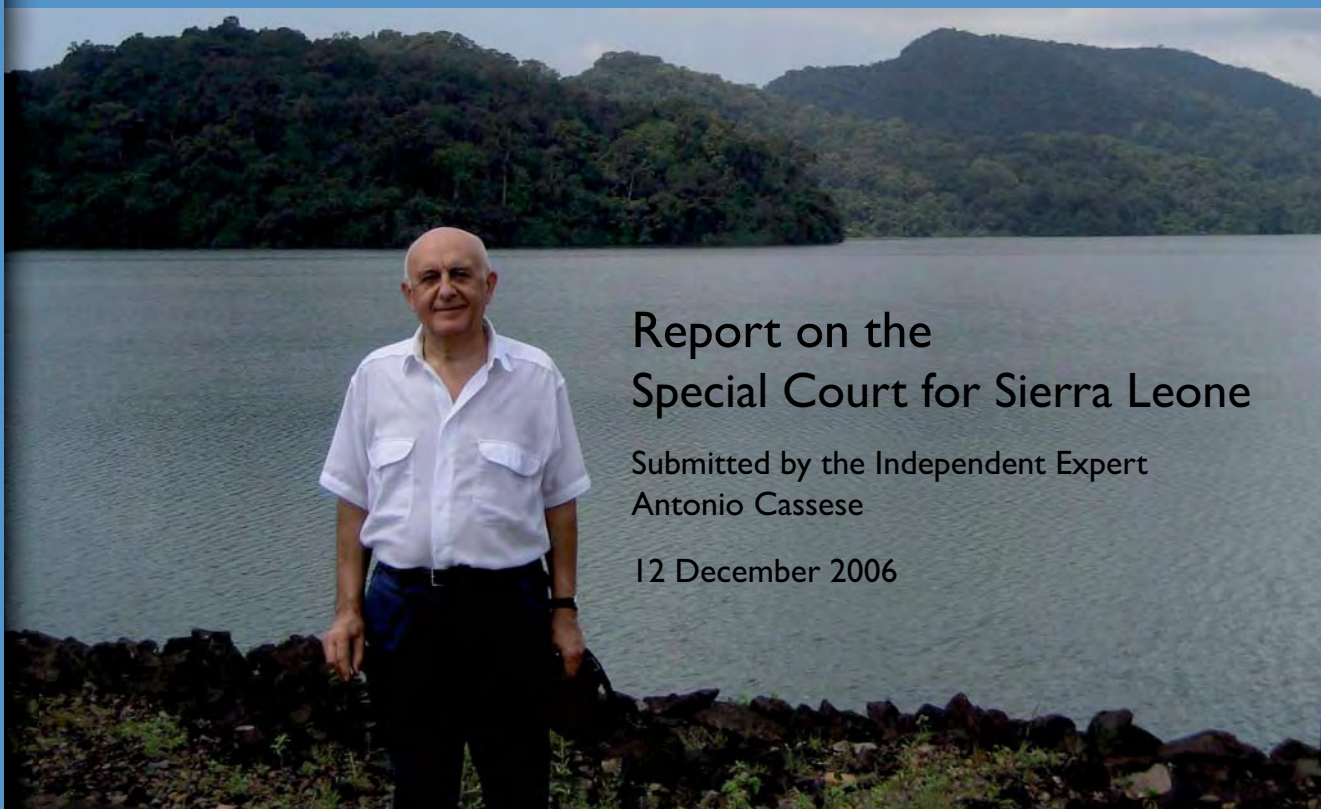


Antonio Cassese
1937 - 2011



Walking the road he paved

Cassese the UN Rapporteur



Report on the Special Court for Sierra Leone

Submitted by the Independent Expert Antonio Cassese

12 December 2006

“ The Special Court is a remarkable achievement. Its success is a tribute to the men and women who worked tirelessly to establish a court to try those persons alleged to bear the greatest responsibility for the crimes committed during Sierra Leone’s civil war. Only a short time after the agreement creating the Court was signed, staff were already in the country starting

To date, the jurisprudence of the Special Court has grappled with a number of novel issues in international criminal law. It is to be expected that the judgments, in addition to establishing the guilt or innocence of the accused persons, will address important factual issues relevant to establishing an historical record of the events; they will also deal with legal issues of worldwide interest.



...

In addition to acting as an international court of law, it has operated as a transitional justice mechanism, interacting with broad sections of civil society as well as the justice sector of Sierra Leone. The Court has incorporated many local staff members, thereby contributing to enhancing the proximity of this new international judicial mechanism to the local population. ”

investigations and beginning to set up the institution. Notwithstanding tremendous hurdles, the first years of the Court were successful in many respects.

...



Cassese the UN Rapporteur

Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General

Chairperson: Antonio Cassese

25 January 2005

“ The Commission strongly recommends that the Security Council immediately refer the situation of Darfur to the International Criminal Court, pursuant to article 13(b) of the ICC Statute. As repeatedly stated by the Security Council, the situation constitutes a threat to international peace and security. Moreover, as the Commission has confirmed, serious violations of international human rights law and humanitarian law by all parties



are continuing. The prosecution by the ICC of persons allegedly responsible for the most serious crimes in Darfur would contribute to the restoration of peace in the region.

...

The Commission considers that the Security Council must act not only against the perpetrators but also on behalf of the victims. It therefore recommends the establishment of a Compensation Commission designed to grant reparation to the victims of the crimes, whether or not the perpetrators of such crimes have been identified.

...

The Commission also recommends a number of measures to be taken by other bodies to help break the cycle of impunity. These include the exercise of universal jurisdiction by other States, re-establishment by the Commission on Human Rights of the mandate of the Special Rapporteur on human rights in Sudan, and public and periodic reports on the human rights situation in Darfur by the High Commissioner for Human Rights. ”



Cassese President of the ICTY*

Address of Antonio Cassese, President of the ICTY, to the Parliamentary Assembly of the Council of Europe

25 April 1996

*Welcoming words by the President of PACE,
Ms Leni Fischer*

“(…) Mr Cassese, you are an old friend of the Council of Europe and your work has certainly left a mark. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is, in a way, your baby. It is a baby that has grown considerably in its ten years of existence and today has some thirty member states. (…)”



Speech by Mr Cassese

“Unlike national courts, the International Criminal Tribunal for the Former Yugoslavia does not have its own police force. It is like an armless and legless giant which

needs artificial limbs to act and move. These limbs are the state authorities of the country - the national prosecutors, judges and police officers. If state authorities fail to carry out their responsibilities, the giant is paralysed, no matter how determined its efforts.

...

The prosecution of the alleged perpetrators of horrific crimes has to be an essential element in the process of restoring peace and democracy in the former Yugoslavia. The hazy and primitive notion of collective guilt is banished only by judicial apportionment of guilt to those directly responsible for the inferno of war. I therefore strongly urge the Council of Europe, as a repository and guardian of the fundamental values of democracy, justice and respect for human rights, to exercise all its influence on the parties that make up the former Yugoslavia. These parties must be made amenable to full respect for the imperatives of international justice. Let them fully understand that, without justice, peace is indeed an empty word, because the fires of hatred and vengeance are bound to burn down the fragile edifice of a formal peace. Let them understand that, without justice, peace is but a sandcastle, to be washed away by the relentless tide of ethnic hatred. Let them understand that real peace can be restored in the former Yugoslavia only if the values upheld by the Council of Europe are fully realised, and the rule of law is affirmed.”

*The International Criminal Tribunal for the former Yugoslavia (The Hague, the Netherlands)

Cassese First President of the CPT*

**“Our ultimate weapon:
the public statement”**

Interview with Professor Cassese, Forum, Council of Europe, 1991

“Europe is the part of the world where allegations of torture are the least common. Even so, preventive work is essential, if only to make sure the situation does not deteriorate ...” From the outset, this is how Professor Cassese has chosen to answer those who might question the need for the committee which he chairs. And he adds, “Quite apart from torture, we should not forget the other aspects, namely inhuman and degrading treatment.” And - perhaps a more sensitive issue - Europe wanted to establish a precedent.

...

“Observer with a critical eye”

The great surprise for the committee has been to discover just how far national authorities are willing to co-operate. By way of example, Professor Cassese refers to the United Kingdom. “Great Britain has a national prison inspectorate led by Judge Tumim. This has given us access to a number of excellent critical reports on various establishments which have been made public. We therefore had to ask ourselves whether on-the-spot visits were really called for. However, it was our British colleagues themselves who insisted on a ‘European’ visit, on the grounds that ‘your opinion could be constructive’.

...



“A sword of Damocles”

But how are the recommendations followed up? The plan is to organise follow-up visits... And as the Chairman Cassese points out: “If the governments concerned have accepted our recommendations, so much the better. If not, however, Article 10, § 2, of the convention allows us to make a public statement on the matter.” Here is a weapon which the committee may only use against a government which fails to co-operate or accept recommendations. It is no exaggeration to say that, in ratifying the convention, the countries concerned have effectively acknowledged a sword of Damocles suspended over their heads. ... Clearly, as far as the European Committee for the Prevention of Torture is concerned, the old principle that “no news is good news” applies. So long as there really are no problems! But in any case, according to its Chairman the committee’s golden rule is: “Rather than condemning ill-treatment, we should be making sure it cannot occur in the first place.”

* Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe, Strasbourg)

Cassese President of the STL*

Address of Antonio Cassese, President of the Special Tribunal for Lebanon, to the Parliamentary Assembly of the Council of Europe

24 June 2009



Welcoming words by the President of PACE, Mr Lluís Maria de Puig

“(…) The Assembly would have the honour and the pleasure of hearing once again from Mr Antonio Cassese. .. Mr Cassese had combined a stellar university career with his experience at the highest levels of special international jurisprudence. As a renowned authority on the subject, his contribution to the debate on the state of human rights in Europe: eradicating impunity would be considerable. (…)”

Speech by Mr Cassese

“In spite of [...] limitations, criminal accountability processes remain a valid tool for addressing the range of gross violations of human rights, in particular those violations that, being uniquely odious in character and collective in nature, amount to international crimes, such as torture, crimes against humanity, genocide and war crimes of terrorism.

What should be done to enhance the existing accountability procedures and bolster their effectiveness? ... first, to make the International Criminal Court more effective so as to better use its universal po-

tential; secondly, to strongly urge the implementation by domestic courts of the principle of universal criminal jurisdiction over such international crimes as torture, crimes against humanity, genocide and terrorism; thirdly, to insist on the notion that no amnesty for gross violation of human rights amounting to international crimes is permissible under current international law; fourthly, to prompt the European Court of Human Rights to give greater bite to its decisions by making explicit what is now mostly implicit in some of its rulings; fifthly, to establish a commission of inquiry available to states and individuals to promptly establish whether egregious violations of human rights have occurred that amount to international crimes, thereby triggering the necessary sanctioning mechanisms.

...



It is crucial to deprive those who engage in criminal conduct against the most fundamental human rights of other individuals of the belief that they can offend and yet remain unpunished. Although some senior state officials, including heads of state, still breach fundamental human rights on a daily basis, the notion has taken a firm

* Special Tribunal for Lebanon (Leidschendam, The Hague, the Netherlands)

Cassese the Judge

Acceptance Speech of the 2009 Erasmus Prize



“Justice puts a stop to violence and sweeps away hatred. As Plato wrote in his Republic, “justice is a thing more precious than many pieces of gold”.

...



To fulfil this task we must count on the young, on the salt of the earth. It is for this reason that I will entirely devote the grant generously awarded to me by the Erasmus Foundation, and for which I express my

deep gratitude, to a Trust Fund. This Fund will be tasked with assisting those young scholars and practitioners who are eager to make a contribution to the development of international courts. The Trust Fund will help them, I hope, to become instrumental in the gradual realization of our dream – the dream to see one day a fully-fledged, truly effective, expeditious and fair international criminal justice.”



Cassese the Judge

Public Summary of the Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging

Case number STL-11-01/I

16 February 2011

“ This customary rule requires the following elements for the crime of terrorism: (i) the perpetration of a criminal act or the threat of such act; (ii) the intent to spread fear among the population or to coerce a national or international authority to take some action, or to refrain from taking it; and (iii) a transnational element (which may lie in a connection of perpetrators, victims, or means used across two or more countries, but may also reside in the significant impact that a terrorist act in one country may have in another country). Let me emphasize that the requirement of a cross-border element goes not to the definition of terrorism but to its character as international rather than domestic. The two elements of (i) criminal act and (ii) intention to intimidate a population or compel an authority are common to both domestic and international terrorism.

...

Further, in spite of disagreement emanating from very few States on the definition of terrorism in time of armed conflict, an overwhelming majority of States takes the view that acts of terrorism may be repressed in time of armed conflict to the extent that such acts target civilians who do not take an active part in armed hostilities. Thus the contention is warranted that at present another customary rule is in the process of formation, which covers terrorism in time of armed conflict. ”



Antonio Cassese lecturing on the STL at the Université Saint-Joseph, Beirut, 2009

Cassese the Judge

A Decisive Moment for Lebanon

by Antonio Cassese

New York Times

12 July 2011

Article following the confirmation of the first STL indictment

“This is a decisive moment for the Lebanese, their state and for international justice. It is also a decisive moment for the region. Recent events across the Middle East show that the desire for justice and human dignity is universal. Over the past decades political assassinations in Lebanon have killed scores of people. The terrorism of the streets is indiscriminate — it kills political leaders and civilians alike — and can only be fought in the courtroom.

...

The work ahead is challenging for Lebanon and for the Special Tribunal. Never before has a legal case been brought at an international court for a terrorist crime. Terrorism inherently breeds injustice and insecurity.

International justice is the best tool to combat this anarchy both to establish the truth and to promote order.

In the upheavals of recent months the citizens of the Middle East have made it clear to the world that the rule of law and accountability are among the pillars upon which they want to build their societies. This tribunal is an opportunity for a judicial awakening in Lebanon and the region. It is an opportunity that must not be missed. ”



Cassese the Judge

Inventing Peace by Lawrence Weschler

The New Yorker, 20 November 1995

“ At one point, I was having lunch with Antonio Cassese, a distinguished Italian jurist who has been serving for the past two years as the president of the court (the head of its international panel of eleven judges). He was rehearsing for me some of the more gruesome stories that have crossed his desk—maybe not the most gruesome but just the sort of thing he has to contend with every day and which perhaps accounts for the sense of urgency he brings to his mission. The story, for instance, of a soccer player. As Cassese



Duško Tadić, in the video monitor at the ICTY, and Vermeer's 1666 "Head of a Young Girl"

recounted, “Famous guy, a Muslim. When he was captured, they said, ‘Aren't you So-and-So?’ He admitted he was. So they broke both his legs, handcuffed him to a radiator, and forced him to watch as they repeatedly raped his wife and two daughters and then slit their throats. After that, he begged to be killed himself, but his tormentors must have realized that the cruellest thing they could possibly do to him now would simply be to set him free, which they did. Somehow, this man was able to make his way to some U.N. investigators, and told them about his ordeal—a few days after which, he committed suicide.”

...

Stories like that: one judge's daily fare. I asked Judge Cassese how, regularly obliged to gaze into such an appalling abyss, he had kept from going mad himself. His face brightened. “Ah,” he said with a smile. “You see, as often as possible I make my way over to the Mauritshuis museum, in the center of town, so as to spend a little time with the Vermeers.” ”



Judges Antonio Cassese and Gabrielle Kirk McDonald shaking hands following the adoption of Rule 61 of the ICTY Rules of Procedure and Evidence

Prosecutor v. Duško Tadić, Appeals Chamber Judgement, 1995

“ Indeed, elementary considerations of humanity and common sense make it preposterous that the use by States of weapons prohibited in armed conflicts between themselves be allowed when States

try to put down rebellion by their own nationals on their own territory. What is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife. ”

Cassese the Judge

Man's Inhumanity to Man

Essays on International Law in Honour of Antonio Cassese, 2003

Judge Lal Chand Vorah

“ In the first year of the Tribunal's existence, in the absence of a regular budget, he alone amongst the Judges was fully resident in The Hague to attend to the nuts and bolts for the physical shape of the Tribunal.

...

Most of the imponderables that he faced were eventually overcome in the four years that he led the Tribunal. For a lesser man the burden would have wreaked havoc on his health, physical and mental, but Nino found solace in the support he received from his wife Sylvia and his two children.

He also found solace in the paintings of Vermeer... He would view the paintings for hours on end and come out refreshed and ready for work again...

Amongst the qualities that have distinguished him in his work as President of the Tribunal are his humility, his stubbornness and his sense of humour.

His humility was well-known. All the time he officiated as Judge at the ICTY, The Hague, his means of transportation was invariably his bicycle which he used even to attend official receptions. He would seldom summon his secretary to his chambers and would go to her for his official matters to be attended to. Quite often he would be seen sitting beside his secretary in her office dictating letters to her or running through her finished correspondence. Also, he would be seen often in the rooms of the law clerks and interns having serious discussions with them. He also had the habit of dropping in on the Judges in their chambers to discuss their assignments. His modesty is hard to emulate.

...

His intellectual and physical stamina is indeed proverbial. ”

Address of Antonio Cassese, President of the ICTY to the General Assembly on 14 November 1994

“ We, the members of the International Criminal Tribunal for the former Yugoslavia, are fully aware that the sentences we will pass will not exhaust the poisoned wells of racial, national or religious hatred. We also know, however, that the setting up of our Tribunal is intended to signal that the world community will not stand idly by, impassive or resigned, and watch while barbarous acts are perpetrated, unconcerned and unaffected by them only because they are committed in what is, for most of us, a far away land, the former Yugoslavia.

You, Members of this Assembly, together with the Security Council, have decided that massacre, rape, ethnic cleansing, the wanton killing of civilians, affect each and every one of us, whatever our nationality and wherever we live. They affect each and every one of us because they imperil the great principles of civilization enshrined in international legal standards on human rights.

...

Mister President, the tasks that the United Nations has entrusted to us are daunting. On the eve of the United Nations' 50th anniversary, you have decided that the United Nations should broaden its arsenal of pacific means to include resort to international criminal justice, as a lawful response to force and violence. All those who are working on behalf of the Tribunal are aware of the heavy responsibility they have been called upon to shoulder on behalf of the whole international community. We shall all accomplish the Tribunal's mission to the very best of our ability and energy. We hope thus to make our contribution to alleviating the anguish and sorrow of all those who still continue to suffer, even as I speak now, in the former Yugoslavia. ”

Cassese the Scholar

“Soliloquy”, in *The Human dimension of International Law: Selected Papers, 2008*

“ I was moved by the old maxim of Roman wisdom: *hominum causa omne jus constitutum est* (any rule of law is ultimately made on account of human beings)...

I still believe that only those problems that dramatically affect the daily life of human beings are worth studying. I still believe that it is the cluster of legal rules and institutions that may have a dramatic impact on the life and suffering of human beings that should constitute the main focus of our attention as scholars. ”

A. Cassese, *Five Masters of International Law, 2001*



Awarding ceremony of the “Grand Prix 2002 de l’Académie Universelle des Cultures”, Paris, 2002

“ I have sought to show some flexibility throughout my own career. While substantially accepting the basic axioms of positivism in my own research, I have modestly attempted to make some circumspect forays into related disciplines. In particular, I have tried to draw upon history and political sciences whenever they could provide insight into the rationale behind a legal institution or rule. I have also critiqued legal concepts of institutions, and proposed how in my view they could be ameliorated in order for them better to respond to current demands. ”



Antonio Cassese and Louis Henkin.
Columbia University, NY, February 1995,
Panel discussion on challenges to the ICTY

Cassese the Scholar

A. Cassese, *International Criminal Law*, 2008

“ My aim is also to point to the historical and human dimension of cases. For this purpose, I have as far as possible recounted the facts behind the court’s legal findings. For one should never forget that this body of law, more than any other, results from a myriad of smaller or greater tragedies. Each crime is a tragedy, for the victims and their relatives, the witnesses, the community to which they belong, and even the perpetrator who, when brought to trial, will endure the ordeal of criminal proceedings and, if found guilty, may suffer greatly, in the form of deprivation of life, at worst, or of personal liberty, at best.

...

To recall it may serve as a reminder of the true historical source of criminal law. This branch of law is about human folly, wickedness, and aggressiveness. It deals with the darkest side of our nature. It also deals with how society confronts vicious violence and seeks to stem it as far as possible so as ‘to make gentle the life on this world’.”



I diritti umani oggi (Bari-Roma: Laterza, 2005)

The Human Dimension of International Law: Selected Papers (ed. by P. Gaeta and S. Zappalá) (Oxford; New York: Oxford University Press, 2008)

Five Masters of International Law: Conversations with R.-J. Dupuy, E. Jimenez de Aréchaga, R. Jennings, L. Henkin and O. Schachter (Oxford; Portland, Or.: Hart, 2011)

L’esperienza del male. Guerra, tortura, genocidio, terrorismo alla sbarra. Conversazione con Giorgio Acquaviva (Bologna: Il Mulino, 2011)

International Criminal Law: Cases and Commentary (co-ed.) (Oxford, New York: Oxford University Press, 2011)

The Oxford Companion to International Criminal Justice (ed. in chief) (Oxford: Oxford University Press, 2009)

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International Law and Politics in a Divided World (Oxford: Oxford University Press, 1984) (translated into Italian and French)

International Law (Oxford: Oxford University Press, 2001) (translated into Italian) 2nd ed. (2004)

International Criminal Law (Oxford: Oxford University Press, 2003) (translated into Italian) 2nd ed. (2008)

BOOKS AND ESSAYS

Il diritto interno nel processo internazionale (Padova: Cedam, 1962)

Il controllo internazionale (Milano: Giuffrè, 1972)

Il diritto internazionale bellico moderno. Testi e documenti (Pisa: Libreria Sc. Giordano Pellegrini, 1973)

‘Modern Constitutions and International Law’, in *192 Recueil des cours de l’Académie de droit international de la Haye* (1985) 331

Violence and Law in the Modern Age (Cambridge: Polity Press, 1988) (original into Italian, translated into French and Japanese)

I rapporti Nord-Sud. Testi e documenti di politica internazionale dal 1945 ad oggi (Roma: Editori riuniti, 1989)

Human Rights in a Changing World (Cambridge: Polity Press, 1990) (translated into Spanish and Indonesian)

B.V.A. Röling — *The Tokyo Trial and Beyond* (Cambridge: Polity Press, 1993) (translated into Japanese)

Self-determination of Peoples. A Legal Reappraisal (Cambridge: Cambridge University Press, 1995)

Inhuman States. Imprisonment, Detention and Torture in Europe Today (Cambridge: Polity Press, 1996) (translated into Italian)

The must-reads for young international scholars according to Antonio Cassese

“...no young scholar wishing to become an academic in international law could ignore them...”

D. Anzilotti, *Corso di diritto internazionale* (Rome, 1915)

M. Sørensen, ‘Principes de droit international public: cours général’, *Recueil des cours*, vol. 101 (1961)

J. de Aréchaga, ‘International law in the past third of a century’, *Recueil des cours*, vol. 159 (1978)

O. Schachter, *International Law in Theory and Practice* (Dordrecht: Nijhoff, 1991)

Cassese the Professor

“Soliloquy”, in *The Human dimension of International Law: Selected Papers*, 2008

“ The hope that we may be able to pass on something intellectually and emotionally valuable to our children and grandchildren is an abiding solace. An academic also has another great joy: the hope that he or she has taught a way of thinking to a goodly number of young persons. I am overjoyed to see that some of those to whom I have tried to teach the use of the intellectual tools of our job are now faring so well and have surpassed me by far in the quality of their thinking.



When the ineluctable hour comes, it will find us neither dismayed nor slothful. ”



Geneva University, working group on Kenya, February 2008



University of Florence, June 2008, thesis defence



University of Florence, April 2007, thesis defence



Fiesole, May 2008, Nino with some of his former students

Obituaries

ANTONIO CASSESE

"The tragedy of Nino's departure is beyond words."

Judge Sir David Baragwanath,
President of the Special Tribunal for Lebanon

"Above all, he taught us that no matter how great your achievements, it is always possible to remain modest."

Judge Ralph Riachi
Vice-President of the Special Tribunal for Lebanon

"His intellectual rigour and humility are a combination that set him apart – as a leader and a visionary."

Daniel A. Bellemare, Prosecutor, STL

"The Defence Office considers that the best homage which they could pay to President Cassese will be to continue promoting the values and standards of justice that Nino had always defended"

François Roux, Head of the Defence Office, STL

"He wanted to see this Tribunal succeed and to contribute in whatever way he could. But he has left an indelible mark on our work that will guide the institution long after his passing. The Tribunal will miss his vision and leadership."

Herman von Hebel, Registrar, STL

"He had the rare combination of being an outstanding authority at the same time as he was a warm and modest person with a deep sense for humanity."

Judge Kjell Erik Björnberg, Appeals chamber judge, STL

"Antonio Cassese was a great jurist, a scholar, a man of commitment, but most of all, an exceptional human being."

Judge Robert Roth, Trial chamber president, STL

"He was a great man among those who have shaped the history of international justice."

Judge Micheline Braidı, Trial chamber judge, STL

"Your departure is a loss for a world that longs for peace, human rights and international justice. We are honoured to be guided by your valuable writings and judicial decisions."

Judge Walid Akoum, Trial chamber alternate judge, STL

"I feel privileged to have known and worked with him."

Judge Janet Nosworthy, Trial chamber alternate judge, STL

"Judge Antonio Cassese was a pioneering innovator in international criminal law."

David Re, Trial chamber judge, STL

"... a giant of international law ..."

Ban Ki-moon, Secretary-General of the United Nations

"La sagesse est sœur de l'équité ; et au cœur de la justice. Pour avoir incarné et pratiqué ce besoin, ANTONIO CASSESE a gravé son nom dans notre mémoire nationale."

Ibrahim Najjar, former Lebanese Minister of Justice

"Puisse le message du Président Antonio Cassese être entendu, et puisse son action servir d'exemple à l'édification d'une justice internationale efficace."

Ramzi Joreige, ancien Bâtonnier de l'Ordre des Avocats de Beyrouth

"His good humor was a godsend in troubled times, and he was the best kind of friend."

David Tolbert,
President of International Center of Transitional Justice

"His death is a great loss for international criminal justice."

Judge Patrick Robinson, President of the ICTY

"With the completion of our mandate in sight, the Special Court for Sierra Leone will be the first to transition into a Residual Special Court. Other tribunals will also build on Judge Cassese's legacy as they too complete their work."

Judge Jon M Kamanda, President of the Special Court for Sierra Leone

"Antonio Cassese has always been at the forefront of international criminal justice. All of us who work in the field of international criminal law shall remain greatly indebted to him."

Judge Sang-Hyun Song, ICC President

"... a fervent defender and a dedicated advocate for human rights."

Judge Amin EL Mahdi, former permanent judge at the ICTY

"... a master of legal culture ..."

Giorgio Napolitano, President of Italy

"We have lost an enlightened mind, a courageous man, and a valuable beacon."

Franco Frattini, Italian Foreign Minister

"He was an outstanding jurist, a courageous campaigner for human rights and a person of exceptional warmth."

Uri Rosenthal, Dutch Foreign Minister

Obituaries

“... a model to us all ...”

Alistair Burt, British Foreign Office Minister

“The loss of this eminent scholar will undoubtedly affect all those who seek for accountability and justice.”

Ambassador Miguel Berger, Permanent Mission of Germany, to the United Nations in New York

Nino Cassese, in Memoriam

It is hard to describe how much Nino will be missed. He is with us in everything we do. We hear him telling us to stop mourning and to start working — to propose new exciting symposia, imagine special issues, to commission articles on the history of international criminal law and comments on judgements and decisions just rendered, and to call on his numerous friends to author papers for the Journal. Always the Professor, Nino has left each of us with our ‘homework’, his quiet inspiration to complete an unfinished task of importance.

Salvatore Zappalà, Journal of International Criminal Justice

Antonio Cassese 1937-2011

The world has lost one of its greatest international criminal lawyers. Professor Cassese was already a very distinguished academic in the field of international law, specialized in the area of human rights, when he was elected as one of the first group of judges at the International Criminal Tribunal for the former Yugoslavia in late 1993. With hindsight, we know that this was the revival of a body of law that had lain largely dormant since the trials at Nuremberg and Tokyo in the late 1940s. But at the time there were many skeptics, and it was not then in the least bit obvious that something great was beginning. Nino was one of those who understood the importance of what was going on then. At the first plenary of judges of the International Criminal Tribunal he was elected the institution’s first president, and it was from that influential position that he steered the fledgling court.

He did more than that, of course, because he set the tone for the entire discipline. Rather boldly, in 1995 the Appeals Chamber over which he presided issued a seminal decision that represented a sea change in our understanding of the law. The Tadic Jurisdictional Decision declared that war crimes could be punished even when committed in internal armed conflict, and established the existence of crimes against humanity in peacetime. Seemingly controversial at the time, both principles were soon widely accepted and confirmed when the Rome Statute of the International Criminal Court was adopted in October 1998.

William Schabas

Antonio Cassese, War Crimes Law Expert, Dies at 74

In books, law journals and decisions from the bench, Judge Cassese expanded the body of international law that had lain mostly dormant since the trials at Nuremberg and Tokyo after World War II.

A professor of law in Florence and Oxford early in his career, in 1993 he became the first president of the International

Criminal Tribunal for the former Yugoslavia, a court established by the United Nations to deal with war crimes in the Balkans in the 1990s.

He proved to be something of a maverick among normally discreet justices. Invariably affable but outspoken, he prodded fellow lawyers and Western governments into providing more support for the fledgling tribunal. And he played a central role in defining rules that would guide it and that have since served as a model for other tribunals and courts.

Among his early decisions, seen as controversial at the time but widely accepted since, were several that changed basic precepts of international criminal law. One was that war crimes could be punished not only in wars between nations, but also in conflicts within a particular country. In another, he wrote that even if there was no war going on, massacres, torture and other atrocities committed by governments or groups could be found to be crimes against humanity and punished accordingly.

...

He insisted on the need for continuous debate because international law was gradually emerging, and as such, reflecting the common conscience of mankind. But he said it was vital to remain skeptical about harsh laws. “Laws may and should be improved if they are not up to reality,” he said frequently.

To remind himself, he kept these words from Bertolt Brecht, the German playwright and poet, on his office wall in The Hague: “I am by nature a man who is difficult to control. I reject with outrage any authority that does not rest on my respect. And I regard laws only as provisional and changeable proposals for regulating human intercourse.”

Marlise Simons, New York Times, 24 October 2011

“Géant de la justice internationale”, le juge Antonio Cassese est mort

A la tête du tribunal pénal international pour l'ex-Yougoslavie (TPIY) de 1993 à 1997, le juge Cassese était parvenu, contre toute attente, à faire de cette juridiction internationale, héritière du tribunal de Nuremberg chargé de juger les criminels nazis après la Seconde guerre mondiale, un puissant instrument judiciaire. Créé en 1993 par le Conseil de sécurité des Nations unies, le tribunal apparaissait alors comme le symbole de l'impuissance de la communauté internationale, incapable de trouver une réponse politique face aux crimes en cours en ex-Yougoslavie.

En juillet 1995, sous son impulsion et grâce à la ténacité de plusieurs juges, le tribunal asseyait sa légitimité en inculpant les chefs serbes de Bosnie, Radovan Karadzic et Ratko Mladic. En s'attaquant aux acteurs clés des crimes de l'ex-Yougoslavie, le tribunal contraignait la communauté internationale à soutenir pleinement et pour longtemps cette nouvelle juridiction.

...

Le 11-Septembre 2001 avait marqué un tournant dans la réflexion du juge italien. Antonio Cassese estimait alors que le terrorisme pouvait être qualifié de crime contre l'humanité, suscitant la controverse au sein même des défenseurs de la justice internationale. Huit ans plus tard, avec une passion égale à celle qui l'habitait lors des premiers pas du TPIY, ce pionnier du droit international prenait la tête du tribunal pour le Liban....

“Il existe une exigence morale pour que les conflits politiques ne se résolvent pas dans le sang, mais par des moyens pacifiques : le dialogue, la discussion et la négociation”, disait-il.

Stéphanie Maupas, Le Monde

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