
A New League of Extraordinary Gentlemen? The Professionalization of International Law Scholarship in the Netherlands, 1919–1940

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Abstract

Despite the historical turn in the study of public international law and the advance of comparative approaches, still too little attention is paid nowadays to specific national traditions. This holds, inter alia, for the scholarly views and practices in the Netherlands during the first half of the 20th century. This article seeks to shed light on the experiences here at the advent of the League of Nations and its tentative ‘new world order’. Offering a meso-level analysis, it portrays the leading protagonists during the 1920s and 1930s, aiming to provide a snapshot of how their discipline and activities underwent an unexpectedly swift professionalization. This process is perceived to have run along three distinct vectors – academic, societal and diplomatic/bureaucratic – which are each examined in turn. Novel opportunities stemming from the rise of the international judiciary, especially the two Permanent Courts established on Dutch soil, are looked at separately. The research delivers a greater insight into the interwar era and the challenges faced by (academics from) smaller nations, enabling us to situate underexplored local experiences within a global frame, and offering useful lessons for (the writing of) international law history more generally.

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1 Introduction

Despite the historical turn in the study of public international law and the *nouvelle vague* of comparative approaches, it has rightly been remarked that still too little attention is being paid to the plethora of national traditions.¹ One author recently lamented the dearth of micro-histories in the field.² Both observations hold true for the ideas and practices germinating in the Netherlands during the first half of the 20th century – a curious fate for a country that was home to one of the most iconic figures in legal studies, Hugo Grotius. The few available publications are either relatively narrow in scope or inaccessible to a wider audience because of the language of writing – or both.³ This is a pity, particularly with regard to the inter-war years, where much more work has been done so far to trace the prevailing intellectual patterns in Germany, France and England.⁴ After all, the ‘local’ impact of international law is likely to have been at least as significant on the territory where the Peace Conferences of 1899 and 1907 took place, where the Hague Academy, the Permanent Court of Arbitration (PCA), as well as the Permanent Court of International Justice (PCIJ) found their seats and where as early as 1910 a Dutch Association for International Law was created.

There are plenty of reasons to try and shed light on the Dutch experience at the advent of the League of Nations and of the tentative new world order, which placed the leading scholars and their views within a global frame. The present article aims to situate ‘the jurists in their local environments as university professors, diplomats or counsel to governments, having institutional “projects” of their own’.⁵ What interests us in particular is the pace at which the discipline evolved over those years, and how the Netherlands measured up to other countries in that respect. By focusing on the professionalization of the scholarship, one may gain a solid impression of how a new breed of lawyers managed to find its bearings, and how the Dutch conceived of their own role vis-à-vis the League system. While such region-centred studies help to further fill in the picture and enhance our understanding of the inter-war era, we have

¹ S. C. Neff, *Justice Among Nations: A History of International Law* (2014), 592. Cf. A. Roberts et al. (eds), *Comparative International Law* (2018).

² Vadi, ‘Perspective and Scale in the Architecture of International Legal History’, 30 *European Journal of International Law (EJIL)* (2017) 53, at 55.

³ See, e.g., Hoetink, ‘Rechtswetenschap’, in H.R. Hoetink, *Rechtsgeleerde opstellen* (1982), 219–243; W. J. M. van Eysinga, *Geschiedenis van de Nederlandse wetenschap van het volkenrecht* (1950); Stuyt, ‘The Science of Public International Law in the First Century of the Kingdom of the Netherlands, 1814–1914’, in H. van Panhuys et al. (eds), *International Law in the Netherlands* (1983), 167; Roelofsen, ‘Jan Hendrik Willem Verzijl’, in W. Heere and P. Offerhaus (eds), *International Law in Historical Perspective*, vol. 12 (1998) xv; Kubben, ‘Completing an Unfinished Jigsaw Puzzle. Cornelis van Vollenhoven and the Study of International Law’, in L. Nuzzo and M. Vec (eds), *Constructing International Law* (2012) 483; A. Eyffinger, *Dreaming the Ideal, Living the Attainable: T. M. C. Asser 1838–1913* (2011).

⁴ See, e.g., E. H. Carr, *The Twenty Years’ Crisis* (1984); D. Long and P. Wilson (eds), *Thinkers of the Twenty-Years Crisis* (1995); M. Koskenniemi, *The Gentle Civilizer of Nations* (2001). Compare also, for example, Lange, ‘Between Systematization and Expertise for Foreign Policy: The Practice-Oriented Approach in Germany’s International Legal Scholarship (1920–1980)’, 28 *EJIL* (2017) 535.

⁵ Koskenniemi, ‘A History of International Law Histories’, in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012) 943, at 967.

barely begun to scratch the surface of the history of international law as a professional activity.⁶ The Netherlands may serve as an undeservedly underexplored example, as well as a test case to verify the pervasiveness of the patterns supposedly dominant across Europe. For instance, the image of *fin-de-siècle* and early 20th-century lawyers as single-minded positivists, enthusing about sovereignty – skilfully dismantled in Koskenniemi’s magnum opus with regard to England, France and Germany – might still have resembled reality in this corner of Europe.⁷ Yet if so, one wonders whether their successors were able to break the spell and (re)align themselves with their foreign peers at long last, though underscoring the veracity of Heine’s quip: ‘When the world ends, I shall go to Holland, because everything happens fifty years later there.’⁸

One might think that the Low Countries stand out negatively, given that few names of leading Dutch scholars readily spring to mind, suggesting a considerable intellectual distance between them and their world counterparts.⁹ This is not to say that ignorance held sway or that cosmopolitan perspectives were deliberately shunned; the characteristic mercantile openness to the outside world had the contrary effect. Moreover, it would have been rather difficult to remain untouched by the global tides. The Dutch nation, modest in size and confronted with ever greater threats to its position, both in Europe and as a colonial power in Asia, was in fact extremely interested in a system that could guarantee collective security at a minimal cost, i.e. not restrain its freedom of action by way of an exclusive alliance. Neutrality denoted a zealously guarded status, which had resulted earlier in its remaining on the side-lines of the 1914–1918 conflict.¹⁰ We are dealing nevertheless with an original member of the League of Nations, present at the organization’s inception. On the one hand, the collective security arrangements and the potential protection the League offered meant there was enough of an incentive to participate actively and facilitate its success. On the other hand, the novel obligations under that regime made it less feasible to avoid foreign entanglements, sit on the fence or act as a neutral intermediary – roles which had paid great dividends in the past.¹¹ We will see later how this core dilemma permeated scholarly as well as political debates when the cherry-picking attitude seemed at first to have outlasted its usefulness, with calls to redeem the old pragmatic stance gaining in strength once the League had neared its nadir. In the interbellum period,

⁶ d’Aspremont et al., ‘Introduction’, in J. d’Aspremont et al. (eds), *International Law as a Profession* (2017) 1, at 3.

⁷ Cf. Koskenniemi, *supra* note 4, at 4.

⁸ M. van Amerongen, *Heine en Holland* (1997), 12.

⁹ Compare the extensive attention given to, e.g., Scelle, Lauterpacht and Schücking in, respectively, Symposium ‘The European Tradition in International Law: Georges Scelle’, 1 *EJIL* (1990) 193; Symposium, ‘The European Tradition in International Law: Hersch Lauterpacht’, 8 *EJIL* (1997) 215; and Symposium, ‘The European Tradition in International Law: Walther Schücking’, 22 *EJIL* (2011) 725.

¹⁰ Despite the remarkable fact of a Central Organization for a Durable Peace being founded on the Dutch soil by representatives of nine European nations plus the United States, during the Great War. On this, see M. Doty, *The Central Organisation for a Durable Peace (1915–1919): Its History, Work and Ideas* (1945).

¹¹ Reminiscent of the paradox that ‘peace appears possible only in the presence of an alliance so strong that it would itself become a danger to its weaker members’, noted by H. Wheaton, *Histoire de progrès de droit des gens depuis la Paix de Westphalie jusqu’au congrès de Vienne* (1841), at 258.

the Netherlands was grappling with its position, cautiously moving away from a foreign policy of neutrality and isolation. Simultaneously, in the wake of Tobias Asser (1838–1913), a new generation of international law scholars arose, honing their skills and exploring their options. This article focuses on a selection of sub-themes that concerned the lead actors and that tie in directly or indirectly with this context. Thus, rather than deliver well-rounded biographies, it canvasses them in (and by) the dramatically changing milieus of the 1920s and 1930s.

The article methodically pursues a meso-historical approach that aims at a wider-ranging epochal sketch, notwithstanding its limited geographical reach. The leading narrative of professionalization is therefore informed by events at the micro level, enabling us to draw out some broader trends and tendencies while being attentive to the risk of irresponsible macro-level generalizations.¹² The timeframe stretches roughly from the moment the protagonists were able to submit their observations on the proceedings at Versailles (the Treaty being signed on 18 January 1919) up to the moment they became embroiled in World War II (the Nazis invading the country on 10 May 1940). Though the discipline as such had already made great strides before, this temporal delimitation is further justified by the ‘unprecedented development of a relatively structured set of international positions in the post-World War I period’, witnessing the emergence of venues and vocations that differed considerably from those on offer before.¹³

The professionalization of international law scholarship as defined here is believed to have run along three vectors, largely reflected in the structure of our analysis.¹⁴ To begin with, the process possessed a quintessential academic dimension, primarily illustrated by the emancipation of the discipline within the legal curriculum and the creation of dedicated chairs across the Netherlands (Section 2). Beyond this institutional aspect, but closely linked, there is the expanding substantive discourse in the field, in which the new generation scrambled to partake (Section 3). A second vector pertains to the shift in the eyes of the public, where international law came to be seen as a true profession of writers commanding a specific expertise. Consequently, it was much less than before left to well-meaning amateurs to comment on international developments in general media. As described below (Section 4), legal academics were eager to share their views in newspapers, radio broadcasts or invited talks, not hesitating to spark off debates and polemics themselves. They regularly sought to counter popular misconceptions, authoritatively elaborating, for example, on the functioning of the League or the backgrounds of manifold treaties and conferences. A third vector

¹² Vadi, *supra* note 2, at 69.

¹³ Sacriste and Vauchez, ‘The Force of International Law: Lawyers’ Diplomacy on the International Scene in the 1920s’, 32 *Law & Social Inquiry* (2007) 83, at 87. Cf. Koskenniemi, *supra* note 4, at 92, who has famously labelled the ‘Men of 1873’ as the founders of the modern international law profession.

¹⁴ Disambiguated elsewhere under the headings of autonomization, communication, socialization and pluralization, with the ready admission that these terms are ‘not always exclusive of one another’ (d’Aspremont, ‘The Professionalisation of International Law’, in J. d’Aspremont et al. (eds), *International Law as a Profession* (2017), 19, at 19–20). The vectors distinguished here should just as much be seen as ideal types.

of professionalization pertains to the growing demand for international law scholars to step in as internal or external advisors to the Dutch government, to serve in high diplomatic offices or act as governmental representatives in multilateral bodies and gatherings (Section 5). In so doing, some of them, wilfully or inadvertently, got caught up in political controversies, further raising the visibility of the new professional class, though occasionally compromising their standing by expressing overly partisan sympathies. Lastly, attention is paid to the unique opportunities arriving in the 1920s due to the establishment of the Permanent Court of International Justice, allowing for the *crème de la crème* to advance to a judgeship, or assume an ad hoc litigating capacity (Section 6). As we shall see, the 'local' jurists proved disproportionately successful on this front, maintaining a continuous presence on the bench over two decades, with yet others gaining an entry into the Peace Palace in the guise of administrator, clerk, arbitrator or counsel for parties. We round off with a series of overarching conclusions that highlight the lessons that can be drawn from this episode towards (the writing of) international law history more generally (Section 7).

2 The Emancipation of International Law in Dutch Academia: The Institutional Dimension

A paramount characteristic of Dutch society from the late 1800s up to the early 1970s was its pillarization ('*verzuiling*'), i.e. a wholesale vertical segregation between different groups primarily based on religion.¹⁵ Each pillar had its own social institutions, ranging from political parties and trade unions to hospitals and sports clubs. To a notable extent, the academic scene was (pre-)determined by that phenomenon, which in turn had a direct impact on scholarly minds, curriculum design and appointment policies, as we will observe below.¹⁶ The three oldest universities were those of Leiden (established 1575), Groningen (1614) and Utrecht (1636), exuding a moderate Calvinist-Protestant *esprit*. At Amsterdam, one found a liberal-oriented Illustrious School since 1632 (officially recognized in 1815, rebranded to Municipal University in 1877) that had long preceded the (protestant-sectarian) Free University of 1880. In 1919, there thus existed only five law schools in the Netherlands, a number growing to six in 1923 when the Roman Catholic University of Nijmegen was set up.

As is well known, international law occupied only a marginal place in academia across the world up until the second half of the 19th century. The very first dedicated professorship was established in 1851 at the University of Turin, predating the Chichele chair at Oxford (1859) and the Whewell chair in Cambridge (1867). Overall, the discipline is considered to have been slow in obtaining a slot in university curricula.¹⁷ In the curriculum of the Dutch law schools, however, already pursuant to

¹⁵ See A. Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (1975); it is referred to as 'institutionalised pluralism' by E. Bax, *Modernisation and Cleavage in Dutch Society* (1990), at 3.

¹⁶ Though by virtue of the subject matter, the impact was probably less pronounced in law schools than at the faculties of humanities, theology and philosophy.

¹⁷ Neff, *supra* note 1, at 304.

the Higher Education Statute of 1876, it had to be included somewhere.¹⁸ Not even in Leiden, though, the principal heir to the Grotian legacy, was it treated as a primary, self-standing subject. It was taught there as a component of the general course on national constitutional law at bachelor's level ('*kandidatuur*'), and as a small elective at master's level ('*doctoraal*'), by revered instructors like Johan Theodoor Buys (1828–1893) and Jacques Oppenheim (1849–1924).¹⁹ Cornelis van Vollenhoven (1874–1933) took his PhD at Leiden with the latter on a study entitled *Omtrek en inhoud van het internationaal recht* [*Scope and Content of International Law*], going on to play a pivotal role in the discipline's entrenchment, authoring several other treatises and publications; however, he earned a greater fame for his writings on the colonial law of the Dutch East Indies, occupying an eponymous chair from 1901 onwards. In 1912, the first full professorship exclusively devoted to international law was established at Leiden, with Willem van Eysinga (1878–1961) as the premier incumbent, succeeded in 1931 by Benjamin Telders (1901–1942). Inside and outside academia, these three voices would be among the most persuasive in shaping the discourse on the seismic legal changes of the inter-war years. Frederik van Asbeck (1889–1968), appointed as *extra-ordinarius* for colonial law in 1925, resided overseas until 1933 and ostensibly kept a somewhat lower profile.

In Utrecht, the discipline had visibly been taking root since 1879, when Jan de Louter (1847–1932) accepted a chair in constitutional, administrative and international law. When his successor declined to teach the latter, de Louter was granted an endowed professorship for that field alone in 1912, handing it over in 1919 to his young apprentice Johan Verzijl (1888–1987).

Elsewhere, the dearth of attention persisted for a longer time – even in Groningen, where no dedicated chair would be created until 1963.²⁰ At the Free University in Amsterdam, there was neither the interest nor the funding available for an individual professorship. At the rival academy in the capital, constitutional and international law were combined, as usual, and placed in the hands of Antoon Struycken (1873–1923). When Struycken went on to the Council of State in 1914, his successors were entrusted with supplementary tasks that pushed the field of international law outside their immediate agendas.²¹ Similarly, at the University of Nijmegen, it formed but one part of a dazzling package comprising introduction to law, civil procedural law and private international law. Between 1923 and 1939, the Flemish incumbent Joannes Bellefroid (1869–1959) was forced to serve as a jack of all trades. In 1939, the Jesuit

¹⁸ Wet op het Hooger Onderwijs [Higher Education Act], 28 April 1876, 102 *Staatsblad van het Koninkrijk der Nederlanden* 1876, art. 42.

¹⁹ See, respectively, van den Brink, 'Johan Theodoor Buys', in T. Veen and P. Kop (eds), *Zestig juristen. Bijdragen tot een beeld van de geschiedenis der Nederlandse rechtswetenschap* (1987), 270; van Elk, 'Jacques Oppenheim' in Veen and Kop, *supra*, at 281.

²⁰ The first occupant, Bert Röling (1906–1985), a former Judge at the Tokyo Tribunal who would become the founding father of polemology in the Netherlands, was appointed for criminal law and international law in 1949.

²¹ See, e.g., Roelof Kranenburg (1880–1965), who was appointed that same year for constitutional, administrative and international law as well as legal philosophy; and Philip Kleintjes (1867–1938), who taught colonial administrative law and international law from 1921 on.

priest Robert Regout (1896–1942) ascended to an extraordinary chair in public international law, pipping to the post the Franciscan friar Leo Beaufort (1890–1965). We find an intriguing addition in Rotterdam, a city that at the time had no genuine university. In 1920, the decision was made, however, to create a fractional professorship for international and consular law at the local Business School, assigned in 1920 to a disciple of van Eysinga, Jean François (1889–1978).²²

From an institutional perspective, we may therefore say that the Netherlands was behind the curve as regards the emancipation of international law as an independent scholarly discipline. The interbellum nevertheless saw a noticeable rise in, and proliferation of, academic positions, concomitant with the changing global environment. As a result, the country was forced to reassert its policies vis-à-vis the Great Powers, with the overseas colonies strengthening the belief that it did not punch much below the weight of its rivals, and with a quickly rising demand for ‘grammarians’ who would be able to defend its interest in a multiplicity of roles.²³ The Netherlands enjoyed a boost of confidence by becoming home to the famous institute for advanced studies co-founded by Tobias Asser and co-financed by the Carnegie Endowment for Peace.²⁴ Due to the outbreak of World War I, the opening of the Hague Academy of International Law scheduled for 1914 had to be postponed until 1923; however, ever since, the Academy has given a podium to grandees such as Nicolas Politis, Louis Le Fur, Erich Kaufmann and Joseph Barthélemy.²⁵ The Academy soon became the place where ‘the most prestigious advocates of the new international legal order met, sharpened their arguments, and contributed to the pooling of knowledge and experiences gleaned from their own personal practice of international law’.²⁶ This momentum helped fortify the image of the Low Countries as a modern beacon for peace, justice and international cooperation.

3 The Lives of the Minds: Sampling the Academic Discourse

In close conjunction with the emancipation of the discipline in institutional terms, the professionalization of the scholarship can be gauged by exploring the growth of the

²² The law faculty of what is now the Erasmus University dates back only to 1963.

²³ Cf. Hernández, ‘The Responsibility of the International Legal Academic. Situation the Grammarian within the “Invisible College”’, in J. d’Aspremont et al. (eds), *International Law as a Profession* (2017) 160, at 161.

²⁴ On the institute, see, e.g., Verosta, ‘L’histoire de l’Académie de droit international de la Haye, établie avec le concours de la Donation Carnegie pour la paix international’, in R.-J. Dupuy (ed.), *Academy of International Law Jubilee Book 1923–1973* (1973) 7. On the funding body, see, e.g., J. Wegener, ‘Creating an “International Mind”? The Carnegie Endowment for International Peace in Europe, 1911–1940’ (2015) (PhD thesis on file at the EUI, Florence).

²⁵ See, respectively, Politis, ‘Le problème des limitations de la souveraineté et la théorie de l’abus des droits dans les rapports internationaux’, 6 *Recueil des cours de l’Académie de droit international* (1925) 5; Le Fur, ‘Le développement historique du droit international de l’anarchie internationale à une communauté internationale organisée’, 41 *Recueil des cours de l’Académie de droit international* (1932) 505; Kaufmann, ‘Règles générales du droit de la paix’, 54 *Recueil des cours de l’Académie de droit international* (1935) 309; Barthélemy, ‘Politique intérieure et droit international’, 59 *Recueil des cours de l’Académie de droit international* (1937) 462.

²⁶ Sacriste and Vauchez, *supra* note 13, at 90.

research and publications devoted exclusively to international legal topics. The expansion at full throttle is ordinarily tied to the launch of the *Revue générale de droit international et de législation comparée* in 1869, and the *Revue générale de droit international public* in 1894.²⁷

Again, Dutch academics appear only to have switched into a higher gear when they could no longer be passive observers, but became aware of their abilities to co-determine which way the wind would blow. One popular account of the substantive international law discourse during the inter-war period has typified it as chiefly a confrontation between an idealist and a realist school.²⁸ Albeit correct in a crude impressionistic manner, a closer inspection reveals a need for nuance. One should mind anyhow that there existed no homogenous epistemic community, partly due to the pillarized make-up of the society, making it impossible to pinpoint exactly where every scholar ‘stood’.²⁹ Moreover, the sentiments did not remain constant, with the second half of the 1920s testifying to a greater optimism than the decade that followed, and jurists being hardly impervious to the volatile sympathies and propensities of politicians and activists.

For a more fine-grained assessment it seems useful to categorize the participants in the scientific debate along slightly deviant lines, exposing a three-way split that neatly maps onto the disposition of the academic landscape in other European countries.³⁰ Thus the predominantly positivist scholars found themselves at loggerheads with those that can be grouped under the heading of ‘solidarism’, and with the staunchest adherents of natural law thinking. Mainstream positivism (not to be conflated with the distinctive Vienna School, spearheaded by Hans Kelsen), is still perceived to be the ‘ruling philosophy’ in this period.³¹ Majority positivists such as de Louter and Verzijl preferred to distance themselves from abstract musings altogether, advocating instead that international lawyers concentrate on the law in force.³² That rigidity did not go down well with everyone, and nearly cost Verzijl his appointment to the chair in Utrecht.³³ The core beliefs of van Vollenhoven and van Eysinga bear more than a passing resemblance to the solidarist school, which notably placed emphasis on the interdependence between states and downplayed sovereignty.³⁴ Prime exponents of natural law thinking were the above-mentioned Regout and Beaufort. Their Catholic roots did mean that they stood on a different footing than foreign adherents, such as

²⁷ d’Aspremont, *supra* note 14, at 21, 30.

²⁸ Hoetink, *supra* note 3, at 239.

²⁹ Cf. Haas, ‘Introduction: Epistemic Communities and International Policy Coordination’, 46 *International Organization* (1992) 2.

³⁰ While a categorization entirely based on denomination is possible, as well, it would not do reality justice here, as the Protestant authors much more rarely took their cue from faith-based concepts than the Catholics.

³¹ Neff, *supra* note 1, at 364.

³² See, e.g., J. de Louter, *Het stellig volkenrecht [Positive International Law]* (1910), at 9–10; J. H. W. Verzijl, *Getemperd optimisme [Qualified Optimism]* (1919), at 19.

³³ Roelofsen, *supra* note 3, at xviii.

³⁴ Neff, *supra* note 1, 374.

Kaufmann or Brierly; and they did occasionally resort to convoluted dogmatic arguments that also elicited criticism from non-specialists (a theme to which we will return later).³⁵

Some samples from the academic discourse may throw the foregoing into sharper relief. In the classic, fundamental conversation on the relationship between the international and the national legal order, van Vollenhoven and van Eysinga ventured to promote the idea of an integrated whole.³⁶ While certainly not representing a *communis opinio* in the Netherlands, their rejection of a strict dichotomy did bring them in tune with foreign colleagues such as Kelsen, Scelle and Lauterpacht.³⁷ In contrast, de Louter, Verzijl and Telders explicitly gave voice to their scepticism, dismissing the paradigm of a seamless web of rules that could eventually give birth to a world federation.³⁸ On a related note, the project of codification that could expose and buttress the universality of the law of nations, to which Asser had devoted tremendous efforts, did not gain plaudits from every corner. In 1926, van Vollenhoven warned against premature entrenchment of norms that could hamper their dynamic evolution.³⁹ In 1935, the president of the Dutch Association for International Law concluded that most of the endeavours in the previous decade had failed for precisely that reason.⁴⁰

Inevitably, much ink was spilled on the outcomes of the Paris Conference, and the vicissitudes of the international organization it brought into being. As is well known, criticisms of the Versailles Treaty proliferated across Europe, albeit on contradictory grounds: either because it went too far⁴¹ or because it did not go far enough.⁴² The harsh terms of the peace treaty triggered a mass resignation of German members of the *Institut de droit international*.⁴³ In the Low Countries, which remained neutral in 1914–1918, the tempers ran understandably less high. In his inaugural lecture of 20 September 1919, Verzijl presented his mildly optimistic vision on the novel regime,

³⁵ de Waele, 'Commemorating Robert Regout (1896–1942): A Chapter from the History of Public International Law Revisited', 7 *Journal of the History of International Law* (2005) 81.

³⁶ C. van Vollenhoven, *Omtrek en inhoud van het internationale recht* [*Scope and Content of International Law*] (1898), at 28; W. J. M. van Eysinga, *Leer en leven der statenvormingen* [*Theory and Life of State Transformations*] and *De studie van het internationale recht* [*The Study of International Law*], both included in F.M. van Asbeck et al. (eds), *Sparsa Collecta – Een aantal der verspreide geschriften van Jonkheer Mr. W.J.M. van Eysinga* (1958), 1–17 and 38–48.

³⁷ Cf. Koskenniemi, *supra* note 4, at 424–425; see also J.E. Nijman, *The Concept of International Legal Personality* (2004), at 149–242.

³⁸ See, e.g., de Louter, *supra* note 32, at 31–32; Telders, 'Is het gewenscht, dat den Nederlandschen rechter de bevoegdheid toekomt internationale verdragen en andere overeenkomsten rechtstreeks toe te passen?' ['Is it Desirable that the Dutch Judge Obtains the Competence to Directly Apply International Treaties and Other Conventions?'], 67 *Handelingen der Nederlandschen Juristen-Vereeniging* (1937) 1; J. H. W. Verzijl, *Na den storm* [*After the Storm*] (1938), at 24.

³⁹ van Vollenhoven, 'Nationale staatsrechtstudie in Nederland', 70 *Mededeelingen der Koninklijke Akademie van Wetenschappen* (1926) 92, at 99.

⁴⁰ van Hamel, 'Crisis in het Internationaal Recht' [Crisis in International Law], 20 *Mededeelingen van de Nederlandsche Vereniging voor Internationaal Recht* (1935) 34, at 40.

⁴¹ See, e.g., J.M. Keynes, *The Economic Consequences of the Peace* (1920).

⁴² See, e.g., A. Pillet, *Le traité de Versailles* (1920).

⁴³ Münch, 'Das Institut de droit international', 28 *Archiv des Völkerrechts* (1990) 76, at 83.

admitting nevertheless that the Wilsonian dreams had been betrayed.⁴⁴ Shortly before, writing in French, his predecessor in Utrecht, Jan de Louter, lambasted the notion of self-determination.⁴⁵ Van Vollenhoven evaluated the design of the League of Nations as woefully unsatisfactory, in particular the composition and powers of the Council – respectively regarded as unfairly balanced and damningly feeble. In his private correspondence with van Eysinga, van Vollenhoven went so far as to refer to an early draft as a ‘shameful piece of trash’.⁴⁶ He was contradicted by Struycken (a familiar adversary in their polemics in the popular press, about which more later), who praised the sovereign-friendly construction, opining that the setup amounted to the maximum that was rationally attainable. In his 1920 inaugural lecture, François also cautioned not to give in to flights of fancy, nor let the better be the enemy of the good.⁴⁷ In subsequent years, Telders and Regout joined that chorus, pointing to the pitfalls in the enforcement system, but stressing the possibility of gradual improvement.⁴⁸ Their works display an admirable confidence in deploying formal legal reasoning, helping to dispel the distrust and contempt which had hitherto afflicted the discipline.⁴⁹ De Louter continued to behave as a conservative outlier, publishing a damning pamphlet entitled *Rechtsontaarding* [*Degeneration of Law*] in 1923, taking a swipe at the Versailles clauses on the arraignment of the Kaiser, compulsory German disarmament and the punishing reparation payments. He further denounced the Allies’ occupation of the Ruhr region, and disqualified the League of Nations as ‘a promise in the eyes of millions, an enigma in the eyes of thousands’ which had not lived up to expectations.⁵⁰

4 International Law Scholars in the Eyes of the Masses: Professionalization through the Media

In the 1920s and 1930s, not only did public international law scholarship go through a process of institutional emancipation at universities and substantive blossoming in scientific discourse, but increasing numbers of scholars proceeded to share their thoughts in talks and publications destined for wider audiences, offering authoritative

⁴⁴ Verzijl, *supra* note 38.

⁴⁵ de Louter, ‘La crise du droit international’, 26 *Revue générale de droit international public* (1919) 78, at 94–95.

⁴⁶ Cornelis Van Vollenhoven, Letter, 3 March 1919, Dutch National Archive, collection Professor Willem van Eysinga, inventory no. 91 (‘Het Parijsche ontwerp is toch wel een schandelijk prul’). Van Eysinga agreed with this assessment: see van Eysinga, ‘De grondwet van den Volkenbond’ [The Constitution of the League of Nations], *Nieuwe Rotterdamse Courant* (9 May 1919) 1.

⁴⁷ A. A. H. Struycken, ‘Het ontwerp van den Volkenbond’, in J. Oppenheim (ed.), *Verzamelde werken van prof. mr. A.A.H. Struycken*, Vol. 3 (1926), 1; J. P. A. François, *Nederlands aandeel in de ontwikkeling van het volkenrecht* [The Share of The Netherlands in the Development of International Law] (1920), at 29.

⁴⁸ Telders, ‘Hervorming van den Volkenbond’, in B.M. Telders, *Verzamelde geschriften van prof. mr. B.M. Telders* (1947), 100–107; R. H. W. Regout, *Is er grond voor vertrouwen in de toekomst van het volkenrecht?* [Is There Reason to Believe in a Future for International Law?] (1940), at 9.

⁴⁹ Cf. d’Aspremont, *supra* note 14, at 23.

⁵⁰ J. de Louter, *Rechtsontaarding* (1923), at 15.

analyses and rectifying widespread misconceptions. Nor did they hesitate to launch debates and polemics. At the same time, it appears that popular media no longer wished to leave it to well-meaning amateurs to comment on international developments, and frequently invited experts to contribute to newspapers, magazines and radio broadcasts. Hence, in this respect too, international law came to be seen as a serious profession, practised by writers commanding a specific expertise. Consciously or subconsciously, the movement lived up to Asser's turn-of-the-century creed that legal academics must not shut themselves in the ivory tower, but actively assist in effecting social progress.⁵¹

In this context, we may for instance read van Vollenhoven's zeal to disseminate the theorem of supra-state law, drawing (selectively) on Grotius.⁵² In 1910, van Vollenhoven had published an article entitled 'Roeping van Holland' ['Holland's Vocation'] in the journal *De Gids*, aimed mostly at liberal upper- and middle-class readership. He proposed, inter alia, the creation of an international police force that would act against delinquent states, taking instructions from an international judiciary. Van Eysinga, writing in the *Nieuwe Rotterdamsche Courant*, a liberal newspaper, concurred.⁵³ The piece provoked a negative reaction from Struycken, who, writing in the periodical *Van Onzen Tijd*, saw no need for any of those contrivances.⁵⁴ Van Vollenhoven substantiated his ideas in the booklet *De drie treden van het volkenrecht* [*The Three Stages of International Law*], prompting a vitriolic review by de Louter in the *Utrechts Nieuwsblad*, repudiating the author's pipe dreams.⁵⁵ The quarrel, which had commenced before the outbreak of the Great War, simmered on until well into the 1920s, influencing societal and political debates on the necessity to reform the League's powers and structure.⁵⁶

The wisdom of Dutch neutrality was another typical issue that kept the learned gentlemen divided, especially during the 1930s, as is manifest from countless publications intended to enlighten and influence the masses. While initially seen as a stumbling block, the rhetoric associated with the Dutch neutral tradition was soon found to match that of the League with regard to collective security.⁵⁷ Following the common

⁵¹ Asser, 'Droit international privé et droit uniforme', 12 *Revue de droit international et de législation comparée* (1880) 6; cf. Oppenheim, 'The Science of International Law: Its Task and Method', 2 *American Journal of International Law (AJIL)* (1908) 355.

⁵² Cf. Kooijmans, 'How to Handle the Grotian Heritage: Grotius and Van Vollenhoven' 30 *Netherlands International Law Review* (1983) 81.

⁵³ van Vollenhoven, 84 *De Gids* (1910), 185; van Eysinga, 'Wilsons Program', *Nieuwe Rotterdamsche Courant* (25 January 1917) 1.

⁵⁴ Struycken, 'Internationale politiemacht: Eene roeping van Holland?' [International Police Force: Holland's Vocation?], in J. Oppenheim (ed.), *Verzamelde werken van prof. mr. A.A.H. Struycken*, Pt. 2 (1925) 9.

⁵⁵ C. van Vollenhoven, *De drie treden van het volkenrecht* (1918); de Louter, 'Mr. C. van Vollenhoven, De drie treden van het volkenrecht', *Utrechtsch Dagblad* (30 December 1918) 12.

⁵⁶ Surprising for a scion of the Leiden school, which displayed the main traits of solidarism, Telders put his foot in it about a decade later, contesting the logic and feasibility of van Vollenhoven's proposal in his 'Staat en volkenrecht' [State and International Law] (1927) (Doctoral thesis, University of Leiden).

⁵⁷ Cf. Richard, 'Between the League of Nations and Europe: Multiple Internationalisms and Interwar Dutch Society', in R. van Dijk et al. (eds), *Shaping Foreign Relations: The Netherlands 1815–2000* (2018) 97, at 99.

interpretation of Article 16 of its Covenant,⁵⁸ members of the organization could basically decide for themselves whether one of them had resorted to war in breach of its obligations. Whereas countries were formally bound to adopt financial and economic measures, the self-judging nature of Article 16 allowed them not to take sides politically and to abstain from any military action to follow. Writing in *De Gids* in 1922, François expounded how the advent of the League was nonetheless destined to render neutrality untenable.⁵⁹ Fourteen years later, however, when it had become clear that Article 16 no longer imposed a duty on League members to sanction countries acting in violation of the Covenant, Telders made the case in that same journal for the removal of that provision.⁶⁰ In 1938, he implored that the Netherlands revert to its traditional non-partisan position to avoid being pulled into the maelstrom of the impending conflict.⁶¹ Regout chose to disagree, underlining the importance of an unreserved commitment to the League and its objectives.⁶² He repeated the message as one of four speakers at a gathering of the Association for the League of Nations and Peace in The Hague.⁶³ An intriguing middle ground was taken at the annual meeting of the Dutch Association for International Law. In a speech entitled ‘Ons recht van bestaan’ [‘Our Right to Exist’], the then president contended, on the one hand, that membership in an organization that would force the Low Countries to take sides was unpalatable. On the other hand, in a very pragmatic fashion, he re-assured listeners that there was no pressing need to withdraw, as Article 16 had become dead letter anyway, and the League yielded sufficient benefits for wanting to stay.⁶⁴

The outreach activities of Catholic international law scholars exemplify how they got mired in a similar tangle. As is well known, the Holy See endorsed Mussolini’s dismal campaign against Abyssinia (1935–1937), as well as the nationalist alliance of general Franco in the Spanish Civil War (1936–1939). Regout, who had obtained his doctorate with a legal-historical study of *bellum justum*, passionately invoked the just war doctrine to convince the crowds of the righteousness of the Vatican’s policies. He thus authored a series of op-eds in *Studiën*, a Jesuit journal; *Pro Pace*, the periodical of the Catholic peace movement; and *De Maasbode*, the newspaper most frequently browsed by readers of his denomination.⁶⁵ Regout thereby pointed to Italy’s manifest need for territorial expansion, going on to state that the refusal to offer any concessions theoretically amounted to an injustice on the part of the Abyssinians.⁶⁶ He had

⁵⁸ Peace Treaty of Versailles – The Covenant of the League of Nations (1919) 225 Parry 188.

⁵⁹ François, ‘De strijd om de neutraliteit’ [The Battle for Neutrality], 87 *De Gids* (1923) 136.

⁶⁰ Telders, ‘De Ethiopische les’ [The Lesson from Ethiopia], 100 *De Gids* (1936) 98, at 105.

⁶¹ Telders, ‘Nederlandsche Volkenbondspolitiek’ [Dutch League of Nations Politics], 102 *De Gids* (1938) 354.

⁶² Regout, ‘Vrede en Volkenrecht’ [Peace and International Law], 10 *Pro Pace* (1938) 57.

⁶³ Reported in X., ‘Algemene vergadering der Vereeniging voor Volkenbond en Vrede’, 10 *Pro Pace* (1938) 164–5.

⁶⁴ van Hamel, ‘Ons recht van bestaan’ [Our Right to Exist], 23 *Mededeelingen van de Nederlandsche Vereniging voor Internationaal Recht* (1940) 12, at 18–20.

⁶⁵ Regout, ‘Het vraagstuk van den rechtvaardigen en onrechtvaardigen oorlog en het Italiaans-Abessynisch conflict’ [The Question of Just and Unjust War and the Italian-Abyssinian conflict], 124 *Studiën* (1935) 349; Regout, ‘Het Italiaansch-Abessynisch Conflict’ [The Italian-Abyssinian conflict], 7 *Pro Pace* (1935) 99; Regout, ‘Italië en Abessynië’ [Italy and Abyssinia], *De Maasbode* (6 August 1936) 3.

⁶⁶ Regout, ‘Het vraagstuk van den rechtvaardigen en onrechtvaardigen oorlog’, 124 *Studiën* (1935) 362.

evinced a kindred, quasi-scholastic attitude in his PhD, erroneously minimizing the distance between the medieval and the modern contexts. Again, the desire to revive an antiquated theory seems to have eclipsed an accurate assessment of the law then in force, which left no room for the type of offensive war waged by the Italians.⁶⁷ A couple of vituperative letters that were received by *Pro Pace* in response might have helped to persuade him to put the topic to rest. In the second half of the 1930s, Regout devoted himself instead to shoring up the authority of the League in speeches delivered, among others, on the Catholic radio, at the *Pax Romana* conference in Washington and at a prominent assembly of religious youth.⁶⁸

Shortly after the Nazis had invaded the Netherlands, Regout and Telders independently published pieces on the legal regime during an occupation, clarifying in simple terms the rights and duties under the 1907 Hague Convention on the Laws and Customs of War on Land.⁶⁹ With these extremely accessible writings, they almost knowingly ushered in their arrest, deportation and ultimate demise.⁷⁰

The foregoing discussion presents a snapshot of how Dutch scholars attempted to reach a wider audience, and elucidates more generally how the budding group of international law professionals risked getting caught up in complex games – seeking proximity to international agendas in order to underscore their relevance, while keeping a sufficient distance to retain the credibility of their discipline. The engagements inspired them to hone their ability to handle different registers and allegiances, simultaneously or in succession.⁷¹

5 International Law Scholars, the Government and the League of Nations: Professionalization through Public Service

Since the days of Grotius and Vattel, the phenomenon of the ‘lawyer-diplomat’ has been a known quantity.⁷² Household names include Wheaton, Calvo and von Martens. At the beginning of the 20th century, the often honorific, unremunerated or part-time functions they exercised morphed into professional, remunerated or full-time ones. The international ‘turn to institutions’ also entailed a range of new job opportunities,

⁶⁷ de Waele, *supra* note 35, at 86. See also Verzijl, *supra* note 38, at 18.

⁶⁸ Regout, ‘De Volkenbond in nood’ [‘The League of Nations in Distress’], Speech for the Catholic Radio KRO, Archive of the Dutch Province of the Jesuits (KADOC), Z.160.1.36, inventory no. 23; L. Waddy, *Pax Romana and World Peace* (1950), at 76; Regout, Lecture given at a symposium organized by Catholic and Protestant youth in Amsterdam, 18 January 1940, Archive of the Dutch Province of the Jesuits (KADOC), Z.160.1.36, inventory no. 42, at 3.

⁶⁹ 18 October 1907, USTS 539.

⁷⁰ Telders, ‘Wetgeving in bezet gebied’ [Legislation in Occupied Territory], *Nieuwe Rotterdamsche Courant* (10 June 1940) 7; ‘De rechtspraak in bezet gebied’ [The Judiciary in Occupied Territory], *Nieuwe Rotterdamsche Courant* (11 June 1940) 3; Regout, ‘De rechtstoestand in bezet gebied’ [The Legal Regime in Occupied Territory], 133 *Studiën* (1940) 469.

⁷¹ Sacriste and Vauchez, *supra* note 13, at 102.

⁷² The term stems from Fitzmaurice, ‘Legal Advisers and Foreign Affairs’, 59 *AJIL* (1965) 72, at 84.

which smaller nations were keen to exploit.⁷³ By consequence, Dutch legal scholars increasingly sought to make themselves useful in the public service between 1919 and 1940, either on their own initiative or upon official request.

In Great Britain's Foreign and Commonwealth Office, Julian Pauncefort was appointed as the first legal assistant secretary in 1876, while Louis Renault became a jurisconsult for the French Ministry of Foreign Affairs in 1890. Their contemporary, Tobias Asser, preferred to counsel the Netherlands government in an ad hoc fashion. Struycken emulated the practice from 1918 on, having moved from academia four years earlier to sit as a judge at the Council of State. Van Vollenhoven and van Eysinga followed a reverse trajectory. The former started off as a civil servant at the Ministry of the Colonies, the latter as a legal advisor at the Ministry of Foreign Affairs. Both opted to switch tracks and become full-time professors. François, however, dedicated the largest part of his career to the government, securing the post of Director at the Department of League of Nations affairs in the 1920s, confining his university work to the margins. Alongside his commercial legal practice and the extraordinary professorship in Leiden, Telders provided public consulting services on an incidental basis. Whenever so requested, but in remarkable moderation vis-à-vis his peers, Regout advised the Roman Catholic State Party on salient questions of international law.

The Low Countries were not represented in the commission installed by the bigwigs at Paris in 1919 tasked with drafting the Covenant of the League Nations. Already in 1911, though, a committee had been set up to reflect on the possible Dutch input to the aborted Third Peace Conference in The Hague, the *Commissie van Voorbereiding voor de Derde Vredesconferentie* (Committee for the Preparation of the Third Peace Conference, CVDV). In the CVDV, being composed of dissimilar minds, such as van Vollenhoven, van Eysinga, de Louter and Struycken, internal frictions abounded, yet its membership carried an obvious prestige. The committee subjected the first blueprint for the Covenant to intense scrutiny, expressing disappointment, among other things, with the omitted right to self-determination, the lack of an absolute prohibition on aggressive war and the non-compulsory dispute settlement procedures.⁷⁴

Van Eysinga participated in the subsequent delegation of the Netherlands to the meeting at the *Hôtel de Crillon* in March 1920, where representatives of European and Latin-American neutral countries were given a podium to speak out on the draft document.⁷⁵ Naturally, they seized the moment, hoping to exert a stronger influence on the policies of the Great Powers than ever before, and to model the organization in accordance with their needs and priorities. An ambitious amendment the Dutch envoys proposed to Article 8, stating that '[I]Assemblée des Délégués fera une loi sur

⁷³ Cf. D. Macfadyen et al., *Eric Drummond and his Legacies: The League of Nations and the Beginnings of Global Governance* (2019), at 49–50.

⁷⁴ Minutes of the meetings of 10, 11 and 14 March 1919, Dutch National Archive, Ministry of Foreign Affairs, *Commissie van Advies inzake Volkenrechtelijke Vraagstukken*, inventory no. 24; Letter from the Committee to Dutch Foreign Minister Van Karnebeek, 15 March 1919, *Rijks Geschiedkundige Publicatiën*, GS 117, no. 996.

⁷⁵ Its secretary was van Asbeck.

la limitation des armements' ('[t]he Assembly of Delegates will draft a law on arms control'), was eventually not accepted. Among the (few) targets they did achieve was the attenuation of Article 16, restricting the right of the League Council to apportion military contingents in order to enforce its decisions.⁷⁶

In 1921, the CVDV evolved into a standing committee to advise the Dutch government on matters of international law, the Commissie van Advies inzake Volkenrechtelijke Vraagstukken (Advisory Committee on Questions of Public International Law, CAVV), presided by Struycken. In parallel, scholars began to be assigned to diplomatic missions with increasing frequency (reminiscent of how Asser had participated in the 1899 and 1907 conferences, on the second occasion accompanied by a young van Eysinga). For a country that cherished a tradition of neutrality, it is particularly striking to see how eager its scholarly community was to engage in the various components of the League, and how eager the representatives of other nations were to put them in office. For example, François attended all sessions of the Assembly from the organization's inception until 1940, the relatively obscure criminal law professor Joost van Hamel (1880–1964) was chosen as head of the Secretariat's legal affairs division and High Commissioner for Danzig in 1925 and his Amsterdam colleague Victor Rutgers (1877–1945) as rapporteur of the committee preparing the Geneva Disarmament Conference of 1932–1934, while van Asbeck joined the Permanent Mandates Commission in 1935. Contrary to assumptions of an entrenched 'provincial' attitude towards the institutionalization of international law, Dutch academics thus partook with great enthusiasm in this 'cosmopolitan milieu'.⁷⁷ To be sure, spending serious time in public service was no precondition for earning respectability as a scholar; inversely, however, a scholarly background was deemed a genuine asset for successful performance in the public sphere.⁷⁸

6 The Pinnacle? Dutch Legal Scholars and the New International Judiciary

Of all the opportunities legal scholars enjoyed to solidify their professionalism during the inter-war period, the occupations directly or indirectly connected to the international judiciary should not be overlooked, especially considering the location of the PCIJ and the PCA on Dutch soil. Witnessing the genesis of the former, James Brown Scott waxed poetically that '[t]he hope of the ages is in the process of realization'.⁷⁹ As is well known, proposals to establish a permanent court of justice had been floated by delegates to the 1899 and 1907 Hague Conferences, but it took a world war to finally

⁷⁶ A. Philipse, *Le rôle du Conseil de la Société des Nations dans le règlement pacifique des différends internationaux* (1929), at 99–100; C. Cluyver, *Documents on the League of Nations* (1920), 173–179. See also D. H. Miller, *The Drafting of the Covenant* (1928), at 306–309.

⁷⁷ Sacriste and Vauchez, *supra* note 13, at 88.

⁷⁸ Cf. Windsor, 'Consigniere or Conscience? The Role of the Government Legal Adviser', in J. d'Aspremont et al. (eds), *International Law as a Profession* (2017) 355.

⁷⁹ Scott, 'A Permanent Court of International Justice', 15 *AJIL* (1920) 52, at 55.

set the wheels in motion.⁸⁰ Pursuant to Article 14 of the Covenant, and acting on the instructions of the League Council, a small party of jurists that included the Dutch judge Bernard Loder (1849–1935) compiled a statute over the summer of 1920.⁸¹ Van Eysinga commented favourably on the final document in a leading Dutch newspaper, extolling the robust guarantees for the institution's independence.⁸² In December that year, the Statute was endorsed by the League Assembly, recommending it for ratification to the whole world. The Statute entered into force nine months later, when a majority of the League's members had completed their domestic ratification formalities.

The PCIJ was composed of 15 judges appointed for a (renewable) term of nine years. To be elected to the bench, endorsement by a majority in the Council and a majority in the Assembly was required. For lawyers anywhere, appointment to the Permanent Court signified a crowning achievement. The first elections were organized in 1921, where Loder triumphed as the candidate of choice from the Netherlands. He saw an additional honour bestowed upon him when his peers elected him as the PCIJ's very first president. Loder, a tenacious fellow of positivist persuasion, had to bow out a decade later for having reached the Dutch statutory age of retirement.⁸³ In 1931, to his displeasure, he was succeeded by Willem van Eysinga.

The inaugural sitting of the PCIJ took place at the beginning of 1922. Under the aegis of Loder, it delivered the celebrated judgment in its first contentious case, pertaining to the *S.S. Wimbledon*, in 1923.⁸⁴ Loder cemented his place in judicial history with his dissenting opinion in the *S.S. Lotus* case (1927), appended to the judgment containing the notorious maxim that 'restrictions upon the independence of states cannot be presumed'.⁸⁵ The opinion gives us an interesting insight, as Loder strenuously objected to the said inference, believing it to boil down to the misguided idea that 'every door is open, unless it is closed by treaty'.⁸⁶ Van Eysinga, who entertained life-long personal friendships with Manley Hudson, Dionisio Anzilotti and Max Huber, acquired renown in the Dutch and global legal community alike for his separate opinion in the 1934 *Oscar Chinn* case. In it, he asserted that, just as in the relationship between national and international law, rules adopted between a smaller circle of subjects have to give way to rules adopted between a larger circle of subjects – echoing thoughts that had permeated his inaugural lectures in Groningen and Leiden.⁸⁷

⁸⁰ Katzenstein, 'In the Shadow of Crisis: The Creation of International Courts in the Twentieth Century', 55 *Harvard International Law Journal* (2016) 159.

⁸¹ M. O. Hudson, *The Permanent Court of International Justice, 1920–1942: A Treatise* (1943), 93–129.

⁸² 'Het Permanente Hof van Internationale Justitie' [The Permanent Court of International Justice], *Nieuwe Rotterdamsche Courant* (16 October 1920) 1; 'Hoe aan enkele bezwaren tegen het Permanente Hof van Justitie tegemoet is gekomen' [How Some Objections against the Permanent Court of Justice Were Met], *Nieuwe Rotterdamsche Courant* (17 October 1920) 1.

⁸³ Kusters, 'In memoriam Mr. B.C.J. Loder', 20 *Mededeelingen van de Nederlandsche Vereniging voor Internationaal Recht* (1935) 7, 9–11.

⁸⁴ *Case of the S.S. Wimbledon (United Kingdom, France, Italy, Japan v. Germany)*, 1923 PCIJ Series A, No. 1.

⁸⁵ *Case of the S.S. Lotus (France v. Turkey)*, 1927 PCIJ Series A, No. 10, para. 18.

⁸⁶ *Case of the S.S. Lotus (France v. Turkey)*, 1927 Series A, No. 10, Dissenting Opinion of Judge Loder, at 34.

⁸⁷ *Oscar Chinn (Britain v. Belgium)*, 1934 PCIJ Series A/B, No. 63, Separate Opinion of Judge van Eysinga.

The PCIJ opened up marvellous new opportunities for 'local' jurists, not least for the scholars who were asked to appear on behalf of a government, to play a part in judicial decision-making, including in the capacity of, for example, clerk or administrator. Under Loder's presidency, the judges resolved that '[a]ny person appointed by a State to represent it should be admitted by the Court', and multiple Dutch professors were enlisted in the 'invisible bar'.⁸⁸ Verzijl acted for the Free City of Danzig in 1925 and for Bulgaria in 1930.⁸⁹ Telders was the Netherlands' agent in 1937 in litigation against Belgium concerning the river Meuse.⁹⁰ François, too, busied himself as counsel or representative in various cases, as a logical corollary of his function at the Dutch Ministry of Foreign Affairs.

Scott correctly predicted in 1920 that 'if the Court is constituted at all and its decisions meet with approval, it will, little by little, lay down principles in special cases which apply to other cases of a more or less similar nature arising between other parties'.⁹¹ PCIJ judgments have maintained a fine relevance, influenced subsequent jurisprudence and continue to be cited today.⁹² The creation of the World Court moreover led scholars such as François and Verzijl to produce scores of annotations, making a name for themselves as deft commentators of judgments.⁹³ The Hague, of course, has accommodated another permanent guest, the PCA, since 1899. Van Vollenhoven joined this lofty institution in 1921, but never sat on an arbitration panel, in contrast to Rutgers (occasionally) and van Eysinga (frequently). After World War II, François even went on to serve as its Secretary-General.

Van Vollenhoven's ascension to the presidency of the US/Mexican Claims Commission in 1924–1927, and Verzijl's chairing of the Franco-Mexican Claims Commission in 1928–1929, suggest that scholars from the Low Countries fulfilled a specific demand. We should note though that neutral countries seconded a disproportional number of members of such bodies overall, a feat commonly attributed to the virtues of exteriority and independence they were presumed to possess.⁹⁴ Verzijl's fateful decision to retire the Mexican members of his Commission was severely criticized by contemporaries, casting a shadow over the ripeness of the professionalism here.⁹⁵ He, however, also received praise for arriving at a refined definition of state responsibility, notably by his verdict in the *Caire* case.⁹⁶ The outcomes of the Mixed Commissions were identical anyhow, the claims being resolved via diplomatic

⁸⁸ Crawford, 'The International Law Bar. Essence before Existence?' in J. d'Aspremont et al. (eds), *International Law as a Profession* (2017) 338, at 339.

⁸⁹ *Polish Postal Service in Danzig*, 1925 PCIJ Series B, No. 11; *Greco-Bulgarian Communities*, 1930 PCIJ Series B, No. 17.

⁹⁰ *Diversion of Water from the Meuse (Netherlands v. Belgium)*, 1937 PCIJ Series A/B, No. 70.

⁹¹ Scott, 'A Permanent Court of International Justice', *supra* note 79, at 54.

⁹² See, e.g., M. Fitzmaurice and C. J. Tams (eds), *Legacies of the Permanent Court of International Justice* (2013).

⁹³ According to Roelofsen (*supra* note 3, at xxx), it probably earned the latter his honorary membership of the *Institut de droit international* in 1979.

⁹⁴ Sacriste and Vauchez, *supra* note 13, at 100.

⁹⁵ Cf. A. Feller, *The Mexican Claims Commissions, 1928–1934* (1935). For a milder assessment, see Roelofsen, *supra* note 3, at xx–xxi.

⁹⁶ Roelofsen, *supra* note 3, at xx.

negotiations, with Mexico ultimately proving unable to pay the damages imposed by the arbitral awards.⁹⁷

7 Conclusion

As we know now, the ‘realization of the hope of ages’ would wind up to be short-lived. In the late 1930s, the methods of peaceful reconciliation fell into abeyance, as the League of Nations was gripped by paralysis, and its members stumbled on the brink of a second grand cataclysm. The conferring of an optional character to Article 16 of the Covenant (excising the duty to sanction aggressors economically and financially) dealt a fatal blow to the system. The Netherlands reverted to its pre-1919 course of strict neutrality, its colonial possessions more vulnerable than ever, and several Dutch lawyer-diplomats lost heart or their jobs – or both. In 1938, a disillusioned Verzijl gave up his chair at Utrecht himself, exchanging it for a professorship at Amsterdam focused on the administrative law of the overseas territories.⁹⁸ Conversely, in his inaugural address in Nijmegen, two months prior to the German invasion, Regout answered the question whether there was still reason to trust in a future for international law with an emphatic ‘yes’.⁹⁹ He was proven right within five years: World War II could not suppress the prevailing trends of the interbellum, which enjoyed a confident resurgence in 1945. The professionalization of the scholarship had become an irreversible process, consolidating the idea of international lawyers oscillating between different roles in the world community and their own communities (*dédoublément fonctionnel*).¹⁰⁰ Many of the theoretical concepts they thought up in the inter-war period laid the foundations for constitutional approaches in the United Nations era.¹⁰¹

The sketches and explorations in this paper have tried to contextualize the lives and work of a small batch of Dutch jurists. The portrayal of key protagonists in the Netherlands, their views and vicissitudes, may nevertheless help to enhance our understanding of the era. Arguably, a number of broader lessons may also be drawn from this episode for (the writing of) international law history. To a sizeable extent, the emancipation of the discipline we observed above amounted to a ‘professorization’: the creation of dedicated positions in the academia, the entrenchment of the discipline within the legal curriculum and the expansion of the substantive discourse in which the new generation of learned gentlemen was avid to partake. Obviously, the advent of the League of Nations was a central catalyst here, which heightened the societal awareness of, and people’s interest in, the changing dynamics at the global

⁹⁷ F. Mégret, ‘Mixed Claims Commissions and the Once Centrality of the Protection of Aliens’, in I. de la Rasilla and J. E. Viñuales (eds), *Experiments in International Adjudication: Historical Accounts* (2019), 127.

⁹⁸ Roelofsen, *supra* note 3, at xxii.

⁹⁹ de Waele, *supra* note 35, at 93–102.

¹⁰⁰ Random post-1945 highlights from the Netherlands include Röling sitting on the Tokyo Tribunal, François chairing the International Law Commission and Verzijl heading the Dutch delegation at the first negotiations on the UN Convention on the Law of the Sea.

¹⁰¹ de la Rosilla del Moral, ‘The Ambivalent Shadow of the Pre-Wilsonian Rise of International Law’, *Erasmus Law Review* (2014) 80, at 95–96.

level. While the Low Countries climbed off the fence politically, their legal academics took advantage of the many new possibilities to coalesce, share their insights and improve popular understanding of international law, pushing laymen to the side-lines ('punditization'). In turn, the increased visibility resulting from such outreach raised the authority of those experts and their field of study. The various functions and offices the scholars took up at the domestic and the international level constitute an equally clear sign of recognition. The launch of the PCIJ testified no less to the fact that a novel rule-based world order was in the making to which lawyers could contribute in numerous ways. Their energetic participation in the life of the Permanent Court and observations on its jurisprudence seemed to raise the institution's chance of success, fortifying the new legal order in which it operated. One may thus identify a virtuous circle between the strategies pursued by individual actors, intending to thrive in the success of the new constructions that they had themselves helped to create.¹⁰² Therewith, while still vindicating von Treitschke's (in)famous dictum 'Men make history', the reverse 'history makes men' looks no less apposite.

The professionalization of international law scholarship in the Netherlands, which did not garner as much attention up until now as the development in other countries, hence ran along approximately the same lines as have been distinguished elsewhere: an incremental prominence at universities, ever-flourishing publication culture, diligent appearances in general media and manifold activities in public service.¹⁰³ We even noted how the conceptual approaches of some Dutch scholars resembled those of French and British counterparts. All this should be enough to pull out the rug from under any habitual presumptions of insularity or backwardness. In one regard, the country was even among the front-runners, considering the discipline's mandatory embedding in the legal curriculum from the late 19th century already.¹⁰⁴ In this light, the continuous presence of a Dutch judge at the PCIJ for two decades is rather striking too, and looks almost disproportional.

Admittedly, it would have been odd if the Netherlands had emerged as a total laggard and complete outlier vis-à-vis its immediate neighbours. The main diverging pattern was seen to stem less from the pillarized structure of Dutch society than from the protracted tradition of neutrality, which left an imprint on the themes discussed by the leading authors as well as the positions taken by the government. For both, the establishment of the League threw up an urgent series of 'boon or bane' questions. Even when smaller European nations could regularly invoke universalists principles of international law for their benefit, the case of the Netherlands demonstrates how they

¹⁰² Cf. Papadaki, 'The "Government Intellectuals": Nicolas Politis – An Intellectual Portrait', 23 *EJIL* (2012) 221, at 231.

¹⁰³ Cf. d'Aspremont, *supra* note 14.

¹⁰⁴ Ahead of Germany, for example. See Schücking, 'Der Stand des völkerrechtlichen Unterrichts in Deutschland', 7 *Zeitschrift für Völkerrecht* (1913) 375, at 375–382. The differences across Europe in the exact moment international law training became compulsory have recently been attributed to such mundane factors as disparities in resources, personal preferences of those in charge of curricula or views of influential commentators (Scoville and Berlin, 'Who Studies International Law? Explaining Cross-national Variation in Compulsory International Legal Education', 30 *EJIL* (2019) 481, at 500).

did not all find it so easy to synchronize their participation in the organization with their own strategic interests.¹⁰⁵

Compared to Germany and France, the scholarly discussions had a slightly more practical slant, and were perhaps theoretically less advanced (or at least less abstract-philosophical in their orientation) than those conducted by colleagues abroad – *pace* figures such as van Vollenhoven.¹⁰⁶ In addition, the bulk of the writings being in Dutch did not stimulate a cross-fertilization of ideas (and concomitant elevation of the discourse) that transcended the extant linguistic barriers. There is no evidence either of the Catholic authors, although meeting in fora such as the *Pax Romana* conferences, being interested in active collaborations with foreign colleagues such as Verdross or Le Fur.¹⁰⁷

In the analyses conducted, the national-socialist thought has been the big absentee, essentially because it gained only little traction among serious international law scholars.¹⁰⁸ While there certainly were Dutch jurists on the extreme right of the political spectrum, they did not nourish any *Grossraum* aspirations. Moreover, the Nazi perspective was easier to apply within the civil or criminal law sphere.¹⁰⁹ The Netherlands was perhaps singular as regards the lethal consequences of that ideology, when it was brought to bear on the protagonists portrayed above: with Rutgers, Regout and Telders, no less than three of them perished in the conflagration their discipline had been unable to avert.¹¹⁰ In the wake of that tragedy, others would follow in their footsteps, reaping the fruits their predecessors had sown. Their lives and those of their contemporaries, ‘epitomising the behaviours, logics and motives that can be found in a given society’,¹¹¹ have enabled us to unpack the history of the evolution of their profession, situating original local experiences within the global frame that hitherto remained underexplored.

¹⁰⁵ Cf. Sacriste and Vauchez, *supra* note 13, 86. It also defies nuance to describe their attitude as dogged ‘pacta-sunt-servanda-ism’; cf. de la Rosilla del Moral, *supra* note 101, at 96.

¹⁰⁶ For example, they stayed out of the long-winded jurisprudential debate on sources raging in Germany and England, as described by Koskenniemi, *supra* note 5, at 958–959.

¹⁰⁷ Cf. Elósegui, ‘La influencia de Kelsen y Verdross en el pensamiento jurídico de Legaz Lacambra sobre el Derecho internacional en el periodo de entreguerras’, in Y. Gamarra and I. de la Rasilla (eds), *Historia del pensamiento iusinternacionalista español del siglo XX* (2013) 287.

¹⁰⁸ In similar vein, see van Hamel, ‘Over de uiteengeretenheid van het volkenrecht, en den weg om die te verhelpen’ [About the Fragmentation of International Law, and The Way to Overcome It], 23 *Mededeelingen van de Nederlandsche Vereniging voor Internationaal Recht* (1940) 25, at 27.

¹⁰⁹ See D. Venema, *Rechters in oorlogstijd. De confrontatie van de Nederlandse rechterlijke macht met nationaal-socialisme en bezetting* [Judges during Wartime. The Confrontation of the Dutch Judiciary with National-Socialism and Occupation] (2007), at 74–128. Cf. Mahlmann, ‘Judicial Methodology and Fascist and Nazi Law’, in C. Joerges and N. Singh Ghaleigh (eds), *Darker Legacies of Law in Europe* (2003) 229; K. Ambos, *Nationalsozialistisches Strafrecht* (2019).

¹¹⁰ Rutgers was imprisoned in Bochum in 1945, Regout in Dachau in 1942 and Telders in Bergen-Belsen in 1945. Verzijl was briefly interned at Buchenwald in 1940, but released in 1941. For longer or shorter periods, they were either considered as potential security risks or suspected of actively conspiring against their oppressors (Regout and Telders having ventured to openly remind the occupying forces to comply with the 1907 Hague Regulations).

¹¹¹ Vadi, *supra* note 2, at 54, referring to Fisher, ‘Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History’, 49 *Stanford Law Review* (1996–1997) 1065, at 1071.