Società Italiana di Diritto Internazionale e di Diritto dell'Unione Europea

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Informazioni generali

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Informazioni sul volume

The applicable law on State immunity from civil jurisdiction, as identified by the ICJ in the *Jurisdictional Immunities* case, has the regrettable result of leaving, very often, the victims of gross violations of human rights law with no alternative means of redress; moreover, it deprives *jus cogens* norms of practical, procedural effects. As the current immunity regime produces unfair results at the normative level, the book addresses the question of how to feasibly restrict State immunity from jurisdiction in case of gross violations of human rights, in light of States' resistance to a general *jus cogens*/human rights exception under customary international law.

Moving from a normative perspective in favour of the restriction of the scope of State immunity from jurisdiction in case of gross violations, the book undertakes an empirical analysis of State practice to highlight the challenges that have so far prevented the clear emergence of a human rights exception to State immunity under customary international law. The book also assesses under which circumstances domestic courts are more likely to uphold or disregard State immunity from jurisdiction. On this basis, the book puts forward a plea to restrict State immunity so as to favour access to justice for the victims of gross violations.

In the light of States' interest in exercising adjudicative jurisdiction over acts occurring in their territory, the central thesis of the book is that justice may be achieved by a limited human rights exception to immunity embedded in an enlarged forum tort exception. To build such an exception, the book draws inspiration from private international law rules on the establishment of adjudicative jurisdiction over torts. Private international law has the distinct advantage of offering a broader definition of "forum tort" than the forum tort exception to State immunity as enshrined in international treaties and as interpreted in the few countries whose domestic legislation on State immunity provides for it. The book thus brings together the disciplines of public and private international law.