

CONFERENCE ON COMPARATIVE AND INTERNATIONAL LAW

- International Conference -

- III^d edition -

June 23, 2023

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Section III.

International Law

Friday, June 23, 2023

Online on Zoom

Keynote speakers:

Associate scientific researcher **Cristina Elena Popa Tache**, Institute of Legal Research of the Romanian Academy

Associate professor **Charlotte Ene**, Faculty of Law, Bucharest University of Economic Studies

! Each paper will be presented within 15 minutes

! Fiecare lucrare va fi prezentată în maxim 15 minute

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SCIENTIFIC PAPERS

10.00 - 11.00

DESIGNING A GOVERNANCE SYSTEM FOR CYBERSECURITY OF FOREIGN INVESTMENT IN EUROPE

PhD. Federica CRISTANI

*Head of the Centre for International Law,
Institute of International Relations in Prague, Czech Republic*

Abstract

Increased global digitalisation has brought both economic benefits as well as cybersecurity challenges; more and more companies around the world are becoming the target of cyberattacks. The consequences of cyberattack have ranged from money losses and information theft to infrastructure destabilization. Companies face different types of cyber-attacks. In the last years, the most frequent (documented) cyber-threats have been: malware; phishing attacks; spam; denial of service; ransomware; insider threat; data breaches; information leakage; cryptojacking and cyber espionage. In the context of investment protection, cyberattacks may have different targets: data on foreign investments and/or foreign investors that are available in digital forms (including trade secrets) and data related to investment arbitration. While the consequences of cyberattacks are clear, less clear is how to deal this problem at the international (and European) regulatory level. This paper deals with the question of how foreign investment can be secured from cyberattacks within the investment law framework, both at the international and the European law levels. The focus is on which international and European actors are involved in cybersecurity and investment protection policies; the aim is to design a 'map of relevant actors' – by using the social network analysis method – and highlight the relevant relationships.

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INTERNATIONAL HUMANITARIAN LAW AND PROTECTION OF CIVILIANS IN TIME OF WAR

Student Gawhar Ahmad KHAN

Islamic University of Science and Technology, India

Abstract

International humanitarian law is a compilation of laws aimed at limiting the consequences of armed conflict for humanitarian purposes. It safeguards those that are not or are no longer involved in fighting and limits the arms and tactics of warfare. It also protects people's lives, welfare, and dignity, prohibits torture and inhuman treatment, prescribes fundamental protections for those facing criminal charges, prohibits prejudices, establishes guidelines for women's and children's safety, and regulates facets of the right to food and health. This study shall focus to bring about the role and importance of international Humanitarian Law in protecting and establishing the rights of civilians during the strife and hostilities.

WHAT'S IN A NAME? - 'WAR', 'ARMED CONFLICT', 'AGGRESSION' - RUSSIA - UKRAINE CASE STUDY

Candidate of Science Anastasiia TARASOVA

Central European University, Vienna, Austria

Abstract

The article addresses the language and legal aspects of the definition of 'war', 'armed conflict', 'aggression' on the case study of the so called 'special military operation' launched by Russian Federation against Ukraine on 24th February 2022. In general, with the start of the full scale military aggression by Russia against Ukraine, the whole range of new terms or so called 'novojaz' in George Orwell's terminology/'newspeak' appeared. Words that try to hide or substitute the reality – explosions are called 'hlopki' – clap/swap, aircraft crashes – are named – 'hard landings'. The most significant word/naming from this vocabulary appears to be – 'special military operation' – not to call war a war, 'partial mobilization' – what makes mobilization 'partial' remains quite blurred. Another aspect to be mentioned is that modern way of waging a war goes far beyond the doctrine of intra/inter state antagonism, but involves non-state actors (e.g., private paramilitary 'Wagner Group' or 'kadyrovtsy' – personal fighters known after their leader and head of Chechen Republic Ramzan Kadyrov on the one hand, and the Sheikh Mansur Chechen Peacekeeping Battalion as one of several Chechen volunteer Armed Formations or Ukrainian foreign legion fighting on Ukrainian side; corporations, private entities, volunteers, diasporas, and governments of the 3 party countries providing weapons and equipment). Conventional entrenchment methods of waging war as in the times of the WWI - are beefed up with the high technologies and new kinds of weapons. Furthermore, striking is the practice of creating humanitarian catastrophe as in Syria, which has been practiced in Ukraine since 2014 – attacks on the infrastructure – water pump stations or energy

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objects. In autumn/winter 2022-2023 – Russian rocket attacked energy power grids in Ukraine aiming at creating energy catastrophe. The blackmailing with the occupation of the nuclear power stations – first Chernobyl area and then the largest in Europe – Zaporizhian nuclear power plant - raises grave concerns and poses a threat of nuclear technogenic catastrophe. All this together takes the definition of war from merely politically- military frames and emphasizes the human dimension side of war. Furthermore, military aggression against Ukraine is the violation and breach of the Budapest Memorandum. Under this agreement Russia is one of the guarantors of the sovereignty and territorial unity of Ukraine. Last but not least, the violation of the Budapest memorandum poses a threat of the nuclear non-proliferation regime and the related treaties. Objective of the studies is to get the insight into the various perspectives and developments in formulation of the terms 'war', 'armed conflict', 'aggression' which may be helpful for either working out the working definition and accordingly choosing right approaches to transforming the ongoing situation between Russia and Ukraine. Furthermore, the right definition of the war in Ukraine is also important for the reparation process. Research methods employed embrace qualitative analysis of the definitions in the legal dictionaries and those used by the intergovernmental organisations (e.g., Red Cross, UN, OSCE, etc.) as well as by the academic scholarship. The case study analysis will allow us to trace the development of the so called 'hybrid' war doctrine. Implication of the study touch upon both theory and legal practice. Mainly, the research will contribute into the elaboration of the definition or the components of the definitions and accordingly facilitate the new approaches to the establishment of ceasefires, conflict transformation and peacebuilding.

THE ROLE OF TREATIES FOR INTERNATIONAL LAW: CASE STUDY OF BUDAPEST MEMORANDUM

Candidate of Science Anastasiia TARASOVA
Central European University, Vienna, Austria

Abstract

The article addresses the significance of the international treaties as the instrument of international law for effectively exercising its soft power. The objective of the article is to get the insight into the provisions of the Budapest Memorandum (in 2014 Ukraine has registered it in the UN Treaty database) and the implications of its breach by the guarantor for the future possible armistice / peace treaty deal between Russian Federation and Ukraine or a possible special UN Resolution (as an example / template can be considered Security Council Resolution 242). Furthermore, the question regarding the role of the OSCE in facilitating the agreement is raised. Last but not least, the violation of the Budapest Memorandum sets an odious precedent and directly relates to the nuclear non-proliferation regime. The case is significant for the research as upon the dissolution of the Soviet Union, Ukraine had the third largest nuclear weapons arsenal after the RF and the US. Having joined the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Ukraine has set an example of a peaceful and democratic transition to non-nuclear status. Ukrainian nuclear arsenal was partly destroyed or handed over to Russian Federation in exchange for 'assurances', in Ukrainian or Russian texts of Budapest memorandum – «гарантії», that is not the correct

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translation in fact. Term “Assurances” have a direct equivalent in Russian and Ukrainian languages which is simply promises and its meaning is very different from the legal term ‘guarantees’. Nowadays, we see the consequences of the tricky wording and Ukraine is attacked and bombarded by its neighbour, nuclear state, and the guarantor of the territorial unity of Ukraine. Accordingly, it may lead to a situation when countries will doubt the benefit of giving up their nuclear weapons or joining the non-proliferation regime. The qualitative nature of the research looks into the text of the treaties and employs a mixture of linguistic and legal analysis for getting the insight into the formulation of the provisions of the treaty and their legal implication. The implication of the research is relevant for the theory of international relations, role of intergovernmental organisations and maintaining of the nuclear non -proliferation regime.

11.00 - 12.00

HYBRID THREATS: THE LEGAL RESPONSE IN THE EU AND SLOVAK REPUBLIC

Associate professor Eva JANČÍKOVÁ
Faculty of International Relations,
University of Economic in Bratislava, Slovakia

Abstract

The paper deals with hybrid threats and the legal steps that Europe and Slovakia is taking in recent years to address them. Fight against hybrid threats is an ongoing, never-ending process that requires the development of societal and governmental resilience legally well covered. Hybrid threats are constantly changing and evolving, which means that our response to them must also constantly evolve and adapt. In the contribution, we analyse the legal measures of the EU and Slovak Republic in the field of fight hybrid threats and their institutional security.

RECENT JUDICIAL RESISTANCE AGAIN THE PRIMACY AND AUTHORITY OF EU LAW BY CONSTITUTIONAL COURTS IN SOME MEMBER STATES: A SURVEY OF LITERATURE

Professor Elvira MÉNDEZ-PINEDO
University of Iceland

Abstract

The study explores in the first place recent criticism, backlash and resistance to the authority of European Union (EU) law by the highest constitutional European courts in some EU Member States. Several important rulings show how the primacy and effectiveness of EU law seem highly disputed and undermined with negative consequences

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for the judicial protection of individual rights in Europe. In the second place, the study refers to the doctrine of primacy of EU law created by the Court of Justice of the European Union (CJEU) and explains the reasons why some Member States' courts have mostly accepted primacy of EU law as a principle while reserving a final say on it under certain limited circumstances (constitutional reservations studied mostly by the school of constitutional pluralism). In the third place, the study offers a survey of recent literature regarding the role of national courts in EU law, judicial dialogue with the CJEU and, more specifically, this worrying and current wave of dissent, defiance, and resistance to the authority of EU law.

ACCESS TO JUSTICE IN EUROPEAN LAW: MOVING FROM “ACCESS TO COURTS” TOWARDS A SUBSTANTIVE, HORIZONTAL AND COMPREHENSIVE APPROACH

Professor Elvira MÉNDEZ-PINEDO
University of Iceland

Abstract

The entry into force of the Lisbon Treaty in December 2009 was supposed to have far-reaching implications for the development of a European policy on justice and access to justice as it “constitutionalized” for the first time this important topic. However, at the time of writing, European Union (EU) law has been unable to construct and provide a proper system of access to justice for European citizens across all European Member States. In particular, the study of the case-law of the Court of Justice of the European Union in Luxembourg shows that the European model of access to justice based on litigation, access to courts and on the defense of individual rights is inherently limited. The author advocates a change of approach, aiming for a better definition of a substantive notion of access to justice in the light of a broad system of European social justice and equality. This new approach could be based on the classic theory and methodology of “access-to-justice” developed in the early 80s by Professor Mauro Cappelletti. His encyclopaedia on the topic offered a horizontal comprehensive strategy to construct a justice system and procedural laws based on the needs of the ordinary citizens.

THE EFFECTIVENESS OF THE ROME II REGULATION IN IDENTIFYING ORBITAL POLLUTION AS AN ENVIRONMENTAL DAMAGE

PhD. candidate Stefani STOJCHEVSKA
South East European University, Faculty of Law – Tetovo, North Macedonia
Associate professor Sami MEHMETI
South East European University, Faculty of Law – Tetovo, North Macedonia
Assistant professor Vedije RATKOCERI
South East European University, Faculty of Law – Tetovo, North Macedonia

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Abstract

Besides the numerous benefits offered by outer space, manned spaceflight has led to some negative effects manifested by various forms of pollution when introducing terrestrial substances and materials. Considering the Rome II Regulation, Article 7 applies in cases of non-contractual obligations arising out of environmental damage or damage sustained by persons or property as a result of such damage. Giving particular emphasis on space-faring member states of the European Union and the European Space Agency in regards to the damage and/or the event giving rise to it may occur within an extraterrestrial environment, Rome II does not theoretically grasp the notion of orbital pollution due to it not being identified as an “environmental damage” in any legal source. When attempting to identify orbital pollution as an environmental damage by drawing a parallel to Rome II, two elements are analyzed: (a) specific Earth-orbits polluted with orbital debris; and (b) potential damages to persons and spacecrafts resulting from space-faring nations’ failure to mitigate domestic orbital debris; This critical analysis, hence, examines whether Rome II does justice for extraterrestrial environmental damages and further argues that the extraterrestrial environment – along with persons and property within – is just as equally endangered as the terrestrial environment.

12.00 - 13.00

THE LJUBLJANA – THE HAGUE CONVENTION: GUARANTEE FOR MORE EFFECTIVE COOPERATION IN INTERNATIONAL CRIMINAL FIELD?

Associate professor Alina GENTIMIR

„Alexandru Ioan Cuza” University of Iasi, Romania

Abstract

Paper aims to underline the impressive contribution brought to the legal international criminal framework by the Ljubljana – The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes adopted on 26 May 2023. It is essential to appreciate both the substantive and procedural law provisions of the Convention, which, using qualitative, descriptive, doctrinal, “black-letter” legal research techniques, cover fundamental questions such as the definition of the international crimes, domestic criminalization, establishment of national jurisdiction, *aut dedere aut judicare*, and victims’ rights. Paper clarifies the obligations for the States, such as obligation to establish jurisdiction on more settled grounds: the place of the crime, nationality of the offender and of the victims and, in case the offender is a stateless person, habitual residence and the presence of the offender in the its territory. Data protection regulation imposes the obligation to carry out international transfers of data in the cooperation channels established by the Convention. Finally, State are obliged to “take appropriate measures within its means to provide effective protection from potential retaliation or intimidation” of victims, witnesses, experts and other

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persons, such as relocation and non-disclosure of information that could reveal the person's identity and ensures to victims the right to reparation and participation in criminal proceedings.

SUSPENSION OF THE PROCEDURE BY THE NATIONAL COURT THAT NOTIFIED ECJ FOR A PRELIMINARY RULING, IN THE CONTEXT OF THE RECENT JURISPRUDENCE OF THE EUROPEAN COURT OF JUSTICE

Lecturer Anamaria GROZA

Faculty of Law, University of Craiova
Judge - Craiova Court of Appeal, Romania

Abstract

Notification of the European Court of Justice for preliminary rulings represents or can represent a case of temporary suspension of the procedure. The mandatory suspension of the procedure is regulated in the national law by imperative law rules, operates independently of any analysis of opportunity made by the judge and in an abstract way, irrespective of the concrete elements of the case. The national norms which regulate notification of the ECJ as a case of mandatory suspension seem to be opposite to a recent judgement of the ECJ, pronounced in case C-477/21. The purpose to order suspension of the procedure is to correctly apply the EU law. This purpose can be achieved without the whole suspension of the trial. The judicial research can continue in order to establish the facts of the case, especially when there are proofs that can be lost or degraded by their late administration. Other law problems can be solved, if they are not in liaison with those addressed to the ECJ. By consequence, facultative suspension and the possibility of a partial suspension of the procedure guarantee the effet utile of EU law, finding of the truth and solving of the trials in a reasonable term. The research is descriptive, explanatory and comparative, being accompanied by relevant doctrine and jurisprudence.

THE EUROPEAN HEALTH INSURANCE CARD, BETWEEN BENEFITS AND LIMITATIONS. “ANOTHER PIECE OF EUROPE IN YOUR POCKET”

Lecturer Anamaria GROZA

Faculty of Law, University of Craiova
Judge - Craiova Court of Appeal, Romania

Abstract

The European Health Insurance Card was adopted after long and slow procedures, in order to consolidate the internal market. Nowadays, it has become an important piece of the European health policy and of the European identity. The European citizens can have medical benefits in another Member State that the State where they have a medical insurance, benefits that are necessary and in the absence of which, these citizens should end their stay and return to the State of insurance. The medical assistance can be

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necessary even because of pre-existing or chronic diseases, pregnancy and birth. The medical assistance thus received can be free of charge, partially free of charge or not, according to the legislation of each Member State. The purpose of this article is to draw attention on the obvious limits for the effective right to human health. Even if life and health are among the main values and interests protected by the European treaties, the economic limits seem not to bother and fears for national budgets are considered natural and justified limitations to the right to human health, without a punctual evaluation. The research conducted is descriptive and explanatory, underpinned by relevant case law and doctrine.

THE INDIVIDUAL AS A SUBJECT OF PUBLIC INTERNATIONAL LAW AND PROCEDURAL LAW OF REPARATION

Lecturer Ioan TOMESCU

*Faculty of Psychology, Comportmental Sciences and Administrative Sciences,
“Andrei Şaguna” University of Constanta, Romania*

PhD. student Ionuţ-Gabriel DULCINATU

International Free University of Moldova, Republic of Moldova

Abstract

The essence and primary condition of developing national and international legal treatment systems for the purpose of achieving justice in the interests of the victim and of repairing the damage and damage suffered by the victim, as a result of armed conflicts, is a thorough knowledge of the psychology of the persons who fulfill the quality of victim, of the peculiarities and peculiarities that this quality brings to the individual. In dealing with the situation of the individual there can be no parallelism between victim status and international criminal liability. The historical evolution in this matter proves some gloomy constants, in which the victims of the atrocities of military acts have appeared permanently as shadows, without face and voice, destined to suffer in silence or to live their frustration through acts of rebellion and revenge. But the situation cannot become eternal, so the horrors of the 20th century have brought to life the internal bodies of states and international, in search of a justice that can even be considered revolutionary, considering the total lack of interest of history in the legal treatment of the horrors of war. From Nuremberg to the Hague, a broad movement against the impurity of legal systems was born and developed, leading to the creation of the first permanent international criminal justice. In 1973, in Jerusalem, the first international symposium on victimology was organized, in which the notions of “victimology”, “victim of crime” and “relationships between offender and victim” were addressed. In 1979, in Münster (Germany), the foundations of the International Association of victimologists were established, which coordinated the work of scientists from different countries of the world in the process of developing victimological measures for the prevention of crime. In 1980, the World Congress on the victimological prophylaxis of crime was held in Washington, where it was admitted that the victim of crime was an essential element in the process of the occurrence and Commission of crime and control over crime. On 29 November 1985, the United Nations General Assembly adopted the Declaration on the Fundamental principles of Justice for victims of

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crime and abuse of Power. Most likely, the metamorphosis of the legal position over the human one will take place in two stages: replacing the impurity of the system with justice and justice; the replacement of justice, channeled on the conviction of the guilty, with a restorative justice, which will have the permanent focus, the victim. The evolution of international law centered on restorative justice is, however, rather timid and extremely fragile, with recent international military events unfortunately proving this undesirable reality fully. Thus, in order to be able to better and as close to the truth as possible to assess the situation of victims of massive human rights violations, it is appropriate to know them psychologically and socially and to identify individual needs, related to the rights conferred by justice systems. In this context, we will make a brief analysis of the psychological and social specificity of victims of armed incidents, related to the need for justice.

13.00 - 14.00

THE POSSIBILITY OF A LAW OF ALL FORMS OF LIFE IN THE CONTEXT OF TRANSDISCIPLINARY MUTATIONS IN INTERNATIONAL LAW

Research fellow Cristina Elena POPA TACHE

International Center for Transdisciplinary Research-CIRET, Paris

Abstract

"Tomorrow will know a culture richer in creation and, at the same time, more suited to human's body and soul than that of today." (C. Rădulescu Motru, *Energy Personalism and Other Writings*, Ed. Eminescu, 1984, p. 593) Undeniably, creation exists in everything. The law itself is also a creation, including in the sense of establishment. It is a process dedicated to life as a whole, especially the rights that can be identified so that life in all its forms can enjoy respect, protection and evolution. Everyone's perception of the legal norm should be one of trust, interest, understanding, satisfaction and even joy. Of all, next to the law of nature or canon law, a law of all beings could not exist without the best possible combination of law, respect for life, gratitude and even love in its spiritual rather than philosophical sense, as these two new rights are perceived and manifested by people. A law of all forms of life seen as a body of legal rules would be a higher field of law which would have as subfields: human rights, animal rights, nature rights and other tangential special rights. We are faced with the possibility of reorganising law. My research will focus on a new application of transdisciplinary methodology to international law, approached from the angle of the multiple mutations of our societies. The triggering factor is given by today's society experiencing an unprecedented international level, whether we are talking about technological advances, human or animal enhancement, or whether we are referring to climate change, sustainable development, global crises, armed conflicts, or financial and health reforms. The ultimate goal is to get as close as possible to a better solution for all forms of life, for the well-being of all beings, in a complete application of the concept of *vivir bien*. The research method is exploratory.

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IGNORING AND DISREGARDING HUMAN RIGHTS - THE STEPS TOWARDS ACTS OF BARBARISM THAT REVOLT THE CONSCIENCE OF HUMANITY

Lecturer Mihai STEFANOAI

*Faculty of Law and Administrative Sciences,
„Ștefan cel Mare” University of Suceava, Romania*

Professor Vitalie STATI

Faculty of Law, Moldova State University, Republic of Moldova

Abstract

Ignoring and disregarding human rights are serious problems that can lead to acts of barbarism that revolt the conscience of humanity. In recent years, we have witnessed numerous cases of human rights violations, such as discrimination, violence, torture and even genocide. These acts are fueled by intolerance, hatred and ignorance, and their consequences are devastating for the victims and for society as a whole. It is important to recognize the importance of human rights and to fight against any form of discrimination and violence. Only by respecting and promoting human rights can we build a fairer and more humane world.

FINANCIAL MECHANISMS OF THE EUROPEAN UNION TO SUPPORT CREATION AND EXITS FROM CRISIS SITUATIONS OF AGRI-FOOD NICHE COMPANIES, OF FISH FARMERS AND FORESTERS

Counsellor for European affairs Speranța-Liliana NEAGU

Ministry of Agriculture and Rural Development, Romania

Abstract

In a continuous dynamic of climate change affecting farmers and fish farmers and taking into account the current geopolitical context and its negative effects, new European financial solutions should be identified to mitigate or combat them. Research methods used: case study, sociological method and research hypothesis/theory. Ferenda law proposals: 1. amending the Charter of the United Nations (UN); 2. the creation of an EU financing line for the creation and modernization of niche companies with social and environmental components, with a strong argument for the creation and preservation of public goods; launching proposals for revising the Multiannual Financial Framework, with celerity; 3. New EU support measures through the Social Climate Fund for accidental cases; 4. innovative insurance system.

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THE NEED FOR INTERNATIONAL LEGISLATION REGARDING THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN EDUCATION AND SCIENTIFIC RESEARCH

Professor Constanta-Nicoleta BODEA

*Informatics and Economic Cybernetics Department, Bucharest University of Economic Studies,
„Costin C. Kiritescu” National Institute for Economic Research, Romanian Academy,
Centre for Industry and Services Economics, Romania*

IT expert Adrian VINTILA,

Polytechnic University of Bucharest, Romania

Abstract

Generative artificial intelligence (GenAI) represents artificial intelligence (AI) capable of creating new content, in different formats (text, images, audio, video, etc.), by applying large-scale machine learning models. The application of GenAI tools in different fields have led to intense debates within the professional communities, but also in the public space, regarding the performance ensured by the use of GenAI tools (ChatGPT, Gan.ai, CodeWP, DecorAI, SchoolAI, etc.), but also the aspects of the ethical and legal nature associated with the use of these tools. Education and scientific research represent two of the fields in which GenAI tools have been and are increasingly used today, causing real concerns, mainly in terms of ensuring the development of students' skills, on the one hand and respecting copyright and intellectual property rights, on the other hand. The European Parliament discussed a series of documents related to AI, documents that define a European approach to the use of AI systems. The paper aims to present the results of a study carried out by the authors about the ethical and legal implications of using GenAI in education and research. Also, the authors analyzed the European approach in AI systems, to establish to what extent it satisfies the regulatory requirements for the use of GenAI in the fields of education and scientific research and represents an appropriate starting point in defining the future European legislation in the field of AI.

14.00 - 15.00

THE ANALYSIS OF THE RULES REGARDING THE CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

Associate professor Charlotte ENE

Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

The main purpose of this paper is to examine the international legal provisions concerning the responsibility of States for their internationally wrongful acts, with an emphasis on the content of such

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international responsibility, meaning the legal consequences for the responsible State. At the beginning, the general conditions of the responsibility of State are presented, including the general principles for responsibility. The main part of the paper refers to the new legal relationship which arises upon the commission by a State of an internationally wrongful act. In particular, special attention is given to the new obligations of the responsible State, especially the obligation to make reparation for the harmful consequences that derive from the wrongful act.