



Programme



9th Annual T.M.C. Asser Lecture

‘Connection in a divided world: Rethinking ‘community’ in international law’

By Prof. Fleur Johns

The Hague, 25 April 2024

www.asser.nl

Introduction



Welcome to the 9th Annual T.M.C. Asser Lecture, our flagship event fostering dialogue between leading international legal scholars and practitioners on pressing global issues. This year's lecture, titled *Connection in a*

divided world: Rethinking 'community' in international law, will be delivered by Professor Fleur Johns, a renowned expert on the intersection of law, technology, and international relations.

The concept of 'community' has long underpinned international law, serving as a foundation for promoting public interests and fostering solidarity. Recent examples include the 'community interest' being invoked in cases before the International Court of Justice, with states seeking accountability for alleged violations of international law, for example in *Canada and the Netherlands v. Syrian Arab Republic* on torture, and *South Africa v. Israel* on genocide.

However, the unifying concept of community also holds a darker history in international law, often excluding and marginalising based on race, religion, or

other factors. Professor Johns will delve into this complex, fundamental and timely topic, exploring how digital technologies reshape how communities form and connect in today's world, prompting crucial questions about the evolving nature of community in the context of international law and humanitarianism and what this means for global relations. Professor Johns' extensive expertise and research, particularly on the impacts of digital technology on law and politics, positions her uniquely to shed light on these issues.

We invite you to join us in collectively engaging with the concept of community, its past and current challenges, and its potential for fostering a more just and fair world. To face the threats of today's world - the climate crisis, wars, pandemics, nuclear weapons and the emerging risks of artificial intelligence - prioritising cooperation and community-making has never been more important. In today's divided world, this is the fundamental discussion we need to have. We hope you will be inspired!

Christophe Paulussen

*Acting chair of the executive board
and academic director
T.M.C. Asser Instituut*

Programme 2024

15.10 Registration

16.00 Welcome and introduction

Christophe Paulussen, Acting chair of the executive board and academic director of the T.M.C. Asser Instituut

16.10 Words of welcome

Rob Schuurmans, Deputy director of international affairs at the Municipality of The Hague

16.15 9th T.M.C. Asser Lecture

Fleur Johns, Professor in the Faculty of Law & Justice at the University of New South Wales

17.00 Q & A

Moderated by **Bérénice Boutin**, Senior researcher at the T.M.C. Asser Instituut

17.30 Reception



Den Haag



Speaker 2024

Prof. Fleur Johns

Biography

Fleur Johns is professor in the Faculty of Law & Justice at the University of New South Wales (UNSW), Sydney (Australia). She works in international law, legal theory, law and development, and law and technology. Her latest research has focused on the implications of digital technology for international law and politics, and on the international law of diplomacy.

Fleur Johns has published five books, the most recent of which is *#Help: Digital Humanitarianism and the Remaking of International Order* (Oxford University Press, 2023) on the transformation of humanitarian aid by digital technologies, and why this matters for law and politics on a global scale. Professor Johns is a Fellow of the

Academy of the Social Sciences in Australia, an Australian Research Council Future Fellow (2021-2025), and a Visiting Professor at the University of Gothenburg, Sweden (2021-2024), and has held visiting appointments in Canada, Europe, the UK, and the US.

She currently serves on the editorial boards of the *American Journal of International Law* and the journals *Technology and Regulation*, the *Journal of Cross-disciplinary Research in Computational Law*, and *Science, Technology & Human Values*, as well as being an Advisory Editor for the *London Review of International Law*, the *Australian Feminist Law Journal*, and several scholarly book series.

‘Connection in a divided world: Rethinking ‘community’ in international law’

9th Annual T.M.C. Asser Lecture by Prof. Fleur Johns

Abstract

‘Connection in a divided world: Rethinking ‘community’ in international law’

The concept of ‘community’ (as in the ‘international community’ or the ‘community of nations’) has been a cornerstone of international law, sometimes aiding the articulation and promotion of public interests. For example, recent attempts to forge international agreement on pandemic prevention, preparedness, and response have been spurred by governments acknowledging ‘the catastrophic failure of the international community’ to ensure solidarity and equity in response to the COVID-19 pandemic.

And lately, international legal litigants have invoked ‘community interest’ in seeking to hold states accountable for alleged violations of international law.

Such claims have been central to recent proceedings brought before the International Court of Justice (ICJ) alleging genocide or torture: by *The Gambia against Myanmar*; by *Canada and the Netherlands against Syria*; and by *South Africa against Israel*.

Nonetheless, international legal notions of ‘community’ have also served racist, exclusionary purposes. The 19th century international lawyer James Lorimer famously argued that some religious and racialised peoples could never be full members of a community of nations under international law. Current international legal vocabularies, such as the ICJ Statute’s reference to the ‘law recognized by civilized nations’ for example, remain redolent of this racist idea of community-as-privilege.

In view of their ambivalence, claims about 'international community' should be made with caution. They often imply commonality of experience and shared value on a global scale when the experiences and values at issue may, in fact, be partial or contested, perhaps increasingly so. Digital technologies have changed how nations and peoples are brought together or connect, creating new disparities between those made more vulnerable to violence and injustice by digital connectivity, and those who benefit from the uneven global spread of computation.

This lecture will examine the concept of 'community' in today's international law, especially in the context of humanitarianism and the growing use of technology. We will revisit key texts such as Georges Abi-Saab's 1998 article, 'Whither the International Community'. Ideas of 'community' have long played a role in making insiders and outsiders in international law and continue to do so. Yet techniques of community-making in international law may nevertheless present egalitarian possibilities— or so this lecture will show.

Fleur Johns, 2024



Tobias M.C. Asser: A visionary for international law

In a world increasingly divided by fear and distrust, the legacy of Tobias Asser (1838-1913), a Dutch jurist and Nobel Peace Prize laureate, serves as a reminder that law can be a powerful force for good in the world, and that we must continue to work to build a more just and peaceful international order.

Tobias Asser was a visionary jurist who dedicated his life to promoting international law and peace. His life and work spanned the late 19th and early 20th centuries, a period of great upheaval and transformation in Europe. He witnessed the rise of nationalism, imperialism, and the arms race, which threatened to plunge the continent into a devastating war. Yet, Asser remained optimistic about the potential of law to bridge divides and promote peace.

At the heart of Asser's vision was the belief that law could serve as a tool to cultivate trust and respect among nations. He saw law, and the development of a shared legal framework, as a way to regulate international relations, prevent conflict, and promote cooperation on issues of shared interest.

Asser's commitment to international law was evident in his work on a number of significant initiatives, including the codification of private international law and the establishment of the Hague Peace Conferences of 1899 and 1907. In 1911, Tobias Asser received the Nobel Peace Prize "for his role as co-founder of the Institut de droit international, initiator of the Conferences on International Private Law (Conférences de Droit international privé) at [T]he Hague, and pioneer in the field of international legal relations".

Array of global challenges

Asser's legacy is not without its challenges, though. As some scholars have pointed out, the international legal system has often been used to justify or perpetuate the interests of powerful

‘As the world confronts an ever-evolving array of global challenges, Asser’s vision remains as relevant today as it was in his time.’

states, while marginalising the voices of those who are less powerful or privileged.

As the world confronts an ever-evolving array of global challenges, Asser’s vision remains as relevant today as it was in his



Source: Public domain - The Dutch Nobel Peace Prize winner Tobias Asser (1838 – 1913), was a man with a vision.

time. We are grappling with a mix of old and new issues, including digitalisation, climate change, migration, the rise of nationalism and populism, terrorism, and warfare. The rise of nationalism and populism, within a context of increasing geopolitical hostility, has made it difficult to achieve international consensus on crucial matters.

The increasing interconnectedness of the global economy has introduced new complexities in regulating transnational activities. And the renewed proliferation of weapons of mass destruction, coupled with the withdrawal of the United States and Russia from important arms treaties, poses a significant threat to global security and marks the end of an era of arms control that has been painstakingly constructed over decades.

Enduring relevance

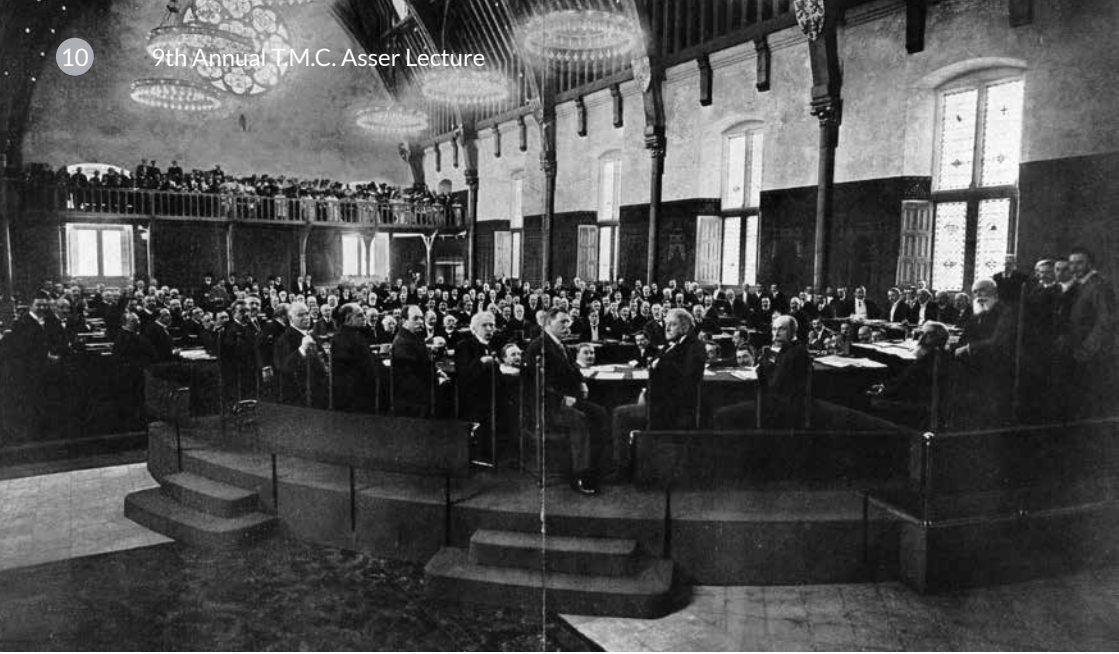
On its 50th anniversary (1965 – 2015), the T.M.C. Asser Instituut launched, on 2 December 2015, the Annual T.M.C. Asser Lecture on the development of international law.



The Annual T.M.C. Asser Lecture, which is held at the Peace Palace in The Hague, is a testament to the enduring relevance of Tobias Asser's legacy. Source: Hilko Visser

The Annual T.M.C. Asser Lecture, which is held at the Peace Palace in The Hague, is a testament to the enduring relevance of Tobias Asser's legacy. Each year, the lecture brings together leading international legal scholars and practitioners to discuss the challenges and opportunities of international law in the 21st century.

The lecture series is a reminder that law can be a powerful tool; for promoting peace, justice, and cooperation in a world that often seems divided and unstable. Asser's vision of an international society based on trust and respect remains an aspiration worth pursuing.



Participants of the Second Peace Conference in a meeting in the Ridderzaal (Hall of Knights) in The Hague (1907). Source: Gemeente Den Haag

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‘Public intellectuals who dare to address the questions of our times’

For the Annual T.M.C. Asser Lecture, we aim to invite speakers who are more than expert international lawyers. They are public intellectuals who dare to address the questions of our times. The Annual T.M.C. Asser Lecture Series was established in 2015, on the 50th anniversary of the T.M.C. Asser Instituut. It honours the Dutch jurist and Nobel Peace Prize recipient Tobias Asser (1838-1913), who worked in both public and private international law.



In 2023, **Michael Fakhri** (United Nations Special Rapporteur on the Right to Food) explained that violence and armed

conflict are the main causes of hunger and famine, and that they lead to more food insecurity. In his lecture ‘The right to food, violence, and food systems,’ Fakhri described how food systems not only produce food but also amplify and produce forms of violence that make people more poor, vulnerable, and marginalised. Fakhri addressed the war in Ukraine to highlight how international markets amplify rather than abate violence, creating global shocks from a regional war.



In 2022, **Brigid Laffan** (European University Institute) analysed the security challenges facing the European Union (EU) after the

Russian invasion in Ukraine. In her lecture ‘Europe in the world: The emergence of Collective Power Europe?’, Laffan explored the EU’s response to Putin’s war, analysed its impact on global politics and Great Power competition and assessed the consequences of the war for the dynamics of European integration and the nature of the EU.



In 2020, **Andrew Murray** (London School of Economics), a leading thinker on information technology and

regulation, discussed the challenges that artificial intelligence (AI) and big data pose for human agency and the rule of law. Andrew Murray urged the EU to regulate AI, in his lecture 'Almost human: Law and human agency in the time of artificial intelligence'.



In 2019, **Anne Orford** (Melbourne Law School) put the social question back on the international law table. In her lecture

'International law and the social question', she argued that the current situation of people who are dispossessed or impoverished by economic liberalisation, and the exhaustion of the world's resources have become 'inescapable barriers to the continuation of 'global business as usual'.



In 2018, **Martti Koskenniemi** (University of Helsinki and Erik Castrén Institute) gave the lecture

'International Law and the Far Right: Reflections on Law and Cynicism', in which he critically reflected on the general state of international law, as well as on its role in the rise of the far right.



In 2017, **Saskia Sassen** (Columbia University) discussed the relations between globalisation, economic

development and global migration in the lecture entitled 'A Third Emergent Migration Subject Unrecognized in Law: Refugees from 'Development''. She asked: 'Is there any role for international law in the prevention of, and protection against, expulsions caused by the accelerating destruction of land and water bodies?'



In 2016, **Onora O'Neill** (University of Cambridge and the British House of Lords) spoke about 'Accountable Institutions,

Trustworthy Cultures' and how rules are not enough. The ethics and culture of institutions, international or otherwise, are important for the trustworthiness of these institutions. This is an important argument that still resonates in these days of institutional distrust.



In 2015, **Joseph Weiler** (NYU School of Law, editor in chief of the *European Journal of International Law*) delivered the Inaugural Annual T.M.C. Asser Lecture

called 'Peace in the Middle East: has International Law failed?'. Weiler identified an indeterminacy issue in the legal framework of belligerent occupation that allowed for different interpretations. This, according to Weiler, had turned into a political dispute about the facts, for which international law can provide no more than a roadmap.



Michael Fakhri, UN Special Rapporteur on the Right to Food during the 8th Annual T.M.C. Asser Lecture

‘Rethinking public interests in international and European Law’ (2022-2026)

The notion of ‘public interest’ plays a central yet contested role in international and European law. The Asser Institute’s research agenda ‘Rethinking public interests in International and European law’, argues for a critical re-examination of how public interest is understood and applied. By doing so, the Institute aims to reclaim its emancipatory potential.

A cascade of global crises – climate change, ecocide, transnational terrorism, unsustainable capitalism, widening social inequality, the digital divide, mass migration, and the looming threat of breaching planetary boundaries – has thrust a critical question to the forefront: How can law be harnessed to safeguard our social and natural world?

Although frequently invoked in legal and political discourse, the concept of ‘public interest’ remains surprisingly understudied in legal scholarship. This ambiguity is particularly troubling given its growing importance in navigating these complex challenges. The term’s lack of clear definition allows

international and European actors to manipulate its meaning for their own benefit, sometimes disguising private agendas as concerns for the public good. Moreover, this lack of clarity can lead to policy formulations that disproportionately favour powerful factions, perpetuating a cycle of inequality and eroding public trust in international and European institutions.

Critical scrutiny

By critically examining the notion ‘public interest’, the Asser Institute aims to reclaim its emancipatory potential. Critical scrutiny may open up a space for alternative conceptions of the public interest to guide law- and policymaking. The goal is to help develop public

interest arguments that offer pathways towards restoring trust and ensuring that international and European law functions in the best interests of society.

Our research agenda emphasises the need to understand how 'public interest' is constructed through legal arguments and public discourse. Who participates in these discussions? Whose voices are heard, and whose are excluded? Most importantly, what are the societal consequences of different interpretations of public interest? Do they promote fairness and justice, or do

they exacerbate existing inequalities?

The research questions that we will address in the coming years are:

- How do legal processes and institutions create and reproduce 'public interest'?
- How do international and European law and policy shape the publics involved in defining public interest?
- Who benefits from particular understandings of public interest?
- How can competing public interest claims be reconciled?
- How are public interests addressed in international courts and institutions?



By critically examining the notion 'public interest', the Asser Institute aims to reclaim its emancipatory potential.



WHAT ARE
YOU
LOOKING AT?

Research strand

‘In the public interest: accountability of the state and the prosecution of crimes’

This research strand examines the accountability of states, both individually and collectively (e.g., the United Nations or the European Union), in light of public interest standards in the context of counterterrorism. Moreover, this strand looks into the prosecution of individuals for international and transnational crimes

in the public interest. Finally, to ensure both the accountability of states and the prosecution of individuals for international and transnational crimes in the public interest, this research strand also investigates the role of journalists, digital media, human rights NGOs, and academics in protecting and promoting public interest standards.



Research strand

‘Regulation in the public interest: Disruptive technologies in peace and security’

The proliferation of disruptive technologies in warfare raises critical questions about international regulation. This strand examines how to develop an international regulatory framework to address the military applications of disruptive technologies, such as

autonomous weapons and biological threats, and the resulting arms race in both conventional and non-conventional weapons. Ultimately, this research aims to safeguard public interests and promote peace and security in the face of these emerging challenges.



Research strand

‘Transnational public interests: constituting public interest beyond and below the state’

In the past century, national governments embodied the pursuit of the public interest on issues like environmental protection or human rights. Yet, since the turn of the century, the influence of non-state actors, such as corporations, NGOs or international organisations like the European Union on global issues such as environmental protection, human rights or digital safety has grown rapidly. Researchers

in this strand examine how non-state actors are increasingly shaping and defending the transnational/European public interest on critical issues and, conversely, how this public turn affects their operations. They raise fundamental questions, such as: how do we ensure that the interests pursued are actually those of the public? And, more fundamentally, who is the public in this context?

About the T.M.C. Asser Instituut

The T.M.C. Asser Instituut is an internationally renowned research institute in the fields of international law and European law based in The Hague. The institute is affiliated with the University of Amsterdam.

Our mission

The Asser Institute's mission is to contribute to the development of international and European public and private law. We achieve this by:

Independent legal research: We conduct fundamental, policy-oriented, and applied legal research in international and European public and private law.

Knowledge dissemination: We initiate and facilitate academic and expert meetings, (professional) education, and public events aimed at disseminating knowledge of international and European public and private law. We further share our legal knowledge by adding to the public debate.

Our vision

We envision a world in which local, national and transnational public interests are protected and promoted by international and European public and private law. This is supported by critical reflection conducive to perspectives for action to help confront our global challenges.

Our values

The Asser community is a public-spirited community that is committed to excellence, integrity, inclusivity, and public values. Located in The Hague – the 'International City of Peace and Justice' – in the vicinity of many international institutions, diplomatic missions and government ministries, the Institute exercises strong convening power and attracts legal experts from around the world.





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