IN MEMORIAM: PROF. BERT V.A. RÖLING

The Dutch academic community has lost one of its great international lawyers, Professor Bernardus Victor Aloysius Röling (1906-1985). After completing his law studies at the Catholic University of Nijmegen in 1931, he began his career as a specialist in criminal law, winning the gold medal of honour awarded by the University of Groningen in 1932 for the best study on measures and penalties for professional and habitual criminals. In 1933 he graduated *cum laude* at the University of Utrecht with a doctoral thesis entitled "The legislation with regard to so-called professional and habitual criminals". Together with Prof. Pompe he established the first criminological institute in The Netherlands (at the University of Utrecht, also in 1933), and in 1936 he was appointed as deputy judge and police magistrate at the court of justice in Utrecht. During the War, in 1941, he was transferred to act as a judge in the town of Middelburg, following a clash with the German occupation authorities which would otherwise have resulted in his arrest, finally to return to the court of Utrecht after the War. In 1946 he became for the first time a professor, accepting a special chair in Netherlands East Indies penal law at Utrecht University.

Remarkably — when we consider his later career — up until this time he had not developed any interest whatsoever in international law; on the contrary, before the War he had turned down an invitation to take the chair of international law at the University of Utrecht, after having read a text of the time and concluded that international law was a dull and conservative discipline!

This would soon change, however; since he was considered one of the rare experts on the law of the Netherlands East Indies — "I really did not know anything about it", he later used to say, explaining that he had accepted the special chair in 1946 as a preliminary step towards a full ordinariate in penal law — he was invited to become a judge at the Military Tribunal for the Far East at Tolkyo, where the major Japanese war criminals were to be tried. It was during this period (1946-1948) that the foundation was established for his devotion to the study of international law and affairs; based on unusual experiences and encounters which gave him a thorough insight driven by a deep rooted universal outlook into political processes and legal manoeuvres taking place behind official curtains, and which were to determine his further career. It was here that his interest shifted from criminology to polemology (peace research) and from penal law, through international criminal law, to the law of nations.

Upon his return to the Netherlands he was first appointed as professor of criminal law and criminal procedure at the University of Groningen, where he coveted, and received, the chair of international law in 1950. From then onwards, although he continued to teach criminal law and criminology and spent part of his time as a judge at the special Court of Cassation (the supreme Dutch authority dealing with war criminals), he concentrated primarily on international law and, subsequently, also on peace research, then a new scientific discipline which he helped to establish. In 1962 he founded the Polemological

Institute at the University of Groningen; in 1956 he founded the International Peace Research Association (serving until 1971 as its first Secretary-General); and in 1966 he helped to establish the Swedish International Peace Research Institute being a member of its Governing Board for many years).

Supported by his growing knowledge of peace research and international relations, Röling began to concentrate on the legal problems of war and peace; and while he published on a great variety of topics, for him the study of international law aimed primarily at the strengthening of its peace and justice-promoting functions was predominent. His efforts were aimed at furthering the principle that international law would no longer be considered as a conservative device for maintaining the status quo, but would be used as a progressive remedy for realizing a more peaceful and just society — which was not welcomed in all circles.

His resentment of traditional international law as it manifested itself in the post-War era was based upon his theory of the "Three Phases", which, departing from a legal-historical point of view, throws an extraordinary clarifying light upon the sociology of international law, for according to Röling, the history of modern international law could be divided into:

(a) the phase of the "Christian Nations" (1648, the year of the Peace of Westphalia, when the system of sovereign states was succeeded by the system of the "two swords", i.e., the hegemony of the Pope and the Roman Emperor — until 1856, the year of the Peace of Paris, when Turkey was admitted as the first non-Christian nation to the confined circle of law-creating states);

(b) the phase of the "Civilized Nations" (1856 to 1945, when the United Nations was established and the prospect of a universal society became a reality); and

(c) the present phase of the "Peace-loving Nations" (as the member states of the UN are called in the Charter).

The recognition of these three phases has three functions: first, it throws light upon the quality of the law-making circle; second, it clarifies the background and contents of the rules; and third, it explains the forms of discrimination and domination legitimized by reference to them. Realizing that traditional law was made "by and for Europe", Röling was convinced that it could not survive unchanged in a universal society where one day Europe (or, for that matter, the Western world) would constitute only one segment among many. Being concerned about the tendency to keep the law-creating machinery in Western custody, he leveled criticism at those who took pride in the European origin of international law, but closed their eyes to dramatic changes which took place in the world, in particular as a result of the rapidly progressing decolonization process. He asked how could one reasonably stipulate that a system of law, developed by Europe, reflecting European thought, serving Euro pean interests, and dictated to the rest of the world (at a time when colonial conquest was legally defended by the right "to Christianize barbarians", in the first phase, and "to bring the blessings of Civilization", in the second phase), be accepted as it stood by a majority of newly independent countries, whose people had been the object rather than the subject of that law? He also posed

the question of how could one in 1955 still agree with a renowned expert like Verzijl — as most Western international lawyers did at the time — that "it would seem very unlikely that any revolutionary ideas will appear as a result of the entrance of these new members which will have power to challenge or supersede the general principles and customary rules of law which have shown their vitality standing the test of time and circumsance"? It was this kind of short sightedness against which Röling took a stance when he wrote his "European Law or World Law?" in 1958 and his "International Law in an Expanded World" in 1960, advocating an adaptation of traditional international law in such a way as to:

(1) get rid of principles and rules legitimizing colonial and neo-colonial domination; and

(2) incorporate new principles and rules which *also* served the interests of the newcomers of the Third World.

Indeed, he ventured to plead for a development in international law in the present day similar to that which took place in the national law systems of the industrialized countries of Europe around the turn of the century, when the fundamental of a collective responsibility for a minimum welfare standard for everybody became recognized as a principle of socio-economic (welfare) law. He urged for a revision of such principles as the freedom of the seas, which tended only to serve the prosperous nations, and pleaded for patience when the newly independent underdeveloped countries re-emphasized the principle of state sovereignty (as a means of protection against the more powerful economically advanced nations) at a time when the latter de-emphasized this principle (because that was now in their interest). His writings were rejected at the time by a predominantly conservative academic environment: they were called "a scandal" and stigmatized as "a dagger into the back of international law".

For Röling the maintenance of peace and security was indissolubly linked with justice. He pointed to the fact that, not without reason, the UN Charter, in the phase of the peace-loving Nations — in contrast to the Covenant of the League of Nations, which still demanded "a scrupulous respect for all treaty obligations" — gave precedence to "justice" as opposed to respect for positive international law (in its preambulae and Art. 1.1); and as such he interpreted the Charter not only as an instrument of "negative" peace (i.e., the mere prevention of violence) but also as an instrument of "positive" peace (i.e., the prevention or solution of those kinds of conflicts which arise from injustice which is perceived as unbearable and thus eventually tend to erupt into violence). His publications demanding the abolition of the colonial system and the adoption of an international welfare law are the most prominent of his numerous contributions in the realm of "positive" peace.

He also published extensively on aspects of "negative" peace, submitting inventive and outspoken views on such questions as the definition of aggression (among many UN assignments, he served as vice-chairman of the 1953 Special Committee on Defining Aggression and as rapporteur of the 1956 Committee), the meaning of a "threat to the peace", the interpretation of the Charter's ban

on force and the right to self-defence, the use of "dubious" (including mass destruction) weapons, and on aspects of disarmament, arms control and deterrence. He was a fervent proponent of a strict interpretation of the Charter's prohibiton on armed force and duelled in a series of articles with colleagues, such as Julius Stone, who advocated a flexible interpretation; holding that in a nuclear era an absolute ban on force is "'not an illusion indulged in by ivory tower legalists" but "the precondition of life itelf". He also submitted interesting theories on the link between *ius in bello* and arms control, suggesting that a prohibiton to use certain "dubious" weapons might have a positive effect on weapon strategies in peace time; and launched innovative ideas on the prohibiton of weapons systems which could not be regarded by potential adversaries as being purely defensive in nature.

Röling leaves behind an impressive intellectual inheritance. In a way, he practicsed his profession in an unorthodox manner, favouring an interdisciplinary approach and focusing on questions which are especially relevant to the effort to mobilize international law as a means to strive for a better world. He was a man of great vision and vocation, who did not waste his time by indulging in technical casuistry or self-flattering (but practically irrelevant) intellectual excursions — which at times were reasons for the more old-fashioned to question his merits as a lawyer. His independent mind, scientific integrity, and non-provincial outlook often brought him into conflict with official authorities: as in the case of his refusal to obey German commands affecting his judicial independence; his dissenting opinion in the Tokyo Tribunal (where he refused to accept the existence, before the War, of a "crime against peace", and to support the politically desirable death penalty against five of the accused); his rejection of the Anglo-French invasion in Egypt following the nationalization of the Suez canal company; and his protest against the colonial policy of the Netherlands Government during the dispute over former Dutch New Guinea. He knew that the public expression of certain unpopular views on "hot" political issues would cost him much official goodwill, nominations, and appointments; yet, when he felt he should express them, he did not hesitate and accepted the consequences, always affirming his remarkable intellectual power and admirable political courage.

During his lifetime Röling had become one of the most well-known and appreciated Dutch international lawyers, and, in view of his writings and performances it is not surprising that many at home and abroad held that he should have been the first Dutch judge at the International Court of Justice. He loved his work as a professor; so much so that he even turned down an appointment as Under-Secretary of State in 1973, because it would have meant that he would have had to stop teaching and writing.

His pioneer work will remain a lasting source of inspiration to all international lawyers dedicated to the cause of peace and justice.

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