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Commemorating Robert Regout (1896-1942). A chapter from the history of public international law revisited

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“Ideas need time before they can mature; efforts which seem fruitless, may well yield precious assets for mankind in the future. Even on the ruins of destroyed civilizations, new generations have time and time again managed to build themselves a safer home. The duty of our days will be clear, even to one looking with anxiety at what lies ahead: to work with full dedication, striving to establish an order of truth and justice in this world.”¹

1. Introduction

In the Netherlands, it is customary for a new law professor to elaborate on his view of his field of expertise in his inaugural lecture. The words quoted above are taken from the inaugural lecture of professor Robert Regout, and were spoken on February 28th, 1940. On that day, the new chair of public international law at the University of Nijmegen expressed a clear and sympathetic conviction; on the need to stand up for what one believes, to remain fully confident in the fruits of one’s endeavours. On that day, Regout gave public testimony of his faith in a future for international law, at a time when political developments seemed to call for quite a different position. When assessing his legacy on the present day, the contemporary reader is still struck by the force of the convictions of a scholar determined to live up to the high expectations held of him. Brutal, inescapable violence silenced his voice much too soon, thus greatly curtailing his heritage. Still he has bequeathed future generations enough, left good

* This article contains translated and thoroughly revised parts of my ‘Grond voor vertrouwen. Regout als jurist’, in M.J.F. Lindeijer & A. Welle (eds.), *Robert Regout. Maastricht 1896-Dachau 1942* (Drachten: Omnia Fausta, 2004), pp. 103-123. To date, the only available foreign publications on Regout have been A. Borret, ‘Robert H.W. Regout S.J. In memoriam’, *Grotius, annuaire international pour 1940-1946*, pp. 9-15; J.J.W. Beuns, ‘Vorkämpfer der Völkerverständigung und Völkerrechtsgelehrte als Opfer des Nationalismus. Professor Robert Regout S.J.’, *Friedens-Warte* 46 (1946), pp. 311-316.

¹ R.H.W. Regout, *Is er grond voor vertrouwen in de toekomst van het volkenrecht?* [Is there reason to believe in a future for international law?] (Nijmegen: Dekker & van de Vegt, 1940), p. 12. All translations of Regout’s writings are by the present author.

harvest to reap from his efforts. This article seeks to commemorate a life lost, and labour, up until now, only scarcely paid attention to.

2. Regout and His Time

Robert Hubert Willem Regout was born in Maastricht in 1896, and belonged to the generation of Dutch lawyers that followed in the footsteps of their famous countrymen T.M.C. Asser, W.J.M. van Eysinga and C. van Vollenhoven. This was the generation of scholars that came into contact with the first great peace and disarmament conferences of the early 20th century, and with the first global international organisations. Regout himself was educated a lawyer around 1926, at a time when the League of Nations was going through a hopeful phase of development. The very first disputes of international law were entrusted to the Permanent Court of International Justice (PCIJ) at The Hague for a solution, and the discipline of international law was at universities cautiously gaining recognition as a specialty. As known, the hope of the day was that states and nations would no longer resort to violence, but seek to end their quarrels peacefully, preferably through legal means. Public international law was thriving, which undoubtedly appealed to many idealistic young lawyers. Maybe, it was held, that after the horrors of the first World War, unilateral military action could definitely become a thing of the past. After 1919, the period of classic international law with its emphasis on absolute state sovereignty had indeed come to an end.² Yet modern international law, in which international relations were to be regulated through binding legal norms, was still tender and tentative. Objective rules could still easily be abandoned if the political need of the day so required, if practical politics necessitated a less obedient attitude. It was 1926 when Regout wrote his first article, in which he already hinted at the possible future causes of renewed global tensions. “One should not forget that the development of international legal relations will always be gradual”, he remarked sagely. “Neither individuals nor nations will deserve peace so long as they are unwilling to sacrifice some of their egoism”.³ What survives to the present day of Regout’s ideas and endeavours, should then in the first place be considered in the light of his time. In

² I fully concur with a recent remark by one author that the periodisation of the history of international law is still far from satisfactory. See R. Lesaffer, ‘The Grotian tradition revisited: change and continuity in the history of international law’, *British Yearbook of International Law* 2002, p. 106. Contrary to him though, I reserve the term ‘modern’ international law for the twentieth century. ‘Classic’ international law in this article refers to the period from the fifteenth-sixteenth century up to World War I. Cf. W.G. Grewe, ‘Die Epochen der modernen Völkerrechtsgeschichte’, *Zeitschrift für die gesamte Staatswissenschaft* 103 (1943), pp. 36-66 and 260-294; *id.*, ‘Was ist klassisches, was ist modernes Völkerrecht?’, in A. Böhm et al. (eds.), *Idee und Realität des Rechts in der Entwicklung internationaler Beziehungen. Festgabe für Wolfgang Preisler* (Nomos: Baden-Baden, 1983).

³ R.H.W. Regout, ‘Enige opmerkingen over “het recht van de sterkste” bij internationale verhoudingen’ [Some remarks concerning the rights of the most powerful in international relations], *Studiën* 106 (1926), p. 433.

the history of public international law, he belongs to a notable chapter: the pristine and kaleidoscopic period of interbellum (1919-1939). The world was in transition, facing turbulence, the law itself shifting with it. For those circumstances, Regout's life and works might well be of interest to the present.

3. Character and Education

When assessing Regout's life and works, one should first be well aware of his spiritual upbringing, a factor that may complicate fair judgment of the subject under review. Robert Regout was trained a Jesuit from the age of 18 onwards, and had completed extensive religious education before pursuing his legal studies at the University of Leyden towards his graduate degree in 1924. This training had an unmistakable influence on all his personal and professional views. As a consequence, his research as a scholar of international law was characterized by a realistic view of man's fallibility, coupled with solid faith in the veracity of Christendom. Most of his work was not drafted without bias, or devoid of value judgments, and to him could probably not have been conceived otherwise. His writings continuously had to reflect the zealotry with which he pursued his faith, if only to make the message more appealing to his Catholic readers. In sum, his perennial quest for peace and justice was in its essence anything but profane. Words he often quoted from Scripture in his articles may be testimony to that: "Peace, more than anything, is the gift of Christ, which the world itself is unable to offer".⁴ Before any contemporary, secular assessment may then turn out favourably, one should understand, and come to terms with his thoroughly christianised legal perspective. As his vocation to the Church had preceded his legal aspirations, both, in the end, became inextricably intertwined. Acknowledgment of this fact will make his boldest remarks more readily understandable, such as his claim that public international law, finding its root in Christianity, could find its vitality there only. He held that "unity among nations and obedience to a higher authority can only be found in acknowledgment and reverence to God. On this essential spiritual foundation the legal construction ought to be placed and perfected".⁵

After the completion of his initial religious training, he read law in Leyden from 1921 to 1924. The influential scholar with whom he became acquainted there was the esteemed chair of international law, professor Willem van Eysinga. Regout's interest would from then on be completely captivated by the field of expertise of this critically acclaimed lawyer, who would sit as a judge at the PCIJ from 1931 onwards.⁶ In 1924, at the age of 28, Regout successfully completed his legal studies, and, stimulated by Van Eysinga, started research on his Ph.D. immediately after. Yet, though the Jesuit

⁴ R.H.W. Regout, 'Europese verhoudingen sinds het verdrag van Versailles. Frankrijks strijd om veiligheid' [European relations since the Treaty of Versailles. France's quest for security], *Studiën* 116 (1931), p. 65.

⁵ *O.c.*, *supra* n. 1, p. 14.

⁶ A further biography can be found in *Sparsa collecta. Een aantal der verspreide geschriften van jonkheer mr. W.J.M. van Eysinga* (Leyden: Sijthoff, 1958), pp. 528-545.

order had noticed his intellectual wit and prowess, he would be assigned to other than academic tasks for the next fifteen years. Nonetheless, he continued work on his doctoral dissertation in private, besides his religious pursuits, and would meanwhile not remain idle as a publicist either.

4. Publicist and Activist

Regout swiftly emerged as a public figure in The Netherlands during the 1920s and 1930s, in particular as a champion of the peaceful resolution of international conflicts. Being a priest, trained as a lawyer, he eschewed excessively idealistic peace-propaganda that would not pay regard to legal considerations.⁷ Nevertheless, he had no desire or intention either to present himself exclusively as a lawyer or a legal theorist. A glance at the range of subjects he covered in his articles will reveal this easily, perhaps even more so when one takes the topics of the numerous lectures, speeches and radio-comments he delivered from 1929 onwards into regard. For the most part, his interest went out to public international law in a broad sense. Thus, in his works, the legal perspective was often widened so as to encompass considerations on the character, politics and especially the history of various nations and peoples. Above all, he enjoyed discussing contemporary developments, and did not shun expounding his views in the general press. Writing over forty essays and (shorter) articles, Regout proved himself a very lively and entertaining author. He disliked excessively technical discourse, but wrote in rich and vibrant prose, often employing touching analogies. Sadly, his truly scholarly output remained rather limited, as barely twenty treatises that can lay claim to this qualification may be credited to his name.⁸ Partially, this can be ascribed to him deploying activities on much too broad a front. For he exerted himself to combine his tasks as a priest in the spiritual care for the flock, with his role as commentator on contemporary legal and political developments for his colleagues and the public-at-large. He was also a celebrated and much sought-after guest-speaker, and fiery in his activities for the *Rooms-Katholieke Vredesbond* (Roman Catholic Peace League) and as a legal advisor to the *Rooms-Katholieke Staatspartij* (Roman Catholic State Party) as well. More than anything else though, it was his early demise that prevented his scientific legacy from expanding further.⁹ His star would thus never rise much beyond his Dutch soil. As far as foreign publications go, his name lives on through his first major publication only: the commended dissertation on the doctrine of just war, which he finished by the end of 1933.

⁷ See e.g. R.H.W. Regout, 'Vrede en Volkenrecht' [Peace and international law], *Pro Pace* 10 (1938), p. 57.

⁸ Including his Ph.D. thesis and published inaugural lecture. An extensive overview may be obtained from <<http://www.robertregout.nl/publicaties.htm>>.

⁹ Upon his acceptance of the Nijmegen professorship in 1940, the latter seemed a manifest destiny. Cf. Borret (*supra*), p. 9: "Mort à l'âge de 46 ans après à peine trois années de professorat, il n'était qu'au commencement de sa carrière scientifique".

5. Regout and *Bellum Justum*

Regout would obtain his doctorate under the supervision of the renown Ben Telders,¹⁰ who had succeeded Van Eysinga at Leyden in 1931. The thesis was entitled *La doctrine de la guerre juste de Saint Augustin à nos jours d'après les théologiens et les canonistes catholiques*, and was published in Paris with a preface by Yves de la Brière, chair of international law at the Institut Catholique in Paris.¹¹ Regout's main incentive for undertaking the study was the desire to make his contemporaries more familiar with the doctrine of *bellum justum*.¹² In his research, Regout carried out a critical investigation of the views of early, medieval and modern Catholic writers on the theory of just war, starting from St. Augustine, and moving on to the 20th century through (among others) Aquinas, Vitoria and Suarez. As his *leitmotiv*, he resolved to examine the continuity of the Catholic doctrine of just war from the days of St. Augustine to the present. In this, he sought to rebut the assertion of Alfred Vanderpol that war, according to the medieval doctrine, could only be regarded just if undertaken to punish wrongdoing.¹³ According to Regout, Catholic doctrine had always recognized as just, war to prevent or remedy injustice if no other method is available, and if the hardship of war is not disproportionate to the injustice, even though the state causing the injustice was acting under 'invincible ignorance', and so was not guilty of a 'fault' deserving punishment. He however exculpated Vanderpol to some extent, by pointing out that under the Catholic doctrine 'offensive war', or war in the full sense, is permissible only for punishment. War to defend or to restore rights must be limited to the acts necessary to accomplish those results. Moreover, he admitted that medieval writers used the word 'vindicate' in a loose sense, covering both reparation and punishment, and often did not visualize the possibility of objective without subjective wrong, that is, of injustice without culpability. His most striking premise then, was that the Catholic doctrine of just war could provide the directing principles for the juridical organization of society in his time. To Regout, war remained a viable way of restoring justice, to be justly undertaken when all other means of repairing or preventing injustice were exhausted. However, he recognized the ethical character of the doctrine, and did not shrink from admitting that it could not serve as the alpha and omega on the lawfulness of waging war. For all

¹⁰ Interestingly, the lives of Telders and Regout display a remarkable parallel to the casual eye. Both had a firm interest in the philosophical aspects of international law, both published essays on Dutch neutrality in the 1930s, and on the applicable legal regime during the occupation. Finally, both passed away long before their time, held in German captivity due to their scholarly work: Regout in Dachau, 1942; Telders in Bergen-Belsen, 1945.

¹¹ R.H.W. Regout, *La doctrine de la guerre juste de Saint Augustin à nos jours d'après les théologiens et les canonistes catholiques* [avec une préface du R.P.Y. de la Brière] (Paris: Pédone, 1934).

¹² *Ibid.*, p. 17: "Si nous avons entrepris cette étude, c'est en grande partie parce que nous étions persuadé qu'il y a tout avantage pour notre époque et pour l'avenir à se familiariser avec la vieille doctrine de la guerre juste."

¹³ See A. Vanderpol, *La doctrine scolastique du droit de guerre* (Paris: Pédone, 1925).

the inspiration it could offer, a regime of positive law would be equally indispensable for bringing about lasting stability and security in the international community. But contrary to those of the opinion that the doctrine belonged to a different time-period, and should by now be completely abandoned, Regout was insistent that the underlying principles kept their value in full, as long as in their application due regard is paid to the exigencies of the modern era.¹⁴

When browsing through the book, one is impressed with Regout's comprehensive and painstaking treatise on the history of the doctrine of *bellum justum*. The author gleaned the writings bearing on the subject from early Christian and medieval authors with great erudition, and displays great determination in explaining the meaning of those passages from the context and the general drift of their thoughts. The underlying principles, the more controversial points, the evolution of the doctrine and the separate stages of its development are exposed with firm dedication. The detailed disquisition, with its emendation of inaccuracies promoted by earlier writers, unmistakably provides a highly invaluable contribution to the history of international law. Having paid this tribute, and with continual regard to the lasting merits of the book, it must be admitted though that the final contention of the book must have been somewhat flawed already at the time of its publication. For the almost scholastic attitude the author applied in his research, led him in the end to minimizing the difference between the medieval and the modern theory of just war. As known, the central idea to the medieval theory, as far as it had a central idea, was that war formed a means to justice. The question of who began the war was unimportant. Thus the distinction between defensive and offensive war was morally neutral: a defensive war could be unjust, and an offensive war might be just. In all, justice was a value greater than peace. In the conclusion to his study, Regout erroneously tried to find this same principle in the positive law of the 1930s. Thus he wrote: "A war legitimately begun in virtue of the Covenant of the League of Nations against a state refusing to submit to a juridical sentence ought to be called offensive, and resistance to this war ought to be called defensive, although in such a case it is a just war of police and an unjust war of resistance".¹⁵ Here, his desire to revive an antiquated theory seems to have eclipsed an accurate assessment of the law then in force. For the Covenant of the League did of course not give authority to states individually to make war against a state, merely because it refused to submit to a juridical sentence. The sanctions were applicable only against a state which had resorted to war in violation of the Covenant. The only just war thereunder (at least from the moment the period of pacific procedure had expired) was against a state which

¹⁴ *Ibid.*, p. 305: "Cette doctrine du Moyen Age et du XVIe siècle n'est ni vieillie ni en train de vieillir; elle reste entièrement utilisable de nos jours, mais, pour l'appliquer, il conviendra de tenir compte de la modification des réalités."

¹⁵ *O.c.* (*supra*, n. 11), p. 309-310: "[U]ne guerre légitime engagée en vertu du Pacte de la Société des Nations contre un Etat refusant de se soumettre à une sentence juridique devrait ainsi être qualifiée d'offensive, et la résistance à cette guerre être dite défensive, bien qu'en un tel cas il s'agisse d'une (juste) guerre de police ou d'une (injuste) guerre de résistance."

had resorted to war.¹⁶ Thus, the only just war was a war of individual or collective defence against a state which had initiated war.¹⁷ This change from a system which contemplated war as an instrument of justice to a system which outlaws war except as defence against a state which has begun war, was a radical abandonment rather than merely a new application of the medieval doctrine. Historically, this new idea grew, not from the medieval doctrine but from a system of international law that aimed to limit the destructiveness of military activity and preventing war from spreading, not at determining the just side in a war.¹⁸ From this point of view, the paucity of discussion as regards the actual application of the doctrine to events in Regout's own time, seems quite regrettable. In the tenacious adherence to his contention, any assessment of the actual value of the theory by its practical applicability was lacking. "To determine the legality of a defensive war one can demand the traditional conditions: that the attack is unjust, that war is the only means of stopping the injustice, and that the war and the wrongs causing it are proportionate," he wrote.¹⁹ But such criteria obviously were in need of further development or elaboration before they could regain any contemporary significance. Regout however did not set himself the task of filling these voids, of presenting meticulous legal criteria for the benefit of modern usage. The book remains admirable on this very day for the thorough exposition of the ideas of Catholic writers through the ages on a fundamental subject of international relations. But the author's

¹⁶ To this end Article 12 of the Charter of the League of Nations read: "The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council (...)." Article 16 added: "Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League (...). It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League (...)."

¹⁷ Though it may be recalled that the Pact of Paris (*Kellog-Briand*), in force from 1929 up to the present day, in its first article condemned recourse to war for the solution of international controversies, and renounced it in whatever form or type as an instrument of national policy in relations between the contracting states.

¹⁸ The idea of World War I thus forming a fundamental watershed in the history of international law, is shared by many authors. See *inter alia* A. Cassese, *International Law* (Oxford: Oxford University Press, 2001), pp. 30-31; P. Malanczuk, *Akehurst's Modern Introduction to International Law* (London: Routledge 1997), pp. 23-32; Ch. de Visscher, *Théories et réalités en droit international* (Paris: Pédone, 1953), pp. 69 and 74-80; A. Verdross, *Völkerrecht* (Berlin: Duncker & Humblot, 1937), p. 11-20.

¹⁹ *O.c.* (*supra*, n. 11), p. 310: "Pour déterminer la licéité d'une *guerre défensive* on peut exiger les conditions traditionnelles: que l'attaque soit *injuste*, que la guerre soit l'*ultime moyen* de détourner l'*injustice* (ce qui sera naturellement le cas la plupart du temps) et que la guerre et le tort causé soient *proportionnés* (...)." (italics in original)

epilogue, pleading for a renaissance of the Catholic doctrine, was overdue already at the time of writing.²⁰ Thus, his opus magnum was to be of benefit mostly to historians, theologians and canonists. To practising lawyers, let alone to the future drafters of a United Nations Charter, he had little to offer. Nevertheless, by obtaining his doctorate, his academic career was secured.

6. Later Work

Most sympathy for Regout and his work may well arise from inspection of his later writings. The young doctor first devoted some ink to the Italian-Abessinian conflict of 1935-1936. He finally attempted a practical application of the Catholic doctrine of just war, and in doing so observed that the refusal to offer any concessions to Italy theoretically amounted to an injustice on the part of Abessinia.²¹ He hesitated to draw further conclusions from this inference, and ended on a vacillating note. Writing for the Catholic Encyclopaedia in 1937 on the entry 'war', he in fact admitted that the old doctrine had had its day, and could only serve as a makeshift solution in absence of a binding set of international legal norms.²² It might be argued in his favour that the inability of the League of Nations to take effective action in the 1930s, created a legal vacuum in which the doctrine of *bellum justum*, for practical purposes, could serve equally well as one of non-intervention. For in those days, as one will recall, half-heartedness, lack of determination, overt sabotage and a faulty design prevented the collective security system from functioning properly. Accordingly, by the mid-1930s, the authority of the League of Nations had almost completely evaporated. Despite earlier intentions, most states seemed unwilling to sacrifice their egoism. Regout then kept close track in his publications of the international tensions that were ripping the world apart. Characteristic of the author's later work may well be his remarkable, enduring optimism:

“Current affairs look grim indeed. But are there traces of light, that leave hope for a change for the better? My response is affirmative. (...) One may often hear the remark, in regard of the veritable impotency of the League of Nations, that the experiment of the League now belongs to the past. This assertion may prove to be

²⁰ Regout's advocacy for a revival of St. Augustine's doctrine forms an excellent example of the neo-scholastic surge dominating the works of Catholic scholars in the early twentieth century. This development was stimulated by Pope Leo XIII and found its root in the encyclical *Aeterni Patris* (1879). Among the other books published in those days on *bellum justum* in the Catholic tradition were Vanderpol's (*supra*, n. 13), and L.J.C. Beaufort's *La guerre comme instrument de secours ou de punition* (The Hague: Nijhoff, 1933). The Franciscan friar Beaufort would succeed Regout on the Nijmegen chair in 1948.

²¹ R.H.W. Regout, 'Het vraagstuk van den rechtvaardigen en onrechtvaardigen oorlog en het Italiaans- Abessynisch conflict' [The question of just and unjust war and the Italian-Abessinian conflict], *Studiën* 124 (1935) p. 362.

²² *Katholieke Encyclopedie* (Amsterdam: Vondel, 1937), lemma 'oorlog'.

correct. Yet it is equally possible that the smouldering fire will once again be fanned to great heights.”²³

At the request of the Roman Catholic State Party, Regout had in 1936 already drafted a razor-sharp analysis of the League’s deficiencies. He ascribed the main weaknesses to the lack of universal membership, and the below par moral effect of its existence on the mentality of its members.

“But the principles of legal organisation underlying the League are completely right and valuable. The institution in its present form, despite its imperfections, is an attempt in the right direction. It is able to set the minds straight, to a posture more amenable to the rule of law (...). If the League of Nations were to be dissolved, without any other organ put in its place, one of the final opportunities at our disposal to renounce the traditional happenchance rules of nationalistic power play, would be abandoned.”²⁴

By the end of 1938 still, he agreed that much could be said to the detriment of the League, and one could point to many lacunae – “but an undisputable fact is, that with its creation, we have embarked upon the road towards the Promised Land”.²⁵ In January 1940, he vigorously addressed Catholic and Protestant youth in a lecture entitled ‘The peace ahead’. By that time, despite lofty earlier resolutions, the scourge of war had been unleashed once again. Where lay the blame for this? “Not so much in the legal arrangements, as in the mentality; not so much in the construction, but in its underground (...) a lack of commitment to the unity of mankind.” The follow-up was a spur to seize actual and potential possibilities for improvement: “We *can* make a difference. Away with defeatism. Just as the institution of the League of Nations will collapse without sincere dedication, thus our attempts will be in vain without an inner vitality”.²⁶

7. Professorship, Occupation and Demise

When those words were spoken, Regout had already been appointed professor by the Nijmegen law faculty. By February 1940, at the age of 43, he would officially assume his position with the celebrated inaugural lecture entitled ‘Is there reason to believe in a future for international law?’. He admitted that in common usage, international law

²³ R.H.W. Regout, ‘Heeft het recht in de wereld afgedaan?’ [Has the world abandoned the law?], *Pro Pace* 10 (1938), p. 186.

²⁴ R.H.W. Regout, *De internationale plaats en taak van onze nationale gemeenschap. Nederland en de Volkenbond* [The international position and task of our national community. The Netherlands and the League of Nations] (The Hague: Rooms Katholieke Staatspartij, 1936), p. 10.

²⁵ *O.c.* (*supra*, n. 7), p. 58.

²⁶ Transcript of a lecture held at a symposium organised by Catholic and Protestant youth in Amsterdam, 18 January 1940 (Nijmegen, Archive of the Catholic Documentation Centre (KDC), Z.160.1.36), p. 3. (italics in original)

had become a subject for scorn and mockery. He saw enough reasons for modesty. After all, people had expected international law to bring about a realm of peace and justice; this it had failed to deliver. But on the question of whether one could find reasons to believe in a future for international law, he answered affirmatively and with conviction. “Not just lawyers, also politicians and diplomats have experienced turbulent years full of hope and disappointment. But why should we suppose people will not learn from experience?”. Looking back on previous centuries, an international *opinio juris* had, according to Regout, taken root. A sense of right and wrong was slowly emerging on a global scale. Positive law should now be founded on a sincere desire for cooperation. But:

“One should not be impatient. A mentality of centuries is impossible to alter within twenty years; the history of nations should not be measured with the short yardstick of a human life. The decline in our days may be a short phase, in a longer process of ascension to a higher ground. (...) Public international law is still in its infancy. May many of the students here attending endeavour with passion to one day construct a legal order among nations as a manifestation of the divine Justice in this world.”²⁷

On the 10th of May, the Nazis abruptly invaded The Netherlands. After five days, the guns silenced, and the Dutch government had capitulated. Regout was both appalled and resolved. At the start of the occupation, he immediately began travelling around the country, contacting colleagues, journalists, local politicians and academia. He encouraged them to stand up for themselves, advised against collaboration, and urged the faint-hearted not to succumb to threats. To enlighten the spirits on a larger scale, by the end of May, he would publish a final and most audacious article. It was entitled ‘The legal regime in occupied territory’, and consisted of a succinct yet well-founded analysis of the fourth section of the 1907 Hague Convention on the laws and customs of war on land. In his assessment, the author emphasises that The Netherlands experienced a state of occupation, not of annexation, which entailed that Dutch law remained in force as usual.

“Our national and religious convictions remain unblemished. We are Dutchmen on Dutch soil, and many times already it has become clear to us how the German soldiers sojourning in our country, for whom the love of their country is rooted so deep within their hearts, respect us for being who we are, for remaining dedicated to our own Queen and Fatherland with heart and soul.”²⁸

From a legal perspective, nothing in the article could be considered truly disputable. Regout correctly asserted that the occupied territory remained subjected to the ousted Sovereign, even though the Nazi authorities *de jure* exercised the actual power. But the subject Regout tread on was in itself too daring, the tone too risky:

²⁷ *O.c.* (*supra*, n. 1), respectively pp. 4, 8 and 17-18.

²⁸ R.H.W. Regout, ‘De rechtstoestand in bezet gebied’ [The legal regime in occupied territory], *Studiën* 133 (1940), p. 471.

“We should strictly abide by our commitments towards the occupying force. (...) All resistance would be futile and injurious. When acting thus, we are not acting in betrayal or disloyalty to our Sovereign. We have full confidence in her return, and expect a swift restoration of liberty to our country. Yet, for as long as the temporal situation of occupation lasts, and no peace is made between the Dutch and the German government, the interest of the fatherland does request us to abide by the rules of the occupying force.”²⁹

It is worthy noting that the study by Regout was published long before any true resistance was taking root and form in The Netherlands. It was an early sign of protest, delivered quite some time before the Leyden professor Cleveringa would stage his famous public address in defiance of the dismissal of his Jewish colleague Meyers. The latter, which took place on 26 November 1940, is commonly regarded the first official protest against the Nazis in Dutch academia. Regout knew very well that he could be arrested for what he did, but wilfully took the risk. As little there was to criticize his remarks from a legal perspective, the political stance in his article, at least to the Nazi's, was unacceptable.

On the 29th of June, in his absence, the *Gestapo* raided his home. The mistaken suspicion was that Regout stood in close contact with the German Jesuit Friedrich Muckermann, the driving force behind the underground Catholic opposition against the Nazis in Germany. Finding his room sealed, Regout voluntarily reported to the Gestapo on the 3rd of July, and was subsequently detained in Arnhem. Even when it entailed being locked up, Regout remained determined to stand up for what he believed in. His article on the legal regime in occupied territory, in which he admonished the Nazis to adhere closely to positive rules of international law, would seal his abysmal fate. The head of the German *Sicherheitsdienst* in The Netherlands, W. Harster, had made an in-depth study of the article. He ordered the ‘public enemy’ Regout to be transported to Berlin.³⁰ After having spent almost a year in captivity, he was sent to the Dachau concentration camp in 1941. Suffering cruel and degrading treatment there, Robert Regout, a martyr for international law, passed away on December 28, 1942.

8. Regout's Legacy

“If a humane society of peoples is only possible when the rule of law, and not the random exercise of violence, controls this society, then all effort should be directed towards establishing that rule of law. Even when noticing that one is continuously

²⁹ *Ibid.*, p. 473.

³⁰ In a letter of 21 August 1940 by Harster to F. Wimmer, *Generalkommissar für Verwaltung und Justiz*, he quoted the lines from Regout's article which could be considered anti-German. This convinced the latter to order Regout to remain in captivity: “Er hat in der Öffentlichkeit Äußerungen gebraucht, die den Nationalsozialismus und seine Staatsform in schärfster Weise angriffen”. (Leyden, Archive of the Dutch Institute for War Documentation (NIOD), 8g, 072732/9).

pushed farther away from that objective, one must then, if necessary, even be prepared to row against the stream."³¹

What Regout has bequeathed to the present, should primarily be assessed in the light of his time. He saw reason to believe in international law, was himself a personification of that belief. In an uphill struggle, he stood up for justice and civilization. His message was that to expel war from the world, one should acknowledge the necessity of respecting international agreements. He wrote a commended, voluminous thesis on the history of the doctrine of just war. In his writings, lectures and teachings, he propagated a sincere desire for cooperation, essential for a lasting peace. His faith in the final triumph of justice remained up until the very end. His voice may have been silenced in a short triumph of lawlessness, his faith would be redeemed, his struggle proven not to have been in vain. On the eve of the Second World War, Regout saw a possibility, even a probability, that a more effective legal regime would be established between nations. Mankind, he expected, would put the lessons of history to good use. However, he knew this future development could only be gradual. The next generations would reap the fruits of the tree, which still had to take root in his time.

Present-day lawyers will agree that international law has made great progress, even though the horrors of a Second World War had to lend force to this development. That the United Nations in its 1945 Charter outlawed the unilateral use of force, could not guarantee that the possibility for, or the magnitude of the suffering would become any less. But the growing desire for cooperation established a mutual interdependence worldwide, which rules out a relapse into the disorder and lawlessness of previous centuries. Even today, there is every reason for modesty. Regout himself wrote already in 1926, that even in the most perfected society of nations, violations of the peace would occur. But the assessment that the law has been broken, proves that a legal order exists. "The system of international law will survive, as it has done before, both terrorism and breaches of international law by powerful states," writes Brownlie.³² We still face problems of legitimacy, but on legality global consensus is slowly emerging. Or as Regout hopefully predicted: "On one day, crimes and sad incidents will remain mere exceptions, generally experienced as transgressions against the rule of law".³³

Regout perhaps was not a true scholar of international law in the modern sense. He lived in a time when modern international law was still in its infancy. But his lasting, great achievement has been that he made the general public in The Netherlands more receptive to the international rule of law, through his knowledge and conviction. With his learned mind, and through his zealous aspirations, he let a light shine where darkness beckoned. The ideas he fostered have matured; the present generation can enjoy the assets his efforts have yielded.

³¹ *O.c. (supra, n. 1)*, p. 10.

³² I. Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 2003), preface.

³³ *O.c. (supra, n. 3)*, p. 433.