

Dreaming the Ideal, Living the Attainable

T.M.C. Asser [1838 - 1913]
Founder of The Hague Tradition



Statue of Tobias Asser by Prof. A.W.M. Odé in the Peace Palace. The statue was instigated by the *Royal Netherlands Society of International Law* in 1915.

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Founder of The Hague Tradition

Arthur Eyffinger

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Cover photograph: Portrait of Tobias Asser from the days of the Hague Peace Conferences

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FOREWORD

In The Hague, not far from The Hague Conference on Private International Law and the Peace Palace, runs a leafy street named after Tobias Asser. Also prominent is the square between these institutions which has been named after Andrew Carnegie who was the benefactor in building the Peace Palace. While the Carnegieplein connects The Hague Conference with the Peace Palace, the Tobias Asserlaan leads from the Peace Palace to the TMC Asser Instituut. Similarly, the man Asser is the ultimate link between private international law and public international law.

Tobias Michael Carel Asser (1838-1913) was a man with a vision, with a passionate devotion for the field of law, with a remarkable level of energy and drafting skills but also a man who was always pragmatic, never lost in idealism. His reputation was worldwide and beyond reproach. He had no enemies to speak of.

He was the man behind the *Institut de droit international* in 1873, the first Hague conventions in the field of private international law, as well as The Hague Peace Conferences (1899, 1907) and the establishment of the Permanent Court of Arbitration (1899). One of the first conferences of the International Law Association (ILA, also established in 1873) took place in The Hague in 1875 where Asser was again an active player.

When the Netherlands branch of the ILA was set up in 1910, Asser was immediately elected honorary chair (the first board consisted of as many as 33 members). He was already 72 at the time and quietly withdrawing from active life. A year later he was awarded, jointly with Alfred Fried, the Nobel Peace Prize.

One hundred years later we are now celebrating the happy beginnings of the Netherlands Society of International Law/Netherlands branch of the ILA (NVIR) in 1910 and the awarding of the Nobel Peace Prize to one of its eminent founding fathers. It was a logical step for the NVIR to mark its Centenary by offering to organize the biennial ILA Conference in The Hague in August 2010.¹ The conference was a great success, with more than 750 participants from all over the world, and with a sound and impressive Volume of Proceedings as a tangible result which was published well within one year of ILA 2010.

The festivities around NVIR's 100th anniversary were extended to include the fact that Asser was a joint recipient of the Nobel Peace Prize in 1911. A special 'Asser 100' seminar has been organized based on his activities for IDI, ILA and NVIR as well as The Hague Conference and The Hague Peace Conferences. The aim is both to reflect on the past and to look ahead to the needs and opportunities for advancing the rule of law in international affairs and strengthening multilateral diplomacy.

The topping of the cake of anniversary activities comes in the form of a royal warrant from Her Majesty the Queen allowing the NVIR to use the prefix 'Royal'. From 2011 on, the NVIR will be called the Royal Netherlands Society of International Law (Koninklijke Nederlandse Vereniging voor Internationaal Recht, KNVIR) – something to be proud of and thankful for.

We owe Tobias Asser a fitting tribute, and we are hence proud to present this book that has been researched and written by the ultimate international law historian, Arthur Eyffinger. Dr

¹ See also the special issue of the *Netherlands International Law Review*, 'The Netherlands Society of International Law. One Hundred Years 1910-2010', vol. 57 (2010), issue 2.

Eyffinger once again displays his in-depth knowledge, wit and vision in a transparent and accessible manner. He shows us that in this world we need Assers, but that they do not appear spontaneously and that, like Asser, they must combine work with passion, vision and discipline.

The KNVIR would like to express its gratitude to TMC Asser Press for its skillful and expeditious services in producing this beautiful book.

This preface is one of my last contributions as chair of the KNVIR, as my term as a board member has come to an end. Together with my fellow board members, and great team players, Professor Katharina Boele-Woelki, Professor Marcel Brus (Honorary Secretary) and Dr Peter van Krieken (Honorary Treasurer), I sincerely hope that our Centenary celebrations and ILA 2010 have given the Netherlands Society a positive boost in the best Asser spirit. With this book by Arthur Eyffinger we trust to add to that momentum.

Leiden, September 2011

Nico Schrijver

Chair KNVIR and President of the ILA

A handwritten signature in black ink, appearing to read 'N. Schrijver', with a horizontal line underneath it.

PREFACE

The passing away of Mr. Max van der Stoep, earlier this year, dashed hopes in the hearts of the Dutch, who for a century have been waiting for a second Nobel Peace Prize laureate. For some time to come, it would seem, Tobias Asser will maintain his unique status in the Netherlands.

‘The Hague Tradition’ of international law cannot be explained by Dutch circumstance alone. From the first, it was emphatically an international endeavour and an interdisciplinary aspiration, in which politicians and diplomats, lawyers and pacifists all had their say. Men like Bourgeois and Renault of France, Scott and Carnegie of the USA, Martens of Russia and Stead of the UK. Each in his own way played a critical role in the founding, nurturing, and expanding of this great tradition.

What these men shared, for their varying expertise and outlook, was an infinite respect and unwavering support for the legal acumen, diplomatic genius and level-headed pragmatism of that trim, elegant Dutchman, Tobias Asser, whose eyes and words thrilled them and whose tactical adroitness bridged their differences. Against a backdrop of lethargy and isolation at home, which spelled out to the world what a century of neutrality had done to those once so dynamic Dutch, Tobias Asser stood out as a magnet attracting all forces of progress and internationalism. To him, more than anyone, The Hague owed the new lease on life it was offered in 1900. Tobias Asser was the facilitator, and his work the premise for The Hague Tradition.

Within the small compass of this publication, the prelude to a full biography which I hope to publish in 2013, I have sampled highlights of Tobias’ Asser’s fascinating personality, versatile mind and myriad endeavours. I am indebted to the Royal Netherlands Society of International Law and its President, Prof. Nico Schrijver, for offering me this opportunity; to various members of the Asser family for their ready and expert help; to Mr. J.H.A. van Loon for his kind suggestions; and to the Asser Press for its meticulous care.

A. Eyffinger

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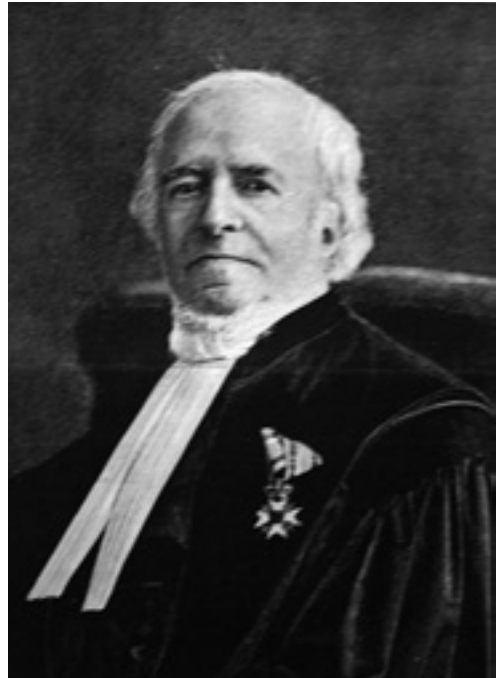
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The mansion at Singel 548, Amsterdam, designed by Philip Vingboons [1639] and the first offices of the Asser law firm [c.1804 – c. 1895].



Tobias' father, Mr. Carel Daniel Asser [1813–1890].

I

THE EARLY YEARS

1. A FAMILY TRADEMARK

In law circles in the Netherlands no surname probably has the ring of the Assers. For two centuries and more ‘Asser’ has been a household name for barristers, state counsellors, judges and legislators. *Fons et origo* of this tradition, and focal point for many generations of legal luminaries effortlessly strung together by this gifted stock was the family law firm.¹ Tobias Asser, or ‘TMC’, is the jewel in the family crown. But then, Tobias’ most striking trait, his eminent pragmatism, has been the family’s trademark throughout, and has deep roots. The Assers first made their mark as successful merchants and expert craftsmen.

Early family history is poorly documented but, somewhere around 1650, one of Tobias’ ancestors made his way to Amsterdam. His provenance, most likely, was Eastern Europe. He would have made an anonymous entry amidst the massive influx of Ashkenazim Jews, whose keen business acumen, so vital to the thriving metropolis, made the City council in 1671 come around to allow the construction of the Great Synagogue. Whether Tobias’ ancestor migrated as a result of war or pogrom, or was lured by wealth or toleration, who can tell. On its climb to prominence within the Jewish community we first meet the family a full century later, in the *Autobiography*² of Moses Salomon Asser, the ambitious son of Salomon, diamond-cleaver. Moses’ pages tell of the family’s likely stepping-stones to wealth and social distinction, commercial success and strategic marriages – as with the offspring of the Itzig, Oppenheim, Godefroi or Thorbecke families.³ Intermarriage within the family, not uncommon at the time within these closed communities, also applied to the Assers, and our Tobias is a case in point.⁴

Moses Salomon [1754-1826],⁵ first in the line of family lawyers, was an affluent enough cocoa merchant when, in 1795, with markets collapsing as a result of political upheaval, he fell in with a business associate’s advice to change frock-coat for robe.⁶ By then a member of the 1798 ‘Committee of Justice’ to upgrade national legislation he was hand-picked by King Louis Napoleon [1806-1810] to help draft a first Code of Commerce [1809].⁷ In 1813 Moses’ insights were

¹ The Asser law firm was founded in 1804. In 1902, Carel Daniel Asser, T.M.C. Asser’s eldest son, who represented the fifth generation, decided on a partnership. In 1980, the firm joined hands with the respectable Rotterdam civil law notaries *Schadee*, whose firm had been founded in 1724 and had merged with *Nauta* notaries in 1927. The 1980 merger of Amsterdam lawyers and Rotterdam notaries was called *Nauta Van Haersolte*. In 1990 this firm, in turn, merged with *Dutilh & Partners* to form the corporate and securities law firm *NautaDutilh*.

² See J. A.A. Bervoets, *Inventaris van Archivalia afkomstig van de leden van het geslacht Asser 1797-1913* [Netherlands National Archives The Hague Nr. 2.21.014; Entries 1-435; henceforth Bervoets] Bervoets 11. Concerning the early generations Assers, see Westenberg 1992, at 54-55.

³ Moses Salomon’s younger son Tobias married Caroline Itzig [1806]; his son Eduard married Rosine Oppenheim [1833]; his second son Carel Daniel married Rosette Godefroi [1837]; TMC’s eldest son Carel married Wilhelmina Thorbecke [1898].

⁴ In 1864 TMC married his cousin once removed Jeanne [Johanna Ernestina]. She was the daughter of Lodewijk [Louis] Asser [the eldest son of Moses Salomon’s eldest son Carel] and Anna [Netje] Asser [the eldest child of Moses Salomon’s younger son Tobias].

⁵ On Moses Salomon, see Bervoets 1-11; NNBW VIII, col. 35-36; Voskuil 1973, at 12. In 1773 he married Cheila Tobie [1745-1821], to account for the first name Tobias. The pair had three sons, Carel [1780], Tobias [1783] and Hendrik [1789].

⁶ On the advice of H.L. Bromet, Moses turned to the law in 1795 and presumably launched his law firm in 1804.

⁷ With Joannes van der Linden [1756-1835] and Arnoldus van Gennep [1766-1856]. Westenberg 1992, at 59.

acknowledged by the Kemper Committee⁸ when it drew up national legislation for William I's proud Kingdom of the Netherlands. In or around 1804, presumably, Moses founded the family law firm.⁹ His *Autobiography* tells us that, from early on, the Assers appreciated the social value of living in the right neighbourhood. In 1822, as token of his wealth, Moses bought himself the stately mansion Singel 548, built in 1639 by the famous Philips Vingboons, where he lived and kept office, as his younger son and grandson after him.¹⁰

Moses' eldest son Carel [1780-1836],¹¹ the first properly trained family lawyer and pupil of the legendary Cras,¹² started out as his father's associate, to make himself a career in officialdom. A Commissioner of Audit of the Council of State as of 1815, he served on the Kemper Committee. He authored tracts on criminal law and topical issues as ministerial responsibility. His reputation rests on his comparative study of the Dutch Civil Code and *Code Napoléon*.

Carel's son Lodewijk [1802-1850]¹³ and only grandson Carel [1843-1898]¹⁴ both were long-standing judges and practicing lawyers in The Hague. Grandson Carel's thesis [1866] addressed the legal consequences of the telegraph. A great musicologist, he served on the 1880 Commission for Revision of the Civil Code before succeeding his former teacher Boneval Faure as professor of civil law in Leiden [1892].¹⁵ The civil law manual Carel compiled initiated the famous 'Asser-Series' that outsiders mistakenly identify with 'TMC'.

Meanwhile, Moses Salomon's younger son Tobias [1783-1847]¹⁶ carried on the Amsterdam law firm on Singel 548, to initiate an impressive line of his own. His two sons, Eduard Isaac [1809-1894]¹⁷ and Carel Daniel [1813-1890]¹⁸ in their turn opted for the bar. Eduard Isaac – a gifted photographer and reputedly the inventor of photographic copy-paper¹⁹ – in due time took

⁸ The Committee was headed by Johan Melchior Kemper [1776-1824], a constitutional lawyer and politician, who was prominently involved with the codification process in the years the Kingdom of the Netherlands was founded [1813]. He authored a *Geschiedenis der deliberatiën over het ontwerp van het Burgerlijk Wetboek voor het koninkrijk der Nederlanden*. [2 vols., 1820, 1821].

⁹ Data are scant. As of 1822, the address of the law firm was Singel 548, the home address of Moses Salomon. Around 1895 the house was sold.

¹⁰ Philips Vingboons [1607-1678] was a celebrated architect in the rapidly expanding Amsterdam of the mid-17th C., and a fair representative of the Dutch classicist style epitomized by Jacob van Campen. The mansion was commissioned by Johan Huydecoper van Maarsseveen [1599-1661], six times 'burgomaster' of Amsterdam and a prominent figure in his days. In its original state the mansion featured 'een Grote Zaal met tapijten bekleedt en Zaal met goudtleebehangen. Het heeft wijders een heel sierlijke grootte Tuyn, met een Fonteyn, beneffens eenige Statuen daer in.' The mansion was sold in or around 1895, the year Eduard Asser died. Possibly the firm was continued at Heerengracht 541. Westenberg has it that in 1860 Tobias joined his father's law firm at Keizersgracht 391. [Westenberg 1992, at 57].

¹¹ Bervoets 12-25; NNBW III cols. 42-44; Voskuil 1973, at 12-13. In 1801 Carel married Rosa Levin [1782-1853]. Their son Lodewijk ['Louis'] was born in 1802. In 1831 Louis married his cousin Anna [Netje, 1807-1893], daughter of his father's brother Tobias and Caroline Itzig. They had three children, Rosa [1836], Johanna Ernestina [1839], and Carel [1843]. In 1864 Johanna Ernestine was married to our TMC.

¹² H.C. Cras [1739-1820] was a celebrated law professor at the *Athenaeum Illustre*, where he taught for almost fifty years [1771-1820]. He was a pioneer of law codification and a great advocate of the idea of 'general principles of law'.

¹³ Bervoets 28-29; NNBW X, col. 25-26.

¹⁴ Bervoets 431; NNBW III col. 44; Voskuil 1973, at 13. Carel [II] married J.C.A. [Coosje] de Sturler. They had two children.

¹⁵ Asser taught civil law and procedure, and commercial law. His inaugural speech addressed 'Wetenschap en Samenleving' ['Science and Society'].

¹⁶ Bervoets 26-27. In 1806 Tobias married Caroline Itzig [1786-1854]. They had three children: Eduard Isaac [1809], Carel Daniel [1813] and Henriette [Jetje, 1817]. Carel Daniel was TMC's father.

¹⁷ Bervoets 30-32. Eduard Asser's dissertation read *Dissertatio juridica inauguralis de exercitio navium, et exercitio societate* [1832]. On his early life and that of his sister Netje, see I.H. van Eeghen, *Uit Amsterdamse Dagboeken: De jeugd van Netje en Eduard Asser, 1819-1833*, Amsterdam 1964. In 1833 Eduard Isaac married Euphrosine Oppenheim [Rosine]. The pair had 4 daughters [Caroline [1834], Charlotte [1836], Anna [1840] and Thérèse [1842], and a son Lodewijk Eduard [1849].

¹⁸ Bervoets 33-49. In 1837 Carel Daniel married Rosetta Godefroi [1816-1892]. They had three children: Tobias Michael Carel [TMC, 1838], Marie Rose [Marie, 1839-1906], and Elisabeth [Lise, 1842-1913].

¹⁹ In the early 1840s Eduard Isaac [1809-1894] experimented with photography after British and French inventions, portraying friends and relatives and taking some of the first pictures of Amsterdam city life. His collection of hundreds of photographs was collected in *Eduard Isaac Asser [1809-1894]*, ed. Bool et al., text Mattie Boom, Amsterdam 1998.

over the law firm. His younger brother, Carel Daniel, TMC's father, carved himself a career of his own, and indeed one that reads as a premonition of his son's. His 1834 Leiden theses addressed bills of exchange and he commented extensively on the Code of Commerce. A protagonist of constitutional reforms [1848], member of the Amsterdam city council [1851] and judge in the Provincial Court [1860], he was invited to the Supreme Court in 1877. A keen business man also, he was on the Supervisory Board of the *Nederlandsche Bank* [1870-85]. Our Tobias' prolific energy and versatility obviously ran in the veins.

From the above, Tobias' career follows logically enough, including his outspoken pragmatic leanings and insistence on the law's social relevance and appliance. To all intents and purposes, Tobias Michael Carel ['TMC', 1838-1913] was the scion of the family tradition – in all respects but one, that is. From Moses Samuel onwards all family members had been prominently involved with Jewish emancipation. Moses had helped found the *Adath Jesurum* and the progressive society *Felix Libertate* which, spurred by the French Enlightenment, helped secure civil rights for the Jewish community in an otherwise controversial policy that encroached on the political prerogatives of rabbis.²⁰ Up to the time of Moses' grandson Eduard the Assers held positions of honour within the Jewish community. In 1870, TMC's father Carel Daniel was elected to the Central Council of the Dutch Israelite Community, on which various family members had served before him. Carel Daniel's brother-in-law Michel Henry Godefroi [1813-1882] likewise championed this cause. He was the first Jew to enter Parliament [1849], later to become Minister of Justice [1860-62].²¹

In a steady process, it would seem, or 'avec patience et courage'²² as his motto read, our Tobias broke away from this tradition.²³ The process may have been an altogether natural one, given Asser's liberal, enlightened views. Still, his social prominence may have played a role as well. At the time, involvement in bodies such as the Royal Academy required the [purely formal] subscription to the Dutch Reformed Church. Tobias willingly complied [1880], while otherwise serving on the Curatorium of the Dutch-Israelite Seminar [1882-87]. In 1902, De Beaufort in his *Diaries* muses whether Asser still considered himself 'an Israelite'.²⁴ Full social acceptance in the Holland regent class Tobias never quite achieved – if indeed he aspired to it. Intimates and friends outside the Jewish community were found in circles of Exchange and banking – and abroad.

2. YEARS OF LEGAL TRAINING

Tobias Michael Carel Asser²⁵ was born in Amsterdam on 28 April 1838,²⁶ the son of Carel Daniel Asser and Rosette Godefroi, whose marriage was also blessed with two daughters, Marie [1839]²⁷ and Lise [1842].²⁸ A precocious youngster, Tobias followed courses at the Latin School and received private education.²⁹ In 1856 he matriculated at the *Athenaeum Illustre* in Amsterdam

²⁰ In 1791 Jews were granted civil rights in France; in the Batavian Republic Jews obtained access to the bar in 1792 and civil rights in 1797. Westenberg 1992, at 54-55.

²¹ Mr. M.H. Godefroi was Minister of Justice in the Cabinet Van Hall [1860-62]. He was a lively, if long-winded speaker and a keen debater. Westenberg 1992, at 63. Bervoets 432-35.

²² Steenhoff 1997, at 130.

²³ Westenberg 1992, at 55.

²⁴ De Beaufort, *Dagboeken* I, at 227 [19 August 1903], and cf., *ibid.*, at 164 [10 February 1902]. Upon his death Tobias was not buried at the Jewish cemetery in The Hague, but at *Oud Eijk en Duinen*.

²⁵ Bervoets 50-430. A survey of Tobias Asser's life and works in the *Biographical Note*; secondary sources in the *Bibliography*.

²⁶ The address of his parents at the time I have not yet established.

²⁷ Marie Rose Asser [1839-1906] married Godfried Salomonson and had four children.

²⁸ Elisabeth Anna [Lise] Asser [1842-1913] never married.

²⁹ De Beaufort 1914 [at 137] holds that Tobias received special schooling by a certain Mr. van der Laar, who ran an institute frequented by boys from well-to-do families.

to follow courses with Jeronimo de Bosch Kemper³⁰ and Martinus des Amorie van der Hoeven.³¹ It was a struggling institution at the time, and a mere shadow of its proud beginnings in 1632, when its founding fathers Barlaeus and Vossius, ill-counselled, invited Hugo Grotius back from exile to accept the rectorship.³² Young Tobias soon made his mark. In 1857 he succeeded Quack³³ as rector of the Amsterdam Student Corps³⁴ and in 1858-59 figured as chief-editor of the *Student Almanac*.³⁵ To attest to his social appetite, Asser had a soft spot for student societies all his life.³⁶

The year 1858 brought Tobias the first reward. He earned himself the gold medal in the 1857-58 annual competition of Leiden University law faculty with a submission of well over 200 pages 'On the Economic Conception of Value'.³⁷ At the tender age of twenty it heralded a scholarly career of fifty years – even if the tract's speculative nature and theoretical outlook made it an untypical opening, as Asser himself readily confessed later on.³⁸ As Asser's colleagues and early biographers readily agree: from early on, this gifted lawyer dismissed all legalistic speculation and theorizing as non-consequential. The tract does, however, attest to Tobias' keen interests in economics. For some time, apparently, Asser seriously considered a business career. Particularly stimulating to him were the massive *Contributions to Dutch Economics* [1818-29] by Gysbert Carel Van Hogendorp.³⁹ Here was an example of the liberal views on international economics that to Tobias, a child of his times, held a life-long appeal.

What, in the *maelstrom* of time, has stuck in humanity's collective memory with regard to mid-19th century liberalism is the British Free Trade tradition of Richard Cobden and the Manchester School. Tobias Asser lends us an instructive insight into the complexities of reality: his perspective was precisely the French tradition. Tobias was the refined product of a cosmopolitan training, fluent in German, English and French and, from the outset, his natural leanings were towards French culture. He knew Alfred de Musset's *Premières Poésies* [1829-35] by heart.⁴⁰ In his letters to his dear friend John Westlake at *River House*, 3 Chelsea Embankment, London Asser writes in French, Westlake replying in English. If Asser struck foreign observers as not typical

³⁰ Jeronimo de Bosch Kemper [1808-1876], the son of Johan Melchior Kemper [see above note 8], was a [criminal] lawyer, sociologist, economist and parliamentarian; he was professor at the *Athenaeum* from 1857 onwards.

³¹ Martinus des Amorie Van der Hoeven [1823-1868] was a celebrated professor at the *Athenaeum*, well-known for his subtle reasoning.

³² Around 1850 a mere 50 law students followed the courses of only two or three law professors; see Westenberg 1992, at 55. Caspar Barlaeus [1584-1648] and Gerard J. Vossius [1577-1649] were celebrated professors of philosophy and rhetoric, and history respectively. Barlaeus was the great propagator of the Amsterdam tradition of the *mercator sapiens* so dear to Tobias Asser, also witness his *Mercator sapiens, sive Oratio de coniungendis mercaturae et philosophiae studiis*. The *Athenaeum* was located in a 14th C. chapel [Agnietenkapel]. On the eventuality of Grotius' rectorship, see H. Nellen, *Hugo de Groot, Een leven in strijd om de vrede 1583-1645* [2007], at 327, 361. In returning to Holland uninvited in 1631, also at the instigation of Hooft and Vondel, Grotius took considerable risks that backfired. By the time his dear friends Vossius and Barlaeus made their inaugural addresses at the *Athenaeum*, on 8-9 January 1632, Grotius had gone into hiding in Amsterdam. He fled the country on 17 April, never to return.

³³ H.P.G. Quack [1834-1917] was a lawyer, economist and historian and best known for his major work on socialism [3 vols., 1875-88]. Secretary of the *Nederlandsche Bank*, Quack was, like Asser, Extraordinary Professor at the Amsterdam Municipal university [1885-94]. Unlike Asser, he was a Saint-Simon kind of socialist with very critical views on liberal economics.

³⁴ Van der Mandere 1946, at 170.

³⁵ Bervoets 381.

³⁶ Even in his last years Asser was involved with student projects and lustrums at Amsterdam, Leiden, and Delft. Bervoets 332.

³⁷ The submission was entitled *Verhandeling over Het Staathuishoudkundig Begrip der Waarde*.

³⁸ As von Vollenhoven's famous *dictum* read: 'History and philosophy of law simply did not exist for Asser.' Van Vollenhoven 1934 I, at 332-33.

³⁹ Gijsbert Carel, Count of Hogendorp [1762-1834], was a member of the Triumvirate that drew up the first Dutch Constitution [1814-15]. He is considered the founder of the Dutch liberal party. A prolific writer on constitutional affairs, he published *Bijdragen tot de huishouding van staat in het koninkrijk der Nederlanden, verzameld ten dienste der Staten Generaal* [10 vols., 1818-1829].

⁴⁰ Voskuil 1973, at 12, on the authority of Albéric Rolin. See below note 466.

Dutch,⁴¹ this was not just on account of his ‘Mediterranean’ appearance, posture and complexion,⁴² but also by virtue of his impeccable, elegant French.⁴³

Both in his 1858 tract for the Leiden prize competition and in his subsequent dissertation [1860], Asser gives pride of place to the concept of *harmonies économiques* first advanced by the French economist Claude Frédéric Bastiat.⁴⁴ A keen business man and militant activist in the 1848 Revolution, Bastiat was a classical economist in the line of Adam Smith. His optimistic liberalism countered Saint-Simon’s socialism and Proudhon’s anarchism. Bastiat’s views definitely struck a chord with Tobias Asser, who was a self-proclaimed pragmatic realist, and a far cry from a utopian.⁴⁵ Endowed with an intuitive awareness of the feasible, Asser put his hopes well within the province of practicality.⁴⁶ By the same token he evidently treasured the enlightened spirit of his day and age, and Bastiat supplied him with the economic ammunition for this optimism.⁴⁷ Then there was this Eugène Pelletan, French senator and publicist, whose battle-cry ‘Le monde marche!’ still echoed in The Hague in 1899.⁴⁸ Pelletan held that all legitimate interests were in harmony and that, often enough, self-interest best served the common interest. In 1862 Asser linked up with another ardent follower of Bastiat and Pelletan in Auguste Rolin-Jacquemyns.

3. A FIRST BENCHMARK [1860]

The year 1860 proved highly significant in Tobias’ career. On 19 April, still only 21, he earned himself the title *doctor utriusque iuris* in Leiden, defending theses with the famous Professor Simon Vissering⁴⁹ on ‘The History of the Principles of Dutch Constitutional Law Regarding the Policy of Foreign Relations’.⁵⁰ Vissering, a future Finance Minister, was an authority on economics and statistics. Tobias must have found much to his liking in Vissering’s courses. In terms of historical analysis, Tobias’ dissertation, which mirrored his personal interests, addressed the constitutional laws of the Dutch Republic, the French interlude, and the law reforms over the first three decades of the young Kingdom of the Netherlands [1814-1848]. Prominent among his life-long tenets first advanced here are the prerogative of the King in matters of war and peace and the strict parliamentary control over the conclusion of treaties. Asser never abandoned these views, neither in his university courses nor as a member of the 1887 Commission on Constitutional

⁴¹ Van Vollenhoven resented this!

⁴² Edouard Rolin wrote in his obituary: ‘[S]on origine méridionale lointaine [...] se révélait immédiatement dans ses traits fins, son teint mat, son regard, sa chevelure noire.’ See Ed. Rolin-Jacquemyns, *Discours prononcé aux funérailles de M. T.M.C. Asser*, in RDILC XLV [1913] pp. 519-22. Other testimonies referred to Asser’s coal black eyes and sharp aquiline nose.

⁴³ It struck his colleagues at Couvreur’s *Association* in 1862 and was often referred to in Dutch papers, as when Asser organized the 1864 Conference of the *Association* in Amsterdam.

⁴⁴ Steenhoff 1994, at 26. Frédéric Bastiat [1801-1850] was a French economist and political scientist. A prolific writer and a correspondent of Cobden, Bastiat co-founded the French Free Trade Movement [1846] and was member of the French Assembly [1848-50]. His *chef d’oeuvre*, published in 1849, shortly before his untimely death, was *Harmonies économiques*. Famous are his *Sophismes économiques*, notably the *Pétitions des marchands de chandelles*.

⁴⁵ In Asser’s own words: ‘I believe I may say, and you know I am not a Utopian...’ Asser on 16 July 1907 at the Second Hague Peace Conference. See Scott 1907 II, at 235; Eyffinger 2007, at 120 and cf., Van Vollenhoven 1934 I, at 336.

⁴⁶ Steenhoff 1993, at 15.

⁴⁷ Steenhoff 1994, at 27.

⁴⁸ Steenhoff 1993, at 12-19; Steenhoff 1994, at 27-29. Eugène Pelletan [1813-1884] was a flamboyant French publicist and politician, apostle of free thinking and of the optimistic theory of unlimited continuous progress.

⁴⁹ Simon Vissering [1818-1888] was economist and statistician. He was professor at Leiden from 1850 and Finance Minister [1879-81]. He published a monograph on *The Nineteenth Century Law on Bills of Exchange* [1850] and a *Manual of Practical Economics* [1879]. In 1860 he co-founded the *Staathuiskundige Vereeniging* [Society of Political Economy], along with Modderman, Pierson and Mackay [the later Lord Reay].

⁵⁰ ‘*Geschiedenis der beginselen van het Nederlandsche Staatsregt omtrent het bestuur der buitenlandsche betrekkingen*’, Leiden 1860. The Amsterdam *Athenaeum* did not have courses on constitutional history, statistics or diplomacy. See Van der Mandere 1946, at 170-71; Westenberg 1992, at 55.

Reform, even if Heemskerk and Buys disagreed.⁵¹ It was a timely conclusion of his studies when, on April 20, his father Carel Daniel sent word to his clients that:

As a consequence of my appointment by H.M. the King to Counsellor in the Provincial Law Court of North-Holland, and my acceptance of this position, I will put aside my legal practice, which will be taken up and continued by my son, the lawyer T.M.C. Asser.

Tobias Asser highly valued his work in the law firm which, despite all other preoccupations, he headed from 1860 to 1893, determined to keep in touch with practice in spite of towering work loads.⁵² He soon earned himself a reputation with Amsterdam merchants and insurance brokers. In court he showed himself self-assured – ‘arrogant’ was the term preferred by opponents.⁵³ Asser never was one to swallow defeat readily.⁵⁴ He specialized in [maritime] insurance law,⁵⁵ thus representing in court the British contractor of the Noordzeekanaal in his lawsuit with the *Kanaalmij*.⁵⁶ But he likewise counselled in German-Dutch [1891-94], Siamese [1897]⁵⁷ and English-South African [1901-04] railway lawsuits,⁵⁸ and advised King Leopold’s heirs in inheritance disputes with the State of the Congo [1901-11].⁵⁹ Intriguingly, in 1911 he gave counsel regarding the query whether a Zionist could sufficiently love the country of his nationality.⁶⁰

Asser was never predestined to exclusively enjoy the law firm, nor the type of personality to be satisfied with the career of barrister. His dissertation had made its mark in academia and drawn the attention of the Foreign Ministry. In 1860, he co-represented the Netherlands at the Coblenz Conference on Rhine Tolls.⁶¹ However, in the Spring of 1862 he accepted a professorship in Amsterdam and that summer attended his first academic conference in Brussels, a momentous event that proved of paramount importance to his further life.⁶² In 1864 he accepted a life-long appointment as Commissioner at the *Nederlandsche Bank* as his father had before him.⁶³ The same year he was married. By the mid-1860s, in other words, the contours of Tobias Asser’s family life and multi-pronged career as a barrister, university professor, diplomat, Council of State, and ‘internationalist’ were clearly evident. In dealing with these components of his life, we will commence with Tobias’ professorship in Amsterdam, a well-defined period [1862-93] attesting to his intellectual growth and gradually widening horizons, and will then briefly discuss his family life. From there we will turn to the international arena. First we will address Tobias’ early contacts in the world of international scholarship and his involvement with the *Institut de droit international*. Hence we will enlarge on his diplomatic and counselling activities on behalf of the Foreign Ministry, then to focus on the *pièce de résistance* of all his intellectual endeavours, the *Conférence de La Haye de droit international privé*. The many challenges the new century offered in the domain of public international law and arbitration [The Hague Peace Conferences and the Permanent Court of Arbitration] will be the subject of the subsequent chapters of this tract, which is concluded by a review of Asser’s last bow, the Conferences on the Bills of Exchange, and his last great dream, The Hague Academy of International Law.

⁵¹ Van der Mandere 1946, at 171; Westenberg 1992, at 57.

⁵² Voskuil 1973, at 14.

⁵³ Westenberg 1992, at 75.

⁵⁴ Van der Mandere 1946, at 172.

⁵⁵ The references to lawsuits in Bervoets 65-75 mostly concern cases of insurance law. For Asser’s legal advice, see Bervoets 76-101.

⁵⁶ The contractor *Henry Lee & Sons*. De Beaufort 1914, at 140; Westenberg 1992, at 57.

⁵⁷ Bervoets 20.

⁵⁸ *Ibid.*, 86-87, 89, 91, and cf., 99 regarding a ‘clearing house’ between competing Dutch railway companies.

⁵⁹ *Ibid.*, 92. As a shareholder of the *Netherlands Society of Artificial Oyster Culture*, Asser advised in the founding of a *United Dutch Oyster Company* [1892]; Bervoets 108.

⁶⁰ Bervoets 97.

⁶¹ On which, see below Chapter V.1.

⁶² The maiden congress of Auguste Couvreur’s *Association internationale pour le progrès des sciences sociales* in Brussels, on which later. In Brussels Asser took up a life-long friendship with Auguste Rolin-Jaequemyns of Ghent and John Westlake of Cambridge that opened up the world of international law to him. See Steenhoff 1994, at 29-31.

⁶³ Bervoets 102-07.

II

PROFESSORSHIP IN AMSTERDAM [1862-1893]⁶⁴1. LAW OF COMMERCE AT THE *ATHENAEUM ILLUSTRÉ* [1862-1876]

Asser's thesis had not escaped the academic world. Early in 1862 he accepted the professorship of 'Contemporary law' at the *Athenaeum Illustré* with an inaugural address on 'Handelsregt en Handelsbedrijf'.⁶⁵ His courses on civil law, commercial law,⁶⁶ criminal law, and criminal procedure heralded an academic career of a full thirty years, cut short in 1893 by his appointment as Council of State.⁶⁷ In a farewell address at University, entitled 'Toen en Nu',⁶⁸ he candidly reviewed the whole period: the many upsets in municipal policy and university management, the upheavals within the law faculty, the ever changing demands of the discipline. The address stands out as a precious testimony, by an acute observer, of academic life in The Netherlands over the period. More than that, it is a true *document humain*, rare in Asser's oeuvre, and an example of his own particular views on the role of the law and law education in society – views that, as he knew very well, were not shared by many colleagues.

He vividly recalled how, aged 24, on that 20 October 1862 he had been collected at his parents' home⁶⁹ by the president of the professorial order, had been robed and escorted into the historic university auditory at the Oude Zijds Voorburgwal, there to find the Municipal Council, lawyers, the *fine fleur* of the Exchange, students and, above all, his father assembled in keen anticipation. Climbing that same high rostrum he had gaped at in awe as a student a mere two years before, dread fell upon him. Just in time he had regained his composure and confidence, reverting to his usual enthusiasm. Sadly, the following day a mere two students had attended his first course on commercial law.⁷⁰ Such were the days of the old *Athenaeum*, a world of small compass, with the ever looming threat of liquidation. One day the Amsterdam city council would call for equal status of its *Athenaeum* with State universities like Leiden, the next for its replacement with a 'Vrijzinnig Protestant' University.⁷¹ This issue was eventually settled in 1876 in new legislation on higher education. 'Amsterdam Municipal University' soon grew into the Kingdom's largest academy, then to be checked in its tracks by prohibitive costs and new threats of dissolution. In terms of management, it had never been smooth sailing.⁷²

⁶⁴ Ibid., 110-30.

⁶⁵ 'Commerce and Commercial Law'. Bervoets 110.

⁶⁶ For documentation on Asser's courses on commercial law during 1862-63, see Bervoets 111.

⁶⁷ This appointment formally obliged him to resign and change his beloved Amsterdam for The Hague. Bervoets 120, for documentation.

⁶⁸ *Toen en Nu. Afscheidsrede van Prof. T.M.C. Asser uitgesproken op zaterdag 21 October 1893, in de Aula der Universiteit te Amsterdam*, 1893. ['Then and Now', Farewell Address].

⁶⁹ The address is problematic; Keizersgracht 391 seems the most likely option, Heerengracht 541 being an alternative.

⁷⁰ *Toen en Nu* 1893, at 3-4. Westenberg 1992, at 57-58.

⁷¹ *Toen en Nu* 1893, at 5.

⁷² Bervoets 128-29, on Asser's involvement with fundraising efforts during 1888-91 to offer the *Athenaeum* an 'Aula' [auditorium].

Fortunately, contacts with colleagues and students made up for these mishaps, most of the times.⁷³ On that Saturday, 21 October 1893, in the new Amsterdam University auditorium⁷⁴ Tobias gratefully recalled Van der Hoeven's ever so subtle analysis of civil procedure, and Buys' exceptional oratorical powers that soon would keep his Leiden audience spellbound.⁷⁵ Asser vividly remembered his skirmishes with Buys, keen champion of the 'old-world' *laissez faire* education policy, countering Tobias' compelling advocacy of compulsory education: 'Do you so much despise the concept of freedom?' Buys had sniped.⁷⁶ Level-headed Tobias was an inspired and committed debater in his own right, not averse to showing his true colours, as on issues of progressive legislation to undo social inequality, or when he argued that the paramount social role of agriculture militated against unlimited freedom in that domain. A man's goals, he preached to his students in this remarkable address, are determined by the heart – just as the means towards these goals [and legislation was such a means] were determined by the intellect: 'Never suppress the feelings of the heart: nothing great was ever brought about by mere intellect!'⁷⁷

Contacts with colleagues had never been unproblematic, also due to the ever changing staff.⁷⁸ In the carousel of posts Asser's terms of teaching had never been certain.⁷⁹ But there was more to it. To begin with, Asser had a *status aparte* throughout his academic career. In 1862 he had laid his claim to continue in his law firm. The move was unprecedented and positively despised by colleagues.⁸⁰ Again, Asser's approach to teaching was revolutionary. In 1862 he had launched a student debating club⁸¹ and initiated 'pleitcolleges' and 'practica', moot courts held to try topical issues and featuring lively discussion and counselling.⁸² In 1865 he launched courses on complex insurance law to oblige representatives of commerce and industry, and thus serve science and praxis alike.⁸³ In another blasphemy, he had opened a curriculum for the Amsterdam citizenry.⁸⁴

There was definitely no coincidence here. The nucleus of Asser's teaching, in his own mind, were his courses on commercial law. He flew high 'On Mercury's Wings' those years. Ideally positioned in the nation's thriving centre of commerce, Asser insisted on linking theory to practice, law to trade. He heartily criticized the apathy⁸⁵ of the Dutch as compared to British embrace of Cobden's ideas on Free Trade, Napoleon III's recognition of British limited liability companies

⁷³ Bervoets 122 contains documentation regarding the 1866 reunion of alumni of the *Athenaeum Illustre*. Bervoets 123, on festivities of the Amsterdam Student Corps over 1866-77.

⁷⁴ Cf., above note 72.

⁷⁵ J.T. Buys [1828-1893] was briefly professor at the Amsterdam *Athenaeum* [1862-64]. In 1864 he moved to Leiden University where he counted as Thorbecke's true successor. He was a liberal-minded constitutional lawyer with economic leanings and great oratory powers. See H. van den Brink, in *Zestig Juristen* 1987, at 270-75.

⁷⁶ *Toen en Nu* 1893, at 23-24.

⁷⁷ *Ibid.*, at 25.

⁷⁸ In 1865 Modderman was appointed, in 1869 Van Tienhoven, and in 1873 Van Pijnacker Hordijk. A.E.J. Modderman [1838-1885] was a very pragmatic criminal lawyer, who considered practical feasibility the true touchstone of all speculation and doctrine. He was professor at the *Athenaeum* [1864-1870] and at Leiden University [1870-80], and Minister of Justice [1879-83]. See H. van den Brink, in *Zestig Juristen* 1987, at 332-35. Gysbert van Tienhoven [1841-1914] was a lawyer and politician, professor at the *Athenaeum* [1869-73], Mayor of Amsterdam [1880-91] and Prime-Minister [1891-94]. On the achievements of his cabinet and his role in Asser's life, see below note 266. Cornelis Pynacker Hordijk [1847-1908] was a lawyer and liberal politician. He was professor at Amsterdam [1874-81], Minister of the Interior [1882-83] and Governor-General of the Dutch Indies [1888-1893].

⁷⁹ Bervoets 112, on the *Series Lectionum* 1872; *ibid.*, 121, on appointments and administration during 1862-90.

⁸⁰ Van der Mandere 1946, at 171.

⁸¹ *Toen en Nu* 1893, at 6. Bervoets 126, for the *Rules and Regulations* of the Debating Club, countersigned by Asser as President.

⁸² Van Vollenhoven 1934 I, at 331; Bervoets 119, for documentation regarding the year 1892.

⁸³ Van der Mandere 1946, at 174. Annotations for his 1882 evening courses on bonds to aspirant-merchants in Bervoets 117. Asser was Commissioner of the *Nationale Levensverzekeringsmij* during 1892-1913. Bervoets 109.

⁸⁴ Bervoets 118, for public courses during 1891-94.

⁸⁵ Van Vollenhoven 1934 I, at 330 refers to the 'deftige of korzelige apathie' Asser had to cope with.

in France, or Germany's new comprehensive Code of Commerce [1860].⁸⁶ Tobias' 'call upon the nation', in his lively debate with students and merchants in the 'Friday Society' for the Netherlands to regain its former prominence in world trade proved infectious.⁸⁷ Out of the 74 dissertations at the *Athenaeum* during 1862–77 no less than 32 concerned aspects of the law of commerce.

These figures are remarkable by any standards. The status of commercial law *vis à-vis* civil law raised fierce debates in 19th century Holland. The 1809 Code which Moses Salomon Asser had helped draft and which heavily leaned on French concepts, gave a *status aparte* to commercial law. It was a controversial approach, keenly challenged by conservative lawyers, the famous Jonas Daniel Meijer⁸⁸ among them. The 1838 Commercial Code had confirmed this separate treatment and the distinct status of the merchant class before the law. It enhanced the status of commercial law – and commerce as such – which, throughout the 18th century, had been held in wide contempt in Holland. Numerous dissertations after 1840 attest to the discipline's growing popularity among students. In the 1880s, a retrogressive tendency manifested itself, ending in the commercial domain's reintegration into the civil code.⁸⁹ In his early years Asser showed himself a firm advocate of the *status aparte*. Later on, with his priorities shifting, he abstained from speaking up on the issue, rather focusing on international arrangements through unification of the international law of commerce.

In 1873 Asser published a handy manual for his students, the first of its kind. This eminently practical 'Schets' of the Dutch Law of Commerce⁹⁰ went through twelve editions during his lifetime and established his authority in the field. In a concise, direct style and with the crystal-clear reasoning that were Asser's trademark, the treatise clearly avowed the subsidiary role of the law to the urgent demands of international commerce. Conflicts of national legislation, Asser argued, were no longer compatible with the demanding dynamics of trans-boundary trade in the Industrial Era. Primarily meant to serve students and practitioners the *Schets* reduced complex issues to simple formulas for pragmatic application. As late as 1882–1889 Asser was on the State Commission for Commercial Legislation. By that time, however, his priorities had long since shifted.⁹¹

2. PRIVATE INTERNATIONAL LAW AT THE UNIVERSITY OF AMSTERDAM [1877–1893]

The Revision of the academic articles in April 1876 and the inauguration of Amsterdam Municipal University in 1877⁹² were a source of great joy to Asser. That night, for once, he took the lead in the festal procession,⁹³ even if the change formally affected his position. To meet his claim to combine bar and rostrum his terms of office were changed into an extraordinary professorship.⁹⁴ His new status fittingly reflected Amsterdam's special, pragmatic outlook on the law as against the purely academic approach advanced by State universities. With Tobias' father's elevation to the Supreme Court in The Hague, that very year, the professional prospects of the Asser family

⁸⁶ *Toen en Nu* 1893, at 14–15.

⁸⁷ Regarding Asser's call for a 'national revival', see Van Vollenhoven 1934 I, at 330.

⁸⁸ Jonas Daniel Meijer [1780–1834], who is often considered the first prominent Jewish lawyer in the Netherlands, battled for the emancipation of the Dutch Jewry.

⁸⁹ Westenberg 1992, at 59–60.

⁹⁰ *Schets van het Nederlandsche Handelsregt*, Haarlem 1873. Westenberg 1992, at 61.

⁹¹ Bervoets 352–56.

⁹² *Toen en Nu* 1893, at 9; Bervoets 129.

⁹³ Westenberg 1992, at 74.

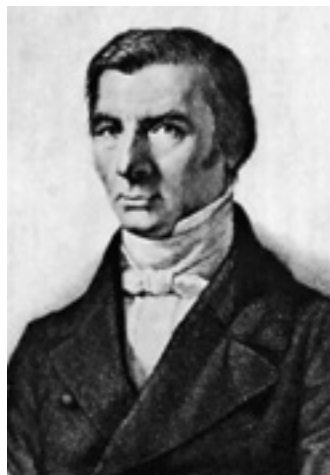
⁹⁴ *Toen en Nu* 1893, at 18; Van Vollenhoven 1934 I, at 332; Van der Mandere 1946, at 173.



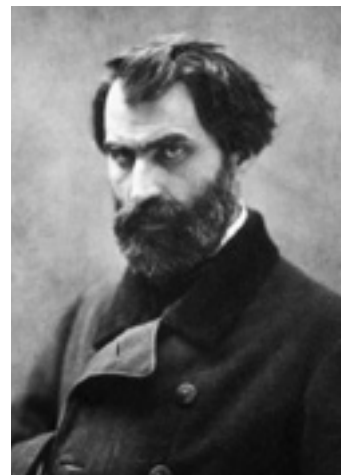
'Tobie or not Tobie': Asser's bid for Parliament in 1891, by Johan Braakensiek. Photograph Municipal Archives The Hague [kl. B. 2059].



Carl Ludwig von Bar [1836-1913], German criminologist and international lawyer.



Frédéric Bastiat [1801-1850], French economist and political scientist.



Eugène Pelletan [1813-1884], French publicist and politician.

looked bright enough. However, it was not all roses. Tobias' *status aparte* and unorthodox teaching made conservative colleagues snigger at the 'academic' status of his teaching.⁹⁵

In his farewell address Asser recalls these embarrassments. The word 'wetenschappelijk',⁹⁶ he suggested, was perhaps the most abused word in the Dutch language. Scholarship implied fathoming its object of study with respect to origin, essence, and meaning. In speculative scholarship this entailed the philosophical analysis of concepts, as with philology and history the scrutiny of sources. In the social sphere of legal studies 'scholarship' was tantamount to the intimate understanding of contemporary society and inter-human relations.⁹⁷ This was most pertinent to the sphere of commercial law, whose *raison d'être* was to identify itself with the demands and challenges of trade and its civil law foundations.⁹⁸ Late-19th century acceleration of social processes demanded that the discipline keep its finger on the pulse of society-on-the-change. To that extent, Asser's 1862 inaugural address on 'Commerce and Commercial Law' had been a declaration on principle. Statistics proved Asser right. To demonstrate the relevance of his subject matter, out of the 200 dissertations at Amsterdam University covering the years 1877-1893, no less than 47 concerned the law of commerce. Trade boomed and optimism ran high in Amsterdam. Huge public projects were launched: in the 1880s, within a matter of years, Cuypers' *Rijksmuseum* [1876-85] and *Centraal Station* [1881-89] were contracted and completed, the Damrak canal filled in and a *New Exchange* projected.⁹⁹

Asser harboured more outspoken feelings. He felt lectures should not be simply written in advance and read aloud to students, as was common practice, but rather delivered 'ex tempore' with the help of brief notes, to better impress the audience and warrant the intellectual alertness of the lecturer.¹⁰⁰ Another controversial feature of his courses was the students' active involvement and right of intervention. As Asser claimed in 1893, over the years he had learned a great deal from his students and from the exchange of views with the Amsterdam *mercator sapiens*.¹⁰¹ University *Almanacs* tell us his students simply loved his courses.¹⁰²

Even so, with time, keen observers could not fail to notice Tobias' gradual change of perspective and shifting interest towards the newly emerging discipline of private international law. This interest was not so much triggered at home, as rather by his close international contacts from the early 1860s. In the Academic Statute of 1876 private international law had been acknowledged as an optional course in the curriculum. In Utrecht Hamaker took up the courses,¹⁰³ in Amsterdam they were entrusted to Asser. Indeed, he may well have instigated the courses himself; his files tell us he anticipated as much in 1875.¹⁰⁴ In 1880, and as a counterpart to his successful *Schets* on commercial law, he published his 'Sketch of Private International Law',¹⁰⁵ often identified

⁹⁵ *Toen en Nu* 1893, at 8-9; Steenhoff 1997, at 123; Westenbergh 1992, at 58.

⁹⁶ 'Scholarly' for the humanities, 'scientific' for the exact sciences.

⁹⁷ See also Van der Mandere 1946, at 172-73; Westenbergh 1992, at 60-61.

⁹⁸ On Asser's philosophy in this respect, see Van Vollenhoven 1934 I, at 331.

⁹⁹ P.J.H. Cuypers [1827-1921] was the foremost representative of the late 19th century historic school of architecture, featuring Gothic and Renaissance overtones, that was characteristic of Dutch official architecture of the period. A church architect mainly [he was a Roman-Catholic from Limburg], he is best known for his public buildings in Amsterdam.

¹⁰⁰ *Toen en Nu* 1893, at 12.

¹⁰¹ *Ibid.*

¹⁰² Westenbergh 1992, at 53.

¹⁰³ H.J. Hamaker [1844-1911] was professor of private international law at Utrecht as of 1877, and a scholar of strong feelings and outspoken views. Averse from all compromising, he was the anti-pole of the suave Asser. On Asser's averseness of polemics, see Van Vollenhoven 1934 I, at 335; on Asser's relationship with Hamaker, see P.C. Kop in *Zestig Juristen* 1987, at 231-35.

¹⁰⁴ Bervoets 114.

¹⁰⁵ *Schets van het internationaal privaatrecht*, Haarlem 1879/80; German edition 1880; French edition 1884 [Rivier]. Bervoets 189 on reviews of the book and later editions.

with the dawn of a new era in the Netherlands.¹⁰⁶ After long and troubled years of searching, Tobias Asser had found his rest and set his course.¹⁰⁷

In his 1893 address Asser argued that, in spite of its long pedigree, uncertainty loomed large in this domain of ‘conflict of laws’.¹⁰⁸ To be sure, the Netherlands boasted a proud tradition in the field. By 1650, the innovative ‘Dutch School’ of Paul Voet and Ulrik Huber had superseded the medieval doctrine of statutes by the innovative concept of *comitas*.¹⁰⁹ But then, in Holland there was a relapse.¹¹⁰ Pivotal in waking Asser’s keen interest was Friedrich von Savigny’s pioneering treatise on the *System des heutigen Römischen Rechts* [1849] which replaced the system of statutes deduced from national legislation with very pragmatic rules of reference instigated by doctrine and jurisprudence. Likewise of lasting influence on Asser was Von Savigny’s pupil Carl Ludwig von Bar in his fundamental overview of international tradition in *Das Internationale Privat- und Strafrecht* [1862].¹¹¹

Asser’s own *Schets* of 1880 was not pretentious. It was typically written for the very practical purposes of his university courses. However, it did follow Von Savigny’s reasoning closely.¹¹² The *Schets* was almost exclusively oriented towards the international sphere, making no reference to Dutch tradition whatsoever.¹¹³ Even so, in advocating international codification, it heralded a ‘national incentive’ at home. Asser distinguished two ways ahead to solve vexing problems. The first aimed at unification of substantive law; this avenue Asser positively rejected as traversing too treacherous ground. He therefore advocated the second avenue towards unification of the law of conflict. As a pilot project he recommended commercial law. The *Schets* served Asser’s paramount objective to revive interest, prompt debate, suggest international co-operation and, last but not least, inspire codification:

[E]n l’absence de dispositions légales l’on ne soit pas encore parvenu à concilier la doctrine et la jurisprudence dans les différents pays. Il est d’autant plus nécessaire de trouver les principes justes dans ce domaine, pour réaliser par là un accord aussi grand que possible et pour préparer l’élaboration de règles législatives ou conventionnelles.¹¹⁴

In itself, Asser’s call for unification and codification linked up with an ongoing process triggered by the Napoleonic Era. Looming large in the general upswing of nationalism after Waterloo was the apprehension of French imperialism. Growing awareness of national coherence prompted the

¹⁰⁶ Steenhoff 1994, at 56ff. Van Vollenhoven 1934 I, at 332: ‘Rare are the books in Dutch law literature of comparable conciseness and crystal-clear lightness [...] never ailing of the illness of those astute scholars who, above all, wish to surprise by something new or caustic.’

¹⁰⁷ Van Vollenhoven 1934 I, at 332. Asser’s substantial paper in the *Revue* [RDILC] of 1880 on ‘Droit international privé et droit uniforme’, only confirms this view.

¹⁰⁸ *Toen en Nu* 1893, at 27-28.

¹⁰⁹ Paul Voet [Voetius, 1619-1667] was a philosopher and doctor of law [1645]. He laid the foundations for modern private international law by replacing the time-honoured Italian-French approach to the conflicting statutes of competing city-states as initiated by Bartolus [14th C.] with the concept of *comitas gentium*, that is, the extending of reciprocal courtesies without legal obligation between states on the basis of sovereign equality. A major work of his is *De statutis eorumque concursu* [1661]. Ulrik Huber [1636-1694] was a political philosopher and a legendary professor of law at Franeker University. He is best known for his Roman law studies and his *De jure civitatis libri tres* [1672], a typical product of the transitory period from Scholasticism to Enlightenment.

¹¹⁰ Due to law unification within the Republic and subsequent codification along the lines of the French *Code civil* [1811] the discipline had lost much of its relevance. The 1838 Dutch Civil Code, to which Carel Asser had contributed, marked a rebirth in this respect. Westenbergh 1992, at 68.

¹¹¹ Carl Ludwig von Bar [1836-1913] was a criminal and international lawyer; Steenhoff 1994, at 10-22. Von Bar later served on the PCA. For his involvement with the Hague Academy of International Law, see below Chapter XVII.1.

¹¹² Steenhoff 1994, at 56-60. Westenbergh 1992, at 68-69; Voskuil 1973, at 16-17.

¹¹³ Scarce reference is made to the *Wet Algemeene Bepalingen* [1829], and not a single Dutch scholar figures among his sources. Westenbergh 1992, at 69.

¹¹⁴ Cited from Voskuil 1973, at 17.

unification of divergent local and regional traditions into ‘national’ legislation. In a parallel process, the paramount influence of the French *Code civil* made itself felt in a wave of codification worldwide. In the end, one may conclude, Napoleon’s pen proved considerably more effective than his sword ever was. Whereas the one provoked fierce protest, the other inspired ardent emulation.

The coin had its flipside, though. By falling back on national legislation the nation-states unwittingly impaired the time-honoured *jus commune* of the great pan-European Roman law tradition. Within the sphere of commercial law, the upsurge of legislation undermined a full millennium of customary *Lex Mercatoria*. More than this, national idiosyncrasies progressively obstructed the unprecedented boom in trans-boundary trade in the wake of technological progress, the Industrial Revolution, and the acceleration of travel and migration facilitated by the steamship and the locomotive. The quest for international unification, therefore, came as a natural response to an acute dilemma. To suppress the conflict of laws, harmonization became imperative. The launching of the British *National Association for the Promotion of Social Science* [1857] and Dudley Field’s¹¹⁵ *Association for Reform and Codification of International Law* [1873] attest to the urgency of the difficulty. Tobias Asser, for one, clearly heard the call.¹¹⁶ In his farewell address he claims he had always known private international law to be his true vocation. In the Amsterdam auditorium, brimming with many familiar faces – dozens of the 55 doctors he had helped to create,¹¹⁷ merchants from the Zaanstreek, and the elite of the world of Banking and Exchange¹¹⁸ – Asser claimed he left university life, his dear students, and his beloved city with a sad heart.

The days of university classes have always been happy days to me. [...] You, students have kept my mind young [...] This university is the jewel in the imperial crown of Amsterdam! [...] Long I have withstood the siren call of the Residence. Under any circumstances, wherever my place of domicile, I will forever remain Amsterdamer! [...].¹¹⁹

There is no reason to question Asser’s sincerity. The formal ground for his resignation was the incompatibility of the university post with his new position on the Council of State.¹²⁰ But then, it was Asser himself who had applied for the post.¹²¹ Again, retracing his steps, the October address came in the wake of the successful conclusion of his first *Conférence de La Haye* of September. This Conference, in turn, was the outcome of an initiative of his own taken a full two years before. In 1891 he eagerly took up a unique opportunity that suddenly presented itself to launch the Conference idea which, obviously, even then had been brewing in his mind for quite some time. Last but not least, there was his growing interest in politics. In the late 1880s Asser had lectured frequently in liberal party circles. In 1890, this proved to have been the mere prelude to his, otherwise unsuccessful, bid for Parliament,¹²² which inspired Braakensiek’s famous cartoon in *De Groene*. The critic presented Asser posing as Hamlet with the legend: ‘To be [Tóbi] or not to be, that is the question.’¹²³ To let off steam, those weeks Asser expounded his constitutional

¹¹⁵ Dudley Field [see below Chapter IV.4] had been pivotal in codifying New York laws.

¹¹⁶ On the above developments, see Westenberg 1992, at 66-67.

¹¹⁷ Bervoets 430, a collection of theses with annotations. Cf., Steenhoff 1997, at 123.

¹¹⁸ On Asser’s correspondence with *doctorandi* over 1888-93, see Bervoets 116.

¹¹⁹ *Toen en Nu* 1893, at 28-32, 41-42. A statement Asser repeated as late as April 1912 in an assembly of the Royal Netherlands Academy of Arts and Sciences; Van Vollenhoven [1934 I, at 326] calls the move a ‘hidjrah’.

¹²⁰ By Royal Decree of 5 May 1893. Bervoets 357; Westenberg 1992, at 53.

¹²¹ Steenhoff 1997, at 126.

¹²² Bervoets 389. On behalf of the Amsterdam ‘Burgerzin’ electoral society. Westenberg 1992, at 74.

¹²³ Later, on the occasion of Braakensiek’s silver jubilee, Asser sent the cartoonist a congratulatory poem, with reference to the pun in *De Groene*, Sept. 1891: Den Heere Joh. Braakensiek op zijn zilveren feest. ‘Tobie or not to Tobie’

views in an elaborate tract.¹²⁴ Within a week of the installation of his former university colleague Van Tienhoven as Foreign Minister, in August 1891, Asser travelled to The Hague to successfully press his *Conférence* idea on him.¹²⁵

It is likely that the genesis of this *Conférence* idea is to be found outside the university sphere. Asser's daily experience at the law firm – specialised as it was in maritime law, insurance law and international business law – had instilled an acute social need into Asser. This feeling was shared by the network of friends in the international domain he had carefully built up over a full three decades. By 1890 the ambitious Tobias Asser was in for a change of intellectual horizon. His First *Conférence de La Haye*, a mere four weeks before his farewell address,¹²⁶ had been a great success. As he pocketed the medals in gold, silver and bronze from the Chamber of Commerce that bore the legends *Kennis*, *Vernuft*, *Arbeid*, respectively,¹²⁷ and received the commemorative album on behalf of the City Council, University and Exchange, he pledged himself to return one day to continue the ongoing debate – as one does on such occasions. Asser had committed himself: from the journey he had embarked on there was no way back, or as Van Vollenhoven put it: *incipit vita nova*.¹²⁸ He exchanged the Heerengracht 541 in Amsterdam for Bezuidenhout 43 in The Hague.¹²⁹

werd, langen tijd vóór dezen, / door Uwe teekenstift heel geestig toegelicht. / Voor *uwe kunst* was nooit een 'not to be' te vreezen; / zij blijve steeds vol luim en politiek gericht. T.M.C. Asser. Bervoets 51.

¹²⁴ 'Revision of the Constitution. Remarks on some Governmental Propositions', in *Studiën* 467-97. Voskuil 1973, at 21.

¹²⁵ See below note 266. Steenhoff 1993, at 44-51. Van Vollenhoven recalls how, even twenty years later, it was widely argued in The Hague that the 1893 initiative had solely served Asser's personal glory. Van Vollenhoven 1934 I, at 330.

¹²⁶ The Conference was opened on 12 September 1893. See the reference in *Toen en Nu* 1893, at 28.

¹²⁷ Van der Mandere 1946, at 180.

¹²⁸ Van Vollenhoven 1934 I, at 326.

¹²⁹ A tentative note on Asser's home addresses is in order. In 1872 Asser and his family lived at Reguliersgracht 8, later at Reguliersgracht 492. Asser's last [private or office] address in Amsterdam was Heerengracht 541. In 1893, upon his move to The Hague Asser – witness Van Vollenhoven [1934 I, at 326] and on the testimony of letters and postcards sent by colleagues – first lived [or kept office] at Bezuidenhout 43. Soon enough he bought himself a mansion at Bankaplein 3 [not 1, as erroneously found in sources; Asser's funeral notice in the NRC of 1 August 1913 settles this issue]. The Bankaplein was a prestigious development project of the Society *Duinweide* in the heart of the so-called [Indian] Archipel area, at the crossroads of Bankastraat and Riouwstraat, a square or 'rondpoint' as of 1879. The project was launched in Spring 1881 and consisted of six monumental mansions around a richly ornamented fountain after designs by architect H. Wesstra Jr. The square was officially named Bankaplein in October 1883. Bankaplein 3 was designed by Wesstra in 1884. In this mansion Asser lived with Jeanne [and little Jan] for the remainder of his years, with the Thorbeckes living next door. Van Vollenhoven himself lived nearby in his 'Bali Palace', with his sister Gretha and his dog *Kereltje*. Throughout [most of] his Hague period, it would seem, Asser kept office at Lange Houtstraat 16, another impressive mansion at the corner of Tournooiveld and adjoining the Royal Theatre. Either in November 1906 [as Bervoets 432 would suggest] or [as his correspondence suggests] around 1912, when Asser's health broke down and precluded him from keeping regular office hours, this mansion was rented, with a right of purchase, to the State of the Netherlands. In the first years, the Ministry of Industry was lodged there. Bervoets 423.

III

MARRIAGE AND FAMILY LIFE

And then, one is entitled to ask, to what extent did the drama of Asser's personal life affect all of the above? On 22 June 1864, at the age of 26, Tobias married his cousin once removed Johanna Ernestine [Jeanne], who was his junior by 8 months. Was it his very intentional choice of separating the private and public spheres that made Tobias, who even then had an international network, choose himself a wife from within the innermost family circles?¹³⁰ Be this as it may, from all sources we must conclude that the marriage was a harmonious one and that, for the first twenty-five years, Tobias and Jeanne lived an altogether happy, if extremely busy, life. Their union was blessed with four children. On 14 February 1866 Carel Daniel [Daan] was born, followed on 4 March 1867 by Hendrik Lodewijk [Louis] and on 14 October 1868 by Elisabeth Maria Rosa [Elsa]. A third son, Jan, was born almost 15 years later, on 16 April 1882.

Tobias' interchange of letters with his dear friend Gustave Rolin-Jaequemyns in Ghent let us catch glimpses of frequent family relations, of contacts running from grandparents to sisters to children. In all this the two spouses, Jeanne and Emilie, both of them warm characters, played a leading role. As late as 1913, John Westlake's wife Alice looks back with warmth on her contacts with Jeanne.¹³¹ All three friends, Rolin, Westlake and Asser, were blessed with stable relationships, and their work must have profited considerably from it. At some stage Gustave refers to the three women as part of the editorial board of their *Revue*.¹³²

Asser's two eldest sons both proved gifted lawyers and gave their father every reason for due professional and personal pride. Daan¹³³ followed in the footsteps of his father, who was his supervisor when, in 1887, he defended his theses on *International Transport of Goods by Rail; the Bern Convention of 1866*.¹³⁴ At the 1894 Paris session of the *Institut*, Daan, by then a lawyer at the Court of Appeal in Amsterdam and on the editorial staff of various journals, was appointed *associé*.¹³⁵ Asser's second son, Louis,¹³⁶ apart from being a competent lawyer, was a gifted designer and painter, who passed his exams at the Amsterdam Academy of Art and painted a series of excellent family portraits. On 14 April 1889 he defended his theses in parliamentary history at Amsterdam University on a dissertation that addressed Dutch Foreign Relations over 1860-1889 and closely followed the lines of the historical part of his father's dissertation.¹³⁷ In subsequent years Louis carved himself a name as contributor to various weeklies on topical socio-political

¹³⁰ Westenberg 1992, at 55 refers to the close family ties and rare access of outsiders into this domain.

¹³¹ Letter to Asser of 10 May 1913. Bervoets 60.

¹³² Rolin-Jaequemyns, in a letter to Asser dated 7 April 1869 writes: '*Les dames en particulier méritent toute notre reconnaissance. Elles compléteront de la manière la plus charmante notre comité de rédaction.*'

¹³³ In 1898 Daan [1866-1939] married Wilhelmina Thorbecke [1877-1971]. They had five children.

¹³⁴ The dissertation was in Dutch and entitled *Internationaal Goederenvervoer langs Spoorwegen. De Bernse Conventie van 1866*.

¹³⁵ *Annuaire XIII* [1894-95], at 395. As of 1889, Carel Daniel was co-editor of the *Magazyn van Handelsregt* and the *Revue internationale de droit maritime*. During 1935-39 he presided over the Standing State Committee on Private International Law. Until his death he headed the law firm. Papers concerning his work on the State Committee were deposited with the TMC Asser Instituut by J. Offerhaus, Asser's successor on the Committee, and in 1988 incorporated in the Family Archive in the National Archives, with an addition in 1994. Bervoets 436-473.

¹³⁶ In 1893 Louis, 26 years of age, married Catharina Piek [1866-1906]. The pair had four children: Hendrik Tobias [1894], Lucia Wilhelmina [1896], Johanna Ernestina [1898] and Wilhelmina Gesiena [1900].

¹³⁷ *De Buitenlandsche Betrekkingen 1860-1889. Schets eener Parlementaire Geschiedenis*, Haarlem 1889.

and economic issues.¹³⁸ In 1894, after a promising professional start, happily married [1893], Louis developed a serious pulmonary condition which forced him to move to Davos for two years. On his return, fully recuperated by all appearances, he distinguished himself with a pioneering study on parental authority, guardianship, and the protection of minors which had a durable impact on Dutch legislation on child welfare.¹³⁹ Summer 1901, right after his installation on 1 July as judge at the Amsterdam District Court, his lung condition fatally resurfaced. Louis passed away on 7 August.

The loss must have hit Tobias hard, all the more perhaps as his relationship with Louis had been a relatively troubled one throughout. For all his outward charm Asser, by all reports, was a demanding and critical father. But then again, the loss came on top of the tragedy that had struck family life in the late 1880s. Jeanne's health had been frail for years, when she developed a chronic illness that fatally affected her eyesight and hearing. She lived on till 1917 and, by all accounts, Tobias gave her all the care he could offer until his death in 1913.¹⁴⁰ Correspondence with friends abounds with queries of deep concern over Jeanne's worsening condition. As De Beaufort and Van Vollenhoven point out in their obituaries, this fatality clouded the last 25 years of Tobias' private life, otherwise so full of professional highlights – and made him submerge himself in work.¹⁴¹ Did the above also affect his decision to say farewell to his strenuous university chair and law firm, and aspire to a highly respected, generously remunerated and less taxing job in The Hague?



Johanna Ernestine Asser [Jeanne, 1839-1917], Tobias' Asser's wife [1864-1913] in her years of widowhood.



The mansion at Bankplein 3, The Hague, where Tobias Asser and Jeanne lived the last twenty years of Asser's life.

¹³⁸ A letter from Auguste Couvreur, journalist of *L'indépendance Belge* and a good friend of Asser, refers to Louis' struggling with the French tongue in his early years. On 30 April 1892, Couvreur congratulates Asser with the engagement of his son Louis, whose contribution to the economic supplement of the *Indépendance* on the financial reforms of the Cabinet Pierson was to appear shortly: after revision, that is, for Asser Jr. clearly still lacked the command of French technical terminology. Couvreur recommended Louis to read more French technical literature and not to battle at two fronts simultaneously – against the French language and in order to express himself clearly – and for the time being submit his work in Dutch, and leave translation to the editorial staff in Brussels.

¹³⁹ Topics, intriguingly, that were covered by his father's Second *Conférence de La Haye* that same year.

¹⁴⁰ De Beaufort 1914, at 142.

¹⁴¹ Van Vollenhoven 1934 I, at 340-41.

IV

INTERNATIONAL SCHOLARSHIP [1862-1900]

1. L'ASSOCIATION POUR LE PROGRÈS DES SCIENCES SOCIALES [1862]

In 1857 the *National Association for the Promotion of Social Sciences* was founded in London. It was a typical product of the Gladstonian Era, and a response by leading liberal thinkers in the line of John Stuart Mill to the wide-spread calls for social reform ranging from sanitary provisions to education and to legislation. Followed closely by the media, the addresses held at the *Association's* conferences were spelled out to the public at large. Reports did not fail to draw the attention of the Belgian journalist Auguste Couvreur,¹⁴² foreign politics reporter of the *Indépendance Belge*, and keen student of social and economic life. In 1862 Couvreur initiated a counterpart of the British Association, the *Association pour le progrès des sciences sociales*.

Asser's decision in Summer 1862, mere weeks before his inaugural address at the Amsterdam *Athenaeum*, to attend the maiden congress of Couvreur's *Association* in Brussels proved far-reaching.¹⁴³ Kop suggests¹⁴⁴ it was precisely in this progressive forum brimmed with liberal optimism that Asser first developed the thoughts and aspirations that marked his life. Here he first met Auguste Rolin-Jacquemyns of Ghent¹⁴⁵ and John Westlake of Cambridge,¹⁴⁶ his brothers in arms for fifty years to come. Three kindred souls they were, enthused by the concept of 'progress through science, legislation and liberal policies' that gave free rein to the individual.¹⁴⁷ On the spot, they concluded a friendship that lasted for life.

Tobias' address at the Brussels congress of the *Association* on the 'Recognition of Foreign Companies' stunned his audience – both by virtue of his mature thought and presentation, and his rare command of the French tongue. Its contents prompted heated debate as to the urgency of international regulation with regard to the execution of foreign judgements, an issue in the forefront of Asser's mind. In 1863, he launched a prize competition on the theme at the *Athenaeum*.¹⁴⁸ As late as 1893 he told his audience, with some bitterness perhaps, that the judgement handed down in one country by a competent judge was often regarded as mere waste paper in other

¹⁴² The scion of industrialists at Ghent and a freemason, Auguste Couvreur [1827-1894] was an ardent advocate of free trade and the laws of supply and demand. A zealous defender of the working class and propagator of free and compulsory primary education he eminently served the cause of social reform in Belgium, notably in his capacity of national deputy for a full 25 years.

¹⁴³ Bervoets 177.

¹⁴⁴ In *Zestig Juristen* 1987, at 227.

¹⁴⁵ Gustave Rolin-Jacquemyns [1835-1902], who assisted Couvreur in launching the *Association* in 1862, was the eldest son of the Louvain advocate Hippolyte Rolin, a one-time pupil of Von Savigny and Hegel at Berlin, attorney-at-law, parliamentarian and Minister of Public Affairs. Gustave, a gifted musician, received a meticulous training in Ghent, Paris and Berlin, then to join his father's law firm. In 1859 he married the well-to-do Emilie Jaequemyns and henceforth combined their names. A moderate Liberal-Catholic politician [and firm adherent of Bastiat!], he became Minister of the Interior in 1878. At home his name is linked to the School Controversy and the Congo. In the international domain the Rolins – Gustave, along with his younger brother Albéric and his two sons, Eduard and Paul, represent a Belgian tradition of [international] law only rivalled in the Netherlands by the Asser family.

¹⁴⁶ John Westlake [1828-1913], the son of a Cornish wool-stapler, was a fellow at Trinity [Cambridge], barrister at Lincoln's Inn, and author of a 1858 *Treatise on Private International law*. He attended the Brussels Conference in his capacity of Secretary of the Trade and International Law Department of the British *Association* [NAPSS].

¹⁴⁷ Van Vollenhoven 1934 I, at 331: 'The glory of this Triumvirate has been that it struck at the right moment.'

¹⁴⁸ Steenhoff 1994, at 32.

countries. In the 1869 *Revue* he stated firmly: ‘L’exécution sans révision ne peut pas être accordée par la loi d’une manière également applicable aux jugements de tous les pays, mais doit être stipulée par des traités internationaux.’¹⁴⁹

The issue was put high on the agenda of the 1863 meeting of the *Association* in Ghent, organized by Rolin-Jaequemyns. On that occasion Gustave invited Westlake and Asser and their spouses to lodge with him. In his obituary for his friend in 1902¹⁵⁰ Asser recalls with warmth how Gustave’s unaffected and sympathetic way of speech, his subtle and benevolent mind, his moderate ideas and the logical exposition of his ideas immediately won him for the Belgian scholar. The Ghent meeting gave rise to lively discussions.¹⁵¹ Rolin himself had mixed feelings. What made up for it, were his meetings with Asser and Westlake:

Que parlez-vous donc, mon cher ami, de me remercier du plaisir que j’ai eu à vous recevoir? Je vous le dois en toute franchise, je regarde votre séjour et celui de M. Westlake, chez moi, comme le souvenir le plus agréable et le plus fructueux qui m’ait laissé le Congrès. L’Assemblée en elle même ne m’a laissé que des impressions mélangées. A côté de beaucoup de bonnes choses, de discours sérieux dans l’enceinte des sections, que de paroles perdues dans les assemblées générales. J’avoue que’en voyant de près un certain nombre de ces hommes que j’avais admirés de loin, j’ai éprouvé plus d’une pénible désillusion. Au contraire, chaque fois que mon esprit se reporte sur nos joyeuses conversations, sur notre intimité de huit jours, sur le bonheur que j’éprouve à compter depuis ce temps un ami de plus, je ne regrette plus ni mon temps ni mes peines.¹⁵²

After some intriguing comments on the disorders in Germany, he sends his family’s warmest regards, thanks for Asser’s invitation for the following year – then to add:

Quant au petit Edouard, il grandit en fou et en vertu, c’est à dire qu’il dit dada et papa, qu’il déplace les jambes d’une manière déjà fort satisfaisante, qu’il rit plus souvent qu’il pleut, et que ses parents et grands-parents trouvent tout naturellement que c’est un phénomène unique de gentillesse, d’intelligence digne de figurer au premier rang dans un congrès de babys. Il va sans dire qui je lui ai fait vos compliments et qu’il m’a chargé de vous donner un ‘polleke’.¹⁵³

And this is how Tobias Asser first made the acquaintance of Edouard Rolin-Jaequemyns,¹⁵⁴ future judge [1930-36] at the PCIJ in The Hague. Asser volunteered to organize the Third Conference. This Conference, presided over by the newly wed Tobias, was held from 28 September to 1 October 1864 in the Royal Palace in Amsterdam.¹⁵⁵ At the Conference Asser pleaded for the upgrading of foreigners to equal status with that of citizens in all respects other than constitutional rights, an aspiration dear to the Jewish scholar. The *Dagblad van Zuid-Holland* never stopped admiring Asser’s authority, learning, and eloquence.¹⁵⁶ Even so, Asser’s initiative left his compatriots lukewarm. The *Association*’s fourth congress in Bern [1865] proved its swan song. Amidst growing tension between France and Germany, its fate was sealed by persistent rumours of the *Association*’ members undermining Napoleon III’s policy.¹⁵⁷

¹⁴⁹ RDILC 1 [1869], at 1-18.

¹⁵⁰ *Annuaire* XIX [1902], at 401-10.

¹⁵¹ On 2 November 1863 Westlake wrote to Asser that the Edinburgh Conference of the British *Association* had accepted so many papers as not to leave any room for discussion – exactly the opposite of what he had met in Ghent. In this context Westlake discusses technicalities concerning the status of foreigners in the UK, and the reparation of damaged goods as stipulated in the Dutch-American Treaty of Commerce.

¹⁵² Letter of 19 October 1863; Bervoets 58.

¹⁵³ ‘donner un polleke’: shake hands.

¹⁵⁴ Edouard was born in Ghent on 23 January 1863.

¹⁵⁵ Bervoets 177. Van der Mandere 1946, at 176; Westenbergh 1992, at 63-64.

¹⁵⁶ Steenhoff 1993, at 24-25.

¹⁵⁷ On 29 September 1875 Couvreur apologizes he and Madame Couvreur had not met Asser and his charming wife during their stay at the Amstel Hotel. Apparently, he had their dinner date wrong and had missed Asser, whom he con-

Tobias kept in personal touch with Auguste Couvreur and his wife all along. In a letter dated 16 July 1873, in the weeks Couvreur's mother passed away, the journalist thanks his friend for his token of sympathy, informs him that Rolin and Westlake had dropped by and had discussed their new joint project to launch an *Institut*. Not being an international lawyer, Couvreur did not anticipate a role for himself in the project, but foresaw a far greater future for the *Institut* in promoting peace than his *Association* ever had. He inquired after the frail health of Madame Asser, sends his warmest regards to Asser's parents, whom presumably he had met in 1864 and deplores the policy of the Liberal party in not addressing the Flemish population in its own language – something obviously to be left for the future.¹⁵⁸

2. *REVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE* [1869]¹⁵⁹

It was Asser who renewed professional co-operation with Rolin, when he suggested that Gustave launch an international journal for the promotion of internationalism. During a historic stroll along the Dreef that brought them into the Haarlemmerhout¹⁶⁰ the two friends pioneered the idea for the *Revue de droit international et de législation comparée*.¹⁶¹ Initially, Rolin had second thoughts. Asser's idea, characteristically, focused on private international law exclusively. In the end Westlake won Rolin over, stipulating that the journal's compass should include the public sphere: 'Go ahead and do it at once!' he famously advised his friends.¹⁶² What settled the issue was Rolin's chance meeting with the Italian legal luminary Pasquale Mancini¹⁶³ Mancini, intriguingly, likewise argued in favour of including the public sphere. Asser's *Prospectus* [1868] attested to his optimism:

Deux faits, deux tendances parallèles, contradictoires en apparence seulement, signalent notre époque. D'un côté, l'esprit de nationalité se réveille et se fortifie. De l'autre, peuples et races s'habituent, chaque jour d'avantage, à obéir, non seulement dans leurs relations extérieures, mais encore dans leur législation intérieure, à certaines principes généraux, à certaines idées communes. C'est ainsi que les nations, ces grandes individualités collectives, cessent peu à peu de se regarder avec une méfiance mutuelle. [...] De même que les communes et les provinces ont après dès lors, à reconnaître l'unité supérieure de l'Etat, de même les Etats commencent à s'incliner devant l'unité supérieure de la grande société humaine.¹⁶⁴

International lawyers had to follow up on science and industry, familiarize themselves with law systems abroad, harmonize conflicting traditions and put an end to prevailing suspicion. Charac-

gratulates with his new Counsellorship at the Foreign Ministry. Asser lectured readily at Couvreur's *Association* and published extensively in its *Annales*, as on bills of exchange, the international law of *Sociétés anonymes* and the recognition of *Sociétés* established abroad, a topic that had his life-long special interest. See Kop, in *Zestig Juristen* 1987, at 227-28, Westenberg 1992, at 64; Cf., Van der Mandere 1946, at 178, for Asser's discontent with the 1868 Dutch-Italian treaty on 'Naamloze Vennootschappen'.

¹⁵⁸ Bervoets 52.

¹⁵⁹ *Ibid.*, 131, 142.

¹⁶⁰ Van der Mandere 1946, at 176.

¹⁶¹ Founded in 1869, the *Revue* was for decades on end the only journal in the field, along with Clunet's *Journal de droit international* [1874]. Until its winding up after World War I the *Revue* was prestigious throughout. Van Vollenhoven 1934 I, at 331.

¹⁶² By letter of 1 October 1867.

¹⁶³ Mancini had made his mark as *auctor intellectualis* of the Italian Civil Code [1865] and by his [abortive] efforts to arrange for bilateral treaties on private international law, a project that failed due to the tensed political climate. A nobleman from Naples, Pasquale Mancini [1817-1888] first carved a colourful career as journalist, political activist in the 1848 Revolution, law professor and attorney-at-law, then to become Foreign Minister [1881-85]. On his involvement with the *Institut*, see IDI Centenary 1973, at 3-10 [De Nova]. Westenberg 1992, at 64.

¹⁶⁴ Steenhoff 1993, at 14-15.

teristic amidst these inspired sentences – only rarely did Asser use such emotionally charged words – is his reference to ‘general principles’, a keynote of his in decades to come.¹⁶⁵ Asser remained involved with the *Revue* throughout. Still, Rolin was its soul and work horse.¹⁶⁶

In launching the *Revue* Asser had the first of a series of sobering experiences: at home not a single colleague subscribed to the project. Vissering, Boneval Faure, the diplomat Westenberg and Council of State Bachiene all declined.¹⁶⁷ From the very first issue Asser produced a fundamental contribution.¹⁶⁸ It dealt with his preoccupation at the time: the thorny issue of the execution of foreign judgements. He recommended the concluding of multilateral treaties based on an international understanding of legislation with respect to the jurisdiction of tribunals,¹⁶⁹ the formalities of procedure, and the legal dispositions regarding private international law.¹⁷⁰ Agreement on the criteria for jurisdiction was thus to precede later unification of applicable law. Intriguingly, at this stage Asser considered international codification premature.¹⁷¹

Asser’s correspondence with Rolin over the next two decades reveals glimpses of the labour of love, needed then as now, to invite scholars, attract papers, warrant quality, and stick to deadlines.

Le but principal de mon voyage [...] est de donner partout un coup de collier pour la Revue.[...] je crois que le résultat en sera excellent, tant au point de vue matériel des abonnements et de la propagande littéraire qu’au point de vue littéraire et scientifique pour l’avenir. J’ai entre autres la promesse formelle d’un article de Lavelaye pour la prochaine livraison!¹⁷²

A month later, on 9 January 1869, Asser is overwhelmed by pages brimmed with comments, additions and technical instructions for the revision of his own contribution. But never did the work come in the way of personal intimacy: ‘J’ai reçu vos bon souhaits et ceux de votre chère famille. Emilie a été ravie et de la bonne lettre de Madame Asser et des délicieux portraits de vos bébés.’ In March 1869, Rolin invites Asser and Westlake and their families over to Ghent for deliberations and to strengthen their personal ties. On 22 March, in reply to his announcement that he has booked a hotel, Asser receives the following letter:

Mon cher ami,
Si vous ne voulez pas que, dans la 3^{me} livraison de notre Revue, j’insère un article anonyme plein de personnalités, de méchancetés et de calomnies venimeuses à votre adresse; que je vous dénonce à la police française comme un émissaire de Bismarck, et à la police belge comme un agent annexionniste correspondant du Pays, vous accepterez, Madame Asser, Mademoiselle votre soeur et vous, l’hospitalité – non de l’Hôtel de la Poste, mais de l’Hôtel Rolin-Jaequemyns, Place Artevelde 8 [...]. Je regarde donc cela comme une chose entendue!¹⁷³

¹⁶⁵ Voskuil 1973, at 17.

¹⁶⁶ The *Revue* appeared four times a year, some 700 pages in all, and contained a separate documents section, the *Archives*. Its role in the organization of the field was pivotal. Rolin remained General Editor until his appointment as Minister of the Interior in 1878. In 1886, upon his return from politics, he resumed the lead. In 1892 financial dire straits forced him to apply for a paid job, which then led him to Bangkok as adviser to the King of Siam.

¹⁶⁷ Steenhoff 1994, at 36. Bervoets 131: letter of 26/09/1868 [Vissering]; letter of 16/11/1868 [Westenberg]; letter of 28/09/1868 [Faure]; letter of 22/11/1868 [Bachiene].

¹⁶⁸ ‘De l’effêt ou de l’exécution des jugements rendus à l’étranger’, in RDILC I [1869], at 42ff., 408ff., 473ff.

¹⁶⁹ IDI Centenary 1973, at 160-61 [Ch. De Visscher].

¹⁷⁰ *Ibid.*, at 148-50 [Ch. De Visscher].

¹⁷¹ Mancini was more optimistic, also witness his unofficial initiative, as early as 1867, to make Italy conclude bilateral treaties of the kind with Belgium, Germany and France.

¹⁷² Letter of 7 December 1868; Bervoets 58, 131, for correspondence regarding the *Revue*.

¹⁷³ Bervoets 58.

On 7 April it reads:

Arrivez le plus vite et restez le plus longtemps possible. [...] Les Westlake arrivent demain matin à 3 heures par Calais. Nous seront donc tous réunis! [...] Vous aurez vu que L'Indépendance a déjà parlé de nous. Je compte bien que vous ne partirez en aucun cas avant le dimanche matin. Encore si vous le faites, devriez-vous vous armer en guerre contre mes parents. [...] Les dames en particulier méritent toute notre reconnaissance. Elles compléteront de la manière la plus charmante notre comité de rédaction.¹⁷⁴

Mid-September, when the Rolins are attending a conference in Holland, something frightful happens during a boat trip:

Mon cher ami,
J'ai bien regretté de ne pas vous avoir accompagner à Amsterdam, car j'étais sur ce fameux bateau le Stad Dordrecht, dont vous aurez lu les aventures presque sinistres. Nous avons, par une bourrasque effroyable, touché trois fois à la même place, où, il y a 9 ans, un bateau à vapeur et ses 72 passagers et hommes d'équipage, ont péri. Il y avait à bord, outre plusieurs dames, deux sténographes du Congrès; c'en était donc fait, non seulement de nous, mais de nos discours! J'étais, au moment critique, à côté d'un marin, à qui je dis: "Is er waarlijk gevaar?" A quoi l'autre répondit, avec un flegme splendide: "Ja, ik geloof dat wij dadelijk naar onder gaan." Vous voyez comme c'était rassurant. Et puis des cris, des gémissements, des dames malades, toute la vaisselle brisée, un pied d'eau dans le salon, nos paquets nageant [...] Pas moyen de se réchauffer, ni de se dégourdir. Alors nous nous sommes entendus à quatre, un négociant d'Amsterdam nommé Burlage¹⁷⁵, son neveu, un Bruxellois et moi, pour héler un canot et nous faire mettre à terre coûte que coûte, puis gagner Dordrecht.¹⁷⁶

On 29 December Rolin writes in reply to letters by Asser from 22, 23, and 26 December:

Puisse 1870 nous réunir encore comme l'ai fait son aînée et ne nous apporter à tous de rides, de cheveux gris, et de contrariétés de toute espèce que ce qui est absolument dans le programme.

It was not to be. On 20 October 1870, in the midst of the Franco-Prussian War, Rolin wrote:

L'Année 1870 est aussi fatale pour notre famille comme pour l'ensemble des affaires Européennes. Tout cela est bien triste. Partout la mort en grand et en petit. L'Horizon est aussi noir comme le bord de cette lettre. [...] Je doute d'ailleurs que la Société de Législation Comparée ait une grande vitalité. Tout est malade en France en ce moment. Nous recauserons donc de notre projet. Le titre devrait être, me paraît-il, Archives de droit international et de législation comparée.¹⁷⁷

Early in 1872, even the power-house Rolin had problems in coping with increasing arrears of the *Revue* and with his correspondence which by now spanned the world. And then, in the middle of everything, the two friends took up the idea of launching an Academy, or Institute of international law.

3. THE ORGANIZATION OF INTERNATIONAL LAW [1873]

There is of course no coincidence in the simultaneous launching, in 1873, of two of the most impressive and durable associations the field of international law has seen. IDI and ILA epitomized

¹⁷⁴ Ibid.

¹⁷⁵ Possibly misspelled for Berlage.

¹⁷⁶ Bervoets 58.

¹⁷⁷ Ibid.

the reaction of the intelligentsia to the brutalities of the Franco-Prussian War [1870-71].¹⁷⁸ After Vienna [1814-15], the world had seen some four decades of peace, if not necessary calm, witness the Revolution Year 1848. The Crimean War [1853-56] and American Civil War [1861-64] almost overnight shattered prevailing optimism. As a consequence of progressive war technology, the reaction in the 1860s focused on humanitarian issues: Balaclava [1854] and Gettysburg [1863] had made their imprint. Instigated by private initiative [Dunant's Red Cross Convention, 1864], by political scientists [the US Lieber Code, 1863] and by the highest of autocrats [Tsar Alexander II's St. Petersburg Declaration, 1868] the Movement boasted impressive backing. In 1871, the appalling nature of the senseless massacres of the Franco-Prussian War, the first war of the Industrial Era, on Europe's very doorstep, served as a catalyst. In the diplomatic sphere, it triggered the first intergovernmental debate on humanitarian issues in Brussels [1874]. Initiative in unofficial circles preceded this. In 1873, concerted action of two partly overlapping groups of intellectuals in the spheres of law, political science, sociology and economics was channelled into the founding, in Ghent and Brussels respectively, of two associations with very distinctive roadmaps towards very comparable goals. Both were initiated not just without governmental interference, but with the specific intent on keeping any such interference at bay. For close to 150 years, both associations have been the embodiment of the public conscience and standard-bearers of legal norms and moral values.

4. THE INTERNATIONAL LAW ASSOCIATION [1873]

Success has many fathers. It is difficult to say where it all started but action was in the air. In the Brussels society American scholars took the lead.¹⁷⁹ Initially called *The Association for the Reform and Codification of the Law of Nations*, it was renamed into *International Law Association* in 1895.¹⁸⁰ Progressive codification was the key to its policy. To that end it welcomed legal academics and practitioners. However, it likewise drew members from the world of commerce, banking, and industry – actually, as its Constitution read, ‘all who, from whatever point of view, are interested in the improvement of *international relations*.’ Put succinctly, the ILA, was the product of idealism encapsulated in the term ‘internationalism’. It regarded the expansion of international relations the best avenue ahead to oust thriving jingoism and nationalism. It drew inspiration and membership from much the same sources and bosom as did the Bern-based *Inter-Parliamentary Union* [f.1889] and *International Peace Bureau* [f.1892]. It considered codification and arbitration prerequisites for the implementation of peace and the rule of law.

One would expect Asser to have been thrilled by the idea of joining the worlds of law and commerce. To be sure, Asser was involved from day one and even served the ILA as vice-president. Still, his heart was with the other association that was founded the same year and had a more exclusively legalistic and pragmatic approach, and this association will therefore occupy us more fully.¹⁸¹ Asser's preoccupation was the unification of rules of private international law and the

¹⁷⁸ The phenomenon is comparable to the simultaneous worldwide rise of Pacifism after the Napoleonic Wars instigated by political economists, Quaker moralists, religious activists and social workers.

¹⁷⁹ The *Association's* founding fathers were American social [anti-slavery] activists, men like the legendary ‘Blacksmith’ Elihu Burritt [1810 -1879] and the advocate of codification and legal reform, David Dudley Field [1805-1894], the author of *Draft outlines of an international Code* [1872]. Field was the Association's first President. For this rich American tradition see M.W. Janis, *America and the Law of Nations 1776-1939*, Oxford 2010, Chs. 4 and 6.

¹⁸⁰ IDI Centenary 1973, 67-73 [Briggs].

¹⁸¹ On the relationship of IDI and ILA and ILA's ‘voeux peut-être un peu trop enthousiastes’ for IDI *membres*, see *Annuaire I* [1877], at 27ff.



The Amsterdam Conference [1864] of Auguste Couvreur's *Association pour le progrès des sciences sociales* [1862-65].



Auguste Couvreur [1827-1894], Belgian social reformer, parliamentarian and publicist.



Gustave Rolin-Jaequemyns [1835-1902], Belgian lawyer, parliamentarian and Minister; co-founder of the *Revue de droit international et de législation comparée* and of the *Institut de droit international*.



David Dudley Field [1805-1894], American social reformer, author of *Draft outlines of an international Code* [1872] and first president of the *International Law Association*.



John Westlake [1828-1913], fellow at Trinity [Cambridge], barrister at Lincoln's Inn, and co-founder of the *Revue de droit international et de législation comparée*.

solving of procedural conflicts. Unification of substantive law he did not foresee for the near future.¹⁸²

In view of their considerable overlap in membership IDI and ILA often synchronized their annual sessions. Thus, in 1875, in the same weeks Asser hosted the IDI Session, ILA's Third Conference took place in The Hague, presided over by Field himself. Subsequent attempts to launch a Dutch branch of ILA proved premature and by 1880 the section was extinct. No memory of it was left a full thirty years later, when the idea was rekindled.¹⁸³ Asser was however intimately involved in the foundation, in close association with ILA, of the *Comité Maritime International*. Launched in Antwerp in 1897, the CMI was an idealistic initiative in Belgian political and commercial circles with a view to distilling uniform principles from time-honoured custom and the contemporary practice of the courts of admiralty in that motley domain of maritime international law.¹⁸⁴ Pivotal in the undertaking was Asser's associate Auguste Beernaert, CMI's first President.¹⁸⁵ Through its national member associations and annual conferences, as in Amsterdam [1904] and Brussels [1905],¹⁸⁶ the CMI addressed such thorny issues as collision and salvage, or the limited liability of shipowners, an exchange of views which led up to a first series of conventions being adopted in 1910.

5. INSTITUT DE DROIT INTERNATIONAL [1873]¹⁸⁷

The *Institut de droit international* was famously founded on 11 September 1873 in the *Salle de l' Arsenal* of the Hôtel de Ville in Ghent, under the motto *Justitia et Pace*.¹⁸⁸ Eleven 'Founding Fathers' from 5 countries attended the historic meeting. The Swiss Gustave Moynier,¹⁸⁹ whose name is linked to the Geneva Red Cross Convention [1864] and the Oxford Manual [1880] as much as to his bitter, unworthy clash with Henry Dunant, reputedly claimed it was his talks with Francis Lieber that had triggered the idea of this loose association [Academy] of lawyers.¹⁹⁰ In March 1873, Rolin, Westlake, and possibly Asser, consulted Caspar Bluntschli in Heidelberg, who helped draft the first scheme for an 'Académie' or 'Institut'.¹⁹¹ Asser was involved from

¹⁸² Westenberg 1992, at 67. Various Dutchmen took an active part in the ILA, among them that military advocate of humanitarian law and co-author of the celebrated 1880 *Oxford Manual*, J.C.C. Den Beer Poortugael, and the prominent politician A.P.C. van Karnebeek.

¹⁸³ See below Chapter XVI.

¹⁸⁴ The CMI was the first successful attempt at international organization, after earlier diplomatic conferences in Antwerp [1885] and Brussels [1888] had failed. The progressive codification process was exemplified by the York-Antwerp Rules adopted by ILA in 1890.

¹⁸⁵ Auguste Beernaert [1829-1912], member [1873], later President of the Belgian Chamber of Deputies, was Governor of the Bank of Belgium. He was a successful Minister of Public Works who greatly enhanced transport facilities by rail, river and road, and later Prime-Minister [1884-1894]. Beernaert was Belgian First Delegate at the 1899 and 1907 Hague Peace Conferences, very active in the PCA, and Nobel Peace Prize co-laureate in 1909. See Eyffinger 1999, at 133-34.

¹⁸⁶ Bervoets 245-49. On these Conferences within the context of the CMI, see Van Vollenhoven 1934 I, at 328-29.

¹⁸⁷ On the genesis and early years of the Institut, see Hambro 1973; Koskeniemi 2001; Macalister-Smith 2003. Asser has repeatedly reviewed the history of the *Institut*, notably on the occasion of its 25th anniversary, in the 1898 The Hague Session which he presided. See *Annuaire XVII* [1898], at 177-210. For references in his files, see Bervoets 132-57. For correspondence with editors and *membres*, see Bervoets 132, 137-40. Cf., Steenhoff 1994, at 41-42.

¹⁸⁸ On the history of the *Institut*, see the 'Notice historique', in *Annuaire I* [1877], at 11ff.

¹⁸⁹ IDI Centenary 1973, at 90-98 [Ruegger]. His obituary in *Annuaire XXIV* [1911], at 442-48.

¹⁹⁰ The talks concerned Moynier's *White Book* [1871] on the impact the 1864 Geneva Convention had made on the Franco-Prussian War. Allegedly, Moynier had handed over the idea of an Academy to Rolin-Jaequemyns during a meeting in Ghent in November 1872. In September 1871, Lieber had likewise contacted Rolin on the issue.

¹⁹¹ IDI Centenary 1973, at 45-60 [Schindler]. Bluntschli later recalled that it was Lieber who had first suggested to him the idea to help influence governmental policies and enlighten public opinion by the collective authority of an international conference of legal luminaries. Bluntschli had readily fallen in with the idea 'that had often crossed my own

early on. In Spring 1873, Rolin sent him and other intimates his hand-written *Note* of no less than 55 pages regarding the proposed ‘association exclusivement scientifique et sans caractère officiel.’ Backbone of the idea was ‘l’action collective scientifique’ as expression of ‘l’opinion juridique du monde civilisé’:

Note confidentielle sur un Projet de Congrès ou de Conférence juridique internationale, en vue 1. de formuler certains principes fondamentaux du droit international; 2. de constituer un Corps permanent ou Académie pour l’étude et les progrès du droit international.¹⁹²

The *Salle de l’Arsenal* saw some very impressive names assembled.¹⁹³ Moynier was there, – his authoritative character perhaps comparing poorly with the ‘associative’ idea of the IDI – and hailing the day as ‘l’aurore d’une ère nouvelle.’ Prominent too was Caspar Bluntschli, the Swiss jurist, legislator and flamboyant politician, for whom the study alone never sufficed. Bluntschli was the only representative of the German-speaking world.¹⁹⁴ Attesting to the international tension in the aftermath of the 1870 clash no scholar from France or Germany attended the *Institut*’s founding. Representing the proud Latin-American tradition was Don Carlos Calvo [1824–1906] of Argentina, diplomat, publicist of manuals and treaty collections, one of the arbitrators in the celebrated *Alabama* Award, and *auctor* of the Calvo Clause and Doctrine on international investment disputes [1868].¹⁹⁵ Traveling from Connecticut was David Dudley Field;¹⁹⁶ his activities in the IDI were necessarily limited, given his three-times Presidency of ILA.

The founding fathers did not necessarily agree which road to take. Thus, James Lorimer [1818–1890]¹⁹⁷ of Edinburgh, the visionary who advocated a European Union of States and an International Court of Justice, called codification at short notice simply an illusion. And then there was the Russian nobleman Vladimir Besobrasof [1828–1889], a liberal economist rather than a lawyer.¹⁹⁸ Lukewarm with respect to arbitration, he was a warm advocate of humanitarian ideas in the Brussels tradition. Also invited was August von Bulmerincq [1822–1890], professor at Dorpat [Tartu] and like Martens of German-Baltic origin. The invitation never reached him in time, but tradition has included him among the founding fathers.¹⁹⁹

Italy was represented by two scholars, the famous Pasquale Mancini and his son-in-law Augusto Pierantoni. Mancini had laid the legal foundations for the unification of Italy. His appointment to the chair of international law in Rome, in 1872, enabled him, at least briefly, to focus on academia. He soon returned to high politics,²⁰⁰ which explains why his involvement with the IDI

mind,’ but had insisted on the permanency of the body. In March 1873, upon being contacted by Rolin-Jaequemyns, he had put up the draft statutes for this ‘International Academy for International Law’. By mid-May Rolin and Westlake had paid him a visit in Heidelberg to discuss the draft.

¹⁹² The *Réflexions Préliminaires* open with the observation: ‘En dépit des vicissitudes de la politique, il se produit de nos jours un mouvement plus accentué que jamais vers la régularisation des relations internationales...’ Pages 41–44 addressed the *Constitution d’une Académie ou Institut international des droits de gens*. [Chapter III.2.B].

¹⁹³ Bervoets 132–33, on the foundation of the IDI.

¹⁹⁴ Bluntschli [1808–1881] was one of the IDI’s most inspired and active members. He served as President [1875–77], four times as Vice-President, was *Rapporteur* on the Washington Rules and was the soul, and host in his Heidelberg home, of the ‘Moynier’ committee on the laws of war that led to the famous 1880 Oxford Manual.

¹⁹⁵ IDI Centenary 1973, at 61–66 [Valladao]. Calvo’s role in the IDI remained limited.

¹⁹⁶ David Dudley Field [1805–1894] was a tireless advocate of a comprehensive International Code as premise to the substitution of war by arbitration. He called for a uniform law system covering all nations and citizens.

¹⁹⁷ IDI Centenary 1973, at 80–89 [Fitzmaurice].

¹⁹⁸ *Ibid.*, at 32–44 [Koretsky]. In his enthusiasm for international legal co-operation Besobrasof introduced his compatriots Kamarovski and Martens to the *Institut*.

¹⁹⁹ Also in view of his later prominence as *Rapporteur* on ‘Seekriegsrecht’ [1877–87] and as IDI President in 1887–88 at the Heidelberg session. [In 1882 Bulmerincq had succeeded Bluntschli in Heidelberg.] In 1873 rumours of his death circulated.

²⁰⁰ As Minister of Justice [1876–1878] and Foreign Affairs [1881–1885]. In the latter capacity he concluded the 1882 Triple Alliance.

was short-lived. His authority was never in doubt, indeed it secured him the first Presidency of the IDI in 1873. Mancini is of particular interest in our context, as he and Asser were the first *Rapporteurs* on private international law [1874]. Asser drew much inspiration from Mancini and after the latter's withdrawal in 1876 was widely acclaimed as keeper of Mancini's precious intellectual legacy. Augusto Pierantoni [1840-1911]²⁰¹ had been a fervent volunteer in Garibaldi's Trentin's campaign before becoming a likewise enthusiastic attorney, law professor and senator. Co-founder of the *Interparliamentary Union* [1889], he chaired the IDI at its 1882 Torino session and attended Asser's *Conférences de La Haye* [1893-1904].

Belgium also boasted two representatives. First Emile de Laveleye [1822-1892]²⁰² of Bruges, a true-born humanist and cosmopolitan. IDI Vice-president in 1882-83, de Laveleye was an inspired contributor to the *Revue*. And so we return to the last two founding members, Rolin-Jaquemyns and Asser. Asser was the youngest of the founding fathers and the last to survive. His commitment to the *Institut* was dedicated and life-long. The number of reports he helped produce is impressive throughout.²⁰³ His involvement, as a 35-year old law professor, is the more remarkable against the backdrop of the prevailing reservations in the Netherlands to commit itself to international engagements, be this in the political, diplomatic or 'internationalist' sphere. Asser's creditable invitation in Ghent was the reward for his personal commitment amidst wide-spread official indifference and academic scepticism at home.²⁰⁴ Rolin-Jaquemyns once astutely observed that the law served as the Scutcheon of the Weak, in their uphill battle against the power-play of the Great. To major Powers, he stated, recourse to the law was just another option, at the whim of their conscience or equity; with the Small their bare existence was at stake. In The Hague in 1907, another great friend of Asser's, Louis Renault would phrase this formula more cynically: 'Small nations are usually the greatest advocates of justice by dint of the fact that they lack the power to impose injustice.'

To that extent, Dutch indifference was remarkable. As De Beaufort observed later, in his *Diaries* during July 1907: 'I have always deemed the Peace Conferences and the presence of the PCA in The Hague as a strong warrant for our neutrality, an opinion that is not shared at home, but all the more abroad.'²⁰⁵ He had seen this confirmed the other day by the American delegate Hill. A Swedish delegate had told Hill over dinner that the Swedes envied the Dutch, inasmuch as the presence of the PCA greatly advanced their options to remain neutral.

As with the *Revue*, Gustave Rolin-Jaequemyns was both Secretary-General and guiding light of the *Institut*. Its *Annuaire*, first published in 1877, was edited at Rolin's *Revue* headquarters at Rue de l'Université in Ghent.²⁰⁶ Rolin's combination of work for both *Revue* and *Institut*, for all its charms, was never easy, witness his letter of 3 January 1874:

Je suis maintenant en correspondance régulière avec trois Espagnols pleins de bonne volonté, avec un Portugais, un Cracovien, et deux nouveaux Russes: Bulmerincq qui, décidément, n'est pas mort (puisque il m'écrit) et De Martens, Professeur de droit des gens à l'Université de St. Petersburg; puis

²⁰¹ IDI Centenary 1973, at 99-102 [De Nova].

²⁰² *Ibid.*, at 74-79 [Rivier]. Laveleye was a well-known publicist of treatises and articles in the tradition of Mill and De Tocqueville in the *Revue des Deux mondes*, *Times*, and *Nineteenth Century*.

²⁰³ Bervoets 134-40, 143, 145-47.

²⁰⁴ Van Vollenhoven 1934 I, at 331-32: 'As from these years, Asser's course in life was settled.'

²⁰⁵ *Dagboeken* I, at 387.

²⁰⁶ The *Annuaire* took over the role of the 'Archives' or documentary section of the *Revue*; the latter hence served as formal academic organ of the IDI. As the editors of *Revue* and *Archives* [Asser, Rolin and Westlake] stated in the first volume of the *Annuaire*: 'Il n'a paru de ce recueil qu'un seul volume, comprenant le texte ou le sommaire des documents les plus intéressants relatifs au droit international, et à la législation comparée des différents Etats civilisés durant les années 1871, 1872 et 1873. L'*Annuaire* de l'Institut de droit international fait suite à ce volume des *Archives*, car les événements qu'il resume et les documents qu'il reproduit commencent exactement à la date où finissent les *Archives*.'

quelques autres particuliers, plus ou moins exotiques. Plusieurs de leurs communications sont remarquables et intéressantes, mais il en résulte un nombre vraiment effrayant de lettres à écrire. Je ne me plains pas d'ailleurs. C'est une vie à part, un commerce intellectuel plein de charmes. Il est fâcheux seulement que le Créateur n'ait mis que vingt-quatre heures dans la journée et qu'il nous ait encore condamnés à en passer une partie dans une position horizontale, les yeux fermés et la tête absente.²⁰⁷

Peace and quiet was what he needed most. He spent his holidays in the Domburg area:

[T]out est délicieusement primitif! [...] Le luxe de Schéveningen nous a effrayé. Ma femme et moi, nous avons en ce moment une 'fancy' pour les petits cours solitaires, où nous pouvons, elle peindre, moi travailler sans devoir nous gêner pour personne.²⁰⁸

However, man is a mystery. The following year, 1878, Rolin abandoned the law and entered the political arena. Freshly elected to Parliament, he was appointed Minister of the Interior [1878-84]. He resigned as General Editor of the *Revue* and as Secretary-General of the *Institut*, which elected him to the Presidency both upon his leave and upon his return [1885]. On 5 May, 1881 he attests to the old friendship:

Croyez, mon cher ami, que ma complète absorption par les travaux d'un ministère exceptionnellement laborieux, n'a bien qu'elle m'empêche de correspondre avec vous comme je le voudrais, altéré en rien ma vieille, solide et sincère amitié.

In 1886 he resumed his positions at *Revue* and *Institut* [1886-92].

6. PRIVATE INTERNATIONAL LAW: ASSER AND MANCINI [1874]

From early on the *Institut* focused on three topical issues simultaneously: international arbitration tribunals, on which Goldschmidt prepared a famous report; the Three Washington Rules of 1871 concerning the duties of neutrals; finally, the wish to make mandatory for all nations, in treaty form, 'a certain number of general rules of private international law.'²⁰⁹ From the first, Mancini and Asser jointly took the lead as *Rapporteurs* on this third issue.²¹⁰ Mancini covered the law of conflicts, Asser was entrusted with aspects of the law of procedure.²¹¹ In 1874, at the Geneva Session, Mancini just found the time to formulate some general recommendations with respect to the proposed codifying role of the *Institut*. Then his political career made him bid farewell, never to return.²¹² Asser's project, incidentally, could easily have foundered for much the same reasons as Mancini's. In 1870 he was approached for the Ministry of Justice in the Third Thorbecke Cabinet [1870-72].²¹³

As it was, throughout 1874-79 interest and debate at the IDI focused on Asser's Report. In submitting his [typically concise, level-headed] draft in Geneva, Asser stressed the urgency of agreement by treaty of uniform rules with regard to judicial competence, procedural manners, and the execution of foreign judgements. In 1874 he wisely availed himself of his political contacts at home to resuscitate Mancini's idea of 1867 and have the Netherlands initiate an international

²⁰⁷ Bervoets 58.

²⁰⁸ *Letter from* 16 July 1877; Bervoets 58.

²⁰⁹ *Annuaire* I [1877], at 31-35.

²¹⁰ Bervoets 141, for the galleys of the two Reports.

²¹¹ Steenhoff 1994, at 44.

²¹² For Asser's approach *vis-à-vis* that of Mancini, see Voskuil 1973, at 18-19, and cf., Offerhaus 1959, at 287-88.

²¹³ Van der Mandere 1946.

conference for the definition of criteria of judicial power in matters of execution of foreign judgments.²¹⁴ In doing so, he profited from the recommendations made over the previous decade from within the bodies of the *Association* and *Institut*. In spite of Italian support the idea foundered – indeed to the [long-living] embarrassment of the Dutch Government – on French opposition in principle, British indifference, and German preoccupation with internal legislation. As against Asser's proposition to attain uniform rules of jurisdiction by an overall treaty, France championed the avenue of bilateral treaties.²¹⁵ In 1907 Asser admitted that his proposition had been: 'un péché de jeunesse [...] je n'hésite pas à prononcer le *peccavi*.'²¹⁶

In 1875 the *Institut* assembled in the *Salle des Trèves* in The Hague.²¹⁷ It was the first time Asser availed himself of this historic room that became a second living-room to him in the following decades. As Minister Heemskerk proudly recalled in his formal opening speech to the *membres* on 28 August,²¹⁸ this room recalled the negotiations, in 1696-97, of history's first 'round table' conference, attended among others by the famous François de Callières. It had resulted in the Peace of Ryswyck which had both epitomized Dutch prominence and foreshadowed its subsequent decline in the international arena. Here, with the great Princess of Orange approvingly looking down on his efforts from their canvases on the walls, Asser savoured his first moment of international recognition when 15 *membres* and 3 *associés* unanimously approved, virtually without emendation, his 1874 propositions with respect to uniform rules of jurisdiction.²¹⁹ In this same room, much later, he celebrated his triumphs at the *Conférences de La Haye* and the *Comité d'Examen* of the 1899 Peace Conference.



Emblem of the *Institut de droit international*



Pasquale Mancini [1817-1888], politician, lawyer, journalist, and first president of the *Institut de droit international* [1873].

²¹⁴ Steenhoff 1994, at 42-44.

²¹⁵ Van Vollenhoven argues that what Asser hated above all was the dilemma of either perfect license of national legislation or the universal appliance of a global law. His aim was progressive improvement in methodical arrangement and in a steady process, step by step, rather than by leaps and bounds. Van Vollenhoven 1934 I, at 327-28.

²¹⁶ Voskuil 1973, at 23-24; Steenhoff 1993, at 34-35. Van Vollenhoven 1934 I, at 327, with reference to a statement of Asser in the 1897 Royal Academy Assembly.

²¹⁷ The IDI met on 25-31 August. The session was presided over by Caspar Blüntschli.

²¹⁸ *Annuaire* I [1877], at 51-55.

²¹⁹ Asser's review in RDILC 7 [1875], at 374ff.

In Paris, in 1878, Asser was much less successful in his second series of propositions, viz. concerning the execution of foreign judgments. He found himself opposed on principle by the great Edouard Clunet, barrister and founder of that single competing journal to Asser's *Revue*, the *Journal de droit international*. Whereas Asser advocated treaties as the most feasible avenue, Clunet championed uniform regulation within national legislation.²²⁰ It was neither the first nor the last time Asser faced opposition on principle to his theses. On the whole, one may say, his policy throughout was to give way. Here, just for once, he found it particularly hard to swallow. Rolin came to the rescue in suggesting a subsidiary, complementary role for a network of treaties. The *membres* readily agreed to this compromise, Asser himself only very reluctantly. So much at least can be distilled from his fundamental contribution on 'Droit uniforme et droit international privé' in the *Revue* of 1880, which reads as a firm restatement of his position, and as an inventory of achievements over the past decade and challenges for the next. Asser never lost sight of reality:

[O]n comprend aisément la qualification d'utopistes, donnée, même de nos jours, à ceux qui croient à l'introduction d'un code général des gens, non seulement sur le papier, mais appliqué et respecté dans toutes les circonstances et par tous les Etats....²²¹

Asser's paper in the *Revue* led Voskuil to conclude that by then he had reached the point of no return: 'la diplomatie et la politique l'emportent chez lui.'²²² In 1879, in Brussels, upon presenting his revised report on civil procedure, Asser felt emboldened to voice an 'observation préalable,' a statement on principle concerning overall policy:

Notre association, bien qu'appliquant à l'étude et au développement des principes juridiques, a en même temps un caractère essentiellement pratique. Nous désirons que les réformes proposées par l'Institut soient adoptées par les gouvernements et reçoivent la sanction législative, et que cela puisse se faire dans un délai aussi court que possible. Je crois qu'à l'égard de nos résolutions concernant le droit privé, ce vœu de l'Institut pourra être réalisé plus tôt peut-être que par rapport aux votes qui concernent le droit public. Cependant, n'oublions pas que, même pour le droit privé, les préjugés nationaux, les considérations soi-disant conservatrices ne manqueront pas de se faire valoir. Evitons donc, autant que possible, de recommander des innovations, qui, tout en fournissant de précieux arguments à nos adversaires, ne semblent pas absolument nécessaires à la réalisation de nos vœux.²²³

Already in his 1880 contribution to the *Revue* Asser clearly saw two avenues opening up for the resolution of conflicts resulting from diverging national legislation: either in unifying substantive law, or in unifying the rules of conflict of laws. The first avenue he deemed premature and treacherous, in view of the very real differences in juridical position in the various countries – 'on top of those of national provenance, traditional customs, morals and climate.' To that extent, the unification of the law of commerce would have recommended itself first, had it not been for the sheer enormity of its reach. Far better, therefore, Asser argued, to start unifying what had the highest degree of urgency and lent itself best to pragmatic results – without, that is, putting too high demands on national sensitivities – in short: adopt uniform rules for the resolution of conflicting legislation, thus to lay a solid foundation for the discipline to the benefit of the civilized world:

²²⁰ Steenhoff 1993, at 36-39; Steenhoff 1994, at 44.

²²¹ 'Droit uniforme et droit international privé', in RDILC 1880, 1-18, at 5; cf., Westenberg 1992, at 76; Steenhoff 1994, at 44-56.

²²² Voskuil 1973, at 20.

²²³ *Annuaire* III/IV [1879-80], at 174-75.

Il faut commencer par la convocation d'une conférence internationale, ou de plusieurs conférences [...] afin d'obtenir l'accord nécessaire à l'égard des principes. [...] La voie indiquée peut sembler un peu longue mais elle est la plus sûre pour atteindre le but. Il importe surtout de bien constater que la réforme [...] ne portera aucune atteinte à l'autonomie des Etats ni aux prérogatives des pouvoirs constitutionnels.²²⁴

In spite of the *déconfiture* of 1874, Asser once more called for an international conference, or rather a series of conferences, as by far the most suitable forum for treaty-drafting. In this drafting process priority was to be given to the *general rules* concerning conflicts of legislation, in anticipation of the drafting of more specific rules with regard to family law, the law of property and the like. In this way, Asser argued, one best met the widely entertained reservations in government circles *vis-à-vis* the project. To that extent at least Asser's words in his 1893 Amsterdam farewell address rang true: the idea of the *Conférences de La Haye* had been in the forefront of his mind for well over a decade. In these endeavours he was only strengthened by the definite enhancement of interest in the codification of the private sphere at the *Institut* as of its celebrated 1880 Oxford session onwards – a development in which Asser, in the absence of Mancini, made sure to take a leading part.

7. THE SKETCH OF PRIVATE INTERNATIONAL LAW [1880]

Against this international backdrop, the publication of Asser's *Schets* of private international law seems well-timed. The die was cast: private international law had now definitely taken over his former preoccupation with the law of commerce. Hamaker's criticism, in a long review,²²⁵ that the *Schets* was 'cosmopolitan' and hardly referred to Dutch circumstance was correct, but beside the point. Asser's expertise and concern were precisely the international arena. As so often with Asser, and as Hamaker rightly observed, the *Schets* was a far cry from a comprehensive or systematic approach to the law. Its paramount objective was to open the eyes of his Amsterdam students to the complexity of tradition, instill in them the urgency of the task set, and hook them to the allurements of the challenges ahead. The *Schets* gives full pride of place to the fundamental work achieved by Von Savigny, Von Bar, Mancini and the *Institut*. Yet, as an additional enticement, it made explicit and proud reference to the guiding role of the mid-17th century 'Dutch School'.

The booklet is perhaps best seen as the first sample of that ever growing urge of Asser's that proved such an inspiration to Van Vollenhoven, *viz.* to give the Dutch a shaking and preach them *noblesse oblige*.²²⁶ Asser's *Schets* was rendered into German by his Amsterdam University colleague Max Cohn [1881] and into French by Alphone Rivier of Brussels [1884]. Rivier praised Asser's pragmatism and, with Asser's consent, extended the text in various places, as on family law, and added substantial notes.²²⁷ The Swiss lawyer Friedrich Meili reputedly learned Dutch to read the original.²²⁸

²²⁴ Cited from Voskuil 1973, at 22-23.

²²⁵ 'De Grondslag van het internationaal privaatrecht' [1880], in *Verspreide Gechriften* 1844-1911, 7 vols. [1911-13], ed. Molengraaff a.o., vol. VI, at 27-75. Steenhoff 1994, at 62-65.

²²⁶ Out of the 50 doctoral theses defended by students of Asser at Amsterdam University [1877-1893], 4 concerned private international law, Mr. B.E. Asscher being the first on a thesis concerning *Verjaring* [Prescription] in 1881. Only a single thesis concerned public international law.

²²⁷ Bervoets 192, for a review of the French edition. Steenhoff 1994, at 60-62.

²²⁸ Steenhoff 1997, at 123. Meili attended all *Conférences de La Haye*. The *Sketch* was also rendered into Spanish, Rumanian [by Schina] and Serbian [by Achinovitch].

8. PRESIDENCY OF THE INSTITUT [1898-1900]

By 1898 Asser was at the peak of his career, both at home and abroad. In 1897, through his friend Gustave Rolin-Jaequemyns, he had served as Council to the Siamese Government in matters concerning its National Railways.²²⁹ In 1898 he was on the Jubilee Committee occasioned by the accession to the throne of Queen Wilhelmina [1880-1962], for which he received a silver medal in recognition. The professional highlight of these years was his election to the Presidency of the *Institut*. In this capacity he chaired the International Conference on Diplomatic History that met in The Hague under the auspices of the IDI,²³⁰ and proudly hosted and presided over the *Institut's* 19th Session in The Hague.²³¹

On 18 August 1898 Foreign Minister De Beaufort officially welcomed the *membres* in the meeting room of the First Chamber.²³² It was a historic moment for Holland and the IDI, De Beaufort proclaimed: the *Institut* celebrated its 25th Anniversary, whereas his country was on the threshold of a new Era, with a young Queen to be installed in a matter of weeks: 'C'est le voeu que son règne soit un règne de paix.' De Beaufort complimented the Association:

[N]onobstant ses grandes pertes, votre Association est restée jeune et vigoureuse. Si la mort a fait des ravages dans vos rangs, vous avez pu remplacer ceux que vous aviez le malheur de perdre par des hommes dignes de marcher sur leurs traces.

He described the prevailing economic protectionism as a most unfortunate barrier to international thought and commented on that other modern phenomenon, to wit, public opinion: 'En effet, cette opinion publique est un organe très bizarre. Quelquefois elle avance à pas de géant, d'autres fois elle fait des retours sur elle-même, ou bien elle va en zigzag.' Asser reviewed the *Institut's* first quarter-century,²³³ opening with Auguste Couvreur's 'Association' and *Annales*, of which the *Institut* had been the natural consequence:

Mais ce qu'on ne trouve pas dans ces Annales, c'est le récit des amitiés conclues par les jeunes de cette époque, les idées qu'ils se communiquaient, leur foi dans l'avenir, leur vif désir de se vouer à l'amélioration des lois et des institutions sociales. Notamment, lors du Congrès de Gand, en 1863, l'hôtel élégant, paisible et hospitalier, habité par celui qui est maintenant notre président d'honneur, avec sa charmante compagne et son fils, notre trésorier, qui à cette époque n'avait que huit mois, fut le lieu de réunion des jeunes membres du Congrès.²³⁴

In much the same way Asser considered his own *Conférences de La Haye* the natural consequence of the beneficial exchange of views within the IDI. On 22 August Asser gave another address, when the *membres* were received at Soestdijk Palace by the Queen-Mother and future Queen. Dutch hospitality was up to par: De Beaufort invited the IDI to a banquet in Scheveningen and Asser had arranged outings to the new Amsterdam Rijksmuseum, Rotterdam harbour and the *Nieuwe Waterweg* [opened in 1872].²³⁵ This Session, Tobias assured his colleagues: 'restera l'un des plus beaux souvenirs de ma vie.' In his files we also read of the many entanglements involved with the proposed Revision of the Statute of the IDI in 1900.²³⁶

²²⁹ Bervoets 406 contains a note by Rolin-Jaequemyns regarding his proposition to have a Siamese decoration bestowed on Asser [and Asser's declining]. The note may well date from these years.

²³⁰ Bervoets 148-49.

²³¹ Voskuil 1973, at 25-26.

²³² *Annuaire* XVII [1898], at 171-77.

²³³ *Ibid.*, at 177-210.

²³⁴ *Ibid.*, at 179-80.

²³⁵ Bervoets 151, on a dinner offered by Asser on this occasion.

²³⁶ *Ibid.*, 153. Cf., *Annuaire* XVII [1898], at 168-70.

V

DIPLOMACY AND COUNSELLORSHIP [1878-1893]

1. COUNSELLORSHIP

In June 1860, shortly after his promotion in Leiden, Asser was invited by the Ministry of Justice, then headed by his uncle Godefroi, to represent it at the Conference of Riparian States in Coblenz that addressed German Rhine Tolls.²³⁷ The Conference ensured the reduction, then final abolition of tolls [1867]. In the aftermath Asser published two pamphlets on the issue.²³⁸ Coblenz was the prelude to his long-standing involvement with the regime of international waterways. During 1888-95 Asser was the representative of the Netherlands on The Central Commission for Navigation on the Rhine.²³⁹ Numerous are the mementoes in his files referring to this Commission's work, from listings of water-levels to free tickets on German railways.²⁴⁰

Godefroi's 'nepotism' of 1860 worked both ways: Asser's participation was valued and his contacts with the Ministry were established. Coblenz paved the way for a career as counsellor that would span half a century, during which Asser rendered his nation great services.²⁴¹ In 1875 he was invited to a honorary Raadsadviseurschap [Counsellorship] to see this position formalized the following year.²⁴² In this capacity Asser would render invaluable advice, to Queen Wilhelmina among others,²⁴³ attend scores of international conferences, accept the membership of the PCA and oversee endless diplomatic exams.²⁴⁴ During 1883-87, and in line, one might say, with family tradition,²⁴⁵ he served on the State Commission for the Revision of the Dutch Constitution.²⁴⁶ In 1893 there followed his appointment to the Council of State [1893-1913].²⁴⁷

Asser's files in the National Archives feature scores of documents referring to all stages of his counselling activities, and his correspondence with fellow-counsellors. They vary from concessions for the *Bell Telephone Co* and the introduction of legislation regarding telephones [1897-1912]²⁴⁸ to the competence of the Rhine Commission to administer justice [1901],²⁴⁹ the

²³⁷ Bervoets 185, 205. Van Vollenhoven 1934 I, at 333 has it that the conference was a private initiative. The meeting of Riparian States was convened in Coblenz on 17 June 1860. It launched a Committee of 12, in which Asser served along with Burger, commissioner of the *Steamship Co.* in Rotterdam. The German tolls, which much impaired Dutch commerce, were abolished in 1867. In the Netherlands tolls had already been abolished in 1850, after suspension of local and regional tolls in 1794. Van der Mandere 1946, at 175; Roelofsen 1985, at 16; Voskuil 1973, at 20; Westenberg 1992, at 63.

²³⁸ *Iets over Rijntollen* and *De Kluisters van Rhenus*, both from 1860.

²³⁹ This Commission had been created in 1815, in an *Annex* to the Final Act of the Vienna Conference, which established the principle of freedom of navigation on international rivers. The Commission ensured the enforcement of common rules by the Riparian States. Initially installed in Mainz, it produced the pivotal 1831 Mainz Act and, after its replacement to Mannheim in 1861, the celebrated 1868 Mannheim Act.

²⁴⁰ Bervoets 239-44.

²⁴¹ As duly acknowledged by Foreign Minister Van Swinderen at Asser's grave. Van Vollenhoven 1934 I, at 333.

²⁴² By Foreign Minister Van der Does de Willebois. Bervoets 209-351. Van der Mandere 1946, at 178.

²⁴³ Bervoets 224, on the role of the Netherlands in international politics [1907].

²⁴⁴ *Ibid.*, 347-48, covering the years 1876-1912.

²⁴⁵ *Ibid.*, *Introductory Note*, 20 [Carel Sr.].

²⁴⁶ Bervoets 168-76. As Van Vollenhoven has it, Asser attended in his capacity of Representative of Amsterdam Municipal University. Van Vollenhoven 1934 I, at 326.

²⁴⁷ Bervoets 357-70.

²⁴⁸ *Ibid.*, 360.

²⁴⁹ *Ibid.*, 361.

competence of the Carnegie Foundation to purchase parcels of land [1904],²⁵⁰ or the Dutch policy of neutrality with regard to the Russo-Japanese War [1904-05].²⁵¹ Of special interest was his draft-council for the Second Book of the Commercial Code on Maritime Law [1909-10].²⁵²

2. DIPLOMATIC CONFERENCES

Asser's vast international network and his reputation as an expert negotiator soon did the round in The Hague. His acute legal insight, his tact, elegance and flexibility made him the obvious choice for diplomatic gatherings. In frequenting international conferences during the 1880-90s he acquired the skills and learned the tools of the trade that kneaded him into the weather-beaten negotiator and practical chairman he became. It has been said of Asser that he was an advocate first, a diplomat second, and a lawyer third.²⁵³ There is much truth in this appreciation. His outspoken leanings towards the private sphere qualified him as a natural lawyer. Asser, to be sure, was gifted with as sound and subtle a legal mind as any man. Still, his major successes in life he owed primarily to his tact, his manoeuvring and harmonizing, and his conciliatory bent of mind.²⁵⁴ This was no matter of incidence. The 'Internationalism' of Asser's day and age was not yet by any means the *domaine réservé* of the legal sphere it became in the League Era. It was the playground of level-headed politicians, sturdy military men and conservative diplomats; of political scientists, sociologists and economists; of parliamentarians, religious pacifists and Quaker moralists. To be effective in this arena one just had to keep an open mind.

Throughout the 1880s, Asser represented the Netherlands at nearly all great international conferences. In 1881 he attended the Conference on the Supervision of North Sea Fisheries which led to the 1882 and 1887 Conventions,²⁵⁵ along with the Second Bern Conference on Transport of Goods by Rail [1881] and its sequel of 1886 that led to the 1890 Convention.²⁵⁶ In 1882 he represented his country at the International Conference on the Protection of Sub-Marine Telephone Cables in Paris that resulted in the 1884 Convention.²⁵⁷ Throughout 1884-85 he travelled back and forth to the Congo Conference in Berlin,²⁵⁸ where his visionary approach even caught the eye of Bismarck, notorious for his impatience with legalistic detail.²⁵⁹ Picture postcards from Cairo in the National Archives recall Asser's involvement with the Suez Canal Conference [1884-85], definitely one of the highlights of his career, and his advice to the Ministry regarding the observance of the Paris Treaty up to 1889.²⁶⁰ He made his mark in securing a seat for his home country

²⁵⁰ Ibid., 365.

²⁵¹ Ibid., 366.

²⁵² Ibid., 369. During 1904-12 Asser was member of the department on 'Geschillen van Bestuur' [administrative disputes].

²⁵³ Van Vollenhoven argues that it was not so much a stunning book, a legal concept or an innovative thought that marked Asser's career, as rather a chain of acts in the political sphere that put the Netherlands back on the map. Van Vollenhoven 1934 I, at 326, and cf., *ibid.*, at 340: 'Voor Asser is het schrift slechts hulpmiddel tot de daad.'

²⁵⁴ Van Vollenhoven [1934 I, at 333-34] held that Asser's willingness to concessions occasionally went too far. Intriguing against this backdrop are Van Loon's conclusions with respect to a prominent case in point, viz. Asser's reaction on Louis Renault's methodical objections to his propositions at the opening of the first *Conférence de La Haye*, on 12-13 September 1893. See below Chapter VI.1, and Van Loon 1989, at 1135 n. 10: 'S'agit-il là d'un opportunisme pur et simple de la part d'Asser et les délégués néerlandais? Nous ne le croyons pas. [...] [L]es critiques de Renault – bien que quelque peu blessantes – mettaient en question la méthode plutôt que l'essentiel du travail à entreprendre.'

²⁵⁵ Bervoets 210.

²⁵⁶ Ibid., 229-34.

²⁵⁷ Ibid., 349.

²⁵⁸ Ibid., 213.

²⁵⁹ Steenhoff 1997, at 123. Van Vollenhoven [1934 I, at 333] argues, pointedly as ever, that Asser wholeheartedly agreed with Bismarck's utter contempt for those self-acclaimed pusillanimous 'High priests in Themis' Temple.'

²⁶⁰ Bervoets 235-38.

alongside the Great Powers in the Suez Canal Commission that oversaw the Canal's neutrality and under whose auspices the 1888 Convention of Constantinople was concluded.²⁶¹ In all, Asser's assertive diplomacy put the Netherlands back on the map of Europe. Within three decades he guided the Foreign Ministry from almost total disinterest in international affairs and a policy of anxious neutrality towards one of tactful assertiveness with a view to making the Netherlands the International Ministry of Justice and Safe Refuge of International Law.²⁶²

Accumulating experiences will have taught Asser much about feasibilities and practicalities in international diplomacy. He will have availed himself of all this when, in the early 1890s, he launched his own series of *Conférences de La Haye*.²⁶³ In 1889 Asser published a paper on the foreign relations of the Netherlands over the previous three decades,²⁶⁴ in which he proposed his view, first advanced in his 1860 dissertation, that in matters of war and peace the King's prerogative was inviolable, whereas in matters of treaties Parliament should take the lead. The painful diplomatic entanglements prior to the opening of the Hague Peace Conference of 1899 made it clear to the world at large that such rich experience as his was not to be taken for granted in all representatives of that Kingdom of Splendid Isolation along the North Sea shores.



Gysbert van Tienhoven [1841-1914], Dutch lawyer and politician, professor at the *Athenaeum*, Mayor of Amsterdam [1880-1891] and Prime-Minister [1891-1894].

²⁶¹ See RDILC XX [1888], 529-58, at 550-52. Van der Mandere 1946, at 179.

²⁶² Van der Mandere 1946, at 179; Westenber 1992, at 65.

²⁶³ See below Chapter VI.

²⁶⁴ Cf., his son Louis' thesis the same year.

VI

THE HAGUE CONFERENCES ON PRIVATE INTERNATIONAL LAW [1893-1904]

1. THE FIRST HAGUE CONFERENCE [12-25 SEPTEMBER 1893]²⁶⁵

The provisional withdrawal [1875] and subsequent demise [1888] of Pasquale Mancini left Asser the standard-bearer of private international law within the *Institut*. In 1891 political circumstance enabled him to give palpable token of this leadership and to realize a long-felt aspiration. In August 1891, the Cabinet Van Tienhoven [1891-94] took up office.²⁶⁶ Gysbert van Tienhoven [1841-1914], classicist, Roman law expert, attorney-at-law, and former Mayor of Amsterdam [1880-1891] had been a colleague of Asser's at the *Athenaeum* [1868-74]. Asser knew this moderate liberal and social reformer to be a kindred spirit with cosmopolitan views. Still in August, he paid Van Tienhoven a complimentary visit in his villa at the Oude Scheveningseweg in The Hague. A stroll at leisure in the garden was all it took for Asser to have his abortive plan of 1874 rekindled: an international conference for the codification of private international law summoned at The Hague.²⁶⁷ Van Tienhoven and Asser jointly surmounted opposition at home – otherwise considerable, also within the Cabinet²⁶⁸ – and in 1892 scrupulously arranged all practicalities of the invitation policy.²⁶⁹ Great Britain, Norway and Sweden declined the invitation, but stood alone among the European nations.²⁷⁰

It was an elegant, if somewhat drowsy township that hosted Asser's first *Conférence de La Haye*. Snugly nestled in its dune landscape, surrounded by sea and meadow, and virtually untouched by the 'blessings' of the industrial revolution, The Hague's major claim to glory at the time was its Hague School of painting. The city's history had been somewhat whimsical. Cata-pulted into the heart of the Dutch Revolt in the 1580s, it had dropped overnight its provincialism as fashionable German and English noblemen joined Prince Maurice' proud revolutionary army [1600]. The splendours of the court of the refugee 'Winter King' from Bohemia [1620-32]²⁷¹ hailed an epoch of court etiquette, baroque architecture and artistic outpouring to which the names of Prince Fredrick-Henry and his secretary Sir Constantine Huygens are linked. In the days of William and Mary's great coalition against France [1689-1702], the city was duly labelled '[t]he Whispering Gallery of Europe.' These days had long gone. Around 1850, a US Ambassador begged Washington for a speedy transfer to a post where his daughters could master the arts of dance and

²⁶⁵ The *Annuaire* XIII [1894-95], at 369ff., records Asser's personal review of his *Conférence* in the Paris Session of the IDI of March 1894, with gallant reference to the 1873 initiative of the *Institut* and to earlier, abortive efforts made by the Dutch [1874] and Italian [1881-84] governments to summon such a Conference.

²⁶⁶ The liberal Cabinet Van Tienhoven [21 August 1891-9 May 1894] aimed at tax reforms [Pierson] and extension of suffrage for men [Tak van Poortvliet]. When the latter proposition failed, the cabinet tendered its resignation.

²⁶⁷ Van Vollenhoven 1934 I, at 326; Steenhoff 1997, at 126.

²⁶⁸ Van Vollenhoven 1934 I, at 330; Steenhoff 1997, at 126.

²⁶⁹ Van Vollenhoven 1934 I, at 327.

²⁷⁰ For reviews of the four Conferences, see Nadelmann 1972; Laufer 1992; Steenhoff 1993; Steenhoff 1994, at 103-113, 116-120; for documentation, Bervoets 251-83.

²⁷¹ The reign of Frederick V (1596-1632), Elector Palatine [1610] and King of Bohemia [1619] ended a year after his coronation at the Battle of White Mountain [1620], hence his nickname 'Winter King'. He took refuge in The Hague, where his splendid court was taken as a model by the House of Orange. Prince Fredrick-Henry married a lady-in-waiting to the Queen, Amalia of Solms-Braunfels.

make their proper ‘entrée dans le monde.’ In the 1880s, Sleeping Beauty had received the kiss of life from the Prince Von Wied, when wealthy German noblemen and industrialists discovered the balm of seawater spas. The brand new *Kurhaus* hotel and concert hall [1887] epitomized a state-of-the-art luxury resort, where Emperor Franz Joseph and Kaiser Wilhelm II lodged to hear Brahms perform. Along with *Du Vieux Doelen* and *Des Indes* in the city, The Hague of the *Belle Epoque* offered the perfect backdrop for international conferences, a stage set for Tobias Asser’s keen aspirations.

On 12 September 1893 the famous picture was taken in the *Salle des Trèves*, showing Asser proudly posing at the ceremonial opening of his *Conférence de La Haye*, amidst delegates from 14 nations.²⁷² Among them were tried and trusted friends of the *Institut*: Louis Renault [France], Feodor Martens [Russia], Guido Fusinato [Italy], Friedrich Meili [Switzerland], and Manuel Torres Campos [Spain]. With Renault and Martens Asser struck up life-long friendships, and we will have ample occasion to refer to them later on. Guido Fusinato [1860-1914] was parliamentarian and law professor in Torino.²⁷³ Friedrich Meili [1848-1914] was professor in Zurich, and expert on private international law. In 1902 he dedicated a work of his to Asser.²⁷⁴ Manuel Torres Campos [1850-1918], international law professor in Granada, was the author of *Elementos de derecho internacional privado* [1891].

In his opening address as President, Asser voiced his deep feeling: ‘Je ne veux pas dissimuler l’émotion profonde que je ressens.’²⁷⁵ It was the fulfilling of ‘un des rêves de ma jeunesse’ and the due reward for his perseverance over a full two decades. However Asser was in for a surprise. In the *Memorial* he had dispatched to the Delegations he had elaborated on his propositions. Intimates of the *Institut* readily recognized the hand of the author of the articles in the *Revue* and of the *Schets* of 1880. However, as Louis Renault had warned Asser betimes, this Conference was not the *Institut*: this was an official forum with political patterns of its own. In his opening speech Asser, anticipating discord, explicitly emphasized:

[Q]ue, pour atteindre le but, nous serons tous obligés de nous faire des concessions réciproques; nous devons sacrifier sur l’autel de l’entente internationale des opinions et des idées qui nous sont chères.

He himself was to be the first to deliver – and he did it with all the charm and benevolence of the born diplomat – and with his heart bleeding.²⁷⁶

In his *Avant-Projet* Asser had made a listing of eight ‘dispositions générales’ to base codification on. They reflected his stern conviction that any attempt at codification had to start with agreement on ‘General Principles’. Renault’s reaction, on 13 September, was prompt and sobering.²⁷⁷ While an interesting thesis from the academic point of view, the Paris celebrity argued, whatever few international results in the field had been reached so far, had been attained precisely on account of their instigators’ sober, pragmatic approach. France wished to proceed in similar tenor this time and, rather than speculating over elusive general principles, take for basis topical issues of practical use where definitive results could be foreseen, such as marriage law and judicial power.

Asser rejoined that an academic exchange was precisely what the Dutch Government had had in mind. Rahusen backed him up, arguing that what the Conference aspired to was ‘regulations

²⁷² Bervoets 258, for the *Actes* of the 1893 Conference. Steenhoff 1993, at 4-7. Westenberg 1992, at 72.

²⁷³ Fusinato later served as member of the PCA [1900]. He chaired the First Commission of the 1907 Hague Peace Conference, which addressed the future of the PCA.

²⁷⁴ Van Vollenhoven 1934 I, at 326. The reference is to *Das internationale Civil- und Handelsrecht auf Grund der Theorie, Gesetzgebung und Praxis: ein Handbuch* [1902].

²⁷⁵ Voskuil 1973, at 24.

²⁷⁶ Steenhoff 1993, at 52-53. Van Vollenhoven 1934 I, at 327. Cf., above note 254.

²⁷⁷ For a full review of the debate, see Van Loon 1989, at 1134-38.



The Scheveningen *Kurhaus* [c. 1885].



The inaugural session of the first *Conférence de La Haye de droit international privé*, on 12 September 1893.

rather than results,' 'principles rather than practicalities.' It was to no avail. The Swiss Roguin fell in with Renault, referring to dismal Swiss experience with attempts to regulate inter-cantonal conflict from general principles. After 'une pause café' the compromise was reached that would bear such rich fruit.²⁷⁸ Debate was channelled into Four Preparatory Commissions to address the conflict of laws related to marriage, succession, and civil procedure. Even so, plenty of problems on matters of principle surfaced. In most European countries legislation on marriage was based on the principle of *nationality*, eminently propagated by Mancini.²⁷⁹ However, Denmark and Switzerland followed the old doctrine of statutes in taking *domicile* as their basis.²⁸⁰ Von Savigny had done the same, as did Hamaker in the Netherlands, in sharp rejection of the 'Italian School'.²⁸¹ Meili took exception to the Conference's 'unreasonable' proposition in demanding his country to abandon its long-standing practice. Asser rescued the draft-treaty by proposing a compromise. Taking nationality as the rule, he made allowances for the application of *renvoi*, or remission to the law of forum, in cases where the permanent residence of the spouses or the place of celebration of the marriage resorted to the principle of domicile. With hindsight, the doctrine of statutes never lost its topicality in the ongoing debate among private international lawyers with respect to this vexing issue.²⁸²

A second entanglement concerned Russia. As Martens explained, Orthodox Russia considered the institution of marriage a sacrament. Never, within its territory, could it accept the Western concept of a wedding ceremony as a legal act, whether for persons of Russian or of foreign nationality.²⁸³ Asser, for want of something better, came up with an *ad hoc* solution, viz. in conflicts to resort to a consular ceremony and avail oneself of the concept of extraterritoriality. Martens did not go along with this and the issue resurfaced at all later conferences. After two weeks of constructive talks delegates returned home pocketing a range of promising draft-conventions for submission to their Governments. On 8 October Martens wrote Asser:

Très honoré collègue et cher ami,

Je m'empresse de vous annoncer mon heureuse arrivée à St. Petersburg avec toute ma famille en bonne santé. Je suis et resterai sous l'excellente impression que j'ai remporté de votre Conférence et je compte pouvoir vous serrer l'année prochaine de nouveau votre main amicalement. Vous avez inauguré une excellente oeuvre: Allez en avant! "Always ahead!", comme disent les Américains.²⁸⁴

That day Renault, a fortnight 'à la campagne,' thanked his friend for the warm welcome and the wonderful two weeks in The Hague: 'Il me semble que nous n'avons pas fait une oeuvre vaine et que nous pouvons espérer que notre travail sera favorablement apprécié.' That year, in recognition of the *Conférence*, Asser was appointed Commandor First Class in the Danish Order of Danobrog.²⁸⁵ Meanwhile, he had made certain to secure a sequel to his *Conférence*.²⁸⁶

²⁷⁸ As Van Loon 1989, at 1136 has it: 'C'est, en fait, la première fois, mais non la dernière, dans l'histoire de la Conférence que la pause café est utilisé comme moyen de créer une ambiance informelle permettant de résoudre des problèmes épineux.' Ibid., at 1138: 'Si Asser avait dû faire des concessions par rapport à la méthode et au rythme des travaux, il pouvait quand même constater que l'essentiel de son programme était resté debout, qu'il avait commencé à prendre forme mais qu'il fallait encore beaucoup de temps et de patience pour l'achever.'

²⁷⁹ Cf., Voskuil 1973, at 18.

²⁸⁰ As for that matter was British practice, which otherwise did not much influence continental scholars.

²⁸¹ Westenberg 1992, at 70. Hamaker argued that national legislation reflected the nation's innermost spirit.

²⁸² Van Vollenhoven [1934 I, at 336] called this a typical instance of Asser's proverbial resourcefulness and eminent intuition for finding very pragmatic, short-term and *ad hoc* solutions.

²⁸³ For a case-study of the divorce and second marriage of a Dutchman in Russia, see *Honderd Jaar Staatscommissie*, 1997, at 10.

²⁸⁴ Bervoets 251. Martens' letterheads often showed a crest with his motto *Suum Cuique*.

²⁸⁵ Bervoets 398.

²⁸⁶ Voskuil 1973, at 25.

2. THE SECOND HAGUE CONFERENCE [25 JUNE–13 JULY 1894]²⁸⁷

This time, Norway and Sweden had decided to join the Conference. Sixteen delegations laboured for three weeks in five commissions addressing the settlement of conflict of laws concerning marriage, the settlement of conflict of laws and jurisdiction as regards to divorce and separation, along with the settlement of conflict of laws regarding succession, guardianship of minors, bankruptcy, and civil procedure. The Conference paid special attention to the position of the married woman, and was baffled by the divergent national legislation regarding divorce and separation. In matters of procedural law it amply discussed the pros and cons of the *cautio judicatum solvi*, the payment of security for legal costs. Towards mid-July most delegates showed themselves satisfied with the results and prepared to back up the draft-conventions at home. Only France [Legrand] and Russia [Martens] entertained distinct reservations. Legrand characterised the meeting as purely speculative.

In November 1894, the Dutch Government distributed a first draft-convention relating to civil procedure.²⁸⁸ In March and July 1896 Asser paid visits to Paris to answer French reservations, and in September 1896 France effectively ratified the Convention. Asser's correspondence with Martens over these years attests to the growing confidentiality between the men, who were to collaborate so much later, and to the complexities of Martens' position. Below, *exempli gratia*, an excerpt from Martens' confidential letter of 30 December 1895:

Mon cher ami,

Je m'empresse de vous communiquer tout confidentiellement deux bonnes nouvelles: 1. Le Conseil de l'Empire a adopté le projet de loi, en vertu duquel la *cautio judicatum solvi* est définitivement abolie au profit des ressortissements des Etats, dans lesquelles elle n'existe pas à l'égard des sujets russes. Notre ami L. Renault doit rougir pour la France, où cette caution a été rétablie dernièrement. Vu les relations politiques cet exemple était bien fâcheux et au Ministère des affaires étrangères on était positivement hostile à l'abolition. Mais le Prince Lobanov a bien voulu approuver mon point de vue et tout le projet a passé au Conseil de l'Empire. 2. Malgré l'opposition du Ministre des affaires étrangères [c'est-à-dire des bureaux du Ministre] le Ministre de la Justice a donné ces jours-ci son avis tout à fait formelle à la conclusion d'une Convention concernant les commissions rogatoires etc. sur le base de la proposition de votre Gouvernement. Je vous félicite de tout coeur! Seulement, ceci reste tout à fait entre nous, jusqu'au moment où M. de Stoetwegen sera instruit de cette marche de notre [pardon que je dis 'notre'] affaire. Vous voyez que vous avez gagné une grande victoire. Je sais que notre réponse formelle aura une grande importance sur quelques autres Cabinets qui chaque semaine nous ont posé la question: qu'est-ce que vous répondrez au Cabinet de La Haye?²⁸⁹

On 14 November 1896, to Asser's great relief, at The Hague nine out of the sixteen States signed the Convention relating to Civil Procedure.²⁹⁰ Russia's position was still in the balance, much to Asser's concern. When he contacted Martens, the reply was prompt and embarrassing.

Mon cher ami,

J'ai reçu vos deux lettres, datées le 20 et 23 novembre, dans lesquelles vous me demandez des explications sur l'attitude incompréhensible adoptée par le Gouvernement Impérial dans l'affaire du protocole de 14 novembre 1896. Vous dites: "J'avoue que je n'en comprends rien", vue que la réponse "est conçue dans un esprit conforme aux idées libérales de votre Ministre de la Justice." Eh bien, j'ai demandé des renseignements au Ministère des Affaires Etrangères et voici ce que j'ai appris officiellement sur cette affaire.

²⁸⁷ Bervoets 259–64.

²⁸⁸ *Honderd Jaar Staatscommissie*, 1997, at 11.

²⁸⁹ Bervoets 251.

²⁹⁰ *Ibid.*, 277; text of Asser's address to the Royal Academy on 15 February 1897.

Le Ministre de la Justice avait répondu, en décembre 1895, dans un sens très sympathique aux propositions de votre Gouvernement. Mais il demandait quelques modifications dans l'acte proposé à être signé. Par un office du 15 [27] Mars 1896 à M. de Stoetwegen, le Ministère des Affaires Etrangères informa le Gouvernement des Pays-Bas de son accord de signer l'acte proposé, seulement avec quelques modifications. *Jusqu'aujourd'hui le Gouvernement Royal n'a pas répondu à cette office!* Voici l'explication du silence du Gouvernement Impérial de Russie. Si votre Gouvernement ne voulait ou ne pouvait pas agréer les modifications imposées par le Gouvernement Impérial, il fallait au moins le dire.

Je regrette sincèrement ce malentendu, et je serais heureux de prêter mes faibles forces à la réussite de votre grande oeuvre. Mais à présent je ne puis rien avant la réponse de votre Gouvernement. Veuillez agréer mes plus sincères condoléances à cause de la grave maladie de Madame Asser, et croyez moi pour toujours votre dévoué Martens.²⁹¹

On 25 May 1899, in the opening weeks of the Hague Peace Conference, with all terms of ratification duly fulfilled, the first Convention of the *Conférence de La Haye* came into force.

3. THE STANDING STATE COMMITTEE ON PRIVATE INTERNATIONAL LAW [1897-1913]²⁹²

Assured by the successes of his *Conférences*, and bolstered by the Foreign Ministry, Asser instigated the installation, by Royal Decree of 20 February 1897, of the Standing State Committee on Private International Law, which he himself chaired. At home it was mostly seen as mere confirmation of that 'grand tradition' which identified the Dutch as 'Escutcheon of International Law and Justice.' The *Nieuwe Rotterdamsche Courant*, by contrast, deemed it mere pretence on the part of a small nation to take the lead. It compared Asser's aspirations to 'gooien met mutsen', that is, aspire at the unattainable, aim high without ever even getting close.²⁹³ Asser himself had meant the national Standing Committee to be the mere prelude to the International Commission on Private International Law he had in mind. He was in for another disappointment: first soundings soon persuaded him of the infeasibility of the project. He gracefully limited himself to advocating the raising of National Standing Committees in the adhering countries to help prepare future conferences. Intriguingly, France and Russia were the first to follow suit. Martens refers to this on 3 December 1898 in his usual, almost conspiratorial manner:

Mon cher ami,

Je m'empresse de vous donner, tout confidentiellement, une bonne nouvelle. La commission impériale, nommée sous ma présidence pour étudier le programme de la Conférence prochaine de La Haye, a terminé ses travaux. Mais de plus: elle a adoptée, sans changements essentiels, tout le programme que vous avez communiqué.²⁹⁴

The National Standing Committees proved of great help. Even so, Asser's correspondence with Louis Renault tells us that promoting the *Conférence* and its conventions was an uphill battle in most countries, and nowhere smooth sailing. On 26 October 1898 Renault wrote from his mansion *Les Troènes* in his beloved Barbizon:

Je ferai tous mes efforts pour activer la vote de notre Convention. Malheureusement mon crédit n'est pas grand [...] Je compte réunir peu après la rentrée la Commission que j'ai faire nommer pour étudier

²⁹¹ By letter of 2 December; Bervoets 251.

²⁹² *Honderd Jaar Staatscommissie*, 1997; see also Steenhoff 1993; Steenhoff 1994, at 115-16. Bervoets 371-80.

²⁹³ *Honderd Jaar Staatscommissie*, 1997, at 8-9, with reference to NRC, dd. 26.02.1897.

²⁹⁴ Bervoets 251.

vosre programme [...] Vous seriez bien aimable de m'envoyer à titre *purement confidentiel* les propositions d'Allemagne....

The Dutch Standing Committee, meanwhile, prepared the amendment of national legislation [1897-98] and promoted a bilateral treaty with Belgium that regulated matters of competence of the judiciary and the execution of foreign judgements. [1905-12].²⁹⁵

4. THE THIRD HAGUE CONFERENCE [29 MAY-18 JUNE 1900]²⁹⁶

Scheduled for 1899, Asser's Third *Conférence* was postponed on account of the Hague Peace Conference. Midway this Peace Conference, on 4 July, in his capacity as then President of the IDI, Asser delivered an address at the Grotius Memorial in Delft instigated by the American delegation. In passing Asser referred to his *Conférences* by reference to Dudley Field:

During a quarter of a century, our Institute has devoted its best force to this work of codification, after having by serious and uninterrupted endeavours succeeded in establishing a *communis opinio* on many matters, with regard to which there was a great divergence between the jurists of different nationalities. This is neither the place nor the time to recount the results which have been obtained. I must, however, ask leave to mention that in its first scientific session at Geneva, just twenty five years ago, the Institute resolved that three very important objects ought to have its attention before all other matters. The first was the codification of private international law. The illustrious Italian, Mancini, then President of the Institute, took the initiative in this urgent reform.

The Dutch Government continued what he had begun, and, as a first practical result of the diplomatic Conference which met at the Hague in 1893 and 1894, the first page of a code of private international law, having legal force in almost all continental Europe, was written in the form of a convention, and signed at the Hague on November fourteenth 1896. We hope that the following pages of the code will be written in the next years, as a consequence of new conferences on the subject. We also hope that, in indicating the States which accept the code, the word CONTINENTAL may soon prove to be inexact, and it is our sincere wish that the fatherland of the jurist who in his "Draft Outlines" did not omit the rules of private law, may join old Europe, so that the States united to accept that code of private international law may embrace the new as well as the old world.²⁹⁷

Intriguingly, and in spite of sobering signals to the contrary both at home and abroad, Asser still felt assured that, one day soon, the unification process would assume global dimensions. His Third Conference was the first to be duly prepared with the help of National Standing Committees:

Très cher ami,

Je m'adresse aujourd'hui à vous par une lettre très confidentielle, qui vous donnera une nouvelle preuve de ma sincère amitié. Vous savez la part que j'ai pris jusqu'à présent dans votre grande oeuvre de la codification du droit international privé. Aujourd'hui je puis vous dire que toutes Ministères compétentes se sont prononcées favorablement sur les travaux de ma Commission qui est établie pour l'étude préalable du programme de la 3^{me} Conférence. Toutefois la Convention signée devrait être approuvée par le Conseil de l'Empire avant la ratification par Sa Majesté.²⁹⁸

In terms of infrastructure, the Conference was definitely making headway. The Dutch Committee made an inventory of all comments and propositions made by its sister-committees, and Asser prepared a special *notice* on the system of *renvoi*, warmly recommending his *trouaille* as a

²⁹⁵ Ibid., 379.

²⁹⁶ Ibid., 266-69.

²⁹⁷ The Delft Ceremony of 4 July, 1899; Asser's address at 38-44. Citation at 39-40.

²⁹⁸ A letter from Martens, written on 5 March 1899.

compromise *par excellence* between the conflicting concepts of nationality and domicile, and eminently suited also to application beyond the sphere of marriage laws.

The opening session of the Conference saw a repetition of moves. In his welcoming address to the same sixteen nations that had attended the 1894 Conference, Asser once more instilled in his audience the importance of his perception 'd'établir une entente par rapport aux principes fondamentaux.' Once more, his proposition was declined courteously. Meili, the Swiss delegate, repeated his earlier plea for concessions to the principle of domicile, again in vain. Neither did the delegations comply with Martens' demand that, in order for Russia to sign the Convention on the Settlement of Conflict of Laws Concerning Marriage, the Conference's outlook on the wedding ceremony as a legal act had to be abandoned. In all, four draft-Conventions were presented, regarding marriage, divorce, guardianship and succession. In his concluding words the Dutch Minister of Justice, Cort van der Linden, voiced his high hopes:

[C]ar dans ces jours se perd de plus en plus l'impression de la distance qui sépare les hommes de différentes nationalités, et le sentiment se renouvelle que nous appartenons à une seule famille qui sera un jour une seule humanité, guidée par une seule justice.

On 12 June 1902, 12 States signed three Conventions.²⁹⁹ Discussion of the Draft-Convention on Succession was adjourned to the next Conference. In subsequent months, Asser was engaged in a polemic with the Italian scholar J.C. Buzzatti.³⁰⁰ In a contribution to the *Revue* of 1901 Buzzatti had declared himself, as Asser phrased it in his prompt reply, 'un adversaire acharné' of the principle of *renvoi*.

5. THE FOURTH HAGUE CONFERENCE [16 MAY-7 JUNE 1904]³⁰¹

As prudently and as circumspect as Asser wished to proceed,³⁰² the Fourth Conference opened under heavily overcast skies. The Boer Wars [1900-02]³⁰³ and the shocking experience of the clash between the Old and the New in the Russo-Japanese War [1904-05] had severely undermined the lofty notions of solidarity and universality. Germany's ambitious Fleet programme had made Great Britain, in its historic political move of April 1904, drop its policy of double supremacy and rely on an *Entente Cordiale* with France. The nervous international climate affected Asser's project in prompting nationalism and protectionism at the expense of international solidarity. It was also reflected in the growing disinterest in the public eye for the 'merely technical' substance-matter of the *Conférences*.

Denmark had declined the invitation this time, but more telling was Japan's request to join the Conference. Sixteen nations, therefore, once more assembled in The Hague for three weeks of negotiations. Meili once more voiced hope for concessions to the principle of domicile, while Martens stressed Russia's willingness to remain involved, even if it had been unable to sign the 1902 Conventions. Asser tirelessly reiterated his creed that uniform legislation by convention was the best way ahead to warrant certainty for the European citizenry that found itself faced with conflicts for which diverging doctrine and jurisprudence offered little help:

²⁹⁹ The Convention of 12 June 1902 relating to the settlement of the conflict of the laws concerning marriage. The Convention of 12 June 1902 relating to the settlement of the conflict of the laws and jurisdictions as regards to divorce and separation. The Convention of 12 June 1902 relating to the settlement of guardianship of minors.

³⁰⁰ Steenhoff 1994, at 117-18.

³⁰¹ Bervoets 270-75.

³⁰² In 1880, in the *Revue*, Asser stated: 'on doit procéder avec prudence, ne pas négliger l'esprit de suite indispensable dans tout travail législatif.' Voskuil 1973, at 26.

³⁰³ On Asser's commitment to the cause of the Boers and his contacts with Dr. Leyds, see Bervoets 218, 288, 296.

A la jurisprudence flottante des tribunaux, à l'appel aux auteurs, chez lesquels on trouve souvent des opinions entièrement divergentes, il faut substituer des règles fixes, ayant la même force que celle des lois nationales et ce but ne peut être atteint que par une entente internationale.³⁰⁴

National codification was the wrong course to steer, he argued with dramatic eloquence: 'Le plus dangereux des conflits de loi est sans doute celui entre les lois sur les conflits, puisqu'un tel conflit donne lieu à la certitude de l'incertitude.'

The Conference revised the 1896 Convention relating to Civil Procedure and prepared draft Conventions on Succession; on the Rights and Duties of Spouses with Regard to their Estates; on Deprivation of Civil Rights; and on Bankruptcy, also to base bilateral treaties on. Asser argued that, as with the 1896 Convention, ideally all future conventions should be made liable to revision, preferably every five years. Such a procedure would also encourage their 'provisional' signature by nations who felt not yet quite satisfied, and would promote later refinement. It was a sensible suggestion, but Asser's optimism against all odds was unwarranted. In his farewell address he hinted at a changing of the guard: 'I wish that, if it is not given to me to chair the next Conference, you will treat and act towards my successor in the same spirit that I received from you. It will render his task as easy and pleasant as mine has always been.' Although Asser was destined to achieve great things in his field for many years to come, he would never preside over another *Conférence de La Haye*. Indeed, no one would for half a century to come. The sequel to the 1904 meeting was scheduled for 1907, then postponed on account of the Second Hague Peace Conference. From there on, the idea was sidetracked: times were changing.³⁰⁵ In 1909, Italy and Germany approached the Dutch Government to initiate an International Conference for the Unification of the laws on Bills of Exchange and Cheques.³⁰⁶ We will discuss Asser's deep involvement in this project later on.

As for the subsequent vicissitudes of the Hague Conventions drafted in the period 1893–1904: the revised Convention relating to Civil Procedure was signed on 17 July 1905 and subsequently ratified by all nations but Japan. The three Conventions of 12 June 1902 relating to the Settlement of the Conflict of laws Concerning Marriage, the Conflict of Laws and Jurisdictions as regards Divorce and Separation, and relating to the Settlement of Guardianship of Minors were never ratified by Denmark, Norway, Austria and Russia. To Russia, the notion of a civil wedding posed an insurmountable barrier to the very last. The Conventions of 17 July 1905 relating to Civil Procedure, to Conflicts of Laws with regard to the Effects of Marriage on the Rights and Duties of Spouses in their Personal Relationship and with regard to their Estates, and relating to Deprivation of Civil Rights and Similar Measures of Protection were all ratified in 1912, by eight and seven States respectively.³⁰⁷ In the very year of Asser's demise, 1913, France withdrew from the 1902 Conventions. The change of wind, noticeable in doctrine over the previous decade, had made itself felt in the sphere of high politics. Its chill made internationalism shiver.

6. APPRAISAL

A concluding word of historical appraisal is in order. Asser's 'international' approach to private international law, for all its authority during his lifetime, had never been uncontested, neither abroad nor at home. Thus in Germany, Franz Kahn, in his fundamental *Gesetzeskollisionen*, had

³⁰⁴ *Honderd Jaar Staatscommissie*, 1997, at 12–13.

³⁰⁵ Van Vollenhoven 1934 I, at 328: 'Ik geloof niet mis te tasten, als ik gis, dat na de conferentie van 1904 andermaal een kritische tijd intreedt.'

³⁰⁶ Van Vollenhoven 1934 I, at 329: 'Rescue comes from abroad.'

³⁰⁷ Steenhoff 1994, at 164–65. The Conventions were drawn up in French only.

argued categorically as early as 1891: ‘Das internationale Privatrecht [...] ist vielmehr nationales Recht und wird dies seinem grössten Teile nach auch in Zukunft bleiben.’ In 1894, Theodor Niemeyer proposed a method that was diametrically opposed to Von Bar’s internationalism of 1862. In France, in 1897, Etienne Bartin called universality of private international law an illusion. In Britain, in 1904, Westlake’s search for general principles in what he had coined his ‘theoretical method’ was fundamentally undermined by Albert Dicey’s ‘positivist method’.³⁰⁸

Asser’s position was no less challenged at home.³⁰⁹ With legislation scarce and the role of jurisprudence negligible for many decades to come, doctrine was the preponderant aspect in promoting the discipline in the Netherlands. To that extent, Asser’s *Schets* marked the first phase of modernity – not in itself, perhaps, but rather in the polemic the proposition provoked in the two other great protagonists of the discipline in the Netherlands up to 1900, Josephus Jitta³¹⁰ and Hamaker³¹¹ who, in their search for reform, likewise addressed the confusing *maelstrom* of their times. Both Jitta and Hamaker viewed Asser’s tenets, as exposed in his *Sketch* of 1880, with reservations and scepticism. And what held good for Asser’s *Sketch*, held for his unification projects at the *Institut* [1874] and the *Conférences de La Haye* [1893-1904]. The views of the three Dutch protagonists differed widely and, for many years, none of them moved an inch. Hamaker’s review of Asser’s *Schets* was severe: he failed to see a governing principle or theory in Asser’s proposition, let alone its relevance to Dutch circumstance.³¹²

Asser’s relationship with Jitta was peculiar. Meticulously trained in Brussels [with Alphonse Rivier] and Leiden, Daniel Josephus Jitta settled down as an attorney-at-law in Amsterdam. In 1890 he published *La méthode du droit international privé*, followed twenty-five years later by his massive *Private International Law* [1916]. Asser and Jitta were both hooked to private international law for life. But then, in their tenets as how to make headway in the field they entertained diametrically opposed views. Jitta’s paramount proposition was his idealistic concept of the legal community of the human race. On its way to self-fulfilment mankind was currently faced with two complementary tendencies: a nationalistic tendency based on sentiment, and a complementary humanitarian tendency inspired by the intellect.³¹³ Nationalistic feelings were the basis for citizenship, universalism and cosmopolitanism were fostered by human consciousness. In his firm belief of the Dawn of Global Law Jitta was not even put off by WWI. In the days of Versailles he published his speculative *The Reconstruction of International Law on the Foundation of a Legal Community* [1919].

International reviews of Jitta’s propositions, as by Von Bar, were sceptical from day one. In IDI circles his views identified as mere day-dreaming. But then, Jitta in turn expressed himself in fairly negative terms on the codification projects of the IDI, in which Asser was the guiding

³⁰⁸ Recently, the above debate has been reappraised with keen insight by Alex Mills, *The Confluence of Public and Private International Law*, Cambridge 2009. As Mills argues, the tendency in the late 19th century towards ‘nationalisation’ of private international law, notably under the influence of the prevailing codification movement and the positivists’ overrating of the concept of sovereignty, failed to take into account the horizontal and vertical ‘international’ functions of the discipline, irrespective of its source, in regulating national differences and implementing fundamental rights. [I owe this reference to Mr. J.H.A. van Loon, The Hague].

³⁰⁹ *Ibid.*, at 53-100, 120-61.

³¹⁰ Daniël Josephus Jitta [1854–1925], a jeweler’s son and third generation Dutchman from German descent, spent most of his youth in Brussels, where he became a doctor of law in 1874, then to turn to Leiden, where he obtained the same degree in 1880 on a dissertation concerning *Het vonnis van faillietverklaring in het internationaal privaatrecht*. Jitta was a humble, quiet but socially deeply committed man. From 1884 to 1894 he was a member of the Amsterdam city council for the liberals of *Burgerplicht*. He was a long-standing member of the board of the Amsterdam Jewish orphanage and mental home. In 1913 he succeeded to Asser in various capacities. He chaired the *Netherlands International Law Association*, NVIR [1910-24] and in 1920 en 1921 the ILA assemblies in Portsmouth and The Hague. See Steenhoff 1991 for a compact review of his life and works. See also Steenhoff 1994, at 69-86, 129ff.; Westenberg 1992, at 71.

³¹¹ On Hamaker see above note 103, and Westenberg 1992, at 69. Hamaker identified the foundation of private international law in universal legal principles and gave precedence to doctrine for its future development.

³¹² Steenhoff 1994, at 62-65. On Hamaker, *ibid.*, at 45ff.

³¹³ Steenhoff 1994, at 120-138.

light – something Asser must have resented deeply. Asser preferred not to comment on the *Méthode*, privately calling the proposition rather confusing, not in the least because of Jitta's rather ornate style. Asser and Jitta were truly incomparable, and to some extent incompatible characters. Their train of thought never converged and, while their esteem was mutual and sincere, for years on end they rarely sought each other's company, happy to ignore each other in the most courteous terms. Asser never commented on Jitta's works, Jitta equally shunned polarisation. Asser's letter Jitta of 23 July 1895 attests to this curious personal relationship:

Amice,

[...] With great pleasure I learned from this so lucidly and systematically written book – as otherwise before from your Introduction to the Study of Commercial Law – which I once pinched in Amsterdam! – your great talents as a teacher which I could only presume at the time I recommended you for the professorship. [...] My life is quite still and lonely these days. My wife, who has been ailing for years, has traveled to Switzerland to recuperate in the company of my eldest and youngest sons. The latter, incidentally, the other day passed his admission exam to the Gymnasium. In case you intend to come over to The Hague one of these days, please oblige me and stay over for dinner. We have a lot we could discuss. Please note that I will be absent from 6-12 August [honorary doctorate Cambridge].³¹⁴

In later years their 'public' relationship became less tense. Jitta recanted his critical review of Asser's *Conférences*, and gladly served as President and Rapporteur of a Committee at Asser's Conferences on Bills of Exchange [1910, 1912].³¹⁵ After 1910, they met at the Royal Netherlands Society of International Law [NVIR]; Jitta was the *Society's* first President, the aged Asser its Honorary-President. After 1913, Jitta succeeded Asser in various prominent functions, often at Asser's explicit recommendation; notably so in the Standing State Committee and the *Institut*.³¹⁶ By then, sadly, both men's ideals were on the way out. In the opening years of the 20th century, with tension worldwide on the increase and British-German naval rivalry acute, private international law was gradually referred back to the margin of the international agenda. Academics who had given their best for five decades on end now were prepared to call it a day.

In February 1908, in his inaugural address at Groningen University, J. Kusters, eyewitness of Asser's *Conférences* from his position at the Ministry of Justice as of 1900, and despairing at the prevailing uncertainty in the field, spoke up in no uncertain terms in favour of a positivist, nationalistic, civil law approach. In 1917, his pivotal handbook on *The International Civil Law in the Netherlands* summarily swept away the last cinders of internationalism. After Versailles the world was a different place altogether. Asser's ideas were stored and positivism prevailed in doctrine throughout the 1920-1940s. It would take another World War before in 1950 Professor J. Offerhaus [1892-1966],³¹⁷ resuscitated Asser's dream. Launching a new series of *Conférences* and Conventions, he uplifted the Hague Conferences on Private International Law and 'les "orphelins internationaux" qu'avait été jusque-lors les réunions diplomatiques' to its present status of a permanent intergovernmental organisation, boasting 71 Member-States, 1 Member Organisation (the European Union), and a growing number of non-Member States subscribing to its currently 38 Hague Conventions [1951-2007]. Meanwhile, the fifty years that preceded the cataclysm [1863-1913] have lost nothing of their fascination, and surprisingly little of their relevance.

³¹⁴ Bervoets 251. Cf., Steenhoff 1994, at 143-44. Asser's second son [Louis], it will be remembered, stayed at Davos at the time on account of his pulmonary condition.

³¹⁵ In 1914, Jitta wrote a substantial 'In Memoriam' in the *Zeitschrift für Völkerrecht*.

³¹⁶ Jitta served as Member of the Commission from 1913 and as its President during 1918-1924; Steenhoff 1994, at 186; *Honderd Jaar Staatscommissie*, 1997, at 15. He became *associé* of the *Institut* in 1913, and *membre* in 1923.

³¹⁷ J. Offerhaus [1892-1966] was, like Asser, an expert barrister in insurance and maritime law, long-standing professor in Amsterdam [1941-1960] and Member [1931-] and President [1952-65] of the State Commission on Private International Law. He presided over the 7th-10th Hague Conference [1951, 1956, 1960, 1964], in which 14 international Conventions were concluded.

VII

THE FIRST HAGUE PEACE CONFERENCE [1899]³¹⁸

1. THE POLITICAL BACKDROP

The conclusion of the *Triple Alliance* of Austria, Germany and Italy in 1882 to oppose the *Entente* of France and Russia crystallized slumbering political strife and economic rivalry in Europe into two clear-cut power-blocks. The ensuing armaments race only added fuel to widespread social discontent in these early days of the Industrial Revolution, when social legislation, by no stretch of the imagination, kept pace with dazzling technological progress. In 1887, as just another initiative among numerous pleas advanced from all quarters of society, Lord Salisbury, in a famous address in the London Guild Hall, invited the Head of Christianity, the formidable Tsar Alexander III, to summon the nations to a disarmament conference, a proposition cut short by the Tsar's untimely demise. In 1898 the idea was rekindled by Nicholas II, Alexander's far less impressive successor, in an effort to secure Russia a moratorium in the stifling armaments race. Russia's patent expansionism towards the Balkans and the Bosphorus, Persian Gulf and Liaodong Peninsula – identified by cartoonists as the tentacles of a giant octopus – was frustrated by the Empire's poor infrastructure and general backwardness. Costly railway projects and gigantic efforts at canal-building to link the Baltic to the Black Sea were put in hand to rectify this predicament: *reculer pour mieux sauter* was the Tsar's motto.

2. ASSER AND MARTENS

Unquestionably, Asser's commitment to the *Conférences de La Haye* was far more heart-felt and intense than to the 1899 and 1907 Hague Peace Conferences. Not necessarily from lack of respect or interest in the field: commentators have argued that Asser was first and foremost a diplomat. It was the mere consequence of his overarching pragmatic approach. By no means a utopian, Asser fully appreciated the scanty chances of success of this hastily prepared diplomatic conference of such enormous proportions, and the fairly limited influence of legal discipline on its outcome. Having said this, Asser's role and record in the materialization of the two Peace Conferences should never be underestimated. Diplomats, lawyers, military men and pacifists – even cartoonists readily agreed that Tobias Asser and Feodor Martens were the soul and backbone of the 1899 Conference.

The organization of the Conference, initially scheduled in St. Petersburg, was left to Martens on account of his vast experience with international forums, his network, managerial expertise and linguistic skills. Martens' position at the St. Petersburg court was not to be envied. An orphan immigrant from Parnu, Livonia [currently Estonia] and of German provenance, he was widely snubbed in reactionary circles at St. Petersburg, where diplomacy was still the exclusive domain of the nobility and where lawyers were dismissed as mere mechanics. An *anser inter olores* at home Martens, pupil of Caspar Bluntschli and Lorenz von Stein, was a scholar of high repute

³¹⁸ Bervoets 284-90. For a full review, see Eyffinger 1999.



Feodor Martens [1845-1909], Russian international lawyer and diplomat of Estonian descent. Prominent advocate of 'The Hague Tradition' of international law.



Cartoon by Johan Braakensiek, showing Asser, Martens and the Stork [the emblem of The Hague], to suggest the impact of Asser's and Martens' collaboration in the days of the First Hague Peace Conference [1899].



The Dutch delegation at the 1899 Peace Conference, featuring [from left to right]: Captain A.P. Tadema, J.C.C. den Beer Poortugael, A.P.C. van Karnebeek, T.M.C. Asser, and E.N. Rahusen.

abroad.³¹⁹ Martens' undisputable claim to be called a father of 'The Hague Tradition' rests on two solid foundations. Appreciative of the political antagonisms, of the unlikely success of debate on disarmament and of the social upheaval a failure of the Conference would entail, he single-handedly expanded the Conference Programme towards the legal sphere. The 'War Laws of The Hague', and the Permanent Court of Arbitration are the manifest outcome of his decision in 1898.

The spontaneous embracing of the proposed Disarmament Conference by the Peace Movement – in these circles invariably labelled as 'Peace Conference' –, and the wide social acclaim it engendered triggered the rivalry of the great powers. Their deadlock over the Conference's preferred venue ruled out all major capitals, thus opening up vistas for the small and neutral nations in a process that, over the past century, has given a special ring to cities like Geneva, Brussels, Oslo and Stockholm. With Switzerland teeming with anarchism, Scandinavia showing total disinterest, and Brussels ruled out by King Leopold's conflict with Parliament, the Netherlands presented itself as a feasible alternative. It was Martens who first proposed The Hague, and his special relationship with Tobias Asser suggested this choice. In St. Petersburg serious doubts were entertained as to the management qualities of the Dutch. What struck foreign observers of the period was precisely the lack of vision and expertise of the Dutch *corps diplomatique*. Time-honoured isolation had made itself felt. Many Dutch diplomats proved not up to par when faced with the intricacies of high international politics.³²⁰ In a letter to Prof. H.T. Colenbrander, published in 1913, Asser wrote:

The Czar [...] hesitated [...] between Brussels and The Hague. De Martens, his adviser in everything concerning the Peace Conference, pleaded for The Hague and with this brought forward, an argument in favour of The Hague, that in 1893 and 1894 the Conferences on Private International Law, attended by De Martens as first Russian delegate, were held there, owing to which, as he said, the suitability of the Netherlands and the Dutch for the organisation and guidance of such gatherings had been proved. As De Martens wrote me then, that argument was the decisive factor in favour of The Hague. [...] I am quite aware that when the Dutch Government, in 1892, upon my suggestion, applied to the other European Powers inviting them to a Conference to be held at The Hague that was to endeavour to draft a codification of Private International Law, it was unable to foresee what would arise from this in the future; actually, however, this did have as result that, in the international sphere, The Hague has acquired an exceptional significance.³²¹

By 1898, Asser and Martens had known each other for decades. They met at the *Institut*, at international diplomatic conferences and at Asser's own *Conférences*. To be sure, their positions were incomparable. The Netherlands, at the time perhaps the most inconspicuous and most neutral of Western democracies, stood out bleak next to the greatest and most reactionary of absolutist autocracies. Yet, Asser's personal bond with Martens was tight and in their approach to the world they had much in common. At that, they were, both of them, very level-headed, extremely pragmatic, and highly efficient. What Martens lacked in diplomatic subtlety and, as some colleagues ventured, legal genius, he made up for by virtue of his impressive personality and sheer force of persuasion. Neither of the two, Asser nor Martens, left their mark on society, or the law, by virtue of their speculative theory, yet both were extremely well versed diplomats, truly international

³¹⁹ Martens edited an impressive Russian counterpart to the collection of German treaties by Georg F. Martens and authored a first Russian handbook on international law [1881-82]. *Membre* from 1874 onwards, he was three times elected Vice-President of the *Institut*. Appalled at the perfect British disinterest with humanitarian law at the Brussels Conference in 1874, he had made the field his specialty. Martens' authority as an arbitrator was impressive by all standards.

³²⁰ Much to De Beaufort's embarrassment, his school friend Van Stoetwegen in St. Petersburg had to be replaced on account of a series of blunders.

³²¹ Full Dutch text in *De Gids* 1913 III, at 532-33. Quoted from Lysen 1934, at 76.

personalities, and highly effective at the conference table. Together they made the difference. In the months prior to the 1899 Conference, their joint efforts neutralized all political machinations at the Russian court, witness a letter written by Martens on 5 March 1899, in the middle of hectic preparations:

Maintenant, permettez-moi, très cher ami, de vous adresser une question *tout personnelle et tout confidentielle*. Un grand personnage me disait, il y a quelques jours, que moi, votre ancien collègue, ne suis pas ‘persona grata’ auprès de votre Gouvernement et qu’on ne m’aime pas à la Haye! J’étais très frappé par cette confiance, ayant la conscience bien tranquille et ayant toujours eu les plus sincères sympathies pour votre pays et population. J’ai insisté auprès de ce grand personnage [russe] d’avoir des explications et à la fin des fins j’ai su que chez vous on m’en veut pour mon arrêt dans l’affaire ‘Costa Rica Packet’.

Est-il réellement possible que vos hommes politiques soient fâchés contre moi pour la prononciation d’un arrêt qui a été le résultat d’un travail le plus consciencieux et d’une conviction la plus impartiale et inébranlable? Chaque juge peut se tromper, mais mon conscience est *absolument* tranquille que, *si* je me sois trompé, je l’ai fait de bonne foie. Je reste aujourd’hui dans la même conviction dans laquelle j’ai prononcé mon arrêt en 1897. Si le Chevalier de Stoetwegen, avant mon arrêt, se croit en droit de dire à quelques personnes que l’arrêt sera *pour* la Hollande, il s’est malheureusement trompé. Mais dans cette affaire, comme dans toutes les autres affaires pendant ma vie entière, je me suis laissé diriger par ma devise SUUM CUIQUE. Vous m’obligerez infiniment en me donnant, aussi vite que possible, quelques éclaircissement tout confidentiels. Vous pouvez compter sur ma discrétion absolue. En vous remerciant d’avance je reste etc.³²²

Given his precarious position in St. Petersburg Martens, obviously, was highly sensitive to these kinds of stings. There may otherwise have been some truth in the accusations. In his 1914 obituary Van Vollenhoven praises Asser for his benevolent appraisal of Martens’ ‘disgraceful Costa Rica award.’³²³ Martens’ conduct in The Hague in 1899 was above all reproach. On 5 August, in the week Asser received news from the Russian Government he had been honoured with the *Grand Cordon de St. Anne*, Martens wrote Asser:

Je suis profondément touché du grand honneur que votre Gouvernement a daigné me conférer et je vous prie d’être auprès de M. de Beaufort l’interprète de mes sentiments de reconnaissance respectueuses et dévouées.

Regarding Russian recognition for Asser’s work at the Conference he declared:

Je suis personnellement enchanté que M. de Staal a rempli la promesse qu’il m’avait donné, et si promptement. Généralement ces choses-là traînent chez nous et font attendre pendant des années....³²⁴

3. ASSER’S ACHIEVEMENTS

The first ever Conference of the ‘Civilized World’ of twenty-six nations included a mere two Asian, one Latin-American and no African delegations. It convened for a full ten weeks [18 May–29 July] in young Queen Wilhelmina’s summer residence in the splendid isolation of the Hague Woods. With time, and as delegates came to know each other better, the worst prejudices melted. The Hague Conference of 1899 was the opening of the International Era of permanent conferences. Asser was second plenipotentiary next to Van Karnebeek, and generally seen as the *auctor*

³²² Bervoets 286.

³²³ Van Vollenhoven 1934 I, at 335.

³²⁴ Bervoets 286.

intellectualis of Dutch Conference policy. His performance at the Conference was highly appreciated. Unlike the fairly authoritative Van Karnebeek, he showed himself an altogether pleasant chairman. His resourcefulness at finding pragmatic solutions to mystifying entanglements, and his overall conciliatory spirit were favourably commented on. His interference forestalled the derailing of the PCA project and enhanced the effectiveness of the Commissions of Inquiry. By the same token, he rarely lost sight of Dutch vested interests.

Asser's achievements at the Conference were manifold. He was a prominent member of the Second Commission which, under Martens' guidance, proposed 'To Trim the Claws of the Dragon of War.'³²⁵ Both were on the celebrated *Comité d'Examen* of the Third Commission that addressed the Peaceful Settlement of Disputes.³²⁶ This select body of legal luminaries from the *Institut* became the heart of the Conference, and after many setbacks came up triumphantly with the world's first standing international judicial body, the Permanent Court of Arbitration.

On 4 July, at the Grotius Memorial in Delft auspicated by the US Delegation³²⁷ Asser, in his capacity as President of the IDI, elegantly reciprocated the American tribute to Grotius as one of the founders of the American Constitution³²⁸ in a eulogy of the American law tradition. He reviewed its role within IDI and ILA in a speech which, in idealism,³²⁹ lived up to the occasion:

The third object chosen by the Institute in its first session, has quite an American character. The three rules of the Washington treaty of 1871 concerning the duties of neutral governments had to be examined on the basis of proposals made by a Committee, to which belonged the American scholar and jurist Theodore Woolsey. I have called this matter quite American, because the United States had the merit of permanently fixing the doctrine of neutrality. When Grotius wrote his famous book, the state of war – and of war in which all nations were concerned, – was almost permanent in Europe. It was Grotius' great merit to have shown how war ought to be submitted to certain rules in the interest of humanity and of justice. The rights and obligations of belligerents form the principal contents of his work. Those of neutrals are indicated in a very brief and rather superficial way.

At two great epochs – that of the first French revolutionary war in 1793, during the administration of Washington and the secretaryship of Jefferson and about twenty five years later, in 1818, Mr. Monroe being President, and Mr. John Quincy Adams Secretary of State, when the Spanish colonies in America threw off their allegiance to the mother country, the United States had the opportunity of establishing liberal and humane principles of international law. On the former occasion they passed their first neutrality Statute, that of 1794, and on the latter the act of Congress of 1818, called the amended foreign enlistment act. One of the greatest English authorities on international law, Sir Robert Phillimore, says that the British statute was during the next year (1819) carried through Parliament in accordance with the American act of congress.

The principal object of the law of neutrality up to this time has been to state the duties of neutrals, and the conditions under which their neutrality is to be respected by the belligerents. If, in the future, war should be rendered impossible, neutrality would cease to exist. As long, however, as war may, from time to time, appear to be unavoidable, it will be a great blessing for humanity if the new Code of Neutrality shall not only prevent neutrals from favouring one of the belligerents and from disturbing the belligerents in their military operations, – but if it shall also – and in the first place – prevent the belligerents from disturbing the neutrals in their peaceful occupations, in their trade and navigation, and in the practice of science and arts.

The United States of America would again render an immense service to humanity if they induced the States of Europe and other parts of the world, to prepare in time of peace a Code of Neutrality so favorable for the pacific nations, and so severe with regard to those who may feel desirous to have

³²⁵ Eyffinger 1999, at 255-16.

³²⁶ *Ibid.*, at 353-20.

³²⁷ *Ibid.*, at 324-31.

³²⁸ In his idolizing of Grotius White voiced a long American tradition that went back to the works of Kent and Wheaton. See Janis 1910 [above note 179], Ch. 3.

³²⁹ Asser was actually well-known for his stimulating warmth and idealism, tempered only by prudence. See Van Vollenhoven 1934 I, at 336, and his reference to the Boer War [1901] and Tripoli [1912]; cf., *ibid.*, at 340.

recourse to war, – that it would prove to be in fact the best guarantee for the maintenance of peace. This would be a glorious task for the statesmen of the new world, in the beginning of a new century!³³⁰

4. THE SECOND COMMISSION³³¹

At Martens' invitation, Asser chaired the Second Commission's First Sub-Commission, which addressed the revision of the 1864 Geneva Convention, and acted as its *Rapporteur*.³³² Right from the beginning, the competence of the Conference in this respect was seriously questioned by the Swiss delegation. Odier contended that the Conference lacked both technical expertise and a formal mandate, seeing that not all adhering parties to the 1864 Convention were represented in The Hague. Asser replied firmly, if somewhat lamely³³³ that, apart from its Programme proper, the Conference was competent 'to discuss all other questions connected with the ideas set forth in the Tsar's circular letter of 1898.' More to the point, he argued that 'a non-binding exchange of views of a distinctly personal nature' on the Convention was profitable to all States. Martens joined in eagerly, stating that such an exchange was in fact imperative, as accelerating military and technical developments had long rendered the Convention out of date.

With the backing of Martens and Renault Asser thereupon proposed an article-by-article review of the Convention. Odier promptly claimed that, in view of the Commission's incompetence to formally adopt textual emendations, such an approach was impractical and would be better reserved for a special conference of the adhering parties of the 1864 Convention. At stake, as all intimates knew all along, was Switzerland's fear for 'internationalization' of what, with some justice, it considered its national prerogative, and Asser's covert aspiration to haul in this major catch for the Netherlands. Several nations resented Asser's pretence. Notwithstanding flagrant opposition, Asser went out of his way. In spite of the Commission's well-understood formal incompetence, but precisely on account of the urgency of the subject matter, he declared that:

[I]t would be desirable, if possible, to cause the work of the Sub-Commission to enter without waiting into the body of positive international law by embodying it in a Convention. This Convention might be signed, right here at The Hague, under the same terms as to form, ratification and entering into force as those observed by parties of the Convention on private international law of November 14, 1896.

Blocked from updating the Geneva Convention, Asser laconically suggested drawing up a new 'Hague' Convention. At that, he prepared a *voeu* expressing the desire to have a special conference convene at short notice to enwrap the two conventions [that is, the 1864 Geneva and the 1899 Hague Convention] into a single code. The *voeu* read as follows:

The Hague Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, utters the *voeu* that steps may be shortly taken for the assembly of a Special Conference having for its object the revision of that Convention.³³⁴

Several delegations objected to this. Beldiman, on behalf of Romania, observed that he 'only too gladly endorsed' the *voeu*, but insisted on insertion of the phrase: 'and under the auspices of the

³³⁰ The Delft Ceremony of 4 July, 1899; Asser's address at 38-44. Citation at 41-44. The address was followed by Valerius' *Prayer for the Fatherland*.

³³¹ Eyffinger 1999, at 275-87.

³³² Martens himself chaired the Second Sub-Commission that addressed the laws of war in the Brussels tradition.

³³³ With reference to correspondence between the Russian and Dutch Foreign Ministries prior to the Conference.

³³⁴ Scott 1899, at 393.

Swiss Federal Council,' which, in his opinion, had "acquired an imprescriptible title' in this respect. As ever, Martens and Renault came to the rescue. Martens agreed in principle, but wondered openly whether such an initiative would not pose too much of a burden on the Swiss Government. He called to mind the 1892 Conference of Red Cross Societies in Rome, which had requested the Italian government to initiate the adaptation of the principles of the Geneva Convention to maritime war. Italy had courteously reciprocated by inviting Switzerland to take the lead – but in a full seven years no action had been taken! Renault insisted on 'expeditious implementation' not to 'run the risk of infinite postponement.'

Asser placidly agreed, stipulating that in his text the Swiss Government was *implicitly* recognized as having the right to convene a Revision Conference and that, obviously, no one would object to its taking that initiative. Odier's riposte was that Switzerland wished to lay no claims to monopoly in the matter, that Martens' reference to Rome was correct, but that his country would be only too happy 'to bring about this revision as soon as circumstances should appear favourable.'³³⁵ However, the USA wished to do full justice to Switzerland. In the end, its motion was accepted and the text of the *voeu* adapted, stating that:

All the States presented at The Hague would be glad to have the Swiss Federal Council take the initiative, in the near future, in convoking a Conference with a view to revising the Geneva Convention.³³⁶

Inasmuch as this text did not amount to a 'mandate', as the British delegate Pauncefote drily commented, it was adopted unanimously.

By 1899, Asser was a 'streetwise' diplomat. Thus, when in the debate on the Red Cross symbol Turkey insisted on the Half Moon for its Islamic world and Siam submitted the Red Flame for the Buddhist commonwealth, various delegates complained of this 'intrusion of religious symbols into the legal sphere.' Asser simply dismissed the propositions with reference to the 'incompetence of the Conference to amend the text of the Geneva Convention.'³³⁷ On 15 June, Chairman Asser congratulated the Sub-Commission on its 'altogether satisfactory results on matters of so high a human interest.' The British Admiral Fisher paid homage to the 'competent, benevolent and impartial spirit' of the President. In reply Asser congratulated himself with the 'unwavering goodwill of all colleagues.'³³⁸ The debate was symptomatic of the subtle 'double layer' strategy which ran through all Commissions and Sub-Commissions. Within this 'Parliament of Man' of the 'Hundred Chosen' opposition of political power-blocks, and between the great and the small, was paralleled by distinct professional demarcation lines of, here, reactionary diplomats and military men, there the progressive legal luminaries of the *Institut*. On top of this, national sensitivities crisscrossed personal sympathies in this endless give-and-take.

5. THE THIRD COMMISSION³³⁹

As Asser put it in Delft:

The second matter to which the priority was granted by the Institute concerned International Arbitration, and the rules of procedure to be adopted by States that agree to submit to arbitration the controversies arising between them. A most remarkable draft by the well known German jurist Professor

³³⁵ *Ibid.*, at 394.

³³⁶ *Ibid.*, at 408.

³³⁷ Eyffinger 1999, at 279.

³³⁸ Scott 1899, at 471; Eyffinger 1999, at 280-81.

³³⁹ Eyffinger 1999, at 355-20.

Goldschmidt formed the basis of the Institute's resolutions. Since 1874 the practice of International Arbitration has made enormous progress, and we may now expect that the generous and magnanimous initiative of His Majesty the Emperor of Russia will bring into operation a set of uniform rules for the decision of international controversies, and for the establishment of a Court of Arbitration.³⁴⁰

The Third commission was the almost exclusive domain of lawyers. It was the sphere that had raised the highest expectations in the world of parliamentarians and pacifists and drew the keenest media-attention. When in the body of this Commission the Swedish delegate Bildt, to the consternation of many, proposed to open the doors to 'King Demos' [the Press], Asser calmly replied that this was up to the Plenary to decide, and that a policy which so obviously ran counter to that of the other Commissions was unlikely to find warm reception in that body. It was, otherwise, a decision that has remained controversial to the present day, and had a negative affect on media coverage. A similar debate arose at the Second Hague Conference.³⁴¹

Most of the work of the Commission was delegated to a *petit comité* of experts, headed by Baron Edouard Descamps of Belgium. Descamps was the author of the authoritative draft on arbitral procedure prepared on behalf on the *Institut* which constituted the basis for discussions. He was escorted by Martens and Asser, the American Holls, the German Zorn, the Austrian Lammasch, d'Etournelles de Constant from France and Odier from Switzerland.³⁴²

A PERMANENT COURT

A first major stumbling-block was the concept of a permanent tribunal as such. The German expert Zorn laid a first booby-trap in observing that such an undertaking bore great risks and even greater dangers 'which it is simple prudence to recognize.'³⁴³ Asser objected immediately. In past decades the world had gained ample experience with occasional arbitrations. The time was now ripe for 'a temporary permanent tribunal.' Formal objections were raised: the idea diverged from the Conference Programme; nothing was so permanent as a 'provisional' arrangement. Berlin even objected to the title 'Tribunal' as implicitly suggesting permanence, and hence the title 'Court' was proposed. By early July crisis had become perfect deadlock. With the Italian Count Nigra, Martens and Odier desperately pleading to save the Court the German delegate Zorn, otherwise a progressive thinker and eminent scholar, apologized that his instructions were adamant. US delegate Holls then bluntly stated that the US population simply loved the idea, that the world at large was waiting for this Court and that merely formal objections were of no consequence. The delegates were bound by:

[A] most solemn obligation incurred between the peoples of the civilized world. I venture to say that we shall have done nothing whatever if we separate without having established a permanent tribunal of arbitration.³⁴⁴

The *Comité* went through similar narrows in its efforts to turn arbitration into a compulsory mechanism. Zorn laconically voiced Emperor Wilhelm II's view that obligatory arbitration was contrary to Germany's independence. With Pauncefote suavely observing that the *Kaiser's* statecraft was 'perhaps not altogether modern,' Asser solved the deadlock by suggesting that Zorn

³⁴⁰ The Delft Ceremony of 4 July, 1899; Asser's address at 38-44. Citation at 41.

³⁴¹ See below note 408, with reference to De Beaufort, *Dagboeken* I, at 396.

³⁴² The first delegates of the [26] nations were entitled to join its sessions, and several of them did. This *Comité d'Examen* held its first and second meeting at the House in the Woods, but henceforth, and in view of the frequency of its meetings, opted for the more practical *Salle des Trèves* at the Binnenhof. In all, it met 18 times.

³⁴³ Scott 1899, at 713; Eyffinger 1999, at 387.

³⁴⁴ Scott 1899, at 716; Eyffinger 1999, at 388.

might perhaps travel back to the Wilhelmstrasse and beg for more favourable instructions.³⁴⁵ Holls, a very persuasive diplomat of German extraction and fluent in German, took it upon himself to escort Zorn to Berlin, to consult Von Bulow and avert disaster. The outcome, as ever, was compromise. The obligatory clause was cut out and arbitration reduced to an optional instrument, but the idea of the permanent court was saved from the wreckage.

MATTERS OF PROCEDURE

This only opened the floodgates to squabbles over procedure. One of these concerned the so-called *compétence de la compétence*. Was the arbitrator or the arbitral panel itself authorized to interpret the *compromis*? Asser recalled that in the border dispute between France and the Netherlands over their Guyanas,³⁴⁶ Tsar Alexander III had simply ignored the incompatible demarcation lines proposed by parties and, in an effort at compromise, had drawn up a line of his own, which had much displeased both parties.³⁴⁷ The *Comité* agreed not to impose general directives but to have the latitude of arbitrators stipulated in the *compromis*.

A prolonged debate on principle was prompted by Zorn's claim that the Arbitral Award should *unbedingt* state the reasons on which it was based, as a premise to legal development. Here the different conditions of Martens' and Asser's missions came to the fore. Martens' reaction was prompt. This was all very well, but arbitrators were not only judges but also representatives of their countries. The publication of their considerations could seriously embarrass them, all the more if their judicial conscience made them reason against Governmental instructions or national public opinion. Could an impartial arbitrator be demanded to openly condemn the policy of his own Government? The clear advantage from a legal point of view, which he acknowledged, was undone by this blatant practical disadvantage.

Asser answered on principle: what was at stake here was the guarantee of absolute impartiality of the arbitrators. He could not recollect a single award where the reasons were not specified. However, Martens could – and from his own experience: both in the celebrated *Alabama* case [1872] and in the 1893 *Bering Sea Fisheries* case arbitrators had actually refused to sign the Award for this very reason.³⁴⁸ Descamps disagreed fundamentally: the statement of reasons constituted the guarantee of the Award and the justification for the panel's decision. As Rahusen, Asser's steadfast colleague, put it concisely: the authority of the Award rested precisely on its grounds, rather than on the decision itself. Zorn won the day.

Asser and Martens were two of the most prominent arbitrators of the day. Even so, and as if to testify to the 'experimental' state of the mechanism, they disagreed heartily on very essential aspects of procedure.³⁴⁹ On 7 June, debate hinged on whether the *compromis* should survive the arbiter or go down with him. It was a matter of some urgency, as it had recently occurred in an arbitration case between Russia and the UK, where the Danish Henning Matzen³⁵⁰ had replaced

³⁴⁵ Van Vollenhoven [1934 I, at 339] calls this a major feat to Asser's credit, along with his proposition regarding the Commissions of Inquiry and his pragmatic approach to the reform of the PCA.

³⁴⁶ Bervoets 215 [Documents over 1888-92].

³⁴⁷ Eyffinger 1999, at 391.

³⁴⁸ *Ibid.*, at 392-93. Martens had served on the latter case himself.

³⁴⁹ Martens, the 'Chief Justice of the Christian World', as William Stead called him, had served as arbitrator in the 1891 *Newfoundland* dispute, the 1893 *Bering Sea* case and the 1895 *Costa Rica Packet* case. More to the point, in the midst of the Hague Peace Conference and his work on the *Comité d'Examen*, he served as President of the arbitral tribunal in the *Orinoco* case [1897-99]. Hearings took place in Paris between June and September 1899 and Martens travelled back and forth on the night train, regularly re-scheduling meetings on either side. For documentation on the *Costa Rica Packet* case, see Bervoets 217.

³⁵⁰ Henning Matzen [1840-1910] was a Danish conservative politician and constitutional lawyer, and member of the *Landsting* [1879-1910]. He graduated in law at Stockholm [1864], where he obtained a chair in 1870.

the deceased Alphonse Rivier.³⁵¹ When Holls argued that arbitration was a matter of personal confidence and that, with the loss, through illness or death, of an arbitrator the *compromis* lost its basis, Martens readily assented, while Asser heartily disagreed. Arbitrators, he recalled, were often elderly men, and arbitrations might last. Should the untimely death of a single arbitrator on the eve of the Award put the whole case up in the air again? Clearly, Governments could put their trust in a new arbitrator without unsettling the case? Zorn subscribed to this view: Asser's proposition, he felt, safeguarded the necessary guarantees of confidence, while preventing abuse by Governments to avail themselves of a chance occurrence to nullify previous labours. Asser's view prevailed. Another amendment of Asser's to Descamps' Draft Convention was readily shared by the *Comité*, viz. that parties to a multilateral treaty should be entitled the right of intervention in a dispute concerning the interpretation of this treaty.

REVISION

The most heated debate of all within the *Comité* [as otherwise in 1907] concerned the concept of *revision*. Asser positively took exception at the American proposition in favour of revision: 'As a rule, radical measures are the best, but in an assembly like this, which may be termed an International Parliament, we are often called upon to reach a compromise.' He wished to see the Award made irrevocable, unless revision was expressly provided for in the *compromis*. Holls then rephrased his proposition, allowing parties a 'rehearing' before the same judges within three to six months. Asser fell in with the concept of 'rehearing' in general, rather than having parties ignore the Award. The sober realist Martens – the most legal-minded of diplomats, it was said of him, and the most expert diplomat among lawyers – objected in the strongest terms: there were two views on settling international disagreements, he argued: that of pious wishes and that which acknowledged the existing order of international relations. Opening up arbitral awards for revision was tantamount to perpetuating disputes, not to solving them. Revision took all the strength out of the principle of arbitration.

Holls rephrased: what he had in mind was to redress dissatisfaction upon the surfacing of new facts within three months, such as the discovery of a new authenticated map. Zorn deemed this not an appeal *in sensu stricto*. Van Karnebeek objected that the surfacing of 'new facts' was in practice tantamount to requiring a new *compromis*, that is, a new arbitration. Martens insisted that revision was contrary to the very principle of arbitration. Asser riposted: but then again, would it not be better to prolong the dispute than to sanction injustice? Holls agreed: 'The fear of irreparable injustice will discredit arbitration more than anything else! Nothing is settled until it is settled right.' Martens then, typically, overdramatized:

I disagree wholeheartedly with my good friend Asser: I am a member of the society for the relief of the shipwrecked and the Red Cross, but in the present case I deem it my duty to be cruel and inhuman. I cannot lend art. 54 a helping hand, and I hope from the bottom of my heart that it may be shipwrecked upon the hospitable shores of Holland.³⁵²

In the end, the concept of revision was accepted, with Martens, Descamps, and the French former Prime-Minister Léon Bourgeois protesting vehemently. Asser kept searching for a compromise 'to serve both masters.' His *trouvaille*, once again, was to exclude revision unless otherwise stipulated in the *compromis*. Asser's proposal was adopted unanimously.

³⁵¹ Alphonse Rivier [1835-1898] was a Swiss lawyer and historian who obtained doctorate degrees in law at Berlin, Lausanne and Paris universities. Professor of law in Bern [1863], he moved to Brussels in 1867. During 1887-97 he was Secretary-General of the IDI and editor of *Annuaire* and RDILC, replacing Gustave Rolin-Jaequemyns. In Brussels he was in 1898 succeeded by Ernest Nys.

³⁵² Scott 1899, at 618; Eyffinger 1999, at 403.

COMMISSIONS OF INQUIRY

Another brainchild of Martens was the innovative concept of Commissions of Inquiry. Martens catapulted the mechanism into the *Comité*, in his inimitable way, as a safety-valve in emergency situations in international disputes to help cool-off emotions by factual examination. The reactions to this proposition varied to the extreme. Odier saw it as yet another tool of the Great Powers to interfere in the domestic affairs of the Weak, and the entry portal to compulsory arbitration. Asser intervened: in view of the opposition, one did best, in a conciliatory spirit, to sacrifice the optimum and resort to purely voluntary commissions. He did, however, suggest to expand the province of the Commissions to all inquiries of a strictly factual nature. Within four years, the mechanism, to Martens' and Asser's great satisfaction, gloriously passed a first test in the *Dogger Bank* incident.³⁵³ In the early phase of the Russo-Japanese War [1904-05], the Russian Baltic Fleet, on its doomed journey to the war theatre in the Pacific, in the black of night and alarmed by false rumours of Japanese presence in the area, off the coast of Hull erroneously sank a flotilla of English fishing trawlers. British indignation ran high, yet was appeased by a Commission of Inquiry composed of admirals under the auspices of the PCA. Martens' brainchild and Asser's expansion facilitated this success.

AN OPEN OR CLOSED CONVENTION

His most impressive address,³⁵⁴ according to contemporaries, Asser delivered towards the end, within the small Committee of Protocol, and concerning the issue of whether the Convention on the Peaceful Settlement of Disputes should be of the 'closed' or 'open' kind, and if of the latter, which options of adherence were to be offered to nations that had not attended:

On the one hand, it was warmly argued that the Convention with which we are dealing [...] implied the absolute right of all Powers to adhere to the Convention by means of a simple declaration. On the other hand, it was maintained that this right should depend either on the express consent of all the contracting States, or on their tacit consent, which they would be considered to have given if, within a fixed time, no Power opposed the adhesion; or, lastly, on the consent of a majority, in the sense that the adhesion should, in case of opposition, be sanctioned by a vote of the Permanent Council, composed of all the diplomatic representatives of the Powers accredited to The Hague, a proposition which I had the honour of submitting to you, in the name of my Government, in order that no one Power might be given the right of veto in this matter. Lastly, it was proposed that in case of opposition to the request for permission to adhere, the adhesion would affect only the Powers that had given their consent.

I cannot now repeat the arguments which were developed in favour of each of these systems. I shall confine myself to stating that we have been unable to find a common ground for a unanimous agreement and that it is materially impossible, in the short time we still have, to reach such an agreement, especially since several delegates have not received specific instructions upon this point. There is nothing left for us to do, therefore, but to choose between the two following systems: Either to omit purely and simply the clause concerning the adhesion of Powers not represented; Or, admitting the principle of their right to adhere, to leave it for a future agreement between the Powers to determine the conditions under which adhesion may take place. I venture to point out that it would appear from the discussions that the latter solution should be adopted. It has been recognized by all that it would be desirable to open the door to Powers that are not represented. If the Convention remained silent upon this point, it would by the very fact be a closed convention, a thing which we do not desire. If, on the contrary, it provides for a future agreement, such a provision is in effect an expression of the hope that this agreement can be brought about. [...]

The object of the Convention is the peaceful settlement of international disputes, and it determines the means of assuring such a result. Well! The authors of this Convention must necessarily desire that all

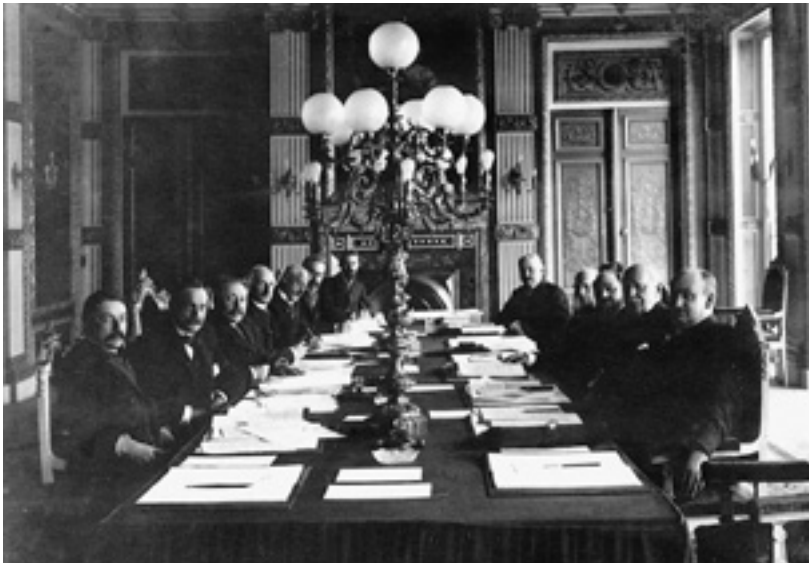
³⁵³ Eyffinger 2007, at 43-44.

³⁵⁴ The speech is reproduced here in Scott's translation from the French. It is characteristic of Asser's train of reasoning, which, it is hoped, will excuse its length.

Powers, even those which are not represented here, join in this work of general interest. Now especially, since the Convention contains no clause concerning compulsory arbitration, they must desire that, in case of a dispute between Powers not represented at the Conference, or between one of them and a Power which is represented, the Convention may bear the same fruits as when there is a dispute between contracting Powers.³⁵⁵



Charles Toché, *Tableau commémoratif de la Conférence* [1902], detail. On the allegorical print Tobias Asser is depicted as standard-bearer of the Red Cross. Next to him his friend Louis Renault



The *Comité d'Examen* of the 1899 Hague Peace Conference that created the Permanent Court of Arbitration. Tobias Asser fourth from the left.

³⁵⁵ Scott 1899, at 216-17.

VIII

THE PERMANENT COURT OF ARBITRATION [1900-1902]

1. HESITANT BEGINNINGS

The 1899 Convention left the actual constitution of the PCA to the Dutch Minister for Foreign Affairs in his capacity as President of the Administrative Council. Some complications in matters of adherence being dealt with, the Convention entered into force on 4 September 1900, when seventeen out of the twenty-six signatory powers had duly deposited ratifications. On 19 September 1900, Minister De Beaufort installed the Administrative Council. A few weeks later, Asser was elected as member of the Dutch national group of four on the Court. Initially, prestigious premises were proposed to accommodate the Court. To that end, Van Karnebeek suggested a mansion along the Korte Vyverberg, the current Cabinet of the Queen. On second thoughts, the Ministry decided not to invest too heavily in this hazardous experiment. More modest accommodation was found at Prinsegracht 71. The mansion in question consisted of two main salons, airing a quiet dignity well suited to the reception of diplomats and scholars. The rooms were decorated wall to wall with melancholy souvenirs of the 1899 Conference.

Melancholy indeed, as the prospects for the Institution looked far from bright. In August 1899, Baron Descamps had concluded that the mechanism of arbitration and the Court had ‘all the sympathies of the present and the richest promise for the future.’ For all its shortcomings, he noticed with pride, the Convention revealed the first, yet unmistakable glimpses of global solidarity, prompted by the growing awareness that overall stability and the prosperity of the nations were best served by co-operation and consensus, rather than by confrontation, coercion, or the exclusive pursuit of self-interest. Optimists were in for disillusion. Shortly after the closure of the Conference, on 9 October 1899 to be precise, the inflexible obstinacy of Paul Kruger and Lord Milner triggered the Boer War. The euphoria of jingoism this war engendered in Britain came as a major shock to the many champions of legalism and pacifism. Russia immediately tried to mediate – only on its own authority and without reference to the new Court. If this ignoring of the Court was ominous, worse was to come. In 1901 the USA, UK and Germany agreed to entrust their claims dispute regarding Samoa to arbitration by the King of Sweden and Norway. Somehow they preferred to keep the issue outside the Hague cauldron, rather than securing for themselves the lustre of inaugurating the PCA machinery. With the great powers preferring to ignore the Court, the ‘small fry’ felt hesitant to summon its help for fear of having the PCA, to its further discredit, identified as the typical ‘Escutcheon of the weak.’ Prospects for the PCA looked bleak indeed. In 1902 the Prinsegracht premises of the Court were inaugurated as venue for hearings in a case outside the competence of the Court.

2. THE BERING STRAITS CASE [1902]³⁵⁶

Early in 1899, Feodor Martens intimated to Asser his government’s desire to invite him, ‘in his capacity as Council of State of the Netherlands,’ to act as sole arbitrator in a dispute with the

³⁵⁶ Bervoets 291-95, containing particularly noteworthy annotations by Asser.

USA. The case concerned the legitimacy of the seizure and detention by Russian cruisers of US seal hunting and whaling schooners on the charge of illegal fishing.³⁵⁷ At the end of an intriguing letter from 5 March 1899 Martens stated:

PS. J'avais presque oublié de vous poser encore une question des plus confidentielles. Outre l'arbitrage avec l'Angleterre pour lequel notre collègue M. Matzen a remplacé le feu Rivier, la Russie aura encore un arbitrage avec les Etats Unies concernant la saisie des plusieurs navires américains par les croiseurs russes dans l'Océan Pacifique. L'arbitre pour cette affaire n'est pas encore choisie. Seriez-vous, très cher ami, disposé d'accepter cette charge très honorable, mais assez lourde? Si vous consentiez, je vous proposerais à mon Gouvernement, qui vous sera, dans tout cas, très reconnaissant. Le choix définitif dépend du commun accord des deux gouvernements.³⁵⁸

Already on 3 April Martens wrote *sub rosa*, 'très confidentiellement', that both parties had consented to Asser's appointment. The protocol of the case was signed in St. Petersburg in September 1900. After an interim award in October 1901, hearings took place at the Prinsegracht in June-July 1902. A photograph in the PCA archives shows Asser proudly posing at a table surrounded by the staff-members of the Court. It was only fitting that the Court salons were first put to use by the dean of Dutch internationalists. As the rationale of Asser's Nobel Peace Prize in 1911 stated:

Mr. Asser decided in favor of the U.S. which had contended that damages for Russian seizure of 5 sealing vessels should be assessed on the basis of the average annual catch; although not taken to the Hague Tribunal, the case was settled according to the code of that court.

3. THE PIOUS FUND CASE [1902]³⁵⁹

In the summer of 1902 the Court received more good news. In Spring the French diplomat d'Estournelles de Constant, on a complimentary visit to Washington, had pleaded with President Roosevelt for help in activating the Hague mechanism and, if anywhere possible, to secure an appropriate case for the PCA. He found Roosevelt, the master of opportunism, willing enough to oblige. The American President handed the French diplomat a first case for the PCA, however humble, that of *The Pious Fund of the Californias* [1902]. He soon followed this up with the far more substantial *Preferential Claims* case, against Venezuela [1903-04].³⁶⁰ Thus, in a characteristic masterful stroke the President who was reputed for brandishing his 'Big Stick' presented himself as the Champion of Arbitration.

In the first case before the PCA, that of the *Pious Funds*, Asser himself took an active part.³⁶¹ It was his last role as an arbitrator in an international case. The dispute concerned a claim filed by the US over Mexico's refusal to abide by an 1875-76 arbitral award concerning church funds.³⁶² While not addressing vital interests, the matter had been lingering on for two decades, implied

³⁵⁷ Van Vollenhoven [1934 I, at 338] argues that the appointment of Asser as single arbitrator was indeed an eminent choice [of Martens], given the very concrete issue at stake, viz. establishing reparation.

³⁵⁸ Bervoets 286.

³⁵⁹ *Ibid.*, 298-300.

³⁶⁰ Asser was not directly involved in this case; see, however, Bervoets 221 for his advice to the Foreign Ministry.

³⁶¹ Bervoets 298-300. In view of the 1899 debate these documents are an interesting test-case to verify Asser's comments on the arguments and reasoning of his fellow-arbitrators.

³⁶² The Tribunal had ordered Mexico to pay the Catholic Church of California the accrual of interest on the capital of certain funds set up in the 18th century to aid Catholicism in the Californias, funds that, from 1842 onwards, were controlled by Mexico. Upon ceding Upper California to the USA in 1848, Mexico refused to pay the bishops of Upper California their share of the Fund's interest. In 1891 the claims had been taken over by the US Government.

legal issues such as *res judicata* and revision, and was watched from close quarters all over the Latin American world. The dispute was referred to the PCA by *compromis*, the Protocol was signed on 22 May 1902 and the award rendered on 14 October judged by a panel of five under the presidency of the Dane Henning Matzen. Feodor Martens and Sir Edward Fry, the future first British delegate at the 1907 Hague Conference, acted as arbitrators on behalf of the USA, while Tobias Asser along with the Dutch lawyer and politician A.F. De Savornin Lohman³⁶³ acted on Mexico's behalf. The Tribunal convened from mid-September to mid-October 1902 and ran through a series of written pleadings and oral hearings before rendering a unanimous award in favour of the USA. It considered the case *res judicata* and ordered Mexico to extinguish the accrued debt and henceforth pay the annuity in perpetuity. It fixed the amount due, which was then promptly paid by Mexico. In this way, the PCA concluded its first case to the satisfaction of both parties. Not, however, to the full contentment of its arbitrators. With the Award rendered, the panel volunteered proposals to the Administrative Council to improve upon the Court's procedure. Among these was the desirability to omit from the *compromis* all reference to an eventual revision of the award. The *notice* foreshadowed the heated debate at the Second Hague Peace Conference.



Tobias Asser as sole arbitrator in the *Bering Straits* case [1902], surrounded by the staff of the PCA.



Announcement of Asser's award in the *Bering Straits* case in a San Francisco newspaper.

³⁶³ A.F. de Savornin Lohman [1837-1924], an aristocratic lawyer and politician, was above all a man of principles, whose outspokenness often caused dispute. A long-standing Member of Parliament [1879-1921], professor of constitutional law at the Amsterdam Free University [1884-95] and briefly Minister of the Interior, he is best known at home as founder of the 'Christian Historical Union' [CHU, 1886]. Far less well-known are his activities in the international sphere, which were considerable. Lohmann was a Board Member of the Carnegie Foundation, Member of the PCA and, intriguingly, the Court's most requested arbitrator. He served on no less than 5 cases: the *Pious Funds* case [US-Mexico, 1902], the *Muscat Dhows* case [France-UK, 1904]; the *North Atlantic Coast Fisheries* case [US-UK, 1909]; the *Savarkar* case [France-UK, 1910]; finally, the *Expropriated Religious Properties* case [UK/Spain/France-Portugal, 1913].

IX

THE PEACE PALACE³⁶⁴

Many contemporary observers in the early days, upon visiting PCA Headquarters, left rather disappointed. The mansion was relatively small and unfit to house the large audiences attracted by its first cases. Or, as William Stead put it in his typically uncompromising way:

The bureau as an office is commodious, supposing that arbitrations are occasional. The modest premises can be procured at a minimum cost, but are in singular contrast to the hope entertained by those who founded the Hague Tribunal.³⁶⁵

From the first, demands for loftier headquarters in better surroundings were voiced. Another common grievance was the lack of a library at the Bureau to serve arbitrators. To remedy this, the first Secretary-General of the Court, installed in April 1901, made it his priority to dispatch a circular letter to the States-Parties begging their help in funding a book collection.³⁶⁶ His request was flatly turned down or ignored. It was left to private initiative to break the deadlock.

In the dying weeks of 1899, Andrew Carnegie, his company turning in record-breaking profits and facing prospects even more dazzling, made up his mind, with his characteristic, brisk determination, to retire from affairs and, as he put it in his epoch-making *Gospel of Wealth*: ‘stop accumulating and begin the infinitely more serious and difficult task of wise distribution.’³⁶⁷ Just turned sixty-four, and challenged by financier J. Pierpont Morgan, he reputedly scribbled some figures on a scrap of paper which the other promptly accepted with similar nonchalance – and overnight sold out his immense steel empire, lock, stock and barrel, for an unprecedented US \$480 million. It left him the richest man on earth. By his own standards, the man who died rich died disgraced. Upon his death, in 1919, Carnegie had spent US \$350 million on projects of education, welfare and peace. Early in 1900, he posed what he called his ‘Conundrum’ to the world at large, welcoming propositions as to how best to discharge his stewardship of wealth in the interest of mankind. Predictably, dozens of bizarre, selfish and unworldly projects and schemes came in. Still, such a summons could never fail to appeal to William T. Stead, that omni-present British journalist and pacifist.

Stead jumped at the chance to discuss Carnegie’s luxury problem at Skibo Castle, Carnegie’s princely retirement home in Scotland, lurking in ample expanses of grouse-breeding heathland. Stead was immediately won over by Carnegie’s straightforwardness and his intent to do something in the interest of mankind. Here was a peace-apostle of a different kind: here no woolly day-dreaming or wishy-washy complaints about society. From Scotland Stead journeyed on, interviewing men of prominence to collect sound ideas, and accosting Feodor Martens along the way. Martens promptly volunteered the idea of having Carnegie create a fund for adequate headquarters to oblige the recently established PCA, and including a proper library.³⁶⁸ Himself following up on the idea Martens, in June 1900, arranged a meeting in Berlin with the US Ambassador and

³⁶⁴ Bervoets 301-03.

³⁶⁵ Eyffinger 1988, at 135.

³⁶⁶ Eyffinger 2007, at 35.

³⁶⁷ Eyffinger 1988, at 37-47, 109-11.

³⁶⁸ *Ibid.*, at 37.

its First Delegate at the 1899 Hague Conference, Andrew Dickson White, one of Carnegie's 'old shoes'. On 22 April 1903, the Scottish benefactor instructed his Hoboken banker 'to pay the draft of one and one half million dollars drawn by the accredited officials of the Dutch Government, on account of the Temple of Peace in The Hague.' On 2 November 1903, the Deed of the 'Carnegie Foundation' was officially signed in New York.³⁶⁹ Previously, on 24 September 1903, by Royal Decree, a Committee chaired by De Savornin Lohman and figuring Asser, Röell and Ruysenaers had begun sounding out appropriate sites for 'Carnegie's Temple'.³⁷⁰ The Committee informed itself thoroughly, consulted architects of repute like Cuypers, Muysken, Peters and Knuttel, and in a matter of months, by 10 February 1904, agreed on a shortlist of sites, headed by the Zorgvliet Estate, including the *Rustenburg* and *Buitenrust* mansions, the domicile of Anna-Pavlovna's widowhood where, in May 1899, the Peace Conference had been inaugurated by Holy Mass.

Somehow, no one seemed to share the Committee's views. On 22 July 1904, at the first board meeting of the Carnegie Foundation, its President Van Karnebeek summarily dismissed the work of Asser's Preparatory Committee. The Board then set out on a two-year long odyssey for other locations, finally being forced to opt for the very spot that had been selected by Asser's PrepCom some 20 months before.³⁷¹ It then got itself involved in an International Prize Competition among architects that turned into yet another tale of misery.³⁷² Asser himself was no longer directly involved in any of this embarrassing turbulence. Much to his grief the Administrative Council of the PCA had preferred De Beaufort as its representative on the Board of the Carnegie Foundation.³⁷³ With hindsight he must have felt relieved. On 23 October 1904, in a letter to the editor of the *Nieuwe Courant*, he voiced his concerns regarding the legal status of the Foundation, concerns that were obviously not shared by the Foundation:

Such an important international institute may not be exposed to the possibility that by changes in the prevailing views of the Law Courts, the Carnegie Foundation might no longer be considered as possessing legal status, to the effect that it would have no right to property in the ground and the building created thereon.³⁷⁴

The trauma ensuing from the international prize competition for the Peace Palace over 1904-1911 must have resuscitated with Asser [and Van Tienhoven!] the tale of misery concerning the *New Exchange* in Amsterdam which, in the mid-1880s, they had watched from close quarters. The parallels were striking. In Amsterdam at the time, after the appraisal of a full two hundred entries from all over the world, the first prize had been awarded to the French architect Louis Cordonnier, with Berlage [and his associate Sanders] coming in fourth place. Both entries championed stylistically identical, conservative designs in the highly decorated style of what at the time was called 'Dutch Renaissance'. Fierce recrimination on the part of Berlage against the integrity of Cordonnier, and endless political machinations finally brought about the cancellation of the prize competition and a delay of a full decade. In the end, Berlage was exclusively commissioned with the project. It then took many more years and four rejected designs before his drawings were finally accepted and the *New Exchange* completed [1904].³⁷⁵

³⁶⁹ *Ibid.*, at 49-53.

³⁷⁰ Bervoets 301. The documents cover the years 1903-06.

³⁷¹ Eyffinger 1988, at 56-57.

³⁷² *Ibid.*, at 63-75. Cf., Bervoets 303.

³⁷³ Van der Mandere 1946, at 186.

³⁷⁴ Quoted from Lysen 1934, at 72.

³⁷⁵ It took the so-called 'Robber's Castle' yet another two decades to be embraced by the Amsterdam citizenry!

In the very year Berlage's *Exchange* was completed, Cordonnier submitted a virtually identical design to his 1884 entry for the prestigious Prize Competition of Carnegie's Temple. To attest to the conservative taste of the period, he once more won the first prize out of hundreds of submissions from all over the world. Berlage, once more defeated, launched another slander campaign, then to join forces with a host of internationalists and architects headed by the architect De Bazel. During 1905-07 this curious mixture of lofty idealists and recalcitrant malcontents almost got the American philanthropist on their side with fantastic schemes to incorporate his Temple into a City of Peace projected in a large 'international zone' in the Waalsdorp dune area, featuring Academies, Concert Halls, Theatres and a garden town.³⁷⁶ In the end, the project failed, but the campaign caused Van Karnebeek and his Carnegie Foundation many years of nightmares and tricky lawsuits up to 1911.³⁷⁷ Asser, for his part, seems to have entertained some sympathy for the peace apostles.³⁷⁸ And Asser was on the best of terms with William Stead, the great advocate of this World Centre of Internationalism. Stead consulted Asser regularly, be this about the affairs of the Boers [1900]³⁷⁹ or the Congo [1903]. A great stylist, he wrote a wonderful portrait of Asser in his *Conference Daily*, the *Courrier de la Conférence* in 1907, calling him 'the second delegate of the Netherlands, but probably the best international lawyer attending the Parliament of Humanity':

[D]ont la chevelure argentée brillait comme un phare lumineux sur le noir de son habit. Ses traits mobiles, son oeil perçant, sa taille mince, la tension de ses nerfs, le désignaient comme la personification de l'idéal humanitaire et international, qui est l'âme vivante de la Conférence. Ce n'est que rarement que les gens de robe sont considérés comme des héros nationaux. Un soldat de dixième ordre soulève toujours plus d'enthousiasme que le plus éminent jurisconsulte.

Stead included Asser in his selection of 'Seven Sages' of the Conference. Asser reciprocated by submitting Stead's nomination for the Nobel Prize for Peace [*not Literature*] in 1908.



Andrew Carnegie [1835-1919], American business tycoon and philanthropist of Scottish descent, who donated the funds for the Peace Palace.



William T. Stead [1845-1912], British journalist, social reformer and pacifist, and pioneer of the investigative journalism. Prominently involved with the two Hague Peace Conferences and the genesis of the Peace Palace.

³⁷⁶ On this project developed by Prof. P.H. Eijkman and the industrialist Paul Horrix, see Eyffinger 1988, at 57-61.

³⁷⁷ See Eyffinger 2004, at 53-64 and notably F.C.H.M. Robbers 'A Storm of Indignation', *The Lawsuit Concerning the Design for the Peace Palace*, in Eyffinger 2004, at 177-82. In 1907 De Beaufort, in his *Dagboeken*, called the whole idea 'utterly foolish' [*Dagboeken* I, at 396].

³⁷⁸ In 1911, Asser spent some of his Nobel prize money to help out one of its impoverished initiators, Paul Horrix. See Eyffinger 2007, at 53-56. Asser readily spent on philanthropic associations; see Bervoets 62.

³⁷⁹ Bervoets 59, 155, 251.

X

TOBIAS ASSER'S STATUS AT HOME AND ABROAD

The acknowledgment and rewards for Asser's remarkable achievements from the 1860s onwards kept pace with his social progress. In 1880 Asser was elected member of the Royal Academy of Arts and Sciences in Amsterdam.³⁸⁰ At the Trippenhuis he gave addresses which helped acquaint colleagues from the humanities and sciences with his international projects.³⁸¹ In 1899 he was elected Member of the Belgian Royal Academy,³⁸² in 1903 corresponding member of the Romanian Academy,³⁸³ and in 1909 member of the *Académie des Sciences Morales et Politiques* in Paris.³⁸⁴ To attest to his early *renommée* in Europe, already in 1883 he was bestowed with a Knighthood in the Order of King Leopold of Belgium. It was the first in an impressive line of international awards, on account of advice given in his private capacity on matters related to the Congo.³⁸⁵ In 1884, at the Tercentenary of Edinburgh University, and presumably as token of recognition on the part of James Lorimer, a honorary doctorate L.L. was bestowed on Asser.³⁸⁶ In 1888 Bologna rendered similar recognition: mid-June Asser rendered a solemn address at the Octocentenary [1088-1888] of this celebrated law school.³⁸⁷ In 1895 Asser was voted a honorary degree from Cambridge University, which incidentally led to some embarrassment. On 23 July that year Asser wrote his colleague Jitta that he would be absent for that reason during 6-12 August. Then a sudden indisposition interfered, it would seem. On 10 August John Westlake, who had instigated Asser's nomination, informs him:

My dear Asser,

I, and all the Institute, were deeply disappointed at not having you here, and grieved at the illness which caused our disappointment. I hope that you have recovered, or are in a fair way of recovery. The vote of the Senate for your degree remains good for a year, and I trust that you will be able to find some convenient time, either in the Autumn or in Spring, for coming to receive the degree. The postcards, which I enclose, ought to have been sent you sooner, but I hope you will excuse the omission, since you can imagine how many things I have to do and how few moments they leave me. Ever yours, in haste, J. Westlake.

Asser went over the next year to receive the Doctorate.

The 1899 Conference left Asser an acknowledged international personality. In the years leading up to the 1907 Peace Conference, and with his arbitrations, his routine work for the PCA,³⁸⁸

³⁸⁰ Pace the Amsterdam classicist J.C.G. Boot who, on 29 May 1880, wrote him that, on principle, he could not support the admission of lawyers, even a former pupil of his, to the Academy; see Bervoets 51. Asser, in his student years, had followed private courses in classics with Boot. Cf., Bervoets 125 on Asser's involvement with the offrance of a present to another classicist, Prof. C.H.B. Boot on his farewell of Amsterdam University in 1871.

³⁸¹ Bervoets 158-62. In 1897 Asser lectured on the 1896 Convention of the *Conférence de La Haye*, in 1899 on the PCA, and in 1906 on the obstructions hindering the unification of the law of conflicts. Already in 1860-64 Asser had lectured at the *Hollandsche Mij. voor Fraaije kunsten en Wetenschappen*; Bervoets 163.

³⁸² The *Koninklijke Academie van Wetenschappen en Schone Kunsten in België*; Bervoets 164-65.

³⁸³ Bervoets 166.

³⁸⁴ *Ibid.*, 167.

³⁸⁵ *Ibid.*, 395.

³⁸⁶ *Ibid.*, 396.

³⁸⁷ *Ibid.*, 397.

³⁸⁸ In 1906, his membership of the PCA was renewed.

and the Ministry, he was as busily occupied as ever. He represented the Netherlands at conferences on Maritime Law in Brussels [1904, 1905] and at the Revision of the 1864 Red Cross Convention in Geneva [1906] he had advocated with such vigour in 1899.³⁸⁹ In 1904 he chaired his own Fourth *Conférence de La Haye* [1904] and oversaw the entrance into force of the Revised Convention on Civil Procedure [1905]. Still in 1904, he helped the Ministry ratifying arbitration treaties with Belgium and Denmark. On account of this, he declined the invitation to attend the conferences linked to the 1904 St. Louis World Fair.³⁹⁰

Due recognition came his way during these years. In April 1903, the Swedish, who had assisted at Asser's Third *Conférence* [1900], expressed their gratitude by bestowing on him the Order of the Polar Star.³⁹¹ In 1904 he was elected Vice-President of the *Institut*.³⁹² Asser must definitely have felt some personal pride when, that same year, and in recognition of three decades of collective pioneering work 'For Justice and Peace', the IDI was awarded the Nobel Peace Prize. Still, by far the highest honour bestowed on him during these years was his appointment as Minister of State in 1904. The honour was unique in that Asser had never served in a Cabinet, or even in Parliament. It suitably reflected his special status at home.

Out of the ordinary he was, and forever remained, in another aspect too. This can be illustrated from two *passus* in the *Diaries* of H.W. de Beaufort. On 10 February 1902, when De Beaufort met Asser at an Academy meeting in Amsterdam, Asser inquired with him after the grounds for the falling out of Kuyper and Kruger. Now Asser was well versed in the ins and outs of the Boer Wars. Van Vollenhoven held that, in the darkest pit of War, no Dutchman perhaps offered the representatives of the Boer Republics more valuable advice than precisely their counsel at Lange Houtstraat 16. In September 1901 Asser channelled their request to the Administrative Council of the PCA to invite the UK to submit the dispute to arbitration.³⁹³ The argument in question, however, concerned infra- and supra-lapsarian issues – hair-splitting that, four centuries before, had cost Hugo Grotius his public career in the Remonstrant Troubles. 'Asser', De Beaufort jotted down in his diary 'him being an Israelite', 'naturally' had no clue as to the true significance of these differences. With a wry smile Asser had suggested the theme as a suitable topic for a future Academy lecture.³⁹⁴

Again, in the days of the Basle Congress of Zionists in September 1903, De Beaufort raised the topical issue of an Israelite colony in Palestine with Asser 'who I think is no longer an Israelite.' Asser told him there was nothing new about the idea. His grandfather had once told him: 'In case this scheme succeeds, I will solicit for the post of Envoy of the Israelite Empire in Paris.'³⁹⁵ Between De Beaufort and Asser, the personal respect was mutual and the political [liberal] affinity close. As it is, De Beaufort was the one who initiated and chaired the Jubilee Committees of 1908 and 1910 in Asser's honour. Even so, the social gap was never bridged, never *quite*, that is, and Asser does not figure really in De Beaufort's *Diaries*. By 1900, a full century of legal and judicial prominence had brought the Assers all due professional respect – but they did not quite 'belong' yet. Anti-Semitism, which roared high both in France and Germany at the time, was no

³⁸⁹ Bervoets 222, 350 and cf., 289: Moynier's request to Asser was dated 20/03/1905.

³⁹⁰ It was Jitta who took Asser's place. Steenhoff 1994, at 149.

³⁹¹ Bervoets 399.

³⁹² It will be recalled that Asser had already presided over the IDI during 1898-1900.

³⁹³ Van Vollenhoven 1934 I, at 340. Apart from giving counsel to Dr. Leyds, a pupil of his [see *Toen en Nu* 1893, at 20], Asser advised the Ministry on the issue. Even William Stead, a life-long stern opponent of British jingoism, picked Asser's brain on the matter. In 1906, again with reference to the Boer War, Asser famously addressed the Amsterdam Academy on how best to educate masses against the kind of political propaganda that triggered jingoism and prompted these wars of aggression. Cf., Bervoets 296.

³⁹⁴ *Dagboeken* I, at 164.

³⁹⁵ *Ibid.*, at 228. The reference is to C. Asser [1780-1836].

real issue in the Netherlands – or, as De Beaufort commented cynically, had not yet been discovered as a profitable political issue.³⁹⁶



W.H. De Beaufort [1845-1918], Dutch politician, parliamentarian, Minister of Foreign Affairs [1897-1901] and foremost representative of the Netherlands at both Hague Peace Conferences.

And then of course there were the professional rivalries. At the 1902 Academy meeting, Professor De Louter expressed his grief to De Beaufort that Kuyper had asked Asser for advice on the South-African issue, and not himself, who had published extensively on the subject. Another resentment of his was that Asser had pushed his eldest son Daan into the position of *associé* at the IDI at his, De Louter's cost.³⁹⁷ A third was that he, De Louter, being an international law professor, had been passed by for a seat on the PCA.³⁹⁸ As it was, the Government had insisted on a Roman-Catholic representative. Religious issues loomed large in Dutch politics of the period. Paradoxically, the deadlock in this sphere did occasionally open avenues to a representative of the Jewish nation. To emphasize Asser's *status aparte*: in 1905 Foreign Minister's van Lynden's health deteriorated rapidly, making replacement imperative. As it was, the Roman-Catholics did not feel like offering a candidate, whereas the Calvinists did not have a suitable one to offer.³⁹⁹ Prime-Minister Kuyper, at a loss, virtually offered Asser the post on a gold platter. 'Asser', De Beaufort observes, had 'obviously declined the offer.' Still, presumably it was Asser's [lack of] religious denomination that prompted Kuyper's move in the first place. From 1906, upon his return from Geneva, Asser's thoughts increasingly focused on the Preparation of the Second Hague Peace Conference.

³⁹⁶ *Ibid.*, at 228 [6 September 1903].

³⁹⁷ *Ibid.*, at 164-64 [10 February 1902]. J. de Louter [1847-1932] was professor of international law at Utrecht [1879-1919] and co-founder of the Dutch-South African Society [1881].

³⁹⁸ *Dagboeken I*, at 164-65.

³⁹⁹ *Ibid.*, at 279. Cf., Bervoets 385.

XI

THE SECOND HAGUE PEACE CONFERENCE [1907]⁴⁰⁰

1. THE SOCIAL AND POLITICAL CLIMATE

Commentators tend to judge severely on the Second Hague Peace Conference. For a fair review one should appreciate the critical phase of global politics. On the eve of the Conference the world was definitely not a happy place. All through 1906, time-honoured empires and great colonial powers alike were unbalanced by the sudden winds of change that had picked up in the wake of Japan's stunning victory over Russia [1905].⁴⁰¹ Social Revolt was in the air⁴⁰² – even if De Beaufort never expected such a thing to happen in Russia: 'There will never be revolution in Russia; the Russian people is not revolutionary.'⁴⁰³ Tsar Nicholas himself thought as much, witness his relentless suppressing of calls for bread by the Moscow mobs and his unwisely fooling successive Dumas. Against this overall backdrop of distrust and despair, a disarmament debate and speculation on lofty legal issues seemed hypocrisy. On 8 May De Beaufort jotted down in his *Diaries*: 'In the Netherlands the Peace Conference has always been unpopular [...] and more in general because of the usual mistrust here at home of whatever comes from abroad.'⁴⁰⁴ In this, 'militarized' court circles took the lead.

In January-February 1907, in a round of 'shuttle diplomacy' *avant la lettre*, Feodor Martens toured the European capitals to sound out the atmosphere and register wishes and reservations, from there to distil a Conference strategy.⁴⁰⁵ He concluded on the Conference's urgency, in view of all outstanding issues, even if he was well aware that British-German naval rivalry forestalled optimism. In 1904 Balfour, to counter Von Tirpitz' 'Flottenbau', had launched the *Dreadnoughts*. Then, in a landslide victory the Liberals had taken over. Overnight, Gladstone's legacy of social reform and pacifism had supplanted imperialism and jingoism. With the 'double supremacy' standard abandoned, Lord Grey insisted on having disarmament put on the Conference Programme. Martens knew the notion to be perfect anathema in Berlin.⁴⁰⁶ To test the backbone of the Anglo-French *Entente Cordiale* Wilhelm II deliberately forced crisis over Morocco. In September 1906 at Algeciras, his stratagem backfired. Left out in the cold, Germany's traumatic spectre of *Einkreisung* was confirmed in the St. Petersburg Agreement [1907] that established the *Triple Entente* of UK, Russia and France. Distrust hang over the Conference as a bleak blanket. In endless cabling with London and Berlin, Martens tried to appease the disarmament paragraph. Agreement was reached on a 'First Class Funeral'.

⁴⁰⁰ Bervoets 312-28. For a full review of the Conference, see Eyffinger 2007.

⁴⁰¹ While Germany smothered revolts of Hottentots in pools of blood, Britain faced uprising Kaffirs in Natal and unrest in India. With the USA imposing its stern rule on the Philippines and Cuba, Japan cruelly dealt with Korean calls for independence.

⁴⁰² London suffragettes besieged Parliament, Finnish women exacted active and passive suffrage. In Germany tabloids poured scorn over the *Kadaverdisziplin*. In Holland excessive speculation acuted financial crisis.

⁴⁰³ For observations by De Beaufort on the Russian national character, see *Dagboeken* I, at 157, 334, 350, 411.

⁴⁰⁴ *Dagboeken* I, at 382.

⁴⁰⁵ Eyffinger 2007, at 78-79.

⁴⁰⁶ When Roosevelt proposed qualitative naval limitations, Wilhelm's answer had been unequivocal: 'Ablehnen! Jeder Staat baut, was ihm passt! Geht keinen Andern was an!'

2. THE CONFERENCE PROGRAMME

Asser's files contain invaluable information regarding the preparation, composition, and proposed policy of the Dutch Delegation.⁴⁰⁷ The first official act performed was the signing of the Protocol of Adhesion to the 'Arbitration' Convention of 1899 by the nations now making their first entry, the Latin American Republics. Then, in the early afternoon of Saturday 15 June 1907, an endless parade of blazoned broughams and puffing cars made their joyous appearance into that bustling sanctum of democracy, the spacious *Binnenhof* courtyard. Two hundred guests crowded the galleries of the time-honoured 'Knights Hall', among them fifty journalists from *London Times* to *Wiener Zeitung*. If miserable acoustics made it hard to catch a single word, from their cramped compartments they had a wonderful panorama displayed before their eyes. Two hundred and fifty seats had been reserved in neat rows and concentric half circles – and, as Stead observed, in they came, one by one, the massive figure of stout German first delegate Marschall von Bieberstein next to 'the delicate figure of the refined, highly intellectual' Tobias Asser, and the utterly respectable octogenarian Sir Edward Fry. As a beacon tossed on the moving sea of heads the red fez of Turkham Pacha stood out, next to the blue silk robe of a Siamese delegate. As in 1899, the opening and closure were all the outer world was to see of the Conference. In 1907 Russia advocated the opening up of sessions to the public, but Britain and Italy protested, and the USA declared itself most firmly opposed.⁴⁰⁸

The Conference was subdivided into four commissions.⁴⁰⁹ The *First Commission* addressed the review of the 1899 Convention for the Peaceful Settlement of Disputes. Its two Sub-Commissions focused on Arbitral procedure and the PCA, and the envisioned Prize Court. The Second Commission, headed by Beernaert of Belgium [and, due to Beernaert's frail health, occasionally by Asser] reviewed the 1899 Convention on the Laws and Customs of War. Its First Sub-Commission considered the laws and customs of war, the Second the rights and duties of neutrals and declarations of war. This Sub-Commission was the domain of legal experts. Its 82 members met seven times. On 30 August Beernaert paid tribute to Tobias Asser:

We have now to begin the second part of our task by the examination of the questions, which our Second Subcommission has had to study. It seems especially fitting that Mr. Asser should preside over the assembly to-day and I urged him to do so, but my efforts were in vain. At least, I am thus afforded the very great pleasure of rendering homage to the proved science and impartiality with which he has directed our debates. Happy are the assemblies well presided over. Mr. Asser is of those regarding whom all the forms of praise have been exhausted, but it will be permitted me to thank him cordially in the name of all.⁴¹⁰

The two Hague Peace Conferences, the first ever encounters of the so-called 'Civilized World', unlike Asser's *Conférences* did not address issues of a technical nature but *heikel* political subjects involving the nations' 'honour and vital interests'. Tension at these prestigious diplomatic meetings claimed the most of chairmen. Asser's rare talent to satisfy the great and the small, the easy-going diplomat, the demanding humanitarian lawyer or the reactionary military man stood out among his peers. By comparison: the Russian President in 1899, De Staal, if altogether charming, was an unworldly aristocrat grown up in a stern autocracy. From first to last he was at a loss, and at Martens' mercy, as how to steer these 'democratic' Plenaries and Commissions. Martens, in

⁴⁰⁷ Bervoets 312, 314, 325.

⁴⁰⁸ *Dagboeken* I, at 396.

⁴⁰⁹ Bervoets 315-24: documents regarding the meetings of the Plenary and the various Commissions.

⁴¹⁰ Eyffinger 2007, at 158. On Van Vollenhoven's appraisal of Asser's exceptional talents as Chairman, see Van Vollenhoven 1934 I, at 335.

turn, was called by De Beaufort ‘the most biased Chairman I have ever seen.’⁴¹¹ De Beaufort himself was appointed First Delegate in 1907 on account of the negative reviews by foreign delegates of Van Karnebeek’s authoritarian conduct in 1899.⁴¹²

The *Third Commission* focused on Naval War.⁴¹³ The *Fourth Commission* was headed by Martens and discussed Maritime Law. In short, topical naval issues, and the lessons to be drawn from the Japanese-Russian clash dominated the agenda. If the Conference failed, it was not for lack of trying. In our review we will restrict ourselves to the intriguing debate within the First Commission, in which Tobias Asser played a prominent role.



Delegates arriving to attend the opening of the Second Hague Peace Conference [1907].

3. THE FIRST COMMISSION⁴¹⁴

The First Commission addressed the precious legacy of the celebrated *Comité d'Examen* of 1899, that ‘Magna Carta of International Law’ which had established the PCA. Its Presidency was entrusted to the amiable Léon Bourgeois of France, the 1899 veteran and sanguine advocate of arbitration. The Commission boasted some of the greatest diplomats and international lawyers the

⁴¹¹ *Dagboeken I*, at 388. On Beernaert, see Eyffinger 1999, at 218.

⁴¹² *Dagboeken I*, at 394.

⁴¹³ Split in two, its First Sub-Commission considered bombardments, mines and torpedoes. The second treated the status of belligerent ships in neutral ports and the application of the Geneva Convention to maritime warfare.

⁴¹⁴ Eyffinger 2007, at 96-130.

world could muster, including many luminaries of *Institut* and *Interparliamentary Union*. Their debate clearly was the most incisive exchange of views on the amicable resolution of conflict of the whole pre-WWI period.

The work of its First Sub-Commission stands out as *pièce de résistance*. It numbered a full hundred and met no less than 47 times. Revision of the 1899 Convention, that ‘Keystone of the Arch of International Justice,’ to recall the florid phraseology of the day, was seriously challenged. Many observers felt that, in view of the small interval of time since 1899, in substance not much could be gained – and possibly more lost in goodwill – from a mere repetition of the 1899 debate in the *Salle des Trèves*. The critics had a point. Still, much had happened within those few years. Thus, bilateral arbitration treaties were ‘in the air’ on both sides of the oceans. Again, the Commissions of Inquiry had caught a spectacular ‘prize’. Finally, after two years of distressing idleness, the PCA had definitely come into its own. But then, the Court had not been an unqualified success. The proof of the pudding had been in the eating. Wide dissatisfaction was voiced over its procedure. Practical experience, rather than theoretical speculation, commanded the 1907 debate. In this, Asser’s role proved pivotal.

4. UNIVERSAL OBLIGATORY ARBITRATION

Over the previous 15 years, no less than 33 bilateral treaties of *restricted* obligatory arbitration had been registered, an unprecedented record. Recently, even *unrestricted* treaties of the kind were introduced, as by Denmark with Holland and Italy,⁴¹⁵ and by Chile with Argentina.⁴¹⁶ Advocates of arbitration now deemed the time ripe for a multilateral or even universal ‘obligatory treaty’. If the attempt failed in 1907, it was not for lack of interest or constructive thought. Or, as the Commission’s Reporter, Guillaume, expressed it in dignified terms:

The problem of obligatory arbitration [...] was examined with care, studied with a sincerely progressive and friendly mind, and gave rise to deep and thoughtful discussion. [...] I have tried not to neglect any side of the brilliant debates, which I am to report; I believe them to be so disinterested, marked by such eminent learning, and of such a high character, that it is important to retain at least the essence thereof.⁴¹⁷

For one thing, the debate prompted a gem of an address by Asser on the nature of international arbitration:

According to some international arbitration is destined in cases between States to be what ordinary tribunals are in cases between individuals. [...] According to this idea of arbitration, it could not be applied except in cases where States themselves are litigant parties, and where it is a question of obtaining a judgment with regard to their reciprocal obligations or to their rights as States, flowing either from treaties or from some other source of international law. It is important, therefore, to distinguish between treaty provisions in which one State makes direct promises to another State or its ressortissants, and those in which it agrees only to give legal force to certain provisions contained in the Convention. [...]

According to the other idea developed in the committee, international arbitration has for its definite purpose legislation for the future, in the sense that judgments are considered as the complement of the treaties themselves. Nothing then is against resort to arbitration with regard to a dispute in which a judgment has been entered, even in a court of last resort, under the national judicial system.

⁴¹⁵ Bervoets 304, on arbitration treaties between the Netherlands, Belgium and Denmark [1904].

⁴¹⁶ *Ibid.*, 310: texts of the ‘general’ arbitration treaties between Mexico-Italy, and Argentina-Italy [1907].

⁴¹⁷ Eyffinger 2007, at 104.

I do not in any way fail to recognize the usefulness of such an application of international arbitration [...] but it seems to me clear that where it is a question of introducing universal obligatory arbitration into international law for the first time, without the reservation as to vital interests or national honour, we should be content with an arbitration of the more restricted scope, first above set forth. [...] When the question arises of avoiding difficulties which may result from the differing interpretations of the same convention by the courts of the different contracting States, then especially can the new Permanent Court of Arbitration render great service as a court of appeals or a court of regulation.⁴¹⁸

Speakers were virtually unanimous in embracing the principle of obligatory arbitration as such. To that extent, much progress had been made over the past decade. Sweden's advocacy of obligatory arbitration in all matters of a judicial nature – that is, issues which did not affect a nation's 'vital interests, independence or national honour' – made Asser muse openly why precisely in disputes concerning vital interests and which posed acute threats nations preferred brute force and the odds of war to relying on reason, learning and thorough scrutiny:

In truth we do not see that for a dispute involving the vital interests of a State one should wish to exclude its settlement by means of arbitration, even if there should result from it the danger or the need of war; that one should prefer to the reasoned decision of a tribunal composed of respectable and impartial judges, rendered after a judicial discussion and a conscientious examination, a solution by arms, by blind force, by the good or evil chances on the battle-field. The vital interests concern life of the nations: war means the death of millions of brave citizens. The vital interests in our day are generally the interests of an economic nature: war is the destruction by millions and billions of the national capital. [...]

I shall never forget the pronounced impression created in 1899 by the address of Sir Julian Pauncefote, the honourable British delegate, who caused us to hear for the first time from the lips of a statesman of that great Empire, whom no one will reproach with sacrificing anything too lightly to the illusions of the moment, to hear that eminent diplomat propose the establishment of a permanent court with the mandate of judging disputes between States.⁴¹⁹

Not everyone shared Asser's views. Many clung relentlessly to their sacrosanct honour, pointing out that an 'empty world treaty' would merely disqualify the concept and jeopardize genuine obligatory arbitration. Others sought cover under the pretext that failing ratification by national legislative bodies would render the Hague signatures null and void anyway. Uruguay, in a brave statement, declared a nation's independence the only legitimate exception to obligatory arbitration, arguing that all other reservations just opened the floodgates to war. A traumatizing debate of four weeks over definitions ended in long rounds of voting item by item. Some nations shirked from adhering to a general treaty, others aspired at adopting a treaty embodying a general rule or, as the US advocated, covering all 'judicial' differences. For all the learning and resourcefulness displayed in this truly titanic debate, the all too knotty problems, if mustering a handsome majority, were never harvested into unanimity.

5. THE PCA: PROCEDURAL ISSUES

Evaluation of the role and record of the PCA revealed a curious mixture of pride and discontent. A first serious bone of contention concerned the choice of arbitrators. In the 1899 Convention this was left to the discretion of parties. By analogy of the principle *nemo iudex in causa sua*, and in order to emphasize the impartial character of the Court, it was advanced that no national judge

⁴¹⁸ Address of 16/07/1907; Eyffinger 2007, at 102.

⁴¹⁹ Address of 16/07/1907; Scott 1907 II, at 232-34; Eyffinger 2007, at 103.

should serve on a bench. Manifold indeed were the entanglements with respect to arbitral procedure. In the aftermath of the *Pious Funds* and *Venezuelan Loans* cases the arbitrators, having faced serious problems in this respect, had of their own accord submitted recommendations for emendation, and advanced queries.⁴²⁰ Should the chosen umpire by right also preside over the Tribunal? Linguistics had likewise posed problems. Translations had caused serious delay and raised the issue of the cost of proceedings, which had attracted much media attention. Journalists had mocked that continuing the armaments race might be less expensive after all! The IPU, the Inter-American Conference and the Lake Mohonk conferences had all submitted critical reviews.

The discussion, inevitably, renewed the vexed issue of revision. As in 1899, Martens most eloquently declared himself a staunch opponent of the concept as contrary to the very idea of arbitration. Beernaert and US delegate Choate militated in favour of having the revision formula at hand wherever new facts emerged or an error on the part of the tribunal came to light. As Choate concluded: 'The sole object of arbitration is to do justice,' to which Martens replied: 'No, its sole object is to settle a dispute – for once and for good.' On which Barbosa riposted: 'Revision is of the essence in arbitration. Arbitration is a means of peace only because it is an instrument of justice.' The stalemate was apparent. In Martens' eyes, revision enabled shrewd politicians to 'perpetuate' a dispute and create legion procedural entanglements.

6. THE PROPOSED 'COURT OF ARBITRAL JUSTICE'

If, by virtue of accumulating experience, the plot had thickened in terms of *procedure*, the four cases the PCA had dealt with had also opened up new vistas in the *political* domain. The abortive but highly intriguing debate of 1907 on a proposed 'Areopagus of Jurists', a 'true Court' to supplant or supplement the PCA, illustrates that social acceptance of an international judicature was drawing near and that lawyers were busily sharpening their wits to oblige.

As so often, it was failure rather than success that heralded progress. By 1907, PCA advocates frankly acknowledged the inherent dichotomy of their creation. The 1899 Convention, in one clean sweep as to attest the boundless optimism of its pioneers, had invested the PCA with competence to deal with international disputes, political and legal, indiscriminately. As a panacea, the Court had addressed not just diplomatic and political disputes, as arbitrators were wont to, but likewise purely juridical questions, on the basis of law. Contrary to what made up the essence of a proper law court, however, these arbitral panels did not constitute an independent standing body. They consisted of dignitaries appointed by parties themselves, *ad hoc* and for the very purpose of pleading these nations' cases. For all their eminent qualifications, PCA arbitrators often could not even boast a proper legal training or judicial experience. Short and sweet, in the creation of the PCA two completely different concepts had been mixed. And there was more to it – and keen observers like Asser and Martens impeccably touched the sore. As they kept drumming in, there was nothing permanent in the PCA. It was not a readily accessible standing body and, as Asser phrased it, it was 'difficult, time-consuming, and expensive to set in motion.' Martens referred to the PCA as a mere 'spectre' of a Court. Asser agreed:

Instead of a permanent court, the Convention of 1899 gave but the phantom of a court, an impalpable spectre, or to be more precise yet, it gave us a recorder with a list. [...] Gentlemen, I take the liberty of remarking that even before the creation of the court the parties might just as well have chosen arbitrators mentioned in that list. What, may I ask, has resulted in practice from that beautiful creation of 1899? Several Powers – we are happy to realize it after the reading of the propositions that has just

⁴²⁰ Eyffinger 2007, at 37-42.

taken place – seem indeed convinced that the Conference of 1907 must not disband without our being able to say, by applying to our work a well-known historic expression, that the permanent court – in whole or in part – shall henceforth be a verity. [...] But since we are a peace conference, I hope that we shall not separate without having facilitated the recourse to arbitration both by a revision of the rules of procedure and by the establishment within the arbitration court, of a permanent tribunal with a more or less extended competence. Only the existence of such a tribunal, even without juridical obligation to invoke its decision, will exert an immense moral effect in the interest of justice and of peace.⁴²¹

To the world at large this debate, for all the sincere efforts to unwrap legal knots, was all rather puzzling. Here were the very luminaries journalists knew for having been the Court's staunch advocates, proud instigators and first arbitrators, now heaping criticism on their brainchild.⁴²² Bourgeois indicated the way ahead to solve the dilemma. As far as political controversies went, he argued, the powers – forever jealous of their sovereignty, be they great or small – would never drop their claim to have a say. With legal disputes, with their prestige, honour or interests not acutely at stake, such mistrust did not apply. He therefore suggested to improve on the procedure of the PCA but keep the institution as such intact, and have a second court established *alongside*. This new and truly Standing Court of Justice should address entanglements of a strictly legal nature such as the interpretation and application of treaty stipulations. Future would tell which court was to be most feasible. Even the German First delegate, Marschall Von Bieberstein, found merit here:

We endorse completely the praise which has been accorded to the work of the Hague tribunal; but we cannot shut our eyes to its defects. I do not desire to criticize it, quite the contrary. It is the great merit of the First Conference to have pointed out the road for us to follow. A veritable permanent court, composed of judges who by their character and competence will enjoy universal confidence, will exert an attraction, automatic, so to speak, on legal differences of every kind. And such an institution will secure for arbitration a more frequent and more extended use than a general compromis clause which must be hedged in by exceptions, reserves and restrictions. We are ready to exert all our efforts in working for the accomplishment of this task. By continuing thus the work of 1899, the Second Peace Conference will not be inferior to the First; and it will justify the hope that its labours may contribute to the preservation of peace, by extending the empire of law and by fortifying the sentiment of international justice.

Guillaume's Report expressed the general feeling:

The fact that there was nothing permanent, or continuous, or connected in the sessions of the Court, or in the adjudication of the cases submitted to it, has been an obvious source of weakness and want of prestige in the tribunal. Each trial it had before it has been wholly independent of every other, and its occasional utterances, widely distant in point of time and disconnected in subject-matter, have not gone far towards constituting a consistent body of international law or valuable contributions to international law, which ought to emanate from an international tribunal representing the power and might of all the nations. [...] Let us then seek to develop out of it a Permanent Court which shall hold regular and continuous sessions [...] which shall speak with the authority of the united voice of the nations, and gradually build up a system of international law, definite and precise, which shall command the approval and regulate the conduct of the nations. By such a step in advance, we shall justify the confidence which has been placed in us and shall make the work of this Second Conference worthy of comparison with that of the Conference of 1899⁴²³

⁴²¹ Address of 16/07/1907; Scott 1907 II, at 234-35; Eyffinger 2007, at 115.

⁴²² Van Vollenhoven 1934 I, at 338, with reference to this debate, calls Asser an 'enfant terrible'.

⁴²³ Report of 16/10/1907; Eyffinger 2007, at 120.

7. TWO PROPOSITIONS

US delegate Choate submitted the draft scheme for the world's first ever permanent court of justice that Bourgeois had in mind. Choate proposed supplementing (*not* supplanting) the PCA with a permanent body of fifteen judges, nine making a quorum, of recognized competence in international law and the highest morals. Judges were to be designated for periods left to the Conference to decide, according to a formula in which all nations, great and small, had their say, and by which the world's systems of law and procedure and its principal languages were to be fairly and evenly represented. The Court would sit annually in The Hague, regulate its own procedure and appoint its own staff. Judges would be of equal rank, enjoy diplomatic immunity and be remunerated by all adhering nations. As a matter of principle no judge could sit in a case involving his native country unless otherwise agreed upon by applicants. The Court could hear cases of any nature between sovereign States and concerning disputes of any character.

For all its merits, the proposition did not pass uncontested. Martens heatedly voiced protest, calling the US proposition an illusion. Russia's far more humble proposition amounted to refurbishing the PCA instead of creating a new Court: 'to construct another edifice on the foundations of the old building, this one better adapted to the just demands of international life.' PCA members should assemble annually in The Hague to get better acquainted and, from their midst, select three judges. These remained near at hand at the Bureau all year through, constituting a 'permanent tribunal' at the disposal of the nations.

One might question Martens' critical approach to Choate's idealistic proposition. His objections, though, were prompted by realism and experience. Interestingly enough, his views were heartily shared by Asser. In fact, Martens' proposition was precisely what Asser had had in mind all along. The reference in Asser's above-mentioned speech to 'the establishment *within* the arbitration court, of a *permanent* tribunal with a more or less extended competence' [italics are mine] reflects the advice which he, whether or not in prior consultation with Martens, had given to the Dutch Ministry on the eve of the Conference. At the time, the Ministry had been hesitant to take any initiative and rather preferred to await propositions of other delegations. Once the USA delegation had announced its scheme, Asser was ordered, much to his resentment,⁴²⁴ to withdraw his alternative proposition – which was then advanced by Martens. Experience told Asser, as it told Martens, that the more ambitious scheme for a Permanent Court of Justice was a bridge too far, and he clearly foresaw its failure.⁴²⁵

The First Commission now found itself faced with two propositions, an American and a Russian project, which not just differed to the extreme, but were actually set apart by the quintessential borderline between the political sphere of diplomacy and the legal domain of an international judiciary. The name proposed by the USA was 'High International Court of Justice'. As was pointed out, 'High' was suggestive of a hierarchy of courts and for that reason to be rejected. Intriguingly, then the designation 'International Court of Justice' was first proposed. Still, the word 'Justice' clearly implied the upgrading of the Court from the plane of arbitration, and this step was much contested. It was the Brazilian delegate Ruy Barbosa who came up with the compromise of 'Court of Arbitral Justice'. Choate reacted laconically: 'We leave the christening of the child to the committee. [...] Once christened, the child's success in life depends on its acts, not on his name.' Upon which Bourgeois wittily rejoined that what was at stake was not so much the child's name, as rather its sex.

⁴²⁴ Witness Van Vollenhoven [1934 I, at 339].

⁴²⁵ Van der Mandere 1946, at 188-90.

The American concept prevailed: a new institution altogether with judges preferably appointed from among the members of the PCA.⁴²⁶ The draft proposed a bench of 17 salaried judges and deputy-judges of known competence and, ‘like Caesar’s wife’, established moral integrity. They were to represent the world’s judicial systems and be appointed for re-eligible terms of twelve years. On 16 July Asser hoped for the better:

You will remember, Gentlemen, how a great monarch, who was not merely a famous general but at the same time a philosopher trained in the French school of the eighteenth century, when on the point of committing an unjust act, was impressed by the exclamation of a mere miller who reminded him “that there were judges in Berlin”; and how “charmed to learn that beneath his sway justice was believed in”, he submitted to the miller’s suit. Then, gentlemen, when some day a tribunal truly permanent shall sit here, I believe I may say (and you know I am not a Utopian), even without the signature of arbitration conventions whose utility, moreover, I do not depreciate, it will not be without practical result that the nations shall invoke the famous article inspired by France, an article of duty, and shall say to a State on the point of committing an injustice “that there are judges at The Hague.”⁴²⁷

Early September speculation began as to the men likely to be invested with the dignity. In his *Conference Daily*, the *Courrier de la Conférence*,⁴²⁸ William Stead mused on the names of the ‘Seven Sages’ – as, with his rich imagination, he had coined the proposed judges. It was hard to point out the ‘True Solon’, he commented. Still, the ‘Seven Sages’ to whom he preferably entrusted the wheel were Asser, Beernaert, Fry, Lammasch, Martens, Renault and Zorn.

And then, just like Asser had sadly anticipated, it proved all premature. In discussing the criteria for selection of judges and the composition of the Bench, all legal genius was trapped in a *cul-de-sac*. As weeks went on, it dawned upon delegates that no agreement was to be reached. The eight great powers claimed permanent representation on the bench of seventeen, but so did the smaller ones, protesting their full equality.⁴²⁹ The political tussle left outsiders with the eerie feeling that, whatever its composition, an *International Court* would necessarily be of a different nature entirely from *national High Courts*. Amidst protest and confusion, the Conference by resolution withdrew to adopting the Court as agreed upon, subject to the solution of the riddle on the selection of judges. Delegates felt they had been a hair’s breadth removed from creating a first ever global judicial body, only to find the Small more ready to run the risks of war with the Great than to bow to them in court.

Asser’s critique on the 1907 Conference was stern.⁴³⁰ But then, while highly critical of the results, he was impressed with the acute urgency of this and future meetings. One conclusion to be drawn from the two Conferences, he argued, was that it was not so much juridical research that had to precede a Conference like the present one, as rather a political study regarding the issues that could be brought up for discussion with a fair chance of success. It was then to be left to the Conference to discuss details. From 1911 PrepComs were launched in preparation of the

⁴²⁶ Bervoets for the lists of members of the PCA over 1901-08.

⁴²⁷ Address of 16/07/1907; Scott 1907 II, at 235; Eyffinger 2007, at 120.

⁴²⁸ Bervoets 326 contains Asser’s personal copy of the *Courrier*. Stead edited the *Courrier* at Eijkman’s *Centre of Internationalism* at the Van Stolkweg; it was distributed at the *Cercle International* at Prinsessegracht 7.

⁴²⁹ It was proposed, firstly, to have the smaller States occupy the nine remaining seats by rotation for periods of one to four years and depending on certain criteria; next, to implement a regional assignment; then, to have each State cast a vote for a prescribed number of judges; finally, to have each State submit its candidate for a judge and deputy-judge to the Hague Bureau, have the nations vote judges and deputy-judges and then decide by drawing lots. Whatever the proposition, Barbosa remained adamant and, heading Latin-American opposition, almost single-handedly wrecked all compromise in a brilliant address, which otherwise drew much support.

⁴³⁰ Bervoets 331, for Asser’s pamphlet in review, and his correspondence. See also Van der Mandere 1946, at 190. The same held good for the 1899 Conference. See Voskuil 1973, at 28-30, with reference to Asser’s satirical comments in *Onze Eeuw VIII* [1900], 1-26, and *De Tijdspiegel* [1908], 1-6.

Third Peace Conference, scheduled for 1915. It was not to be. Life would take a dramatic turn for the worse before the world, the wiser and sadder for it, in 1920 saw a Committee of Jurists assemble in the Peace Palace, to whom the 1907 Report proved a welcome shortcut when traversing political and procedural minefields. They emerged triumphant, brandishing a Statute for the PCIJ whose phraseology, to veterans like Bourgeois, felt like balm to their souls.

8. THE AFTERMATH

In Autumn 1907, after four months of exhausting deliberations, dinners and receptions,⁴³¹ Asser felt relief in getting back into his own. He now focused on the proposed sequel of his own *Conférences*. Intent on keeping the flame alive, he launched a periodical under the auspices of his Standing State Committee, the *Bulletin des Conférences de La Haye* [1907].⁴³² It recorded texts of treaties concluded by contracting parties of the *Conférences*, their legislation and jurisdiction. The move was spurious: the *Bulletin* never made much headway and was soon discontinued. Soon afterwards Asser was seriously distracted. One of the left-overs of the 1907 Conference was the abortive draft for an International Prize Court. Of all propositions made in 1907, this was the one Asser had held most promising at the time.⁴³³ Much to the distress of the UK, the Conference had not agreed on a codification of the law to be applied by the proposed Court. This prompted London to invite the powers to a Naval Conference [Dec. 1908 – Febr. 1909].⁴³⁴ The Netherlands, much to its embarrassment, was not included in the initial invitations, but Asser put that right.⁴³⁵ The London debate was eminently a political contest. It found the nations as divided as before on the law to be applied. British-German rivalry blocked progress. Asser himself did not attend. On 20 December 1908 Foreign Minister Tets van Goudriaan wrote Asser that, for that reason alone, he shared Asser's pessimism:

If only circumstance had allowed you to represent the Netherlands at the Conference, you would perhaps have succeeded in finding and formulating solutions that might just have helped reaching an agreement. Accordingly, no need to tell you that explicitly, I sincerely regret the London Conference has to do without your advice and support.

The rules adopted at the Conference lent some legislative character to the *London Declaration*. It proved to no avail. Although the *Declaration* was signed by all attending nations, by 1914 not a single ratification had been received. Its text was voted down in the House of Lords.

⁴³¹ Asser, typically, kept a collection of invitations to receptions and dinners, entry- and menu cards. Bervoets 327.

⁴³² Bervoets 282. Steenhoff 1994, at 166. Van Vollenhoven [1934 I, at 340] argues that Asser was never by any length as convincing or successful in launching periodicals as in initiating action or organizing conferences.

⁴³³ Asser deemed it the most palpable proposition. See Van Vollenhoven 1934 I, at 338; cf., Voskuil 1973, at 29.

⁴³⁴ Bervoets 250.

⁴³⁵ *Ibid.*, 201, for Asser's article on the Prize Court in *De Tijdspiegel* 1910.

XII

THE HAGUE CONFERENCES ON BILLS OF EXCHANGE AND CHEQUES [1910, 1912]⁴³⁶

In 1909 news reached Asser of an initiative that, with hindsight, sealed the fate of his *Conférences* during his lifetime. By the same token it heralded the last rewarding success of his professional life. Italy and Germany jointly requested The Hague to host a prestigious International Conference on Bills of Exchange and Cheques. Its organization was entrusted to the Standing State Committee for Private International Law, even if the unification of material law was beyond the Commission's province properly speaking. In this Cabinet decision Asser's authority will have been the deciding factor. Asser readily took the honourable commission on his shoulders. Bills of exchange had raised his keen interest from early on. Already in the days of Couvreur's *Association* he had advocated unification of legislation in the field.⁴³⁷ The interest ran in the family. In 1834 his father Carel Daniel had defended theses on bills of exchange in Leiden.⁴³⁸ The hectic of preparations accounts for Asser's last minute withdrawal from the International Air Law Conference in Paris [1910].⁴³⁹ At Asser's funeral in 1913 friends and colleagues readily agreed that the exertions of his titanic efforts to help succeed the Conferences of 1910 and 1912 had broken his physique.⁴⁴⁰ Had the fatigue brought about, or merely precipitated the unstoppable process of his progressive illness? Van Vollenhoven advances that, by July 1912, Asser's physical appearance had changed beyond recognition; that he looked pale, was coughing, and laboured breathing. The buoyant energy and spring in his step were gone. At 74, Tobias Asser had become an old man.⁴⁴¹

In the first issue of *Grotius*, the international *Annuaire* that was launched in 1913 by Jacob Ter Meulen, the later Librarian of the Peace Palace, Asser himself reviewed the two conferences: 'La lettre de change, voyageuse et cosmopolite de sa nature, a été depuis son origine régié par un grand nombre de lois et de coutumes différentes, en vigueur dans les différents pays qu'elle avait à parcourir.' He stipulated the pivotal role of the *Allgemeine Wechselordnung*, inaugurated at the 1847 Leipzig summit of the worlds of high finance and law. He proudly recalled his own moment of glory, on 19 September 1863 in Ghent, when as a young recruit and *vis-à-vis* the members of Couvreur's *Association* he had advocated the conciliation of German tradition and the conflicting French concept of Pothier's *contrat de change*. Even in 1863 he had deemed the union feasible. He called to mind the two conferences summoned by the Belgian Government [1885, 1888] and referred to the pioneering work of *Institut* and ILA. Still, as he owed up frankly, the world owed Berlin the initiative of the Hague Conferences of 1910 and 1912. First, the Dean of the Berlin Chamber of Commerce had invited Felix Meyer to write his magisterial *Das Weltwechselrecht*

⁴³⁶ *Ibid.*, 335-346; Steenhoff 1994, at 183.

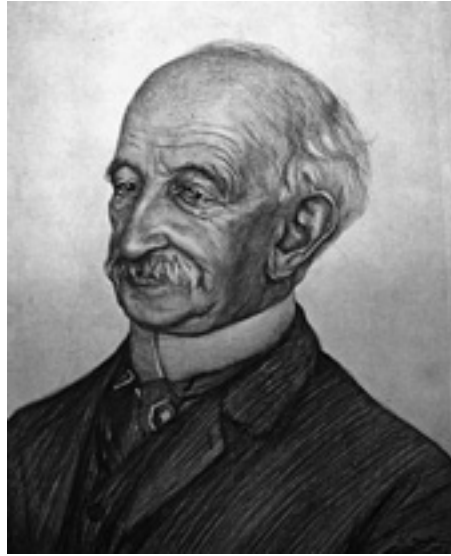
⁴³⁷ At the *Association*'s Second Conference in 1863. In 1880 Asser had contributed a paper to the *Revue* on Scandinavian Bills of Exchange. Van Vollenhoven 1934 I, at 330.

⁴³⁸ See above Chapter I.

⁴³⁹ Bervoets 351. The Air Law Conference was attended by 18 European States. It was a French initiative in the aftermath of Louis Blériot's first cross-Channel flight and a successful Aviation Fair in Paris [1909]. Asser closely followed this Dawn of a New Era of Transport and the legal challenges it posed.

⁴⁴⁰ Cf., Van der Mandere 1946, at 191-92; Van Vollenhoven 1934 I, at 329. Cf., Westenberg 1992, at 74-75.

⁴⁴¹ Van Vollenhoven 1934 I, at 329.



Tobias Asser in 1898. Drawing by H.J. Haverman; *photograph Bureau of Iconography, The Hague.*

[1909]. This comparative study had prompted a first draft for unification; hence came the German request to the Netherlands.

Under Asser's chairmanship, the Conference was opened in The Hague on 23 June 1910: 'Par un jeu du hasard, le jeune Hollandais qui avait en 1863 lu le mémoire cité ci-haut, fut appelé à présider la Conférence [seulement il n'était plus jeune!].' The Conference was attended by 75 delegates from 45 nations worldwide: diplomats, lawyers, bankers and merchants. Delegates gratefully acknowledged Asser's firm hand throughout. A questionnaire had been forwarded to the nations well in advance. At the opening delegates were handed a practical *Tableau Synoptique* of issues. The conference was divided into five sections, each boasting a President and Reporter. Among these were dear friends of Asser's: Renault, Beernaert, and Lyon-Caen. Josephus Jitta likewise figured as President of a Section. The Conference prepared an *avant-projet* for a Convention that comprised of 88 articles distributed over 14 chapters. In a *voeu* it requested the Dutch Government to pledge itself to a Second Conference to be invested with the mandate to draw up a Convention. That Second Conference was opened on 15 June 1912. At its closure 26 States had signed *Règlement* and Convention. By all appearances, success was assured. Then the Guns of August changed the world, to obviate ratification.

XIII

THE HAGUE OPIUM CONFERENCE [1912]

In 1911-12 Asser also gave his best to another international initiative.⁴⁴² On 1 December 1911 the ‘Ridderzaal’ opened its doors to the International Opium Conference. For a full two months delegates from twelve countries amply discussed the urgent issue, which constitutes such an embarrassing chapter of Western history. For twelve centuries China had cultivated the *papaver somniferum* for medical ends when the British abused the poppies to enslave the Chinese people. The Two Opium Wars [1840-1842, 1856-1860], meant to put an end to profitable trade, never solved the riddle inside China. In 1906, with modern China on the rise, an Imperial Edict outlawed the cultivation of poppies. Under pressure of public opinion Britain agreed to progressively reduce its import of opium into China, a pledge laid down in a bilateral Convention in May 1911. Meanwhile, in reply to growing concern, in 1909, and under American auspices, a scientific conference that brought together delegates from twelve nations had assembled in Shanghai, chaired by the American Bishop Brent. It was this dignitary who also presided over the 1911 Hague Conference and the signing, on 23 January 1912, of an International Opium Convention. In 25 articles distributed over six chapters it aimed at controlling the manufacturing, importing, selling, distributing and exporting of morphine, cocaine, and heroin. Far from perfect, the Convention stands out as the first international agreement in the domain of drugs control. Three years later the Convention entered into force in five countries. In 1919 all parties to the Paris Peace Treaties subscribed to the Convention.⁴⁴³ Asser’s involvement with the Hague Conference had been fairly limited until, towards its closure, his brain was picked by its Drafting Committee, at a loss how to reconcile conflicting views regarding signature and ratification. As another proof of his creative legal genius, Asser famously came up with the *trouvaille* of an ‘inverted’ procedure, subjecting the Convention’s ratification by the twelve represented nations to prior ratification by the thirty-four not-represented civilised nations worldwide.⁴⁴⁴



Drawing by W.H. Overend of skirmishes during the Second Opium war [1856-60]. Chinese officers hauling down the British flag and arresting the crew of the British ship the 'Arrow' on 8 October, 1856.

⁴⁴² Bervoets 227, on Asser’s advice to the Conference’s Editorial Committee from January 1912.

⁴⁴³ Registered in the *League of Nations Treaty Series* on January 23, 1922 [LNTS vol. 8, at 188-39].

⁴⁴⁴ Van Vollenhoven 1934 I, at 336; Van der Mandere 1946, at 195-96; Roelofsen 1985, at 16.

XIV

PERSONAL JUBILEES [1908, 1910]

The last years of Asser's life were rewarding in the private sphere as well. Bespeaking his public status, in February 1908 Dutch newspapers appreciatively recalled the 50th Anniversary of his prize-winning contribution to the 1858 Leiden competition.⁴⁴⁵ In anticipation of his 70th birthday in April a Jubilee Committee was launched.⁴⁴⁶ In a letter dated 25 April its chairman, De Beaufort, kindly asked Asser whether his Committee of Ten could pay a complementary visit on 30 April. The Hamburger *Israelitisches Familienblatt* joined in:

Vermeldet mag noch werden, dass der ausserordentlich sprachengewandte Jubilar auch ein genialer und bewunderter Meister des Vortrags ist und dass er sich trotz seiner 70 Jahre eine fast jugendliche Frische und Arbeitskraft erhalten hat.⁴⁴⁷

The above proved a mere stepping-stone to the Jubilee in 1910, occasioned by the 50th Anniversary of Asser's promotion at Leiden in 1860.⁴⁴⁸ All newspapers, from *Algemeen Handelsblad* to *Het Vaderland* submitted extensive reports of the celebration in (where else!) Asser's own *Salle des Trèves* – that 'epitome of Dutch aversion of the merest hint at display' as, in his vote of thanks, Asser observed tongue-in-cheek.⁴⁴⁹ A picture shows the septuagenarian, proudly seated amidst his grandsons, and surrounded by his sons, scholars and public figures who were dear to him.⁴⁵⁰ Attending were De Beaufort [the initiator], De Savornin-Lohman, Van Karnebeek, Marees van Swinderen, Rahusen, Stuart, Heemskerk, Jitta; last but not least, on behalf of commerce, Ter Meulen and Van der Mandere. Albéric Rolin assisted as well. His face, Asser sadly recalled, made him miss Auguste the more.

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 to have equity and morality govern inter-human relations and man's material interests. To properly fulfil these ends, the legal discipline should keep the pulse of social progress.⁴⁵¹ The world at large might venerate the names of Grotius and Bynkershoek, the legal protagonists of the 17th and 18th centuries; Asser's name, De Beaufort insisted, epitomized the 19th century.⁴⁵² Mr. Heemskerk, Minister of the Interior, praised Asser's cosmopolitanism and his genius to conciliate national interest with the overall interest of all nations.⁴⁵³

With a touch of melancholy Asser recalled that 19 April 1860, when his father had escorted him to Leiden. He called to mind 'the opening ceremony, back in 1893 in this very room, when my juvenile optimism was belied that I just had to shake the conventions out of the tree.' '*Ardua*

⁴⁴⁵ Bervoets 400.

⁴⁴⁶ *Ibid.*, 401.

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*, 402.

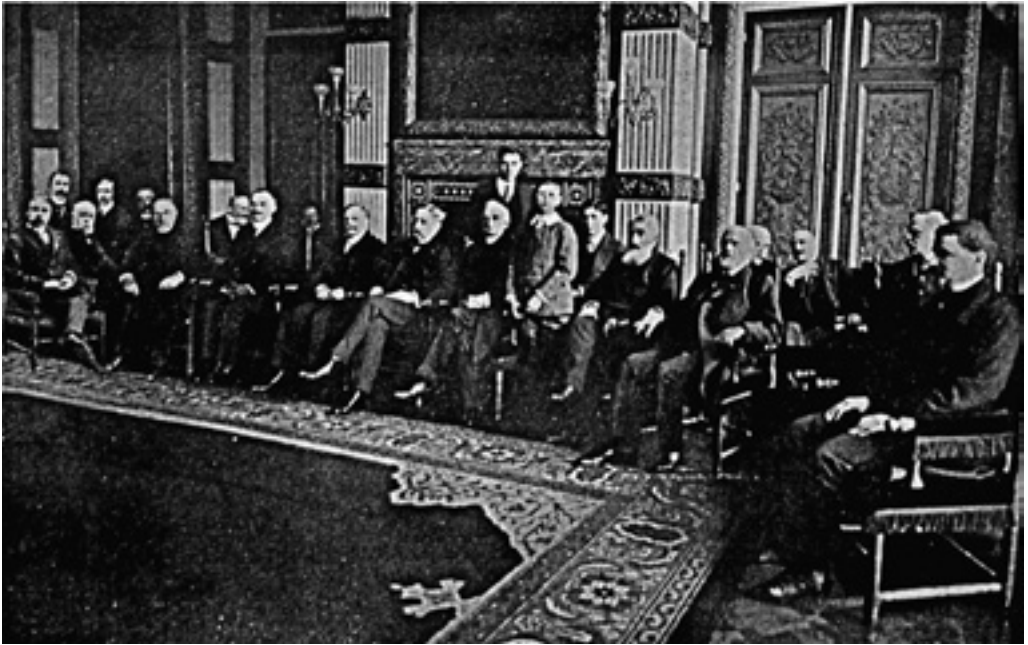
⁴⁴⁹ See *Staatsraad Mr. T.M.C. Asser, 19 April 1860-19 April 1910*, at 21. For Dutch standards the room is elaborately over-decorated.

⁴⁵⁰ *Staatsraad* 1910, frontispiece.

⁴⁵¹ *Ibid.*, at 8-9. Cf., Van der Mandere 1946, at 197.

⁴⁵² *Ibid.*, at 13-14.

⁴⁵³ *Ibid.*, at 17-18.



Tobias Asser at the jubilee to celebrate the 50th Anniversary of his Leiden thesis [1860-1910].



The jubilee dinner in 1910.

quae pulchra, De Beaufort had warned him at the time. It had taken the Dutch a full 80 years of relentless strife to gain their independence. Asser, therefore, would bear his patience and proceed quietly, if doggedly.⁴⁵⁴ A *déjeuner* was offered at *Du Vieux Doelen*, but what made Asser's day was 'The Gift': the funds for the world's first ever specialized library of private international law, to become the nucleus of the Peace Palace Library. It was the fulfilment of Martens' vision, back in 1900, of that 'great library of international law for the use not only of the Court but of the whole world.'⁴⁵⁵ On 21 October 1912 a Foundation was instituted.⁴⁵⁶

Commentators have observed, as evidence of Asser's vanity, that Tobias had a childish pride in collecting all the newspaper clippings that spelled his name ever so briefly.⁴⁵⁷ It is submitted here that Asser rather gives one the impression of the born collector.⁴⁵⁸ *Humani nihil alienum*: no doubt Asser felt flattered at the many honours bestowed on him. But then, he seemed far too sober and down-to-earth a character to become unduly intoxicated with glory.⁴⁵⁹ At all events, the endless personal memoranda treasured in his files at the National Archives – photographs; menu, calling and entry cards; drafts of table speeches and seatings; exam papers of students – they make for great reading. As Van Vollenhoven once observed, to Asser his records of personal correspondence meant infinitely more than official dossiers.⁴⁶⁰ In Spring 1910 he proudly treasured some more. John Westlake had been invited to join the Jubilee Committee. On 11 March 1910 the English scholar sent note to the Committee's Secretary, Donker Curtius:

Monsieur,

Je me rallie de tout mon coeur à la préparation de rendre hommage à M. Asser et à la Cinquantenaire de son grade de docteur en droit et non moins à l'idée de donner à cet hommage le forme d'une Bibliothèque de droit international privé, auquel notre ami a rendu des services si signalés.

Je vous remercie ainsi que les autres personnages que vous représentez d'avoir songé à la part que j'ai prise avec Asser à la fondation de la Revue de Bruxelles, pour m'inviter à prendre place dans votre Comité, je que j'ai eu me sentant flatté de cette distinction. Je vous prie de m'inscrire pour une cõtisation de 5 Livres Sterling, dont je transmets ci-inclus le montant par une chèque sur mes banquiers, payable à votre ordre. Veuillez, Monsieur, agréer...⁴⁶¹

Renault sent a postcard:

5, Rue de Lille VIII Paris, le 17 April 1910 soir

Mon cher Président,

J'espère que ce petit mot vous arrivera le 19 du matin, peu avant la Cérémonie ou l'on rendra un juste hommage à vos 50 ans de travail et des services rendues non seulement à votre pays, mais à beaucoup d'autres pays. J'ai vu avec plaisir que c'est dans la Salle de la Trêve que cet hommage vous sera rendu, puisque c'est là que s'est déployé votre féconde activité depuis 1893. Vous ne doutez pas, mon cher ami, de sentiments d'estime, d'affection à distance à tous les éloges que vous seront adressées. Puissiez-vous longtemps encore rendre à la science et à la pratique de signalés services! Je serai toujours heureux et fier de travailler à vos côtés. Votre affectueux et dévoué Louis Renault.

– Je compte toujours vous voir à Paris le mois prochain pour la navigation aérienne. Lyon-Caen est désigné avec moi pour la Conférence de la Lettre de Change.⁴⁶²

⁴⁵⁴ *Ibid.*, at 24.

⁴⁵⁵ Lysen 1934, at 6; Eyffinger 1988, at 175-80.

⁴⁵⁶ Bervoets 403. The funds treasured Dfl. 10.000. The idea was effectuated in 1924.

⁴⁵⁷ Van Vollenhoven 1934 I, at 335; Van der Mandere 1946, at 172; Westenberg 1992, at 58.

⁴⁵⁸ An interesting example is Asser's agitation over the mystifying disappearance of stamps from his letters, probably the work of a stamp collector in his private or professional surroundings. Bervoets 64.

⁴⁵⁹ Cf., Van Vollenhoven 1934 I, at 341.

⁴⁶⁰ Bervoets 50-60; and see Van Vollenhoven 1934 I, at 327.

⁴⁶¹ Bervoets 60.

⁴⁶² *Ibid.*, 57.

Lyon-Caen likewise sent word:

Mon cher et très honoré Confrère,
Je suis très heureux de la manifestation qui se prépare en votre honneur et j'y participe de tout coeur. Il y a là un hommage légitime et bien modeste rendu aux éminentes services que vous avez rendues depuis de longues années aux causes les meilleures. Malheureusement j'ai mon cour à faire, et je ne pourrai pas être à La Haye Mardi prochain pour assister à la séance du Binnenhof et au déjeuner, auquel vous avez la grande amabilité de m'inviter. Excusez-moi et soyez persuadé que je ne suis nullement indifférent et que je serai avec vous par la pensée.⁴⁶³

Asser had insisted with the Committee that at least one representative of the Rolin 'clan' should assist. On 16 April Albéric Rolin sent a card to Lange Houtstraat 16:⁴⁶⁴

Mon cher et honoré Confrère et Ami,
La perspective de vous voir et d'assister à l'hommage si mérité qui vous sera rendu est pour moi si pleine de charme et de séductions que je me décide à accepter votre aimable invitation. A bientôt et tout à vous.

De Louter sent his compliments from Utrecht, and Asser felt truly flattered by a charming Latin poem dedicated to him by 'the first of Latinists' of his day, the Leiden classicist Jacobus Hartman [1851-1924], a former pupil of Boot at the *Athenaeum Illustre*: 'I only regret I cannot send reply in verse, not in Dutch, let alone in Latin!'⁴⁶⁵ Asser did not really have a poetic vein, it would seem. But then, his life-long fondness of Alphonse de Musset, the most terse of French poets, opens a hidden corner of this man's gifted character.⁴⁶⁶ Asser corresponded with men of letters such as Van Lennep, Beets and Colenbrander.⁴⁶⁷ On a last note: characteristically, in Spring 1910 Asser courteously declined the Royal 'Grand Cross' reserved for him on account of his jubilee as being a decoration not befitting an academic occasion.⁴⁶⁸ But then, the 1910 celebration itself proved to be just the upbeat to far greater glory.

⁴⁶³ Ibid., 336.

⁴⁶⁴ The address is intriguing inasmuch as Asser signed a contract to [partly?] rent the house to the State of the Netherlands on 5 November 1906. Bervoets 423.

⁴⁶⁵ Bervoets 162. The *incipit* of the poem by J.J. Hartman [dated 19 April 1910] reads: *Doctrinae solidae totum qui se dedit, illum / Egregie vitam quis posuisse neget?*

⁴⁶⁶ Albéric Rolin recalled their walks in the Haarlemmerwoud, with Asser extensively citing poems by Alfred de Musset. Voskuil 1973, at 12.

⁴⁶⁷ Westenbergh 1992, at 55.

⁴⁶⁸ Van der Mandere 1946, at 192. In the end he would never receive the distinction.

XV

NOBEL PEACE PRIZE LAUREATE [1911]

I. THE NOBEL PEACE PRIZE

What exactly made Alfred Nobel [1833-1896] launch his series of Prizes was never quite ascertained. The initiative merely confirms a line in his early autobiographic poem: 'I am a Riddle'. A lover of literature who idolized Shelley,⁴⁶⁹ Nobel's life reads like the plot of a Dickens tale: from the impoverished youngster who sold matches for a living to the inventor of dynamite. The wealthy business tycoon who put his wealth at the service of mankind: the comparison with Andrew Carnegie imposes itself. It is often argued that, as far as the Peace Prize goes, the influence of the Austrian pacifist Bertha von Suttner [1843-1914] was the decisive factor. In the 1870s Bertha had very briefly been Nobel's secretary and she became the first female peace laureate [1905].⁴⁷⁰ In 1895, when Nobel wrote his will, Alfred and Bertha had been close for twenty years. Nobel gave his unwavering support to her cause. Still, there is ground for qualification. The awarding of Henry Dunant [1901] and the ICRC [1917] suggest that Nobel intended to include humanitarian law into the ambit of his prize.⁴⁷¹ Von Suttner reputedly held that 'St. George did not ride to trim the claws of the dragon, but to kill the bastard!' Her greatest pride, in her admirable campaign to rehabilitate Henry Dunant in the late 1890s, was precisely to have lured the Swiss away from the [militarized] Red Cross Committee and rallied him under her 'White Banner' of pacifism. Nobel, on his part, harboured distinct reservations with regard to pacifism or, for that matter, the arbitration movement, which, in his eyes, were unrealistic woolgathering. The best way ahead from Nobel's perspective was a collective security system brought about by international negotiation.

A child of his day and age, Nobel confidently relied on human reason, the concept of progress, and the fraternity of peoples. His initiative for the prize series was in line with prevailing sentiment, as exemplified by De Coubertin's launching of the Olympic Games that same year [1896]. While attributing the prizes in physics, chemistry, medicine and literature to Stockholm, Nobel opted for the Norway Storting to administer the Peace Prize. This was a deliberate choice, intended to keep this particular prize out of political waters. Within the then Personal Union of the Kingdoms of Sweden and Norway [1814-1905], the Norwegian Parliament was not entitled to an autonomous foreign policy. It actually had some reputation of impartiality and a tradition of promotion of peace. In 1895 it subsidized the *Interparliamentary Union*, an institution much to Nobel's liking, as the later Storting Committee knew well enough: Albert Gobat [co-laureate 1902], Auguste Beernaert [co-laureate 1909] and Léon Bourgeois [laureate 1920] were driving forces behind this association.⁴⁷²

⁴⁶⁹ Nobel was a prodigious linguist and man of letters, fond of Henrik Ibsen [1828-1906] and Bjørnstjerne Bjørnson [1832-1910], the 1903 laureate for literature who was himself a member of the Nobel Peace Committee.

⁴⁷⁰ Bertha Baroness von Suttner [Born Countess Kinsky, 1843-1914], a foremost Austrian peace activist, was Alfred Nobel's secretary for a mere couple of weeks in 1876. Eyffinger 1999, at 56-57.

⁴⁷¹ Its programme merely stipulated that the Award was to go to the person who that year 'shall have done the most or the best work for fraternity between nations, for the abolition or reduction of standing armies and for the holding and promotion of peace congresses.'

⁴⁷² The IPU advocated the 1899 Peace Conference and effectively instigated its 1907 sequel. Pursuant to its Resolution at the 1904 St. Louis meeting [which Asser missed, Jitta attended, and where Aletta Jacobs met Bertha von Suttner], the IPU persuaded Roosevelt to help initiate the Conference. Eyffinger 2007, at 62-64.

2. ASSER'S AWARD

In itself, Tobias Asser's award in 1911 was not all that surprising. To be sure, the Peace Prize, by then a full decade running, was readily identified with true-born pacifists.⁴⁷³ Still, over the previous decade three of Asser's closest colleagues had been awarded: Louis Renault [1907], Baron d'Estournelles de Constant⁴⁷⁴ and Louis Beernaert [co-laureates 1909]. Two more were to follow that decade: Elihu Root [1912] and Léon Bourgeois [1920]. Of these five, three were mainly diplomats and politicians. Only Renault could, as Asser,⁴⁷⁵ be coined 'a lawyer in the service of peace.' But then, the *Storting* Committee clearly deemed international lawyers well within Nobel's stipulations. The first institutional award ever was attributed to the *Institut* [1904].⁴⁷⁶ Rather remarkable against this backdrop, and in view of Asser's great networking qualities, is precisely that he was nominated only once, and by a single colleague only. Just as remarkable indeed as the fact that this one-time candidature was effectively honoured. Martens was nominated consistently over 1902-08 and by numerous colleagues. He was expected to turn up as Laureate any year, but never did.⁴⁷⁷

In 1911, the year Maeterlinck was Laureate for Literature and Marie Curie for Chemistry by virtue of her discovery of the elements of radium and polonium, the Peace Committee received nominations for six institutions. Four of these concerned Peace Societies.⁴⁷⁸ Noteworthy was the nomination of the *Société de législation comparée* in Paris. In all, 28 personal candidates were nominated. As ever, it was a motley group. Noteworthy from our 21st century perspective are Kaiser Wilhelm II,⁴⁷⁹ Count Sergius Witte [the Russian Finance Minister], Count Albert Apponyi of Budapest [the great opponent of Viennese centralism] and... Andrew Carnegie. As usual, many pacifists featured on the nomination list.⁴⁸⁰ Among these pacifists Alfred Fried clearly stood out. His nomination had impressive backing: Walther Schücking, Karl Lamprecht, Ludwig von Bar, Bertha von Suttner, Gaston Moch, Jacques Novicow, Frederic Bajer, Ernesto Moneta, and the Swedish Interparliamentary Group, to mention only his most prominent advocates. Fried's selection by the Nobel Committee never came as a surprise.

Along with Asser, three other prominent lawyers had been nominated: Ernest Nys, Brussels [by T.E. Holland, Oxford]; Philipp Zorn, Bern [by Heinrich Lammasch]; and Pasquale Fiore, Napels [by J.C. Buzzatti]. Léon Bourgeois had been nominated by Ch. Lyon-Caen, Baron d'Estournelles de Constant and Frédéric Passy. Last, not least in that year's harvest was the German philosopher and sociologist Wilhelm Foerster [nominated by Baron d'Estournelles de Constant]. Asser's selection, in other words, was far from being a foregone conclusion. Bourgeois, for one, must have scored high in everyone's bets.⁴⁸¹

⁴⁷³ Frédéric Passy [1901], Elie Ducommun and Albert Gobat [co-laureates 1902], William Randal Cremer [1903], Bertha von Suttner [1905], Klas Arnoldson [1907] and Fredrik Bajer [1908] all came into this category, as did Asser's co-laureate, Alfred Fried. Fried [1864-1921] was an Austrian publisher, founder of the *Friedenswarte*, steadfast companion of Von Suttner, and propagator of the German Peace Movement. Eyffinger 1999, at 54.

⁴⁷⁴ His full name was Paul Henri Benjamin Balluet d'Estournelles, Baron de Constant de Rebecque [1852-1924].

⁴⁷⁵ Asser had a repute among peace apostles by virtue of his advocacy of arbitration. Westenberg 1992, at 73.

⁴⁷⁶ Followed by the International Peace Bureau [1910] and the International Committee of the Red Cross [1917].

⁴⁷⁷ Between 1901 and 1908, Martens, who died in 1909, was a prominent candidate on the shortlist of the Oslo Committee. As of 1902 he was expected to become a laureate any time. His name was successively submitted to the Committee by Goos, Matzen, Harburger, Rouard de Card, Bjørnson, Lammasch, Nys a.o.; Information Nobel Institute, courtesy Mrs. Anne Kjelling.

⁴⁷⁸ Two English, a German, and a Latin American Peace Society. On the 1911 Award, see *Friedenswarte* 13 [1911], at 373-74; AJIL 8 [1914], at 343-44.

⁴⁷⁹ Nominated by Benjamin Wheeler, President of California University, Berkeley.

⁴⁸⁰ Including Emile Arnaud, Richard Barthold, Frederic Bajer, W. Evans Darby, Henri La Fontaine, Gaston Moch, Felix Moscheles, and Albert K. Smiley of the Lake Mohonk Conferences.

⁴⁸¹ Léon Bourgeois [1851-1925], was an enlightened French politician and Prime-Minister [1985-96]. He counts as the 'Father of the League of Nations', was first President of its Council [1920] and that year's Nobel Peace Laureate. On

Overall political circumstance offers an interesting sideline to the 1911 award competition. In Summer 1911, to the consternation of the Peace Movement, Italy's aggression in Libya that led to war with the Ottoman Empire [1911-12] was energetically defended by Ernesto Moneta [1833-1918], the political publicist. Now Moneta, a 'militant pacifist' and founder of the *Lombardian League for Peace and Arbitration*, had been the widely acclaimed Nobel Peace Laureate in 1907. In October 1911, with pacifists demanding the revoking of Moneta's award, mass media insisted that, in a gesture of support to anti-war sentiments, the Nobel Committee best withheld the 1911 Peace Prize at all. While resisting this pressure, the Committee will have made sure to steer on the safe side that year. Intriguingly, those very months Asser himself spoke up in uncommonly ardent terms against Italy's aggression. Van Vollenhoven advances precisely this incident along with Asser's position on the Boer War, a decade earlier, as testimonies to Tobias' idealistic zeal wherever he saw justice wronged.⁴⁸²

'On the safe side' is precisely what the media wryly concluded from the Committee's choice of 1911, seeing their hopes frustrated of eye-catching names or, better still, controversial laureates. For all Asser's *renommée* in official and intellectual circles, the Oslo Committee, as so often, had some explaining to do to the world at large. The Danish daily *Socialdemokraten* commented coldly that, in Fried and Asser, the Committee had:

[E]xcavated a couple of gentlemen, rather unknown to the public eye, from the cavern of obscurity in which they have hitherto resided, and from the oblivion to which they will most likely return after the festivities.⁴⁸³

The German *Nationalzeitung* observed that neither of the Award-winners had ever caught the public eye, adding that, in the 20th century, the public was more interested in war heroes than in apostles of peace anyway.⁴⁸⁴

3. THE 1911 CEREMONY

From day one, in 1901, the Nobel Peace Prize ceremony took place on 10 December, the day of Nobel's demise in 1896. Asser must have received the news by mid-October, as was customary from 1907 onwards.⁴⁸⁵ He never travelled to Oslo to receive medal, diploma and prize money, or to lecture in person; neither did Alfred Fried. This in itself was nothing uncommon in those early years, given weather and travel conditions in Scandinavia in December. Neither Dunant nor Passy [co-laureates in 1901] nor Bertha von Suttner [1905] ventured to Oslo in mid-Winter. The first laureate to effectively address the Oslo auditorium on 10 December was the Norwegian Arnoldson in 1908.

At the 1911 Award Ceremony the Storting Committee substantiated its choice. Having welcomed the audience in the Auditorium of the Nobel Institute, Jørgen Løvland, Chairman of the

his life and prominence at the 1899 Hague Peace Conference, see Eyffinger 1999, at 140-42, and *passim*; on his prominence in 1907 and his decisive role in saving The Hague tradition at Versailles, see Eyffinger 2007, at 97-177, and 211.

⁴⁸² Van Vollenhoven 1934 I, at 340.

⁴⁸³ Oivind Stenersen, Ivar Libaek, Asle Sveen [eds.], *The Nobel Peace Prize: One hundred Years for Peace. Laureates 1901-2000*, Oslo 2001, at 67.

⁴⁸⁴ *Ibid.*, p. 69. In Asser's files in the National Archives no complimentary telegrams or letters from within Dutch society are to be found, with the single exception of Van Eysinga [Bervoets 404]. Van Vollenhoven [1934 I, at 339, 340] calls Asser a very appropriate laureate. Rather than being just another enthused 'apostle' on behalf of justice and peace, he stood out as the 'pragmatic architect' or 'ingenieur' of the reform of international law.

⁴⁸⁵ Up to 1907, the Award came as a perfect surprise on 10 December, even to the Laureates themselves.

Committee, also given the absence of the two Laureates, called upon Prof. Fredrik Stang, an eminent Norwegian jurist⁴⁸⁶ to address the assembly on ‘Nordic Cooperation in Unifying Civil Law’. Then Løvland officially announced that the Peace Prize for 1911 was to be shared by Tobias Asser and Hermann Fried, and that neither of them had been able to attend and lecture at the ceremony. He then read a biographical account of the laureates. To substantiate Asser’s award, Løvland referred to the laureate’s impressive career at home, his involvement in international arbitral awards, and his role ‘as one of the founders of the *Institut* and one of its most active and influential members.’ He continued:

Asser has above all been a practical legal statesman. He holds a position in the sphere of international private law similar to that enjoyed by the famous French jurist Louis Renault in international public law. Indeed, his public activity has overshadowed his scholarly writing, which is of great importance in its own right. As a pioneer in the field of international legal relations, he has earned a reputation as one of the leaders in modern jurisprudence. It is therefore only natural that his countrymen should see him as a successor to or reviver of The Netherlands’ pioneer work in international law in the seventeenth century.

It was at his instigation that the Dutch government summoned the four conferences at The Hague in 1893, 1894, 1900, and 1904 on international private law; all presided over by Asser [...] Asser has also proposed that other nations follow The Netherlands’ example by appointing permanent commissions to prepare the work of the Conferences. “By doing this”, he said in 1900, “the foundations will be laid for an international organization which, without interfering with the complete autonomy of the nations in the domain of legislation, would contribute greatly to the codification of international civil law within the not too distant future.” As a result of these conferences, seven Conventions have been concluded on different aspects of civil procedure (legal aid) and of family law; five of these have been subscribed to by Norway.



The medal of the Nobel Peace Prize.

Alfred Nobel [1833-1896], Swedish chemist, inventor of the dynamite, armaments manufacturer and philanthropist.



Løvland’s explicit reference to Renault, as Asser’s counterpart, would suggest that Asser’s award was at least partly meant to put the private legal domain on equal footing with the public sphere. The theme of Stang’s address only supports the impression that it was first and foremost Asser’s

⁴⁸⁶ Fredrik Stang [1867-1941], the son of Prime-Minister Emil Stang, was a Norwegian lawyer and conservative politician. He was professor at Oslo University as of 1897, member of the Storting [1906-09], and became Minister of Justice in 1912. In later years he was rector of Oslo University and member, later president of the Nobel Committee.

work for the *Conférences de La Haye* that had occasioned the award in the Committee's eyes.⁴⁸⁷ Prize money and paraphernalia were transferred to Asser in subsequent weeks.

4. ASSER'S NOMINATION

Over the years 1900-11 the Dutch had very actively nominated candidates for the Nobel Peace Prize.⁴⁸⁸ Still, no Dutchman ever nominated Asser. In 1901 the Leiden Law Faculty nominated Dunant, while Minister Van Houten, on a personal title, nominated Cremer and Passy. In 1901-02 Rahusen nominated Von Suttner. In 1906 Den Beer Poortugael nominated D'Estournelles de Constant, while Asser nominated Nys, as we will see below. In 1908 Asser nominated Stead. The only man who ever felt fit to nominate Asser was Charles Lyon-Caen of Paris [1843-1935].⁴⁸⁹ Lyon-Caen's later involvement in *L'oeuvre de La Haye* was impressive. In 1923 he was elected President of the Curatorium of the Hague Academy. The later Dutch Foreign Minister Van Kleffens, Secretary of the PrepCom of the Curatorium in 1922-23, vividly recalled the meetings in Lyon-Caen's apartment at 13, Rue Soufflot,⁴⁹⁰ in the heart of the *Quartier Latin*: 'the venerable Charles Lyon-Caen: extremely competent, but somewhat choleric at times, somewhat deaf too, a combination which asked for trouble.' Once, he had obviously misunderstood van Kleffens and, in the midst of the discussions on the Law of Peace, threw the ebony stick that never left him at the stunned Dutchman. At the opening of Asser's Hague Academy on 14 July 1923 Caen famously concluded his address with the words '[u]n jour le droit sera le souverain du monde!' In 1935, in recognition, his bust by Cladel was unveiled in the Peace Palace.

Asser had been on intimate terms with Caen for many years at the *Institut*, where Caen was a long-standing *membre* and President.⁴⁹¹ Likely enough, the immediate ground for Caen to nominate Asser [*and Bourgeois*] was the success of Asser's First Conference on Bills of Exchange [1910], where Caen had been a section president and reporter. Presumably, his nomination was co-ordinated with Renault, the 1907 laureate. Caen's sober, level-headed letter of nomination reads:

13, Rue Soufflot, Paris, 16 Décembre 1910

Monsieur le Président,

J'ai l'honneur de présenter comme candidat du prix Nobel M. Asser, Ministre d'Etat, Conseiller d'Etat, à La Haye (Hollande). Il me paraît avoir des titres nombreux et considérables à cette haute distinction. Il a été l'un des fondateurs de l'Institut de Droit international dont il a été Président et auquel il a donné toujours une collaboration très active. Il a participé aux Conférences de la paix de La Haye en 1899 et en 1907 et y a joué un rôle important. Il a été le promoteur et le président des Conférences de La Haye qui ont codifié, sur un grand nombre de matières, le Droit international privé. Il a organisé et présidé en 1910 la Conférence de La Haye relative à l'unification du Droit en matière de lettre de change et de billet à ordre. Il a ainsi puissamment contribué à établir, pour le présent et pour l'avenir, des relations pacifiques entre les Etats et à assurer entre elles la règne du Droit.

J'attire aussi l'attention du Comité Nobel sur les titres considérables de M. Léon Bourgeois, Sénateur,

⁴⁸⁷ Even if one would have expected the 1910 Conference on Bills of Exchange to have loomed large as well.

⁴⁸⁸ Professor Baart de la Faille, for one, submitted candidates each and every year. Among his nominees were De Bloch, Dunant, Ducommun, the peace painter Ten Kate, Passy, the IPB in Bern, Von Suttner, Darby – but no Asser.

⁴⁸⁹ A tailor's son, Lyon-Caen worked in the family firm and helped out Jewish orphans and emigrants before he turned to the law, specialising in commercial law, comparative law, and private international law. Professor at the Sorbonne as of 1872, he published a massive *Traité de droit commercial* [8 vols., 1885] together with Louis Renault. Among his descendants are many lawyers of fame.

⁴⁹⁰ Intriguingly, on the title-page of the *Annuaire* this same address features as the address of *Pedone*, the famous publishing house.

⁴⁹¹ Files on Lyon-Caen in Bervoets 55, 62, 145, 190, 335-37.

ancien Président du Conseil des Ministres, 1er Delegué de la France au Conférences de la Paix de 1899 et de 1907. Il y a joué un rôle prépondérant que tout le monde connaît. Depuis lors, il n'a cessé, par la plume et par la parole, de défendre les idées de droit et de paix entre les nations. Recevez, Monsieur le Président, l'assurance de mes sentiments de haute considération et tout dévoués, Ch. Lyon-Caen, Membre et ancien Président de l'Institut de Droit international.⁴⁹²

In all of this, another long-standing acquaintance of Asser's must have been a useful, possibly decisive *trait-d'union*, indeed *playdoyer*. The reference is to Francis Hagerup [1853-1921], Norwegian lawyer, diplomat and conservative politician. Hagerup was an inspired *membre* of the IDI [1897] and its President in 1912. In Norway Hagerup was ubiquitous.⁴⁹³ In 1906 he was appointed ambassador to Brussels and The Hague, in 1907 he headed the Norwegian delegation to the Second Hague Peace Conference, and upon his return he became member of the Storting Nobel Committee [1907-21]. His vote will have carried considerable weight.⁴⁹⁴

5. ASSER'S INVOLVEMENT IN NOMINATING OTHER CANDIDATES

The above does in no way exhaust Asser's contacts with the Nobel Committee. As it was, Asser was involved in Nobel Prize nominations over 1906-12, both in an institutional and a personal capacity. Among the persons and bodies entitled to nominate candidates – apart, that is, from the Nobel Committee itself, earlier laureates and members of governments and parliaments – were the *Interparliamentary Union* [f. 1889], the *International Peace Bureau* [f. 1892], the *Institut* and the PCA,⁴⁹⁵ along with university professors in political science, law, history and literature in their personal capacities. Asser's papers in the National Archives contain correspondence with the *Institut* with regard to Nobel nominations over 1908-12.⁴⁹⁶ In 1906 the *membres* had successfully nominated Louis Renault, and Asser had been instrumental in this. On 29 March 1908 Renault sends Asser belated thanks for his support:

Mon cher Président,

Je sens que j'ai besoin, encore plus que d'ordinaire, de faire appel à toute votre indulgence. Je ne sais vraiment comment j'ai passé cet hiver. Au sortie des travaux absorbants de la Conférence, j'ai été obligé, presque sans interruption de reprendre me occupations ordinaires, pour lesquelles j'avais des préparations insuffisantes. J'en suis sorti, jusqu'à présent, matériellement, mais je ressens une grande fatigue et j'ai dû négliger bien des choses, même parmi celles qui me soient particulièrement agréables. Je n'ai pas été en état de remercier toutes les personnes qui avaient bien vouloir m'adresser leurs félicitations en sujet du Prix Nobel. Peut-être êtes vous de celles là? Excusez-moi donc encore de ce chef, mon cher ami. Vous êtes parmi les hommes de l'amitié desquels je m'honore le plus et à l'estime desquels je suis particulièrement sensible. La bienveillance avec laquelle vous avez accueilli la nouvelle de l'honneur un peu extraordinaire qui m'était fait m'a fait grand plaisir mais ne m'a pas surpris. Donc, merci du fond du coeur si j'ai gardé la silence jusqu'à présent.⁴⁹⁷

Another case in point was Ernest Nys [1851-1920], Alphonse Rivier's successor in Brussels [1898], editor of the *Revue*, translator of works of Lorimer and Westlake, and a standing member

⁴⁹² Nobel Institute Pfl. 1910/58. Bourgeois' nomination was not meant as '*nebenbei*'. His candidature was covered by D'Estournelles and Passy, presumably in co-ordination with Renault.

⁴⁹³ George Francis Hagerup was law professor in Oslo [1887-1906], Minister of Justice [1893-95] and of Finance [1895], and Prime-Minister of Norway [1895-98]. He was Member of the *Storting* [1901-06] and subsequently of the Storting Nobel Committee [1907-21].

⁴⁹⁴ Also witness a letter by Descamps to Asser, in which it is stated that Hagerup does not think the candidates of the *Institut* stood much chance that year. Bervoets 140.

⁴⁹⁵ In 1922 this entitlement was extended to the PCIJ and in 1946 went over to the ICJ.

⁴⁹⁶ Bervoets 155.

⁴⁹⁷ *Ibid.*, 57.

of the PCA. Nys was elected *membre* in 1892; throughout 1906-16, and in 1919, he was [unsuccessfully] nominated by colleagues. Asser knew Nys well; he submitted his nomination in 1906, presumably in co-ordination with the IDI Bureau. More intriguing is Asser's *personal* commitment in 1908 to have William Stead nominated. Stead was a highly respected public figure of international standing. At The Hague his efforts on behalf of the *Courrier* and *Cercle international* had been highly appreciated.⁴⁹⁸ Asser and Stead had long picked up a liking,⁴⁹⁹ also witness Asser's letter to the Committee:

La Haye, 4 Janvier 1908, Au Comité Nobel du Parlement Norvégien, Kristiania.
Messieurs,

J'ai l'honneur de proposer comme candidat pour la Prix Nobel de la Paix M. William T. Stead de Londres. Je n'aurai pas besoin d'entrer dans beaucoup de détails pour motiver cette proposition. Il suffira de dire que parmi les amis de la paix et les fauteurs du Mouvement Pacifiste, personne n'ai fait preuve de plus de zèle, de talent et de persévérance que M. Stead. Par des publications de différente nature [Review of Reviews, publications relatifs aux Conférences de la Paix etc.] il a rendu des services incontestables et bien précieux à la cause de la paix.

Parmi les personnes qui ont des mérites à cet égard on peut distinguer deux catégories bien différentes entre elles. D'abord les juristes qui travaillent à la codification du droit international, persuadés que de cette manière ils contribuent largement à diminuer les causes de conflits entre les nations. C'est à cette catégorie de personnes qu'appartient M. Louis Renault, qui vient d'obtenir la Prix Nobel pour 1907.

Mais à côté de ceux-ci il y a la seconde catégorie, celle des hommes entièrement dévoués à la grande cause et qui mettent à son service leur temps, leur plume, leur meilleures forces, dans le but de convaincre les nations que la guerre est un fléau qui les ruine et les déshonore et que d'autres moyens peuvent et doivent être employés pour aider les différends internationaux.

Dans cette dernière catégorie on trouve beaucoup d'hommes superficiels, des charlatans, des phraséologues qui se servent du nom de pacifiste. M. Stead n'est pas de ce nombre. Il a un talent remarquable et je puis dire sans exagérer que par sa parole il exerce une influence bien salutaire dans les esprits. Je crois donc que pour cette année c'est M. Stead qui mérite de revoir la Prix Nobel de la Paix. Veuillez agréer, Messieurs, l'assurance de ma considération la plus distinguée,

T.M.C. Asser, Membre de la Cour Permanent d'Arbitrage; Fondateur et Membre de l'Institut de droit international; Ministre d'Etat, Membre du Conseil d'Etat des Pays-Bas.⁵⁰⁰

Asser's critical comments on the Peace Movement reflect his reservations *vis-à-vis* the many utopians within this motley company.⁵⁰¹

6. LATER DUTCH NOMINEES AND NOMINATIONS [1911-1961]

If no other Dutchman was ever awarded the Peace Prize this was not for lack of trying – on the part of the Dutch, that is. Over the first 50 years after Asser's award [the Nobel files over the past 50 years are confidential] only a single foreigner ever nominated a Dutchman.⁵⁰² In 1929, the

⁴⁹⁸ Even if his involvement with Eijkman's City of Peace project made him controversial in circles of Van Karnebeek's Carnegie Foundation.

⁴⁹⁹ Bespeaking their relationship is Stead's informal letter of, presumably, 1904-05: 'Dear Mr. Asser, Here I am back again. I want to see you about the Carnegie business. I am to see Dr. Kuypers [sic!] at 8 tonight. Where could I see you before or after? Telephone me. Hotel Savoy Scheveningen. Yours truly W. Stead.'

⁵⁰⁰ Bervoets 155.

⁵⁰¹ Somehow it does not strike as surprising that Asser's name does not figure in Bertha von Suttner's memoirs on the Peace Conferences. Asser could be every inch as pertinent as the Baroness herself. Even so, closer inquiry into Asser's links with pacifists may well reveal some interesting results.

⁵⁰² In 1922 the German pacifist and 1927 Nobel Laureate Ludwig Quidde [1858-1941] nominated Benjamin De Jong van Beek en Donk, [1881-1948], pacifist and co-founder of the *Nederlandsche Anti-Oorlog Raad* [1914], who initi-

Dutch law professors Costers, De Louter, Verzijl and Suijling, along with Tobias Asser's eldest son Carel Daniel nominated Bernard Loder [1849-1935]. Loder was member of the 1920 Committee of Jurists that prepared the Statute for the PCIJ, was Judge [1921-30] and first President [1921-24] of the PCIJ, *membre* of the *Institut* as of 1921 and President at its 33th session in The Hague in 1925. Again, during 1931-33, the pacifist J. Hugenholtz nominated G.J. Heering on account of his 1928 study on 'The Fall of Chistianity'.⁵⁰³ In 1932 Loder nominated Van Karnebeek Jr. for his constructive work on behalf of the League of Nations. Most intriguing perhaps was the 1951 submission by the Leiden Law Faculty on behalf of H.M. Queen Wilhelmina on account of her work for the two Hague Peace Conferences [to which the Queen had been famously opposed from day one!].

Nominations for Dutch institutions were equally rare. In 1917 Members of the Swedish Parliament nominated the *Nederlandsche Anti-Oorlogsraad*. As for International Organizations based in the Netherlands: in 1927 the PCA was nominated by Beichmann. Impressive support was found for the *Hague Academy of international Law*. It was first nominated by Lassa Oppenheim [1915-16]. During 1932-37 and 1947-51 the Nobel Committee was litterally bombarded with nominations on its behalf by scores of prominent scholars [who had taught at the Summer Courses]. To conclude this survey, among the prominent *foreign* institutions, dignitaries and scholars nominated by Dutchmen over the period 1901-1961 were Lammasch [by De Savornin Lohman, 1913-15]; the Greek Red Cross [by Josephus Jitta, 1913]; Adams and Quidde [by van der Mandere, 1925]; the Carnegie Endowment [by van Vollenhoven and van Eysinga, 1927-28]; Van Ossietsky [by Willem Drees et al., 1936] and Lord Cecil [by Dutch Members of Parliament, 1937]. Intriguing in historical perspective is Van Eysinga's nomination of Chamberlain in the aftermath of Munich, September 1938. To announce a new era, in 1955 Van Asbeck and Verzijl nominated the UNHC for Refugees.



Alfred Hermann Fried
[1864-1921].



Louis Renault
[1843-1918].



Charles Lyon-Caen
[1843-1935].

ated peace study conferences in The Hague [1915] and Bern [1917], where he lived for the last three decades of his life. De Jong made it to the shortlist the year Fridtjof Nansen became the Laureate. A relative of his, the feminist Cécile De Jong van Beek en Donk [1866-1944], authored the epoch-making social novel *Hilda van Suylenberg* [1897].

⁵⁰³ J.B.Th. Hugenholtz was priest and pacifist on the Permanent International Peace Bureau. The book by the Remonstrant pacifist theologian G.J. Heering [1879-1955], *De Zondeval van het Christendom* (1928), was an a-political apology with socialist leanings. It advocated the strictest anti-militarism in line with Early Christianity's unconditional abjuring of force as eminently preached by Tertullian, and offered a stern review of Constantine's State Church. Rendered into German, Danish, French and English, it was of great influence on the contemporary concept of conscientious objections.

XVI

THE ROYAL NETHERLANDS SOCIETY OF INTERNATIONAL LAW⁵⁰⁴

1. THE ABORTIVE ENDEAVOUR OF 1875

In 1873, the founding of the *Association for the Reform and Codification of the Law of Nations*⁵⁰⁵ had been warmly welcomed in parliament and the world of banking and commerce in the Netherlands. Asser had attended the inaugural meeting in Brussels in his capacity as founding member of the *Institut*. In 1875, when Asser received the *Institut* at its 3rd Session in The Hague, the ILA followed suit. Dudley Field himself presided over the *Association's* 3rd Conference in The Hague, and a Dutch PrepCom met to sound out the prospects of a National Branch. Next to Asser on behalf of IDI and Bredius on behalf of ILA this Committee featured such prominent figures as Beelaerts van Blokland, Gevers Duynoot, Kappeyne van de Coppello and Tak van Poortvliet. In January 1876 a brochure was issued, and in subsequent years annual reports were published in *Themis* and *The Economist*. For all its prominent backing, the idea proved premature. Within five years the Branch was extinct; indeed no recollection was left when, a full thirty years later, the idea was rekindled.⁵⁰⁶ Symptomatic of Dutch circumstance, this new initiative was taken in London. At its 26th Conference in the London Guild Hall in 1910, ILA announced its intention to initiate a 'World Congress' in the Hague in 1913 to accompany the inauguration of the Peace Palace, and on that occasion to launch an Academy of International Law.⁵⁰⁷ Welcomed by Tobias Asser, a standing board Member of ILA, and Coninck Liefsting, former President of the Netherlands Supreme Court and Honorary Vice-President of ILA, the idea was judiciously broken to legal luminaries and the world of banking and industry at home by the Barrister at Lincoln's Inn and Council of the Netherlands Chambers of Commerce in London, Mr. W. Roosegaarde Bisschop.⁵⁰⁸ In a brochure co-signed by the eight Dutch standing members of ILA⁵⁰⁹ a formative meeting was arranged in *Odeon*, Singel 460 Amsterdam, for Monday, 28 November 1910.

2. THE RELAUNCH IN 1910

That night, Roosegaarde Bisschop, in a heart-warming *Plea For Internationalism* to an audience of sixty, fervently advocated ILA ideology as an eminent podium for practical men of commerce, 'the *creators* of international relations,' to exchange views with lawyers, 'the *formalizers* of these relations.'⁵¹⁰ Enlarging on the successes of international organization with respect to trade and

⁵⁰⁴ For a concise history of the NIVR [1910-2010], see Eyffinger in NILR LVII [2010], at 143-66.

⁵⁰⁵ Renamed *International Law Association* [ILA] in 1895; see above Chapter IV.1.

⁵⁰⁶ At the formative meeting in 1910 a historian recalled these early stages. See *Mededelingen* No. 1, at 25-27.

⁵⁰⁷ On this latter project we will elaborate below. See *Oprichtings-circulaire* NVIR, October 1910, in *Mededelingen* No. 1, at 8-9.

⁵⁰⁸ Mr. W. Roosegaarde Bisschop was an Anglo-Dutch lawyer, barrister at Lincoln's Inn, and Council to the Dutch delegation in London.

⁵⁰⁹ Asser's name was not included in this list which, apart from Josephus Jitta en Roosegaarde Bisschop, consisted of Mr. J. Levij, J. Ter Meulen Jr, Mr. J. Cohen Stuart, Mr. A. Baron van Haersolte, Mr. H. Schwartz and Mr. G. Jellinghaus. Stuart and Ter Meulen were tried and trusted friends of Asser's.

⁵¹⁰ In an address 'Het pleit van het Internationalisme', in *Mededelingen* No. 1, at 12-21. Quote at 13.

commerce from the Mannheim Rhine Act [1868] to the Bern Railway Convention [1890], he summoned ‘Grotius’ Country’ to resume ‘its historic call’. He explicitly referred to Cornelis van Vollenhoven’s famous plea that the somnolent, self-satisfied Dutch Nation should finally drop its lethargy, recall its glorious past, and resume its leadership in guiding the nations towards global organization.⁵¹¹ The ILA, chaired by the celebrated Edouard Clunet, founder of the *Journal du droit international* (1874) and then President of the *Institut*, offered the Netherlands a unique opportunity to drop introspection and ‘think internationally’. ‘When at last’, speaker mused, ‘will Asser’s spirit prevail among the Dutch?’



Daniël Josephus Jitta [1854-1925], private international lawyer and first Chairman of the NVIR [1910-1924]. Oil canvas from 1913 by Jan Veth [1864-1925].



Bernard Loder [1849-1935], *membre* of the *Institut*, Judge [1921-1930] and first President [1921-1924] of the PCIJ, and Chairman of the NVIR [1925-1935].

Bisschop recalled how, twenty years earlier, Asser had broken ground in the domain of private international law. Holland should instill upon the world that attributing the Peace Palace to The Hague had *not* been a matter of accident. A Dutch Branch of ILA should summon a World Conference and help launch a World Academy, for young lawyers, diplomats, economists and pacifists to be initiated in internationalism. The Branch should spread the word of the Third Peace Conference, scheduled for 1915 – not, as did the official Dutch PrepCom, *à huis clos*, but by turning the idea into a national campaign, a *levée en masse* for the law!⁵¹²

Asser will have listened amused, if with keen interest, to the all too ambitious programme of legislation Bisschop anticipated: a uniform law of exchange and cheques; a uniform law of patents and trademarks; a uniform maritime law; uniform rules of legal procedure; uniform laws of marriage, dowry, divorce and separation; unification of the laws on transport of goods, and international legislation ranging from slave trade to railways to sub-marine cables to the rights of neutrals. These aspirations were only matched by those in the sphere of international adjudication and organization: the establishment of an International Prize Court; the creation of a Permanent Court for private international law; the expansion of the jurisdiction of the PCA to include matters of

⁵¹¹ *Ibid.*, at 19. Cornelis van Vollenhoven (1874-1933), Leiden professor of Indonesian *adat* law and expert on International Law, in numerous publications advocated a rebirth of the Grotian Tradition in the Netherlands, pointing out the nation’s missionary role in the world.

⁵¹² *Ibid.*, at 19-21. See also Bervoets 333.

national honour; and an ‘International Academy’ to monitor harmony and continuity in the awards of the PCA. Paramount premise, Bisschop entreated his overwhelmed audience, was the breakthrough towards global thinking.⁵¹³ The moment was drawing near for the Peace Conferences to be institutionalized into a permanent body of State representatives that met periodically, was served by an international registry, and constituted a ‘World Assembly’.⁵¹⁴ That night the [now Royal] Netherlands Society of International Law [NVIR] was founded, as a national branch of ILA, backed by Asser, Loder⁵¹⁵ and the burgomasters of Rotterdam and The Hague. For its first fifteen years [1910-1925] the *Association* was presided over, and very inspiringly so, by Josephus Jitta. Asser was elected Honorary President.

3. ASSER’S INVOLVEMENT

On 15 April 1911, in an address to the Annual Assembly in familiar surroundings, viz. the auditorium of Amsterdam University, Asser proudly elaborated on the successes of his 1910 Conference on International Bills of Exchange. In token of his endorsement of the NVIR, he donated Dfl. 300 from his Nobel Peace Prize.⁵¹⁶ The first ever ‘Pre-Advies’ discussed within the NVIR was Jitta’s draft on the accession of Non-European States, and notably the Anglo-Saxon world, to Asser’s Hague Conventions. It was another gesture of *rapprochement* on Jitta’s part, coinciding with his involvement in the Conferences on Bills of Exchange.

Asser’s last bow within the NVIR, at its Third Annual Meeting [1912] was, almost symbolically, reserved for the Amsterdam *Exchange*. In this assembly Asser expressed ‘his wish that the *Society* would do honour to its country by co-operating closely with ILA.’⁵¹⁷ Asser had more to get off his chest. He made a fervent plea for the reintroduction of the principle of dual nationality in the Netherlands. First introduced in 1850 the concept had been ‘most unhappily’ dropped in 1892. Intriguingly, he advocated domicile as criterion in conflicts of private international law.⁵¹⁸ Still, most impressive for intimates were the warm personal words he addressed to Josephus Jitta, whom he called his brother in arms and successor in propagating the codification of private international law.⁵¹⁹ Asser must have anticipated that this was his last stand. Elegantly reciprocating the compliment, Jitta drew an overview of the reputation of the Netherlands in the field and generously paid all due respects to Asser. He implored his audience to count its blessings and treasure Asser’s legacy, as Brussels and Bern were keen competitors to *L’Oeuvre de La Haye*. As if to crown this historic encounter, that night it was agreed to archive Dutch law practice.⁵²⁰ Four years later, the publication of Jitta’s manual on private international law concluded an era.

Prospects for the *Society* looked bright in 1912. In 1911 Asser helped launch and chaired the Prepcom for the Third Hague Peace Conference, scheduled for 1915.⁵²¹ Jitta proudly announced that the Peace Palace would be equipped with a first ever Library on International Law as well as – and he bowed to Asser: ‘thanks to the man sitting left to me’ – an International Academy.

⁵¹³ *Mededelingen* No.1, at 15-16.

⁵¹⁴ *Ibid.*, at 18.

⁵¹⁵ Bernard Loder (1849-1935), Dutch lawyer and internationalist of great integrity; co-founder with Asser of the *Comité Maritime International* (1897) in Antwerp, delegate to the 1920 League Council and first President of the PCIJ in The Hague. He succeeded Jitta as NVIR President.

⁵¹⁶ Annual Report 1910-1911, in *Mededelingen* No. 5, at 10.

⁵¹⁷ *Mededelingen* No. 4 at 17.

⁵¹⁸ *Ibid.*, at 22-25.

⁵¹⁹ *Ibid.*, at 22.

⁵²⁰ *Ibid.*, at 25-26.

⁵²¹ Van der Mandere 1946, at 192.

As Jitta intimated, the NVIR would have been only too glad to instigate this institution, but had simply been too late. But then, it would keenly profit from it or, as he put it: *'non nos, sed nobis – if my Latin is not too rusty.'* A festive dinner at *Bracks Doelen Hotel* concluded this session. Within two years, with Asser gone and the Guns of August roaring, the 29th ILA Conference, scheduled for 7-12 September 1914 in the Peace Palace and to be chaired by Jitta, had to be cancelled. Thirty-two reports had been submitted, by Molengraaff and van Eysinga among others, and a social programme planned. During the war years NVIR memberships were cancelled by the dozen. The Dutch Branch seemed once more heading for failure.

In 1915, a National Committee was launched headed by Van Karnebeek, to raise a monument for Asser. It commissioned sculptor Prof. A.W.M. Odé of Delft to mould a bronze statue, to be unveiled in the Peace Palace once peace was restored.⁵²² In November 1915 the Committee and the Asser family approved of the clay model to be cast in bronze. The 'slightly larger than life-size' statue of Asser seated on a low pedestal was generally deemed 'nice and dignified, with a good resemblance.' On April 8, 1916, with war raging on, the statue was 'provisionally' unveiled at Amsterdam University, where Asser had 'provisionally' developed his ideas for the *Conférences de La Haye*.⁵²³ The statue was transferred to the Peace Palace in 1919 and unveiled on 30 August 1921.⁵²⁴

The previous year, at its meeting of 18 March 1918 and impressed by Louis Renault's sudden demise in his beloved Barbizon on 18 February, the Board also tossed with the idea of initiating a similar statue in honour of Asser's great friend and collaborator, who had provisionally been elected President of the Academy-to-be.⁵²⁵ Fifteen years later, on 5 August 1932, Louis Renault's statue, initiated by friends and admirers, was unveiled by his great friend Charles Lyon-Caen, the then President of the Curatorium of the Academy. On that occasion Asser's statue was brought up from the *rez de chaussée* to the *bel-étage*⁵²⁶ to make a pair with Renault. For 80 years now, and also thanks to the NVIR, the life-time co-militants Tobias Asser and Louis Renault have posed as guardian angels on either side of the entrance door to the 'Japanese' Assembly Room of the PCA.⁵²⁷

There is more in the Peace Palace to remind us of the early aspirations of ILA and NVIR. In 1912 the Netherlands Association of Commerce and Industry⁵²⁸ voted a pair of stained-glass windows to serve the waiting-rooms of parties in the front hall of the Palace. Legends recall the days of Pierson and Van der Mandere and all those other captains of industry that played such a prominent part in the NVIR. More impressive still are Robert Douglas Strachan's huge stained-glass windows that grace the Great Hall of Justice.⁵²⁹ The national gift of the UK they picture world history in four successive panels that air the atmosphere of the early days of ILA and NVIR, when bankers and industrialists, lawyers and diplomats as a matter of course marched hand in hand for the benefit of mankind. Asser's bright eyes must have sparkled.

⁵²² *Mededelingen* No. 4, at 15.

⁵²³ *Mededelingen* No. 8, at 11.

⁵²⁴ See W.A. Rutgers, in RDILC 52 [1921], at 492; Ch. Benoît, *Inauguration* 1921; Lysen 1934, at 112.

⁵²⁵ In the end, it was decided to reconsider the issue in the Post-War Era.

⁵²⁶ See picture in Lysen 1934, opposite 144.

⁵²⁷ NVIR *Mededelingen* No. 12, at 4-5. *Revue de droit international* 1932, at 395.

⁵²⁸ *De Maatschappij voor Handel and Nijverheid*.

⁵²⁹ Douglas Strachan [1875-1950] was possibly the most significant Scottish designer of stained glass windows in the 20th Century. His largest commission were the windows for the Scottish National War Memorial in Edinburgh Castle. On his work for the Peace Palace, see Eyffinger 1988, at 159.

XVII

THE HAGUE ACADEMY OF INTERNATIONAL LAW⁵³⁰

1. THE LONG PEDIGREE OF THE IDEA

The last great dream Asser harboured concerned the ‘Hague Academy’. How dearly would he, being the inspired teacher and gifted speaker he was, have resumed in The Hague, if only for a ‘Summer Holiday’, his labour of love of twenty years in Amsterdam, cut short so brusquely in 1893 by his obliging officialdom. How many scores of students from all over the world would have profited from the privilege that destiny meant to keep reserved for his one-day pupils at the *Athenaeum Illustre*. Asser made a gesture of personal commitment by donating to the Academy half of the money that came with his Nobel Peace Prize. This gesture drew massive media attention to the Academy and substantially enhanced the project’s feasibility.

The concept of an Academy of International Law had a long pedigree. Over the centuries, internationalists had tossed with the idea. This tradition was rekindled by the *Institut* in 1873.⁵³¹ At about 1900 the Academy-idea was ‘in the air’. Quite a range of ‘Academies’ in different disciplines had been projected for Eijkman’s City of Peace at Waalsdorp. Still, the genesis of the specific concept and rationale from which grew the Hague Academy as we know it today, is relatively short. In 1898, Carl Ludwig von Bar, the same whose systematization of the domain of private international law had made such an imprint on Tobias Asser back in 1862, first launched the idea to found an ‘International Academy’ in The Hague. What he had in mind was a consultative body of eminent scholars ready at hand to render mediatory and conciliatory services to the nations. It much resembled Bluntschli’s idea for a research centre from 1873. Von Bar’s concept was recast by Otfried Nippold of Bern who envisaged an Academy in The Hague as a permanent study centre annex ‘nursery’ for young scholars and diplomats. The Centre would focus on developing a comprehensive code of international law and be the PCA’s natural complement, linking theory to practice. Both Bar’s and Nippold’s propositions were conceived with the PCA in mind.

Nippold first expounded his concept in the *Deutsche Revue* of April 1907, on the eve of the Peace Conference. The editor of the magazine sent a copy to Count De Nelidov, the Russian President of the Conference. De Nelidov expressed himself much taken by the idea. On 20 July he submitted the ‘highly interesting suggestion’ to the Third Plenary. In the florid language of the period, he compared the Academy to Hippocrates’ classical *Asclepion* in Kos for the medical sciences. Availing himself of Carnegie’s presence in The Hague, he even went so far as to encourage private fund-raising initiatives. Within a fortnight, De Nelidov received a letter from the Romanian First-Minister Dimitru Sturdza [1833-1914].⁵³² Sturdza proposed to merge the aspirations of 1899 and 1907, to wit, international arbitration and adjudication, into a research Academy. Enclosed were Statutes which provided for a seat in The Hague and the election by the Hague

⁵³⁰ On the genesis of the Hague Academy, see *Académie de droit international de La Haye; Livre jubilaire 1923-1973*, ed. R.J. Dupuy; Eyffinger 1988, at 165-69.

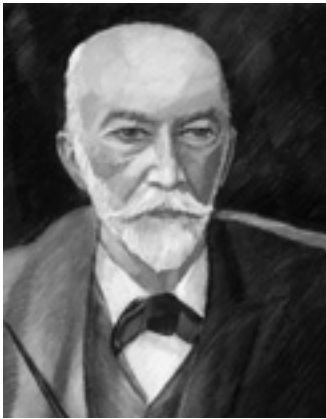
⁵³¹ Caspar Bluntschli’s first draft of March 1873 spoke of an ‘Academy of International Law’. What Bluntschli had in mind, presumably, was a permanent research centre.

⁵³² The liberal Sturdza was four times Prime-Minister during 1895-1909.

Peace Conference of ten members for a stipulated period. Courses were to proceed annually from May to July in French, English, German and Italian. Costs of housing and organization were to be borne by the attending nations and attributed to a fund to be administered by the Administrative Council of the PCA. The Academy was to open its doors in 1908, cover the private and public law domains and the world of diplomacy, and welcome young diplomats, scholars, military men and officials of the sponsoring nations proportional to their governments' contributions. On 7 September this proposition was submitted to the Plenary. The Conference acclaimed the idea 'in principle', yet considered its implementation premature and, as things go, suggested further elaboration:

[O]nce the peacemaking institutions which the Conference was bound to create were sufficiently rooted to warrant the necessary continuity in the field of international law and a legal practice had been established which called for codifying.⁵³³

From there, predictably,⁵³⁴ the project lost momentum.



Dimitrie Sturdza [1833-1914], Romanian Statesman and four times Prime-Minister; co-initiator of The Hague Academy of International Law in 1907.



Elihu Root [1845-1937], American lawyer and politician, U.S. Secretary of State [1905-09], Nobel Peace Prize laureate [1912] and first President of the Carnegie Endowment.



James Brown Scott [1866-1943], American international lawyer, editor-in-chief of the *American Journal of international Law* [f. 1906] and Secretary of the Carnegie Endowment.

2. WILLIAM STEAD'S INTERFERENCE

By now, William Stead had got wind of the idea. On 13 September, the news was duly reported in the *Courier*, amply discussed at the *Cercle* and, predictably, capitalized by Eijkman and Horrix who had already envisioned Social, Medical and Physical Academies in their World Capital Project. They smartly redrafted their project to incorporate an international university of legal and political sciences. Early in 1910, after thirty months [!] of stagnation in the official sphere, Eijkman dispatched a flyer to the standard-bearers of internationalism to advocate his Academy,

⁵³³ Eyffinger 2007, at 150-54.

⁵³⁴ In 1902, in a letter to Asser, Martens had expertly advised his friend never to rely on the Administrative Council of the PCA to achieve any such thing. These diplomatic bodies served different purposes altogether.

which met with general acclaim. Nippold elaborated a new scheme for two-year courses by ten scholars of international standing. In Cambridge Lassa Oppenheim enlarged on the idea, on the Continent Barclay, Fiore, Huber and Von Bar all showed themselves charmed with the ambitious project. From the US, Elihu Root expressed consent. Léon Bourgeois proposed to have the project reviewed by the *Institut*. In August 1910, in London, ILA adopted a Resolution in support, reaffirmed in Paris in 1912.⁵³⁵ In 1911, the Amsterdam architect Scheltema drew up plans for the Academy building. All this is to show the reach of Eijkman's centre well after the 1907 Conference. Only on account of the negative verdict by the Hague Appeals Court of 9 January 1911 in Eijkman's lawsuit with Van Karnebeek's Carnegie Foundation, the World Capital project *Centre* lost its impetus.

3. ASSER'S LAST DREAM

By that time the idea had been embraced by Asser himself.⁵³⁶ In 1910 he launched a national PrepCom, assembling the *fine fleur* from the spheres of politics, diplomacy and international law in an impressive thinktank, featuring Van Karnebeek, De Beaufort and Cort van der Linden next to Loder, Van Vollenhoven, Meyers, Van Eysinga, De Louter and Molengraaff. On 2 December 1910, Van Karnebeek, not altogether unselfishly one may add, addressed Parliament to plead support. Asser did not stop there. In January 1911, in order to secure international backing *and* funding, he contacted Elihu Root, Joseph Choate and James Brown Scott, Carnegie's hand-picked Board Members of the recently established *Endowment for International Peace*. Against this backdrop, Asser's voting half his Nobel prize money [Dfl. 15.000]⁵³⁷ to the Academy project reads if anything as an attempt to pump up pressure. In appreciation of Asser's gesture, a well-off Dutch pacifist, the industrialist Mr. Adriaan Goekoop,⁵³⁸ stepped in to double the gift.

It took Asser a full two years and scores of meetings with the inspired but very critical James Brown Scott [1866-1943]⁵³⁹ to settle the issue. Of Scott it was said at the opening of the Academy in 1923 that to advance peace he would sooner cross the Ocean than another man drive from Paris to Versailles. Scott, however, was adamant on the strictest organization and the highest standards of scholarship. To that end he suggested that the initiators should call in the help of the *Institut*. On 8 April 1911, on the eve of the Madrid session of the IDI, Westlake sent Asser word to that extent. Particularly touching are the personal memories in this correspondence between these two men who felt their strength ebbing away:

My dear Asser,

On the eve of my [setting out] for Madrid, I must express to you my great regret that I shall not meet you there, and for the want of health, or at least of strength, which I fear is the cause of your not undertaking the journey, and the fatigue of the Session. Our meetings now are full, to me, of those to whom so much of the charm and usefulness of the early years of the Institute were owing, but still I can number you among those whose approval, though absent, I always seek in imagination to meet – and I trust that long may it be so! Your kind[est] lines to me, in appreciation of my article in the *Revue*, meant a very great deal to me.

⁵³⁵ At its 26th and 27th Sessions, respectively.

⁵³⁶ Van der Mandere 1946, at 195-96; Voskuil 1973, at 29-30.

⁵³⁷ Asser's Prize money, therefore, will have amounted to the equivalent of Dfl. 30.000 approximately. Currently the dotation is one million US Dollars.

⁵³⁸ Around the turn of the century, Adriaan Goekoop [1859-1914] developed exclusive residential neighbourhoods for the rapidly expanding Hague population, such as in the 'Zorgvliet' and 'Statenkwartier' areas.

⁵³⁹ James Brown Scott was the founder of the *American Journal of International Law* [1906]. Scott attended the 1907 Peace Conference as legal expert. He was a great admirer of the 16th C. Spanish law school.

I do not know who will take up, in Madrid, the erection of an International Academy, which I understand from Bisschop you were to bring before the Institute. If it is taken up by any one, I will support it, but I do not feel that I can put myself in any prominent place in the Movement, because that would commit me to labouring to its elaboration and its success. I can still work as in old times, as I am doing in order to secure the ratification of the Prize Court Convention and the Declaration of London, but I cannot undertake a 'labour' in any new undertaking.

My wife will accompany me to Spain, and begs me to remember her most kindly to you. We hope, after the Session, to see Leon and Salamanca, which we had to omit on our previous visit to Spain, but intend to be home again early in May. Ever yours most truly, J. Westlake.⁵⁴⁰

Two schemes were developed. The first provided for a University proper, the second for annual summer courses of a more general nature, to amplify the reach of international law.⁵⁴¹ In a Memorandum of October 1911 Asser opted for the second option, which the Carnegie Endowment backed up by funding in December. At its 25th Session in Kristiania [1912] the IDI appointed a consultative committee, including Asser, which applied to governments and university centres for support of the scheme. In line with prior assent by the ILA and at the recommendation of Louis Renault the *Institut*, in August 1913, at its 26th Session in Oxford, lent its formal consent to the Draft.⁵⁴² On that occasion Asser was supposed to be elected Honorary President of the IDI. It was not to be. Tobias Asser lived for a full three quarters of a century to miss the opening of the Peace Palace and the approval of his Academy Project by his beloved *Institut* by a hairbreadth: less than a month. Van Vollenhoven recalled once hearing a representative of the Carnegie Endowment avow to Asser: 'If for the Academy of International Law we place our confidence in the Netherlands, this is due to you, Mr. Asser.'⁵⁴³

The Foundation Deed was passed on 28 January 1914. In February 1914, Tobias Asser's heirs and assigns and Dr. Goekoop each transferred Dfl. 15.000, the Academy's starting capital. An annual sum of US\$ 40.000 was voted by the *Carnegie Endowment*.⁵⁴⁴ In February the Academy Curatorium first met in Paris. It elected Louis Renault as its first President and set the official opening for 1 October 1914, with courses scheduled to start in the Summer of 1915. Mid-August 1914 the Dutch Foreign Minister sadly announced the postponement of the opening of the Academy and of the Third Hague Peace Conference. Asser's dream finally came true in 1923, when the Hague Academy proudly opened its doors to a new generation of eager students, from there rapidly to mature into what is considered by many the most durable success of the Hague Formula.

⁵⁴⁰ Bervoets 60.

⁵⁴¹ Van der Mandere 1946, at 195.

⁵⁴² *Annuaire* XXVI [1913], at 690-91.

⁵⁴³ Van Vollenhoven 1934 I, at 341.

⁵⁴⁴ Lysen 1934, at 146.



Poster announcing expositions to celebrate the ceremonial opening of the Peace Palace in 1913.

XVIII

THE END

1. FAREWELL TO OLD FRIENDSHIPS

Slowly but surely, a long and busy life was drawing to its close. In 1902, at the request of the Rolin family, Asser had spoken heartfelt words of comfort at the funeral of Auguste Rolin-Jacquemyns.⁵⁴⁵ He had not seen Rolin since the latter's rush departure for Bangkok in 1896. At the time, they had not even found a spare moment to say farewell. In August 1896 Rolin sent a touching letter to the *membres* assembled in Venice, in which he stated:

Un jour viendra peut-être où je pourrai, libre de toute entrave officielle, venir défendre, au sein de l'Institut, la cause de cette intéressante civilisation asiatique, si peu connue, bien qu'elle soit le berceau de la nôtre. Si je le faisais aujourd'hui, je serais accusé, peut-être à juste titre, de vouloir entraîner l'Institut dans la mêlée de la politique, alors que son mérite et sa gloire sont de rester dans les régions sereines du droit.⁵⁴⁶

Upon Rolin's return, Asser had been keen to meet his dear friend. He had waited too long, as he avowed in his obituary of 31 January 1902:

Je rédige ces pages le jour même où j'avais espéré pouvoir, pour la première fois après beaucoup d'années, faire parvenir à ce confrère bien-aimé, dans sa patrie et au milieu de sa famille, mes souhaits à l'occasion de l'anniversaire de sa naissance. Mais au lieu de lui écrire, je ne puis, hélas! que rendre un sincère et mélancolique hommage à sa mémoire. La grandeur d'âme, la loyauté à toute épreuve, l'absence de tout sentiment mesquin de vanité ou de jalousie, le dévouement sans bornes à la cause qu'il servait et aux personnes qui lui étaient chères, toutes ces qualités qui distinguaient notre ami Rolin-Jacquemyns nous feront toujours garder de lui dans nos coeurs un doux et pieux souvenir.⁵⁴⁷

They all had been struck at the news of Gustave's demise.⁵⁴⁸ At the funeral Descamps, Asser and Westlake had all given speeches.⁵⁴⁹ On this occasion Asser had opened with those famous words: 'C'était en 1862. Dans le domaine de la politique comme dans celui de l'économie sociale, le libéralisme avait triomphé.' Already in the IDI Jubilee Session in The Hague in 1898, he had expressed these feelings:

Je n'oublierai jamais l'accueil franchement cordial que je reçus au sein de cette charmante famille, chez laquelle j'entraî presque en inconnu. Au centre de la ville flamande, pleine de souvenirs historiques, je me vis logé dans cet hôtel de la Place Van Artevelde, séjour à la fois élégant et confortable, abritant, au milieu d'un luxe de bon goût, la plus délicieuse idylle, deux jeunes époux avec un gentil enfant de huit mois. On a dit, dans un discours admirable, que Gustave Rolin et sa noble compagne n'avaient à deux qu'un seul coeur. J'ai été, près de quarante ans, le témoin de ce bonheur conjugal, qui donnait à notre ami la force de résister aux épreuves de sa vie souvent agitée et de conserver en toute circonstance la sérénité d'âme nécessaire aux grands travailleurs...⁵⁵⁰

⁵⁴⁵ Bervoet 154, on Asser's intense contacts with the Rolin family in January-February 1902.

⁵⁴⁶ *Annuaire* XV [1896], at 315-17.

⁵⁴⁷ *Annuaire* XIX [1902], at 411.

⁵⁴⁸ Bervoets 154.

⁵⁴⁹ *Annuaire* XIX [1902], at 391-417.

⁵⁵⁰ *Ibid.*, at 402-03.

Are we right to hear in these words the tinge of the sad trial Asser himself had experienced in his marriage, opened under the same high auspices and prospects, with a wife as charming, as dear as Gustave's Emilie? On 20 September 1902, when the IDI assembled in Brussels, the *membres* gravitated to the cemetery in Laeken to put a wreath on the tomb of their beloved colleague. Asser rendered an 'hommage ému'. In 1909 Asser lost another brother in arms in Feodor Martens. That Christmas his dear friend Pierson died. John Westlake's letter of April 1911 had already reminded him that their generation was on its way out. On 18 April 1913 another blow hit him. The end had come to a full fifty years of yet another remarkable friendship:

Chère Madame Westlake,

J'apprends à l'instant même par un journal hollandais (étant malade et retenue chez moi; depuis plusieurs mois je ne lis pas les journaux étrangères) la triste nouvelle du décès de mon excellent ami, votre cher époux, que j'ai tant aimé et que j'ai vénéré comme un des juristes les plus érudits et les plus consciencieux de notre temps. C'était un de ces hommes rares qui recherchent la vérité sans arrière-pensée et qui cultivent la science pour en faire profiter le genre humain. Votre mari a aussi eu le grand mérite de rendre ses collègues anglais plus acceptable aux idées des juristes du Continent. Permettez-moi d'ajouter, que parmi les plus beaux souvenirs de ma vie je compte toujours la semaine que nous avons passée ensemble en 1863 chez les Rolin, ainsi que les intéressantes et agréables journées que j'ai passées à Cambridge et à Londres en 1895 grâce à votre bonne hospitalité.

Veillez, chère Madame, agréer l'expression de ma bien sincère amitié et me croire toujours votre bien dévoué T.M.C. Asser.⁵⁵¹

On 10 May Alice Westlake wrote him back:

Cher Monsieur Asser,

Je vous demande bien pardon de n'avoir pu plus tôt vous remercier de votre bonne lettre avec l'appréciation si vraie de mon cher mari. Vos avez été tous deux des amis de si longue date, si frères en travaux et en les objets de vos travaux, que vous pouvez mieux que tout autre apprécier à leur propre valeur les travaux de mon mari, 'cherchant', comme vous dites si bien, 'la vérité sans arrière-pensée' et 'cultivant la science pour en profiter le genre humain'.

J'ai vécu dans la communion la plus parfaite avec lui pendant presque 50 années et je sais comment vos paroles sont vraies. Et maintenant je suis seule et l'isolation est terrible. Mais il est mort comme il voulait finir sa vie, travaillant jusqu'à la fin, sans souffrance, s'éteignant doucement sans le souvenir pour ses amis d'une longue maladie. Quel trio d'amis vous étiez! M. Rolin-Jaequemyns, vous et mon mari! Et quels travaux vous avez initiés et portés à bonne fin! Le monde entier est plus riche pour vos services.

Je suis très touchée de la sympathie de Madame Asser que je remercie beaucoup pour ses bonnes paroles [...] Mon mari avait tant d'affection et de respect pour vous, que votre lettre m'a fait plus de bien que presque toutes les autres. Croyez-moi, cher Monsieur, toujours votre dévouée Alice Westlake.⁵⁵²

2. HONOURS UNTIL THE VERY END

In Spring 1911 Asser felt uncommonly tired. With time he got over it, but acquiesced in acknowledging that the 1915 Peace Conference came too late for him.⁵⁵³ Even so, he did not give in yet, not quite. As Van Vollenhoven recalled, Asser had never really aspired the life of the aesthetic. He had always preferred work to leisure. His mind had always started operating the moment he

⁵⁵¹ Bervoets 60. For Westlake's obituaries by T.E. Holland and Albéric Rolin, see *Annuaire XXVI* [1913], at 699-712.

⁵⁵² Bervoets 60.

⁵⁵³ Van Vollenhoven 1934 I, at 329.



Three members of the Dutch Standing Committee on International Law leaving the grounds of the Peace Palace. From left to right: Prof. H.L. van Oordt [1857-1935], Prof. C. van Vollenhoven [1874-1933], and Prof. W. J.M. van Eysinga [1878-1961].

opened his eyes and he had never spared himself. He felt most at home in his study, where he could find his way blindfolded in the midst of piled up towers of papers, thanks to his wondrous memory and rigid methodology. Now, at last, life was catching up on him. In September 1911 Asser spoke out in the strongest terms in favour of women's suffrage.⁵⁵⁴ Yet, ever so slowly his health was failing him, an aggressive illness progressively eroding his strength. Friends noticed that his colour was ebbing away, that he was losing interest in world affairs. As of Spring 1912 his health went down rapidly. Shortness of breath, coughing, and incapacity to work for more than a few hours were nagging at him. Even now, new honours came his way. Mid-June 1912, the *Friedrich-Wilhelm Universität* in Berlin offered him the honorary doctorate.⁵⁵⁵ 'Ever more honours! Ever more deserved!' Van Karnebeek wrote.

In January 1913, in the midst of a meeting of the Council of State, Asser was overcome by a faint, but regained consciousness. He never returned to the Council: henceforth, he worked from home, keeping in touch by writ, his mental brilliance unaffected till the very last. He cancelled most commitments, among these the membership of the PrepCom for the Third Hague Peace Conference.⁵⁵⁶ On 22 February, De Beaufort sent him word that the Commission urged him to reconsider and await another personal interview. For his colleagues it was not less hard to let go.⁵⁵⁷ Presumably, not even those nearest to him fully appreciated the seriousness of his illness.

⁵⁵⁴ Bervoets 394.

⁵⁵⁵ *Ibid.*, 397.

⁵⁵⁶ De Beaufort, *Dagboeken I*, at 145ff.

⁵⁵⁷ Bervoets 407.

To be sure, no one anticipated his demise that year.⁵⁵⁸ Probably the last paper Asser produced was written for the 1913 Annual Conference of the Dutch Peace Society *Vrede door Recht*. On 19 July W.R. Hora Adema, a member of *Vrede door Recht*, sent him a series of poems in recognition.⁵⁵⁹ Mid-June Asser cancelled his lecture at the meeting of the *Association Internationale Littéraire et Artistique*, sending instead a copy of the paper he had given at the Society's meeting thirty years earlier, on the occasion of the 1883 Amsterdam World Fair.⁵⁶⁰

Then, on 10 July 1913, less than three weeks before his demise, he received a formal letter from Leiden University informing him that it had pleased its Senate, in its meeting of 18 June previously [!], to offer a honorary doctorate in the Faculty of Political Sciences to Alfred Fried, Louis Renault, Elihu Root and himself.⁵⁶¹ The idea was occasioned by the forthcoming Opening of the Peace Palace. Already on 23 June Van Eysinga, who had instigated the idea, had sent Asser word to the same extent, adding in a note of embarrassment that he had proposed 29 August for the ceremony, the day after the official Opening of the Peace Palace. However, that day being within the Academic Summer break, the Senate had argued against the idea. Instead, it had 'provisionally' proposed 17 September. Van Eysinga fully acknowledged the anomaly of requiring Root [USA], Fried [Austria] and Renault [France] to travel back and forth to Holland twice within a single month. Again, he was well aware that, due to his frail health, Asser's was in no position to pledge himself for September.⁵⁶²

3. DEMISE AND FUNERAL

Mid-July Tobias moved for a fortnight to Scheveningen for a Spa, as often those last months. Had he visited the Kurhaus, he could have seen a young genius of twenty-one excelling at the international chess tournament: Alexander Alechine, a rising star then, whose dazzling career was checked, be this only temporarily, in 1935 by another bright representative of the Jewish community in the Netherlands, Max Euwe. On Monday 28 July, on his doctor's advice, Asser returned home. Tuesday morning he succumbed to a faint. This time he did not come around. He passed away peacefully at 13.00 hours. That day, at the Foreign Ministry, the diplomatic exams commenced without Asser supervising, for the first time in decades.

The fully unexpected news of his demise caused consternation all around and plunged the nation in deep mourning. Asser had looked frail of late, but never had one thought. . . Asser's death was very much a public affair. The Government received condolences from the Belgian, German and Hungarian envoys. On behalf of Poincaré, Ambassador Pellet sent condolences to the family. Renault sent a telegram from Paris. The state funeral took place on Saturday 2 August. At noon, the escort left the Bankplein, the hearse flanked by the chamberlain and messengers of the Council of State who served as pallbearers. State coaches carried the representatives of Queen

⁵⁵⁸ On 16 June 1913, Van Karnebeek, as the most normal thing in the world, called in Asser's help ['Amice'] for Scott's address and the name of the President of the *Carnegie Endowment* [Elihu Root]. By 20 June he had received reply from Asser and submitted further requests concerning the *Endowment* with a view to the opening ceremony of the Peace Palace on 28 August.

⁵⁵⁹ Bervoets 334. On 26 June Asser received a complimentary poem from A. Boelens; the incipit reads 'Neerland eert zijn groote Zonen, heeft U veelmaal dank gewijd.'; Bervoets 51.

⁵⁶⁰ In 1883, Asser had chaired the Committee for International Conferences. Van der Mandere 1946, at 175.

⁵⁶¹ Bervoets 405. In picking the Nobel laureates of 1907 [Renault], 1911 [Asser and Fried] and 1912 [Root], the Leiden Senate definitely could not go wrong. Again, in selecting the pacifist Fried, the legal luminaries in the private [Asser] and public [Renault] fields, and the politician Root it neatly covered the whole field of internationalism.

⁵⁶² On 8 July Van Eysinga wrote to Asser that the Leiden Senate had recanted. On 27 August, the day before the opening of the Peace Palace, Van Eysinga himself handed out the doctorate to Fried, Renault and Elihu Root. See *Vrede door Recht* 1913, at 254-55.

and Prince-Consort. Followed the deeply afflicted Jeanne and her bereaved children and, two by two, Foreign Minister Marees van Swinderen and Vice-President of the Council of State, Röell; Van Karnebeek and De Beaufort; Loeff [former Minister of Justice] and, on behalf of the *Institut*, Albéric Rolin, the newly appointed Head Librarian of the Peace Palace; Van Eeghen and Hubrecht, on behalf of the Amsterdam Chamber of Commerce.

Passing through Javastraat, then turning right towards the Oude Scheveningsweg, the procession passed the Peace Palace.⁵⁶³ That Spring, no one at the Ministry had anticipated the dramatic impact of the last minute decision to postpone the opening of Carnegie's Temple, scheduled for June, towards 28 August: Moses, it was murmured now, was not to see the Promised Land of Peace. On it went, along Laan van Meerdervoort, Valkenboschlaan and Loosduinscheweg towards *Oud Eijk en Duinen*, the quiet, time-honoured cemetery, where Count William II of Holland, founder of the Knights Hall, had built himself a chapel in memory of his father, back in 1247. Here the envoys of UK and USA, of Russia and Austria-Hungary, of France and the German *Reich*, of Belgium and Romania joined the funeral escort. Scores of prominent persons paid their last tribute: Mr. Vissering, President of the *Nederlandsche Bank* next to Dr. Treub of Amsterdam University; Asser's friend Mr. Stuart and his pupil Dr. Leyds; the Peace Movement next to Jellinghaus and Termeulen, secretary and treasurer of the NVIR.

Marees van Swinderen recalled the legal brilliance of the great world citizen, reincarnation of his country's proud tradition of international law, whose words carried authority around the globe and 'for whose cosmopolitan mind this country was too small.' Inspiring and endearing by his captivating personality, brimming with lively wit, Asser had been a keen judge of human nature, 'eminent friend and learned guide of our nation.' 'In him, today, we bury a tiny piece of Holland.' To his sons he left 'the treasure of his name, that will be honoured forever.' 'We will not forget,' the Minister pledged himself. Rolin put a wreath on the grave, on behalf of the *Institut*, and spoke warm words, calling Asser's works 'carved from the purest marble.' Asser's eldest son, Carel Daniel, spoke words of recognition to Royal House and Government. On 4 August, the Hague Municipality named an avenue in the immediate vicinity of the Peace Palace after the Temple's foremost advocate. Had Asser lived in Belgium, De Beaufort mused in his obituary, he would have met with greater recognition than he ever received in Holland. The in-born character trait of the Dutch to dismiss all pretence, made the nation liable to occasionally even mistake essence for pretence.⁵⁶⁴

4. OBITUARIES AND APPRAISAL

In the public sphere recognition was ubiquitous and generous. The *Frankfurter Zeitung* stated that Asser had been among the very few Dutch of truly international stature. To him alone The Hague owed its new status.⁵⁶⁵ In the *Berliner Tagesblatt* Hans Wehberg praised Asser, next to Lammasch, as probably the most astute legal minds of their day and age. 'Le Hugo Grotius des temps modernes,' the Belgian *Gazette* called him. In Holland, the *Nieuwe Courant* published a long obituary. *De Telegraaf* plainly acknowledged that the sheer authority of Asser's word long preceded and surpassed the many tokens of honour bestowed on him. Without relying on bulky volumes or scores of papers, Asser had effectively achieved the unification of law that had been wishful thinking in Grotius' days, been first tested in the cauldron of the French Revolution, and

⁵⁶³ As well as the Jewish cemetery opposite the Peace Palace.

⁵⁶⁴ De Beaufort 1914, at 150.

⁵⁶⁵ A statement readily confirmed by Van Vollenhoven 1934 I, at 341.

been vainly aspired at by the great Mancini.⁵⁶⁶ The *Nieuwe Arnhemse Courant* pictured Asser the way the Hague citizens would remember him best: the trim stature of the white-haired pinched-faced man with grey moustache and sharp, aquiline nose, crossing their streets with jaunty, little steps at brisk and hasty pace, clad in his formal dress-coat, his black portfolio forever tucked up his elbow, the sparkling coal-black eyes twinkling with acute genius beneath the felt Homburg – forever hectic, nervous, agile – on his way to a train station mostly...

Personal observations of friends only confirmed this portrayal. Van Vollenhoven vividly recalled the impression of rush and urgency that forever clung to Asser's every word, movement or step.⁵⁶⁷ We recall William Stead's lively sketch from 1907.⁵⁶⁸ In 1913, Albéric Rolin agreed with Stead in highlighting that 'son origine méridionale lointaine [...] se révélait immédiatement dans ses traits fins, son teint mat, son regard, sa chevelure noire.' An outer appearance that mirrored his 'esprit très subtil, doué d'un sens juridique sûr, fort érudit.'⁵⁶⁹ Van der Mandere observed that Asser's outer appearance had always been austerity itself. If not for his acute countenance, one would never have told the international celebrity in the unobtrusive figure hurriedly crossing the streets.⁵⁷⁰ But then, meeting the open, friendly gaze, welcoming people of all stations – an observation emphatically confirmed by Van Vollenhoven⁵⁷¹ – one could not fail but being struck by Asser's lively, perceptive mind. A kind, attentive friend by all records, considerate and thoughtful to whomever was dear to him. A critical word rarely crossed his lips. Indeed all too mild perhaps was his judgement of writings by lesser gods.

Paramount among the many gifts of Asser's lightning, razor-sharp mind, commentators agreed, was his unparalleled talent to acutely grasp and instantly deal with the most baffling complexities facing him.⁵⁷² This, and his linguistic genius, had made him the born leader at international forums. Another rare gift was his empathizing with other man's points of view, even those voiced by the less expert, less experienced, and his readiness to assist wherever he could. For all his personal commitment, he put his targets first, his ego second – forever ready, all too ready perhaps, to compromise, seeking to persuade not to oust opponents. If he never lost his belief in 'general principles', and never got tired at voicing this creed, he likewise never stopped swallowing his pride. But then, for all his consideration with others, at the end of the day he relied on his own strength, seeking to attain his goals with unwavering determination. Westenberg deemed him self-possessed: the forever closed mouth, the lightly raised left eyebrow and the clear, sharp eyes that betrayed consideration but also impatience. Asser demanded respect in return for the highest standards he demanded from himself in whatever he thought, wrote, or organized with all his endless energy.⁵⁷³

An acute student of human nature and of the follies of the world, as Van Vollenhoven argued, Asser perfectly trimmed his sails to the wind, accepting man the way he was.⁵⁷⁴ A very special gift of his, only the more conspicuous as his experience grew with time, was his open eye for the immediate, short-term needs of his world.⁵⁷⁵ If not an utopian by all accounts, he definitely har-

⁵⁶⁶ Ibid., at 330.

⁵⁶⁷ Ibid., at 341.

⁵⁶⁸ '[D]ont la chevelure argentée brillait comme un phare lumineux sur le noir de son habit. Ses traits mobiles, son oeil perçant, sa taille mince, la tension de ses nerfs.' See above Chapter IX, *s.f.*

⁵⁶⁹ Albéric Rolin 1923, cited in Voskuil 1973, at 11.

⁵⁷⁰ Van der Mandere 1946, at 197.

⁵⁷¹ Van Vollenhoven 1934 I, at 334-35.

⁵⁷² Steenhoff 1997, at 130.

⁵⁷³ Westenberg 1992, at 75.

⁵⁷⁴ Van Vollenhoven 1934 I, at 333.

⁵⁷⁵ Ibid., at 333: 'Asser's secret was to sense, ahead of all others, what were the world's needs for the immediate future.'

boured many ideals, indeed with singular zest. But dreaming the ideal never kept him from living the attainable. Wisdom brought about his pragmatism. Hence his preference for the private sphere of technicalities to the elusive powerplay of the public domain.⁵⁷⁶ Asser's *Conférences* reflected – as some critics had it, merely suggested – an international coherence that Asser knew to be well out of reach in the public sphere.⁵⁷⁷ Pragmatism made him the organizer he was, and made him abjure systematization for its own sake.⁵⁷⁸

Of Asser it was often said that he kept his private feelings very much to himself. This may be true enough. Yet, as amply illustrated by his correspondence, he developed warm and durable friendships with colleagues like Rolin-Jaequemyns, Westlake, Renault or Martens, in which professional views and personal feelings were closely entwined. They invited spouses, children and parents to stay over and shared all ups and downs of family life. Sincere concern for Asser's charming, but ailing Jeanne runs through all of this correspondence. Asser's letter of condolance to Alice Westlake and her reply are touching *documents humains*.

But then, as Van Vollenhoven has it, the outgoing, charming, courteous Asser known from public life and Conferences was just one side of this versatile character. Himself liable to depressions, and well aware of it, Van Vollenhoven was perhaps the more susceptible to penetrate Asser's moods. In his obituary he highlighted 'that other, unknown Asser, the closed character.' Not the Asser that buoyantly opened and debonair chaired those endless assemblies 'in his triumphant *Salle des Trèves*,' that magnet of all debate with his exuberant energy and almost boyish wit. Van Vollenhoven had eye for the Asser that struck him once meetings were over: the elderly man, tired of keeping up appearances. The man who, left on his own in the emptied room, withdrew into a cocoon of pensive melancholy. A loner at heart, forever preoccupied with his life-long mission – also to repress his grief?⁵⁷⁹

Asser's repute was never linked to a peculiar book or a single innovative thought. His name was identified with a specific approach to international society. That approach never stood a chance in the onslaught of WWI or ensuing crisis and polarization. It took two decades, then another cataclysm for the world to repent and, in the UN Charter, substitute non-committal co-existence with the positive duty to co-operation. Only then the world aspired to relive Asser's dream. By 1955, the *Conférence de La Haye de droit international privé* was, once again, thriving reality. A decade later TMC Asser's name, no longer a vague echo along a stately avenue, flaunted as the proud figure-head of an ambitious research institute. Lest the world forget!

⁵⁷⁶ Van Vollenhoven [1934 I, at 337] is outspoken on this point: Asser perfectly hated the pomp that was the steady companion of these rules dictated by mere opportunism. Cf., Voskuil 1973, at 28; Westenberg 1992, at 74.

⁵⁷⁷ Westenberg 1992, at 71.

⁵⁷⁸ Van Vollenhoven 1934 I, at 336.

⁵⁷⁹ Van Vollenhoven 1934 I, at 341.

BIOGRAPHY

- 1804 Moses Samuel Asser [1754-1826] opens law firm in Amsterdam [Singel 548]
- 1834 Tobias' Asser's father, Carel Daniel Asser [1813-1890] promotion Leiden University on theses Exchange law.
- 1838 28/04 Tobias Michael Carel Asser, son of Carel Daniel Asser [1813-1890] and Rosette Godefroi [1816–1892], born in Amsterdam
- 1845–1855 Private education [van der Laar] and Latin school in Amsterdam
- 1856 Law study at Amsterdam *Athenaeum Illustre*
- 1857 Rector Amsterdam Student Corps
- 1858 Asser wins gold medal in contest Leiden Law Faculty with thesis *Verhandeling over het Staathoudkundig Begrip der Waarde*
- 1859 Editor Amsterdam Student *Almanac* 1859
- 1860 Promotion *doctor utriusque iuris* with prof. Simon Vissering at Leiden University on dissertation *Geschiedenis der beginselen van het Nederlandsche Staatsregt omtrent het bestuurder buitenlandsche betrekkingen*
- 1860–1893 Head Family law firm at Keizersgracht 391, Amsterdam
- 1860 Member German-Dutch Commission for Abolishment Rhine Tolls
- 1862–1876 Professor Contemporary Law [civil law, commercial law, criminal law, law on criminal procedure] at Amsterdam *Athenaeum Illustre* [f. 1632]
- 1862 Attends First Conference Auguste Couvreur's *Association internationale pour le progrès des sciences sociales* in Brussels. Meets Rolin-Jaequemyns, Westlake and Mancini
- 1863 Second Conference *Association internationale pour le progrès des sciences sociales* in Ghent
- 1864–1913 Commissariat *Nederlandsche Bank*
- 1864 22/06 Marriage with Johanna Ernestina Asser [1839-1917]
- 1864 Third Conference *Association internationale pour le progrès des sciences sociales* Amsterdam
- 1864 Inquiry into position Limburg and Luxemburg within withering German Federation
- 1865 Fourth Conference *Association internationale pour le progrès des sciences sociales* in Bern
- 1866 Birth Carel Daniel [1866-1939]
- 1868 Co-Founder of *Revue de droit international et de législation comparée* (Rolin and Westlake).
- 1867 Birth Hendrick Lodewijk ['Louis', 1867-1901]
- 1868 Birth Elisabeth Maria Rosa [1868-1934]
- 1868 Member Amsterdam Kiesvereniging 'De Grondwet'
- 1869 *De l'effet ou de l'exécution à l'étranger des jugements rendus en matière civile et commerciale*
- 1871 Candidature Dutch Parliament
- 1873 *Schets van het Nederlandsche handelsregt*
Cofounder *Institut de droit international* [IDI] in Ghent
Founding *International Association for the Codification of International Law* [from 1895 ILA]
- 1874 IDI Rapporteur on private international law with Mancini in Geneva
- 1875–1913 Advisory Council Ministry Foreign Affairs
- 1875–1879 Vice-President *Institut* at 1875 The Hague, 1877 Zurich, 1878 Paris and 1879 Brussels Sessions
- 1875 Organizes The Hague Session of *Institut*; Presentation Report on Civil Procedure
- 1876–1912 Member Supervisory Committee on Diplomatic Exams
- 1876–1880 Member Dutch Branch of *International Association for the Codification of International Law*
- 1877 Asser's father appointed Member Supreme Court
- 1877–1893 Extraordinary professor private international law at Municipal University Amsterdam

- 1879 Sounded by Thorbecke for post as Minister of Justice [Aug.-Sept.]
Vice-President on behalf of Netherlands at ILA
- 1880–1913 Member Royal Netherlands Academy of Arts and Sciences
- 1880 Accession to Netherlands Reformed Church
Schets van het internationaal privaatrecht
- 1881–1882 Representative Netherlands at International Conference on Supervision North Sea Fisheries
- 1881 Representative Netherlands at Second Conference in Bern on Transport of Goods by Rail
- 1882–1889 Member State Commission on Commercial Legislation
- 1882–1887 Member Curatorium Dutch-Israelite Seminar
- 1882 Birth son Jan [1882-1945]
Representative Netherlands at Conference on Protection Sub-Marine Telephone Cables in Paris
- 1883–1887 Member Commission Revision Dutch Constitution
Propositions International Code of Private International Law fail on German-French opposition
President Conference on Commerce and Industry in Amsterdam;
Awarded Knighthood in Order King Leopold Belgium;
Hugo de Groot [1583-1883] Commemorative speech;
President committee on congresses at Amsterdam World Fair
- 1884 Honorary Doctorate at Edinburgh University
- 1884–1885 Council and Representative Netherlands at Congo Conference Berlin
- 1885 Representative Netherlands at Suez Canal Conference in Paris [1885] 1886
Representative Netherlands at Third Conference in Berne on Transport of Goods by Rail
- 1887 Member Commission on Constitutional Reform
Promotion oldest son Carel Daniel on dissertation *Internationaal Goederenvervoer langs Spoorwegen. De Bernse Conventie van 1866*
- 1888–1892 Counsel on dispute borderline French and Dutch Guyana/Surinam
- 1888 Honorary Doctorate Bologna University
Publication Report for Netherlands Society of Jurists on ‘Buitenlandsche Vonnissen’ [Foreign Judgements]
- 1889–1895 Representative Netherlands on Central Commission for Navigation Rhine
- 1889 *Studien op het gebied van recht en staat [1858-1888]*
Promotion second son [Louis] on dissertation *De Buitenlandsche Betrekkingen 1860-1889. Schets eener Parlementaire Geschiedenis*, Haarlem
- 1890 Representative Netherlands at First International Maritime Law Conference Hamburg
- 11/03 Death Tobias’ father, Carel Daniel Asser
- 1891–1893 Membership Provincial States of North-Holland
- 1891 Candidacy for Parliament for Liberal Party on behalf of Kiesvereniging ‘Burgerplicht’
- 1891 Agreement with Prime-Minister Van Tienhoven on series *Conférences de la Haye*
- 1892 21/01 Death Tobias’ mother, Rosette Godefroi
- 1893–1913 Membership Council of State
- 1893 Resignation as university professor; farewell address at Amsterdam University
Move from Amsterdam to The Hague. Purchase mansion at Bankplein 1
Chairman First *Conférence de la Haye de droit international privé* in The Hague
Awarded Commandership First Class Danobrog Order Denmark
- 1894 Chairman Second *Conférence de la Haye de droit international privé* in The Hague
- 1895 Honorary Doctorate Cambridge University
- 1896 Representative Netherlands at International Conference on Traffic of Goods by Rail in Paris
Costa Rica Packet Arbitration between Netherlands and United Kingdom
- 1896 14/11 Entry into Force of Hague Convention on Civil Procedure
- 1897–1913 Chairman Netherlands Commission on Private International Law
Co-founder *Comité Maritime International* [CMI] in Antwerp, headed by Auguste Beernaert
- 1897 Arbitral Award Tsar Nicholas III on border dispute French Guyana-Dutch Guyana
Council to Siamese government in matters of Nation Railways
- 1898 President *Institut*; Chairman 18th session IDI in The Hague;
President Conference on Diplomatic History in The Hague under auspices IDI

- 1898 Membership Jubilee Committee on Ascension to Throne Queen Wilhelmina
- 1899–1913 Membership Royal Belgian Academy of Sciences and Fine Arts
- 1899 Plenipotentiary Delegate at First Hague Peace Conference
- 1900–1913 Member Permanent Court of Arbitration
- 1900 Chairman Third *Conférence de la Haye de droit international privé* in The Hague
- 1901 Death Asser's second son Louis from pulmonary disease
- 1902–1904 On Permanent Council IDI
- 1902 Sole Arbitrator in *Bering Straits* whaling dispute (Russia/USA), in rooms PCA in The Hague
On Arbitral Panel first case PCA: *Pious Funds* case [USA vs. Mexico]
- 1903–1913 Member *Institut international d'études pour la paix*
Corresponding Membership Romanian Academy of Sciences
- 1903–1906 Member PrepCom Location Peace Palace
- 1903 Attends Conference on the Exemption of Customs Duties for Red Cross Hospital ships
Awarded Knighthood in Order Polar Star Sweden [Apr.]
- 1904–1913 Minister of State
- 1904 Elected Vice-President of the IDI
Chairman Fourth *Conférence de la Haye de droit international privé* in The Hague
Representative Netherlands at Second International Maritime Law Conference Brussels
Advisory Council to Foreign Ministry concerning arbitration treaties with Belgium and Denmark
Declines invitation to St. Louis Conference
Nobel Peace Prize to *Institut de droit international*
- 1905 Representative Netherlands at Third International Maritime Law Conference Brussels
Entry into Force Revised Convention on Civil Procedure
- 1906 Death Tobias' sister Marie.
Representative Netherlands at Conference Revision 1864 Red Cross Convention in Geneva
Famous address in Royal Netherlands Academy of Arts and Sciences to educate masses against political propaganda towards wars of aggression
- 1907–1909 Publication *Bulletin des Conférences* along with G.L. Buzzatti
- 1907 Second Plenipotentiary Delegate Netherlands at Second Hague Peace Conference
Instrumental in awarding Nobel Peace Prize to Louis Renault
70th Birthday Jubilee Committee initiated by De Beaufort
- 1909 Member French Academy of Moral and Political Sciences
- 1910 Chairman First Hague Conference on Bills of Exchange and Cheques
Founding Royal Netherlands Society of International Law [NVIR], a branch of ILA.
Jubilee 50th Anniversary promotion Leiden University
Creation Asser Library on Private International Law to be kept in Peace Palace Library
Appointment and withdrawal as representative at International Air Law Conference in Paris
- 1911 10/12 Co-Laureate Nobel Peace Prize along with Alfred Hermann Fried (Austria)
Public statement/address in favour of Women's suffrage
- 1912 Chairman Second Hague Conference on Bills of Exchange and Cheques
Involved with International Opium Conference in The Hague
Votes half Nobel Prize money to Hague Academy of International Law
Honorary Doctorate Friedrich-Wilhelm Universität Berlin
Advisory Council to Foreign Ministry on German and Dutch claims on navigation Eems River
Asser's offices at Lange Houtstraat 16, The Hague rented out to Dutch Government
- 1913 13/01 Death Tobias' sister Lise
29/07 Tobias Asser passes away in The Hague. State Funeral. Buried at *Oud Eijk en Duinen* cemetery
Honorary Doctorate Leiden University [posthumous]
Opening Peace Palace The Hague
- 1917 Death Asser's spouse Johanna Ernestine [Jeanne]
Provisional unveiling Statue Asser by Odé at Amsterdam University
- 1921 Definitive location Statue Asser at Peace Palace
- 1923 Opening Hague Academy of International Law

- 1965 Foundation *TMC Asser Instituut* for public and private International Law and European Law
1973 Papers Tobias Asser and Asser law firm transferred to Dutch National Archives
1975 Papers Asser family transferred to Dutch National Archives
2011 The NVIR receives the designation 'Royal'

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- 1858 *Verhandeling over Het Staathuishoudkundig Begrip der Waarde*, Prize-winning treatise Leiden University
- 1860 *Geschiedenis der beginselen van het Nederlandsche Staatsregt, omtrent het bestuur der buitenlandsche betrekkingen*, Leiden [dl. 1 als proefschrift verdedigd op 19 april 1860]
Iets over Rijntollen
De Kluisters van Rhenus
- 1862–65 Various contributions to the *Annales de l'Association internationale pour le progrès des sciences sociales*
- 1862 *Handelsrecht en Handelsbedrijf*. Inaugurale rede Amsterdam
Over de afschaffing der bij Keizerlijk Decreet ingestelde politiereglementen van waterschappen
- 1863 *Le Duché de Limbourg et la Confédération Germanique*
De la reconnaissance internationale des sociétés anonymes à l'étranger
- 1864 *Une législation uniforme sur les lettres de change*
Contribution to *Themis* and exchange of views with Robert Fruin
- 1865 *Mémoire on commercial law at sea according to Dutch law*
- 1866–71 *Geld en Vrijheid* ['Money and Freedom']; 2 vols.
- 1866 *Het eerste ontwerp van een Nederlandsch wetboek van koophandel: zamengesteld op last van Koning Lodewijk Napoleon* door A. van Genneep, M.S. Asser en J. van der Linden, opnieuw uitgegeven met voorrede van T.M.C. Asser
- 1868-69 *Handelsregtelijke Aanteekeningen* [Annotations on Commercial Law]
- 1868 *Wetgevingsstudiën* [o.a. de wet op Engelse naamloze vennootschappen; A'damse aanvaringsclausule bij cascoverzekering; tractaat NI-Italië betreffende naamloze vennootschappen; De Rijnvaart-Conventie]
Les sociétés anonymes établies à l'étranger
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- 1871 *Wetgeving-Studiën, I: Herziening der wetboeken. II: Het nieuwe wetsontwerp tot afkoopbaarstelling der tienden*
- 1872 *De naamloze vennootschappen; bijdrage tot wetsherziening*
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- 1880 *Schets van het internationaal privaatrecht*, Haarlem; German edition, Berlin 1880; French edition 1884
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- 1885 *The Congo Act*

- 1885 Pamphlet 'Passage on Congo River' 1885
Annotations on negotiations Suez Canal Treaty and advisory counsel on compliance with Paris Convention
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- 1886 *Clunet Journal de droit international* 13 [1886], 35
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- 1893 'La codification du droit international privé', in *RDILC* 25 [1893], at 521ff.
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- 1894 *Wet en Practijk*. [Aanteekeningen II]
- 1895 *Het Privaatrecht der Binnenvaart en de Amsterdamsche Aanvaringsclausule*, Haarlem
- 1896 Annotations on the *Costa Rica Packet* dispute between the UK and The Netherlands
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