

CAN COLLECTIVE POWER EUROPE  
EMERGE FROM PUTIN'S WAR?

BRIGID LAFFAN

Seventh Annual  
T.M.C. Asser Lecture



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*by*

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## FOREWORD

### *Europe as a geopolitical actor after the Post-Cold War era*

YELLOW AND BLUE

On 10 May 2022, we once again gathered at the Peace Palace in The Hague for the Annual T.M.C. Asser Lecture after almost two years of the COVID-19 pandemic. The Seventh Lecture had been postponed from November 2021 to May 2022 in order to be able to meet in person. After all, our annual flagship event traditionally aims to combine an excellent lecture on a topical subject by a world-renowned speaker with informal discussion during drinks afterwards. I am grateful to the municipality of The Hague for supporting our Annual Lecture since so many years now and for being such a valuable partner in our efforts to create space for critical and in-depth reflection on issues of peace and justice.

Yet, it was not the COVID-measures that were foremost in our minds.

We had opted for yellow and blue flowers at the lecture – not so much because of Europe Day two days earlier – but because of the war of aggression against the Ukraine that Putin had begun a little over 10 weeks earlier. For Europe, the post-Cold War era had come to an end on 24 February 2022.

Professor Brigid Laffan had realised this immediately and she resolved to write a completely new text for her Asser Lecture. I had invited Professor Laffan to talk about the role of the EU as regional and global actor in the first weeks of 2021. At the Asser Institute, legal and legal-political questions on the identity of Europe as a global actor are at the heart of our research project *Global Europe*, led by the researchers Dr Eva Kassoti and Dr Narin Idriz. For the Seventh Lecture, I intended to bring an eminent speaker to The Hague to engage critically with such crucial concepts as European sovereignty and

strategic autonomy. What do these concepts mean and what should they entail?

For the Annual T.M.C. Asser lecture, we invite our speakers to examine – as Tobias Asser did in his day – what Asser called ‘the condition of society’, to reflect on the legal, political, and perhaps institutional implications, and to discuss the responses needed to address related contemporary challenges.

Initially, Brigid Laffan had written a lecture with a title inspired by a statement made by Josep Borrell, the then new Foreign Policy Chief, expressed at his first meeting with EU Foreign Ministers in December 2019: ‘[the EU] has the option of becoming a player, a true geostrategic actor, or being mostly the playground.’<sup>1</sup>

After the invasion of Ukraine of 24 February, she wrote a new lecture, as questions about Europe’s role in the world and the objectives of its strategic autonomy had become deeply marked by Putin’s war. What will be the nature of the international order that will emerge from Putin’s war? What are the consequences of Putin’s war for the EU?

While ‘Ukraine is on the front line of a war between democracy and authoritarianism and a rules-based international order’,<sup>2</sup> it responds forcefully to the devastating challenges and confirms and defines its ‘agency’, as Laffan emphasises repeatedly, by defending democracy, European values, and international law.

However, in her lecture Laffan also stresses that this war should not be transformed ‘into a “West” versus the “Rest” framing with an emphasis on US hegemony’ – something that would suit China well.<sup>3</sup> Indeed, this is also a moment testing Europe’s agency and its capacity to keep its own course.

<sup>1</sup> Quoted in Politico, 9 December 2019, <<https://www.politico.eu/article/on-foreign-policy-josep-borrell-urges-eu-to-be-a-player-not-the-playground-balkans/>>, accessed 27 June 2022.

<sup>2</sup> Brigid Laffan, 2022, Can Collective Power Europe Emerge from Putin’s War?, as included hereafter at p. 3.

<sup>3</sup> Brigid Laffan, 2022, Can Collective Power Europe Emerge from Putin’s War?, as included hereafter at p. 10.



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In other words, on 10 May 2022, we convened at a moment in which the EU as a foreign policy actor is challenged to the core of its identity.

### A MONUMENTALLY CREATIVE EFFORT

The day before, although overshadowed by the war in Ukraine and by Putin's speech, we celebrated Europe Day 2022 and commemorated the signing of the Schuman Declaration on 9 May 1950. This declaration starts by saying, and I quote: 'World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it.'<sup>4</sup>

Peace requires creative efforts and the European Union is such a monumentally creative effort. We must maintain and care for it actively and continuously.

When Brigid and I talked in the Spring of 2021, I explained that I was hoping to program a lecture on Europe after Brexit; a lecture that would confront the increasing Eurosceptic voices and discuss Europe's role in today's rapidly changing geo-political and geo-economic order. A lecture on how to remain Europe, – that is: democratic, open, and based on human rights and international law –, while the world seems to be rapidly changing into a hard power-reality in which dependencies can become risks and threats. Traditionally, Europe is a soft-power global actor, with global standard-setting and extraterritorial legal rule as its instruments for foreign policy.

This surely raises its own set of questions and problems, but according to some commentators, in the coming years Europe's strategic autonomy and digital sovereignty might require more hefty instruments.

<sup>4</sup> The 1950 Schuman Declaration <[https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950\\_en](https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en)>, accessed 27 June 2022.

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Under the shadow of war on the European continent, Brigid Laffan gave a peppered speech in which she proposed to add a new concept to our analytical and normative toolbox when reflecting on the EU.

### COLLECTIVE POWER EUROPE: A NEW CONCEPT FOR OUR ANALYTICAL AND NORMATIVE TOOLBOX

In the post-Cold War world, the power of the EU was encapsulated by the two notions of Normative Power Europe and Market Power Europe. Now, pressured by violence, Europe moves into what Laffan coins a ‘Collective Power Europe (CPE)’.

Market Power Europe does not need an explanation. Normative Power Europe has been coined by Ian Manners as the ‘ability to shape concepts of “normal” in international relations’.<sup>5</sup> It captures, as Laffan explains, the EU’s ability to alter ‘the norms, standards and prescriptions of world politics away from bounded expectations of state-centricity’.<sup>6</sup> However, as Laffan argues in the lecture hereafter, the war against Ukraine is a transformative moment for Europe as it requires the EU to become an effective defence and security actor. ‘Neither Normative Power or Market Power Europe is adequate for Europe as it faces a world of weakening multilateralism,’ Laffan observes, and so CPE has to emerge.<sup>7</sup>

Laffan thus introduces not just a descriptive but also a normative concept to visualise where Europe ‘should’ go. Laffan sketches how the EU will need to become a global actor capable of exercising both soft and hard power. Or, power ‘to amass resources, instruments and affect outcomes’. It represents ‘the power to harness the whole and the parts in the pursuit of shared goals’.<sup>8</sup> It implies that Europe confronts ‘hard power’ and enhances its capacity for collective action.

<sup>5</sup> Ian Manners, 2002, *Normative Power Europe: A Contradiction in Terms?*, *Journal of Common Market Studies*, 40:2, 239, as cited hereafter at p. 13.

<sup>6</sup> Ian Manners, 2008, *The normative ethics of the European Union*, *International Affairs*, 84:1, 46-60, as cited hereafter at p. 13.

<sup>7</sup> Brigid Laffan, 2022, *Can Collective Power Europe Emerge from Putin’s War?*, as included hereafter at p. 22.

<sup>8</sup> Brigid Laffan, 2022, *Can Collective Power Europe Emerge from Putin’s War?*, as included hereafter at p. 22.

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As such, with this Asser Lecture, Laffan makes a strong normative argument. The war against Ukraine has major geopolitical consequences, which painfully bring out the *problematique* of Europe's power and its identity as a global actor. Professor Laffan forcefully argues that the EU as a global actor has to change forever.

This argument is coming from a voice with great authority on the European Union.

### ‘A WOMAN WHO SHAPES BRUSSELS’

Professor Brigid Laffan knows Europe inside out. She does not just study Europe, she shapes it – as the influential website *Politico* stated in 2018. This is among other things due to her profound understanding of the EU and of how the internal legal, political and economic dynamics relate to the external policies of the EU, and of its role and position in the world.

Until the summer of 2021, Brigid Laffan was director and professor at the Robert Schuman Centre for Advanced Studies and director of the Global Governance Programme at the European University Institute in Florence, where she has worked since 2013. Laffan is a leading thinker on the dynamics of European integration and has been a long time professor of political science. She grew up in Ireland and moved back there recently.

Professor Laffan has published a number of important books on Europe, such as *Integration and Co-operation in Europe* (1992), *The Finances of the Union* (1997), *Europe's Experimental Union – Re-thinking Integration* (2000, co-authored), *Core-periphery Relations in the European Union* (2016, co-edited), *Europe's Union in Crisis: Tested and Contested – West European Politics* (2016), and articles and book chapters among which ‘The Future of Europe: alternative scenarios’ (2021).

Laffan was awarded the THESEUS Award for outstanding research on European Integration, and the UACES Lifetime Achievement

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Award. In 2010, she received the *Ordre national du Mérite* from the President of the French Republic.

I wish you a good read.

PROF DR JANNE E. NIJMAN

*Chair of the Executive Board and Academic Director  
of the T.M.C. Asser Instituut, The Hague*

# CAN COLLECTIVE POWER EUROPE EMERGE FROM PUTIN'S WAR?

BRIGID LAFFAN

## I. INTRODUCTION<sup>1</sup>

On 24 February 2022 illusions were shattered when a wholesale Russian invasion of Ukraine was unleashed. The shattering of illusions was akin to a meteor hurtling towards earth, exploding as it hits the earth's surface. The nature of the attack shattered the illusion that there would be no invasion or if there was, that Putin would pursue limited objectives. Gone was the illusion, that had clearly dimmed but was still flickering, that Europe and the west could have a constructive relationship with Putin's Russia. Gone was the illusion perpetrated by Berlin and Paris that dialogue might prevent war. Both Germany and France had invested heavily in the Minsk process, now in tatters even though that process was heavily skewed towards facilitating what was considered Russia's strategic interest in Ukraine by both EU powers.

There should have been no illusions in the first place. Putin had repeatedly attempted to penetrate and interfere with democratic politics in Europe and the US and there were far too many *Putinverstehers* in EU member states. The violence of Putin's playbook was visible in plain sight; the 2008 occupation of part of Georgia, the 2014 annexation of Crimea, war in the Donbas and Russian engagement in Syria from 2015. In a tweet on 24 February, Annegret Kramp-Karrenbauer said: 'I'm so angry at ourselves for our historical failure. After Georgia, Crimea, and Donbas, we have not prepared anything that would have really deterred Putin.'<sup>2</sup> She was German minister for

<sup>1</sup> My thanks to Ben Tonra and Paul Gillespie and Declan Kelleher and Diarmuid Laffan for their insightful comments on an earlier version of this paper.

<sup>2</sup> Annegret Kramp-Karrenbauer, tweet, <<https://twitter.com/akk/status/1496805470945923076>>, 24 February 2022, accessed 13 April 2022.

defence until December 2021 when Berlin was fully engaged in dialogue with Moscow and willing to undermine its energy security with Nord Stream 2. Her tweet revealed anger tinged with shame.

Far more than illusions were shattered on 24 February 2022. This was the most dangerous and consequential rupture of Europe's security architecture since the Second World War. A country was willing to engage in all-out war against a neighbour and wanted to obliterate that country from the map. The complacent and comfortable idea that war and aggression happened elsewhere but no longer in Europe was revealed as baseless. That comfortable idea should never have taken root given Yugoslavia, Georgia and Crimea but it was the build-up of Russian troops and the scale of the invasion of Ukraine that altered perceptions, a line was crossed. The post-Cold War order was at an end. Not just that but Putin posed a fundamental threat to the system of international rules and the international order by the shredding of core principles of the established international order.<sup>3</sup>

Putin pursued both immediate war objectives and fundamental strategic objectives designed to reopen the post-Cold War settlement and overcome the perceived humiliation that had been inflicted on Russia since the collapse of the Soviet Union. The immediate goals were to fight and win a speedy war, take Kyiv, decapitate the Ukrainian Government and install a pro-Moscow regime. Ukraine would become a client state of Moscow and act as a buffer, together with other former Soviet Republics, against NATO and the west. Putin appears to have been convinced that his army would be welcomed with open arms by the Ukrainian population and that a process of what Putin bizarrely called 'de-nazification' was warranted. The longer-term goal was to alter the post-Cold War settlement in favour of Moscow, weaken NATO and strengthen Russia's influence over Europe's security architecture. The EU was also in Putin's sights as he had expended considerable effort to damage it over two decades. Fundamentally Putin

<sup>3</sup> Peter Ricketts, 'The Russian president is using Ukraine to reopen the post-Cold War Settlement', Prospect Magazine, 25 February 2022. <<https://www.prospectmagazine.co.uk/world/a-former-head-of-the-foreign-office-on-what-putin-wants-russia-ukraine-invasion>>, accessed 13 April 2022.

never accepted the loss of the Soviet empire, never fully accepted the democratic transitions in eastern Central Europe and certainly did not countenance the right of the former Soviet Republics to forge their own futures.<sup>4</sup> Georgia, Ukraine, Belarus and Moldova were to be denied agency. Putin the authoritarian fundamentally fears democracy, the rule of law, liberal values, human rights and freedom of speech.<sup>5</sup> Put simply, Putin hates our way of life and wants to diminish it, and, if possible, destroy it. Ukraine is Putin's war in a very tangible sense because Russia is no longer a regime in any meaningful way; it has descended into a personalised dictatorship.<sup>6</sup> The imagery of his engagement with the Russian Security Council was a powerful reminder of his disdain not just for the west but his own state apparatus.

The Russian invasion of Ukraine is a transformative moment in European history, one of those before and after moments, the legacy of which will last well into the 21st century. War as an instrument of statecraft is being played out in plain sight. For the EU it exposes its uneven development and a default tendency to talk but struggle to act. Putin's invasion of Ukraine has already changed Europe forever.<sup>7</sup> The war is not just about Ukraine as European states bordering Russia are threatened too making Europe less secure than at any time since the early 1960s before *Détente* began a welcome thaw in east-west relations. The EU and the west more generally face the prospect of living for a long time with a hostile confrontational Russia. Europe's leaders must be honest with themselves and their populations that there will be costs, a Putin price, and that Europe's economic and strategic interests must be brought back into alignment. There are uncomfortable choices to be made in Berlin, Paris, London, Rome and other capitals. Ukraine is on the front line of a war between de-

<sup>4</sup> Ibid.

<sup>5</sup> Ben Judah, 'The Terrible Truths That So Many Experts Missed About Russia', 28 February 2022, Slate, <<https://slate.com/news-and-politics/2022/02/ukraine-invasion-putin-is-ruling-alone.html>>, accessed 13 April 2022.

<sup>6</sup> Ibid.

<sup>7</sup> Tom McTague, 'Bury the Old World Order: The Old Ways of Dealing with Russia No Longer Apply', <<https://www.theatlantic.com/international/archive/2022/02/us-europe-russia-putin-new-world/622917/>>, 25 February 2022, accessed 13 April 2022.

mocracy and authoritarianism and a rules-based international order. That said, the west will need to work with states beyond the club of democracies to respond to Russian aggression. There is a strategic imperative that this does not become a ‘West’ versus the ‘Rest’ contest, favoured by China, although primary responsibility for supporting Ukraine will lie with the west. Putin cannot be allowed to succeed, to destroy the security of Europe, to re-establish a Russian Imperium, or to obliterate Ukraine. Having ignored the warning signs for many years, there are no excuses left, no room for self-deception. Europe and the west have choices and these choices exist because Ukraine has refused to yield. If Putin’s war plan had resulted in a speedy victory, the west would have imposed sanctions, there would have been lots of hand wringing but Europe might well have succumbed to complacency again. But this was not part of the Zelensky playbook. In any account of Europe’s future and current events, we must begin with Ukrainian agency and salute its indomitable spirit.

## 2. UKRAINE AND THE EXERCISE OF AGENCY

Most Europeans knew little about Ukraine before 24 February 2022. Now its blue and yellow flag is draped on buildings, adorns statues, private homes and cars. Sunflowers have taken on a new meaning and yellow and blue are the colours of our time. Because Ukraine is in the eastern half of the continent and a former Soviet Republic, its Europeanness is ill understood and appreciated. Not understanding or appreciating the edges, the periphery, is a pronounced feature of core Europe. Timothy Snyder, the leading western historian of Ukraine, is at pains to remind us that Ukraine is a normal European country that experienced political and social developments not unlike the rest of Europe in the medieval, early modern, and modern periods – conversion to Christianity, renaissance and reformation, and 19th century modern nationalism.<sup>8</sup> Attempts to forge a Ukrainian state after the First World War faltered and Ukraine found itself absorbed into Stalin’s Soviet Union. The histories of Russia and Ukraine are interre-

<sup>8</sup> Timothy Snyder, ‘Kyiv’s Ancient Normality’, Petryshyn Memorial Lecture in Ukrainian Studies 18 February 2022, <<https://huri.harvard.edu/news/timothy-snyder-kyivs-ancient-normality-redux>>, accessed 13 April 2022.



lated but Putin's claim that there is no such thing as a Ukrainian nation and that a Ukrainian state has no right to exist has no historical basis. Putin's belief that Ukraine is Russia, that Ukrainians are at one with Russia, and that blue and yellow must be crushed is wrong and dangerous. Putin represents the return of empire and the imperial method – crush a people, take their land, dominate, subordinate and humiliate. Putin's idea of Russia is not compatible with freedom and democracy or with self-determination for Russia's neighbours. If Putin's version of a legitimate state and interstate order prevails, Europe will have lost.

The Ukrainian leadership and people understand what is at stake. They know that this is existential, that if they lose then Ukraine will be dominated and subjected to the whims of a tyrant. The conduct of the war should leave us in no doubt. Persistent attacks against civilians, razing cities to the ground, attacks on humanitarian corridors, and overwhelming evidence of civilian carnage and atrocities. Faced with Putin, the Ukrainian leadership, army and people have resisted magnificently. To witness the defiance of the people when confronted with soldiers and tanks, is humbling. They are fighting for self-determination and the right to exist. They are fighting for democracy and the values we all hold dear. Ukraine is fighting not just for its survival but a certain idea of Europe that is neither imperial nor colonial. President Zelensky has used his agency to push for western help. He uses modern communications with an effectiveness that dwarfs the leaders of most states. Zelensky has masterfully addressed the political class across Europe and the US; he highlights what is needed and calls out hypocrisy.

There is only one imperative – Ukraine must win this war or at least not lose it. But therein lies a dilemma for those supporting Ukraine. At one end of the spectrum is a Ukrainian victory that pushes the Russian forces back into Russia retaking the Donbas, at the other is the survival of Ukraine with a return to pre-war borders leaving a Russian presence in the east but ensuring that Ukraine has continuing access to the Black Sea. Given that NATO cannot intervene directly because of the nuclear threat, the west and particularly the EU has an

obligation to support Ukraine in every way possible in the pursuit of survival. President Zelensky boldly claims: ‘We believe in victory. This is our home, our land, our independence. It’s just a question of time.’<sup>9</sup> On the battlefield, the Russian campaign has not gone according to plan, leading Moscow to refocus on the Donbas. In the east, supply lines are shorter and Russia may hope to take some territory but how much? The war is delicately poised as the summer begins. The US and allies provide Ukraine with heavy weapons but will they be sufficient for Ukraine to defend its territory? There is no sign that Putin will come to the negotiating table in good faith and there is no evident deal that would persuade Russia to withdraw its troops. Whatever happens, Ukraine must have agency over any deal.

### 3. EUROPE’S RESPONSE

The EU’s and the west’s response to Putin’s war was swifter, more comprehensive and more draconian than would have been anticipated before the outbreak of hostilities. Given that war is back in Europe, the EU was compelled to take unprecedented and urgent action. There was an outpouring of solidarity and support for Ukraine from the peoples of Europe, which compelled Europe’s leaders to act decisively and in a united manner, something that has always challenged the EU as a foreign policy actor. Putin has succeeded in uniting Europe against him and bolstering the Transatlantic Alliance. The Conclusions of an urgently convened European Council on 24 February state:

The European Council condemns in the strongest possible terms the Russian Federation’s unprovoked and unjustified military aggression against Ukraine. By its illegal military actions, Russia is grossly violating international law and the principles of the UN Charter and undermining European and global security and stability. The European Council underlines that this includes the right of Ukraine to choose its own destiny. Russia bears full responsibility for this act of aggression and all the destruction and loss of life it will cause. It will be held accountable for its actions.<sup>10</sup>

<sup>9</sup> ‘Why Ukraine must win’, The Economist editorial, 8 April 2022

<sup>10</sup> Conclusions, Emergency European Council, 24 February 2022, <<https://presidence-francaise.consilium.europa.eu/en/news/press-release-european-council-conclusions-24-february-2022/>>, accessed 15 April 2022.

At the informal Versailles Summit just three weeks later, the language hardens as the invasion is defined as a 'war of aggression' and that the perpetrators would be 'held to account for their crimes'.<sup>11</sup> The role of Belarus in supporting Russia was also condemned. The policy toolkit includes sanctions, coordinated with the US, UK and other allies, military assistance to Ukraine, the first use of the Temporary Protection Directive (TPD) to ease the passage of Ukrainian refugees fleeing war, and humanitarian and economic support. Sanctions are at the centre of the response. By 8 April, the EU agreed its 5th sanctions package designed to squeeze the Russian economy, impose costs on Putin and his golden circle, and put pressure on the Russian government.<sup>12</sup> By early May, a 6th sanctions package is on the table although the EU struggles to get Orbán's agreement for this package. The sanctions imposed on Russia are 'among the most powerful in modern history, largely because so many countries have gone along with them. The punishment to the Russian economy, and to rich and poor Russians individually, has also been extraordinarily severe'.<sup>13</sup> The threat of sanctions did not prevent the aggression but the ratcheting up of sanctions has imposed sizeable costs on the Russian economy, ordinary citizens and the ruling class. The costs are progressive as Russian companies will run out of spare parts and the voluntary withdrawal of more than 300 companies and the refusal of hundreds of companies to do business with Russia deprives Russians of goods and services they took for granted. Sanctions will not shift the calculus in Moscow quickly or perhaps at all, but they are a significant and necessary part of the western toolkit. The sanctions have been accompanied by a military component although the west including EU member states do not want to be drawn into direct confrontation with Russia, hence the refusal to countenance a 'no fly zone'. The EU has used the Eu-

<sup>11</sup> Versailles Declaration, 10-11 March 2022. <<https://www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf>>, accessed 15 April 2022.

<sup>12</sup> EU adopts its fifth round of sanctions against Russia, 8 April 2022. <<https://www.consilium.europa.eu/en/press/press-releases/2022/04/08/eu-adopts-fifth-round-of-sanctions-against-russia-over-its-military-aggression-against-ukraine/>>, accessed 15 April 2022.

<sup>13</sup> Gary Clyde Hufbauer and Megan Hogan, 'How Effective are Sanctions Against Russia?', PIIE, 16 March 2022, <<https://www.piie.com/blogs/realtime-economic-issues-watch/how-effective-are-sanctions-against-russia>>, accessed 15 April 2022.

ropean Peace Facility (EPF) to supply lethal weapons to Ukraine, an unprecedented move in the history of European integration, a significant game changer. The EPF financial contribution amounts to Euro 1.5 billion. The intention is to support the Ukrainian Armed Forces in their defence of territory and the civilian population.<sup>14</sup> Individual NATO and EU states have also provided military aid directly. The third arm of the EU's response is humanitarian support for the millions of refugees fleeing war.

The EU is one part of a wider western response to the war. Has the EU done enough? The Achilles heel of Europe's response is the continent's reliance on energy supplies from Russia – almost 40% of natural gas imports, with Germany and Italy particularly vulnerable. For years, Germany refused to accept that Nord Stream 2 had a geopolitical component. For Berlin, it was more comfortable and self-serving to focus on it as an economic project but it has at least acknowledged the pipeline is finished following the invasion. However, payments amounting to Euro 1 billion daily for European imports of oil and gas continue to fund the Russian state and the war in Ukraine. Moreover, sanctions are not a one-way street. Putin has weaponised the supply of gas and demanded that gas is paid for in roubles, thereby strengthening the currency. This is a highly sensitive and controversial issue; it is reported that ten companies have created the necessary accounts with Gazprombank,<sup>15</sup> considered sanctions busting by the EU. Supplies to Poland and Bulgaria were cut off when their energy companies refused to pay in roubles and supplies to Finland were cut off in response to Finland's application for NATO membership. There is growing pressure on the EU to go beyond the ban on Russian coal to include oil and then gas faced with growing

<sup>14</sup> Council Press Release, 13 April 2022, <<https://www.consilium.europa.eu/en/press/press-releases/2022/04/13/eu-support-to-ukraine-council-agrees-on-third-tranche-of-support-under-the-european-peace-facility-for-total-1-5-billion/>>, accessed 15 April 2022.

<sup>15</sup> Irish Times, 27 April 2022, <<https://www.irishtimes.com/business/energy-and-resources/four-european-gas-buyers-have-already-paid-for-russian-supplies-in-roubles-1.4863108>>, accessed 29 April 2022.

evidence of war crimes in places such as Bucha, Irpin and Mariupol.<sup>16</sup> Support for embargos on oil and gas imports has been publicly articulated by Charles Michel who said on 6 April that sanctions on oil and gas would be needed 'sooner or later'.<sup>17</sup> By May, oil formed part of the emerging 6th sanctions package but Hungary opposes this package. Putin also plays the energy card but is likely to be selective so as to sow dissent and division in the EU rather than impose a blanket withdrawal of energy. Europe is paying a high price for not paying attention to the vulnerability of relying on an authoritarian regime for essential energy. There is a very heated debate in Germany and considerable external pressure on what is perceived as German tardiness in supporting Ukraine. An open letter to the German Government from 96 specialists on eastern Central Europe and international security was scathing. It draws attention to Germany's historic responsibility in the following manner:

By insisting on continuing to import Russian oil and natural gas, the German government allows Russia to continue earning enormous income from its energy exports. It thereby prolongs the war and counteracts the west's already adopted (in and of themselves imposing) sanctions. Furthermore, this behaviour puts Berlin in conflict with the 'historic responsibility' toward the countries of the former Soviet Union that Germans took upon themselves after having devastated Belarus and Ukraine in World War II.<sup>18</sup>

Policy within Germany shifted and on 28 April when the Bundestag voted overwhelmingly (586 in favour, 100 against and 7 abstentions)

<sup>16</sup> Basil Kalymon, 'Europe must stop funding Vladimir Putin's war crimes in Ukraine', *The Atlantic Council*, 12 April 2022, <<https://www.atlanticcouncil.org/blogs/ukrainealert/europe-must-stop-funding-vladimir-putins-war-crimes-in-ukraine/>>, accessed 15 April 2022; and Mark Lynas, 'Time for Europe to Switch Off Putin's Energy', *EUROACTIVE*, 13 April 2022, <<https://www.euractiv.com/section/energy/opinion/time-for-europe-to-switch-off-putins-energy/>>, accessed 15 April 2022.

<sup>17</sup> Charles Michel, *Politico*, 6 April 2022, <<https://www.politico.eu/article/eu-move-ban-russia-oil-gas/>>, accessed 15 April 2022.

<sup>18</sup> Open Letter, 'Peace and Stability in Europe Depend on Ukraine's Destiny', *World Affairs*, 185 (2), 1-10. (PDF) OPEN LETTER BY 96 EXPERTS ON EASTERN EUROPE AND INTERNATIONAL SECURITY TO THE GERMAN GOVERNMENT: Peace and Stability in Europe Depend on Ukraine's Destiny (researchgate.net), accessed 15 April 2022.

to enhance military support for Ukraine and Berlin is willing to support sanctions on oil.<sup>19</sup> Before turning to the long-term implications of the war in Ukraine, the wider geopolitical consequences of the war weigh heavily on Europe.

#### 4. CHINA

The war in Ukraine has both European and wider global ramifications. Perhaps in the medium term the biggest strategic issue arising from this shock, is what lessons the west and China take from the war. It would suit China to transform this into a 'West' versus the 'Rest' framing with an emphasis on US hegemony. This is not in the long-term interest of either the US or EU nor is it desirable that the world divides between the democracies and authoritarians. There is a real danger of this. Vladimir Putin attended the opening of the Winter Olympics in Beijing on 4 February when he participated in a major bilateral with President Xi at which they declared there were no limits to their strategic partnership. It was telling that the invasion of Ukraine occurred after the ending of the games. The Chinese leadership strongly holds the view that the west is in secular decline and the east is rising.

The war which Beijing persistently calls a 'special military operation' raises complex challenges for China and is partly read through the prism of Taiwan. The Chinese leadership regards the conflict as a matter of internal security and not of international politics. It blames NATO for the tensions in Europe's security order and has refused to wholeheartedly condemn the invasion. On the surface China staunchly supports Russia and conveys that support in its state-controlled media. However, in international diplomacy China abstained on the UN Assembly vote condemning the invasion and has so far not materially supported the Russian invasion. Not too much should be read into the abstention which is China's default setting on issues that are

<sup>19</sup> 'Germany signals more Ukraine support', Politico, <<https://www.politico.eu/article/germany-ukraine-support-wavers-on-defense-spending/>>, accessed 29 April 2022.

regarded as arms-length. China does not approve of what they define as illegal unilateral sanctions as an instrument of diplomacy but has not yet explicitly sought to undermine western sanctions.

There is a tension in the Chinese position between its long-term geo-political goals and its short-term economic interests. From the perspective of geo-politics China sees a partnership with Russia as vital to counterbalance the US and its policy of containment. According to former Australian Prime Minister and China specialist, Kevin Rudd:

Too many Chinese strategic interests rely on the Moscow relationship, to do with their own border with Russia; the fact that China doesn't want to focus on a Russia problem, but focus on the United States regionally and globally; and the fact that China sees strategic utility in Russia being a rolling strategic diversion for the Americans, the Middle East, north Africa and Europe.<sup>20</sup>

But China is economically much more dependent for its prosperity on the US and Europe and hence if the war drags on, the misalignment between economics and politics will be accentuated. That said, China is intent on reorientating its economy in the longer term. COVID and war in Ukraine makes that more challenging. The west faces its own dilemmas. China is too central to the global economy and globalisation to be managed like Russia. President Biden in a meeting with President Xi was clear about the potential for serious material consequences if Beijing assists Russia and undermines western sanctions. The war may lead Beijing to reassess its perspective on US and western power. It saw the US as a waning and weakening power but Ukraine has demonstrated that raw financial power is still in the hands of the west and that it is capable of mobilising impressive unity and capacity.

How will China react to this and what lessons will it draw? Re-engineering global finance is on its agenda but very difficult to achieve. Meanwhile, China sits on the fence and has not attempted to deploy

<sup>20</sup> Kevin Rudd quoted in the Financial Times, 16 April 2022.

its influence over Moscow to push for a cessation of violence. It calculates perhaps that nobody is likely to stop Putin at this stage. However, as the war drags on the limits of the China-Russia strategic partnership will be tested. Beijing may have miscalculated the longer-term impact of this war and its impact on Chinese geo-strategic interests. In addition to China, there are many more non-aligned states including democracies such as India sitting on the fence. The nature of the international order that emerges from this war is impossible to determine. The war may accelerate the development of new opposing blocks in the international system and create a partial de-coupling between a China-led coalition and a US-led coalition with non-aligned states shifting sides depending on the issue. However, if the world is to address the climate crisis, which remains the world's existential crisis, co-operation and not just competition is needed. In any event, Putin's war has major consequences for Europe and the EU.

##### 5. WHAT IT ALL MEANS FOR THE EU?

The invasion of Ukraine brought interstate war to the fore in Europe. The war is at odds with that centuries long struggle of *Conquering Peace* that characterised much of European history and is at odds with the waning of imperial and colonial dynamics in Europe and internationally since WW1.<sup>21</sup> For the EU it starkly revealed the gap between the rhetoric of 'strategic autonomy' and Europe's security dependence on NATO and the US. The war has brought into stark focus the challenge facing the EU in transforming *Normative Power Europe* and *Market Power Europe* into *Collective Power Europe*. The strongest component of EU power has always been its *Market Power*, that large single market that produced the Brussels Effect.<sup>22</sup> The conceptualisation of the EU as a normative power, as a uniquely distinctive international actor, dominated the literature on the EU role in the world from the early 2000s onwards. Manners coined the concept Norma-

<sup>21</sup> Stella Ghervas, 2021, 'Conquering Peace from the Enlightenment to the European Union', Cambridge Mass: Harvard University Press, 513pp.

<sup>22</sup> Chad Damro, 2012, Market power Europe, *Journal of European Public Policy*, 19:5, 682-699 and Anu Bradford, 2020, *The Brussels Effect: How the European Union Rules the World*, Oxford University Press: Oxford.



tive Power Europe (NPE) which for him was characterised by the 'ability to shape concepts of "normal" in international relations'.<sup>23</sup> For Manners, the EU had the ability to alter 'the norms, standards and prescriptions of world politics away from bounded expectations of state-centricity'.<sup>24</sup> With an emphasis on 'soft power', NPE captured a crucial aspect of the EU in the post-Cold War world. It was however based on a rejection of realist approaches to IR [International Relations] and underplayed geo-politics and power. From the perspective of normative power, Russian aggression represents a total rejection of the EU's constitutional and political norms and Ukraine is fighting for those very values and norms.

The invasion of Ukraine has generated extraordinary and urgent pressure on the EU and its member states to further address the EU's role as a regional and global actor. For decades the EU struggled to develop a coherent and consistent foreign and security policy, to become a more complete international actor, to embrace 'hard power' and to recognise that the world is becoming less like Europe given its multilateral reflexes and instincts. Multilateralism should not be fetishized; rather it is a global public good only if it is effective. The brutal wars in Yugoslavia in the 1990s exposed the limits of the EU as an international and security actor and although it led to incremental changes in EU ambitions as a player in the international system, Europe struggles to behave strategically.

Even before the Russian invasion, the EU faced the most challenging international and regional environment since the end of the Cold War. The EU's neighbourhood was unstable and volatile and there were major questions over future US preferences on security and defence. This was accentuated by the emergence of Great Power competition and the US pivot to Asia. For the US, China was its number one foreign policy consideration. Europe's economic cooperation and engagement with China came under increasing pressure. The emerg-

<sup>23</sup> Ian Manners, 2002, *Normative Power Europe: A Contradiction in Terms?*, Journal of Common Market Studies, 40:2, 239.

<sup>24</sup> Ian Manners, 2008, *The normative ethics of the European Union*, International Affairs, 84:1, 46-60

ing dynamics and fissures in global politics placed considerable strain on the multilateral system and the order that Europe relied on. This triggered a debate in Europe about European sovereignty and ‘strategic autonomy’, two concepts that meant different things to different actors but together represent Europe’s search for a response to the changing dynamics of global politics and Europe’s place in the world. At his first meeting with EU Foreign Ministers in December 2019, Josep Borrell, the new Foreign Policy Chief, argued that the EU ‘has the option of becoming a player, a true geostrategic actor, or being mostly the playground.’<sup>25</sup> In order to become a player, the EU must be attentive to its strategic capacity and willingness to act strategically. According to Helwig, strategic autonomy is:

the political, institutional and material ability of the EU and its member states to manage their interdependence with third parties, with the aim of ensuring the well-being of their citizens and implementing self-determined policy decisions.<sup>26</sup>

The focus on strategic autonomy evolved from a desire that the EU would not be overwhelmed by Great Power competition but retain a capacity for action. The election of Donald Trump in autumn 2016 led Chancellor Merkel in 2017 to conclude that ‘the era in which we could fully rely on others is over to some extent’ and Europe had to take its fate into its own hands.<sup>27</sup> President Macron beginning with his Sorbonne speech in September 2017 placed European Sovereignty and strategic autonomy at the heart of his vision for Europe.<sup>28</sup> For Macron, strategic autonomy was his mission for the EU’s future but he was also prepared to go outside the EU with initiatives such as

<sup>25</sup> Quoted in Politico, 9 December 2019, <<https://www.politico.eu/article/on-foreign-policy-josep-borrell-urges-eu-to-be-a-player-not-the-playground-balkans/>>, accessed 18 April 2022.

<sup>26</sup> Niclas Helwig, EU Strategic Autonomy, FIIA Working Paper 119, October 2020. <[https://www.fiaa.fi/wp-content/uploads/2020/10/wp119\\_strategic\\_autonomy-2.pdf](https://www.fiaa.fi/wp-content/uploads/2020/10/wp119_strategic_autonomy-2.pdf)>, accessed 18 April 2022.

<sup>27</sup> Chancellor Merkel, quoted in Politico, 28 May 2017, <<https://www.politico.eu/article/angela-merkel-europe-cdu-must-take-its-fate-into-its-own-hands-elections-2017/>>, accessed 18 April 2022.

<sup>28</sup> President Macron speech at the Sorbonne, 26 September 2017, <<http://international.blogs.ouest-france.fr/archive/2017/09/29/macron-sorbonne-verbatim-europe-18583.html>>, accessed 18 April 2022.

European Security Council and the E12 initiative involving a common European intervention force of 12 states. Macron's re-election in May 2022 makes him one of the most influential European leaders of our time. Macron's use of his mandate and his ability to persuade the other member states about the need for strategic autonomy over the next years are crucial to the EU's future. Macron needs to build coalitions and not ignore small states.

The invasion of Ukraine raises challenging and tough questions for Europe about its role in the world and the objective of strategic autonomy. It responded with resolve to the war but it must move beyond crisis management and crisis response to become a Collective Power Europe (CPE). This implies that Europe confronts 'hard power' and enhances its capacity for collective action. Historically, the EU has been at ease deploying hard economic power but military power is a different matter. Member state preferences, the transatlantic dimension, and the implications of military power in terms of command and control raise tough sovereignty issues that the member states struggle to address. Josep Borrell's claim that Europe 'probably advanced more in building a geopolitical Europe in one week than we did in several years' overestimates achievements and underestimates the challenges ahead, in my view.<sup>29</sup>

Europe's strategic autonomy is severely dented by Europe's continuing security and energy dependencies. The war revealed and highlighted the continuing importance of the Transatlantic Alliance and NATO to European security. A reinvigorated NATO is intent on strengthening its exposed eastern flank and Finland and Sweden have applied to join the alliance. Within three days of the invasion, German Chancellor Scholz shed core paradigms of post-war German policy because of what he called a *Zeitenwende*. With a pro-NATO President in the White House, the role of the EU as a defence and security player in the immediate future is to complement the alliance and build a European pillar in NATO but much depends on future US elections.

<sup>29</sup> Josep Borrell, 'Defending Ukraine at its hour of maximum need', EEAS blog, 1 March 2022. <[https://www.eeas.europa.eu/eeas/defending-ukraine-its-hour-maximum-need-0\\_en](https://www.eeas.europa.eu/eeas/defending-ukraine-its-hour-maximum-need-0_en)>, accessed 18 April 2022.

The election of Trump or a Trump-like political leader would force Europe to address its defence and security needs without the comfort blanket of the US. Although war has drawn the US back into Europe, its main strategic priority remains China. Because NATO is a defence alliance and the EU is strongest in the economic and political spheres, this should induce complementarity and cooperation but there remains a degree of rivalry and US hegemony. Europe must prepare to accept further responsibility within NATO and enhance the security dimension of the EU. It should be possible in the light of Putin's war to arrive at an effective division of labour between the two institutions. The war has bolstered defence spending and commitment to conventional capabilities in Europe and this is likely to continue. In addition, the performance of the Russian armed forces in Ukraine revealed weakness, not strength and agility.

Although the EU's use of its peace facility to send weapons to Ukraine marked the end of a taboo this does not in itself transform the EU into an effective defence and security actor. The publication of the EU's long awaited Strategic Compass for Security and Defence on 21 March 2022, two years in the making, came at a time when the EU is challenged to face up to its responsibilities following the return of war to Europe. The ambition of the Compass is a 'quantum leap forward' in the EU's capability and willingness to act on four strands of work.<sup>30</sup> The threat assessment matters as the EU historically lacked a shared perspective on the threats Europe faced and the Compass recognizes the shifts and shocks in international and European politics and the challenges to global order:

In this highly confrontational system, the EU and its Member States must invest more in their security and defence to be a stronger political and security actor. Despite the progress we have achieved over the past years, there is a major risk of being outpaced by our competitors: a lot remains to be done for the EU to raise its geopolitical posture.<sup>31</sup>

<sup>30</sup> EU Strategic Compass in Defence and Security, <<https://data.consilium.europa.eu/doc/document/ST-7371-2022-INIT/en/pdf>>, accessed 18 April 2022.

<sup>31</sup> *Ibid.*, 6.

The Commission published a paper on defence that focuses on what is within the remit of the Commission in February 2022 before the outbreak of war, designed to contribute to the strategic compass. Does the Strategic Compass mark a substantive step forward? There are some reasons for concern. The EU agreed documents such as the Compass before, notably, the 2003 *European Security Strategy* followed by the 2007 Defence Ministers' *Strategy For The European Defence, Technological And Industrial Base*.<sup>32</sup> Will a large-scale war of conquest in Europe compel the EU and member states to go beyond rhetoric to action and outcomes? Will the member states stay unified on this issue and will they overcome the tendency to promise much and deliver less? There is the ever-present danger that the cost-of-living crisis and rising energy costs will lead to a political backlash. Are Europeans prepared to pay for the protection of Ukraine, democracy and European values in the longer term?

Beyond security and defence, the greatest consequence of the war in Ukraine is to reveal Europe's Achilles heel-energy dependency, a dependency that was allowed to deepen despite the behaviour of Putin. Addressing the energy challenge will require complex and costly short and longer term measures. It has to be done. Otherwise, Europe will remain vulnerable to the whims of a tyrant. Accelerating the energy transition is vital for Europe's future. The Commission presented its proposals REPowerEU designed to wean Europe off Russian energy sources. The plan seeks to diversify gas supplies, speed up the roll-out of renewable gases and replace gas in heating and power generation. The objective is to reduce EU demand for Russian gas by two-thirds before the end of 2022 and to make Europe independent of Russian energy sources by 2030.<sup>33</sup> The Fit for 55 programme is more urgent than ever. The International Energy Agency (IEA) published a 10

<sup>32</sup> EU, 2003, *European Security Strategy* EU, <<https://data.consilium.europa.eu/doc/document/ST-15895-2003-INIT/en/pdf2007>>, accessed 18 April 2022; EU, 2007, *Strategy For The European Defence, Technological And Industrial Base*. <[https://eda.europa.eu/docs/documents/strategy\\_for\\_the\\_european\\_defence\\_technological\\_and\\_industrial\\_base.pdf?msclkid=c62b7314acb811ecab2e101b253285aa](https://eda.europa.eu/docs/documents/strategy_for_the_european_defence_technological_and_industrial_base.pdf?msclkid=c62b7314acb811ecab2e101b253285aa)>, accessed 18 April 2022.

<sup>33</sup> REPowerEU <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1511](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1511)>, accessed 22 April 2022.

point plan intended to address Europe's vulnerability.<sup>34</sup> For its part, Russia has already weaponised gas in its dealings with the EU.<sup>35</sup> Linked to the need to reduce dependence on Russia is the challenge of rising energy costs and the impact on inflation and the cost of living in Europe. European Governments and the EU will have to cushion the consequences so that a political backlash is avoided, particularly if Europe is facing a long period of confrontation with a hostile Russia. It would be fatal if there was a return to austerity politics and policies in Europe given the cost-of-living increases faced by ordinary Europeans. Moreover, the EU should consider expanding collective borrowing to speed up the energy transition. Europe faces uncomfortable choices and trade-offs that have implications for standards of living and the European economy. This is a There is No Alternative (TINA) moment for the EU and there are no easy choices left.

The domestic consequences of Putin's war for the EU are seismic but so too are the consequences for the EU's neighbourhood policy and enlargement. Undoubtedly enlargement remains the most successful external policy that the EU has in its toolkit. A key feature of EU enlargement has been the Union's openness to poorer countries looking for a more prosperous, stable and secure future. By the second decade of the 21st century, the Union experienced a pervasive enlargement fatigue brought on by the scale of previous enlargements, democratic backsliding in Hungary and Poland and the challenge of assuring adequate governance in many member states. Enlargement to the western Balkans stalled and although Turkey remained a candidate country, there was no expectation of eventual Turkish membership. The war in Ukraine has up-ended the Union's enlargement and neighbourhood policy. Three former Soviet Republics, Ukraine, Moldova and Georgia, have formally applied for membership. All three countries have received and returned their membership questionnaires to the Commission; just think: a Government in Ukraine fighting a

<sup>34</sup> International Energy Agency (IEA), Reduce the EU's Reliance on Russian Natural Gas, <<https://www.iea.org/reports/a-10-point-plan-to-reduce-the-european-unions-reliance-on-russian-natural-gas>>, accessed 22 April 2022.

<sup>35</sup> Financial Times, 21 March 2022, <<https://www.ft.com/content/b32bf4fc-608c-46fa-944b-0b3fe8642919>>, accessed 22 April 2022.

war replying to a membership questionnaire. Ukraine's application, as it fights for its future and European values, poses an acute dilemma for the EU. At Versailles, European leaders concluded that Ukraine 'belongs to our European family' and the Commission is preparing an Opinion on its application. This is a deeply divisive issue in the EU. The countries of eastern Central Europe want a strong membership perspective whereas others, conscious of the problems caused by the opening of negotiations with Turkey, are wary of granting fast track membership or even 'candidate status' to Ukraine. The Union's enlargement process is strongly path-dependent with an embedded set of processes and stages that are highly technocratic. Accession is lengthy and arduous for every candidate country especially poorer and weaker states. Ukraine is one such state but the Ukrainians have shed blood for European values and a way of life and that is more than any EU state has had to do in recent times. European leaders and institutions understand that whatever is done for Ukraine has implications for the western Balkans and other former Soviet Republics. Expansion is back on the agenda in a very forceful manner.

EU enlargement has always had a geopolitical dimension. The accession of Greece and the Iberian states was intended to copper-fasten democracy in those countries. The eastern Enlargement was designed to secure the post-Cold War settlement and post-communist transitions. In 1999, Romania and Bulgaria were given a membership perspective after they assisted NATO in the Kosovo war. Neither were ready for membership in 2007 and still have elements of EU monitoring not experienced by other states but was it the wrong choice to admit them in 2007? I think not. Both countries have more stability and prosperity than they would have outside the Union although their institutions remain weak and levels of corruption are high. Bulgaria's Borrisov acted in ways that helped Putin, especially the gas pipeline to Serbia, another pro-Russian country in the western Balkans. Bulgaria continues to block the opening of enlargement talks with North Macedonia and Albania. Ensuring the EU member states do not engage in democratic backsliding and maintain the rule of law is a struggle that the EU has failed to win in any decisive way.

The EU has to squarely face the dilemmas and trade-offs generated by developments in Ukraine. On the one hand, the EU cannot abandon the *acquis* and the need for candidate countries to converge with EU laws and policies. On the other hand, an excessively bureaucratic and technocratic process may mean symbolic convergence but not meaningful convergence. The relationship between neighbourhood policy and enlargement must be re-examined. EU's relations with neighbouring countries are complex and characterised by different political, institutional and economic instruments. There is an important distinction between those countries that could join the Union with relative ease such as Norway, Switzerland and the now departed UK and those countries that want to join but face an up-hill struggle to meet the stringent criteria. Ukraine is in the latter category. External differentiation is the concept used to describe the Union's relations with third countries and it may well be an approach that could facilitate a re-think of the Union's enlargement policy. Differentiation comes in many forms. There is an important distinction between differentiation designed as 'multi-speed' (shared goals but same ends) or 'multi-end' (a permanent end state). Another noteworthy feature of differentiation is difference arising from geographical space, core Europe and widening concentric circles. There is also policy-led differentiation sometimes referred to as multi-menu or *à la carte*.<sup>36</sup> In practice there are multiple modes of differentiation within the EU treaties: extra treaty, enhanced cooperation, optouts and selective opt-ins.

Does differentiation offer innovative possibilities for the future of enlargement and if yes, just what aspects might contribute to addressing the Union's dilemmas? The EU might consider a multi-end form of differentiation that implies differentiated membership, a new category that is more than association. Former MEP Andrew Duff champions a form of 'affiliate' membership which would be much deeper than existing association arrangements but fall short of full membership. Affiliate membership is a model combining multi-ends with concentric circles. In order to manage this, Andrew Duff, a federalist,

<sup>36</sup> Paolo Chocchetti, DI Manual, InDivEU Horizon 2020 project, <<http://indi.veu.eui.eu/2022/01/28/differentiated-integration-manual/>>, accessed 23 April 2022.



argues for a much stronger more federal government at the centre. For Duff:

Affiliation should allow the EU to develop close economic and cultural partnerships with its neighbours in a democratic fashion. Affiliate states would enjoy greater access to the EU institutions than is permitted under any of the current association agreements. Affiliate membership would also be available as an option for any current EU member state which, like the UK, chose not to adhere to the goal of an ever closer union.<sup>37</sup>

Essentially this is a model of concentric circles with a strong federal core surrounded by affiliated members. The problem with this model is that it is most attractive to rich European states that could but do not want to join the EU. It is far less attractive to Europe's poorer states that would regard this as a form of second-class membership. I doubt President Zelensky has this model in mind when thinking about the future of Ukraine. Anything that smacks of a core-periphery model is unlikely to be palatable to those who aspire to full membership but find themselves at Europe's edge. The model asks for enhanced participation in EU institutions and decision-making processes for states that are not full members. This is a strong taboo in the EU, which has always had a core underlying principle – that the autonomy of EU decision-making and its legal system is sacrosanct.

An alternative is to dissect the current enlargement process – multiple negotiating chapters – and determine blocks of integration and engagement that could be accessed on a phased basis. This implies a multispeed process rather than a multi-end one and the objective would remain full membership of the EU. Rather than thinking of this as a ladder to climb, it should be viewed as a set of building blocks that are deployed when conditions are fulfilled. The EU must set conditions for membership and it cannot be open to just any state that may wish to join. One could for example envisage free movement rights before other parts of the single market or enhanced access to the market for goods before services depending on the level of pre-

<sup>37</sup> Andrew Duff, *Dealing with the Neighbours*, EPC, Discussion Paper, 21 December 2021, <<https://www.epc.eu/en/publications/Dealing-with-the-Neighbours-The-case-for-an-affiliate-membership-of-t-44e2c4>>, accessed 22 April 2022.

paredness. None of this is comfortable for the EU and many governments remain deeply sceptical about the current applications. In any process of phased enlargement, the EU must invest heavily in helping the potential member state prepare for membership. Ukraine should receive priority given its existential fight for survival and EU membership might well be part of a settlement that precludes NATO membership. Because enlargement is a cross policy and polity issue with major implications for the future of the Union, it would benefit from deliberation in a high-level group either within the institutions (akin to the President's reports on EMU) or a group of wise women and men chosen for their knowledge and expertise. Such a report could serve as the launch pad for a discussion across Europe with citizens whose support is essential for the big trade-offs ahead. But just what kind of power should Europe become?

## 6. COLLECTIVE POWER EUROPE

Neither Normative Power or Market Power Europe is adequate for Europe as it faces a world of weakening multilateralism, Great Power competition and a deeply hostile Russia on its doorstep. Collective Power Europe (CPE) may provide an overarching concept to capture where Europe needs to go if it is to become a more rounded, more complete, international actor capable of exercising hard and soft power and translating that into smart power, according to Joseph Nye.<sup>38</sup> Collective Power Europe (CPE) builds on the concept of the EU as a compound polity based on the whole and the parts. It is a power but not in the traditional sense of 'power over', rather the power 'to': to amass resources, instruments and affect outcomes. CPE does not represent classical state capacity but rather the power to harness the whole and the parts in the pursuit of shared goals. Europe's uneven political development identified by Kelemen and McNamara is baked into the structure of the Union.<sup>39</sup> Europe's market power has

<sup>38</sup> Joseph Nye, 'Get Smart: Combining Hard and Soft Power', *Foreign Affairs*, 88:4, 160-163.

<sup>39</sup> R. Daniel Kelemen & Kathleen R. McNamara, 'State Building and the European Union: Markets, War and Europe's Uneven Political Development', *Comparative Political Studies*, 55:6: 963-991.

strong constitutional foundations with a robust supranational capacity whereas defence and security relies on nascent structures to give it purpose and direction.

The EU has collectively demonstrated the ability to exercise collective power in the Brexit process, during the pandemic and again in response to Russian aggression. Given the EU's uneven political development what does collective power entail? There are four essential elements. First, for effective collective power, the EU needs a high level of consensus on key priorities and directions. Unity matters or if not complete unity, then unity minus one or two. Second, resolve matters – Europe's member states must have the will to respond, to act and to project power. Third, this relies on strengthening the ability to mobilise institutional capacity, resources and knowledge. It is now time for the EU to become operational. Capacity might involve all member states or a sub-set of states. Leadership is distributed in a CPE. Fourth, it implies a willingness to add additional instruments if and when necessary. The strap line for this Union is a Union of 'Whatever it takes', Draghi's memorable intervention in the Eurozone crisis that quelled market turbulence.

In the background, the EU's future is being debated at the Conference on the Future of Europe (CfE), one of the EU's periodic processes to engage formally with its future. The CfE began on 9 May Europe day 2021 and ended in May 2022. The Conference was the first formal attempt in the EU to set up and incorporate a deliberative citizens' based process in discussions on the EU. The Citizens Panels dealt with an extraordinary large agenda including a special panel on Europe's role in the world and migration. The conference plenary involving 400+ members brought deliberative democracy face to face with representative democracy to debate some 168 recommendations which formed part of a report to the Conference Executive Board and ultimately a final report conveyed to the Presidents of the institutions on 9 May. It is unclear what legacy the Conference will have and if any of the recommendations will fly. There is disagreement across the institutions about next steps and many member states are just not committed to the process. Governments have limited bandwidth es-

pecially at a time of war. The Conference provides an opportunity for Europe's leaders to agree a number of 'must do' projects and perhaps establish a Constitutional Convention to address treaty change. The EU needs to do this to become a rounded strategic actor. Ad hoc mobilisation will not be sufficient for the kind of world Europe now faces. The Union has to address the challenges of unanimity, the fragmentation of roles and the need to create a collective capacity across the policy range to enable Europe to not just aspire to be strategic but to act in the strategic interests of Europe and the kind of world it wants to shape.

## 7. CONCLUSIONS

Drawing hard and fast conclusions as war in Europe continues is foolhardy. However, the war reveals that conceptions of the EU as a normative power and market power may have been apposite for the immediate post-Cold War era but are insufficient in the context of war in Europe and a hardening of geopolitics. Collective Power Europe (CPE) opens us up to a conceptualisation of the EU as a global actor that is not a scaled-up version of the nation state but one that focuses on action and outcomes and on the capacity generated by the collective and the member states. To overcome Europe's uneven political development and address contemporary geopolitics, the EU must face its dependencies and vulnerabilities, especially in relation to energy and security. Hastening the energy transition is smart as energy dependency creates a dangerous vulnerability and it is worth borrowing collectively to manage the transition and ensure that it is a just transition. Defence and security are tied up with a rekindling of US-EU relations and a renewal of NATO but that remains contingent on future US elections and longer-term American strategic preferences. Defence and security cannot be left to NATO and the US. The EU in the first instance should focus on building up member state and collective capability in this field. Faced with aggression in the east, the EU cannot forget the South and the need to stabilise that part of its neighbourhood. There is an urgency to the EU's activities in security and defence especially developing capabilities in new and emerging technologies. Without urgent policy developments in both

energy and defence, the EU's search for strategic autonomy will remain largely rhetorical and fall well short of CPE and the imperatives of global politics.

The EU cannot lose sight of contemporary geopolitics, the emerging global order and Europe's role in it. All global powers will take lessons from the war in Ukraine, it is just unclear what those lessons will be. The US will remain a key ally but US and European interests will never be fully congruent and the EU will want to avoid US hegemony. In relation to China, the EU has to find the appropriate balance between cooperation and systemic rivalry. Beyond those two great powers, there are a host of non-aligned countries that do not want to opt decisively for either of the great powers. It is imperative from an EU perspective that the conflict in Ukraine does not succumb to a 'West' versus the 'Rest' framing. Moreover, the inevitable preoccupation with war because it is immediate and pressing, should not crowd out the much more existential threat to humanity, the climate crisis. The Fit for 55 programme is more, not less, relevant following Putin's war.<sup>40</sup> All countries especially the large powers will have to cooperate. Nor can the EU avoid confronting major questions of political economy especially the rise in the cost of living, energy prices and inflation, all of which affect domestic politics.

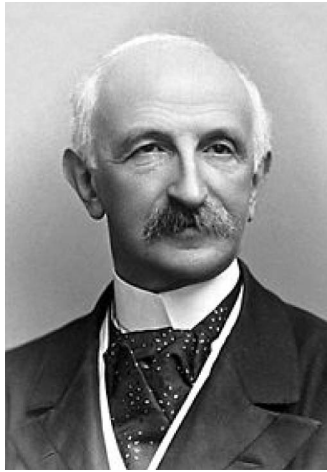
Let me end with the war in Ukraine. We must bear witness to the sacrifices and courage of Ukraine's leadership, army and people- Europe is blue and yellow. There is an imperative to support Ukraine in defence of its territory and to ensure that Ukraine endures as a viable polity and economy. There is no sign of a negotiated settlement but one may become possible depending on the evolution of the war. Ukraine must have agency concerning any settlement because it has to live with the consequences. The outlines of an agreed deal are there, notably, non-membership of NATO for Ukraine but security guarantees from European powers. This would have to be linked to membership of the EU, which requires the Union to take a hard look at enlargement as

<sup>40</sup> I am indebted to my daughter Dr. Kate Laffan, London School of Economics, for always reminding me of the climate crisis.

a policy and process. Only a viable and European-oriented Ukraine would represent a fundamental rejection of war and imperialism and enable Europe to continue to conquer the peace.

THE ANNUAL T.M.C. ASSER LECTURE ON THE  
DEVELOPMENT OF INTERNATIONAL LAW

*A Mission for Our Time*



INTRODUCTION

The Annual T.M.C. Asser lecture has been established in honour of the Dutch jurist and Nobel Peace Prize Laureate, Tobias Michael Carel Asser (Amsterdam, 28 April 1838 – The Hague, 29 July 1913), and his significant contributions to the development of public and private international law. It is the T.M.C. Asser Instituut's flagship lecture and its date commemorates the foundation of the Institute in December 1965.

MISSION

Tobias Asser was a man with a vision. A man who kept his finger on the pulse of his time, and who managed to shape the legal develop-

ments during his days.<sup>1</sup> In his Inaugural Address upon the acceptance of his professorship at the University of Amsterdam in 1862, Asser explained that it was his ‘vocation’ to reflect on commercial law and its ‘import’, while ‘taking into consideration the condition of society in [his] century’.<sup>2</sup> What we learn from his lecture extends beyond the field of commercial law; it shows Asser’s view of the law more generally: ‘law serves primarily to cultivate trust’.<sup>3</sup>

For its mission statement, the Annual T.M.C. Asser Lecture builds on the vision and mission of the man who has lent it his name. It invites distinguished international lawyers to take inspiration from Asser’s idea of cultivating trust and respect through law and legal institutions, and to examine what it could mean in their area of expertise today.

Current legal scholarship has uncovered the complications of Asser’s mission, and of his internationalist friends and colleagues.<sup>4</sup> It has pointed to the downside of how the international legal order took shape in spite of the good intentions of these late 19th and early 20th century liberal-humanitarian internationalists. Asser himself was well aware of the dangers of utopian idealism<sup>5</sup> on the one hand, and the dangers of a nationalistic conservative attitude towards international law on the other. Every age has different needs and pitfalls and hence, sailing between commitment and cynicism,<sup>6</sup> every age requires a different course.

<sup>1</sup> A. Eyffinger, *T.M.C. Asser [1838–1913] Founder of The Hague Tradition* (The Hague: Asser Press, 2011), p. 11.

<sup>2</sup> The Inaugural Address is included in E.M.H. Hirsch Ballin (ed. and intro.), *A Mission for his Time. Tobias Asser’s Inaugural Address on Commercial Law and Commerce, Amsterdam 1862* (The Hague: Asser Press, 2012), p. 18.

<sup>3</sup> *Ibid.*, p. 22.

<sup>4</sup> See below ‘Tobias Asser in context: One of the ‘Men of 1873’.

<sup>5</sup> At the Second Hague Peace Conference, Asser himself said ‘you know I am not a Utopian’, Eyffinger, p. 5, n. 45.

<sup>6</sup> M. Koskenniemi, ‘Between Commitment and Cynicism: Outline for a Theory of International Law as Practice’, in *Collection of Essays by Legal Advisors of States, Legal Adviser of International Organizations and Practitioners in the field of International Law* (United Nations, NY, 1999), pp. 495–523; also available online.



Our time, too, is in dire need of reflection. It is marked by the politics of fear, domestically as well as globally. In different ways ‘fear operates directly as a constitutive element of international law and the international ordering and decision-making processes.’<sup>7</sup> Taking note of Tobias Asser’s legacy in this context, a reorientation of the international order towards an order based on respect and trust urges itself upon us.<sup>8</sup>

Today, with international lawyers perhaps sadder and wiser, it seems more than ever to be an international lawyer’s task to examine – as Asser did in his day – how to respond to ‘the condition of society’. Mutual trust and respect are crucial to the health of any heterogeneous society, whether it is the international society or one of the rapidly growing cities across the globe. A (research) question which Tobias Asser bequeathed to us is ‘how can law serve this aim?’

In spite of well-known complications and dark sides,<sup>9</sup> in this context the Rule of Law and the principles of human rights are paramount. These may provide direction in our considerations about trust and respect in relation to challenges brought by, for example, globalisation, urbanisation, (global) migration, the atomisation of society, climate change, environmental degradation, the complexity of the traditional North-South divide, the dangers of a renewed international arms race, and the dilemmas of new global actors such as the EU.

Against this backdrop, the Annual T.M.C. Asser Lecture aspires to be a platform for a constructive, critical reflection on the role of law in dealing with the challenges and (potentially radical) changes of the global society of the 21st century.

<sup>7</sup> D. Joyce & A. Mills, ‘Fear and International Law’, *Cambridge Review of International Affairs*, 19:2 (2006), pp. 309–310.

<sup>8</sup> A. Carty, ‘New Philosophical Foundations for International Law: From an Order of Fear to One of Respect’, *Cambridge Review of International Affairs*, 19:2 (2006), pp. 311–330; also J.E. Nijman, ‘Paul Ricoeur and International Law: Beyond ‘The End of the Subject’. Towards a Reconceptualization of International Legal Personality’, *Leiden Journal of International Law*, 20 (2007), pp. 25–64.

<sup>9</sup> D. Kennedy, *The Dark Sides of Virtue* (Princeton: PUP 2004); also M. Koskenniemi, *The Gentle Civilizer*, infra note 21, and *The Politics of International Law* (Oxford: Hart 2011).

## BACKGROUND

In Asser's time, the cultivation of trust and respect in international relations was indeed an urgent matter. Asser's professional life spans from the second half of 'the long 19th century'<sup>10</sup> up to the eve of the First World War. It was a time of rising nationalism and mounting 'distrust and despair'<sup>11</sup> in Europe. The 19th century Eurocentric world order was to collapse only a few years after Asser's death.

In Asser's lifetime America had experienced the Civil War (1861–65) and slavery was abolished after a slow struggle. In Europe, the Crimean War (1853–56) and the Franco-Prussian War (1870–71) brought decades of peace in Europe to an end. With these wars the horrors of industrial warfare began and forever changed the destructive scale and intensity of armed conflict. In Asia, Britain and France forced China, by military means, to open up its markets for opium, on the basis of what they argued to be their sovereign right to free trade, even against the imperial government's desperate attempt to protect its dwindling population from opium addiction. A socialisation into international society and law that was to leave its mark on China's approach to international law well into our time.<sup>12</sup> In the latter days of his career, Asser actively supported the International Opium Conference (1912) to end the opium enslavement of the Chinese people.<sup>13</sup>

With the economic policies of the late 19th century the European empires spurred on the process of modern globalisation in the industrial era. Asser had a keen interest in economics and as the head of a (commercial) law practice for most of his life,<sup>14</sup> he is likely to have been especially sensitive to the process. In his view, transnational trade and commerce were crucial for societies to thrive and develop peace-

<sup>10</sup> Eric Hobsbawm's term for the period 1789–1917.

<sup>11</sup> Eyffinger, p. 67.

<sup>12</sup> S. Suzuki, 'China's Perceptions of International Society in the Nineteenth Century: Learning more about Power Politics?', 28 *Asian Perspective* (2004), pp. 115–144.

<sup>13</sup> Eyffinger, p. 79.

<sup>14</sup> Among his clients, though, were the heirs of King Leopold in the Congo heritance.

fully. In that sense, his perspective on free trade and commerce was utilitarian – in the service of ‘public welfare’.<sup>15</sup> Hence, his stance was not uncritical; transnational trade and commerce facilitated by law and legal institutions were to serve peace and justice, but not to exploit or violate ‘the inalienable rights of a free people’.<sup>16</sup>

The urbanisation of 19th century Europe prefigures that of today; it basically put much of the current global city system in place. Asser was outspoken about his love for the ‘distinguished mercantile city’ of Amsterdam: ‘[u]nder any circumstances, wherever my place of domicile, I will forever remain an Amsterdammer!’<sup>17</sup> His love of Amsterdam, however, not only sprung from the city’s tradition of international trade and commerce, but also and even more so from its tradition of openness to strangers and providing a refuge for the expelled. Being a Dutch citizen of Jewish descent, the exclusion and violence brought about by anti-Semitism in European (urban) societies must have been a matter of personal concern for someone so eager to participate in the public sphere. Nationalism, a growing sentiment in Europe, was completely alien to Asser. With his urban cosmopolitan mind-set, his thinking was transnational by nature. His vision of international and personal relations did not hinge upon fear and othering, but rather upon respect and trust.

For Asser, the role of law was vital to the emancipation of the Jewish minorities in Europe, as was the case for any minority. He worked with an integral view of the Rule of Law, to be strengthened as much in the domestic as in the international society. Asser’s dedication to citizens’ rights and the principle of legal equality is visible, for example, in his advocacy of equal voting rights for women.<sup>18</sup>

While Asser’s vision of law and legal institutions was all about the ideals of peace, prosperity and justice, he was concrete and prag-

<sup>15</sup> Hirsch Ballin, p. 19.

<sup>16</sup> *Ibid.*, p. 33.

<sup>17</sup> Eyffinger, p. 13.

<sup>18</sup> Hirsch Ballin, p. 13.

matic when aiming to shape developments in private and public international law.

Asser's commitment to international trade and commerce as a means to achieve peace and international solidarity inspired his efforts to deal with 'conflict of laws' and to promote a unification and codification of the rules of private international law. In his view, the demands of international life went beyond economic relations only, and so, being the pragmatic lawyer that he was, Asser presided over the Four Hague Conferences on Private International Law (1893–1904) which managed to produce six conventions ranging from procedural law to family law issues.

While international tensions intensified and an arms race was looming, Asser moved into the realm of public international law – albeit with a good share of realism about state conduct and the pursuit of self-interest. Together with Feodor Martens, Asser stood at the helm of the Hague Peace Conferences (1899 and 1907), which focused on international humanitarian law and the peaceful settlement of disputes. The First Conference resulted in the constitution of a Permanent Court of Arbitration (PCA). Being a prominent arbiter himself, Asser participated in the first case before the PCA. Thanks to Andrew Carnegie, who wanted to ensure a 'wise distribution' of his wealth, the Peace Palace was built and The Hague was thus granted its role of *City of Peace and Justice*.

T.M.C. Asser's mission of peace, liberty and justice defined both his academic and diplomatic work. He intended to listen to 'the voice of the conscience of [his] century' and tirelessly applied his legal genius to develop public and private international law. After decades of neutrality, he would moreover steer the Netherlands back into the diplomatic arena and towards a more prominent international position.

Tobias Asser's legacy is almost too vast for one man. No wonder his role was recognized by the Nobel Prize Committee in 1911. The

Committee portrayed Asser as ‘the Hugo Grotius of his day’.<sup>19</sup> Certainly they both aimed to strengthen the Rule of Law in a global society.<sup>20</sup>

In contemporary international legal scholarship, Professor T.M.C. Asser was one of the international lawyers Martti Koskenniemi has famously called the ‘Men of 1873’: twenty to thirty European men who were actively engaged in the development of international law and who, thanks to among others Asser and his dear friend Rolin, established the *Institut de Droit International* in 1873.<sup>21</sup> They were interested in ‘extending the mores of an *esprit d’internationalité* within and beyond Europe. ... [they were the] “founders” of the modern international law profession.’<sup>22</sup>

For the men of 1873, international law was to be social and cultural in a deep sense: not as a mere succession of treaties or wars but as part of the political progress of European societies. They each read individual freedoms and the distinction between the private and the public into constructive parts of their law. If they welcomed the increasing interdependence of civilized nations, this was not only to make a point about the basis of the law’s binding force but to see international law as part of the progress of modernity that was leading societies into increasingly rational and humanitarian avenues.<sup>23</sup>

Their liberal project was a project of reform, human rights, freedom of trade, and ‘civilization’. In their view, ‘jurists should not remain in the scholar’s chamber but were to contribute to social progress.’<sup>24</sup> Koskenniemi further cites Asser to explain the *esprit d’internationalité*:

For Asser, for instance, the tasks of the *jurisconsulte* in the codification of private international law followed “from the necessity to subordinate

<sup>19</sup> See for the Nobel Peace Prize 1911 speech: <[http://www.nobelprize.org/nobel\\_prizes/peace/laureates/1911/press.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/1911/press.html)>.

<sup>20</sup> See Asser’s Address at the Delft Grotius Memorial Ceremony, 4 July 1899, p. 41.

<sup>21</sup> Eyffinger; M. Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge: CUP 2002).

<sup>22</sup> *Ibid.*, p. 92.

<sup>23</sup> Koskenniemi, pp. 93–94.

<sup>24</sup> *Ibid.*, p. 57.

interest to justice – in preparation of general rules for the acceptance of governments to be used in their external relations”<sup>25</sup>.

BUILDING ON TOBIAS ASSER’S VISION AND MISSION

The institution of this Annual Lecture is inspired by these ‘Men of 1873’ in general and by Asser’s social progressive, ‘principled’ pragmatism, liberalism, and ‘emancipation from legal traditionalism’ in particular.<sup>26</sup>

Drawing inspiration from the ‘Men of 1873’ is however not without complications. Part of their project was the ‘civilizing mission’, with all its consequences. On the one hand, in the early decades of the 20th century these scholars may have been hopeful about decolonisation and lifting developing countries out of poverty. Asser’s own involvement in attempts to end a most ‘embarrassing chapter of Western history’, the Opium Wars, may also be mentioned. On the other hand, international law as an instrument of civilisation has surely shown its dark sides. Today, more than ever before, we are aware of how internationalism and the Rule of Law have been the handmaidens of (economic, legal) imperialism.<sup>27</sup> Scholars have pointed to the ‘double standards’ as ‘an integral part of the ideology of democracy and the rule of law’ so visible in the application of international law even today.<sup>28</sup>

The rich and somewhat complex heritage of internationalism does not leave room for naïve ideas about international law as an instrument only for the good of liberal-humanitarian reform; if ‘[l]egal internationalism always hovered insecurely between cosmopolitan humanism and imperial apology... [and i]f there is no perspective-

<sup>25</sup> Ibid., pp. 57–58.

<sup>26</sup> Hirsch Ballin, pp. 12 and 2.

<sup>27</sup> E.g. A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: CUP, 2005).

<sup>28</sup> A. Carty, ‘The terrors of freedom: the sovereignty of states and the freedom to fear’, in J. Strawson (Ed.) *Law after Ground Zero* (London: Glasshouse Press, 2002), pp. 44–56.

independent meaning to public law institutions and norms, what then becomes of international law's universal, liberating promise?<sup>29</sup>

While for some this rhetorical question marks the end-point of possible legal endeavours, the Annual T.M.C. Asser Lecture hopes to be a place for reflecting critically on what lies *beyond* this question. As Koskenniemi points out, '[i]n the absence of an overarching standpoint, legal technique will reveal itself as more evidently political than ever before.'<sup>30</sup> And so, since '[i]nternational law's energy and hope lies in its ability to articulate existing transformative commitment in the language of rights and duties and thereby to give voice to those who are otherwise routinely excluded', we ask: What does the *esprit d'internationalité* mean today and what could it mean in and for the future?

PROF DR JANNE E. NIJMAN

*Chair of the Executive Board and Academic Director  
of the T.M.C. Asser Instituut, The Hague*

<sup>29</sup> Koskenniemi, p. 513.

<sup>30</sup> *Ibid.*, p. 516.





## RETHINKING PUBLIC INTERESTS IN INTERNATIONAL AND EUROPEAN LAW

*Pairing critical reflection with perspectives for action – Contours of  
the strategic research agenda of the Asser Institute 2022-2026*

### INTRODUCTION

The T.M.C. Asser Instituut conducts fundamental and independent policy-oriented research and organises critical and constructive reflection on international and European legal developments, at the interface of academia, legal practice, and governance.

The institute strives for excellence in its research and academic education and always has a keen eye for its societal responsibility, knowledge dissemination, and outreach.

*The city of peace and justice*

Since 1965, our unique location in The Hague amidst international and European legal institutions, diplomatic missions, and government ministries has supported us in our ambitions and in our convening power. The Institute has a large international network and attracts legal experts from around the world.

*Asser Institute and the Amsterdam Law School of the  
University of Amsterdam*

With the newly concluded collaboration agreement with the University of Amsterdam (UvA), which entered into force 1 September 2020, we joined the UvA-family. The Institute and the UvA, in particular the Amsterdam Law School, share the ambition to contribute to knowledge enhancement and scientific solutions to societal problems, ultimately aiming for a more just society. We will seek to intensify the

interactions between the UvA and our Institute in the years ahead. At the same time, the Asser Institute is proud of its legacy as an inter-university institute. It will build on a long tradition of cooperation when fulfilling and expanding its role as a facilitator and platform for inter-university collaboration.

MISSION

The Asser Institute aims to contribute to the development of international and European public and private law by independently conducting fundamental, policy-oriented and applied legal research, as well as by initiating and facilitating academic and expert meetings, (professional) education, and public events that aim to disseminate knowledge of international and European law.

CONTOURS OF THE STRATEGIC RESEARCH AGENDA  
OF THE ASSER INSTITUTE 2022-2026

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 (questions of legitimacy) in nature.

*Rethinking public interests in international and European law*

In our atomised yet hyper-connected world, the COVID-pandemic undoubtedly showed the significance of law, policy, and government in the name of the *public interest*. From the very first measures that restricted individual freedoms in order 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.

Stemming from the very basic question – ‘How do we take care of our (social and natural) world, and what role does law play in this?’ – the public interest is a crucial legal notion, characterised by a plethora of sometimes competing interests and evanescent in its near infinite diversity. And yet critical scrutiny of this notion can open up space for alternate – and improved – conceptions of public interest to guide law-and policy-making. Therefore the theme of *‘Rethinking public interests in international and European law’* will direct the Asser Institute’s Strategic Research Agenda (ASRA) for the next four years. Our conviction is that law can contribute to addressing pressing local and global challenges such as climate change, ecocide, transnational terrorism, unsustainable capitalism, a growing social inequality, a widening digital divide, global migration, planetary urbanisation, and the rapidly approaching planetary limits.

The relevance of public interests functions as the common denominator in the work of the Asser Institute researchers and also constitutes an area of convergence with the communities that we engage and share our knowledge with. Having this theme at the core of our activities guides our research and facilitates synergies within and across the various interlinked research strands of the Institute, namely:

- In the public interest: accountability of the state and the prosecution of crimes
- Regulation in the public interest: disruptive technologies in peace and security
- Public interest(s) inside/within international and European institutions and their practices
- Transnational public interests: constituting public interest beyond and below the state

*In the public interest: accountability of the state  
and the prosecution of crimes*

State action finds legitimacy in its representation of the public and their interests. Public prosecution of transnational crimes, such as terrorism but also international crimes, such as war crimes and crimes

against humanity and genocide, finds legitimacy in the protection of public interests.

This research strand examines the responses of states – individually and collectively (for instance at the level of the United Nations or the European Union) – to alleged terrorists and suspects of international and transnational crimes. It will investigate the justifications for these responses, the role and meaning of public interest in these justifications and whether these responses are compatible with international (human rights) law and the rule of law.

That also holds for the repression 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, in some cases they may violate public interests articulated as international (human rights) law and the rule of law and hence merit scrutiny. On the other hand, societal actors can assist in, for instance, monitoring violations and thus help in both holding states accountable and bringing individuals to justice.

A specific focus area will be the context of the post-9/11 hyper-securitisation, with its overreach through national security measures, significant expansion of surveillance tools, and resulting digitalisation of individual identities. The strand will also focus on the implications of new technology and artificial intelligence for traditional criminal law concepts and the establishment of criminal responsibility. It will expand its research focus to include the study of criminal responsibility for the degradation of the world's environment, either via international criminal law (ecocide) or transnational criminal law.

*Regulation in the public interest: disruptive technologies  
in peace and security*

This newly established research strand investigates the current and future technological developments that can have significant implications for international security and international law. The key element

is the *potential disruptive impact* certain technologies may have rather than their 'digital' or 'emerging' nature. Disruptive technologies that this strand conducts research on include military AI, autonomous weapon systems, data-driven warfare, biochemical weapons, and conventional weapons or dual use technologies with a disruptive potential (e.g. small arms, commercial drones with the potential to be weaponised, cybersurveillance). The strand's research focuses, in particular, on the development of the international regulatory framework for the military applications of disruptive technologies.

The research in this strand reflects on the regulation of disruptive technologies in peace and security in a way that promotes the public interest, defined here as the common or general good, to the interest of a community or society as a whole. 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.

The first 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 Designing International Law and Ethics into Military Artificial Intelligence (DILEMA) project, research seeks to identify and safeguard fundamental values (e.g. human dignity, human agency, accountability), and to translate values and principles into requirements and processes for military AI in order to promote their alignment.

The second line of research explores how international law addresses change, in particular technological change that disrupts international security. 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.

*Public interest(s) inside/within international and European institutions and their practices*

Fragmentation and institutional proliferation have marked the development of international law over the last decades. International institutions, international and regional courts, as well as tribunals are often at the forefront of adjudicating conflict in the name of publics and public interests. This research strand investigates material and institutional practices, methodologies used to measure and analyse the public interest, and new technologies that drive change in these institutional practices. Finally, it also examines how public and private international law manage conflicts among asserted public interest by referring to international courts and tribunals, as well as to legal mechanisms like the Brussels I regime that is set up to determine which court has jurisdiction in cases with links to more than one country in the European Union.

This strand analyses the values operationalised by international institutions such as the International Court of Justice, 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 an ideal in international legal ordering. Central to this research are issues such as who is empowered to decide on what counts as a value, a public, or a public interest, and on what basis they decide, who invokes these categories and with what purposes.

Technological developments impact how international institutions operate and this strand examines the emerging dynamics in these institutions driven by the rise of networked communications media and information-processing technologies. It explores how these are bound up with professional routines incorporated from fields of business management and information theory. Work within the 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.

*Transnational public interests: constituting public interest  
beyond and below the state*

The pursuit of the public interest in the transnational space and the shift 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 will be critically investigated in this strand.

Two research lines will be explored. The first research line aims to identify and understand this shift beyond the state and to empirically locate some of its institutional and normative materialisations. The role of non-state actors and their relationship to the state will be further analysed. The second research line for the strand is normative, studying the mechanisms of control and representation necessary to ensure that non-state actors, when they purport to act in the transnational public interest, remain accountable to the relevant transnational public(s). These research lines will be conducted through four main projects falling under the strand's umbrella.

The Doing Business Right (DBR) project focuses 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 businesses have the responsibility to respect human rights, marking a clear move 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, this has triggered the emergence of new regulatory techniques, such as human rights due diligence, aimed at providing a framework for businesses in order for them to discharge this responsibility. Climate change and environmental law also intertwine with the due diligence standards established by the UN Guiding Principles on Business and Human Rights.

This is further intertwined with the work of the Asser International Sports Law Centre (AISLC) that is focused on studying the interface between private regulation and public interests in the transnational governance of sports. The aim of this project 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 European Union (EU) is one of the main actors to which the pursuit of the public interest has shifted. 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.

The Cities and the (re)constitution of (transnational) public interests project raises a number of fundamental questions about the public interest such as: How do cities understand and use public interests and who determines what is in a city's public interest? Do cities create a transnational public sphere? If so, how? 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?

#### LOOKING AHEAD

Research and practice converge at the Asser Institute, and as a research centre for European and international law we use research to generate new ideas to make people's lives better. Our research will be guided by the notion of the public interest and we will continue to harness legal scholarship to define and contribute to this interest.

Over the period of this research agenda, the Institute will:

- Conduct high-quality independent research – both fundamental research and policy-oriented research – in order to contribute to current academic and policy debates within the scope of the aforementioned research strands, with a strong commitment to open access research.
- Increase its research capacity, especially through fostering PhD research in international and European law in collaboration with the University of Amsterdam.



- Deliver research-based, cutting-edge, high-level policy-oriented meetings, (professional) education modules and public events contributing to the dissemination of knowledge.
- Intensify – in areas where the institute’s research expertise can be brought to bear – its cooperation and engagement in European and international academic networks, as well as in the national, European, and international arenas of policy formation and legal practice.
- Engage with the local and international community to disseminate knowledge of international and European law both to academic audiences as well as the general public.

More information about the Asser Institute’s research & activities can be found on the website: <https://www.asser.nl>.



## THE ANNUAL T.M.C. ASSER LECTURE SERIES

The Annual T.M.C. Asser Lecture is a platform for a critical, multi-disciplinary and constructive reflection on the role of law in the (potentially radically) changing global society of the 21st century, and a high-level event within the context of our research programme '*International & European law as a source of trust in a hyper-connected world*'.

In 2015, Professor Joseph Weiler (President of the European University Institute in Florence, and University Professor at NYU School of Law) delivered the Inaugural Annual T.M.C. Asser Lecture on '*Peace in the Middle East: has International Law failed?*' in which he identified an indeterminacy issue in the legal framework of belligerent occupation that allows for different interpretations. This, according to Weiler, has turned into a political dispute about the facts, for which international law can provide no more than a roadmap.

In 2016, Onora O'Neill, Professor Emeritus of Philosophy at the University of Cambridge and crossbench member of 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.<sup>1</sup>

In 2017, Saskia Sassen, Robert S. Lynd Professor of Sociology at Columbia University (NY), discussed the relations between globalisation, economic development and global migration in the lecture entitled '*A Third Emergent Migrant Subject Unrecognized in Law: Refugees from "Development"*'. She asked: 'Is there any role for inter-

<sup>1</sup> O. O'Neill, *Accountable Institutions, Trustworthy Cultures* (The Hague, T.M.C. Asser Press 2017).

national law in the prevention of, and protection against, expulsions caused by the accelerating destruction of land and water bodies?<sup>2</sup>

In 2018, Martti Koskenniemi, Professor of International Law at the University of Helsinki and Director of the Erik Castrén Institute of International Law and Human Rights, 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.<sup>3</sup>

The Fifth Annual T.M.C. Asser Lecture, held in 2019, was delivered by Anne Orford, Professor of International Law at Melbourne Law School and was entitled ‘*International Law and the Social Question*’. It placed the social question, the value of solidarity and social justice back on the table of international lawyers.<sup>4</sup>

The Sixth Annual T.M.C. Asser Lecture ‘*Almost Human: Law and Human Agency in the Time of Artificial Intelligence*’ was delivered by Prof Andrew Murray from the London School of Economics via the internet, due to COVID-restrictions. The lecture challenges the process of datafication in society: the reduction of the complexity of the world to data values, which threatens the fabric of human agency and the rule of law.<sup>5</sup>

For more information on the Annual Lecture Series, registration and programme, please go to: <https://www.asser.nl/annual-lecture>, or contact [TMCAsserLecture@asser.nl](mailto:TMCAsserLecture@asser.nl)

<sup>2</sup> S. Sassen, *A Third Emergent Migrant Subject Unrecognized in Law: Refugees from ‘Development’* (The Hague, T.M.C. Asser Press, 2018).

<sup>3</sup> M. Koskenniemi, *International Law and the Far Right: Reflections on Law and Cynicism* (The Hague, T.M.C. Asser Press, 2019).

<sup>4</sup> A. Orford, *International Law and the Social Question* (The Hague, T.M.C. Asser Press, 2019).

<sup>5</sup> A. Murray, *Almost Human: Law and Human Agency in the Time of Artificial Intelligence* (The Hague, T.M.C. Asser Press, 2021).

## ABOUT THE AUTHOR



Until September 2021, Brigid Laffan was director and professor at the Robert Schuman Centre for Advanced Studies and director of the Global Governance Programme at the European University Institute (EUI), Florence. In the last eight years, Laffan has been the convenor of the State of the Union, the annual summit for high level reflection on the European Union which acts as a bridge between academia and policy making at the highest level in Europe. In 2018, *Politico* ranked Laffan, a long time professor of political science who grew up in Ireland, among the women who shape Europe. Laffan is a leading thinker on the dynamics of European integration. She has published a number of important books on Europe, such as *Integration and Co-operation in Europe* (1992), *The Finances of the Union* (1997), *Europe's Experimental Union – Re-thinking Integration* (2000, co-authored), *Core-periphery Relations in the European Union* (2016, co-edited) and *Europe's Union in Crisis: Tested and Contested – West European Politics* (2016). Laffan was awarded the THESEUS Award for outstanding research on European Integration, and the UACES Lifetime Achievement Award. In 2010, she received the Ordre national du Mérite from the President of the French Republic.

Brigid Laffan on her lecture *Can Collective Power Europe Emerge from Putin's War?*:

'On 24 February 2022, the post-war international order ended, as did the 1989 peace dividend. A major nuclear power, Russia, invaded its neighbour Ukraine, targeting civilians, reducing urban centres to a rubble and triggering a major displacement of people in Europe. For the European Union (EU) and the wider community of democracies, this is a critical juncture with implications for the security and political economy architecture of Europe and the wider world for decades to come.

The Russian invasion takes place against the return of hard geopolitics, Great Power competition and the weakening of multilateral institutions. Over the last decade, the EU, a polity but not a state, has been grappling with its response to new dynamics in global politics. Europe's search for a role has focused on ill-defined concepts such as strategic autonomy and European sovereignty. The collective EU wants to be a player, not a plaything, but is challenged by the imbalance between its economic power, diverging preferences of the member states and an inchoate approach to security which relies on NATO and the Transatlantic Alliance.

The focus of this lecture is threefold. First, it explores the response of the EU and the community of democracies to Putin's war. Second, it analyses the impact on global politics and Great Power competition, and three, it assesses the consequences of the war for the dynamics of European integration and the nature of the EU.'

