

INTERNATIONAL CRIMINAL COURT AND TRIBUNALS

In Memoriam, Bert Swart

GÖRAN SLUITER*

Bert Swart passed away on 17 February 2011, at the age of 69.

We lose in Bert a great and loving friend and colleague. Those who knew him personally will remember his kindness, generosity, and modesty. Bert spoke with a soft voice and was genuinely interested in and friendly to others.

Bert will also be remembered as a legal and scholarly authority who has made vital contributions, both as an academic and as a practitioner, to various fields of law. International friends and colleagues may know Bert because of his prominence in international criminal law, but he also enjoyed an excellent reputation in Dutch and European criminal law as well as refugee law, in which he started his academic career.

It is impossible to summarize Bert's seminal life's work in just a few pages. This short 'laudatio' is bound to be selective and incomplete.

Bert studied law at the University of Nijmegen in the roaring 1960s. When he moved to Amsterdam as a young scholar, he was influenced and inspired by famous Dutch scholars Enschede (criminal law) and Meyers (international law). Bert always remained an 'Amsterdammer', the city where he felt at home and lived until his death, also when he worked in Utrecht and in The Hague. He wrote his PhD thesis at the University of Amsterdam, on the subject of refugee law. But his heart lay in criminal law. He became professor in this field at the University of Utrecht in 1980, in the footsteps of prominent criminal-law scholars such as Willem Pompe (after whom the department of criminal law was named) and Toon Peeters. Bert thrived in the 'Utrecht school of criminal law', hallmarked by its strong orientation towards the protective function of criminal justice regarding the accused. It was also during this period that he developed a passion for international criminal law and soon became one of the leading authorities in this field.

In 1983, he delivered his impressive inaugural lecture on *goede rechtsbedeling*, which may be translated from Dutch as the proper administration of justice between states. This work is still highly relevant and, in my view, is a must-read for all those who want to make sense of the ICC's principle of complementarity. Moreover, in

* Professor of International Criminal Law, in particular international law of criminal procedure, Department of Criminal Law and Criminal Procedure, Faculty of Law, University of Amsterdam (UvA) [G.K.Sluiter@uva.nl].

1986, he published his *magnum opus* on extradition – a lengthy and thorough study. Only a short while ago, he started working on a revised and updated edition, which he never got the chance to complete.

In the 1990s, his interest in international criminal law grew as a result of both the establishment of the ICTY and other international tribunals and courts and crucial developments within the EU, giving rise to a system of European criminal law. It is admirable that he managed to master these new fields of law and at the same time remain a major authority in Dutch criminal law – a subject on which he continued to publish fine scholarly works. This combination is as good as impossible for young scholars, who are more and more compelled to specialize. The ability to continue being a real expert in a broad range of subjects is only reserved to true academics with unique qualities and genuine passion, such as Bert.

After he became a professor in Utrecht, Bert supervised a good number of PhD candidates; I was extremely fortunate to become one of them in 1996. I recall that André Klip, who also worked under Bert's supervision, was, just like me, greatly inspired by him. In his work with young scholars, Bert was a truly dedicated *Doktorsvater*. He was very demanding, but he cared deeply about his students and put great time and energy into guiding them gently on a journey of academic life. Even beyond his function as a supervisor, he continued being a mentor and role model for all of us. Being trained by Bert, I learned much of his approach to studying (international) criminal law. He was blessed with the remarkable ability of being very open and associative in his thinking and looked at issues from multiple angles. This also explains the title of the book published in his honour on the occasion of his leaving Utrecht University: *Er is meer* (which translates as 'there is more to it'). This phrase was indeed typical of Bert. It may not have always been easy for students and authors whose work he was reviewing: even if they thought that they had delivered a thorough and exhaustive piece, Bert was the one to bring in many additional points and perspectives that enriched the work and invariably came to be appreciated by its author. With any other, there would be a risk that such rich and associative thinking could result in chaotic or inaccessible writing, but this was not the case with Bert, which attests again to his unique qualities as a scholar. He was a true master in converting his knowledge and ideas in both very detailed and well-structured writing.

In 1996, Bert left Utrecht University to start as a practitioner. He became a judge at the Amsterdam Court of Appeals, which he absolutely loved doing, although he may have thought that it consumed much of his time. He also obtained a part-time position at the University of Amsterdam as professor in European criminal law. His inaugural lecture on the mutual recognition of criminal judgments within the EU was published in 2001. Just like his previous contributions, it was a work of supreme quality that inspired others active in the field of European criminal law and greatly enriched existing approaches to that field. He was at the forefront of a new important and fascinating field of law. While being a professor of European criminal law who taught that subject for many years at the University of Amsterdam, Bert also continued to be very active in international criminal law. He wrote many excellent articles and book chapters on various topics in that domain. In recognition

of his academic contributions, he was invited to join the editorial board of the *Journal of International Criminal Justice*.

Bert was deeply honoured and very pleased when he was selected as an *ad litem* judge at the ICTY. He sat for a number of years in the Hadžihasanović Chamber, which delivered its impressive and seminal judgement in 2006. With his professional and human qualities and his great sense of responsibility, the ICTY could not have had a better judge. I believe that it was a good decision to select him as an STL judge just a few years later. Unfortunately, he never got to work on a case in that tribunal, but he did work really hard and devotedly on the draft STL Rules of Procedure and Evidence and the amendments, along with other preparatory matters.

In 2006, at 65, Bert was eligible for retirement. From then on, he started spending more time with his family, but he also continued to be active, both as a practitioner and as an academic. We were very privileged and happy to have him as a colleague within our department of criminal law also after his retirement. I remember Bert was still so replete with creative ideas and plans when he fell ill. When I visited him in the hospital in July 2010, he was very concerned about his commitments and responsibilities in the ongoing projects (in this case, it was the book on the legacy of the ICTY that Bert co-edited with Alexander Zahar and me). This consciousness and sense of responsibility in spite of the circumstances were very typical of Bert.

Bert was fighting fiercely for his recovery, but towards the end of treatment was too weakened by illness to win . . .

A uniquely prominent and impressive academic and professional, Bert was, above all, a wonderful and deeply caring man.