

EDITORIAL

In memoriam Professor Frits Kalshoven: Some personal words on the passing of one of the most respected International Humanitarian Law experts of the last century

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On 6 September 2017, Professor Emeritus Frits Kalshoven passed away at the age of 93. I learned about his passing the day afterwards, and although in some ways it should not have come as a complete surprise given his age, it had a very deep emotional impact on me. This was not only from the perspective of an international humanitarian lawyer, since in this moment we lost one of the most respected scholars of the field,¹ someone whose expertise as an academic as well as whose impact as a practitioner can only be described in the highest praise. The great Jean Pictet wrote in his foreword to the *Liber Amicorum* for Frits Kalshoven that he stands in the long tradition of Dutch legal scholars ‘who, since Grotius, have greatly added to the fame of their country throughout the world’.² But an even more important reason for this great feeling of loss was that we had to say good-bye not only to a great scholar, but also to a wonderful human being, a role model, a true humanitarian, a man who despite his numerous achievements remained humble and kind until the end, someone who inspired generations of colleagues, experienced lawyers and young students, in their way to apply, research and disseminate International Humanitarian Law.

I had known Frits only for a bit more than six years – much less than some of my colleagues from Leiden Law School and the Netherlands Red Cross who had the pleasure to work with him for several decades. I met him the first time at the inauguration of the newly established Kalshoven-Gieskes Forum on International

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¹ For some examples on how the international law community reacted to his passing, see, for example: www.universiteitleiden.nl/en/news/2017/09/professor-frits-kalshoven-passed-away, www.ejiltalk.org/in-memoriam-frits-kalshoven/, and www.rodekruis.nl/nieuwsbericht/frits-kalshoven-overleden/ (accessed 26 October 2017).

² J. Pictet, ‘Preface’, in A.J.M. Delissen and G.J. Tanja (eds.), *Humanitarian Law of Armed Conflict: Challenges Ahead, Essays in Honour of Frits Kalshoven* (1991), xiii at xiii.

Humanitarian Law at Leiden Law School on 6 June 2011.³ The circumstances of the creation of this Forum, which has the honour of carrying Frits Kalshoven's name, are one example of the humbleness of this great scholar. We were not completely sure whether our eminent International Humanitarian Law Professor would agree with giving his name to this institution which had not yet started to be in operation, and would need probably a couple of years before it would have the infrastructure in order to live up to the expectations; we are talking about expectations which would come along with carrying the name of someone who had influenced the area of International Humanitarian Law for decades. But Frits himself saw this clearly and primarily as an honour we had given to him, and happily agreed. Several years after this opening event, I had lunch with him at the Leiden Faculty Club and in his very special way, he confided in me how happy he was that he had his own Forum on International Humanitarian Law while he was still alive. It is difficult to convey this in the proper way, but the moment he made this statement, I got the impression that, somehow, he thought that he did not really deserve this and that people were always exaggerating his achievements. In the academic world, I have rarely met someone with a similar modesty and kindness.

A similar experience was shared by two of my colleagues, Jeroen van den Boogaard and Rogier Bartels, formerly Legal Advisors in the International Humanitarian Law Department of the Netherlands Red Cross, who, ten years ago, came to Frits Kalshoven's house and asked him whether he would allow them to name the newly established International Humanitarian Law Competition⁴ after him. Apparently, it was only after the two had made an analogy with the fact that Jean Pictet got an internationally organized International Humanitarian Law Competition⁵ named after him, while he was still alive, that Frits Kalshoven agreed to this proposal, expressing clearly how deeply touched he was by this. There were multiple occasions similar to this over the last couple of years, which demonstrated to me what an extraordinary person Frits Kalshoven has been. He had always dedicated his life, energy and passion to the greater good and the benefit of other people, including his colleagues and students, while contributing immensely to the research, teaching and dissemination of International Humanitarian Law.

He committed himself to this area of law until the very end. In the last couple of years before his passing, he still would always try to attend the Round Table on International Humanitarian Law organized by the San Remo Institute, being an honorary member of the Institute. In 2014, he still went to Washington, D.C. to attend the 2014 ASIL Annual Meeting & ILA Biennial Conference,⁶ and until the end one of his biggest hopes was that he would be able to finish his final book project,

³ See the respective press release at www.law.leiden.edu/organisation/publiclaw/publicinternationallaw/news/kalshoven-gieskes-forum-on-international-humanitarian-law.html (accessed 23 October 2017).

⁴ See, for more information, Rode Kruis, 'Frits Kalshoven Competition' at afdeling.rodekruis.nl/dit-zijn-we/humanitair-oorlogsrecht/ihl-competition (accessed 23 October 2017).

⁵ This is the very traditional Jean-Pictet Competition, see www.concourspictet.org/indexen.html (accessed 26 October 2017).

⁶ See www.unanca.org/component/content/article/193-2014-asil-annual-meeting-a-ila-biennial-conference (accessed 26 October 2017).

'The History of International Humanitarian Law'.⁷ At one point, he called me and told me that he had to admit that this would unfortunately not happen, because he probably did not have the necessary energy anymore. I was astonished how seriously he took it that he could not finish this project at the age of 90. It seemed that he apologized for the fact that he now, finally, had decided to 'retire' from writing books, although probably the majority of colleagues would have taken this decision some 20 years earlier. But even then, he did not really retire from being committed to International Humanitarian Law. He would still, every year, come to the finals of the Frits Kalshoven International Humanitarian Law Competition in The Hague, happy to see the students arguing cases on difficult issues of the law of armed conflict.⁸ He would come to the keynote lecture of our newly established summer school on International Humanitarian Law in 2016 given by his colleague Judge Christopher Greenwood, or the opening event of our IHL Clinic Exchange Conference, always expressing his happiness and gratitude over the fact that so many young people were engaging in this important discipline of international law, and never taking himself too seriously even though he would have reason to do so looking at the long list of his publications and life achievements.

While the main objective of this in memoriam essay is to honour Frits Kalshoven as the wonderful person he was, this piece would not be complete without mentioning his great achievements during his academic and professional life. As two of my colleagues formulated in an obituary which was published a couple of days after Frits Kalshoven's passing: 'The world has lost one of its greatest international humanitarian law scholars'.⁹ This is something which cannot be said about many people, but I think in the case of Frits Kalshoven there is absolutely no dispute about this statement, since he was, indeed, known around the globe as one of the most influential and respected academics in the field of International Humanitarian Law.¹⁰ This might be also proven by the fact that we received many messages in the days and weeks after his passing from academic colleagues and former students who expressed their sadness and grief, and pointed out this special combination of outstanding expertise and wonderful personality.

There are few people who can look back at a more extensive career dedicated to the teaching, promotion and research of International Humanitarian Law spanning more than 50 years. Frits Kalshoven was born in The Hague on 29 January 1924, and after experiencing the Second World War as a young man, he decided to join the Dutch Royal Navy, because he wanted to contribute to the general good of

⁷ He only published part of the planned chapters, see *supra* note 1; F. Kalshoven, 'The History of International Humanitarian Law Treaty-Making', in R. Liivoka and T. McCormack (eds.), *Routledge Handbook of the Law of Armed Conflict* (2016).

⁸ Here a report from the 2016 edition of the Kalshoven IHL Competition, www.universiteitleiden.nl/en/news/2016/02/leiden-university-wins-the-2016-kalshoven-ihl-moot-competition (accessed 26 October 2017).

⁹ R. Bartels, J. van den Boogaard and R. Heinsch, 'In Memoriam: Frits Kalshoven', *EJIL: Talk!* 11 September 2017, available at www.ejiltalk.org/in-memoriam-frits-kalshoven/ (accessed 26 October 2017).

¹⁰ See, for example, the words of Jean Pictet, *supra* note 2, at xiii, or J.J. van der Weel, 'Preface', in Delissen and Tanja, *supra* note 2, at xv.

the state and a peaceful world. He served as an officer in the Navy until 1967.¹¹ During this time he studied law at Leiden University from 1954 to 1958 where he received his law degree.¹² He then taught public international law, the law of naval warfare and Dutch criminal and military law at the Dutch Royal Naval Academy (*Koninklijk Instituut voor de Marine*). After leaving the Dutch Royal Navy in 1967, and ending his active military service, he became a member of the Department of Public International Law at the Leiden University,¹³ where in 1971 he successfully defended his PhD thesis on 'Belligerent reprisals' (*cum laude*), which until this very day is one of the core publications on this matter.¹⁴

As indicated in an interview with the Peace Palace,¹⁵ he decided to write his PhD on this topic having been inspired by Dr. M.W. Mouton, who had served as a senior advisor on international law issues during the Second World War under Dutch Prime Minister P.S. Gerbrandy. Mouton afterwards became the Dutch representative at the UN War Crimes Commission.¹⁶ At a time when the effective implementation of International Humanitarian Law and the prosecution of its violations were not yet supported by a growing system of international criminal courts and tribunals, the issue of belligerent reprisals was of heightened importance.¹⁷ Frits Kalshoven pointed out that:

[i]t was great to write about the concept, but it was the theory that had to be supported by the facts, and these facts were very difficult to find. My research was focused on the Second World War and the bombardments that were carried out by all parties involved. I had to find out whether legal thought preceded the execution of these attacks ...¹⁸

From 1967 to 1985, Frits Kalshoven was first Lecturer and then Professor of Public International Law at Leiden University and became Extraordinary Professor of International Humanitarian Law from 1975 to 1989, taking over the newly established Red Cross Chair in International Humanitarian Law at Leiden University (from 1975 to 1989).¹⁹ The connection with the Red Cross had started during his research for his PhD, when he became interested in the role of the International Committee of the Red Cross (ICRC) with regard to the development of International Humanitarian Law, which at that time had to face the challenges posed by armed conflicts involving freedom fighters, guerrilla warfare and wars of liberations.²⁰ In this context, he asked the Netherlands Red Cross whether he could attend the Red Cross meetings in Geneva, and eventually became the International Humanitarian Law Advisor to

¹¹ See Biographical Note of Frits Kalshoven, in Delissen and Tanja, *supra* note 2, at xix.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ F. Kalshoven, *Belligerent Reprisals* (1971).

¹⁵ C. Alihusain, 'Interview with: Holland's most famous International Humanitarian Law Professor Frits Kalshoven', Peace Palace Library 14 May 2012, at www.peacepalacelibrary.nl/2012/05/interview-with-hollands-most-famous-international-humanitarian-law-professor-frits-kalshoven/ (accessed 23 October 2017) (hereinafter Peace Palace Interview).

¹⁶ F. Kalshoven, *Reflections on the Law of War, Collected Essays* (2007), at 947.

¹⁷ See Kalshoven, *supra* note 14, at 17–18.

¹⁸ Peace Palace Interview, *supra* note 15.

¹⁹ See Delissen and Tanja, *supra* note 2, at xix.

²⁰ Peace Palace Interview, *supra* note 15.

the Board of the Netherlands Red Cross and represented them during meetings of the Red Cross/Red Crescent movement.²¹

From 1971 onwards, Frits Kalshoven was part of the Dutch delegation which negotiated the 1977 Additional Protocols to the Geneva Conventions, and as of 1974 he joined the delegation for the 1980 Certain Conventional Weapons Convention.²² Being Rapporteur of the Ad Hoc Committee on Conventional Weapons at the Diplomatic Conference on the Reaffirmation and Development of International Law Applicable in Armed Conflict, his decisive role was duly mentioned by Jean Pictet in his tribute to Frits Kalshoven in the above mentioned *Liber Amicorum*.²³ During the negotiations of the 1977 Additional Protocols he had an important influence on the wording of some of the provisions of this important treaty on the law of armed conflict. One special anecdote was recalled in this context during one of the last International Humanitarian Law seminars which Frits Kalshoven attended at Leiden Law School, and where Jeroen van den Boogaard raised the question why states had chosen the term ‘excessive’ in Article 51(5)(b) Additional Protocol I in order to describe disproportional attacks in armed conflict. With a cheeky smile, Frits Kalshoven raised his hand and explained that due to problems in agreeing on the original suggested wording to describe the principle of proportionality, he had suggested this terminology, and it was incorporated in the final text.²⁴

In 1985, he was asked to teach at The Hague Academy of International Law and one year later he was appointed as its Director of Studies. In the 1990s, he was the first Chairman of the United Nations Commission of Experts to investigate serious violations of International Humanitarian Law in the Former Yugoslavia.²⁵ During this time, being confronted again with the realities of war on the European continent, he expressed his consternation about the cruelties of war. Furthermore, he was first Member (1991–1997) and then President of the International Humanitarian Fact-Finding Commission (1991–2001). In addition, he acted as the long-term Advisor to the Board of the Netherlands Red Cross (1971–1993).²⁶ From 1999 to 2002 he was appointed as Guest Professor at the University of Groningen. From 2002 until his death in 2017, he was Emeritus Professor at his alma mater, Leiden University. In addition to all these important posts, he found the time to publish widely, and for many students his ‘Constraints on the Waging of War’ whose last editions he wrote together with Liesbeth Zegveld, was the first introduction to International Humanitarian Law they would read.²⁷

²¹ Ibid.

²² See Delissen and Tanja, *supra* note 2, at xix.

²³ See Pictet, *supra* note 2, at xiii.

²⁴ T. Gill, R. Geiss and R. Heinsch, International Law Association Study Group on the Conduct of Hostilities in the 21st Century, ‘The Conduct of Hostilities and International Humanitarian Law: Challenges of 21st Century Warfare’, (2017) 93 *International Law Studies* 322, footnote 134, available at stockton.usnwc.edu/ils/vol93/iss1/12/ (accessed 26 October 2017).

²⁵ Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674 (27 May 1994), para. 1.

²⁶ See Delissen and Tanja, *supra* note 2, at xix.

²⁷ F. Kalshoven and L. Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law* (2011).

But of course, this was not his only influential publication in the area of International Humanitarian Law. In 1991, when his *Liber Amicorum* was published, the list of his ‘principal publications’ contained more than 70 entries,²⁸ including various articles on the topic of his PhD, ‘Belligerent Reprisals’, but also covering issues like ‘Assisting the Victims of Armed Conflict and other Distasters’, the ‘Implementation of International Humanitarian Law’, ‘Human Rights, the Law of Armed Conflict, and Reprisals’, ‘The Applicability of Customary International Law in Non-International Armed Conflicts’, ‘Guerrilla and Terrorism in Internal Armed Conflict’, and of course on ‘The Humanitarian Law of Armed Conflict: The Protocols of 1977 Additional to the Geneva Conventions of 1949’.²⁹ In 2007, an important part of Frits Kalshoven’s extensive writing was collected in the 1,115-page volume ‘Reflections on the Law of War’,³⁰ which did not stop him continuing to write (and publishing even until 2016).³¹

Frits Kalshoven’s importance in the field of International Humanitarian Law is also reflected in the multiple awards he received. In 1971, he received the Royal Shell Award for his work in the domain of International Humanitarian Law, and in 1973, he was awarded with the Ciardi Award of the International Law Society for Military Law and the Law of War for his thesis on Belligerent Reprisals.³² In addition, he received the Dutch Red Cross Society’s Cross of Merits (*Kruis van Verdienste*) and, in 2003, he was awarded with the Henry Dunant medal for humanitarian service, the highest distinction of the ICRC, an award he was always very proud of to wear on special occasions. In 2015, Frits Kalshoven received the San Remo Prize for the Promotion, Dissemination and Teaching of International Humanitarian Law. The award was given within the framework of the 38th Round Table on ‘The Relationship between IAC and NIAC: Challenges for IHL?’, in recognition of his ‘outstanding and tireless commitment to International Humanitarian Law, as well as for his exceptional contribution to its development through his ever-active involvement with international humanitarian bodies and to its dissemination through his scholarly writings and teaching activities’.³³

Putting together all these life achievements is one way to describe a person when he is leaving us, and we try to revive his memory. But with Frits Kalshoven, my sincere belief is that this would not do him justice. Because professional achievements do not mean much at the end of your life if they are not supported by the corresponding personality. As illustrated at the beginning of these lines and as highlighted by every single person I talked to in the weeks after his passing, he was a wonderful human being: kind, gentle and modest. He was a mentor to the young, a great colleague and friend, who always insisted on being called ‘Frits’. It is rare that someone who was so successful as an academic and practitioner stayed so humble.

²⁸ Principal Publications of Frits Kalshoven, in Delissen and Tanja, *supra* note 2, at xxi–xxvii.

²⁹ For detailed citations, *ibid.*, at xxi–xxvii.

³⁰ See Kalshoven, *supra* note 16.

³¹ Kalshoven (2016), *supra* note 7.

³² See Delissen and Tanja, *supra* note 2, at xx.

³³ 38th International Round Table on ‘The Relationship between IAC and NIAC: Challenges for IHL?’ Sanremo, 3–5 September 2015 (for more information see www.ejiltalk.org/in-memoriam-frits-kalshoven/ (accessed 10 November 2017)).

Frits Kalshoven was a role model to all of us, not only with regard to his work ethic, but especially concerning his personality. He was a true humanitarian, and I am sure his legacy will have long-lasting effects. For now, it is time to mourn and say: 'Good-bye, Frits!'