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Nollkaemper, P.A.

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What's Wrong with International Law?

Liber Amicorum A.H.A. Soons

Edited by

Cedric Ryngaert
Erik J. Molenaar
Sarah M.H. Nouwen



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Fred Soons: A Pragmatic Trust in International Law

André Nollkaemper

Traditions of Dutch international legal scholarship can roughly be divided into three categories. Of course these represent archetypes. Many persons can fit in more than one category and move between them. Yet, the distinction is helpful when we reflect on the position of Fred Soons in the landscape of Dutch international legal scholarship.

One stream, perhaps dominant, includes international lawyers who profess international law in the pursuit and support of some grand ideals. These mostly consist of human rights, international criminal justice or a fair division of wealth in the world. International lawyers in this category build on a Dutch tradition of foreign policy, often depicted in terms of parsons and preachers.

A second stream includes international lawyers who keep a critical distance of international law. It consists of non-believers, persons who may find international law scientifically interesting, but critique the naivety of scholars who think that international law can bring a better world. This stream was never particularly strong in the Netherlands, but is clearly on the rise, due to the impact of critical legal studies and the increasing influx of international lawyers in Dutch academic positions who have received their training elsewhere.

A third stream is different from either of the other two. It is different from the first in that the persons we place in this category are not expressly in the business of furthering some substantive goals such as the protection of the rights or the prosperity of all. It differs from the second category because the persons we place in this category do trust in international law and believe in the possibility that international law can make a difference. This category consists of pragmatists: international law cannot save the world, but it can make small differences, and should be studied in order to improve it, in small steps, so that these differences can indeed materialize.

Individual persons are not always easily placed in either of these categories, and this is not the place to put other people in boxes. However, there is little doubt that Fred Soons should be placed in the third category. He would not be there on his own, but in the company of a sizable number of Dutch international law scholars, often, though not always, involved in legal practice. Fred Soons has always been critical of the too easy an acceptance that international law would or should bring about a more just world, or against interpretations which

were clearly colored because that would benefit human rights or so. Yet, he firmly trusted that international law could make a difference.

The theme of the book (*What is wrong with international law?*) fits this outlook of pragmatic trust. Despite the question mark, the theme is really more in the nature of a proposition: there is nothing fundamentally wrong with international law. That at least is, I believe, a proposition to which Fred Soons would subscribe.

Indeed, the proposition that there is nothing fundamentally wrong with international law encapsulates two fundamental features of the professional life of Fred Soons as an international lawyer. The first is a strong belief in international law and the values that it serves; not because of any particular substantive value like human rights, development or the protection of species, but because of the ability of international law to serve a wide variety of goals that have been accepted by states. The second is a pragmatic perspective on the role of the international lawyer.

Let me say a few words on both of these aspects. Fred Soons' professional life has reflected a belief that international law works and that it matters. A large part of his career is aimed to making it work and making it relevant. Before he became a professor of public international law, Fred Soons pursued this aim as a civil servant at the Ministry for Transport, Water Management and Public Works. He had moved there after finishing his studies in Utrecht and spending a short spell at the University of Amsterdam. At the Ministry for Transport, Water Management and Public Works, Fred worked in the areas in which he later developed his "claim to fame," notably with marine pollution and law of the sea. These are the issue areas that have defined most his career and it is in this area that Fred Soons leaves a particularly strong legacy.

Perhaps Fred Soons' belief that international law matters has been most visible for those who, like me, have been privileged to have participated as students in Fred's international law classes. In the mid-1980s, Fred accepted a part-time position at Erasmus University Rotterdam, next to his position at the Ministry. He succeeded Willem Riphagen in that position. Fred Soons managed to convince me, and my fellow students, that international law actually mattered, that it served important goals and that it was worth studying. He was a masterly teacher of international law. His ability to motivate students and to convince them that international law matters, has been central to his career.

In addition to teaching, Fred Soons has, in a variety of other functions, been able to demonstrate, and sustain, his trust that international law matters. He did so in government, advisory functions and arbitration. He has fulfilled key functions in the international legal profession in the Netherlands, including

the leadership of the Netherlands Association for International Law, as it then was, and the chairmanship of the Advisory Committee for Public International Law. By virtue of these and other functions, he has had a formative impact on the profession of international law in the Netherlands.

If trust and belief in the cause of international law is one feature that defines Fred Soons' contribution, that cannot be seen apart from a second defining feature: pragmatism. Perhaps influenced by a mix of US and Scandinavian scholarship, much of international law scholarship has moved away from a study of the practical operation of international law and the ends that it serves. Indeed, it is much of this scholarship to which we can attribute the claim that there *is* something wrong with international law.

Fred Soons was certainly open to discuss such theoretical work. However, it was not his approach to actively contribute to it. Whatever may be the value of abstract theorizing, it is my impression that, for him, international law can fulfill these purposes only if it is approached, studied and explained in a pragmatic manner. Of course, that approach has its limits and there is no doubt that Fred Soons was aware of those. A pragmatic approach may disconnect international law from the wider aims it serves and may hide the struggles that it reflects. Yet, the day to day operation of international law cannot do without it.

It is a fair proposition that it is not so much international law that is the problem, but rather that the problem lies with human choices and agendas. If that is correct, and I do believe it to be correct, human beings are also part of the solution. Individual lawyers can have a crucial role in decision-making, and their role can matter. That fundamental belief underlies much of the work of Fred Soons.

This was evidenced by the way in which Fred Soons directed the Netherlands Institute for the Law of the Sea (NILOS) for a period of more than 25 years. Surely, fundamental theoretical and even existentialist questions can be posed about the law of the sea. But that was not to be the task of NILOS under Fred's leadership. Rather, NILOS has become a living example of a research institute that aims, in a pragmatic and practical way, to contribute to the solution of specific problems of major societal relevance – by research, training and advice. There is little grand theory or grand ambition here – law is to fulfill a purpose. The lasting success of NILOS surely is one of his accomplishments.

This pragmatic outlook also defines Fred's own contribution as a scholar. It is fair to say that Fred did not aim to compete with scholars who believe that it is the task of an international scholar to produce 10 articles and three books each year. Perhaps his choice not to participate in that rat race was in part a result of the other demands that the profession brings, in particular the priority that he has given to teaching. But it is my impression that there is more to

this. In a world where there is an overabundance of academic writing, no one looks forward to reading the 1001st contribution on the indeterminacy of international law or to yet another contribution on legitimacy, fragmentation or pluralism. What more can be said on such topics? And if more can be said, is there more than a handful of people who can say what needs to be said?

It is my understanding that, for Fred Soons, the test for new academic output has to be not only that it is practically oriented, but above all that it should be “slow science” and that it should add something to what has been said before. Fred Soons had an extremely good sense of locating where new contributions could be made, and where the field was simply too full.

This can be seen from the selection of topics of PhDs that Fred supervised. It also can be seen from Fred’s own work. His PhD on marine scientific research stands out as an identification of an underexplored area that could benefit from scholarship. The PhD produced a study that gave him a rightful claim to unique expertise for the rest of his career. I also recall Fred’s inaugural address in Utrecht on the impact of sea-level rise on maritime boundaries – a study that long preceded the larger number of publications which later followed.

At his departure, Fred will leave a strong legacy in the international legal profession. His legacy extends beyond his individual work. If we would make a soft power map, we would note that the current chairs of international law of four law schools in the Netherlands were guided by Fred Soons’s leadership. The many PhDs and students that he has trained would even provide a much more elaborate and indeed world-wide power map. In this way, Fred Soons has sustained and ensured further longevity for the perspective of pragmatic trust on which much of the day to day operation of international law depends.