

LEGAL VISIONS
OF THE 21ST CENTURY:
ESSAYS IN HONOUR OF JUDGE
CHRISTOPHER WEERAMANTRY

Edited by

Antony Anghie
and
Garry Sturgess



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A C.I.P. Catalogue record for this book is available from the Library of Congress.

ISBN 90-411-1116-6

Published by Kluwer Law International,
P.O. Box 85889, 2508 CN The Hague, The Netherlands.

Sold and distributed in North, Central and South America
by Kluwer Law International,
675 Massachusetts Avenue, Cambridge, MA 02139, U.S.A.

In all other countries, sold and distributed
by Kluwer Law International, Distribution Centre,
P.O. Box 322, 3300 AH Dordrecht, The Netherlands.

Printed on acid-free paper

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Printed in the Netherlands

Preface

The breadth of subjects covered in this Festschrift reflects, in some measure, the range of issues covered by Judge Christopher Gregory Weeramantry in his extraordinary career. Judge Weeramantry has written distinguished books on Roman Dutch Law, Jurisprudence, the relationship between Law and Science, International Law and International Human Rights law. No less impressive is the range of approaches that these works demonstrate, from the careful systematization of complex bodies of law which has made his work on the Roman Dutch Law of Contract one of the leading works in the field, to the wide-ranging interdisciplinary explorations which are undertaken in works such as *An Invitation to the Law* and *The Law in Crisis*.

Judge Weeramantry's interests and concerns have continuously evolved and expanded in a legal career which has now spanned almost fifty years, as a barrister and then judge in Sri Lanka, as a scholar and teacher in Australia, and now, as a judge of the International Court of Justice at The Hague. It is clear that this remarkably varied career has been characterized by some central themes.

First, Judge Weeramantry has always understood law as connected with society, as a means of bettering the human condition. His works have continuously stressed the need for law to change with changing social realities, and, indeed, to pave the way to a better future. His gradual transition to the field of international law can be understood in these terms, as the great issues of our time - the alleviation of poverty, the protection of human dignity, the prevention of environmental degradation - have acquired international dimensions which can only be properly addressed through international law. Judge Weeramantry's work has consistently argued whether implicitly or explicitly, that law is not an autonomous body of principles, but a means of achieving justice.

Secondly, he has always sought to broaden our understanding of different legal cultures and traditions and to incorporate their learning into our legal thinking. As a judge in Sri Lanka, Judge Weeramantry administered a system of justice which incorporated elements of Roman Dutch law, the common law, Islamic law, and customary Sinhalese and Hindu laws. As a

scholar and as a judge of the International Court of Justice, Judge Weeramantry's writings draw, with equal expertise and familiarity, on the writings of Roscoe Pound and Islamic jurisprudence, Benjamin Cardozo and Buddhist doctrine, Grotius and traditional African law. It is one of the fundamental tenets of international law that it is universal in character, that it applies equally to all states and that it incorporates the jurisprudence of all the world's major legal systems.

Like his hero, Grotius, Judge Weeramantry's work is informed at all times by the belief that international law is indeed universal. His work is important and distinctive, however, in that it differs markedly from the shallow cosmopolitanism of a jurisprudence which often proclaims itself to be universal but which in fact encompasses a very narrow range of doctrines, and which excludes a wider consideration of many of the world's legal systems and cultures. By contrast, Judge Weeramantry has articulated a truly universal international law, one which appropriately reflects the rich traditions and ideas of legal systems which have been historically excluded from the body of doctrine which is traditionally taken to constitute international law. Furthermore, given his sustained aspiration to administer justice it is almost inevitable that Judge Weeramantry's work embodies a particular sensitivity for the underprivileged, the excluded and the disadvantaged, whether these be the victims of economic exploitation, or of oppressive systems such as apartheid. Thus much of his work has striven to understand and articulate the problems confronting developing societies, and to bring their traditions and legal systems into prominence in the deciding of cases.

The prominence and respect that Judge Weeramantry has attracted on account of his work as a jurist and as a scholar should not obscure his qualities as a teacher and mentor. Both Judge Weeramantry's father and mother were teachers, and teaching has been an important aspect of Judge Weeramantry's work from the beginning of his career. As a young lawyer, he taught at the Law College of Colombo for a number of years. The impact he made has been detailed in a Sri Lankan legal journal, *Forensic Forum*, which described Judge Weeramantry as "one of the finest lecturers whom the Law College ever had" and then proceeds "Christie Weeramantry's lectures were classics in their genre". As a senior member of the Bar in Sri Lanka, he guided and supported a number of junior lawyers who themselves went on to distinguished careers, both within Sri Lanka and overseas.

As the Sir Hayden Starke Professor of Law at Monash University, a position he held for almost twenty years, Judge Weeramantry influenced generations of students who took his classes in subjects such as Contracts,

International Law, Jurisprudence and International Human Rights. For many students who had taken to the law in the belief that they would thus equip themselves to promote justice, only to find themselves preoccupied with trying to understand the fine and abstruse distinctions with which the legal system is replete, Judge Weeramantry was an inspiration. His teaching, while insisting on a careful grasp and rigorous analysis of legal materials, invariably connected such an approach to a larger vision of the law as a means of achieving social justice. He made his students aware of the richness of different legal traditions and in this way contributed to an Australian society which was increasingly seeing itself as multicultural. He was especially inspiring to his students because he spoke with the unusual authority of having achieved so much as a practicing lawyer and as a judge prior to devoting himself to teaching. Equally inspiring was the idealism and the conviction which always informed his teaching. He earned the respect and affection of his students, not by assertions of status or superiority, but by his expertise and his concern for his students.

Generosity and courtesy characterized his dealings with students, and many of the foreign graduate students who were supervised by him were especially grateful for the understanding and support he unfailingly extended to them. As a supervisor, he contrived somehow to suggest to his students — even while they were dependent on his guidance and knowledge — that they were his equal, as both supervisor and student were engaged in the common enterprise of furthering knowledge. He has that vital quality of all great teachers, of seeing in his students' qualities and talents which they were hardly aware of themselves, and doing his utmost to nurture and develop those talents. Judge Weeramantry is now the Vice-President of the International Court of Justice; but for many of us who were fortunate enough to have been taught by him he remains, whatever elevated positions he achieves, simply, our teacher.

Judge Weeramantry entered the field of international law at a relatively late stage in his career. Despite this, and despite having spent less than one term on the bench, it is clear that he has left a significant mark on the jurisprudence of the Court. Judge Weeramantry could be termed an 'activist judge' and his separate and dissenting opinions, as in his *Jan Mayen*, *East Timor*, *Nuclear Tests* and *Nuclear Weapons* opinions, make important attempts to refine and develop the law with respect vital international issues. His judgments are products of a formidable erudition and technical mastery of the materials and are invariably written with a powerful eloquence. Perhaps in the final analysis, however, the most prominent feature of his judgments is the vision they consistently outline, of an international law which is responsive to the changing needs of the international community,

and which is not so entangled in technicalities as to prevent it from addressing questions of the first magnitude. His judgments attempt to remedy the dissonance between an international law which promises so much and yet seems intent on incapacitating itself from saying anything of significance. Many readers of his works, and those who have come to know him, have been indelibly marked by the integrity and generosity of his vision, his quiet and profound humanism and his uncompromising passion for justice. These same qualities have informed all his work, and have given his judgments a uniquely compelling character which perhaps transcends their importance as statements of legal principle.

More than twenty-five years ago, when departing from the other Court on which he served with such distinction, the Supreme Court of Sri Lanka, Judge Weeramantry was moved to observe:

We individual judges are of little moment when compared with this great institution we are privileged to serve. Each one of us is here for a little while and we pass on. But what is vital is that this institution, stainless in its integrity, should move into the future with growing authority so that as we progress as a nation it will find itself adequately equipped to meet the great responsibilities that lie ahead. That country is secure whose judiciary is strong, and I know succeeding generations will say with gratitude that justice always radiated from this place not only with constancy but also with strength.

Once more a member of a judicial body, Judge Weeramantry's jurisdiction has expanded; his duty now is to administer the laws which govern the international community rather than the land of his birth; and yet, this passage, appropriately amended, reflects the devotion with which he approaches his work on the Court, and the aspirations which animate his service to the principal judicial organ of the international community.

Judge Weeramantry, in his own inimitably unobtrusive way, is both indefatigable and single-minded. While playing a very active role in the affairs of the Court, he continues to lecture widely and write prolifically. He has just completed a book on the Lord's Prayer; his word by word analysis of the great prayer is a mark to his roving intelligence and his single-minded determination to make each word count. Thus it is far too early to assess his legacy to the world of international law. But we hope in this volume to pay tribute to what he has achieved so far in a remarkable journey which he could hardly have imagined when he first joined the Sri Lankan Bar at the age of twenty-one, fifty years ago, a journey which is as yet incomplete, and which has taken him from his small island home to a distinguished place on the bench in the International Court of Justice.

As editors, we sought to compile contributions which touch in various ways on the broad themes that have been the subject of Judge Weeramantry's career. Nevertheless, these contributions do not reflect his opinions and indeed, with our approval, some of these contributions actively contest his views. We would not have felt any other approach to have been appropriate for a volume which is a tribute to Judge Weeramantry. Further, we have attempted to convey, in the final section of this volume, titled 'Appreciations', some idea of the role that Judge Weeramantry has played in the offices he held prior to appointment to the International Court of Justice.

We did not solicit contributions from Judge Weeramantry's colleagues on the Bench of the Court as we felt this would be inappropriate. There are, we realise now, a number of people we should have, but did not contact in relation to contributing to this volume. We very much regret this, and the fact that time considerations and publication deadlines prevented us from accommodating the many other distinguished scholars and international lawyers who expressed an interest in contributing to the volume when they learned of the project. We wish to thank all the contributors to this volume who have extended us a great deal of patience and assistance. Finally, our thanks are due to the publishers, Kluwer, and in particular, to Alan Stephens, Annebeth Rosenboom and Sabine Wesseldijk; to Uta Roth and Maxwell Opoku-Agyemang for assistance in the preparation of the manuscript, and to the summer stipend fund of the College of Law, University of Utah.

Antony Anghie
Garry Sturgess

CHRISTOPHER GREGORY WEERAMANTRY

(Vice-President of the International Court of Justice; Member of the Court since 6 February 1991; Vice-President since 6 February 1997)

Born in Colombo, Sri Lanka, on 17 November 1926.

B.A.; LL.B.; LL.D. (University of London);

LL.D. (*honoris causa*) (University of Colombo).

Professional Appointments:

- Advocate, Supreme Court of Sri Lanka (1948–1965).
- Lecturer and Examiner, Council of Legal Education, Sri Lanka (1951–1956).
- Commissioner of Assize, Supreme Court of Sri Lanka (1965–1967).
- Justice of the Supreme Court of Sri Lanka (1967–1972).
- Member, Council of Legal Education, Sri Lanka (1967–1972).
- Honorary Visiting Professor, University of Colombo (since 1981).
- Honorary Life Member, Bar Association of Sri Lanka.
- Sir Hayden Starke Professor of Law, Monash University, Melbourne, Australia (1972–1991).
- Emeritus Professor of Law, Monash University (since 1991).
- Chairman, Commission of Inquiry into International Responsibility for Phosphate Mining on Nauru (1987–1988).

Part-Time and Occasional Appointments:

- Panelist, UNESCO Seminar on Teaching of Human Rights, Canberra (1980);
- Member, United Nations University Task Force on Human Rights (1982);

- Vice-Chairman, United Nations Centre against *Apartheid*/Government of Nigeria Conference on Legal Status of *Apartheid*, Régime, Lagos (1984);
- Panelist, SCOPE/ENUWAR/UNU (Scientists' Committee on Problems of the Environment/Environmental Consequences of Nuclear War/United Nations University, International Conference on Nuclear Danger, Tokyo (1985);
- Lecturer, United Nations Human Rights Commission Seminar commemorating 40th Anniversary of the Universal Declaration of Human Rights, Palais des Nations, Geneva (1988);
- Editor, United Nations University/United Nations Human Rights Commission's two-volume study on Science, Technology and Human Rights (1988–1990);
- Co-ordinator, United Nations University/Netherlands Institute of Human Rights Workshop on Science, Technology and Human Rights, Utrecht (1989).

Visiting Professorships and Academic Appointments:

- University of Tokyo (1978);
- University of Stellenbosch (1979);
- University of Papua New Guinea (1981);
- University of Florida (1984);
- Lafayette College, Pennsylvania (1985);
- University of Hong Kong (1989).

Member, Editorial Board:

- *Sri Lankan Journal of International Law*;
- *Human Rights Quarterly*, Johns Hopkins University;
- *Interdisciplinary Peace Research*, La Trobe University;
- *Journal of Ceylon Law*;
- Advisory Board, *China Law Reports*.

Memberships:

- Associate Academician, International Academy of Comparative Law, Paris;
- Vice-President, International Commission of Jurists, Victoria;
- Past President, World Federation of Overseas Sri Lankan Organizations;
- Vice-Patron, United Nations Association of Sri Lanka;
- Member, Club of Rome (Australia), Commonwealth Lawyers Association;
- Society of Public Teachers of Law;
- World Association of Law Professors;
- Lawasia;
- World Association on the Philosophy of Law and Legal Philosophy.

Books:

- *The Law of Contracts being a Comparative Study of the Roman-Dutch, English and Customary Law of Contract in Ceylon* (2 vols.), (1965);
- *The Law in Crisis: Bridges of Understanding*, 1975;
- *Equality and Freedom: Some Third World Perspectives*, 1976;
- *Human Rights in Japan*, 1979;
- *Apartheid: The Closing Phases?*, 1980;
- *An Invitation to the Law*, 1980;
- *The Slumbering Sentinels: Law and Human Rights in the Wake of Technology*, 1983;
- *Law: The Threatened Peripheries*, 1984;
- *Nuclear Weapons and Scientific Responsibility*, 1987 (translated into Japanese);
- *Islamic Jurisprudence: Some International Perspectives*, 1988;
- *Human Rights and Scientific and Technological Development*, ed., 1990;
- *Nauru: Environmental Damage under International Trusteeship*, 1992;

- *The Impact of Technology on Human Rights: Global Case-Studies*, ed., 1993;
- *Justice without Frontiers, Vol. I, Furthering Human Rights*, 1997.

Reports:

- *Report of the Nauru Commission of Inquiry* (10 vols.), 1988 (joint author).

Articles in law journals:

- in Asia, Africa, Australasia, Europe and North America.

Published lectures include:

- “Fundamental Perspectives on Equality and Freedom”, World Congress on Equality and Freedom, St. Louis, Missouri (1976), an official event marking the American Bicentennial;
- “National and Transnational Systems as Denigrators of Human Rights”, UNESCO Seminar on Teaching of Human Rights, Canberra (1981);
- “The Right to Development”, Lawasia Seminar on Establishment of a Regional Human Rights Framework for the Pacific, Suva (1985);
- “Cultural and Ideological Pluralism in Contemporary Public International Law”, World Congress of International Academy of Comparative Law, Sydney and Melbourne (1986);
- “Traffic in Armaments: A Blind Spot in Human Rights and International Law”, Joint Soviet/US International Conference on Nuclear Weapons and International Law, New York (1987);
- “Emerging Dimensions of Sovereignty in International Law”, International Seminar on the Coming Global Civilization, Moscow (1988);
- “The Teaching of Human Rights”, United Nations Seminar commemorating 40th anniversary of Universal Declaration of Human Rights, Geneva (1988);
- “The Law, Nuclear Weapons and the Real World”, First World Convention of Lawyers against Nuclear Arms, The Hague (1989);
- “International Arbitration under the UNCITRAL Rules”, Regional Seminar on International Arbitration, Kuala Lumpur (1989);

- “Judicial Reasoning under the Common Law”, Commonwealth Law Conference, Auckland (1990);
- “The Importance of Philosophical Perspectives to the Judicial Process”, 6 CONN. J. INT’L L. (1991);
- “Does International Law Matter?”, *Inaugural Tun Hussein Onn Memorial Lecture*, Kuala Lumpur (1991);
- “The Right to Know: Freedom of Information as a Human Right”, Commonwealth Law Conference, Cyprus (1993);
- “Introducing Human Rights to the Younger Generation”, UNESCO, Netherlands (1993);
- “The Constancy of the Judicial Obligation”, *Inaugural Fernando Memorial Lecture*, Colombo (1994);
- “The World Court: Its Conception, Constitution and Contribution”, *Inaugural Governor’s Forum*, Melbourne, Australia (1994);
- 1995 Martin Luther King Lecture, “On Earth as It Is in Heaven: A Vision of World Order for the 21st Century”, TULSA J. COMPARATIVE & INT’L L. (1995);
- “The Function of the International Court of Justice in the Development of International Law”, 10 LEIDEN J. INT’L L. (1997);

Honours:

- Order of *Deshumanya* (Sri Lanka);
- *Mohamed Sahabdeen Award* for International Understanding in the SAARC Region, 1993.

Separate and Dissenting Opinions

- *Arbitral Award of 31 July, 1989, Judgment, I.C.J. Reports 1991*, pp. 130–174, Dissenting Opinion.
- *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom, Provisional Measures, I.C.J. Reports 1992*, pp. 50–71, Dissenting Opinion.
- *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab*

- Jamahiriya v. United States of America, Provisional Measures, I.C.J. Reports 1992*, pp. 160-181, Dissenting Opinion.
- *Case Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), I.C.J. Reports 1993*, pp. 211–279, Dissenting Opinion
 - *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Further Requests for the Indication of Provisional Measures, I.C.J. Reports 1993*, pp. 370–389, Separate Opinion.
 - *East Timor (Portugal v. Australia), I.C.J. Reports 1995*, pp. 139–223, Dissenting Opinion.
 - *Request for an Examination of the Situation in Accordance with paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (Australia v. France) Case, I.C.J. Reports 1995*, pp. 317–362, Dissenting Opinion.
 - *Land and Maritime Boundary between Cameroon and Nigeria, Provisional Measures, I.C.J. Reports 1996*, p. 31, Joint Declaration with Judges Shi and Vereshchetin.
 - *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, pp. 101-171, Dissenting Opinion.
 - *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 429-555, Dissenting Opinion.
 - *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), I.C.J. Reports 1997*, Separate Opinion.
 - *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Counter Claims, I.C.J. Reports 1997*, Dissenting Opinion.

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