



Institute for International Law

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## **The Concept of *Opinio Juris* and Its Role in the Formation of Customary International Law**

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**Chair: Prof. Dr. Jan Wouters**

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Grote Vergaderzaal, Law Faculty, Tiensestraat 41, Leuven

*Abstract:* Customary international law has always been a controversial source of international law. Except for its existence as a source and of its two elements - an objective element, i.e. practice and a subjective element, *opinio juris* - there is no general agreement on the content and requirements of both elements and their mutual relation. In this doctoral seminar the subjective element will be scrutinized. First, the substance will be looked into, in particular whether the subjective element can be reduced to the (tacit) consent of each and every State or rather to be equated with a general shared conviction that a certain conduct is required or should be abstained from because of the existence of a customary rule. Underlying each of these options are two different paradigms on international law, the first focusing on State sovereignty, the other on the international community whose shared belief may bind a State which did not expressly or tacitly consented. In the seminar, the latter conception of the subjective element will be defended. In a second part, the problems entailed by regarding the subjective element as a form of legal conviction that a certain conduct is required by a rule of customary international law will be looked into, especially whether such legal conviction can ever be identified and how it applies to a customary norm in formation: indeed it seems paradoxical to require a legal conviction of the existence of a customary norm in case such a norm does not exist. Therefore, a modified version of *opinio juris* will be presented, based on the distinction Hart made between the internal and external aspects of rules. Finally, the relation between practice and *opinio juris* will be looked into, with special reference to the problem of the epistemological circle.

Please notify Els Costers via e-mail ([els.costers@law.kuleuven.be](mailto:els.costers@law.kuleuven.be)) in case you will attend.