# Speaking to the Future: Judge Antônio Augusto Cançado Trindade lasting impact on International Law

**By:**

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**Prolegomena**

On 8 September 2020, the International Court of Justice (ICJ) issued an order in the Armed Activities case (Democratic Republic of the Congo vs. Uganda). The Order contained the Court's decision to obtain an expert opinion to determine the reparations owed by Uganda to the Democratic Republic of the Congo for the injury caused due to the breach of its international obligations, which the Court previously determined in its notorious 2005 Judgment. That Order also contains the last Separate Opinion issued by late judge Antônio Augusto Cançado Trindade.

Judge Cançado Trindade was famous for his separate and dissenting opinions, which on occasions were longer than the Court's own Judgment. They usually contained detailed references to literature and history, as well as a recollection

of the views of the founding fathers of international law. He was always concerned with the human perspective of cases, dismissing what he called the "outdated and impertinent voluntarist outlooks" of international law.

**Criticized, neglected and mocked**

The international, primarily European, community of scholars, however, did not always value his long opinions. For instance, some years ago, Professor Milanovic questioned judge Cançado Trindade's effectiveness, claiming (without much justification) that surely the other ICJ judges "*have long since stopped reading his opinions*", and further claiming that his opinions were not widely read in academia. On another occasion, he also labelled his use of Greek and Latin "*a form of self-indulgence and of disrespect for the audience*". Judge Cançado Trindade was also the frequent subject of (respectful, but still telling) memes focusing on the extension and frequency of his long opinions, as well as his citation style.

However, his separate opinion, dated 8 September 2020 is a good summary of his views of international law. In just twelve pages, judge Cançado Trindade reflects on the purpose of our field, reflecting on the remarkable individual I had the privilege of knowing some years ago.

**The last attempt to influence the development of a new *jus gentium***

Judge Cançado Trindade strongly advocated for an understanding of international law that went beyond an inter-State outlook and focused on individuals. However, due to the jurisdictional limitations of the ICJ, this proved to be a difficult task. As is known, Article 34 of the ICJ's Statute provides that only states may be parties in cases before the Court.

Thus, the *Armed Activities* case was especially challenging. In its 2005 Judgment, the ICJ found that Uganda had committed a series of violations of international law, including the prohibition on the use of force and the principle of non-intervention, but also breaching several provisions of international humanitarian law and international human rights law. The Court found convincing evidence that members of the Congolese civilian population were killed, tortured and/or subject to inhumane treatment, that children were trained as soldiers and that villages were destroyed due to indiscriminate

shelling and bombing (paras. 206-2011).

However, unlike the proceedings before the Inter-American Court of Human Rights (IACtHR) or the International Criminal Court, where victims can directly benefit from reparations ordered by the tribunal, the proceedings before the ICJ only concerned the direct reparation of the Democratic Republic of Congo, which in 2016 requested the payment of more than US$13.000 million in compensation for damages.

This was a matter of particular importance for Judge Cançado Trindade. I was lucky to work as his Judicial Fellow from mid-2019 to mid-2020. During my year at the Court, most of my research and discussions with the Judge concerned the reparations for the Armed Activities case. As noted in his last Separate Opinion, and also in his previous opinions and declarations on this case from July 2015, April 2016 and December 2016, Judge Cançado Trindade was deeply concerned by the significant delays and postponements of the case, arguing that this prolonged the suffering of the numerous victims of Uganda's wrongful acts.

He also believed the Court should focus on collective rather than individual reparations as well as to consider other forms of reparations in addition to economic compensations. This interest is consistent with his long trajectory as a Judge at the IACtHR, a tribunal with a highly developed case law on reparations, especially in cases of massacres, a case law the Judge Cançado frequently cited in his Separate or Dissenting Opinions at the ICJ.

As explained, the prevalence given by Judge Cançado Trindade to reparations for direct victims of harm is consistent with his general approach to international law. As developed in his landmark book International Law for Humankind, he believed the state-centered voluntarist conception of international law to be a fallacy. In his own words, "*[c]ontemporary international legal order appears ineluctably impregnated with an acknowledgment of common and superior values, in its pursuit of the realization of justice*" (p. 22). He believed the new *Jus Gentium* to be characterized by increasing attention to the needs of humankind, both present and future generations.

However, his views on reparations were not shared by the majority of the ICJ, at least in the Armed Activities case. In its 9 February 2022 Judgment on

Reparations, in which Judge Cançado Trindade did not participate, due to his illness, the Court ordered the payment of economic compensation to the Democratic Republic of Congo, without specific regard to the victims. The only reference made to individual reparations was a brief acknowledgment of the statement made by the Agent of the Democratic Republic of Congo during the oral proceedings to distribute the compensation fairly and effectively to the victims of the harm, without further detail. No alternative forms of reparations (including rehabilitation or satisfaction) were granted by the ICJ.

**Speaking from The Hague to future generations**

Judge Cançado Trindade's inability to persuade his fellow Judges of the need for a more diverse approach to reparations in the Armed Activities could be seen as a failure. Indeed, as per Milanovic's view, that would be an example of his ineffectiveness and lack of connection to the Court on which he was sitting.

I have a different view. My view is of course influenced by the personal experience of working with whom I viewed as an individual deeply dedicated to his judicial function. However, I do not think that Judge Cançado Trindade's impact should only be evaluated by the reaction of his peers. In fairness, he certainly exerted influence over some of them, including former President Yusuf , who also criticized the Court's "*overly narrow approach to reparations adopted in the Judgment and the lack of consideration of the communities, collectivities and individuals who have directly suffered as a result of the wrongful acts of Uganda through loss of life, personal injuries, destruction of private properties, conscription of child soldiers and the displacement of population*", and regretted that the Court did not consider alternative forms of reparations, including those of a collective nature.

Moreover, as I pointed out more than a year ago in my favorite international law podcast, Internacional con Ñ, Judge Cançado Trindade was also (and maybe primarily) talking to future generations of lawyers. I am convinced that history will be kind to him. His views on the humanization of international law may not be mainstream today, but his work is gaining more adepts, especially in the Global South, where he came from. As noted by Rodolfo Ribeiro, unlike some European lawyers who were more concerned with frowning his style and rhetoric, we were, and are, definitely listening.

Judge Cançado Trindade left us way too soon. However, we are fortunate enough to have his legacy of (massive) writing, not only in his Dissenting and Separate Opinions but also in his hundreds of articles and books (like Lin-Manuel Miranda's Hamilton, he really did write like he was running out-of-time). As Andrea Bianchi beautifully stated some years ago, paraphrasing Voltaire, "*if Cançado did not exist, it would be necessary to invent him*".

Luckily, he did exist, and those who did not have the privilege of meeting him or working with him can surely draw inspiration from his commitment to humankind expressed in thousands and thousands of pages. He also has the appreciation of a young Chilean lawyer with no previous connections to international law, who will forever be grateful for giving her the opportunity to work in the highest spheres of international law without ever losing sight that the raison d'être of international law is (and must be) the protection of the individuals.

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