

## Asser Strategic Research Agenda 2022-2026



**Rethinking public interests in  
international and European Law:  
Pairing critical reflection with  
perspectives for action**



**Cover**  
 'Fearless Girl' is a bronze sculpture by artist Kristen Visbal in New York City, United States. Promoting female empowerment, the statue was installed for International Women's Day 2017.  
 © Anthony Quintano, Flickr



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The world-famous Catalan artist Jaume Plensa pays tribute to his love of literature by working with language and words in many of his sculptures. His sculpture House of Knowledge, located in Bordeaux, France, conveys a message of beauty, unity and hope, and a feeling of oneness despite the barriers that separate humankind. In this work, the artist articulates the internal and the external, the public and the private space, and the collective and individual. By looking through the cavities between the letters that make up the body of the 8-metre-high sculpture, or even climbing into it, one is also able to see humankind as a whole.

‘For Gramsci, hegemony is the process by which the ruling class establishes the material, ideological and institutional conditions to establish control. Significantly, this is not achieved through force alone, but through ideologically capturing popular support and conditioning it as the articulation of the public interest or common sense.’

Chantal Mouffe, ‘Hegemony and Ideology in Gramsci’, in C. Mouffe (ed.), *Gramsci and Marxist Theory* (London: Routledge and Kegan Paul, 1979), p. 168. [See Clair Cutler]

‘[L]aw presents itself not just as a set of commands by the powerful [or] a set of rules recognized among an elite, but as a set of norms made publicly and *issued in the name of the public ... that ordinary people can in some sense appropriate as their own, qua members of the public*’...

Jeremy Waldron, ‘Can There Be a Democratic Jurisprudence?’ (2009) 58 *Emory LJ* 675, 684 (emphasis added).

‘[C]ounterpublics emerge in response to exclusions within dominant publics, they help expand discursive space. In principle, assumptions that were previously exempt from contestation will now have to be publicly argued out. In general, the proliferation of subaltern counterpublics means a widening of discursive contestation, and that is a good thing in stratified societies. [...] After all, to interact discursively as a member of a public – subaltern or otherwise – is to disseminate one’s discourse into ever widening arenas.’

Nancy Fraser, ‘Rethinking the public sphere: A contribution to the Critique of Actually Existing Democracy’ (1990) 67 (emphasis added).



Graffiti in Mohamed Mahmoud Street, Cairo, Egypt during the 8 July Tahrir square protests in 2011. © Hossam el Hanalawi, Flickr

# 1. General introduction

## The Asser Strategic Research Agenda (ASRA)

By academic director Prof. Dr Janne E. Nijman

'Rethinking public interests in international and European law', is the research programme of the Asser Institute for the years 2022-2026. It was developed during the Covid-19 pandemic, while the world experienced severe restrictions on our personal and professional lives.

In our atomised yet hyper-connected world, the pandemic undoubtedly showed the significance of law, policy, and government in the name of the public interest. From the very first measures that restricted freedoms and had to protect public health, to the discussions on the equitable global distribution of vaccines; in the past two years the public interest was at the heart of law, policy- and decision-making discourses at all levels – local, regional, national and global.

However, the idea to organise this ASRA around questions pertaining to the public interest in international and European public and private law, had emerged long before the pandemic. It was triggered by pressing local and global challenges such as climate change, ecocide, transnational terrorism, unsustainable capitalism, a growing social inequality, the digital divide, global migration, planetary urbanisation, and our planetary boundaries rapidly coming rapidly in sight.

Stemming from a very basic question – 'How do we take care of our (social and natural) world, and what role does law play in this?' – the legal notion of 'public interest' is both indeterminate and prevalent, as is set out hereafter (section 2), and yet, the public interest is severely understudied in legal scholarship. In guiding the research that we conduct, and the societal impact we seek with our work, the notion of public interest to us pairs critical reflection with perspectives for action.

This ASRA builds on the previous ASRA, entitled '*International and European Law as a source of trust in a hyper-connected world*', which served as a framework from 2016–2020, and contributed to the Asser Institute's transformation to an institution with (fundamental) research at its core. In the past years, questions of trust and distrust with respect to the legal regimes and institutions at the various levels of governance have proven to be present, and the world's hyper-connectivity has only increased.

With our new focus on public interest, we turn to a notion that – even though it is understudied – is in itself more central to the discourses of law and legal research. While the notion of the public interest was already present in the previous ASRA, we will now bring questions around public interest to the core of our work, relegating them to the various legal domains covered by the Institute's research as a whole.

Researchers of the Asser Institute work on a wide range of substantive legal areas, which include: international criminal law, international humanitarian law, public international law, international and European migration law, the law of the EU's external relations, European Union Law, human rights law, memory laws, international and European law of counter-terrorism, international law and artificial intelligence, international and transnational sports law, private international law, international arms control law etc. In all of these fields, questions regarding the



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© Shutterstock – Artwork by April Pine, titled 'Shifting Horizons', on the largest free to the public sculpture festival in Sidney, Australia. Pine envisaged the wooden sculptures as guardians or protectors of the landscape.

intersection between public interests and law arise.

So, the concern about public interests and, in some cases, public values too, is a strong common denominator in the work of the Asser researchers and within the communities that we share our knowledge with. As such, this shared concern will inspire us and it will support synergies within and across the various research strands of the Institute.

As identified in the previous ASRA, the hyper-connectedness of our world has deep and fundamental societal implications, which are exacerbated at the international level. From the use of armed drones or autonomous weapons, to the human rights impact of the digitalisation of welfare or justice, the insidious effect of social media platforms on democracy, and the new challenges posed by quantum technologies; emerging technologies shape and affect society in a myriad of ways.

In international and European law, these technological developments increasingly impact and question legal frameworks and concepts as well, and at an accelerating pace. Inevitably, the governance and regulation of these upcoming technologies emerged as a cross-cutting research theme, which researchers in each of the Asser research strands are exploring. The theme touches upon both highly theoretical and very practical aspects, emerges in local, regional, national and international settings, and it reveals competing public and private interests.

## Roadmap

This ASRA is organised against the background of a more general discussion of why we turn to rethinking and reclaiming public interests in international and European law (section 2), and along four programmatic lines grouped in research strands (section 3). Section 4 explicates our methodological consciousness and pluralism. Section 5 sets out briefly how we will nurture our research discussions and output as a research department: through research department-wide activities (5.a), PhD programme (5.b), open access (5.c), ethical and responsible science (5.d), and SEP-based evaluation (5.e).

To conclude, this ASRA has been developed not just by internal conversations. We have invited people from the worlds of academic and applied research, legal practice and policy making to discuss our ideas prior to its finalisation. We are grateful for these conversations. Moreover, to safeguard the quality of research at the Asser Institute we have asked an External Committee to evaluate our midterm self-assessment 2016-2019 and taken their recommendations into account when generating this new ASRA.

## Four research strands

In the following pages, we will discuss the overarching theme of the public interest as the background of our research programme. Subsequently, we will unpack the theme public interest into four (interrelated) programmatic lines, which aim to give focus to the Institute's research and researchers, and which will help promote research quality and quantity. In the coming years, these programmatic lines will be embedded into the following four research strands:

- A. **In the public interest: Accountability of the state and the prosecution of crimes** (see section 3.a);
- B. **Regulation in the public interest: Disruptive technologies in peace and security** (see section 3.b);
- C. **Public interests within international and European institutions and their (technological) practices** (see section 3.c);
- D. **Transnational public interests: Constituting public interest beyond and below the state** (see section 3.d).

The four research strands do not stand alone. Collaborations and synergies within and between the strands, as well as with external research groups, including our colleagues at the Amsterdam Law School (UvA), are an integral part of the ASRA. We expect these synergies and opportunities to become increasingly visible, for example in the area of emerging technologies and their governance for the public interest.

## Increasing collaboration between Asser and UvA's Law School

The aim to reflect on the protection and promotion of public interests in international and European public and private international law and to develop knowledge that provides perspective for action to address societal challenges is well aligned with the DNA of the University of Amsterdam in general and the mission of the Amsterdam Law School in particular. The

Institute and the UvA's Law School share the ambitions to contribute to knowledge enhancement and scientific solutions to societal problems, driven by commitment and responsibility, and to aim for a just society. That mission equally captures the research agenda of the Asser Institute in general and of its Strands in particular. In the coming years, the envisaged

intensified research collaboration between ALS and the Asser Institute will be further developed in annual plans of the Institute as well as the four Strands.

This collaboration will be further guided by the agreements as laid down in the Covenant that will be concluded early 2022.



While public interests are central to legal arguments and normative orders, what public interests are and what they imply, is often contested. What exactly a public interest or a public good entails, is always claimed, never a given, and sometimes agreed on. The identification, formulation and interpretation of public interests are discursive exercises. That said, their value for constructive legal research and in particular for the development of legal arguments and answers to address societal challenges is hard to overestimate. © Carl Guderian, Flickr – artwork unknown

## 2. Overarching research theme: Rethinking public interests

### 2.a Why public interests?

In the first months of 2021, the notion of public interest featured in various legal and political debates. For one, in the debate on global vaccine justice. The suspension of intellectual property rights of vaccine producers is both propagated and contested in the name of public interest. The pharmaceutical companies argue that their research and development (R&D) is only sustainable – and thus the public interest of global health served – if intellectual property rights are respected and R&D has a significant return on investment. Others contest this, with the argument that the waiving of intellectual property rights in the name of global health and equality is proportionate and just. This is only one example of how the indeterminacy of ‘the public interest’ gives way to struggles, and of how public interests are mobilised in both public policy and legal discourses.

In our previous ASRA, our concern for the public interest was implicit. Inspired by examinations of the backlash against globalisation and against international and European law and institutions by renowned international scholars such as Martti Koskenniemi and Anne Orford, this concern later came to the fore in our discussions. The loss of public trust in international and European law and institutions, seems strongly related to the perception that these norms and institutions fail to serve ‘public interests’. Data on the rising inequality and the deepening of both climate and earth system crises, only support this perception of failure and untrustworthiness.

Moreover, critical research into international and European public and private

law and institutions has shown that these legal regimes and institutions are implicated in the increasing global inequality, and in the imminent crash into our Earth’s planetary boundaries. This forms a stark contrast with what the public expects: that these institutions and regimes play a role in the confrontation of these crises, and that they protect public interests and/or public goods at the local, national, regional and international level. The implication of international and European institutions in global inequality, climate crises, etc, is not for want of appeals made to public interests, nor even for want of best intentions. But the presuppositions behind these public interest arguments and their effects in action, are not yet well-understood.

While public interests are central to legal arguments and normative orders, what public

The COVID 19 pandemic undoubtedly showed the significance of law, policy, and government in the name of the public interest. From the very first measures that restricted freedoms and had to protect public health, to the discussions on the equitable global distribution of vaccines; during the pandemic public interest was at the heart of law, policy- and decision-making discourses. © Wikimedia, mural in Glasgow



Public art at Joštova street, Brno, Czech Republic. Artist unknown. An anonymous author wrote: "These hands appeared after a renovation of Joštova street. Special hands. People are watching them, they like them, but nobody knows what is it made for. (...) Anyway, (they) make this boring street little bit better." © Jaroslav A. Polak, Wikimedia



interests are and what they imply, is often contested. What exactly a public interest or a public good entails, is always claimed, never a given, and sometimes agreed on. The identification, formulation and interpretation of public interests are discursive exercises. That said, their value for constructive legal research and in particular for the development of legal arguments and answers to address societal challenges is hard to overestimate.

For most lawyers, this is no surprise. The law functions through many open norms and concepts, and as such, these need to be contextualised, interpreted and applied. To that end, choices need to be made. Which public interests are relevant to a situation? Whose interests count as public interests and are thus served at the international, European, national or local level? The role of politics in the formation, interpretation and application of the public interest is inescapable. This insight can alert us to power asymmetries in stratified societies. It should also make us aware of emerging stratifications, for instance in the uneven distribution of artificial intelligence (AI) technologies for security purposes. Or in the emerging control of quantum technologies, and that of new infrastructural resources. Similarly, some counter-terrorism measures, such as the deprivation of nationality, disproportionately impact minority groups

in society, leading to unequal enjoyment of citizenship rights.

Thus it is fair to say that 'the public interest' simply does not exist. The notion may refer to many different public interests of many different social, political, cultural, economic or ecological natures. And yet, the public interest is a crucial legal and political notion, that is omnipresent at all levels of law and governance – the local, national, regional and international – and in all substantive legal domains.

We have also chosen the notion of 'public interest' as our research theme because it is a crucial legal concept and a category commonly used in public debates as well. That said, the concept in which we are interested, may sometimes be called 'public interest', and sometimes 'public good', 'common concern', or even 'shared values', etc.

The concept of public interest or public good, singular and plural, is a concept that refers to the public, and the public sphere of a political society. As such, in its more general sense, it is traditionally foundational to both legal and political systems. Both law and government are understood and presented to operate in the interests of the public, in the name of the public interest. This more general conception of the public interest – public interest *sensu lato* – grounds legal and political discourse and the making of law and policy. As such, it is a normative concept with a long history in legal and political philosophy.

However, this ASRA is not an agenda for research in political philosophy or the history of philosophy. It is not pre-set in a particular tradition, utilitarian, liberal contractarian, Marxist or otherwise, but accepted to be a concept theorised in both political and legal philosophy (ultimately) in pursuit of a fair and just society.

In a democratic, rule of law-based society, the public interest *sensu lato* grounds as a normative concept the work of all powers of the *trias politica*. Law is made, developed, enforced, interpreted, implemented and applied in the name of the public and the recognition and protection of their interests. Governments justify their decisions on similar grounds; this may range however from protection of human rights as a public interest, to the infringement of human rights and freedoms in the name of the public interest of security. Courts may decide in favour of either businesses or workers, the use of a natural resource or biodiversity, and so on, all in the name of the public interest.

The concept of the public interest *mutatis mutandis*, plays a similarly fundamental role at the international and regional levels of law and governance. But, as Anthony Carty has rightly stated: '[t]he individual interests of states

do not [...] represent a public interest. Objective law – that is, constitutional law – does not exist at the international level. There is no equivalent to the state as a guarantor of law, which can designate (determine) the significance of juridical acts or facts (situations).'

While this is true, public institutions and courts involved in global and regional governance refer to the public interest and to the (global or regional) publics in whose interests they function and/or enforce the law.

Whether it is the international community through the United Nations as 'we the peoples,' or a local government responsible for the 'household' of the city that develops law and policy, these institutions are presumed to serve the interests of the public, that is, of the many and not of the few. The International Court of Justice (ICJ) recently had to adjudicate between the respective



Public interest' frequently features as a legal concept or category that is weighed in judgements or policy decisions. It aims to cloak the work of public institutions with (the aura of) authority and legitimacy. © Flickr, Ben Sutherland – Cape Town, South Africa]

public interests of post-colonial states and former colonial powers. And the European Court of Human Rights is regularly tasked with deciding human rights complaints against state actions asserted in the name of public interests. Similarly, international criminal law or European law as applied by international and domestic courts is accepted as legitimate and authoritative because it is assumed to serve the public interest, and to function in the name of the public. It is also in the public interest that national and international public prosecutors and judges, prosecute and judge. However, in the name of which public – local or global – does the public prosecutor at the International Criminal Court, indict war criminals? Or, how do we define public interests in the context of EU regulation: by the logic of the market or the logic of the planetary biosphere?

The public interest *sensu lato* raises fundamental questions of politics, legitimacy, and justice. It is a concept that features in public debates on the implications of law and regulation, as

well as in scholarly discourse of political and legal philosophy. “We the publics” (have to) trust that the law and governmental institutions to which we subject ourselves, serve our interests. This, however, cannot and should not be taken for granted.

With the concept of public interest *sensu lato* as a general basis for authority and legitimacy of international and European law and government, public interests *sensu stricto* or, rather, area-specific public interests, unsurprisingly permeate reasonings and judgements. ‘Public interest’ frequently features as a legal concept or category that is weighed in judgements or policy decisions. It aims to cloak the work of public institutions with (the aura of) authority and legitimacy.

As a normative concept, or a standard aiming to contribute to a legal framework that best serves society, from the urban to the global, public interest can either be in the foreground or play a role in the background of a particular research project within this ASRA. The distinction between the public interest *sensu lato* and an area-specific public interest, is gradual and perhaps even superficial. Yet it is helpful to realise that discussions of the one or the other may differ in the degree and depth with which they feature in legal and political theory literature and/or case-law and legal practice.

We think that, in all of its abstract and concrete legal manifestations, the concept of the ‘public interest’ deserves further scrutiny. Both aspects, public interest *sensu lato* and area-specific public interest, will feature within the four programmatic lines of research at the Asser Institute. We also note that feminist critiques of international law have long problematised a public/private split, destabilising discursive and doctrinal constructions of the public behind public international law. By paying attention to whom and what is excluded from international law’s public, or



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A quarter million people joined the Climate Action March around the world on Sep. 8, 2018, asking for immediate action to reduce climate change. In San Francisco, United States, thousands of activists created one the largest street murals ever made, covering five blocks of city streets with dozens of colourful scenes illustrating possible solutions to global warming. Each mural was designed by a different community group, and painted on the ground in large 35-foot wide circles, with washable tempera paint. The artwork featured here was created by the Sierra Club, environmental students at UC Berkeley, and SFUSD ("Write History Wisely"). © Fabrice Florin, Wikimedia, Art & Activism for Climate Action

publics, feminist critiques expose the exercises of power that sustain regressive global distributions of resources and political capacity.

Mindful of this, we aim to rethink and reclaim public interests. Sometimes, these ambitions will be at odds: rethinking the public behind public international law will not always include a new claim in its name; reclaiming a public with public international law will sometimes mean redeeming long-held progressive ambitions for the field. We believe a responsible research agenda includes both possibilities, and a willingness to sustain the tension between them.

## 2.b Rethinking and reclaiming public interests

It is high time to turn to the concept public interest and to examine how it is understood, and how it functions within international and European public and private law and institutions today. While research is ongoing on 'publicness',<sup>1</sup> 'community interests'<sup>2</sup> or

<sup>1</sup> Benedict Kingsbury, 'The Concept of 'Law' in Global Administrative Law', 20(1) *EJIL* 2009, 23–57; Von Bogdandy & Venzke, *In Whose Name? A public Law Theory of International Adjudication* (OUP 2014);

<sup>2</sup> Benvenisti & Nolte (Eds), *Community Interests across International Law* (OUP 2018).



'Power to the people', illuminated signs on London's South Bank Centre, United Kingdom, taken from Waterloo Bridge.  
© James Petts, Wikimedia

'global public goods'<sup>3</sup> in international law and European law scholarship, the notion of public interest and the work it does in international and European public and private law and governance is less at the forefront of the scholarly debates.<sup>4</sup>

As observed before, the concept of public interest is crucial as a foundational notion to-, and as a legal category within any law system.

It is as self-evident to legal and political debates, as it is elusive and contested. Public interests are neither given nor clearly defined. Rather, they are continuously negotiated and redefined in legal and political argumentation and argumentative practices. Public interests are continuously constituted and reconstituted *discursively* within the public sphere.<sup>5</sup>

One does not need to read Marx or Gramsci to see how the public interest is a battlefield.<sup>6</sup> Nancy Fraser has done seminal work on the public sphere as a space where *inter alia* public

3 Andre Nollkaemper, 'International Adjudication of Global Public Goods: The Intersection of Substance and Procedure', 23(3) *EJIL* 2012, 769–791; also, N. Krisch, 'The Decay of Consent: International Law in an Age of Global Public Goods', 108 *AJIL* (2014) 1.

4 An important exception is the work on 'public authority' by Armin von Bogdandy and Ingo Venzke, in which the exercise of public authority by institutions is understood as acting in pursuance of public interests. Von Bogdandy, Goldmann and Venzke 'From Public International to International Public Law: Translating World Public Opinion into International Public Authority' 28 *EJIL* 2017, 115–145. See also hereafter.

5 Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," *Social Text*, no. 25/26 (1990): 56–80. <https://doi.org/10.2307/466240>; Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Cambridge: Polity, 2008).

6 Susan Marks (Ed), *International Law on the Left: Re-Examining Marxist Legacies* (CUP 2008).

interests are discursively produced. Her work is as relevant to the urban and national public sphere, as it is to the 'post national' or 'transnational' public sphere.<sup>7</sup> In her article *'Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy'*, Fraser shows how the public sphere and the publics of existing legal and political systems exclude what she calls 'subaltern publics' from the socio-political processes that construct the public interest. Her work raises the issue of representation as highly relevant to an examination of the public interest in international and European law: who is involved or represented in the socio-political discourse that constructs the public interest at the various levels of law and governance? The many or the few? A community as a whole or its (competing) fractions? Expert elites or publics implicated by the legal decisions informed by such an understanding of the public interest? And so on, and so forth. Public values such as participation, representation, transparency and accountability then are also relevant to how socio-political processes and discourses come to understand and (re)constitute a public interest.

Numerous questions arise from the understanding that public interests are continuously constituted and reconstituted discursively within a public sphere and (attested) within legal and governmental institutions. To name but a few: How do these legal processes and institutional practices create and (re)produce a public interest? In turn, how do international and European public and private law and policy shape the publics and public spheres involved in the (re)constitution of a public interest? Who are these publics engaged in the production of public interest at the global,

European, domestic and local level? Which actor is included, which actor is excluded from the processes and institutional practices that constitute a public interest? How are public interests understood in the context of a specific legal regime? Who or what is served by a public interest as shaped by these specific areas of international or European law? Who decides on the prevailing conception or interpretation of a public interest? How can competing or conflicting views on what constitutes public interests be reconciled? How is a public interest understood and (re)constituted in the social practices of international courts and institutions? How are (global) public interests weighed in particular cases or decisions at hand? What regulatory action is needed to safeguard a public interest? With whose interests is the public interest aligning: the powerful or the powerless? What are the distributive effects of a particular use of a public interest?

To make it more concrete: in the interest of which publics is law and policy made within institutions like the European Union (EU), the World Trade Organization (WTO) or the United Nations (UN)? Maximisation of 'the global public interest' features in 'UN speak', with a view to moving beyond the divide between the Global North and Global South in access to information and communication technologies. But how does this play out when put under critical – post-colonial – scrutiny? Within the context of the ongoing UN debates on autonomous weapons systems, for instance, states have adopted different positions on which interests and values are to be protected and how.

In EU law, public interest goes beyond the legal category of public policy or *ordre public* as laid down in Article 36 TFEU to cover a broad range of issues; from the protection of the environment to maintaining press diversity. Following *Cassis de Dijon* (ECJ, 1979), EU

<sup>7</sup> Nancy Fraser, 'Transnationalizing the Public Sphere. On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World, *Theory, Culture & Society* 2007, Vol. 24(4): 7–30 DOI: 10.1177/0263276407080090; Nancy Fraser and Kate Nash, *Transnationalizing the Public Sphere* (Polity Press, 2014).

law allows for example for public policy or public interest exemptions of free movement principles. In the context of EU law, a recurring tension is whether the 'public' whose interests are served is a national or transnational public. Within the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR), public interests may be found, for example, in the exceptions system of 'legitimate aims' within the second paragraph of articles 8-11. Understood from a 'living instrument' perspective, public interests have been redefined continuously and the interests of an initially subaltern or counter-public,<sup>8</sup> such as the LGBTQI community, have become part of the public interest of the European public as a whole.<sup>9</sup>

However, André Nollkaemper has rightly pointed to 'the problem of under-enforcement of [international] norms that protect the public interest'.<sup>10</sup> A recent wave of public interest litigation to confront climate change around the world aims to tackle this problem.<sup>11</sup> Public interest litigation such as in the Dutch Urgenda case shows how climate is understood as a public interest or a common good, and how, moreover, the public that the case aims to serve, is a 'public' defined over generations, that is, inclusive of unborn generations.<sup>12</sup> This trend also shows that the struggle over what (global) public interests are and require, may be pushed by social movements or non-state actors (NSAs).

These interventions in contemporary political struggles through the courts are not intrinsically good or bad. They come potentially from both (extreme) left and right-wing movements (re)claiming (their conception of) a public interest. Within domestic jurisdictions, such as in the Netherlands or Germany,<sup>13</sup> climate change cases are argued on the basis of international and or European (human rights) norms. It is but one way in which the public/private distinction is problematised.

Public interest litigation and/or advocacy is, at its core, about advancing 'the public interest through challenging laws, policies and practices which are unjust or deficient'.<sup>14</sup> This evokes the relationship between the public interest on the one hand, and (in)justice and legal deficiencies on the other. Therewith, it pushes conceptions of justice – social justice, climate justice, etc – and constitutional or 'rule of law' and human rights standards centre stage. As Hilary Charlesworth wrote, "[i]nternational human rights law presents a method for expanding, deepening, and internationalising the public interest."<sup>15</sup> Public interest advocacy has found scholarly friends in critical international legal scholarship, which also does not take a rule or policy for granted, but approaches it critically to examine its implications and the politics that may come with it. As said before, the public interest is being (re)claimed by both (extreme) left and right movements and/or progressive and reactionary religious NGOs.

Moreover, at the international level, public interest litigation is on the rise. The Kingdom of The Netherlands, for instance, has explicitly made its contribution to international public interest litigation one of its foreign

<sup>8</sup> Nancy Fraser 2007 *supra* n 22.

<sup>9</sup> Cf Ulad Belavusau's work.

<sup>10</sup> Andre Nollkaemper, 'International Adjudication of Global Public Goods: The Intersection of Substance and Procedure' EJIL

<sup>11</sup> There are also cases ongoing in Canada, Colombia, India, Mexico, Nepal, New Zealand, Pakistan, Peru, the Republic of Korea and the US, see: <https://www.urgenda.nl/en/themas/climate-case/global-climate-litigation/>

<sup>12</sup> Cf Urgenda case; Cf Shell case, public interest litigation against a multinational company that is big enough to impact singlehandedly the public interest both positively (jobs) and negatively (CO2 emissions and climate change).

<sup>13</sup> Cf Climate change case in Germany (PM ref).

<sup>14</sup> Hilary Charlesworth, Human rights & public interest advocacy, *Alternative Law Journal* (1994), 8.

<sup>15</sup> Ibidem.



Who is involved or represented in the socio-political discourse that constructs the public interest at the various levels of law and governance? The many or the few? A community as a whole or its (competing) fractions? Expert elites or publics implicated by the legal decisions informed by such an understanding of the public interest? © Neil Cummings, Flickr – Emory Douglas mural painted in Nottingham, United Kingdom, as part of Jean Genet exhibition at Nottingham Contemporary

policy spearpoints.<sup>16</sup> It has supported, for example, the Gambia in its case before the ICJ against Myanmar for violating the Genocide Convention by conducting genocide on the Rohingya.<sup>17</sup> In this case, international adjudication moves away from its traditional function of international dispute settlement.

The language of 'reclaiming' the public interest also expresses a sensitivity to the way in which powerful groups in local, national or global society can disguise their interests as 'public interest'. The public interest then becomes a

legal notion that reproduces political domination and/or private interests as public ones. This should alert us to the fact that while the notion of public interest is regularly used in legal arguments and judgements, it is – especially as an open norm or category – also a concept that may be used to legitimise the existing social, economic and political order and its vested interests. This realisation is all the more important in light of the expectations of the public projected onto a legal and political notion that is so central to legal regimes and public institutions. To many, the public interest, in its colloquial meaning, is a concept with emancipatory force and with the potential of transformative politics and law. In the age of late capitalism, after decades in which international and European public

<sup>16</sup> See eg Netherlands supports UN evidence database on atrocities in Syria | News item | Government.nl

<sup>17</sup> Netherlands intervention in the Myanmar vs The Gambia case at the ICJ see [here](#).



In the age of late capitalism, after decades in which international and European public and private law have been implicated in neoliberal globalisation, it is fair to critically examine how the public interest is currently understood in these legal regimes, and what its implications are. Research has shown how perceived 'public interests' have been largely shaped by market fundamentalism, to support capital and business. © Pixeldan, Flickr – Street art in Vancouver, Canada

and private law have been implicated in neoliberal globalisation,<sup>18</sup> it is fair to critically examine how the public interest is currently understood in these legal regimes, and what its implications are. Research has shown how perceived 'public interests' have been largely shaped by market fundamentalism, to support capital and business – including 'Big

Tech' – over labour, maintenance of the public sphere, and the environment.<sup>19</sup>

For decades, the 'public interest' has also been invoked in arguments for deregulation. Within the prevalent neoliberal mindset, an economic approach to the public interest dominates. Similarly, in an era in which illiberal

<sup>18</sup> Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press, 2018); Linarelli, Salomon, and Sornarajah, *The Misery of International law* (OUP 2018).

<sup>19</sup> Cf Mariana Mazzucato, *The Value of Everything. Making and Taking in the Global Economy* (Allen Lane, 2018).

democracies are on the rise, judicial reform in for example Poland has been argued to be in the public interest, while objectively straining rule of law principles.<sup>20</sup> In the post 9/11 decades of counter-terrorism, UN experts have warned how in counterterrorism measures in the (public) interest of security have put pressure on the open space for NGOs and human rights organisations, and therewith actually 'choke[d] the public interest'.<sup>21</sup> This leads to questions such as: what are the implications of a particular use and/or understanding of a public interest, and where does it have, or fail to have, redistributive effects or emancipatory potential?

In an interview with Pauline Westerman, Roberto Mangabeira Unger has argued: 'We are not going to allow the law to be seen as just a field of battle among powerful interests. It has to serve the public interest, as we, the jurists, understand it. [...]' Unger says at least two important things here. One, there may be politics in law but that doesn't mean law equals politics altogether. There is a distinctive role for law to play in this world. Two, with the collapse of the 'distinction between, on the one hand, a set of rules of property and contract that are unquestionable or distributive and neutral and another set of rules of public law that are only distributive',<sup>22</sup> legal scrutiny of the public interest in law and governance has become crucial and urgently called-for. Adding Gramsci's insights to Unger's observation, one cannot escape the thought that

*rethinking* public interests in international and European public and private law may also amount to an exercise of *reclaiming* the public interest. Critical scrutiny of the use of public interest may open up a space for alternative conceptions of the public interest to guide law- and policy-making, and for raising questions of distribution.

In conclusion, understandings of public interest constitute and are (re)constituted by (specific areas of) international and European public and private law, and how public interests are understood and function in international and European public and private law and governance has significant – distributional and ideational – consequences. Hence the struggle over interpretations. With this research agenda, the Asser Institute examines this *problematique* in the context of the four research lines, which we will develop below in more detail.

**Within the present ASRA we aim to further the understanding of how public interests are understood, identified, used, (re) constituted and function in international and European public and private law and institutions. In turn, we will examine how public interests contribute to the (re)constitution of international and European public and private law and institutions. Research can be descriptive (the analysis of the use of public interests) or normative (cf questions of legitimacy) in nature.**

20 Cf also in the case of *Baka v. Hungary*, the ECtHR observed that "questions concerning the functioning of the justice system fall within the public interest, the debate of which generally enjoys a high degree of protection under Article 10".

21 Special Rapporteur, Mr. Emmerson, stated in his 2015 report to the UN General Assembly: 'Many of the international and national measures aimed at countering terrorist financing and the provision of material support have also had a direct and chilling impact on public interest groups, restricting the ability of entirely lawful organisations to secure funding or to operate effectively.'

22 Pauline Westerman, *Over de rechtstheorie van de Farizeeën: Een interview met Roberto Mangabeira Unger*, R&R 2007, 46-47.



Understandings of public interest constitute and are (re)constituted by (specific areas of) international and European public and private law, and how public interests are understood and function in international and European public and private law and governance has significant – distributional and ideational – consequences. With this research agenda, the Asser Institute examines this problematique in the context of four research strands. @ Pfüderi, Pxhere

### 3. Four research strands and their strategies

In order to make innovative and substantial contributions to current debates in international legal scholarship and practice, this ASRA focuses on four themes:

#### ① Research strand A: 'In the public interest: accountability of the state and the prosecution of crimes'

This research strand examines i) the accountability of states – individually and collectively (for instance at the level of the UN or the EU) – in light of public interest standards in the context of counter-terrorism; and ii) the prosecution of individuals for international and transnational crimes in the public interest. Moreover, to ensure both the accountability of the state and the prosecution of individuals, the strand will deal with iii) the role of journalists, the (new) media, human rights NGOs and academics in protecting and promoting public interest standards.

#### ② Research strand B: 'Regulation in the public interest: Disruptive technologies in peace and security'

This research strand addresses regulation to safeguard and promote public interests. It focuses, in particular, on the development of the international regulatory framework for the military applications of disruptive technologies and the arms race in conventional and non-conventional weapons. The public interest of peace and security serves as the prime conceptual framework in this strand.

#### ③ Research strand C: 'Public interest(s) inside/within international and European institutions and their (technological) practices'

This research strand zooms in on how (discursive constructions of) public interests shape, and are shaped in the institutional practices of international and European courts, such as the ICJ and the ECtHR, and organisations such as the UN and the WTO.<sup>1</sup> This research strand has a keen eye for how emerging technologies intervene in these practices, and with what implications.

#### ④ Research strand D: 'Transnational public interests: constituting public interest beyond and below the state'

This research strand moves our concerns to transnational public spheres and examines how public interests shape and are shaped below and beyond the state. The research in this strand asks what role non-state actors, such as corporations, NGOs, cities and the EU, play in the constitution and operation of public interests in a transnational context.

1 See eg in the context of bilateral and multilateral trade and investment agreements and regimes, the Netherlands model BIT: no expropriation, unless 'in the public interest' ... See here: <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5832/download>. See also Joshua Paine, 'International Adjudication as a Global Public Good' in EJIL 2018 <https://academic.oup.com/ejil/article/29/4/1223/5320171?login=true>

## Research strand A



Public interest justifications of counter-terrorism measures and policies, in particular within the area of national security, will be critically examined against public interest standards, such as international (human rights) law and the rule of law.

© Shutterstock – This piece of a CCTV camera looking at the words "What are you looking at?" by world renowned street artist Banksy is a mockery of today's surveillance culture in the artist's homeland, the United Kingdom

## 3.a In the public interest: accountability of the state and the prosecution of crimes

Research strand coordinator: Dr Christophe Paulussen

### Introduction

State action finds legitimacy in its representation of (the interests of) the public. Governments often justify their actions by invoking public interests. Public prosecution of transnational crimes, such as terrorism, and international crimes, such as war crimes and crimes against humanity and genocide, finds legitimacy in the protection of public interests. Adoption by some states of contemporary counter-terrorism measures (such as the deprivation of nationality or the policy not to repatriate foreign fighters and their families detained in camps in North East Syria) are often justified by being in service of 'the public interest', *in casu* national security.

That also holds for the repression in other states of critical actors with dissenting opinions on state-forged societal narratives, such as human rights defenders, journalists, political opponents, minority groups and academics. While such measures and policies may be taken to pursue a public interest on the one hand, they may violate public interests articulated as international (human rights) law and the rule of law on the other; and hence merit scrutiny.

### Main research questions

In the coming years, research strand A<sup>1</sup> will examine the responses of states – individually and collectively – to alleged terrorists, suspects of international and transnational

crimes; as well as those to a very different category, viz. of critical societal actors such as journalists. It will investigate the justifications for these responses, the role and meaning of (the) public interest(s) in these justifications. We will also assess whether these responses are compatible with international (human rights) law and the rule of law. Our research will be guided by the following three research lines:

**1. The accountability of states – individually and collectively (for instance at the level of the UN or the EU) – in the light of public interest standards in the context of counter-terrorism.**

Public interest justifications of counter-terrorism measures and policies, in particular within the area of national security, will be critically examined against public interest standards, such as international (human rights) law and the rule of law. Broader questions of the measures' effectiveness will also be addressed.<sup>2</sup> Indeed, are contemporary legal and policy measures protecting the national security of states in the long term?<sup>3</sup> How do they correlate with the national security of other states<sup>4</sup> and the public interests at the global level? How do they relate to human rights, and to what extent do national interests (language) cover up human rights violations? Driven by the conflated 'in the public interest' and national security narratives, how has the relationship between the individual terror suspect and the state been altered in the past

1 Strand Composition (as of 1 January 2022): Dr Romyana van Ark-Grozdanova, Dr Ulad Belavusau, Dr Marta Bo, Dr León Castellanos-Jankiewicz, Dr Tarik Gherbaoui, Dr Christophe Paulussen, Dr Stavros Pantazopoulos, and junior researchers Zsófia Baumann, Victoria Kerr, Natacha Polia, and ...].

2 See research Christophe Paulussen, Romyana van Ark-Grozdanova and Zsófia Baumann.

3 See <https://academic.oup.com/jcs/article/26/1/219/6030005?login=true>.

4 See research Zsófia Baumann.

twenty years? With (trans-)national prevention and pre-emption of terrorist activities becoming central to national security and counter-terrorism strategies, are we seeking to establish the (unachievable) risk-free society? How should we assess the different roles of state organs in this discussion? What is, for instance, the role of national courts in assessing the boundaries of governments' use of the public interest, national security or similar notions?<sup>5</sup>

A specific focus area will be the context of the post 9/11 hyper-securitisation, with its significant expansion of surveillance tools and resulting digitalisation of individual identities. Measures such as Watchlisting will be used as a case study, to illustrate both the normalisation of placing individuals in pre-criminal spaces through their digital identities and the severely reduced opportunities and means to hold states accountable for overreach through national security measures.

As implied in the references to pre- and post-9/11 levels of securitisation, our academic work mapping the varied and under-examined effects of the events of 9/11, will continue. This work has already begun within the 11<sup>th</sup> edition of the Advanced Summer CT Programme of the Asser Institute and a book chapter<sup>6</sup> and will continue with the realisation of a new edited collection on the public interest in the counter-terrorism context and the transformation of doctoral work into monographs.<sup>7</sup>

Whereas the object of the first research line of Strand A is the state, the second research line focuses on the individual.

## 2. The prosecution of individuals for international and transnational crimes in the public interest.

Sub-questions falling under this research line include how states can bring suspects of international crimes as well as (the still under-explored) transnational crimes to justice in a way that comports with public interest standards.<sup>8</sup> It is indeed in the public interest that serious crimes do not go unpunished and that their perpetrators are brought to justice.<sup>9</sup> But it is not about bringing many suspects to justice. It is about bringing alleged perpetrators to justice in a way that comports with public interest standards, which do not only encompass elements of accountability, but also compliance with international (human rights) law and the rule of law. Moreover, and similar to the first research line, a critical questioning of the use of public interests as a justification to legitimise overzealous prosecutions and/or political trials is needed.

In this context, both broader sub-questions (e.g. related to the concept of 'justice' and how it fits within the remit of wider transitional justice<sup>10</sup> in whose interest suspects of serious crimes are prosecuted<sup>11</sup>) and more technical sub-questions (e.g. related to evidentiary challenges, including the role of the military and digital open source information<sup>12</sup>) will be addressed.

5 See research Romyana van Ark-Grozdanova. See e.g. [https://link.springer.com/chapter/10.1007/978-94-6265-355-9\\_14](https://link.springer.com/chapter/10.1007/978-94-6265-355-9_14), p. 355: "In 1994, writing extra-judicially, Lord Justice Brown described the typical judicial approach on matters of national security as follows: 'the mere incantation of the phrase [national security] instantly discourages the court from satisfactorily fulfilling its normal role of deciding where the balance of public interest lies.'"

6 See forthcoming research Romyana van Ark-Grozdanova.

7 E.g. Romyana van Ark-Grozdanova.

8 See research Christophe Paulussen, Marta Bo, Romyana van Ark, Victoria Kerr and Zsófia Baumann.

9 See research Marta Bo.

10 See research Victoria Kerr.

11 See <https://www.asser.nl/about-the-institute/news-asser-today/stakeholder-report-more-attention-needed-to-local-stakeholders-and-affected-communities-engagement-with-the-icc/>.

12 See research Christophe Paulussen.



State action finds legitimacy in its representation of (the interests of) the public. Governments often justify their actions by invoking public interests. That also holds for the repression in other states of critical actors with dissenting opinions on state-forged societal narratives, such as human rights defenders, journalists, political opponents, minority groups and academics. While such measures and policies may be taken to pursue a public interest on the one hand, they may violate public interests articulated as international (human rights) law and the rule of law on the other; and hence merit scrutiny. © The justified sinner, Flickr – Freedom Of Speech, graffiti art in Edinburgh, Scotland

The coming years, strand A will focus more on the implications of new technology and artificial intelligence (AI) for the concept of criminal responsibility itself.<sup>13</sup> National criminal law (e.g. in the context of serious accidents caused by self-driving cars) and international criminal law (e.g. in the context of war crimes committed through AI-supported military systems)

will increasingly have to address this shift from concepts related to intentional crimes by actual perpetrators to concepts such as recklessness, negligence, positive duties, oversight and control, involving a combination of actors, including programmers and users themselves. This new 'criminal law of risks' demands an assessment of the risks that are acceptable for societies and their publics to bear, and a limitation of criminal law responses to those risks that are unacceptable. It also requires us to balance out different public interests.

<sup>13</sup> See <https://academic.oup.com/jicj/advance-article/doi/10.1093/jicj/mqab005/6181757?login=true>.

Strand A will organise a closed expert meeting on this topic and formulate recommendations for regulations of AI drawn from the field of criminal law and an overview of best practices for the prosecution and adjudication of crimes stemming from failures of AI.

AI is also of relevance to another topic that will be studied increasingly within this research strand. That is criminal responsibility for the degradation of the world's environment. Environmental crime is expanding rapidly, into being the 'fourth-largest criminal activity in the world, growing at a rate of between five percent and seven percent per year'.<sup>14</sup> Some environmental crimes might even amount to an international crime adjudicated by the ICC.<sup>15</sup> However, eco-crimes evoke more legal challenges: judicial practice so far suggests for instance that environmental *transnational* criminal law lacks systematisation and harmonisation. Moreover, AI-driven technologies may play a role in the commission of environmental crimes. For example, in the case that autonomous ships spill oil and cause an environmental disaster. Further scholarly attention must be directed at assessing the impact of AI-driven technologies on international and transnational environmental criminal law, with a focus on whether the criminalisation of harm to the environment may become even more difficult when AI is involved. To this end, a closed expert meeting with EUROJUST will be organised to scope and map the problem, followed by a public roundtable on international and transnational criminal law perspectives on environmental crimes.

To ensure both the accountability of the state (the first research line) and the prosecution of

individuals in the public interest (the second research line), it is crucial to examine in more detail:

### 3. The role of journalists, the (new) media, human rights NGOs and academics in protecting and promoting public interest standards.

This third research line will encompass sub-questions of how societal actors can assist in for instance monitoring violations and thus help in bringing both states to accountability and individuals to justice.<sup>16</sup> It also evokes questions pertaining to how states should relate to these actors, to ensure they can do the important work they need to do for society as a whole,<sup>17</sup> and to how crimes against journalists and disinformation can be tackled.<sup>18</sup> This research also includes questions on the scope of freedom of expression (e.g. *vis-à-vis* hate speech and incitement to terrorism),<sup>19</sup> on access to information, and on how to assure all voices in society are heard – for instance in relation to (legislation on) society's past.<sup>20</sup> Who is represented in the

16 See <https://www.asser.nl/matra-ukraine> and <https://www.asser.nl/about-the-institute/news-asser-today/stakeholder-report-more-attention-needed-to-local-stakeholders-and-affected-communities-engagement-with-the-icc/>.

17 See the general ASRA framework ("In the Post 9/11 decades of counter-terrorism, UN experts have warned how [...] counter-terrorism measures in the (public) interest of security have put pressure on the open space for NGOs and human rights organisations and therewith 'choke[d] the public interest.'") as well as <https://icct.nl/publication/staying-in-an-area-controlled-by-a-terrorist-organisation-crime-or-operational-necessity/>.

18 See [https://brill.com/view/journals/shrs/29/1-4/article-p36\\_36.xml?language=en](https://brill.com/view/journals/shrs/29/1-4/article-p36_36.xml?language=en) and <https://www.asser.nl/about-the-institute/news-asser-today/joint-initiative-launch-of-a-forum-of-legal-actors-on-freedom-of-expression/>.

19 See e.g. Ulad Belavusau, 'Hate Speech', available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3022531](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3022531) and Ulad Belavusau, Berenice Boutin, Romyana Grozdanova, Marloes van Noorloos and Christophe Paulussen, 'A Comparative Research Study on Radical and Extremist (Hate) Speakers in European Member States', ICCT, November 2019, available at: [https://icct.nl/app/uploads/2019/11/NCTV\\_Report.pdf](https://icct.nl/app/uploads/2019/11/NCTV_Report.pdf).

20 See the three-year MEMOCRACY consortium of which Ulad Belavusau is the Principal Investigator and León Castellanos-Jankiewicz' research on decolonisation and human rights.

14 See <https://www.unep.org>.

15 See <https://www.asser.nl/about-the-institute/news-asser-today/call-for-papers-ecocide-as-an-international-crime-perspectives-from-domestic-and-international-law/>.

socio-political discourse that constructs a public interest at the various levels of law and governance<sup>21</sup> and what is the role of minority groups in the discussions and decision-making processes on public interests?

### Research goals, ambitions and output

The general objective of research strand A for the next five years is to continue to contribute cutting-edge knowledge to the legal fields relevant to these three central

research lines. This includes knowledge on the more fundamental level of the concept '(the) public interest(s)' itself – and how it can assist in reconceptualising existing debates on, for example the security, versus human rights paradigm.

Securing PhD funding will offer an opportunity to further develop the fundamental research line within our research, and to that end, the ambition is to aim for two PhD positions within the next five years. Moreover, the MEMOCRACY-project that started in

<sup>21</sup> *Ibid.*



In the coming years, this research strand will focus on the topic of ecocide as an international crime in the Rome Statute, alongside crimes against humanity, war crimes, acts of aggression and genocide. Among other things, researchers are working on an edited volume on ecocide, which means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts. © Shutterstock – Annual Sculpture by the Sea public event, at Bondi Beach, Australia. The human-sized spray and wipe cleaning bottles are titled 'The Bottles' by RCM Collective.

2021, will also have a two-year post-doctoral research fellow. Finally, we will pursue funding for two Marie Curie fellows.

In terms of output, research strand A will continue to produce high-quality publications in leading journals,<sup>22</sup> besides continuing the editing of collected volumes on topical issues, such as an upcoming volume on ecocide and a book focusing on specific national case studies evaluating the public interest in the counter-terrorism context. We will also continue our contributions to year-books such as the *Yearbook of International Humanitarian Law*.

#### Positioning and cooperation

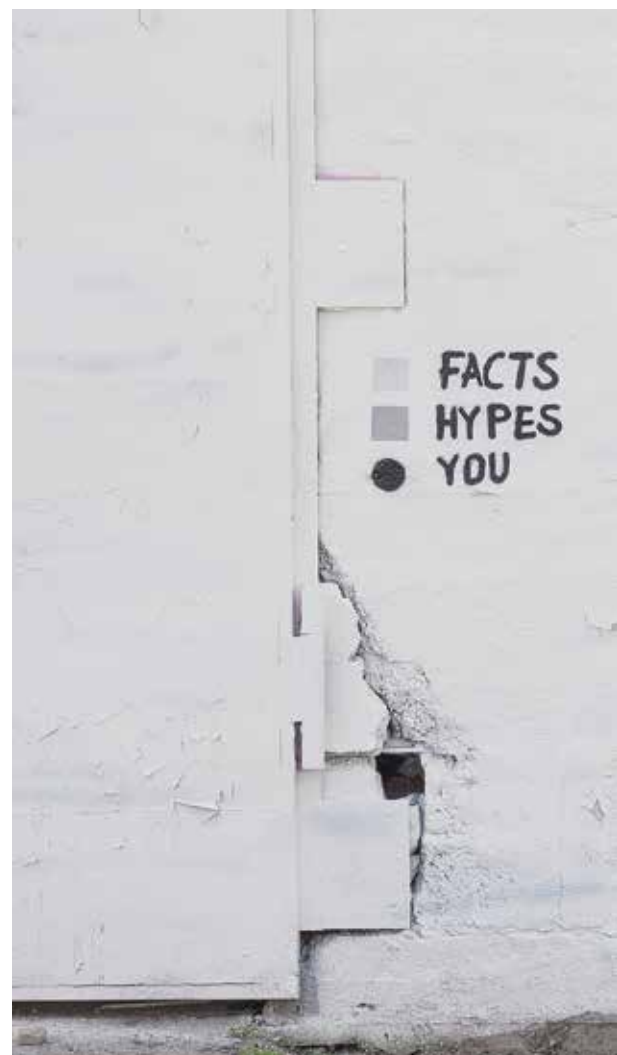
Our work in research strand A will continue to combine critical reflection with input from- and relevance to practice. In the next five years, we aim to involve more stakeholders in (the design of) our research.<sup>23</sup> We can achieve this by making sure that the panels of our public events are balanced, not only in terms of gender but also in terms of professional backgrounds and disciplines. This means that we will invite sociologists, international relations experts, policy makers and practitioners who could do a 'reality check' on some of the more academic (legal) ideas). We will invite these stakeholders not only to substantive brainstorm sessions for identifying new and relevant topics,<sup>24</sup> but we will also involve them in the valorisation of the research results.

Research strand A further aims to maintain,

<sup>22</sup> Ibid.

<sup>23</sup> Assessment Report T.M.C. Asser Instituut, Mid-term Review 2016 – 2019, February 2021, available at: <https://www.asser.nl/media/794802/asser-midterm-review.pdf>, p. 14.

<sup>24</sup> In the same way as ministries invite academics to think about future challenges, academics can also invite staff members of ministries to gauge what policymakers find relevant. Suggestions for new topics will also be harvested through our regular contacts with professionals, such as our masterclasses.



nurture and expand the strong connection with the Amsterdam Center for International Law (ACIL) of the UvA. Researchers of the Asser Institute will continue to actively participate in ACIL's research programme 'The Role of Law in Armed Conflict and Military Operations' (LACMO). ACIL is also one of the partners in the *Hague Initiative for Law and Armed Conflict* (HILAC) lecture series, and of the inter-university *International Humanitarian and Criminal Law Platform*, both coordinated by the Asser Institute's research strand A.

Our researchers will continue to supervise master- and PhD theses of international (criminal) law (PhD) students at the Amsterdam Law School (UvA), and they will occasionally teach Amsterdam Law School courses. We will



How can crimes against journalists and disinformation be tackled? © Vlady Art – street art

explore new and interesting cooperation with ACIL's War Reparations Centre and the UvA's *Rethinking SLIC* project.

As our research is characterised by both critical reflection and practical relevance, we find natural partners in for example the International Review of the Red Cross,<sup>25</sup> the Geneva Academy of International Humanitarian Law and Human Rights and the Mandate of the UN Special Rapporteur on the promotion and protection of human rights and

fundamental freedoms while countering terrorism, with which the strand is increasingly cooperating. Another natural research partner is ICCT The Hague, the counterterrorism centre which the Asser Institute co-founded in 2010. Finally, our cooperation with Justice and Peace in the context of the Shelter City Programme will be continued. We think the Asser Institute should also be a safe space for human rights defenders from societies with repressive regimes, so that they can recharge, develop new ideas and networks.

### Funding

In the context of so-called third and fourth flow money, there is considerable funding available in the field of counter-terrorism. In our future acquisition, the aim is to focus

<sup>25</sup> In 2022 and 2023, the T.M.C. Asser Institute's capacity building work in ICL, IHL and transnational criminal law (ICL/TCL training) for magistrates from West African countries will aim at strengthen cooperation and synergies with the ICRC, avoiding overlaps, and maximising impact by organising complementary seminars directed at the same group of participants.



The Shoes on the Danube Bank by Can Togay, Budapest, Hungary is a memorial that honours the Jews who were massacred during the Second World War.. Memory laws have an impact not only on the legal situation of individuals and groups, but they also shape the historical narrative of a given place and community. These narratives are increasingly codified in criminal law provisions. The proliferation of memory laws and policies in Central and Eastern Europe (CEE) has instigated a contemporary culture war in Europe, a clash concerning the meaning of the past for present European identities. In the MEMOCRACY research project, co-organised with University of Cologne, University of Copenhagen, and Polish Academy of Sciences, we study the proliferation of the nation-centric governance of memory through laws and policies in Germany and selected countries of Central and Eastern Europe. © Wikimedia, Jules Verne Times Two

especially on projects which have a strong research component.<sup>26</sup>

In the coming years, we will focus on increasing funding grants from the Dutch Research Council (NWO) and the Royal Netherlands Academy of Arts and Sciences (KNAW). These types of research grants will provide a safeguard for researchers in protecting their research time. We will further aim for projects within the context of NWO's *Nationale Wetenschapsagenda* (NWA), in addition to submitting two ERC grant applications.

26 Comparable to our 2016 study 'The Foreign Fighters Phenomenon in the European Union: Profiles, Threats & Policies' (commissioned by the Netherlands National Coordinator for Security and Counterterrorism) or the 2017 study for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) 'The European Union's Policies on Counter-Terrorism: Relevance, Coherence and Effectiveness' (both implemented in our capacity as ICCT fellows).

### Impact, valorisation and outreach

We will continue and expand the valorisation activities that have brought us the reputation as 'a go-to place for topical research and policy discussions on contemporary issues'.<sup>27</sup> A clear ambition is to further develop the recently launched *Asser Nexus on Conflict and Crime*, an internet platform that brings together all Asser Institute's knowledge products in the inter-related fields of international humanitarian law, international criminal law, transnational criminal law and legal aspects of countering terrorism. In the coming years, we aim to become the hub for anyone interested

27 Examples being the International Crimes Database, the Asser Nexus on Conflict and Crime, the lectures series on international humanitarian law (HILAC) and international criminal law (SCL), the Inter-University Programme in Lebanon and the Washington College of Law summer programme.

in the many fields in which we are active. One way to achieve this, is by reviving our correspondents' reports. We will further expand our potential target audiences, which traditionally consist of university students and criminal justice professionals, to include high school students<sup>28</sup> and the public at large. We will also continue to work with journalists, as they can counter disinformation and protect the public interest. Currently, we are already involved in substantive work on freedom of expression, together with the NGO Free Press Unlimited and UNESCO in our *Forum of Legal Actors on Freedom of Expression*. And we work with the media in the context of our research on counter-terrorism measures which can severely impact not only minorities, but also humanitarian organisations, human rights groups and journalists/publicists. Our dissemination methods will become more diversified. Examples of this are the translation of more complicated knowledge products into accessible visuals and podcasts<sup>29</sup> – including bitesize chunk podcasts on for instance international humanitarian law and international criminal law for the Asser Nexus on Conflict and Crime – and by publishing op-eds in (inter)national media.

### Education and training

In addition to our research strand's existing education and training programmes,<sup>30</sup> the ambition for the next five years is to strengthen our professional education portfolio. The new Asser Academy Masterclass series will be instrumental in this. To this

end, we will map the needs of practitioners to see how we can best accommodate these, within our normative framework of respect for international (human rights) law and the rule of law. This latter aspect will become even more important in our policy-relevant and capacity-building work for the Global Counterterrorism Forum (GCTF), for instance within the context of our new projects on Watchlisting; the strengthening of the human rights dimension of current GCTF instruments, and possibly other topics such as terrorist travel.

In the next five years, we will further explore how we can better tailor to the needs of our local audiences in The Hague, the international city of peace and justice. Think of staff members of the courts and international organisations who could also benefit from our international and transnational criminal law trainings. These trainings will further be adapted to serve staff members of NGOs, diplomats and criminal justice professionals of new/other countries facing challenges in the administration of justice. Our researchers will also explore the possibilities to conduct trainings for graduate students and young professionals in Spanish-speaking countries. To this end, institutional partnerships with the ICC and the International Institute of Social Sciences (ISS) will be consolidated.

In addition to publishing policy papers and setting up a website, our researchers within the MEMOCRACY project will develop presentations for practitioners in the field of memory politics and the mobilised community of historians

<sup>28</sup> See project Sofia Stolk in which Strand A will also participate.

<sup>29</sup> See the work of Marta Bo and Romyana van Ark-Grozdanova. These new forms of outreach were also mentioned by the committee that conducted Asser's mid-term review, see Assessment Report T.M.C. Asser Instituut, Mid-term Review 2016 – 2019, February 2021, available at: <https://www.asser.nl/media/794802/asser-midterm-review.pdf>, pp. 14-15.

<sup>30</sup> Examples being the Lebanon Lecture Series, the Washington College of Law Summer Programme, the Advanced Summer Programme: Terrorism, Counter-Terrorism and the Rule of Law, the ICL/TCL trainings, and the trainings in the context of the MATRA project.

## Research strand B



Non-Violence, also known as The Knotted Gun, is a bronze sculpture by Swedish artist Carl Fredrik Reuterswärd of an oversized Colt Python .357 Magnum revolver with its muzzle tied in a knot. The artist made this sculpture after the murder of John Lennon, with whom Reuterswärd was acquainted. It is located at the UN Headquarters in New York, United States. © Shutterstock

## 3.b Regulation in the public interest: Disruptive technologies in peace and security

Research strand coordinator: Dr Berenice Boutin

### Introduction

Research strand B<sup>1</sup> focuses on the topic of ‘*Disruptive technologies in peace and security*’ (DTPS), defined as current and future technological developments that can have significant implications for international security and international law. This thematic lens thus relates to the potential impacts of certain technologies rather than their ‘digital’ or ‘emerging’ nature. The types of disruptive technologies that this strand conducts research on include military AI, autonomous weapon systems, data-driven warfare, bio-chemical weapons, and conventional weapons or dual use technologies with a disruptive potential (e.g. small arms, commercial drones with the potential to be weaponised, cyber-surveillance). Other technologies with major security implications that warrant further research include, for instance, AI-enabled drone swarms, maritime high tech, hypersonic weapons, the weaponisation of space, or implantable brain-machine interfaces.<sup>2</sup> Disruptive technologies pose serious risks for

peace and security, and as such are an important object of research on current and future global challenges.<sup>3</sup>

In the context of this research focus, the researchers reflect in particular on how to regulate disruptive technologies in peace and security in a way that promotes the public interest. As a starting point, the notion of public interest is used to refer to common or general good, to the interest of a community or society as a whole. It is understood as related to the idea of public values, defined as societal values such as – for instance – the rule of law, accountability, fundamental freedoms, human dignity and human agency. In this approach, public interests are viewed as reflecting diverse fundamental and societal values that may conflict and on which there might be no agreement.

Considerations of public interests and public values, especially at the international level, inevitably raise difficult questions regarding both the *substantive* aspect (Which interests and communities are to be considered? What is the meaning of public interests in relation to the international community as a whole? Which values are to be protected and promoted? What is the role of (international) law in realising public interests?) and the *procedural* dimension (Who decides what is in the public interest? Who takes part in the process of identification and balancing of values and interests?). The two lines of research described below relate to these broader framing questions, and with our research we

1 Strand Composition (as of 1 January 2022): Dr Berenice Boutin, Senior Researcher in International Law; Prof. Dr Thilo Marauhn, Professor of Arms Control Law; Dr Magdalena Pacholska, Postdoctoral Researcher in International Law, Marie Skłodowska-Curie Fellow; Dr Sadjad Soltanzadeh, Postdoctoral Researcher in Ethics of Technology; Dr Tomasz Zurek, Postdoctoral Researcher in Computer Science; Klaudia Klonowska, PhD Researcher in International Law; Taylor Woodcock, PhD Researcher in International Law. Early 2022, a (part-time) Postdoctoral Researcher in Arms Control Law will join the research strand.

2 All of which are of an increased concern, see: Zachary Kallenborn, ‘Meet the Future Weapon of Mass Destruction, the Drone Swarm’, *Bulletin of the Atomic Scientists*, 5 April 2021; Joel Coito, ‘Maritime Autonomous Surface Ships: New Possibilities – and Challenges – in Ocean Law and Policy’ (2021) 97 *International Law Studies* 259; John A. Tirpak, ‘The U.S. Is Playing Catch-Up on Hypersonics. Here’s How’, *Air Force Magazine*, 25 March 2021; Joe Saballa, ‘Australian Military to Establish New \$7 Billion Space Division’, *The Defense Post*, 20 May 2021; Darrell Etherington, ‘Watch a monkey equipped with Elon Musk’s Neuralink device play Pong with its brain’, *TechCrunch*, 9 April 2021; Kris Osborn, ‘Future Wars Will Be Fought on the “Hyperactive Battlefield”’, *The National Interest*, 4 July 2021.

3 For an overview of defence technology trends and their impact on security, see the NATO report: NATO Science & Technology Organization, ‘Science & Technology Trends 2020-2040: Exploring the S&T Edge’ (2020), <https://www.sto.nato.int/pages/tech-trends.aspx>.



Text projections by public artist Martin Firrell in London, commissioned by the Household Division of the British army. Titled 'Complete Hero', the artwork explored contemporary definitions of heroism. © Wikimedia, Martin Firell

strive to contribute to advancing knowledge on the topic.

### Two main research lines

Two main lines of enquiries will guide our research. On the one hand, we question how legal norms and ethical values can shape technologies, and on the other hand we analyse how technologies challenge our legal norms and ethical values. These two broad thematic lines are typically at the core of research enquiries on law, ethics, and technologies. They can be approached in a variety of methodological ways, and leave space for

future (individual) research developments. In the context of our focus on DTPS, these two essential and correlated questions can be elaborated as follows.

#### 1. Identifying and promoting alignment of DTPS with shared public values through international law and ethics

This general line of research focuses on mapping relevant values and principles in law and ethics, identifying possible conflicts of values, reflecting on the balance of public and private interests, and exploring the interface of legal principles, legally-embedded values, ethical

values, and public interests. For instance, in the context of the NWO-funded DILEMA project<sup>4</sup> research seeks to identify and safeguard fundamental values (e.g. human dignity, human agency, accountability), and to translate values and principles in requirements and processes for military AI in order to promote alignment.

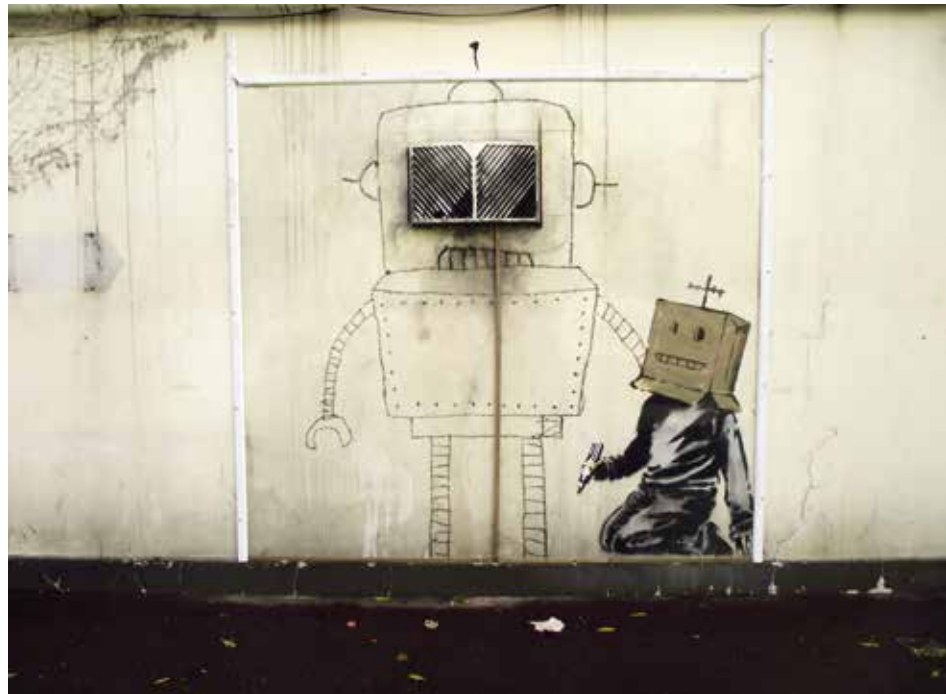
A critical questioning of the very notions of 'values' and of 'shared public values' is an integral part of this line of research. Recognising the intersubjective nature of values, and the heterogeneity of political systems and discourses, research will reflect on whether, where and how shared values can be identified, and on the challenges and possible shortcomings of value-based approaches. While at the regional (e.g. European) level, there is some agreement on shared fundamental values, much less convergence can be observed at the global level. For instance, in ongoing discussions on AI governance under the aegis of UNESCO, states have agreed to seek a 'holistic, comprehensive, multicultural and evolving framework of interdependent values, principles and actions that can guide societies',<sup>5</sup> but are facing lengthy and difficult negotiations on which 'values and principles' are to be included or not, and how to address 'tensions between these values and principles'.<sup>6</sup>

This first line of research will thus seek to identify and balance relevant interests and values in the context of DTPS. It will explore how public interests and values are constructed and justified in the international discourse on the governance of technology,

and how notions of public interests relate to expressions of public values. Building on research on the notion of 'values' and 'shared public values', research under this heading touches upon the *substantive* aspect of public interests.

## 2. Exploring the adaptability, limits, and transformation of existing international law in the face of change and novelty, with DTPS as a case-study

The second general line of research explores how international law addresses change, in particular technological change that is disruptive to international security. This is also a common theme to research on



Are new laws needed for new technologies? How are existing laws interpreted in a new context? How can actors generate (or not) agreement on both substance and processes? How does international law evolve, and how are new norms developed? © Wikimedia, ianmacm – painting on wall of Grosvenor Hotel in Torquay, England. Said to be the work of Banksy.

<sup>4</sup> See below.

<sup>5</sup> Draft Text of the Recommendation on the Ethics of Artificial Intelligence (Paragraphs 1-25; text considered in the 1st Session), SHS/IGM-AIETHICS/2021/JUN/2, 14 June 2021, para. 1, <https://unesdoc.unesco.org/ark:/48223/pf0000377881>.

<sup>6</sup> Ibid. para. 11.

international regulation of technologies in general. Recurring questions include whether new laws are needed for new technologies, how existing laws are interpreted in a new context, how actors generate or not agreement on both substance and processes, how international law evolves through these interpretative exercises, and how new norms are developed. Related to these is the study of the discourses and political processes surrounding law interpretation and international law making in practice. For instance, ongoing debates on disruptive technologies at the UN and EU-levels constitute a fascinating example of these practices, and offer the opportunity for both empirical and critical research.

This second line of research analyses how technological developments affect international law processes and concepts, and questions to what extent and in which sense technologies impact public interests. It reflects on how technologies influence our perception of values, or create new environments for moral and legal decision making. In this regard, research will notably examine the political adaptation processes of international law, identify which actors participate in the process and through which means. Research under this heading relates in particular to the *procedural* dimension of public interests.

### Research projects

Research in the strand is supported and structured by a number of research projects and initiatives.

#### DILEMA project

The DILEMA project (Designing International Law and Ethics into Military Artificial Intelligence)<sup>7</sup> explores interdisciplinary

perspectives on military applications of artificial intelligence (AI), with a focus on legal, ethical, and technical approaches on safeguarding human agency over military AI. It analyses in particular subtle ways in which AI can affect or reduce human agency, and seeks to ensure compliance with international law and accountability by design. It investigates why is it essential to safeguard human agency over certain functions and activities, where it is most critical to maintain the role of human agents, and how to technically ensure that military technologies are designed and deployed in line with ethical and legal frameworks. The project received funding from NWO (2020–2024).<sup>8</sup>

#### I2RAMP project

The I2RAMP project (Implementing International Responsibility for AI in Military Practice) focuses specifically on issues of international responsibility in relation to military AI. It seeks to address challenges military AI raises in the international responsibility realm, with a view to determining who can bear international responsibility for the wrong done with the use of military AI (covering both individuals and States). Further, it inquires how such responsibility can be implemented in military practice, and aims to set forth practical guidelines that would assist States or military commanders in preventing breaches of IHL or mitigating the consequences of harm done, should such breaches occur. The I2RAMP project is funded by a EU Marie Skłodowska-Curie Individual Fellowship (2021–2024).<sup>9</sup>

<sup>8</sup> The DILEMA Project is led by Dr Berenice Boutin, Senior Researcher in International Law. Team members include Dr Sadjad Soltanzadeh, Postdoctoral Researcher in Ethics of Technology; Dr Tomasz Zurek, Postdoctoral Researcher in Computer Science; Klaudia Klonowska, PhD Researcher in International Law; and Taylor Woodcock, PhD Researcher in International Law.

<sup>9</sup> The I2RAMP Project is undertaken by Dr Magdalena Pacholska, Postdoctoral Researcher in International Law, Marie Skłodowska-Curie Fellow.

<sup>7</sup> See [www.asser.nl/DILEMA](http://www.asser.nl/DILEMA).



Posters informing the public of North Korea's ballistic missiles on the walls in the city streets in South Korea. © Shutterstock

### International Arms Control Law initiatives

The research strand undertakes initiatives on the topic of international arms control law, notably in relation with disruptive technologies. These include research on chemical, biological, radiological and nuclear (CBRN) security, the monitoring of compliance with existing arms control treaties, and the practical implementation of arms control law obligations in the national legal sphere. The strand will also develop and coordinate a national research network and a knowledge hub on international arms control law.<sup>10</sup>

### Goals and ambitions

As a newly constituted research strand in the context of this ASRA, we have the ambition to become one of the leading academic research groups on DTPS with a focus on international law, through high-quality publications, activities, and networking. We conduct fundamental and critical research on the mutual implications of emerging technologies for international peace, and security. Specific research includes individual research projects on the meaning of human agency and human judgement, the role of such notions in enabling compliance with international law, the modelling and embedding of legal norms in technologies, questions of accountability and responsibility, and implementation in

<sup>10</sup> The International Arms Control Law initiatives are led by Prof. Dr. Thilo Marauhn, Professor of International Arms Control Law.

practice of frameworks for a responsible use of technologies (both from a technical and policy perspective).

Although the focus is on international law, questions on regulation of DTPS inevitably require a degree of interdisciplinary cooperation, in order to fully grasp the challenges raised by disruptive technologies, and to reflect on solutions that are not siloed within respective academic disciplines. The strand therefore includes researchers from disciplines such as philosophy and computer science, whose individual research directly relate to, and interact with, legal aspects. It will further seek to foster interdisciplinary perspectives on the topic, for instance by building an informal community of researchers from various backgrounds to reflect on cross-cutting implications of DTPS (i.e. law, ethics, computer science, but also international relations, psychology, neuroscience, architectural theory, etc.).

In order to accomplish our ambitions, the researchers together set out explicit goals in terms of publications and other research or valorisation activities on a multi-annual basis. Research outputs are also guided by the requirements and commitments of funded research projects. Apart from each researcher publishing articles in high-level legal journals, we will produce interdisciplinary papers, co-authored by researchers from at least two different disciplines.<sup>11</sup> We also organise conferences and expert meetings to test, share, and gain knowledge and ideas. The core strategy is to proactively ensure alignment between individual expertise, research interests, research needs, transversal research questions, goals, and outputs. The strand also engages in – and fosters collaborations with



Good Defeats Evil, a very large sculpture by Zurab Tsereteli, 1990 – In the grounds of the United Nations building, New York. A traditional St George on his horse (Good) slays a 2-headed dragon (Evil) whose body is made of an American Pershing II missile and a Soviet SS20 missile. © Mira66, Flickr

relevant partners in academia and policy, in order to remain both at the cutting-edge of research and policy-relevant.

With its members, the research strand benefits from a good balance across levels of seniority, demonstrated expertise on specific cutting-edge topics (e.g. military AI, arms control), interdisciplinary expertise (e.g. international law, philosophy, technology), and a solid network across academia and policy. It is therefore in a good position to obtain external funding in the form of large research grants or smaller commissioned projects.

#### Impact, valorisation and outreach

The topic of the international regulation of DTPS in the public interest is of high policy relevance. It is a field in which governments,

<sup>11</sup> Current examples include work at the frontier of ethics and law on the notion of agency, and a paper on the IHL principle of proportionality in the context of programming.



NGOs, private corporations, and the civil society actively seek to shape the debate and to advance (or hinder) regulation. In order to inform and influence policy developments, research conducted in the strand will therefore be translated into policy-relevant documents on crucial topical issues related to technologies in peace and security and international law (e.g. advisory reports, policy guidelines). The strand benefits from close links with the policy world (e.g. Dutch Ministry of Foreign Affairs, Dutch Ministry of Defence, NATO), and regularly provides expert advice and engages in cooperation on topics such as, inter alia, the identification of potential normative or interpretative gaps in the international regulation of warfare and dual-use technologies, or the practical implementation of arms control law obligations and the appropriateness of existing approaches to arms control.

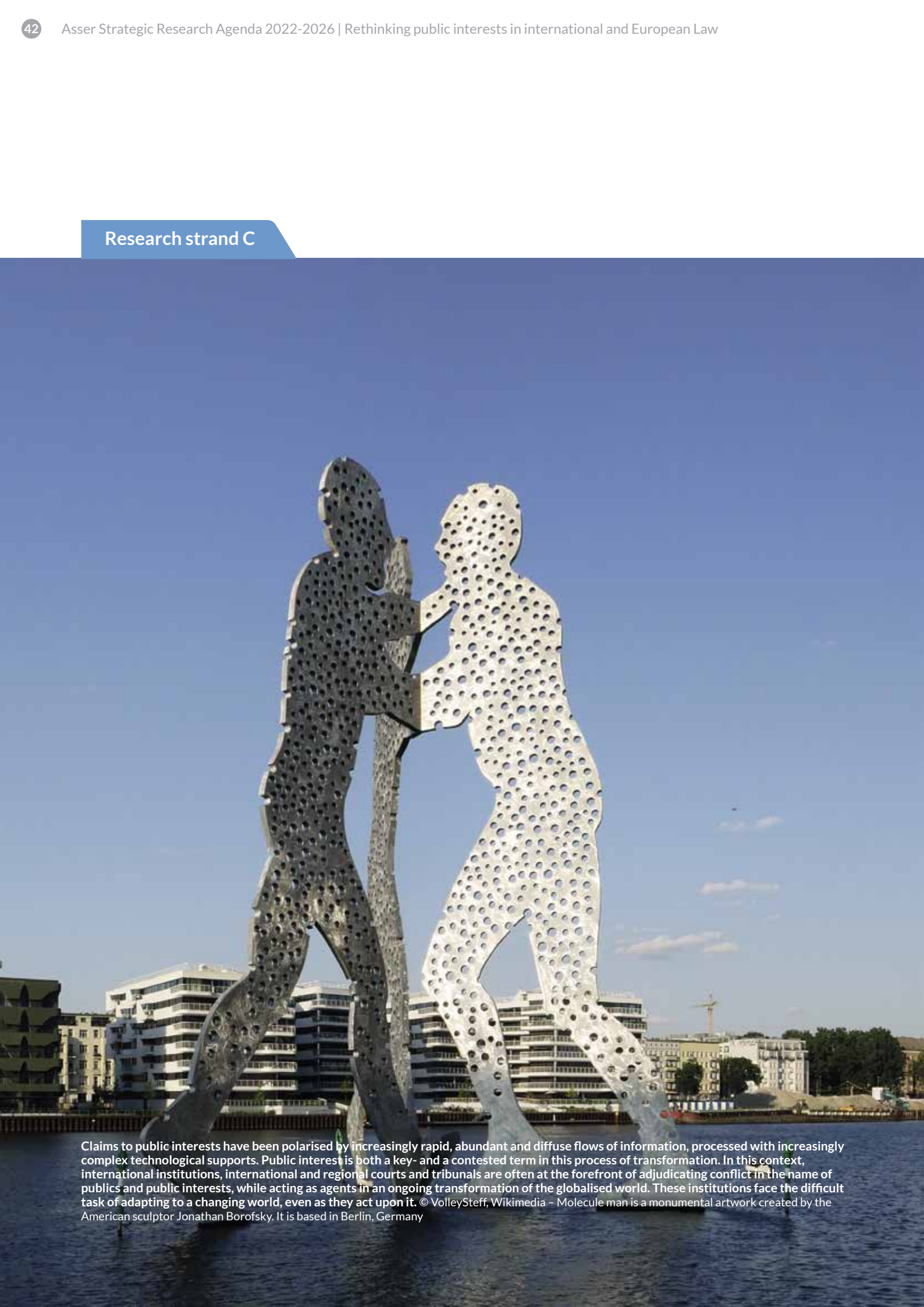
Outreach will be achieved through series of public events such as lectures and workshops, but also with events organised outside of the

strictly scholarly scene, to directly engage the general public. Current and envisaged activities include the DILEMA Lecture Series, the publication of blogposts or op-eds aimed at the general public, and the organisation of a public survey on the perception of values in the context of DTPS. Further, the strand will explore opportunities to engage in data-based analysis and visualisations (e.g. observe and represent international policy debates on AWS; visualise alignments and conflicts of diverse public interests).

#### Education and training

The research strand currently coordinates the Winter Academy on Artificial Intelligence and International Law, the Training Programme on Disarmament and Non-Proliferation of Weapons of Mass Destruction, and the Masterclass on Law and Ethics of Artificial Intelligence in Defence and Security. Building on the expertise of strand researchers, additional educational programmes will be developed to fit specific topical needs, in particular targeted to policymakers and legal advisers in governments or international organisations (e.g. 'Towards an Integrated Approach of the Regulation and Governance of DTPS: IHL, IHRL, and Arms Control').

## Research strand C



Claims to public interests have been polarised by increasingly rapid, abundant and diffuse flows of information, processed with increasingly complex technological supports. Public interest is both a key- and a contested term in this process of transformation. In this context, international institutions, international and regional courts and tribunals are often at the forefront of adjudicating conflict in the name of publics and public interests, while acting as agents in an ongoing transformation of the globalised world. These institutions face the difficult task of adapting to a changing world, even as they act upon it. © VolleySteff, Wikimedia – Molecule man is a monumental artwork created by the American sculptor Jonathan Borofsky. It is based in Berlin, Germany

### 3.c Public interests and practices within international and European institutions

Strand coordinator: Dr Geoff Gordon

#### Introduction

Fragmentation and institutional proliferation have marked the development of international law over the last decades. With this multiplication, international law is engaged in ever more practices implicating categorically distinct claims to public interests. Those claims have been polarised by increasingly rapid, abundant and diffuse flows of information, processed with increasingly complex technological supports. Public interest is both a key- and a contested term in this process of transformation. In this context, international institutions, international and regional courts and tribunals are often at the forefront of adjudicating conflict in the name of publics and public interests, while acting as agents in an ongoing transformation of the globalised world. These institutions face the difficult task of adapting to a changing world, even as they act upon it.

Research strand C<sup>1</sup> examines this diverse practical, discursive and technical field, taking forward the ASRA in four broad areas organised around public interests, including: an interest in **material, institutional practices**, including the professional skills and techniques implicated in public interest practices and how they can be represented in practice; **methodologies**, or methodological inquiry, a cross-cutting concern at the Asser Institute which we feature in our strand to problematise the methods we use to measure and analyse public interests, what they are, how they are known and measured, and actions described as taken in or against the public interest; and a related interest in the **new technologies** and things that enable and drive

change in contemporary material, institutional practices. Finally, we also examine how public and private international law manage conflicts among asserted public interest by referring to international courts and tribunals, as well as to the mechanisms like the Brussels I regime.

Across these four areas, we regularly focus on public interests in terms of the values that are represented, contested, constituted, and at stake in the institutional spaces we examine. These several elements add up to a concern for the ways of materially knowing and communicating international law, what it is and does through its institutional operations, whom its institutions work for and with (and against or without), their discontents and their promise. We teach high-level university courses and research innovative and novel issues relating to these questions.

The practices that we focus on include professional routines and modes of communication;



The distribution of material, aesthetic and semiotic elements across institutions of international law determines the way they 'hear', project and respond to public interests. © Pixabay – The Listener

<sup>1</sup> Strand Composition (as of 1 January 2022): Dr Geoff Gordon, Dr Vesna Lazic, Dr Carl Lewis, Michiel de Rooij, Dr Sofia Stolk.

Global infrastructures and information flows determine the ways by which the world to which international law applies is perceived, pieced together and known in institutional contexts. © Shutterstock – 'Aspire' by artist Warren Langley features glowing golden trees which appear to rise up and hold aloft the enormous weight of the overhead freeway structure in Sydney, Australia. This work references the community action in nearby Fig Street, which resulted in the preservation of local housing which was to have been demolished for the freeway. The artwork addresses the notion of aspiration which was evident in the community action. The sculpture in light provides a historical metaphor for this action.



the transformations that we focus on are related to technological change. Global infrastructures and information flows determine the ways by which the world to which international law applies is perceived, pieced together and known in institutional contexts. The flow of information available to international institutions includes material, aesthetic and

semiotic elements, from computing resources to styles of argument to specific institutional vocabularies.

This distribution of material, aesthetic and semiotic elements across institutions of international law determines ways in which institutions 'hear', project and respond to



public interests, and likewise the ways in which they measure, analyse and act on the world for legal regulatory purposes internationally. Related change is apparent in the ways in which international institutions communicate with publics to which they mean to apply. These transformations have not come out of nowhere. They are the latest turns in a

larger programme to adapt international law to a globalised world, one that has seemingly grown ever closer, its publics and pluralities – and its inequalities – ever more apparent, with competitions among their multiple interests ever more challenging.

### Main research lines and projects

#### 1. Material, institutional practices: How are public interests made legible and mobile in the institutional practices of international law?

Today, the nature and stakes of international legal contests are changing, in part as a function of changes to the professional and technological assemblages by which international institutions are able to perceive and act on the dimensions of international life that fall within their jurisdictions. In this light, our research aims at critical engagements with emerging international legal practices that posit, advance or affect publics and public interests in new or contested ways around the world.

We propose to investigate this term with fundamental research to analyse the bed-rock values operationalised by international institutions such as the International Court of Justice and the European Court of Human Rights and the European Court of Justice, and what their engagement with such values reveals about the contingency of the 'public' as a concept and ideal in international legal ordering. We call it the **Trying Values** project. This research is suited to a VENI project and ultimately an ERC Starter Grant, to examine definitional concepts and their application in institutions vested with the power to resolve of value-laden contests in international law. We aim to analyse the contingent construction of publics and public interests by contrasting claims that posit their definitive



The Imagining Justice project looks at the manifestation of international law beyond the rules, regulations and court cases. It explores how different audiences understand, experience and evaluate international law through its visual presence; in artworks, on social media, in films and through the symbolic architecture of its institutional buildings. © Pixabay, 'Art & Justice'

scope with universalistic language often employed by international adjudicative bodies and other actors who bring disputes and raise claims in international fora.

Our research strand has a history of engagement with questions of value in the international system, including an ongoing collaboration with Prof. Dr. Isabel Feichtner, at the University of Würzburg, for the **Constitutions of Value** project, which hosted a symposium on the *Verfassungsblog* and will produce an edited volume in 2022. Our research has focused on the ways in which values are known and measured for distributive purposes in an institutional context. These questions require confronting issues such as who is empowered to decide on what counts as a value, a public or a public interest, and on what basis; or who invokes these categories and with what purposes? These issues are intimately connected with international law's complicated history and highly politicised representational practices, and the ways in which international law and its institutions

constitute/position themselves in relation to their audiences/constituencies. Whether at the International Court of Justice, the relatively new Specialist Chambers for Kosovo, the European Court of Human Rights, or at other institutions, these fundamental issues raise thorny questions in everyday practice. We air these questions and others in our **Hague Courts Dialogue Series**, organised in conjunction with counterparts in the courts and tribunals community in The Hague. The Hague Courts Dialogue Series is an example of our close and symbiotic relationship with the institutions in The Hague and the community around them.

Our interest in the communicative potential of institutions is not limited to traditional dialogue. Through the **Legal Sightseeing** project, we interrogate the lively spaces of international law's embodiment. With an interactive blog, long reads, and independently published scientific articles, the Legal Sightseeing project looks at international law and wonders how it presents itself to 'the public', as an event. It explores its images, its stories, its audiences, asking how international law is presented, where, and to whom? And, on the side of the audience: Who is seeing it? What is actually seen? How is it experienced? The project's method is to look, and look again.

## 2. New technologies: How do new technologies affect the institutional reproduction of public interests in international law?

Our research is framed by the changing technological landscape, for instance in new material constellations of global communications, including modes of communication between institutions of international law and the peoples affected by their practices, collective security, and conflicts of norms. In this space of accelerated transformation, our strand looks at emerging technological

entanglements and institutional practices that instantiate diverse constructions of public interests for- and by legal regulatory intervention.

We have done ground-breaking work to analyse the ways in which international institutions incorporate and project the publics to which they seek to apply. The **Imagining Justice** project examines the use of visual means within international courts and tribunals, as well as the communication of international law by means of proliferating images over contemporary platforms. This research project includes a first-hand focus on the actors and activities in The Hague as a physical and virtual international law hub.

The output for the Imagining Justice project includes active participation in the Hague-based ecologies that it describes. Thus, our work is reflexively engaged with the practices that we observe. In addition to Imagining Justice, which will become Veni and ERC applications, we are currently developing a NWO proposal to develop a new curriculum to introduce international law in secondary schools in The Hague (more about this below).

The technological underpinning of emergent dynamics in international institutions, driven by the rise of networked communications media and information-processing technologies, are bound up with professional routines incorporated from fields of business management and information theory. Work within the



How are competing constructions of public interest managed by institutions of international law? © Artheos, Pixabay – Street art

research strand currently incorporates the past and present of information theory into new projects that will examine the impact of emerging quantum information technologies on international institutions and regimes. The work builds on our **Mapping Value(s) in AI project**, funded by a seed grant for the Human(e) AI Research Priority Area at the UvA, to address the governance work and values produced in conjunction with algorithmic systems and sub symbolic AI applications. This work puts us in dialogue with colleagues at IViR, and collaborators for the Mapping Value(s) project included colleagues in Informatica and Media Studies. The changing landscape involves cross-cutting local and global network developments that include information technologies for data-driven resource allocation, raising fundamental questions of economic and social policy alongside questions of security and communications, putting our work in line with the priority given at the University of Amsterdam's law faculty to issues of social and economic justice.

Our upcoming projects in this area address the development of quantum technologies. These projects will be the basis of Vidi, ERC and other grant applications. The projects vary, but we will collectively refer to them by the name of our recent Vidi application, **QuGov, for Quantum Governance**. The development of quantum technologies threatens to destabilise long-held institutional arrangements in the areas of international security and the global economy, for instance with threats to encryption and stealth technologies, or altering geolocation infrastructures. The ability of international institutions to coordinate the deployment of quantum technologies has become a horizon for governing distributive outcomes in the future. QuGov interrogates these issues, as well as the potential value added of quantum information theory for perennial issues of critique and social theory applicable to international law.

In addition to QuGov, our research strand is active with Action Line 4 of Quantum Delta NL, addressing ethical, legal and societal aspects of quantum technologies. We are currently developing a consortium project going forward at Quantum Delta under the leadership of Joris von Hoboken (at IViR), with whom we work closely, also as part of the Digital Transformation of Decision-Making project.

### 3. Managing conflicts: How are competing constructions of public interest managed by institutions of international law?

In private international law, it is precisely a role of the legal institution to serve as mediator among competing claims of public policy, public interest, and private right, and so the reflexive nature of our work is baked into the subject. The public interest exception is perhaps clearest in this regard, especially when it is brought into conflict with human rights norms. The issue is also apparent, from a Private International Law perspective, in the constant decision as to how much law from outside the national legal system will be recognised within it. We propose to take up such questions in ongoing research. Further, our Private International Law group also focuses on rules that limit party autonomy in the name of some public interests, for instance when private international law constraints serve to protect the interests of weaker parties.

The research further covers public policy and human rights restrictions in applying private law norms, as well as the role of mandatory rules in adjusting private law implications. We raise provocative questions about dilemmas (and opportunities) posed by private international law in a world marked by deep and accelerating inequality, where wealth and capital flow across multiple possible jurisdictions, and likewise the appeal of private international law models to develop an institutional

architecture for public norms in pluralised legal-governance contexts.

Private international law, for instance, has long been occupied with the harmonisation of diverse interests and conflicting public policies, and continues to play a key role to sustain leading regional and institutional initiatives. The EU-funded **JudgeTrust** programme is exemplary, it has aimed to identify best practices and provide guidelines in the interpretation and application of the EU Regulation 1215/2012, usually referred to as 'regulation Bla' or 'Brussels Ibis'.

This regulation is a core of EU private international law legislations as it deals with the jurisdiction and the recognition and enforcement of judgments in a wide range of civil and commercial matters. The project will contribute to a more uniform interpretation and application of Brussels I Regulation, primarily through publications. It will contribute to enhancing consistency in legal education on issues of EU private international law by providing important educational tools. These publications, some of which will be available on the Asser Institute's website, as well as other project outputs, will prove valuable tools to academics and legal practitioners alike when applying and interpreting the Regulation and other EU private international law instruments. Since the rules of the Regulation are based on a careful balance of international litigants' interests, the project results will serve public interests and improve the efficiency of cross-border resolution of civil and commercial disputes.

#### 4. Knowledge production and methodologies: How do we know what we know about public interests in international law?

Across the several projects of our strand, we have a consistent interest in modes of



We consistently ask how international lawyers and academics know what we know about – and in international law, and how they and we make that knowledge actionable. © Keith-Edkins – 'Question mark'

knowledge production in – and with international law. We consistently ask how international lawyers and academics know what we know about – and in international law, and how they and we make that knowledge actionable. Our interest dovetails with a cross-cutting concern for methods and methodology at the Asser Institute as a whole. Accordingly, our research strand hosts institute-wide discussions over the different methods and perspectives that we bring to conduct research into international law and public interests. This has recently come to fruition in our highly successful **Method, Methodology & Critique** series, a series of monthly events culminating in a week-long workshop at the end of 2021. Our monthly online events regularly attract up to three hundred registrations and over a hundred participants. Through this and other initiatives, our strand includes a strong socio-legal component.

Our *Method, Methodology and Critique* series is predicated on the insight that changes



*Our Method, Methodology and Critique series* is predicated on the insight that changes in the course of our discipline have lately been fuelled by the emergence of different modes of perceiving, thinking and writing. © MaxPixel.net, Public Sculptures

in the course of our discipline have lately been fuelled not by new substantive claims in existing (doctrinal, analytical or political) controversies, but through the emergence of different modes of perceiving, thinking and writing. The aim of this series is to explore various new ways of 'doing' international legal scholarship. This includes a focus on the opportunities, pitfalls and politics of varying

methodological approaches, their embedded epistemological, sociological or philosophical commitments as well as the particular technical crafts they demand. Researchers participating in the workshops gain a better grasp of how to position themselves in an increasingly complex methodological landscape. They also enhance their understanding of what is at stake in the various 'turns' that

are continuously performed in international law (such as the 'turn' to practice, history, discourse, political economy, critical sociology, materiality, geography or aesthetics, to name but a few).

### Teaching and outreach

Our researchers are recognised for their expertise in fundamental matters issues of doctrine, theory and practice. Our primary source of income is and should remain as valuable teachers at the masters and bachelor's level, able to speak to the foundations of international law as well as its cutting-edge. Our teaching is framed by problematics of an international legal system that must toggle between the global and the local. On the basis of our strong grounding in cutting-edge theory, we are first and foremost university teachers. Research strand members are annually hired at the Vrije Universiteit to teach in the interdisciplinary LLM program Law and Politics of International Security, teaching the foundational course on 'Theories and Approaches to War and Collective Security', as well as a bachelor's level course that introduces similar themes, such as 'The Law and Politics of Fencing the Use of Force'. We have further been hired to design and teach a novel course on documentary film making and international law. In addition, we have been hired to coordinate the major public international law course for bachelor students at the *Vrije Universiteit*.

In both our public and private international law research, we approach questions about public interests reflexively, though for different reasons. By reflexively, we mean with a critical sense of our own engagement in theory and practice with the issues and things that we research. The sense of our own engagement creates both connection and distance: we seek to relativise the practices

we observe, while acknowledging our implication in those practices. This is evident in our outreach. For our Public International Law group, this reflexive commitment animates our **International Public Interest Advocacy** summer program. The program brings together pioneering lawyers, activists and civil society figures critically to discuss the opportunities and pitfalls of cutting-edge techniques for public interest advocacy. And as noted above, we are translating interests in the communication of international law into a **curriculum for high schools in The Hague**, in an application for NWO funding. This interaction with the city of The Hague builds on our strand's relationship with the Municipality of The Hague as an institutional stakeholder. This relationship is evident in the *Hague Courts Dialogue Series*, mentioned above. It is also apparent in our research strand member Sofia Stolk's long commitment to the **Movies That Matter** festival in The Hague. Through Sofia's close association with the Movies That Matter Film Festival, we are engaged with a popular audience interested in issues of international law. Sofia has been an instrumental figure in the Movies That Matter Film Festival, and has expanded on her position to develop courses and special programs on documentary filmmaking in international law. She will continue to pioneer this space, for instance with installations at the interface of art and international law, such as she has previously staged at the Asser Institute, or with other upcoming programs on the uses of art in international law.

## Research strand D



'Fearless Girl' is a bronze sculpture by artist Kristen Visbal in the Financial District of Manhattan in New York City, United States. Promoting female empowerment, the statue was installed for International Women's Day 2017. Initially, Fearless Girl was installed facing down the Charging Bull statue at the northern tip of Bowling Green on Broadway. Following complaints from that statue's sculptor, it was relocated to its current location. © Anthony Quintano, Flickr

## 3.d Transnational public interests: constituting public interests beyond and below the state

Research strand coordinator: Dr Antoine Duval

### Introduction

Research strand D<sup>1</sup> will take as a starting point the assumption (to be critically investigated) that the pursuit of the public interest in the transnational space is (at least partly) moving away from the institutions of the nation state towards actors and organisations beyond (or below) the state, including private actors, cities and regional/international organisations.

### Main research lines

A first research line will aim to identify and understand this shift beyond the state and to empirically locate some of its institutional and normative materialisations. The following questions come to mind: Do nonstate transnational actors claim to be acting in the transnational/European public interest? Do they face demands to be acting in the transnational/European public interest? What are the procedures they use to determine the transnational/European public interest? How do they understand and define transnational/European public interest? Are states resisting or encouraging this shift? If the former, what are the legal-political strategies they use to resist such a shift? Are they successful in doing so? How are potential conflicts between interpretations of the public interest resolved? Who prevails, and why?

A second research line for the strand will be normative. Assuming that such a shift is taking place, what are the consequences that need be drawn to check the power exercised by

nonstate actors when identifying and pursuing the transnational public interest? Here the research strand members would turn to studying the mechanisms of control and representation necessary to ensure that nonstate actors, when they purport to act in the transnational public interest, remain accountable to the relevant transnational public(s). Potentially relevant questions include: Are the institutional mechanisms used by nonstate actors to identify and implement the transnational public interest reflective/inclusive of the affected actors? How arbitrary is the use of the idea of public interest by nonstate actors? What are the risks if the narrative of transnational public interests is used for private gains? What type of procedural innovations would need to be introduced (transparency, participation) to ensure a democratisation of nonstate actors claiming to act in the transnational public interest? What role for states (and their courts) in exercising a check on nonstate actors claiming to act in the transnational public interest? How to define the public in a transnational context? Should we talk of a plurality of transnational publics?

These two research lines will be concretised through four research themes:

#### 1. Private corporations, public interests: investigating the public/private divide in the business and human rights discourse

The existing Doing Business *Right* (DBR) project will take a new turn and focus primarily on tracing and analysing the operation of the public/private divide in the context of the business and human rights discussion. Under the current paradigm, grounded in the Ruggie Framework and the UN Guiding Principles on Business and Human Rights (UNGPs),

<sup>1</sup> Strand Composition (as of 1 January 2022): Dr Antoine Duval, Dr Daniela Heerdt, Dr Narin Idriz, Dr Eva Kassoti, and a vacancy EU law.



The pursuit of the public interest in the transnational space is (at least partly) moving away from the institutions of the nation state towards actors and organisations beyond (or below) the state, including private actors, cities and regional/international organisations. © DaveyNin, Flickr – Public artwork 'Alberta's Dream' by Jaume Plensa, in Calgary, Canada. It is a self-portrait of Plensa hugging a real tree, his back turned to a skyscraper called 'The Bow' and what it symbolically represents (big business, oil, gas). The political message is one to heed and hear often the natural world gets ignored in favour of development and progress.

businesses have the responsibility to respect human rights. This marks a clear shift from the traditional position of human rights as primarily directed against the State as a sovereign holder of the right to exercise public authority. Consequently, it has triggered the emergence of new regulatory techniques, such as human rights due diligence, aimed at providing a methodological framework for businesses in order for them to discharge this responsibility.

We will study how these ideas and processes shift our understanding of the public and the private, how they shape the creation of new transnational publics to which businesses are supposed to be accountable, how businesses adapt their corporate governance to accommodate their new public function, and the impact of the deployment of private management tools to pursue public interests.

The DBR research team will continue its work in fundamental research. It will continue to publish book chapters, journals and edited volumes, and peer-reviewed articles in top HR, IL and EU law journals. We build on our network to organise both academic and policy-oriented events. In terms of funding, we will primarily aim to attract research funding through the acquisition of national (VIDI) or European (ERC Starting Grant) research grants. We see opportunities for close collaboration and joint fundraising with both the Amsterdam Centre for Transformative Private Law (ACT) and the Amsterdam Center for International Law (ACIL), as well as with UvA's legal clinic. In terms of societal impact, the *Doing Business Right* project will leverage the existing communications channels (social media, blog, and mailing list) to reach a wide range of stakeholders active in the business and human rights discourse. Finally, we plan to organise a series of Asser Academy Masterclasses and a specific Winter Academy structured around the issues at the heart of this theme.

## 2. *Lex Sportiva* goes public: Public interests and the transnational private regulation of sports

The *Lex Sportiva*, the transnational regime regulating the practice of sports at the international level, relies primarily on formally private institutions to operate. Its core law-making and administrative organisations are (mainly Swiss) associations (e.g. International Olympic Committee and many international federations) or foundations (e.g. the World Anti-Doping Agency). Its primary dispute resolution body is a private arbitral tribunal (e.g. the Court of Arbitration for Sport). For a public lawyer, this regime is a fully private matter built around private contracts, and yet, we've seen courts struggle with this formal private nature and using a number of strategies to bind sport governing bodies (SGBs) to public standards.

This is because, as pointed out recently by the European Court of Human Rights in its



The participants to international sporting competitions have no choice but to accept to submit themselves to the private rules and processes of sport governing bodies.  
© Phxere, olympic rings in Portland, Oregon, United States

Mutu and Pechstein decision, the consensual foundations of the entire edifice are shaky. In practice, the participants to international sporting competitions have no choice but to accept to submit themselves to the private rules and processes of SGBs, their private autonomy is extremely limited. This *de facto* monopoly power, which entrenches the authority of SGBs and their governance capacity, can only be justified by their pursuit of some public interests. In turn, it also raises the question of the application of public standards (be they constitutional or administrative in nature) to this type of governance.

In the coming years, the work of the Asser International Sports Law Centre (AISLC) will be centered on studying the interface between private regulation and public interests in the transnational governance of sports. The aim will also be to contribute to the normative debates on the institutional

requirements and human rights responsibilities that the (formally) private authorities of the *lex sportiva* should abide by.

The members of the AISLC will regularly publish book chapters, edited journal issues and volumes and peer-reviewed articles in the International Sports Law Journal, as well in general Human Rights, International – and EU law journals. We will continue to build on our network in the field of transnational sports law and governance to strengthen our academic activities.

In terms of funding, we will aim to attract primarily funding through commissioned research (from EU institutions, SGBs, national governments, FIFPro, NGOs etc.) that fits with the orientation of the research project. In particular, we aim to develop a strong advisory practice at the intersection between transnational sports law and governance and human rights through a close partnership with the



The Global Europe project will analyse the EU's external policies and action with a view to establishing the EU's capacity to exercise principled and value-based global leadership. © Vlady art



Researchers within the Global Europe project will organise stakeholder activities and develop a training for young professionals on a specific aspect of EU External Relations law, such as trade or migration. © Vlady art

Centre for Sports and Human Rights. We further aim for a stronger collaboration with UvA on both research and education, also through jointly developing professional education and specialised masters.

In terms of societal impact, the project will benefit from the existing communications channel of the AISLC (social media, blog, and mailing list) to reach its stakeholders and disseminate as widely as possible our findings. The members of the AISLC will as well continue to engage regularly in media activities to actively share our knowledge and policy recommendations. Finally, we aim to develop a curriculum of regular transnational sports law and governance Masterclasses (five per year) as well as a Summer school on human rights and the global governance of sports.

### 3. Global Europe: Investigating public interests in the EU's external action

The “Global Europe” project will examine both lines of research, focusing on the second (recap) in particular. One of the aims of

the project, is to analyse the EU's external policies and action with a view to establishing the EU's capacity to exercise principled and value-based global leadership. Therefore, the normative questions described above in the introduction above, are important to establish the nature of the EU as an external actor and see whether it is able to live up to its very own objectives and aspirations.

Additional questions to be raised in the framework of this project relate to whether and to what extent public interest is factored into the EU's external policies and actions; and whether and to what extent recent trends and developments take account of this concept. Does public interest play a role in shaping EU external action? What are the broad principles or values that contain or take account of this concept? What role do they play in EU external action? Which actors and/or procedures play a role in defining public interest in EU external action? Which actors and/or procedures play a role in shaping EU external action in line with what is seen as the public interest? How do recent trends, such as informalisation of EU law-making and EU external action,



How do cities understand and use public interests? Who determines what is in a city's public interest? Whether and how do cities create a transnational public sphere? What are the publics that take part in this sphere? And, how do cities use transnational public interests in the mobilisation of anti-hegemonic force in the (re) constitution of the urban? © Pxhere – Outdoor architecture 'Power to the people'

affect existing actors and/or procedures that play a role in shaping and implementing the public interest? Is there a difference in the definition and role played by the concept of public interest in the various areas of external action?

The 'Global Europe' project members are focused on researching and organising different types of events surrounding the EU's role as a global normative actor, its external relations posture and its evolving relationship with international law. The project brings different stakeholders together to analyse this role and its implications at a national, regional and international level.

The project members will continue to share their knowledge through publications and edited volumes, articles in peer-reviewed journals posting on well-read professional blogs (e.g. *Verfassungsblog*) with a view to engaging a broader audience. Furthermore, embedded in the Global Europe project is the book series published by Asser Press and Springer, entitled "Global Europe: Legal and Policy Issue of the EU's External Action". The members of the

Global Europe project will continue to publish on the broader theme of Global Europe as well, as on more specific themes related to shared EU values and interests in EU external action.

Moreover, the existing partnership with UvA will be strengthened both in terms of education (both project leaders are involved in teaching and supervising LLM theses at UvA) and in terms of research by exploring possibilities for holding shared events, as evidenced by previous activities such as the conference on Migration that took place on 8-9 October 2020. Lastly, project members will seek to engage further in international projects and partnerships, such as the MATRA project on the Judicial Culture in the Western Balkans.

The societal impact of the Global Europe project is enhanced by a number of activities that involve different stakeholders, such as diplomatic missions in The Hague, the Ministry of Foreign Affairs of the Netherlands, NGOs, think-tanks, students and the wider public in academic events, seminars and conferences both as audience and contributors. These activities will also serve as dissemination tools, along with the use of social media by the researchers. The participation of project members in key-activities held by the International Law Association will also provide further opportunities for networking, research and dissemination. The project will also develop a training for young professionals on a specific aspect of EU External Relations law, such as trade or migration.

In terms of funding, we aim to attract mainly EU funding (such as Jean Monnet project funding) that fits the profile of the Global Europe project.

CLEER, which is coordinated by research strand D, is one of the most renowned Centers of expertise for EU External Relations

Law internationally. CLEER has launched a research programme centred on the analysis of the interplay between the international and the EU legal order, the projection of EU law on the international plane, and issues of coherence and consistency in EU external policy-making and implementation. International experts from academia and practice will further the debate on these issues in workshops, seminars and conferences before disseminating their findings in working papers made available to a global public via the website of CLEER and SSRN. As such, CLEER's ambition is to stimulate excellence in research, reflection and teaching in EU external relations studies in higher education institutions within and outside the Union and to promote innovative solutions to practical challenges to the external dimension of the EU's legal order.

In the coming years, and with a strong research capacity and an outstanding network of international partners, the researchers involved in the Global Europe project and CLEER aim to build on the Asser Institute's function as a leading forum for debate on EU external relations issues.

#### 4. Cities and the (re)constitution of (transnational) public interests

With the rise of neoliberalism in the 1980s, economic and cultural globalisation has significantly shaped the world's cities, both in the Global North and Global South. Privatisation aimed to cut costs of (local) government was argued to serve the public interest generally. Cities, big and small, became – be it in different degrees – an inescapable part of the global city network. Only very gradually – with thanks to the critical work of Saskia Sassen and some other critical urban scholars – the negative impact of the unregulated global economy on cities became explicated and discussed. Cities increasingly criticise and

counter the negative impact of globalisation and seek (transnational) legal and political ways to protect and promote urban public interests.

Arguably, since the early 2000s, cities around the world claim to act in the public interest and to deserve a seat at the table in the various fora of global governance and international law to articulate what is in cities' public interest both locally and globally. These claims are often grounded in critique of the nation-state and justified by mayors and local governments with language for which then New York City's mayor Bloomberg's statement became exemplary: 'While nations talk, cities act.'

Today, there are numerous transnational city networks that claim to confront global challenges ranging from climate change to migration, discrimination and the distribution of emerging technologies. Cities claim to be better promoters of public interests and better implementers of international legal norms and global policies. While they are increasingly accepted to have a role in global governance, their acclaimed role in the protection and promotion of the public interest deserves close scrutiny.

As phrased in section 2, the public interest is not given or found. It is contingently constituted and reconstituted. In the *Cities and the (re)constitution of (transnational) public interests* project, a number of the more fundamental questions raised in this ASRA are brought to the urban sphere: How do cities understand and use public interests? Who determines what is in a city's public interest? Whether and how do cities create a transnational public sphere? What are the publics that take part in this sphere? And, how do cities use transnational public interests in the mobilisation of anti-hegemonic force in the (re)constitution of the urban?



## 4. Methods and methodology

The Asser Institute is a place of intellectual and methodological pluralism. We value strong doctrinal research to co-exist with inter- and multi-disciplinary approaches. Critical perspectives are paired with an appreciation of law's emancipatory promise and potential.

In recent decades, the field of international law has seen a multiplication of methodological approaches, a growing variation in methods for research and practice, as well as critical reflection on epistemological tenets of the field. International law has long ceased to be the domain of a privileged few. Together with processes of globalisation, international law reaches into an ever-increasing variety of local spaces and idioms.

At the Asser Institute, we are situated between the study of international law and its practical everyday life. Likewise, we aim to serve the public interest (whomever and whatever that may be) even as we aim to critically research the public interest: this double relationship implicates us in the questions we raise about who the public may be and who is excluded, what their interests may be and what not, and how we know these things. In short, we foster an open research environment featuring multiple methodological approaches from legal and social sciences (doctrinal, philosophical, sociological, anthropological, economical) for the study of international law, the practices that sustain it, and their effects on- and in the name of public interests.





The work "House of Knowledge" of artist Jaume Plensa in in Borås, Sweden. Composed of a multitude of letters welded, this large human form encourages quiet contemplation as well as physical and sensory exploration by inviting the public to enter and walk inside the monumental empty container. © Wikimedia

## 5. Research department

### 5.a Nurturing our research culture

One of the advantages of the current size of the Asser Institute, is the easy collaborations across its research strands. We will nurture our research and thinking also in research department-wide labs and seminars.

To ensure coherence as well as interactions and collaborations across the research strands, the Institute continues to organise a number of internal meetings for the research department as a whole, including research department meetings (twice a year), research- and PhD labs, and research luncheons/reading group sessions (all on average on a monthly basis).

#### Research Labs and research luncheons/reading group sessions

In the internal research- and PhD labs, particular attention is given to questions of methodology and research design, while researchers discuss scholarly literature together and invite feedback from colleagues on their papers in progress. These internal meetings at the Institute aim to further nurture the production of excellent research and publications in A-journals and other outlets. They also serve to become aware of and understand each other's work and to enhance potential collaborations between colleagues. During our luncheons/reading group sessions we discuss (topical, newly published) work (monographs and/or articles) from renowned international lawyers.

#### Research seminars

Throughout the year, in our Research Seminars Series we invite external scholars to present in the context of our ASRA. The seminars are semi-open, as these are primarily meant for the Asser research community, although we will invite a few external

researchers who may be interested in the specific topic of the seminar. Nonetheless, we aim to keep the group's size limited, in order to stimulate interaction and high quality, in-depth discussions. The goal of the seminars is not only for the Asser research community to get acquainted with- and discuss relevant external scholarship, but also for the external researcher to be able, based on the feedback received during the seminar, to improve the text presented – for instance a draft article or draft chapter – before final submission.

Pursuant to the agreement to intensify research collaboration between Asser and ALS researchers, Asser, Asser Research Seminars will be a space through which the Asser Institute and Amsterdam Law School based research centres such as ACIL, ACELG, ACT, IvIR, and ACES can strengthen relations. We will invite researchers from these centres to present their work to the Asser community. In turn, Asser researchers look for opportunities to present their work at UvA School of Law based research centers.

#### Annual conference

Early 2022, we will launch the new ASRA with a series of annual conferences. The first will be a collective endeavour, while in the coming years each different strand will take responsibility for the conference and the edited volume to which it leads.

#### Annual T.M.C. Asser Lecture

On the occasion of its 50th Anniversary (1965-2015) the T.M.C. Asser Instituut launched the Annual T.M.C. Asser Lecture series on the development of international law. The Asser Institute thus will continue to invite each year an internationally renowned jurist and outstanding public intellectual to take inspiration from the ASRA to deliver our flagship lecture. The Annual T.M.C. Asser Lecture aspires to be a platform for constructive, critical reflection on the role of

international and European law in addressing the challenges and (potentially radical) changes of the global society of the 21st century.

### Visiting Research Fellows Programme

The T.M.C. Asser Instituut offers the possibility of a self-funded research stay (one to six months) to scholars and legal practitioners from around the world working in the field of international and European public and private

law. The Asser Institute accepts applications from junior research fellows (PhD researchers enrolled in a doctoral degree programme; early career researchers and practitioners), and senior research fellows (experienced academics and practitioners). Visiting research fellows pursue their own research project, and will be connected to one of the research strands as part of the [Asser Strategic Research Agenda](#).



Public art of museum Sculptures by the Sea in Scheveningen, The Hague, the Netherlands. Surrounded by sand and beach grass, the monumental sculpture 'Light of the moon' by the Polish-German sculptor Mitoraj has an alienating effect. It could be a find from classical antiquity. But on closer inspection, it becomes clear that the sculpture is modern. Mitoraj has added decay and ageing, as if he wants to say: man is vulnerable. Mitoraj was born in Dresden during the Second World War and as a baby narrowly survived a bombing of the city. © Shutterstock

While in The Hague, visiting research fellows meet with other scholars and practitioners and engage with The Hague community of international lawyers working at the many international organisations located in the city, and with Dutch academia. They are encouraged to participate fully in the activities of the Asser Institute and to attend its lectures and seminars. They are expected to present their research at one of the [Asser Research Seminars](#) as well as at a public lecture, and to submit a manuscript produced (partly) during the research stay for publication in the [Asser SSRN Research Paper Series](#).

Many researchers are attracted by the open, international, and inclusive culture of the Institute, including visiting research fellows, a few of which the Institute welcomes every year, as well as our annual Shelter City fellows.<sup>1</sup>

### Diversity

The Asser Institute aims to be an open, diverse and inclusive environment that supports and gives voice to all members of its research community. The Institute aims to contain a balanced composition of its staff, in terms of age, gender and backgrounds. Gender equality in particular requires our attention, also in our (research) events in which we strive for a gender-balanced composition of participants. We are inspired by - and acknowledge the benefits of interactions between colleagues from different nationalities and (cultural) backgrounds. The large number of opinions and perspectives enhances a range of legal



© Shutterstock, 'Rainbow Sea Container' – abstract sculpture in Fremantle, Western Australia by Perth artist Marcus Canning has been affectionately dubbed 'The Containbow'. The Containbow is 9-metres high, 19-metres long, and tips the scales at 66 tonnes. It is near a walkway down to a park and with access to the water's edge.

argumentation stimulating academic debates, which in turn increases the quality of our research.

## 5.b Asser PhD Programme

At the Asser Institute, PhDs conduct their individual research projects preferably teamed up in pairs. The Institute's PhD programme is characterised by intensive supervision and extensive training within a small research community. It follows moreover the doctoral programme of the Amsterdam Law School of the UvA in terms of annual reviews and agreements on content, planning and supervision. Each PhD researcher is supervised by two UvA professors, in conformity with UvA requirements for doctoral supervision, in addition to a daily advisor (a senior researcher). PhD researchers are, as a group and individually, integrated in the research department of the Institute, and take part in all kinds of activities organised at the Institute. They take part in a variety of training activities, organised both at the UvA and at the Asser Institute.

<sup>1</sup> Since 2017, the Asser Institute yearly welcomes one human rights defender within the framework of Shelter City, a project initiated by Justice and Peace Netherlands that provides temporary relocation and training to legal practitioners who fight against human rights violations in their home countries. In the context of the Visiting Research Fellowship Program of the Asser Institute, Shelter City Fellows carry out a research project during a three-month research stay in the fields of human rights, international law or European law. As other Visiting Research Fellows, they actively take part in the Asser research community.

PhD researchers regularly meet with their promotor(s) and daily supervisor. These meetings serve to review text, to discuss progress, and to share ideas on future activities and general issues such as project management.

A success factor in Asser's PhD Programme are our *PhD Labs*. As a group, the PhD researchers come together in monthly PhD research labs. Here, discussions on the ongoing research projects take place in an open, peer-driven environment. The peer-review process with colleagues supports PhD researchers to acquire presentation skills and to engage in constructive, critical commentary and feedback.

On average, the Asser Institute aims to employ four to six PhD candidates at any given time, resulting in (on average) at least one successful PhD defence per year. In addition, the Institute regularly employs (junior) project researchers to carry out commissioned research under the supervision of senior staff. These junior researchers are assisted in the development of their PhD project proposals.

### 5.c Interuniversity research coordination

The Asser Institute coordinates a number of interuniversity research networks and collaborates with a number of partners.

- CLEER
- NNHRR
- IHCL Platform
- Asser IJI – Netherlands Network on Private International Law in a Global Context
- ICCT

In 2022, the Chair of International Arms Control Law, based at the Asser Institute will initiate the Netherlands Network on

International Arms Control Law. Academic coordination will be conducted by Prof Thilo Marauhn and a Post-Doc, hired early 2022.

### 5.d Research performance indicators and evaluation of research

The Asser Institute will continue to follow the performance indicators of the FdR-UvA (see Annex 1), while taking note of the VNSU's 'Waarden en Erkennen' report. The performance indicators form an integral part of the annual talks (*jaargesprekken*) with the individual researchers.

### 5.e Open Access

The Asser Institute is committed to publish its research output to the highest extent possible in open access. Open access is in the public interest, and entails that anyone including our main target groups – i.e. academics, policy makers, practitioners, and the general public – can freely access our research outcomes. As such, open access generates valorisation of research results.

Researchers are encouraged to publish in well-respected, international journals, whose contributions are subject to a (blind) peer review, e.g. *Common Market Law Review*, *European Journal of International Law*, *Europe and the World: A Law Review*, *Journal of Law and Society*, *Journal of World Trade*, *Leiden Journal of International Law*, *London Review of International Law*, *Melbourne Journal of International Law*, *Security and Human Rights*. The majority, if not all, of these journals publish in open access. Asser researchers, as UvA employees, will be able to do so without



The Asser Institute coordinates a number of interuniversity research networks, such as CLEER, NNHRR and the IHCL Platform. © Sam Valadi, Flickr. A giant bronze sculpture of spider called "Maman" by artist Louise Bourgeois standing at the main entrance the National Gallery of Canada. It alludes to the strength of Bourgeois' mother, with metaphors of spinning, weaving, nurture and protection.

any costs, thanks to deals made by UvA with various academic publishers. Therefore, researchers are not only encouraged to continue publishing in top journals, but to also ensure in advance that publication in open access and free of charge is possible, and that – when signing the publishing agreement – the waiver of the publication costs applies.

In terms of options, researchers are requested to publish with a so-called *Creative Commons licence that facilitates gold open access publishing, i.e. to make publications immediately freely available for others to view, download and distribute*. In cases in which publication costs in journals are not part of agreements, costs can alternatively be covered by internal funds (upon prior approval), or – as part of a research grant – by the funder such as NWO

(in which case open access costs should be budgeted in funding applications).

As to books (monographs), the Asser Institute has allocated a separate amount of €25.000 in both 2022 and 2023 for open access publication.

## 5.f Ethical and responsible science

The Asser Institute endorses the principles of the *Netherlands Code of Conduct for Research Integrity* (VSNU, KNAW). Researchers are individually responsible to comply with the standards for good research practices embedded therein. The Institute nurtures

The Asser Institute is committed to publish its research output to the highest extent possible in open access. Open access is in the public interest, and entails that anyone including our main target groups – i.e. academics, policy makers, practitioners, and the general public – can freely access our research outcomes. © Shutterstock – Sculpture of hands holding a pebble at Jing'an Sculpture Park, Shanghai, China



a research integrity culture that secures independence of both fundamental and policy oriented research and is committed to transparent research policies and practices. Viable research design and structure is subject of debate in our research labs. Integrity and independence are addressed explicitly in particular in the context of commissioned work, from the acquisition of a project through its implementation and the communication of the

insights produced. We emphasise our adherence to the principles of research integrity and independence in conversations with external partners and stakeholders that commission research at the Asser Institute. The importance of integrity is essential in light of the sometimes sensitive nature of research topics (e.g. counter-terrorism), and is paramount also when we carry out commissioned research. Transparency and accessibility are equally

important. Only in rare cases, in commissioned research projects, an extent of confidentiality prevails over making research results (immediately) publicly available. Adherence to the standards of research integrity also applies to PhD researchers, who need to comply with the Doctorate Regulations of UvA.

Researchers are required to take into account any ethical issues that may arise in research, in particular when socio-legal research methods are applied, e.g. interviews, questionnaires, etc., and for research that entails data collection. An ethical self-assessment and ethical reviews are becoming more important, in particular in externally funded research projects. Ethical approvals can be obtained through the Ethics Committee of the Faculty of Law of UvA. The Institute has a secured data management system in place, which will be aligned with the new UvA / Amsterdam Law School policy on research data management. Data are stored on its servers located in The Hague. Personal data are treated in conformity with the General Data Protection Regulation (GDPR) and the *Uitvoeringswet Algemene verordening gegevensbescherming* (AVG).

organised every six years for the Law Schools of the Dutch universities. A committee of external experts evaluates the Institute's research according to the Standard Evaluation Protocol (SEP), which is drawn up by the Association of Universities in the Netherlands (VSNU), the Royal Netherlands Academy of Arts and Sciences (KNAW) and the Dutch Research Council (NWO). In 2020, the Institute conducted a self-assessment that formed the basis of the mid-term review of the period 2016-2019. In 2022, the Institute will be evaluated for the period 2016-2021, based on the SEP 2021-2027.

## 5.g Quality control and evaluation

The Asser Institute continues to apply the performance indicators of the UvA Law School, in which criteria to evaluate research are laid down in a system where the number of points expresses both the average amount of time needed to accomplish a goal of a given type and the academic value assigned thereto. The performance indicators are an integral part of the annual evaluations of individual researchers.

To safeguard the quality of its research, the Asser Institute participates in the evaluations



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