

# B.V.A. Röling — A Personal Recollection and Appraisal

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## Abstract

*The author draws an intellectual portrait of the great Dutch international lawyer and judge. He considers in particular Röling's contribution to international law made in his two principal works, the booklet on the 'International Community in an Expanded World' and The Hague lectures on the 'Law of Warfare'. He then briefly recalls the views about Röling expressed in the 1990s by two other leading international lawyers, R.-J. Dupuy and E. Jiménez de Aréchaga. He finally assesses the merits and the limits of Röling's major writings.*

## 1. The Man

Bert Röling was cut from a cloth very different from most international lawyers. Not only did he come from criminal law and from a dramatic and rich experience as an international judge. He also was deeply versed in history, sociology, international relations, peace research and made use of all those disciplines to better understand the law regulating international dealings and its function in the world community. He was a talented scholar, with a profoundly curious and investigating mind.

When you first met Röling, what would strike you was his physical appearance. He was a tall and handsome man, with snow-white hair (when I first encountered him he was 67 years old), a demeanour of great dignity combined with affability and a perceptive smile. Talking with him was fascinating. He was soft-voiced, which markedly contrasted with the gravity and weight of matters he discussed or the stories he recounted, matters and stories that dealt with human violence and aggressiveness. He would just as well always relish recounting to attentive friends a profusion of fascinating anecdotes and reminiscences.

\* Judge and President, Special Tribunal for Lebanon; Editor-in-chief of the *Journal*. In 1977, the author conducted a long interview with Judge Röling, which was subsequently published as B.V.A. Röling, A. Cassese, *The Tokyo Trial and Beyond; Reflections of a Peacemonger* (Cambridge: Polity Press, 1994). [cassese@un.org]

## 2. Meeting Röling

I met Röling for the first time in Strasbourg in 1973, when he, Pierre Boissier (a Swiss expert in humanitarian law) and I had been invited to give lectures on the laws of warfare. Before I could even ask him whether I could attend his lectures, Röling asked me whether he could attend my own. He was already famous whereas I was a newcomer to the field of humanitarian law. You can imagine what source of worry and anxiety it was for me to see the great scholar and former Tokyo judge in my audience. We quickly became friends and frequently met, chiefly in Pisa and then in Florence, where I taught, until his death in 1985. To me, he was an irreplaceable mentor. Before becoming acquainted with him, I tended to believe that the rigid parameters of legal positivism should be abandoned and other disciplines could serve as sources of inspiration in order to grasp the multifaceted dimension of law and its role in society. His teaching and his example confirmed my feelings and invigorated my interest in interdisciplinary research. His zest for curious interlocutors led me to ask, each time we met, so many questions not only about his legal thinking but also about his life.

He tended to be reserved, and showed self-confidence coupled with great dignity in his personal life. For instance, he never complained about some personal setbacks nor did he take pride in his numerous achievements. In 1958, he fell out of favour with the Dutch Minister of Foreign Affairs (who had until then sent him as a Dutch delegate to the UN General Assembly), because in December 1957, on his journey back from New York, taking advantage of the leisure time on the ship, he had written a little book in which he stressed the urgent need for the Netherlands to grant independence to Irian (Western Guinea), then a Dutch colony.<sup>1</sup> He was immediately struck off the list of Dutch delegates to the UN — something which deeply wounded him. Similarly, he never complained about not being appointed professor at the most prestigious Dutch university, that of Leyden, again on account of his unorthodox outlook. It is only from some of his disciples that I later learned of these personal disappointments. Unlike most of us, he succeeded in reconciling himself with academia and did not bear a grudge.

Röling also refrained from boasting about his many achievements, although he was of course aware of his own intellectual stature. He never evinced any presumptuousness. I remember an episode linked to my book *International Law and Politics in a Divided World* (1984), a book which owes much to his inspiration and approach. When, after extensively commenting on the various chapters of the book while I was finishing it, he read the proofs and saw that

1 B.V.A. Roling, *Nieuw Guinea als Wereldprobleem* (Assen: van Gorcum and Co., 1958). After critically outlining the debates on New Guinea (Irian) in the UN General Assembly (at 45–78) Röling put forward his own views about the need for the Netherlands to relinquish its authority over the colony, setting forth two alternatives: either the colony was to be handed over to Indonesia, or the Netherlands was to entrust the UN with the task of deciding on the matter (at 79–104).

I had dedicated it to him with the words ‘For B.V.A. Röling, *il miglior fabbro*’ [the better blacksmith], he asked for the meaning of those Italian words. I explained to him that my dedication rested on a double citation: the original words by Dante, which in his poem referred to Virgil, had become the inscription of T.S. Eliot’s *The Waste Land* for Ezra Pound. Bert listened to this explanation and did not look flattered at all in spite of the clarity of the message. I recall another episode, which shows his modesty and respect for others. When I showed him the revised draft of the long interview I had conducted with him on the Tokyo trial, he appeared dissatisfied, explaining that there was an imbalance: he spoke too much and I too little. He therefore invited me to bolster my comments in reaction to his responses to my questions. This led me to discard the interview entirely at the time. Indeed, I published it only many years later, when his death morally obliged me to publish it as it was, in spite of Bert’s previous disappointment.

### 3. The Scholar

Lawyers, as most intellectual workers, can be divided into various categories.

One can first distinguish between *intuitive* and *reflective* scholars. The former tend to proceed in their investigations based on clues and feel their way by groping in the dark, led only by a vague sense of where their research might end up. Their findings are often based on the *Aha-Erlebnisse* (sudden insights) referred to by the supporters of the *Gestalt* theory. Reflective scholars instead incline to be guided primarily by a general conceptual framework and proceed through logical concatenations and deductions in order to build theoretical constructs that reflect or encapsulate reality as accurately as possible.

Another distinction can be made between *innovative* thinkers and *mainstream scholars*. Plainly, the former challenge existing ways of thinking and suggest new paths for research. They tend to be iconoclasts. The latter instead are orthodox thinkers, privilege the beaten path, and can offer important contributions that present new vistas or novel ideas but within the existing overall scientific perspective. At least some of them tend to be ‘dry analysts fiddling with verbal distinctions while cities burn’ — to borrow a metaphor from H. Hart.<sup>2</sup>

One can further distinguish between *technicians* and *investigators of overarching structures*. The former concentrate on the meticulous examination of single problems in their logical and interpretative dimension; they relish mulling over the details, and tend to neglect the general framework. The latter instead privilege the general problems, the broad logical and legal structures of law (or other social institutions) and play down the detail, for whose enquiry they often rely on the ‘technicians’. They tend to offer vast syntheses refraining from in-depth probes of discrete problems.

2 H.L.A. Hart, *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon Press, 1983), at 52.

Borrowing a metaphor from Saint-Exupéry,<sup>3</sup> one could also draw a distinction between ‘geographers’ and ‘explorers’. The geographer spends his time making maps, and never leaves his desk to count the towns, the rivers, the mountains, the seas, the oceans and the deserts. The geographer ‘is much too important to go loafing about’. He considers that this is the job of the explorer. Also, he is only interested in big things: ‘We don’t record flowers’, he tells the Little Prince, ‘because they are only ephemeral’. In contrast, the explorer is always on the move, goes out in pursuit of discoveries, new volcanoes, mountains, lakes, moved by curiosity and a keen longing for novelty. He does not disdain such ephemeral things as flowers. This distinction is plainly applicable to scholars. Those who are satisfied remaining within the confines of their discipline, using its traditional investigatory and conceptual tools, can be classified as ‘geographers’. Those instead who are eager to go out and explore new fields of research and probe novel methods, are the ‘explorers’.

Yet another distinction can be suggested: that between ‘*broad-brush painters*’ and ‘*meticulous polishers*’. This distinction relates not only to the method of investigation but also to style. The former category embraces those who prefer to study the fundamentals of a problem or an institution, without going into the minutiae of all their implications. This normally translates into a style of writing that is not necessarily carefully attended to and elegant: what matters to the author is not so much the way of conveying ideas but the substance of those ideas. As soon as they have jotted down a suggestion, a thought, an idea, they do not bother to return to it to repeatedly file its formulation. In contrast, the meticulous polishers obsessively dig into a thought, an interpretation, a legal construct and wish to see all its ramifications. In addition, for them style is no less important than substance, and therefore they painstakingly endeavour to express their scientific conclusions in a manner that is not only accurate but also harmonious and graceful.

Assuming the above distinctions are sound (although admittedly they may somehow overlap), one would perhaps be warranted in classifying Rölöng as an *intuitive* and *innovative* investigator of *overarching structures*, a *broad-brush painter*, and, above all, a *great explorer*.

## 4. Rölöng’s Two Major Works

### A. *International Law in an Expanded World*

What I have just stated can be confirmed by a perusal of Rölöng’s two major writings, a booklet entitled *International Law in an Expanded World* (1960) and The Hague Academy lectures on *The Law of War and the National Jurisdiction since 1945* (1960).

The small monograph broke new ground and opened important vistas on the world community. Traditionally, books on international law tended to

3 A. de Saint-Exupéry, *Le Petit Prince*, Chapter XV.

ignore the historical development of the world community or, if they dealt with it at all, they confined themselves to focusing on individual legal institutions (piracy or slavery, for instance, or the League of Nations, and so on) or portraying the contribution of such great scholars of the past as Grotius, Vattel and others. Röling was the first to depart from the prevailing academic methodology by taking a broad look at the international community in its historical dimension, investigating the driving forces of the various stages of the community's evolution. What is even more important, he also looked at the ideological foundations of these various phases of development, forcefully criticizing the Eurocentrism prevailing in the Western world.

In his view, the international community had gone through three phases in its historical evolution. The first was that of Christian nations (1648–1865), which was marked by European domination of the international community. It started with the peace of Westphalia and ended when the Ottoman Empire entered the magic circle of the Great Powers. The second phase was that of 'civilized nations' (1866–1945). A leading world minority consisting of states with developed industrial economies had wielded power in this period. These countries considered themselves 'civilized' and looked contemptuously at those whom they considered had not reached their level of 'civilization'. This served as a justification for colonization, even though colonial domination was not really aimed at promoting the progress of the colonized, but rather at exploiting their natural resources. The third stage, that of 'peace-loving states' opened with the adoption of the UN Charter in 1945 and is still ongoing. This phase is characterized, more than by the decline and end of colonialism, by the fact that the preservation of peace becomes the primary goal of the world community.

This is, in broad strokes, the main content of the book. The monograph broke with the tradition of international lawyers at least in three respects. First, it heavily drew upon history and sociology to better understand the current features of the world community and the motivations of major states. It thus departed from the traditional positivist outlook, which only focused on legal interpretation of existing rules and the building of legal constructs, disregarding any interdisciplinary research. Second, it broke with the positivist approach in another respect: it did not shy away from advocating changes and improvements to the current international community, thus moving away from *lex lata* (existing law) to *lex ferenda* (the law to be passed). He stressed that the modern legal scholar should not balk at endeavouring to suggest 'the natural law of the nuclear age'.<sup>4</sup> Not surprisingly, this approach had a significant impact on lawyers, diplomats and practitioners, chiefly those from developing countries. Third, in this book Röling took a 'progressive' stance, siding with what he used to call the 'underdogs', the 'have-nots', in short, the developing countries, and calling to action all those who, tired of a Eurocentric or Western-centric outlook, appeared bent on changing international relations. This, therefore, was not at all a traditional, 'objective' law book; it was a

4 *International Law in an Expanded World* (Amsterdam: Djambatan NV, 1960), at 2 and 124.

'*livre de bataille*' that shrewdly used and amalgamated various disciplines and proposed a blueprint for action.

In addition, the book's importance is maximized by its being the first scholarly attempt to suggest that the vision of international law being essentially *European* must be radically replaced by the view of international law as a body of legal rules functioning at the *world* level, and for the entire world community. In essence, it was the first scholarly bid to audaciously push the readers to action in favour of the 'have-nots', that is, the developing countries.

*International Law in an Expanded World* epitomizes not only all of Rölöing's qualities but also his limits. While the work remains a repository of novel ideas and vision, with both the method and the content of the research being profoundly innovative, one is left with the impression that the author was keener to suggest new ideas than to unpack and dissect them. For whatever reason, his reasoning would stop short of exploring all the logical consequences or implications of his intuitions, or from pursuing those intuitions and other views to their logical conclusions. One is faced with a bright broad-brush fresco rather than a fully fledged and minutely polished up painting: as if one were contemplating certain paintings by Cézanne or Kandinsky rather than a Vermeer.

### B. *The Law of War*

We find some of the aforementioned characteristic of Rölöing's writings in his Hague Academy lectures on the law of war. The lectures are less ground-breaking and innovative than the booklet. Yet, this was an area where he had accumulated enormous personal experience and knowledge. First, he had suffered from the long German occupation of the Netherlands (1940–1945), during which he had been transferred from Utrecht to Middelburg as a judge, on account of his opposition to the Occupants<sup>5</sup> (once he told me that in that period, while he was playing the violin in a quartet with some friends, a German officer overheard the music as he was passing outside the house and stopped; Rölöing and his friends immediately ceased playing for they did not wish to play for Germans; later he wrote that 'life in occupied territory is doomed to be life in hell'<sup>6</sup>). He was then appointed to the bench at the Tokyo International Tribunal, spending two full years in Japan (1946–1948). That experience became of great importance to him, for, being intellectually curious and keenly interested in understanding the culture and mindset of a different people, he did not confined himself to acting as a judge, but strove to grasp the motivations and goals of the Japanese leaders before and during the war. This enabled him to take a critical view of the Allies' policy and their approach to post-war Japan, as well as to lucidly notice the limitations of the International Tribunal's role. Finally, upon his return in the Netherlands,

5 On this point see the paper by N. Schrijver, in this issue of the *Journal*.

6 'The Law of War and the National Jurisdiction since 1945', *Hague Recueil* (1960), at 412.

he was appointed to the Special Court of Cassation (*Bijzondere Raad van Cassatie*) trying Germans accused of international crimes and Dutch nationals charged with the crime of collaborating with the enemy (1949–1951). He deeply immersed himself into this new judicial activity and in addition he commented on cases brought before Dutch courts when he was not the one hearing and adjudicating them.<sup>7</sup> This breadth of judicial experience formed the basis of his analysis of the law of warfare after 1945.

It is intriguing to unearth the main themes underpinning the conceptual framework within which he conducted his review of the Dutch (as well as, in some instances, foreign) case-law relating to modern law of warfare (what we today term ‘international humanitarian law’).

The first fundamental theme was that the interpretation of that body of law (and, I presume, of any rule of international law more generally) is conditioned by the general outlook of the country to which a court belongs. In Röling’s words:

The position of a country determines the outlook of its lawyers and its judges, their evaluation of values and interests, their opinion about the meaning of treaty-texts and their appreciation of a specific custom.<sup>8</sup>

He went on to specify that on this score, one should be alert to the different or even conflicting position of ‘highly developed nations’ as opposed to ‘poor, underdeveloped countries’, between ‘old countries’ and ‘newly independent states’, between ‘formerly colonising states’ and ‘former colonies’, between ‘countries with an old military tradition and a technically highly developed army’ and ‘countries, recently become independent, with no army of any significance’, between ‘probably-occupying countries’ and ‘probably-occupied nations’. The general stance of each country within these categories had, in his view, a bearing of the legal attitude of national courts towards the law of war.<sup>9</sup>

The second major idea was that the law of warfare must be considered in light of its historical development. While the body of law existing at the outbreak of the Second World War rested on notions developed after the Franco-Prussian War of 1870, modern warfare, as it evolved following 1939–1945, is predicated on the principle of ‘total war’ — admittedly a concept not new, for it went back to von Clausewitz<sup>10</sup> — a principle which entailed that

7 I have gone through all the cases handled by the Special Court and published in *Nederlandse Jurisprudentie* in 1949–1952, finding only one case where Röling sat on the bench (12 April 1950, *ibid.*, 1951, no. 176, at 364–365). Probably, most decisions in which Röling took part were not published. In contrast, the journal carries a great number of other cases commented upon by Röling in scholarly notes.

8 Röling, ‘The Law of War’, *supra* note 6, at 332.

9 *Ibid.*, at 332–333.

10 It is common knowledge that Clausewitz, in his turn, theorized Napoleon’s way of conducting war. In 1916, Heinrich Triepel recalled that in the 19th century General von Moltke attacked the clause of the St Petersburg Declaration of 1868, whereby the only goal of war was to weaken the military forces of the enemy, saying that ‘no, one must attack all the sources of support of the enemy Government, its finances, its railway, its food supplies, even its prestige’ (H. Triepel, *Die Zukunft des Völkerrechts* (Leipzig/Dresden: B.G. Teubner, 1916), at 54).

the economy and the industrial capacity of the belligerent plays a decisive role, so that the bombing of industrial plants and the civilians living there is accepted and more generally, civilians get increasingly embroiled in the armed conflict.<sup>11</sup>

The obsolete nature of the traditional law was manifest, in Röling's view, in the law of belligerent occupation. With regard to this segment of law he masterfully outlined both the inherent conflict between small or weak countries, susceptible to being occupied and the major powers, likely to be the occupants, and the evolution of the law, in an attempt to strike a balance between clashing interests.<sup>12</sup>

A third thematic pillar upholding Röling's enquiry into the law of warfare was his general view of the role of these laws. Over the years, he had acquired so much experience that he was able to propound some general reflections on the matter. First of all, he felt that it would be bad to change the law in an unrealistic manner by disregarding the inherent exigencies of armed hostilities. As he put it:

It is one of the great dangers of the law of war to formulate rules which officially and generally will be violated. Because such violation will breed hatred and contempt, with regard to men, and with regard to law.<sup>13</sup>

He also warned against legal rules which are vague and unable to serve as safe yardstick for the combatants. As he put it: 'Legal rules on warfare must be frank and unambiguous, and realistic.'<sup>14</sup> This last proposition is in some respect at odds with what he once stated during a public discussion on a paper I had presented on the role of general principles of humanitarian law, mainly the ban on weapons causing unnecessary suffering. After a review of the state practice concerning the application of the principle, I had concluded that both the loose nature of the principle and the failure of states to implement it in actual practice led to a belief that in fact the principle was pointless. Röling countered my position in a spirited intervention, rightly noting that one should not disregard the value of principles, however weak and hazy they may be, and even if they have never been applied. One day, he added, a state or a non-state actor could invoke the principle and set the process in motion leading to its effective application. I was persuaded by his criticism and accordingly revised my paper. Instead, another point which he frequently made, and of which one can find traces in his Hague lectures, was that the law of war is not predicated on the belief that men are heroes; on the contrary, it starts from the more accurate assumption that men are frail, cowardly and are generally moved by strong passions.

The fourth concept on which the lectures are built relates to the prosecution of international crimes and in particular of war crimes. Röling's experience

11 See in particular, *ibid.*, at 395, 414–415, 440.

12 See *ibid.*, at 406–409, 414–416

13 *Ibid.*, at 417. See also, 438–439.

14 *Ibid.*, at 445.

with war crimes trials led him to be very sceptical about criminal justice, for various reasons. First of all, courts can only prosecute a very small number of culprits. He noted in this connection that while in the Netherlands 100 000 Jews had been murdered, Dutch post-war courts had delivered only 14 528 judgments, in total 193 Germans had been punished (of them 14 had been sentenced to death but this sentence had been executed only against five convicts).<sup>15</sup> The second reason for his disenchantment was that national laws envisaged war crime trials against the enemy (or the former enemy), while ignoring or condoning the crimes perpetrated by one's own military.<sup>16</sup> More generally, international justice was always a victor's justice. Röling had strong feelings about the 'one-sidedness' of justice dispensed after an armed conflict and considered that many trials were based on sheer hypocrisy.<sup>17</sup> He went so far as to assert:

The victor in a major war usually is in a position to transform his own violation of the law into widely or generally accepted rules of warfare or neutrality. The vanquished, however, in so far as a special military position led him to deviate on other points from accepted custom, is punished for his violations of the laws of war.<sup>18</sup>

He also rightly stressed that the trials conducted by the victors are usually strongly influenced by public opinion, to such an extent that courts may end up being slanted:

Even with regard to the facts the judges will be tempted to tamper with the truth. The temptation to do this may be very strong indeed, and moral pressure of public opinion and governmental wishes may be almost irresistible. During the war, war propaganda has been perhaps somewhat careless with the truth; however, most of the time the people were too angry and too indignant to care. But now punishment is requested as the consequence of the accusations. The inclination will be strong to build the verdicts on the picture that was formed by the war propaganda if evidence to the contrary is not given.<sup>19</sup>

His conclusion — based both on his realization of what had happened during and after World War II and his keen desire for *fair* justice — was very pessimistic: 'It is now beyond any doubt that in every future war the victor will try the vanquished.'<sup>20</sup> It seems to me that here the forward-looking and imaginative scholar missed an opportunity: he could not conceive the possibility that in the future, *international* criminal tribunals could be instituted bent on dispensing even-handed justice, not on behalf of the victor, but in the exclusive interest of the world community in the realization of the rule of law and the full implementation of the principle of accountability. In a word, tribunals could be set up and be composed of impartial persons without any links to the parties to a conflict and therefore unfettered by any national prejudice

15 *Ibid.*, at 329.

16 *Ibid.*, at 335–337.

17 *Ibid.*, at 331, 336, 356, 392, 429–434.

18 *Ibid.*, at 392.

19 *Ibid.*, at 430.

20 *Ibid.*, at 432.

or bias. By the same token, Rölöng seems to have neglected the chance for *national* criminal jurisdiction to be grounded not in territoriality or the principle of active or passive personality, but in universality. Instead of appreciating the possible future advantages of universal criminal jurisdiction, Rölöng harshly attacked this category of jurisdiction with strikingly state sovereignty-oriented and conservative reasons: he asserted that exercise of such a ground of jurisdiction would imply a meddling into other states' affairs.<sup>21</sup> He thus overlooked, amongst other things, the enormous significance of the criminal provisions on universal jurisdiction in the 1949 Geneva Conventions. These provisions, by upholding the principle of *aut judicare aut dedere* and predicating universal jurisdiction on the presence of the accused or suspect on the territory of the prosecuting country, envisaged a realistic mode of prosecution while proclaiming the principle of accountability of any author of very serious war crimes (the so-called 'grave breaches').

In spite of this failure to apply his utopian vision to international criminal justice, of some misapprehensions,<sup>22</sup> and more generally, the lack of a thorough discussion of some points treated with excessive haste, the Hague lectures remain a major work, where one can appreciate the wisdom, a wealth of perceptive observations,<sup>23</sup> and the accumulated experience and legal acumen of a great scholar.

## 5. Other International Lawyers on Rölöng

Being an unorthodox scholar, Rölöng was bound to arouse both strong feelings of admiration and have detractors. Some felt that he was not a true scholar in the traditional sense, since he combined various disciplines and research

21 'To authorize nations to try every war crime committed somewhere in this world in a completely foreign war has great disadvantages. Prosecution in such cases may be regarded as meddling and intervening in other's affairs. One may doubt, too whether a judge here would be able justly to evaluate events e.g. in South America.' (*Ibid.*, at 362.)

22 For instance, his definition of war crimes as 'any breach of the laws and customs of war which causes appreciable injury' (at 340), seems inadequate (cf. for example, the more detailed definition set out by the ICTY Appeals Chamber in *Tadić* (interlocutory appeal), judgment of 2 October 1995, at §§ 90–94). Also, Rölöng's remarks on the value of the Martens Clause (*ibid.*, at 350–354) and his conclusion that 'the laws of humanity are a source of binding rules' (at 351) is unsubstantiated by any practice or *opinio juris*, and is also contrary to the *nullum crimen* principle, which among other things implies the requirement for *specificity* of criminal rules.

Also, his statement that at Nuremberg 'only Streicher was sentenced for crimes against humanity committed before 1939' (at 347) is inaccurate. Streicher was convicted for his instigation of persecution of Jews after 1939. The IMT stated: 'Streicher's incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes persecution on political and racial grounds in connection with war crimes as defined by the Charter, and constitutes a crime against humanity.' (Judgment of the International Military Tribunal for the Trial of the German Major War Criminals, Nuremberg, 30 September and 1 October, 1946, Vol. 1 (London: H.M.S.O., 1951) 100, at 102.)

23 For instance, see the important remarks on the *nulla poena* principle (at 368–370).

methods and tended not to delve into problems deeply. It was also felt that he was more inclined to propose new strategies and lines of action than to investigate the existing legal infrastructure of the international community. To some extent, the reserve of many of his peers accounts for his aforementioned failure to be offered the most prestigious Dutch professorship in international law, that of Leyden.

While it is understandable that mainstream scholars looked upon his scholarly production with reticence or even some hidden hostility or scepticism, it is a fact that he nevertheless enjoyed widespread respect in Europe for his critical mind and his ground-breaking ideas. In addition, many distinguished international lawyers, whatever their ideological leanings and legal approach, did not hesitate to express their admiration for him. I should report at this point the comments on Röling's personality and achievements made to me in interviews going back to the 1990s by such diverse scholars as the French René-Jean Dupuy and the Uruguayan Eduardo Jiménez de Aréchaga.<sup>24</sup>

The former, when I asked him in June 1993 whether he had met the great Dutch scholar, replied as follows:

I met Röling in The Hague of course and in various colloquia at the Institute of International Law. I also met him once in Florence during a lunch at Rügger's house, who respected him a lot. Their friendship was all the more remarkable since Rügger was a great realist and Röling was regarded as a great utopian, as a person with a generous mind, but who, in the eyes of his critics, was cut off from the international world. Ridiculous criticisms. Rügger had great esteem for Röling because he himself was a great intellectual and he had perfectly understood that Röling's alleged utopianism was really a perfectly lucid view of the world. His vision was both that of a great moralist and a specialist in political science and law. Röling actually castigated the international world. In addition to his high intellect and moral stature, he also had a great deal of charm and truly glowed when he spoke.

When I asked him whether he thought that Röling was a moralist rather than a jurist, his answer was as follows:

I believe he was a jurist. Without a doubt. But the reputation of a jurist is always a rather cold one. When we say that someone is 'a great jurist', it means he's a good legal technician. But when a jurist has a great deal of prestige and personal aura, it's for other, loftier reasons. Either because he has a critical view of law, or because he has a critical view of society in general and because his judgements have a philosophical dimension. Law itself gives us a reason to admire those who are very clever, those who know how to manipulate it, and apply it in difficult cases. We admire professors who know how to capture the interest of their audience in a lively way during a lecture, even though the subject seems technical and off-putting. We admire great masters who can clearly present complex issues. But this doesn't go beyond a certain level of esteem. Whereas for Röling, I believe there was an admiration which was more than just an admiration of his qualities as a jurist, which were undeniable and stemmed from his personal brilliance.

24 The interviews, with three others, will soon be published in a book (A. Cassese (ed.), *Five Masters of International Law*, Oxford: Hart Publishing, 2011, forthcoming).

When prompted to answer whether he thought Rölöng had had an effect on the international scene, Dupuy answered:

He did not have influence on the international scene, which belongs largely to Machiavellians and does not willingly pay much attention to prophets. He had a great deal of influence on many students and, through them, on the evolution of thought.

Eduardo Jiménez de Aréchaga told me in November 1993 that he had first met Rölöng in 1950, at the UN General Assembly, in Paris, in the Committee that discussed aggression. He recalled that Bert had told him that ‘Aggression is like a beautiful girl. It is very difficult to define in advance but everyone recognizes her as soon as they see her.’ And added: ‘We had a great laugh.’ Jiménez de Aréchaga also pointed out that Bert ‘was a great man, a great personality’, and that what had struck him was ‘his idealism’. In his view, Rölöng was not a positivist lawyer but ‘a great human being’.

## 6. By Way of Conclusion

Rölöng was indubitably an eminent scholar, although his writings are not notable for the rigour of the argumentation or the elegance of the exposition. In his numerous and enduring scholarly works he departed from traditional legal scholarship and, by drawing upon history, sociology and international relations offered new insights into the world order. He also had an admirable passion for reform.

A few days after his passing away, his wife sent me a letter to let me know that Bert had died ‘a Socratic death’ (I later gathered that he had decided no longer to suffer from a lung cancer). Therefore, it seems to me not inappropriate to use for him the words that Phaedo, one of those who had witnessed years earlier the death of Socrates, tells Echecrates about the passing away of the master: ‘Such was the end, Echecrates, of our friend, who was, as we may say, of all those of his time whom we have known, the best and wisest and most righteous man.’<sup>25</sup>

<sup>25</sup> *Phaedo*, 118 a (trans. H.N. Fowler).