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CIVIL LIABILITY IN LIGHT OF INTERNATIONAL LEGISLATION

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INTRODUCTION

Civil liability, which concerns wrongdoing resulting from professional activities and may cause damage to individual parties or to the general public, is a key part of ensuring accountability for individual actions in various legal fields. Its relevance is particularly crucial when financial relevance intensifies. The current worldwide reality demands a growing understanding of the international standards of conduct and legal principles and rights connected to different areas of human activities, affecting many multinational claims, mainly the protection of numerous legal duties related to the environment, health, safety, and corporate social responsibility. The constant international legislation significantly influences the liability of legal persons as well as civil liability

.The paper aims to demonstrate the issues of civil liability in the field of insurance and to trigger a constructive discussion, including common initiatives in the harmonization and discipline of tort liability in the EU or other jurisdictions. A dominant theme in the liability literature has focused on conceptions of justice that give priority to the compensation of the victim, who is considered wrongfully and heavily affected by others' fault, or the prevention of anomalies, the economic loss rule, the dual function of the legal procedure, or of the legal system and the relative efficiency of liability and compensation systems with reference to DUI, medical malpractice, or defective products. The objectives of this work are to explore the principal civil liability issues in the field of the international legal framework, including general indemnification funds for international excess casualties. The ultimate aim of the paper is to critically reflect on the reductionist vs. original substantive nature of the discipline in regulating and reforming the principles connected to civil liability policy. The paper includes a reference to the territorial damage definition in the EU. As a consequence, the issue strongly entails and embraces multidisciplinary experiences and research. The paper is divided into five sections.

In the first section, we offer a historical view of civil liability and discuss how different notions of justice are intertwined with particular visions of the role of the civil legal procedure and how policy and political evaluations of civil liability issues change according to these conceptions. The historical perspective necessarily refers to the first steps of the codification of national insurance, contract, and tort law but contends not to offer a significant legal interpretation. In the second section of general issues, the paper takes a judicial perspective about the exclusion of liability by way of the interpretation of the general exclusion clause, if any, including the discussion of contract TPL, mainly in international reinsurance. In a third section, we offer some case studies regarding the applicability of the territorial definition or exclusion rule from the United Kingdom Act on international transport, as well as discardable excess-related indemnification funds. In conclusion, we summarize the ethical and legal competing needs of civil liability.

Background and Importance of Civil Liability in International Law

The concept of civil liability draws its roots from the time when the relations between European sovereigns as well as between them and the holders of the land they ruled were based not on law as we know it today, but rather on custom and usage. Over the years, the nature of hybrid liability has been replaced with that of strict liability in most cases, cloaked in, however, qualified exceptions. As a matter of public international law, the doctrine of state immunity mostly shields sovereign debtors from civil claims before the courts of other sovereigns.

Owing to the advancement in international relations, the late 19th and early 20th centuries witnessed the need to establish criteria for determining civil wrongs for which reparation could be sought. This was primarily to settle grievances between individuals of different nationalities and in order to conduct international relations among states. However, in the contemporary world, which is characterized by a robust and intricate regime of international legal instruments, civil liability pertains not only to relations between individuals but also between states themselves and individuals on the one hand and states on the other. The realm of civil liability, including instances of joint, concurring, or composite liability, is thus interconnected with a number of novel principles, rights, and exceptions evolved and protected under municipal and international civil liability instruments.

In reality, most of the major rules and principles relating to state responsibility have been codified by such instruments as the Vienna Convention on the Law of Treaties, the Vienna Convention on Diplomatic Relations, the Vienna Convention on CSST, international human rights treaties, international environmental agreements, transportation conventions, trade law, investment law, and international criminal law. This indicates an indisputably high frequency of international civil claims against foreign nationals or states and a manifold complexity thereof. Therefore, in addition to theories and traditions of nation-based rules of private international law on a general basis, knowledge of civil liability relations deriving from international sources, legal systems, and treaty laws assumes great importance.

Foundations of Civil Liability

Civil liability is a classical area of law in every jurisdiction. It represents a friendly subject for complex legal discussions due to its practical and theoretical significations. From a practical point of view, civil liability is intended to accomplish justice and achieve restitutio in integrum. The theoretical foundation of civil liability is materialized in various grounds on which this institute is based. Some legal systems are founded on a sense of 'justice' that in essence renders everyone equal; others are based on principles of corrective justice or distributive justice, leading to a conclusion that there are two elementary functions for which the exercise of an action is structured: the punitory and the corrective function.

In a state based on the rule of law, the legal system recognizes that in order to create accountability for committed wrongs, damaged persons must receive a form of compensation or restitution to remove the adverse effects of the harmful event. This base of civil liability is also a result of an acknowledgment of the basic concept, lived by the individual right-holders and imported into international law: the interdependency of state responsibility and individual rights. Any breach of international law amounting to an internationally wrongful act of the state is against an injured individual, who in some cases seeks to bring a civil action, individually or collectively, at the domestic level, against a state or another entity accountable for the harm. The concept of civil liability is divided into various categories, according to the background justifications and, partially concomitantly, to the substantial foundation of law. The main categories of civil liability are civil liability based in tort, contractual liability, civil

liability provided by special laws, and civil liability in cases of immunity.

Legal responsibility can be examined and analyzed from different points of view of the legal ramifications. Thus, liability is classified as civil or criminal, public or private, contractual or based in tort. Civil liability represents a general kind of responsibility held by the legal systems and is regarded as a classic field of regulation imposed by the law in terms of the behavior of individuals and institutional entities. The category of civil liability also includes a transcendent approach in order to have international ramifications and, beyond them, it can be criminally prosecuted as the ulterior liability, generically referred to as public law. Despite its various facets, civil liability, as general legal responsibility integrated by the theoretical and application connection, constitutes the focus of our study. The main purpose of this structure was to create a sequential path linking to the normalization of the liability application in international law and to the international investigation of the field. For developed sections pertaining to the interpretation, it is intended to present the basics of a complex scientific domain.

Definition and Scope of Civil Liability

The concept of civil liability is not easy to define, particularly in the area of international law. Nonetheless, understanding the various contexts in which civil liability can arise is vital in cross-border cases or for the foreign investor attempting to avoid loss. Liability will be discussed mostly in an international context, pursuant to treaties, international rules, and customary law. Liability can be based on both national and international legal rules. In addition, the legal liability will take broad account of the various values held by the claimant, such as dignity, reputation, and protection of private property. For these reasons, civil wrongs must be more broadly defined than a simple 'tort' concept from some legal systems. On the one hand, the link with the law of delict cannot be denied, but on the other hand, this revision of private international law would confer upon states that have abolished tort and replaced it with other civil wrongs, at the very least, an interpretative charter. Moreover, since liability can be based on international law, the compulsory linking of a concept with an international instrument would be too restrictive.

It is said that a civil injury is caused by another's action, inaction, or defective activity that causes harm to another. This harm may be either physical, psychological, damage to property, or non-material in cases such as defamation, breach of property rights, or experiencing cruel and unjust treatment. It is also acknowledged that the injury gives rise to civil liability, even when in some legal systems wrongful (fault), no-fault (strict liability), or in between (absolute or exceptional liability regardless of fault) liability systems can be found. In light of this paper, civil wrongs that give rise to civil liability may be caused by both acts of government or by private individuals. Acts of government causing injury to individuals are referred to as acta jure imperii, and injuries caused by private individuals are referred to as acta jure gestionis. This paper will only deal with the acoustic case, known as acta jure imperii in private international law. To conclude and sum up: 1. This paper will investigate the different angles and scope of civil liability as a consequence or remedy to a civil wrong endured by victim(s) in the field of private international law. 2. A civil injury may be of a physical, moral, psychological, property-related, and non-property-related nature, as admitted by almost all domestic laws. 3. This paper creates a global legal background of civil liability as alternative remedies to cross-border commercial crimes and depredation committed by economic actors or acts of government. 4. This paper expands the liability dimensions of our local tort theory into an international legal theory of liability. 5. The fulfillment of a set of legal conditions is mandatory for civil wrongs to be found in law. These preconditions are mostly statutory and differ from country to country. 6.

We argue that this legal scope of wrongs is mainly the dictate or concession of the legal system that may embrace the private party cause and remedy or follow a more particular interpretation of the exception theory of diplomatic rights and immunities/privileges of state apparatus in private law. Therefore, the civil nature of the wrong should be construed as an interpretation of the host or territorial state's law and attitude on modern diplomatic law in the narrow context of private party immunity. 7. Can a local wrong be justiciable before a foreign judicial instance? The civil liability discourse should extend its legal framework to include the foreign investor.

Key Principles of Civil Liability

The main legal principle of civil liability is fault. However, there is also a principle of strict liability. In systems in which the fault principle is of crucial importance, if one of the elements—gravity of the harm, causation, indirect injuring, or the existence of the fault—is not fulfilled, then the claimant does not deserve compensation. On the other hand, if the principle of strict liability applies, the claimant can receive full or part of the compensation without proving the existence of one of the above-mentioned elements. Under this solution, strict liability is a system in which the parties are not responsible for causing the damage. Although the very existence of civil liability and its principles are not in doubt, there is a divergence of opinion about the type of liability—fault or strict—to be used.

First of all, it might be helpful to figure out that in fault liability, the victim should prove the existence of direct injuring and gravity of the harm as well as the fault. On the whole, the use of almost absolute grounds for fault liability, based on the fault of the injuring party, is of the utmost importance in establishing compensation. According to fault liability, the victim needs to prove the breaking of the injuring party's behavior. However, strict liability is not dependent for any reason on the need to prove faults or the breaking of behavior. It is only in cases of derogations from standard rules and the obligations arising from regulations that strict liability is taken into consideration. It is also worthwhile discussing traditional and systematized grounds of responsibility based on fault. They are regarded as the basic concept of civil liability and its foundations in all branches of private law. What seems to be of special value is the problem of the institution of a given type of liability. On the one hand, they influence perfecting the rules and the institution for establishing liability on the part of injuring entities, and on the other hand, the very institution of responsibility constitutes a practical problem. There is a shift occurring from the liability of the person injuring through his legal behavior to liability that is alleged and proven.

Fault vs. Strict Liability

The two main concepts in the field of liability are fault and strict liability. The relevance of determining whether a plaintiff acted with or without fault is established on the grounds of two aspects being present in the related legislation. First, when the plaintiff acts without any fault, the legislation in force presumes that liability should be enforced regardless of the absence of any breach of the law on the part of the defendant. This should be applied especially when the actions of the plaintiff have generated detrimental effects on a whole set of victims. Another consideration rests in the idea of proportionality, according to which a fault should be treated differently according to its gravity. In brief, although it is not easy to establish the condition of the fault and the instruments for determining different levels of fault, the latter should be legally identified to balance social conflicting interests in a better way.

Infringing individuals may be subjected either to fault-based liability or strict liability for infringements committed by others for whom the infringing actors are responsible. In tort disputes, fault-based liability or the concept of prima facie negligence is fundamental to

framing the norm configurations strictly connected to the power of the plaintiffs to influence defendants' behavior. It is relevant to note that negligence is a discrepancy between an actor's foregoing behavior that does not reflect the standard conduct. Two standards are utilized. The reasonable person standard is closer to the qualification and sanctions theories, and in this theory, the state is assumed to possess more information and knowledge or experience than the other theories. Even the standard is explicitly prestigious oriented. The internal viewpoint standard refers to the behavior of the experienced actor and the relationship of proximity. According to transnational case law, fault-based liability for physical injury has been mainly applied in jurisdictions that use common law, while civil law is more prone to strict liability. The ruling represents a significant moment in American tort law when a court derives a cause of action from public law while also providing that potential plaintiffs could rely on publicly recognizable criteria in their private tort remedies. Today, courts could rule a precedent assigning absolute liability for dangerous activities or in fault. In general, the plaintiff receives a legal remedy in either private or public law.

From an international law perspective, whether or not a state can be held responsible for losses – and towards whom – is particularly influenced by current rules regulating fault and strict liability cases. On the one hand, certain international treaties exclude or limit the possibility for injured states to seek civil damages arising from injuries they incurred in their relations with other states. Furthermore, actions by injured states might expose them to liability towards the responsible states. The existence or absence of fault on their part influences the appropriateness of an international responsibility action. Given that international rules prohibit the use of warfare, a state that is assaulted in good faith and without any negligence should be entitled to react by way of self-defense without being liable in civil law for the resulting military operation. Conversely, if it was possible for the victim state to negotiate the settlement of such a dispute with the injuring state, any evident negligence on the part of the victim in triggering the dispute would absolve the injuring state of its own responsibility for the ensuing consequences.

Sources of International Civil Liability

Four principal sources of international civil liability can be identified, each determining international rules on legal bases, criteria for, and extent of state responsibility in tort as between private persons or entities. The first source is found in bilateral or multilateral treaties which govern the relationships of, and establish obligations for the states party to the relevant treaty; these obligations may affect reparations owed either by one state party to another, or by the signatory state to natural and legal persons. The second source is common to practically all legal systems: the principle that a state is liable in domestic tort law for wrongful acts committed (mainly) by the members and servants of its public service, and therefore the possibility, which may be precluded by the relevant national law, of exercising individual redress by way of reparations. The third source, the codification of principles, has led to the recognition of the wrongfulness of certain acts, and is usually accompanied by the establishment of thresholds and scales of responsibility and the substantive criteria for liability. Finally, the fourth source, although less prominent today, has been customary international law; certain legal rules concerning civil liability have originated in the customary practice of states and have been accepted as legally binding on the basis of opinio juris.

Treaties (or conventions), concluded between or among states, can deal expressly with civil liability questions; they can also address state responsibility in the context of international environmental law generally. Such treaties may establish the international standards for civil liability (economic and non-economic), for

measures adopted, and for restoration and compensation; they may regulate the field of state responsibility as between parties to the convention only. Many of these treaties may also cover the establishment of ad hoc dispute settlement provisions, such as conciliation and/or arbitration, as part of their dispute resolution procedures. Customary international law, by identifying what states, considered as a group, have accepted, and in what form, can identify the development of liability. Customary law can be an in vivo or in vitro source of international liability.

Treaties and Conventions

Treaties and conventions play a major role in the development of a legal framework for accepted civil liability rules. The treaties and conventions have laid down the liability—whether strict or not—of an operator for any damage caused by the peaceful or non-peaceful use of nuclear energy or in handling nuclear material. This non-pecuniary liability of either the operator or the state may also be supplemented with compensation by the competent authorities of the state concerned.

Treaties for persons internationally may cause agreements or arrangements to be broken, abandoned, or undercut by influential political pressure. Nonetheless, these treaties can influence national regulations, which can in turn provide value for the industry and individuals. This, if the industry is aware of the additional protocol and makes the changes in order to conform with the protocol, is evidence that states are more interested in nuclear safety and security execution.

Some treaties have been more successful in assuring member states to follow the protocols or adhere and bind themselves to the agreement beyond just ratifying and enforcing the obligations of a protocol or convention. Dissent arises from case law, which tends to support states in paying any claims under the agreement, although object-state compliance may be limited. Further, the practical enforceability of the agreement is largely speculation in the different sectors of an industry. The liability agreement can differ from that of the civil liability of the handling of the civilian nuclear regulator. In some protocols, the objectives are to ensure that parties are abiding by international obligations and have demilitarized commercial relations. The protocols have not given much thought to cases of civil nuclear state liability. There are many political and technical disputes around what the definition or interpretation of negligence is.

Jurisdictional Issues in International Civil Liability

At the jurisdictional stage, a private forum is first confronted with a question of whether it is chosen properly, either in accordance with the rules of international, domestic, or regional jurisdiction. Even though a de facto commitment to the principle established several years ago in the forum non conveniens doctrine was weakened by a series of legislative, rather than jurisprudential actions, it is still common to rule that the national court would not hear a particular claim or dispute if it accepts that the domestic forum is inappropriate. The court may also make a decision on the issue of applying or not applying the laws of another country or an international standard as the applicable substantive law before itself is selected, and whether such a decision would have the effect of a rule establishing forum non conveniens. However, what the scope of its jurisdiction is neither a question of admissibility of a case by a foreign forum.

Regarding international civil liability, victims are often granted access to jurisdiction with more flexibility under international human rights norms, but in principle will be less strict if the domestic forum is too much against a foreign defendant for a claim linked with the Crown act or if a court will not be able to effectively enforce, assuming it will render a victory in favor of the claimant. However, courts rarely clearly and totally distinguish if the defendant did

commit the act of Crown or not. Although some norms of private international law or international jurisdiction based on treaties or customs are intended to be lex specialis and must provide for an exemption from the rules or principles of domestic jurisdiction, practical problems occur, particularly when having regard to relations between the main rules of the domestic adjudicative jurisdiction and international human rights norms. Some decisions raise the problem because of not dividing with indifference private from public functions, and not examining the issues such as doubt before the application of the principle of forum non conveniens in international human rights laws.

Forum Non Conveniens

1.1. Definition of the Doctrine

The forum non conveniens's primary concern is the essential or effective judicial administration, as it serves to minimize the cost of forum usage. In this way, its main goal is guaranteeing the economy of the legal process. The right to approach an international forum should not normally be subject to any of the previous or legal restrictions, even when dealing with a public international liability system that has not yet been satisfactorily effective in its construction phase. Instead, it is preferable to situate the limits within the judicial level. In specific cases, some of the criteria adopted for solving lawsuits involve opting in global private international law and policy in case of conflicts, which prioritizes the interest of trying to grant justice to all legitimate suits filed, in particular to the victim who would naturally be oriented toward one of the two forums.

Criterion implementation in cross-border international cases follows quite a wide range of options, among which the forum non conveniens doctrine stands out. This doctrine has determined a lot of controversy. Where a national court is vested with jurisdiction on the ground that a defendant is present in the forum or that service abroad has effect, the court can still abstain from exercising jurisdiction on the ground that the action is more appropriate for determination in another forum. That forum may, in fact, be the domiciliary forum of the defendant. For declining a case based on the forum non conveniens, the plaintiff is normally required to have an 'adequate alternative' forum and also jurisdictional activity by the defendant or else to provide the court with significant evidence that is likely to be unavailable in the alternative forum.

Therefore, the forum non conveniens doctrine allows the issue to be decided by the judge of the most convenient state, but does not influence the applicable or substantive law, as where a judge refuses international proceedings and new proceedings take place, the elected law by the applicable state for the concretion of the linked obligations continues to be the same.

State Responsibility for Civil Wrongs

Almost 40 years ago, it was stated that the Commission's work on State Responsibility was dedicated exclusively to the examination of the principles governing the responsibility of a state for internationally wrongful acts. Today, on the verge of re-discussing the ILC's already completed work on the same topic, by focusing on the content and scope of international wrongfulness in general, state responsibility is often presented only as one aspect of the international legal regime on responsibility. However, focusing solely on the content of international wrongfulness leads nowhere, especially in the field of civil wrongs. Indeed, the general rules on state responsibility – generated in order to make such a responsibility correspond to the principle pacta sunt servanda and state obligations erga omnes – marginally influence the point of departure.

Five are the crucial issues that international law takes into consideration when dealing with civil wrongs, which appear in the overall regime of state responsibility as the manifestations of categories of primary rules. They are: a) state responsibility; b) specifics of subjects to whom

such a state is responsible; c) norms according to which civil actions are committed; d) actual types of state conduct against which some norms of civil wrongs are directed; and, lastly, e) the understanding about the scope of exclusion from state responsibility or the entities responsible for such wrongs. By discussing those issues, we arrive at the category of erga omnes and we are able to identify the consequences of state behavior in front of various civil wrongs or modes of responsibility. Therefore, the current regime of state responsibility determines the source and the way of providing justice to alleged injured entities and also the court from which they are supposed to seek satisfaction.

6.1. State Immunity

The doctrine of state immunity, declining to take a position as to when it constitutes a rule of customary international law, has genuine relevance for civil liability. Based on the principles of sovereign equality among states and the independence of each sovereign within its own territory, state immunity represents a general rule according to which a state may not be sued before the courts of a foreign country and its property is immune from any sort of interference through such courts. Despite the significant consequences that often stem from state immunity, it is not an absolute principle. There are indeed a number of exceptions to the general rule, the most relevant of which concern cases of controversies related to a foreign state's commercial activities and with respect to a foreign state's commercial activities.

Moreover, and even more significantly, there is a precise and arguable exception in respect of matters involving human rights violations, to the effect that a state cannot invoke immunity from being sued before a foreign court within whose jurisdiction the human rights violation is said to have occurred. In international law, the question of state immunity primarily involves a compromise between the principle of sovereign equality of states - preventing states from asserting their jurisdiction internationally against other states - and considerations of equity and full access to justice, as well as liability of states for their wrongful acts. It is generally accepted, in light of the principle of sovereign equality, that states should remain immune from being sued before foreign courts. At the root of the rationale underpinning state immunity, there is a conflict-of-laws issue and the resulting desire to safeguard the sovereign rights of foreign states as putative defendant parties.

Enforcement Mechanisms for International Civil Liability

There are several potential enforcement mechanisms available for claimants wishing to implement a civil liability judgment at the international level. The first option is to seek a judicial decision in a national court. If national courts have jurisdiction, then this will be an effective means of enforcement since the judgment will be recognized and enforced under the rules applicable in the state where the judgment was obtained. A second option is to take disputes relating to international accidents and injuries to an international tribunal, such as an arbitration panel constituted in terms of a multi- or bilateral trade agreement, investment treaty, or environmental protocol, or even an international court specifically created to enforce international law and resolve state disputes. Bringing international civil liability claims to an international tribunal may be attractive to claimants for jurisdictional reasons. International tribunals or panels may have jurisdiction where national courts do not because of their specific enabling statute or treaty. International tribunals may also provide a more neutral and even-handed decision-making body, where one or both of the injurer-defendant and the victim-claimant is from a state with a weak and corrupt judiciary. When the objective of the enforcement stage is to achieve compliance with a judgment or negotiated settlement resulting from a transnational accident, injury, or environmental harm, the controversy becomes amenable to

international litigation. Nevertheless, the tension between customary international law obligations and state sovereignty must be kept in mind when discussing enforcement success or compliance with international litigation. Ultimately, the effectiveness of enforcement measures available will depend upon the extent to which the norms sought to be enforced domestically are consistent with rules and obligations of international law. The following examples illustrate this point.

7.1. National Courts vs. International Tribunals

National courts and international tribunals both exercise jurisdiction to impose civil liability, although they differ in a number of crucial aspects. International tribunals are generally limited to hearing claims against states and intergovernmental organizations, whereas national courts may also hear claims against individuals. Decisions of international tribunals lack the compelling nature of a 'final judgment,' since they are based on the consent of the parties to a specific transaction, arising from the treaties that establish such institutions. In this situation, states often have a choice to bring an action before a national court and ask for the enforcement of an international rule directly. The choice of whether a claim should be brought before a national court, rather than before an international tribunal, will depend on the specifics of each case. The historical modes of regulation of the consequences resulting from the infringement of international obligations, in which the relations between national courts and international tribunals have been developed, provide a great deal of valuable information in the context of the present issue. This relationship became particularly significant in the context of claims for civil liability. It is useful to examine the case law of such international tribunals, whose jurisprudence illustrates both the successes and difficulties that parties may encounter when attempting to enforce a civil law judgment against a state. While arbitral awards traditionally have no precedential authority, one tribunal went a step further and argued that arbitral decisions were not even authoritative. Instead, arbitral decisions were a 'potential source of state responsibility.' The analysis must take into account a possible conflict between national sovereignty and the enforcement of international obligations, which may lead to the non-recognition of a judgment by a foreign state.

Conclusion

In an ever-increasing interconnected world, it cannot be overemphasized enough that legal practitioners, judges, and scholars alike must keep apace with the state of international legislation on civil liability and how case law is developing. In light of recent trends, discussions in the previous chapters emphasize a few issues:

(a) International legislation and international case law set the trends and practices in engaging civil liability, and most importantly, shape policies within different states. This happens since most member states in international deep-sea transport, biotechnology companies, and states are party to international agreements that help define the contours of civil liability. A bankruptcy involving a genetically manipulated nostrum almost immediately affects litigation rules and policies in at least over 100 countries. Moreover, the civilian aviation package or the response to health crises will have effects in setting policies on civil liability in respective sectors.

(b) Enforcement may be a huge practical problem. Practically, after a default judgment has been given in one country, a victim may find it difficult to execute such a decision in another country where assets may be situated due to technical and procedural hurdles. Enforcement becomes all the more problematic when there is a cross-border procedure involving many defendants and many judges. Thus, rather than producing two separate judgments, consideration was also given to how to give a double-sealed judgment that is directly enforceable.

(c) Civil liability is continuing to become trendy. Industrial countries are putting policies into their organizational and regulatory models, frequently driven by both specific and general international laws. Lawyers elsewhere are becoming

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