

OBITUARY

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

## Judge Antônio Augusto Cançado Trindade: An unwavering quest for international justice and for the universalization and humanization of international law

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On 29 May 2022, our eminent colleague Antônio Augusto Cançado Trindade passed away in Brasilia, Brazil, after an extended illness. The International Court of Justice lost a unique and singular judge who was profoundly committed to justice among nations big and small, to the protection of the dignity of human beings whatever may be their station in life, and to the safeguarding of humanity and its home planet. International law lost one of its most distinguished, most productive, and most creative scholars. I lost a dear friend whom I had known for almost 50 years, and for whom I always had a lot of affection and admiration.

Antônio Augusto Cançado Trindade was born in Belo Horizonte, Brazil, in 1947. He obtained his first degree in law from the Federal University of Minas Gerais (UFMG), where he initially developed his interest in international law. He decided to pursue this interest at the University of Cambridge, UK, where he obtained a Master's degree and a PhD in international law. His doctoral thesis on the application of the rule of exhaustion of local remedies in international law was awarded the Yorke prize. It was also a prelude to his plentiful writing on international law as the thesis consisted of two volumes and 1,700 pages. It was later published by Cambridge University Press (1983, 443 pages) and has since become a work of reference in this area.<sup>1</sup> This was not, however, his first book. He published his *Fundamentos jurídicos dos direitos humanos*, which reflected his life-long passion for human rights, in 1969 in Brazil.<sup>2</sup> He went on to publish, before his death, 78 books and more than 790 articles and other publications, thus becoming one of the most prolific writers on international law in the twentieth and early twenty-first centuries.

Having completed his studies in Cambridge, UK, Cançado Trindade went back to Brazil where he was appointed professor of public international law at the University of Brasilia in 1978, and a year later at the Rio Branco diplomatic academy where he taught several generations of Brazilian lawyers and diplomats. From then onwards, he devoted his life to the study, teaching and dissemination of international law and to the promotion and protection of human rights. For him the two were intrinsically intertwined, since, in his view, the ultimate purpose of law, and of international law in particular, was the protection of human rights and the promotion of human welfare. His career was thus marked by a constant endeavour for the humanization of international law.

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<sup>1</sup>A. A. Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law: Its Rationale in the International Protection of Individual Rights* (1983).

<sup>2</sup>A. A. Cançado Trindade, *Fundamentos jurídicos dos direitos humanos* (1969).

Antônio's natural empathy, his kindness and his humanism led to his interest in human rights to which he devoted most of his scholarly work. While still studying at Cambridge, he was a frequent visitor to the European Court of Human Rights in Strasbourg, and an active participant in the summer courses of the Strasbourg Institute of Human Rights, where he later delivered lectures almost every year from 1988 to 2018. Over the years, he became one of the most eminent authorities in the field of human rights law. However, neither his intellectual and academic production nor his professional activities were limited to this area as they equally embraced many other aspects of international law ranging from diplomatic law to international economic law and to environmental law.

In view of his widely recognized expertise in international law, he was appointed legal advisor to the Brazilian Ministry of Foreign Affairs in 1985 where he served until 1990. During his term as legal advisor, Brazil acceded to many human rights conventions including, *inter alia*, the UN Convention Against Torture and the Convention on the Rights of the Child. He also represented Brazil in many international conferences, including the UN Conference on the Law of Treaties in Vienna. The practical experience he gained as a legal advisor was afterwards used to advise various organizations of the UN system on different issues of international law including the three Rio conventions: the Convention on Biological Diversity (CBD), the UN Framework Convention on Climate Change (UNFCCC), and the UN Convention to Combat Desertification (UNCCD). He also served as an expert consultant to the Organization of American States (OAS).

From 1990 to 1994, he was Judge *ad hoc* at the Inter-American Court of Human Rights, and in 1994 he was appointed Executive Director of the Inter-American Institute of Human Rights. He was then elected in 1995 by the General Assembly of the Organization of American States as a Judge of the Inter-American Court of Human Rights, a post to which he was re-elected in 2000. He subsequently became Vice-President of the Court (1997–1999) and its President (1999–2004). His tenure as Judge and as President of the Court gave him an opportunity to bring his progressive ideas on the promotion and protection of human and people's rights to bear on the jurisprudence of the Court. He was instrumental in the recognition of the principle of humanity and the humane treatment of vulnerable persons in the jurisprudence of the Inter-American Court. For him, the principles of humanity and humaneness permeated the whole *corpus juris* of protection of the human person, particularly those in situations of vulnerability. He propounded the dynamic and evolutive interpretation of human rights law, and continuously strived to see to it that it was applied by the court in its judgments and in its advisory opinions in order to take forward the protection of human rights in all its aspects. He thus left an enduring legacy at the Inter-American Court of Human Rights and imparted an abiding progressive outlook to its judicial activities.

Antônio valued, more than anything else, his work as a teacher and mentor. He was a tireless educator who enjoyed engaging in lengthy discussions and conversations with students from all over the world. In addition to his professorship at the University of Brasilia where he taught for almost 40 years, he lectured in universities in Europe, Latin America and Asia, and took pride in his lectures at The Hague Academy both in The Hague and in its external sessions. He always looked forward to his annual lectures at the Strasbourg Institute of Human Rights Law, at the International Law Courses organized by the OAS Inter-American Juridical Committee in Rio de Janeiro, at the University of Utrecht in the Netherlands where he was an Honorary Professor, and at the University of Belo Horizonte in Brazil. For him, preparing future generations and raising their awareness on the issues facing humanity and the role that international law could play in addressing them was a matter of utmost importance in the teaching and dissemination of international law.

Antônio and I were elected together in November 2008 as Judges of the International Court of Justice and re-elected in 2018. It was not the first time our professional paths crossed and we had the opportunity to work together. After our first encounter in The Hague in 1974 at The Hague Academy summer courses and its research centre, we met again in Geneva as delegates of our

respective countries to the UN Conference on an International Code of Conduct on the Transfer of Technology, and afterwards as expert advisers to the UN Conference on the Elaboration of a Convention on Biological Diversity. These professional encounters enabled us to work together on matters of common interest and to exchange views on international law, and the role of developing countries in its reform and development. Being elected together to the Court offered us the opportunity to continue our intellectual exchanges, but above all to contribute together in a tangible manner to peace and justice among nations through the interpretation and application of the law, and to strive for the safeguarding of human and peoples' rights under the law.

In the same way as he did at the Inter-American Human Rights Court, Antônio left an outstanding judicial legacy at the ICJ after almost 13 years on the bench. His progressive and principled views found their way into many judgments and left an indelible mark on the work of the Court. The Court greatly benefited from his vast knowledge of international law as well as from his innovative approaches to the judicial settlement of disputes between states, which in his view could not ignore the 'human factor'. He was throughout his tenure a very influential judge who was respected by his colleagues. However, he never hesitated to make his dissent well known whenever he disagreed with the majority of the judges in a case. His dissenting and separate opinions are passionately studied by students and scholars of international law throughout the world. He always paid particular attention to the impact that the judgments of the Court would have on individuals and communities even when they dealt with issues such as maritime or territorial delimitation.

Thus, in a long Separate Opinion appended to the Provisional Measures Order of the Court in the *Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, he criticized the approach of the Court, which, according to him 'instead of bringing people and territory together, has preferred to rely on its traditional outlook'.<sup>3</sup> For Judge Cançado, the Court should have given proper weight to the human factor since, in his words, 'the human factor is the most prominent here'.<sup>4</sup> Conversely, in his Separate Opinion in the *Frontier Dispute (Burkina Faso v. Niger)*, he expressed his satisfaction that the 'ICJ now sees that people and territory go together'.<sup>5</sup> In his view, 'the latter cannot make abstraction of the former in particular in cases of such a cultural density as the present one'.<sup>6</sup> After all, since the time of its 'founding fathers', the law of nations (*jus gentium*) has borne witness of the presence of solidarity in its *corpus juris*. Similarly, in the *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, he noted with satisfaction in his Separate Opinion the points made in the Judgment of the Court relating to the need for consultation with the affected population and stated as follows:

I dare to nourish the hope that the ICJ is prepared to change its vision to the effect of proceeding to look with more determination beyond the strictly inter-State dimension whilst also taking into account the relevant legal principles in the exercise of its function in contentious cases; after all, in historical perspective, it should not be forgotten that the State exists for human beings and not vice versa.<sup>7</sup>

Although almost all his separate and dissenting opinions were widely discussed and cited in the literature, perhaps the most quoted ones were those relating to two cases concerning human rights which were dealt with by the Court during his tenure. The first was his Separate Opinion

<sup>3</sup>*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Provisional Measures, Order of 18 July 2011, [2011] ICJ Rep. 537, para. 97 (Judge Cançado Trindade, Separate Opinion).

<sup>4</sup>*Ibid.*, para. 100.

<sup>5</sup>*Frontier Dispute (Burkina Faso/Niger)*, Judgment of 16 April 2013, [2013] ICJ Rep. 44, para. 63 (Judge Cançado Trindade, Separate Opinion).

<sup>6</sup>*Ibid.*

<sup>7</sup>*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).

appended to the Judgment on the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* of 2010,<sup>8</sup> and the second was his Dissenting Opinion in the Judgment on the *Case Concerning Jurisdictional Immunities (Germany v. Italy: Greece intervening)* of 2012.<sup>9</sup> In his Separate Opinion on *Diallo*, Judge Cançado extensively discussed the ‘principle of humanity’ and the need to take into account the humanity and dignity of the person. He also addressed the prohibition of arbitrariness in the international law of human rights reviewing, *inter alia*, for this purpose the case law of the African Commission on Human and Peoples’ Rights and the jurisprudence of the Inter-American and European Courts of Justice. He commended the Court for having adjudicated the *Diallo* case on the basis of the international law of human rights rather than that of diplomatic protection under which it was originally brought by Guinea. According to him:

the only protection that the “wretched of the earth” have been finding is the one provided under certain international instruments and treaties of the international law of human rights. Attention is thus to be shifted from the differing *de facto* capabilities of States to extend protection to their nationals abroad into the satisfaction of the basic needs of protection of those forgotten by the world, the poor and the oppressed, who have already lost faith in human justice.<sup>10</sup>

In his Dissenting Opinion in the *Case Concerning Jurisdictional Immunities*, Judge Cançado addressed very extensively the primordial importance of access to justice for individuals in order to prevent impunity and achieve a concretization of human rights with a view to avoiding what he referred to as ‘the state-centred distorted outlook in face of the imperative of justice’.<sup>11</sup> With regard to state immunity in the case of grave violations of human rights, he emphasized that:

it is not at all State immunity that cannot be waived. There is no immunity for crimes against humanity. In cases of international crimes, of *delicta imperii*, what cannot be waived is the individual right of access to justice, encompassing the right to reparation for the grave violations of the rights inherent to him as a human being. Without that right, there is no credible legal system at all, at the national or international levels.<sup>12</sup>

A more recent Separate Opinion of Judge Cançado which also attracted a lot of attention in scholarly circles and in the literature on international law is the one relating to the *Chagos* Advisory Opinion of the Court. Judge Cançado attached particular importance to the protection of the rights of peoples at the international level and to their access to justice.<sup>13</sup> He was of the view, as expressed in his Separate Opinion, that ‘when the matter lodged with the Court concerns the rights of peoples, as in the present advisory proceedings, the ICJ reasoning is to transcend ineluctably the strictly inter-State outlook; otherwise justice cannot be done’.<sup>14</sup> He was dissatisfied with the Court’s Advisory Opinion for not having addressed the *jus cogens* character of the right of

<sup>8</sup>*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, [2010] ICJ Rep. 639 (Judge Cançado Trindade, Separate Opinion).

<sup>9</sup>*Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment of 3 February 2012, [2012] ICJ Rep. 99 (Judge Cançado Trindade, Dissenting Opinion).

<sup>10</sup>*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, [2010] ICJ Rep. 639, para. 85 (Judge Cançado Trindade, Separate Opinion).

<sup>11</sup>*Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, [2012] ICJ Rep. 99, paras. 172–176 (Judge Cançado Trindade, Dissenting Opinion).

<sup>12</sup>*Ibid.*, para. 199.

<sup>13</sup>*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, [2019] ICJ Rep. 95 (Judge Cançado Trindade, Separate Opinion).

<sup>14</sup>*Ibid.*, para. 214.

people's to self-determination. He felt that 'there is no justification for the ICJ not having addressed *jus cogens* in the present Advisory Opinion'.<sup>15</sup> In his view the *Chagos* Advisory Opinion provided the Court with an opportunity to develop much further its jurisprudence on *jus cogens*.<sup>16</sup>

Judge Cançado's contribution to the work of the International Court of Justice was not limited to its judicial function and proceedings. He actively participated in various committees of the Court and was involved in many initiatives relating to the modernization of the administration and methods of work of the Court. He served for several years as the Chairman of the Library Committee of the Court where he took particular interest in the digitization of the Nuremberg archives so that a wider public could have access to them. He promoted the access of the Library to digital databases on law in general and on international law and its collaboration with other libraries specialized in these areas throughout the world. He also tried to make sure that the library of the Court would have the capacity to respond to the research needs of the Judges and of the Registry of the Court not only in terms of publications on international law but also in related fields which could assist in the accomplishment of the work of the Court.

As a proud Brazilian and Latin American, he wrote extensively, including in his opinions at the Court, about the legal traditions of Latin American countries and the doctrines and perspectives of international law put forward by scholars from the region. His *Repertório da prática brasileira do direito internacional public*, which covers, in several volumes, the period 1889–1981 is a widely appreciated reference work in Brazil and other Latin American countries.<sup>17</sup> His book on the *Doctrina Latinoamericana del derecho internacional*, which was first published in 2003,<sup>18</sup> as well as his Hague Academy Lecture of 2015 on 'the Contribution of Latin American Legal Doctrine to the Progressive Development of International Law' are similarly widely used in the teaching and dissemination of international law in Latin America.<sup>19</sup>

Judge Cançado's monograph on *International Law for Humankind: Towards a New Jus Gentium* which is based on the General Course he delivered at The Hague Academy, represents the culmination of an academic life devoted to research and teaching of international law.<sup>20</sup> It summarizes to a certain extent his overall vision of the current state of international law as a '*corpus juris* increasingly oriented to the fulfilment of the needs and aspirations of human beings, of peoples and of humankind as a whole'.<sup>21</sup> It reflects his view that though the world has entirely changed since the times of the 'founding fathers' of the *jus gentium*, the fulfilment of human aspirations and the search for the realization of justice are atemporal and remain always present as imperatives of the human condition itself. For him, the gradual improvement and development of the law of nations is to be based on the primacy of the *raison d'humanité* over the *raison d'état*. This would make possible the humanization of the *droit des gens* and provide responses to the basic needs of the international community as a whole, and, ultimately, of humankind. I have no doubt that many will particularly appreciate his message in this monograph to the new generations. He wrote that:

[m]y basic message to the new generations is . . . one of hope and confidence in the future of international law, the law of nations, amidst the profound crisis in which we now live. It has been in moments of crisis that advances have been achieved in the past. To that end, it is of utmost importance to rescue the fundamental principles of our discipline, which appear to

<sup>15</sup>*Ibid.*, para. 256.

<sup>16</sup>*Ibid.*, para. 119.

<sup>17</sup>A. A. Cançado Trindade, *Repertório da prática brasileira do direito internacional público – Período 1899-1918* (2012).

<sup>18</sup>A. A. Cançado Trindade and A. Martínez Moreno, *Doctrina Latinoamericana del derecho internacional* (2003).

<sup>19</sup>A. A. Cançado Trindade, 'The Contribution of Latin American Legal Doctrine to the Progressive Development of International Law', (2015) 376 *Collected Courses of the Hague Academy of International Law*.

<sup>20</sup>A. A. Cançado Trindade, *International Law for Humankind: Towards a New Jus Gentium* (2013).

<sup>21</sup>*Ibid.*, at 33.

have been somewhat neglected and largely forgotten nowadays. It is likewise relevant not to elude the basic question of the foundations of the law of nations, which also seems to have been rather circumvented in contemporary international legal thinking.<sup>22</sup>

In his already busy life as Judge of the ICJ, teacher and mentor to many young scholars, professor and lecturer in various universities and other institutions of higher learning, and prolific author of many works on international law, Antônio managed to find time to participate actively in various professional organizations and societies. He was a member of the *Institut de Droit International* from 1997 and actively contributed to the work of several of its commissions. He derived particular satisfaction from his association with The Hague Academy of International Law in which he was a member of the Curatorium since 2004. He was also Director of the Brazilian Journal of International Law from 1985, Co-Director of the Brazilian Journal of Human Rights from 2001, Member of the *Academia Brasileira de Letras Jurídicas*, Member of the Board of Directors of the Institut international des droits de l'homme (Strasbourg) and of the *Instituto Hispano-Luso-Americano de Derecho Internacional* (IHLADI).

Antônio Cançado Trindade touched the lives of many, in particular students and scholars of international law throughout the world. As an advocate for the respect and protection of human rights and as Judge, his work contributed to lessen the suffering of many individuals, to the reparation of many wrongs and to the peaceful settlement of international disputes. His modesty, humanity, humour and generosity were widely appreciated by all those who knew him. But, it was above all his sharp and compelling intellect, which made him stand out among his peers and won for him recognition and fame among all those interested in international law and beyond it. His eminent and warm personality, illustrious contributions to international law, and service to humanity will be sorely missed.

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<sup>22</sup>*Ibid.*, at 3.