

Tribute to Richard N. Gardner

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Richard Gardner was my valued mentor and colleague at Columbia University, beginning before I began teaching in 1984 and continuing well beyond his retirement in 2012. In the fall semesters from 1984 through 1989, we co-taught the survey course in International Law, using the Columbia textbook originally developed by Wolfgang Friedmann with other Columbia co-editors (which has remained the “Columbia book” over the years).¹ Our first semester of teaching together coincided with the semester that Dick’s daughter, Nina, took the International Law class as a 2L at Columbia Law School (as his son, Tony, would also do, a few years later)—an experience they took fully in stride—although Dick later confessed in the pages of this *Journal* that he was a bit more worried about having his daughter in class than I realized at the time!²

In those semesters, as always, Dick enriched his classroom teaching with illustrations of the relevance of international law from his own experiences in the U.S. government, especially as Deputy Assistant Secretary of State for International Organization Affairs in the Kennedy and Johnson administrations, where he had played a role in international legal diplomacy during the Cuban Missile Crisis.³ Outside the classroom, he drew on the legal lessons of the Cuban Missile Crisis for writings on the use of force, two of which I had the privilege of editing. The first was a commentary written as part of a joint U.S.-Soviet research project in international law, of which the initial activity was a conference on use of force held during the run-up to the 1991 Iraq war, which resulted in a collaborative volume containing Dick’s reflections on the most pressing questions

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1. CASES AND MATERIALS ON INTERNATIONAL LAW (Wolfgang Friedmann, Oliver Lissitzyn & Richard Crawford Pugh eds., 1969); INTERNATIONAL LAW: CASES AND MATERIALS (Louis Henkin, Richard Crawford Pugh, Oscar Schachter & Hans Smit eds., 1st ed. 1980, 2d ed. 1986).

2. See Richard N. Gardner, *Closing Remarks*, in *Symposium Issue: The Challenges We Face: A Conference Honoring Professor Richard Gardner’s Retirement from Teaching*, 50 COLUM. J. TRANSNAT’L L. 716, 722 (2012).

3. For a recapitulation, see *id.* at 718–20.

for the international law of the use of force.⁴ In the aftermath of the second Iraq war in 2003, Dick returned to the lessons of the Cuban Missile Crisis for contemporary policy challenges, in particular to argue against the asserted justification of preemptive self-defense against a state like Iraq between 1991 and 2003, on the basis of apprehensions that the State in question has, or might have, weapons of mass destruction or a program to acquire them.⁵ 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.⁶ He wisely counseled: “The considerations that led us to avoid enlarging the concept of preemptive self-defense in 1962 are just as valid today.”⁷ He went on to offer what he called a “modest reinterpretation of the UN Charter,” consisting of several succinct propositions articulating when armed force may now be used in exceptional circumstances, subject to continuing Charter-based constraints.⁸

Dick adapted the saying that the law embodies “those wise restraints that make men free” for our field of international law, which he saw as embodying “those wise restraints on the use of force that safeguard the peace.” We are fortunate that he shared his wisdom with so many generations of Columbia students.

4. Richard N. Gardner, *Commentary on the Use of Force*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* 49 (Lori F. Damrosch & David J. Scheffer eds., 1991).

5. Richard N. Gardner, *Neither Bush Nor the “Jurisprudes,”* in *Agora: Future Implications of the Iraq Conflict*, 97 *AM. J. INT’L L.* 585 (2003).

6. *Id.* at 587–88.

7. *Id.* at 588.

8. *Id.* at 590.