
FOREWORDS

A volume on the Hague-based institutions focusing on peace and justice is a multifaceted enterprise. The editors are honoured to note that three aspects of this project are highlighted below in forewords by the Netherlands' Minister of Foreign Affairs (Bernard Bot), the Mayor of the City of The Hague (Wim Deetman) and the former United Nations Legal Counsel (Hans Corell).

THE NETHERLANDS' MINISTER OF FOREIGN AFFAIRS

The origins of international law are closely linked to the Netherlands and date back to the seventeenth century. It was in 1625 that one of the Netherlands' most famous sons, the lawyer, diplomat and theologian Hugo Grotius, wrote *De Jure Belli ac Pacis*, widely recognized as one of the most important treatises underlying modern international law. In a section of this work that he published separately – *Mare Liberum* – Grotius developed for the first time the notion of a world community connected by the freely accessible seas as its channel of communication.

Towards the end of the nineteenth century, a general realization was dawning that the world order would be well served if relations between States were guided by a universally accepted set of rules. In the subsequent process of institution building, the Netherlands played a prominent part. The Hague Peace Conferences of 1899 and 1907 were the first of their kind, and it was at these Conferences that the foundations were laid for the peaceful settlement of international disputes. In 1913 the Permanent Court of Arbitration took up residence in the Peace Palace in The Hague, where it is located to this day. There, it was joined in 1922 by the Permanent Court of Justice of the League of Nations, predecessor of the International Court of Justice.

When the United Nations was created after the Second World War, one of its organs, the International Court of Justice, was assigned to The Hague, thus confirming international recognition of the Netherlands' affinity with international law. In recent times this has made The Hague virtually the natural choice as the seat of international courts such as the Iran-US Claims Tribunal, the International Criminal Tribunal for the former Yugoslavia and others. There were other candidates bidding to host the International Criminal Court, but they stood little chance against The Hague, by now seen internationally as 'the legal capital of the world'.

One might wonder why the Netherlands has traditionally attached so much importance to universal rules. There are probably very few other countries in the world whose Constitutions – like that of the Netherlands – include an article explicitly obliging the Government to promote the development of the inter-

national legal order. For the explanation we can return to Hugo Grotius, who wrote *De Jure Belli ac Pacis* at a time when the Netherlands had overseas interests that it could not hope to defend by military might. By cleverly blending international law with natural law, he defended the trading rights of the Dutch East India Company as well as its right to sail the seas without restriction. In so doing, he expanded on the notion that, inherent to human reason and immutable even in the face of the wilfulness of sovereign States, imperative considerations of natural justice and moral responsibility exist, which must serve as a check against the arbitrary exercise of immense political power.

This notion still serves as one of the guiding principles of the Netherlands' foreign policy. We Dutch like to think of our country as a 'pocket-sized medium power', carrying enough clout to exercise significant influence, but small enough to have a strong interest in anchoring political power in rules and agreements. As a nation we are convinced that abiding by the rule of law is essential for the well-being and progress of mankind. It ensures that the weak receive better protection and improves their chances of prospering.

Hosting a number of international courts as well as organizations related to international law such as the Hague Conference on Private International Law, Europol, Eurojust and the Organization for the Prohibition of Chemical Weapons is of course very much in line with our constitutional obligation to promote the development of the international legal order.

We in the Netherlands are proud to be at the heart of international legal practice and theory. When you read the interesting contributions to this book, you will undoubtedly understand why.

Autumn 2004

Bernard BOT
*Minister of Foreign Affairs
of the Netherlands*

THE MAYOR OF THE HAGUE

Over the past hundred years, The Hague has played a growing role as the centre of national government and in its remarkable capacity as an international city of peace and justice. The foundations for this fascinating development were laid at the end of the nineteenth century, with the foundation of that respected institution, the Hague Conference on Private International Law, and with the world's first-ever international peace conference.

Many international treaties followed, some carrying the name of The Hague as part of their title. Organizations promoting international justice and peace – both as ideals and in a practical sense – found a home here. The city eventually became the 'legal capital of the world', to use the title bestowed on it by a prominent figure in international politics.

Naturally, as the mayor of The Hague, I am proud of our city. It is home to our head of State and the seat of our country's government and parliament. Its residents come from a multitude of countries and backgrounds. We are honoured to host a number of major international organizations and proud of the many embassies and specialized non-governmental organizations located here.

In the field of international justice, history is made here every day. The International Court of Justice, the Permanent Court of Arbitration and the International Criminal Tribunal for the former Yugoslavia all constantly generate new case law, which is then supplemented with commentary from scholars and specialists at the academic and research institutions based in The Hague.

As a former Minister of Education, I attach great importance to precisely this interaction between education, scholarship and practical endeavour. The many activities going on in The Hague in these areas deserve the attention of a large audience.

This book, *The Hague: Legal Capital of the World*, does justice to that idea. By providing scholarly analysis of over a century of developments in The Hague, it forms a significant addition to the available literature on the subject. Naturally, the information in the book also provides a solid basis for understanding future developments, such as the work of the International Criminal Court.

Allow me to express the sincere hope that this volume will be much more than just a useful handbook.

Autumn 2004

Wim DEETMAN
Mayor of The Hague

THE UNITED NATIONS LEGAL COUNSEL

The purposes of the United Nations are set out in the first article of its Charter. One is to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. In pursuing the Purposes, the Organization and its Members undertake to act in accordance with certain Principles, including the principle that all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

The means of dispute settlement are indicated in Article 33 of the Charter: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of the disputing states' own choice. The judicial institutions established in The Hague should be viewed in this context.

At the national level, legal systems have developed over time. But much remains to be done – even in countries that pride themselves on being

democracies under the rule of law. To develop societies under the rule of law is a continuing challenge for mankind. Today we all must realize that the rule of law cannot halt at national borders. Much of the work of the United Nations should be seen against this background. One could very well argue that the philosophy of the Charter is the rule of law.

Some time ago, Secretary-General Kofi Annan decided to focus on the rule of law in international relations as one of the most important challenges for the Organization in the new century. In September 2000, the General Assembly took the same view in its Millennium Declaration. Steps in this direction had been taken long before the United Nations was established.

Of particular interest in this context are two institutions, both in The Hague: the Permanent Court of Arbitration, established after the city's first Peace Conference in 1899, and the Permanent Court of International Justice, established through a Statute adopted in 1920. The latter was closely connected to the League of Nations, although not part of it. In 1945, it was succeeded by the International Court of Justice, the principal judicial organ of the United Nations.

This means that for more than a century the work of creating an atmosphere of law and justice has been carried on in the city of The Hague. It is therefore only natural that other judicial institutions have been established in this city in recent years.

Although it did not take place in The Hague, in this context we should also recall the trial of the suspects in the Lockerbie case by a Scottish Court sitting in the Netherlands; a political and legal impasse was resolved through an unprecedented arrangement, developed in a constructive interchange among four capitals, including The Hague, and put into effect with the support of the United Nations.

One of the advantages of this concentration of judicial institutions, in a city sometimes referred to as the legal capital of the world, is that it creates an environment where those who aspire to practise their profession at the international level can develop and thrive: judges, prosecutors, investigators, members of the bar, interpreters, court administrators, etc.

However, it is even more important for states and their representatives to realize that the rule of law must apply in international relations. The world is a dangerous place, and we are certainly capable of wiping out this planet, if not with weapons of mass destruction, then by gradually destroying our environment, making it unsuitable as a habitat for human beings. It goes without saying that in such a setting the potential for disputes among states is tremendous. To have a dispute is nothing disreputable in itself; the closer the relations among states, the greater the potential for disagreements. And disputes can be perfectly legitimate. The only issue is how they are resolved.

It is therefore important that there be a firm understanding within states, and in particular among those who represent them, of the means available for dispute settlement. The present book – *The Hague: Legal Capital of the World* – serves

the purpose of explaining in clear and matter-of-fact terms the institutions present in The Hague and how one can make use of them. It should be a useful tool in capitals and at the diplomatic representations in The Hague. But it should also be of use in teaching and at non-governmental organizations.

The international criminal tribunals should be mentioned specifically. Many have high hopes for the International Criminal Court (ICC) in particular. This Court is designed to redress the impunity that has caused so much human sorrow and suffering in the past. It is therefore important that the ICC receive the full support not only of states but also of individuals. There is still a threshold to be crossed: we must convince states that have not yet ratified or acceded to the Rome Statute that they should join the community of states that have done so.

One of the principles of the rule of law is that all persons should be equal under the law and before the institutions that are charged with applying it. At the national level, slowly but gradually, superiority and arrogance have had to yield to the rule-based, predictable exercise of public authority. The same should hold true among states.

In a state under the rule of law everybody, including the powerful, must bow before the law. So it should be at the international level too. But in both cases, one prerequisite is the presence of institutions that can solve disputes independently and impartially. This is the lesson that should be learned from The Hague – and borne out in both word and deed!

Autumn 2004

Hans CORELL
*Former Legal Counsel of the United Nations
Former Judge of Appeal*