TRICI-Law

THE RULES OF INTERPRETATION OF CUSTOMARY INTERNATIONAL LAW

12 - 13 October 2023

Alkis Argyriadis Ampitheatre
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TRICI-Law, UoA & AthensPIL Conference

The Rules of Interpretation of Customary International Law

12-13 October 2023

Conference Description

I. Overview

The TRICI-Law project, AthensPIL, the University of Groningen and the Faculty of Law of the National and Kapodistrian University of Athens have the pleasure to invite you to a conference on 'The Rules of Interpretation of Customary International Law', which will take place at the Faculty of Law of the University of Athens, on 12-13 October 2023. The conference will form part of the research conducted by the project 'The Rules of Interpretation of Customary International Law'. This project has received funding from the European Research Council ('ERC') under the European Union's Horizon 2020 Research and Innovation Programme (Grant Agreement No. 759728).

The Organisers of the Conference are ***Prof. Alexandros-Linos Sicilianos*** (former President of the European Court of Human Rights & Dean of the Faculty of Law of the University of Athens), ***Prof. Photini Pazartzis*** (former Chair of the Human Rights Committee & Constantine G. Karamanlis Chair in Hellenic and European Studies at the Fletcher School of Law and Diplomacy; Director AthensPIL) ***& Prof. Panos Merkouris*** (Principal Investigator of the TRICI-Law project & Professor of International Law, University of Groningen).

II. Theme of the Conference

In international law, interpretation is ubiquitous and is the process through which the interpreter attempts to determine the true meaning of the rule that is being interpreted. Most cases brought before international courts and tribunals deal one way or another with questions of interpretation. This process has been codified in Articles 31-33 of the Vienna Convention on the Law of Treaties (VCLT). Based on these articles, some of the elements that are taken into consideration are the text, and context of the treaty, its object and purpose and the intention of the parties. However, a key issue is that these VCLT articles refer only to interpretation of treaties and not of customary international law.

Customary international law (CIL) , in turn, is one of the formal sources of international law and together with treaties are the most important ones, creating binding rules of international law. Some of the most crucial rules of international law started and continue to exist as CIL. The issue with CIL, however, is that it is an unwritten source of international law. Its existence is determined through an examination of two elements, state practice and *opinio juris*.

Whereas in the application of treaties the process of interpretation is one that always yields a solution, with respect to CIL these rules of interpretation have not been examined. This leads to one of the following two paradoxical scenarios. Either CIL needs to be induced each and every time, by reference to state practice and *opinio juris* (but this is extremely problematic as it fails to take into account the continued existence, development and manifestation of CIL rules); or, CIL is asserted by international judges (which also runs into problems of a potential exercise of a *pouvoir de légiférer*). Evidently, in the study of CIL there is a critical gap in understanding how CIL can be applied in individual cases once it has been formed. Even in the case of this unwritten source, i.e. customary international law (CIL), there are rules of interpretation that bear some similarity to those that exist for the interpretation of treaties.

Against this background, the Conference aims to reflect upon the prospects, methods and limits of rules of interpretation of customary international law focusing on both theoretical considerations and the practice of international (and domestic) courts and tribunals in interpreting customary law across different fields of international law. The overarching theme of the Conference is to discuss the patterns, methods and limits of interpretation of customary international law and the potential divergences of it from treaty interpretation To this end, the Conference aims to compile generalist contributions about the rules of interpretation of customary international law in the context of the theory of sources of international law, but also expert contributions about the rules, methods, and evolution of interpretation of customary law within specific sub-fields of international law.

During the Conference the Draft Conclusions of the TRICI-Law project and their commentaries will also be discussed.

Programme

Thursday October 12, 2023

10:00-10:30 Arrival & Registration

10:30-11:00 Welcome & Opening of the Conference by the Organisers

Prof. Alexander-Linos Sicilianos (Dean of the Faculty of Law, National & Kapodistrian University of Athens);
Prof. Photini Pazartzis (Constantine G. Karamanlis Chair in Hellenic and European Studies at the Fletcher School of Law and Diplomacy; Director AthensPIL);
Prof. Panos Merkouris (Professor of International Law, University of Groningen)

11:00-12:30 Panel 1: From Identification to Interpretation of Custom: Theory, Limits and Interactions

Chair: Prof. Hélène Ruiz Fabri *(Professor, Université Paris 1 Panthéon-Sorbonne)*

- Identification and Interpretation of Customary International Law in the Jurisprudence of the International Court of Justice
  Mrs. Maria Telalian (Legal Adviser to the Prime Minister on Public International Law Matters, Honorary Legal Adviser to the Greek Foreign Ministry)
- Interpretation of Customary Law: Not the Bogeyman but an Irreplaceable Tool
  Prof. Panos Merkouris (Professor of International Law, University of Groningen, TRICI-Law PI)
- Customary International Law and the Interpretation of Treaties: Beyond the 1969 Vienna Convention on the Law of Treaties
  Prof. Malgosia Fitzmaurice (Professor of International Law, Queen Mary, University of London)
- Interpretation *versus* Modification of Customary International Law: Separating the Wheat from the Chaff
  Dr. Andre de Hoogh (Associate Professor, University of Groningen; CAVV member)
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12:30-14:30 Lunch Break

14:30-16:00 Panel 2: Interpretation of Customary Rules for the Protection of Humans & their Environment

Chair: Prof. Frans Nelissen *(Professor of International Environmental Law, University of Groningen)*

- The Interpretation of International Customary Law of the Sea in Light of the Recent ICJ Nicaragua-Colombia cases (2022 and 2023)
  Dr. Efthymios Papastavridis (National & Kapodistrian University of Athens)
- Customary Indirect Dialogue between International Courts and Treaty-Bodies: The Interpretation of the Obligation of Environmental Impact Assessment
  Prof. Seline Trevisanut (Professor of International Law and Sustainability, University of Utrecht)
- Interpretation of Customary Rules of International Humanitarian Law: Much Ado About Nothing?
  Prof. Vaios Koutroulis (Professor of Public International Law, Université libre de Bruxelles)
- Interpretation of Customary Rules in the Context of Protection of the Environment During Armed Conflict
  Dr. Stavros Pantazopoulos (Post-doc Researcher 'Toxic Crimes' Project- Erik Castrén Institute, Researcher, Asser Institute)

16:00-16:30 Coffee/Tea Break

16:30-18:00 Presentation & Open Discussion of TRICI-Law Draft Guidelines on CIL Interpretation with Commentaries
Presentation by the TRICI-Law team (Panos Merkouris, Sotirios-Ioannis Lekkas, Marina Fortuna, Nina Mileva)

19:30 Dinner for Speakers & Chairs

Friday October 13, 2023

9:00-10:30 Panel 3: Interpretation of Customary Law: Moderns Challenges & Approaches

Chair: Prof. Marcel Brus *(Professor of Public International Law, University of Groningen)*

- The Importance and Utility of CIL Interpretation in the Context of Sea-Level Rise
  Prof. Patrícia Galvão Teles (Professor of International Law, Autonomous University of Lisbon; ILC member) [ONLINE]
- Interpretation of Customary Rules of International Space Law
  Dr. Georgios Kyriakopoulos (Associate Professor, National & Kapodistrian University of Athens)
- How does the European Union Interpret Customary International Law?
  Prof. Jan Wouters (Jean Monnet Chair, and Professor of International Law and International Organizations at KU Leuven; CAVV member)
- Interpreting the Customary Rules on State Responsibility: Text, No Text, Hypertext
  Dr. Andreas Kulick (Visiting Professor, Albert Ludwigs University Freiburg)

10:30-11:00 Coffee Break

11:00-12:30 Panel 4: Interpretation of Immunities

Chair: Dr. Jenny Stavridi (Head of the Legal Department of the Ministry of Foreign Affairs of Greece)

- The ILC Draft Articles on Immunities of State Officials from Foreign Criminal Jurisdiction and Customary International Law: Between Identification and Interpretation
  Prof. Concepción Escobar Hernández (Professor, Universidad Nacional de Educación a Distancia, former ILC member & Special Rapporteur)
- Interpretation of Customary Immunity Rules by the Greek Domestic Legal System
  Prof. Maria Gavouneli (Professor, National & Kapodistrian University of Athens)
- Between Systemic Interpretation and the Emergence of New Customary Rules: the Role of Italian Judiciary in the *Jurisdictional Immunities of the State* Saga
  Prof. Alessandra Gianelli (Professor, Sapienza University of Rome)
- Interpretation of the Customary International Law on Diplomatic and Consular Immunities
  Dr. Anastasios Gourgourinis (Assistant Professor, National & Kapodistrian University of Athens)

12:30-12:45 Concluding Remarks & Closing of Conference

13:00 Lunch for Speakers & Chairs

Conference Organisers

Professor Dr. Linos-Alexander Sicilianos, Dean of the Faculty of Law Dean of the Faculty of Law, National and Kapodistrian University of Athens; former President of the European Court of Human Rights (2019-2020); Judge at the European Court of Human Rights (2011-2021); Professor of International Law. Member (1997-2009) and Chairman (2003-2004) of the Committee of experts of the Council of Europe for the Improvement of Procedures for the Protection of Human Rights (DH-PR); Member (2002-2009), Vice-Chairman (2004-2005) and Rapporteur (2008-2009) of the United Nations Committee on the Elimination of Racial Discrimination (CERD); Member since 2000, then Vice-Chairman of the Greek National Commission for Human Rights, 2006-2011; Member of the European Union Network of independent experts in the field of fundamental rights, 2002-2006; Member of the Management Board since 2007 and member of the Executive Board of the Fundamental Rights Agency of the European Union, 2009-2011; Member of the Curatorium of the Hague Academy of International Law, since 2010; Member of the Scientific Board of the Revue trimestrielle des droits de l'homme and of the European Journal of International Law; Member of the Administrative Board of the European Society of International Law.

Professor Photini Pazartzis is the Constantine G. Karamanlis Chair in Hellenic and European Studies at the Fletcher School of Law and Diplomacy, Tufts University (as of 1 January 2023). Photini (Fay) Pazartzis is Professor of Public International Law at the Law Faculty of the National & Kapodistrian University of Athens and Director of the Athens Public International Law Center (AthensPIL). She was a member of the UN Human Rights Committee, the supervisory body of the International Covenant on Civil and Political Rights (2015-2022), serving as its Vice-Chair (2019-2021) and Chair (2021-2022). Professor Pazartzis was a member of the Board of the European Society of International Law and served as President of the Society (2019-2021). She was President of the Hellenic Branch of the International Law Association, and Co-Chair of the ILA Study Group on The Content and Evolution of the Rules of Interpretation (2015-2020, with Professor Geir Ulfstein). She is author of several books and numerous articles on international law. Professor Pazartzis has served as adviser for the Hellenic Ministry of Foreign Affairs, was a member of the Greek delegation to the Sixth Committee of the UN for a number of years, was member of the OSCE Court of Conciliation and Arbitration, and has recently been appointed as expert for the Moscow Mechanism of the OSCE. Her areas of interest are public international law, settlement of disputes, international adjudication and procedure, law of the sea, human rights law and international criminal law.

Professor Panos Merkouris is Professor of International Law at the University of Groningen. He is the Principal Investigator of The Rules of Interpretation of Customary International Law (TRICI-Law) project, a 5-year project funded by the European Research Council (ERC - Grant Agreement No 759728). He formerly held the Chair on Interpretation and Dispute Settlement in International Law,at the University of Groningen;2020 – (present). He is Arbitrator at Xi'an Arbitration Commission (since 2022); Editor in Chief of the TRICI-Law Book Series published by Cambridge University Press (since 2021); Editorial Board Member of the Leiden Journal of International Law (since 2020), of the Netherlands Yearbook of International Law (since 2020) and of the International Community Law

Review (since 2012); Open Access Ambassador of the Faculty of Law of the University of Groningen (since 2020); Co-Rapporteur of the ILA Study Group on Content and Evolution of the Rules of Interpretation (2015-2020) and Fellow of AthensPIL (since 2015). Professor Merkouris has written extensively on the law of treaties, dispute settlement, sources and interpretation, most recently authoring *Interpretation of Customary International Law: of Methods and Limits* (Brill 2023) and co-authoring *Treaties in Motion* (CUP 2020) with Professor Malgosia Fitzmaurice.

Sponsors

The European Research Council (ERC), set up by the European Union in 2007, is the premier European funding organisation for excellent frontier research. It funds creative researchers of any nationality and age, to run projects based across Europe. The ERC offers 4 core grant schemes: Starting Grants, Consolidator Grants, Advanced Grants and Synergy Grants. With its additional Proof of Concept Grant scheme, the ERC helps grantees to explore the innovation potential of their ideas or research results. The ERC is led by an independent governing body, the Scientific Council. Since 1 November 2021, Maria Leptin is the President of the ERC. The ERC's mission is to encourage the highest quality research in Europe through competitive funding and to support investigator-driven frontier research across all fields, based on scientific excellence

The TRICI-Law Project (the acronym stands for "The Rules of Interpretation of Customary International Law") is a 5-year European Research Council Starting Grant project. The project aims to demonstrate that customary international law is open to interpretation, and to identify the rules that govern such interpretation. The TRICI-Law Project is organized in four working packages (WPs), which deal with the theoretical interpretability of customary law (WP1), the practice of international courts and tribunals in the interpretation of customary law (WP2), the comparison between interpretation of rules of customary law and that of rules emanating from other sources of international law (WP3) and a Synthesis WP (WP4).

The Faculty of Law at the University of Groningen is a modern, internationally oriented institution that has existed for nearly four centuries. As it measures itself amongst the best law faculties in Europe, advanced systems of quality control have been implemented to continuously improve the Faculty's research and education. Although the Faculty has grown to become one of the largest law faculties in the Netherlands, it has kept a friendly and informal atmosphere where good relations exist between staff and students.

The National and Kapodistrian University of Athens, officially founded in April 14th, 1837, is the first University not only of Greece but both the Balkan peninsula and the Eastern Mediterranean region. With almost 200 years of history, **the Law School of the National and Kapodistrian University of Athens** is the oldest and largest state institution for the training of young legal scholars in Greece. Its alumni include some of the

most influential and important figures of the recent Greek and European history. The Athens Law School's aspiration is to offer our students better, more useful and creative studies, which will equip them with the necessary skills and qualifications to deal with the complex and ever-changing academic, professional, social, cultural and technological realities. The Athens Law School endeavours to spark the students' interest in learning and research via a training curriculum which combines an interdisciplinary theoretical approach with the needs and demands of legal practice.

The Athens Public International Law Center (AthensPIL) was founded in July 2015. It is an academic institution that forms part of the Faculty of Law of the National and Kapodistrian University of Athens. The mission of Athens PIL is to be a leading research centre committed to the study and promotion of international law. The Athens PIL objectives are: to contribute to the promotion of international law through teaching, research and other scientific events; to provide an environment that brings together students, researchers and academics interested in international law from all over the world; to play a pivotal role in the development of international law through strong cooperation and partnership with other academic institutions or research centers, international organizations and other scientific and social organizations. The Athens PIL key activities include: expert seminars and meetings on carefully selected topics of international law; a bibliographical center with emphasis on International law related research activities and publications; bilateral and multilateral co-operation with other academic institutions or research centers; organisation of conferences on topical issues of international law and national and international events; training and education seminars and programmes.

Panel 1: From Identification to Interpretation of Custom: Theory, Limits and Interactions

Chair: Prof. Hélène Ruiz Fabri (Professor, Université Paris 1 Panthéon-Sorbonne)

Hélène Ruiz Fabri is a professor at the Sorbonne Law School of the University of Paris 1 Panthéon-Sorbonne, where she is back after nine years of secondment to be director of the Max Planck Institute Luxembourg for Procedural Law, where she headed the Department of International Law and Dispute Resolution. She is an Associate Member of the Institute of International Law, a former President of the European Society of International Law and holder of the CNRS Silver Medal. She has published extensively on international law and dispute settlement and is the editor-in-chief of the *Max Planck Encyclopedia of International Procedural Law* (OUP) and the *Journal of World Investment and Trade* (Brill)

Speakers

Mrs. Maria Telalian (Legal Adviser to the Prime Minister on Public International Law Matters, Honorary Legal Adviser to the Greek Foreign Ministry)

Maria Telalian is currently (since July 2020), Legal Adviser to the Prime Minister of Greece on public international law matters, and since 2022, Honorary Legal Adviser of the Greek Foreign Ministry. Previously (2013- 2020), Head of the Legal Department of the same Ministry, and before that, Head of the Public International Law Section of the Legal Department. Deputy Permanent Representative of Greece to the UN during Greece's tenure as elected member of the UN Security Council, and chair of many sanctions committees of the Council. For many years she was the representative of Greece in the Sixth Committee of the United Nation General Assembly, chairing many ad hoc Committees of the latter. She is currently Member (for Greece) of the Panel of Conciliators and Arbitrators of ICSID, and former Agent of Greece before the International Court of Justice, Counsel of Greece before the European Court of Human Rights and Member of the Appeals Board of the Western European Union for the settlement of disputes arising out of violations of the WEU Staff Rules (2010-2015).

"Identification and Interpretation of Customary International Law in the Jurisprudence of the International Court of Justice"

The International Court of Justice has often in its case-law engaged substantially with customary international law, and the *gravitas* of its jurisprudence is undeniable. The present contribution will outline the methodology employed by the International Court of Justice in determining the rules of customary international law. It will do so by engaging with the most revealing examples from its jurisprudence and also focusing on some of the more recent judgments. This way light can be shed on the manner in which the International Court of Justice approaches the task of determining the existence and/or content of a rule of customary international law, whether there are any potential inconsistencies or varieties in approaches, and whether interpretation can be gleaned from some of its or its judges' reasoning.

Prof. Panos Merkouris (Professor of International Law, University of Groningen, Principal Investigator of the TRICI-Law project)

Panos Merkouris is Professor of International Law at the University of Groningen. He is the Principal Investigator of the TRICI-Law project (ERC Grant Agreement No. 759728). Prof. Merkouris has written extensively on the law of treaties, sources, international dispute settlement and interpretation. He recently co-authored *Treaties in Motion* (CUP 2020) with Prof. Malgosia Fitzmaurice, and co-edited *The Theory, Practice, and Interpretation of Customary International Law* (CUP 2022) with Dr.Kammerhofer and Dr. Arajärvi.

"Interpretation of Customary Law: Not the Bogeyman but an Irreplaceable Tool"

State practice and *opinio juris*. Those are the keywords that have been indelibly etched in the minds of every first year law student regarding customary international law. The International Law Commission as well, in its recent work confirmed the importance of these two elements with respect to the emergence of customary international law. But are these two elements really the be all end all with respect to the content-determination of customary international law? What about the interpretation of customary international law?

Usually, although the tides have been shifting significantly, such inquiries surrounding the interpretability and interpretation of customary international law raise dramatic objections. Absolutely not; this would destroy the essence of custom; unwritten rules cannot be interpreted; in the case of custom content merges with existence; interpretation leads to an unacceptable modification of the customary rule; the system is perfect as it is and interpretation would just spoil it. These are some of the objections raised. A common theme is that interpretation of customary international law is portrayed like the boogeyman. But is that really so? This contribution will deconstruct these objections, and show that upon close scrutiny they do not hold water and fall prey to internal inconsistencies. It will demonstrate that interpretation of customary law is far from the boogeyman but rather an indispensable tool that can ensure the relevance, utility and appropriateness of customary international law, as one of the main sources of international law.

Prof. Malgosia Fitzmaurice (Professor of International Law, Queen Mary, University of London)

Malgosia Fitzmaurice holds a chair of public international law at the Department of Law, Queen Mary University of London. Since 2019 she has been a Member of the Institue de Droit International and in 2021 she was awarded the Doctorate Honoris Causa of the University of Neuchâtel. She specialises in international environmental law; the law of treaties; and indigenous peoples. She publishes widely on these subjects.

She has published extensively on these subjects. She and Editor-Chief- of the International Community Law Review and the book Series (published by Brill/Nijhff) *Queen Mary Studies in International Law* . She has been a Visiting Professor at many Universities, such as Berkeley Law School; University of Kobe; Panthéon-Sorbonne (Paris I), University of Ferrara.

"Customary International Law and the Interpretation of Treaties: Beyond the 1969 Vienna Convention on the Law of Treaties"

This is a complex and not at all a straightforward subject-matter. It has several approaches, which are diametrically different. Two main approaches can be identified: a formal and a substantive (which in turn has two subgroups).

A formal approach is exemplified by a situation of where a parties to a dispute before international and national courts are not formally parties to the 1969 VCLT and nonetheless the rule on interpretation of the VCLT is applied as a rule of customary international law. In this case the identical rule of the interpretation is functionally and normatively different as deriving from different sources of international law (see e.g., the 1999 *Kasikili/Sedudu Island (Botswana/Namibia*).

The substantive method of the application of customary international law to treaty interpretation is much more complex. It consists of two different approaches. One hinges on the application by international and national courts and tribunals of a modified rule of the interpretation, which is included in the 1969 VCLT, which may have been already established as a norm of customary international law (or is the process of crystallisation). An example of such a situation is the application of subsequent agreement and subsequent practice (Article 31 (3 and b) of the VCLT as a supplementary means of interpretation (e.g., *Kasikili/Sedudu Island*). Such an approach was confirmed by the International Law Commission in 2018 Draft Conclusions on Subsequent Agreement and Subsequent Practice in Relation to the Interpretation of Treaties. The *Kasikili/Sedudu Island* case is also an example of the International Court of Justice relying as a main means of treaty interpretation on the object and purpose of the treaty.

The other approach has developed outside the scope of the VCLT i.e., a treaty is interpreted in an evolutionary matter. This approach has its roots in the approach of the European Court of Human Rights to the interpretation of the European Convention of Human Rights as a 'Living Instrument'. Is the evolutionary interpretation a norm of customary international law? If we accept that it is, there is a host of questions which arises from such an interpretative technique such as State expectations; legitimacy and the scope of the interpretation and the uneasy relationship between evolutionary interpretation and subsequent agreement and practice, as evidenced by the 2009 *Dispute regarding Navigational and Related Rights(Costa Rica v. Nicaragua)* case.

Dr. Andre de Hoogh (Associate Professor, University of Groningen; CAVV member)

André de Hoogh is associate professor in international law at the University of Groningen. His publications have focussed on the powers of the Security Council, the Tadić case and attribution of conduct in the law of State responsibility, legislative powers of UN peacekeeping operations, the war against Iraq (2003), the Bush doctrine of pre-emptive self-defence, non-proliferation of nuclear weapons, jurisdiction of States, the rules of treaty interpretation, and jus cogens and the use of armed force. Since 2017 he has been a member of the Advisory Committee on Issues of Public International Law, which provides legal advice to the Dutch government and parliament.

"Interpretation *versus* Modification of Customary International Law: Separating the Wheat from the Chaff"

Recent scholarship, engendered by the TRICI-Law project, advances the proposition that rules of customary international law can be interpreted, and that the process of their

interpretation can be regulated in similar vein to the rules applicable to treaty interpretation. As with treaty interpretation, this raises questions as to its foundational basis, goal(s) and limit(s) of interpretation. In treaty interpretation, the foundational basis is found in the intentions of the parties as expressed authentically in the text of the treaty, its goal to establish the legally relevant interpretation, and its (fundamental) limit not to revise the treaty. That particular limit also captures the (theoretical) distinction between the interpretation and modification of a treaty by practice, with the provision proposed by the ILC for the latter being rejected, for various reasons, at the 1968-1969 Vienna Conference on the Law of Treaties.

For rules of customary international law the foundational basis is less obvious, even if it could be said to lie with the practice and acceptance (as law) of States. In contrast with treaties, their practice and acceptance are generated by an amorphous and often unstructured mass of actions, omissions, intentions, opinions and motivations. This will most likely then also impact upon the goal of the process of interpretation of rules of customary international law, which cannot be found in the (relatively) clearly identified intentions, and which may in any case shift over an extended period of time. This may then also entail that the distinction between interpretation and modification of rules of customary international law becomes untethered, and that perhaps no practical limits may be discernible.

Discussing the possibility of change in customary international law, the Court held in the Nicaragua case (para. 207) that "[t]he significance for the Court of cases of State conduct prima facie inconsistent with the principle of non-intervention lies in the nature of the ground offered as justification. Reliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards a modification of customary international law." The Court here is clearly contemplating the identification of a new right, exception or justification otherwise incompatible with an existing rule, which would hence constitute a 'modification' of existing customary international law.

This then raises questions as to the circumstances under which the interpretation of a rule of customary international law will be considered to result in its modification, what practical limitations may be envisaged as part of the regulation of the process of its interpretation to avoid such an occurrence, and what consequence(s) should ensue in case transgression of limitations were to take place. Tentatively, considering that rules of customary international law are subject to change due to changing patterns of practice and *opinio juris*, the primary consequence(s) ought to be a rejection of an irregular interpretation unless bolstered by a renewed analysis of practice and its acceptance as law relevant to the purported change.

Panel 2: Interpretation of Customary Rules for the Protection of Humans & their Environment

Chair: Prof. Frans Nelissen (Professor of International Environmental Law, University of Groningen)

Frans Nelissen is Professor of International Environmental Law at the University of Groningen since 1999. He studied Dutch and International Law at the University of Leiden and was a Visiting Research Fellow at the University of Virginia Law School, Dept. of Oceans Law and Policy. His publications are in the fields of aspects of Aruban and Namibian independence, the Law of the Sea and International Environmental Law. In 1997 he was awarded his doctorate cum laude for a dissertation on Rights and obligations of states with respect to ships and shipwrecks which pose a danger to the environment. From 1999 to 2012 he was Director-General of the renowned T.M.C. Asser Institute on International Law in The Hague. He was involved in project assignments from Dutch ministries and international organizations such as the EU and has served as Legal counsel to several governments of Eastern European Countries. From 2012-2016 he was Professor of Maritime International Environmental Law at the University of Amsterdam and since 2015 he serves as Director of Research of the Law Faculty of the University of Groningen.

Speakers

Dr. Efthymios Papastavridis (National & Kapodistrian University of Athens)

Efthymios (Akis) Papastavridis is Principal Investigator of the Research Project 'EU Maritime Security post-2020' conducted at Athens PIL Center, National &Kapodistrian University of Athens (NKUA). He also teaches international law at the School of Law, NKUA) and he is a visiting lecturer at the Faculty of Law, University of Oxford. Since 2020, Akis is an Expert Consultant of the UN Office on Drugs and Crime, Global Maritime Crime Programme.

"The interpretation of international customary law of the sea in light of the recent ICJ Nicaragua-Colombia cases (2022 and 2023)"

The international courts and tribunals, including the International Court of Justice (ICJ), are often called to apply international law of the sea in contentious cases. When one of the litigants is not party to the 1982 UN Convention on the Law of the Sea (UNCLOS), the applicable law would necessarily be the customary international law (CIL), as it occured in a saga of cases between Nicaragua and Colombia.

In 2022, the ICJ issued its decision on the Alleged Violations of Sovereign Rights in the Carribbean Sea, and in 2023 on the dispute concerning the continental shelf beyond 200 n.m. between these two States. In both cases, the ICJ heavily engaged in identification, interpretation, and application of CIL.

The presentation will explore the interpretative tools the ICJ employed in its Judgments and try to identify trends or patterns in interpretation of customary international law.

Prof. Seline Trevisanut (Professor of International Law and Sustainability, University of Utrecht)

Seline Trevisanut is professor of International Law and Sustainability at Utrecht University School of Law. She has taught and conducted research in various institutions, including Columbia University, the European University Institute, the Max Planck Institute for Public Comparative and International Law and UC Berkeley. Her publications include several papers and chapters on the law of sea and international environmental law, a monograph on *Irregular migration by sea in international and EU law* (2012, in Italian), and edited volumes, *inter alia*, on *Energy from the Sea: An International Law Perspective* (2015) and *Regime Interaction in Ocean Governance: Problems, theories and methods* (2020).

"Customary Indirect Dialogue between International Courts and Treaty-Bodies: The Interpretation of the Obligation of Environmental Impact Assessment"

The present contribution wants to investigate the role of treaty bodies in developing and interpretating the content of customary rules. In order to do so, it will focus on the duty to perform an environmental impact assessment (EIA), which is a well-established customary rule, and on the role that treaties bodies of selected multilateral environmental agreements (MEAs) have had in shaping the content of the duty. Even though international courts and tribunals seldomly refer to treaty-bodies instruments, it is here argued that the latter deeply influence the practice and *opinio juris* of states. There is then a silent dialogue between courts and treaty bodies concerning the content of customary rules.

For instance, in the Pulp Mills case, the ICJ affirmed: "[T]he obligation to protect and preserve, under Article 41 (a) of the [1975 Statute], has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource" (para. 204); "[t]he rules and measures which [Argentina and Uruguay] have to adopt under Article 41 [of the 1975 Statute] should also reflect their international undertakings in respect of biodiversity and habitat protection" (para. 262).

The 'international undertakings in respect of biodiversity' undoubtfully connect the customary obligation of EIA to the legal framework of the Convention on Biological Diversity (CBD). Article 14 of the CBD provides for an international obligation to submit to EIA procedure any activity which might significantly impact biodiversity, internally or transboundary. In order to support the integration of biodiversity considerations in EIA procedures, the treaties bodies of the CBD have played an important role in specifying and developing the content of EIA procedures. The Conference of the Parties (COP) of the CBD adopted in 2006 the Voluntary Guidelines on Biodiversity-inclusive Impact Assessment. The lawmaking powers of COPs within multilateral environmental agreements (MEAs) are highly debated and beyond the scope of the present paper. What is important here is the assessment of the normative value of the non-binding instrument which is the outcome of the decision-making process. Although not formally binding, the 2006 Voluntary Guidelines are considered to have 'high normative value because they have been negotiated under the auspices of the CBD and adopted by the [COP]'. Moreover, the 2006 Voluntary Guidance benefits from the external support of other guideline documents with a similar content, such as the resolutions of the Ramsar Convention COP 2008 and the Convention on Migratory Species COP 2002. They 'operate collectively to reinforce

the principles associated with biodiversity-inclusive impact assessment'. They, consequently, increase each other normative value and can be construed as an authoritative interpretation of the customary rule.

Prof. Vaios Koutroulis (Professor of Public International Law, Université libre de Bruxelles)

Vaios Koutroulis is a professor of public international law at the ULB Faculty of Law and Criminology. He has given numerous lectures on international humanitarian law (IHL) and international criminal law, including courses for members of the armed forces, humanitarians and other professionals. He has published extensively on IHL and *jus contra bellum*. Vaios Koutroulis is a member of the International Humanitarian Fact-Finding Commission, the only treaty-based standing body addressing compliance with the 1949 Geneva Conventions and their first additional protocol. He was an adviser to the Counsel and Advocate of Belgium in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* before the International Court of Justice (2012) and has consulted the Belgian Ministry of Foreign Affairs on international criminal law questions relating to the negotiations of an international convention on mutual legal assistance for core international crimes (MLA initiative).

"Interpretation of Customary Rules of International Humanitarian Law: Much Ado About Nothing?"

International Humanitarian Law is composed of a significant number of customary rules. The rules are not limited to fundamental principles, like the principle of distinction, of proportionality, or of humane treatment of persons at the hands of the enemy. They include numerous prohibitions relating both to the conduct of hostilities and to the protection of the victims of armed conflicts. The 2005 ICRC-led study on customary international humanitarian law has identified – and thus cloaked with a 'lexical garment' – 161 customary rules. The presentation will first seek to confirm that customary rules of international humanitarian law have indeed been considered interpretable and have been interpreted. It will then look more closely to the methods of interpretation of these rules in order to determine whether any patterns or limits can be identified.

Dr. Stavros Pantazopoulos (Post-doc Researcher 'Toxic Crimes' Project- Erik Castrén Institute; Researcher, Asser Institute)

Stavros-Evdokimos Pantazopoulos is a post-doctoral researcher with the Toxic Crimes Project of the Erik Castrén Institute at the University of Helsinki, and a researcher at the Asser Institute.

Stavros is currently a visiting researcher at the National and Kapodistrian University of Athens School of Law, and the Chair of the Law Interest Group of the Environmental Peacebuilding Association. Stavros obtained his Ph.D degree in international law from the European University Institute, and his scholarship focuses on the legal aspects of environmental protection during and after armed conflict.

"Interpretation of Customary Rules in the Context of Protection of the Environment During Armed Conflict"

The ongoing interstate war between Ukraine and Russia has been claimed to be the most well documented war throughout human history, raising awareness, inter alia, for conflict-related environmental harm. The international community has been paying increasing attention to wartime environmental damage during the last decades, and this has further translated in the undertaking of related legal initiatives within the broader field of protection of the environment in relation to armed conflicts (PERAC).

In this respect, the UN International Law Commission (ILC) adopted 27 PERAC principles in 2022, while the International Committee of the Red Cross (ICRC) issued its Guidelines on the Protection of the Natural Environment in Armed Conflict in 2020. The ILC, in line with its mandate, attempted to codify and progressively develop the relevant international law, while the 2020 ICRC Guidelines 'are a restatement of the law as it stands in the eyes of the ICRC', even though, for the sake of completeness, they contain a set of recommendations, as well. Unsurprisingly, both endeavors have attracted wide attention, not least so because the legal dimension of PERAC has been dormant since the late 1970s when the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques was adopted, and Additional Protocol I included two environment-specific provisions.

Against this background and taking into account the dearth of judicial pronouncements on any aspect of the customary law of PERAC, the present contribution will focus on how the two abovementioned actors, namely the ILC and the ICRC, and their respective processes, have treated the customary rules of PERAC. To this end, I will also explore the statements before the UN General Assembly Sixth Committee where States have been sharing their views on the ILC's outputs on multiple occasions. On this account, I intend to shed light on three main issues:

a) the civilian character of the (natural) environment and the associated implications, namely the applicability of the fundamental international humanitarian law principles (distinction, proportionality, precautions etc.) to the environment and its parts;

b) the interpretation of the tripartite threshold of impermissible environmental damage (widespread, long-term, *and* severe). It is noteworthy that all these terms are found in the equivalent treaty prohibitions, enshrined in articles 35(3) and 55 API. Even more importantly for our purposes, these treaty prohibitions, which according to the ICRC also enjoy customary status, were adopted more than 45 years ago, and it is trite to mention that humans' ecological understanding has since then made huge breakthroughs. Accordingly, the issue of the evolutive interpretation of the respective customary prohibitions takes center stage;

c) the interpretation of the relevant customary rules in situations of occupation (see ILC PERAC principles 19-21), which have been informed by notions and principles of international environmental law, foregrounding the question of the applicability of the principle of systemic integration in the domain of customary international law, and its contours thereof.

Presentation & Open Discussion of TRICI-Law Draft Guidelines on CIL Interpretation with Commentaries

Presentation by the TRICI-Law team (Panos Merkouris, Sotirios-Ioannis Lekkas, Matina Fortuna, Nina Mileva)

Dr. Sotirios-Ioannis Lekkas is Assistant Professor at the University of Sheffield and was postdoctoral researcher for the project. His research focuses on the content and evolution of rules of interpretation in international law. Prior to this position, Sotirios worked as a judicial fellow at the International Court of Justice and as a tutor in public international law for the Faculty of Law of the University of Oxford. Sotirios holds a DPhil in Law from the University of Oxford. He has studied law in Athens and London (UCL), where he was awarded the Schwarzenberger Prize in International Law by the University of London. He is a member of the Bar in Athens, Greece (non-practicing).

Marina Fortuna is a PhD candidate and lecturer at the University of Groningen. She is part of the TRICI-Law project. Her research focuses on the interpretation of customary international law in international courts and tribunals. Her research is funded by the European Research Council. Her research research focuses on the practice of international courts (ICs) and quasi-judicial bodies (QJBs), especially that of the ICJ, human rights courts and quasi-judicial bodies and international criminal tribunals, which she examines from the perspective of different topics from general international law.

Nina Mileva is Assistant Professor of Public International Law at the University of Groningen. Prior to this, she was a PhD researcher of the TRICI-Law project, working on the interpretation of customary international law and the role of domestic courts in that process. She defended her PhD titled '*A Theory of Interpretation for Customary International Law*' in September 2023, at the University of Groningen. Mileva's research interests lie in the fields of general international law, legal theory, the relationship between national and international law, and critical approaches to international law.

Panel 3: Interpretation of Customary Law in a 21st Century Society & Legal System

Chair: Prof. Marcel Brus (Professor of Public International Law, University of Groningen)

Marcel Brus is Professor of Public International Law at the University of Groningen and member of the board of the Department of Transboundary Legal Studies (Faculty of Law). Together with Prof. P. Westerman, he is director of the research programme Transboundary Legal Studies of the Faculty of Law. Currently he is a member of the editorial board of the Netherlands International Law Review. He was a member of the editorial board of the Leiden Journal of International Law (1989- 2009 and Editor-in-Chief from 2003-2005) and of the Netherlands Yearbook of International Law (1998-2008). From 2001-2013 he was a member (and in 2012-13 the chair) of the Advisory Committee on Questions of Public International Law (CAVV), advising the Dutch Government and Parliament. From 2003 to 2012 he was Hon. Secretary of the Royal Netherlands Society of International Law. His research concentrates on the interaction between international law and politics, the development of international law as a system of law, international environmental law and sustainable development, international investment law and international dispute settlement.

Speakers

Prof. Patrícia Galvão Teles (Professor of International Law, Autonomous University of Lisbon; ILC member)

Professor Patrícia Galvão Teles is member of the United Nations International Law Commission, and its current Chair. She is Legal Advisor of the Portuguese Ministry of Foreign Affairs, Associate Professor of International Law at the Autonomous University of Lisbon and Co-Director of the CIL eAcademy of International Law of the National University of Singapore.

At the International Law Commission, she was also General Rapporteur at the 70th Session and Chair of the Drafting Committee for the 72nd Session in 202. In 2019, she was appointed Co-chair of the Study Group on "Sea-level rise in relation to International Law" and is responsible for the sub-topic "Protection of Persons affected by Sea-level Rise".

"The Importance and Utility of CIL Interpretation in the Context of Sea-Level Rise"

At its 3467th meeting, on 21 May 2019, the International Law Commission decided to include the topic of 'sea-level rise in relation to international law' in its programme of work. Not only that but it also took the stance to consider the topic on the premise that sea-level rise is a fact, already proved by science. Sea-level rise is a phenomenon with global and wide-ranging implications. More than 70 States are or are likely to be directly affected by sea-level rise. This accounts for more than one third of the States of the international community. An equally large, if not larger, number of States is likely to be indirectly affected. Such a global phenomenon, creating global problems unquestionably has resulted and will continue to result in international law implications in a variety of areas, ranging from statehood and maritime delimitation, to human rights and environmental protection. Faced with such a complex issue, this contribution will examine the

importance and utility of interpretation of customary international law in the context of sea-level rise.

Dr. Georgios Kyriakopoulos (Associate Professor, National & Kapodistrian University of Athens)

Georgios Kyriakopoulos is Associate Professor of International Law at the National & Kapodistrian University of Athens (elected in 2023). He is Member of the Greek Delegation at ICAO, the United Nations Committee on the Peaceful Uses of Outer Space (UN COPUOS - Legal Subcommittee and the Plenary) and COSPAS-SARSAT. He is Member of the Hellenic Society of International Law and International Relations (where he served on the Board of Directors between 2011-2017). He has served as Rapporteur to the Scientific Council of the Greek Ministry of Foreign Affairs (2017-2020), as Member of the Greek Air Accident Investigation and Aviation Safety Board (2008-2010) and as Legal adviser of the Minister of National Defense (Greek Government) in Air Law and International Law (2005-2006). He has been visiting professor at McGill University, Université Nice Sophia Antipolis, and the Panteion University. Dr. Kyriakopoulos is a renowned expert and has written prolifically on international air and space law.

***"Interpretation* of Customary Rules of International Space Law"**

In modern international space law, custom is a source from which rules governing the relations of states in those areas emerge. This can be the case both in areas in which, up to recently, there was no treaty regulation, but also where there already is. Customary international law is and will continue to be not only necessary and useful, but one of the most important sources of international space law. New customary rules can and may continue to emerge alongside existing ones. In such a complex field of law, where one has to deal not only with the complexity *eo ipso* of the field of regulation, but also the multifariousness of interactions between treaty and customary rules, and between customary rules, concreteness about the content of the rules in play is crucial. In this context, the current contribution will examine the importance and manner of interpretation of customary rules in international space law.

Prof. Jan Wouters (Jean Monnet Chair, and Professor of International Law and International Organizations at KU Leuven; CAVV member)

Jan Wouters is Full Professor of International Law and International Organizations, Jean Monnet Chair *ad personam* and Director of the Leuven Centre for Global Governance Studies and the Institute for International Law at KU Leuven. He also serves as Administrator of the America Europe Fund. He has published widely on international and EU law, global governance and international organizations.

"How does the European Union Interpret Customary International Law?"

The present contribution looks into the practice of the European Union (EU) in interpreting customary international law. While the analysis focuses in the first place on the case-law of the Court of Justice, it will also be explored how other EU institutional actors interpret customary international law, namely the European Commission, the Council, the European External Action Service and the European Parliament, and whether inter-institutional differences appear. The institutional practice will be critically assessed from

the viewpoint of the EU's constitutional commitment to "the strict observance and the development of international law", as laid down in Article 3(5) of the Treaty on European Union.

Dr. Andreas Kulick (Visting Professor, Albert Ludwigs University Freiburg)

Andreas Kulick (Privatdozent and Dr. iur., Eberhard Karls University Tübingen) is currently a visiting professor at the Albert Ludwigs University Freiburg, Germany. His main areas of interest pertain to general international law, international adjudication, international investment law and international and regional human rights law. He is author, editor and co-editor of seven books with Cambridge University Press, Oxford University Press and Mohr Siebeck and he has published over 50 contributions in international peer-reviewed journals and edited collections. He is an active member of the International Law Association and currently serves on its Committee on "Submarine Cables and Pipelines under International Law". Moreover, he has extensive experience representing sovereign and non-sovereign clients before international courts and tribunals and advising states on all aspects of international law.

"Interpreting the Customary Rules on State Responsibility – Text, No Text, Hypertext"

Interpreting customary international law poses various challenges. First and foremost, custom itself is an unwritten source of international law, which, however, may find expression in various written texts that may serve as the interpretive material from which to glean content and meaning of an individual customary rule. The law of state responsibility is a prime example, begging the question how to deal with several interconnected 'texts' – the ARSIWA, the Commentary, other ILC work, individual expressions of state practice and *opinio juris* and the actual unwritten customary norm hovering over all of them – and what rules should guide their interpretation.

In this presentation, I draw on insights from linguistic and literary studies as well as media theory to tackle custom's complex textuality. Its lack of a fixed textual centre, the plurality of numbers and forms of relevant expressions of culture, its openness to change, etc., so I argue, very much resembles a hypertextual structure – a specific form of intertextuality, of interconnections of semiotic signs. Hypertext is the 'text' displayed on an electronic digital device that references it with other texts via so-called hyperlinks. Hypertext consists of various blocks of 'texts', i.e. signs (written text, pictures, music, tables, diagrams, animations, videos, etc.), that are linked to each other. Hypertext is variable, it is 'de-centered' and it is interactive, among others: all attributes that custom shares.

Viewing custom as hypertext offers several insights. Most importantly, as its textuality differs considerably from that of a treaty, this casts doubts on whether interpreting a customary norm's text, as a rule, should follow the methodology of treaty interpretation. The latter is based on a clear-cut voluntaristic premise that is reflected in the textual structure of the interpretive materials: the treaty text is at the centre, the other relevant 'texts' form different layers of the periphery. A customary norm lacks such a fixed centre and hence a hierarchical structuring of its 'texts'. Yet, custom's variable structure also allows for the addition of focal points: texts that, although not fixed textual centres, assume heightened interpretive authority. Such special authority derives from thorough vetting processes that the genesis of these texts underwent: either by states themselves or, additionally, by expert bodies that states accept as bestowed with particular expertise and representativeness. The ILC's work on state responsibility is a case in point.

The variety of texts that custom provides as interpretive material requires setting micro and meta rules of interpretation. Micro rules pertain to the interpretive methodology of

each specific text or set of texts: Treaty texts follow the methodology set out in Art. 31-33 VCLT, domestic legislation is to be interpreted according to the domestic rules of statutory interpretation, unilateral acts follow their own methodology, etc. I develop certain guideposts for an interpretive methodology of the ILC work on state responsibility, taking into account the specific nature and interconnectedness of its various texts. Meta rules of custom interpretation consist of the factors determining focal points and the tools to weigh potentially differing interpretive outcomes of micro rule interpretation.

Panel 4: Interpretation of Immunities

Chair: Dr. Jenny Stavridi (Head of the Legal Department of the Ministry of Foreign Affairs of Greece)

Zinovia Stavridi is a member of the Legal Department of the Greek Ministry of Foreign Affairs. She currently holds the position of Legal Adviser, Head of the Legal Department. She graduated from the Law School of the National Capodistriac University of Athens and is a holder of a DEA in Public International Law and a Doctorat d'Etat of the University of Paris II.

Speakers

Prof. Concepción Escobar Hernández (Professor, Universidad Nacional de Educación a Distancia, former ILC member & Special Rapporteur)

Concepción Escobar Hernández holds a Bachelor in Law from the Complutense University of Madrid (1981), she got her Law PhD from the same University in 1987. She is Professor of Public International Law at the *Universidad Nacional de Educación a Distancia/UNED*, where she served as Dean and Director of the Department of International Law. From 2011 to 2022 she was Member of the International Law Commission (UN), and Special Rapporteur on the topic "Immunity of State officials from foreign criminal jurisdiction" (2012-2022). From 2004 to 2012, she was the Head Legal Adviser on International Law of the Spanish Ministry of Foreign Affairs. Since 2019 she is the Director of the Spanish Red Cross Centre of Studies on International Humanitarian Law. Since 2022 she is an Expert for the Human Rights Dimension Mechanism of the OSCE. She is the author of many publications dealing, *inter alia,* with the following topics: jurisdictional immunities, international courts and tribunals, human rights, international criminal law, peacekeeping, international organizations and European Law.

"The ILC Draft Articles on Immunities of State Officials from Foreign Criminal Jurisdiction and Customary International Law: between Identification and Interpretation"

In 2022, the International Law Commission has adopted the first reading of the Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction. Since the beginning of the work on this topic in 2007, the issue of the customary international law has been present in the Commission's discussions from different perspectives, including the very nature and scope of the institution and the identification of State officials who enjoy this type of immunity.

This debate has taken place in parallel with two other processes related to the identification and value of international custom. The first of these has taken place within the International Law Commission itself, which over the past two *quinquenium* has considered the topic of the identification of customary rules of international law. The second has occurred before the International Criminal Court, concerning the existence or not of a custom excluding the immunity of heads of State from criminal jurisdiction and the obligation of States to cooperate with the Court, together with the determination of the scope of this international custom. Although these are autonomous processes, the coincidence in time of the three processes (ILC-Immunities, ILC-Customary Law and ICC) has generated certain interactions that deserve to be analysed.

The issue of the existence and interpretation of customary international law has taken a special significance in relation to the identification and definition of the limits and exceptions to immunity contained in article 7 of the Draft Articles on Immunities, according to which immunity from foreign criminal jurisdiction *ratione materiae* does not apply in respect of the crimes under international law listed in that article.

In this context, there has been an interesting debate in the ILC about what elements of practice can serve as a basis for identifying the existence of an international custom or, at least, a trend in practice that can be identified as a custom in *status nascendi*. This debate has focused not only on the identification of the practice (and *opinio iuris*) sufficient to build an international custom, but also on the assessment and interpretation of the practice itself, and -as a consequence- on the rules governing the interpretation of customary international law. Whether the teleological and systemic interpretation were applicable has been one of the most controversial issues.

These elements should be analysed to clarify the role of the customary international law in defining the legal regime designed by the International Law Commission with respect to the Immunity of State officials from foreign criminal jurisdiction. In parallel, the ILC's work on this topic offers useful elements for reflection on the interpretation of customary international law.

Prof. Maria Gavouneli (Professor, National & Kapodistrian University of Athens)

Maria Gavouneli (Professor of International Law, National & Kapodistrian University of Athens) LL.M. (Cantab), Ph.D. (Cantab) (Guggenheim Prize); Professor of International Law, Faculty of Law & Athens Public International Law Center – Athens PIL; Director, Refugee & Migration Studies Hub – RMS Hub, National & Kapodistrian University of Athens; Fulbright Scholar – Greece at the University of California Berkeley (2018-2019); Associate Research Fellow, University of London; visiting professor and lecturer in several universities and research institutions around the world; published extensively on the law of the sea, energy and environmental law as well as migration issues.

Director General, Hellenic Foundation for European & Foreign Policy – ELIAMEP; President of the Greek National Commission for Human Rights; member of the Managing Board, Greek National Transparency Authority; member of the National Accessibility Authority.

"Interpretation of Customary Immunity Rules by the Greek Domestic Legal Sytem"

Historically, the Greek courts have been instrumental in developing the customary rules of immunity. That tradition has been reiterated with the Distomo saga and its many offshoots, which addressed questions pertaining to the identification and interpretation of

possible new rules, most notably on a possible tort liability exception. In spite of language constraints, the impact of these decisions was felt in numerous jurisdictions in both domestic and international courts and tribunals.

Prof. Alessandra Gianelli (Professor, Sapienza University of Rome)

Alessandra Gianelli, Ph.D.in International Law Sapienza University Law School, LL.M. European University Institute and Yale Law School, is currently Professor of Public International Law at the Sapienza University Law School, having previously taught at the Law Schools of Florence and Teramo.

She is on the Board of Directors of the Rivista di Diritto internazionale. She was on the Council of the Italian Society of International Law, 2015-2017.

"Between Systemic Interpretation and the Emergence of New Customary Rules: the Role of Italian Judiciary in the *Jurisdictional Immunities of the State* Saga"

In accordance with art. 10, para. 1 of the Italian Constitution, the Italian judiciary applies and interprets, following a strict dualist outlook, the domestic rules instantaneously created by art. 10 at the emergence of general international law. Such rules have a constitutional standing, with regard to other sources of Italian law. This normative backdrop has provided Italian courts fertile soil to engage with the interpretation of customary international law. In its landmark *Ferrini* judgment of 2004, the Italian Cassation Court interpreted the centuries-old rule of foreign State immunity in domestic courts in light of the developments occurring in international law in the last few decades, in particular in view of the peremptory nature of some of those rules. The Cassation Court found a conflict of international customary rules, which was resolved by reading the traditional customary rule of State immunity also in light of supervening peremptory rules. Such a systemic interpretation of rules is indeed the main task of the highest courts of every municipal legal system. In the latter case 238/2014, the Constitutional Court felt compelled to interpret the rule on State immunity according to the 2012 International Court of Justice judgment in the Immunities of the State case, but then refused to apply it in the Italian system and advocated a change in the law brought about by State practice, which it championed. In the recent 159/2023 judgment, the Constitutional Court employed the balancing of interest approach to try to meld together the need to comply with international judgments, the preservation of fundamental concerns of the State in the protection of human rights and the interpretation of the scope of the rule on jurisdictional immunity of State-owned property.

The Italian saga provides a good example of the different roles municipal courts play with regard to custom, from its interpretation to its change.

Dr. Anastasios Gourgourinis (Assistant Professor, National and Kapodistrian University of Athens)

Anastasios Gourgourinis is Assistant Professor of International Law at the Faculty of Law of the National and Kapodistrian University of Athens, specializing in International Economic Law. He is also a Research Fellow at the Academy of Athens and a membre associé of the Centre de Recherche sur le Droit des Marchés et des Investissements Internationaux de Dijon (CREDIMI), Université de Bourgogne. Anastasios has served in the past as Special Legal Advisor at Greece's Ministry for Development and Competitiveness, and the Ministry of State, advising on issues pertaining to investment, trade and state aid. Currently, he practises with the Athens Bar in Greece. Anastasios' teaching and research interests include public international law, international investment law and WTO law, particularly from the perspectives of international arbitration and adjudication, the theory of sources of international law, State responsibility, and normative fragmentation of international law.

"Interpretation of the Customary International Law on Diplomatic and Consular Immunities"

Diplomatic and consular immunities are considered as the oldest principle of the law of diplomatic and consular relations. Customary international law on the matter has evolved hand-in-hand with the 1961 and 1963 Vienna Conventions. The relevant provisions of the Vienna Conventions either reflect pre-existing customary international law, or the consistent practice of their implementation (even by the few states who are non-parties to them) has rendered them part of customary law. The present paper analyzes how domestic courts have interpreted the customary international law on diplomatic and consular immunities, balancing between the right to exercise diplomatic and consular functions and the prohibition of interference in the internal affairs of the receiving State.

Comité d'Accueil

Konrad Turnbull is an interdisciplinary PhD researcher within the Department of Transboundary Legal Studies and Faculty of Economics & Business at the University of Groningen, where his research focuses on international courts' approaches in adjudicating cases of structural discrimination. He holds a BS from Shepherd University, LLB & LLM in International Human Rights from the University of Groningen, an LLM in International Comparative Law from The George Washington University Law School, and is assistant editor on the forthcoming TRICI-Law edited volume, P Merkouris, A Kulick, J Álvarez-Zarate & Żenciewicz (eds), *Custom and Its Interpretation in International Investment Law* (forthcoming CUP 2023).

Ivo Tarik de Vries-Zou is a Doctoral researcher at the Transboundary Legal Studies department of the University of Groningen. My research concerns how soft law may be used to interpret treaties and customary law. I look especially at the case law of the International Court of Justice and its predecessor. Besides this, I have also done research into the test which the Court employs to determine its material jurisdiction under certain compromissory clauses.

Dionysia Vanikioti is a trainee lawyer in Athens. She graduated from the law school of Democritus University of Thrace. During her studies she participated and distinguished herself in the Telders International Law Moot Court Competition. She is currently an LLM candidate of Public International Law at the National and Kapodistrian University of Athens.

Alkiviadis Konstantaros holds an LL.B from the Law School of the European University of Cyprus (EUC) and is currently pursuing an LL.M. in Public International Law at the Faculty of Law at the National and Kapodistrian University of Athens. He has interned at the Embassy of Greece in Sofia, at both Greek and Cypriot law firms, International Foundations and the Bureau of International and Constitutional Institutions of the Academy of Athens.

Assistance with the Organisation

The organisers would also like to thank the following people for their invaluable assistance with the organisation and promotion of the Conference:

Tamara Hummel is Project Manager of the TRICI-Law project. She was employed at the Faculty of Science and Engineering (University of Groningen) for more than 20 years as management assistant and recently joined the research office of the Faculty of Law and assists in the project reporting of a couple of very divers projects. Next to her appointment at the research office, she is involved in the knowledge security team of the University of Groningen.

Dr. Eleni Micha holds a doctorate degree in law from the University of Athens and a diploma from ICRC. Dr. Micha specializes in public international law and her particular fields of interest are international & regional protection of human rights, international humanitarian law & law of war, international criminal law and domestic application of international law. She currently holds a teaching post at the Department of International Studies at the School of Law of the University of Athens.

Matina Papadaki is a PhD Candidate at the National and Kapodistrian University of Athens, and a Researcher at AthensPIL. Her doctoral research focuses on the reconceptualization of general principles of law in international law. She holds an LL.M (i) from the University of Cambridge and a bachelor on International and European Relations with emphasis on Public International law.

Dimitris Panousos is a PhD candidate in Public International Law at the European University Institute (scholar of the Hellenic State Scholarships Foundation - IKY) and a Researcher at the AthensPIL since May 2020. His research focuses on the law of the sea. Parallel to that, he is qualified lawyer with the Athens Bar Association.

Practical information

Athens International Airport "Eleftherios Venizelos"

Attiki Odos, Spata 190 04, Greece
Phone: +30 2103530000
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Hotels

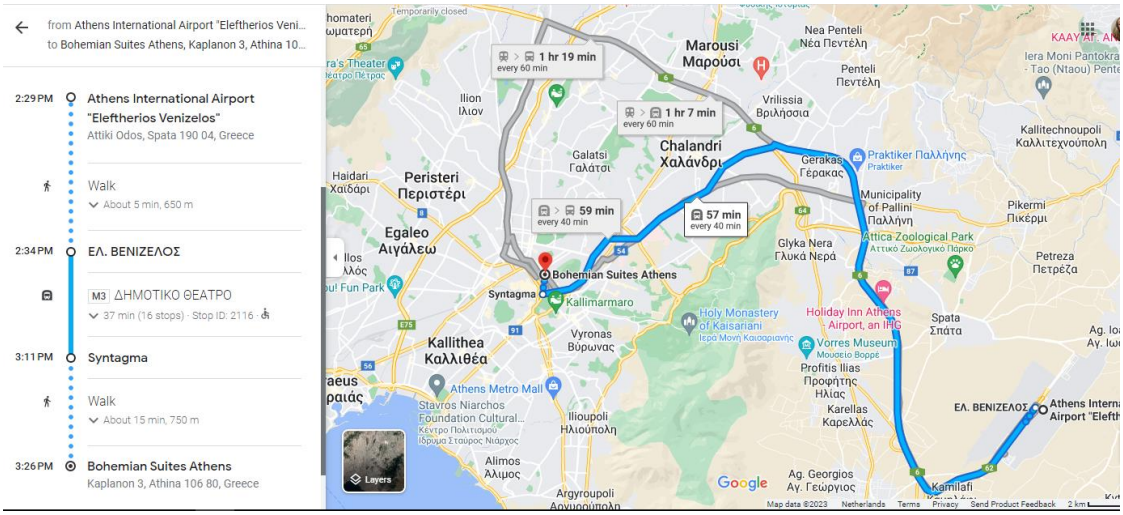
Bohemian Suites

Kaplanon 3, Athina 106 80, Greece
Phone: +30 2103645101
https://bohemiansuitesathens.com/

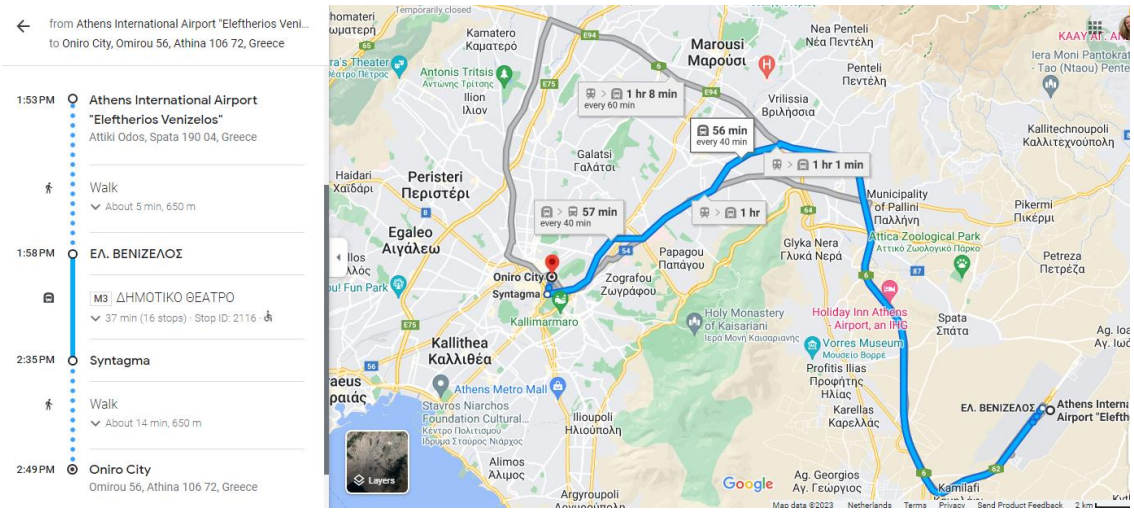
Oniro City Hotel

Omirou 56, Athina 106 72, Greece
Phone: +30 2103639853
https://www.onirocity.com/

Airport to Bohemian Suites



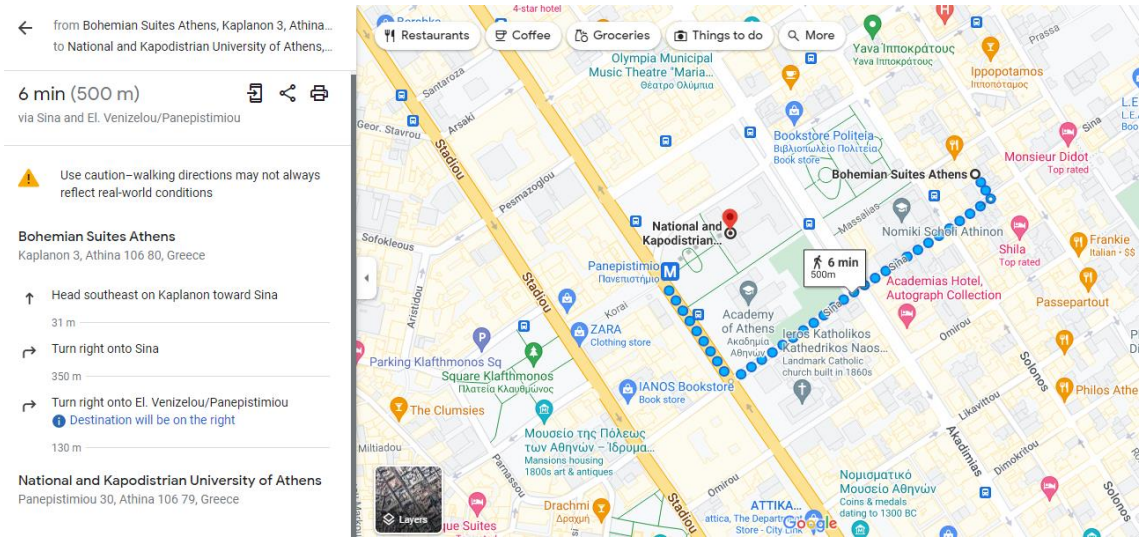
Airport to Oniro City Hotel



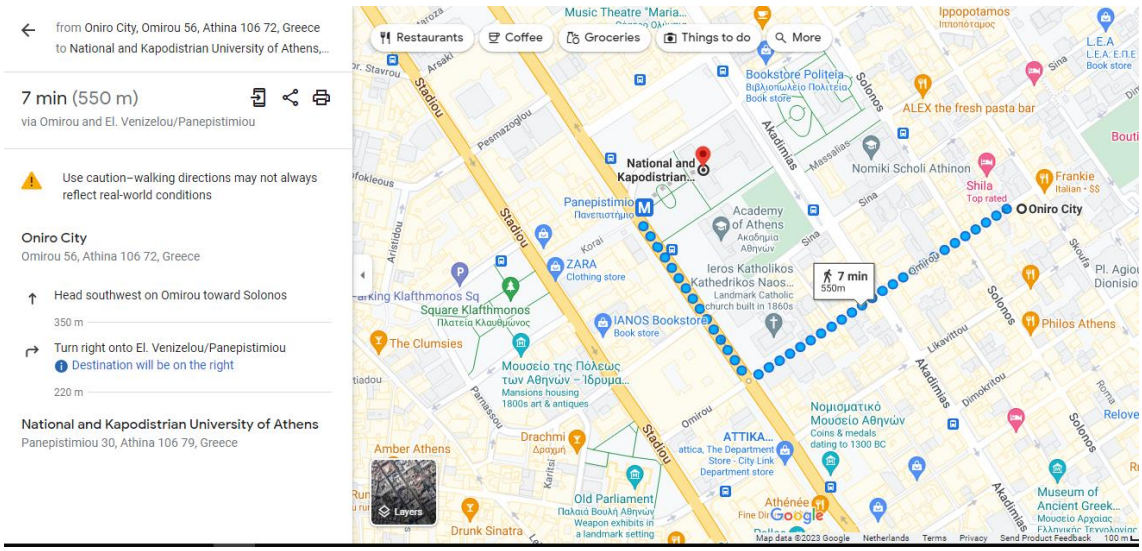
Venue

Alkis Argyriades Amphitheater
University of Athens, Historical Central Building,
Panepistimiou 30
106 79 Athens, Greece

Bohemian Suites to Venue



Oniro City Hotel to Venue

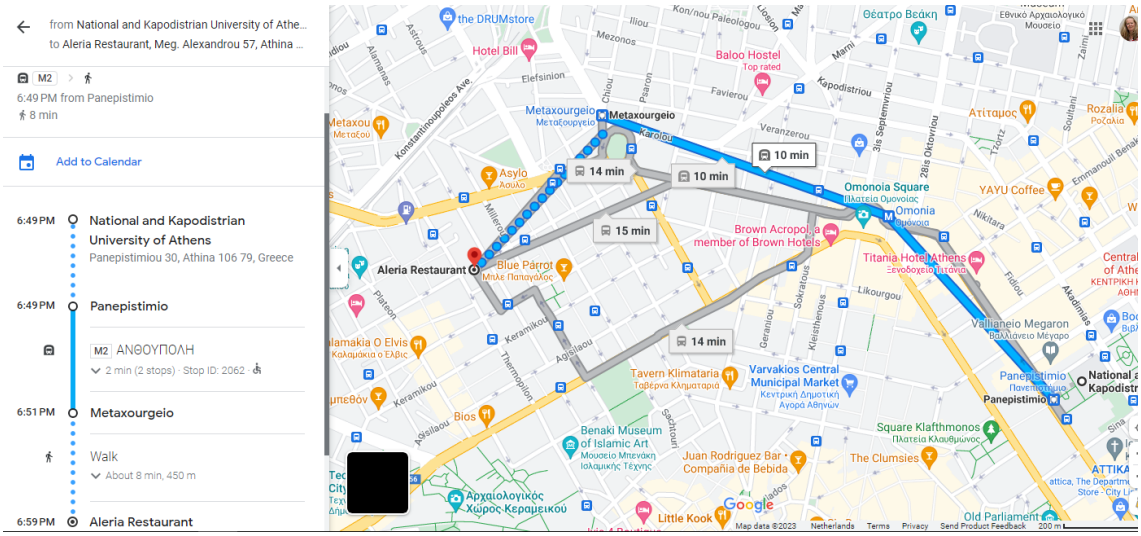


Restaurants

Dinner October 12

Aleria restaurant
Meg. Alexandrou 57, Athina 104 35, Greece
Phone: +30 2105222633
http://www.aleria.gr/

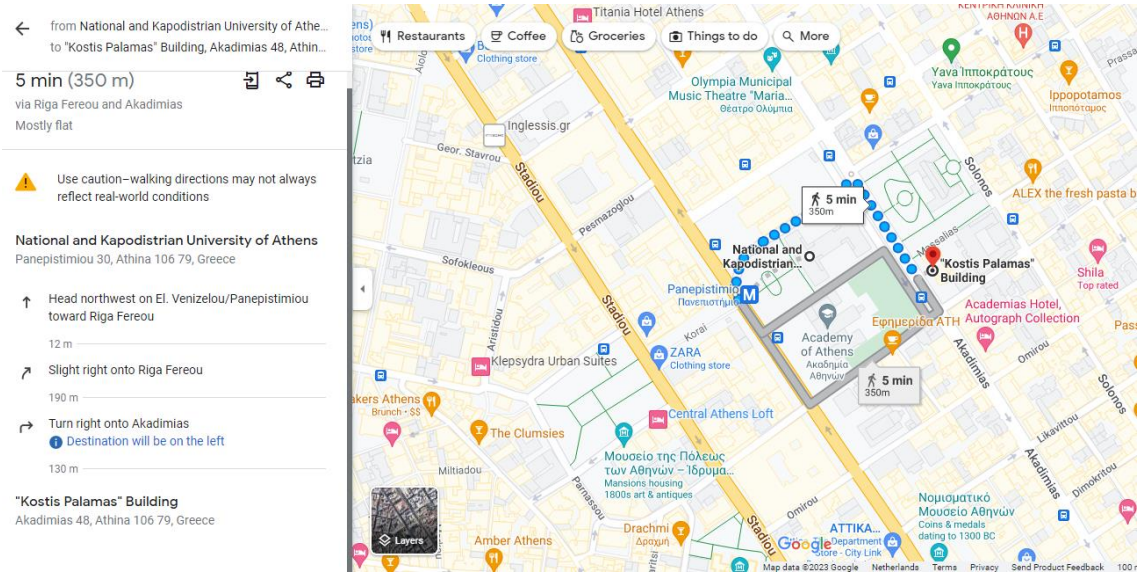
Venue to Dinner Restaurant



Lunch October 13:

Kostis Palamas Building
University of Athens
(Located in University of Athens Law School)
Akadimias 48, Athina 106 79, Greece
Phone: +30 2103688708

Venue to Lunch Restaurant



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