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INTERNATIONAL LAW AND PRACTICE

A Portrait of Judge P. H. Kooijmans – A Passionate Advocate of the Rule of Law in International Affairs

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Abstract

In 2013 the Netherlands lost its standard bearer in international law. After a short period of illness, Pieter Hendrik Kooijmans died at the age of 79 on 13 February 2013. Some time before his illness the author had an extensive and frank interview with Judge Kooijmans who reflected on his life and work, especially on his intellectual formation, his understanding of the essence and core functions of law, his experiences as UN special rapporteur on torture, his ideas on reform of the International Court of Justice, and the great changes that have taken place in international law. This portrait shows a fine man with a strong sense of justice who was fully dedicated to the substance of public international law without turning a blind eye to its shortcomings and relative influence in international and domestic affairs. The interview is preceded by an introduction and concludes with some observations on his long and productive life in the service of peace, justice, and respect for human rights through the law.

Key words

Dutch constitution; European integration; foreign policy; function of law; International Court of Justice; international dispute settlement; torture; UN reform

1. INTRODUCTION: AN OVERVIEW OF KOOIJMANS' LIFE AND WORK

Professor, UN diplomat, government minister, and international judge. These are the four vocations that Pieter Hendrik Kooijmans (6 July 1933–3 February 2013) practised with great inspiration. Born to a strict Protestant family, it was only natural that, after completing his gymnasium at the Haarlem First Christian High School, he attended the (Calvinist) VU University Amsterdam where he studied law and economics. In 1958, he graduated as a lawyer before obtaining his PhD *cum laude* from the same university in 1964 with the dissertation: *The Doctrine of the Legal Equality of States. An Inquiry into the Foundations of International Law.*[1]

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1 A commercial edition was published by Sijthoff, Leiden (1964). See the special edition of the *Netherlands Yearbook of International Law*: J. E. Nijman and W. G. Werner (eds.), 'Legal Equality and the International Rule of Law: Essays in Honour of P. H. Kooijmans', (2012) 43 NYIL 3, at 3–24.

'The last time I looked at it, I wasn't disappointed. It is actually still surprisingly relevant', Kooijmans said to me not without some pride. His PhD supervisor and intellectual mentor was Gezina van der Molen (1892–1978), the first and, for a long time, the only female professor of international law in the Netherlands. This unorthodox and colourful law academic clearly made her mark on his development as a scholar of international law.[2] At the age of 31 Kooijmans was appointed Professor of International Law and the Law of European Communities at the VU University Amsterdam. His inaugural address, held on 26 March 1965, was entitled 'International Law and Social Justice' which covered a theme that was to remain close to his heart for the rest of his life.[3] In this address, he examined what the demand of social justice means for international law and what possibilities the latter offers for achieving the former. Kooijmans argued that social justice as a norm in the postwar formulation of human rights and the decolonization process did not appear out of thin air but had its roots in inter alia the law of war (*jus in bello)*, the minorities treaties in the era of the League of Nations, and the doctrine of humanitarian intervention (*bellum justum*). In his address Kooijmans elaborated on the description of social justice by T. P. Van der Kooy, Professor of Economics at the VU University Amsterdam, who saw the recognition by every person of the rights of their fellow humans to a dignified life as an essential element of social justice, as well as a guideline and standard in their own efforts to achieve progress and prosperity.[4] Social justice, therefore, does not exclusively mean more co-operation and partnership law between states but also has significance for the rights and responsibilities of the individual person, the populations of states and for all humanity.

In 1973, Kooijmans was unexpectedly appointed as State Secretary (Deputy Minister) of Foreign Affairs with special responsibility for disarmament and UN affairs (although he was already vice chairperson of the Calvinist Anti-Revolutionary Party) in the renowned Den Uyl centre-left cabinet (1973–78). Several other members of his ARP (including the ministers De Gaay Fortman and Boersma) also took part in the government.[5] This was a turbulent period in both Dutch and international politics which was marked by the Arab–Israeli conflict (1973), the call for a New International Economic Order (1974–76), the first Lomé Convention between the European Community and 46 developing countries (1975), the independence of Surinam (1975), sanctions against apartheid South Africa (an arms embargo in 1976)

2 For more information on Van der Molen see the biography by G. van Klinken, *Strijdbaar en omstreden. Een biografie van de calvinistische verzetsvrouw Gezina van der Molen* [*Assertive and Controversial. A Biography of the Calvinistic Resistance Woman Gezina van der Molen*] (2006); also J. de Bruijn (ed.), *Gezina van der Molen Herdacht* [*In Memory of Gezina van der Molen*] (1993).

3 P. H. Kooijmans, *Volkenrecht en sociale gerechtigheid. Een peiling* [*The Law of Nations and Social Justice. An Assessment*], at 30. See also P. H. Kooijmans, *Op zoek naar Het Recht van een nieuwe internationale economische orde. Abstractie of realiteit?* [*In Search of the Law of a New International Economic Order. Abstraction or Reality?*] (1981) and his chapter 'Armoede, rijkdom en recht in het internationaal bestel' ['Poverty, Wealth and Law on the International Plane'] in J. van Nieuwenhove, *Armoede, rijkdom en recht* [*Poverty, Wealth and Law*] (1987), at 47–58.

4 See T. P. van der Kooy, *Om welvaart en gerechtigheid* [*On Wealth and Justice*] (1954), at 93.

5 See B. F. de Gaay Fortman, 'Volkenrechtsgeleerde en staatsman' ['International Law Scholar and Statesman'], in *Jaarboek Parlementaire Geschiedenis* (2013), at 171–4. See also the commemoration of Kooijmans, minister of state, in both houses of the Dutch parliament, Proceedings of the Lower House TK 57 and Upper House EK 19, 5 March 2013.

and the beginning of the Helsinki process that led to *détente* between East and West (1976). At that time, the Netherlands had a proactive foreign policy in many areas (the Netherlands saw itself as a pioneer or 'model country' in this field)[6] and together with Van der Stoel (Minister of Foreign Affairs), Pronk (Development), and Brinkhorst (European Affairs), Kooijmans was one its architects. Together with Van der Stoel, Kooijmans issued a white paper on Disarmament and Security.[7]

In 1978, he returned to academic life – not to the VU University Amsterdam but to the University of Leiden – which was not appreciated by his former colleagues. This time his inaugural address was entitled 'De volkenrechtswetenschap en de crisis in het volkenrecht' ('The Discipline of International Law and the Crisis in International Law'). A comparison of this address with his first inaugural address of 1965 on social justice clearly demonstrates that Kooijmans had been strongly chastened by his exposure to practice in the real world. He found that, in the intermediate years, for example, the International Court of Justice had seldom been called upon to adjudicate disputes. In his opinion, the principal question to be asked was why states rarely made use of the many instruments available for international dispute settlement when there were so many disputes. He felt that the answer could not be found in rendering the jurisdiction of the International Court of Justice compulsory. It appeared to him that the international legal order would not grow to full maturity by taking the path of strengthening organizational structures, in particular in the area of formulating law, administering justice, and maintaining law and order. Nevertheless, most practitioners of international law continued to focus primarily on this approach. For this reason Kooijmans referred to a crisis in international law. He found that too many medicines are concocted for the prevailing ills in international relations without first making an accurate diagnosis on sound legal and political principles.[8] He consequently advocated a cross-fertilization of legal and sociological research. His new professorship resulted in a constant series of publications on quite diverse subjects including peaceful settlement of international disputes, the role of the Security Council, the International Court of Justice, and sovereignty and human rights. In this period his textbook, *Internationaal publiekrecht in vogelvlucht* (*A Bird's Eye View of Public International Law*), was also published. The first edition appeared in 1989 and the last, tenth edition, which was edited and updated by others, in 2008.[9] In this period Kooijmans also served in many organizations active in Dutch society and within the framework of the United Nations (UN). He was part of the Netherlands delegation to the UN Commission for Human Rights in the early 1980s and served as chairperson of this commission in

6 This term was coined by B. F. de Gaay Fortman, at that time chairperson of the left-wing PPR party. See his article, 'De vredespolitiek van de radicalen' ['The Peace Policy of the Radicals'], in (1973) 27 *Internationale Spectator*, at 112.

7 'Ontwapening en Veiligheid: Nota over het vraagstuk van ontwapening en veiligheid' was presented by the minister and state secretary of foreign affairs to the lower house of the Dutch parliament, 1975. Kamerstuk 1974–75, 13461, Nos. 1–2, 76 pp.

8 P. H. Kooijmans, *De Volkenrechtswetenschap en de crisis in het volkenrecht. Poging tot een analyse* (29 October 1978), at 20.

9 P. H. Kooijmans, *Internationaal publiekrecht in vogelvlucht* (2008), edited by M. M. T. A. Brus, N. M. Blokker, and L. J. A. Senden.

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1984–85.[10] In 1985, he was appointed as the first UN Special Rapporteur on Torture, an issue that had made a deep impression on him and a position that, according to him, has influenced him enormously: 'This helped me to overcome some hesitation and reluctance to take certain standpoints'. He depicted torture practices as the 'scourge of the twentieth century' and 'the criminal destruction of the human individual which cannot be justified by any ideology or higher interest'. In his eyes, progress towards the elimination of torture was exasperatingly slow with the speed of a snail on a barrel of tar if one observes the headway made on a day to day basis. However, if one makes observations with greater intervals, some genuine progress can be seen. Even the existence of a special rapporteur on torture was unthinkable twenty years ago.[11] Kooijmans remained in this honorary UN position until 1992.

Again unexpectedly ('a bolt out of the blue', according to Kooijmans), he was asked to serve as minister of foreign affairs in the Lubbers III cabinet that consisted of the PvdA (Labour party) and the Christian Democratic CDA (which was the successor party to his ARP). He replaced Van den Broek who had been appointed as the EU Commissioner for External Relations and European Neighbourhood Policy. Kooijmans enjoyed to the full his short term as minister (4 January 1993–22 August 1994) and carried out his duties with considerable panache.[12] His time as minister coincided with the breakup of the former Yugoslavia along ethnic lines and he was one of those responsible for the cabinet decision to deploy 'Dutchbat' to Bosnia–Herzegovina to protect Srebrenica as a 'safe area' in line with the decision taken by the Security Council.[13] Furthermore, Kooijmans fulfilled an important role at the World Conference on Human Rights in Vienna, the first after the Cold War. At the national level he capably steered through both houses of parliament a new law on the approval and promulgation of treaties.[14] Although Kooijmans enjoyed being a minister, he returned somewhat relieved to Leiden after his party – the CDA – dramatically lost elections under a new leader, Elco Brinkman. Yet he did not occupy his chair in Leiden for long. In 1995, a first attempt to fill a vacancy at the International Court of Justice that had resulted from the death of the Italian judge Ago failed.[15] However, after a long and intensive international campaign by the Netherlands in 1996, his 'boyhood dream' was realized when he was appointed as a judge of the International Court of Justice for a term of nine years. Kooijmans knew

10 See also C. Flinterman, 'Peter Kooijmans and Human Rights', in (1997) 10 LJIL 126, at 126–31.

11 See also P. H. Kooijmans, 'Foltering – Een onuitroeibaar kwaad ['Torture - An Ineradicable Evil']?' in (1993) 42 *Ars Aequi* 36–45, at 45.

12 See P. R. Baehr, 'Pleitbezorger voor de mensenrechten. Pieter Hendrik Kooijmans (1993–94)', in D. A. Hellema, B. Zeeman, and A. C. van der Zwaan (eds.), *De Nederlandsche ministers van Buitenlandse Zaken in de twintigste eeuw* (1999), 283–93; J. G. Lammers, 'Pieter Kooijmans: Minister for Foreign Affairs', in (1997) 10 LJIL 122, at 122–6.

13 See Security Council Resolution S/RES/824, 6 May 1993. On this dark period in Dutch history see J. C. H. Blom and P. Romijn, *Srebrenica een 'veilig gebied'. Reconstructie, achtergronden, gevolgen en analyses van de val van een Safe Area*, 3 Parts (2002).

14 Rijkswet goedkeuring en bekendmaking verdragen [Act on the Approval and Promulgation of Treaties], (1994) 542 *Staatsblad* [*Government Gazette*]. This law elaborates Art. 91 of the 1983 Constitution of the Kingdom of the Netherlands and is applicable to both treaties and decisions of international organizations.

15 See the interesting interview held shortly afterwards with Pauline Hoefer-van Dongen, 'Het schaduwland van het volkenrecht. Interview met Prof. Mr. P. H. Kooijmans' ['The Shadow Land of Public International Law'], in (25 August 1999) 28 NJB [*Netherlands Law Journal*], at 1067–71.

the seat of this court, the Peace Palace in The Hague, like the back of his hand; he was Chairman of the Board of the Carnegie Foundation, which owns and manages the palace, and had been lecturer at The Hague Academy of International Law.[16] In the meantime, many more cases were being submitted to the International Court of Justice than in the 1970s, as described by Kooijmans in his critical Leiden inaugural address in 1978. During the period 1997–2006, the Court made in total 50 judicial pronouncements of which eleven were final judgments in disputes between states and two were important advisory opinions including that on the legal consequences of Israel building a wall on occupied Palestinian territory. In the judges' chambers of the Court, Kooijmans was praised for his balanced ideas, his team spirit, and his wisdom.[17] Although he was a team player, he did not hesitate to adopt his own positions, as his many declarations, separate opinions, and one dissenting opinion in the Court's judgments make clear.[18] From these expositions of his personal opinion, it appeared that he often thought it important that the Court should pronounce more frequently on matters of principle (for example on the rules for the use of force)[19] in order to create more clarity and unambiguous legal principles. As he wrote not long after his term came to an end: 'I am certainly not in favour of judicial activism which may turn into a destructive trap. But neither am I in favour of a form of judicial restraint that closes windows which need to be opened and thus becomes barren.'[20]

At the same time, Kooijmans' separate opinions show that he disdained 'wishful thinking' and clearly wanted to keep politics out of the courtroom. On 5 February 2006, he completed his term as a judge of the International Court of Justice. In 2007, Queen Beatrix appointed him as Minister of State of the Netherlands (an honorary title bestowed on some statesmen) on the recommendation of the Balkenende–Bos cabinet. The Queen also named him Knight in the Order of the Golden Lion of the House of Nassau, an exceptional honour. Kooijmans remained faithful to the Christian Democratic party although in 2010 he belonged, in his own words, to 'the CDA dinosaurs' who rejected an agreement by which the anti-immigration party PVV, led by Geert Wilders, supported the Rutte I minority government (which included his CDA) in parliament.

16 See P. H. Kooijmans, 'Protestantism and the Development of International Law', in *Receuil des Cours de l'Académie de la Haye*, Vol. 152 (1976-IV), at 79–118.

17 See, e.g., 'Speech by Rosalyn Higgins – 20 February 2013', reproduced in (2012) NYIL, at xi–xii.

18 For a comprehensive discussion see M. M. T. A. Brus, 'Judge Pieter Kooijmans Retires from the International Court of Justice', in (2006) 19 LJIL 619, at 619–717.

19 *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment of 6 November 2003, Separate Opinion of Judge Kooijmans; *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgment of 13 December 2005, Separate Opinion of Judge Kooijmans. See also his chapter 'The Legality of the Use of Force in the Recent Case Law of the International Court of Justice', in Sienhoo Yee and J.-Y. Morin (eds.), *Multiculturalism and International Law: Essays in honour of Edward McWhinney* (2009), at 455–66.

20 See P. H. Kooijmans, 'The ICJ in the 21st Century. Judicial Restraint, Judicial Activism or Proactive Judicial Policy', (2007) 56 ICLQ 741, at 753.

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2. Education and teachers

Kooijmans graduated in Dutch Law with a specialization in constitutional law. He wrote his thesis under A. M. (André) Donner. As Kooijmans explained: 'The subject was Secret Treaties and the Dutch Constitution. Donner was chairperson of the constitutional commission for which he had a lot of work to do. He was quite clever in getting all of his students to write theses on parts of the constitution to be revised. I had to write my thesis in order to prepare the way for the articles on ratification of treaties, which then were Articles 60 to 64 and now is 91 of the Dutch Constitution'.

Why did you study law?
Kooijmans: 'Like many people, because I couldn't think of anything better. Actually, I wanted to study history but I didn't fancy teaching. I therefore chose law and have taught for the rest of my life . . . ' I ask Kooijmans where his interest in international matters came from: 'I think from the war; I grew up in the time that the United Nations was founded. Trying to do something that would prevent war I found interesting. Hence the European movement also appealed to me.'

In the course of his law study Kooijmans attended lectures by Professor Gezina van der Molen, who would later be his PhD supervisor. Did you first meet her at the VU University Amsterdam?
Kooijmans: 'Gezina van der Molen attended the same church as my family; I saw her stride into the church from the right while we entered on the left. She was a very impressive lady. She had a very strange way of relating to her students; she gave very remarkable lectures. She wrote down everything by hand and then read it out aloud. I always thought that I would never do that as it is a terrible amount of work; you are continually writing. After the lectures, she took us to cafés or to her home where we discussed every issue under the sun. She had a very small group of seven to eight students so it was actually a continual private lesson. During the lectures you had to write like a maniac and you had to learn that *verbatim* as she asked detailed questions on all the material in oral examinations. She had written an excellent dissertation on Alberico Gentili that was positively referred to by Nussbaum in his *Concise History of the Law of Nations*.[21] She was strongly influenced herself by Max Huber; he was like a guru for her.'

Which other people played an important role in your education as a jurist?
Kooijmans: 'Professor Sjoerd Gerbrandy (1915), who lectured on civil law, also made a great impression on me. He had the gift to perfectly explicate law as an issue of management. In his lectures on case studies your head was almost literally put on the block. You really learned to clearly formulate your ideas and to analyse a legal problem. Moreover, he had a very strong sense of justice.'

21 G. H. M. van der Molen, *Alberico Gentili and the Development of International Law. His Life, Work and Times*. Dissertation (1949). Cited in A. A. Nussbaum, *A Concise History of the Law of Nations* (1962), who wrote that 'in 1937 a Dutch woman jurist, Dr Gezina H. J. van der Molen, honored his memory in English, perhaps the best biography ever written on an author in the field of international law'.

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We speak further on those who had a great influence on him later in his life and career as jurist. As first, Kooijmans mentioned the Groningen professor and former judge of the Tokyo war crimes tribunal, B. V. A. Röling (1906–85):[22] 'I made the acquaintance of Röling in the Advisory Committee on Issues of Public International Law. At that time he was already the scapegoat at the Ministry of Foreign Affairs, particularly due to his criticism of the policy of Minister Luns on New Guinea.[23] I always found it fascinating how he approached matters from a non-legal perspective. He always considered the impact of the law on society as such. That of course set a specific tone in an era when international law was mostly seen as a technical matter of treaties and customary law. In fact, he was for that reason a kindred spirit of Gezina van der Molen. They got along very well together although they never agreed on anything. Through the force of his personality Röling has remained an influence on me. Max van der Stoel also had a great influence on me in the field of human rights and the norm of justice, not so much as a jurist as he was mostly a politician at heart. Of course, there have also been very many people from whom I have learnt much in the area of human rights such as Sir Nigel Rodley, Theo van Boven and others.'

Finally, Kooijmans named the Polish judge Manfred Lachs (1914–93): 'Lachs has always been a source of inspiration for me in international law. He always described me to some extent as his son. That began when I was secretary of state (1973–77). He was president of the International Court of Justice at the time and it was in this period that a section of the Court wanted to leave The Hague. In the General Assembly there was even an agenda item: 'Relocation of the International Court of Justice'. That was of course not very flattering for the Netherlands. The judges didn't want to stay in The Hague; they found it a sleepy town where they were not recognized as very important. At that time there was also the issue of *précédence*. They had no *précédence* and actually came behind the diplomats which they all found quite annoying. A large group wanted to leave The Hague; nobody knew where to. Lachs thought it was all nonsense and said that they would have the same problems anywhere else. He regularly visited me at the ministry to discuss the issue and said a step in the right direction would be to give the Court new accommodation. The Peace Palace was no longer up to date. At that time, the Court had hardly any – and sometimes no – cases and therefore the judges sat together only to grumble about the inadequacies of The Hague. Then Manfred said: "if we were to get some decent accommodation with each judge provided with his own room, own secretary and own toilet, then things would definitely improve". We managed to get agreement on all these issues and the annex was built. Fortunately, they got more to do afterwards and the whole matter blew over. I always maintained regular contact with Lachs. He died in the saddle as judge when I had been a minister for only four days. I was with him in his final hours.'[24]

22 See also P. H. Kooijmans, 'Röling als beoefenaar van het volkenrecht [Röling as International Law Scholar]', in *Transactie – Tijdschrift over Vraagstukken van Oorlog en Vrede*, Year 15 (1986), No. 2, at 113–23. See also W. B. Verwey, *Bert V. A. Röling, 1906–1985* (1985); N. J. Schrijver, 'B. V. A. Röling – A Pioneer in the Pursuit of Justice in an Expanded World', (2010) 8 *Journal of International Criminal Justice* No. 4, at 1071–91.

23 See B. V. A. Röling, *New Guinea, Wereldprobleem* (1958).

24 See also P. H. Kooijmans, 'In Memoriam Manfred Lachs', in (1993) 6 LJIL 198, at 198–9.

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3. UN RAPPORTEUR ON TORTURE: 'THE SCOURGE OF THE TWENTIETH CENTURY'

Kooijmans: 'Working as a UN rapporteur was a quite special and formative period for me. I was the first Special Rapporteur on Torture. The convention was agreed in 1984.[25] I had to give shape to a completely new area that, unlike other areas, took place clandestinely. There were two other special procedures: disappearances and summary executions. However, both of them are based on facts. People have disappeared: that is a fact. Where are they and who did it are questions for the next phase, but the people have disappeared. If there have been summary executions, then there are corpses. In the case of torture, you have nothing. You only have stories and claims. Facts regarding scars you have to collect first. I found it extremely difficult: what procedure should you adopt? You can't keep relying on claims and accusations but you also can't wait until you have the facts. Certainly not in the case of the early warning procedure whereby I tried to intervene in an early stage, not after the torture has taken place but before the torture has been carried out. And the second problem that I found unbelievably difficult in the first years: what exactly is torture? What facts constitute torture? In a ministerial report I once compiled a whole list of acts which I provisionally described as coming under the definition of torture.[26] In my first report, I also wrote that, in my opinion, a prohibition of torture was a rule of *jus cogens*. That had not been claimed before. I thought if I write that and nobody objects then it is *jus cogens*. That would then be a form of "thesis approval". Of course there were objections. Then, by using a system of objection and non-objection you should be able to establish certain positions. The third factor, which I found very exciting, was that I actually had to do field research as the ambassadors in Geneva were not exactly the most appropriate people to whom you could submit your questions, although that was, of course, an important part of the whole mechanism. If you have wangled invitations by devious means (nobody invites someone to "come and see how well we torture or how well we don't torture"), what you can then do is particularly difficult. I began with Argentina and Uruguay where new democratic governments had just assumed power. I asked whether I might come and see how they handled the fact that there was so much torture during the dictatorship. Of course, they thought that was wonderful. Then I said to Peru and Colombia: "I am in your part of the world and I have also heard some distasteful news about you, may I come and have a look?" Of course, they found that difficult. And how do you then go about your work? How do you do that? Do you ask: "May I have a quick look in your torture chambers?", then you get the answer: "No". My first visit to a country where torture was still being carried out was Colombia. I finally got my hands on the programme that had been organized for me only the evening beforehand and saw that from eight o'clock in the morning until eleven o'clock in the evening I was in the

25 See J. H. Burgers and H. Danelius, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, International Studies in Human Rights, (1988).

26 See UN Doc. E/CN.4/1986/15. The only official definition of torture is in Art. 1 of the Anti-Torture Convention 1984.

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hands of the government. Then you would see absolutely nothing as you would be completely manipulated. At my next visit I said: "The morning is for the government and in the afternoon I want to make my own programme and speak to NGOs, church representatives, etc." You are given a small staff from Geneva that travels with you but you have to do it completely by yourself and that is a great learning curve. And every country is different which means that you have to start from the beginning every time. That provided me not only with a legally interesting exercise because you are at the birth of new legal rules and norms but it also tests your character in terms of resolve and resourcefulness. To give an example: I arrived in Peru and had been given a number of specific cases by Amnesty International that hoped I would be able to draw attention to them. I entered the office of the Minister of Security, whose first preference would obviously be to kick me out of his office, and he said: "You should see a letter on my desk from Amnesty International Amsterdam about Mr 'So and So', a letter from Amnesty International Oslo about the same Mr 'So and So', from Rome, from London, all about the same man. It is a conspiracy." Then I said: "Mr Minister, I am sorry to tell you that I also have a letter in my pocket about the same person. Wouldn't it be best for you to give me permission to visit him in gaol? Then I can be convinced . . . " Permission was not granted but a few months later he was released. In short, you can have influence. If I can have the feeling every year that I have been instrumental in the release of five people or in the fact that they have not been tortured, I have already had a good year. I learned a lot in those seven years as rapporteur. My membership of the Advisory Committee on Migration Affairs in the Netherlands was a perfect training for me as I am not basically a prosecutor or judge. In those days the IAC not only made recommendations but also dealt with appeal cases. I attended many sessions in which I learnt how (a) to read files and (b) to perform as a judge. I was always chair of a subcommittee and therefore asked the questions. It was also exciting because you came into contact with the real legal subjects. I saw them every week. That experience helped me enormously in my role as rapporteur as I knew the procedures.'

4. The core functions of law

We discussed the essential functions of law. Kooijmans: 'The core concept of law for me is: the ordering of public life: bringing peace and order to a chaotic society. That is the formal side of the question. In terms of substance, that ordering must be just, otherwise it would not be robust and there would therefore be no ordering. The most remarkable development of law in almost sixty years is that it is treated much less in separate chapters and that there is osmosis between all sorts of legal areas. Previously somebody who had been interested in international law sat in a separate room. The discipline then had relatively little to do with jurisprudence and was seen as a sort of hobby. That is very different now. This development has come about, first, with the founding of the European Community and afterwards with the enormous growth of international institutions which went to work by cutting across national law. I find it particularly fascinating that I lived through this period. When I started my degree in 1951, there were virtually no formal (international)

institutions; there was the United Nations and the Council of Europe; the European Coal and Steel Community (ECSC) was founded during my degree. If you spoke of legal sources then you never spoke of the decisions of international organizations; with the exception of a few minor instances dating from the League of Nations period, there was absolutely nothing. The UN had brought about the Universal Declaration of Human Rights which you could discuss for a very long time as to whether it was a legal document or not and that was about it. In my time as a university student, there was virtually nothing of European law; only the ECSC which we covered in a very small booklet by Riphagen of about 40 pages.[27] I still have it somewhere in the bookcase but it is so very thin that it keeps slipping to the back. I had to learn by heart the "fat Francois" in two volumes, but it had scarcely any reference to the European Communities.[28] International law was basically Cornelius van Vollenhoven.[29] His main themes were just war, just society and just law – Gezina van der Molen was a disciple. There was actually very little formal law. What I find a very interesting period, is the time when international law became not only a much more important and even obligatory course subject but also became part of Dutch law. The phase of specialization in Dutch and international law I found fantastic. International law was no longer an optional extra but had become a genuine legal discipline in its own right. The fact that international law became part of the normal curriculum has had enormous influence in the discussion of legal principles but also in the practice of law that followed. In the 1960s, one of the most exciting experiences I had was to give lectures to judges within the framework of the Training and Study Centre for the Judiciary where I made clear what the effect of international law on national law meant. They had only read the *Cognac* judgment and nothing else.[30] I found that fantastic because I sat there in the evening surrounded by twenty judges to whom I had to make clear what the *Van Gend en Loos* judgment, the *Costa Enel* judgment and the *Procession prohibition* judgment meant.[31] They found it quite uncomfortable as they had to follow legal paths with which they were not familiar.'

5. Great changes in outline

Law has undergone enormous changes since the end of the 1950s

Kooijmans: 'The most significant is that the national borders have disappeared in law. Public international law has profited from the fact that it evolved from European law. I always find the *Costa Enel* and *Van Gend en Loos* judgments so wonderfully expressed. That was of course very early in the 1960s and these judgments also influenced public international law. The billiard ball state system of the Peace Treaty of Westphalia in my opinion was finally broken up in the 1960s. International law became part

27 W. Riphagen, *De juridische structuur der Europese Gemeenschap voor Kolen en Staal* [*The Legal Structure of the European Coal and Steel Community*] (1955).

28 J. P. A. Francois, *Handboek van het holkenrecht* [*Handbook of International Law*], 2 Volumes (1949–50).

29 See mainly C. van Vollenhoven, *De drie treden van het volkenrecht* [*The Three Stages of International Law*] (1923).

30 HR 10 December 1954, *NJ* 1956, 240 (Cognac-I).

31 HvJ EG 5 February 1963, 26/62 *Van Gend en Loos*; HvJ 15 July 1964, 1964 1203, 6–64 *Costa/ENEL*; HR 19 January 1962, NJ 1962, 107 *Procession prohibition.*

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of national societies; domestic law came to be partly derived from international sources.'

In addition to the demolition of national borders, what are the other great issues which have left their imprint on the development of law?

Kooijmans: 'The fact that international law has become less state-centric and the number of actors has risen to a level where they can no longer be ignored. There is of course a very worrying gap between the formal structure and the assessment of what is actually going on. In this regard, I think that international law has become more chaotic because there are so many actors. In combination, each in their own way, these actors play a role at least as important as the states. But international organizations, non-governmental organizations, corporate organizations and interest groups composed of individuals have inadequate access to obtain their rights in this international legal system. This becomes visible in the caricature that resulted when NATO took the decision to attack Yugoslavia militarily. Part of Yugoslavia's resistance was to bring this attack [to] the international courts. However, it could only issue a writ against a number of member states of NATO and not against NATO as such although it had been a NATO decision to intervene militarily. Subsequently, the International Court of Justice came to the conclusion that of the ten member states [who] had actually taken part in military activities and that Yugoslavia had summonsed to appear before the ICJ, only four remained that could actually be summonsed to appear because they had not made any reservation to the acceptance of the court's jurisdiction. What countries were we then left with? Four small, insignificant countries – the Netherlands, Belgium, Norway, and Portugal.[32] That is nothing less than an indication that the structural design of the international community is not keeping pace.'

Are there also certain negative developments that characterize the evolution of international law?

Kooijmans pronounced some ideas: 'Because structural developments, due to all sorts of political causes, are not able to keep pace with a quickly changing pattern of demand, there is a risk that current structures increasingly lose their relevance. At the International Court of Justice, we see in fact only one aspect of international society. As long as the Court remains so reticent in admitting *amicus curiae* letters as evidence and in granting any status to all sorts of non-governmental organizations and interest groups, I fear that the International Court of Justice will also become less relevant. The whole United Nations is at this moment losing relevance in a disturbing manner. Until ten years ago I was an optimist, for example with the emergence of the concept of the "Responsibility to Protect".[33] That was something new

32 *Legality of the Use of Force (Serbia and Montenegro v. Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, United Kingdom)*, Judgment of 14 December 2004 (Preliminary Objections), Separate Opinion of Judge Kooijmans.

33 According to this concept, national governments bear the primary responsibility for the protection of their citizens against genocide, crimes against humanity, ethnic cleansing, and serious war crimes. In the case that they fail or are not prepared to provide protection, the international community, in the form of the United

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that was elaborated within the United Nations but after ten years it appears that the application of Responsibility to Protect has come to an end. Libya was the death knell of Responsibility to Protect. This was the result of the nature of the intervention. The report of the UN Secretary-General Ban Ki-moon states that the Responsibility to Protect consists of three phases: Prevent, React, and Rebuild.[34] But only phase two was carried out. In that case it just can't work. In Libya the immediate action was armed intervention; and nothing was done to rebuild. I think the mistake in Libya was to undertake armed intervention almost immediately.'

Wasn't it Benghazi? The Security Council thought that if we did not intervene now perhaps 10,000 civilians in the rebel city of Benghazi would be massacred by the Gaddafi regime . . . ?

Kooijmans: 'We had known for a long time that terrible things happened in Libya. Yet we didn't do anything about it because Libya had oil and because it was thought that is was necessary to receive them officially at the Élysée Palace. It illustrates the hypocrisy of the international community. I think it is irresponsible to stretch the unique authorization granted by the Security Council to its outermost limit, if something comes up and the case explodes, you then can predict the reaction of Russia and China in the next situation. The behaviour in the Libya case has left us nowhere in the Syrian situation. I am not against humanitarian intervention in principle, but I think that it should take place very carefully; I thought we had learnt that from Kosovo. But that appears not to be the case. If you obtain support from the Security Council as in the case of Libya, then you should treat that delicately like a premature baby in an incubator instead of triumphantly waving it about. Syria is a powder keg. If China and Russia could still be persuaded to come to the party and no longer feel themselves tricked and treated with contempt, then you could perhaps achieve a sufficiently similar state of mind among the big five that would allow them to devise a number of emergency measures, just to stop the whole business from exploding because Syria at this moment is Armageddon with a lot of fuses. I don't see any international leadership.'

6. The International Court of Justice: A global court?

Is the International Court of Justice still the 'the principal judicial organ' (Article 92 of the UN Charter)?

Kooijmans: 'Yes, in the sense of distinguished. But it is of course not the primary one. For citizens, for example, the European Court of Human Rights is considerably more important than the International Court of Justice. I am also encouraged by what is growing in Africa, even with all its shortcomings, and even in Asia (within

Nations, must step into the breach. This principle was adopted by the United Nations General Assembly in 2005 (see A/RES/60/1, 24 October 2005, paras. 138–9) and was actually applied for the first time in 2011 in the decision of the Security Council to act with 'all necessary means' to protect the civilian population in Libya and subsequently in Ivory Coast. (see S/RES/1973 and 1975, 2011 respectively).

34 See the report of the UN Secretary-General Ban Ki-Moon, 'Implementing the Responsibility to Protect', UN Doc. A/63/677, 12 January 2009.

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the framework of ASEAN). Furthermore, Latin America and North America already have, of course, had the Inter-American Court of Human Rights for a very long time. I found it disappointing that particularly European states have sought to resolve all disputes in arbitration for a long period although they have started to come back more to the Court in recent years. In my period as judge the only European case on which I sat was *Liechtenstein* v. *Germany*.'[35]

What makes a good and influential judge?

Kooijmans: 'A judge is good if he or she is not only a good jurist. Of course, juridical knowledge is important for a judge but the essential thing is that he is aware that he is adjudicating between parties and trying to bring them closer together on an issue on which they disagree. I tried to emphasis both legal reasoning and judicial wisdom in international dispute settlement. In those nine years I learned that that is essential. For that reason I found working together on composing a judgment so interesting, as you work to the final product step by step. Of course, a judicial panel must demonstrate a certain amount of cohesion. Nothing is worse than the Court being characterized by divisive elements; I experienced that for three years. Trying to work in that environment is very difficult and unpleasant. Of course, everybody must be allowed to express their individuality but you still have to be able to work as a team. How should you work to achieve path-breaking judgments such as the *Yerodia* case (*Congo* v. *Belgium*)[36] on universal jurisdiction, the *Bahrain/Qatar* case[37] on delimiting maritime waters, the *Israeli Wall*[38] opinion in which we had to walk a tightrope and also *Congo* v. *Uganda*[39] on the illegal presence of troops of one country in another? These cases were path-breaking, not just explaining law, and then you can clearly see that we were working together on the same case.'

Do you have any proposals for a reform of the International Court of Justice?

Kooijmans: 'Definitely, but these reform proposals must all take place within the current Statute, because it will be very difficult to change the Statute because it is part of the UN Charter. We have already mentioned that the Court should be more generous in admitting *amicus curiae*. That would inject more life into the Court. We had a discussion on this point in reference to the Advisory Opinion on the Wall whereby a number of NGOs and similar organizations had made themselves known to the Court which turned out to be extremely miserly in its recognition of these actors.'

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35 See *Certain Property (Liechtenstein v. Germany)*, Judgment of 10 February 2005 (Preliminary Objections), Dissenting Opinion of Kooijmans.

36 *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of 14 February 2002, Joint Separate Opinion of Judges Higgins, Kooijmans, and Buergenthal.

37 *Maritime Delimitation and Territorial Question between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment, International Court of Justice, 16 March 2001.

38 *Legal Consequences of the Construction of a Wall by Israel in Occupied Palestinian Territory*, Advisory Opinion, International Court of Justice, 9 July 2004.

39 *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v. Uganda)*, International Court of Justice, 19 December 2005, Separate Opinion of Judge Kooijmans.

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Do you expect anything more of the traditional Netherlands position advocating more acceptance of compulsory jurisdiction of the Court or is that flogging a dead horse?

Kooijmans: 'No, there is so little interest in this issue that you can more profitably direct your energies towards other matters. Very few cases come to the Court by that means. By far the most cases are submitted on the basis of a special agreement and in that case you immediately have an indication that the states are prepared to comply with the judgment. The score has been quite good in this regard for fifteen years if not longer. There is compliance with the judgments.'

Nevertheless, in one way or another, there is a perception in the political United Nations that the Court is barely useful and that judgments are not complied with – look at the advisory opinion on the Israeli Wall.

Kooijmans: 'I think that is because the Court is often occupied with bilateral cases which usually don't threaten world security. For the countries themselves these cases of course are extremely important. When we pronounced the judgment in the *Kasikili/Sedudu Island* case (Botswana/Namibia),[40] that was of course nothing very important but in those countries it was the talk of the day. Countries make it a question of national pride. In the longest case that the Court has ever sat upon, Bahrain/Qatar, they called each other every name under the sun and, according to rumour, were armed when sitting in the courtroom. When we at long last pronounced our judgment, both countries announced a national holiday because they had both won! The Court then has been a success. Actually, the Advisory Opinion on the Israeli Wall was also a success, in the sense that the judges voted 14–1 in favour of the judgment and it was almost 15–0. It is not the fault of the Court but of the political United Nations that there was no follow-up. That is why in my separate opinion, I was strongly against the – in my eyes – completely gratuitous declaration that all member states were expected to fulfill their obligations.'

There are various reform proposals for the Court being bandied about. More than 15 judges for example?

Kooijmans: 'Absolutely not. If the Court were to work more often with chambers, you would be able to do much more with the current number of judges. I sat myself, for example, in the Chamber for *Benin/Niger*.[41] A chamber works easily and quickly. First of all, you have only one language. The procedure takes place so much more quickly and there are only five judges. The three chambers in which I worked all had five judges. You have three permanent judges and two ad hoc judges. With fifteen judges in the full Court you really have to have an official assembly and you are dependent on all the translations which must be ready first. If there are only five judges it can even sometimes become intimate.'

40 *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment of 13 December 1999, Separate Opinion of Judge Kooijmans.

41 *Case Concerning the Frontier Dispute (Benin/Niger)*, Judgment of 12 July 2005.

Should the Secretary-General also be given the right to ask for an advisory opinion?

Kooijmans: 'I would be in favour. However, I am convinced that in practice he would never ask for such an advisory opinion as he would step on the toes of at least one permanent Security Council member.'

The prejudicial procedure?

Kooijmans: 'That should be the national courts. I think that that option has had its day. However, I would find it useful for really general juridical problems if all sorts of other international tribunals, such as the Yugoslavia and Rwanda tribunals but also the International Criminal Court and similar courts, could submit a preliminary question to the International Court of Justice. Such prejudicial procedure would allow the Court to give its role as principal organ some substance. This issue arose during the *Tadić* case, when the Yugoslavia tribunal had to judge on the legitimacy of its own institution and, moreover, appeared to take a completely different standpoint on lines of command than the ICJ had done in the *Nicaragua* case. At that point, the then President of the ICJ, Gilbert Guillaume, had advocated such a prejudicial procedure for international tribunals and courts in an address to the General Assembly of the UN.[42] As a result of the proliferation of tribunals and courts, I am of course concerned about the great danger of different interpretations. I therefore found potentially useful the initiative of another president, Rosalyn Higgins, to organize meetings of the presidents of the different tribunals and courts. Of course, it would be extremely difficult procedurally as most courts and tribunals have no relationship with each other. You could try to organize a certain uniform interpretation among the UN tribunals but in relation to the International Criminal Court and the European Court of Justice the question arises of the basis in law to try and achieve that. For the UN family it could be [arranged] through the ICJ by extra-statutory means. Otherwise, you would have to change the Statute and subsequently the UN Charter. That would be very difficult if not impossible.'

What are your ideas on the institution of ad hoc judges, whereby in a dispute in which a party does not have a judge of its nationality in the Court, it may nominate one of its own?

Kooijmans: 'I have recently written an article on this but without giving a clear preference.[43] An ad hoc judge certainly has its advantages: you can be certain that arguments of both parties are seen and discussed by the Court. This lowers the threshold to the Court for both parties and it is easier for the losing party to accept the judgment. The negative side is that ad hoc judges make use of the occasion to

42 Speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations, 'The Proliferation of International Judicial Bodies: The Outlook for the International Legal Order', 27 October 2000. See <http://www.icj-cij.org/court/index.php?pr=85&pt=3&p1=1&p2=3&p3=1>.

43 See P. H. Kooijmans, 'Article 31' in A. Zimmerman, C. Tomuschat, K. Oellers-Frahm, and C. J. Tams (eds.), *The Statute of the International Court of Justice. A Commentary* (2012), 530–42. Art. 31 of the Statute discusses the circumstances under which states that are party to a dispute before the Court may nominate an ad hoc judge.

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write stories of several hundred pages and often turn out to be puppets of their governments. Nevertheless, in the final analysis, I am in favour of retaining ad hoc judges. As long as compliance with the judgments of the Court is dependent on the good will of the parties, I think ad hoc judges provide an extra stimulus to encourage that willingness to comply. Otherwise, the parties could think that they don't have anyone of their own choice in the Court who could bring serious attention to all their arguments.'

Furthermore, there are also several thematic chambers, for example the Environment Chamber. Should this example be repeated?
Kooijmans: 'The Environment Chamber came into being due to a fear of missing the boat again as happened in 1982 when it was decided to set up a new, separate International Tribunal for the Law of the Sea in Hamburg. Following the huge UN Conference on Environment and Development in 1992, the Court thought it could stay one step ahead by setting up its own facility to settle environmental disputes and hence pre-empt the danger of a separate international environmental court. Apart from this consideration, I thought it was a good signal to the outside world that the Court knows what is happening in the wider world and was able to refashion its remit to meet new challenges.'

How do you see the future of the International Criminal Court after the first judgment of Lubanga?
Kooijmans: 'Sombre – to be honest. Because so far the International Criminal Court only examines such a small part of the world (exclusively Africa) and that, already from the viewpoint of image, gives a bad impression. Moreover, there were so many blunders in this first case that it was not a good advertisement. Furthermore, the procedure is so unbelievably slow. And we only hear about disagreements – that also doesn't promote the court.'

Will we ever see the Syrian president Assad in The Hague? That is no longer possible with Colonel Gaddafi. Perhaps we will still get his son Saif or Kony, the leader of the Lord's Resistance Army in Uganda?
Kooijmans: 'We won't get Saif Gaddafi either. I think it was a little overenthusiastic to immediately issue writs while the case cannot have been closely examined.'

7. The Netherlands Constitution

Kooijmans is impressed by the international orientation of the Netherlands Constitution. Article 90 stipulates that: 'The government promotes the development of the international legal order.'[44]

44 See on this provision L. F. M. Besselink, 'The Constitutional Duty to Promote the Development of the International Legal Order: The Significance and Meaning of Art. 90 of the Netherlands Constitution', in (2003) 34 *NYIL* 89–138.

Kooijmans: 'Legally it doesn't say very much, of course, but politically it is sometimes handy if you have this stated in the Constitution. It sets a task for the government. A precursor of this provision was introduced in the constitutional change of 1922. At the time, V. H. [Victor] Rutgers expressed his opinion in the Dutch Lower House that this was purely a declaratory provision without any meaning.[45] There are, of course, many more things in the Constitution which don't really mean very much but occasionally this provision is handy to use as an argument.'

We also consider Articles 93 and 94 of the Dutch Constitution, which directly put into effect 'provisions of treaties and of decisions of international organizations'. Kooijmans recalls that these provisions derive from the Cals-Donner Commission during his university student days.[46] 'I have always thought that it was an excellent provision. At that time only France and the former Yugoslavia had a similar provision.'

In the Lower House, there is a proposal by Taverne (VVD, conservative liberal party) and others to greatly reduce the effect of this constitutional provision by adding 'unless the law determines otherwise'.[47] Kooijmans thinks that in that case you might as well scrap the entire article:

'I find it quite ridiculous: it is giving with one hand what you take away with the other. I find the article in its present form a very meaningful provision. It would signify a great step backwards if we were to reverse it; the proposal is a clear indication of a mood to renationalize. It went so quickly. As the responsible minister in 1994 I introduced the Approval of Treaties Act in the House and this point was never raised. The immediate coming into force of treaties was accepted as self-evident in the Netherlands.'

Subsequently, we briefly review the Halsema (Green Left) proposal to examine national laws for compatibility with the Constitution.[48] Kooijmans: 'I find it actually quite normal that laws should be examined for compatibility with the Constitution in a state that has one. I have always thought it remarkable that we didn't have a law requiring this. However, the importance has receded now that the European Court for Human Rights in Strasbourg and the European Court of Justice in Luxemburg can undertake such examinations of constitutional provisions in treaties. But if seen in isolation, I think it would make the Constitution a complete whole. It could be a task for a chamber of the Supreme Court. You should not set up a separate Constitutional

45 V. H. Rutgers (1877–1945) was a Netherlands jurist, politician, and resistance fighter during World War Two. He was leader of the ARP in the Lower House from 1919 to 1925 and was briefly minister of education. Subsequently, he was professor of Roman law and criminal law at the VU University Amsterdam. He also served as a representative of the Netherlands in conferences and commissions of the League of Nations principally in the area of arms limitation and disarmament. He saw the League of Nations as a valuable attempt to achieve an international legal order. See the contribution of W. F. de Gaay Fortman at <www.biografischwoordenboek.nl>.

46 In the Constitutional revision of 1983, it was decided to add that 'the decisions of international organisations' could also become immediately effective.

47 See Parliamentary proceedings 33359 (R1986), 6 September 2012, Proposal by the MP Taverne that there are grounds for taking into consideration a proposal to amend the Constitution, in effect a modification of the procedure for determining the immediate coming into force of provisions of treaties and decisions of international organizations.

48 See Parliamentary Document 28.331 for the Halsema proposal.

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Court for this task. From an aesthetic viewpoint, I think that such a constitutional examination of national law belongs in a democratic constitutional state.'

8. Traditions in the Netherlands' foreign policy and the threat of renationalization

If you could cherry-pick, what would you choose as the constant, positive aspects of Netherlands foreign policy?

Kooijmans: 'Dispute settlement, human rights and development co-operation – if I may choose three. These themes came into prominence in the course of my life and have all been described by successive governments as very important. The Netherlands has always done a lot for international dispute settlement in various forums whether it was arbitration, human rights procedures, or peace and security.'[49]

Isn't the third point, development cooperation, significantly on the wane? There are even people who say that poverty alleviation and development cooperation are just twentieth century concepts.

Kooijmans: 'The material is of course not at all something of the twentieth century but as relevant as it could be. What disturbs me so much is that the financial cuts are not based on substantive grounds but on a need to save money. We are doing this again in completely the wrong order. Of course it is useful to re-assess concepts and forms of development co-operation that we have inherited from earlier periods and on the basis of that re-assessment to calculate in terms of financial expenditure a responsible contribution of the Netherlands in the light of Article 90 of the Constitution and the tradition that we have built up. But now there are some who say first that development co-operation is an out-of-date concept and that we can therefore deduct a billion from its budget. This demonstrates a shopkeeper's mentality that is typical for the current period in which nobody has a vision anymore of what the future should look like but only how we can make it through to the next day. If you look at the total of all economic and social human rights, then naturally a duty of all UN member states arises, in my opinion, to contribute to the realization of these human rights in all countries and for all people. Of course, that cannot always be identified in jurisprudence with enforceable, concrete responsibilities but the point here is to create frameworks and structures which give direction to the behaviour of people and states. That is perhaps much more important than every time having a box with prepared, enforceable rights and duties. In this way, development cooperation has both an ethical and juridical origin.'

Don't you find European co-operation and integration also a constant theme in Dutch foreign policy?

Kooijmans: 'That is not a specific subject, more a general vision of the future. What occupies me is how you can reclaim Europe from the renationalization process.

49 See N. J. Schrijver, 'A Missionary Burden or Enlightened Self-Interest? International Law in Dutch Foreign Policy', in (2010) 57 *Netherlands International Law Review* 209–44.

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So much has been lost in the last ten to fifteen years. It began with (Minister of Finance) Zalm who took advantage of a trend in the Netherlands and elsewhere to try to get money back from Europe and to transfer as few powers as possible. In this way, Europe became something suspect. What do we actually want with Europe? Besides getting something out of it and not being fleeced? That attitude began with the left-right (Purple II) coalition government in the mid-1990s. People with a vision for the future of Europe are almost regarded with suspicion. There was a generation of Jean Monnet, Robert Schumann, and Jacques Delors, including Max Kohnstamm and Edmund Wellenstein in the Netherlands, who moved mountains. I am disturbed that we are now sometimes trying to put those mountains back where they came from. Renationalisation.'

You often emphasize the role of individuals.

Kooijmans: 'When I was a minister I had quite an intensive acquaintance with both Mandela and Arafat and I was completely aware of the difference in quality between the two. One person can evoke something in another that causes that other person to rise above himself. Don't forget that former President De Klerk did not become the person he was on his own. If Arafat had been such a figure (as Mandela) then he could have caused a De Klerk-like figure to arise on the Israeli side, which could have been Rabin. But Arafat didn't have the quality of Mandela although Rabin gave him the benefit of the doubt for a relatively long time. In the Middle East at this moment you unfortunately don't see anyone who can rise above himself.'

Do you have a long-term vision?

Kooijmans, after long hesitation: 'Not a World Court of Human Rights. My preference would be for a sort of institution that could both mediate and pass judgment and that has various sub-organs in certain areas so that an overall connection is maintained. In fact, I find our Netherlands Advisory Council on International Affairs, which has four chambers and one co-ordinating council, an attractive model.[50] There should then be co-ordinating structures with regional organizations. These structures are lacking now which leads to a terribly amorphous organization.'

9. Devoted to the university

After your political positions why did you always return to the university?

Kooijmans: 'In the first place, it isn't the case that when you leave a political position you have a wide choice of jobs. So you go back to where you came from. I wasn't interested in becoming an MP as I am, of course, not really a political animal. I love politics to the extent that it comes into contact with law and when law functions within politics and I also like the political game but I am not a real politician. I always

50 This Advisory Council consists of a co-ordinating council and four permanent commissions: European Integration, Human Rights, Development Co-operation, and Peace and Security. See the website <www.aiv-advice.nl>.

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felt like a fish in water at the university. I have always found teaching wonderful. When I was sitting on the Court I really missed the students. Many students came to visit the Court and I was always the first in line to ask if I could welcome them.'

10. Final comment

Professor Peter Kooijmans was a jurist *pur sang*. After graduating with a solid degree in law from the VU University Amsterdam, he put his long and productive life in the service of peace, justice, and respect for human rights through the law. In all of his four vocations – academic, politician, diplomat, and judge – he always defended the same ideals. He was notable as a wise jurist, with clearly-thought through judgements based on substance and commitment.[51] Kooijmans had a strong sense of justice and was deeply convinced by his experience of the war when he was a child and by his intellectual formation in the postwar period of the necessity of international co-operation. He was an internationalist and a European. In the interview he emphasized many times how much the renationalization of Dutch politics was anathema to him. The substance of public international law touched him and he was deeply conscious of its social relevance without closing his eyes to the shortcomings and relative nature of the role of law. He spoke with inspiration, and not without emotion, about international law in his well-considered, elegant sentences with well-chosen imagery and dry humour. Although it was no surprise for all those who knew him, it was impressive that he remained true to his ideals in all his wide variety of professional activities.

51 See H. Goslinga in his touching In Memoriam, 'Peter Kooijmans (1933–2013). Evenwicht tussen passie en rede [Balance between Passion and Reason]', in *Trouw, De Verdieping*, 14 February 2013, at 4.

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