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# The Hague Academy and the World Court: Travelling Together in the Peaceful Settlement of Disputes

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*Un jour le droit sera le souverain du monde!*

— Charles Lyon-Caen, 14 July 1923<sup>1</sup>

## 1 Introduction

The Hague Academy of International Law has recently celebrated its centenary. On 24–26 May 2023, it held a colloquium at the Peace Palace, which counted various eminent scholars and practitioners in the fields of public and private international law among its participants.<sup>2</sup> The event included the president of the Institut de Droit international (IDI), the president of the International Court of Justice (ICJ), former and current members of the Court, judges ad hoc and counsel regularly appearing before the ICJ. It could not have been otherwise given the long-standing links that the Hague Academy has nurtured with other institutions since and even before its inauguration on 14 July 1923. The presence of these representatives reflects the strong links between the Hague Academy and international courts and tribunals – most prominently, the Permanent Court of Arbitration (PCA), the Permanent Court

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<sup>1</sup> Extract from the address by Charles Lyon-Caen, president of the Curatorium, at the inauguration of the Hague Academy on 14 July 1923. The words quoted by Lyon-Caen are attributed to Mirabeau (1749–1791), a French revolutionary and publicist. See Eyffinger, ‘The Hague Academy at 100: Its Rationale, Role and Record’, 403 *Recueil des cours de l’Académie de droit international de la Haye* (RdC) (2023) 9, at 75.

<sup>2</sup> The Hague Academy’s Colloquium is titled ‘Challenges of International Law at the Time of the Centenary of The Hague Academy of International Law’, available at [www.hagueacademy.nl/wp-content/uploads/Colloquium-A4-English.pdf](http://www.hagueacademy.nl/wp-content/uploads/Colloquium-A4-English.pdf).

of International Justice (PCIJ) and its successor, the ICJ (together referred to as the World Court), as well as institutions involved in the codification and progressive development of international law, like the IDI, the International Law Association (ILA) and the International Law Commission (ILC).<sup>3</sup>

The argument put forward in this review essay is that, with the benefit of that ecosystem, the Hague Academy has made an important contribution to the development of the modern system for the settlement of international disputes and the output of the World Court within that system. The two institutions are fundamentally different in their mission, structure and functions. Yet they have shared much more than the physical premises of the Peace Palace. They have a common history and, most importantly, a shared vision of the international legal order in which states, by and large, opt to settle their disputes peacefully. This argument is supported by four elements. First, the two institutions have had strong and consistent links in terms of the overlap of people and, thus, ideas. This is most visible in the composition of the Curatorium of the Hague Academy<sup>4</sup> and the selection of experts who have been invited to deliver courses.<sup>5</sup> Second, many of the Hague Academy courses have been delivered by judges, judges ad hoc and repeat counsel in proceedings before the Court, thus bringing closer together the theory and practice of international law through dispute settlement. Third, the Hague Academy has contributed to the capacity building of states, their lawyers and their diplomats, many of whom would go on to appear in proceedings before the Court. Fourth, while the Court has refrained from explicitly relying on the Hague Academy courses in its decisions, as it does in respect of doctrine more generally, whether it is the work of an individual or the product of a collective effort of a private scientific body (for example, the IDI or the ILA), judges have relied on the Hague Academy courses in their individual opinions and declarations. The same is also true of the parties' pleadings.

<sup>3</sup> On private international law, which is not considered in this piece, see also the links that the Hague Academy has with the Hague Conference on Private International Law.

<sup>4</sup> In 1923, the Curatorium of 12 included nine members of the Institut de Droit international (IDI) (Politis, Alvarez, Catellani, Descamps, Hammarskjöld, Phillimore, Schücking, Brown Scott and Strisower) and one judge ad hoc (at the time called a national judge) sitting in the very first case of the Permanent Court of Justice (PCIJ), and who later went on to become a titular judge (Schücking). In comparison, in 2023, the Curatorium of 18 included 12 members of the IDI (Bennouna, Charlesworth, Fernández Arroyo, Bing Bing Jia, Kamto, Mbengue, Momtaz, Schrijver, Sicilianos, Tomka, Treves and Thouvenin), three judges of the Court (Bennouna, Charlesworth and Tomka) and two acting judges ad hoc (Daudet and Momtaz).

<sup>5</sup> In 1923, during its first year of activities, 28 individuals delivered lectures at the Hague Academy, albeit not all of them got to be published in either the *RdC* or the *Bibliotheca Visseriana*. Out of 28 individuals, 12 were members of the IDI (Korff, Politis, Brown Scott, Phillimore, de Lapradelle, Strisower, Alvarez, Loder, de Bustamante, de Hammarskjöld, Mandelstam and Weiss), three were judges of the Court (Loder, de Bustamante and Weiss) and three others went on to become judges of the Court (Van Eysinga, de Visscher and Basdevant). For the full list of lecturers in 1923, see Van Kleffens, 'L'Académie de droit international en 1923 et avant', 17 *Grotius annuaire international* (1924) 17, at 40–42. In comparison, in 2023, the winter and summer courses on public international law were delivered by 16 lecturers, out of which five were members of the IDI (Corten, Paik, Higgins, Sicilianos and Lim), one was a former member of the Court (Higgins) and another one was then a candidate and is now a judge of the Court (Gomez Robledo).

This essay proceeds as follows. Section 2 sheds light on the historical, institutional and personal links between the Hague Academy and the World Court. Section 3 considers the impact that the Hague Academy has had on the international dispute settlement and the Court. Section 4 concludes.

## 2 The Intellectual Ecosystem of the Peace Palace: The Hague Academy and the World Court

The Hague Academy was the product of the pacifist movement towards the end of the 19th century. It was conceived as part of the new international legal order to be founded on the ideals of peace, justice and third-party dispute settlement. This was a time during which many academic and scientific institutions were being established at the national and international level precisely to promote these ideals.<sup>6</sup> However, the Academy has a unique ‘physiognomy’ that does not resemble any other scientific association or academic institution in the world both in terms of its teaching methods, its lecturers – many of whom are closely linked to the practice of international law – and its outreach activities.<sup>7</sup>

The establishment of the Hague Academy is closely intertwined with key milestones in the foundation of the modern system for the peaceful settlement of international disputes in the period between 1899 and 1922. These milestones include, first and foremost, the 1899 and the 1907 Hague Peace Conferences, the principal result of which was the establishment of the PCA. The first formal proposal for the Academy, which was explicitly intended to be an institution with a function complementary to those of the arbitral tribunals that would operate under the auspices of the PCA,<sup>8</sup> was tabled at the 1907 Peace Conference. It was welcomed by some at the time<sup>9</sup> but put on hold due to uncertainties about its structure, mandate and finances.<sup>10</sup> However, it was not long until the idea was revived, revisited and implemented.<sup>11</sup> Shortly after the 1907 Hague Peace Conference, different initiatives were undertaken to establish the Academy, including with the support of the ILA.<sup>12</sup> Ultimately, a more modest and

<sup>6</sup> See Van Kleffens, ‘The Hague Academy of International Law: An Aid to the Diffusion and to a Clearer Notion of the Law of Nations’, 6 *British Yearbook of International Law* (1925) 172, at 172–173. The first mention of the Academy appears to be in the writings of Carl Ludwig von Bar in 1898 and 1900.

<sup>7</sup> Skubiszewski, ‘The Contribution of the Academy to the Development of the Science and Practice of Public International Law: Address Delivered on the Occasion of the 75th Anniversary of the Academy’, 271 *RdC* (1998) 57, at 73.

<sup>8</sup> Verosta, ‘L’histoire de l’Académie de droit international de La Haye, établie avec le concours de la Dotation Carnegie pour la paix internationale’, in R.-J. Dupuy (ed.), *Livre jubilaire, 1923–1973* (1973) 7, at 14–21.

<sup>9</sup> See Letter of Démètre Sturdza, president of the Council of Ministers of Romania, addressed to Alexandre I. Nelidov, ambassador of Russia to Paris and president of the Second Conference of The Hague, reprinted in *Deuxième Conférence de la Paix: Actes et Documents*, vol. 1 (1908), at 124ff.

<sup>10</sup> Eyffinger, *supra* note 1, at 24; see also Verosta, *supra* note 8, at 17–21.

<sup>11</sup> Other than Eyffinger, *supra* note 1, for a detailed history of the Hague Academy, see Verosta, *supra* note 8, at 7; Skubiszewski, *supra* note 7; Lysen, ‘History of the Carnegie Foundation and of the Peace Palace at The Hague’, 11 *Bibliotheca Visseriana* (1934) I, at 144–148.

<sup>12</sup> Verosta, *supra* note 8, at 21–26.

realistic model of the Academy as a summer school was made possible thanks to support from both sides of the Atlantic. The Academy was championed by Tobias Asser in the Netherlands and Elihu Root and James Brown Scott in the United States and, ultimately, received material support from the Dutch state and the Carnegie Endowment for International Peace.<sup>13</sup> Asser, one of the founders of the IDI and a Nobel Peace Prize laureate, was so personally invested that he donated half of his prize money to the establishment of the Hague Academy.<sup>14</sup>

The Hague Academy owes much of its conception to the IDI, which has recently celebrated its 150th anniversary of promoting justice and peace (*'justitia et pax'*) through law.<sup>15</sup> It was the IDI that was given the important task of preparing the original statutes of the Hague Academy in 1913, which was formally established in 1914 but unfortunately did not begin its activities immediately due to the outbreak of World War I.<sup>16</sup> Luckily, in 1920, many of the same IDI members, who originally spearheaded the idea of the Academy and kept it alive throughout the early 20th century, were involved in the work of the Advisory Committee of Jurists (ACJ), which drafted the Statute of the PCIJ at the Peace Palace.<sup>17</sup> In that context, the ACJ adopted a resolution (*vœu*), which was addressed to the League of Nations, calling for the Academy to resume its activities.<sup>18</sup> The Academy was inaugurated on 14 July 1923 at the Peace Palace, just a year after the inaugural sitting of the World Court on 15 February 1922.

One century onwards, many of the links have been consolidated. An intellectual ecosystem has developed not only between the Hague Academy and the World Court but also more broadly involving the IDI, the PCA and, later, the ILC. In a recent work,

<sup>13</sup> See Verosta, *supra* note 8, at 21–26; see also Skubiszewski, *supra* note 7, at 70.

<sup>14</sup> See Eyffinger, 'Tobias Asser's Legacy: The Pertinence of the *Institut de droit international* to The Hague', 66 *Netherlands International Law Review* 313, at 334.

<sup>15</sup> In 1872, Johann Blüntschi drafted statutes for an Akademie des Völkerrechts – a learned society that launched in September 1873 in Ghent under a different name, Institut de Droit international (IDI). See Eyffinger, *supra* note 1, at 22. For Martti Koskenniemi, the foundation of the IDI in 1873 marks the birth of modern international law as a distinct discipline. See M. Koskenniemi, *Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2004), at 361.

<sup>16</sup> See IDI, 'Délibérations diverses en séance plénière: Séance du 8 août 1913 le matin', 26 *Annuaire de l'IDI* (1913) 686, at 690 (Session d'Oxford) (upon the request of the Carnegie Foundation, the IDI studied the question of the usefulness of the establishment of the Academy of International Law and adopted the recommendation for the establishment in The Hague of 'a centre of advanced studies of international law and connected disciplines, in order to facilitate the thorough and impartial examination of issues concerning international juridical relations'. The author's translation from the original in French: 'L'Institut de Droit international recommande l'établissement à La Haye d'un centre de hautes études de Droit International et de sciences connexes, pour faciliter l'examen approfondi et impartial des questions se rattachant aux rapports juridiques internationaux').

<sup>17</sup> Statute of the Permanent Court of International Justice 1920, 6 LNTS 390.

<sup>18</sup> Permanent Court of International Justice (PCIJ), Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee (June 16<sup>th</sup> – July 24<sup>th</sup> 1920)* (1920), at 749, Resolutions (*Voeux*), Third Resolution ('[t]he Advisory Committee of Jurists assembled at the Hague to prepare the constituent Statute of a Permanent Court of International Justice; Gladly takes this opportunity of recording a wish that the Academy of International Law, founded in 1913, and of which the work has been suspended owing to circumstances, may be set in operation in as near a future as possible, side by side with the Permanent Court of International Justice and the Permanent Court of Arbitration, at the Peace Palace at The Hague').

Arthur Eyffinger provides an account of the intricate relationships that have arisen over time:

Ninety out of one hundred scholars who served on the Curatorium were members of the IDI. Throughout the past century, over 350 members of the IDI gave 630 of the 1,400 courses offered at the Academy. Furthermore, more than 400 IDI members actively participated in Hague-based institutions, with some 150 members serving on panels of the PCA and more than eighty as members of the World Court. Likewise, the reverse is true. Fifty out of the (as of spring 1923) 111 judges of the International Court of Justice (ICJ) delivered lectures at the Hague Academy, with some of them doing so up to five times. Twenty-seven World Court judges served on the Curatorium.... In addition, sixty-six judges *ad hoc* provided 122 courses, and numerous agents and counsel also lectured, showcasing an impressive level of expertise. Many scholars seamlessly combined their positions at the IDI, the Curatorium and the World Court for extensive periods.<sup>19</sup>

Many of the individuals who attended the courses at the Academy later returned as lecturers to the Academy (sometimes on multiple occasions), were elected as members to the IDI and joined the Curatorium, all before being elected to the World Court. Judges Philip Jessup and Roberto Ago are prominent examples.<sup>20</sup> According to Eyffinger's recent account, '[t]he same pattern, minus the position of student auditor, applied to 22 other World Court judges'.<sup>21</sup> If one were to include in this statistic those individuals who have completed parts of the trajectory described above before being elected to the World Court, or those who went on to teach or sit as a member of the Curatorium after being elected to the World Court, then the numbers would be even higher. A similar pattern of overlap exists when one looks at the membership of the ILC juxtaposed with the identity of lecturers at the Academy and the composition of the bench of the Court. In the period after 1948, membership at the ILC became a common springboard for election to the ICJ.<sup>22</sup> Again, the numbers are striking: 'A total of seventy-seven ILC members delivered 130 courses at the Hague Academy', out of which only 17 were not concurrently members of the IDI, and 33 ILC members went on to become judges at the Court.<sup>23</sup>

An intellectual ecosystem thus exists between the World Court (and, to a more limited extent, other international courts and tribunals in The Hague) and the Hague Academy's lecturers and members of its Curatorium. The private and public bodies of experts that contribute to the progressive development and codification of international law, such as, notably, the IDI or the ILC, respectively, can be thought of yet as a further layer of that ecosystem. As international lawyers celebrate the centenary of the Hague Academy, operating within this ecosystem, it is fitting to consider how it has impacted the development of public international law and the peaceful settlement of disputes as one of its cornerstones.

<sup>19</sup> Eyffinger, *supra* note 1, at 32–33.

<sup>20</sup> *Ibid.*, at 34.

<sup>21</sup> *Ibid.*

<sup>22</sup> See O. Sender, *International Law-Making by the International Court of Justice and International Law Commission* (2024), at 158 ('[o]f the Court's 115 judges to date, as many as 43 (i.e. over one-third) had previously served as members of the Commission, and of these, 10 have become presidents of the Court').

<sup>23</sup> Eyffinger, *supra* note 1, at 46, 96–97.

### 3 The Hague Academy's Contribution to International Dispute Settlement

This section argues that the Hague Academy courses have contributed to international dispute settlement, in general, and the practice of the Court, in particular. This implies, first, surveying whether and, if so, to what extent the Hague Academy courses have addressed issues concerning the peaceful settlement of disputes, in general, or issues pertaining to the substance or procedure of the Court, in particular. Second, it involves investigating whether and, if so, how the Hague Academy courses have been used by the Court.

#### *A The Hague Academy Courses on International Dispute Settlement and the World Court*

International dispute settlement figures prominently in the collected volumes of the Hague Academy. Several general courses and over 50 special courses have been dedicated to the peaceful settlement of international disputes. These courses address the means of dispute settlement, the relevant institutions, the issues of substance or procedure and the relevant practice in specialized fields such as trade, environment, investment or human rights.<sup>24</sup> Many of these courses have been heavily focused on the World Court, even if their titles frequently suggest that they are of broader scope.<sup>25</sup> In addition, no fewer than 24 special courses have been devoted to the study of institutional, procedural and substantive aspects of the World Court.<sup>26</sup> At the same time, as

<sup>24</sup> The author's count excludes courses on the practice of national courts or international commercial arbitration.

<sup>25</sup> See, e.g., Stephan, 'Applying Municipal Law in International Disputes', 434 *RdC* (2023) 9; Kawano, 'The Role of Judicial Procedures in the Process of the Pacific Settlement of International Disputes', 346 *RdC* (2009) 9; McWhinney, 'Judicial Settlement of Disputes: Jurisdiction and Justiciability', 221 *RdC* (1990) 9; Bowett, 'Contemporary Developments in Legal Techniques in the Settlement of Disputes', 180 *RdC* (1983) 169.

<sup>26</sup> The 24 courses identified as directly addressing the Court's role within the international community, its institutional and procedural aspects as well as specific aspects of its case law are Abou-El-Wafa, 'Les différends internationaux concernant les frontières terrestres dans la jurisprudence de la Cour internationale de Justice', 343 *RdC* (2009) 9; Reisman, 'The Supervisory Jurisdiction of the International Court of Justice: International Arbitration and International Adjudication', 258 *RdC* (1996) 9; Oda, 'The International Court of Justice Viewed from the Bench (1976–1993)', 244 *RdC* (1993) 9; Bedjaoui, 'Le cinquantième anniversaire de la Cour internationale de Justice', 257 *RdC* (1996) 9; Torres Bernárdez, 'L'intervention dans la procédure de la Cour internationale de Justice', 256 *RdC* (1995) 193; Mbaye, 'L'intérêt pour agir devant la Cour internationale de Justice', 209 *RdC* (1988) 223; Gross, 'The International Court of Justice and the United Nations', 120 *RdC* (1967) 313; Thierry, 'Les résolutions des organes internationaux dans la jurisprudence de la Cour internationale de Justice', 167 *RdC* (1980) 385; Bastid, 'Les problèmes territoriaux dans la jurisprudence de la Cour internationale de Justice', 107 *RdC* (1962) 361; Briggs, 'Reservations to the Acceptance of Compulsory Jurisdiction of the International Court of Justice', 93 *RdC* (1958) 223; Hambro, 'The Jurisdiction of the International Court of Justice', 76 *RdC* (1950) 121; Kerno, 'L'organisation des Nations Unies et la Cour internationale de Justice', 78 *RdC* (1951) 507; Bastid, 'La jurisprudence de la Cour internationale de Justice', 78 *RdC* (1951) 575. For courses on the PCIJ (titles omitted to shorten the length of the footnote), see Scerni, 65 *RdC* (1938) 561; Bruns, 62 *RdC* (1937) 547; Feinberg, 59 *RdC* (1937) 587; Nêgulesco, 57 *RdC* (1936) 1; Beckett, 50 *RdC* (1934) 189; Rundstein, 43 *RdC* (1933) 1; Beckett, 39 *RdC* (1932) 131; Caloyanni, 38 *RdC* (1931) 651; De Visscher, 26 *RdC* (1929) 1; Salvioli, 12 *RdC* (1926) 1; Hudson, 8 *RdC* (1925) 341.



alluded to above, the real number of courses addressing these issues is higher, given that many other courses on aspects of dispute settlement have focused disproportionately on the World Court and its practice. In addition, many substantive issues of public international law that have given rise to special courses have arisen most prominently in the proceedings before the World Court.<sup>27</sup> For instance, several Hague Academy courses are dedicated to the protection of minorities, which was prominent in the PCIJ's jurisprudence which in turn was addressed in detail.<sup>28</sup> Moreover, most of the general courses on public international law contain a full chapter on either the settlement of disputes or the Court, or both, or engage to varied degrees of depth with the Court's case law on any given issue.<sup>29</sup>

Looking at the Academy's *acquis* from another angle, as noted earlier, a significant number of special and general courses have been delivered by the members of the Court, judges ad hoc or repeat counsel and advocates before the Court.<sup>30</sup> The courses they have delivered have been directly informed by the reality of the World Court. The output of the Hague Academy thus serves as a useful medium for reflection on the developments in the Court's case law and practice. Moreover, it is a platform of an academic nature where current and former judges, judges ad hoc and counsel may express their views more freely. It allows them to reflect, including at times with a healthy dose of criticism, on the contributions that the Court has made or could make to the clarification and development of international law. Finally, the Hague Academy courses have served as a forum for those individuals most familiar with the Court's practice to convey areas for potential reform and innovation in the Court's procedure.<sup>31</sup>

In this context, it is worth recalling the words of Yves Daudet, a former president of the Curatorium, who has participated as judge ad hoc in 11 cases at the ICJ, that

<sup>27</sup> For an overview of substantive areas where the Hague Academy's courses have made a particularly marked contribution to the development of international law, see Skubiszewski, *supra* note 7, at 80–99; see also Jennings, 'Fifty Years of Hague Academy Lectures on Public International Law', in Dupuy, *supra* note 8, at 100–115.

<sup>28</sup> See, e.g., Mandelstam, 1 *RdC* (1923) 363; Mandelstam, 38 *RdC* (1931) 125; Vichniac, 43 *RdC* (1933) 115; François, 53 *RdC* (1935) 283; Dumas, 59 *RdC* (1937) 1; Feinberg, 59 *RdC* (1937) 587; Ermacora, 182 *RdC* (1983) 247; Vukas, 231 *RdC* (1991) 263; Achour, 245 *RdC* (1994) 321; Van der Stoep, 296 *RdC* (2002) 9. Titles omitted to shorten the length of the footnote.

<sup>29</sup> See, e.g., Bennouna, 383 *RdC* (2017) 9, at 125–139; Pellet, 414 *RdC* (2021) 9, at 270–294; Gaja, 364 *RdC* (2013) 9, at 110–123; Bedjaoui, 325 *RdC* (2006) 9, at 25–108; Dupuy, 297 *RdC* (2002) 9, at 460–478. Titles omitted to shorten the length of the footnote.

<sup>30</sup> For recent general courses, see, e.g., Corten, 436 *RdC* (2024) 9; Pellet, 414 *RdC* (2021) 9; Momtaz, 412 *RdC* (2020) 9; Bennouna, 383 *RdC* (2017) 9; Crawford, 365 *RdC* (2013) 9; Gaja, 364 *RdC* (2013) 9; Reisman, 351 *RdC* (2010) 9. For recent special courses, see, e.g., Kamto, 442 *RdC* (2024) 9; Gomez-Robledo, 439 *RdC* (2024) 289; Tanzi, 437 *RdC* (2024) 195; Salam, 435 *RdC* (2024) 9; Shaw, 432 *RdC* (2023) 45; Sands, 431 *RdC* (2023) 285; Tladi, 418 *RdC* (2021) 225; d'Argent, 417 *RdC* (2021) 9; Nolte, 392 *RdC* (2018) 205; Murphy, 386 *RdC* (2017) 9; Lowe, 379 *RdC* (2016) 9; Iwasawa, 378 *RdC* (2016) 9; Charlesworth, 371 *RdC* (2015) 43. Titles omitted to shorten the length of the footnote.

<sup>31</sup> See, e.g., Oda, *supra* note 26; Lauterpacht, 'Principles of Procedure in International Litigation', 345 *RdC* (2009) 387; Torres Bernárdez, *supra* note 26; Salvio, 'Problèmes de procédure dans la jurisprudence internationale', 91 *RdC* (1957) 553; Guggenheim, 'Les mesures conservatoires dans la procédure arbitrale et judiciaire', 40 *RdC* (1932) 645.

‘[t]he vision one may have and the analysis of the question of dispute settlement are not at all the same, depending on whether they are viewed from the perspective of the ICJ or other Tribunal as well as the parties, on the one hand, or from the perspective of the Academy and of doctrinal authorities on the other hand’.<sup>32</sup> While the Court’s function is to decide cases in accordance with international law, ‘[d]octrinal authorities and the Academy are primarily interested in the ground and the thought process that has led to the particular solution’.<sup>33</sup> In the absence of similar substantive or procedural constraints to that of the Court, the Hague Academy allows for a critical reflection on the activity of the Court and fosters an academic culture that places the peaceful settlement of disputes at the heart of the international legal order.<sup>34</sup> That critical reflection becomes all the more valuable when engaged with by individuals who have been directly exposed to the daily realities of the Court, its functioning and its docket. Reflecting on all this, the Academy’s former secretary-general René-Jean Dupuy rightly observed that the ICJ has been given a ‘privileged treatment’ in the Hague Academy courses.<sup>35</sup>

These effects are important because the Academy’s exercise of its ‘unique educational function’, owing as described above both to its curriculum and to the identity of the individuals who have defined it, has had ‘some influence on the practice of States’.<sup>36</sup> As will be discussed below, this is demonstrated by the use of the Hague Academy’s courses in the pleadings of states before the Court.

## **B *The Hague Academy’s Courses in the Court’s Practice***

The impact of the Hague Academy upon the Court is visible in two respects: the use of the Hague Academy’s courses in the individual opinions of judges and their use in the parties’ pleadings.

### *1 Individual Opinions of Judges*

In regard to references by judges, the figures are significant. Over 50 individual opinions of judges have relied on Hague Academy courses.<sup>37</sup> The courses so relied upon address substantive areas of international law and procedural issues relating to international dispute settlement. These individual opinions span the history of the World Court, but the point can be demonstrated with a few recent examples. These examples fit broadly into two categories. First, judges rely on the Hague Academy courses in support of their reasoning on contentious issues in dispute. For instance, Judge Nawaf Salam, the former president of the Court, relied directly on the general course of

<sup>32</sup> Daudet, ‘The Hague Academy of International Law and the Development of the Settlement of Disputes as a Global Mechanism’, in S. van Hoogstraten (ed.), *New Challenges to International Law: A View from The Hague* (2018) 14, at 15.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, at 17.

<sup>35</sup> Dupuy, ‘La contribution de l’Académie au développement du droit international’, 138 *RdC* (1973) 45, at 61.

<sup>36</sup> Skubiszewski, *supra* note 7, at 97; see also Jessup, ‘A Half-Century of Efforts to Substitute Law for War’, 99 *RdC* (1960) 1, at 4.

<sup>37</sup> The numbers are based on searches conducted on the JusMundi database and the ICJ’s website.



Michel Virally on the nature of the obligation to negotiate.<sup>38</sup> In *Ahmadou Sadio Diallo*, Judges Awn Al-Khasawneh and Abdulqawi Yusuf drew on Paul de Visscher's Hague Academy course in an effort to understand the scope of application of diplomatic protection in respect of corporate entities.<sup>39</sup> In *Application of the Interim Accord*, Judge ad hoc Emmanuel Roucouas referred to four different Hague Academy courses.<sup>40</sup> In its declaration in *Dispute Regarding Navigational and Related Rights*, former president Gilbert Guillaume relied on two Hague Academy courses concerning the use of navigational resources and certain issues of treaty interpretation.<sup>41</sup>

Second, judges have relied on the Hague Academy's courses on issues of procedure before the Court. For instance, in *Certain Activities*, Judge ad hoc Christopher Dugard relied on Lord Collins' lectures at the Hague Academy in support of a particular interpretation of the material conditions for the indication of provisional measures.<sup>42</sup> In the pending *Gambia v. Myanmar* case, Judge ad hoc Claus Kress referred to four different courses of the Hague Academy when discussing Gambia's legal standing before the Court in connection with obligations *erga omnes partes*.<sup>43</sup> There are also numerous examples of individual opinions in which judges have relied on the ideas that they themselves formulated in a course delivered at the Hague Academy. One of the most telling examples of such apparent cross-fertilization between what a judge may have written as part of their Hague Academy course and in the individual opinion at the Court may be found in *Sovereignty over Pulau Ligitan and Pulau Sipadan*, where Judge Shigeru Oda considered that the views he had expressed in his course at the Hague Academy in 1993 were directly relevant to the way in which the Court should have construed intervention as a non-party under Article 62 of its Statute.<sup>44</sup> Of course, one would be remiss not to acknowledge late Judge Antônio Cançado Trindade, a long-standing member of the Curatorium and avid supporter of the Academy, who has heavily relied on the Hague Academy's courses, including his own, in his opinions.<sup>45</sup>

<sup>38</sup> *Access to the Pacific Ocean (Bolivia v. Chile)*, Merits, 1 October 2018, ICJ Reports (2018) 599, para. 2, Dissenting Opinion of Judge Salam.

<sup>39</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, 30 November 2010, ICJ Reports (2010) 700, at 704, Joint Dissenting Opinion of Judges Al-Khasawneh and Yusuf.

<sup>40</sup> *Application of the Interim Accord of 13 September 1995 (Former Yugoslav Republic of Macedonia v. Greece)*, Judgment, 5 December 2011, ICJ Reports (2011) 720, paras 12, 13, 36, 60, Dissenting Opinion of Judge ad hoc Roucouas (referring to the Hague Academy's courses by himself, Yasseen, Virally and Waldock).

<sup>41</sup> *Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, 13 July 2009, ICJ Reports (2009) 290, paras 3, 15, Declaration of Judge ad hoc Guillaume.

<sup>42</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Provisional Measures, 8 March 2011, ICJ Reports (2011) 60, para. 2, Separate Opinion of Judge ad hoc Dugard.

<sup>43</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, 22 July 2022, ICJ Reports (2022) 538, paras 14, 17, 29, Declaration of Judge ad hoc Kress (namely, the Hague Academy courses by Scelle, Simma, d'Argent and Gaja).

<sup>44</sup> *Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Application by the Philippines for Permission to Intervene, Judgment, 23 October 2001, ICJ Reports (2001) 609, para. 9, Dissenting Opinion of Judge Oda; Art. 62 Statute of the International Court of Justice 1945, 33 UNTS 993.

<sup>45</sup> See, e.g., *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, 14 July 2020, ICJ Reports (2020) 119, paras. 9, 12, 93, Separate Opinion of Judge Cançado Trindade; *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, 5 October 2016, ICJ Reports (2016) 907, paras 111, 134, Dissenting Opinion of Judge Cançado Trindade.

The fact that judges so regularly refer to the Hague Academy's courses is an indication that the full Court might have engaged with those courses or, at least, might have taken cognizance of them at some point during the deliberations and the preparation of the decision. The frequency with which judges have relied upon Hague Academy courses in their reasoning suggests that they may be considered, alongside the output of the ILC, the IDI or the ILA, as part of a higher echelon of doctrine to be used as a subsidiary means for the determination of the rules of law under Article 38(1)(d) of the ICJ Statute. However, unlike those institutions, the Hague Academy does not have a mandate of developing international law, much less contributing to its codification, and its output is largely driven by individuals rather than the result of a collective scientific effort.<sup>46</sup> While the quality of Hague Academy courses is inevitably variable and even though it is a result of an individual labour, many of its courses constitute a useful and persuasive legal authority not only in the eyes of adjudicators but also of States.

## 2 Parties' Written and Oral Pleadings

A review of states' written and oral pleadings before the ICJ yields a similar picture: on numerous occasions, parties have referred to Hague Academy courses in support of their legal arguments. A few most recent examples are apposite. In the pending case of *Guyana v. Venezuela*, Venezuela relied on the course of Judge Gerald Fitzmaurice in framing its arguments on the material scope of *domaine réservé*.<sup>47</sup> In *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, Egypt referred to Judge Manfred Lachs' course at the Hague Academy for the proposition that an enforceable right to self-determination was already part of customary international law in the 1960s.<sup>48</sup> In *Certain Iranian Assets*, the USA referred to Judge Fitzmaurice's course in support of its argument on the application of unclean hands doctrine.<sup>49</sup> In *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, the United Arab Emirates referred to Campbell McLachlan's course on *lis pendens* for the proposition that it is a general principle of law within the meaning of Article 38(1)(c) of the ICJ Statute.<sup>50</sup>

<sup>46</sup> On the similarities and differences between the IDI, the International Law Association (ILA), the Hague Academy and the International Law Commission (ILC), see Schrijver, 'Four International Law Sisters (IDI, ILA, Hague Academy and ILC): Similarities, Differences, and Interactions', in M. Kohen and I. van der Heijden (eds), *150 ans de contributions au développement du droit international: Livre du sesquicentenaire de l'Institut de Droit international (1873–2023) / 150 Years of Contributing to the Development of International Law: Sesquicentenary Book of the Institute of International Law (1873–2023)* (2023) 181.

<sup>47</sup> *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Provisional Measures, CR 2023/24, 15 November 2023, at 23, para. 22 (Mbengue).

<sup>48</sup> *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Written Statement of the Arab Republic of Egypt, 25 July 2023, at 28, para. 298.

<sup>49</sup> *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Counter-Memorial Submitted by the United States of America, 14 October 2019, at 59, para. 8.13.

<sup>50</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, CR 2020/6, 31 August 2020, at 60, para. 20 (Forteau).

In *Armed Activities*, Uganda relied on Rosalyn Higgins' 1994 Hague Academy general course, written before she became a member of the Court, to argue against the Court's earlier conclusion that the provision of weapons or logistical support to rebels did not constitute an armed attack.<sup>51</sup> As is apparent from these and other examples,<sup>52</sup> states favour referring to courses delivered by members of the Court or experienced counsel, including those delivered by sitting judges before they joined the bench that are likely to be more critical of the Court's jurisprudence.

In sum, although the Court refrains from relying on the Hague Academy's courses in the body of its decisions, as is the case of doctrine in general, individual judges and parties use the Hague Academy's courses as a legal authority of considerable weight in respect of both substantive and procedural issues.<sup>53</sup> The wealth and diversity of issues for which Hague Academy courses are used as authority is also significant. Most courses referred to in individual opinions or in pleadings were delivered by judges or experienced counsel, some of whom were subsequently elected to the Court. However, as is the case with any of the subsidiary means for the determination of the rules of law, it is difficult to determine the exact impact of a particular course upon the output of the Court. Such an analysis is beyond the limited scope of this essay. Thus, we must be left with the more limited conclusion that, as noted above, Hague Academy courses appear to enjoy a special status, perhaps only paralleled or surpassed by the output of other private collective scientific bodies (for example, the IDI or the ILA) or public bodies of experts in the codification and progressive development of international law such as, most prominently, the ILC.<sup>54</sup> In the words of Sir Robert Jennings, the former president of the ICJ, there is 'no doubt about the value of the traditional, systematic,

<sup>51</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Merits, CR 2005/7, 18 April 2005, at 19, para. 34 (Brownlie).

<sup>52</sup> See, e.g., *Jurisdictional Immunities of the State (Germany v. Italy; Greece intervening)*, Written Statement of the Hellenic Republic, 3 August 2011, at 7, para. 31 (referring to the general course of Judge Antônio Cançado Trindade), available at <https://www.icj-cij.org/sites/default/files/case-related/143/16658.pdf>; *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections of the United Kingdom, 20 June 1995, at p. 9, para. 2.2 (referring to the special course of Judge Guillaume), available at <https://www.icj-cij.org/sites/default/files/case-related/88/11257.pdf>; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Memorial of Nicaragua, 30 April 1985, ICJ Pleadings, vol. IV, at 72, para. 264 (referring to the general course of President Jiménez de Aréchaga), available at <https://www.icj-cij.org/sites/default/files/case-related/70/9619.pdf>; *Right of Passage over Indian Territory (Portugal v. India)*, Counter-Memorial of India, 25 March 1958, ICJ Pleadings, vol. II, at 116, para. 271 (referring to the 1937 course of Hersch Lauterpacht), available at <https://www.icj-cij.org/sites/default/files/case-related/32/9111.pdf>.

<sup>53</sup> For a detailed analysis on the use of doctrine by the ICJ, see S. Torp Helmersen, *The Application of Teachings by the International Court of Justice* (2021).

<sup>54</sup> See generally *ibid.*, at 122 ('[i]ndividual ICJ opinions contain a total of 191 references to "institutional" teachings: eighty-five to the IDI, twenty-nine to the ICRC, eighteen to the ILA, fifteen to ALI, and fourteen to Harvard Law School'); Sender, *supra* note 22, at 45–90; Peil, 'Scholarly Writings as a Source of Law: A Survey on the Use of Doctrine by the International Court of Justice', 1 *Cambridge Journal of International and Comparative Law* (2012) 136, at 153ff; see also Jalloh, First Report on Subsidiary Means for the Determination of Rules of Law, UN Doc. A/CN.4/760 (2023); Jalloh, Second Report on Subsidiary Means for the Determination of Rules of Law, UN Doc. A/CN.4/769 (2024).

didactic method of scholarly exposition. These courses are not discussions; they are all lectures; some distinguished, many good, and no doubt some less good. But all in all they form a contribution to the science and development of international law of outstanding power and quality'.<sup>55</sup> Perhaps, in the end, a major success of the Hague Academy courses lies in reflecting upon and contributing to the international legal order's ability to ensure its 'continuity and adaptation' to 'new circumstances and new problems'.<sup>56</sup>

## 4 Conclusion

This article has surveyed the century-old intellectual ecosystem that has developed between the Hague Academy and the World Court at the Peace Palace as well as more broadly involving other institutions, including most prominently the IDI, the PCA and the ILC. This ecosystem is comprised of people, ideas and ideals, and it has existed continuously since these institutions came into being. It is thus, perhaps, natural that a considerable part of the Academy's output has focused on issues relating to the peaceful settlement of international disputes, with a clear emphasis on the World Court – notably, in courses delivered by judges, judges ad hoc and counsel appearing before the Court. Judges have relied on Hague Academy courses in their individual opinions and so have states in their pleadings before the Court.

The importance of this ecosystem, and of the Hague Academy within it, has been recognized by states. The United Nations General Assembly has regularly acknowledged the important 'contributions of the Hague Academy to the teaching, study, dissemination and wider appreciation of international law'.<sup>57</sup> States have provided continuous support for the Hague Academy. Examples of this support include the provision of funds for scholarships and their participation of states in regular events, alongside the annual session of the General Assembly in New York, at which the role of the Hague Academy was discussed. One such recent event was organized in 2023 by the Philippines and co-sponsored by a record number of states and titled 'Peaceful Dispute Settlement: The Indispensable Courts and Courses of the Peace Palace'.<sup>58</sup>

The Academy has certainly realized the hopes and expectations of its founders and has become 'indispensable for the teaching and research in international law'.<sup>59</sup> This was true in 1973 on the occasion of the Academy's 50th anniversary, and it is even more so today on its 100th anniversary. Its living legacy consists of 443 volumes of collected courses, dozens of publications resulting from its Centre for Studies and Research, various external programmes, an impressive pool of eminent lecturers and

<sup>55</sup> Jennings, *supra* note 27, at 101.

<sup>56</sup> *Ibid.*, at 115.

<sup>57</sup> GA Res. 78/107, 7 December 2023.

<sup>58</sup> 'PH Leads Recognition at UN of the 100th Anniversary of The Hague Academy of International Law', *United Nations* (25 October 2023), available at [www.un.int/philippines/activities/ph-leads-recognition-un-100th-anniversary-hague-academy-international-law](http://www.un.int/philippines/activities/ph-leads-recognition-un-100th-anniversary-hague-academy-international-law); <https://webtv.un.org/en/asset/k1x/k1xbctwvcc>.

<sup>59</sup> Verosta, *supra* note 8, at 55.

thousands of attendees from all over the world. Its output has contributed to the development of many substantive areas of international law, including international dispute settlement. As for the World Court, after some tumultuous years and even a 'serious crisis' in the 1960s,<sup>60</sup> it has gained the trust and confidence of states, as the current record of over 20 pending proceedings amply shows. The same is of course also true of the PCA, which after a long period of relative dormancy is celebrating its 125th anniversary while experiencing record numbers of pending cases. The so-called '*Trias Juridica*' of the Peace Palace is more active and necessary than ever before in the international community.<sup>61</sup>

<sup>60</sup> Gross, *supra* note 26, at 319.

<sup>61</sup> A. Eyffinger, *The Peace Palace: Residence for Justice – Domicile of Learning* (1988), at 165 ('[i]f the Courts [the PCA and the World Court] ... represent the wisdom that comes with age, the complementary institution [the Hague Academy] that was founded in the Peace Palace in 1923 to round off the Hague *Trias Juridica* features the optimism of youth').