T.M.C. ASSER INSTITUUT

FORTY YEARS OF INTERNATIONAL LAW

on the occasion of

40 years of the T.M.C. ASSER INSTITUUT

edited by

Dr. Olivier Ribbelink

Head of Research
T.M.C. Asser Instituut

T • M • C • ASSER PRESS

Published by T·M·C·Asser press
P.O. Box 16163, 2500 BD The Hague, The Netherlands
<www.asserpress.nl>

T.M.C. Asser Instituut Institute for Private and Public International Law, International Commercial Arbitration and European Law

Institute Address: R.J. Schimmelpenninck laan 20-22, The Hague, The Netherlands; Mailing Address: P.O. Box 30461, 2500 GL The Hague, The Netherlands; Tel.: +3170 342 0300; Fax: +3170 3420 359; Internet: www.asser.nl.
Over forty years, the T.M.C. Asser Institute has developed into a leading scientific research institute in the field of international law. It covers private international law, public international law, including international humanitarian law, the law of the European Union, the law of international commercial arbitration and increasingly, also, international economic law, the law of international commerce and international sports law.
Conducting scientific research, either fundamental or applied, in the aforementioned domains, is the main activity of the Institute. In addition, the Institute organizes congresses and postgraduate courses, undertakes contract-research and operates its own publishing house.
Because of its inter-university background, the Institute often cooperates with Dutch law faculties as well as with various national and foreign institutions.

40 years of the T.M.C. ASSER INSTITUUT

On 28 September 2006, the T.M.C. Asser Instituut for International Law (a cooperative platform of the Law faculties of the Netherlands' universities) commemorated its 40th Anniversary with a festive meeting, in the form of a seminar, in the Great Hall of Justice at the Peace Palace in The Hague.

After an opening address by the Chairman of the Governing Board of the T.M.C. Asser Instituut, Professor Michiel Scheltema, the President of the International Court of Justice, H.E. Judge Rosalyn Higgins, delivered a substantive lecture on the modern history of public international law in the last 40 years. She eloquently put into perspective certain developments in international law and in state practice during this period. Comparable surveys were presented on private international law by Dr Hans van Loon, the Secretary-General of the Hague Conference on Private International Law, and on developments in European Law by Professor Jaap de Zwaan from the Clingendael Institute in The Hague and the Erasmus University in Rotterdam. Concluding remarks were presented by Professor Frans Nelissen, the Director of the T.M.C. Asser Instituut, in which he emphasized the importance of knowledge-based cooperation in The Hague. He also referred to the role of the T.M.C. Asser Instituut in the Hague Academic Coalition.

The seminar was concluded with the presentation of the Asser Medal of Merit by Dr Wim Deetman, the Mayor of The Hague, to Dr Sybolt Noorda, the former Chairman of the Board of the University of Amsterdam, the governing body of the T.M.C. Asser Instituut.

Opening Address

Professor Michiel Scheltema
Chairman of the Governing Board of the T.M.C. Asser Instituut

(...)

It is a great pleasure and a great honor for me to welcome you on the occasion of the 40th Anniversary of the T.M.C. Asser Instituut.

We are especially grateful to be able to have this celebration here in the Peace Palace for two reasons: in the first place, because the founding ceremony of the Asser Institute, 40 years ago, also took place in this building. At that time the Small Courtroom was used. Now we have the privilege of using the Great Hall of Justice of the International Court of Justice. Of course, we hope that this change of rooms is an indication that the Institute has grown up in those 40 years.

However, the second reason is of greater importance. It is the Asser Institute's goal to contribute to the development of international law by stimulating academic research, by organizing conferences, by training students and through other related activities. It is an academic institution in The Hague, where there is no university. But, of course, The Hague is the city of international law. This is not only a privilege for The Hague, but it is also an opportunity to make maximum use of the presence of so much intellectual capacity in the field of international law. In fact, I think it is an obligation for all who are convinced of the growing importance of law in an international world to make use of this situation. And maybe it is even an advantage that there is no university in this city. That makes it easier to cooperate with a wide range of universities in this country and abroad. Today's meeting in this room, and the presence of the representatives of so many countries and organizations that have an interest in the further development of international law, is a sign that we are on the right road.

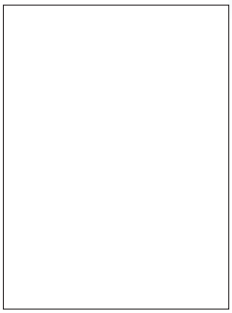
The Institute was named after Tobias M.C. Asser. He lived in the 19th and the beginning of the 20th century, and he was, *inter alia*, an expert in private international law, but he was – more in general – also active in many fields of international law and the peaceful settlement of international conflicts. He initiated the Hague Conference on Private International Law, and also played a significant role in bringing the Peace Conference to The Hague in 1899. Like Tobias Asser, the Institute is active in various fields of international law. Today, the developments of the last 40 years in three of the fields where the Asser Institute is active will be discussed.

We are extremely pleased that the keynote speech on the developments in public international law will be delivered by President Higgins of the International Court of Justice. At the beginning of this year, Rosalyn Higgins was elected President of the ICJ, where she has been a member of the court since 1995. She has an impressive career in international law, both as a practitioner and as an author of academic works. She holds honorary doctorates from a large number of universities in Great Britain and other countries.

The keynote speech by President Higgins will be followed by a speech by Dr Hans van Loon, the Secretary-General of the Hague Conference on Private International Law. He will present a brief overview of the developments in the field of private international law. Dr. van Loon started his career as a lawyer, but he joined the Hague Conference more than twenty years ago. The University of Osnabrück has awarded him an honorary doctorate.

Tobias Asser was not an expert in European law. That field of law did not exist in his time. But for the T.M.C. Asser Instituut, European law has become an important field, and we are pleased that Professor Jaap de Zwaan will deal with the developments in European law. Professor de Zwaan is currently the Director of the Clingendael Institute and, until a year ago, was a member of the Board of the T.M.C. Asser Instituut.

40 years of
PUBLIC INTERNATIONAL LAW



H.E. Judge Rosalyn Higgins,
President of the International Court of Justice

(...)

I have been very glad to accept the invitation to participate in this symposium marking the 40th anniversary of the T.M.C. Asser Instituut.

The namesake of the Institute, Tobias Michael Carel Asser, made a contribution to the development of public international law that is still reflected today in the Statute of the International Court of Justice. During the drafting of the *1899 Convention for the Pacific Settlement of Disputes*, Mr. Asser proposed the idea of allowing a State that is a party to a convention that is under consideration in proceedings between two other States to intervene to present its construction of the convention in question. The intervening State will then be bound by the construction adopted by the Court. This idea was expressed in Article 56 of the 1899 Convention, which later formed the basis for Article 63 of our Statute and the Statute of our predecessor, the Permanent Court of International Justice. The rationale for Article 63 is to foster uniform interpretation of a convention and thus to promote the coherent development of international law. These policy reasons have even more resonance today than they did a century ago, with the burgeoning of multilateral conventions and of the judicial bodies charged with interpreting and applying them.

The Asser Institute has chosen to celebrate its anniversary by inviting speakers to reflect on one of the three fields of law on which the Institute conducts important research. My designated theme is '40 Years of Public International Law'.

Since 1966, some things have remained constant, and yet much has changed. What has remained constant is that international law is still an essentially inter-State system, with the Charter of the United Nations at its heart. What has changed is that it has come to be recognised as relevant too to non-State actors, that its norms cover entirely new topics, still in their infancy in 1966, such as space, human rights, trade law and environmental law. And new, too, is the huge turn towards third-party settlement and the birth of a great array of courts and tribunals to meet that desire.

International law is no longer *just* a law for States. It impacts upon individuals, corporations, and non-governmental organisations. Today, these are regarded as having both rights and responsibilities under international law. International humanitarian law lays responsibilities upon individuals; human rights law gives rights to individuals; international law specifies good governance standards for international financial institutions to insist upon. Corporations cannot ignore international law standards. And NGOs have become significant players in some areas of international law.

I can do no more than offer a pen sketch of some of what I see as I look back over 40 years, but these introductory remarks will form the backdrop of that pen sketch.

At the beginning of the sixties, the main actors in the world of international law were mainly – with a few exceptions – the developed States of the world, the 'old' States. That decade marked the coming on to the stage of many newly independent countries, particularly from Africa, and the world of international law has never been the same again.

There was scepticism, indeed almost a hostility, among this community of new States as to whether international law was a law relevant to their interests as well as to the interests of the so-called first world. At the same time, the longer established States wanted to feel secure that international law would continue to provide a core stability that would be applicable to all nations.

It is easy today to forget that the sixties were characterized by a period of intense North-South tension in which many of these new States did not trust the institutions of international law, feeling that international law was a law that had not been made by them. But they rapidly came to appreciate that they could be significant players both in treaty-making and in the refinement of custom. It took less than two decades for these States to become adept at using the General Assembly of the United Nations for promoting changes to existing law and introducing new concepts that reflected their aspirations. Many of these new ideas ultimately finished up as General Assembly resolutions.

Resolutions of the General Assembly are not binding, but they can have an important impact on the development of customary international law. In the *Advisory Opinion on the Legality of the Threat of Use of Nuclear Weapons*, the International Court noted that:

> 'General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is neces-

> sary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule.' (para. 70).

In the sixties, the idea of self-determination as a legal, rather than a political, concept was novel. The General Assembly and the ICJ played a significant role in this transformation. The legal tools for peacefully ending colonialism were forged.

And then great battles were fought over what was then termed by the one side as 'economic colonialism' and by the other as the need for stability and protection of international investment. One of the most significant resolutions in this early period was Resolution 1803 (1962), the *Declaration on Permanent Sovereignty over Natural Resources*. This resolution declared inviolable the right to permanent sovereignty over natural resources and the right to nationalize or expropriate on the grounds of 'public utility, security or the national interest'. It also laid down the legal obligation for the payment of 'appropriate compensation' – a departure from the classical formula of 'prompt, adequate and effective compensation'. It is hard to recall how bitter the battles were. The concept of Permanent Sovereignty over Natural Resources was later reaffirmed in the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights of 1966, and subsequent General Assembly resolutions, namely Resolution 3201 (1974), the Declaration on the Establishment of a New International Economic Order, and Resolution 3281 containing the Charter of Economic Rights and Duties of States, radicalized the concept further. By the late eighties, a largely effective consensus had emerged, essentially reflecting the original 1803 Resolution – but not the later more radical resolutions. We see these new international law norms applied each week by arbitral tribunals and by the Iran-United States Claims Tribunal.

A further area in which developing countries have had a particular interest in the deepening of international law and the progressive codification of rights and responsibilities is the law of the sea. In 1967, Malta's Ambassador, Mr. Arvid Pardo, called for 'an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction'. This set in motion a process that was to last 15 years and saw the creation of the UN Seabed Committee, a signing of a treaty banning nuclear weapons on the seabed, the adoption of a General Assembly resolution declaring that all resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind, and the convening of the Third UN Conference on the Law of the Sea. The Conference ended with the adoption of the *UN Convention on the Law of the Sea*, a treaty that pays attention to the special interests and needs of developing countries, including their participation in activities in the Area (Article 148) and the provision of scientific and technical assistance (Article 202). We think of UNCLOS today as a technical treaty: but at the time it was hard fought, reflecting in particular divergent regional interests. The first world, too, had economic and strategic interests in this codification. The arrival of the detailed provisions of the Convention, now so solidly part of the corpus of our law, is a signal achievement of the last 40 years.

Confidence in the content of international law has led to confidence in third party decision-making under international law. From 1960 to 1980, only 5 cases came to the International Court involving African countries. In the past decade, 11 such cases – more than double in half the amount of time – have come to the Court.

In fact, the Court is being more widely used than ever before. Some 59 States have come before the International Court since 1996. They have participated as applicants and respondents in contentious cases or have submitted written or oral statements in advisory opinion proceedings. These States include the 'traditional clientele' of the Court such as the United States, France, Germany, the United Kingdom and Spain. However, States from what was Eastern Europe, from Asia, Africa, Latin America and the Middle East have also appeared before the Court. Of the cases on the current docket, there are four between European States, four between Latin American States, two between African States, one between Asian States and two of an intercontinental nature.

In 1966, the International Court stood almost alone as a vehicle for resolving international law disputes. But the past two decades, in particular, have seen the burgeoning of international courts and tribunals equipped to deal with disputes that might arise under the growing reach of international law. The International Court is now joined by regional human rights courts, by international criminal courts and tribunals, by courts which are part of treaty systems for regional economic integration, by a Tribunal for the Law of the Sea, by decision-making panels on trade – and very many more.

Our response to this phenomenon has to be a positive one. We are living in a specialized world where particular courts and tribunals have their own important role to play – a role that often envisages flexibility in procedures, adjudicators possessing special expertise, access going beyond state parties, and a necessary speed of decision.

This growth in the number of new courts and tribunals has generated a certain concern about the potential for a lack of consistency in the enunciation of legal norms and the attendant risk of fragmentation. Yet these fears have not been borne out. The general picture has been one of specialized international courts seeing the necessity of locating themselves within the embrace of general international law. Parties themselves prefer to submit their disputes for settlement to bodies whose decisions are characterized by consistency, both within that body's own jurisprudence and with the decisions of other international bodies confronted with analogous issues of law and fact. There is an incentive for international decision-makers to pay careful attention to the work of their colleagues. What is striking is not the differences between the international courts and tribunals, but the efforts made at compliance with general international law. We see this in a variety of areas where more than one judicial body is operating, such as the law of the sea, human rights law and environmental law.

This explosion of judicial activity at the international level has been matched by an increased engagement with international law at the domestic level. Today, there is a significant permeability between what is international and what is national. There is not only a growing interface between international law and national law, but also between international courts and national courts. Obviously,

where treaties are incorporated, or otherwise received into national law, they may become matters of legal relevance for national courts. But standards of customary international law are also invoked before national courts, and national courts increasingly are faced with practical questions about what impact international judgments should have on decisions they themselves have to make.

Of course, the participation of national courts and legislatures in the formation of international law was already recognized in the Statute of the International Court of Justice. Article 38, which effectively states the sources of law for the Court to apply, provides that the Court shall apply, *inter alia*, 'international custom, as evidence of a general practice accepted as law'. The process of identifying custom involves a close examination of State practice, including national legislation. Article 38 also states that the Court can look to 'judicial decisions' – note, not 'international judicial decisions' – as a subsidiary means for the determination of rules of law. But who can doubt that that potential has today become a reality? Hardly a week goes by when I do not receive on my desk a case of great importance by a leading national jurisdiction, based on its analysis of international law. National courts look to us, and in certain areas of international law, we look to national courts.

Almost from the inception of the International Court, it had to operate within the negative background of the Cold War. There was a multi-polar international system of power, on which was superimposed the great doctrinal hostilities of capitalism and Marxism. These factors necessarily constrained the overall contribution that the Court could make.

The Soviet perspective on peaceful coexistence sat uneasily with the idea of third party dispute resolution. Referral of disputes to the International Court was seen as contrary to the spirit of peaceful coexistence and an inadequate response to problems that were viewed as political, not legal in nature. Moreover, there was reticence as to international law itself. The socialist perception of international law was exemplified by the explanation of Tunkin in his 1958 lectures at the Hague Academy, that international law expressed the wills of the ruling classes of different States. The ending of the Cold War has led to extraordinary changes. Opposition to third party settlement has been dropped. It is routinely included, in one form or another, in multilateral treaties. In the 1990s, the ICJ saw its first intra-East European case. Ukraine and Romania have a case pending before us. Russia is now supporting positive references to the ICJ in key UN documents. And in 2005 President Putin visited the International Court, saying words inconceivable 40 years ago.

In 1970, the Declaration on Friendly Relations stated that 'international disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.'[1] International judicial settlement had no specific mention. Thirty-five years later, more than 170 Heads of State and Government met at the United Nations Headquarters for the 2005 World Summit. The Outcome Document that resulted from the Summit recognized the need for universal adherence to and implementation of the rule of law at both the national and international levels. It specifically recognized the role of

[1] See K.J. Keith, 'The World Community and its Laws', (2006) *NZ Law Review* 2, 9-10.

the ICJ and called upon States to consider accepting the jurisdiction of the Court and to consider means of strengthening the Court's work.[2]

Of course, such general statements must be backed by real deeds.

Of the 66 declarations accepting the jurisdiction of the International Court, one-third have been deposited in the past 15 years, almost all of them by States which have never before accepted the Court's jurisdiction.

We have also seen the withdrawal by States of reservations to multilateral treaties excluding the jurisdiction of the International Court for disputes arising under the treaty in question. At the same time, as already mentioned, references to the ICJ in multilateral treaties have increased since the end of the Cold War. At present, some 300 bilateral or multilateral treaties provide that disputes concerning the application or interpretation of the instrument may be referred to the Court for decision.

There has been significant progress in these areas. But in another major area of international law – the law as it relates to the use of force – some initial progress seems to have been replaced by great uncertainties.

It is hard to exaggerate how far we have moved in the last 40 years from the original ideas of the Charter about collective security.

The original intention was that the use of force be restricted to that of self-defense, controlled *ex post* facto by the Security Council; and that this would be made possible by collective security to be provided by the UN. Even before the sixties it had become clear that States were not willing to establish and commit to this collective security system envisaged by the Charter.

It is only legal creativity that has provided some cover at all.

From the middle of the fifties, with the UN Emergency Force (UNEF), to early in the sixties, with the UN Operation in the Congo (ONUC), we had the embarking upon an alternative line of military action by the UN, over which there was great controversy at the time as to its legality – that is, peacekeeping.

Peacekeeping has seen many models. The 'classical' model was characterized by the prior achievement of a ceasefire, an invitation from the government concerned, formal agreements with the UN and an understanding that force would only be used in self-defense. It did not take too long before it was apparent that this clear-cut model would have to become less clear-cut around the edges.

In the Congo, the question was already asked as to what should be done if it was not always so clear who was the legitimate government; and whether the UN could in any circumstances at all assist a government in suppressing an insurrection, if that insurrection was said to be destabilizing international peace.

All the complexities and uncertainties that have followed from the mixing of the internal and international had begun and have never left us till this very day.

Peacekeeping now began to take on a multitude of forms and was directed towards a multitude of purposes. As early as UNFICYP in Cyprus, UN peacekeeping operations began to take on ancillary functions: persuasion and negotiation with the local military personnel and officials; humanitarian relief; the provision of safe passage for convoys; protection of the cultivation of crops. In

[2] Summit 2005 Outcome Document, para. 134(f).

Kosovo and East Timor, the missions were directed to supporting the temporary UN administration.

Some operations were enormously successful, some foundered. Part of the international law that related to their operation had become rather clear. Other legal elements remained contested and uncertain.

The failure of the intended collective security system led to perceived needs for military action that the UN alone simply could not fulfill. Under Secretary-General Boutros Ghali, there began an era of seeking to use regional organizations as an aid to UN action. Article 53 of the Charter provides that 'The Security Council should, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority.'

In fact, the first body turned to for this assistance was a body that has never described itself as a regional organization. NATO has always insisted that it is a collective self-defense organization.

In the Balkans NATO became an international peacekeeper acting as it itself clearly stated within the parameter of agreements forged with the UN and essentially under its authority. There appeared to be a political unwillingness to use Chapter VII of the Charter for enforcement, but an acknowledgement that peacekeeping intermittently close to enforcement was now needed by the situation. Talk was heard of 'robust peacekeeping'. It has not proved a felicitous concept. And this audience needs no telling of all the problems associated with military action in the Balkans.

There continue to be attempts by the UN to utilize, or at least to bless, the use of regional organizations. We have seen ECOWAS involved in peacekeeping efforts in Liberia since 1990 and the African Union, with the full support of the UN, doing what it can in Darfur.

The UN has not been able, through robust peacekeeping or otherwise, to ignore indefinitely the failure of the intended system under Chapter VII of the Charter enforcement. Here again, ersatz models have been resorted to: most notably, the authorization of a 'coalition of the willing' after Iraq's invasion of Kuwait. The optimism at that time that this would provide a model which the wider international community could support for the future was very short-lived.

I have no need to go into the political reasons which led to a situation in which the United States has felt it necessary to stage its most recent intervention in Iraq, with some allies, outside of the UN system. A significant majority of States believe that it is for the Security Council to decide if there is indeed a threat to or a breach of the peace that requires military action and disagreed with the US as to whether that necessity had been shown. This is coupled with an insistence on their part that all action outside of UN authorization is necessarily illegal.

As if this were not enough, we have in my view entered a period of increasing uncertainty about related legal norms that have served us so easily and well since the inception of the UN Charter.

For long years there was general broad satisfaction with the prohibition on the use of force as articulated in Article 2(4) and the permitted recourse to self-defense as articulated in Article 51 of the Charter. Today, even this seems to have become less clear. Because of the inadequacies of the intended collective security system, States are interpreting more and more widely the circumstance

in which they claim to be able to have recourse to self-defense. There have been legal debates as to whether the 'self' that must have been attacked is the country itself or whether self-defense would be triggered by an attack on public servants and embassies abroad. There have been debates on whether the Article 2(4)-Article 51 formula operates when attacks are by non-State actors – irregular forces or indeed terrorists. The US has said, as regards the latter, that in the real world the doctrine of pre-emptive military entitlement is needed.

The ICJ has made some occasional findings on some discrete parts of these great problems, but it cannot be said that there exist agreed legal norms in which the entire international community has the confidence it once had in the Article 2(4)-Article 51 paradigm.

Mere repetition of the words of Article 2(4) and Article 51 cannot alone suffice. There are contained within them too many unanswered questions that have arisen in our changing world.

These questions have to be addressed and answers found that underpin these provisions, providing for multilateralism on the one hand but also effective security on the other.

Finally, on humanitarian law, *jus in bello*, very substantive strides have been made in these last 40 years. We have had the conclusion of the Additional Protocols and the setting up of international tribunals to hold individuals accountable for genocide and crimes against humanity. At the same time, I do find it deeply depressing that in our politically divided world our most basic precepts are today being challenged. By that I mean that prior illegalities by governments cannot excuse the deliberate targeting of civilians in response. We, as international lawyers, cannot repeat that often enough. But this message so often seems to be lost in the sea of political charges and counter-charges.

(...)

I know I speak for the entire Court when I offer my congratulations to the Asser Institute on its 40th Anniversary. We look forward to many more years of your important research in the field of public international law.

40 years of
PRIVATE INTERNATIONAL LAW

Dr Hans van Loon
Secretary-General of the Hague Conference on Private International Law

(...)

It is a great pleasure for me, on behalf of the Hague Conference on Private International Law, to congratulate our friends of the board and staff of the Asser Institute on its 40th Anniversary. It is in a way, to us, as if we were celebrating today a *fête de famille*. After all, Tobias Asser, the godfather of the Institute, is also the founding father of the Hague Conference on Private International Law – the genius who initiated, inspired and chaired its first four diplomatic sessions during *la belle époque* around the turn of the last century.

There is more to the bond between the Asser Institute and the Hague Conference than our sharing of a common patron, however. From its very inception, the Institute's research in private international law has extended into the work of the Conference. The outstanding symbols of this scientific activity are the five proud volumes of *Les Nouvelles Conventions de La Haye*. They represent more than two decades of research by the Institute on the application of Hague Conventions by domestic courts worldwide. More recently, we have embarked together, through the Hague Forum for Judicial Expertise, on a very different exciting new adventure: the organization of seminars for judges from Latin America, Africa, and soon also from India. Throughout the past 40 years we have had, at various levels, a very friendly working relationship. At the Conference we very much value this relationship and hope that it will continue for many years to come. So, long live the T.M.C. Asser Instituut!

There has been, from the beginning, a truly *visionary* element in the Asser Institute's mandate to combine the study of private and public international law,

and European law (formerly the law of international organizations). Indeed, one of the most striking developments over the past 40 years has been the growing interaction between, and the complementarity of, these branches of the law. Considered from the point of view of legal sources of private international law, this has become most visible in the broad range of multilateral treaties and, more recently, of European Community instruments dealing with private international law, whereas domestic statutes and case-law used to dominate the scene 40 years ago. But this 'de-nationalization' of the *sources* of private international law is itself a manifestation of a paradigm shift that affects the law at a deeper level, brought about by the growing interdependence of markets, societies and people worldwide, by the instant sharing of information through the media and the Internet, and by the appearance of non-State actors in addition to States on the world stage, in other words: by globalization and regional integration.

The backcloth of private international law in the years following the Second World War was the nation state, with its attributes of nationality and territory. Nationality and domicile in respect of the status of natural and legal persons, families and succession, and the place of tort, and, in contracts, the parties' choice of the law, operated as reliable criteria to determine what laws were applicable and which courts had adjudicatory competence. Private international law was generally more concerned with the coordination of legal systems than with policies. It was believed that just results would flow, indirectly, from 'neutral' private international law rules. Where the involvement of foreign authorities or courts was indispensable, international 'assistance' was provided, again indirectly, through diplomatic or consular channels. In short, and with some exaggeration: private international law operated as a somewhat self-content part of the domestic order to deal in a rather abstract manner with a relatively small number of (cross-border) issues. All this has changed quite dramatically during the past 40 years.

In the brief time available, I can only highlight a few aspects of this profound transformation of the landscape of private international law. The first aspect is the increased and increasing significance of direct communication and cooperation between administrative authorities, and more recently also between courts, across international borders. The second aspect concerns the growing role of private international law in furthering substantive law policies including values shared by the international community, and in particular its growing interaction with human rights law. The third aspect relates to the interface between information and communication technology and private international law. Together these developments have led to a remarkable denationalization of private international law, and have redefined its role as an increasingly vital component of the legal architecture of our shrinking world.

- The increasing significance of direct communication and cooperation between administrative authorities and courts across international borders

One year before the Asser Institute was founded, in 1964, the 10th Session of the Hague Conference came up with an innovative legal device. The idea was simple: given the increasing volume and significance of cross-border litigation in civil

and commercial matters, the age-old diplomatic and consular channels were becoming much too complex, slow and expensive for the transmission of requests for the service of process abroad. It would be much easier to have direct access to the body that had the oversight within the other State. So the concept of the Central Authority was born, to start a quiet but highly successful career in countless Hague, European and Inter-American instruments as well as in domestic laws. The next step was the institution of regular meetings of these authorities at the Peace Palace (the first of which took place in 1977), and the formation of horizontal networks not between States as such but directly between the Central Authorities themselves. This in turn facilitated mutual understanding, and did much to bring legal systems together. A concrete example is the introduction of a provision in the French *Nouveau Code de Procédure Civile* (Article 740) that enables the cross-examination of witnesses, a procedure unknown in French domestic law, to give effect to requests made by courts from common law countries under the Hague Evidence Convention.

Next, the Central Authority device was transplanted into the field of cross-border family relations. As this happened, the functions of Central Authorities extended considerably, to include exchanging information, promoting agreed solutions, by mediation and other alternative dispute resolution mechanisms, and providing assistance to each other. Within this administrative cooperation framework it was possible to create entirely new solutions for problems that had so far been intractable. The 1980 Hague Convention on the Civil Aspects of International Child Abduction stands out as the first international instrument to create an effective remedy to return wrongfully removed children to their previous habitual residence so that the courts there may take decisions on custody, and this without any concern for the citizenship of the child or of others involved. The change of mentality this Convention has effected can hardly be overestimated: to ask authorities and judges not to look into the full breadth of the child's best interests, nor to pay decisive attention to the nationality aspects, requires what Markesinis has called 'the internationalist mentality'.[3] Needless to say that nurturing and further developing this mentality is quite a task, particularly at the global level, and the Hague Conference has deployed a range of initiatives to meet this challenge.

Similar cooperative frameworks are now successfully operating worldwide for the protection of children in intercountry adoption. They are paralleled, to a certain extent, by global and regional networks in other areas, such as competition law and finance law. What emerges from this development are new forms of world and regional governance, which could well be further extended into new areas such as economic migration, for example, to provide structure to temporary migration schemes or to facilitate remittances by migrants to their home countries.

The past four decades have seen another fascinating new development: cross-border cooperation between courts. In a globalizing world the likelihood that more than one court can legitimately claim jurisdiction increases exponentially.

[3] B.S. Markesinis, 'Bridging Legal Cultures', 27 *Israel Law Review*, pp. 363-383, (1993).

When Maxwell Communication Corporation, an English holding company with several hundreds of subsidiaries worldwide, ran into financial difficulties, it filed for Chapter 11 protection under the bankruptcy code in New York and simultaneously entered into insolvency proceedings in London. It was only through a direct dialogue between the two courts that the procedures for liquidation could be settled. UNCITRAL's model law of 1997 on cross-border insolvency now deals explicitly with such forms of international cooperation.

Similar judicial dialogues have developed in the area of cross-border family relations, based on informal or even formal arrangements, for example, in order to coordinate the return of abducted children under the Child Abduction Convention. The 1996 Hague Child Protection Convention has introduced an exceptional possibility for a transfer of jurisdiction, e.g., by the court of the habitual residence of the child to the court of its nationality when that court is better placed to deal with the case. Judicial seminars, such as the ones I mentioned earlier, have stimulated the designation, informally or even formally, of liaison judges, who may assist in explaining their legal systems to their counterparts in other countries and help to provide other forms of cooperation. The 'Malta process' is an attempt to stimulate such cooperation also with States from within the Sharia tradition.

Within the European Union, administrative and judicial cooperation have received a boost from the Treaty of Amsterdam, which has established a new competence of the Community. The principle of automatic recognition of decisions from the courts of Member States requires close cooperation. A European judicial network was created in 2001 to facilitate direct contacts and other forms of cooperation.

- The growing role of private international law in furthering substantive law policies and its growing interaction with human rights law

The view of private international law as a system of neutral coordination rules, that was common 40 years ago, has also profoundly changed. Dissatisfaction with this view had become stronger since the early sixties with the appearance of the welfare state. Notions such as, on the one hand, party autonomy and, on the other, the need to protect weaker parties, or the need for non-discrimination between the sexes and between children born within and out of wedlock, started demanding to be taken into account when it came to determining the jurisdiction of the courts and the applicability of laws. In a seminal decision by the New York Court of Appeals in 1963 (*Babcock* v. *Jackson*)[4] rendered in the context of torts, the question was put in straightforward terms: should the law of the place of tort *invariably* govern the availability of the relief, or should the applicable choice of law rule also reflect a consideration of other factors relevant to the purposes by the remedy? 'Yes, it should' was the reply given by the Court of Appeals, and it resonated widely also in Europe. Three years later, the Dutch Supreme Court, in *Alnati*, made another inroad into the traditional rules of the game by admitting

[4] Court of Appeals of New York, 1963. 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279.

that weighty substantive law interests, even of third States, may impact on determining the applicable law.

Although these developments did not ruin the old paradigm, they have led to a much more result-oriented private international law. Several Hague Conventions, in the field of torts, contracts and family matters, the Rome Convention and draft Regulation on the Law Applicable to Contractual Obligations, its Inter-American sister – the Inter-American Convention on the Law Applicable to International Contracts, the draft Regulation on the Law Applicable to Non-contractual Obligations, and a whole range of new private international law codes reflect this new approach. It is most effective, of course, when combined with access to the courts. Hence the introduction in the Brussels and Lugano Conventions on jurisdiction and enforcement of special provisions on choice of forum, and rules to give consumers and employers access to the courts in their own countries. At the global level, the Hague Convention on Choice of Court Agreements, adopted in 2005, should at least safeguard the choice of court by parties in a commercial context (B2B), while work may continue to establish uniform jurisdiction rules for B2C cases and in cases where the parties have not agreed on a choice of court.

A landmark decision by the German *Bundesverfassungsgericht* in 1971[5] heralded the beginning of a growing interaction between private international law and human rights law. It followed from this '*Spanierentscheidung*' that the patriarchal connecting factor of the nationality of the husband/father was incompatible with the fundamental rights enshrined in the German Constitution. This new view was followed in Italy, in the Netherlands (*Chelouche* v. *Van Leer*), and elsewhere, and led to a wholesale revision of conflict rules, including the denunciation of old Hague Conventions. But the correcting influence by human rights law did not stop there. It could also lead to the rejection of the application of a foreign law or of the recognition of a foreign decision in a concrete case. For example, unilateral repudiation of a wife by her husband without a decent procedure is not acceptable in this part of the world as it is contrary to our constitutions and the European Convention on Human Rights. However – and here private international law brings an important nuance – the acceptability or non-acceptability may depend on the degree to which the foreign repudiation is connected to the forum. If the case is embedded in the foreign legal order, our fundamental values are not necessarily at stake, and the result may have to be accepted. Here private international law plays its role as a broker between different value systems.

The growing complementarity of private international law and human rights law has appeared in a remarkable way in the area of child protection. Here, the almost universally ratified United Nations Convention on the Rights of the Child of 1989 sets broad norms and principles, but calls on States to cooperate to provide nuts and bolts for achieving cross-border child protection. Three modern Hague Conventions on child protection are now operating on an increasingly global scale to meet this call, and a fourth, on maintenance obligations, is in the making. The Committee on the Rights of the Child now systematically recommends that States sign up and adhere to these instruments.

[5] BVerfGE 31 p. 58 et seq.

- The interface between information and communication technology and private international law

One of the most telling manifestations of globalization is without doubt the Internet. The spectacular growth of the use of e-mail and of the World Wide Web has led to a global communications medium that transcends geography. It seems to challenge the very basis of traditional private international law: the assumption that legal issues can be connected to the laws of nation-states through a localizing factor. So do other networks of electronic communication, for example those used to effectuate the transfer of financial securities, which nowadays are mostly held via intermediaries and in dematerialized form – good for a daily volume of global trade worth trillions of dollars.

There is, of course, one private international law device that can be of avail in the new cyber world, and that is the designation by the parties of the applicable law or the competent court. The agreement of the parties, in principle, saves the courts the localization effort. This is why the new *Hague Convention on indirectly held securities* departs from traditional localization techniques and opts for the designation of the law by the parties to the account agreement.

Let us return to the Internet, however: free choice of courts or of laws presupposes a more or less equal bargaining power as between the parties. So what about the protection of consumers? And what if the parties have not agreed on the competent court or on the applicable law, as will be the case generally in torts?

Over the past ten years these questions have been intensely argued before the courts on both sides of the Atlantic, as well as in Australia and other places, in particular in respect of torts; for consumer contracts, an interpretative declaration on the Brussels I Regulation requires some form of *targeted activity* by the consumer's contracting partner, as a condition for the consumer to be able to sue at his or her 'home' court. A similar rule is proposed in the draft Regulation on contractual obligations. The law is still in flux here, partly as a result of progressing technology, but partly also because the Internet brings different value systems in immediate contact with one another.

The recent *Yahoo!* lawsuit illustrates these problems. *Yahoo!* was operating a website, located in the United States, which contained an auction service where Nazi material was on offer. The French court ruled in November 2000 that this constituted a tort in France, and that *Yahoo!* must take steps that prevented French Internet users from accessing the site. Experts had testified that such steps were technically possible. Subsequently, however, the court in the United States refused to enforce this order in the United States as being contrary to the First Amendment: the right to free speech. This sequence of decisions suggests that even if more sophisticated technology may help to bring geography back into the virtual world, the real challenge will remain to reconcile differing legal cultures.

Information and communication technology does not only pose challenges to private international law – it also opens entirely new avenues. An electronic database with some 800 decisions rendered under the Hague Child Abduction Convention – as a modern successor, in part, to the venerable *Les Nouvelles*

Conventions de La Haye – assists courts worldwide in their efforts to interpret the Convention in a consistent manner. Efforts are under way to create an electronic apostille, to enable the easy circulation of electronic birth certificates, patents and other public documents. The new Hague Convention on child support and other forms of family maintenance should facilitate the electronic cross-border transfer of funds, to bring more speedy relief to tens of thousands of children and spouses.

Conclusion

I have only been able to present here a very superficial, incomplete, and therefore inadequate picture of 40 years of private international law. What it may have shown, though, is what I think is an unquestionable emancipation of private international law during the past 40 years from the limitations of an abstract neutral discipline, little concerned about policies and basically entrenched in the domestic legal order. Private international law now operates increasingly on the basis of international Conventions – or at least the ideas embodied in such Conventions – and in Europe also of Community instruments. At the same time, there is far more concern about policies, which has had its impact on the methodology, but also on the spirit of private international law. Since globalization is overwhelmingly brought about by private initiative, legal frameworks to facilitate and regulate such activity have become more and more needed. Moreover, in a world where different cultures meet ever more frequently and intensely, the experience of private international law in handling conflicts of laws is much needed. Together, public and private international law, and European law, complement each other more and more. What a vision the founders of the Asser Institute had!

40 years of EUROPEAN LAW

Professor Dr Jaap W. de Zwaan
Director of the Netherlands Institute of International Relations ('Clingendael'), The Hague, and Professor of the Law of the European Union, Erasmus University Rotterdam

(...)

European legal order

The new legal order, as it has been established in the framework of the European Communities, dates back to 1952 when the European Coal and Steel Community was founded. The characteristics of Community law have been developed not only in treaty texts but also in the jurisprudence of the Court of Justice, by applying and interpreting provisions of Community law. In this context we should of course refer first and foremost to the two landmark decisions of *Van Gend & Loos* and *Costa/ENEL* in the early sixties – thus 40 years ago – in which the Court confirmed the autonomous character of the legal order of the European Community and developed the concepts of supremacy (of European law over national law) and direct effect.

Deepening and widening

The process of European integration is characterized by two main developments, deepening and widening.

As to *deepening* it may be recalled that the European Community (EC) deals with an ever-growing number of policy fields. The hard-core business certainly was and is represented by the internal market, the famous area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. However, apart from that fundamental concept many policy domains

have been added over time to the list of competences of the EC, such as environmental policy, research and technology, social policy, education, public health and – here the reference is to the single currency – the euro monetary policy. Certainly, the fact that the European Community may deal with all these policy matters does not mean that the Community has acquired exclusive competences over these domains. According to the jurisprudence of the Court, in each individual case one has to take into account not only the drafting of the relevant treaty provisions, but also policy achievements, and the legislation enacted in practice with regard to these domains. The last additions to the catalogue of Community competences concern, *inter alia*, aliens law and policy, the extensive problem concerning open borders, visa policy and asylum and immigration law and policy. This was a result of the entry into force of the Amsterdam Treaty in May 1999 in the context of which it was, *inter alia*, decided to integrate the *acquis* of the Schengen cooperation into the European Union.

As a consequence of the process of transfer of competences to the European level the scope of sovereignty of the Member States has gradually been diminished. This process has taken such a dimension that some authors, as a reflection of the present state of affairs, already refer to Member States as semi-sovereign states.

As to *widening* it has to be noted that the geographical scope of European cooperation – and of the European Union legal order – also has been enlarged over time. Having started with 6 Member States, among which was the Netherlands, the European Union is at present composed of 25 Member States. And, next month the European Council will most probably decide that two new Member States – Romania and Bulgaria – will enter the Union in 2007. Still applications for membership are coming in. And, with a number of candidate states – Croatia and Turkey – negotiations for accession have already begun.

- Democracy and efficiency

In parallel to these fundamental developments the decision-making at the European level has become more democratic, in view of the ever-growing role of the European Parliament. Real democracy at the European level, for example, is reflected in the so-called co-decision procedure, referred to in Article 251 of the EC Treaty. Also, measures have been introduced to make the European decision-making process more efficient. In this context, of course, the introduction of the principle of qualified majority voting (QMV) in the Council is of importance. Indeed, because of the simple existence of the possibility to take a vote in the Council the continuity of the decision-making process can be ensured.

- Court of Justice

Parallel to the developments mentioned above, the Court of Justice in Luxembourg has made impressive contributions to make Community law fully effective. This has been achieved notably through the application of the mechanisms of cooperation with national judiciaries in the context of the so-called preliminary rulings procedure. In this jurisprudence the obligation of loyalty and of coopera-

tion, laid down in Article 10 of the EC Treaty and to be mutually respected by Member States and institutions, has played a crucial role. In this context, one may also think of the further development of the direct effect doctrine (vertically and horizontally), the concept of the interpretation of national law in conformity with Community law, and the principle of state liability. In so doing, the Court of Justice has strengthened the system of judicial protection. It has also ensured that the Community indeed operates as a Community of law in which the ordinary citizen is in a position to really enjoy the rights granted to him or her in the treaty.

- Treaty of Maastricht

The constitutional structures of EU cooperation have been laid down in the Treaty of Maastricht, which entered into force on 1 November 1993. If there is one European treaty which deserves the name of a 'constitutional' treaty, it is the Treaty of Maastricht. Indeed, the Maastricht Treaty provided for the pillar structure and the introduction of the European Union, a new organization overarching the earlier ones, the European Communities. Since Maastricht, it is well established that the European Union deals with three main areas of cooperation, the policies of the European Communities (First Pillar), the Common Foreign and Security Policy (Second Pillar) and Justice and Home Affairs cooperation (Third Pillar).

In so doing European integration potentially covers all relevant policy domains which – 50 years ago – only had been entered into by states, thus at the national level. And, indeed, since the entry into force of the Maastricht Treaty in all pillars important policy decisions have been taken. As an area touching upon all three pillars simultaneously, the dossier concerning the combating of terrorism should be referred to, that is, the problem of 11 September 2001.

- European integration a success

Seen in this perspective and notwithstanding its defects which certainly do exist, one cannot but conclude that the process of European integration is an overwhelming success, politically, economically and socially. In fact, European integration represents a remarkable example of how a coherent system of regional cooperation serves the interests of states, companies and the ordinary citizen.

In a way it is a pity that the advantages of European integration, and the basic values of peace, stability and prosperity it has contributed to, seemed to be forgotten in the run-up to the referendum about the constitutional treaty, which was held in the Netherlands on 1 June 2005. Some politicians even argued that these basic values could no longer even be advanced as justification for the process of European cooperation. The process would require new dynamics and new arguments.

Now, notwithstanding the fact that also new arguments may be advanced – European cooperation has given an impetus to economic growth, research and technology, intensive cooperation with third countries and international organizations as well as the protection of the environment – the aforementioned reasoning sounds rather odd. Because it is still true, and today the ever growing

number of applications for membership of the Union can only illustrate this phenomenon, that the process of European integration has created intensive and stable relations between the individual Member States. In doing so, it has created out of this Europe-wide framework of cooperation a zone of freedom, stability and prosperity.

This having been said, the constitutional structures of the European Union now need, at the beginning of the 21st century, to be adapted. Indeed, notably in order to be prepared for a future with even more Member States, the construction has to be made simpler, more democratic and more efficient. In fact, however, the constitutional treaty, signed on 29 October 2004, aimed to do just that and to achieve these objectives. Here we touch upon a number of basic innovations brought about by that treaty which, in view of the obstacles encountered in the process of ratification in some Member States, have thus far not been able to enter into force.

Therefore, it is to be hoped that these issues will be discussed again in a not too distant future because, at some point in time, we definitely will need an EU structure which is simpler, more democratic and more efficient, if indeed our ambition is to have the European Union survive in the future.

- National legal order

The impact of European law on the legal orders of the Member States, including the legal order of the Netherlands, has been enormous. Some European decisions are directly applicable in the national legal orders. Others have to be implemented in national law or, to put it differently, to be transformed into national norms and rules. In the context of this process of implementation the Netherlands has sometimes encountered difficulties. Indeed, our legislative procedures – prudent and careful as they are – are lengthy and complicated. Therefore it can happen that the Netherlands exceeds the deadlines set in European decisions.

Be that as it may, an ever-growing number of laws have been adopted by national parliaments as a consequence of our membership of the European Union. Percentages vary according to the policy domains concerned, but anyhow the numbers of national laws, regulations and administrative provisions sufficiently reflect the impact which the process of European integration has on national societies. Also legal practice has become more complicated. Indeed, European law has become more and more specialized. Members of the bar, lawyers in ministries, members of national judiciaries and business lawyers experience these difficulties on a daily basis. In fact, even for European law professors it has now become hardly possible and feasible to follow all developments (policy-making and the jurisprudence of the Court of Justice and national courts) in all European policy domains.

- T.M.C. Asser Instituut

The activities of the Asser Institute aiming, among other things, to spread and deepen the knowledge of European law over the relevant professional circles in the Netherlands and abroad, are well-known and have always been greatly ap-

preciated. Especially the colloquia for European law which the Institute traditionally organizes once a year – this year, 2006, already for the 36th time – are prestigious opportunities for practitioners of European law not only to become up to date, but also to get to know their colleagues better. To that extent the Asser Institute has played a role of avant-garde/forerunner, also for universities. By now certainly universities have organized themselves well in this respect and provide whole ranges of European law courses and full study programmes, both at graduate and post-graduate levels. This being said, the Asser Institute can continue to operate as a network organization, for example to stimulate the establishment of joint research programmes by universities, to participate itself in such joint programmes, and to bring national professional circles into contact with each other, as well as with colleagues and sister organizations abroad.

Therefore, I offer my sincere congratulations to the Institute, its Chairman, Michiel Scheltema, and its Director, Frans Nelissen. I wish you all the best and all the success that is needed to continue in the future the prestigious role which the Asser Institute has played over the years to promote the knowledge of the law of the European Union in the Netherlands and abroad.

Closing Address

Professor Dr Frans Nelissen
Director, T.M.C. Asser Instituut

(...)

As the director of the T.M.C. Asser Instituut it is my privilege this afternoon to deliver the closing address at this momentous event, which I would like to begin with an expression of my gratitude for the fact that so many of our friends have gathered here today to celebrate the 40th Anniversary of the Institute with us.

Our friends from the courts and tribunals and international organizations based in The Hague; from the diplomatic community in The Hague; from the Dutch universities and research institutions, and, certainly worth mentioning, our friends from academic institutions from abroad who have traveled to The Hague especially for this occasion, for example our partners in Asser College Europe coming from Central and Eastern Europe, who represent the new Member States, as well as the candidate and partner States of the EU.

First of all, however, I want to thank the three speakers:
H.E .Madam President Higgins for her wonderful and enlightening key-note address on developments in public international law;
Dr van Loon, the Secretary-General of the Hague Conference on Private International Law on developments in the field of private international law; and
Professor de Zwaan, formerly the vice-chairman of the Board of the T.M.C. Asser Instituut, and presently the Director of the Clingendael Institute in The Hague, on developments in the law of the EU.

These three fields of international law represent three pillars of the research and other activities of the Asser Institute and we are delighted and honored to have

with us today three of the most qualified representatives of famous Hague-based institutions, two international organizations, as well as one national research institute.

The choice of the three speakers today reveals a crucial mission of the Asser Institute: to stimulate academic cooperation between the important legal institutions in The Hague and the experts working in these international organizations and the academic world in the Netherlands as well as abroad.

Please allow me a few minutes to explain what the Asser Institute is all about, what it does and what our ideas are for the future:

The TMC Asser Institute is a professional inter-university centre, which conducts fundamental and applied research, including contract research in private and public international law, European law, international commercial arbitration and other related fields, such as international sports law and international humanitarian law.

'Interuniversity' not only means that we were founded by all the Dutch Law Faculties – and I should make special mention of one person in particular, who is also present here today, Dr Bert Voskuil, the Institute's first director and the foremost initiator in establishing the Asser Institute – but also that we represent all the Dutch Law Faculties here in The Hague, wherever possible, in all fields of International Law.

Within this interuniversity scheme, the Institute maintains a special relationship with one of the participating universities; namely the University of Amsterdam, to which the Institute is affiliated.

We conduct our research frequently in cooperation with experts from the different Dutch Law Faculties, e.g., facilitating doctoral research programmes, like the Asser Dissertation Programme, where the public defense of the Ph.D. candidates always takes place at one of the Dutch universities.

The Institute organizes and publishes many periodicals and yearbooks, such as the *Netherlands International Law Review,* the *Netherlands Yearbook of International Law,* the *Yearbook of International Humanitarian Law*, the *European Constitutional Law Review*, and, in the Dutch language, *Nederlands Internationaal Privaatrecht*.

We provide the Dutch Law Faculties with reasonably priced student readers for their courses. We combine this with our broader task of delivering a good and reliable supply of documentation and information.

The Institute's modern and well-equipped library, which is also an official *European Documentation Centre* (EDC), serves the needs of its users with its extensive collections. The library is open to the general public.

To further disseminate knowledge about international law in general, the Institute maintains specialized websites and it has its own publishing house, the T.M.C. Asser Press. The marketing and distribution of its publications are carried out by our partner Cambridge University Press.

Furthermore, we have built a tradition of regularly organizing high quality conferences, meetings, and Asser Round Table Sessions, thereby promoting and fostering academic discussion.

We organize the annual well-known European Law Colloquia in close cooperation with the chairs of the Departments of the Law of the European Union at all Dutch Law Faculties. This year we will celebrate our 36th Colloquium!

We are proud to also organize the *Hague Joint Conferences on International Law*, with the American Society of International Law and the Dutch Society for International Law – de Nederlandse Vereniging voor Internationaal Recht. This biannual conference is now in its 15th year and has become a vested tradition in The Hague.

The unique concentration of legally relevant international organizations in The Hague – many of which are within walking distance of one another – creates a potential and its own dynamics, unknown anywhere else in the world.

Our mission for the coming years is to combine the above-mentioned ingredients of the Institute's successful past through cooperation with our Dutch university partners in research, publications and academic events, such as conferences and in post-graduate education – in other words, being an 'academic community organizer' – with the great potential offered by this abundance of important international organizations neighboring us here today. In doing so, we want to connect the practitioners who work in these organizations with the academic world in the Netherlands and abroad.

A good example of our cooperative efforts is the recently concluded two-year programme on the European Arrest Warrant, in which – within the framework of an EU AGIS programme – a large number of academics and practitioners from almost all EU Member States worked together in a consortium consisting of partners such as the University of Amsterdam, the Max Planck Institute in Freiburg, and The Hague-based international organization *Eurojust*. This cooperation resulted in a highly successful programme creating a trusted knowledge source, books, databases, and a very successful international conference.

It serves as a good illustration of the importance attached by the European Commission and other national and international entities to our work, and to our broad academic network in the Netherlands and beyond.

An important goal for the coming years will be to support the development of an academic platform, a platform of cooperation, with The Hague-based international organizations and their experts to provide support for their activities.

This should become a platform where we can bring in the Dutch experts in international law who work at the Dutch Law Faculties where we can strongly emphasize our role as an interuniversity institute, while simultaneously providing our Dutch academic partners, from Groningen in the North, to Tilburg and Maastricht in the South, and all other Universities in between, with an extra window in The Hague.

I would especially like to mention our colleagues from the other Hague-based academic institutions who share this vision and want to cooperate with the T.M.C. Asser Instituut in the effort to attain the above-mentioned goal.

This platform concept was one of the main reasons for the creation of the Hague Academic Coalition (HAC). This is a consortium of six academic institutions all based in The Hague. They work in the field of international relations, international law and/or international development. The HAC seeks to promote research, education and debate, not only on issues of international law, but also

in the broader area of peace and justice. Clearly, the input of the T.M.C. Asser Instituut in HAC is also to represent international law.

An important new development and a good example of the platform function is the creation of the Hague Forum for Judicial Expertise by the HAC partners together with the National Council for the Judiciary (Raad voor de Rechtspraak) and the Netherlands Ministry of Foreign Affairs, which provides in The Hague training programmes in international law with an emphasis on international criminal law for national judges from a variety of countries with the assistance of practitioners from, e.g., the Courts and Tribunals in The Hague.

It should be emphasized that we consider the HAC not as 'a closed shop or society', but as the beginning of an academic network, where the HAC platform brings together those practitioners who are working in and with the international organizations and to get these organizations involved with the academic world in The Hague, the Netherlands, and, of course, also abroad.

The positive reactions from a substantive number of the international institutions based in The Hague to this initiative – and I specifically want to mention the Hague Conference on Private International Law, as well as the Organisation for the Prohibition of Chemical Weapons – have strengthened our confidence that there is indeed a need for such a platform, and that it will prove to be an important new asset to the already unique concentration of international institutions that surround us.

The Institute is also active in contract research and legal advice. This tailor-made applied research varies from providing *ad hoc* solutions for more minor legal questions to the coordination and/or implementation of long-term (research) projects.

In our research, in our training programmes, in our prestigious T.M.C. Asser Press, and in our projects and consultancies, we combine the rich experience of the academic community and the practice of judges, lawyers, and others in the international organizations in The Hague. It is in particular this function of the T.M.C. Asser Instituut as a bridge between national and international academic institutions and the international organizations in The Hague which in my view provides great opportunities for the next few decades.

Alongside the Institute's team of expert researchers and its own research facilities, the Institute has established itself as an academic community organizer, through, amongst other things, the creation of platforms, in collaboration with its extensive national and international network of university and academic contacts, where practitioners at the international organizations, courts and tribunals in The Hague can cooperate with academic communities from the Netherlands and abroad.

The development of the T.M.C. Asser Instituut to the position and standing it has today has only been made possible with the help of its dedicated staff and, of course, of all of you who have collaborated with the Institute over the last 40 years. I hope we can continue to count on your support in the exciting years to come.