

## IN MEMORIAM PROFESSOR W.L.G. LEMAIRE

Professor W.L.G. Lemaire died on the 15th of February this year. Truly, he was an excellent man – and an excellent scholar of law.

In this short obituary I shall confine myself to explaining his position in our academic world as a scholar of the conflict of laws. His professorships in this field – first, for some years before and after the last war in the former Netherlands Indies, later, from 1958 till his death, at Leyden State University – formed only part of the numerous functions that Lemaire fulfilled, but the teaching of conflict of laws, both orally and in writing, constituted undoubtedly his major activity and the one that clearly gave him great satisfaction and joy.

Although an academic for the greater part of his career his attitude to the law was very much that of the practitioner, showing as it did Lemaire's firm belief in the simple, but yet not generally observed, truth that in legal science it is legal practice that really matters, for that is what it is actually all about. 'No room for *l'art pour l'art* in law' might well have been his motto. And yet, his approach to legal problems was more than just pragmatic and was never of an opportunist nature. In his writings, and in conversations that I remember having with him, Lemaire showed himself to be a man of quite original but never revolutionary ideas. When discussing new trends in the conflict of laws, Lemaire would be inclined to advocate caution, however open-minded he was. His cautious attitude was based on a respect for long established legal concepts and standards even if such standards were derived from ancient and apparently outdated rules. It sprang, not from a kind of legal conservatism but, I think, from Lemaire's strong feeling that breaking away from old concepts and modifying or abolishing existing rules in order to make room for new trends in the law would always require a twofold argument by which to justify, on the one hand, the acceptance of the new and, on the other, the discarding of what is deemed old and outlived.

A cautious man, he was eminently equipped – to take just one example from the many worth mentioning – for the chairmanship of a commission formed shortly before his death by the Netherlands Standing Committee for Private International Law, of which Lemaire had long been a member, and entrusted with the preparation of an opinion for the Dutch Government on the question whether the old Hague Conventions on personal status and family matters still adhered to by The Netherlands should be denounced. The main task of the commission was to examine the defectiveness of the nationality principle to which these conventions are tuned, in the light of the present day practice of Dutch private international law. The significance of nationality as a connecting factor in conflict of laws has considerably diminished during past decades, even though the nationality principle is still to be found in the statutory provision on the *statutum personale* (article 6 AB: Wet algemene bepalingen = General

Provisions Act). As with some of the old Hague Conventions, this provision has given rise to grave problems in our courts, or rather, it has – and to some extent still does – often failed to serve as a proper rule by which to solve the intricate problems of modern society. Lemaire was fully aware of such deficiencies and of the inadequacies of the underlying nationality principle but in dealing with the above provision and conventions or with the nationality principle in general he would always be inclined to look for ways to adapt – cautiously, diligently – the existing rules so that they might serve modern needs and requirements, but anxious at the same time to preserve, if possible, elements that might still be regarded as valuable. Never in favour of rash conclusions he was by nature inclined to look for the neatly balanced compromise. His was the role of the mediator.

When in 1962 the idea was launched of setting up between the Dutch universities an institute for international law, Lemaire was among the first firmly to support this idea as well as the T.M.C. Asser Institute which emerged from it. In this Institute he was Chairman of the Private International Law Commission during the final five years of his life. From our frequent contacts in the Asser Institute and in the Standing Committee I came to know Lemaire more intimately and to appreciate fully, as did so many others, his impressive scholarly qualities, his intelligent, agile mind and his most amiable character.

When I sat down to write these few words I resolved not to give a year by year account of Lemaire's life as an academic nor to provide bibliographical notes, but to recall him as a colleague and friend and to make an attempt at explaining his position in our common field of conflict of laws. Mention should be made here, however, of the period in his life when, at the Law School of what is now Indonesia's capital, Djakarta, formerly Batavia, he was guided into the field of conflicts by the late Professor R.D. Kollwijn. That eminent scholar, whose thinking has had a great impact on the teaching and practising of private international law in The Netherlands, undoubtedly influenced Lemaire's approach to conflict law, as Lemaire himself was proud and grateful to point out, which he did in his inaugural speech when, in 1958, he succeeded Kollwijn as a professor of conflict of laws at Leyden State University. As to Lemaire's writings, one could hardly fail to mention his textbook on private international law published in 1968 and that most remarkable contribution to the collection of articles on freedom and the law, *Praesidium libertatis*, published in commemoration of the founding in 1575 of Leyden University. In that article Lemaire commented on certain new trends in the field of private international law, and provided us with a critical account of the important changes that Netherlands private international law has undergone during past decades. It serves fittingly to round off the many valuable contributions Lemaire himself gave to the teaching and practice of conflict of laws during his remarkable and indeed inspiring career as a lawyer.

C.C.A. Voskuil