

Madam Vice-Dean,
Dear Members of the Asser family,
Ladies and Gentlemen,
Dear Friends,

It was a great idea to commemorate Tobias Asser with this publication of an English translation of his inaugural address delivered here on this very same date 150 years ago. As someone who, in a certain way, has had the privilege of being entrusted with the execution of part of Asser's legacy, I am humbled to be one of those to receive this book with Ernst Hirsch Ballin's rich sociological-historical introduction.

Asser was only 24 years old when he pronounced what is still a brilliant and remarkably vivid lecture. Two years earlier, in 1860, he had taken over his father's law firm in Amsterdam, *and* made his first appearance as a diplomat in a conference of the Rhine river states in Koblenz. We are reminded here of that other great Dutch legal genius, Grotius, with whom Asser later was to be compared in the *laudatio* for his Nobel Peace Prize in 1911. Grotius, like Asser, started his career as a practising lawyer at a very young age and was also called soon after to high public offices and diplomatic missions.

It would take more than 30 years, however, before Asser was to live what has been called "his finest hour": the opening of the first Conference on Private International Law in the Hague on 12 September 1893. It was then that he spoke the famous words

« C'est un des rêves de ma jeunesse, qui, si tous les présages ne nous trompent, vient d'entrer dans la voie de la réalisation ».

We cannot be sure when Asser first had his dream. Formally, he took up private international law as a course only in 1877, in addition to commercial law, his original principal assignment. The year before, private international law had been recognised in the academic curriculum, most likely at Asser's instigation. But it is interesting to see that already in his inaugural address there are clear hints as to his interest in this field:

“Truly fortunate is the nation, which sets itself the goal of finding the means to improve...all in its current legislation that still hampers trade, and especially international trade; and does so with the intent....of seeing accepted the principle of mutual recognition of judgments, the equality before the law of subjects and foreigners, in matters of trade...”

Asser refers here to aspects of private international law, which he feels could and should be addressed by domestic law. Quite understandably, his focus is on the Dutch Code of Commerce, introduced in the year of his birth, 1838. His vision, though, is clearly international, informed both by his background – *“this window on the world in a Dutch house”* to quote from Ernst Hirsch Ballin’s introduction – and by his law practice which he continued throughout his teaching career.

During the thirty years that followed his inaugural address, Asser was increasingly driven to the international arena. He took part in, and often took the initiative for, international learned societies, including the *Institut de droit international*, and the International Law Association, where he met other kindred spirits, such as Auguste Rolin-Jaequemyns of Ghent, John Westlake of Cambridge, and later Pasquale Mancini of Turin. Together with these pioneers and several others, including Louis Renault of Paris and Feodor Martens of St Petersburg, Asser became “emancipated” from the limitations of the domestic legal system as the sole model for advancing law and society. He co-created a new legal universe, or paradigm, that of *international law dealing with cross-border private and commercial relationships*.

Through his international exchanges, he became convinced that, when it came to providing for the mutual recognition of foreign judgments – a topic for which he always showed great interest – domestic rules alone could not do the job: international agreement on the basics of such recognition was indispensable. He thus became a forerunner of the current European Union regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It was Mancini who not only reinforced this idea of unification of general rules through international treaties, but in fact pushed, beyond the recognition of judgments, for the inclusion in the future programme of international negotiations, of a whole range of matters of private international law, including the law of persons and families.

Mancini and Asser worked in tandem. Asser's first efforts, in 1874, to have the Netherlands convene a diplomatic conference to begin negotiating such treaties failed, for lack of interest. So did Mancini's attempt in 1885, as a result of a cholera epidemic, and he died a few years after. But then, in 1893, Asser saw his perseverance, his "*patience et courage*", rewarded by the success of the first Hague Conference on Private International Law, followed immediately by a second in 1894, then a third in 1900, and a fourth in 1904.

In my presentation on the occasion of the celebration of the centennial of Asser's Nobel Peace Prize on 10th December in the Peace Palace, I concluded that Asser's vision, the international legal forum he had in mind, his methodology, and his programme, all continue to inspire the current mission of the Hague Conference on Private International Law¹. In summary, one might say that the multilateral approach of the work of the Hague Conference with its focus

- on *private*, not on State *interests*, (despite the use of the treaty instrument)
- on rules concerned foremost with the *international ordering* of *diversity* of jurisdiction, applicable law and effect of judgments, and *not* primarily with *substantive* justice, and
- on *empirical* research both in preparation of its instruments and in the monitoring, and review of their implementation and application

is itself informed by a fundamental policy principle: the value of *justice pluralism*, i.e., the acceptance of the equivalence, in principle, of civil and commercial laws in the world, the acknowledgment that the application of a foreign law, or the recognition of a foreign judgment, may lead to a just result, even if the outcome differs from that of an *internal* law or judgment.

There are limits to this tolerance: it is not blind. Asser was aware of them and proposed, in vain, solutions to protect the fundamental values of the forum when they were at stake. It would take until after the holocaust to restore the balance, and

¹ "The Hague Conference on Private International Law: Asser's vision and an evolving mission", in *NIPR (Nederlands Internationaal Privaatrecht)*, vol 30/3, 2012, 258-361

complete the treaty system through the famous correction of “manifest incompatibility with public policy” – applied not in the abstract but in the *concrete* case – to safeguard those basic values, including human rights.

Asser’s enlightened viewpoint, which transcends the narrow borders of nationalism, of parochialism, and looks without prejudice and with interest, scientific (fact-based) interest, if not passion, to the rich diversity of laws and cultures in our world – that perspective, which was already discernible in his inaugural address, still inspires us today, and will continue to inspire us in the future because of its irresistible truth and force.

Once again therefore, it was an excellent idea to celebrate the 150 years of Asser’s inaugural address.