



Cornelis VAN VOLLENHOVEN

1874 - 1933

PREFACE

If one should visualize in geographical detail the scholarly explorations in international and comparative law in the Netherlands around the turn of the nineteenth century, the landscape that would unfold would be dominated by a range of impressive peaks. From the distance of our time, close to the turn of the twentieth century, those peaks still stand out.

Distance lends perspective.

That is what we may rely upon when drawing up pictures of the outstanding Dutch lawyers who in the latter part of the nineteenth, and the early days of the present century, gained prominence in the field of international and comparative law — in scholarly work and in many instances in legal practice as well.

In connection with the present biographical series, reference may here be made to T.M.C. Asser — that greatly gifted, dynamic scholar and diplomat, to whose life and works the opening essay of our series was dedicated,¹ the architect, *inter alia*, of the Hague Conference on Private International Law, which is to celebrate its first centenary in 1993.

J. Kusters, whose biography is likewise included in our series,² should be mentioned, too: he was the author of a treatise on private international law which for almost half a century was widely accepted in Dutch legal practice as the prevailing guide to conflicts law. An equally brilliant scholar and a contemporary of Kusters, active in that same area of international law though proceeding along quite different paths, was D. Josephus Jitta, whose biography was recently published,³ shortly after we issued an essay dedicated to that other singularly gifted, though rather unconventional scholar of private international law, from roughly the same generation: I. Henri Hijmans.⁴

1. C.C.A. Voskuil, *Tobias Michael Carel Asser — 1838-1913* (The Hague, 1984).
2. C.W. Dubbink, *Jan Kusters — 1874-1951* (The Hague, 1988).
3. G.J.W. Steenhoff, *Daniël Josephus Jitta — 1854-1925* (The Hague, 1991).
4. J.W. Westenberg, *I. Henri Hijmans — 1869-1937* (The Hague 1990).

Though somewhat closer to our time, F.M. Baron van Asbeck⁵ might here be referred to as well, particularly so because his enlightened approach to the role which international law should be allowed to play in our world clearly recalls the imaginative teachings, essentially reflecting the Grotian tradition, of the man to whom the present essay is dedicated: Cornelis van Vollenhoven.⁶

Two authors were invited jointly to write the biographical essay on Cornelis van Vollenhoven: Mrs. J.A. de Kanter-Van Hettinga Tromp, who is widely known for her profound knowledge of the story of Van Vollenhoven's life and the essential features of his impressive personality, and A. Eyffinger, who has earned a reputation for his scholarly expertise of the history of international law.

We feel greatly indebted to the authors for their excellent contribution to our series.

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The one who writes the preface is among the first to have read the book and, whenever the text is as inspiring as that of the present essay, he is the first person tempted to record some of the allusions that come to mind on first reading. For once I would like to seize the opportunity and add the following brief note:

In the essay ample attention is given to Van Vollenhoven's commitment to matters concerning the maintenance of peace and, more generally, the introduction of conditions for creating and upholding a legal order within the international community. Chapter 6 of the essay focuses on the strenuous efforts he made in this respect, on the opposition his ideas aroused, and on the stubborn resolve he maintained throughout. His skills and scholarly authority were never challenged in earnest. Shortly before the outbreak of the Great War, he was appointed a member of the Committee established in 1913 for the purpose of preparing another session of the Hague Peace

5. P.J.G. Kapteyn et al., *F.M. Baron van Asbeck — 1889-1968* (The Hague, 1989).

6. The scholars listed are only those contemporaries of Van Vollenhoven's to whom an essay has so far been dedicated. In the Preface no attempt is made to draw a full picture of the landscape of Van Vollenhoven's time.

Conference – a session long postponed but which may well be scheduled to be convened and to conclude the present Decade of International Law, proclaimed by the United Nations.

Recalling these developments, one is struck by Van Vollenhoven's untimely death in 1933, coinciding with the ominous events which marked the end of whatever expectations his generation may have had for an early reconvening of the peace conference or, indeed, of the chances for effectively promoting a legal order in the international community.

At this juncture one is reminded of a curious notice which in that same year, 1933, appeared in the very last issue of Carl von Ossietzky's magazine, *Die Weltbühne*,⁷ shortly before this publication was banned. From that notice, entitled *Die erste Friedenskonferenz*, the following lines may here be quoted in the original, German language:⁸

'Die Zeitung "L'Oeuvre" hat das Verdienst, daran erinnert zu haben, dass die erste Friedenskonferenz nicht jene Haager Konferenz war, auf den Deutschland einen Völkerrechtslehrer als Delegierten schickte, dessen Lehrbuch des Völkerrechts mit der Versicherung anfang, es gebe kein Völkerrecht. Was die französische Zeitung über die erste Friedenskonferenz vor hundert Jahren zu erzählen weisz, ist höchst instruktiv.

Louis Philippe hatte in der Thronrede von 1831 beklagt, die auf anderen Gebieten der staatlichen Tätigkeit erzielten Ersparnisse seien ohne tatsächliche Wirkung geblieben, weil das Militärbudget verschlinge was anderswo erspart werde.'

Disarmament was considered the obvious solution. Not a solution, to be sure, that should be pursued unilaterally, but rather one which might be reached jointly with the other military powers in Europe.

7. Reference is made here to the true '*Weltbühne*', not the publication that was issued in the former DDR and to which that same name was attached. The true '*Weltbühne*' was founded in 1904 by Siegfried Jacobsohn. In 1933 it was directed by Carl von Ossietzky – *unter Mitarbeit von Kurt Tucholsky, geleitet von Carl von Ossietzky* – until, in March of that year, it was banned by the Nazi regime.

8. The quotations are taken from a complete reprint of '*Die Weltbühne*', published in 1978 by Athenäum Verlag GmbH, Königstein/Ts. (BRD). See: Vol. 29 (1933) p. 337.

'Die Abgeordnetenversammlung antwortete, die allgemeine Abrüstung werde die schönste Errungenschaft der Zivilisation sein.'

'Am 29. September versammelte Casimir Périer, in Fortführung einer früheren Sitzung, die Gesandten der vier Großmächte. Es wurde ein Text ausgearbeitet, der den Mächten zur Ratifikation vorgelegt werden sollte. Nach einer Einleitung, die mit ihrer billigen Herzlichkeit und ihrem falschen Lyrismus fatal an gewisse genfer Elaborate erinnert, folgen zwei Artikel:

1. Die Streitkräfte zu Lande und zu Wasser Frankreichs, Oesterreichs, Preussens und Russlands sollen auf den gewöhnlichen Friedensfuß zurückgeführt werden.

2. Die Ausführung der Abrüstungsmaßnahmen solle am ersten Januar 1832 beginnen und am ersten Mai abgeschlossen sein.'

The reactions to this proposal are characteristically evasive. Metternich accepts them but does not conceal the fact that he considers them quite useless: *'Der Friedensfuß soll wiederhergestellt werden. Wir haben ihn, und wir haben ihn nie verlassen . . . Wir brauchen nur die Urlauber einzuberufen, und eine gewisse Menge von Pferden, die wir im Lande haben, einzukaufen, um zur gegebenen Zeit zum Krieg bereit zu sein.'* The Russian reply is simply that the Emperor considers his State to be already in line with the proposed arrangement, adding: *'Im Grunde stimmt er also der Abrüstung der anderen zu.'* Prussia declares its sympathetic support, and invites France that [es] *'Europa das Beispiel der Abrüstung gebe'*.

The outcome is related in a nutshell and with sour commentary:

'Am 29. Dezember vereinigt Casimir Périer die vier Gesandten wieder, diesmal zur Grabrede. Eine allgemeine Abrüstung sei aussichtslos und werde von der "öffentlichen Meinung" nicht gestützt, so lange wichtigere und entscheidendere Fragen im Interesse des europäischen Systems offen blieben.'

The editorial commentary begins with a sneer at the loose conglomerate of States and the notion of an 'European system' by which it is defined. The next lines are in a sad, ironic key:

'Aber ist es nicht interessant, dass damals schon alles da war, was uns heute zur Verzweiflung bringt? Dass die anderen anfangen mögen; dass man selbst schon abgerüstet habe; und sogar die "Sicherheit" gab es schon.'

A remarkable piece of information and commentary, which reflects the sense of defiance, irony and frustration, so typical of the attitude prevailing in the small group of editors who in the early thirties courageously persisted in fighting a just but already lost battle.

At the same time it offers a glimpse of the world in which, in his teachings on international law, the scholar to whom the present essay is dedicated, pursued, with great intellectual courage and brilliance, a noble cause which may broadly be defined as that of peace conditioned by a legal order embracing the entire world community — a cause which in 1933, at the time Cornelis van Vollenhoven died, seemed to become ever more distant and totally devoid of perspective.

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Just a personal allusion and no more than that. Too somber in tone, to be sure, to be taken for an opening chord that sets the key for what is to come on the following pages. The authors have written their essay with great skill, making use, in a most admirable way, of the perspective, retrospectively offered by the distance in time, as well as of their rich knowledge of the life and works of Cornelis van Vollenhoven. We are happy and proud to include the essay in our series.

C.C.A. Voskuil

The Hague, November 1992

Cornelis van VOLLENHOVEN

(1874-1933)

by Mrs. B.J.A. de Kanter-Van Hettinga Tromp
A. Eyffinger

INTRODUCTION

Cornelis van Vollenhoven occupies a special place among Dutch jurists of the past, a place determined by his personality, the stature of his work, his unique style and, above all, the originality of his thinking. His wide interests took him far beyond the lawyer's usual field of work. His inclination to look at law comparatively, with an historical as well as a cultural perspective, and his ability to establish previously undiscerned connections and to bring system where none existed, make him an intriguing figure right up to the present time.

Briefly stated, Van Vollenhoven's work may be divided into his pioneering work on the so-called *adat* law (the indigenous customary law of the Dutch East Indies), of which he could be described as the founder, and which was his life's work in many senses; his research in the field of constitutional and administrative law; and his international law studies. The last of these was founded partly upon his thorough study of the works of Grotius, and in particular Grotius' doctrine on the duties of States. These inspired him to truly innovative ideas for the achievement of an international legal order, the cornerstone of which would be an international police force.

However, perhaps Van Vollenhoven's opinions on the exercise of his profession best typify him: his interdisciplinary approach; the legal comparisons which gave rise to surprising syntheses; the overview, which allowed him to see similarities which eluded others. It is for these reasons that he has been described as a 'visionary', and as a 'universal spirit', and why he has been praised for providing momentum towards the reform of society. Those who knew him spoke of his inspiring commitment, complete integrity, humanity and religious conviction. Nevertheless, Van Vollenhoven could express his views with exceptional acuity, and sometimes had little patience with those who thought differently from him. It was in relation to precisely those ideas which were most deeply thought out, and were closest

to his heart, that the power of his advocacy, and his eloquence, often provoked strong opposition. As with others who are 'ahead of their time', this was not conducive to an easy life.

EARLY YEARS

Cornelis van Vollenhoven was born in Dordrecht on 8 May 1874. His education at Dordrecht Gymnasium meant a great deal to him. His youth was not trouble free. The youngest of four children, he lost his mother (Maria Elisabeth Rijshouwer) before he was four, and the stately, seventeenth-century patrician house 'De Bourgondië', at number 51 Wijnstraat, was hardly homely. His father, Mr. Willem Jan van Vollenhoven, the President of the Dordrecht District Court, does appear to have fostered his son's interest in history, but apart from that was a taciturn and uncommunicative man. He died when Cornelis was eleven years old, and thereafter the children were brought up by the housekeeper.

At the Gymnasium, the headmaster, Dr S.J. Warren, quickly detected his exceptional talents. He was to be a life-long friend and mentor. Literature, in particular the classics, excited Cornelis beyond measure, as did early Christian history. Ernest Renan's *La vie de Jésus* offered him a first guideline, and Renan's critical research into the sources was very appealing to him. He read the *Revue des deux mondes*, and his biblical research also began at this time. He never abandoned the study of the gospels and the letters of the apostles.

Perhaps his bible study provided one of the reasons for his choice for further study: 'Eastern Letters', or semitic languages. However, Warren saw in him a gifted jurist, and was able to convince his pupil, to some extent: Cornelis enrolled in Leiden in 1891 to study Eastern languages, law and political science. This decision was probably responsible for the rather remarkable dichotomy in his work: the study of international law alongside the culture and the (customary) law of Eastern peoples. It was in any case to prove an exceptionally fruitful interaction, which produced an unusual broadening of view and gave his whole *oeuvre* a special dimension.

Cornelis fell under the spell of Leiden from the first moment, and its atmosphere always remained dear to him. Probably no other Leiden professor has expressed his love for his *Alma Mater* quite like Cornelis! As a student he proved to be very active. Alongside his studies, he immersed himself fully in student life: the *Corps*, debating clubs, such as *Juri Sacrum*,

and also publications. He was chief editor of *De Studentenalmanak* and of *Minerva*, in which he wrote playful, witty and spirited pieces, together with poetry and rhyme. In his student days, his style was passionate and baroque. He enjoyed words. Style was to remain of great importance to him throughout his whole life. Contemporary literary developments inevitably influenced him. Like Huizinga and Van Schendel he grew up against the background of the *Beweging van Tachtig*. He devoured *De Gids*, wrestled with Couperus, Van Deysse (who appears to have had the greatest influence on his prose style), Verwey and Gorter, fulminated in *Minerva* against Van Eeden ('it would be a sad thing if this book were to be well thought of in the Netherlands . . .') and coolly wrote off *De Nieuwe Gids* as out of date. He enjoyed the work of Thorbecke, and praised the style of his professor of philosophy and semitic languages, J.P.N. Land, predecessor of the famous Bolland.

Van Vollenhoven's unique style, that is apparent even in his English and French publications, is characterized by a well-developed expressive faculty and the rare gift of being able to translate the abstract into colourful, concrete language. To that end, he was quite willing to make use of neologisms. Originality of expression, frequently distinguished by its pithiness, went hand in hand with creative thought. His students were also expected to maintain high standards on this point; he demanded clarity of style and of imagery. Imprecise formulation was, according to him, evidence of an inadequate grasp of the subject in hand.

From his early days he showed himself to have a social conscience, in matters both great and small. He fought for integration of the student groupings within and outside the *Corps*, and in pursuit of this even made an unsuccessful bid for the *Praesidium Collegii* — a disappointment which he only learned to live with many years later, thus revealing the vulnerable nature of his personality.

The long drawn out war in Atjeh touched him deeply. He was no more a soldier than a pacifist and his military service was not a success; the stylist and aesthete was never to be a fighter. The appearance in 1894 of Snouck Hurgronje's masterpiece, *De Atjehers*, in which the author argued for the forging of trust between the Dutch and the Indonesians as the only way to achieve a realistic future, had a permanent effect upon Van Vollenhoven's thinking with respect to colonial policy.

Meanwhile, his thirst for knowledge appeared to be insatiable. He was later to look back with gratitude to the philosophy lectures of Land, who taught him about the unity and the diversity of disciplines. This gratitude found its expression in Van Vollenhoven's organizing of the republication

of two of Land's philosophy manuals in 1899 and 1900. He was also thrilled by the classes of the orientalist P. de Goeje, with whom he passed his bachelor's degree, and later studied Arabic and Islamic history. In the Faculty of Law, J. Oppenheim, later his friend and colleague, was the one who most appealed to him, and whose lively and human approach to the law inspired him. For his part, Oppenheim permitted his gifted and ambitious pupil to contradict him, this being a rare occurrence!

In 1897 Cornelis completed his master's degree in political science. A year later, on 13 May — at just twenty-four years of age — he gained his doctorate in political science before a packed auditorium, at three o'clock in the afternoon, having defended 12 propositions and a thesis on *Omtrek en inhoud van het internationale recht* (Scope and Content of International Law). At four o'clock on the same day he gained his doctorate in law, defending a series of 24 propositions. The political science propositions dealt, *inter alia*, with Marx's theories, the capitalist system, socialism as religious doctrine, the monarchy and the Encyclical *Rerum Novarum*. 'Production is greater when wealth is distributed more equally,' read his eighth proposition, evidencing his socialist views, though these were never expressed through party politics.

The legal propositions deal with such diverse subjects as labour law (pensions, insurance), aspects of Islamic law (a sharp attack on Abraham Kuiper!), the status of religious communities and the doctrines of Thomas Aquinas. The political thesis immediately became a standard work '... alongside that of Grotius, the most brilliant of which I am aware in the field of world legal order,' wrote Jhr. W.J.M. van Eysinga later. It was published in English in 1932, as Part X in the prestigious *Bibliotheca Visseriana*. In exemplary style, with sagacity, insight and persuasiveness, and with great dash but obvious maturity, he pleaded for the establishment of a supranational law and authority. The book reveals Van Vollenhoven in his full genius as a systematic analyst. He laid out a theory which was to remain a guiding principle in his life, and ideas which were never to leave his mind. According to his thesis, the international legal order can make no progress as long as law and force are not put into one hand. To this end he put forward the idea of a supervisory and regulatory international police force as an extension of the *trias politica*.

This international, or actually supranational force (on the size, status and powers of which he held different views in the course of his life), could carry out acts of war in a *bellum justum*, a legal, officially and duly declared war,

following a judgment by a competent international court. As much as Van Vollenhoven wanted the arbitrariness and destructive power of wars of aggression to be banned, he remained convinced of the function of coercive action and sanctions as indispensable instruments of a competent international authority for the maintenance of peace. It is interesting that he considered all this to be compatible with the sovereignty of States.

The idea of an international police force was one which Van Vollenhoven was to defend throughout his life, and on which he led the school of thought for several decades. Since his study of this topic is important to his place in the development of international law in his era, several parts of his argument presented in 1898 are reproduced below. Van Vollenhoven drew a characteristic parallel between international and national law (in particular that of the German Empire). He argued that coercion and sanctions are fundamental building blocks of any legal system.

‘What distinguishes mere custom from customary law, “conventions” from constitutional law provisions, a mere agreement from a legal contract, and, generally, all non-law from law is just this, that the clause “to be maintained by force, if necessary” is an element of the definition of law lacking in that of the other part of ethics. The want of this sanction of coercion in a number of provisions of Brahmin, muslim or rabbinical law makes it impossible to qualify them as law.’ [. . .]¹

‘If therefore, it appears — and every month brings fresh instances — that conflicts about law arise among States and so one of them at least must have slighted its legal duty, then also the international community, built up chiefly by sovereign States, needs a coercive force to guard against transgression of the law by states; and in the last instance armies and navies will be the instruments of that coercive force.’ [. . .]²

‘. . . the legal duty which sovereign states are compelled to perform was never imposed but by their own free consent. [. . .] Now, if the sovereign state falls short of living up to its international legal duty, military force, the instrument of the international legal community, should also overcome its unwillingness and reduce it to obedience.’ [. . .]³

1. C. van Vollenhoven, *Scope and Content of International Law* (1932) pp. 15-16.
2. *Ibid.*, p. 16.
3. *Ibid.*, p. 14.

'A comparison with legal coercion in municipal law points out the way. It is in the last instance the strong hand of the police and, if necessary, of military force which ensures observance. [. . .]⁴

For, whereas coercion by force of arms begins in the German empire only on neglect of duty by States being legally ascertained; and is effected by means of a legal instrument definitely assigned, the ordering of legal coercion and its execution in international law is wrapped in obscurity. Hence the backwardness of the rule of law in international affairs. Meanwhile, if it be granted that legal coercion of States cannot be done but by war, and that such coercion is necessary because law without some compelling instrument would not be law, then the need of not outlawing war will no longer be argued from a demand that each State should be able to defend itself — as if each individual too could protect his right against every assault! — but we ought rather to own that no peace on earth is conceivable without coercive force of war. Although in the future by making such military action dependent upon judicial decisions and by appointing in advance some instrument to be charged with its execution in a given case, active reduction of war-estimates may be brought about — as some few dozens of policemen guard a whole city — yet war as a legal institution will have to remain an element also in future international life, as is acknowledged in even the most sanguine peace-speculations, and is asserted in Von Molke's phrase: "*der Krieg ist ein Glied in Gottes Weltordnung*". [. . .]⁵

'Where police stimulation against States does not suffice we require police coercion: actual enforcement by the authorities of what has been imposed on the States as an obligation. That such authority may be the injured State itself or another State or an international instrument, and that, even when complete international administration of justice over States shall exist one day, yet a police war will remain necessary to enforce judgments passed on States, has already been argued; [. . .] not as a sketch of an ideal (or even utopian) future, but as a specimen of defining that legal function which is nowadays already contained in the waging of war. For the present that right to wage war is as vague as that to intervene, as the legal duty imposed upon States is mostly uncertain and its fulfilment consequently hard to demand; that the

4. *Ibid.*

5. *Ibid.*, pp. 14-15.

competence to act in this manner has never been regulated will, therefore, cause little astonishment.' [. . .]⁶

'Though this future may be far off, yet it will come in view as soon as international administration of justice has been secured; but then the objection based on the invincibility of some among the military forces of present-day nations will no longer prevail. [. . .] It is only when international police action shall have been established thoroughly and for good with instruments of its own that this problem can find a final solution. Till then the question of the proportion regulating the maximum of power of the various States can only be decided by common insight.'⁷

He continued to hammer on these points throughout his life, and they will be discussed further below. At the doctoral defence, Oppenheim expressed the wish that he would soon see his pupil return to Leiden.

CIVIL SERVICE YEARS (1899-1901)

The return to Leiden was preceded by other events. On Oppenheim's advice, Van Vollenhoven entered the service of J.Th. Cremer, Deli-planter and Member of Parliament, as private secretary. Shortly after this, Cremer was appointed Minister for the Colonies in the Pierson-Goeman Borgesius Cabinet (1897-1901), and his secretary went with him to the Ministry. Cremer was a practical man: energetic, down-to-earth, without much education, and in many ways the opposite of his secretary, whose view of the world was considerably broadened by their contact. At the same time, Van Vollenhoven's duties initiated him into the finer points of the administration of the Dutch East Indies. Cremer was an enlightened entrepreneur who knew the business life and the civil service of the Indies from his own experience; he saw that changes had to be made, and devoted attention to the question of decentralization.

A turning point in Van Vollenhoven's thinking on the Indies and emancipation came in 1899 with the publication of an article in *De Gids* entitled 'Ereschuld' (Debt of honour), by the Leiden jurist and advocate,

6. *Ibid.*, pp. 103-104.

7. *Ibid.*, pp. 106-107.

from Semarang, C.Th. van Deventer. This article was perhaps even more striking than the moving pleas of Snouck Hurgronje or Domela Nieuwenhuis; in its business-like, statistical approach it mobilized the public conscience and pilloried the moral aspects of colonial policy. According to Van Deventer's 'ethical view', which was warmly embraced by Van Vollenhoven, profits made in the Indies should be devoted to the advancement of welfare in the region.

At this time Van Vollenhoven lived in the Balistraat in The Hague, with his sister Gretha, in his 'Bali Palace', though he did not feel himself to be a native of The Hague; he continued to be a 'Leidenaar'. His free time was taken up by correspondence, by sporadically visiting the gentlemen's club, *De Witte* (the atmosphere of which did not really appeal to him), and by study. He got to know Spinoza's *Ethica*, and valued it highly for the rest of his life.

In 1900 he was attached to the Preparatory Committee for the Third Conference on Private International Law, at the suggestion of the great T.M.C. Asser, who had been the initiator of this project in the 1890s. From early days, Asser had had a high opinion of Van Vollenhoven, who was his junior by 36 years. Some time later, around 1913, he was to nominate him to the *Koninklijke Nederlandse Academie van Wetenschappen* (Royal Dutch Academy of Sciences) as his necrologist: it was to be an intriguing obituary. In later times, Van Vollenhoven was to argue for broadening the competence of the Permanent Court of Arbitration, following on from Asser's ideas.

This is not the place to go into the details of the relationship between Asser and Van Vollenhoven, the two most influential Dutch internationalists of the period around the turn of the century, but one comparison is quite compelling: both men worked carefully and at length on the international legal order, Asser primarily in the area of private law, and Van Vollenhoven mostly in public law. Like Van Vollenhoven, Asser anticipated the new provisions which were necessary to establish an international legal order, this was extensively dealt with by Voskuil in the first booklet in this series, devoted to Asser.⁸ The two men had the breadth of their vision in common, but what a difference in character! Asser was the tactician, the pragmatist, the man with inexhaustible patience, who gladly made do with what was politically and diplomatically attainable, if the desired end proved to be out of reach. This explains, to some extent, the success of his private law confer-

8. C.C.A. Voskuil, *Tobias Michael Carel Asser — 1838-1913* (The Hague, 1984).

ences in The Hague in the 1890s, and it also certainly explains the solid governmental support he always got for his ambitious plans, and the international recognition gained with the Nobel Peace Prize in 1911.

Van Vollenhoven's sense of mission made him much less flexible, and not infrequently led to opposition in the civil service and diplomatic communities. 'There is only one way,' was a typical remark of his. He found inertia intolerable, in the human mind as well as in the administrative system. This probably goes some way to explain the limited role he played at The Hague Peace Conferences, which was also certainly to do with his rejection of government policy on the Indies.

Van Vollenhoven's admiration of Asser's devotion, tact and tenacity was, however, great:

'A managerial master, [. . .] who through his gifts for organizing and directing, and for creating the new and the realistic, was able to arrange things so that they worked and continued to work.'⁹

'[Asser's] ambition was less to be the founder or designer of the law than its builder or engineer.'¹⁰

PROFESSOR AT LEIDEN – FIRST YEARS

A position became free in Leiden and, to his satisfaction, Oppenheim saw his pupil, now 27, return as Professor of Mohammedan Law and the Institutions and Customs of the Dutch East Indies, as well as of the Constitutional and Administrative Law of the Colonies and Possessions of the Dutch East Indies. Van Vollenhoven delivered his inaugural lecture on 2 October 1901. It was entitled *Exacte rechtswetenschap* (Precise legal science), and constituted a masterly synthesis of various fields of law. Some felt, probably rightly, that his acute analysis and feeling for system could be traced back to his studies of language and philology.

This inaugural lecture reveals that, from the very beginning, he gave a highly personal interpretation to his academic task: a codification of legal opinions in the Dutch East Indies seen from the point of view of *adat* law,

9. *Mr. C. van Vollenhoven's Verspreide Geschriften* (Mr. C. van Vollenhoven's Collected Writings) (1934) (hereinafter VG; see also the general note in the Bibliography (*infra*)), Part I, p. 338.

10. *Ibid.*, p. 340.

and not, as was usual, from the point of view of European legal principles, or the Koran. He showed himself to be in favour of the 'ethical tendency', and wished to adapt the administration of government, and the autonomy of the regions, to indigenous viewpoints.

In his inaugural lecture he dealt again with his ideas for an international police force, as the enforcement arm of a world legal order — a surprising topic in its context, but ardently felt! The police force was to help to control the political consequences of the growing gulf between state imperialism and the world economic order, on the basis of a universally applicable law. This was 'the visionary' Van Vollenhoven speaking, as he was to do so often, and so controversially, in later years.

Then came the setback! Growing pressure of work? The result of the years of hard work, ambition and perfectionism? He appeared to have lost his élan. For a whole year he suffered from persistent insomnia and from obvious stress, which gradually wore him down. On medical advice he took absolute rest, did a great deal of walking (his favourite leisure activity) with his dog, Kereltje, or in Noordwijk, with 'Gretha-by-the-sea'; and he travelled. First to England, where he was fascinated by Oxford, and most of all by St. John's ('I had no idea that such magnificent things existed'), where he was an acute observer ('if we had inherited Oxford in 1800 . . . everything would by now have been ruined; we would not have been worthy of it'), and where he dismissed Cambridge contemptuously ('what a bitch of a place!'); he concluded, almost with relief: 'I shall literally embrace Leiden when I get back.' The year of adversity taught him his limits, and he accepted these, albeit with difficulty. Although there are no definite indications as to the nature of his illness, the papers in the *Algemeen Rijksarchief* (General State Archives) in The Hague seem to suggest that he continued to suffer chronically from it, and adapted his life to it.

From that time, he lived a strictly ordered life. He took 17 minutes for his meals; not a minute more, not a minute less. He worked until nine o'clock in the evening and took Sunday off, doing, at the most, his private correspondence. He had a great talent for letter-writing, mixing seriousness with fun in brilliant letters. Other than this, he could tolerate only diverting literature: Dickens, and also Guido Gezelle, whom he regarded highly; he even went to Gezelle's Flemish country, with his friend, Karel van der Mandele. He devoted much time to reading the bible, preferably Psalm 139. His health was gradually restored, but the periods of depression remained, and he overcame them only by a great effort of will — in Leiden he had always been seen as cheerful and witty.



ADAT LAW AND EMANCIPATION

Back at the University, his attention was devoted fully to the Dutch East Indies: the systematic description of its vigorous native and *adat* law and, as a constitutional and political extension of this, the preservation of this conglomerate of (mostly local) legal customs, as a component in the establishment of an East Indies national legal system; thus, without unification on the Western model. He dedicated himself to gaining political recognition for native law, and its insertion into the Indies legal system. From 1902 until 1907, he dealt with this material in a series of lectures on the Dutch East Indies legal code. From 1902 until 1906 he also covered Islam, and returned to it in the years 1927-1931.

It could be said, as J.F. Holleman put it, that *adat* law was Van Vollenhoven's pet subject. The various aspects of his personality, from disarming simplicity with his friends and colleagues, to haughty and uncommonly hard outbursts against those who did not share his views, also showed themselves at their most pronounced in this field. What appealed to him in *adat* law was its reflection of life itself: 'the living face of the law', as he called it, which as an object of study necessarily stood out 'above the business of dogmatic jurists, who place around foreign law the fetters of what they know' and who saw law in the Indies as a 'disordered, deficient, incomplete chaos', instead of as 'an inexhaustible source of learning'. He distinguished nineteen 'legal regions' in the pool of East Indies law, almost intuitively, as all this was not originally based upon personal experience! These were regions which were distinguished as if by a child's chalk marks on the pavement, or as he once put it: it was ordered diversity, neither rigid nor dogmatic. Codification was a sterile objective here, unification on the Western basis would lead to 'civil service or fantasy law'.

'He who studies the law of the Dutch East Indies after the law of the Netherlands enters a new world. He had taught himself to see the law as a collection of rules codified in legislation and decrees . . . That the law is a phenomenon of a society constantly in motion, in an unremitting interplay of movement and counter-movement with other phenomena, was an insight

which had reached him only as a colourless phrase, viz., that the law must take account of the needs of society . . . How different are the Indies . . .'¹¹

So read the opening words to Part I of *Het adatrecht van Nederlandsch-Indië* (The *adat* law of the Dutch East Indies), Van Vollenhoven's masterly life's work. It appeared in instalments from 1906. Part I was completed in 1918, and described the nineteen different legal regions of the Indies. It won him the gold medal of the *Thorbecke-Stichting*. Part II appeared first in 1931, and dealt with the customary law of the 'foreign Eastern peoples': the Chinese, the Arabs and the Indians, with attention being paid to their religions, histories and future prospects. Part III was published posthumously in 1933, edited by pupils; it contained diverse, unpublished essays. The work laid the foundation of both the system and the terminology of its subject area.

On the one hand, it was a work of feeling rather than knowing; the expression of deep societal respect. On the other hand, his methodology was in many respects far ahead of its time. He worked largely on the basis of ethnological studies and, as already mentioned, with the empirical-theoretical approach of philology. At the same time, he appreciated that a definite description of customary law would have to be written later, and not by him but in the East, by a 'native', possessing appropriate respect for his heritage, and by someone endowed with a 'healthy nationalism'.

In a newly-to-be-formed, autonomous constitutional entity, brought into being not through revolution but through gradual emancipation and transfer of power, one law of the land could possibly apply, as long as very specific traditions of customary law were taken into account, such as the often magical-religious background and the strongly adaptable nature of this law, which was always directed towards compromise and which hardly ever applied sanctions. Van Vollenhoven's optimism is clear from his almost romantic presupposition that customary law operating in local communities could be transposed to the national level without difficulty, without institutional adaptation or communal tension.

He was not content with university teaching and research. He joined the *Adatrecht Commissie* (*Adat* Law Committee) and the *Indisch Genootschap* (East Indies Society), let his voice be heard in the Royal Institute, and studied and taught at the Academy of Sciences with verve and success. No

11. C. van Vollenhoven, *Het adatrecht van Nederlandsch-Indië* (The *adat* law of the Dutch East Indies) Part I (1918) p. 3.

less than 78 students, six from the East Indies, gained their doctorates under him during his thirty years as a Professor. He had a special relationship with his Indonesian students, invited them to his home and was, for them, 'our Kees'. His great affinity with their culture, and his exceptional ability to identify with others meant he was much loved. Graduates of the Law School in Batavia (established in 1924) owed it to his efforts that they could enter further study in Leiden without having to pass the bachelor's examination. Nevertheless, he recognised that his Indonesian students were not always easy. The cultural gulf was also apparent from the lack of a university tradition, the will to study and perseverance. He helped them through personal contact, with a good heart but with a rod of iron. He did indeed establish a 'school', and his many enthusiastic pupils spread out among administrative and educational establishments at home and overseas. He formed a group of customary law jurists that worked inspirationally for generations: Dutchmen like B. ter Haar, J.F. Holleman, F.D.E. van Ossenbruggen; Indonesians such as Soeripto, Wirjono, and later Djojodigoe-no, Hazairin and Koesnoe.

When the first Indonesian gained his doctorate under Van Vollenhoven in 1906, he appeared with his two escorts in head-dress, sarong, bare feet; one of the two ushers carried a creese. The title of this first Indonesian doctorate was: *De vernietiging van dorpsbesluiten in Indië* (The annulment of village decisions in the East Indies). Van Vollenhoven wrote:

'The book is very good and the author's own work.'¹²

... 'A visit this week from one of the somewhat notorious extremists; a decent, recently rejected youth. His head was bowed, he chose his slowly-spoken words as if in an irreproachable drama, and once the handkerchief appeared. As he was leaving, I silently held his right hand in my two hands.'¹³

The doctorate ceremonies of Indonesian students gave him very special pleasure. At the same time, they filled him with the worry that competent and willing Indonesians found the doors of the Dutch government anything but open:

12. H.L.T. de Beaufort, *Cornelis van Vollenhoven, 1874-1933* (1954).

13. *Ibid.*, p. 186.

'My Javanese friends here encounter nothing but obstruction at the Colonial Department. It is, of course, always expressed in terms of 'asking the Governor-General for advice', etc., but they feel it, just as I do. The Indonesian veterinary surgeons in Utrecht have the same experience, meeting nothing but a wall of resistance. They are thoroughly embittered by this, and rightly so. They see that the whole Dutch East Indies question is played out away from the ballot box, that the voters, even those of goodwill, know nothing and could not care less; just think of the foolish questions they are asked over and over again by friendly professors.'¹⁴

It was typical of Van Vollenhoven that he respected the individuality and diversity of both people and ideas. In his major works on *adat* law, he always championed the view of law and administration, instead of imposing Western thinking on the Indonesians, however pragmatic, efficient and well-meant that may have been. Reform, which had to come, should be compatible with what had already developed, 'They, the Indonesians, must shape the existing and reformed elements of law and administration,' was his credo. This was what gave the young Indonesians who followed his lectures confidence in his intentions, while there reigned, in general, much distrust of Dutch words.

Beside his research and university teaching, he made himself heard more loudly in the area of constitutional law, in particular in support of the idea of emancipation. Throughout his life, he proved himself to be an active proponent of the emancipation and autonomy of the East Indies 'focussed on its own interests and its own resources'. From 1905 until his death, he devoted himself to this goal unconditionally, in his writings and by word-of-mouth. Tens of articles among his *Verspreide Geschriften*¹⁵ collected essays bear witness to this. He missed no opportunity to influence government policy on this matter right up to the moment when, in 1928, the idea of legal unification was abandoned for good.

In 1905 he strongly opposed the 'Idenburg' bill, which would have made currently applicable Dutch private law the guideline for the unification of Dutch East Indies law. He published a fiery piece in *De Gids* in 1905, in which he compared the proposed interference in Indies law with the replacement of ancient Dutch law by Roman law.

14. *Ibid.*, p. 187.

15. *Op. cit.* n. 9.

In 1909 he provided a more detailed scientific basis for this contention in his book *Miskenningen van het adatrecht* (Misjudging *adat* law), in which he showed the extent to which Eastern legal traditions fell outside the legal categories familiar to the Westerner.

In 1913 he took 'Reactionaire staatskunde' (Reactionary constitutional policies) to task in a newspaper article, and when there appeared to be governmental plans, in 1919, to impose Western-style property law on the Indonesians, he again made strong protests, and with success.

He continued his travels. In 1905 he visited North Africa, and although he did not have the thirst for adventure and the practical nature of a Snouck Hurgronje, he enjoyed the countries and their cultures. In 1907, finally, it was the Dutch East Indies turn. On the outward journey, Egypt stirred him to enthusiastic study. He passed through Singapore, where the absence of Dutch influence and the envy of the English disturbed him. On 11 October 1907 he arrived in 'the promised land'. For months on end he travelled through its extensive territories, absorbing endless new impressions, meeting many people, some who would remain his friends for life, and experiencing to his heart's content what he already knew so well from his studies. Typically, he avoided, above all, *Buitenzorg* and the official institutions. When he returned, he was unshakably convinced of the vitality and tradition of the native legal system.

THE INTERNATIONAL LEGAL ORDER

For a good ten years the International Law world heard nothing from the author of the celebrated *Omtrek en inhoud* (Scope and content), published in 1898. Nothing in his published work reveals how Van Vollenhoven approached his research into the development of the international legal order during this period; until 1910. In that year he wrote an article for *De Gids*, entitled 'De roeping van Holland' (Holland's call), in which he foresaw an 'historical' role for Holland in achieving a ban on wars of aggression as an instrument of national policy. He called upon the Government to give up part of the national fleet, and put it under international control, as a first move towards disarmament. It was a mixture of political and ethical revival which he envisaged and, as so often with him, idealism and theorising merged into one. After two hundred years of decline, the Netherlands, supported by the Hague Peace Conferences, was to resume its international role, and lead the world to better times. The background to the article was probably his

intended membership of the soon to be appointed National Preparatory Committee for the Third Hague Peace Conference, planned for 1915.

The strongly argued piece attracted much attention both at home and abroad, not all of it uncritical. Critical reaction came, in particular, from the Amsterdam professor, A.A.H. Struycken (also a student of Oppenheim) among the academics, and from Mr. van Karnebeek Jr. among the civil servants. This provoked a new stream of articles from Van Vollenhoven, occupying 150 pages in his *Verspreide Geschriften*. In 1913, in *De eendracht van het land* (The union of the country), he wrote:

'Many will find it tasteless that we turn again to that same international police force and that same Dutch initiative. Why this insistence, which may well lead to the opposite of that which is sought? Why not leave this question to the mature and expert discussions of the Government and its advisors?

Because we are not dealing with a question which can be dealt with in eight years' time, as well as now. Because a perfect, perhaps unique, opportunity to serve all interests will slip through our hands, without the nation taking the trouble to notice what is happening. Because the Netherlands, acting now, can imprint its name for ever in the memory of this world.

Thirty years ago, in the Netherlands of that time, *dormant fort bien sans glorie*, a Minister of Foreign Affairs who contrived to undertake an international step could, at the least, have been accused of recklessness, of megalomania; staying out of the limelight was, in those turbulent days, the beginning and end of all wisdom! But now the circumstances have arisen for the Netherlands to have its own policies, directed towards the good of all, and not to score off others.

The task is undeniable; the time is ripe; only one thing remains: to act!¹⁶

His basic argument remained: international adjudication by a court applying penal law to States, with an international police force as the sanction.

In the spring of 1913, with the world looking towards The Hague and the forthcoming opening of the Peace Palace, a controversial public discussion took place, set up by the peace movement (Peace through Law). The pacifists

16. VG, Part II, op. cit. n. 9, p. 207.

at the World Peace Conference categorically rejected the 'Vollenhoven Plan': answering force with force would not do. It would maintain, even sanction, war as an instrument, albeit on a higher plane. Only Van Eysinga supported the Plan. Politically, the idea also had little chance, even though Van Vollenhoven referred to Roosevelt who had shortly before cautiously raised the age-old idea of a Podiebrad, De Sully or Abbé de St. Pierre, for a *League of Peace* with a coercive force. However, in an epoch when international adjudication still seemed a distant prospect, and negotiations on arbitration and controlling the arms race were difficult and circumspect, Van Vollenhoven was fighting a losing battle. But he fought more than ever! In the Preparatory Commission for the Third Peace Conference (later, the Advisory Commission on International Law) he exerted himself to get the idea of an international police force onto the agenda. The Chairman, de Beaufort, was sceptical, De Louter belittled both the Plan and its initiator, but perseverance paid for once. The Conference, planned for 1915, was overtaken by the War, but the Commission continued its work and came up with further proposals in 1919, for the establishment of a League of Nations and an International Court. Van Vollenhoven constantly contributed to the discussions. He had already, in the context of 1913, pointed to the Boer War as an example of great powers being unwilling to have their imperial wings clipped by any (arbitration) tribunal: legal sanctions were indispensable!

In 1918, while reflecting upon the Hague Conference of 1899, he wrote:

'What helmsman on the quay would be so reckless as to underestimate the obstacles of the *Huis ten Bosch*? But in the Final Act of the Conference, in the result of its labours, only the spirit of Vattel can be heard. It would have been so pleasing to have found the words of a prophet, the voice of a Gladstone, of Grotius, even upon just one page of the records. The prophet was absent. The Conference broke up without having touched upon its main business, and the revenge came as early as October: a war broke out in South Africa, against which The Hague's product was powerless . . .'¹⁷

'The spirit of Vattel'. These were ominous words, as Van Vollenhoven had come to see this mid-eighteenth century international lawyer as the slanderer of Grotius.

17. *Ibid.*, p. 432.

The shots in Sarajevo put an end to the discussion for a time. Van Vollenhoven received the not unexpected news near Zundert, on the *De Moeren* estate of his friend Mr. H. van der Hoeven, where he often stayed with great pleasure ('my greatest efforts here are in the picking of peaches and cherries'). Without delay he cycled to his relatives, the Roland Holsts, to bring them the bad news. His first public reaction was an article, 'Gewaarborgde vrede' (Guaranteed peace) in the newspaper *NRC* of 9 September 1914, in which he gave an historical survey, referring to Grotius, and showing the inevitability of catastrophes like the contemporary one, unless:

'The organization of the, as yet, unorganized state system, which has been much-pleaded for, does not appear to be a matter which can be ignored, but reveals itself to be an interest of surprising timeliness and bitter urgency.

[. . .] International judicature and arbitration, international enquiry and police work, integrity and treaties of neutrality, with guarantees of their observance, ingenious combinations of elements, even international boycotts, or whatever else might be or have been recommended — all these must be sifted, tested, used as building blocks, without prejudice or scepticism. [. . .] Up to now, this has been left to a small circle of what are usually called pacifists; but it must be a matter for the attention and insistence of all the educated people in the country, the Members of Parliament most of all. The push provided by general interest is indispensable'.¹⁸

'It would obviously be foolish to undertake this as if one began with a clean sheet. All kinds of fine, international programmes from the past seem for the time being to be valueless. A practical statesman will now make no progress at all if he comes with his own ideas about world harmony.'¹⁹

Van Vollenhoven published much during the war and was very active in other ways. Among other things, he wrote many opinions for the Political Affairs Department of the Foreign Ministry. He set out his views, *inter alia*, in an article in the *Evening Post* of 15 April 1916, entitled 'Peace and International Police', in which he wrote the following:

18. *Ibid.*, p. 267.

19. *Ibid.*, p. 271.

'It is of vital interest not only for Europe, but also for the whole of mankind, that the present war shall not end by a mere suspension of hostilities, laid down in an old-fashioned peace treaty, but by some attempt at international organization tending seriously to prevent such another war. [. . .] As this war between the nations seems, however, to be the outcome of their fears of being suddenly attacked by their neighbours' formidable armies and navies, the remedy must be found in an effort to remove conclusively these very fears.' [. . .]²⁰

'A great number of separate treaties and one collective treaty would divert human thought from sterile meditation on general disarmament. Such a series of treaties would open a prospect of organized protection against war. They would convert the military cooperation of to-day, intended collectively to threaten into a new cooperation intended collectively to protect. At least no other way out of the present international anarchy has been found.'²¹

'The supposed treaty itself must from the very beginning state clearly that a violation of the provisions endangering universal peace, will be a crime against the whole community of nations and as well will entitle foreign powers, either by their combined national forces or by an organized international force, to destroy such an aggression and repair justice.' [. . .]²²

'As long as the international forces are operating together, their component national parts will be deemed not to be in the service of their respective states, and will not engage the responsibility of the states. The responsibility for actions of these forces will rest upon the community of states represented by them.' [. . .] 'A permanent international board of naval and military officers to organize the joint forces and to set the machinery in motion seems indispensable.' [. . .]²³

In 1917 he was Chancellor of Leiden University, in which capacity he lectured on 'Altruism in the law and state'. He said:

20. *Ibid.*, p. 350.

21. *Ibid.*, p. 354.

22. *Ibid.*, p. 353.

23. *Ibid.*

‘The history of Law and State produces unpleasant insights into human nature, and no elevated thoughts: a cold building, with plain white walls. As an antidote to this scepticism, I will try to show you the history of the Law as “sunlit”.

In order to be able to speak of a legal order which truly propagates peace and gives satisfaction, the altruism has to be created, the altruism as a living institution among ordinary people on however small a scale — and this is the point of departure for the whole enterprise.’²⁴

This is the theme which runs throughout his work.

In 1918, towards the end of the War, he put forward his famous treatise, *De drie treden van het volkenrecht* (The Three Stages in the Evolution of the Law of Nations), in a course for the *Volksuniversiteit* (People’s University). The book was to be translated and reprinted many times (French, German and English editions). The title itself reveals the evolutionary approach to international law maintained by Van Vollenhoven. The book is to be recommended, even on the grounds of its style alone.

He seemed to have further developed his ideas since 1910, probably as a result of his wartime experiences, but also undoubtedly under the influence of his recent study of Grotius, *inter alia*, for the purposes of the re-publishing of Grotius’ ‘*De jure belli ac pacis*’ by P.C. Molhuysen.²⁵ More than ever before, it was Grotius’ teachings which he took as the point of departure for his own theories, in particular with respect to the obligations of States and penal law affecting states. In addition he ‘constructed’ an historical antithesis on the relationship between State sovereignty and the international legal order in the teaching of Grotius, as he interpreted it, and the opinions of the above-mentioned Emerich de Vattel, as contained in his ‘*Le droit des gens ou principes de la loi naturelle*’, of 1758. The latter, whose name he equated with that of a ‘ballet-master’, was censured by Van Vollenhoven for defending absolute, unbridled sovereignty, which he characterized as a charter for self-interest under the cloak of law. He dismissed Vattel’s enduring success as being like that of the schoolmaster who abolished homework!

As the title of his work indicates, Van Vollenhoven distinguishes three phases in international law: the period 1150-1492, which was dominated by the international law of peace, and primarily concerned with ambassadors

24. VG, Part I, op. cit. n. 9, pp. 36-37.

25. Published in 1919.

DE DRIE TREDEN VAN HET VOLKENRECHT

DOOR

MR. C. VAN VOLLENHOVEN



'S-GRAVENHAGE
MARTINUS NIJHOFF
1918

and legations; then the period until 1780 during which the law of war reigned supreme; and, finally, a third phase, up to 1914, in which the law of peace again appeared in the developing theory of the duties of states. The developments moved slowly; Van Vollenhoven's judgement of the first stages was not too favourable:

'However, the student who should forget in considering this growth that we are dealing with a Law of Nations conceived by boys in their teens and should expect to meet with advanced views, would find himself rudely deceived. Can he imagine — after all the incessant warring, all the murderous devastation, all the revolting disorganisation and dislocation — that this Law of Nations can plan or execute measures for the peace and safety of Europe? It effects nothing at all in that respect. One may as well look for snow in the dog-days, as for endeavour to promote international order in the Law of Nations during the 16th and 17th centuries. And hardly anyone requires it, for that matter . . .'²⁶

However, the realization gradually dawned that a practical mechanism for the maintenance of international law was indispensable to its further development. The first codifications were carried out in the nineteenth century, and the idea of arbitration gained recognition, albeit with difficulty. But Grotius' sanctions theory fell further and further out of the picture — through Vattel's proposition that a legal community '*delinquere non potest*' — and with it, according to Van Vollenhoven, the chance to build a system of States.

Van Vollenhoven contended that Grotius viewed the world community, the '*omnis humani generis societas*', the 'great community of mankind, which overreached both men and states', as a community based on law, built upon the pillars of *ratio* and public spirit. In this community, the punishment of crime, even among States, was a moral, if not a legal, imperative. The breach of a norm was to be punished: the so-called theory of duties.

Van Vollenhoven expanded upon this viewpoint in the succeeding years, in *Grotius and Geneva*, 1924, *Grotius and the Study of International Law*, 1925, and, in particular, *Grotius' theoremata*, 1926. Grotius' contention, said Van Vollenhoven in the last-mentioned of these articles, published in 1926

26. C. van Vollenhoven, *The Three Stages in the Evolution of the Law of Nations* (The Hague, 1919) pp. 3-4.

in the *Tijdschrift voor Strafrecht* (Penal Law Review), was that rules of law applied to States as well as individuals, a view not generally shared by his contemporaries. Breach of these rules signified an unlawful act — in serious cases a crime — and deserved punishment. Who was competent to administer punishment? How far could one go? Could armed force be employed?

In an unorganized world society 'might was right'. The mediaeval view, which remained general until Grotius' time, was that in order to have penal competence there had to be authority over the delinquent, and thus only a superior had competence. In the case of a breach of law within inter-State relations, among equal sovereign States, this rule was no help, and the injured State was left to its fate. Grotius, however, argued that in the *magna humani generis societas* not only superiors, but also equals had a natural right to penal competence: *aequalibus in aequales (puniendi jus) est a natura, superioribus in subditos etiam ex lege*.

Van Vollenhoven said that what Grotius was introducing with this view was not inconsiderably different from the teachings of his contemporaries and direct predecessors, such as Vitoria, Vazquez or Molina: he introduced 'into the self-interested chaos of his times the selfless notion of a league of nations'. State crime would wither away if it were known that all States were lined up together to punish it.

Van Vollenhoven recognized that Grotius' doctrine in *De jure belli ac pacis* was not expressed with great clarity, partly because the general tendency of the day to jump from private to public law, and from national to international law. In his *Framework*, published in 1931, he even undertook a reorganization of Grotius' work.

Grotius had been long neglected, but with the establishment of the League of Nations and the Geneva ban on wars of aggression, the 'hour of Grotius' seemed finally to have arrived: wars of aggression would be criminalized, combatted and banned.

'Grotius' Law of Nations stands at the door, and it knocks. For three hundred years we have let it knock. Now it is getting too strong for us. We have not yet turned the key, but the bolts have been drawn.'²⁷

Even since he wrote it, Van Vollenhoven's *Three Stages* has caused much controversy. His attack on natural law historians and Vattel, whom he

27. *Ibid.*, p. 98.

suggested had distorted Grotius' theories, has been resisted with some force, and has received little approbation, in particular since Oudendijk dismissed it as a 'case of wishful thinking', in the *Tijdschrift voor Rechtsgeschiedenis* (Legal History Review) in 1980. Oudendijk's objections were multifarious: Van Vollenhoven's approach was unhistorical; his interpretation of Grotius' doctrine was selective, and thus misleading; his interpretation of Vattel's texts did not accord with the facts; finally, the Grotius-Vattel antithesis was largely fictitious.

'[S]eeing how seriously Vattel has suffered at Van Vollenhoven's hands, one feels inclined to ask whether a person who died long ago is outlawed. Had Vattel been still alive he could have brought a successful suit for libel.'²⁸

The pathos of these words would have appealed to Van Vollenhoven! The explanation for all of this was, according to Oudendijk, that Van Vollenhoven read his own thoughts into Grotius' concept, and to such a marked extent that, in his *Framework*, he even proceeded to rearrange the text. In a political pamphlet like the *Three Stages* this approach was understandable, but she considered its later development in academic discourses as unforgivable, and a mutilation of the image of the historical figure of Grotius. In particular, she disputed Van Vollenhoven's much too narrow interpretation of Grotius' theory of *bellum justum*, his over-estimation of the notion of *crimen*, and his interpretation of Grotius' teaching on neutrality.

'Was *De jure belli ac pacis* really in need of such a treatment?'²⁹

There is much truth behind Oudendijk's criticism, certainly with respect to the substantive analysis, though the question has been raised whether Oudendijk really understood Van Vollenhoven's intentions. In his Van Vollenhoven Memorial Lecture in 1983, Kooijmans raised the point that Van Vollenhoven was well aware of his unhistorical approach, that he often explicitly admitted it, as in his *Grotius and Geneva*, in which he posed the

28. J.K. Oudendijk, 'Van Vollenhoven's "The Three Stages in the Evolution of the Law of Nations)". A Case of wishful Thinking', in 48 *Tijdschrift voor Rechtsgeschiedenis* (1980) p. 23.

29. *Ibid.*, p. 27.

question, above all, of what Grotius had to say to him as an early 20th century man, and then came to conclusions with far-reaching consequences for the political situation of the day. Alongside the historian's approach, another legitimate standpoint is that of the eclectic adoption of ideas from earlier times, for one's own purposes.

It has become clear that Van Vollenhoven did try to read many of his own opinions into Grotius, and also attributed them to Grotius, which makes his interpretation historically debatable. However, Grotius as the source of Van Vollenhoven's inspiration remains intact. It was an undeniable merit to have used elements from Grotius as building blocks, thereby inspiring his generation and bringing about a great, international Grotius revival, and thus ultimately even giving a new impulse to historical research. There could never be the slightest doubt about Van Vollenhoven's great knowledge and high opinion of the life and work of Grotius.

AMERICA

Van Vollenhoven was co-founder of and for many years adviser to the *Overzee Trust Maatschappij* (overseas trust company), which looked after Dutch overseas trade interests. This led to his being invited to undertake a diplomatic mission, and in November 1918 he travelled to the United States as adviser, in the retinue of the Dutch envoy, Cremer. The objective was primarily political: to remove American distrust about the suspected pro-German position of the Netherlands, which had applied a strictly neutral policy in the War:

'The suspicion that the Netherlands had most seriously breached its duty of neutrality in 1914, by allowing German troops to pass through Limburg, is still very widely believed in some of the allied and associated countries, even by highly-placed and influential people. Everything which our Government and our press have done against this lie has apparently not been sufficient. It will not help in the admission of the Netherlands to the League of Nations.'³⁰

30. VG, Part II, op. cit. n. 9, p. 510.

Further to this, a thorny question had to be settled, concerning angry: the seizing by the USA of Dutch ships; something which had caused an additional deterioration in relations between the two countries. Van Vollenhoven was a recognized authority on this point. He had reported to the Academy of Sciences on 12 April 1915, and again on 8 April 1918 on the problem of confiscation. At the same time, he worked for the restoration of cultural and scientific links between the two nations. He stayed in the United States for six months altogether, and travelled widely. To improve mutual understanding, and to increase sympathy for his Government, Van Vollenhoven spoke and wrote on Dutch foreign policy in the previous one hundred years. He also argued strongly for Dutch membership of the League of Nations, despite his criticism of the draft treaty, which he had himself helped to put together in February 1919. He published much on this topic at the time: 'The Netherlands and the League of Nations', 'The League of Nations as a threat to the Netherlands', 'America, the Netherlands and the League of Nations', 'If America refuses', 'The Court of Law of the League of Nations', were all published in 1919, mostly as newspaper articles. He sneered at Dutch aloofness with respect to great contemporary developments and the general half-heartedness which he detected. His slogan was simple and, with Patrick Henry, he said:

'I have but one lamp by which my feet are guided, and that is the lamp of experience. I know of no way of judging the future but by the past . . .'³¹

When, after much hesitation, the Netherlands joined the League, he wrote:

'On 9 March 1920, the Netherlands did finally join the League of Nations. Was a single flag put out? Did anyone have the feeling that it was an historic day? Was there any of that mood which Bolsward experiences when Parliament approves the establishment of a dairy school there.' [. . .]³²
 'The old world is a wreck, and an irrecoverable one if its courage to be young has slipped away; if it no longer feels the strength of spirit to cross over a new threshold.'³³

31. *Ibid.*, p. 459.

32. *Ibid.*, p. 526.

33. *Ibid.*, p. 538.

In later years he continued to look at the development of the League of Nations very critically: 'The League of Nations weathercock has still had no chance to rust itself fast,'³⁴ he wrote characteristically in 1926. When in America he also helped to draft the Rhine river transport provisions of the Treaty of Versailles, which he saw as 'turning the clock back a century.'

American culture did not appeal to the Leiden jurist! He delved deeply into literature, but found little to his liking. History excited him more, particularly the Civil War period. Abraham Lincoln interested him very much, and he read about his life with relish; biographies were always a special favourite of his. Like Pope, he felt that 'the history of mankind begins with man,' and he regretted the absence of such a tradition in the Netherlands. He once remarked that the essence of Dutch history could be explained by examining the life of William the Silent, and lamented the fact that there was no biography of Gijsbert Karel van Hogendorp, whom Van Vollenhoven so admired. (This gauntlet was later taken up by his own biographer!)

Van Vollenhoven was always an admirer of 'great men', and in particular those with a passionate commitment. It is, therefore, most regrettable that he was unable to fulfil his firm intention of publishing an extensive biography of Grotius. This idea dated back to the 1890s, when he lectured on Grotius to the *Nederlands Studenten Congres*, and was carried forward in many publications in *Grotiana*, the periodical of the Foundation for the Publication of the Works of Grotius, of which he was an active member. He wrote an interesting article for the *American Journal of International Law* in 1925, and in 1931 a study in which he revealed the framework of Grotius' main work '*De jure belli ac pacis*'.

Alongside his writing, there were countless lectures: for Columbia University; the *Koninklijke Nederlandse Academie van Wetenschappen*; in Leiden. The papers which he left behind contain a number of approaches to a biography and suggest a broad plan, with space for a description of Grotius' era as well as a sketch of his character. It was this last aspect which particularly fascinated Van Vollenhoven. His knowledge of the works of Grotius was unsurpassed, his style was superlative, and he had outspoken views on biography as a literary genre. He was fully aware that, for the general public, Grotius had little appeal, in particular in his own country. For Van Vollenhoven, however, it was different:

34. *Ibid.*, p. 628.

'Have I ever confessed to you how Grotius helps me through all my cares? Fruin also had a weakness for Grotius; he apparently has a magnetism for certain people; even today.'³⁵

His special literary interests have already been noted, and two striking examples from his Grotius research are Van Vollenhoven's translation of Grotius' *Wildzang* (Occasional poetry), on the death of his French friend, F.A. de Thou in 1619, said to be Grotius' most moving verse, and his reinterpretation of Grotius' neo-Latin drama about Joseph, *Sofompaneas*, which Van Vollenhoven rightly classified as a self-conscious piece, following deep research. In this connection, reference may be made to a file with notes on Vondel, which is to be found at the *Algemeen Rijksarchief*. In the Netherlands, only the Utrecht international lawyer, G.C.J.J. van den Bergh, has followed Van Vollenhoven in this literary inclination, rare among jurists.

The publication of the *Briefwisseling* (Correspondence), and other works of Grotius under the auspices of the *Koninklijke Nederlandse Academie voor Wetenschappen*, is based on an initiative of Van Vollenhoven, and it was he who convinced the *Union Académique* in Brussels to establish a centre for the study of Grotius. The *Schets* (Sketch) of the life of Grotius published by Van Eysinga in 1945, was a posthumous tribute to his friend Van Vollenhoven.

LIFE IN LEIDEN – THE LATER YEARS

Following the death of his sister Gretha, his loyal companion, Van Vollenhoven lived alone with his housekeeper, Sientje, in a large house at number 40 Rapenburg, in Leiden. He enjoyed his walled garden with its view of the Pieterskerk (St. Peter's Church). He never knew a real family life, and missed this greatly. His biographer, who observed him for many years at close quarters, took the view that he was too affected by the experiences of his youth to contemplate marriage. He was, and remained, a solitary man, even though he had deep friendships, and suffered severely when these ended. He also derived great pleasure from the children of his

35. De Beaufort, op. cit. n. 12, p. 200.

friends Van der Mandele and Van der Hoeven, and later those of Johan Huizinga.

His connection with Huizinga, a colleague at Leiden, and from 1918 a firm friend, meant a great deal to him. Both had started out as philologists, but of very different types! The sensitive Huizinga felt most at home with detailed study; with due attention to detail, Van Vollenhoven inevitably sought the wider picture, the broad context and the comparative aspects. Huizinga's style was simplicity itself, Van Vollenhoven took a long, emotional route from the splendour of words to mature thoughts.

Their discussions, even about punctuation, were endless. Van Vollenhoven dined weekly at Huizinga's home. He had his own key, and let himself in, to tease and provoke the Huizinga children at the dinner table. Huizinga's *Herfsttij der Middeleeuwen* (The waning of the Middle Ages)(1919) and his biography of Erasmus (1924) were an inexhaustible source of inspiration for his friend, who could so well understand his predilection for '*Homo ludens*' and the playful elements in culture.

As already mentioned, Van Vollenhoven was devoted to Leiden and the University. His long involvement in the ups and downs of the student world was evidence of this. When friends presented him with the sum of 20,000 florins on the occasion of his rectorial address in 1917, he donated it to the *Leids Universiteits Fonds* (Leiden University Fund (LUF)), which was dear to him. Some years later he joined the Board of the LUF, first as Secretary, and from 1924 until his death as Chairman. The richness of his ideas was felt here too: it was his idea that the LUF should institute special professorial chairs. In order to limit the growing number of commuting students, he applied his mind to the improvement of student housing. His ideal solution was a LUF village near to Leiden, but in practice there came to be an increasing number of student houses. His concern for housing the University population, and for Leiden's cultural heritage, went hand in hand, and resulted in historic properties being bought up. On his death, he gave his own house at number 40 Rapenburg. His final initiative was the institution of a *Studium Generale*, that began in 1934. In 1957, a Van Vollenhoven Fund was established by the LUF.

THE DUTCH EAST INDIES QUESTION

After 1918, Van Vollenhoven intensified his study of the colonial system, and his political involvement in the rising tensions associated with emancipation grew: initially in his role as governmental adviser, as the inspiration behind the committee which drafted the *Proeve van een staatsregeling voor Nederlandsch-Indië* (Specimen constitution for the Dutch East Indies) in 1922, in response to a government mandate. Oppenheim and Snouck Hurgronje were also on the committee. *Adat* law remained in force in the Specimen — one of the reasons it was rejected, as going too far. Van Vollenhoven was soon exerting himself in his personal capacity. He energetically attacked the ‘silent opposition’, as he called it, to the natural course of events in the Dutch Indies. The East had awoken, emancipation should be tackled in broad consultations among all the parties concerned. Anxious about fast-growing nationalism overseas, and kept outstandingly well informed on this by his colleagues, friends and correspondents, he decided to address himself to a wide section of the public in a series of leading articles in the *NRC* newspaper, from the beginning of April 1922. In these articles he drew a striking parallel between the contemporary situation in the colonized territories and the Dutch struggle for independence in 1572, and declared that the Indonesians had outgrown subordination to the Westerners and to tutelage, and wanted to be heard, and to participate in decision-making. He gave strong support to the enlightened policies of Governor-General Van Limburg Stirum, indicated the similarities to the situations in India and the Philippines, and emphasized that the answer to the question, ‘autonomy or not’, could no longer be postponed, without there being a confrontation that could lead only to a long-lasting loss of confidence, and the disruption of government activity:

‘The principal form of emancipation in the East Indies is that under which Eastern organs and Eastern institutions, which have long existed — government by regents, district-based government — learn to stand on their own feet, constitutionally and economically, thereby gaining real powers, together with real responsibilities, leading to self-government.’³⁶

36. VG, Part III, op. cit. n. 9, pp. 256-257.

Meanwhile, Van Vollenhoven, who enjoyed the unconditional support of many of his colleagues in Leiden, took an entirely independent position. He set his own course, and was careful not to identify himself with nationalist tendencies, or Dutch progressives, such as the members of *De Stuw*.

Reaction to his articles was, nonetheless immediate; it appeared to be aimed at him personally and was violent and lasting. It is no exaggeration to say that the Dutch East Indies Question, and above all the personal allegations which he had to endure, and against which his personality had virtually no defence, had serious consequences for his health in the following decade, and contributed to his all-too-early death. He quietly withdrew, declined high and honourable offices and fought a silent battle.

Opposition to his ideas came from various quarters, and was based on very different grounds: from traders and planters with clearcut self-interest, but also from party politicians, and from the academic community, based on scientific, and less scientific considerations. In early 1925 these groups united in the *Indologisch Fonds*, under the leadership of Professor J. de Louter, and successfully applied to the Council of the University of Utrecht for the establishment of an East Indies Studies Faculty, which was established there in 1925, 'on the ground of the inadequacy of this branch of education in Leiden'. Reference was made to Van Vollenhoven's assessment of colonial policy, which in no way accorded with government views, and was prejudicial to Dutch authority; to his anti-historical method and his overrating of *adat* law; to the dangers of over-population and unemployment should the overseas labour market disappear; and, finally, to Van Vollenhoven's lack of patriotism.

Many prominent figures joined in the opposition to him: Loder (to Van Vollenhoven's great disappointment), Treub, the most active agitator, Colijn, Gerretson. Thus, the dispute between conservatives and progressives became a Leiden-Utrecht controversy for the public at large. The conflict dragged on for many years.

Van Vollenhoven did indeed have a totally different approach to colonial administration, and the balancing of authority and interest, from that propagated by the new educational programme for civil servants going to the Dutch East Indies, which had been set up at Utrecht University in 1925. The guiding principle there was the maintenance of Dutch authority and the protection of Dutch firms; 'also in the interest of the East Indies and its inhabitants', it was said.

From the very beginning, Van Vollenhoven was on the defensive. Even the support of the great Snouck Hurgronje, who took his side in a sensational article in *De Gids* in 1923 ('Forgotten Jubilees', on the occasion of the Silver Jubilee of Queen Wilhelmina), was not enough; nor was Leiden's strong protest in *De Gids* in 1925, entitled 'The attack on Leiden', and signed by eight professors. Van Vollenhoven's 'obsequious ethical theories' on the love of one's neighbour and altruism were disparaged as applied to 'dangerous nationalists'. Van Vollenhoven defended himself in countless articles, many in the *NRC* newspaper, but knew in his heart that the battle was unequal; he lost his fighting edge and became quiet, distressed, disillusioned. Van der Mandele, Van der Hoeven, and also Wensinck, with whom he often travelled at that time, did what they could. Literature, and poetry, offered temporary solace, but the slander and insinuation broke the man, though never his belief in his case: '. . . even those who regret the awakening of the people have to recognize it as a fact . . . and have to see that, if it is not channelled into a legal course in good time, it will flood into illegal courses.'

In the following years he meekly observed how the independence of the Governor-General was curtailed, and the clock was turned back, apparently with success. Although he never lost his belief in his approach, he did, with difficulty, dismiss the illusion that this would be given concrete form in the near future.

All this did not lead to apathy in other fields: the last ten years of his life were completely filled with work at the highest level, and some of his most notable achievements date from this period.

INTERNATIONAL APPOINTMENTS

From 16 February 1920, Van Vollenhoven was one of five Dutch delegates to the multilateral consultations of ex-neutrals in the First World War, under the leadership of Professor Loder. Their objective was the preparation of a draft treaty for the establishment of the Permanent Court of International Justice, based on Article 14 of the League of Nations Covenant. When these consultations reached an impasse, Van Vollenhoven made a breakthrough by working for twelve days without rest to produce a draft text which proved to be acceptable to all concerned.

On 13 September 1921, Van Vollenhoven became a member of the Permanent Court of Arbitration, and six years later, on 13 September 1927,

his membership was renewed; though he was never directly involved in any cases during this period. From the records in the *Algemeen Rijksarchief*, it appears that he was a member of the International Arbitration Commissions between the Netherlands and the USA, in the years 1924-1929.

His period as Presiding Commissioner (1924-1927) of the US-Mexico Claims Tribunal was very successful. He could thank his appointment, in part, to the many contacts which he had made in 1918-1919, and the favourable impression he had created. The sixty judgments of his period in office, many of them drafted by him personally, stand as a model for later Commissions, not least on account of their style and the coherence of their treatment of national and international legislation — another example of Van Vollenhoven's love for comparative law approaches. He chaired meetings in either English or Spanish without difficulty. When he resigned on 23 July 1927 he was effusively thanked, and was later even decorated by the Mexican Government.

LATER PUBLICATIONS

In 1931 the second part of Van Vollenhoven's imposing triptych on *adat* law was published, followed in 1933 by the final, third part, edited by his students and containing his collected articles on the subject. This brought to an end thirty years of work by Van Vollenhoven and a small army of colleagues. Even the completion of this masterpiece could not prevent the periods of depression which came upon him with great regularity. With disbelief, he observed how large segments of the Dutch population remained blind and deaf to the growth of national consciousness in the East Indies. He was alive to the fact that, after the constitutional amendments of 1922, 'the fresh winds which blew over our island kingdom' fell still. Decentralization was not carried through; the Government adopted a 'chameleon policy', and although the overseas *Volksraad* (People's Council) had legislative as well as advisory powers after 1935, the emancipation process broke down. Van Vollenhoven deeply regretted all this, but was probably more deeply hurt by the personal misunderstanding which he saw in it.

In the years 1928-1930, he wrote a series of 18 articles on the growth of the Dutch colonial system for the *Koloniaal Tijdschrift* (Colonial Journal); these were collected in 1934, and published as *Staatsrecht overzee* (Overseas constitutional law). He was the first to dissect the structure of the Dutch State, and reveal that greater autonomy for the overseas territories could be

A F S C H R I F T.

17 September 1927.

№ 54.

*Wij Wilhelmina, bij de gratie Gods,
Koningin der Nederlanden, Prinses van
Oranje-Nassau, enz., enz., enz.*

Gezien Ons Besluit van 13 September 1921
no.71;

Gelet op artikel 44 van het bij de Wet
van 1 Juli 1909 (Staatsblad no.229) goedgekeurde
verdrag van 18 October 1907 voor de vreedzame
beslechting van internationale geschillen;

Op de gemeenschappelijke voordracht van
Onze Ministers van Buitenlandsche Zaken van den
Gden September 1927, Kabinet van den Minister
no.4119 en van Justitie van den 14den September
1927, 2e afdeling A, no.877;

Hebben goedgevonden en verstaan;
Opnieuw aan te wijzen als lid van wege Nederland
in het Permanente Hof van Arbitrage Prof.Mr.C.
van Vollenhoven, Hoogleraar aan de Rijks-
universiteit te Leiden.

Onze Ministers voornoemd zijn belast met de
-uitvoering-

uitvoering van dit Besluit.

's-Gravenhage, den 17 September 1927.

(w.g.) WILHELMINA.

De Minister van Buitenlandsche Zaken,

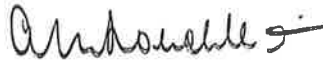
(w.g.) Beslaerts van Blokland.

De Minister van Justitie.

(w.g.) Donner.

Voor eensluidend afschrift:

De Secretaris-Generaal van het Ministerie
van Buitenlandsche Zaken,



granted within the existing framework, and that a revolution was by no means necessary. In 1930 he gave a bird's eye view of the constitutional history of the Netherlands, in a famous lecture to the *Koninklijke Nederlandse Academie voor Wetenschappen*.

In 1932, the year in which the University of Amsterdam awarded him an honorary doctorate, his renowned *Du droit de paix* appeared, an historical/constitutional study for the establishment of peace with justice worldwide, in which ten centuries of political history are summed up. The book developed out of a lecture for the Hague Academy of International Law (whose creation he had long worked for), which he was supposed to have delivered in 1931, but which he had had to cancel for reasons of health.

Adopting a strict system ('The Facts; Hopes Raised; Critical Analysis; Hopes Dashed'), the book dealt with European political history in four Chapters ('Mediaeval Portents of a Law of Peace, The Reign of War, The Law of War and the Law of Peace, and The Law of Peace and the Law of War') and closed with the dawning of 'The Reign of Peace', the Disarmament Conference of 1932 ('The Facts, Achievements, Dangers Ahead, Lingering Hopes'). Van Vollenhoven did not feel easy about the outcome of the Conference.

'The Disarmament Conference of 1932 can only be crowned with success if it is sustained by a burning conviction that success is possible.'³⁷

His early death spared him the fiasco which the Conference became.

Du droit de paix justifies its fame, though it is characterized more by the development, combination and updating of earlier ideas than by a new, original thesis. 'Power and force behind the law — and in one hand', was always his credo. The ideas upon which he had worked before, in 1898, 1910 and 1918, he now put into the perspective of the Covenant of the League of Nations. He saw two possibilities in this text for banning war as an instrument of power, Articles 16 and 11. Article 16 opened up the possibility, after it had been established whether a war was or was not legitimate, to intervene by way of a call upon the Member States. Article 11 gave the League an autonomous right, and Van Vollenhoven's clear preference was for the extension of this more far-reaching Article:

37. C. van Vollenhoven, *The Law of Peace* (London, 1936) p. 1.

DU DROIT DE PAIX
DE IURE PACIS

PAR

C. VAN VOLLENHOVEN



LA HAYE
MARTINUS NIJHOFF
1932

'The indispensable condition for the advent of a régime of lasting and international peace has been forthcoming these last thirteen years in the League Covenant itself. It is to be found in Article XI, paragraph 1, where we read that "any war or threat of war is a matter of concern to the whole League, and the League" — not this or that nation, not any group of any interested States, but the League — shall take any measures that may be deemed wise and effectual to safeguard the League of Nations.'³⁸

'The solution offered by Article XVI [. . .] had first had its wings clipped, then its claws cut, and after that its eyes gouged out. What about Article XI? [. . .]'³⁹

'By the terms of Article XVI it is illegal for a State to commit an act of aggression, it is not illegal for a State to defend itself by force of arms; by Article XI, on the other hand, the very fact of being engaged in a warlike operation is illegal.'⁴⁰

'The appeal of Article XI [. . .] is an appeal directed not to the old and the disillusioned, but to youth, brimming over with courage and enterprise.'⁴¹

He realized that this was conditional upon States responding to the calls of the League of Nations, and the League having armed forces at its disposal. He continued to adhere to the view that the Court in The Hague should first be asked to make a finding on the suspected reprehensible and punishable actions of a State.

He very clearly saw the technical problems in implementing the Article, identified the challenges to the Article during his time, and was not blind to another danger:

'It is perfectly true that it involves leaving the terra firma of positive law and embarking in the frail vessel of uncertainty, as soon as the problem is stated as follows: How are we to ensure that the League of Nations, operating under Article XI, is provided with an instrument of action which is at the same time very strong — indeed irresistible — and entirely impartial and disinterested? But, after all, the latter-day history of the law of peace records so many examples of impartial commissions and of impartial decisions, even

38. *Ibid.*, p. 222.

39. *Ibid.*, p. 224.

40. *Ibid.*

41. *Ibid.*, p. 257.

if we leave out of account the Hague Court, that this is surely a problem capable of being solved.' [. . .]⁴²

'The thing can be done, provided only we [. . .] are prepared to see that catastrophic rivalry among States replaced by a system of cooperation such as would mean the translation of the first sentence of Article XI into terms of actual reality.' [. . .]⁴³

'[I]f the world is to place any reliance upon the action of the League as provided in Article XI of the Covenant, the world must be assured of the League's power, of its readiness to use that power, and of its impartiality. We need a solid organisation of peace, worthy of confidence, not one that is evasive, uncertain and unstable.' [. . .]⁴⁴

'The translation of Article XI into practice is going to be difficult, admittedly. But will it be more difficult than world economic reorganisation? Is it to be believed that the world, when it proclaims the difficulty of such a solution, can remain in the present international situation? The inspiration of my argument is not merely — indeed, not primarily — that Article XI of the Covenant so ordains; the premiss is, above all, that the solution which I have outlined is predetermined, prefigured by the whole course of the history of the law of peace from the year 1150 onwards . . .'⁴⁵

He concludes with Grotius' appeal to the altruism of governments:

'Just as the citizen who acts in accordance with the national laws in his own country is not committing any folly, even though, for the sake of observance of those laws, he should have to leave aside certain things which might be to his advantage, so the nation commits no folly that does not rate its own private interest so high as to neglect those rights that are common to all the nations. [. . .] [T]hat nation which violates the law of the society of mankind is destroying for ever the bulwarks of its own peace.'⁴⁶

42. *Ibid.*, pp. 235-236.

43. *Ibid.*, p. 236.

44. *Ibid.*, p. 238.

45. *Ibid.*, p. 246.

46. *Ibid.*, p. 258.

Finally, just as Grotius had ended with a prayer in 1625, he closes his Introduction with these words:

'And therefore, O Muse, pour into my ear that tale of the law of peace which men have too long neglected, that this sorely afflicted generation of ours may see its reflection in that peerless mirror and learn its lesson.'⁴⁷

FINAL TRAVELS AND LAST DAYS

In 1932, Van Vollenhoven journeyed to South Africa, India and the Dutch East Indies, a trip which he made incognito. He had not wanted receptions or lectures, though he did make an exception in the case of the Law School in Batavia, which he himself had helped to establish and promote. On 23 August he delivered a lecture at the Law School which was characteristic of him: 'Poetry in Indonesian Law'. For Van Vollenhoven, 'poetry' stood for the whole range of human feelings, indefinable, but the reflection of harmony in the order of things.

South Africa thrilled him beyond measure. He recognised that there were tremendous problems ('ten times worse than ours') but travelled widely and particularly enjoyed a Parliamentary debate by non-whites, held in English in Transkei. He saw in this a shining example for an autonomous Dutch East Indies, and announced with delight that 'the Afrikaners are not lost to our tribe'. He described this trip in his last written work: *Old Glory*.

Visibly refreshed, and full of new plans, Van Vollenhoven returned to Leiden. The born storyteller could not help but give voice to all the fresh impressions he had brought back. He embarked upon the new academic year with enthusiasm, and with a favourite theme: comparative legal history. This again gave him the chance to demonstrate the connection between apparently diverse fields of law, and was intended to be the impulse for a major study of the topic, upon which he had resolved many years before.

It was to be his last academic year, and it was a great success. In a sense, his lectures amounted to a synthesis of his life's work. Van Eysinga, who had been a Judge at the Permanent Court of International Justice since 1930, came from The Hague to follow the lectures. How gladly would Van Vollenhoven have succeeded him as Professor of International Law at

47. *Ibid.*, p. 5.



Leiden — but circumstances prevented it! Van Vollenhoven was an inspired teacher. This was not thanks to his outward appearance: he was of small build and shy by nature, and many found him unimpressive on first acquaintance. His grey-green eyes were somewhat expressionless; he had a hoarse, husky voice; his hands were always shaky; but once he began to speak his face became animated, and he was stimulating from his very first sentence, which invariably contained an important pun. He was master of a succinct eloquence and displayed an elephant-like memory, but the way in which he prepared his lectures was also an example to his students of a sense of responsibility and of duty. This aspect of his academic role was of great importance to him. In 1917 he had said:

‘It is perhaps our greatest, our too little understood, wealth, that each year we again experience the rejuvenation of the inflow of our students; receptive minds, in which things can be summoned from the dead area of impassivity, if only they feel they are being drawn up to higher spheres. It is not difficult for Academe to extinguish this spirit; to make youth uniform with chilled age; to transform theologians into clergymen, physicians into family doctors; men of letters and philosophers into teachers, jurists and lawyers. But for nothing are they so thankful as for the unfreezing of their thinking; they do not ask Academe for dictation, but for a spark.’⁴⁸

The academic year 1932-1933 was, then, his last. At a time when he was probably more than ever conscious of the intellectual maturity which he had reached, when his detachment from much that was disturbing and irrelevant began to take shape, and his concentration upon essential matters became total, his physical strength began a rapid decline. Driven as he was, he saw that complete success could never be achieved in this world. His model, Grotius, had also preceded him in this respect.

He became very ill. He had trouble with one of his feet in March 1933, and this proved to have been caused by a thrombosis; a thrombosis of the lung followed in April. Van Vollenhoven made a last will; he wished to have a quiet departure: no obituaries; no speeches at the graveside; no portrait in the University’s Senate Chamber. Quite suddenly, he made a miraculous recovery, and the patient immediately made a whole set of new plans: after

48. VG, Part I, op. cit. n. 9, p. 46.

the biography of Grotius, he would write a book on the minor prophets of the Old Testament.

On 29 April he was visited by several colleagues, Huizinga being the last to go. A few days later, Cornelis van Vollenhoven was accompanied by a small group of friends to his last resting place, at the '*Groene Kerkje*' in Oegstgeest.

CONCLUSION

There are two parts of Van Vollenhoven's work which call for a brief retrospective consideration, viz., the viability of his approach to *adat* law, and the possible applicability of his ideas with respect to the autonomy of the Dutch East Indies; and his enthusiasm for a police force as part of the international legal order.

Discussion on the first point — the possible role of *adat* law in the Indies gradually moving to full autonomy — can quite properly be dismissed as academic, though the result remains unsatisfactory. We shall, after all, never know! International political developments in the two decades following Van Vollenhoven's death were extremely rapid, but there was very little change in Dutch thinking on the question of emancipation. There was never a serious attempt to introduce *adat* law under Dutch authority, and there would probably never have been one. After the Japanese occupation, the break with the past was simply a fact.

It can be shown that the East Indies policies of the Governments of the inter-War years were flawed, but to conclude from this that Van Vollenhoven's way would have produced a better result, may be too simplistic an assessment. The path to accelerated autonomy would probably have been less traumatic for all concerned, but could *adat* law have been consistently sustained at national level? It would be difficult to argue that historical developments have prevented this. Van Vollenhoven's vision had been propagated for twenty or thirty years by competent former students of his, both Dutch and Indonesian. He had established a quite adequate school of thought; *his* work had been done. Even if the political developments had been otherwise, it would still have been left to the same generation of the young nation to put practical application to the test. The infrastructure for this was in place: the field trials had been carried out, the system designed, the methodology established.

The feasibility of the idea of an international police force as the enforcement organ of a world organization is quite another matter. It would seem that even now, three quarters of a century later, no definite pronouncement on this could be made. Tammes expressed his opinions in 1958, and in a memorial collection published in 1974, Van Panhuys looked at the contemporary prospects, and did not rate them as good. He saw 'a few swallows with broken wings', but thought that the world had become 'sadder and wiser'. In 1983, Kooijmans considered the notion to be unworkable. Nevertheless, the unexpected, turbulent events of the last five years seem to suggest otherwise: there has been the action against Iraq under the UN flag, and 'blue helmets' are spreading out across the world. The world organization has, undeniably, and perhaps irreversibly, gained momentum.

At this moment, it seems quite clear that Van Vollenhoven was indeed ahead of his time with this concept. As an 'inspired realist', who said over and over again that he formed his thoughts not with some distant ideal in mind, but on the basis of the lessons he had learnt from history, (how wonderful it would have been to listen to his conversations with the cultural historian, Huizinga!), he tirelessly pointed out that bringing together law and force was the essential premise for the establishment of world order. Coercion and sanctions were always necessary. We are still confronted today with the same dilemma with respect to State sovereignty and international law-making, and in this sense the whole question is no less topical.

Can Van Vollenhoven's answers be of interest to us? His lack of patience with those who thought differently from him was based, partly, upon the fact that he saw his way as the only one, and inescapable. In the present still very imperfect stage of international legal order it would at least seem fruitfull to remember well the analysis of this gifted thinker, who combined learning, experience of history and vision.

BIBLIOGRAPHY

I. General Note

The most important source of C. van Vollenhoven's numerous and widespread publications is the three-part collection *Mr. C. van Vollenhoven's Verspreide Geschriften* (C. van Vollenhoven's Collected Writings, hereinafter VG), published in 1934 by Tjeenk Willink (Haarlem) and Martinus Nijhoff (The Hague) under the editorship of C. Snouck Hurgronje, F.M. van Asbeck, W.J.M. van Eysinga, J. Huizinga, K.P. van der Mandele, F.D.E. van Ossenbruggen and A.J. Wensinck. In addition to major works in the areas of international, administrative and Dutch East Indies law, these parts contain more or less all his known publications.

Part I contains legal studies of a general nature under the collective title of 'Omtrek en methode der rechtswetenschap' (Jurisprudence — outline and method), furthermore, sketches of Leiden, historical sketches and studies on Grotius and Thorbecke.

Part II spans the field of international law.

Part III contains studies concerning the Dutch East Indies, commemorative contributions, an index of names and a comprehensive index of cases and, moreover, a chronological list of works and supplementary indexes.

The most widespread papers on *adat* (indigenous customary law) are contained in part III of *Het adatrecht van Nederlandsch-Indië* (The *adat* law of the Dutch East Indies) (Leiden, 1933) and in *Staatsrecht overzee* (Overseas constitutional law) (Leiden, 1934).

An important collection of papers left by Van Vollenhoven, for the most part unprocessed, can be found in the *Algemeen Rijksarchief* (General State Archives) in The Hague. An inventory of these papers has been compiled by J.A.A. Bervoets.

II. Most important writings

- Omtrek en inhoud van het internationale recht* (Leiden, 1898) (VG, Part II, pp. 3-143), published in English under the title *Scope and Content of International Law* (Leiden, 1932) (*Bibliotheca Visseriana* vol. 10).
- Exacte rechtswetenschap* (Precise legal science) (The Hague, 1913) (VG, Part I, pp. 3-21).
- De eendracht van het land* (The union of the country) (The Hague, 1913) VG, Part II, pp. 173-209.
- Het onbaatzuchtige in recht en staat* (Altruism in the law and State) (Leiden, 1917) (VG, Part I, pp. 36-50).
- De drie treden van het volkenrecht* (The Hague, 1918) (VG, Part II, pp. 412-457), published in English under the title *The Three Stages in the Evolution of the Law of Nations* (The Hague, 1919).
- Het adatrecht van Nederlandsch-Indië* (The adat law of the Dutch East Indies), Parts I-III (Leiden, 1918, 1931, 1933).
- Omtrek van het administratiefrecht* (An outline of administrative law) (The Hague, 1926) (VG, Part I, pp. 63-91).
- The Framework of Grotius' Book De jure belli ac pacis, 1625* (Amsterdam, 1932).
- Grotius and Geneva* (Leiden, 1926) (VG, Part I, pp. 406-460).
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III. Some studies on the life and work of Van Vollenhoven, here for the most part also resorted to (in chronological order):

- F.D.E. van Ossenbruggen, 'Prof. Mr. Cornelis van Vollenhoven als ontdekker van het adatrecht' (Prof. Cornelis van Vollenhoven as the founder of *adat* law), in 90 *Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië* (1933) pp. I-XLI.
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