The Legacy of Antônio Augusto Cançado Trindade: Towards Building a New Jus Gentium

By:

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December 6, 2022

In his professional life, Antônio Augusto Cançado Trindade perfectly combined theory and practice in the field of International Law. Without any intentions of being all-encompassing, this post illustrates the multiple facets of his prolific career as an academic and as an international judge, at both the Inter-American Court of Human Rights and the International Court of Justice (ICJ).

His contributions as a scholar of International Law

Cançado Trindade served as a professor and lecturer at several universities and renowned institutions during his career, such as at The Hague Academy of International Law. In 2004, he became a member of the Curatorium of The Hague Academy representing Latin America, and since1997 he had been a member of the Institut de Droit International. He was a Full Professor at the University of Brasília and the Rio Branco Institute from 1978 to 2009. In 2010,

he was awarded the title of Professor Emeritus of International Law at the University of Brasília. He was also Doctor Honoris Causa and Honorary Professor at several universities in Latin America and Europe.

He authored about seventy-eight books and 780 monographs, having contributed to book chapters and articles in International Law journals in different countries and languages. To illustrate his academic practice, it is worth recalling the writings resulting from his General Course on Public International Law, taught between July and August 2005 - which was the first general course by a Brazilian jurist since the establishment of The Hague Academy of International Law in 1923 –International Law for Humankind: Towards a New Jus Gentium. The third revised and updated edition, which considers the most recent challenges for the consolidation of International Law, was published in 2020 by BRILL.

This book is vital as it seeks to overcome the predominant interstate and voluntarist vision of International Law by rescuing the primacy of the reason of humanity over the reason of State, which is ever-present in the thinking of the 16th and 17th centuries founding fathers, such as F. de Vitoria (Relecciones Teológicas 1538-1539), F. Suárez (De Legibus ac Deo Legislatore 1612), A. Gentili (De Jure Belli 1598), H. Grotius (De Jure Belli ac Pacis 1625), S. Pufendorf, and C. Wolff, among others.

The book is the result of personal reflections assembled over a lifetime as an academic and international judge that rescues and brings to life the universal legal conscience, building a new jus gentium for humankind. He concludes his very up-to-date work by showing deep confidence in the new generation of international jurists on the construction of the new jus gentium of this century.

His contributions as a Judge of the Inter-American Court of Human Rights

Cançado Trindade served as a judge of the Inter-American Court of Human Rights (IACtHR) from 1995 to 2008 and was President of the Court from 1999 to 2004. Out of the 148 Judgments in contentious cases he participated at the IACtHR, he delivered a total of 72 votes, among which: 57 separate opinions, nine dissenting opinions and six concurring opinions following the majority of the Court.

In particular, the nine dissenting opinions were delivered in cases that dealt with topics such as arbitrary detention by State agents, extrajudicial executions, forced disappearances and Indigenous Peoples, among others. In requests of Advisory Opinions, Cançado Trindade delivered two concurring opinions out of the five Judgments to which he attended, one on the rights of the child and another on the rights of migrant workers.

As a judge at the IACtHR, Cançado Trindade advocated for individuals' right to direct access to international jurisdiction. He deemed the recognition of substantive rights under the American Convention on Human Rights to be associated with the recognition of their procedural capacity and the need to provide for the compulsory jurisdiction of international tribunals. Therefore, he proposed the revision of the Rules of Procedure to guarantee individuals direct access to the Inter-American system. The individual petitioner would have locus standi in judicio and jus standi in all stages of the Court's proceedings. He repeatedly stressed the need to provide for the automaticity of the mandatory jurisdiction of the IACtHR through unconditional acceptance by the State, as well as the amendment of Article 62 of the American Convention.

Also, throughout his work at the IACtHR, Cançado Trindade advocated for jus cogens norms, the gradual expansion of their content and the corresponding erga omnes obligations of protection based on the American Convention, emphasizing the horizontal and vertical dimensions of these obligations. As a judge of the IACtHR, he actively engaged in the conceptual and jurisprudential construction of the erga omnes obligations of protection and criticized contemporary legal doctrine for not adequately addressing the vertical dimension of erga omnes obligations.

His contributions as a Judge of the International Court of Justice

In November 2008, Cançado Trindade was the fifth Brazilian elected to the ICJ, having been preceded by Francisco Rezek (1996-2006), José Sette Câmara (1979-1988), Levi Fernandes Carneiro (1951-1955) and José Philadelpho de Barros e Azevedo (1946-1951). He was elected by the UN with an unprecedented and historic vote: 163 votes in the General Assembly and fourteen out of fifteen votes in the Security Council. In 2017, he was re-elected for a new nine-year term.

In his thirteen years as Judge of the ICJ, Cançado Trindade participated in judgments related to questions of jurisdiction and procedure, questions of substance, and provisional measures in both contentious cases and advisory proceedings. In contentious cases, the Justice Cançado Trindade delivered 31 votes: eight dissenting opinions (seven in concluded cases and one in pending cases); and 23 separate opinions (19 in concluded cases and four in pending cases). Regarding advisory proceedings, Cançado Trindade also delivered three separate opinions. One opinion related questions of labour rights of workers of UN agencies; the other two were delivered in cases dealing with matters of self-determination.

During his tenure as a judge at the ICJ, Cançado Trindade demonstrated concern with the importance of international judicial duties, the lack of automatism of international jurisdiction, and the role of international courts, especially the ICJ, in the progressive development of international law and in the realization of justice.

In his separate opinions and dissenting votes, Cançado Trindade insisted on the centrality of human beings as the ultimate addressees of all legal norms and emphasized that the principle of humanity permeates the entire corpus juris of human protection, taking both people-oriented and victim-oriented approaches.

On several occasions, Cançado Trindade expressed harsh criticism of the often-formalistic stance adopted by the majority of the Court, which, in certain circumstances, failed to analyse the merits of claims presented (often in cases involving the interests of the international community) based on procedural impediments. For example, the three controversial cases involving the Marshall Islands against the United Kingdom, India and Pakistan from 2016 also illustrate well his criticism of procedural impediments.

Conclusions

This post illustrates the legal-humanistic trajectory of Professor Antônio Augusto Cançado Trindade in its multiple facets - as scholar and practitioner of International Law. The theses he developed in his prolific academic writings were equally visible in his practice as a judge of the IACtHR and of the ICJ. He believed that the jurisdictional function was guided, above all, by the ideal of achieving justice. This is because an international court cannot remain

indifferent to human suffering, favouring raison d'État and denying justice to individuals under its jurisdiction.

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