The precautionary principle and international law the challenge of implementation

edited by David Freestone and Ellen Hey.

INTERNATIONAL LAW AND THE HAGUE'S 750TH ANNIVERSARY

edited by

WYBO P. HEERE

International Law AND THE HAGUE'S 750TH ANNIVERSARY

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

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Over thirty years, the T.M.C. Asser Institute has developed into a leading scientific research institute in the field of international law. It covers private international law, public international law, including international humanitarian law, the law of the European Union, the law of international commercial arbitration and increasingly, also, international economic law and the law of international commerce. Conducting scientific research, either fundamental or applied, in the aforementioned domains, is the main activity of the Institute. In addition, the Institute organizes congresses and postgraduate courses, undertakes contract-research and operates its own publishing house.

Because of its inter-university background, the Institute often cooperates with Dutch law faculties as well as with various national and foreign institutions. The Institute organizes Asser College Europe, a project in cooperation with East and Central European countries whereby research and educational projects are organized and implemented.

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PREFACE

According to historical sources, the City of The Hague was justified to celebrate its 750th anniversary in 1998. Almost from the beginning, the City of The Hague has been linked to the *trias politica* and later to diplomacy, when it became clear that the Dutch 'Staten-Generaal' were firmly established in The Hague. With the Dutch governmental circles concentrated in the city, diplomacy entered the scene and The Hague became the diplomatic city of the Netherlands. As a natural result, various international gatherings, debates, congresses and treaty negotiations were brought to The Hague.

In fact, The Hague has become the prominent venue for international legal institutions and events and the home for peaceful settlement of international disputes. As the future location for the International Criminal Court, The Hague's name has become attached to the development of international humanitarian law. It was, therefore, entirely appropriate also to focus, in 1998, on The Hague's unmistakeable importance to the international legal community. Thus, within the framework of the year's commemorative celebrations, the T.M.C. ASSER Instituut, in cooperation with the 'Stichting 750 jaar Den Haag', organized The Hague's 750th Anniversary International Law Conference.

For the T.M.C. ASSER Instituut it was an important event that sparked intellectual and academic discussion. Once again, it brought many international scholars and diplomats to The Hague to participate in topical debates on the wideranging issues of international law. The proceedings of the Conference, which are contained in the present publication, contribute to the development of international law and, at the same time, mark the anniversary celebration and clearly demonstrate the continuing interest that the international academic and professional legal community attach to The Hague as 'the City of International Law'.

The editor of this book, Wybo P. Heere, has produced yet another professionally edited volume. He was assisted by Robert van de Rijt of Leiden University, who worked with great enthusiasm and dedication on this project under the guidance of Marjolijn Bastiaans, publisher of T.M.C. ASSER Press. Their joint effort made it possible to realize this publication within a reasonable time-limit.

The Hague, March 1999

Gerard J. Tanja
General Director,
T.M.C. Asser Instituut

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INTRODUCTION

In 1998, the City of The Hague commemorated its 750th anniversary.

To celebrate this historical event, a Foundation, 'Stichting 750 jaar Den Haag', had been established, in order to coordinate the large number of activities that would be organised during this year.

In order to emphasize the fact that The Hague has been an international judicial centre of activities during the past decades, the T.M.C. Asser Instituut, in cooperation with the 'Stichting 750 jaar Den Haag', had the pleasure to undertake the organization of a special International Law Conference to which lawyers from all over the world were invited.

Besides members of the T.M.C. Asser Instituut and the 'Stichting 750 jaar Den Haag', the Conference's Programme Committee was composed of representatives of the following relevant Hague organisations, institutions, etc.: International Court of Justice, Carnegie Foundation, Permanent Court of International Arbitration, Hague Conference on Private International Law, International Criminal Tribunal for the Former Yugoslavia, Institute of Social Studies, Hague Bar Asociation, Netherlands Ministry of Justice and Council of State.

The Programme Committee decided to concentrate The Hague's 750th Anniversary International Law Conference on the following main themes:

- international criminal law;
- interstate dispute settlement;
- international commercial arbitration:
- international humanitarian law;
- private international law;
- the regulation of international trade.

Within this framework, a number of panels was especially devoted to aspects of 'The Hague, Legal Capital of the World', i.e., concerning the International Court of Justice, the (future) International Criminal Court and the Iran-US Claims Tribunal. Besides, representatives of the Netherlands Ministry of Foreign Affairs, Europol, the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia, the Hague Conference on Private International Law, the Organization for the Prohibition of Chemical Weapons, the Iran-US Claims Tribunal and the Permanent Court of Arbitration, were panel chairmen or panel members at the Conference.

This publication contains the papers on a broad range of subjects of international law that were submitted by speakers during The Hague's 750th Anniversary International Law Conference.

Dr Robert C.R. Siekmann Head of Research, T.M.C. Asser Institute Chairman of the Programme Committee

OPENING ADDRESS BY W.J. DEETMAN, BURGOMASTER OF THE MUNICIPALITY OF THE HAGUE

THE SYNERGY BETWEEN THE CITY OF THE HAGUE AND INTERNATIONAL LAW

Excellencies, ladies and gentlemen,

It is a pleasure to welcome so many renowned specialists in the field of international law, many of them associates of the Asser Institute, at the occasion of The Hague's 750th Anniversary International Law Conference.

The Hague, Legal Capital of the World – as former Secretary General Boutros Ghali has once labeled our city – is the inspiring title of the theme of this conference. And, of course, being called the judicial or legal capital of the world fills us with pride and honour. I am convinced, and the city council shares this conviction with me, that The Hague is the natural environment for large law conferences such as this.

Our city has a long and strong traditional bond with international law. The Hague, seat of the Dutch government since the sixteenth century, has been a city of diplomacy for centuries. Because The Hague was 'easily accessible and not so far from London, Berlin, Paris or even St.Petersburg', it was chosen to be the venue of the First Peace Conference at the turn of the century, 99 years ago.

Henceforth The Hague would gradually and regularly prove itself an exemplary host to international organisations, some of them perpetuating the traditions that were established at the 1899 Conference. These organisations include the Permanent Court of Arbitration, the International Court of Justice, the International Tribunal for the former Yugoslavia and the Organisation for the Prohibition of Chemical Weapons. Recently the United Nations Diplomatic Conference decided that if the intended International Criminal Court will actually be established, it will be accommodated in The Hague. There is no need to say that this decision, which we consider as another acknowledgment of the judicial importance of The Hague, filled us with pleasure and delight.

The Netherlands has a strongly entrenched parliamentary tradition which even precedes its formal recognition as an independent and sovereign nation by the European Great Powers of that time at the Peace of Westphalia in 1648. Since those early days of political independence The Hague, the country's seat of government and of the legislature, has been a home for diplomats. And of course The Netherlands sent its own envoys all over the world.

Setting a tradition to be associated with the Netherlands for centuries to come, Hugo Grotius' De Jure Belli ac Pacis, which he wrote in 1625, is considered the

first modern treatise on the waging of war and the laws and regulations governing warfare.

This tradition is reflected in the 1899 and 1907 Peace Conferences and in the international courts and tribunals which now have their seats in The Hague.

Apart from the main international judicial institutions, The Hague is presently home to a number of international organisations. Besides the Organisation for the Prohibition of Chemical Weapons that I already mentioned, these organisations include the Permanent Bureau of the Hague Conference for Private International Law and the Iran-US Claims Tribunal.

Enshrined in the long legislative history of The Netherlands – once a Republic ruled by representatives of highly independent provinces and since the end of the Napoleonic area a constitutional monarchy – solidarity and open debate are the hallmarks of public life in the Netherlands, with international political issues often in the spotlight.

The constitutional mandate on the maintenance of international relations obliges the government to 'promote the development of the international rule of law.'

THE HAGUE, JUDICIAL CAPITAL

The Hague's traditional role in the settlement of international judicial disputes originated with the 1899 Hague Convention for the Pacific Settlement of International Disputes, which established the Permanent Court of Arbitration. Eight years later, the 1907 Hague Convention augmented the previous one and still forms the foundation of the activities of the Permanent Court of Arbitration which is seated in the Peace Palace, that was inaugurated in August 1913. Unfortunately a year later the First World War broke out.

The Hague was also the seat of the League of Nations' Permanent Court of International Justice. Its successor, the International Court of Justice, the principal judicial organ of the United Nations (that succeeded the League of Nations after the Second World War) is likewise based at the Peace Palace. And, talking about the Peace Palace, of course the impressive world famous Peace Palace Library may not go unmentioned.

Apart from the presence in our city of United Nations related institutions, the synergy between The Hague and international law is also strongly emphasised by the presence of a large number of other institutions that deal with international law such as the Asser Institute, to mention only one.

Ladies and gentlemen,

The concept of individual responsibility for crimes under international law has its foundations in the Hague Conventions respecting the Laws and Customs of War

on Land. The international trials of war criminals at the end of the Second World War were based on those Conventions as are the present-day mandates of the International Tribunals for the former Yugoslavia and for Rwanda.

It is more than fifty years ago that the most serious war criminals of the Second World War were tried before the international tribunals of Nuremberg and Tokyo. Also fifty years ago the United Nations adopted the Genocide Convention and this year we commemorate the fiftieth anniversary of the Universal Declaration of Human Rights.

Within two weeks from now, the United Nations Diplomatic Conference in Rome will decide whether an International Criminal Court will be established. Of course, the outcome of this Conference depends on a large quantity of political debates and discussions. But we have good hope and little doubt that the Conference will come to a successful conclusion and that the International Criminal Court will indeed be established in our city. To us it will once again confirm the synergy between The City of The Hague and international law.

Thank you for your attention.

INTERNATIONAL CRIMINAL LAW

Judicial Co-operation in Criminal Matters

Chair: C. Fijnaut

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