

IN MEMORIAM

RICHARD N. GARDNER (1927–2019)

*By Lori F. Damrosch**

Richard Gardner occupies a unique place in the history of United States diplomacy, in the teaching and practice of international law, in scholarship across a wide range of fields of interest to our discipline, and in the life of this Society. He was my valued colleague and mentor at Columbia University for many years, not just at the Law School, but also at the School of International and Public Affairs, where he nurtured and inspired generations of diplomats and policy experts to follow the call of public service. Having ascended the academic ladder to ever more dazzling heights—from Harvard (B.A.), to Yale (J.D. 1951), to Oxford (Rhodes Scholar and D. Phil. 1954)—he began teaching international law at Columbia in 1955, where he remained for six decades, through and beyond his retirement from teaching in 2012. He was the Henry L. Moses Professor of Law and International Organization at Columbia, teaching international law and a legendary seminar, “Legal Aspects of U.S. Foreign Economic Policy.”

For today’s tribute, I would like to focus in particular on his contributions to this Society. The *Proceedings* record that he attended his first annual meeting in 1951 and gave his first banquet speech in 1965, on the same program as then-Secretary of State Dean Rusk.¹ He served in the leadership as a vice president from 1973 to 1975 and addressed our annual meeting on multiple occasions. One time I remember in particular has special resonance for the current period: he gave the banquet address in 1996, with the memorable title, “Who Needs Ambassadors? Challenges to American Diplomacy Today.”² Based on his two four-year terms as President Carter’s ambassador to Italy and as President Clinton’s ambassador to Spain, he illuminated the need for a fully funded U.S. presence in all countries where the United States has diplomatic and consular relations, for robust pursuit of both bilateral and multilateral diplomacy.

Prior to his ambassadorial service, Dick held the position of Deputy Assistant Secretary of State for International Organization Affairs in the Kennedy and Johnson administrations, and he played a role in international legal diplomacy during the Cuban Missile Crisis, as he would frequently recall in the classroom. He drew on the legal lessons of the Cuban Missile Crisis for significant contributions to Society-sponsored publications on the use of force, which I commend to the attention of anyone in this audience who would like to reflect on the lessons of the Cuban Missile Crisis for contemporary policy challenges. For example: is there a valid argument for anticipatory self-defense against a state like Iraq between 1991 and 2003, or North Korea or Iran more recently, on the basis of apprehensions that the state in question has, or might have, weapons of mass

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¹ Richard N. Gardner, *United Nations Procedures and Power Realities: The International Apportionment Problem*, 59 ASIL PROC. 232 (1965); see also 59 ASIL PROC. 222 (1965).

² Richard N. Gardner, *Who Needs Ambassadors? Challenges to American Diplomacy Today*, 90 ASIL PROC. 525 (1996).

destruction or a program to acquire them?³ Relying on his insights from the Cuban Missile Crisis, Dick argued that the so-called Bush Doctrine of preemptive self-defense, as advanced by proponents of military intervention in Iraq in 2003, would open too wide a loophole in the prohibition on the use of force. “The considerations that led us to avoid enlarging the concept of preemptive self-defense in 1962 are just as valid today.”⁴

Columbia University had a festive and substantive celebration of his six decades of teaching and public service, in the form of a two-day conference held in April of 2012, which resulted in the publication in 2012 by the *Columbia Journal of Transnational Law* of a special issue of almost two hundred pages, under the title “The Challenges We Face: A Conference Honoring Professor Richard Gardner’s Retirement from Teaching.”⁵ A number of members of this Society who are present today participated in that happy occasion, where Dick reveled in the company of old friends, including Stephen Schwebel, Zbigniew Brzezinski, Paul Volcker, and Michael Doyle, and many former students, including our very own Sean Murphy and Dick’s very own, very brilliant children, Nina and Tony Gardner (both of whom studied international law at Columbia). We will honor his memory at Columbia on October 6, 2019, and his many friends and admirers in this Society are all cordially invited to attend.

³ Richard N. Gardner, *Commentary on the Use of Force*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* (Lori F. Damrosch & David J. Scheffer eds., 1991); Richard N. Gardner, *Neither Bush Nor the “Jurisprudes,” in Agora: Future Implications of the Iraq Conflict*, 97 *AJIL* 585 (2003).

⁴ Gardner, *Neither Bush Nor the “Jurisprudes,” supra* note 3, at 588; *see id.* at 590 for his proposed “modest reinterpretation” of the UN Charter.

⁵ *Symposium Issue: The Challenges We Face: A Conference Honoring Professor Richard Gardner’s Retirement from Teaching*, 50 *COLUM. J. TRANSNAT’L L.* 529 (2012).