

Interaction between legal systems

Law-making and law enforcement are increasingly taking place on various levels: in a global context, in EU context, on a national level and in a private law framework. These various levels influence each other, sometimes directly, on the basis of a hierarchical relation, but often indirectly, for example through the development of trade customs or through an exchange of legal experience or good practices. The continuous interaction and co-operation between the various levels of law-making and jurisdiction affects all areas of law, and is highly complicated.

The research conducted at the Leiden Law Faculty aims at understanding the complex interaction between the various levels of jurisdiction and at solving the resulting problems and questions. Interaction between legal systems is the theme which determines the faculty's research profile. Researchers focus not only on practical and political problems, but also on a variety of fundamental questions raised by the increasing interdependency of legal systems. Which methods can best be used to accommodate law-making and enforcement in a world of multilevel jurisdiction? How do the actors involved define fundamental legal values and principles? And how can legal coherence, respect for human rights and checks on unwanted concentrations of power best be guaranteed? Are traditional concepts of national law flexible enough to internalise changes in an international context? Global developments such as migration, democratisation processes, developmental and environmental issues, and international crime and terrorism, present an additional research challenge.

Leiden University is well-established in the study of international and European law, (comparative) public and private law, human rights and customary and colonial law. The interaction between legal systems is studied in all institutes of the Law Faculty and in renowned institutes such as the Europa Institute, the Institute for Immigration Law, the Grotius Centre, the International Institute for Air and Space Law, the International Centre for International Tax Law and the Van Vollenhoven Institute. The Law Faculty also houses a number of important international journals, for example the Common Market Law Review, Leiden Journal of International Law, and European Company Law.

Co-ordinators:

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Rick Lawson, Professor of European Law, Faculty of Law

Financial sanctions in the fight against terrorism

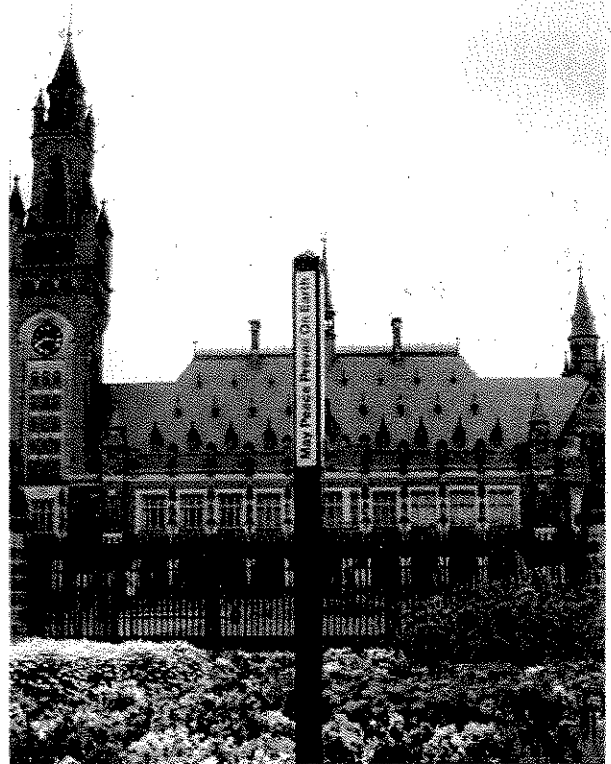
In the fight against international terrorism measures such as financial sanctions are taken against people who are directly involved with Al Qaeda or the Taliban, to prevent them from purchasing weapons. Professor Rick Lawson, Professor of European Law: 'These sanctions are imposed by the UN Security Council, elaborated in the form of EU regulations, implemented by member states, and eventually applied by banks and other institutions. But who checks whether the sanctions are imposed on the right people and organisations? To whom can a citizen appeal if he believes he has wrongly been placed on a sanctions list? Is the European Court of Human Rights authorised to verify whether EU sanctions are in line with property rights, for example? Is a national judge or the EU Court of Justice authorised to assess the fairness of UN Security Council measures? Does the European Union's pillar system allow it to respond adequately to developments in international legal practice? What is the role of the different institutions?' Researchers at the Leiden Law Faculty began to examine such issues directly following 9/11. Not only has their research translated into scientific publications, it has also led to contributions to the social debate: from recommendations to banks to participation in the discussions within the UN.

Lawson addresses the problem from a European point of view. Nico Schrijver, Professor of International Law, and Dr Larissa van den Herik co-operated with Brown University's Watson Institute in producing a white paper on 'strengthening targeted sanctions through fair and clear procedures'. It was commissioned by the governments of Sweden, Germany and Switzerland, and presented to the Security Council in 2006.



Prof. Rick Lawson:

'Societies change, and so do the laws that seek to regulate them. Law-making is no longer the prerogative of national legislators. As new interactions emerge, we analyse the consequences.'

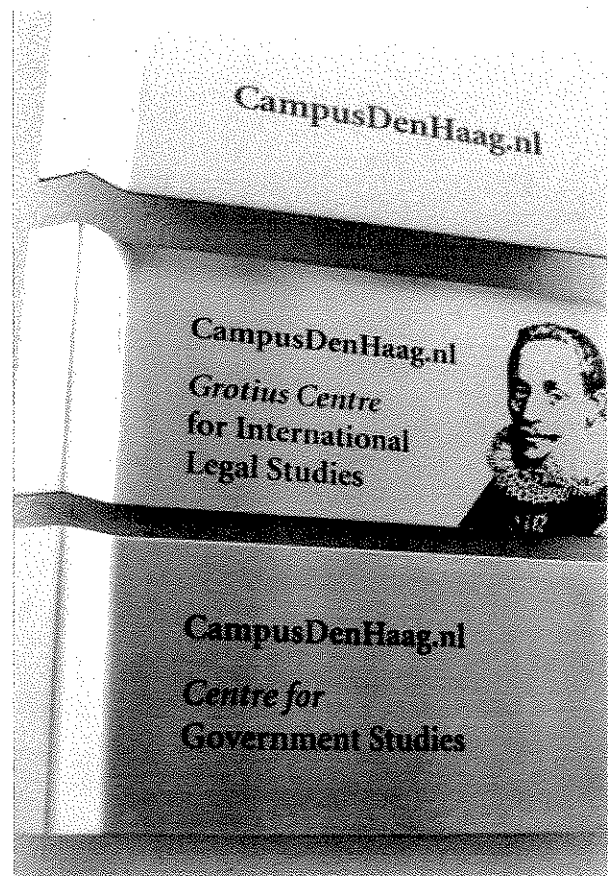


Uncovering the common principles of civil law

All fields of Dutch civil law are full of open-textured concepts. The use of so-called 'open norms' is a way of reducing the tension between a dynamic society and legislation, which is frequently static. According to Alex Geert Castermans, Professor of Civil Law, this characteristic has the considerable advantage both of making it possible to do justice to different situations and of adapting law to developments in society without actually having to amend legislation. Researchers at the Institute of Civil Law look at the nature of the various concepts, their general meaning and underlying principles, always in an international context. 'Recent European developments intensify contacts with scholars throughout Europe,' says Castermans, referring to the Draft Common Frame of Reference. 'Although this academic outline of a European Law of Obligations is far from undisputed, it helps us to uncover the common principles of civil law throughout Europe.' Current research involves specific subjects such as the general duty to forewarn, or the cooling off period for the benefit of consumers. Broader themes are the systems of child protection, the social accountability of citizens and companies – in terms of human rights and sustainability – the private enforcement of competition law, or international insolvency law. Problems arising from the interaction between the various levels of jurisdiction cannot be solved by the harmonisation of material law alone. 'Part of our work is aimed at procedural and international private law, to bridge the gap between material law and every day business.'



Prof. Alex Geert Castermans:
'Worldwide, private lawyers are searching for a new balance between autonomy and solidarity, in business to business as well as in business to consumer relations.'



The Grotius Centre

The Grotius Centre for International Legal Studies is a The Hague based centre of Leiden University, focusing on all aspects of international law. At the Grotius Centre, the expertise of Leiden University's Faculty of Law is combined with the position of The Hague as the City of Peace and Justice. The Grotius Centre houses a variety of activities and programmes, covering all aspects of international law, at the highest levels of academia. The academic expertise of Leiden University is paired to the everyday practice of the various international legal organisations in The Hague, such as the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Court of Justice (ICJ), and the Permanent Court of Arbitration (PCA).

Fundamental rights: European and national interpretations

Fundamental rights cases are often notoriously hard cases, being concerned with important and highly sensitive issues such as privacy or discrimination. Janneke Gerards, Professor of Constitutional and Administrative Law, studies the interaction between European and national law in relation to these basic but highly multi-interpretable rights. Gerards: 'Fundamental rights issues are not only close to the individual, but also to national and cultural traditions. As a result, it is often difficult to provide a "European" interpretation of fundamental rights. For European courts such as the European Court of Human Rights, one of the most pressing problems is the diversity that its members show in their approaches towards fundamental rights. Certain states have not even reached internal agreement.' In addition, the interaction between national law and European law is complex and dialectic: 'National law finds its way into European law through the European Courts' method of comparative interpretation. European law is then translated back into the national laws by way of execution of the European judgments. Both elements raise important and challenging questions, especially concerning the legitimacy of the case law created by the European Courts and their use of interpretative methods. Has law really converged to the extent that the European Courts say it has? Or do the Courts just impose their own interpretations?'



Prof. Janneke Gerards:

'Fundamental rights cases are increasingly decided by European courts. This raises important questions of legitimacy, which can only be answered by closely studying the interaction between national and European courts.'

Prosecuting war crimes committed abroad

'More and more cases involving international crimes committed abroad are prosecuted before Dutch courts based on the principle of universal jurisdiction,' says Veni laureate Larissa van den Herik (Public International Law). 'In these proceedings, the Dutch courts have to take international law into account and apply it where appropriate. Take the prosecution of Afghan asylum seekers suspected of having committed war crimes. Based on Dutch law and Article 1F of the Refugee Convention, these people are not given refugee status. A serious reason to consider that a person has committed a war crime is sufficient to deny this. However, rejected asylum seekers often cannot be sent back to their country of origin, and so remain here. It has now been decided to prosecute these persons, if possible. But this is not so easy. Prosecutors are faced with difficulties of proof, and the Dutch courts have to address intricate questions of national and international law. In a recent case an Afghan invoked the domestic amnesty that had been issued in Afghanistan and argued that the Dutch courts had to respect this. International law gives no clear guidelines as to whether amnesties for international crimes are allowed. However, even if the Afghan amnesty law were not illegal under international law, it would still not bind the Dutch courts, so the Dutch judges rightfully dismissed the claim. Imagine, though, that the amnesty was granted in the context of the South-African Truth and Reconciliation Procedure. Would it still be proper for a Dutch court to bypass it? Future cases will confront Dutch judges with equally difficult legal and moral questions.'

Sustainability as a new global value

Has there been a globalisation of normative values? Did the international law regime developed by the United Nations system renew attention for global ethics? And if so, what has been their influence on international law and UN policy? These are the research questions that Professor of International Law Nico Schrijver wants to address. He leads an interdisciplinary NWO-financed research project entitled: *The United Nations and the Evolution of Global Values*. 'In my view the answer is yes,' he says. 'Global values did indeed emerge. Striking examples are the concept of Peace and Security and the concept of Humanity. These values have been developed in the process of drafting treaties and normative UN resolutions. The 1948 Universal Declaration of Human Rights has been

extremely influential, as well as the 1960 Decolonization Declaration and the various World Summits.' Schrijver mentions a third global value that has more recently taken root: the value of sustainability. He has just published a book about it. 'In a relatively short time this concept has become firmly established in the field of international law,' Schrijver says. Sustainable development is defined as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The value of sustainability entails the principle of intergenerational equity, a principle that hardly anybody disagrees with nowadays, says Schrijver. 'The debate begins when it comes to concrete rules and actions: should we have an airport tax or rather a CO₂ tax?'

