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The Hague Academy as a Space of Encounter: How Scelle's 1933 Teachings on National Courts Landed in the Netherlands

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1 Introduction

Nowadays, the legacy of the Hague Academy is mostly defined through the *Recueil des Cours*, whose more than 400 volumes provide a key source for both intellectual historians of international law and those engaging with its present-day theory. Yet, at the very outset of the Academy in 1923, the *Recueil* emerged as merely an offspring of its teaching activities. In the first years of its existence, the Academy first and foremost focused on the over 300 attendees gathered at the Peace Palace's premises every year. It was by bringing together upcoming and established international law professionals in lecture halls and during dinners, teas and excursions that it wanted to internationalize the still very nationally orientated field of international law.[1]

In light of the Academy's centenary, this article zooms in on the Academy's crucial role as a space of learning and encounter. This means entering rather unchartered territory: after all, studying the impact of the Academy's teaching is not as straightforward as tracing the impression that the *Recueil* left in innumerable footnotes. So far, the effect of the Academy's socialization on careers and convictions has mostly been addressed in individual testimonies by famous former students, but, apart from being a genre of its own, these hardly seem to represent the large cohorts of students passing through the Peace Palace's lecture halls.[2] At the same time, even when the archives

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1 Brown Scott, 'The Hague Academy of International Law', 17 *American Journal of International Law* (1923) 746.

2 See testimonies in R.J. Dupuy (ed.), *Livre Jubilaire, 1923–1973. Académie de Droit International de La Haye* (1973); S. Cartier and J. Wilcox (eds), *100e Anniversaire Académie de Droit International de La Haye, 1923–2023* (2023).

do provide the attendance lists meticulously kept by its administrators – at least for the interwar years – the wide diversity of backgrounds of the students, in combination with their (often) relatively anonymous careers as civil servants, judges or private lawyers, discourages any generalizations.[3] This contribution therefore explores a different way of reflecting on the impact of the Academy's teaching by taking a particular example – Georges Scelle's 1933 'Règles générales du droit de la paix' course[4] – and focusing on a specific audience – the Dutch lawyers making up more than half of the Academy's attendees that year.

The intervention thus aimed at is both empirical and methodological. In the latter regard, it picks up on recent pleas to study international law not just as an actual body of law but also as a particular language employed in a broader, political setting.[5] So, this brief and somewhat speculative history of how Scelle's course landed in the Netherlands does not look at the legal-theoretical writings in which his doctrine was cited (which would have been rather unlikely in the theory-averse Dutch international legal field)[6] but, rather, explores a broader set of practices and narratives developing in the same period that aligned remarkably well with what Scelle had preached in particular about national courts acting as 'agents' of the international order. Empirically, the point here is not to claim that the same could not have happened without Scelle having presented his poignant ideas in The Hague in 1933. Instead, this contribution suggests that Scelle's teachings contributed to the thinking space, or maybe the grammar, in which a specific Dutch vocabulary on international law developed.

As I have argued elsewhere, this specific Dutch vocabulary had important implications for the development of European law, in particular through the constitutional reforms and court cases of the 1950s that 'paved the road' for a constitutional practice in European law.[7] Apart from technical terminology such as 'direct effect' and 'primacy', the vocabulary contained references to both a 'Grotian' commitment to the international legal order and a 'Quixotic' mission for national courts, in particular, to contribute to its enforcement. Through explorations of the Hague Academy's impact on the Dutch legal field, the main content of Scelle's 1933 general course and the emergence of this 'Quixotic' Dutch idea in the late 1930s, this contribution suggests that the remarkable Dutch vocabulary on national courts and international law drew inspiration from Scelle's teachings.

[3] Papers of the Academy can be found in the archives of the Carnegie Endowment for International Peace, New York; in Washington Office Records (CEIP Records), Columbia University Rare Books and Manuscripts Library, New York; and in Nikolaos Politis Papers, United Nations Archives, Geneva.

[4] Scelle, 'Règles générales du droit de la paix', 46 *Recueil des cours* (1933) 331.

[5] J.P. Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (2017), at xx.

[6] De Waele, 'A New League of Extraordinary Gentlemen? The Professionalization of International Law Scholarship in the Netherlands, 1919–1940', 31 *European Journal of International Law* (*EJIL*) (2020) 1005.

[7] Van Leeuwen, 'Paving the Road to "Legal Revolution": The Dutch Origins of the First Preliminary References in European Law (1957–1963)', 24 *European Law Journal* (2018) 408; Van Leeuwen, 'On Democratic Concerns and Legal Traditions: The Dutch 1953 and 1956 Constitutional Reforms "Towards" Europe', 21 *Contemporary European History* (2012) 357.

2 The Hague Academy as a Space of Encounter

The year 1933, which was the year of Scelle's general course for the Hague Academy, marked a special year and not just because of the political developments unfolding east of the Dutch border. On its 10th anniversary, the Academy moved into a new, separate building in the beautiful Peace Palace garden. The new structure, containing a lecture hall, a reading room, conversation rooms and offices for its teachers marked the success of both the Academy and the Permanent Court of International Justice (PCIJ), which due to its judges' need for more office space increasingly struggled to share the Peace Palace with the Academy. That the Carnegie Foundation and the Dutch government did not hesitate to support the construction of a special Academy building confirmed that the Academy had quickly built a reputation both in the Netherlands and beyond.[8] Since the establishment of the Academy in 1923, various alternatives had seen the light, such as the Genevan Graduate Institute of International Studies in 1927 and Paris University's programme in international law, which increasingly benefited from the university's construction of a *Cité internationale*. Yet, as the Academy's founders kept underlining, the Hague Academy remained 'one of the very few institutions of learning in the world which may properly be termed international in the fullest sense of the word'.[9]

The ideal to develop a space of encounter, where an internationalized conception of international law could emerge, had already guided the thinking about a Hague Academy from 1907. Thus, the Academy was meant to counter the 'divergent practices' emerging in the different countries that thus far frustrated the development of international law.[10] The emphasis on fostering encounter and exchange was further underlined by the Academy's insistence on using only one official language as well as by its programming, mixing public and private international law, established and upcoming scholars, as well as those of progressive and more conservative fashion. In its reports, the Academy's governing board consistently emphasized the growing number of different nationalities it attracted, also with the help of scholarships and study leaves granted by some governments to civil servants. The successful fostering of an 'international atmosphere' during the 'Hague season' – the summer months when the PCIJ also held most of its sessions before the entire circus moved to Geneva for the League Assembly – was confirmed in the reports of some attendees, who also cherished the joint Kurhaus dinners for lecturers and students and the excursions organized by the Academy's alumni association.[11]

In spite of all these efforts, there was one national group consistently outnumbering all other nationalities: Dutch registrations typically made up some 40–50 percent of the attendees. In internal reports, the Academy acknowledged that the high cost

[8] Joor, 'The Hague Academy from a Historical Perspective', in B. Duynstee, D. Meijer and F. Tilanus (eds.), *Bouwen Aan Vrede: Het Vredespaleis, 1913–2013* (2013), at 119.

[9] 'Annual Report of the Director of the Division of International Law', in *CEIP Yearbook* (1934) xv, at 108.

[10] Brown Scott, 'Memorandum for mr. Politis', 4 October 1922, vol. 292, 1923, CEIP Records.

[11] Senior, 'Die Haager Völkerrechtsakademie', 29 *Die Friedens-Warte* (1929) 131; Gardot, 'L'Académie de Droit International', 36 *Revue Politique et Parlementaire* (1929) 285.

of living in The Hague, combined with the need to sacrifice summer holidays, had a deterrent effect on many foreigners. Where non-Dutch attendance increased significantly up to 1929, the economic crisis caused numbers to drop again after 1930. By 1933, the number of Dutch registrations (180) again outranked non-Dutch participation (166).[12] While it is impossible to establish what registration meant for the various participants – even students on a scholarship, who needed to demonstrate regular attendance, were occasionally reported to have spent most of the summer on the nearby Scheveningen beaches – one thing that can be observed about the Dutch participants, in particular, is that they consisted of a rather mixed crowd. Among the Dutch lawyers acquainting themselves with the 'internationalized' international law, whether mostly in the lecture hall or over dinner, some veterans of international law signed up year after year, such as League of Nations delegate Clasina Kluyver, Leiden professor Ben Telders and co-founder of the Netherlands Association for International Law Willem Roosegaarde Bisschop.

Further, a large part of the Dutch delegation consisted of students and academics, some of whom unsurprisingly became well known in post-war international or European law circles (L. Erades, A.M. Stuyt, P. VerLoren van Themaat). Remarkably, however, quite a few others would take up or occupy chairs in, for example, constitutional law (Jo van der Hoeven, Evert van Raalte, J.R. Stellinga, C.W. de Vries) or private law (S. van Brakel, A. van Oven, P. Sanders). Similarly, each year, a few dozen legal counsels, company lawyers, civil servants and magistrates also joined the Academy's activities, both from nearby offices in The Hague or Amsterdam and from other parts of the country.[13] The relatively large Dutch representation ensured that the new 'language' of international law did not only spread to the most committed disciples in the country but the theories and practices discussed by the many prominent scholars and experts invited to The Hague each year also reached a rather large and diverse part of the Dutch legal profession.

3 Agents of the International Legal Order: Scelle in 1933

In this setting, on Monday 3 July 1933, Georges Scelle opened his lecture series on the 'principles of international law' for an audience of 63 students, slightly more than the 54 that had attended Zurich professor Dieter Schindler's opening lecture at 9:30 a.m. that same day, where he discussed '[t]he sociological and psychological basis of international law'. During the 16 sessions of Scelle's course, attendance did not drop below 50, which was above average. The shorter, more specialist courses in the same month, such as Arnold MacNair's introduction to British treaty jurisprudence, Boris Mirkine-Guetzevitch's series on constitutional law and the organization of peace or

[12] 'Résumé de quelques données statistiques concernant le fonctionnement de l'Académie de Droit International en 1933', vol. 331, 1933, CEIP Records.

[13] Names and numbers based on 'Liste des auditeurs de l'Académie – Année 1931', vol. 320, 1931; 'Liste nominative des auditeurs de l'Académie – Année 1932', vol. 324, 1932; 'Liste des auditeurs de l'Académie – Année 1933', vol. 331, 1933, CEIP Records.

Choucri Cardahi's lectures on the French mandate in Syria and Lebanon, typically drew a slightly smaller crowd than the general courses. Introduced to the Academy's programme in 1929, the 16-lecture 'general courses' were meant to present the 'discussion of a doctrine, of a system of international law'.[14] Scelle's 1933 lecture series perfectly fulfilled this aim: later reviews described it as 'unique in its genre' for the way it systematically discussed a highly original doctrine.[15]

When he was invited to The Hague, Scelle had held a chair in public international law at the University of Dijon for 20 years before he was appointed in Paris in 1933. Since 1929, he had also been a professor at the Genevan Graduate Institute and an associate member of the Institut de Droit International. It was well known that Scelle was to be found among the progressive international lawyers such as Léon Bourgeois or Nikolaos Politis, who understood the world as a community of individuals rather than as a system of states or the product of state will. For Scelle, states merely served as a means to organize solidarity between individuals. This reflected his approach to law, which he understood, first and foremost, as a social phenomenon. In a 1923 publication, Scelle had already maintained that World War I had 'broken sovereignty in favor of methodological individualism'.[16] His 1932 *Précis de droit des gens* further developed his doctrine.[17] While Scelle's ideas on the role of the individual in the international legal order placed him close to Hans Kelsen, for example, his starting point differed. Where Kelsen thought of the international system as a system of norms, Scelle, from his more sociological perspective, mostly focused on functions of (political) organization.[18]

In his Hague lectures, Scelle systematically discussed the main principles of what he called his 'realist' views on the international legal order and their consequences for questions regarding the role of the state, sovereignty and the '*domaine réservé*'. Amongst others, he insisted not only that all national legal orders were subject to the international legal order but also that there was not really a difference between public and private international law. Consequently, turning to the most original part of his lectures, Scelle discussed international law as the 'constitutional' law of the international legal community. As Kelsen had done in his 1932 Hague lectures, Scelle structured his overview of international law by distinguishing between the legislative, judicial and executive functions on which its actions rested. Also, he observed that these functions often were exercised on a more decentralized, state level rather than on the international level. More than Kelsen, however, Scelle insisted that 'state agents' – the individuals acting on behalf of national governments and courts – in fact had to perform these functions complementing the emerging yet strained international

[14] 'Minutes', 18 November 1929, 251–254, Nikolaos Politis Papers.

[15] R. Kolb, *Les Cours Généraux de Droit International Public de l'Académie de La Haye* (2003), at 111–112.

[16] M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (2002), at 330; Scelle, 'Essai de systematique de droit international', 30 *Revue Générale de Droit International Public* (1923) 116.

[17] G. Scelle, *Précis de droit des gens: principes et systématique* (1932).

[18] Cassese, 'Remarks on Scelle's Theory of "Role Splitting" (dédoublement fonctionnel) in International Law', 1 *EJIL* (1990) 210, at 211.

institutions.[19] In order to explain how national governments – as well as national courts – could intervene in both the national and the international legal order, Scelle came up with the concept of '*dédoublement fonctionnel*' or 'role splitting': members of the executive and state officials act as state agents when they operate within the national legal system but as international agents when they operate in the international sphere.[20]

While Scelle's concept of role splitting provided a highly original perspective on the role of national bodies in the international order, his thoughts picked up on both the work of some earlier thinkers as well as a developing practice, in particular regarding the role of national courts. In 1929, the Austrian-British lawyer Hersch Lauterpacht had also called for national courts to act as 'guardians of international law'.[21] Moreover, the PCIJ in its 1927 *Lotus* case had acknowledged that national court decisions had a role in the formation of international law.[22] Only a few years later, Scelle's call for an active role of national courts gained more urgency against the background of a threatening failure of the League of Nations, due to both its own incapacity to act – such as in the 1931 Manchurian crisis – and the rise of hostile, nationalist regimes such as in Germany. Against this background, Scelle concluded his Hague lectures by citing the words ascribed to the Dutch founding father William the Silent: 'One need not hope in order to undertake, nor succeed in order to persevere.'[23] Although the horizons of international law looked rather gloomy in 1933, Scelle had opened a new way of thinking about possible actions.

4 Dutch International Lawyers: A Quixotic Mission?

In 1937, Utrecht international law professor Jan Verzijl echoed Scelle's solidarist ideas. For those familiar with the Dutch interwar international law landscape, Verzijl might seem an unexpected ally: unlike some of his Leiden colleagues, such as Hugo Krabbe, Cornelis van Vollenhoven and Willem van Eysinga, Verzijl had little time for the solidarist thinking that Scelle had popularized. Instead, Verzijl had followed in the positivist footsteps of his mentor Jan de Louter. After a dissertation on prize law, Verzijl produced an impressive series of comments on the jurisprudence of the PCIJ, on which he also lectured at the Hague Academy in 1924, next to commenting on national jurisprudence on international law. Yet, by the late 1930s, Verzijl seemed less certain of his ground, and, in 1938, he took the radical decision to leave his chair, out of mere despair over the state of international law.[24]

[19] *Ibid.*, at 221–222.

[20] Scelle, *supra* note 4, at 358–359; Thierry, 'The European Tradition in International Law: The Thoughts of Georges Scelle', 1 *EJIL* (1990) 193, at 194.

[21] H. Lauterpacht, *International Law: Being the Collected Papers of Hersch Lauterpacht*, vol. 2 (1970) 567, as cited in Roberts, 'Comparative International Law? The Role of National Courts in Creating and Enforcing International Law', 60 *International and Comparative Law Quarterly* (2011) 57.

[22] *S.S. 'Lotus,' France v. Turkey*, 1927 PCIJ Series A, No. 10.

[23] Scelle, *supra* note 4, at 693.

[24] C.G. Roelofsen, 'Jan Hendrik Willem Verzijl (1888–1987)', in T.M.C. Asser Instituut, *The Moulding of International Law: Ten Dutch Proponents* (1995) 334.

Shortly before, in 1937, Verzijl published a report about the direct application of international law in Dutch courts for a meeting of the Dutch Lawyers' Association (Nederlandse Juristenvereniging [NJV]). Concluding a detailed discussion of the Dutch monist tradition, Verzijl first posited that given the uncertain times, the Netherlands risked becoming the 'Don Quixote of international law' if it persisted in its monism. Yet, precisely this challenging situation necessitated perseverance, he added: 'The struggle to build a true international legal order is a too serious and important matter for humanity to allow for desertion.'[25] Thus, the Utrecht professor went beyond a mere monist interpretation of international law and enlisted national courts as important agents in a crumbling international order.

Verzijl's report was meant to intervene in a rather practical question that had emerged some years earlier, around the time that Scelle lectured in The Hague. Only a few streets away from the Peace Palace, the Dutch government had issued legislation protecting inland shippers against the rat race for freight that had been caused by the crisis. Introducing a system of freight planning, the law was considered to conflict with the freedom of navigation as guaranteed by the 1868 Rhine Navigation Act, an international treaty binding on The Netherlands.[26] Therefore, Rhine shipping had been exempted from the law, pending treaty amendments. Soon, however, courts had to rule on violations of the law in tributary rivers. In 1934, the Supreme Court, in line with previous jurisprudence, upheld the Rhine Navigation Act. In Dutch legal circles, the affair triggered the question of whether international law could be invoked in a purely national context. In his case note, Verzijl had already highlighted how the Dutch courts' inclination to answer the question positively contrasted with the PCIJ's recent *Oscar Chinn* ruling that had even hesitated to apply international guarantees on free navigation in a case where an international dimension clearly featured.[27] In his NJV report, Verzijl developed these cautious observations into an explicit appeal to his Dutch colleagues to defend the international legal order.

Curiously, whereas Verzijl, in practice, subscribed to the ideas voiced by Scelle and like-minded thinkers such as Kelsen and Alfred Verdross, he openly admitted that he did not warm to theories of an international legal community or to any other theoretical 'construction', as he called it.[28] In contrast, Verzijl's opponent in 1937, Ben Telders, a Leiden professor in international law – who was himself a regular attendee of the Academy – elaborated on these theories before rejecting them in favour of a dualist interpretation.[29] In the NJV meeting, Verzijl's emotional plea to defend international law nevertheless won the vote of a narrow majority of the scholars, civil servants and practitioners attending. Thus, the meeting not only affirmed the Supreme Court's monism but also declared international law to prevail over later legislation. As a critical observer remarked, the vote aligned well with the 'sentimental appeals' to the Netherlands' Grotian reputation, which was often invoked to justify

[25] Verzijl, 'Preadvies', 67(1–2) *Handelingen NJV* (1937) 1.
[26] Revised Convention on the Navigation of the Rhine (Treaty of Mannheim 17 October 1868).
[27] *Weekblad van het Recht* 12849 (5 January 1935), at 4–6.
[28] Verzijl, *supra* note 25, at 48–49.
[29] Telders, 'Preadvies', 67(1–2) *Handelingen NJV* (1937) 1, at 15.

its commitment to the international legal order.[30] By 1937, however, such older sentiments dovetailed with new theoretical constructions such as Scelle's *dedoublement fonctionnel* to which Dutch lawyers had been introduced during the summer sessions of the Hague Academy.

5 Conclusion

In the Netherlands, the position endorsed by the NJV in 1937 continued to prevail also after the years of World War II. This was not in the least place due to a student of Telders whose name consistently featured on the Academy's attendance lists between 1931 and 1938: Lambert Erades. As a judge, the co-founder of the *Netherlands Journal of International Law* in the early 1950s, and, in particular, the author of many publications on the relation between international law and national law, Erades was key in keeping alive the 'Quixotian' sentiments that set Dutch legislators on the track of an important constitutional reform in 1953–1956.[31] This reform in turn inspired Dutch courts to act as agents of an international, but also, more importantly, a European, legal order in the post-war years.

This contribution, in exploring the impact of the Hague Academy's teaching, has suggested that, for the large cohorts of Dutch lawyers participating in its activities in the interwar years, the Academy mattered. For young students such as Erades, as well as for the more experienced practitioners that populated the NJV's ranks, engagement with the 'international legal order' was seemingly normal. More specifically, the space created by Scelle's 1933 teachings on the agency of national courts in this international legal order, amongst others, allowed Dutch lawyers such as Verzijl to develop new ways of thinking about the international engagement of Dutch national courts. Even when Verzijl and his compatriots did not fully subscribe to Scelle's theoretical constructions, they embraced the practical implications of his teachings as well as the urgency to put them into practice.

In their 1990 discussions of Scelle's work, Antonio Cassese and Hubert Thierry reflected on 'Scelle's … enormous potential for explaining the phenomenon of the European Community in the context of international law' from a theoretical point of view.[32] This contribution has posited that the relations between Scelle's teaching and post-1945 European law do not just exist on a theoretical level but also in the form of actual human encounters that took place in the lecture halls and tea rooms of the Hague Academy.

30 'Verslag Eerste Zitting', 67(2) *Handelingen NJV* (1937) 1, at 21.

31 For an overview of publications, see T.M.C. Asser Instituut, *Essays on International and Comparative Law in Honour of Judge Erades* (1983).

32 Cassese, *supra* note 18, at 238; Thierry, *supra* note 20, at 208.