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Gezina van der Molen

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Abstract

As one of many portraits collected in Immi Tallgren's eye-opening portrait gallery of (forgotten) women in International Law, this chapter paints a picture of Gezina van der Molen. Contrary to many of the women discussed in this book, Van der Molen was already recognized as a significant actor in the world of international law and relations in her day. In many of her roles she was the first woman in a man's world: the first woman to obtain a doctorate at the Free University of Amsterdam; the first female professor at that university; the first woman to be appointed as a member of the Permanent Court of Arbitration. For Van der Molen, it was not so much the positions that were important, but the work she could do through those positions – work that she had also pursued as a resistance fighter in the Second World War and in various social groups. This work was initially heavily inspired by the religious and moral principles of the church to which she belonged: the Neo-Calvinist. But her increasing encounter with plurality created a dilemma that still confronts international lawyers today: given that there are many different readings of what justice requires, who should be able to determine its meaning in concrete circumstances? In one prominent role, that of Chairwoman of the 'Committee for War Foster Children', it was Van der Molen who was to a large extent responsible for deciding just that. It has been her insistence on equality without wanting to recognize cultural differences as being legally relevant that has turned her into a pioneer who cannot be celebrated.

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Keywords

history of international law, women in international law, World War II, Neocalvinism, war foster children, Gentili

I. A recognized International Lawyer

From a professional international law perspective, Gezina van de Molen (1892-1978) is an easily justifiable choice for a portrait gallery of women in the field.¹ In many of her roles, she was the pioneering first: in 1937, at the Free University of Amsterdam, she was the first woman to obtain a doctorate in international law, indeed the first woman to obtain a doctorate, full stop. In 1949, at that same university, she became not just the first female professor in international law, but the first female professor – again, full stop. In 1966, she was the first woman to be appointed as a member of the Permanent Court of Arbitration. And she attended several of the profession's highlight events: meetings of the League of Nations in Geneva, the first sessions of the United Nations in New York, and the Eichmann trial in Jerusalem.

Contrary to many of the women discussed in this book, she was already recognized as a significant actor in the world of international law and relations in her day. Her PhD and the revised version that appeared in book form thirty years later, *Alberico Gentili and the Development of International Law: His Life Work and Times*, were discussed in, among others, the *American Journal of International Law*,² the *London Quarterly Review*,³ the *Nordic Journal of International Law*,⁴ and the *University of Toronto Law Journal* (according to which 'many readers will be grateful to him for having written his book in the English language').⁵ Van der Molen interacted with, among many others, Bert Röling, Martin Buber, Charles Henry Alexandrowicz, and Max Huber. Her best-known research assistant and PhD supervisee was Peter Kooijmans, who would make it to the position of judge of the International Court of Justice.

Her name is no longer generally known among international lawyers today – the same applies to most of her male colleagues – but among Gentili scholars, her book continues to be referred to. In her 2020 book, Valentina Vadi writes of Van der Molen's as 'one of the best available monographs on Alberico Gentili', explaining that '[h]er lucid writing coupled with an in-depth knowledge of international law has made her monograph among the best starting points for approaching Gentili's contribution to international law for decades.' Vadi also cites Arthur Nussbaum who had, in 1954, praised Van der Molen's book as 'perhaps the best biography ever written on an author in the field of international law'.⁶

¹ Our wish to study the life and work of Gezina van de Molen has been greatly facilitated by Gert van Klinken's biography, on which we gratefully rely in this piece. See Gert van Klinken, *Strijdbaar & Omstreden: Een Biografie van de Calvinistische Verzetsvrouw Gezina van der Molen [Combative & Controversial: A Biography of Calvinist Resistance Fighter Gezina van der Molen]* (Boom 2006) (hereafter Van Klinken, *Strijdbaar & Omstreden*). For a Dutch documentary on our protagonist, see *Gezina van der Molen (1892-1978)*, Brandpunt Profiel, KRO-NCRV (2 May 2007) <https://www.npostart.nl/profiel/02-05-2007/POW_00117927> accessed 1 June 2021.

² Percy T Fenn, 'Alberico Gentili and the Development of International Law. By Dr. Gezina H. J. van der Molen. (Amsterdam: H. J. Paris, 1937. pp. xii, 342. Fl. 4.50.)' (1938) 32 AJIL 209; Edward Dumbauld, 'Alberico Gentili and the Development of International Law. 2nd Revised Edition. By Gesina H. J. Van Der Molen. (Leyden: A. W. Sijthoff, 1968. Pp. xviii, 348. Index. Fl. 35.)' (1969) 63 AJIL 180.

³ Elizabeth Thorneycroft, 'Alberico Gentili and the Development of International Law. His Life Work and Times. By Dr. G. H. J. van der Molen. Amsterdam: H. J. Paris. 1937. :142 pp.' (1938) 54 London Quarterly Review 609.

⁴ Anon, 'Dr. Gesina H. J. van der Molen: Alberico Gentili and the development of international law, 2nd revised edition. A. W. Sijthoff, Leyden, 1968' (1968) 38 Nordisk Tidsskrift for International Ret 187.

⁵ H A Smith, 'Alberico Gentili and the Development of International Law: His Life and Times. By G. H. J. VAN DER MOLEN. Amsterdam: H. J. Paris. 1937. Pp. xii, 342. (4.50frs.)' (1939) 3 Univ Tor Law J 178, 179. (emphasis added).

⁶ Valentina Vadi, *War and Peace: Alberico Gentili and the Early Modern Law of Nations* (Brill 2020) 30, citing Arthur Nussbaum, *A Concise History of the Law of Nations* (rev edn, Macmillan 1954) 101.

And yet, while she played a significant role in international law, it would be wrong to portray her primarily and only as a career international lawyer. Van der Molen was not interested in international law for the sake of international law, but as an instrument to order the world to realize certain universal values. She pursued these values in all the roles she fulfilled in Dutch society and in international circles. Among those roles, that of international law expert came relatively late, due to the social and cultural inhibitions preventing women engaging in study and paid work in The Netherlands, and especially in the part of society to which she belonged. But even when she had become an expert in international law, this role was just one among many. In 1946 she would be knighted in The Netherlands not for her role in international law, but for leadership in the Dutch resistance against the Nazis.⁷ Similarly, Van der Molen would be posthumously recognized by Yad Vashem as 'righteous among the nations', not for a contribution to international law, but for having saved dozens of Jewish children from the Germans.

The values she promoted corresponded for most of her life with those of a specific branch of the Dutch Protestantism, but towards the end of her life this symbiosis weakened and there was more space for alternative visions of the good life. Throughout her life, Van der Molen was confronted with a dilemma that continues to challenge international lawyers today: how to reconcile a belief in pre-given moral categories with the experience of plurality? Given that there are many different readings of what justice requires, who determines its meaning in concrete circumstances?

II. Coming 'too late' to international law

While her friends and relatives were celebrating her success, Van der Molen's own comment on being awarded a doctorate was: 'too late'.⁸ Aged 45 and a woman, she doubted she would ever get to do something professionally with the degree.

The societal context made it difficult to have been any faster.⁹ Until the 1960s, Dutch society was divided into three 'pillars' (Protestant, Catholic, and social-democratic; those who did not feel they belonged in any of these were 'the liberals', essentially a non-pillar). This 'pillarization' was a kind of Westphalian order within The Netherlands: the political parties representing the pillars collaborated at the top (which Arend Lijphart has famously theorised as 'consociationalism'), and each pillar was 'sovereign' in a wide range of aspects of social life. Each pillar had its own political parties, its own trade unions, employers' organisations, newspapers, schools, universities, sport clubs, and hospitals. The pillarization went as far as people shopping only at the baker, butcher, and greengrocer who belonged to their own pillar.

Van der Molen was born Protestant, and her father played a prominent role in one of the more conservative groups within that pillar: the Neo-Calvinist. To her own frustration, she was not allowed to go to grammar school (which would prepare her for university) on the ground that the calling of a good Protestant woman was marriage and family life. The only respectable paid jobs to be fulfilled by a woman were that of a teacher and nurse. Not interested in marriage, she tried both, but found satisfaction in neither. A turning point came when her mother organized for her to live in the house of a befriended family within the same pillar, headed by a professor of law and prominent member of the political party in which father Van der Molen

⁷ Marijke Waalkens, 'Molen, Gezina van der (1892-1978)' (*Het Digitaal Vrouwenlexicon van Nederland*, 4 July 2016). <http://resources.huylgens.knaw.nl/vrouwenlexicon/lemmata/data/Van_der_Molen> accessed 1 June 2021.

⁸ Van Klinken, *Strijdbaar & Omstreden* (n 1) 129.

⁹ See, more elaborately, Janne E Nijman, 'Marked Absences: Locating Gender and Race in International Legal History' (2020) 31 EJIL 1025, 1035 onwards.

was also active. Anne Anema recognized Gezina's intellectual talents, sharpened her writing skills, and encouraged her to apply for a position as a journalist at a Dutch newspaper. She started as editor of the 'women's pages', covering both housekeeping (how to remove stains, how to cook cabbage soup), and the role of women in society.¹⁰ But her reach expanded: four years later she was sent to Geneva to cover the meetings of the League of Nations, including the adoption of the *Protocole pour le règlement pacifique des différends internationaux*. Encouraged by Anema, she decided, aged 32, to study law and to focus, inspired by this Geneva experience, on the law of nations. During all those years, she was also active in her church, in the women's movement, and in the peace movement.

Throughout her life, Van der Molen operated within and was committed to the Neo-Calvinist branch of the Protestant pillar. According to the descriptions of people who knew her, she also embodied some of the characteristics ascribed to people belonging to that branch: firm on principles, hard-working, sober, stubborn, polemic, and moralistic. At the same time, Van der Molen was in many ways exceptional. She lived together with a Catholic woman, thus breaking two taboos for Neo-Calvinist women at the same time. On top of that, she made a career, published political brochures, and was not afraid openly to take issue with the male-dominated elite of her pillar. Yet, at least initially, this was not because she believed in gender equality. In the 1920s and 1930s, Van der Molen even went further than her party (which was cautious about state interference) by advocating for legislation that would force married women to stay home. Invoking God's will, natural law, and 'the strength of the Dutch people', Van der Molen argued that the natural role for married women was that of taking care of the family – and that it is up to the state to enforce this. The situation was different, so Van der Molen argued, for unmarried women: they should be able to participate freely in economic, social, and political life.¹¹ Van der Molen would change her view regarding married women after the Second World War, but her pre-war stance already reveals the complexity of her position. Her polemic style, her invocation of the Bible, and her conservative take on the duties of married women all fitted the Neo-Calvinist tradition. And yet, they were presented by a woman living together with a Catholic woman who took issue with the male elite because she was so convinced of her own reading of God's will, natural law, and the nature of the Dutch people that she propagated intrusion by the state into the private life of citizens. At the same time, she advocated and claimed more freedom for women such as herself who chose not to follow the traditional path of marriage.

Her commitment to the principles of the Calvinist Church as universal ones was visible in her dissertation. Its first thesis was: 'Alberico Gentili should be considered among the Calvinist lawyers of his time, some deviations in his doctrine notwithstanding.'¹² This was controversial: at some point Gentili had joined the Anglican Church and he had been legal counsel for the Catholic Spanish Crown (in cases against the Protestant Netherlands, that is). Van der Molen expresses her surprise that Gentili accepted that job, given his opposition to the Catholic Church and his characterization of the Pontificate as the Antichrist. At the end of the day, however, she downplays the importance of his aid to the Catholic empire as follows:

That he did not refuse this flattering commission, may be attributed to a weakness in his character, but does not imply a denial of his faith. For he was only concerned with pure lawsuits

¹⁰ Van Klinken, *Strijdbaar & Omstreden* (n 1) 73-4.

¹¹ Van Klinken, *Strijdbaar & Omstreden* (n 1) 118-123. Original: Gezina H J van der Molen, *De beroepsarbeid van de gehuwde vrouw* (Edecea 1938).

¹² Gezina H J van der Molen, *Alberico Gentili and the Development of International Law: His Life Work and Times* (H.J. Paris 1937), preliminaries (hereafter Van der Molen, *Alberico Gentili*). While the body of the text was in English, the preceding list of "theses" was written in Dutch; this is our translation.

and it is merely the pronounced religious conviction of his client which surprises us in this connection.¹³

For her it was important that Gentili was recognized not just a Christian thinker, but a Calvinist Christian thinker: unlike Christian Grotius, Gentili had not separated natural law and natural reason (*ratio naturalis*) from God.¹⁴ Natural reason according to Gentili is, so Van der Molen writes, 'God's gift after the fall, and manifests itself in the voice of our conscience'.¹⁵

This, then, was Van der Molen's initial answer to the question that would accompany her throughout her adult life: how to reconcile a belief in pre-given moral categories with the experience of plurality. In her dissertation, she grounds the idea of a legal order between a plurality of communities on a firm, pre-given basis: the *ratio naturalis* as God's gift to a sinful humanity. International law is thus both specifically Christian and pluralistic as it allows one to be a legal counsel irrespective of one's own belief, even for a Crown that uses its power to spread a Church recognizing the 'Antichrist' as its spiritual leader.

After her doctorate, Van der Molen obtained a research grant from a Calvinist research foundation to write a biography of the 16th century Calvinist monarchomach Théodore de Bèze. He had written on a question that was again topical in the late 1930s: under which circumstances was a Calvinist allowed to stop obeying a tyrannical government? When the war broke out in 1939, Van der Molen criticized the generally shared desire in the Netherlands to stay neutral: one had to fight for justice and take up the struggle against an anti-Semitic country.¹⁶ Putting her money where her mouth was, Van der Molen abandoned the research into Bèze and instead did the work that she would become most famous for, as well as the work that made her internationally notorious. Neither work was in international law.

III. World War II and aftermath: Defining choices

Not long after the German occupation, Van der Molen assumed a leading position in the Dutch resistance movement, again as one of very few women in a male-dominated underground world. She called for resistance in a brochure she wrote on the law of occupation, published in 1941, in which she took issue with some leading figures in the Calvinist movement who had argued that citizens had to obey orders from the occupying power. She also publicly objected to the so-called 'Aryan declaration' and those who had signed it: a declaration to certify one was not Jewish, which the Nazis required Dutch civil servants to sign if they wanted to keep their jobs. Van der Molen also established, organized, and wrote for clandestine press (a role for which some of her colleagues were assassinated).¹⁷ Finally, she helped Jewish children escape the Nazis by finding them families with whom they could hide. It was for her role in the Dutch resistance that she would later be decorated.

However, it was her role after the war that made her notorious and in which context she is mostly remembered today.¹⁸ While the occupation was still ongoing, Van der Molen had been concerned about the future guardianship of children who had been with *de facto* foster families during the war. Together with other leading figures of the resistance movement, she proposed

¹³ Ibid, 265.

¹⁴ Ibid. 203. For contrast with Grotius see 205.

¹⁵ Van Klinken, *Strijdbaar & Omstreden* (n 1) 203.

¹⁶ Ibid, 147.

¹⁷ The newspaper she co-founded, *Trouw*, still exists: <<https://www.trouw.nl/>> accessed 1 June 2021.

¹⁸ It is, for instance, in this context that she makes an appearance in the best-selling 2018 Costa Book of the Year: Bart van Es, *The Cut Out Girl: A Story of War and Family, Lost and Found* (Penguin Books 2019) 196-197.

the creation of a national committee that should decide on their fate. The proposal was accepted by the government in exile and the Commissie voor Oorlogspleegekinderen ('Committee for War Foster Children'; OPK) was formed, with Van der Molen as chair, and tasked with deciding on a case-by-case basis where children who had been with foster parents would go after the war.

From Van der Molen's perspective, her work after the war was a natural continuation of that during the war: she had taken responsibility for finding Jewish children foster families during the war; after the war she had the responsibility to ensure their care. As one commentator has observed, her approach to the children was also consistent: 'If these children were little warm bodies first and Jewish only after that, she acted in a similar vein after the war, in her capacity as head of the OPK.'¹⁹ Van der Molen's guiding principle, and subsequently that of the majority of the Commission, was that the children were first and foremost Dutch and not to be regarded as belonging to a special group within Dutch society.

This guiding principle had implications for who was to decide on the children's future and what to decide on their future. As to who was to decide, Van der Molen's reasoning was that because this was a national affair regarding Dutch citizens, it was up to a national commission; the Dutch did not follow, for instance, the French or Belgian approach, which left decisions on the placement of orphans to Jewish organizations. As to what was to be decided, the Commission considered that it had to act as much as possible in the spirit of the parents, but it was the Commission that decided what would have mattered for the parents. To the Commission, and in particular its chairwoman, Jewishness per se was not a relevant factor in deciding on the children's future. In Bela Ruth Samuel-Tannenholtz's words, Van der Molen was 'unable (or unwilling) to understand Jewish identity in the secular sense'.²⁰ The decimated Jewish community in the Netherlands experienced her and the Commission's approach as 'a denial of a right to exist of a Jewish community in The Netherlands.'²¹

The approach adopted by the Commission followed from the moral principles that had inspired the resistance movement during the war. To set apart a group of society as different, as 'Jewish', was unacceptable, Van der Molen argued, also because it would replicate what the Nuremberg laws had tried before:

Who thinks these children are a purely Jewish affair is mistaken. When our common enemy and suppressor started to persecute our Jewish compatriots vehemently, the best part of Dutch people did not regard this as a Jewish matter. They felt it was a Dutch problem, which regards all of us because of humanitarian considerations.²²

In this lecture on the Dutch radio, Van der Molen moved seemingly smoothly from a universalistic logic ('humanitarian considerations') to the national level ('a Dutch problem') to an elite ('the best part of Dutch people') that knows best how to determine what universalism and the Dutch nation require. What complicated this picture even further is that often only a thin line separated 'Dutch' and 'Christian'. The spirit of the Dutch people, as Van der Molen had already argued in the 1920s and 1930s in relation to the position of women, was a

¹⁹ Bela Ruth Samuel-Tannenholtz, 'Define Saving: Gezina van der Molen and Anneke Beekman: History and Identity after WWII' (2009) 14 *Shanan* E23, E37.

²⁰ *Ibid.*, E30.

²¹ Maurice Swirc, 'Gezina redde en roofde kinderen' ['Gezina saved and stole children'] *Trouw* (Amsterdam, 15 February 2014) <<https://www.trouw.nl/nieuws/gezina-redde-en-roofde-kinderen~b06759ee/>> accessed 1 June 2021.

²² Van Klinken, *Strijdbaar & Omstreden* (n 1) 202, citing 'Radiotoespraak voor Herrijzend Nederland 17-9-1945', HDC AGM inv.nr.43.

Christian one. The result of the decisions of the Commission was that hundreds of Jewish children were placed in Christian homes. This was supposedly done in the name of a Dutch nation, acting through its 'best people', in order to realize humanitarian aspirations.

Commentators have accepted that, in the circumstances after the Second World War, 'determining the best interests of the child was not only highly fraught and political but in fact may have constituted an epistemological impossibility' due to 'the irreparable damage to families created by war and genocide'.²³ More than anything else, though, they criticise Van der Molen for her self-righteous and exclusive way of decision-making on this hugely complex issue. In order to deal with this impossible and tragic situation, Van der Molen fell back to the modes of operation and thinking that guided her during the war: in her view, it was up to an elite of 'righteous people' acting on clear moral principles to settle the situation. But the characteristics that had made her a hero during the war became the source of the greatest criticism of her in peace time.

IV. A thinning universalism and a thickening pluralism

Van der Molen's post-OPK writings on international law demonstrate a relativization of her belief in firm moral and God-given principles. In a brochure that she wrote for her pillar's political party in 1950 on the ambitious topic of 'Christendom and International Ordering',²⁴ we again see her grapple with the tension between universality and plurality, but the universality is becoming thinner. She still argues that the ultimate foundation of international law is the fact that God has created men after his image, and that humankind sprang from this divine creation. The starting point, in other words, is the deep unity of mankind under God. However, the unity of mankind was spoiled when Adam and Eve sinned, resulting in God's command to spread around the earth. This was reinforced by the curse after mankind tried to build the tower of Babylon: mankind was divided into different linguistic communities, who do not live together in a single world community. The political message Van der Molen distills from these stories is that attempts to undo the plurality of mankind are vain and dangerous. To strive for a world state, she argues, is a dangerous utopia, comparable to the Leviathan, the beast arising from sea in the Book of Revelation. Christians should cherish the nation state as a way to deal with the consequences of the fall, to restrain and protect sinful human beings through law. Instead of a world state, they should strive for a stronger rule of law among nations, especially in a time when 'God's world plan' has made nations more interdependent than ever before. Again, what starts out from primordial creation and a single, Christian foundation of international law, ends up in a pluralist world, where law serves to keep the peace and to bring nations closer together. As this world is made up of Christian and non-Christian nations (and Van der Molen strongly opposes privileging Christian nations), the rule of law can do its job only if it transcends its Christian foundations. She thus ends up arguing that the unity of mankind is embodied in the unity of a legal order that applies between independent – and diverse – nations. Almost a decade later, Van der Molen would even explicitly distance herself from her earlier reading of Gentili's *societas humana* as a Western world society, a reading that, she admitted, betrayed a 'fatal exclusivity'.²⁵

Foreign journeys, almost always work-related, were key to the broadening of Van der Molen's normative horizons. Abroad, she experienced a sense of freedom to think and say things that

²³ Diane L. Wolf, 'Child Withholding as Child Transfer: Hidden Jewish Children and the State in Postwar Netherlands' (2013) 12 J Hum Rights 296, 306.

²⁴ Gezina H J van der Molen, *Christendom en Internationale Ordening* (Antirevolutionaire Partijstichting 1951).

²⁵ Van Klinken, *Strijdbaar & Omstreden* (n 1) 254, citing 'Some remarks on overseas student in Europe (lecture for the Fondation Européenne de la Culture, Vienna, 20 November 1959)', HCD AGM inv. Nr. 66.

she did not feel in the confines of the Dutch Calvinist society. As one of the 20 women among the thousand delegates to the United Nations General Assembly in 1946, she stated: '[W]e can hardly understand that after two world wars, which have certainly done as much harm to women as to men, there are still countries in which only men are fully responsible for state politics.'²⁶ And three months earlier she had written during a conference in Zurich that she felt 'vraiment libre, - libre d'aller où je veux, libre de dire que je pense.'²⁷

Travelling made Van der Molen's thinking more flexible and shifted her priorities. In Palestine, in 1945-6, she was more open to the idea of letting Dutch Jewish foster children go to Palestine than when she had been in the Netherlands, or indeed, than she would be upon return.²⁸ In 1961, at the age of 69, she used her sabbatical to visit, research, and give lectures in New Delhi, Thailand, Ceylon, Syria, Egypt and, once again, Israel. Officially, she was going to search norms common to all people that could be the foundation for international law, in part to argue against fellow international lawyer Bert Röling, who had emphasized the Western-European character of international law.²⁹ But the encounter with the realities of the street – poverty, racism, and the caste system – made her change her research agenda. In her Valedictorian a year later, she argued that as long as the majority of the world's population lacked livelihoods, international law would remain paralysed.³⁰ After her retirement, the struggle against racism and apartheid became among her primary causes. She saw this work as a natural extension of that of the resistance in World War II:

We as Christians and as Europeans should be deeply ashamed instead of feeling superior on the ground that we are 'white', considering how in this Christian Europe six million Jews were insidiously murdered. And all of this resulted from a foolish and criminal racial awareness.³¹

In her view, the fight against racism was more important than the Cold War.³²

Little was left of Van der Molen's universalization of Calvinist principles as the basis for international law. In the beginning of her academic international law career, she had promoted Gentili's work as a system of international law grounded in Protestant articles of faith and had argued for using the scriptures as the basis for international law to deal with an imperfect world after the original sin. In later life she moved from a Christian foundation of international law to a set of norms that could be found in religions and cultures around the world. Instead of Gentili's *ratio naturalis*, she looked for a natural sense of justice shared by humankind at large. More importantly, she concluded that it would not be fitting to pass judgement on peoples, religions, and cultures that were foreign to her. Partly as a result of changing times, but also because of her travels, her belief in moral superiority had waned, and was eventually replaced by embarrassment and a sense of guilt. What she had held to be universal, objective truths now appeared to be culturally biased opinions. While she took pride and comfort in being a

²⁶ Ibid, 237, citing 'Speech G.H.J. van der Molen, Lake Success 11-12-1946', HDC AGM inv.nr. 57.

²⁷ Ibid, 230, citing 'Discours au Troisième Congrès Féminin Suisse le 23 septembre 1946 à Zürich', AGM inv. Nr. 65.

²⁸ Ibid, 212.

²⁹ Ibid, 277.

³⁰ Ibid, 281, citing Gezina J H van der Molen, *Norm en Praktijk in de Internationale Samenleving* 19.

³¹ Ibid, 284, citing Gezina H J van der Molen, *Recht op de Naaste Af* (Keesing BV 1976) 39 (hereafter Van der Molen, *Recht op de Naaste Af*). (our translation)

³² Ibid, 274.

Christian, she also realized how Christianity had been implicated in the Holocaust.³³ She kept searching for principles that apply across the world, but by the end of her academic career she tried to develop them from the bottom up, through dialogue with other cultures.

And yet, this did not mean that she gave up on Christianity as the moral basis for international cooperation. She accused Christendom for complicity in racism, anti-Semitism, and imperialism, but she could not let go of her moral anchor. Meeting foreign cultures and religions, Van der Molen stated, 'has only strengthened my own Christian belief'.³⁴

V. A recognized international lawyer who cannot be celebrated

In 1992, Jeanne de Bruijn, the newly appointed professor of 'women's studies' at the Free University of Amsterdam proposed the creation of a Gezina van der Molen Chair. To mark what would have been her 100th birthday, the interfaculty study group on 'women's studies' also organized an open seminar.³⁵ The turnout was low, and a prominent Dutch novelist and emeritus professor of criminology was offended just to be invited: 'What were you thinking? How could I, as a Jewish woman, participate in such a seminar?'³⁶ The Van der Molen Chair would never materialize. Instead, some two decades later the law faculty created a (rather modest) Gezina van der Molen Fund, which provides research support for female academics. The website of the fund contains no information on Van der Molen herself and most recipients have no idea who she was.

Another controversy emerged in 2013 when the municipality of Bloemendaal, where Van der Molen had lived until her death in 1978, proposed to name a street after her. This proposal, too, spurred fierce opposition from a variety of groups, including the Association of Jewish War Children and the Association of the Postwar Jewish Generation.³⁷ This time the criticism did not abort the initiative: one can now visit the Van der Molenstraat in Aerdenhout, Bloemendaal.

These two episodes illustrate how initiatives to commemorate Gezina van der Molen turn into controversies. Whereas her supporters and admirers emphasize her pioneering role in Dutch society and her courage as a resistance fighter, opponents highlight her responsibility for the treatment of Jewish children, and by extension the Jewish community, after the war. For us as authors, too, there was no way around these controversies. While the international law focus of this book seemed to make it logical to foreground Gezina van der Molen as an international lawyer, it would be a misrepresentation not to discuss the roles that came to define her in eyes of the wider public.

And yet, as always, it is impossible to reduce a person to some of the roles she performed during her life, however influential these may have been. There are more stories to tell, and this chapter is an attempt to do so. We have argued that although the explicit reference to Christian articles of faith is far removed from the language of international law practised today,

³³ After attending the opening of the Eichmann trial in 1961, she observed: 'This trial made me realize, that we all as Christians and Europeans are co-responsible for the catastrophe that we did not try to prevent.' Van der Molen, *Recht op de Naaste Af* (n 31) 78.

³⁴ *Ibid*, 117.

³⁵ See Van Klinken, *Strijdbaar & Omstreden* (n 1) 311.

³⁶ *Ibid*, 312. See also Elma Verhey, *Om het Joodse Kind* (Nijgh & Van Ditmar 1991).

³⁷ See Gert van Klinken, 'Herinneren aan de Vrije Universiteit. Gezina van der Molen en de 'affaire Bloemendaal'' in Wim Berkelaar and others (eds), *Een oorlogsplaquette ontrafeld. Het herdenkingsmonument 1940-1945 van de Vrije Universiteit Amsterdam* (Boom 2020) 35-46.

Van der Molen's writing in this area stands for a struggle in international law that continues: the struggle between universalism and pluralism.

Throughout her professional life, Van der Molen maintained that international law rests on two pillars: positive law and transcendental justice. Positive law is relative to time and place: different times, different places, different rules. Justice, by contrast, functions as an anchor. It provides a universally applicable scheme to assess the validity of positive rules and to ground directly applicable rules. In her early work, Van der Molen grounded 'justice' primarily in the Calvinism she grew up with. Later in life, her notion of justice became torn between universality and pluralism. She tried to distill it from values shared by Christianity, Islam, Hinduism, and Buddhism. Despite the undeniable differences between the four worldviews, Van der Molen found enough commonalities to conclude that a sound basis for international cooperation did exist. However, what she found was a set of positive values, dependent on the actual acceptance by the four worldviews or religions she studied. If this was all there is to it, the set of core values would be vulnerable to change, while it remained yet to be seen whether other worldviews would buy into them. While her experiences with others (and 'the other') made her less dogmatic about the ultimate foundation of law, she still maintained that the ethics of Christianity rose above that of other religions.³⁸ At the end of her journey she returned to where she came from, albeit more aware of its shortcomings and the promises held by other worldviews.

³⁸ Van der Molen, *Recht op de Naaste Af* (n 31) 117.