Four (Annotated) Arthur Conan Doyle, 2020-10 First published in 1890 The Sign of Four is Sir Arthur Conan Doyle s second book starring legendary detective Sherlock Holmes The story is complex involving a secret between four ex cons from India and a hidden treasure More complex than the first Holmes novel The Sign of Four also introduces the detective s drug habit and leaves breadcrumbs for the reader that lead toward the final resolution

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