

Bert V.A. RÖLING

1906 - 1985

PREFACE

Towards the end of 1984 the T.M.C. Asser Institute marked the opening of its fourth lustrum year by publishing a small biographical essay on the eminent scholar of international law whose name the Institute bears: Tobias Michael Carel Asser. It was the first of a series by which to commemorate prominent dutch scholars of international law and to recall the contributions made by them to the furthering of international law and international relations.

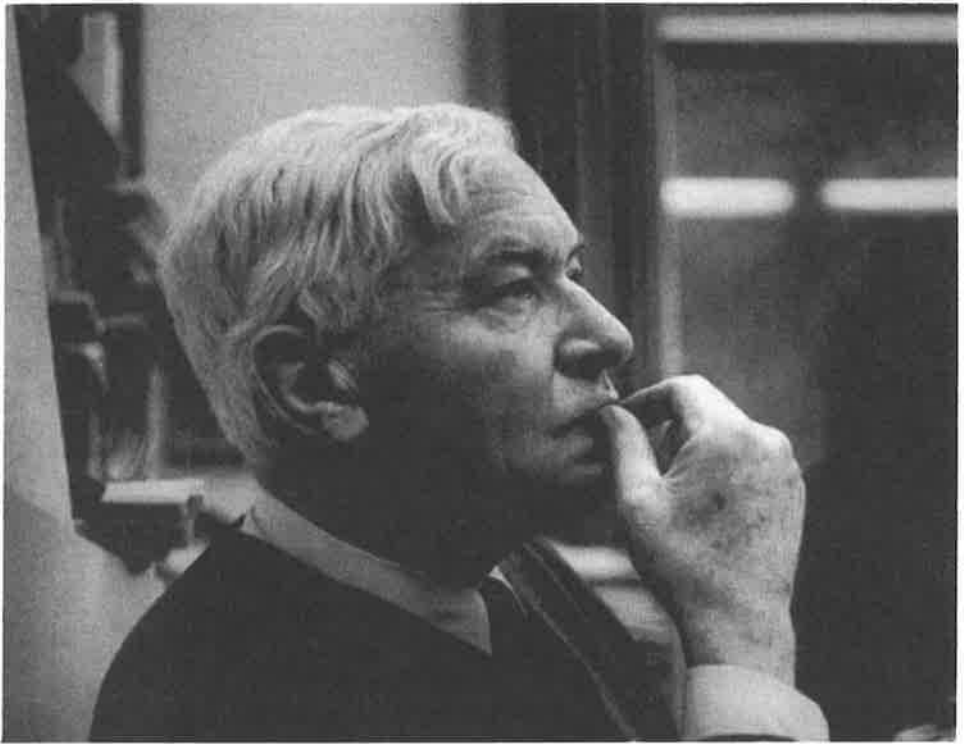
The present essay in what is gradually to form that series pays tribute to B.V.A. Röling, for many years professor of international law at the State University at Groningen and widely known and respected as a scholar of polemology.

We have been very fortunate that Professor W.D. Verwey so readily accepted our invitation to write the essay on Röling's life and work. His close professional and personal relationship with Röling and his profound knowledge of the legal issues to which Röling dedicated much of his life made Verwey singularly well equipped to prepare the biography that is now before us.

For many years Röling was a member of the Institute's Board of Science, a post in which he was succeeded by the author of the present essay. To us in the T.M.C. Asser Institute, the essay has therefore a special quality. It is a commemoration of a man who, till so recently, worked alongside us — a deeply respected colleague who will be greatly missed.

C.C.A. Voskuil

The Hague, November 1985



Photograph: Edith Kruidhof

Bert V.A. RÖLING

(1906-1985)

by W.D. Verwey

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INTRODUCTION

With the death of Prof. Bert Röling on 16 March 1985, the international academic community has lost one of the most prominent and versatile international lawyers of the post-War era. Röling leaves an important academic inheritance. His publications are the extraordinary product of a rare academic capacity: an outstanding knowledge of both international law and peace research. Being a professor in both disciplines, Röling developed his theses about the relationship between international law and the promotion of peace and security over a period of 40 years, starting from his thorough insight into the factors and processes which have condemned the world to become what it now is: a polemogenous anarchy of alliances, States, and sub-national political entities which seem to be unable to escape from a social structure marked by instability, continuous struggle, and military confrontation as its *ultima ratio*.

Born in 1906 in the town of 's-Hertogenbosch, Bernardus Victor Aloysius Röling studied law at the Universities of Nijmegen, where he took his master's degree in 1931, and Marburg an der Lahn. Having obtained a grant from the Rockefeller Foundation for a comparative study of criminal law systems in a number of European countries, he began his academic career in the field of criminal law, winning the gold medal of honour offered by the University of Groningen for the best study in this field in 1932. Following the advice of his teacher, Prof. Pompe, he developed this study and graduated *cum laude* one year later at the University of Utrecht with a doctoral thesis entitled "Legislation with Regard to So-called Professional and Habitual Criminals". Also in 1933, he established, together with Pompe, the first Criminological Institute in the Netherlands at the University of Utrecht and he became a lecturer in criminal law and criminology. In 1936 he was appointed as deputy judge to the Court of Utrecht, and in 1941, following a conflict with the German occupation authorities, he was transferred to Middelburg, to become a

judge at the Court of that provincial town. After the War he returned as a judge to the Court of Utrecht and in 1946 he obtained his first professorship, being offered the special chair in the criminal law of the Netherlands East Indies as a preparatory step towards an appointment as ordinary professor of criminal law at the University of Utrecht.

Things were to change, however. In 1946 he was invited by the Dutch Government to be the Dutch judge at the Military Tribunal for the Far East in Tokyo, whose task it was to sentence major Japanese war criminals. Until then Röling had not developed any particular interest in international law and relations. He was steering towards a career as professor of criminal law and criminology. Indeed, as luck would have it, shortly before the War he turned down an invitation to teach international law at the University of Utrecht, having read a manual commonly used in those days and concluded that international law was a dull and conservative discipline! However, during his period as the youngest judge on the Military Tribunal (1946-1948) he soon became fascinated by the international dimensions of law and politics, and the foundation was laid for his future devotion to international law and peace research. The unusual experiences he gained there, which provided his alert mind with a thorough insight into the political processes and legal maneuvering which take place behind official curtains, shifted his interest from criminal law to the law of nations, and from criminology to polemology; or "from bad to worse", as he himself used to put it.¹

Upon his return from Tokyo he immediately sought an academic position in the field of international law and matters of war and peace. First, however, he was offered and accepted the chair of criminal law and criminal procedure at the University of Groningen in 1948, where he also taught criminology up to 1953.² And while he continued to write on criminal law and procedure up to 1965, and served, for example, as a judge on the Special Court of Cassation (the supreme authority on questions of war crimes in the Netherlands) and as chairman of the Advisory Committee on Pardons for Political Offenders, in 1950 the opportunity came to embark upon the career he by then coveted most: he was appointed as professor of international law at the same University of Groningen, where he was to stay until he retired in 1977, at the age of 70. He

Numbers in brackets refer to the published works of Röling which are listed in the Annex following this tribute.

1. (50) p. 6.

2. The originality of much of his writings is evidenced, in the field of criminology, by his study on "The criminological significance of Shakespeare's *Macbeth*" (*De criminologische betekenis van Shakespeare's Macbeth*), 2nd edn. (Deventer 1972).

wrote an impressive number of books and articles on questions of international law related to problems of war and peace. In addition, from 1953 he served the Dutch Government as a member of the Advisory Committee on Questions of International Law. He was a member, furthermore, of the Dutch delegation to the United Nations, representing the Netherlands in the Sixth Committee of the UNGA (1949-1957), as well as in the two Special Committees on International Criminal Jurisdiction (1951 and 1953; as a Rapporteur of the latter Committee). After 1958, his UN activities came to an end, following a conflict with the Dutch Government as a result of Röling's writings and attitude concerning the Anglo-French military operation during the Suez crisis and the Dutch policy during its confrontation with Indonesia over West Irian (formerly Dutch New Guinea).³ He condemned both policies as wrongful efforts to maintain the colonial system and the Western-made international law which legalised it. He was not only removed from the UN delegation, but was also prevented by a successful conservative lobby in political and academic circles from taking up the prominent chair of international law at the University of Leyden which had been offered to him. Continuing his work at Groningen, in 1960 he was invited to give a course at the Hague Academy of International Law on "The law of war and national jurisdiction since 1945".⁴ In 1963 he became a *membre associé* of the *Institut de Droit International*.

In the meantime, he had also begun to specialize in non-legal aspects of questions of war and peace, attending, from 1960, conferences organized by the Pugwash Movement. His desire to establish a centre for research on war and peace was fulfilled in 1961, when the Polemological Institute was founded at the University of Groningen (followed by the establishment of other peace research Centres at the Universities of Amsterdam, Leyden, and Nijmegen). In 1964 he became one of the original members of the Advisory Committee on Questions of Disarmament, International Security and Peace, which (up to its dissolution in 1984) advised the Dutch Minister for Foreign Affairs. In 1973 he was appointed as Chairman of this Committee and in 1965, at a conference organized by Röling together with Johan Galtung and Kenneth Boulding at the University of Groningen, the International Peace Research Association was established and Röling became its first Secretary-General (a post he held until 1971). He was also active in the establishment of the Swedish International Peace Research Institute in 1966, and became a member of its Governing Board. Likewise, he was instrumental in the foundation of the Dutch Institute for

3. Cf., (40) p. 529 et seq., and (28).

4. (24) p. 329 et seq.

Peace Problems, a Government-sponsored Institute which began operations in 1970, and which he served for four years as Chairman of the Advisory Board.

In 1973, when the Socialist Party returned to power in a coalition with the Christian Democrats, Röling was invited to become Under-Secretary of State responsible for questions of peace and security. He declined, because acceptance would have forced him to abandon his teaching and research, and this was his primary vocation — the more so since, finally, in 1972, he had been appointed professor of peace research, an event considered by him as official recognition of, and a mark of respect for his work as director of the Polemological Institute. Similar credit was given to him on the occasion of the award of the Carnegie Foundation's Wateler Peace Prize (1972) and the Ted Lentz Peace Award (1973). In 1981 the Technical University of Twente paid tribute to his work by awarding him a doctorate *honoris causa*, and since 1983 the "Röling Prize" has come into being, which is offered to the student who writes the best paper on questions of peace and security. The funds for this prize are provided by private donations and part of the profits made on the sale of the *Liber Amicorum*, which was presented to Röling on the occasion of his retirement in 1977. It contains 22 contributions written by international lawyers and peace researchers and is entitled "Declarations on Principles. A Quest for Universal Peace".⁵

1. THE JAPANESE EXPERIENCE

Röling's membership of the Tribunal in Japan proved to be the event with the most decisive impact on his career. On that occasion he was confronted, under dramatic circumstances, with a fundamental lack of understanding among predominantly Western judges and officials of non-Western views, perceptions and convictions; a lack of understanding which he found reflected in Western-made international law. Röling resented certain aspects of the phenomenon of "victors' justice", as it manifested itself in, for example, convictions based upon "crimes against peace" and in the Tribunal's lack of capacity and preparedness sincerely to try to understand the background to certain Japanese policies from an Asian perspective — phenomena denounced by him in his famous dissenting opinion.⁶ But, more important, he became convinced of the necessi-

5. Edited by R.J. Akkerman et al. (Leyden 1977). Most of the personal data presented here is derived from the biography inserted into this *Liber Amicorum*, which was written by P.J. Teunissen.

6. (41) II pp. 1041-1148. Cf., also, (9) pp. 7-9, and see *infra*, section III.

ty, *in general*, of adapting international law to post-War political relations, in such a way as to make it universally understandable and acceptable in a de-colonizing world order. The circumstances and encounters which were decisive in leaving their universalist mark upon his future outlook on the world and the function of international law in it certainly include his close co-operation and friendship with the only Asian member of the Tribunal, the Indian judge, Radhabinod Pal. The wisdom of this man and his knowledge of Asian thinking — he, too, denounced in vain the Tribunal's ignorance of Asian perceptions of the origins of, and responsibilities arising out of the Pacific War — were instrumental in convincing Röling of the shortcomings of a system of politics and law which was almost exclusively based upon Western conceptions and interest, and that Nehru was right when he said to the UN General Assembly in 1948: "May I say, as a representative from Asia . . . that the world is something bigger than Europe, and you will not solve your problems by thinking that the problems of the world are mainly European problems . . . Today I venture to submit that Asia counts in world affairs. Tomorrow it will count much more than today".⁷ If international law was to survive in the post-War world as a globally applicable system for the maintenance of peace, the exclusively dominant position of the European values and interests which it had traditionally reflected and served would have to be abandoned. Non-European values and interests would have to be taken into account as well, even at the cost of a radical transformation of certain foundations of international law as had developed during the colonial era; or, in Pal's words: "Law must become more political if politics are to become lawful".⁸

When Röling returned from Japan he was determined to contribute to this transformation of international law, from a conservative instrument devised to maintain the colonial *status quo* into a progressive system suited to bring about a more peaceful and just society. Subsequently, the nuclear arms race gave an extra impetus to this effort, and he focussed his research activities on the relationship between international law and world peace "starting from the deep conviction that it also depends on the development of international law whether mankind will manage to escape from the danger of nuclear war".⁹ He published on a variety of subjects; but whether he dealt with the UN system, human rights, racial discrimination, space law, environmental law, the law of the sea, the law of economic

7. Address to the UN General Assembly on 3 November 1948.

8. R.B. Pal, "The international law in a changing world", 48 *All India Reporter* (November 1961) p. 102.

9. (45) p. 8.

relations, or even technical questions like the *clausula rebus sic stantibus*, he always had the peace-promoting function of law in mind. Indeed, his "Peace and International Law" ("*Vrede en Volkenrecht*"), in which he deals with a large number of international law topics, can be considered — and was meant by him — as a general introduction to the law of nations from the perspective of the quest for world peace.¹⁰

In his view, one of the necessary points of departure for the evolution of an effective international law of peace is a general acceptance of the assumption that the principle of sovereignty would have to be circumscribed and that traditional freedoms based upon it would have to be confined in the common interest: "The enemy relationship only fits into a structure without central authority and central power, such as the structure of sovereign States which are the sole determinants of their own behaviour and which take care of their own security. Such a structure is a polemogenous one, in which the struggle for power constitutes the *ultima ratio*. The price of national sovereignty is occasional war. The price of lasting peace will be, among other things, the restriction of unlimited national sovereignty, the restriction of freedom of decision in the fields of armament, economic policy, ideology and culture, environmental protection and law".¹¹ In this connection, he always emphasized the self-destructive shortsightedness of policies based upon narrowly conceived short-term national interests. Indeed, short-term and long-term national interests are incompatible when the former is allowed to dominate decision making. For Röling, pursuit of the common global interest is conducive to — indeed, inextricably linked with — the pursuit of the *long-term* national interest. Transposing this point of view to the level of international law, he wrote:

"One can approach the law of nations in two ways. Traditionally, this approach was dominated by the question: how can the law of nations be rendered subservient to the direct interests of my State? This approach influences what is required from the 'progressive development of international law' and the interpretation of positive international law. Another approach seems to be: how can the law of nations best serve universal interests, promote peace among nations, ease the poverty problem, assist most profitably in the protection of the environment? Such an approach readily implies different points of view as regards *lex ferenda* and the interpretation of *lex lata*. Yet, there is a common point of departure in both attitudes. In both cases one proceeds from the thesis that the law of nations should serve the national interest. However, the five

10. Cf., (45).

11. (45) p. 13. All quotations from this book presented here are citations translated from Dutch by the present author. Cf., also, (19) p. 182.

points of view diverge with respect to the question of what is the national interest. Those adhering to the traditional attitude are inclined to emphasize the direct national interest, the 'short term interest'. The second attitude, which is usually referred to as the 'idealistic' one, puts more emphasis on the national interest in the longer term. How will things develop if, for the present, all effort is directed at satisfying immediate material needs? What problems will arise affecting the supply of raw materials? What will be the environmental consequences of continuing deafforestation, desertification, overfishing? What will be the consequences of the application of new technologies, which, indeed, guarantee direct advantages but entail so many hazards for future generations? More than before, one becomes aware of the value of the healthy environment which living organisms need to survive. The environment of the national State is the region of which it forms a part, and in many respects the world as a whole. Taking care of that environment is a vital interest of the national State. Just as it is a vital interest of the national State to prosper in a peaceful world in which disputes are no longer settled by military means. Humanity can no longer afford the 'luxury' of a war. This, too, is a new aspect of international relations, with far-reaching consequences for daily policy decisions."¹²

As one might expect, in view of Röling's attitude towards the function of international law in society, in a gradually de-colonizing world he paid considerable attention to the legal merits of UNGA resolutions; both the "mandatory" and, in particular, the "permissive" ones (the latter legitimizing acts hitherto prohibited by international law but permitted by a two-thirds majority of the UNGA). He never made the mistake, however — as some of his critics asserted — of neglecting the differences between resolutions and manifestations of "hard" law. On the contrary, he adhered to the thesis of "soft" law, and recognized that the rules embodied in resolutions need substantial concurring state practice before they can become binding law. In his view, their main function, in terms of progressive development of international law, is "to change the attitudinal climate" by formulating new *opinio iuris* which may, and has often proved to, result in new state practice.¹³

These general introductory observations constitute the framework for an effort to present a more detailed and concrete impression of Röling's versatile contribution to the development of legal doctrine. For the pur-

12. (45) p. 9. This 3rd revised edition, the last major work Röling was able to complete shortly before his death, may be considered as a synthesis of his thoughts and theses on problems of peace and law, as they have matured over a period of some 40 years. It seemed the more relevant to the present author to include some more lengthy quotations from this book, since it has not yet been translated into English or another major language (plans for which are under consideration), and it is, accordingly, not yet available to non-Dutch speaking readers.

13. Cf., for example, (19) p. 190; (32) p. 39; (45) pp. 30, 143-145, 161.

poses of the present review it will only be possible, however, to touch upon some of the many inventive and thought-provoking theses which he developed in his writings.

2. PROHIBITION OF ARMED FORCE

Even a very concise review of Röling's thoughts on the *prohibition of armed force* should start with a reminder of the position he took in Tokyo on the question of "crime against peace". This innovation was introduced into the Charters of Nuremberg and Tokyo as "the supreme international crime" for which those major German and Japanese war criminals who were responsible for the planning and initiation of the Second World War should be sentenced. Notwithstanding the pressure which was exercised upon him by the highest Allied authorities, Röling rejected the thesis that responsibility for aggressive war was recognized as a crime under valid international law, both as regards its written (e.g., the Briand-Kellogg Pact of 1928) and customary constituent parts. He denounced the abuse of international law for political purposes, claiming that the crime against peace was "invented" to serve, for example, as a legal cloak for "revenging the attack on Pearl Harbour",¹⁴ and that the blunt announcement of "we'll give 'em a fair trial and then hang 'em!" was not a harmless publicity joke. In his dissenting opinion Röling held that five of the accused should have been acquitted to the extent that the death sentence pronounced against them was based upon their having committed a "crime against peace". This applies, in particular, to former Foreign Secretary Hirota Koki, who had merely been involved in formulating the original non-military version of a policy aimed at establishing a "New Order" in Asia, a policy of indirect (economic and ideological) aggression, which could be considered at the time as even less of an international crime than military aggression: "From the law as it now stands, it follows that no one should be sentenced to death for having committed a crime against peace".¹⁵ Later he recognized that the condemnation of certain acts as crimes under international law may express, and contribute to the intensification of, public perception of such acts as being particularly repulsive, which in its turn may contribute to their prevention.¹⁶ But he considered the prohibition of aggression by criminal law "premature";

14. (39) pp. 23-24; (42) pp. 251-255.

15. (9) p. 10; (41) p. 1116. Cf., also, (9) pp. 11 et seq., 19-27; (29); (30); (31); (41) p. 1121 et seq.; (42).

16. (9) p. 11; (24) p. 365; (30) p. 177; (45) pp. 197-198.

both because the meaningfulness of such a step is linked to an *effective* definition of "aggression" (which is impossible), and because a prohibition of armed force without a simultaneous guarantee of peaceful change and promotion of justice is a questionable exercise.¹⁷

This brings us to the question of the *prohibition of armed force* proper.

As regards the practical effect of the prohibition of armed force, Röling did not indulge in legalistic illusions: "If a State for political reasons wants to resort to force, ample pretexts are available to it. In some instances, the only result of the prohibition of force is that the use of weapons occurs 'underground' (Guatemala 1954). Hence the limited effect of the prohibition of war on the elimination of the 'Clausewitz' war, the war waged as a tool of national policy". Indeed, between nuclear States, "this kind of war — the use of force as a tool of national policy — is prevented rather . . . by fear of nuclear arms. The deterrence of nuclear arms has a greater effect than the prohibition of war".¹⁸ In addition, Röling was sceptical about the sincere intentions of many proponents of a legal ban on armed force, in view of "the aspect of consolidation of the *status quo* against violent improvement of a situation by use of force on the side of the destitute. As such it implies an assault on the position of the 'underdog'." Indeed, "prohibition of war without guarantees of peaceful change according to criteria of justice and supranational interest, makes no sense. It is misleading and for that reason dangerous".¹⁹ Hence his stipulation that, under strict conditions and in very specific circumstances, the promotion of justice should prevail over the elimination of force (we come back to this thesis in sections 5 and 6 *infra*). To the extent that the prohibition of force does serve sincere purposes and is not abused to obstruct the cause of justice, however, he recognized that it has an important moral and educational function, notably "the promotion of a general attitude, which no longer accepts that military power is the ultimate and decisive factor in international relations".²⁰ Thus, he welcomed the prohibition of force from the perspective of "North-South" relations, where it can be conducive to guaranteeing developing countries the freedom of action they need to proceed with their process of political and economic emancipation. He emphasized this point of view on the occasion of the Anglo-French intervention during the Suez crisis, an action condemned by Röling because he

17. Cf., (5); (39).

18. (45) p. 163. Cf., also, (20) p. 275; (22) p. 740; (25).

19. (45) p. 157. Cf., also, (39) p. 30.

20. (45) p. 164. Cf., also, (19) p. 182.

considered it as a typical example of a new-style North-South conflict, in which the "old" countries of Europe, confronted with an illegal economic act committed by a "new" Third World government, resorted to armed force of a neo-colonial type in clear violation of the UN Charter.²¹ At the same time this constitutes one major reason why he advocated a strict interpretation of the Charter's ban on force (Article 2 paragraph 4) and of the right of self-defence "if an armed attack occurs" (Article 51); an interpretation which he saw reaffirmed by Article 5 of General Assembly Resolution 3314 (XXIX) of 1974 on the Definition of Aggression.²² On the occasion of the Suez affair he rejected, in particular, the thesis that traditional customary international law would revive when the UN is not able to maintain respect for international law; a view expressed by the Dutch Foreign Secretary when he said that "one cannot invoke the Charter after upsetting the international legal order".²³

A strict interpretation of the Charter's ban on force has become even more important today within the context of "Great Power" rivalry, because no vital national interest, whatever its nature, can ever justify resort to force in a conflict in which the use of nuclear weapons — always entailing the risk of escalation towards nuclear holocaust — cannot be excluded. With this particular situation in mind, Röling opposed Julius Stone's thesis that "if we persist in representing to the ordinary people of the world that the Charter contains strict and firm rules of law forbidding war, then, insofar as daily events show these rules to be illusory, we invite massive impatience and cynicism not only with these supposed rules, but with other United Nations functions and organs and with international law generally". For, today, Röling claimed, if the prospect of nuclear war arises, one is forced to take that risk. In this connection he denounced the fundamental inconsistency in Stone's stipulation, on the one hand, that "we must choose between the possible interpretations in the light of their 'consequences' and 'their relation to policy and wisdom' ", and his conclusion, on the other, that Article 2(4) does *not* prescribe an absolute ban on force and that Article 51 leaves room for armed self-defence even in circumstances not involving a prior armed attack upon (but, for instance, an infringement of important economic interests of) the State resorting to it. This even applies to the employment by the Super Powers of conventional arms: "In this regard the 'consequences' of nuclear weapons are vital . . . Nuclear weapons cannot be used without the unbearable risk of mutual annihilation . . . all weapons have become unusable between

21. Cf., (40).

22. Cf., (19) p. 182; (20) p. 274; (32) p. 34.

23. (40) pp. 565-566.

nuclear powers because every war brings the risk of escalating into nuclear war".²⁴ This is why today "Article 2(4), as a prohibition of the *first* use of military power, is the fundamental premise on which the United Nations is built. It is *not* a mere expression of peace euphoria at the end of a devastating war. It is *not* just some kind of luxury designed to make life more pleasant. It is *not* an illusion indulged in by ivory-tower legalists to feed their own complacency and self-importance. It is the precondition of life in the atomic era".²⁵

He took great pains, accordingly, in providing evidence and submitting arguments against Stone's thesis that Article 2(4) should not be strictly interpreted, e.g., allegedly because (a) it had been formulated in order to be deliberately ambiguous; (b) traditional customary rights would revive when the UN peace-keeping machinery does not work; (c) the term "inherent" in Article 51 of the Charter would imply that the right to resort to armed force as it existed under customary international law survives in full under the system of the Charter; and (d) the maintenance of peace was merely one among several equally important purposes of the UN Charter. As regards the latter claim, Röling emphasized that in the present nuclear era it has become more important than ever to recognize that "the commitment to collective peace enforcement is the paramount aim of the Charter; and any action by an individual State inconsistent with this commitment is thus explicitly outlawed". And this applies as much to, for example, employment of "rapid deployment forces" by the USA in the Middle East, in defence of vital economic (oil) interests, as it does to the violent suppression of democratic movements by the USSR beyond its national frontiers, in defence of vital ideological interests".²⁶

As regards other aspects of the interpretation of Article 2(4) it may be observed that Röling recognized that the Charter does not intend to prohibit minor uses of force which are not of a serious enough nature to affect "the territorial integrity or political independence of any State" or to be "in any other manner inconsistent with the Purposes of the United Nations"; and he proposed to the UN General Assembly, accordingly, that the meaning of the term "armed attack", in the sense of Article 51 of the Charter, should be confined to that kind of force which "leaves the State

24. (19) p. 183. Cf., also, (20) p. 274; (22) p. 738 et seq.

25. (31) p. 283. Cf., also, (2).

26. (31) p. 276. Cf., also, (14) p. 184; (20) p. 273; (31) p. 287; (45) p. 160. In this connection, Röling seemed to be particularly disturbed by Stone's views of withholding Arab oil measures and the legality of military counter-measures, when he observed: "He (i.e., Stone) goes so far as to maintain that 'the extreme coercion of the concerted oil measures probably constitutes a threat or use of force, forbidden by Art. 2 para. 4 of the UN Charter!"; (22) p. 739; likewise, (20) p. 274.

against which it is directed no means other than military means to preserve its territorial integrity or political independence".²⁷ He held, furthermore, that the phrase "threat of force" does not necessarily cover the mere presence of superior military power or even an increase of armament in general, as long as this is not manifestly aimed at coercing another State in the course of a concrete dispute (because Great Power policies based on the balance of terror and, in general, a large-scale state practice based upon balances of power are incompatible with any conclusion to the contrary).²⁸ However, at the same time, in line with his theories in the field of arms control and, in particular, those concerning "inoffensive deterrence" (see section 4 *infra*) he suggested that in the future the development and procurement of certain kinds of nuclear weapons — notably those which are specifically suited to *aggressive* purposes — should be stigmatized as a "threat of force" in the sense of Article 2(4).²⁹

3. IUS IN BELLO

Rather unconventionally, Röling approached *ius in bello* primarily from the point of view of its relationship with the restoration and maintenance of peace. Thus, in his view, during actual fighting the purpose of *ius in bello* is not only to ease human suffering in war, but also "to ensure that war is not waged in such a manner as to obstruct the restoration of peace".³⁰ As regards its peace-maintaining function, Röling expressed doubts, on the one hand, about the correctness, under all circumstances, of the view adhered to by the ICRC, that "*le renforcement du droit n'est en rien incompatible avec la recherche de la paix*".³¹ He recognized that the humanitarian law of warfare might contribute to the perception of war as a "decent" affair among honest and chivalrous men, thereby making war more acceptable; while, at the same time, the rules are easily circumvented with the help of inventive science and technology. But Röling pointed, on the other hand, to ample historical evidence to sustain the thesis that those who held, following Alfred Nobel, that war would be abolished by the prospect of employment of the most terrible weapons,

27. (31) p. 275. Cf., also, (2) pp. 246-247; (19) p. 182 et seq.; (20) p. 274; (22) p. 738 et seq. And see J. Stone, *Aggression and world order* (London 1958) p. 72 et seq.

28. (2) p. 250. See also I. Brownlie, *International law and the use of force by States* (Oxford 1963) p. 364.

29. (33) p. 131.

30. (45) p. 171 (italics added).

31. "*Reaffirmation et développement des lois et coutumes applicables dans les conflits armés*", 21st International Conference of the ICRC (Istanbul 1969) p. 40; (45) p. 172.

had often been wrong.³² However, at the same time weapons of mass-destruction had, on a number of occasions, certainly helped to prevent violent clashes between the Super Powers; and, coming back to the *restoration* of peace, it could not be maintained that “coercive warfare”, aimed at making war “painful beyond endurance” for the enemy’s civilian population,³³ might not result, under any circumstances, in speeding up the end of an otherwise protracted war. Experiences like the Vietnam war have proved, of course, that everything depends on the particular circumstances of a conflict, and that one should be aware of the misuse which had and could again be made of this argument, as exemplified by the decision to drop the atom bombs on Hiroshima and Nagasaki (which had nothing to do with Japanese capitulation).³⁴ Most important, to the extent that the balance of terror, the system of “Mutual Assured Destruction” (MAD), does constitute a necessary condition of peace between the Super Powers, it is inevitable that one accepts the potential annihilation, the “collective hostage-taking”, of the civilian population. The ABM Treaty concluded in the course of SALT I has, indeed, legalized the “democratization of hostageship”:³⁵

“This is the novelty of the situation. Traditional *ius in bello* had to find a balance between ‘the necessities of war’ and the values of humanity, including the protection of the civilian population. Today these values must also be weighed against ‘the demands of peace’. In this respect it is not the winning of war, but the maintenance of peace which is at stake”.³⁶

The relationship between *ius in bello* and the maintenance or restoration of peace implies, at the same time, that “combat law” may have a significant impact on armament policies in a time of peace:

“For, rules governing the admissibility of means of warfare and legitimate targets constitute a factor in the determination of armaments build-up. Greater attention to the law of warfare in time of peace could be instrumental in in-

32. (32) pp. 29-30.

33. Röling often took a stand against advocates of the concept of “coercive warfare”, such as Thomas Schelling, whose book *Arms and influence* (Yale 1966) he stigmatized as “an infamous book”; (45) p. 178.

34. During and after his years in Japan, Röling made a thorough study of the background of, and circumstances leading towards, the decision to drop the bombs. Cf., his “Case study: the atomic bombs on the Japanese cities” — (*Case study: de atoombommen op de Japanse steden*); Chapter XVIII of (14) p. 164 et seq.

35. (32) pp. 10-11.

36. (45) p. 179. Cf., also, (8) p. 47; (35) p. 47 et seq.; (38).

hibiting the readiness of States to procure all kinds of novelties ('dubious weapons') and include them in the weapons arsenal.'³⁷

For this reason, in particular, efforts to (instate) respect for traditional rules and to supplement these by new ones, aimed, in particular, at the outlawing of weapons of mass destruction, were considered by Röling to be of the utmost importance, because he did not believe in a *lasting* peace on the basis of the MAD system. Polemological studies convinced him, as they did many other experts such as von Weizsäcker,³⁸ that the present system of nuclear deterrence, which is bound to result in an ever-continuing and increasingly destabilizing arms race, in the end inevitably leads to nuclear war.³⁹ In addition, he did not believe that World War II developments, like the introduction of unrestricted submarine warfare, carpet bombing, and total destruction of cities by both Axis and Allied forces, have resulted in the legal abolition of formerly accepted principles of humanity. On the contrary, he emphasized that there is a growing conviction "that we have taken the wrong path and have to return to former standards of civilization and humanity". And, agreeing with Schwarzenberger that "Governments are always free to restate or develop by way of treaty the law they have obscured beyond recognition by their own practices", he submitted that "it is important that jurists take a clear stand. Traditional law can be reinstated". Recapitulating the relationship between *ius in bello*, on the one hand, and the ill-conceived link between the maintenance of peace and nuclear deterrence on the other, he concluded that:

"It seems that the idea of 'weapons for use against civilians' is wrongly credited with being an important factor in promoting the cause of peace. If it were true that survival could only be achieved by abandoning the values of civilization and humanity, then we should have to opt for survival. But this is not the choice facing us: neither the theory of deterrence nor that of coercive warfare can be credited with such importance. Whatever short-term advantages these factors may provide in the cause of peace can, and should, be dispensed with because of the harmful long-term effects they produce."⁴⁰

37. (45) p. 180, also, cf., pp. 171-181; (38).

38. (20) p. 69; (38). See also C.F. von Weizsäcker, *Kriegsfolgen und Kriegsverhütung* (Munich 1971) p. 20.

39. Studies have shown that some 70% of all recorded arms races have led to war, and not peace; (50) p. 11.

40. (23) pp. 33, 34.

Therefore, "the aspect of 'survival' must play, in the present era, a dominating role in the formulation and justification of *ius in bello*".⁴¹

Starting from such considerations, he submitted proposals aimed at restating traditional, but still workable, principles as well as formulating new ones; noting, in addition, that current *ius in bello* finds itself in a chaotic and obsolete situation in that it has not been adapted in line with such developments as the "democratization" of warfare, the phenomenon of guerrilla warfare, or the concept of "people's war" (as proclaimed by Yugoslavia and Romania and meaning that even after the capitulation of the national armies the people must continue fighting as a partizan collective).⁴² The following new basic principles of modern *ius in bello* ought to be recognized:

(a) *the principle of proportionality* (implying, in its new form, a prohibition on weapons and military acts which cause disproportionate, and not just unnecessary, suffering);

(b) *the principle of survival* (implying that the survival of mankind prevails over the national interest and that the prohibition of specific weapons should depend not only on their humanitarian aspects but also on the danger they pose to the very survival of the human race or groups thereof);

(c) *the principle of the protection of the environment* (implying a prohibition on weapons and techniques with a destructive effect on the natural balance, or which introduce destructive and irrevocable ecological processes); and

(d) *the principle of threshold* (implying a prohibition on those kinds of weapons whose use involves crossing a threshold which opens up the way to escalation towards the use of weapons prohibited under any of the previous principles.

Taking the view that the present *ius in bello* does *not* prohibit the use of nuclear weapons under all circumstances,⁴³ Röling postulated: "The most crucial task of the law of armed conflicts will be to prohibit in the near future, before it is too late, the use of weapons of mass destruction, especially nuclear weapons".⁴⁴

41. (8) p. 47.

42. (32) p. 39; (45) p. 181.

43. Cf., his extensive argumentation in (19) pp. 185-192.

44. (23) pp. 36-44, 75.

4. ARMS CONTROL AND DISARMAMENT

Restriction of the principle of freedom of armament was considered by Röling as a matter of *ius constituendum* of the highest order. In a nutshell, his major thesis on the question of arms control and disarmament can be presented as follows.

Traditionally, the military (and most decision-making politicians) are inclined to seek national military security in the achievement of a level of armament which ensures them of a major advantage over any (combined) potential enemy. They are inclined to disregard, at the same time, the fact that such a potential enemy tends to perceive such a policy of strength as a threat, if not a sign, of aggressive intentions, and to take corresponding counter-measures. The resulting process of action and reaction triggers an arms race. History provides ample evidence of the inherently destabilizing effects of conventional arms races, which occur, for instance, when in times of conflict a temporary advantage provided by the possession of superior weapons which the adversary is about to develop incites the possessor to start a war before the tide turns.⁴⁵ The procurement of nuclear weapons has introduced a new dimension to this problem, because they may offer the prospect of a “disarming first strike capability”. Thus, while weapons are produced to ensure security, their procurement may result in *insecurity*. This applies, in particular, to nuclear weapons of an *offensive* nature (i.e., “armed power suitable for attack and conquest”), of a *destabilizing* nature (i.e., “military posture that puts a premium on haste”), or of an *excessive* nature (i.e., “a military power that has built up a greater military capability than is needed for deterrence”).⁴⁶ Analysis of today’s nuclear arms race led to Röling’s inescapable conclusion that “military power has become a danger *in itself* because the vulnerability of weapons of mass destruction puts a premium on haste to start war, or, in the case of an actual war, a premium on escalating the violence”. This consideration, incidentally, also constitutes one of his objections against the procurement of Euro-strategic weapons.⁴⁷ Nuclear weapons have become unusable between nuclear powers, because their employment may result in total destruction. At the same time, “history teaches us that States are inclined to misbehave in proportion to their power, hence the need to possess nuclear arms in order to maintain a power balance”. Therefore, being an opponent of unilateral disarmament, “since this would make the other party’s weapons usable

45. Cf., n. 39 *supra*.

46. (19) p. 197; (22) p. 742; (32) p. 33.

47. (19) pp. 193 (italics added), 202. Cf., also, (32) pp. 31-32.

again”, Röling concluded, “. . . is the real weapon dilemma: nuclear arms are unusable, but for the time being indispensable”.⁴⁸ If one seeks military security the question is, then, how to combine “enemy security” (provided by sufficient armament) with “weapon security” (to be provided by arms limitation agreements aimed at eliminating weaponry of a destabilizing kind, both in a qualitative and a quantitative sense). For, new weapons which aim at increased “enemy security” may lead to decreased “weapon security”.⁴⁹ In this connection he considered it very important to distinguish between “disarmament agreements” (involving substantial arms reduction or elimination, which is possible and advisable only if one can be assured of decent behaviour on the part of all nations concerned) and “arms control agreements” (aimed at reducing the *destabilizing effects* inherent to weapons systems themselves).⁵⁰ With the introduction of weapons of mass destruction and, in particular, nuclear weapons, arms control should become a new and vital chapter of international law. But what kind of arms control agreements? The numerous agreements concluded so far in the fields of tests prohibition and de-nuclearization, or even “ceiling” or “freeze” treaties including the SALT agreements, are only of marginal importance:

“All the restrictions thus far imposed on this sovereign ‘right to bear arms’ have forbidden some quality or quantity of *specific categories* of weapons. But the never-ending spate of technological innovations makes this approach increasingly difficult, if not wholly useless.”

What is needed today is a new functional approach, “which would not rely on qualitative or quantitative restrictions on weapons, but would be directed to the ‘missions’ or ‘functions’ of national armed power”.⁵¹ What is needed is a coherent series of steps aimed at reducing existing arsenals to a level which is insufficient for offensive purposes but sufficient for “*inoffensive*” or “*defensive deterrence*”. Future arms control agreements should be conducive to putting a halt to the disastrous spiral of the nuclear arms race and to ensuring a “functional optimal deterrence”, by eliminating all weapons systems which are suitable for aggression and conquest and by maintaining a level of defensive weapons which is both sufficient to deter aggressive adventures by others and insufficient

48. Quotations are from (19) p. 183 and (31) p. 283. Cf., also, (6); (13); (20) p. 272; (32) pp. 28, 34; (33) p. 130; (37); (50) p. 6.

49. (7); (22) p. 738; (26).

50. (15); (16); (19) p. 193; (22) p. 731.

51. (31) p. 290. Cf., also, (20) p. 273; (22) pp. 732-733; (50) pp. 12, 15.

to pose a threat to these others' military security.⁵² This would come close, indeed, to a general agreement to renounce the possibility of war. In any case it requires the elimination of all weapons of mass destruction, including nuclear weapons, as well as those kinds of weapons whose use would be prohibited, under the principle of "threshold", by the new *ius in bello*.⁵³ Thus, at this point elements of *ius ad bellum* and the law of arms control come together: "the logical consequence of the ban on the use of force (except to resist armed attack) is to move towards a further ban on the right to possess arms capable of supporting aggressive designs".⁵⁴ Referring to "the natural law of the atomic age",⁵⁵ Röling saw a major task here for the smaller nations, in taking the initiative and pressing for the expression of a new *opinio iuris* in UNGA resolutions; he hoped that such *avant-garde* views would in due course evolve into new "establishment" principles, with the support of active campaigns aimed at better informing the public in the East and West, the North and South, of the dangers posed to the survival of mankind by the nuclear arms race.⁵⁶ The "new chapter of international law" envisaged by Röling should be founded upon the following basic principles, in which his theses on *ius ad bellum*, *ius in bello*, and the law of arms control converge:

(1) *The right of the State to possess national armed power is not unlimited.*

(2) *The right of the State to possess armed power is related to the right to use that armed power.*

(3) *The State only has the right to possess the armed power indispensable for exercising its right to use armed power.*

(4) *Only such armed power as is needed is legitimate for deterrence and defence against armed attack.*⁵⁷

Is it realistic to expect that this new approach might be adopted? Röling's answer was that we have no choice:

"Herein lies a task for lawyers who are willing to work at *ius constituendum*: a difficult but fascinating task. Important interests are at stake here. But one can postulate without exaggeration, that the very survival of our culture, if not of all mankind, depends on the timely achievement of this new chapter of international law. This new chapter could no longer be based upon the existing freedom of national armament. It would formulate the norms of a New Inter-

52. Cf., (11); (19) p. 183; (20) pp. 273, 275-276; (27); (33) p. 131; (34); (50) pp. 10, 15.

53. (6) p. 172 et seq.; (21) p. 96 et seq.; (49) p. 126; (34).

54. (31) p. 290.

55. (22) p. 747; (21) p. 96 et seq.; (49) p. 126.

56. (1); (20) p. 276; (22) p. 743; (43); (50) p. 15.

57. (17); (20) p. 276; (22) pp. 741-742; (32) p. 39.

national Military Order, which has become necessary as a result of technological developments, and which proceeds from the principle that the freedom of the national State to arm itself is not unlimited.⁵⁸

5. THE POLEMOLOGICAL THESES

It has been observed above that Röling did not attach great value to the prohibition of armed force *in itself*.⁵⁹ This view resulted not only from his distrust of man's intentions and the socio-political systems which man has devised, but it also resulted from his firm belief in the correctness of two polemological theses, which to a large extent determined his outlook on international law and his ideas about its progressive development.

The first thesis starts from the distinction between two kinds of war: the planned, intended war and the accidental, unintended war. The classical definition of war, formulated by von Clausewitz, is "the continuation of politics involving the employment of other means" ("*mit Einmischung anderer Mittel*"). This definition has until now determined our thinking about the prevention of war, and it lies at the root of the rules prohibiting war (and use of force short of war) as they appear in the Covenant of the League of Nations, the 1928 Pact of Paris, and the UN Charter. However, there can be spontaneous developments, as in the case of gradual escalation which occurs in the course of a process of action and reaction involving misunderstandings or miscalculations, which tend to result in the unforeseen deterioration of a crisis and the unplanned eruption of violence.⁶⁰ Although it is not always easy to make a distinction between planned and accidental violence, a distinction is important. Here Röling used to make a comparison between politics and traffic, observing that "the Clausewitz-type war results from a way of driving, while the 'accidental, unintentional war' rather represents an accident in dangerous international traffic".⁶¹ The prohibition of war is relevant only to the first type, the planned war. With respect to the second type, international law must endorse efforts to bring about less dangerous international traffic. Hence the necessity, in the field of armament, for example, for interna-

58. (45) pp. 74-75. Cf., (17) also.

59. Cf., n. 18 *supra*.

60. Röling referred in this connection to the elaborations on this point of, for example, Raymond Aron in his *Le grand débat. Initiation à la stratégie atomique* (Paris 1963) p. 76 et seq.

61. (45) pp. 17, 163. Cf., also, (20) pp. 275-276; (32) p. 27; (50) p. 11.

tional law to prescribe limits to the freedom to possess certain weaponry. For, "what is started in all reasonableness to prevent 'war as a means of national policy', the 'Clausewitz' war, leads to a world in which the mad escalation of armament and the mentality that goes with it, will sooner or later inevitably trigger off the 'accidental war', the total war accidentally unleashed".⁶²

Closely related to this first thesis, and further clarifying the background of Röling's thoughts on, for example, *ius in bello* and the law of arms control as they have been presented above, is the second thesis. It starts from the distinction between "negative" and "positive" peace. In Caltung's definition, "negative" or "dissociative" peace means the mere "absence of war or more generally absence of organized violence between groups"; while "positive" or "associative" peace means the "presence of patterns of co-operation, of harmonious living together and in general integration between groups".⁶³ Transposing this distinction to the legal scene, Röling disagreed with authors such as Kelsen, who thought that the terms "peace" and "security" in the phrase "international peace and security" were superfluous.⁶⁴ In Röling's view, the term "security" has its own distinctive meaning, notably "absence of the *risk of war*" (while "peace" means the mere absence of war or, in general, of armed force). "Security" includes "*military security*" (including both "enemy security" and "weapon security", as explained above), "*ideological security*" (i.e., absence of a threat to one's social, political and ideological system), and "*economic security*" (i.e., non-impairment of vital economic interests, such as an uninterrupted supply of raw materials, including oil).⁶⁵ Although "security" is not identical to "justice" — "international peace, security and justice" are referred to separately in the UN Charter — there is a profound relationship between peace and security, on the one hand, and justice, on the other. This is because "unbearable injustice is incompatible with security. If structural violence has reached a certain intensity, and is felt by the under-dog to be intolerable injustice, it will lead to violent action." Thus, "negative peace cannot be maintained in the long run, if vital needs of people or of States remain unfulfilled".⁶⁶ Translated into legal language, this means that the Charter's ban on armed force is bound to fail, unless it is supported by the achievement of security, which,

62. (34) p. 155. Cf., (22) also.

63. J. Galtung, "International repertory of institutions specializing in research on peace and disarmament", *UNESCO paper No. 23* (1966) p. 5. Cf., also, (14) p. 60 et seq.

64. H. Kelsen, *The law of the United Nations* (London 1951) pp. 13, 19.

65. Cf., (7); (19) p. 194; (20) p. 277 et seq.; (22) pp. 734-738; (26); (32) pp. 284-287; (32) p. 34 et seq.

66. (36) p. XII.

in its turn, depends in part on the achievement of justice. This being the case, Röling's writings to a certain extent express a preference for the achievement of positive peace over the maintenance of negative peace in situations where the two become incompatible; a standpoint supported, in his view, by the fact that the UN Charter itself gives priority to justice, possibly even at the expense of respect for obligations arising from positive international law.⁶⁷ This is affirmed, moreover, by the practice of the UN General Assembly, which has allowed peoples struggling for the realization of their right to self-determination against colonial, racist, and alien regimes, to resort to armed force, and UN member States to support such struggles "by all available means". This comes close to reintroducing the theory of *bellum iustum* which has been abandoned by Article 2(4) of the Charter.⁶⁸ In certain other circumstances, too, such as situations calling for genuine "humanitarian intervention", Röling could agree with the claim that justice had to be accorded priority over the maintenance of negative peace; notwithstanding that in all these cases the *auctoritas* to declare the use of force legitimate is now, and must remain, vested in the UN, and no longer in individual sovereign States.⁶⁹ On this point, incidentally, Röling for once agreed with authors like Stone and Lillich,⁷⁰ but only insofar as there is a reasonable prospect that violence will remain limited and controllable: the pursuit of justice should *never* be allowed to provoke disproportional violence, let alone the risk of nuclear war. In such cases, the maintenance of negative peace must have absolute priority. In this connection Röling referred, by way of analogy with Senator Fulbright's book on "the arrogance of power", to "the arrogance of 'the just man' ", who tends to consider all means permissible which may serve *his* just cause. This indicates that Röling certainly did not belong among those who think that justice automatically implies peace. On the contrary, he realized, and warned, that there are peace-threatening aspects to the promotion of justice by law; a relationship commonly neglected by lawyers, who often know little about the sociological processes which might result from the progressive development of law. Alexis de Toc-

67. (10); (45) p. 221.

68. (4) p. 221; (45) pp. 21, 163-164. On this topic, see also, W.D. Verwey, "Decolonization and *ius ad bellum*: a case study on the impact of the UN General Assembly on international law", in R.J. Akkerman et al., eds., *Declarations on Principles, A quest for universal peace, Liber Amicorum B.V.A. Röling* (Leyden 1977) p. 121 et seq.

69. (45) pp. 18-19. The question of the permissibility and the conditions of legality of humanitarian intervention under the UN Charter has recently been discussed by the present author in "Humanitarian intervention under international law", 3 NILR (1985).

70. See Stone, *op.cit.*, n. 27, p. 99; R.B. Lillich in S.K. Chatterjee, "Some legal problems of support role in international law: Tanzania and Uganda", ICLQ (1981) p. 762.

queville, referring to the French Revolution, had already noted that the need for the wholesale achievement of justice progressively increases in intensity as justice begins to be achieved, i.e., proportionately as the distance between the existing state of affairs and the desired objective becomes narrower. In legal terms this means that the progressive development of international law, for example in the field of human rights, may promote violence if the rights claimed in consequence of their legal recognition do not in fact materialise. "In the phase of transition, in which justice is in the process of becoming realized, the risk of conflict increases. For, along with the recognition of rights, e.g., the universal declaration of human rights, the sensitivity to a situation of injustice becomes more intense. What used to be tolerated, is no longer accepted . . . It has correctly been postulated: the legal prohibition of racial discrimination is 'likely to crystallize the bitterness that it is intended to destroy' ". Thus, one should always be aware of the potentially divisive effects of legislation which embodies principles of justice, and begin by asking to what extent its realization can reasonably be achieved; in particular, in situations involving the risk of disproportional escalation of violence and, above all, in situations involving potential interference by nuclear Powers. Thus, at the present time, according to Röling, it is impossible to attach an absolute value to the cause of justice. Those who tend to do so should nonetheless realize that their approach would "lead towards permanent conflict and violence, to a campaign of crusades which the world can no longer afford . . . Lasting peace also requires tolerance at the legal level. Peace has a price, even in the field of law and justice".⁷¹

6. THE LAW OF A NEW INTERNATIONAL SOCIAL AND ECONOMIC ORDER

Taking such considerations into account, Röling developed his thoughts on the promotion of *positive peace* through the progressive development of international law, convinced as he was that in the long run an effective and lasting ban on force depends on the realization of a higher level of positive peace (including a substantially increased level of global justice). His writings on this subject constitute an important, perhaps the most important, part of his contribution to legal doctrine. To a certain extent, as we have seen, his theses on *ius in bello* and the law of arms control (which have nothing to do with the pursuit of justice, but

71. (45) pp. 24, 25-26.

are highly relevant to the achievement of military security) are related to the promotion of positive peace. But here his main contribution is in the field of the development of a new foundation of international law in general, of a true "world law" which, by serving global needs and interests, would make international law universally acceptable in a decolonized international society. This new law should primarily be a law of justice and welfare; in modern terminology: the law of a New International Social and Economic Order. It is this aspect of his work on which we shall concentrate in this final section.

Commencing with the insights he gained during his years in Japan, upon his return Röling collected his experiences of traditional international law, elaborated on them, and soon developed them into a coherent set of rather unconventional theses. He predicted that international law would find itself confronted with an unprecedented challenge in the post-War era; a challenge posed by the inevitable process of decolonization, but neglected by shortsighted and complacent Western politicians and lawyers who were neither prepared nor able to recognize that it would no longer be self-evident that international law predominantly served the interests of only one group of States and a very subjective concept of justice: the interests of the developed colonizing countries, and a concept of justice primarily relevant to them. Without a process of fundamental reorientation, aimed at the adoption of universally acceptable principles and at the promotion of universal justice, in his view international law could not survive as a system governing worldwide relations.

He took a stand, accordingly, against colleagues who recognized that traditional international law was "made by and for Europe", but who did not conclude from this that such a system of international law had to be adapted to the requirements of a post-War international society, in which the process of political emancipation of colonial territories marked a decisive trend towards universality. An example of this was Verzijl, who correctly recalled in 1955 "that the actual body of international law, as it stands today, is not only the product of the conscious activity of the European mind, but has also drawn its vital essence from a common source of European beliefs, and in both of these aspects it is mainly of Western European origin . . . To this development no extra-European nation made any essential contribution". But at that time this eminent lawyer seemed not to recognize that this state of affairs was eventually bound to become incompatible with the interests and demands of a growing number of non-European newcomers in the society of sovereign States:

"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 by standing the test of time and circumstance.⁷²

Such pronouncements reflected the dominating view in Western academic circles at that time, and they show that by 1955 scholars still thought about the international political and legal system along similar lines as, for instance, Hall had done in 1924. He wrote — in his time much more understandably — that “States outside European civilization must formally enter into the circle of law-governed countries. They must do something with the acquiescence of the latter . . . which amounts to an acceptance of the law in its entirety beyond all possibility of misconstruction”.⁷³ It typified Röling’s independent mind and scientific integrity that he did not hesitate to propagate his controversial opinion at a time when Verzijl’s point of view was still the common one: in 1958 — i.e., two years before the adoption by the UN General Assembly of the “Declaration on the Granting of Independence to Colonial Countries and Peoples”, ushered in in the UN De-colonization Decade — he published his “European Law of Nations or Global Law of Nations?”,⁷⁴ which he subsequently elaborated into his famous “International Law in an Expanded World” (1960).⁷⁵ At the time of its publication this book was met with widespread criticism in both political and academic circles, and was on one occasion stigmatized as “a dagger into the back of international law”.

Röling approached the question of whether traditional European-made international law could survive in the post-War era from the historical perspective of the theory of the “three stages” of international law: first, the phase of the “Christian Nations” (from 1648, the year of the Peace of Westphalia, when the system of sovereign States was established, until 1856, the year of the Peace of Paris, when Turkey was invited as the first non-Christian nation “to participate in the public concert of Europe”)⁷⁶; second, the phase of the “Civilized Nations” (1856 to 1945, when the establishment of the United Nations paved the way for a universal system); and third, the phase of the “Peace-loving Nations” (as the member States of the UN are identified in the Charter). His interpretation of this theory threw an extraordinary illumination upon the historical sociology of international law, in particular, by demonstrating that the

72. J.H.W. Verzijl, “Western European influence on the foundation of international law”, *International Relations* (1955) pp. 137, 146.

73. W.E. Hall, *A treatise on international law* (Oxford 1924) p. 47.

74. Cf., (10).

75. Cf., (18).

76. Treaty of Paris, 1856, Art. 7.

common denominators of being “Christian”, “Civilized”, and “Peace-loving” respectively have three distinctive functions:

1. they serve(d) to confine the circle of law-creating nations;
 2. they provide the basis for and determine the contents of the rules;
- and
3. they provided the moral justification for the legalization of discrimination and domination.⁷⁷

1. As regards the *nature and restrictiveness of the law-creating circle*, Röling recalled that “after the overthrow of the supreme power of Pope and Emperor and the acceptance of the concept of national sovereignty . . . (the) European nations which established law in the world considered and called themselves the Christian Nations”.⁷⁸ Indeed, although in former times the Christian Nations had accepted some participation in the formulation of rules of international law by a few Asian countries with whom regular trade relations had been established, this participation was abolished when most of these countries lost their international legal personality vis-à-vis Europe in the course of colonial conquest. Then a new, very restricted, “family of Christian Nations” claimed the exclusive right to determine the contents of international law.⁷⁹ In this connection Jessup spoke of “a selective community with a provincial outlook. It was a European and Christian community into which the Islamic, much less the Hindu and Buddhist, worlds were not admitted. The Western Hemisphere (including what is now the United States) had only colonial membership”.⁸⁰

This situation did not really change when, for political and security reasons, the circle was expanded by the admission of a few non-Christian states; notably Turkey in 1856 (admitted with a view to stabilizing the balance of power in the Balkans), and later Japan (in 1902, after it had defeated China), as well as China, Mexico, Persia and Siam (invited to participate in the Hague Peace Conferences of 1899 and 1907). Henceforth the circle became identified as that of the “Civilized Nations”, but in essence nothing changed: the presence of the non-Christian newcomers was merely tolerated, and they were certainly not allowed to exert any real influence on the law-creating process. Thus, their pleas to accept rules prohibiting certain forms of colonial domination or Japan’s

77. Cf., in general, (10); (12); (18); (44) pp. 337 et seq., 348; (45) p. 203 et seq.; (47); (48).

78. (18) p. 17.

79. Cf., (10) in (45) p. 207.

80. P.C. Jessup, *The use of international law* (Ann Arbor 1959) p. 20.

plea to insert the principle of racial equality into the Covenant of the League of Nations were rejected. From the "Christian" or "Civilized" point of view it was understandable, in a way, when John Stuart Mill wrote in 1867:

"To suppose that the same international customs, and the same rules of international morality, can obtain between one civilized nation and another and between civilized nations and barbarians, is a grave error, and one in which no statesman can fall into . . . To characterize any conduct whatever towards a barbarous people as a violation of the law of nations, only shows that he who speaks has never considered the subject."⁸¹

But Röling noted that years after the second World War, at a time when the circle of sovereign States began to expand towards universality, people seemed to be no longer aware of this historical background of modern international law, as exemplified by Brierly, who in 1963 still defined international law as "a body of rules and principles of action which are binding upon civilized States in their relations with one another".⁸²

In this connection the present author, incidentally, came across a rather staggering article written by A.V. Freeman, who in 1964 — i.e., *half way through the UN De-colonization Decade* — spoke of "the devastating inroads which the myth of universality has chiselled into the very foundations of traditional international law" and held, with respect to the newly independent States, that "a complete evaluation must impeach the practice of admitting into the society of nations primeval entities which have no real claim to international status and the capacity to meet international obligations, and whose primary congeries of contributions consists in replacing norms serving the common interests of mankind by others releasing them from inhibitions upon irresponsible conduct". Further, "an undignified compulsion to admit these entities as full-blown members of the international society upon achieving 'independence' has impeded, not advanced, the emergence of a mature code of conduct".⁸³ This kind of perception of post-War developments reflects a profound lack of capacity to accept that the world has changed, and completely neglects the pleas made, since the establishment of the UN, by Nehru and other prominent

81. J. Stuart Mill, "A few words on non-intervention", *III Dissertations and Discussions* (London 1867) pp. 167-168.

82. J.L. Brierly, *Introduction to the law of nations* (Oxford 1963) p. 1.

83. A.V. Freedman, "Professor McDougal's 'Law and minimum public order'", 58 AJIL (1964) p. 712.

Third World leaders.⁸⁴ For many it was obviously very difficult, however, to accept that “the creation of international law is no more a prerogative of countries bearing the cultural heritage of the West but the common task of all the members of the international community”.⁸⁵ Significantly, Western lawyers often did not understand the relevance of the fact that the traditional reference to “the general principles of law recognized by *civilized* nations”⁸⁶ was replaced in UN terminology by a reference to “the general principles of law recognized by *the community of nations*”.⁸⁷

2. Röling's opposition to efforts to keep the law-creating circle confined *de facto* to the former group of “Civilized Nations”, even in the UN era of “Peace-loving nations”, was based, in particular, on the perception that the concept of being “Christian” or “Civilized” also had the function of *determining the contents of the rules*. “In those days Europe was ‘the world’, in other words, Europe was the world's speech-making community. Who makes the speech, dictates the law. Thus global international law developed as European international law”.⁸⁸ Since, moreover, “in all positive law is hidden the element of power and the element of interest” and “law has the inclination to serve primarily the interests of the powerful”, it is not surprising that “‘European’ international law, the traditional law of nations . . . served the interest of the prosperous nations”.⁸⁹ Indeed, on the basis of the fundamental notions of freedom for Europeans vis-à-vis non-Europeans (and, according to the circumstances, vis-à-vis each other) and that of protection of European property and interests against non-European interference, international law was made by Europe and developed, in the words of Lissitzyn, “in response to the requirements of Western business civilization”.⁹⁰ Thus, the fundamental notion of freedom was concretized, e.g., in the form of the principles of freedom of the seas and freedom of trade (principles already suspended, incidentally, during the time of Grotius when their application in relations amongst European nations *inter se* became a nuisance to either side);

84. Cf., quotation at n. 7 *supra*.

85. R.B. Pal, “Future role of the International Law Commission in the changing world”, 9 UN Rev. (September 1962) p. 31.

86. Cf., the Declaration of St. Petersburg (1868), Preamble; Hague Convention on the Laws and Customs of War on Land and annexed Regulations (1907), Preamble; Red Cross Conventions (1949), e.g., Convention IV, Art. 158; Statute of the ICJ (1945) Art. 38(l.c.); Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art. 7(2).

87. Cf., International Covenant on Civil and Political Rights (1966) Art. 15(2).

88. (10) in (45) p. 205.

89. (18) p. 15.

90. O.J. Lissitzyn, “International law in a divided world”, Int.Con. No. 542 (1963) p. 58.

along with the fundamental notion of protection, e.g., in the form of the "international minimum standard of civilization", which governed interference with foreign (European) property rights, and, in general, the doctrine of State responsibility. In this connection Jessup has noted correctly that "the history of the development of international law on the responsibility of States for injuries to aliens is . . . an aspect of the history of 'imperialism', or 'dollar diplomacy'. The fact that several strong States found themselves simultaneously interested in the welfare of their nationals in States which were 'exploited' . . . assisted the legal development".⁹¹ The concept of being "civilized" gradually developed into a synonym for an industrial commercial nation which was able and willing to protect the life, liberty, and property of Europeans.⁹² Thus it no longer left room for protecting the interests of non-European regions, which were simply there to provide cheap labour and free commodities.

In the course of studying this question, the present author found it surprising — notwithstanding the views of certain authors presented above — that during the Fifties and Sixties quite a few international lawyers, all of them aware of the European origins of international law, held that, in order to render it universally acceptable, it only needed procedural or technical adaptation. Thus, Third World opposition to international adjudication and arbitration was often explained by reference to the different philosophical and religious traditions in countries with a Confucian, Hindu or Buddhist culture.⁹³ Quincy Wright, for instance, represented this kind of approach when he wrote that "in the Orient generally, there has been a preference to settle disputes by negotiation, mediation or conciliation rather than by courts applying positive law. These national traditions . . . are carried to the international field and explain the preference of the Asian States for negotiation and conciliation in the settlement of their disputes over adjudication and application of positive international law". Likewise Sir Wilfred Jenks thought that what was needed was a reorientation "by establishing its claim to continuing acceptance as a synthesis of the legal thought of widely varying traditions and cultures".⁹⁴ But, however important such a "cultural and intellectual

91. Jessup, *op.cit.*, n.80, p. 96.

92. Cf., R. Higgins, *Conflict of interests. International law in a divided world* (London 1965) p. 39.

93. Cf., R.P. Anand, *New states and international law* (Delhi 1972) p. 48 et seq., and the literature examined there.

94. Q. Wright, "The influence of the new nations of Asia and Africa upon international law", 7 *Foreign Affairs Reports* (New Delhi 1958) p. 38; C.W. Jenks in A. Larson and C.W. Jenks, eds., *Sovereignty within the law* (New York 1965) p. 3, quoted by Anand, *op.cit.*, n. 93, pp. 49, 50.

decolonization" — as Baxi called it⁹⁵ — might be, it was not primarily *this* kind of change that was needed to ensure the survival of international law as a globally applicable and acceptable system. What was needed in the first place, and this is what Röling emphasized, was a fundamental adaptation of the *contents* of the rules, in the sense that henceforth not only European interests but the interests of *all* States and peoples would be served. Speaking of "the new majority" of developing countries, he wrote in 1958 about the necessity of "supplementing the old European law by new rules, new rules which reflect the factual, technical and economic state of affairs. As poor, vulnerable States they demand a kind of law which protects them against the economically powerful States . . . The new majority in the community of nations demands, next to a liberal law, also a protective law and a welfare law".⁹⁶ In this respect (as in many others) his view concurred with that of Wolfgang Friedmann, who pointed out that "to confuse policies born of changing positions of interests with religious, cultural, or other values inherent in the national character of a people, can only lead to a grave distortion of the problems of contemporary international politics and law".⁹⁷ One prominent lawyer from the Third World, Anand, has expressed the problem in this way: "National interest, rightly or wrongly understood, rather than cultural traditions, seems to be the decisive factor in the determination of policies toward international law and affairs. This is the reason for agreement on numerous questions of contemporary international law between most of the underdeveloped States of Asia, Africa, and Latin America which have entirely different histories, cultural backgrounds, and religious orientations". Thus, for instance, "no agreement could be reached about the breadth of territorial waters at the two conferences on the law of the sea (1958 and 1960) not because of different cultural traditions of Asian-African countries, but due to the conflicting interests of the maritime Powers, and the weak and underdeveloped states not only of Asia and Africa, but of Latin America and Europe as well"; and "in any case, their apathetic attitude towards international adjudication and general reluctance to accept compulsory jurisdiction of the International Court of Justice are *not the result of their religious philosophies and cultural tradi-*

95. U. Baxi, "Some remarks on Eurocentrism and the law of nations", in R.P. Anand, ed., *Asian States and the development of universal international law* (New Delhi 1972) p. 5.

96. (10) in (45) p. 212.

97. W. Friedmann, *The changing structure of international law* (New York 1964) p. 322. Cf., R.A. Falk, "The new States and international legal order", II *Hague Recueil* (1966) p. 188.

tions but, like all other States, are due to their views of their national interests".⁹⁸

3. The exclusive protection of European interests by traditional international law has manifested itself most clearly in the third function of the criterion of being "Christian" and "Civilized": it has also *legalized discrimination and domination*. As regards discrimination, a very old rule of law — to mention only one illustrative example — prohibited the use of the cross-bow against Christian soldiers but permitted its use against Muslim enemies. The principle of *ius in bello* of the "Christian Nations" upon which this rule was based, was still invoked by Mussolini during the last period of the phase of the "Civilized Nations", in 1936, when he tried to justify the use of poison gas against Ethiopian fighters, asserting that the law of warfare did not protect heathens. As regards domination, the pre-eminent example of repressive law was the legalization of the colonial system. During the first stage of the development of international law, Röling submitted, "Christianity was not merely a source of standards, and not merely the criterion by which the circle of nations and peoples, within which the law of nations applied, was determined. It was also the justification of, or the legal title to, the domination of non-Christian peoples. The quality of 'Christian nations' conferred the legal title to the domination of the 'barbarian', 'heathen' world"; in other words, "of this law, non-European, colonized people were the object rather than the subject". Initially, the colonial system was justified for the purpose of "Christianizing barbarians".⁹⁹ During the second stage, when fifteen European States assembled at Berlin in 1885 for the purpose of dividing Africa amongst themselves, this was justified as serving the aim of "instructing the natives and bringing home to them the blessings of civilization". The Covenant of the League of Nations still recognized "the principle that the well-being and development of such peoples form a sacred trust of civilization" (a noble formulation which served as a cloak for colonialism), and even in the UN Charter the concept of the "sacred trust" still plays a role (Article 73) — albeit that here the reference to "civilization" was omitted. Röling considered it a grave mistake of the authors of the Charter that by the end of the second World War they still opted for an instrument in which the colonial relationship was accepted. Although it prescribes a good colonial policy, based upon the consideration that the interests of the people of dependent territories shall be paramount, by incorporating what has been called "Charter colonialism" it certainly did

98. Anand, *op.cit.*, n.93, pp. 51-52 (italics added).

99. (18) pp. 21, 47.

not outlaw colonial domination. This implies that society was still subject, in a crucial respect, to the demands of the Civilized Nations, even if by then the concept of "Civilization" had become all too openly associated with abuse of positions of power; a fact which was strikingly underlined by the Japanese diplomat who said, on the occasion of Japan's admission to the illustrious circle of the Civilized law-creating nations, after it had defeated China in war: "We show ourselves at least your equals in scientific butchery, and at once we are admitted to your council tables as civilized men".¹⁰⁰

In 1958, Röling formulated four demands, which he subsequently elaborated in later publications. They were basic demands *de lege ferenda*, which had to be met if one wished international law to survive in our era as a universally acceptable system aimed at maintaining negative peace by the achievement of positive peace. It has been observed above that in his view they were in line, moreover, with the purposes and principles of the UN Charter: the Charter apparently gives priority to positive peace over existing positive law. For, its Preambula speaks of the objective "to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained", and Article I(1) prescribes that the settlement of disputes shall be "in conformity with the principles of justice and international law"; and in both cases "justice" is mentioned *before* "law". He called for:

(1) Abolition of that part of European international law which legalized discrimination and domination; including both the colonial relationship and the discriminatory pattern of the "unequal treaty".

(2) Global application of traditional European law as far as it is globally acceptable.

(3) Adaptation of this liberal law to the extent that it does not provide poor and weak nations with the necessary protection of their interests.

(4) Introduction and general recognition of new principles and rules aimed at transforming traditional international law into a system suitable to promote the prosperity and welfare of all its subjects.

With respect to points (3) and (4), he worked out his well-known thesis based upon a comparison between, on the one hand, the emergence of national socio-economic welfare law aimed at protecting the poor sectors of national society in the industrializing States of Europe around the turn of the century, and, on the other, the need for the development of a similar international welfare law aimed at protecting the poor nations in the global society of today:

100. *Idem.* p. 27.

“This endeavour of the young, poor countries coincides and is related with the internal development in the old, rich countries, who evolved from the liberal ‘Rechtsstaat’ to the social welfare State: the State which concerns itself with the fate of all its members as expressed in its attempt to reach full employment and to attain a decent standard of living for all members of its community . . . Practically all States now officially accept the promotion of the welfare of their citizens as one of the legal duties of the State. Thus the legal concept of collective responsibility of the community for the social and economic well-being of its parts has become a general principle of law recognized by the nations. Hence the properly founded demand to also recognize this principle in international law.”¹⁰¹

Röling knew very well that he was writing about *lex ferenda*, not about *lex lata*, when he put forward his demands in the late 1950’s. With respect to this plea for an international welfare law, for instance, he concluded, more than a decade later that: “the world community has not yet recognized or realized an international law that is attuned to this new task, and which would lead to a legal arrangement in the economic field contributing to the abolishment of world poverty”. Thus, those of his critics who suggested that his writings were not of a legal but of a socio-political character, were wrong: he did write about the law, both as it was and as it should be; and whenever he turned to rules *de lege ferenda*, he departed from existing principles and rules in order to support the legal relevance of his thesis. What is more, subsequent legal developments were to confirm that his four demands, though ahead of their time, were both justified and realistic.

His demand for the abolition of the law legalizing colonial domination (see point (1) above) soon became widespread. Once the UN General Assembly had adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960, in which the colonial system was condemned as a violation of the UN Charter and as an impediment to the promotion of world peace, the “De-colonization Decade” ended in 1970 with a mere 5% of the world’s population living in Non-Self-Governing Territories (in comparison to 45% in 1945). Today, there is no doubt that positive international law prohibits colonial domination in all its forms.

His demand that traditional European international law (see point (2) above), as far as it was generally acceptable, should be globally applied, has in the meantime also been fulfilled: as far as references to “principles recognized by”, or “usages established among”, Civilized Nations still sur-

101. This is the way Röling formulated it in (36) pp. IX, X.

vive in older treaties (including the Statute of the International Court of Justice !), they are remnants of a post legal period and no longer have any legal meaning. Putting aside rules of regional international law, today international law is globally made and globally applicable.

As regards his demand that modern international law must be globally acceptable and serve the interests of all nations and that, in order to achieve this, it must include principles which provide protection and care for its poor and weak members (see points (3) and (4) above), let it suffice here to say the following. A realistic review of recent legal developments in the social and economic fields justifies the conclusion that, in comparison with former times and despite the occurrence of numerous obstacles and disappointments, it is surprising to see how fast traditional liberal international law has changed as a result of the recognition of new principles, which eventually may provide the legal framework for the establishment of a "new international economic order". Indeed — again, despite the many obstacles and set-backs experienced — the Third UN Law of the Sea Conference, which assembled between 1974 and 1982 to draft a comprehensive new law of the sea treaty, bears the most prominent witness to a gradually emerging common recognition that public international law, in order to remain globally accepted and respected, needs the approval of *all* major constituent parts of international society. This may seem an optimistic conclusion, but it is certainly not an unrealistic one, if one studies recent legal developments with an unprejudiced eye and makes a sincere effort to grasp the fundamental significance of the gradual emergence of a set of newly evolving principles; principles which, to most of us, only thirty years ago were beyond imagination. These include (a) the adoption, within the framework of the GATT, of the principle of non-reciprocity in trade relations between developed and developing countries; (b) the adoption, within the framework of the World Bank and the IMF, of the principle of exclusive (and sometimes subsidized) borrowing and drawing rights allocated to developing countries; (c) the recognition and subsequent specification of the principle of permanent sovereignty over natural resources of States and peoples, and of the principle of common heritage of mankind; and, perhaps above all, (d) the widespread application, in treaties and in the practice of IGO's, of the principle of preferential treatment of developing countries and particularly needy or disadvantaged sub-groups among them.¹⁰²

102. See the author's reports to the United Nations on "The establishment of a new international economic order and the realization of the right to development and welfare: a legal survey", UN Doc. HR/Geneva/1980/BP.3, pp. 1-89; and on "The principle of preferential treatment for developing countries", UN Doc. UNITAR/DS/5 (1982) pp. 6-183. Cf., further, the

Epilogue

Röling practised his profession in an unorthodox manner, and his contribution to the development of legal doctrine bears the mark of a pioneer. He was a man of great vision and vocation, who did not waste time indulging in technical casuistry or self-serving but practically irrelevant intellectual digressions — which at times prompted the more old-fashioned to question his merits as a lawyer. His independent mind, scientific integrity, and humane concern resulted for some time in his isolation from the academic community, and occasionally brought him into conflict with official authorities: as in the case of his refusal to obey the commands of the occupying German authorities which affected his judicial independence; his dissenting opinion in the Tokyo Tribunal; his condemnation of the Anglo-French invasion in Egypt; or his protest against the colonial policy of the Netherlands Government during the dispute over former New Guinea. He knew in advance that the public pronouncement of unpopular views on “hot” political issues might cost him official goodwill, nominations, and appointments. Yet, when he felt he should express them, he did not hesitate and accepted the consequences, always revealing his remarkable intellectual power and admirable civil courage.

In a speech prepared for a commemorative session for Bert Röling held on 14 May 1985, Judge Manfred Lachs, a member and former President of the International Court of Justice, said the following:

“A friend of men, he was so anxious for them to overcome the weaknesses of the past and the errors of today; to build a future that would respect the rights of men and nations, to assure them of a decent life free from fear and want. He strove for a world of true humanism beyond the frontiers of States and continents, embracing the whole of our globe. I am deeply convinced that while he did not live to see his ideals materialize, he made a giant step in that direction; thousands and thousands of our generation are grateful to this man of great wisdom and love for his fellow man, for the lessons he taught us.”

author's “The United Nations and the least developed countries: an exploration in the grey zones of international law”, in J. Makarczyk, ed., *Essays in international law in honour of Judge Manfred Lachs* (The Hague 1984) pp. 531-556; and “The taking of foreign property under international law: a new legal perspective?”, *NYIL* (1984) pp. 3-96.

ANNEX

In this tribute the following published works of B.V.A. Röling are referred to. A complete list of his hundreds of publications (up until 1976) can be found in R.J. Akkerman et al., eds., *Declarations on Principles. A quest for universal peace, Liber Amicorum B.V.A. Röling* (Leyden 1977) pp. 383-403. A list of publications covering the period from 1976 to 1985 can be obtained from the Polemological Institute, University of Groningen.

- (1) "Arms control, disarmament and small countries", 31 *Impact of Science on Society* (1981) pp. 97-111.
- (2) "Aspects of the ban on force", in H. Meyers and E.W. Vierdag, eds., *Essays on international law and relations in honour of A.J.P. Tammes*, Special Issue, XXIV NILR (1977) pp. 242-259.
- (3) *De clausula rebus sic stantibus in het volkenrecht* (The *clausula rebus sic stantibus* in international law (Themis 1972) pp. 574-601.
- (4) "De definitie van agressie" (The definition of aggression), in *Vrijheid en recht, s'Jacobbundel* (Zwolle 1975) pp. 209-225.
- (5) "Die Definition der Agression", in *Recht im Dienst des Friedens, Festschrift für Eberhard Menzel* (Berlin 1975) pp. 387-403.
- (6) "Het dilemma van de wapenwedloop" (The dilemma of the arms race), in "Beheersing van technologische ontwikkeling: noodzaak en mogelijkheden", *Boerderijcahier 7602* (Enschede 1976) pp. 166-178.
- (7) "Disarmament and development: the perspective of security", a paper of the Polemological Institute (Haren 1979).
- (8) "Dubieuze wapens", 4 *Transaktie* (1975) pp. 44-47.
- (9) "Enkele aspecten van de processen van Neurenberg en Tokio" (Some aspects of the trials of Nuremberg and Tokyo), *Hollandse Maatschappij der Wetenschappen* (Haarlem 1978).
- (10) "Europees volkenrecht of wereldvolkenrecht?" (European law of nations or global law of nations?), *Jaarboekje Vereniging voor Internationale Rechts-Orde* (The Hague 1957-8) pp. 1-20, reprinted in (45) p. 205 et seq.
- (11) "Feasibility of inoffensive deterrence", *Bulletin of Peace Proposals* (1978) pp. 339-347.
- (12) "The history and sociological approach of the NIEO and the Third World", *XXII Thesaurus Acroasum* (Thessaloniki 1982) pp. 177-243.
- (13) "The impact of nuclear weapons on international relations and inter-

- national law”, *Werkgroep Ontwikkeling en Veiligheid* (Groningen 1982).
- (14) *Inleiding tot de wetenschap van oorlog en vrede* (Introduction to the science of war and peace) (Assen 1978).
 - (15) “International law and the maintenance of peace”, NILR (1973) pp. 1-103.
 - (16) “International law and national armament”, in no. 6 *supra*, pp. 155-161.
 - (17) “International law and the right to possess arms”, 33 *The UNESCO Courier* (1980) pp. 20-24.
 - (18) *International law in an expanded world* (Amsterdam 1960).
 - (19) “International law, nuclear weapons, arms control and disarmament”, in A.S. Miller and M. Feinreider, eds., *Nuclear weapons and law* (Westport/London 1984) pp. 181-203.
 - (20) “International law of arms control and disarmament”, in M. Thee, ed., *Armaments, arms control and disarmament* (UNESCO 1981) pp. 272-282.
 - (21) “Koude oorlog en vreedzame coëxistentie” (Cold war and peaceful coexistence), in *Aspecten van de koude oorlog, Polemologische Studies IV* (Assen 1964) pp. 96-132.
 - (22) “The law of arms control and disarmament”, in J. Makarczyk, ed., *Essays in international law in honour of Judge Manfred Lachs* (The Hague 1984) pp. 731-747.
 - (23) Together with O. Sukovic, *The law of war and dubious weapons* (Stockholm 1976).
 - (24) “The law of war and the national jurisdiction since 1945”, *Hague Recueil* (1960) pp. 325-456.
 - (25) “The limited significance of the prohibition of war”, in H. Lasswell et al., eds., *The search for world order*, Studies by students and colleagues of Quincy Wright (New York 1971) pp. 228-237.
 - (26) “Military security and weapons security”, *Procedure of the 30th Pugwash Conference on Science and World Affairs* (1980) pp. 112-119.
 - (27) “Naar een vorm van defensieve afschrikking”, 4 *Transaktie* (1975) pp. 18-23.
 - (28) *Nieuw Guinea, Wereldprobleem* (Irian, World problem) (Assen 1958).
 - (29) “The Nuremberg and Tokyo trial in retrospect”, in M.C. Bassiouni et al., eds., *A treatise on international criminal law* (Springfield 1973) pp. 590-608.
 - (30) “On aggression, on international criminal law, on international criminal jurisdiction”, NILR (1955) pp. 167-196, 279-289.

- (31) "On the prohibition of the use of force", in D.R. Blackshield, ed., *Legal change. Essays in honour of Julius Stone* (London 1983) pp. 274-298.
- (32) "Het oorlogsprobleem en het recht" (The problem of war and law), in 24 Cahier, *Studiecentrum voor Vredesvraagstukken* (Nijmegen 1982) pp. 27-40.
- (33) "Over defensieve afschrikking" (On defensive deterrence), 7 *Transaktie* (1978) pp. 130-132.
- (34) "Polemological aspects of deterrence", in *Afschrikking en ontspanning, Congresboek Hogere Krijgsschool* (The Hague 1969) text in English at pp. 136-161.
- (35) "De positie van de nietbezette burgerbevolking in een gewapend conflict, in het bijzonder met het oog op de massaal werkende strijdsmiddelen (NBC wapens)" (The position of the non-occupied civilian population in an armed conflict, in particular, with respect to weapons of mass destruction (NBC weapons)), 61 *Mededelingen van de Nederlandse Vereniging voor Internationaal Recht* (Deventer 1970) pp. 47-78.
- (36) "Preface" to W.D. Verwey, *Economic development, peace, and international law* (Assen 1972) pp. VII-XVI.
- (37) "Het probleem van de wapens", in L. Tindemans and B.V.A. Röling, eds., *Hoe winnen wij de vrede?* (Leuven 1983) pp. 26-55.
- (38) "The significance of the laws of war", in A. Cassese, ed., *Current problems of international law* (Milan 1975) pp. 133-155.
- (39) "Strafbaarheid van de agressieve oorlog" (Criminality of aggressive war), *Inaugural Lecture* (Groningen 1950).
- (40) "De Suez-kwestie. Beschouwingen over volkenrecht en internationale politiek" (The Suez affair. Reflections on international law and politics), XI *Internationale Spectator* (1957) pp. 529-578.
- (41) Together with F.C. Rüter, *The Tokyo judgement* (Amsterdam 1977).
- (42) "The Tokyo trial in retrospect", in *Budhism and culture, dedicated to Dr. D.T. Suzuki* (Kyoto 1960) pp. 247-266.
- (43) "De universiteit en het probleem van oorlog en vrede", 2 *Polemological Institute* (Groningen 1984).
- (44) "Volkenrecht" (International law), in A. Komen, ed., *Nederlands recht in kort bestek* (Deventer 1979) pp. 335-362.
- (45) *Volkenrecht en vrede* (International law and peace), 3rd edn. (Deventer 1985).
- (46) "Volkenrecht in stroomversnelling" (Rapidly changing International law), in J.M. Polak, ed., *Vooruitzichten van de rechtswetenschap*, vol. 2 (Deventer 1983) pp. 101-126.
- (47) "Volkenrechtelijke aspecten van de ontwikkelingsproblematiek", in

- Ontwikkelingsproblematiek in vakken* (University of Groningen 1978) pp. 23-29.
- (48) "Volkenrechtelijke en polemologische aspecten van het ontwikkelingsvraagstuk" (International legal and polemological aspects of the development problem), *Leergang Ontwikkelingsproblematiek* (University of Groningen 1980) pp. 12-29.
- (49) "Vrede door uitbouw van het volkenrecht" (Peace through the development of international law), in *Oorlog en vrede, Congresbundel Collegium Studiosorum Veritas* (Nijmegen/Utrecht 1960) pp. 99-127.
- (50) "Het wapenprobleem", *Valedictory Lecture* (Assen/Amsterdam 1977).