



Tobias Asser's Legacy: The Pertinence of the *Institut de droit international* to The Hague

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Abstract

This article is occasioned by this year's visit of the *Institut de droit international* to The Hague. It addresses the seminal role that the *Institut* (f. 1875) has played in advancing The Hague to its position as the 'Judicial Capital' and the hub of international law. In reviewing the part that Tobias Asser, the co-founder of the *Institut*, played in the launching of *L'Oeuvre de La Haye*, it stresses the critical impact of his colleagues at the *Institut* at all major stages: from the *Conférence de La Haye* (f. 1893) to the Peace Conferences and the Hague Conventions, and along the establishment of the Permanent Court of Arbitration (f. 1900), the Peace Palace and its Library to the implementation of the International Judiciary (f. 1922) and the Hague Academy of International Law (f. 1923). The article reviews the four previous Sessions of the *Institut* in the Netherlands (1875, 1898, 1925 and 1957) and highlights the role and record of the close to thirty Dutch internationalists who were elected to its membership. The author emphasizes the critical impact of the research body of the *Institut* on the development of the law and the city's debt to the scores of members who, over the past century, have graced the arbitral panels and the benches of the International Courts, or served as lecturers at the Hague Academy. The author recommends a comprehensive study of the above tradition for 2023, when the 150th anniversary of the *Institut* coincides with the Centenary of the International Judiciary in The Hague.

Keywords *Institut de droit international* · The development of international law · The Hague tradition of international law · Dutch internationalists · Tobias Asser

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1 Introduction

This year's Session of the *Institut de droit international* in The Hague is only the fifth meeting of the scholarly body in the Netherlands in the close to 150 years of its existence. The last time was a full 62 years ago, in another world so to speak. It was in the months when the first *sputnik* explored the All and a first UN Conference in Geneva legally mapped the Deep. In his welcoming speech the President of the Session in 1957, Professor François, the then Secretary-General of the Permanent Court of Arbitration (PCA) and the nestor of the Dutch contingent at the *Institut*, addressed the preoccupation of the *membres* at the time: how to position the *Institut vis-à-vis* that impending new rival, the International Law Commission (ILC). Himself a member, indeed the former President of the ILC, François was eminently positioned to tackle the issue.¹ And all the while the youngest Dutch recruit in their midst, Offerhaus, went around beaming with pride: the Phoenix had arisen, the Statute of the *Conférence de La Haye* 'New Style' had entered into force. Why did it take the *Institut* so long to return?

Statistics can be deceptive. This year hardly a single *membre* or *associé* will be attending the Session in The Hague strictly in this capacity. Most of them will actually be treading very familiar territory—and a dozen or so will not have to travel at all. They are based in The Hague in their capacity as Judges of Courts and Tribunals. Others frequent the city in their roles as arbitrators, as representatives at the Hague Conference, members of the Curatorium or lecturers at the Hague Academy, board members of research institutes—or in that plethora of other positions that the 'Judicial Capital' offers the international lawyer today. As we speak, the *Institut* has its ears and eyes all over The Hague. It is the outcome of a fascinating process that began in 1875, when Pasquale Mancini and Caspar Bluntschli first ordered their emissaries to the humble township.

The ties were bound up more tightly at the Silver Jubilee Session in 1898, with Tobias Asser in the chair. It was Asser's ultimate reward for his launching of *l'oeuvre de longue haleine* that, with hindsight, likewise opened *l'Oeuvre de La Haye*. It was a meeting in limbo in 1898. Members deliberated unaware of the events in St. Petersburg that week that would result in their glorious return to The Hague in the spring. In the summer of 1899 the link between the *Institut* and the city was institutionalized. With the Hague Conventions the *Institut* left its indelible mark on the Netherlands. And when a handful of *membres*, gathered in the celebrated *Comité d'examen*, launched the PCA, they implicitly accepted the challenge to co-steer the future of the city. The *Institut* returned in 1925, in the heyday of the Locarno Treaty. Along with the launching of the Permanent Court of International Justice (PCIJ) and the Hague Academy, the solemn pledge the nations made that year seemed to bolster the confidence President Bernard Loder voiced that Wilson's brainchild was the implementation of the aspirations that Hugo Grotius had epitomized in the pioneering work whose Tercentenary *membres* came to celebrate in Delft. In 1957, with

¹ J.P.A. François was a member of the ILC from 1949 to 1961 and the President of its Fifth Session in 1953.

the crisis in Hungary fresh in their minds, François sadly reminded *membres* of that forlorn hope.

Asser, Loder and François were among the close to 30 prominent Dutch international lawyers (not a single female lawyer so far!) who, over the past 150 years, have given their best to the *Institut*. They present an intriguing band of scholars and the comparative assessment of their characters and relations, their outlook on the law and their contributions to the research body would make for a rewarding typology of the Dutch internationalist and the reaches of the discipline at home over the past century. Such research is well beyond the exploratory nature of the present study. But it should be noted that the *Institut* has been presented a fair picture. In its Sessions, the Dutch traditions of public and private international law, including the clashing 'schools' of the major academic centres at home, have found ample expression by able spokesmen. This year's meeting in the Peace Palace is also in recognition of that impressive legacy, a tribute on the part of the *Institut* to the loyal support of the now Royal Netherlands Society of International Law (KNVIR).

Still, in all fairness, the contribution of Dutch scholarship to the *Institut* bears no comparison with the impact that this legal think-tank had on the Netherlands. No country owes so much to this society of learning. The present position of The Hague in our domain of studies is perfectly inconceivable without the critical interference in 1899 and the steady nurturing ever since of generations of *membres*. At the outset of our review a few figures may underpin our case. From 1902 to 2019 some 51 *membres* served as arbitrators in 134 cases under the auspices of the PCA. Some members truly left their mark, like Fusinato, Hammarskjöld, Lammasch and Renault in the early years² or Lowe, Reisman, Schwebel, Simma, Stern or Tomka in recent years.³ The seminal Advisory Committee of 1920 consisted of five established *membres*, three scholars who were incorporated the following year, and two who were elected later.⁴ In 1922 the first bench of the PCIJ included six Judges and two Deputy-Judges who were regular *membres*, and another three Judges who were to be elected to the *Institut* later on.⁵ In all, an impressive 64 *membres* were elected Judges at the PCIJ and the International Court of Justice (ICJ). Of these, 20 were on the Bench before they became a *membre*, but 44 were *membres* before they became a Judge. And, another stunning figure, over the years 1923–2017 no less than 319

² Fusinato: 1908-02; 1910-01; 1912-01; 1912-02; Hammarskjöld: 1908-01; 1908-02; 1912-01; 1912-02; Lammasch: 1903-01; 1904-01; 1909-01; 1909-02; Renault: 1902-02; 1908-02; 1910-01; 1910-03; 1912-01; 1912-02.

³ Lowe: 2004-02; 2008-13; 2009-23; 2012-04; 2012-13; 2012-25; 2017-06; Reisman: 2000-04; 2001-01; 2001-03; 2008-07; 2013-06; 2013-16; Schwebel: 1996-04; 2001-01; 2004-02; 2005-03; 2005-04; 2005-05; 2008-07; 2011-015; Simma: 2003-02; 2009-04; 2011-01; 2012-01; 2012-02; 2012-04; 2012-13; 2013-11; Stern: 2009-12; 2010-08; 2010-17; 2013-23; 2017-07; 2018-06; 2018-38; 2019-10; Tomka: 2003-02; 2009-11; 2009-21; 2010-20; 2011-01; 2013-34; 2014-01.

⁴ Lord Phillimore, *membre* (*m.*) 1883; Descamps, *m.* 1892; Hagerup, *m.* 1897; La Pradelle, *m.* 1904; Root, *m.* 1912. Adatci, Loder, and Ricci-Busatti were elected in 1921, Altamira in 1927, Fernandes in 1956.

⁵ Weiss, *m.* 1887; Moore, *m.* 1891; Bustamante Sirven, *m.* 1895; Anzilotti, *m.* 1908; Huber, *m.* 1921; Loder, *m.* 1921; Oda, *m.* 1925; Altamira, *m.* 1927; Nyholm, *m.* 1928; DJ Beichmann, *m.* 1910 and DJ Negulesco, *m.* 1923.

membres delivered 923 courses at the Hague Academy. To bring it to the point, back in 1873 the *Institut* chose to work *Justitia et Pace*. What its members actually accomplished was to build themselves a City of Justice and Peace. The *Institut* is the intellectual backbone of international legal The Hague. The year 2023 will see the 150th anniversary of the *Institut* and the centenary of the International Judiciary in The Hague. It is very unlikely that, without the first assembly, the second body would ever have materialized in the form we know it today. This in itself is an achievement for an academic body that, as a matter of principle, blocked out all official interference and relied exclusively on the cogency of its moral authority and the Rule of Law.⁶

2 Tobias Asser's Critical Role

2.1 A Rich National Tradition

The single linchpin at the cradle was a slender Jewish lawyer from Amsterdam, the youngest among the eleven Founding Fathers in Ghent. A highly gifted and no less ambitious scholar who entertained views that were as innovative as they were outspoken, but who had a rare eye for the feasible and a special talent for organization. He is the only Dutchman who was ever awarded the Nobel Peace Prize (1911), and this recognition he owed, as an additional token of honour, precisely to the interference of his colleagues at the *Institut*. With the indispensable help of its *membres*, and only thanks to their trust in his legal genius and visionary thought, Tobias Asser had, in the previous two decades, accomplished the unthinkable in turning a conservative, anxiously neutral nation and a slumbering township into the thriving hub of international law.

The Netherlands has never been short of competent lawyers and the country boasts a respectable tradition of international law. Quite naturally so, one may add. A small nation with limited political options and strategically positioned ‘in the eye of the storm’, but also a commercial powerhouse that claimed trade interests—and at one time a colonial empire—that spanned the globe, the Netherlands readily identified itself with the law, if only from enlightened self-interest. On two occasions in history Dutch legal luminaries critically intervened in the legal process. At a major juncture of intellectual and moral crisis Hugo Grotius suggested a pioneering theory to link international relations to the rule of the law. A century later, the Dutch Elegant School, in a no less creative intervention, reoriented Bartolus's concept of statute law to make it tally with urgent needs of social and commercial prompting. Around 1915 the international lawyer Van Vollenhoven and the diplomat De Beaufort readily agreed that Tobias Asser's achievements constituted a third such heyday. Comparisons of the kind, if tempting, are of course rather gratuitous. Still, the observation has some pertinence in highlighting the role of time

⁶ For a fuller account of the role of the *Institut* in the development of The Hague as a centre of international law see Eyffinger (2019b).

and circumstance in defining goals and recruiting talents. Grotius was, often to his detriment, a man of stern principles in his all too principled times. Voetius in his days was censured for 'cheating', by suggesting the non-legal remedy of *comitas* to solve a legal conundrum. At his *Conférences de La Haye* Asser was playfully jeered at as 'Voetius Reborn' for coming up with alleged stopgaps (the concepts of *renvoi* and extraterritoriality) to bring provisional redress—then to allow time to do its sifting and healing work. Grotius's lasting fame rests on a book. Asser hardly published an academic treatise of consequence after his formative years. Grotius was the ultimate compiler of legal theory and history. Of Asser it has been said, if not entirely justified, that the theory and history of the law did not mean a thing to him. Where Voetius, or Bynkershoek, and Asser definitely converged was in their eminently resourceful approach and very pragmatic outlook, their insistence that the law should find its sublimation in its role as a conditioner of the social process.

2.2 Asser's Legacy

Still, at the end of the day, Asser's unique legacy rests on his talents as an initiator and organizer. It tells us that, in the last resort, the demands of the times make the lawyer. Grotius emerged when the law required a theoretical underpinning, Voetius when Roman law had lost touch with social reality, Asser when the two conflicting phenomena of his times, the national law traditions and the growing global networks of commerce and communications called for the lawyer's critical intervention. By Asser's own words the Dutch international lawyer was privileged. Trained for centuries in a centrifugal Confederacy, puzzled by competing English, French and German law traditions all around, comparative research was his bread and butter.

Asser's role in the creation of *L'Oeuvre de La Haye* was pivotal. He launched a first journal of international law, co-founded the *Institut* and the International Law Association (ILA), initiated the *Conférence de La Haye*, helped materialize the PCA and fund the Peace Palace Library and the Hague Academy. Time and again, through critical interventions and creative thinking, he resolved deadlocks and opened avenues. Still, for all his talents and aspirations nothing would ever have come of it, if not for the intellectual guidance and critical backing of his fellow *membres*. Rolin and Westlake steered the *Revue*; Renault forestalled the wrecking of the *Conférence*; Martens put up Asser in his role as arbitrator, singlehandedly drew up the Conference Agenda and guided the debate in 1899, then suggested Carnegie's gift for a Court House annex Library. *Membres* lent their *exequatur* to the Hague Conventions and crewed the early panels of the PCA; Von Bar, Renault, Lyon-Caen and Scott implemented the Hague Academy; to Bourgeois's desperate plea in Paris The Hague owes the International Judiciary. The objective of this contribution is to review this process of never abating interaction over the past century and a half. In this bird's-eye view emphasis will be laid on the first part of the story. We will retrace the role of Dutch learning within the *Institut* and highlight the academic and social backdrop of the four Sessions in the Netherlands. It is hoped that the imminent jubilee in 2023 may occasion a fuller and more balanced survey of a process that has been so

rewarding for The Hague and the nation. Still, any review must begin with Tobias Asser.

2.3 Asser's Inspiration⁷

In his opening speech as President of the Jubilee Session in 1898 Asser retraced the intellectual underpinning of the *Institut* and his personal involvement in the stimulating Congresses of Auguste Couvreur's *Association internationale pour le progrès des sciences sociales* (AIPPSS, 1862–1865).⁸ It is a curious thing that Asser, from the first, drew his inspiration from abroad. One critical element was the purposeful policy of aloofness from international affairs at home. It was the outcome of repeated trauma: the downfall of the Dutch Republic and its proud East India Company, the French occupation (1795–1813) and the Belgian separation (1815–1838). The attitude, and growing backwardness of Dutch society, tallied poorly with the international outlook of Asser's family upbringing.⁹ With the Assers we touch upon the exponents of that impressive tradition of explorers of the *Torah* who have enriched the Dutch legal landscape: the Jittas, Levies, Meijers, Wertheims, or Pintos.¹⁰ Quite a few actually made it to the *Institut*: Asser father and son, Jitta, Kisch, Meijers, and De Winter.

In the long term Asser will not be recalled for his writings, but in his formative years (1855–1862) he produced some impressive treatises that overnight established his repute in academia. Ranging from the domains of the philosophy of history to political economy and constitutional law they, one and all, typify him as the child of Enlightenment and Liberalism. They bespeak his perfect trust in social progress, an essentially international outlook, and an aversion to overly theoretical speculation.¹¹ Asser identified with the 'gospel of optimism' of the French economist Frédéric Bastiat and his reliance on the 'harmony of interests' that, as with Adam Smith's 'Invisible Hand' through 'ce qu'on voit et ce qu'on ne voit pas' regulated markets of their own accord. Asser's second guiding light was another Frenchman, the

⁷ In what follows, frequent reference will be made to Eyffinger (2019a), also as a shortcut to further references.

⁸ Eyffinger (2019a), Ch. 37.1 and cf. Ch. 10.3.

⁹ Eyffinger (2019a), Ch. 1–3. The Assers had come to Amsterdam from the Berlin area (c. 1645) and worked their way up from ritual butchers to diamond cleavers and from coffee brokers to legal practitioners. Tobias's great-grandfather had helped draft a Dutch Code of Commerce for Louis Napoleon (1806); his son helped negotiate the Constitution of the new Kingdom. By 1860 the family belonged to the *noblesse de robe*.

¹⁰ Eyffinger (2019a), Ch. 6.1–2. The family has produced four more generations of legal luminaries. Tobias's great-grandson Daan (W.D.H.) Asser served the Supreme Court (2005–2012) the way Tobias's father Carel Daniel Sr. had done from 1877 to 1890. In 1999 Daan was appointed to the chair of civil procedural law in Leiden just like Tobias's first cousin, Carel, the founder of the famous *Asser Law Series*, in 1892 and Tobias himself in Amsterdam in 1862. Tobias Asser's eldest son, Carel Daniel Jr. was in 1905 called to the first chair of private international law in Leiden, the chair Tobias had held in Amsterdam from 1877 to 1893. From about 1800 onwards the family boasted a law firm that focused on maritime law and insurance law. In the 1950s it merged into what became *NautaDutilh*.

¹¹ Eyffinger (2019a), Ch. 6–9.

flamboyant Eugène Pelletan, the 'father' of the Third Republic, whose battle cry 'Le monde marche!' still echoed in the Conference halls in The Hague in 1899. Pelletan's presence lured Asser to Couvreur's congress in Brussels in 1862. As Van Vollenhoven put it, from the day he met Couvreur & co., Asser's course in life was set.¹²

2.4 Couvreur's Association

To Asser, Couvreur's initiative had come as a Godsend. A matter of weeks earlier he had been installed in the pioneering chair of the Law of Commerce in Amsterdam (1862–1878). At the age of twenty-four he was yearning to spread his wings. In the *Palais Ducal* in Brussels he spoke his mind in matters of 'La reconnaissance internationale des sociétés anonymes établies en étranger'. He addressed the new phenomenon in light of the predicament of modern society, how to rhyme the concept of nationality with international aspirations. He called for treaties that warranted uniform legislation to secure mutual recognition.¹³ In Brussels Asser first conversed with Westlake and Rolin. Three kindred souls they were, enthused by the concept of progress through science, policies that gave free rein to the individual, and international legislation. Brussels opened an era of family relations between the Assers and the Rolins that held good up to WW II. The next year, in Ghent, Asser and Westlake lodged with Rolin. The following year Asser invited the congress to Amsterdam and displayed his talents as an organizer. The ceremonial opening in the *Grande Salle* of the Palace at Dam Square must have been a moment of triumph. Looking up, delegates gazed at the monumental figure of Atlas towering high above their heads bearing a massive globe. Looking down they literally trotted the maps of the earth and heavens reproduced in the marble pavement. No conference hall better epitomized the universal aspirations of these men of word and deed, of learning and action.¹⁴ Still, the reserve Couvreur's *Association* met with at home for being a bunch of revolutionaries and atheists never escaped Asser. The following year the AIPPSS succumbed to political pressure.

2.5 The Revue

Tight personal bonds absorbed the shock. Asser kept in touch with Couvreur for all of his life and kept reflecting on ways to revive his *Annales*. In the summer of 1867, with Rolin in Haarlem for a lawsuit, he took his friend on a stroll in the Haarlemmerhout and catapulted the idea of a journal on private international law to fill

¹² Van Vollenhoven (1934), p. 332.

¹³ Asser's perfect ease of presentation, superb command of the French tongue and delicate style drew the envy of colleagues. Along with his terse build-up, southern complexion and immaculate outer appearance he seemed to be a Mediterranean type rather than the Dutchman. As Gustave's son, Edouard Rolin pointedly observed in 1913: 'son origine méridionale lointaine [...] se révélait immédiatement dans ses traits fins, son teint mat, son regard, sa chevelure noire'.

¹⁴ Two days later they were received in the *Paleis voor Volkswijl* ('Palace of Industry'). The astonishing huge glass building, only just inaugurated, was Amsterdam's answer to London's Crystal Palace.

the gap.¹⁵ The moment is legendary.¹⁶ In a letter from mid-August Gustave fondly captured the day. He had been thrilled and brokered the idea to Westlake in London. In a flyer Tobias voiced his confidence and optimism. Modern society thrived on two tendencies that seemingly clashed but actually ran parallel: strong nationalism next to the nations' observance, both in legislation and foreign policies, of a set of general principles and shared ideas. Westlake's reply to what Asser later called his 'cacography' was as British as it was to the point: 'I would rather appeal to something more definite than the conscience of an age.' He readily endorsed Asser's revised version, witness his famous words 'Go ahead and do so at once!' A few weeks later, through Emile de Laveleye, Pasquale Mancini voiced his interest in the position of co-editor. He even promised sponsorship were the journal to include the domain of public international law. Rolin and Asser had their reservations from a fear that the Italian celebrity might carry their project into the political waters that had wrecked Couvreur's *Association*. It was the opening of a throughout troubled relationship between Mancini and Asser.

The first issue of the *Revue (Revue de droit international et de législation comparée, RDILC)* opened with a declaration on principle from Rolin and the first part of a three-partite article by Asser that addressed the mutual recognition and execution of foreign judgements. It was another campaign in the crusade that made up Asser's life and in 1893 found its capstone in the *Conférence de La Haye*.¹⁷ Only once more would Asser contribute a major article, in 1880, his famous 'Droit international privé et droit uniforme'.¹⁸ He was the born initiator and innovative mind, whereas Rolin was the intelligent administrator who competently took the numerous hurdles of form and practice that, then as now, imperil the running of a journal. The Franco-Prussian War disrupted communications, political disturbances in Belgium and Holland threatened to catapult the editors into Ministerial positions. Rolin took it all in his stride with tireless energy and in the best of spirits. The two never became tired of bombarding each other in playful jest with quotes from operas, another passion they shared.¹⁹

In February 1872 Rolin told Asser he had made a new acquaintance, a Professor at the University of Beijing, an American called Martin: 'Such a pity, the name sounds hardly Chinese! It should have been Fich-Ton-Kan or so', Gustave observed tongue-in-cheek.²⁰ The pun ('fiche ton camp'—'get lost') was not lost on Asser. The name was taken from a famous *parade chinoise* and a later *opéra bouffe* by Emmanuel Chabrier to the libretto of Paul Verlaine and Lucien Viotti. More to the point, and indeed rather embarrassingly, the reference to the American professor concerns no less a figure than William Alexander Parsons Martin, the Presbyterian missionary

¹⁵ Van Vollenhoven (1934), Ch. 17.1–2.

¹⁶ Asser knew Rolin to be an adept of Bastiat's. Sauntering in this *locus amoenus*, the oldest public park of the Netherlands, he found out that Gustave shared his love for Alfred Musset's terse verses.

¹⁷ Eyffinger (2019a), Ch. 17.3.

¹⁸ Eyffinger (2019a), Ch. 22.6.

¹⁹ Cf. Eyffinger (2019a), Ch. 17.6.2–3.

²⁰ Letter dd. 09.02.1872; National Archives The Hague; J.A.A. Bervoets, *Inventaris van het Archief van het Geslacht Asser (1610) 1797–1940*, Den Haag 1976; Archiefinventaris 2.21.014, No. 58.

and professor of international law in China.²¹ In 1882 Martin was, in rightful recognition, elected *membre* of the *Institut*. The irony is that, in China, Martin was well known under an Asian name: *Ding Wei Liang*. The friends' condescension towards non-Western worlds that came so natural strikes the more in the perspective of Gustave's later career as privy council to King Rama V of Thailand—where he became known under the name *Chao Phya Abhai Raja* and where his memory is kept alive to the present day, indeed as much as that of Reverend Martin in China.

3 The *Institut de droit international*²²

3.1 Genesis

One would have thought that the two did not have a minute to spare. With a world set ablaze and the *Revue* in permanent arrears they never thought twice when faced with new challenges. In the course of 1872 Rolin confidently took the lead in the launching of an Academy or, as its final name would read, an *Institut* of international law. The story has often been told.²³ The idea must have been in the air and was developed on both sides of the Atlantic. It sprung from indignation at the slaughterhouses of Sebastopol and Solferino, Gettysburg and Sedan, which brutally belied the solemn promise of Holy Alliance and European Concert. It likewise came in response to the spark of hope embodied in the *Alabama* arbitration in Geneva (1872). Two men claimed authorship of the idea, Francis Lieber at Columbia University and Gustave Moynier in Geneva. Born in Berlin and wounded at Waterloo Lieber in his famous 'General Order No. 100' for the US Army had spelled out moderation and humaneness to combatants. The *Lieber Code* was the bluebook for the *Declaration of Brussels* (1874), the stepping-stone to the *Oxford Manual* (1880) of the *Institut* that in turn inspired the Hague Conventions of 1899 and 1907. The name of Moynier, Henry Dunant's competitor at the Red Cross, is linked to the Geneva Convention (1864). Rivalling claims apart, it is safe to conclude that both the Hague Tradition, the mitigation of war by codification, and the Geneva Tradition of humanitarian redress are closely linked with the origins of the *Institut*. Both men contacted Rolin as the powerhouse best positioned to implement the idea. Rolin and Westlake conversed with Bluntschli in Heidelberg to elaborate Statutes and a Programme. At the constituent assembly in Ghent, in September 1873 Asser, predictably, attended as one of the eleven founders.

3.2 *Institut* and International Law Association

The *Institut* was not the only international association launched in 1873. We have already addressed Lieber's involvement. As it is, European and American

²¹ Martin's repute rests on his endeavours to render law treatises into Chinese, Wheaton's *Elements* (1863), Woolsey's *Introduction* (1875) and Bluntschli's *Völkerrecht* (1869) prominent among them.

²² For reviews of (aspects of the work of) the *Institut* see Scott (1916); Fitzmaurice (1973); Institut de droit international (1973); Koskenniemi (2002); Macalister-Smith (2003); Salmon (2017).

²³ For full references see Eyffinger (2019a), Ch. 18.1–2.

protagonists of codification and the implementation of the Rule of Law met in 1872 to compare notes. In constructive talks they concluded that their outlook and intended infrastructure, ideas of membership and projected marching routes were too distinct to be harboured within a single body. The American agenda was duly reflected in the name of the second association, launched a matter of weeks later, a couple of miles down the road, in Brussels: the Association for the Reform and Codification of the Law of Nations (as of 1895 ILA).²⁴ At its heart was an American law reformer, David Dudley Field. To illustrate the close parentage, Field also figures among the founding fathers of the *Institut*. He was the author of a Code of Civil Procedure for New York State and in 1872 suggested a world code, Draft Gist Lines of an International Code, which epitomized ILA's philosophy.

Over the past century and a half, both *Institut* and ILA have, each from its own perspective, made a huge impact on the discipline and performed complementary roles from which the discipline has reaped huge profits. The early years, however, appear not to have been the absolute heyday of their relations. In 1873 parties had decided to synchronize conferences and opt for the same location. In Geneva (1874) and The Hague (1875) ILA met a week from the day the Session of the *Institut* was adjourned. The construction proved counter-productive. Growing rivalry may have been the catalyst, but cultural differences also had their say. ILA was an 'open' organization, membership of the *Institut* strictly by co-optation. The *Institut* focused on a purely academic and strictly legal approach, ILA aimed at political and social reform by plying public opinion, parliaments and governments. Or, as the editor of the *Annuaire* put it with characteristic *dédain*: 'par les moyens que les Américains et les Anglais savent si bien employer.' Besobrasoff's report even spoke of 'l'impudence des agitateurs et des philanthropes'. Asser had been involved with ILA from day one. He conversed with Field in Amsterdam in September 1873 and during the first year served as Vice-President. Soon, diverging views entailed far-reaching consequences for Asser's position.

At the *Institut* Asser was, jointly with Mancini, put in charge of the section of private international law, Asser focusing on procedural aspects. In Geneva (1874) the *incompatibilité d'humeurs* between the established authority and the young pretender surfaced.²⁵ It is only fair to say that Mancini may well have had grounds to entertain reservations towards the young intruder. Early in 1867, under his government's auspices, he had opened diplomatic overtures to sound the feasibility of bilateral treaties on the mutual recognition and execution of foreign judgements. His aspirations, very much in line with Asser's ambitions within Couvreur's *Association*, had been wrecked on political tension. In the very months the *Institut* met in Geneva the Netherlands, out of the blue, approached the Great Powers with very similar propositions. Their *auctor intellectualis* was Tobias Asser and Mancini may well have felt less than pleased. The move constitutes a critical moment in Asser's life. His initiative ended in blatant fiasco

²⁴ Eyffinger (2019a), Ch. 19.1.

²⁵ Eyffinger (2019a), Ch. 18.4–5.

and the embarrassing *déconfiture* for the Netherlands almost wrecked his career: 'peccavi', he frankly confessed.²⁶ However, 1874 was the first of a series of tenacious bids on his part that was crowned in the glorious launch of the *Conférences* in 1893.

Irritated, Mancini reciprocated by withholding his Report from the *Revue* and have it published in Eduard Clunet's rivalling *Revue de droit international* (f. 1874). Gustave was furious and all set on counter-measures when the turn in his political career made Mancini bid farewell to the *Institut*. His views, and notably his insistence on the criterion of nationality, remained paramount for decades, but throughout 1875–1879 debate within the *Institut* focused on Asser's project and reports. Meanwhile, and fittingly in Geneva, a compatriot of Asser's joined him as *associé*. J.C.C. Den Beer Poortugael, 'The General' as he was lovingly called at home, was reputedly the most humanitarian of military men. He authored treatises on the law of war and neutrality, and in 1879 was Minister of War. He was on the committee that, in Bluntschli's house in Heidelberg, compiled the *Oxford Manual*. In 1899, in The Hague he impressed delegates with lofty addresses in defence of the position of civilians.²⁷

4 The First Session in The Netherlands: The Hague (1875)

4.1 Competing Aspirations

From 25 to 31 August 1875 the *Institut* assembled in the Houses of Parliament in The Hague, with Asser figuring as second vice-president.²⁸ It was the first time that he attended a meeting of some consequence in the *Salle des Trêves*, the historic venue that, as time went by, almost became a second living room to him. In this richly ornamented salon he celebrated triumphs as chairman of four *Conférences de La Haye* (1893–1904) and as a member of the *Comité d'Examen* in 1899. In his opening address President Bluntschli made a statement on principle. The *Institut* was a scientific society in the quest for truth and rules of law in harmony with the conscience of the civilised nations. It invoked neither brutal force nor political authority but relied on good faith and sound reason, God's gifts to mankind, and trusted in painstaking research and calm deliberation. Its influence on public affairs rested entirely on its moral authority.²⁹ Asser's propositions with regard to the jurisdiction of tribunals passed with flying colours.³⁰

²⁶ Van Vollenhoven (1934), p. 327; Steenhoff (1993), pp. 34–35; Eyffinger (2019a), Ch. 21.5.

²⁷ Eyffinger (2019a), Ch. 49.3.1.

²⁸ *Annuaire de l'Institut de Droit international (Annuaire)* 1 (1877), pp. 38–122; Eyffinger (2019a), Ch. 18.5.

²⁹ *Annuaire* 1 (1877), pp. 44–45.

³⁰ *Annuaire* 1 (1877), p. 39. The Session addressed 1. *Compétence des tribunaux*; 2. *Devoirs internationaux des États neutres: Règles de Washington*; 3. *Traitement de la propriété privée dans la guerre maritime*; 4. *Examen de la Déclaration de Bruxelles de 1874*; 5. *Projet de règlement pour la procédure arbitrale internationale*.

A week later, Field opened the ILA congress. His gallant advocacy of international law was most inspired. Asser will have been delighted hearing Field's observations on the conflict of laws:

One has but to look into any of the treatises on the conflict of laws, Story for instance, or Wheaton, or Westlake, to discover a mass of disputed points and discordant views. Is one, who in America finds himself of age at 21, to be deemed not of age, when he goes into a country where the period of minority is extended to 25? Is a marriage contracted in London between a Frenchman and a daughter of England, valid always in France? Is a divorce performed in Edinburgh between two aliens valid, under all circumstances, in their own country? Is a will executed in St. Petersburg by an Italian sufficient to fix the devolution of property in Rome?³¹

Altogether sensible words, one would say, and one would have expected Asser to embrace ILA with gusto. The level-headed approach of lawyers, economists, parliamentarians and philanthropists would seem his cup of tea entirely. Circumstance decided otherwise. From Rolin's correspondence with Asser we must conclude that friction had arisen within the joined Dutch PrepCom for both assemblies. It was not the first or last time that Asser clashed with Dutch regent class officials. They marred his life in local politics in Amsterdam and cut short his early involvement with the Peace Movement at home.³² More pertinent to us, it sadly made him shun the short-lived Dutch Branch of ILA (1875–1880) that was founded pursuant to the Hague Congress of 1875.

Still, with the *Institut* waters may have run deeper. In a letter from 1875 Gustave comments on ILA in uncommonly deprecatory terms to suggest a fundamental controversy of outlook. Apparently, the ILA Congress had belittled the work of the *Institut* in an appeal to the public at large 'with its usual enthusiasm for everything vulgar and superficial'. But they should not despair at their philosophy: 'Whatever is solid remains. On the horizon I can already see ILA's "fantasmagory" dissolve in thin air.'³³ In Rolin's and Asser's perception ILA was the typical medium of woolly American pacifism. That year the synchronicity of meetings was dropped. Asser and Rolin had a point. In 1875–1876 the Dutch diplomat and politician, Beelaerts van Blokland in *Themis* addressed the frictions and misconceptions.³⁴ In its opening days ILA had been the typical offspring of American idealism. Growing European influence had made the *Association* come down to earth. In The Hague it had presented itself as an assembly of earnest, dignified men, whose high standards of discourse put many Parliaments to shame. Still, the clash of cultures was manifest. ILA was English-speaking; French scholars hardly attended its congresses. Two years later, American involvement had become extinct.

³¹ D.D. Field, 'ARCLN, Its History and Aims', Eyffinger (2019a), Ch. 19.2.2.

³² Eyffinger (2019a), Ch. 12 and Ch. 20.3 respectively.

³³ Eyffinger (2019a), Ch. 19.2.4.

³⁴ Beelaerts van Blokland (1875), pp. 405–426. Eyffinger (2019a), Ch. 19.2.5.

4.2 New Dutch Members in the 1880s and 1890s

The first new Dutchman to be elected to the *Institut* was J.H. Ferguson in 1888.³⁵ It was an interesting choice. Of Scottish descent and raised in the Dutch Antilles, Ferguson was Minister Resident in Beijing (1876–1895). He authored a tract on *Jurisdiction et exterritorialité en Chine* (1890). For the *Institut* he produced reports on legal reform in China and Siam.³⁶ The Scottish connection, incidentally, suggests a ‘crypto-Dutch’ member installed in 1882. From his student days Asser had been befriended with Donald James Mackay, who was born in The Hague, the son of Aeneas Mackay, the 10th Lord Reay.³⁷ In 1876 he succeeded his father, was naturalised as a British subject and made a splendid career in the UK³⁸ As the British delegate to the Second Peace Conference he humoured De Beaufort and Asser with perspicuous insights into British policies.³⁹ Not by coincidence Mackay presided over the Session of the *Institut* in Edinburgh in 1904.

In 1894 Asser's eldest son, Carel Daniel was elected. He would serve the *Institut* for 45 years and we will meet him again. ‘Daan’ had made his mark with a dissertation and later on a monograph on the Berne Convention on Carriage of Goods by Rail (1886).⁴⁰ In 1898 he was joined by a colleague who was dear to the Assers, Eduard Nicolaas Rahusen.⁴¹ He was the scion of a prestigious Amsterdam merchant family of German provenance, a prominent advocate and the eloquent champion of Amsterdam's interests. He was a senator from 1891 to 1910 and a delegate to Asser's *Conférences* and the Peace Conference of 1899. For many years he was the energetic chairman of the thriving Dutch section of the *Comité maritime international* (CMI, f. 1897), the product of pioneering Belgian initiatives in the 1880s inspired by Auguste Beernaert.⁴² The *Comité* was an offshoot of ILA and its province cut at the heart of the Asser law firm. Father and son Asser were deeply committed from

³⁵ J.H. Ferguson (1826–1908) was elected associate in 1888 and became a full member in 1891. Ferguson was a lawyer and naval officer. He produced tracts on the Red Cross and maritime law, *The Philosophy of civilization* (1889) and a review of the 1899 Peace Conference, *A Plea for Peace in Social Evolution* (1899). See Bruns (2012), pp. 137 et seq.

³⁶ See *RDILC XXIII* (1891), pp. 5 et seq. 176 et seq.

³⁷ The Dutch branch of the Mackays was ennobled in 1815. From 1888 to 1891 Aeneas Baron Mackay (1839–1909) headed a cabinet. Donald James Mackay (1839–1921) was befriended by Couperus.

³⁸ Mackay was a.o. Governor of Bombay, Under-Secretary of State, Rector of St. Andrews University and President of the British Academy.

³⁹ Eyffinger (2019a), Ch. 8.7.4; 9.5.2; 13.3.4; 45.8.

⁴⁰ See Asser (1887); Asser (1893); Eyffinger (2019a), Ch. 32.3. On Carel Daniel's life Eyffinger (2019a), Ch. 54.

⁴¹ Eyffinger (2019a), Ch. 35.2.3. Rahusen (1830–1913) was elected associate in 1898 and became a full member in 1913.

⁴² Eyffinger (2019a), Ch. 35.2. Auguste Beernaert was elected *membre* in 1906.

first to last, the son as the long-standing Secretary of the Dutch section, first with Rahusen, then Bernard Loder in the chair.⁴³

4.3 The *Conférences de La Haye* (1893–1904)

Asser's commitment to the founding of *Revue*, *Institut*, ILA and CMI bespeaks his approach to the discipline. His legacy rests on the pragmatic initiatives he took, or actively endorsed, to help streamline research and organize the discipline into permanent bodies and institutions. Paramount among these ranks the series of *Conférences de La Haye* (f. 1893).⁴⁴ It was the implementation of the ideal he had treasured from the 1860s and had sought to implement in 1874, 1881 and 1888. The success of his bid in 1893 was very much a matter of incident, and family circumstance played a critical role in the process.⁴⁵ The last three decades of Asser's life were a *clair obscur* of professional highlights and personal drama. In the mid-1880s his charming and level-headed wife, on whom he had relied throughout, contracted a chronic disease (*nervus vagus* problems) that from the 1890s left her vegetating. In the mid-1890s their second son was hit by tuberculosis to which he succumbed in 1901, in spite of long sojourns in Davos. A mentally unstable junior son required intensive care.⁴⁶

In about 1890, family circumstances made Asser put a hold on his all too demanding life—the assignments at Amsterdam University, a thriving law firm, and the plethora of commitments as counsellor, commissioner, board member and editor in the worlds of the law, politics, commerce, and banking. He resolved to substitute the hectic nature of university life for the relative shelter of the State Council in The Hague.⁴⁷ Then, in 1891, opportunity knocked. Political crisis urged Prime Minister Van Tienhoven, a former university colleague and dear friend, to call upon him for a seat in Parliament. Asser obliged, if conditionally. As *quid pro quo*, during another legendary stroll, he claimed support for his Conference project. The seat in Parliament never materialized, but the deal held good. If not for Van Tienhoven's firm support Asser would never have overcome the stiff opposition in Parliament and at the Ministry of Justice. For all this, the idea would very likely have aborted if not for Louis Renault.

On 12 September 1893 a famous picture was taken in the *Salle des Trêves*. It is the birth certificate of *l'Oeuvre de La Haye* and shows Asser proudly posing among 25 delegates of 14 nationalities, a dozen of them tried and trusted friends from the *Institut*. It was hardly coincidental. Two decades of dogged research among the *membres* had paved the way to bring Asser's dream of a *Union Judiciaire*, the 'Lex

⁴³ On Bernard Loder (1949–1935), who became a member in 1921, see below, Sect. 6.3.

⁴⁴ Eyffinger (2019a), Ch. 24–26.

⁴⁵ Eyffinger (2019a), Ch. 23.

⁴⁶ On the family drama see Eyffinger (2019a), Ch. 53, Ch. 55, and Ch. 56.2 respectively.

⁴⁷ Eyffinger (2019a), Ch. 31.

Asser' as it has been called, within reach.⁴⁸ As Asser owed up in a rare emotional moment, the dream from his early years had come true.⁴⁹ Asser's marching orders were unequivocal: their foremost aim was to define a set of General Principles, to monitor the harmonizing of the conflicts of law regarding persons, goods and acts alike. He warned his colleagues that, one and all, they had to make sacrifices. He himself was the first to deliver. It must be said, he did so with all the tact and charm of the diplomat—but with his heart bleeding. Louis Renault frontally challenged Asser's opening address. The quest for 'general principles' was of course a tantalizing exercise from an academic point of view, but the success of the present enterprise hinged on its very palpable objectives, not on abstract speculation, but on practical and tangible results. They should abandon all discourse on 'general principles'.

It was a shellshock. Rahusen eloquently endorsed Asser's position, arguing that what the Conference aspired at were 'regulations rather than results', 'principles rather than practicalities'. It was to no avail. In all fairness—and as Asser owned up in 1900—in a *tête-à-tête* prior to the opening Renault had given him a timely warning: this was not a Session of the *Institut*. This was a diplomatic forum, with political imperatives, and in which public opinion likewise had a say.⁵⁰ In later years Asser acknowledged the historic intervention which, as he owned up, may well have saved the project as such.⁵¹

Four Conferences (1893, 1894, 1900, 1904) showed how far removed from the ideal of concord and general principles they actually were, even within the Civil Law tradition. They never even came close to interesting the champions of the Common Law. In the strenuous debate two dear friends from the *Institut* claimed a major part. Friedrich Meili, the Swiss delegate, took exception to the 'unreasonable' claim of the Conference that his Federation should drop the principle of domicile and adopt nationality as a criterion. Feodor Martens explained with endless patience in 1893, and doggedly kept repeating at subsequent conferences that in Orthodox Catholic Russia the institution of marriage was a sacrament. It was simply inconceivable for Russia to consider a wedding ceremony a legal act—and this also applied to foreigners. In both cases the deadlock proved repetitive.

Asser famously 'solved' both riddles through 'trouvailles' that bespoke his legal genius and diplomacy: the concept of *renvoi* in answer to the Swiss conundrum, that of extraterritoriality and resorting to the consular ceremony to oblige the position of Russia.⁵² The contraptions brought him the nickname of 'Voetius Reborn'. As many delegates rightfully argued, the 'placebos' never affected the real dilemma.

⁴⁸ Commentators have stressed its modernity and linked it to the Brussels Convention of 1968; Läufer (1992), pp. 39–65; De Baere and Mills (2011), pp. 10–11. Asser first voiced the concept in his 'Droit international privé et droit uniforme'; Asser (1880), pp. 1–22.

⁴⁹ *Actes Conf.* 1904, p. 8.

⁵⁰ For the discourse see *Actes* 1893; Eyffinger (2019a), Ch. 24.3.

⁵¹ *Actes* 1900, p. 197; Steenhoff (1994), p. 109.

⁵² Eyffinger (2019a), Ch. 24.4.1.2–3.

True progress on substance sadly stagnated in a deadlock even Asser found it hard to deny, or mask. The professional divergences never came in the way of friendship.⁵³

5 The Second Session in the Netherlands: The Hague (1898)

5.1 A Historic Venue

Twenty-five years from the inaugural session in the town hall in Ghent Asser took up the Presidency of his beloved *Institut* at its jubilee session in The Hague (17–24 August 1898).⁵⁴ It was an honour he immensely valued. The accomplishments of his *Conférences* had brought him to the peak of glory. Foreign Minister De Beaufort sang the praises of the *Institut*, then addressed an issue that gained a special dimension in the perspective of subsequent events, the armaments race and the burdens military budgets imposed on national economies.⁵⁵ He also tackled another ‘bizar’ social phenomenon, Public Opinion, that whimsical lady,⁵⁶ then to express the hope that Young Queen Wilhelmina’s reign, to be inaugurated in 3 weeks’ time, was to herald an Era of Peace. That hope proved idle;⁵⁷ still, if unwittingly, De Beaufort was right, the auspices were the most favourable that one could hope for. On 24 August, the day the jubilee session of the *Institut* was adjourned, Czar Nicholas II proclaimed his *Rescript*. Its perplexing result was the opening of a Peace Conference, in The Hague, 8 months later.

In one of his most inspired speeches ever, Asser rendered a superb review of the past quarter-century that had led up to the celebration of the *juubilé d’argent*. He enlarged on Couvreur’s Congresses, the *Revue*, his work with Mancini and its first fruits through the *Conférences de La Haye*, 20 years later.⁵⁸ In spite of their motto *Justitia et Pace* issues of war had often preoccupied them, notably naval war (1882–1887). Its cornerstone was Bulmerincq’s project for an International Prize Court. Asser mused whether the Powers would ever accept such a Court. He received the answer to that question in 1907–1908. And then there was the vexed issue of arbitration. Their early endeavours had been crowned in a *Règlement* agreed upon in The Hague in 1875. It had not yet been ratified but ‘petit à petit’ progress was being made. Neither he nor the *membres* had an inkling of what was awaiting them in 1899, the Arbitration Convention and the founding of the PCA.⁵⁹ If anything, it was the solidarity and *camaraderie* among the *membres* within the *Comité d’Examen* that accounted for that success. Commentators tend to belittle the outcome of the 1899 Conference. The expectations Asser expressed in 1898 with regard

⁵³ References Eyffinger (2019a), Ch. 25.4.4. In 1902 Meili dedicated a work of his to Asser and the two corresponded at times in Dutch, a language Meili knew well. Martens in subsequent years helped Asser in his career as an international arbitrator.

⁵⁴ *Annuaire* 17 (1898), pp. 177–195, 211–212; Eyffinger (2019a), Ch. 37.1.

⁵⁵ *Annuaire* 17 (1898) pp. 172–173.

⁵⁶ *Annuaire* 17 (1898), p. 173.

⁵⁷ Wilhelmina’s realm lasted 50 years (1898–1948) and included two World Wars.

⁵⁸ *Annuaire* 17 (1898), pp. 183–185.

⁵⁹ And on top came the Fact-Finding Commissions, Martens’s brainchild streamlined by Asser.

to the mechanism of arbitration were by far surpassed during the next year. Arbitration was an excellent mechanism to solve inter-State disputes and to prevent war, he observed. Only, in modern times, wars were rarely the outcome of real disputes. One rather concocted feigned disputes as a pretext to declare war and by brutal force attain one's political ends.⁶⁰

There is no reason for us to elaborate on the substance of meetings and Resolutions in 1898.⁶¹ One item definitely spoiled part of Asser's pleasure. The jubilee session tackled the revision of the Statute and Rules of the *compagnie*. Some rules had *tombées en désuétude*, others were being questioned.⁶² One issue at stake was the concept of two distinct classes: full members and associates. And what about members who never showed up? Throughout 1899 their efforts came to nothing. It was suggested to insert a special Session in Spain in May 1900. Not everyone was thrilled. As Holland wrote to Asser: 'I shall be very glad when the proposed special meeting is abandoned and I shall probably lodge a formal protest should it be held.' Westlake commented from Cornwall:

I am sorry that my having forgotten the vote of the Institute has obliged you to be at the trouble of waiting again. [...] For my own part I would prefer The Hague, as being a city more sympathetic to me than Brussels [...] Please accept our united kindest remembrances, and remember us also kindly, and with deep sympathy, to your wife, if you think it well to do so.

By January 1900 Secretary-General Lehr had become rather frustrated. For the sake of internal peace Asser dropped the project. As Westlake observed: 'My dear Asser, you have come to the right decision.'

To return to the jubilee session, Asser and his team had spared no cost to pamper the *membres*. The social programme was exuberant: concerts in the *Kurhaus*, a day trip to Amsterdam in special trains. The Queen-Mother offered the Bureau high tea at *Soestdijk*. Asser introduced Gustave Rolin-Jaequemyns to the royalties. Their old Secretary-General had returned from Siam for the occasion. The Session was concluded by a *feu d'artifice*. As Asser observed, 'the Session in The Hague will remain one of the best memories of my life!'

5.2 The Hague Peace Conferences (1899, 1907)

This is of course not the place to dwell at any length on the Hague Peace Conferences. It should be noted, however, that these two High assemblies were in fact by far the most critical moments in the dealings of the *Institut* with the Netherlands over the past century and a half. Their legal legacy is the rightful boast of the *membres*, from the International Courts and Tribunals to the Hague Conventions and including

⁶⁰ *Annuaire* 17 (1898), pp. 192–193.

⁶¹ Addressed were: *Litispendance dans les rapports entre juridiction d'Etats différents; Règles sur la détermination de la loi applicable en ce qui concerne la validité en la forme et la force exécutoire des actes notariés; Règlement sur le régime légal des navires et de leurs équipages dans les ports étrangers.*

⁶² For the debate and full references see Eyffinger (2019a), Ch. 37.1.4.

all organs that hence have sought to implement their stipulations. The institution of ‘International Legal The Hague’ was their work, and no one else’s. In 1899, the *membres* could hardly have grasped the consequences in the long run. But when the unique opportunity presented itself, they read the historic moment for what it was and lived up to the challenge. For, to be sure, in 1899 it was an uphill battle for the lawyers to gain a foothold at all in the Plenary. It was the baptism of fire in the cauldron of high politics for both the discipline and its advocates, widely dismissed as mere ‘technicians’. The *membres* valiantly stood the test. This first comprehensive encounter of the worlds of diplomacy, the military and the law, for all its pitfalls, inconclusive rounds of debate and abortive projects, constituted the keystone of all efforts of the *Institut* over the previous quarter-century.

Critical to their success was the programme itself. Its substance was the brain-child of a man recruited from their midst, Feodor Martens. It was tailor-made, almost embarrassingly so, to enlarge on the issues the *Institut* had focused on over the previous decade—as a PrepCom *avant la lettre*. Even the unlikely proposition of The Hague as a venue had been Martens’s idea, who implicitly relied on Asser’s deep commitment.⁶³ *Membres* served as presidents of (sub-)commissions and as *rappor-teurs*. They steered, and if needs be waylaid the discourse. To mention just one incident, within the Second Commission Asser, Martens and Renault cunningly conspired to force the hand of the recalcitrant Swiss Red Cross commissioners to finally extend the terms of the Geneva Convention of 1864 to the domain that needed it most, naval combat. Renounced, they adroitly broke the deadlock through the stratagem of a parallel Hague Convention.⁶⁴ When in 1902 a French artist, Charles Toché, at the instigation of his Foreign Ministry produced a huge *Tableau Commémoratif* of the Conference, he portrayed Asser and Renault hand in hand as the standard-bearers of the Red Cross banner. In December 1904 the three musketeers met in The Hague at the Conference on Hospital Ships⁶⁵ and in 1906, on the eve of the Second Hague Conference, they shrewdly cornered the Board of the Red Cross into finally swallowing the long overdue Revision Conference in Geneva.

The Peace Conference secured the institutional links between the *Institut* and The Hague. In subsequent years *membres* frequented the General List of the PCA and sat on successive arbitral panels. Asser himself inaugurated the premises as the sole arbitrator, again at Martens’s instigation, in the *Whaling and Sealing* case.⁶⁶ Along with three *membres*, Martens, Beernaert and Descamps, he was on the panel of the *Pious Funds* case that opened the PCA Era. The arbitrators’ critical review of procedural issues, their heated debate on the concept of ‘revision’, and their steady refining of the Court machinery by clear-cut propositions for reform proved crucial to the

⁶³ Eyffinger (2019a), Ch. 38.2–3.

⁶⁴ Eyffinger (2019a), Ch. 39.4.

⁶⁵ Martens visited the intended spot for the Palace and reoriented the project; Eyffinger (2019a), Ch. 42.4.6.

⁶⁶ Eyffinger (2019a), Ch. 41.4.

way the international judiciary was to take shape.⁶⁷ As a consequence, the change of atmosphere between 1899 and 1907 was truly amazing. The stunning increase of the *membres*' self-confidence was epitomized in the never anticipated discourse on PCA, Permanent Court of Arbitral Justice (PCAJ) and the International Prize Court that took most Foreign Ministries (the Dutch included) entirely by surprise. This time, *membres* entered the discourse fully prepared. A painful incident may illustrate this.

Asser's keen advocacy of the mechanism of arbitration and his calls for an in-depth reform of the PCA made his position at home rather precarious. Its backdrop was the following. As in 1899, Italy blocked the presence of the Holy See, much to the indignation of the Roman-Catholic faction in the Netherlands. In 1899 Asser, in a masterful *trouvaille* backed by Renault had left the door a crack open for the Holy See.⁶⁸ In 1906, when faced with the same conundrum, the Cabinet of the host country of the PCA, to play the galleries and be on the safe side, in a rather questionable move, resolved to drop the item of arbitration from the Conference agenda and ditch the dilemma. With the Russian Foreign Ministry readily complying, Martens applied the full force of his authority to block that avenue. On the eve of the Conference Asser, in a first bid to acquaint the Cabinet with what was actually heading towards them, probed its feelings on the launch of a small Permanent Committee within the Court machinery. Very likely, it was a device of his own, if no doubt concocted in conclave with Martens and other *membres*. It was intended as a stepping-stone to help turn 'the Spectre of a Court' as Asser called the PCA into a palpable and permanent institution. The Cabinet dismissed the idea forthwith. Asser, unperturbed, laconically left the scheme to be tabled by Martens instead. However, closely instructed to keep his peace in the discourse, Asser could not leave well alone and intervened in a magisterial plea for arbitration. To bespeak his sanguine feelings, upon being severely reprimanded, much to the Minister's consternation he tendered his resignation as a delegate.⁶⁹ Asser's true loyalty was with the progress of the law and the *Institut*. His pragmatic scheme, far more modest than the ambitious PCAJ formula that was tabled instead and which he rightly deemed to be a bridge too far, might well have saved the day. Asser always kept his ear to the ground. Two weeks earlier he had informed the unsuspecting Foreign Minister of Britain's intention to table the idea of an International Prize Court. In a way, the fraternity of *membres* recalled the humanists of old and their *respublica litteraria*: a transboundary intelligence network.

The outcome of 4 months of intense deliberations in 1907 left delegates empty-handed.⁷⁰ Given the stretch of land that still had to be covered to reach 1923, whether in terms of organisation or mentality, the implementation of a true Court of Law was never a feasible option in 1907. Truth be told, in the last resort this was irrelevant. What counted most in the end—along the road to the international

⁶⁷ Eyffinger (2019a), Ch. 41.6–9.

⁶⁸ Eyffinger (2019a), Ch. 39.6.1.

⁶⁹ Eyffinger (2019a), Ch. 47.5.

⁷⁰ For once, the Small Powers definitely bore the brunt of the failure in stubbornly preferring to risk a political conflict with the Great rather than bow to them on the Bench.

judiciary, that is—was the debate itself. Its durable harvest was the inventory of problems of substance and procedure; of fallacies, sophisms and pretexts. Of the answers that might be construed to level the massive barriers raised by *raison d'état* and nationalism. The Second Hague Peace Conference was the intellectual prerequisite to the goal; it was the cradle of the PCIJ. There is a huge gap of thought between 1899 and 1919, between the *Salle d'Orange* at Huis Ten Bosch and the *Salle de l'Horloge* at Quai d'Orsay. Still, in essence the issue was the same. It was the Rule of Law battering the walls of Power Politics. In 1899 the engagement was unfair. A mismatch between competitors representing different leagues. In 1919 two ideologies clashed *auf Augenhöhe*. This accomplishment was the outcome of 4 months of dogged perseverance in 1907. It is perhaps the greatest compliment one must pay to that often sabred assembly. Between 1899 and 1907 international lawyers had grown up and harnessed themselves to become truly competitive. In terms of intellectual joust and political fencing, the discourse in 1907 was far more akin to that of 1919. So much so, indeed, that one is tempted to say that this encounter around *Hofvijver* cast a heavy shadow over the banks of the Seine. Perhaps more so than present-day international lawyers would care to acknowledge, the Statute of the PCIJ has the status of a Truce. It bears the grim scars of battle and an inconclusive encounter. Both in its merits and its shortcomings the document bespeaks the strategy of either camp in 1907 to wrongfoot and outwit its foe, of sallies made and losses taken. It was an agreement on compromise, never mistaken for the optimum. It was, above all, unfinished business. In some respects it still is. For this Statute still governs the wheelings and dealings of the International Judiciary in our times.

5.3 The Nobel Peace Prize

It may be worthwhile to dwell a moment on the dealings of the *membres* with the Nobel Peace Prize.⁷¹ Asser's first involvement came in a rather dramatic fashion. On Sylvester night 1901 Albéric Rolin sent him New Year's Wishes in consolation for Asser's loss of his son. It was also a cry of despair. A visit to ailing Gustave, who had returned from Siam a physical wreck, had left Albéric broken-hearted. Last but not least the letter conveyed an idea. Was Gustave not a worthy candidate for the Nobel Peace Prize? Asser never had to think twice. If there was one person he would have championed, it would have been his old comrade. It was not to be. Within a fortnight Gustave passed away. Poetic justice was done 3 years later, when the *Institut* was awarded the Prize. The gesture was seen as a posthumous homage to Rolin-Jaequemyns.

In subsequent years Asser was closely involved in nominations, both in an institutional and a personal capacity. In 1907 the *membres* successfully nominated Louis Renault—and Asser was instrumental in the process. And this brings us to Asser's award in 1911, as co-laureate along with the German pacifist, Alfred Fried. That

⁷¹ Eyffinger (2019a), Ch. 57.4. Both the *Institut* as an Association, and most of its members in their academic capacities were, by Nobel Charter, entitled to nominate candidates. They eagerly lived up to the invitation.

year, twenty-eight private persons were nominated.⁷² Prominent among Asser's competitors was the formidable Léon Bourgeois, another prominent *membre*, who must have scored high in everyone's bets. The awarding of an international lawyer like Asser was not all that surprising. What is striking is that he was nominated just once, and by a single colleague only. This, in turn, makes it all the more remarkable that the candidature was crowned with success. Feodor Martens was nominated consistently throughout 1902–1908 by numerous colleagues from the *Institut*, and the same held good for Ernest Nys. They were expected to turn up as laureate every year, but never did. Over the years 1900–1911 the Dutch had energetically nominated candidates for the Prize. Still, no Dutchman ever nominated Asser. The only man who felt fit to nominate Asser was Charles Lyon-Caen of Paris. Presumably, he co-ordinated the nomination with Louis Renault. Asser and Lyon-Caen had long been befriended at the *Institut* where the latter was a long-standing *membre* (1880) and was twice elected President (1910, 1934). As likely as not, the impulse was Asser's Conference on the Bills of Exchange (1910), where Lyon-Caen had been chairman of a section and *rapporteur*.

5.4 The Peace Palace Library

Whenever Asser received an award, his colleagues at the *Institut* were never far. In 1910 a ceremony was arranged to recall the 50th anniversary of Asser's epochal dissertation.⁷³ John Westlake was in touch with the jubilee committee, and so were Renault and Lyon-Caen.⁷⁴ No token of honour on the occasion was more welcome to Asser than the funding, at his request, of the world's first ever library of private international law, his foremost field of research. In October 1912 a Foundation was established and in 1924 an impressive oak book chest was installed in the Peace Palace Library. Asser had long been involved with the idea to have a library of international law established in The Hague. He amply discussed the idea with Martens in 1900 and was on the PrepCom to implement Carnegie's library project during 1902–1904.⁷⁵ When, early in 1913, the issue of the librarianship became imminent, he considered the appointment a personal affair. The man he had in mind was Albéric Rolin. The proactive move also suggests his effort to warrant the impact of private international law in the build-up.⁷⁶ Albéric showed himself sincerely touched. At seventy, he still felt competent to produce a lot of work. He quoted from Augier's comedy *L'Aventurière*: 'Poudreux est le flacon, mais vive est la liqueur!'

⁷² As ever, it was a motley group. Intriguing were the nominations of Wilhelm II and Andrew Carnegie.

⁷³ Eyffinger (2019a), Ch. 57.3.

⁷⁴ Albéric Rolin represented the *Institut*. The latter's face made Asser miss Gustave the more. In his table speech De Beaufort recalled that to Asser the law was a living force, its science not an artful doctrinal system, but a coherent collection of rules and precepts meant to have equity and morality govern human relations and monitor man's material interests. The world at large might venerate Grotius and Bynkershoek, Asser's name epitomized the 19th century.

⁷⁵ Eyffinger (2019a), Ch. 42.4. Asser inspected institutions at home and abroad and even familiarized himself with Dewey's decimal classification system and stack technology.

⁷⁶ Eyffinger (2019a), Ch. 61.2. Albéric Rolin held the chair at Ghent (1890–1912) and had been keenly involved in Asser's *Conférences de La Haye*. He was Secretary-General of the *Institut* (1906–1922).

Asser, typically, jumped at it. With all due respect, he jested, to marry a young girl at seventy was still something else from the obligations incumbent on a Librarian! With Albéric Rolin lack of energy was never an issue. When he left the Library, 6 years later, he had many more years of rewarding labour ahead of him. In 1920, aged seventy-seven, he published his three-volume *Le Droit moderne de la guerre*. On 14 July 1923, when the Academy was inaugurated, he was appointed Secretary-General. He lectured twice at the Academy, in 1923 and 1926, before he at long last retired.

5.5 The Hague Academy of international Law

The idea for an Academy in The Hague was launched in 1898 by Von Bar, *membre* from 1874 and recast in 1907 by Nippold (elected *membre* in 1924). It was brought to the attention of the Peace Conference by its President, De Nelidov, who compared the formula to Hippocrates's *Asclepion* in Kos.⁷⁷ The Plenary considered implementation to be premature; hence the project lost momentum. By 1910 Asser embraced the idea. In a quest for endorsement he contacted Elihu Root (*membre* as of 1912) and James Brown Scott (elected *membre* in 1908), Carnegie's hand-picked board members of the newly founded *Endowment*. A year later, in a move worthy of Carnegie himself, he played his trump card, donating half of his Nobel Peace Prize money (Dfl. 15,000) to the Academy project in a successful bid to pump up pressure. The next year he even increased his donation, once more denoting a gift by Last Will. Scott drew hard bargains; he demanded the strictest organization and the highest academic standards. To that end, he insisted on the commitment of the *Institut*. Two schemes had been developed. The first provided for a university proper, the second—of Asser's making—suggested summer courses that did not compete with university programmes. Pragmatic and to the point as ever, Asser had hit the mark. His wise choice may well have saved the project. On these terms the Carnegie Endowment was willing to bear responsibility for the cost. Scott himself came up with another proposition: 'A volume of lectures delivered at such an Academy would appeal at once to educationalists in all parts of the world. The volumes could be published in uniform and attractive style.' And here we touch upon the origin of that impressive series of green volumes, which are perhaps the most consistent record of the tenets the *Institut* represents and, to that extent, the reliable reflection of the vagaries and shifting priorities of the discipline over the past century. As intimated above, the presence of *membres* in the series is impressive.

In August 1913, in Oxford, the *membres* lent their formal consent. With the *Institut* as patron and Renault as Director of Studies the Academy was to open in 1915 during the Third Hague Peace Conference. In Oxford Asser, the last surviving founder of the *Institut*, was to be elected Honorary President. It was not to be. Tobias Asser lived a full three quarters of a century, only to miss by an inch (less than a month) the opening of the Peace Palace and the blessing of his Academy project by

⁷⁷ Eyffinger (2019a), Ch. 61.3. The Romanian Prime Minister, Dimitru Sturdza forthwith submitted Statutes.

his beloved *Institut*. In the end, it was thanks to the mediation of yet another body of *membres* that the idea came about at all. In 1920 the Advisory Committee of Jurists expressed the *voeu* that the Academy be set in motion side by side with the International Court. On *Quatorze Juillet* 1923 the Academy was inaugurated. An emotional Lyon-Caen recalled his two great friends, Renault and Asser. He extolled Scott's merits, then to conclude jubilantly: 'Un jour le droit sera le souverain du monde!' That first year, 353 students from 31 countries attended, 35 of them female. In their ranks paraded young Philip Jessup (elected *membre* in 1948). Over the past 95 years, not a single year have *membres* of the *Institut* been missing on the Curatorium or among the tutors.

5.6 The Conferences on the Bills of Exchange (1910, 1912)

After 1904 the concept of the *Conférences de La Haye* was gradually side-tracked. Two elements conspired against the further expansion of Asser's project. Growing political tension reduced private international law to the margins of the international agenda.⁷⁸ But not unrelated were the shifting paradigms of doctrine. In 1891 Franz Kahn in his epochal *Gesetzeskollisionen* stated categorically: 'Das internationale Privatrecht [...] ist vielmehr nationales Recht und wird dies seinem größten Teile nach auch in Zukunft bleiben.' Even the *membres* stood horns locked. In 1894 Theodor Niemeyer (elected member in 1913) questioned the internationalism of Von Bar (*membre* since 1874). In 1897 Etienne Bartin in France (to be elected *membre* in 1929) called the universality of private international law an illusion. In 1904 Albert Dicey (*membre* since 1880) in his 'positivist method' challenged Westlake's search for General Principles in his 'theoretical method'.

At home, the same dichotomy applied. Jan Kosters (elected member in 1927), in his inaugural address in Groningen (1908) championed a positivist, nationalistic approach and declined the notion of the 'universal, international legal community', as e.g. advanced by Jitta (*membre* from 1913). In a review of what he called Kosters's 'peculiar' address Asser expressed regrets at the turn of coat as 'High Priest of Science' of the man who, from his vantage point at the Ministry of Justice, had been actively involved with the *Conférences* of 1900 and 1904. In his seminal handbook *The International Civil Law in the Netherlands* (1917) Kosters swept away the last cinders of Asser's approach. The manual was the major source of law at home until WW II.⁷⁹ Asser must have felt as if he was standing in quicksand, his foothold slipping, even if by then he had secured himself a steadfast ally. In 1905 Carel Daniel Jr. (*membre* 1894) was called to the first chair of Private International Law in Leiden. In his inaugural address he stressed the topicality of the discipline

⁷⁸ Eyffinger (2019a), Ch. 28.10. The *Entente Cordiale* (1904) was the opening move in a strategic reshuffle. The *Morocco crises* (1905, 1911) bespoke growing tension; naval rivalry became acute.

⁷⁹ Kosters later bespoke his commitment to Asser's legacy, witness his *Les conventions de la Haye de 1902 et 1905 sur le droit international privé. Recueil de législation et de jurisprudence* (1921, co-edited with Bellemans). He even helped to initiate the resurgence of the *Conférences* in the 1920s.

for the sphere of commerce. Modern man had become an ‘international legal subject’. For all the cosmopolitan nature of modern society—at the end of the day, the reach of science had its limitations. Railways, the telegraph or telephone did not affect the ingrained discrepancies of morals and customs, language or legislation. Hence the pertinence of the discipline that probed into the nature of legal conflict. With the Hague Conventions a new era in the history of the discipline had dawned. A judge operating within the jurisdiction of the Contracting Powers could now rely on trustworthy guidance on all issues covered by the Conventions.

Then, in 1909 Asser’s personal prestige made Italy and Germany turn to the Netherlands to host the International Conferences for the Unification of the Laws on Bills of Exchange and Cheques.⁸⁰ To Asser the invitation must have appeared a Godsend to compensate the stagnating process of his *Conférences*. He jumped at the opportunity to prove to the world that his pet project was far from being laid to rest. Was it a whim of fate, or poetic justice? The last international conferences that Asser chaired carried him back to what had always been at the heart of his research. In his *Schets van het Nederlandsche Handelsregt* (1873) he had dedicated some thirty inspired pages to the analysis of negotiable instruments and hailed the *Wechsel* as ‘the eminent product of human genius, indispensable to trade’. Still, in the same breath he acknowledged, with the cheque it was as what Carmen sang of love: ‘Le cheque est enfant de Bohème: Il n’a jamais connu de loi!’ By 1873, he had already gained considerable experience with its intricacies. As he recalled in June 1910, in his opening speech, back in 1863 a young Dutchman had first tackled the issue in Ghent, never knowing that, 50 years later, he would chair a world conference.⁸¹ To Asser the Conferences, in which Lyon-Caen, Renault and various other *membres* were acutely involved, were ‘the great substitute’. He dropped everything to optimize conditions.⁸² The project one last time kindled his energy, legal genius and resourcefulness. Sadly, it also exhausted him physically, indeed beyond repair.

5.7 The End of the Generation of Founders

Slowly but surely Asser’s generation was on the way out.⁸³ First to die had been Gustave Rolin (1902). In 1909 Tobias lost another brother in arms in Feodor Martens. In 1913 the end came to that bond that had lasted a full 50 years. As he wrote to Alice Westlake, ‘your husband was one of those rare men who seek for the truth without hidden motives and have only the interest of the human race in mind’. As she replied, ‘the friendship between the three of you was truly amazing, and the world the better for it. Your letter meant more to me than nearly all the others.’ The winter of 1910–1911 was an unwonted ordeal for Asser. On doctor’s orders he took a rest in a *Kurort*. But then, idleness was never his thing and only intensified

⁸⁰ Eyffinger (2019a), Ch. 58–59.

⁸¹ *Actes* 1910, p. 21.

⁸² He ignored the Naval Conference in London and the International Air Law Conference in Paris (1910).

⁸³ Eyffinger (2019a), Ch. 62.1–2.

his unrest. Asser never regained his former energy. He acquiesced in acknowledging that the 1915 Peace Conference came too late. Then came the invitation for the Opium Conference in The Hague (1911). No longer in a position to attend, Asser consented to be available at Bankplein for consultation. Various delegations availed themselves of the privilege. Asser even solved the dilemma of the Executive Committee by suggesting the formula of 'inversed ratification'.⁸⁴ In the spring of 1912 his health spiralled downwards rapidly. Shortness of breath, a persistent cough, and the incapacity to work were nagging at him. It was sheer willpower and mental resilience that carried him through the Second Conference on the Bills of Exchange (1912). In January 1913, in the midst of a meeting at the Council of State, he was overcome by a fainting spell. He regained consciousness, but never fooled himself. Early on 29 July he once again lost consciousness; this time he did not come around. On behalf of the *Institut*, Albéric Rolin put a wreath on the grave and spoke warm words, praising Asser's works as 'carved from the purest marble'. The lasting tribute was yet to come. In 1915 an international committee commissioned sculptor Prof. Odé in Delft to mould a bronze statue to be placed in the Peace Palace once peace was restored. In August 1921 it was unveiled in a solemn ceremony with a corona of diplomats and scholars from the *Institut*, ILA and Cambridge University attending. It was only half the story. Friends and colleagues of Louis Renault, moved by his sudden death in his beloved Barbizon in February 1918 sought to honour the man who, provisionally, had been elected President of the Academy. In 1932 the statue was unveiled by Charles Lyon-Caen. Asser's statue was brought up to the *bel-étage* and, for 87 years now, the life-time co-militants have posed as guardian angels on either side of the entrance door to the Assembly Room of the PCA.⁸⁵

6 The Third Session of the *Institut* in the Netherlands: The Hague 1925

6.1 The Interbellum Years

After Versailles the world was a different place—and so was The Hague. The Third Hague Peace Conference intended for 1915 had been postponed. When it materialised it took place in Geneva, to implement the conclusions agreed upon in 1907 to have the Hague Process institutionalized in a veritable League of Nations and a continuum of annual deliberations. Wilson discredited the gratuity of the arbitration formula and resented Queen Wilhelmina's offer of shelter to the major war criminal running loose, in perfect disregard of the axiomatic *dedere aut judicare*. It took Bourgeois all his eloquence and formidable powers of persuasion to salvage at least the judicial component of the League System for The Hague.⁸⁶ Perhaps the most

⁸⁴ Eyffinger (2019a), Ch. 60.3.

⁸⁵ Eyffinger (2019a), Ch. 62.7.

⁸⁶ Eyffinger (2019a), Ch. 48.1.3. Bourgeois had been the most forceful *playdoyer* of PCA and PCAJ/PCIJ in 1907.

comforting thought to insiders was the consolidated dedication of the *Institut*, first through the Advisory Committee of Jurists (1920), then on the Hague Bench (1923). Foremost among these members ranked Bernard Loder, the Amsterdam practitioner, advocate of CMI, long-standing judge of the Supreme Court (1908–1921) and author of *Institutions judiciaires et de conciliation* (1917). His sincere advocacy of the international judiciary on the Committee of 1920 earned him the membership of the *Institut* (1921) and the Presidency of the PCIJ (1922–1924).⁸⁷ Soon the *membres* also dominated the Curatorium and courses of the Hague Academy. The *Institut* had gained control of the Hague Tradition.

6.2 The Grotius Commemoration

The year 1925 was a heyday for international law at home. In the precarious span of optimism generated by the Locarno Treaties and the Dawes Plan, the Netherlands celebrated the tercentenary of the book that had made its name resound, Hugo Grotius's *De Jure Belli ac Pacis*. In 1924 Vice-President André Weiss of the PCIJ, former President of the *Institut*, claimed part of the book's glory for France during a ceremony in Balagny sur Thérain where Grotius had penned the first lines of his *chef d'oeuvre*. 'Jure soli', he claimed, the work was the child of exile. He insisted on the acuteness of Grotius's concept of the solidarity of man and States. He identified Grotius's call for an areopagus of nations to solve disputes as the prototype of Wilson's League. In the Netherlands, the year abounded with celebrations and conferences, expositions and festivals. A commemorative stamp was issued, a Grotius Medal launched. On Grotius's birthday Curators of Leiden University placed a wreath on the tomb of their alumnus in Delft, next to the silver laurels bestowed by the US Delegation in 1899.⁸⁸ The gesture was repeated on the day of Grotius's death: church organs played in mineur and the audience rose. Again, Grotius was hailed as 'Wilson's Harbinger'. An authoritative biography saw the light of day.⁸⁹

6.3 The Session in The Hague

At the invitation of its Dutch *membres*⁹⁰ the *Institut* convened in The Hague from 29 July to 5 August to pay its respects to Grotius. Eighty-two members representing twenty-five nations answered the call, an all-time record. The opening session in the Great Hall of Justice of the Peace Palace was attended by a capacity crowd of Ministers, *Corps diplomatique*, national and international judges and arbitrators, and lecturers of the Academy. Foreign Minister Van Karnebeek Jr. enlarged on the relations between the *Institut* and the League. Nobody in Geneva could stay guard over the legal principles that should govern inter-State relations the way the *Institut* did.

⁸⁷ Loder's Presidency was also a token of courtesy to the host nation of the PCIJ.

⁸⁸ Eyffinger (2019a), Ch. 39.3.

⁸⁹ Knight (1925).

⁹⁰ Carel Daniel Asser, *membre* 1894, De Louter, *m.* 1904; Jitta, *m.* 1913; Loder, *m.* 1921.

President Loder focused on Grotius's *chef d'oeuvre*. The Tercentenary was not just a historical meeting, but a recognition of the lasting impact of Grotius as the organizer of the 'Jus Gentium' as a science and of his masterwork as the true expression of equity and right. The Geneva Protocol was the first incarnation of Grotius's ideas. Loder drew attention to Grotius's watchword on the ceiling of the Great Hall of Justice, *Si vis pacem cole iustitiam*. Only the 20th century was applying this old truth to inter-State relations. There was no better way to celebrate Grotius's work than by lending support to the League. In a *pèlerinage* to Delft the *Institut* placed a laurel wreath with a silver ribbon and an inscription on Grotius's tomb. In an impressive address Baron Descamps argued that, to understand Grotius, they should not consult his heavy-handed doctrinal epigones in the natural law tradition whose works were devoid of moral and Christian values. Grotius's cardinal idea and ultimate drive aimed at the higher form of justice and a less precarious peace that inspired their own times. Would Grotius attend their meeting he would welcome the work of the *Institut*, next to the Hague Courts and Academy, and alternate its device *Justitia et Pace* with his own favourite watchword *Verae Justitiae Sacerdotes!* The visit of the *Institut* definitely helped the Netherlands to take another step on its troublesome path to come to terms with its gifted son, whose stand in the Remonstrant Troubles kept burdening the appreciation of his legal genius.

6.4 An Embarrassment

In The Hague the *Institut* passed a resolution on *Prescription libératoire*. Amidst 400 students, *membres* attended some of that year's courses at the Academy.⁹¹ That institution was 'plein de vitalité', as its reporter, Van Kleffens, observed, and open to all in the true spirit of Justinian: *Legitimos thesauros volentibus aperimus*. Still, the high praise that *membres* bestowed on Grotius and the Netherlands could not hide an embarrassing incident. That year, the Dutch section had seen its three candidates for membership, Kosters among them, all turned down. Carel Daniel Asser, in careful manoeuvring with Albéric Rolin and Charles De Visscher, sought to heal the discomfort. The incident also attests to the personal rivalry and professional tension within the discipline at home during the Interbellum years, when Loder and Van Eysinga were never on speaking terms and the Leiden School (Van Vollenhoven) and its counterpart in Utrecht (De Louter) frontally clashed, whether with regard to policies in the Indies and Adat Law or in their outlook on the League and international organization.

Rivalry for membership was nothing new of course, as Daan Asser had himself experienced.⁹² In his *Diaries* De Beaufort records an incident from 1902, when the Utrecht professor Jan De Louter complained to him that he had not

⁹¹ Including courses by Gidel (*membre* 1921) on the Rights and Duties of States; Hudson (*m.* 1936) on Advisory Opinions; Phillimore (*m.* 1921) on Immunity; Pillet (*m.* 1897) on Acquired Rights; Politis (*m.* 1904) on Sovereignty; Charles De Visscher (*m.* 1921) on Codification (*m.* 1921); Wehberg (*m.* 1921) on the Geneva Protocol; *Recueil des cours* vols. 6–10.

⁹² Asser was head of the family law firm and President of the French-German Mixed Arbitral Tribunal.

been put on the List of the PCA.⁹³ Queen Wilhelmina had insisted on a Roman Catholic representative—only De Louter (otherwise Her Majesty’s personal tutor) had never been told as much. De Louter blamed the outcome on Asser and volunteered another grievance, that Asser had ‘pushed’ his eldest son at the *Institut* at his cost. De Louter was otherwise duly elected in 1904. The Utrecht don was a stern positivist, the champion of national sovereignty and a strong national defence, and entertained stern reservations against the League System and international alliances.⁹⁴

In October 1926 Albéric Rolin *très confidentiellement* expressed his regrets to Daan Asser with respect to the three declined candidates. The fatherland of Grotius, Bynkershoek and Asser deserved better.⁹⁵ However, the candidates simply did not have sufficient *renommée* abroad. This also applied to Kusters. Rolin actually volunteered two suitable candidates in his eyes, Van Vollenhoven and Van Eysinga. Daan took it upon himself to contact Loder. It did not prove to be a good idea: Loder reacted as if he had been stung. He knew well enough that Van Vollenhoven had lobbied with Scott in America to secure his election. Personally, he had no objections: ‘He is one of the most brilliant experts. Only, so far, I saw no reason to drop earlier candidates on his behalf.’ The other candidate the Bureau had in mind, Van Eysinga, was a different matter altogether. This gentleman did not meet the standards of the *Institut*:

The man is devoid of all insight and discernment. Inasmuch as the same holds good for so many in circles of the League of Nations, he has managed to be successful there. The reason Rolin submits his name is only through his son in the League, with whom Van Eysinga has ingratiated himself. To prefer Van Eysinga to Kusters is perfectly ridiculous. Van Eysinga and I do not exist in each other’s eyes, and this may well explain why I was never consulted on his candidature. [...] I will never support this man. And as far as Kusters is concerned, it is ridiculous to put him behind a number of unknown entities among the current members.⁹⁶

In 1927 Kusters was duly elected. In 1934 Van Eysinga, by then a Judge at the PCIJ (1931–1946), was nominated by the Bureau. To be on the safe side, De Visscher sounded Asser: would the Dutch Section agree? To Asser it posed a predicament: how to break the news to Loder? In 1931 this gentleman had positively resented being succeeded on the PCIJ by Van Eysinga of all people. Before Daan had even gathered the courage to contact Loder, De Visscher sent a telegram that brought instant relief. Van Eysinga had declined the invitation as incompatible with his position at the World Court.

⁹³ Eyffinger (2019a), Ch. 54.7.2.

⁹⁴ On De Louter see Verzijl (1933), pp. 104–110; Roelofsen (1985a).

⁹⁵ For the incident Eyffinger (2019a), Ch. 54.7.2.

⁹⁶ Eyffinger (2019a), Ch. 54.7.3.

6.5 The Dutch Contingent at the *Institut* up to 1957

The assessment of the Dutch members over the decades that separate the Third and Fourth Session of the *Institut* in the Netherlands (1925–1957) is perhaps best made with reference to their commitment to the League and UN organizations and the *Conférence de La Haye*. For a full two decades after 1904 no initiative was taken to rekindle the flame of Asser's project. To make things worse, the Treaty of Versailles had effectively nullified all prior treaties and agreements between the warring parties. Against this backdrop, the Dutch *Staatscommissie* deserves credit for its daring to relaunch the project against all odds of politics and doctrine. Daniel Josephus Jitta (1854–1925) personified this optimism reflected in what became his intellectual testament, *The Reconstruction of International Law on the Foundation of a Legal Community of the Human Race* (1919). Jitta was elected a member of the *Institut* in 1913. His intervention on behalf of the *Conférence* lent a happy ending to what had been a long and troubled relationship with its *auctor intellectualis*.⁹⁷ Tobias Asser and Jitta were truly incomparable characters and their trains of thought never really converged. For decades on end the two had ignored each other in the most courteous terms. Only in later years did they develop an understanding.⁹⁸ Jitta was meticulously groomed—first in Leiden, then in Brussels by Alphonse Rivier.⁹⁹ He settled down as an attorney-at-law, held prominent positions in Jewish social life and, like Asser, was raised in the Liberal party. Both Jitta and Asser were hooked on private international law for life. But in their views on how to make headway they plotted diametrically opposed itineraries.¹⁰⁰ Jitta's offhanded dismissal of the *Conférence* project, his denouncing of Asser's approach through General Principles as 'utterly vague' and his appraisal of Asser's projects at the *Institut* as 'défectueux et incomplets' must have hurt the latter to the core. Asser, for his part, mistrusted Jitta's views, reasoning—and style. In the 1870s they crossed swords within the *Nederlandse Juristen Vereniging* (the Dutch Association of Jurists, NJV), then, in the early 1890s, they tentatively converged. Asser may have given the first push. In 1893 he suggested Jitta as the successor to his chair in Amsterdam. A letter to Jitta from July 1895 reflects his intention to strengthen the bonds. It was a critical moment in Tobias's life, the first crack in the mirror, on the eve of his intended honorary doctorate in Cambridge. Just moved to The Hague and alone in an empty house, with his wife and second son abroad for unlikely revalidation, Asser mentally collapsed—and owned up to it to Jitta. To

⁹⁷ Eyffinger (2019a), Ch. 26.3.

⁹⁸ The Jittas had come over from Bamberg in the 1770s. Daniel's grandfather had started trading in jewellery in the Jodenbreestraat. By 1850 his son had attained the status of court jeweller and served Napoleon III himself. His son was a member of the municipal council.

⁹⁹ The Swiss Rivier taught in Belgium and was Gustave Rolin's successor at the *Revue* and *Institut*. He was close to Asser and had rendered his *Sketch of Private International Law* (1880) into French.

¹⁰⁰ While Asser kept the pulse of politics and tossed his chances to enforce an international diplomatic breakthrough, Jitta in 1890 quietly published his *La méthode du droit international privé*, the prelude to his voluminous *La substance des obligations dans le droit international privé* (2 Vols., 1906–1907).

Westlake's embarrassment he cancelled the trip to Cambridge at the last minute. The next week Jitta showed up at the *Kurbad* of Asser's wife in Switzerland to converse with Carel Daniel Jr. In a paper he produced in 1899 Jitta had made *volte-face*. As he now argued, the Hague Conferences were a distinct token that his ideal was drawing nearer. That month Asser suggested Jitta's name to the *Institut*. If nothing else, the law had helped two great Amsterdam (Jewish) families to clasp hands.¹⁰¹

In 1923 the State Commission sounded the feasibility of a restart. It found its invitation land on fertile soil.¹⁰² In the autumn of 1925, in the very weeks the Locarno Treaties were concluded, President Loder welcomed a record twenty-two nations to the Fifth Hague Conference.¹⁰³ For all the energy of its charismatic chairman the Conference never managed to dispel the gloom and adjourned *sine die*.¹⁰⁴ In 1928, under the brightening skies of the Kellogg-Briand Pact, its sequel made as little headway. Loder acquiesced in the inevitable: 'without fuel the Sacred Flame will extinguish'. The Olympics in Amsterdam must have inspired the sad metaphor. No Hague Conference was to convene for a full two decades. When the cannons fell silent at last, all records of the *Staatscommissie* over the Interbellum years, and including the files of the Conferences of 1925 and 1928 had been burned to ashes in war bombardments. With the past in ruins, was there any future left? In 1945 a Swiss expert, Max Gutzwiller (*membre* from 1947) championed the relaunch with an appeal to the 'Hague Climate'. The token of confidence, true to the memory of Friedrich Meili's friendship with Asser, was not lost on the *Staatscommissie*. In December 1946 it probed for interest with De Visscher and Basdevant. By then, the Dutch contingent at the *Institut* had been refreshed with some heavyweight scholars. François had made his entrance in 1937, in 1947 Meijers and Verzijl followed suit, in 1950 Van Asbeck was added to their numbers. They are all celebrated names at home, but they made for a multi-coloured band.

J.P.A. François was the pupil of Van Eysinga. In a career at the Foreign Ministry that spanned four decades he became the national expert on League affairs and attended all Assemblies.¹⁰⁵ In 1948 he helped launch the ILC, which he chaired in 1953, then played a critical role in the Law of the Sea Convention of 1958. His amiable character, innate tact and diplomatic reserve tallied well with the political games of rivalling legal committees in New York. From 1954 to 1968 François was Secretary-General of the PCA, otherwise without managing to allure a single case. He was elected to the *Institut* in 1937, but his finest hour came in 1957, when he presided over its Session in Amsterdam.

The variety of characters and the outlook of successive Dutch *membres*, adumbrated with Asser and Jitta, cannot better be illustrated than by putting J.H.W.

¹⁰¹ From 1910 the two met at the NVIR, where Jitta was President and the ageing Asser was Honorary President.

¹⁰² Eyffinger (2019a), Ch. 26.7.1.

¹⁰³ The Assembly discussed issues of succession, bankruptcy and the execution of foreign judgements.

¹⁰⁴ Max Gutzwiller (1889–1989) from Freiburg authored a *Geschichte des International-privatrechts. Von den Anfängen bis zu den grossen Privatrechts-kodifikationen* (1977); Eyffinger (2019a), Ch. 26.7.2.

¹⁰⁵ He held a chair in Public International Law in Rotterdam (1920–1960) and produced a manual of international law (2 vols., 1931–1933). See Kluyver (1959, pp. 11–20) and Roelofsens (1985b).

Verzijl next to François. Verzijl was a pupil of Jan de Louter in Utrecht and in his dissertation (1917) on issues of Prize Law he addressed the role of the submarine. In 1919 his assessment was squarely challenged by François in his dissertation on much similar subject-matter. That year, the two were rivals for the chair of Public International Law in Utrecht. In his inaugural address Verzijl, in De Louter's footsteps, made short shrift with the Covenant of the League.¹⁰⁶ A man of stern principles, Verzijl's role as President in the abortive French-Mexican Claims Commission (1928)¹⁰⁷ was controversial.¹⁰⁸ Suggestive of his personal distance from the accommodating François, the political horse-trading after Munich (1938) made Verzijl resign his chair and turn away from international law a disillusioned man. Even so, his pertinent opinions cost him a year of internment in *Buchenwald* (1940–1941). After the war he resumed his chair in Utrecht. By comparison, François's elasticity at the Ministry *vis-à-vis* the occupying forces has always troubled commentators, even though he survived the post-war purges at the Ministry unscathed. At the Law of the Sea Conference in 1958 Verzijl found his scepticism towards the politicised UN confirmed and resigned his chair to focus on his monumental *International Law in Historical Perspective* (11 vols., 1968–1992), his intellectual legacy.¹⁰⁹ With F.M. van Asbeck,¹¹⁰ the pupil of Van Vollenhoven and Van Eysinga, who was elected in 1950, we return to the Leiden tradition and its commitment to the League System. Van Asbeck served on the Permanent Mandates Commission (1935–1940), and in the post-war years was a member of the Commission of Experts of the International Labour Organization (ILO) (1947–1964) and a Judge at the European Court of Human Rights in Strasbourg (1959–1966).

In 1951 the Seventh Session of the Hague Conference was opened with J. Offerhaus in the chair.¹¹¹ The choice was a *trouvaille*. Offerhaus proved himself an 'Asser Reborn' in his visionary outlook, resourcefulness and determination.¹¹² Like Asser, he was in the chair on four occasions¹¹³ and in 1954 was invited to the *Institut*. His call to the ICJ as Judge *ad hoc* in 1958 in the interpretation of a Convention that Asser himself had presided over¹¹⁴ was a fitting

¹⁰⁶ As Legal Adviser Verzijl was twice involved, on behalf of Danzig and Bulgaria, with Advisory Opinions before the PCIJ: *Polish Postal Service in Danzig* (1925); *Greco-Bulgarian 'Communities'* (1930). His intrigue with the international judiciary was reflected in his much appraised *The jurisprudence of the World Court* (2 vols., 1965–1966).

¹⁰⁷ *Georges Penson (France) v. United Mexican States, R.I.A.A.* 5, pp. 325 et seq.

¹⁰⁸ There was no incident here. Twenty years later (1947), Verzijl's juridical rigour wrecked his negotiations with the Indonesian Republic on the eve of the Linggadjati Agreement.

¹⁰⁹ Bos (1987), pp. 285–297; Roelofsen (1994b).

¹¹⁰ Van Asbeck was the son of a rear-admiral and Governor of Surinam and an expert on colonial law. From 1947 to 1959 he taught international and comparative law in Leiden. See van Panhuys and van Leeuwen Boomkamp (1976) and Kapteijn (1979).

¹¹¹ On Offerhaus see Cleveringa (1966–1967), pp. 382–388; Nève (1979).

¹¹² Many other resemblances are hard to oversee. Like Asser, he was an accomplished practitioner in Insurance Law and Maritime Law. Offerhaus likewise started out as a professor of the Law of Commerce and Civil Law in Amsterdam (1941) and from 1945 increasingly shifted interest to Private International Law. He was not the type to produce learned treatises; his forte was organization.

¹¹³ In 1951, 1956, 1960, and 1964; he helped to bring about fourteen Conventions.

¹¹⁴ *Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)*.

tribute to both pioneers.¹¹⁵ Two other Dutch *membres* were critically involved in the relaunching of the *Conférences*, Meijers and Van Hoogstraten. E.M. Meijers was one of the most celebrated lawyers of the 20th century at home. He has been called the father of the *Nieuw Burgerlijk Wetboek* (NBW) that, long after his demise, in 1992, replaced the legislation that was introduced in the year Tobias Asser was born (1838).¹¹⁶ More dramatically, Meijers's forced resignation in Leiden in November 1940 made his pupil Cleveringa launch his formal protest against the occupying forces.¹¹⁷ As with Offerhaus, with Meijers we hark back to the core of Asser's tradition. Like Asser he was a practitioner and for decades held the chair of Civil Law and Private International Law in Leiden.¹¹⁸ He was involved with legal co-ordination and unification within the emerging Benelux. In his capacity of board member of *Unidroit* in Rome his intervention was vital in rekindling Asser's *Conférences*. He successfully outwitted rivalling projects.¹¹⁹ Meijers's role at the *Institut*, to which he was elected in 1947, remained limited due to his early demise.

M.H. van Hoogstraten was a legal practitioner, an official at the Ministry of Foreign Affairs, and the Secretary-General of the *Conférence de La Haye* (1951–1955). He was only elected at the *Institut* in 1977, towards the end of his life. He and Offerhaus were what the *Conférence* needed most, a superb team full of determination and well abreast of the changing wind in global affairs. They duly appreciated that the decolonisation process and the compartmentalisation of spheres and cultures dictated a new policy. In the global quest former yardsticks like Roman law and natural law could no longer claim primacy. Provisionally, the ambition of universality had to be dropped. In his eminently courteous way Van Hoogstraten reoriented procedures and goals and in word and writ propagated the Conference *New Style*.¹²⁰ In the corridors of the 1951 Conference a *petit comité* drew up a Statute to turn the *Conférence* into a veritable International Organization. The idea proved hard to get afloat, but in 1955 the Statute entered into force; a brave effort had paid off. Sixty-five years from Asser's stroll with Van Tienhoven his pioneering idea had taken solid root in Dutch soil. In its new formula the *Conférence* soon won itself the authority and credit to ambitiously reach out.

¹¹⁵ It also recalls that other advocate of the guardianship of minors at home, Asser's gifted second son, Louis (1867–1901), whose own children, as runs the irony of life, had to be put under guardianship upon his premature demise from tuberculosis. Eyffinger (2019a), Ch. 55.5–8.

¹¹⁶ Meijers prepared a first draft for books I–IV.

¹¹⁷ Meijers was the scion of a prestigious Jewish family in Amsterdam. He was on the notorious lists put up by Frederiks and Van Dam at the Foreign Ministry, was interned in Barneveld and via the *Westerbork* transit camp was transported to *Theresienstadt*.

¹¹⁸ Meijers's publications on Civil Law and Procedure, as in the famous *Asser Series*, are impressive and his intellectual legacy will last. See Langemeijer (1959), pp. 589–594; Feenstra (1979).

¹¹⁹ Eyffinger (2019a), Ch.26.7.2.

¹²⁰ He submitted annual reports in the *NILR* (1953–1962) and lectured at the Academy on codification: 'La codification par traités en droit international privé dans le cadre de la Conférence de La Haye', in *Recueil des cours* 122 (1967), pp. 337–426. He was President of the Board of the T.M.C. Asser Institute (f. 1965).

7 The Fourth Session of the *Institut* in the Netherlands: Amsterdam (1957)

7.1 The Status of the Discipline and the *Institut*

In 1957 the endeavours of generations of dedicated lawyers made the *Institut* return to the Netherlands ‘in Asser’s spirit, under his guidance—and therefore to his home town’. The Session convened from 18 to 27 September under the Presidency of François.¹²¹ It welcomed a handful of *membres* who had attended the Session of 1925: Wehberg, Basdevant, Gidel, Charles and Ferdinand De Visscher.¹²² Midway, the attending Judges of the ICJ hurried back to attend to the case of *Right of Passage over Indian Territory*. Secretary of State for Foreign Affairs, Van den Beugel sketched the panorama of gloom all around: the nuclear threat, the Cold War, and the Hungarian crisis. Still, somehow, he stated, the members of the *Institut* never lost courage or hope, even in the face of World Wars. They were like ants: as soon as they found their hill destroyed, they started rebuilding. What seemed gone at first sight was never truly lost. The foundations of the *Institut* were as solid as Amsterdam’s own pillars.

François voiced his views on the status of their discipline under siege in a changing world and addressed the threats the *Institut* faced in the midst of expanding international organizations. He recalled the sadly forlorn ideals of a previous generation. What had become of the Protocol of Geneva, hailed by Loder in 1925 as Grotius’s belated but decisive victory? He called to mind the precarious formula of the *Institut* to keep aloof from political influence, while itself seeking to influence world affairs. Asser himself had given them fair warning in 1898, they should not attempt an all too rigid approach. In serving humanity’s highest interests and the wealth of nations they could not do without the sympathy of Governments and Parliaments.¹²³

There were acute grounds for the *Institut* to reconsider its position: the world of politics was invading their *sanctum*. New processes were being launched, new approaches to the law being developed, competitive organs and bodies on the rise. They were on the eve of yet another Multilateral Codification Conference, this time concerning the Law of the Sea.¹²⁴ Back in 1946 Sir Cecil Hurst had pointed out that the Conference formula, the legacy of the League, did not serve its purpose. He had recommended the launch of a small research body along lines to be suggested by the *Institut*.¹²⁵ The General Assembly had now entrusted codification to the ILC, whose members were handpicked on a personal title. Was there any task left for the *Institut*?

¹²¹ See Bastid (1957), pp. 993–996; Briggs (1958), pp. 100–107; Salmon (1958), pp. 335–353; Schätzel (1958), pp. 128–130; Udina (1958), pp. 639–642.

¹²² The Dutch contingent featured Verzijl, Van Asbeck and Offerhaus. The opening took place at the *Koninklijk Instituut voor de Tropen*. Most sessions were at *Trippenhuis*, headquarters of the *Koninklijke Nederlandse Akademie van Wetenschappen* (KNAW).

¹²³ *Annuaire de l’Institut de Droit international (AIDI)* 57, Vol. II, p. 153.

¹²⁴ The institutionalisation of the Hague Conference and its Permanent Bureau served similar purposes.

¹²⁵ *AIDI* 57, Vol. II, pp. 151.

As a long-standing Member and former President of the ILC François was eminently positioned to blow the whistle. He insisted on the unique formula of the *Institut*, a private association that, unlike the ILC, entertained no direct links with officialdom. Without confining itself to the Ivory Tower, the *Institut* should focus on the scientific angle to problematics.¹²⁶ With respect to the processes of *progressive development* and the actual *codification* of international law, one could not simply reserve the one task for the *Institut* and the second for the ILC. To a changing world that featured new forms of government, former parameters, doctrines and formulas were no longer adequate or acceptable. New appealing disciplines were on the rise, like political sciences. Their traditional field of research was widely being dismissed as ‘impotent’ and in peril of being side-tracked. It was a superficial reproach, of course. Still, for lack of time their research often did lack depth. It was time for the *membres* to reconsider their policies and working procedures.¹²⁷

7.2 Resolutions and Elections

The Amsterdam Session adopted Resolutions on Arbitration in Private International Law; Judicial Redress Against the Decisions of International Organs; and on the Distinction Between the Régime of the Territorial Sea and the Régime of Internal Waters. Its overall atmosphere was much favoured by the rich cultural programme, including a reception at *Soestdijk* by H.M. Queen Juliana, trips to the projects of land reclamation (*Zuiderzeewerken*), the Rijksmuseum and Kröller-Müller, a boat trip through Amsterdam, and a leisurely stroll through the Jewish quarters of the city, the provenance of the Asser and Jitta families.¹²⁸ Among the new associates elected were Sir Robert Jennings, Herman Mosler and Julius Stone, along with a new Dutch representative, Izaak Kisch (1905–1980).¹²⁹

Kisch was a man full of Amsterdam Jewish wit and a pragmatic lawyer. In the war he, too, had been included in the ‘Barneveldgroep’ and deported to *Theresienstadt*, just like Meijers and Tobias Asser’s youngest son, Jan.¹³⁰ From 1945 to 1975 he held the chair of comparative law, his preferred domain of studies, in Amsterdam.¹³¹ He was an expert on marriage law, a delegate to the *Conférence* in 1956, and in 1958 pleaded on behalf of the Netherlands before the ICJ, with Offerhaus on the Bench, in the case of the *Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)*. Another Jewish Dutch scholar who attended the *Conférences* in 1951, 1956 and 1964, indeed presided over its

¹²⁶ *AIDI* 57, Vol. II, pp. 152.

¹²⁷ *AIDI* 57, Vol. II, pp. 156–158.

¹²⁸ The Ladies Programme included trips to Haarlem, The Hague and the cut-flower auctions in Aalsmeer.

¹²⁹ Langemeijer (1980), pp. 202–207; Winkel (2004), pp. 172–181.

¹³⁰ Eyffinger (2019a), Ch. 26.7.1 (Meijers) and Ch. 56.2.7 (Asser).

¹³¹ He was director of the International Juridical Institute and a member of the Supreme Court (1960–1961).

special session in 1966, was Louis Izaak de Winter.¹³² He was a legal practitioner, the director of an assurance company and a co-founder of the *NILR* (f. 1953). He published extensively on *locus regit actum* (1936), nationality and domicile, and later held the chair of private international law in Amsterdam (1967–1972). In 1969 he lectured at the Academy.¹³³ His appointment at the *Institut* came the year before his untimely demise in 1972.

7.3 Dutch Members over the Past Half Century

For well over 60 years the *Institut* never returned—as a body, that is. By the same token, its *membres* and *associés* never left. Indeed, over the past two decades, with the sharp increase in International Courts and Tribunals, security organs and research centres in The Hague, the city saw *membres* return in ever more capacities and ever greater numbers to help expand the Hague Tradition into virtually their own. And all the while, as if in recompense, they kept refreshing their own numbers from the Hague breeding-ground, fostering that cyclical process of inspiration, back and forth, of a full century and a half. On its part, Dutch scholarship likewise kept stimulating the process, from enlightened self-interest one may suggest, by volunteering some of its most acute lawyers. As before, they varied in background and expertise.

In 1963 Bernard Röling joined their ranks, the principled criminologist from Groningen, a former Judge at the International Military Tribunal in Tokyo and the expert Legal Adviser to the GA, who entertained refreshing ideas for an overhaul of the classical law of nations.¹³⁴ In 1967 the Leiden school of Van Eysinga, Telders and Van Asbeck was rekindled with Van Panhuys, an intimate of François at the Foreign Ministry and in Geneva in 1958, whose sensitivity to the diverging demands of the law and politics was reminiscent of Asser himself.¹³⁵ In 1973 Verzijl's successor in Utrecht was elected, Maarten Bos, a veteran from the UN Office of Legal Affairs and an expert on codification issues.¹³⁶ The Dutch contingent only called

¹³² Izaak de Winter (1911–1972) was born Louis Barmat, the son of a Russian emigrant, and adopted his mother's name.

¹³³ De Winter (1969), pp. 347–504.

¹³⁴ Röling was at heart a criminologist; in his dissertation (1933) he censured the penitentiary system. He co-founded the Utrecht Institute of Criminology, then held the chair in Groningen (1950–1977), where he founded the Polemological Institute (1962). From 1953 he also lectured in international law. His views are reflected in *International Law in an Expanded World* (1960) and *The Tokyo Trial and beyond; Reflections of a Peacemonger* (posth. 1993). See Teunissen (1977), pp. xvii–lxviii; Roelofsens (1994a).

¹³⁵ Van Panhuys was an outspoken monist. In 1964 he lectured at the Academy on the national and international domains; *Recueil des cours* 112 (1964), pp. 1–90. For an assessment Bos (1976), pp. 3–4; van Emde Boas (1987); Roelofsens (1989)

¹³⁶ Bos was born in Surinam and remained committed to its legal position *vis-à-vis* the home country. In New York (1952–1958) he edited volumes V–VIII of the *R.I.A.A.* series, then taught public international law in Utrecht (1958–1984). He was counsel for Spain in the *Barcelona Traction* case at the ICJ. His views are best represented in his *Methodology of International Law* (1984). Bos was co-founder (1953) of the *NILR* and Secretary (1959–1968), then President of the NVIR (1968–1971). He was President of ILA (1970–1972) and the editor of its Centenary Jubilee volume. See Heere (1998).

for refreshment 15 years later, upon Kisch's demise. Henry Schermers was Van Asbeck's pupil, a Legal Adviser (he too) and an expert on International Organizations and Specialized Agencies, Later on, Schermers' interests focused on Human Rights; he served the European Commission for a long time.¹³⁷

Reviewing the Dutch *membres*, we have seen various lines of provenance and interest recur in our pages. A first, perhaps characteristic national phenomenon is the fair number of legal practitioners among the Dutch *membres*.¹³⁸ Again, quite a few were trained amongst the staff of the Foreign Ministry.¹³⁹ Interesting are the close links to the Colonies, Adat Law and the rights of native populations.¹⁴⁰ Both the public and private law traditions were fairly represented at all stages.¹⁴¹ University lines suggest significant watersheds: Amsterdam with its strong Jewish tradition¹⁴²; Leiden, with its scholars in the line of Van Eysinga and van Vollenhoven¹⁴³; the solid, principled contingent from Utrecht¹⁴⁴; finally, Groningen.¹⁴⁵ No less than five Dutch members served the *Institut* for 40 years or more.¹⁴⁶

The Dutch member very likely to be missed most by *membres* who were his colleagues for 22 years is Pieter Kooijmans (†2013). The shock of his loss is still too pregnant and the personal memories of his personality are still too vivid to need to be recalled. In his successive functions Kooijmans became close to many members of the *Institut*, most notably so, of course, in his capacity as the only Judge from the Netherlands at the World Court in the Post-War Era. When sauntering the corridors of the Palace this year, with scores of *membres* quotes, gestures and anecdotes will spring up spontaneously. Maybe we would do best to simply dedicate the above pages to his memory as the recent figurehead of what a proud Dutch discipline has to offer in retribution of the invaluable contributions the *Institut* has paid to it—and to the city that epitomises its ideals.

¹³⁷ Schermers' successive positions and major publications reflected his evolving interests. Under Van Asbeck he wrote a dissertation on *Specialized Agencies* (1957), then carried out pioneering research on the UN system (*International Institutional Law*, 1972) before focusing on legal protection within the EC. He authored *Judicial Protection in the European Communities* (1976), a volume of case law (1977) and a seminal monograph on the work of the Commission (1990). From 1963 to 1978 he held the chair of the Law of International Organizations in Amsterdam, hence from 1978 to 1993 in Leiden, where he headed the Europa Institute. Upon his retirement he held the Van Asbeck chair of Human Rights. The impressive three-volume *Essays* in his honour (1994) testifies to the respect that he commanded in the worlds of academia and public administration.

¹³⁸ As such qualify both Assers, Bos, van Hoogstraten, Loder, Meijers, Offerhaus, Rahusen, Schermers and De Winter.

¹³⁹ As with François, van Hoogstraten, van Panhuys and Schermers.

¹⁴⁰ This applies to Van Asbeck, Bos, Ferguson, De Louter and Röling (as it did to Van Vollenhoven).

¹⁴¹ The private domain was represented by the Assers, van Hoogstraten, Jitta, Kisch, Kosters, Meijers, Offerhaus and de Winter; the public domain by Van Asbeck, Bos, Ferguson, François, Loder, De Louter, Van Panhuys, Röling, Schermers and Verzijl.

¹⁴² The Assers, Jitta, Kisch, Meijers, and De Winter.

¹⁴³ From François, Meijers and van Asbeck to Van Panhuys and Schermers.

¹⁴⁴ From De Louter and Loder to Verzijl, Bos and Röling.

¹⁴⁵ Kosters and Röling. Den Beer Poortugael and Rahusen perhaps do not quite fit within the academic tradition; both were prominent members of both the *Institut* and the ILA.

¹⁴⁶ C.D. Asser 45 years; François 41 years; T.M.C. Asser and Verzijl 40 years; Den Beer Poortugael 39 years; Van Hoogstraten served a mere 3 years, de Winter just a single year.

Appendix

Alphabetical listing of the Dutch members of the Institut (1873–2019)

Asbeck, F.M. van	1889–1968	1950
Asser, C.D.	1866–1939	1894
Asser, T.M.C.	1873–1913	1873
Beer Poortugael, J.C.C. den	1832–1913	1874
Bos, M.	1916–2004	1973
Ferguson, J.H.	1826–1908	1888
François, J.P.A.	1889–1978	1937
Hoogstraten, M.H. van	1913–1980	1977
Jitta, J.D.	1854–1925	1913
Kisch, I.	1905–1989	1957
Kooijmans, P.H.	1933–2013	1991
Kosters, J.	1874–1951	1927
Loder, B.C.J.	1849–1935	1921
Loon, J.H.A. van	1948	2009
Louter, J. de	1847–1932	1904
Meijers, E.M.	1880–1954	1947
Nollkaemper, P.A.	1962	2017
Offerhaus, J.	1892–1966	1954
Panhuis, H.F. van	1916–1976	1967
Rahusen, E.N.	1830–1913	1898
Röling, B.V.A.	1906–1985	1963
Schermers, H.G.	1928–2006	1989
Schrijver, N.J.	1954	2007
Soons, A.H.A.	1948	2015
Struycken, A.V.M.	1936	2005
Verzijl, J.H.W.	1888–1987	1947
Winter, L.I. de	1911–1972	1971

Chronological listing of the Dutch members of the Institut (1873–2019)

1873–1913	Asser, T.M.C.	40 years
1874–1913	Beer Poortugael, J.C.C. den	39 years
1888–1908	Ferguson, J.H.	20 years
1894–1939	Asser, C.D.	45 years
1898–1913	Rahusen, E.N.	15 years
1904–1932	Louter, J. de	28 years
1913–1925	Jitta, J.D.	12 years
1921–1935	Loder, B.C.J.	14 years

1927–1951	Kosters, J.	24 years
1937–1978	François, J.P.A.	41 years
1947–1954	Meijers, E.M.	7 years
1947–1987	Verzijl, J.H.W.	40 years
1950–1968	Asbeck, F.M. van	18 years
1954–1966	Offerhaus, J.	12 years
1957–1989	Kisch, I.	32 years
1963–1985	Röling, B.V.A.	22 years
1967–1976	Panhuyts, H.F. van	9 years
1971–1972	Winter, L.I. de	1 year
1973–2004	Bos, M.	31 years
1977–1980	Hoogstraten, M.H. van	3 years
1989–2006	Schermers, H.G.	17 years
1991–2013	Kooijmans, P.H.	22 years
2005–	Struycken, A.V.M.	14 years
2007–	Schrijver, N.J.	12 years
2009–	Loon, J.H.A. van	10 years
2015–	Soons, A.	4 years
2017–	Nollkaemper, P.A.	2 years

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