

THE CONSTRUCTION OF A HUMANIZED INTERNATIONAL LAW



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Please permit me to add three short comments to what Dean Spielmann has just said in his presentation, one for each of the two-volume Book of Opinions, and a third one which may one day need to be borne in mind when a third volume is to see the light of day!

My first comment. Volume One of Antonio's Opinions provides an in-depth overview of the influence which he has had, first as a member, and then as the President, of the Inter-American Court of Human Rights in San José. The inter-American human rights protection system is modelled, to a considerable extent, on the pre-Protocol No.11 ECHR system. The individual does not have direct access (right of application) to the Court and the OAS has no equivalent procedure to that of our European Convention, in which the Committee of Ministers supervises the implementation of the judgments of the Strasbourg Court. The Opinions – mostly separate or concurring - of Antonio Cançado Trindade, provide a thorough insight of how he, often as the sole instigator of ameliorations, has ensured fundamental changes in the Rules of the Court in Costa Rica – by ensuring the possibility for the San José Court itself to deal with the implementation of its own judgments and, in particular, by providing an enhanced role for (alleged) victims of violations in pleadings before the Court. Victims of human rights violations, even if not able to seize the Court, possess *locus standi* before it. This point has also been underlined, in no uncertain terms, by Dean Spielmann.

My second comment. Antonio's (still unfinished) contribution to the case-law of the International Court of Justice, at the Hague, which can be found in Volume Two of this Book of Opinions. Antonio's contributions are many and varied, but one dissent of his, in the ICJ Jurisdictional Immunities of States – Germany v Italy case, of 2012, stands out - in my view. Particularly worth reading is his dissent where, for him, (procedural) rules of immunity should not

permit impunity. I refer you, in this connection, to the chapter, in Volume Two, which is entitled: "The primacy of the right of access to justice over state immunities in face of international crimes." This title speaks for itself.

My third, and last comment. An issue which may be the first Opinion in a third volume to Antonio's contribution in 'humanising' international law. As most persons present today are aware, on 3 February, 2015 - last week - the International Court of Justice, in the *Application of the Convention against Genocide case* (Croatia v Serbia), found that acts undertaken by the Parties to the case constituted the *actus reus* of genocide, within the meaning of the Convention, but that the element of genocidal intent (*mens rea*) had not been established.

Permit me to quote a paragraph – paragraph 496 – from Antonio Cançado Trindade's dissent in this recent case:

496. The present case [...] provides yet another illustration of the pressing need to overcome and move away from the dogmatic and strict inter-State outlook, even more cogently. In effect, the 1948 Convention against Genocide, – adopted on the eve of the Universal Declaration of Human Rights, – is not State-centered, but rather people-centered. The Convention against Genocide cannot be properly interpreted and applied with a strict State-centered outlook, with attention turned to inter-State susceptibilities. Attention is to be kept on the justiciables, on the victims, – real and potential victims, – so as to impart justice under the Genocide Convention.

Antonio: The majority of the Court did not agree with you. But I suspect that the majority of the judges in other international criminal law jurisdictions, in San José, in Arusha, including most of the judges present here today, may agree with what you said.

I thank you for your attention.



