

IN MEMORIAM: SIR GERALD FITZMAURICE*

For nearly forty years, the person of Gerald Fitzmaurice formed an eminence in the international legal landscape, a feature without which, that is to say, the scene would have looked significantly different. To be present at the conferences which, towards the close of the Second World War, were intended to establish the new international order, drafted the peace treaties, shaped the new world organization, meant presence while not only law but history was in the making. To sit for many years on the Legal Committee of the United Nations General Assembly, to attend the Berlin and Manila Conferences and the Geneva Law of the Sea Conferences in 1958 and 1960, meant a further presence during the application as well as the making of the law. To be a member of the International Law Commission was to engage in law-making in its own right. To appear at the bar of the International Court of Justice meant participation in the international judicial process. To sit for 13 years on the Bench of the International Court was partnership in the decisions of that process. To be Member of the European Court of Human Rights was again to share decision-making in another important chapter of law. To preside over an international Arbitral Tribunal and be a member of another was likewise participation in the legal and reasonable adjustment of momentous controversies.

I have briefly recounted some of the many roles Gerald Fitzmaurice performed during the last 38 years; playing the midwife to principles and rules of law, nurturing their childhood and ensuring their maturity, demonstrating their viability through practical application, enshrining them in acutely reasoned decisions. Of all the motley garb he must needs have put on to play those parts, the sober gown and jabot of The Hague Court fitted him best I believe.

His links with that Court dated to the days of the Inter-Allied Committee of Experts established on the initiative of the United Kingdom to examine the assumption "that an international court would be needed in the future". Gerald Fitzmaurice was its Secretary, and it produced a report in February 1944. The links were strengthened when in 1950, 10 years before joining the Court, he wrote the first of a now famous series of articles in the *British Yearbook of International Law* on the law and procedure of the International Court of Justice, a most penetrating analysis of the activities of the Court which will remain for decades to come a guide for all those interested in the international judiciary.

* Address by Manfred Lachs, Judge and former President of the International Court of Justice, delivered at the Memorial Service to Sir Gerald Gray Fitzmaurice GCMG, QC, held at St. Margaret's Church, Westminster, London, on Friday, 26 November 1982. Although the Netherlands International Law Review does not, in general, include obituaries of foreign lawyers, Sir Gerald's long association with and residence in The Hague prompted the Board of Editors to make an exception to this custom.

As an advocate before the Court Gerald's fidelity was as fully committed to the international institution that would judge his arguments as to the national cause which was his to defend. Thus in one of his early pleadings he said: "It . . . must . . . on wider grounds, be a matter of importance to all members of the family of nations whose relations are governed by international law, that the judgments of the highest international tribunal, as indeed of all tribunals, should be respected and carried out." From this conviction he never swerved.

From the day he mounted the bench, his words and his views became the property of the Court. From that very day he was and remained unsurpassed in the esteem and prestige he enjoyed as a man and as a judge.

At first sight he may have conveyed the impression of being inaccessible to his colleagues, of remaining somewhat remote. How untrue that was in fact. He was deeply devoted to his family. His reserve, one came to realize, was but an aspect of the discipline he enjoined upon himself, and was in no way directed against others as a caution or defence. To those who knew him, or wanted to come closer to him, he was an excellent colleague, generous in counsel, helpful and kind on all occasions. I for one have known him for 36 years and encountered him on many occasions. Far from being a narrow specialist, Gerald Fitzmaurice took great interest in many facets of life: in literature, poetry and the theatre. In brief he was a man of wide general culture; he spoke rarely and little, but that was more out of modesty than for any other reason. "It is a fact," wrote Lord Buchan, "that the greatest judges have usually been men of wide general culture. Such were Hardwicke, Mansfield, Wensleydale, Selborne, Bowen, and very notably in America was Story." The name of Gerald Fitzmaurice would appropriately have graced that list.

Gerald, once at the Court, showed once again that he was not content to slip into a ready-made slot and confine himself to judicial ratiocination. The administrator and reformer in his make-up led him to become a stimulating member of the Court's committees, to seek to understand the needs of its organization and promote the efficiency of its Registry. A master of procedure, he was always seeking ways and means to improve it.

But the most interesting part of our life at the Peace Palace is the exchange of views, the debates on the merits of each case. In this Gerald Fitzmaurice excelled. He had a prodigious memory; no-one equalled him in the knowledge of precedents; he was always the first to find the right formula and word. This mastery of language was of no mean importance, as that great judge Lord MacMillan claimed: "For the lawyer the importance of words lies in the fact that they are the vehicle of the law. For the formulation, the exposition and the application of law the only medium is language, and success or failure in these endeavours is dependant on the skill and precision with which the lawyer handles his medium." One could say that Gerald's style had a Roman cadence and Corinthian ornamentation. In this, Gerald Fitzmaurice was a master of classical English, one who seemed incapable of committing jargon or officialese, or penning any sentence which failed to bear the stamp of his personality. Indeed, students of the Court's Judgments have little trouble in recognizing those in which his hand is visible.

He adorned the case law of the Court with some striking formulations: in one case, he gave a valuable re-definition of a dispute; in another he observed that in a certain domain “international law must in consequence be regarded as deficient and underdeveloped . . .” and found that the judgment was “a sort of ostrich act” and told “the hungry fellow that he must be satisfied with this because although he will never be allowed to eat that carrot, it will always remain there to be looked at”, which prompted him to append a verse from his favourite poet Keats’s “Ode on a Grecian Urn”.

Looking back, it is evident how Gerald’s great qualities shaped his life and destiny: not only his qualities of mind but also his character and breadth of interests. Those who served with him remain grateful for his counsel and assistance. We mourn his demise because the vein of wisdom had shown no sign of exhaustion. Yet we and future generations of judges and students are fortunate that real pearls of law, sagacity and culture remain to be harvested from the written heritage he left.

Manfred Lachs