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INTERNATIONAL COURT OF JUSTICE: TRIBUTES TO JUDGE
ANTÔNIO AUGUSTO CANÇADO TRINDADE

Remembering Judge Cançado Trindade's voice, faith, and integrity

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Judge Antônio Augusto Cançado Trindade was a giant in the field of public international law. His career ticked almost every box one can think of – he was a beloved teacher and mentor with an influential list of publications, a legal advisor to the Brazilian government, a judge in two international courts, a member of the *Institut de Droit international*, and a frequent lecturer at, and member of the Curatorium of, the Hague Academy of International Law. I suspect that many students from Brazil, Latin America, and other parts of the Global South will have shared my own experience of looking up to him in awe and feeling proud that one of us went so far. There is much to be said about Judge Cançado's accomplishments, but what I propose to do in this brief tribute is to offer some personal reflections about three attributes that, I think, make him a source of inspiration for the generations of international lawyers that succeed him.

First, Judge Cançado had a truly unique voice. His writings, both as an academic and as a judge, reflected an intellectual attitude that was both fiercely independent and eclectic. In an interview that he gave to students at the University of Brasília shortly after his election to the International Court of Justice, he described himself as a 'free thinker' who believed that people should be allowed to search, unencumbered, for answers to the questions they encounter in their personal and professional lives.¹ That sheds light on his readiness to express principled disagreement without feeling overburdened by institutional expectations; on the dynamic conception of law that he espoused, under which international law is approached as a creative and purposive endeavour rather than a mechanistic order that can be reduced to the will of states; and on the eclecticism of his legal reasoning, which was peppered with references to extra-legal sources, most notably literary works, deployed not only as metaphors and illustrations but also as 'elements for having an answer' for questions that conventional legal argument does not exhaust.² At the same time, for all his playfulness, Judge Cançado took the task of offering substantive justifications for legal propositions very seriously. In his own words, 'a judgment has to reason and to persuade', for '[i]f the parties are not persuaded that that is what the law is, they'll not abide by the judgment'.³

¹'Memórias do Professor Cançado Trindade', (2009) 8 *Revista dos Estudantes de Direito da UnB*.

²L. R. Tanner, 'Interview with Judge Antônio A. Cançado Trindade, Inter-American Court of Human Rights', (2009) 81 *Human Rights Quarterly* 985, 1002.

³*Ibid.*, at 1001.

He accordingly favoured ‘didactic’ and ‘substantial’ judgments that, beyond settling the dispute, strived to ‘convince the parties’ of the rightness of the decision.⁴

Judge Cançado’s unique voice can be hardly apprehended without taking on board his relationship with Latin America, in particular how the legal culture of the region informed his identity as a jurist. His roots showed in his commitment to a ‘Latin American International Legal Doctrine’ that embraced substantive conceptions of principles such as the juridical equality of states, the peaceful settlement of disputes, and the rejection of military force and nuclear weapons.⁵ His writings often included references to classic Latin American authors such as Andrés Bello, Carlos Calvo, and Ruy Barbosa; treatise writers such as Hildebrando Accioly, Alberto Ulloa, and José Maria Ruda; and other influential Latin American scholars and practitioners of the twentieth century such as Alejandro Alvarez and Eduardo Jiménez de Aréchaga. It should come as no surprise, thus, that in his opinions for the International Court, Judge Cançado often highlighted the contributions of the Latin American doctrine to the development of international law.⁶ If I may add a personal anecdote, one of the most vivid recollections of the time I spent with him as a Judicial Fellow at the International Court was that the chambers’ meetings he had with me and his Law Clerk María Castro Granja, originally from Spain, were all conducted in Spanish. There was something deeply comforting in this homage that he, himself a native Portuguese speaker, paid to the most widely spoken language in Latin America – a sense of the inclusiveness and universality to which international law should always aspire, in The Hague and elsewhere. For Judge Cançado’s identification with Latin America did not come from a position of partisanship. On the contrary, he was deeply committed to a universalist outlook to international law. But he combined that universalist outlook with a moving enthusiasm for rescuing and celebrating the role and agency of Latin America in the shaping of the international legal system, and saw himself as a representative of that legal culture in the larger conversations about the discipline that continue to unfold, both in academia and in practice.

Second, Judge Cançado was a person of faith in a profession that seems to be growing increasingly cynical. I do not mean faith in a religious sense – as he clarified in an interview, he did not follow any religious denomination, even though he considered himself ‘very religious’ in the sense of the Latin word *religare*, ‘when you link yourself to the cosmos, and try to find the explanation to the mystery that surrounds human life’.⁷ What he showcased was an unwavering faith in humanity and its capacity to reason and develop, over time, a ‘juridical conscience’ that grounded international law. Even so, it would be a mistake to take Judge Cançado’s faith for utopianism or naiveté: he was profoundly aware of ‘the insensitiveness, indifference, and irrationality of the world which surrounds us all’.⁸ In an interview in 2020, he expressed concern about the ‘very dangerous moment’ the world is going through, where multilateral approaches to global problems are under threat, walls are erected to separate people, and market interests are placed above

⁴*Ibid.*, at 998.

⁵See generally A. A. Cançado Trindade, ‘The Contribution of Latin American Legal Doctrine to the Progressive Development of International Law’, (2014) 376 *Recueil des cours* 9.

⁶See, e.g., *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, [2010] ICJ Rep. 14, para. 158 (Judge Cançado Trindade, Separate Opinion); *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, [2010] ICJ Rep 403, para. 171 (Judge Cançado Trindade, Separate Opinion); *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment of 3 February 2012, [2012] ICJ Rep. 99, para. 211 (Judge Cançado Trindade, Dissenting Opinion); *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Judgment of 5 October 2016, [2016] ICJ Rep. 833, para. 247 (Judge Cançado Trindade, Dissenting Opinion).

⁷See Tanner, *supra* note 2, para. 1004.

⁸*Case of Tibi v. Ecuador*, I/ACtH.R. Series C. No. 114, Preliminary Objections, Merits, Reparations and Costs, Judgment of 7 September 2004, Separate Opinion of Judge Cançado Trindade, para. 3. A similar sentiment is expressed in various of his opinions in ICJ cases, a recent example being *Jadhav (India v. Pakistan)*, Judgment of 17 July 2019, [2019] ICJ Rep. 418, para. 13 (Judge Cançado Trindade, Separate Opinion).

human life.⁹ He was disappointed to see state sovereignty invoked in support of those regrettable trends. Yet, despite the brutishness of it all, he remained committed to the project of international law. His intuition, informed by his experience as judge and president of the Inter-American Court of Human Rights, seems to have been that, for all its faults and biases, international law is more often than not on the side of human beings – a pebble in the shoe of states pursuing authoritarian, oppressive, or imperialistic projects. I suspect that the experience of studying human rights law as a young jurist at a time when Brazil was under a military dictatorship, which motivated him to leave the country to pursue postgraduate studies in Cambridge and spend a few summers in Strasbourg following the work of the European Court of Human Rights, also contributed to shape Judge Cançado's general attitude towards international law.¹⁰

A thought-provoking way in which Judge Cançado's faith in the international law project manifested itself lay in his recurring appeals to the works of the 'founding fathers' of the discipline, including Francisco de Vitoria, Francisco Suárez, Hugo Grotius, Alberico Gentili, Samuel von Pufendorf, and Christian Wolff, but also some comparatively less known authors from the Iberian Peninsula such as Domingo de Soto and Bartolomé de Las Casas.¹¹ He located in the works of those authors the basic conceptual and normative framework for a universal and inclusive legal system centred on the dignity, agency and welfare of human beings. That approach to articulating a progressive approach to international law stands in contrast with the current *Zeitgeist*, which interrogates the Eurocentric origins of the system and the positioning of influential European men belonging to an age tainted by slavery, empire, and extreme forms of bigotry. Whether those 'Western classics' can offer a sound starting point for building the international law of the future is thus a matter for debate, but Judge Cançado's reading of them is no doubt inspiring. It is also intriguing: at the same time that he argued for a 'more lucid international legal doctrine' based on 'the idea of an objective justice, the primacy of *jus cogens* above State consent, the primacy of conscience above the "will",¹² his aim was to offer a better reading of the same tradition from which the 'positivists' whom he opposed drew. In other words, if he swam against the current,¹³ he did so while purporting to work *within* the system. In a passage of his monograph *International Law for Humankind: Towards a New Jus Gentium*, also highlighted by Judge Yusuf in his contribution to this volume, Judge Cançado's 'basic message to the new generations' was 'one of hope and confidence in the future of international law', comprising an invitation to join the quest of rescuing 'the fundamental principles of our discipline' and investigating 'the basic question of the foundations of the law of nations'.¹⁴ By exploring how we can build on these principles and foundations, he sets an example of how jurists from the Global South can reclaim, appropriate and ultimately contribute to (re)shaping the tradition that they 'inherited' from the peoples who oppressed them.

Third, Judge Cançado was a person of great integrity. He practiced what he preached, and pursued with great energy that more 'lucid' version of the law of nations that he thought had emerged from the juridical conscience of humankind over the centuries. He was adamant that

⁹A. A. Cançado Trindade, 'Entrevista com O Juiz Antônio Augusto Cançado Trindade Sobre o Direito Internacional e os Desafios do Mundo Atual – Concedida ao Dr. Pedro Sloboda, na Sede da Corte Internacional de Justiça', (2020) 20 *Revista do Instituto Brasileiro de Direitos Humanos* 295, 301.

¹⁰For a recollection of his formative years see 'Memórias do Professor Cançado Trindade', *supra* note 1.

¹¹See A. A. Cançado Trindade, 'Reflexões sobre a Perenidade da Doutrina dos "Pais Fundadores" do Direito Internacional', (2022) 80 *Revista da Faculdade de Direito da UFMG* 15, especially at 27–8 (I owe this reference, which came with a reminder that Judge Cançado's gaze extended beyond the 'usual suspects', to Lucas Carlos Lima, now a professor at Judge Cançado's *alma mater* in Brazil).

¹²*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, [2019] ICJ Rep. 95, para. 96 (Judge Cançado Trindade, Separate Opinion).

¹³As he himself used to say: see 'Memórias do Professor Cançado Trindade', *supra* note 1, where he comments on the profound impression that Isaiah Berlin's book *Against the Current: Essays in the History of Ideas* had left on him.

¹⁴A. A. Cançado Trindade, *International Law for Humankind: Towards a New Jus Gentium* (2013), at 3.

international courts and tribunals should never decline to address the suffering and circumstances of victims of international law breaches,¹⁵ and vocal in criticizing doctrines that stood in the way of the realization of justice on the international plane.¹⁶ He once remarked to me that it is by refusing to act against our conscience – including by resigning from posts that become untenable – that we ultimately earn the respect of our community. In a similar vein, he told students from the University of Brasilia that ‘one loses nothing by remaining faithful to his own ideas, to his own ideals’, mentioning the example of how all the states against which he had decided at the Inter-American Court of Human Rights voted in favour of his election to the International Court.¹⁷ Another illuminating anecdote concerns an appreciative if somewhat baffled reaction that he got from a Mexican Ambassador upon proposing a set of sweeping reforms as President of the Inter-American Court. The Ambassador quipped that the lesson to be extracted from the exchange was that ‘to be realist, we need to ask for the impossible!’.¹⁸ Just as well, Judge Cançado did not shy away from asking for the impossible, and by doing so he managed to change things for the better. One of his proudest achievements was having secured for victims of human rights violations full participation in every stage of the proceedings at the Inter-American Court, in a marked departure from previous practice. Another was to have paved the way, as legal advisor to Brazil soon after the end of the military dictatorship, for Brazil’s accession to the American Convention on Human Rights,¹⁹ the International Covenant on Civil and Political Rights, and the International Covenant on Social, Economic and Cultural Rights, also drafting the constitutional clause that made those treaties part of the Brazilian legal order.²⁰

Judge Cançado Trindade was, in short, one of a kind and a force of nature. He deserves to be remembered for his unique voice, his inspiring faith in international law, and the integrity with which he conducted himself. Those who have been fortunate to cross paths with him will also remember him for his warmth and generosity, his delightful sense of humour, and the *joie de vivre* that he displayed in his quest for a more enlightened international law.

¹⁵E.g., his Separate Opinion in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, [2010] ICJ Rep. 403, paras. 161–168.

¹⁶E.g., his Dissenting Opinion in *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment of 3 February 2012, [2012] ICJ Rep. 99.

¹⁷See ‘Memórias do Professor Cançado Trindade’, *supra* note 1.

¹⁸*Ibid.*

¹⁹As well as to Brazil’s acceptance of the compulsory jurisdiction of the IACtHR.

²⁰See Art. 5(2) of the Brazilian Constitution of 1988.