

# THE ROLE OF ANTÔNIO AUGUSTO CAÑÇADO TRINDADE AS AN INTERNATIONAL JUDGE

## O PAPEL DE ANTÔNIO AUGUSTO CAÑÇADO TRINDADE COMO JUIZ INTERNACIONAL

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### ABSTRACT

Antônio Augusto Cañçado Trindade lived a life dedicated to the theory and practice of international law. This paper briefly presents an overview of his contributions as a Legal Advisor to the Brazilian Ministry of Foreign Affairs and as an academic on international law, focusing on the contributions of his work as an international Judge at the Inter-American Court of Human Rights and at the International Court of Justice to the advancement of discussions on international law of human rights pertaining to questions of jurisdiction, procedure, substance and to procedural cross-fertilisation between international courts and tribunals.

**KEYWORDS:** Antônio Augusto Cañçado Trindade. Itamaraty Legal Advisor. International Judge. Inter-American Court of Human Rights. International Court of Justice.

### RESUMO

*Antônio Augusto Cañçado Trindade levou uma vida dedicada à teoria e à prática do direito internacional. O presente artigo apresenta um breve panorama de sua atuação como Assessor Jurídico do Ministério das Relações Exteriores do Brasil e como acadêmico do direito internacional, concentrando-se em explorar as contribuições de seu trabalho como Juiz internacional na Corte Interamericana de Direitos Humanos e na Corte Internacional de Justiça para o avanço de discussões sobre o direito internacional dos direitos humanos referentes a questões de jurisdição, procedimento, substância e à prática de fertilização cruzada procedimental entre cortes e tribunais internacionais.*

**PALAVRAS-CHAVE:** Antônio Augusto Cañçado Trindade. Consultor Jurídico do Itamaraty. Juiz Internacional. Corte Inter-Americana de Direitos Humanos. Corte Internacional de Justiça.

### INTRODUCTION

Antônio Augusto Cañçado Trindade lived a life dedicated to the theory and practice of international law. Before being appointed as an international Judge, Cañçado Trindade also contributed to the promotion of international values in his service to the State of Brazil and in his work as an academic.

From 1985 to 1990, he has served as Legal Advisor to the Brazilian Ministry of Foreign Affairs – Itamaraty. During this period, he has been a member of the diplomatic delegations that Brazil has sent to several regional

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and international conferences in international organisations such as the Organization of American States and the United Nations<sup>1</sup>.

As mentioned by his colleague from the Itamaraty Legal Advisory Board, Antônio Paulo Cachapuz de Medeiros, Cançado Trindade “was one of the most dynamic, productive and efficient consultants Itamaraty has ever had”<sup>2</sup>. During his 15 years of service, he has drafted over two hundred detailed opinions<sup>3</sup>. His contribution as Legal Advisor to the Ministry of Foreign Affairs was paramount to the motivation of Brazil’s adherence to treaties on human rights protection at both a global level– such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – and a regional level – such as the American Convention on Human Rights of 1969<sup>4</sup>.

During his career as a scholar, Cançado Trindade has served as professor and lecturer at several universities and renowned institutions<sup>5</sup>, such as at The Hague Academy of International Law (1987 and 2005). In 2004, he became a member of the *Curatorium* of The Hague Academy representing Latin America; and, since 1997, he has been a member of the renowned *Institut de Droit International*. From 1978 to 2009, he was also a full professor at the University of Brasilia and at the Rio Branco Institute. In 2010, he was awarded the title of Professor *Emeritus* of international law by the University of Brasília. He was also Doctor *Honoris Causa* and Honorary Professor at several universities in Latin America and Europe.

Cançado Trindade is the author of a prolific academic production: he published approximately 78 books and 780 monographs and contributed with chapters in books and articles in journals on international law in various countries and languages<sup>6</sup>. Professor Cançado Trindade was also the first Brazilian to give a General Course on Public International Law at the Hague

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1 ALMEIDA, (P. w.) O legado de Antônio Augusto Cançado Trindade: as múltiplas facetas de um percurso voltado para a construção de um novo jus gentium. *CEBRI-Revista* Ano 1, Número 2 (Abr-Jun), 2022, p. 187-188.

2 MEDEIROS, (A. P. C. de). (org.). *Pareceres dos consultores jurídicos do Itamaraty: 1990-2000. Vol. VIII*. Brasília: Senado Federal, Conselho Editorial. <http://www2.senado.leg.br/bdsf/handle/id/1044>.

3 ALMEIDA, (P. w.) O legado de Antônio Augusto Cançado Trindade: as múltiplas facetas de um percurso voltado para a construção de um novo jus gentium. *CEBRI-Revista* Ano 1, Número 2 (Abr-Jun), 2022, p. 187-188.

4 ALMEIDA, (P. w.) O legado de Antônio Augusto Cançado Trindade: as múltiplas facetas de um percurso voltado para a construção de um novo jus gentium. *CEBRI-Revista* Ano 1, Número 2 (Abr-Jun), 2022, p. 187-188.

5 ALMEIDA, (P. w.) O legado de Antônio Augusto Cançado Trindade: as múltiplas facetas de um percurso voltado para a construção de um novo jus gentium. *CEBRI-Revista* Ano 1, Número 2 (Abr-Jun), 2022, p. 188-89.

6 ALMEIDA, (P. w.) O legado de Antônio Augusto Cançado Trindade: as múltiplas facetas de um percurso voltado para a construção de um novo jus gentium. *CEBRI-Revista* Ano 1, Número 2 (Abr-Jun), 2022, p. 188-191.

Academy of International Law, which was held between July and August 2005: *International Law for Humankind: Towards a New Jus Gentium*<sup>7</sup>.

The publication of the *Recueil Des Cours* on his course comprises texts written, selected and updated over his last three decades as a scholar and became an international paradigm on the primacy of the reason of humanity over the reason of the State<sup>8</sup>, concurring with the beliefs of the founding fathers of international law, such as F. de Vitoria (*Relecciones de Vitoria*), F. Suárez (*De Legibus ac Deo Legislatore*, 1612), H. Grotius (*De Jure Belli ac Pacis*, 1625)<sup>9</sup>.

After an overview of his career as an Itamaraty Legal Advisor and as an academic, this paper will discuss Cançado Trindade as an international Judge, both at the Inter-American Court of Human Rights, from 1991 to 2008 (I), and at the International Court of Justice, from 2008 until 2022 (II).

## I. 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. During his tenure, he played an active role in delivering concurrent, separate and dissenting opinions (1). In the *rationale* of his opinions, he often emphasised the importance of questions of jurisdiction and procedure (2) as well as questions of substance (3) to the protection of humanity and the promotion of a new *ius gentium* in the work of the Court. Cançado Trindade, among other IACtHR Judges, has also resorted to procedure cross-fertilization with the ICJ (4).

### 1. OVERVIEW

Out of the 148 Judgments in contentious cases he attended over his tenure as *ad hoc* judge (1991, 1993, and 1994) and elected judge (1995-2000 and 2001-2006) of the IACtHR, Cançado Trindade proffered a total of 72 votes, among which: 57 separate opinions, nine dissenting opinions and six concurring opinions following the majority of the Court<sup>10</sup>. In particular, the nine dissenting opinions were delivered in cases that dealt with topics such

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7 CANCADO TRINDADE (A. A.). *International Law for Humankind: Towards a New Jus Gentium* (I) - General Course on Public International Law. *R.C.A.D.I.*, vol. 316, 2005, cap. XII, p. 336-346.

8 CANCADO TRINDADE (A. A.). *A humanização do Direito Internacional*, Belo Horizonte, ed. Del Rey, 2006.

9 ALMEIDA, (P. w.) O legado de Antônio Augusto Cançado Trindade: as múltiplas facetas de um percurso voltado para a construção de um novo jus gentium. *CEBRI-Revista* Ano 1, Número 2 (Abr-Jun), 2022, p. 189.

10 In accordance with Article 65 (2) of the Rules of Procedure of the Inter-American Court, concurring or dissenting opinions should be motivated.

as arbitrary detention by State agents<sup>11</sup>, extrajudicial execution<sup>12</sup>, forced disappearances<sup>13</sup>, labour rights<sup>14</sup>, and indigenous peoples' rights<sup>15</sup>. The total amount of opinions proffered by the Judge in IACtHR's contentious cases is illustrated in the following figure:

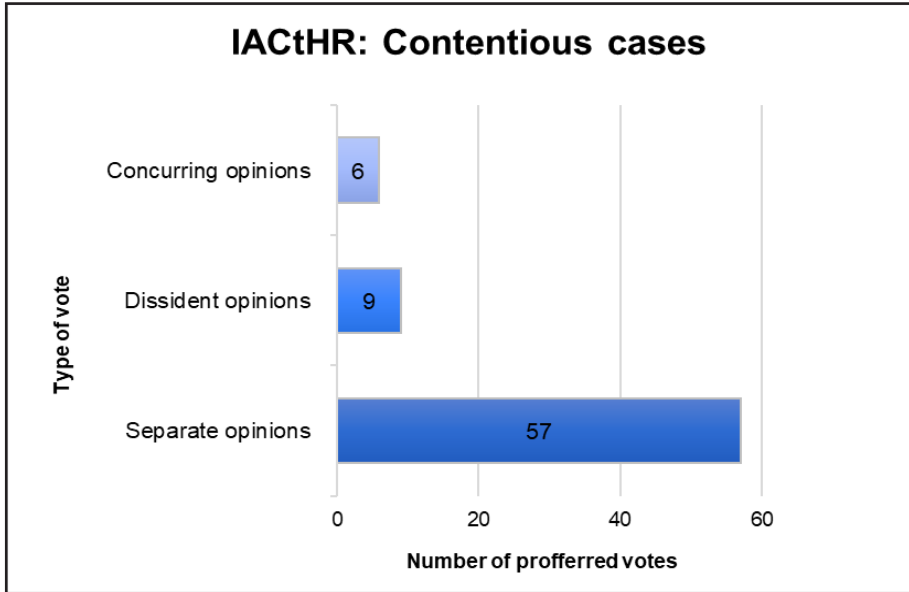


Figure 1: Number of opinions proffered by judge Cançado Trindade in the IACtHR's contentious cases per type of vote<sup>16</sup>.

In advisory proceedings, Cançado Trindade delivered two concurring opinions out of the five Judgments to which he attended. These two opinions were proffered in the cases: *OC-17*, requested by the Inter-American Commission

11 *Caso GangaramPanday Vs. Surinam* (Fondo, Reparaciones y Costas) IACtHR Serie C No 16 (21 January 1994); and *Caso Caballero Delgado y Santana Vs. Colombia* (Reparaciones y Costas) IACtHR Serie C No 31 (29 January 1997).  
 12 *Caso El Amparo Vs. Venezuela* (Reparaciones y Costas) IACtHR Serie C No 28 (14 September 1996); *Caso El Amparo Vs. Venezuela* (Interpretación de la Sentencia de Reparaciones y Costas) IACtHR Serie C No 46 (16 April 1997); and *Caso Genie Lacayo Vs. Nicaragua* (Solicitud de Revisión de la Sentencia de Fondo, Reparaciones y Costas) IACtHR Serie C No 45 (13 September 1997).  
 13 *Caso de las Hermanas Serrano Cruz Vs. El Salvador* (Excepciones Preliminares) IACtHR Serie C No 118 (23 November 2004); and *Caso de las Hermanas Serrano Cruz Vs. El Salvador* (Fondo, Reparaciones y Costas) IACtHR Serie C No 120 (1 March 2005).  
 14 *Caso Trabajadores Cesados del Congreso (Aguado Alfaro y otros). Vs. Perú* (Fondo, Reparaciones y Costas) IACtHR Serie C No 125 (30 November 2007).  
 15 *Caso Comunidad Indígena Yakye Axa Vs. Paraguay* (Solicitud de Interpretación de la Sentencia de Excepciones Preliminares, Fondo, Reparaciones y Costas) IACtHR Serie C No 174 (17 June 2005).  
 16 The figure was produced by the author based on the data provided by the IACtHR in its official website.

on the juridical condition and rights of children<sup>17</sup>, and OC-18, requested by the Mexican State on the juridical condition and rights of undocumented migrants<sup>18</sup>. The Judge also participated in the judgments related to several requests on provisional measures.

## 2. QUESTIONS OF JURISDICTION AND PROCEDURE

At the IACtHR, Cançado Trindade advocated the right of individuals to have direct access to international jurisdiction<sup>19</sup>. As a judge rapporteur for the Court, he intended to recover the position of individuals as subjects of international human rights law and public international law, endowed with full legal capacity to access international jurisdiction, *i.e.*, *legitimaria ad causam*<sup>20</sup>. He argued that the recognition of substantive rights to individuals under the American Convention should be accompanied by the necessary recognition of their procedural capacity<sup>21</sup>.

Despite the progress in conferring *locus standi in iudicio* at all stages of the proceedings before the IACtHR, Cançado Trindade sustained that the limitation on individual's direct access deserved to be reconsidered. He proposed the revision of the Rules of Procedure to provide for the direct access of individuals to the Inter-American system<sup>22</sup>, based upon the conviction that the recognition of the *legitimatio ad causam* of individuals before international bodies responds to a "necessity of the international legal order itself"<sup>23</sup>. Thus,

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17 *Condición Jurídica y Derechos Humanos del Niño*, Opinión Consultiva OC-17, IACtHR Serie A No 17 (28 August 2002).

18 *Condición jurídica y derechos de los migrantes indocumentados*, Opinión Consultiva OC-18, IACtHR Serie A No 18 (17 September 2003).

19 See cases: *Castillo Páez y Loayza Tamayo versus Peru*; *Castillo Petruzzi y Otros versus Peru*; *Blake versus Guatemala*; *Bámaca Velásquez versus Guatemala*; "Ninos de la Calle" (*Villagrán Morales y Otros*) *versus Guatemala*; *Cinco Pensionistas versus Peru*; *Hermanos Gómez Paquiyaury versus Peru*; *Instituto de Rehabilitación del Menor versus Paraguay*; *Yátama versus Nicaragua*; *Ximenes Lopes versus Brasil*; *Masacre de Pueblo Bello versus Colombia*; *López Alvarez versus Honduras*; *Comunidad Indígena Sawhoyamaxa versus Paraguay*; *Baldeón García versus Peru*; *Masacres de Ituango versus Colombia*; *Goiburi y Otros versus Paraguay*; *Trabajadores Cesados del Congreso versus Peru*; *Mery Naranjo y Otros versus Colombia*; *García Prieto y Otras versus El Salvador*; *Penitenciaria de Araraquara versus Brasil*; y *Opinión Consultiva n. 17 sobre la Condición Jurídica y Derechos del Niño*.

20 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013. p. 113.

21 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013. p. 113-114.

22 See CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013. p. 118-127.

23 CANÇADO TRINDADE (A. A.), *Evolution du droit international au droit des gens, : L'accès des Individus à la Justice Internationale, le regard d'un juge*. Paris: Pedone, p. 29.

individual petitioners should be granted *locus standi in judicio* and *jus standi* at all stages of the proceedings before the Court<sup>24</sup>.

For Cançado Trindade, the right of individuals to bring a claim and the need to provide for the compulsory jurisdiction of international courts are forcibly intertwined and constitute true cornerstones of the international protection of human rights<sup>25</sup>. The importance of providing for full State recognition of the compulsory jurisdiction of international courts has previously been discussed by the doctrine<sup>26</sup>. In relation to the IACtHR, Justice Cançado Trindade has repeatedly stressed the need for the automatic compulsory jurisdiction of the Court, either by unconditional acceptance by the State or by amending Article 62 of the American Convention<sup>27</sup>.

During the period in which the Judge served as president of the IACtHR, the Court has adopted an “anti-voluntarist” conception of the optional clause of obligatory jurisdiction in the Inter-American system in certain cases<sup>28</sup>. Justice Cançado Trindade considered that a State party to the American Convention could only be released from its conventional obligations if it observed the provisions of the Convention<sup>29</sup>, whose interpretation would fall within the scope of the Court<sup>30</sup>. According to his perspective, the duty of States parties to guarantee compliance with the provisions and useful effect (*effet utile*) of the American Convention would apply not only to substantive norms, but also to the procedural norms of human rights treaties, such as those referring to the right of individual petition and acceptance of the contentious jurisdiction of international human rights tribunals<sup>31</sup>.

Also during his presidency, Cançado Trindade pointed out gaps in the system of supervision of the enforcement of sentences and reiterated the

24 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013. p. 113-114.

25 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013. p. 113-114.

26 Manila Declaration on the Peaceful Settlement of Disputes, 15 Nov. 1982, UNGA (A/RES/37/10); A/47/277-S/24111, para 39; A/55/285-S/2001/574, paras 48 e 50.

27 CANÇADO TRINDADE (A. A.), *Evolution du droit international au droit des gens, : L'accès des Individus à la Justice Internationale, le regard d'un juge*. Paris: Pedone, p. 60 ; CANÇADO TRINDADE (A. A.). *La Cour Interaméricaine des Droits de l'Homme au seuil du XXIème siècle. Actualité et Droit International*, 24 février 2000, para.7 et 8.

28 *Caso del Tribunal Constitucional Vs. Perú* (competência), CtIDH [1999]. *Caso Ivcher Bronstein Vs. Perú* (Competência), CtIDH [1999]. Ver Voto fundamentado apresentado no *Caso Hilaire Vs. Trinidad y Tobago* (Preliminary objections), CtIDH [2001].

29 *Caso Hilaire Vs. Trinidad y Tobago* (Preliminary objections), CtIDH [2001]

30 See *Hermanas Serrano Cruz versus El Salvador*, CtIDH [2005].

31 See case *Hilaire Vs. Trinidad y Tobago* (preliminary objections), CtIDH [2001].

complementarity of mechanisms of international and domestic law in this regard<sup>32</sup>. For Cançado Trindade, the “principled position” on the enforcement of sentences would not only be desirable, but also possible and necessary<sup>33</sup>. With the intention of adverting reforms in the rules of procedure of the IACtHR, the Justice advocated for the establishment of a permanent mechanism for the monitoring, compliance and enforcement of the sentences issued by the Court<sup>34</sup>. However, no action was taken to reform the system of enforcement of judgments at that time.

Cançado Trindade argued that provisional measures in matters of international human rights law acquire, in addition to their precautionary character, a tutelary character, with respect to the preventive dimension of the protection of fundamental human rights<sup>35</sup>. In the case *Familia Barrios y Otros v. Venezuela*, Cançado Trindade sustained that provisional measures of protection have an autonomous legal nature with its own legal regime<sup>36</sup>. On other occasions, the judge has defended the coexistence between the provisional measures of the IACHR and the precautionary measures of the Commission<sup>37</sup>. In his opinion in *Familia Barrios y Otros v. Venezuela*, he also defended an “autonomous State responsibility” for non-compliance with provisional measures of protection<sup>38</sup>.

The judge has also emphasized the importance of compliance with the provisional measures issued by the IACtHR for the protection of the fundamental rights of people in vulnerable situations<sup>39</sup>. On this matter, he enumerated specific situations in which fundamental rights would be at risk, such as in cases concerning procedural guarantees or respect for due process<sup>40</sup>,

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32 See cases *Hilarie, Benjamin y Constantine versus Trinidad y Tobago* (2001-2002).

33 See cases *Hilarie, Benjamin y Constantine versus Trinidad y Tobago* (2001-2002).

34 See his opinions in the cases *Baena Ricardo y Otros (270 Trabajadores) vs. Panamá* (2003); *Advisory Opinion n.º. 18/2003, Hilaire, Benjamin y Constantine versus Trinidad y Tobago*; “*La Última Tentación de Cristo*” (*Olmedo Bustos y Otros versus Chile*).

35 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013. p. 113-131.

36 Corte IDH. *Caso Familia Barrios Vs. Venezuela*. Fondo, Reparaciones y Costas. Sentencia de 24 de noviembre de 2011. Serie C No. 237.

37 See cases: “*Complexo do Tatuapé*” de la FEBEM vs Brasil, Mery Naranjo y Otros vs Colombia; *García Prieto y Otros vs El Salvador*; *Integrantes del Equipo de Estudios Comunitarios y Acción Psicosocial - ECAP (caso de la Masacre de Plan de Sánchez vs Guatemala)*.

38 Corte IDH. *Caso Familia Barrios Vs. Venezuela*. Fondo, Reparaciones y Costas. Sentencia de 24 de noviembre de 2011. Serie C No. 237.

39 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013, p. 113-131.

40 As in the case of *James y Otros v. Trinidad y Tobago*, in which the provisional suspension of the execution of condemnatory sentences (death penalty) by domestic courts of the respondent State also guaranteed the preservation of plaintiffs’ right to life.



cases of forced displacement<sup>41</sup>, and cases of deprivation of liberty in subhuman conditions<sup>42</sup>.

### 3. QUESTIONS OF SUBSTANCE

Among the questions of substance with which Justice Cançado Trindade has dealt at the IACtHR, the planning, premeditation, intention and perpetration of crimes by agents of the State have been identified in several of his opinions issued in cases before the Court<sup>43</sup>. He sustained the existence of violations of human rights committed by States, implicating in an aggravated responsibility of the perpetrating State<sup>44</sup>. In several cases, the Court has recognised the configuration of State crimes<sup>45</sup> and of the aggravated responsibility of the State<sup>46</sup>.

According to the Judge, the configuration of State crimes would be clear in cases of massacres<sup>47</sup>, therefore entitling the victims and their families to exemplary reparations and punitive damages<sup>48</sup>. In the cases *Masacre of Mapiripán v. Colombia* and *Masacre of Plan Sánchez v. Guatemala*, Cançado reaffirmed his opinion on the coexistence and complementarity between the aggravated international responsibility of the State and the international criminal responsibility of the perpetrating individual.

Another recurring theme in his opinions at the IACtHR was the recognition and gradual expansion of the content of *jus cogens*<sup>49</sup> and its corresponding *erga*

41 Haitianos y Dominicanos de Orígen Haitiano vs República Dominicana Case; Comunidad de Paz de San José de Apartados vs Colombia.

42 For example: *Cárcel de Urso Branco vs Brasil*, *Penitenciarias de Mendoza vs Argentina*, *Penitenciaría de Araraquara vs Brasil* and “Complexo do Tatuapé” de la FEBEM vs Brasil cases.

43 See cases *Myra Mack Chang versus Guatemala* (25. 11.2003), *Masacre de Plan de Sanchez versus Guatemala* (Merits, 29.04.2004, and Reparations, 19.11.2004), *Masacres de Ituango versus Colombia* (01.07.2006), *Prisión de Castro Castro versus Perú* (25.11.2006), *La Cantua versus Perú* (29.11.2006).

44 See *Myrna Mack Chang versus Guatemala*, de 25.11.2003; *de la Masacre de Plan de Sánchez versus Guatemala*, Merits, de 29.04.2004, Reparations 19.11.2004; *de la Masacre de Mapiripán versus Colombia*, de 15.09.2005; *de Gómez Palomino versus Perú*, de 22.11.2005; *de Goiburú y Otros versus Paraguay*, de 22.09.2006; *de La Cantuta versus Perú*, de 29.11.2006).

45 See *Massacre de Barrios Altos* (de 14.03.2001), *de Caracazo versus Venezuela* (Reparations, de 19.08.2002), *de Plan de Sanchez* (de 29.04.2004), *de 19 Comerciantes* (de 05.07.2004), *de Mapiripán* (de 17.09.2005), *de la Comunidad Moiwana* (de 15.06.2005), *de Pueblo Bello* (de 31.01.2006), *de Ituango* (de 01.07.2006), *de Montero Aranguren y Otros* (de 05.07.2006), *de la Prisión de Castro Castro* (de 25.11.2006) *de la Cantuta* (de 29.11.2006).

46 See *Almonacid Arellano y otros Vs. Chile*, CtIDH [2006]; *Goiburú y otros Vs. Paraguay*, CtIDH [2006].

47 *Caso Masacre Plan de Sánchez Vs. Guatemala*, CtIDH [2004]. *Caso de la “Masacre de Mapiripán” Vs. Colombia*, CtIDH [2005]., *Caso de las Masacres de Ituango Vs. Colombia*, CtIDH [2006].

48 See *Myrna Mack Chang versus Guatemala*, de 25.11.2003; *Blanco Romero y Otros versus Venezuela*, de 28.11.2005; e *Goiburi y Otros versus Paraguay*, de 22.09.2006. See also *Niños de la Calle” (Villagrán Morales y Otros versus Guatemala*, (reparations 26.05.2001) e *Masacre de Plan de Sánchez versus a Guatemala* (reparations 19.11.2004).

49 See Cançado Trindade’s concurring opinion on the Advisory Opinion n°. OC-18/03, 17 September 2003, Series A, N° 18.



*omnes* obligations of horizontal and vertical protection<sup>50</sup>. Part of the *rationale* of his arguments were later partially adopted by the majority of the Court<sup>51</sup>. In the first stage on the jurisdictional evolution of the concept of *jus cogens* at the IACtHR, its content was limited to the absolute prohibition of torture in all circumstances<sup>52</sup>, later expanding to the prohibition of cruel, inhuman and degrading treatment<sup>53</sup>. On a more recent stage, the Court expanded the material content of the institute to include the basic principle of equality and non-discrimination<sup>54</sup> and the right of access to justice<sup>55</sup>.

Cançado Trindade associated the evolution of obligations *erga omnes* at the procedural level to the evolution of the concept of *jus cogens* at the substantive level<sup>56</sup>. He also emphasised that all *jus cogens* norms necessarily generated *erga omnes* obligations of protection, but not all *erga omnes* obligations necessarily emanated from *jus cogens* norms<sup>57</sup>. As a judge of the IACtHR, he actively contributed to the jurisprudential construction of the concept of *erga omnes* obligations of protection based on the American Convention<sup>58</sup>. While emphasizing the horizontal<sup>59</sup> and vertical<sup>60</sup> dimensions of these obligations<sup>61</sup>,

50 See Cançado Trindade's concurring opinion on the Advisory Opinion n°. OC-18/03, 17 September 2003, Series A, N° 18.

51 See *Caso Blake Vs. Guatemala* (preliminary objections, merits, reparations and costs); *Barrios Altos versus Perú* ( de 14.03.2001); *Hilaire versus Trinidad y Tobago* (01.09.2001); *Mariza Urrutia versus Guatemala* ( 27.11.2003); *Hermanos Gómez Paquiyauri versus Perú* (08.07.2004); *Hermanas Serrano Cruz versus El Salvador* (preliminary objections de 23.11.2004).

52 See *Caso de los Hermanos Gómez Paquiyauri Vs. Perú* , CtIDH [2004].

53 *Caso Caesar Vs. Trinidad y Tobago* , CtIDH [2005]. Acesso em 09.06.2022.

54 *Condição Jurídica e Direitos dos Migrantes Indocumentados*. Parecer Consultivo OC-18/03 de 17 de setembro de 2003. Série A N° 18.

55 *Caso Goiburú y otros Vs. Paraguay* Sentencia de 22 de septiembre de 2006 (Fondo, Reparaciones y Costas); See also *Caso de la Masacre de Pueblo Bello Vs. Colombia* , CtIDH [2006]; *Goiburú y otros Vs. Paraguay*; *Almonacid Arellano Vs. Chile*; *Caso La Cantuta Vs. Perú*.

56 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013, p. 131.

57 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013, p. 136.

58 See cases: *Comunidad de Paz de San José de Apartadó vs Colombia*; *Comunidades del Jiguamiandó y del Curbaradó vs Colombia*; *Pueblo Indígena Kankuamo vs Colombia*; *Pueblo Indígena de Sarayaku vs Ecuador*; *Cárcel de Urso Branco vs Brasil*; *Penitenciarias de Mendoza vs Argentina*; See also *Blake vs Guatemala*.

59 See concurring opinión in the *Advisory Opinion n. 18 CtIDH (Condición Jurídica y Derechos de los Migrantes Indocumentados)*; See also *Las Palmeiras vs Colombia e Voto Concurrente no caso Comunidad de Paz de San José de Apartadó vs Colombia*.

60 See concurring opinión in the *Advisory Opinion n. 18 CtIDH (Condición Jurídica y Derechos de los Migrantes Indocumentados)*; See also *Comunidades del Jiguamiandó y del Curbaradó vs Colombia*; *Votos Razonados nos casos Masacre de Mapiripán vs Colombia*; *Masacre de Pueblo Bello vs Colombia*.

61 CANÇADO TRINDADE, (A. A.). *El ejercicio de la función judicial internacional: memorias de la Corte Interamericana de Derechos Humanos*. Belo Horizonte, Brasil: Del Rey, 2013, p. 131-132.

he criticised contemporary legal doctrine for not dealing adequately with the vertical dimension of *erga omnes* obligations<sup>62</sup>.

As pertaining to Advisory Opinions, Cançado Trindade presented separate concurring votes in two of the five advisory opinions issued during his time at the Inter-American Court. In his separate opinion to Consultative Opinion No. 17/2002, the Judge referred to the human person as a subject of international law<sup>63</sup>, also reinforcing the importance of the protection of the rights of children<sup>64</sup>.

In his separate opinion to Consultative Opinion No. 18/2003, Cançado Trindade highlighted the *jus cogens* nature of the fundamental principle of equality and non-discrimination, which is not limited to conventional norms, but also covers any legal act<sup>65</sup>. In the occasion, he reiterated the importance of “humanizing international human rights law”<sup>66</sup> and replacing the State-centred paradigm by placing the human being at the core of international law.

#### 4. JUDICIAL DIALOGUE WITH THE ICJ AT THE IACTHR

Cançado Trindade affirmed the importance of horizontal international judicial dialogue, whether in a direct or indirect manner<sup>67</sup>. In his concurring, separate and dissenting opinions and in his pronouncements in the judgments before the IACTHR, the Judge often referred to judgments of the International Court of Justice (ICJ) with the aims of promoting cross-fertilization of

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62 See cases: *Cárcel de Urso Branco vs Brasil*; *Penitenciarias de Mendoza vs Argentina*; *Penitenciaría de Araraquara vs Brasil*.

63 See Cançado Trindade’s concurring opinion on the Advisory Opinion n°. OC-18/03, 17 September 2003, Series A, N° 18.

64 See Cançado Trindade’s concurring opinion on the Advisory Opinion n°. OC-18/03, 17 September 2003, Series A, N° 18.

65 CANCELADO TRINDADE (A. A.). International Law for Humankind: Towards a New Jus Gentium (I) - General Course on Public International Law. *R.C.A.D.I.*, vol. 316, 2005, cap. XII, p. 336-346.

66 CANCELADO TRINDADE (A. A.). International Law for Humankind: Towards a New Jus Gentium (I) - General Course on Public International Law. *R.C.A.D.I.*, vol. 316, 2005, cap. XII, p. 336-346; CANCELADO TRINDADE (A. A.). La ampliación del contenido material del ius cogens. in *Comité Jurídico Interamericano, Curso de Derecho Internacional*, XXXIV, 2007, p. 1-15; CANCELADO TRINDADE (A. A.). Jus cogens: The Determination and the Gradual Expansion of its Material Content in Contemporary International Case-law. in *Comité Jurídico Interamericano, Curso de Derecho Internacional*, XXXV, 2008, p. 3-29; CANCELADO TRINDADE (A. A.), *A humanização do Direito Internacional*, Belo Horizonte, ed. Del Rey, 2006, p. 3-406; CANCELADO TRINDADE (A. A.). El desarraigo como problema humanitario y de derechos humanos frente a la conciencia jurídica universal, *Derecho internacional y humanitario y temas de áreas vinculadas, Lecciones y Ensayos n° 78*, Gabriel Pablo Valadares (org.), Lexis Nexis Abeledo Perrot, Buenos Aires, 2003, p. 71-116, spéc. chapitre XI.

67 SLAUGHTER, (A.-M.). A Typology of Transjudicial Communication. 29(1) *University of Richmond Law Review* 103, 1995, p. 117-119.

international legal solutions and reinforcing the persuasion, authority and legitimacy of the decisions of the Inter-American Court<sup>68</sup>.

Unlike the current practice of the ICJ, the incidence of mentions of decisions of the World Court by the majority of Judges of the IACtHR was already frequent<sup>69</sup>. As of October 2018, the IACtHR had referred to ICJ jurisprudence in 146 prevailing opinions, on both questions of jurisdiction and procedure and questions of substance<sup>70</sup>.

As far as indirect judicial dialogue is concerned, ICJ mentions were present in 94 opinions by the Judges of the IACtHR, as of October<sup>71</sup>. Among these, Cançado Trindade stood out as the most active Judge in terms of the use of cross-fertilization. In fact, from the period of 1995 to 2006 at the IACtHR, the judge has made a total of 56 references to ICJ jurisprudence: 42 in separate opinions, twelve in concurring opinions, and two in dissenting opinions<sup>72</sup>.

## II. AS A JUDGE OF THE INTERNATIONAL COURT OF JUSTICE

In November 2008, Cançado Trindade became 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.

During his tenure in the ICJ, the Judge stood out for proffering a comprehensive number of separate and dissenting opinions (1) and for advocating the role of the ICJ to the realization of international justice on both questions of jurisdiction and procedure (2) and questions of substance (3).

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68 SLAUGHTER, (A.-M.). A Typology of Transjudicial Communication. 29(1) *University of Richmond Law Review* 103, 1995, p. 117-119.

69 MILLER, (N.). An International Jurisprudence? The Operation of Precedent Across International Tribunals. 15(3) *Leiden Journal of International Law* 489, 2002, p. 489. See also MACGREGOR, (E. F.). What Do We Mean When We Talk about Judicial Dialogue: Reflections of a Judge of the IACtHR 30 *Harvard Human Rights Journal* 90, 2017, p. 90.

70 See ALMEIDA, (P. W.); PORTO, (G. H.). O Impacto Da Jurisprudência Da Corte Internacional De Justiça Em Cortes De Direitos Humanos: Diálogo Judicial Ou Monólogo Com A Corte Interamericana De Direitos Humanos?. 26(2) *Revista direitos fundamentais & democracia (UniBrasil)*, 2021, p. 152-155.

71 See also BURGORGUE-LARSEN (L.); CÉSPEDES, (N. M.). El diálogo judicial entre la Corte Interamericana de Derechos Humanos y la Corte Europea de Derechos Humanos. in George Rodrigo Bandeira Galindo, René Uruñeá & Aida Torres Pérez (org.), *Manual: Protección Multinivel de Derechos Humanos* (Red de Derechos Humanos y Educación Superior 2013), p. 191-2.

72 See ALMEIDA, (P. W.); PORTO, (G. H.). O Impacto Da Jurisprudência Da Corte Internacional De Justiça Em Cortes De Direitos Humanos: Diálogo Judicial Ou Monólogo Com A Corte Interamericana De Direitos Humanos?. 26(2) *Revista direitos fundamentais & democracia (UniBrasil)*, 2021, p. 152-155.

Cançado Trindade has also resorted to the use of judicial dialogue between international courts, highlighting the contributions of the IACtHR on several of his ICJ opinions (4).

## 1. OVERVIEW

In his thirteen years as Judge of the ICJ, Cançado Trindade attended to judgments related to questions of jurisdiction and procedure, questions of substance, and provisional measures in both contentious cases and advisory proceedings.

In ICJ contentious cases, the Justice Cançado Trindade delivered 31 votes: eight dissenting opinions (seven in concluded cases and one in pending cases)<sup>73</sup>; and 23 separate opinions (19 in concluded cases and four in pending cases), delivered while concurring with the decision adopted by the majority of the Court. The total amount of opinions proffered by the Judge in ICJ's contentious cases is illustrated in the following figure:

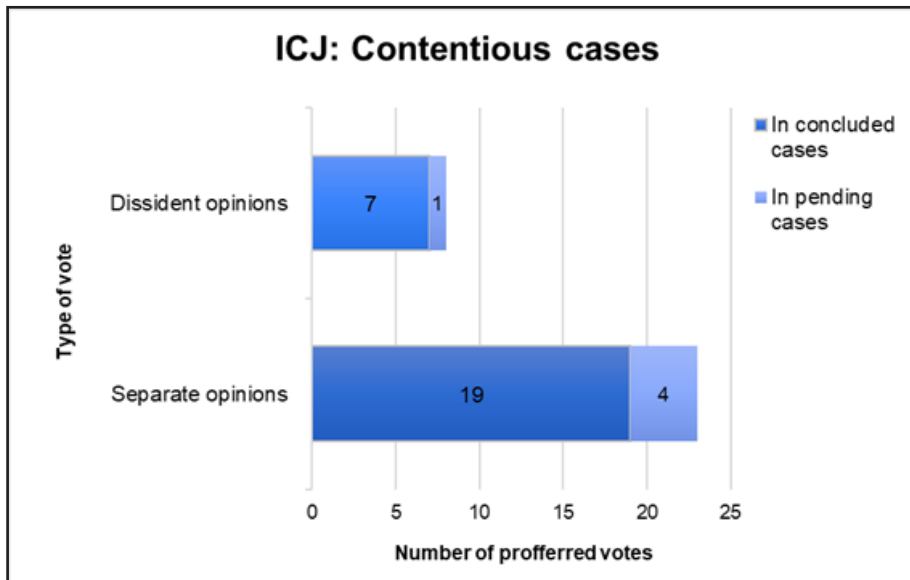


Figure 2: Number of opinions proffered by judge Cançado Trindade in ICJ's contentious cases per type of vote<sup>74</sup>.

73 See cases: *ICERD (Georgia v. Russian Federation)/ Jurisdictional Immunities (Germany v. Italy)*; *Obligation to Prosecute or Extradite (Belgium v. Senegal)*; *Genocide Convention (Croatia v. Serbia)*; *Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*; *Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*; *Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*; *Continental Shelf (Nicaragua v. Colombia)*.

74 The figure was produced by the author based on the data provided by the ICJ in its official website.

Regarding ICJ advisory proceedings, Cançado Trindade also delivered three separate opinions. One opinion related questions of labour rights of workers of UN agencies, in the case *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*. The other two separate opinions were delivered in cases dealing with matters of self-determination: *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* and *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

## 2. QUESTIONS OF JURISDICTION AND PROCEDURE

Cançado Trindade demonstrated concern with the role of international courts, especially the World Court, in the progressive development of international law and in the realization of international justice. Cançado Trindade also advocated the importance of the rules of procedure as a means to protect individual rights and collective interests.

His dissenting opinion in the case *Georgia v. Russia*<sup>75</sup> expressed the Judge's criticism towards the voluntarist conception underlying the rules for the exercise of the jurisdiction of international courts. On this occasion, he stated that "the time ha[d] come to overcome definitively the regrettable lack of automatism of the international jurisdiction"<sup>76</sup> and defended the need to establish compulsory jurisdiction as an imperative to the achievement of international justice<sup>77</sup>.

On several occasions, Cançado Trindade also expressed his criticism towards the formalistic approach of the Court when dealing with cases involving community interests<sup>78</sup>. In his dissenting opinion in the *Jurisdictional Immunities* case<sup>79</sup>, Cançado Trindade stated that the "legal procedure is not an end in itself, it is a means to the realization of justice"<sup>80</sup>. The Judge diverged from the majority of the Court in holding that the atrocities committed by the Nazi regime constituted *delicta imperii*, *i.e.*, violations of imperative norms of

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75 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (Preliminary Objections) [2011] ICJ Rep 70.

76 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (Preliminary Objections, Diss. Op. of Judge Cançado Trindade) p. 258.

77 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (Preliminary Objections, Diss. Op. of Judge Cançado Trindade) p. 263.

78 See ALMEIDA, (P. W.). Imunidades jurisdicionais do Estado perante a Corte Internacional de Justiça: uma análise a partir do caso Alemanha vs. Itália. 12(2) *Revista Direito GV*, 2016, p. 530.

79 *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* (Merits) [2012] ICJ Rep 99.

80 *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* (Merits, Diss. Op. of Judge Cançado Trindade) [2012] ICJ Rep, p. 285.

international law, and could not therefore be protected by State immunity<sup>81</sup>. Cañçado Trindade further stated that “to uphold State immunity in cases of the utmost gravity amount[ed] to a travesty or a miscarriage of justice, from the perspective not only of the victims (and their relatives) but also of the social milieu concerned as a whole”<sup>82</sup>.

The controversial cases on cessation of the nuclear arms race and nuclear disarmament involving the *Marshall Islands*<sup>83</sup> also illustrate his criticism of procedural impediments to the Court’s jurisdiction. Cañçado Trindade demonstrated his dissatisfaction with the Court’s prevailing opinion in the Judgment of 5 October 2016 in the case against Pakistan<sup>84</sup>. In his opinion, the Judge strongly criticized the Court’s decision not to pronounce itself on such an issue of great importance to the protection of humanity based on procedural issues, concluding that “a world with arsenals of nuclear weapons, like ours, is bound to destroy its past, dangerously threatens the present, and has no future at all”<sup>85</sup>.

This concern with the judicial function is also clear, *inter alia*, in the Judge’s separate opinions in the cases *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand)<sup>86</sup> and *Obligation to Negotiate Access to the Pacific Ocean*<sup>87</sup>.

Cañçado Trindade also stressed the importance of the autonomous legal regime of ICJ’s provisional measures of protection as a means to safeguard fundamental interests of the international community. The Judge proffered 11 separate opinions and two dissenting opinions on judgments of requests for provisional measures before the contentious jurisdiction of the Court, on the following cases: *Obligation to Prosecute or Extradite*<sup>88</sup>, *Request for*

81 ALMEIDA, (P. W.). Imunidades jurisdicionais do Estado perante a Corte Internacional de Justiça: uma análise a partir do caso Alemanha vs. Itália. 12(2) *Revista Direito GV*, 2016, p. 530.

82 *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* (Merits, Diss. Op. of Judge Cañçado Trindade) p. 256.

83 *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)* (Preliminary Objections) [2016] ICJ Rep 833; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)* (Jurisdiction and Admissibility) [2016] ICJ Rep 255; and *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)* (Jurisdiction and Admissibility) [2016] ICJ Rep 552.

84 *Marshall Islands v. Pakistan* (Jurisdiction and Admissibility, Diss. Op. of Judge Cañçado Trindade) [2016] ICJ Rep, p. 617.

85 *Marshall Islands v. Pakistan* (Jurisdiction and Admissibility, Diss. Op. of Judge Cañçado Trindade) [2016] ICJ Rep, p. 732.

86 *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand) (*Cambodia v. Thailand*) (Judgment of 11 November, Sep. Op. of Judge Cañçado Trindade) ICJ Rep [2013] p. 322-345.

87 *Obligation to Negotiate Access to the Pacific Ocean (Bolívia v. Chile)* (Preliminary Objection, Judgment of 24 September, Sep. Op. of Judge Cañçado Trindade) ICJ Rep [2015] p. 592.

88 *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Provi-



*Interpretation of Judgment - Temple of Preah Vihear* (Cambodia v. Thailand)<sup>89</sup>, *Seizure and Detention of Certain Documents and Data*<sup>90</sup>, *Certain Activities* (Costa Rica v. Nicaragua) and *Construction of a Road* (Nicaragua v. Costa Rica)<sup>91</sup>, *Jadhav*<sup>92</sup>, *Application of the ICERD* (Qatar v. United Arab Emirates)<sup>93</sup>, *Application of the Financing of Terrorism Convention and of the ICERD* (Ukraine v Russian Federation)<sup>94</sup>, *Alleged Violations of the 1955 Treaty of Amity* (Iran v USA)<sup>95</sup>, and *The Gambia v. Myanmar* case<sup>96</sup>.

### 3. QUESTIONS OF SUBSTANCE

Cançado Trindade has noted the proliferation of cases involving human rights before the ICJ<sup>97</sup>. In several of these cases, he delivered separate and dissenting opinions reaffirming his belief on the centrality of the human being as the final beneficiary of all legal norms.

In Cançado Trindade's words, "States have human ends"<sup>98</sup>. He sustained this view in his separate opinion on the Judgment on the merits of the *Frontier Dispute* case, asserting that sovereign States were conceived for the ultimate purposes of taking care of human beings under their jurisdictions and pursuing

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sional Measures, Order of 28 May, Diss. Op. of Judge Cançado Trindade) ICJ Rep [2009] p. 165-200.

- 89 *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand) (*Cambodia v. Thailand*) (Provisional Measures, Order of 18 July, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2011] p. 566-607.
- 90 *Questions relating to the Seizure and Detention of Certain Documents and Data* (*Timor-Leste v. Australia*) (Provisional Measures, Order of 3 March, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2014] p. 167-193.
- 91 *Certain Activities Carried Out by Nicaragua in the Border Area* (*Costa Rica v. Nicaragua*) and *Construction of a Road in Costa Rica along the San Juan River* (*Nicaragua v. Costa Rica*) (Judgment of 16 December, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2015] p. 665.
- 92 *Jadhav* (*India v. Pakistan*) (Provisional Measures, Order of 18 May, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2017] p. 247-259.
- 93 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*) (Provisional Measures, Order of 23 July, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2018] p. 438-469.
- 94 *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Ukraine v. Russian Federation*) (Provisional Measures, Order of 19 April, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2017] p. 155-186.
- 95 *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights* (*Islamic Republic of Iran v. United States of America*) (Provisional Measures, Order of 3 October, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2018] p. 654-683.
- 96 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*The Gambia v. Myanmar*) (Provisional Measures, Order of 23 January, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2020] p. 36-64.
- 97 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*) (Provisional Measures, Sep. Op. of Judge Cançado Trindade) ICJ Rep, p. 439-40.
- 98 *Frontier Dispute* (*Burkina Faso/Niger*) (Merits, Sep. Op. of Judge Cançado Trindade) [2013] ICJ Rep 133.



the common good<sup>99</sup>. His concern with individuals' rights before the State was also present in the cases *Jurisdictional Immunities*<sup>100</sup>, *Diallo*<sup>101</sup> and *Application of the Genocide Convention* (Croatia v Serbia)<sup>102</sup>.

In his dissenting opinion to the Judgment on the merits of the *Genocide Convention* (Croatia v Serbia) case, the Judge also emphasized the need for the Court to take people-oriented and victim-oriented approaches<sup>103</sup> based under the principle of humanity, which he sustained that pervaded the entire *corpus juris* of international protection<sup>104</sup>. On the same decision, he also sustained that the Genocide Convention, whose interpretation and application were at issue, should be interpreted in a teleological manner and applied on the basis of its *effet utile*<sup>105</sup>.

The centrality of the human being was also made present in separate opinions of Cançado Trindade on issues involving the rights of peoples, groups or collective aggragation<sup>106</sup>, as in the cases: *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*<sup>107</sup>; *Frontier Dispute*<sup>108</sup> and *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*<sup>109</sup>.

Cançado Trindade also delivered important opinions on matters of environmental protection. In his separate opinion to the *Whaling in the Antarctic* case, the Judge stressed the need for the interpretation and application of norms for environmental protection and preservation according to their temporal

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99 *Frontier Dispute (Burkina Faso/Niger)* (Merits, Sep. Op. of Judge Cançado Trindade) [2013] ICJ Rep 133.

100 *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* (Merits, Diss. Op. of Judge Cançado Trindade) [2012] ICJ Rep, p. 256.

101 *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (Merits) [2010] ICJ Rep 639.

102 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (Merits) [2015] ICJ Rep 3.

103 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (Merits, Diss. Op. of Judge Cançado Trindade) [2015] ICJ Rep, p. 226-7.

104 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (Merits, Diss. Op. of Judge Cançado Trindade) [2015] ICJ Rep, p. 226-7.

105 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (Merits) [2015] ICJ Rep, p. 226-7 *et seq.*

106 CANÇADO TRINDADE, Antônio Augusto. *O regime jurídico autônomo das medidas provisórias de proteção*. Fortaleza: Expressão Gráfica e Editora, 2017, p. 18-19.

107 *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion of 22 July, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2010] p. 523-617.

108 *Frontier Dispute (Burkina Faso/Niger)* (Judgment of 16 April, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2013] p. 97-133.

109 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion of 25 February, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2019] p. 156-257.

dimension<sup>110</sup> and their interaction with human rights regimes<sup>111</sup>. Other separate opinions on environmental protection were delivered in the cases *Pulp Mills on the River Uruguay*<sup>112</sup>, and *Certain Activities (Costa Rica v. Nicaragua)*; *Construction of a Road (Nicaragua v. Costa Rica)*<sup>113</sup>.

#### 4. JUDICIAL DIALOGUE WITH THE IACTHR AT THE ICJ

Cançado Trindade has been the most active Judge in terms of judicial dialogue at the World Court<sup>114</sup>. In his opinions in cases before the ICJ, Cançado Trindade often cited the jurisprudence of the IACTHR: as of October 2018, he had made eighteen references to the jurisprudence of the Inter-American Court<sup>115</sup>, drawing on his previous practice as Judge and president of the IACTHR<sup>116</sup>. Cançado Trindade's references to the IACTHR dealt with procedural and substantive issues, including access to justice, provisional measures, evidence and burden of proof, interpretation of human rights treaties, material scope of *jus cogens*, and reparations<sup>117</sup>.

The case *Abmadou Sadio Diallo*<sup>118</sup> stands out as the first case in which the ICJ was requested to address matters directly related to the rights of an individual, under a UN human rights treaty, a regional human rights treaty, and a UN codification Convention, as pointed out by Cançado Trindade in his Separate Opinion to the judgment on the merits<sup>119</sup>.

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110 *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)* (Judgment of 31 March, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2014] p. 360.

111 *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)* (Judgment of 31 March, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2014] p. 348-382.

112 *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (Judgment of 20 April, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2010] p. 135-215.

113 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* (Judgment of 16 December) ICJ Rep [2015] p. 665.

114 Besides from Cançado Trindade, Judge *ad hoc* Kreka and Judge Higgins made only two references to cases of the IACTHR.

115 ALMEIDA, (P. W.). The Asymmetric Judicial Dialogue Between the ICJ and the IACTHR: An Empirical Analysis. 11(1) *Journal of International Dispute Settlement*, 2019, p. 7-11.

116 See HIGGINS, (R.). Human Rights in the International Court of Justice. 20(4) *Leiden Journal of International Law* 746, 2007, p. 746; CROOK (J. R.). The International Court of Justice and Human Rights. 1(1) *Northwestern Journal of International Human Rights* 7, 2004, p.7; NEUMAN (G. L.). The External Reception of Inter-American Human Rights Law. (Special Edition) *Revue québécoise de droit international*, 2011, p. 102; VOETEN (E.). Borrowing and Nonborrowing among International Courts 39(2) *The Journal of Legal Studies* 549, 2010, p. 567-8.

117 ALMEIDA, (P. W.). The Asymmetric Judicial Dialogue Between the ICJ and the IACTHR: An Empirical Analysis. 11(1) *Journal of International Dispute Settlement*, 2019, p. 7-11.

118 *Abmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (Merits: Judgment of 30 November) ICJ Rep [2010] p. 639.

119 *Abmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (Merits: Judgment of 30 November) (Sep. Op. of Judge Cançado Trindade) ICJ Rep [2010] p. 731-732.

It was also the first moment in ICJ jurisprudence that the Court made an express mention to the contributions of the IACtHR, both in the Judgment on the merits of the case<sup>120</sup> and in the Judgment on the compensation owed by the Democratic Republic of the Congo to the Republic of Guinea<sup>121</sup>. Judicial dialogue between the two international courts would be present in other votes by Cançado Trindade, such as in the ICJ cases *Obligation to Prosecute or Extradite*<sup>122</sup> and *Jadhav*<sup>123</sup>.

## CONCLUSION

During his life as an international Judge, Antônio Augusto Cançado Trindade delivered a prolific number of opinions. At the IACtHR, he proffered 57 separate opinions, nine dissenting opinions and six concurring opinions in contentious cases, and two concurring opinions in advisory proceedings. At the ICJ, he presented eight dissenting opinions and 23 separate opinions in contentious cases and three separate opinions in advisory proceedings.

By mapping the participation of Cançado Trindade as an international Judge, this paper forwarded interesting observations. Although Judge Cançado Trindade was often seen as a dissenting voice in the World Court, the data reveals that, in fact, there were rare occasions in which he voted against the prevailing opinion of the Court. On other occasions, while following the majority of the Court, Cançado Trindade delivered separate opinions to bring to light issues not addressed by the prevailing opinion.

In more than one hundred IACtHR and ICJ opinions, Cançado Trindade remained consistent on his humanist approach towards international law. He believed that the human being is at the core of international law and that the jurisdictional function should always be guided, above all, by the promotion of international justice<sup>124</sup>.

Justice Cançado Trindade believed international courts and tribunals could not remain indifferent to human suffering. This should be applicable when the Court is faced with human rights-related questions of substance, such as interpretation of human rights treaties, material scope of *jus cogens*, reparations, environmental protection, and the protection of the fundamental

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120 *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (Merits: Judgment of 30 November) ICJ Rep [2010] p. 639-665.

121 *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (Compensation: Judgment of 19 June) ICJ Rep [2012], p. 331-341.

122 *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgment of 20 July, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2012] p. 487-558.

123 *Jadhav (India v. Pakistan)* (Judgment of 17 July, Sep. Op. of Judge Cançado Trindade) ICJ Rep [2019] p. 462-493.

124 *Jurisdictional Immunities (Germany v Italy)* (Diss. Op. of Judge Cançado Trindade) 182.

rights of people in vulnerable situations in general<sup>125</sup>. Likewise, international judges should also take this consideration into account when dealing with questions of jurisdiction and procedure, such as access to justice, compliance with provisional measures, evidence and burden of proof<sup>126</sup>.

Furthermore, Cançado Trindade often reaffirmed the importance of horizontal judicial dialogue between international courts and tribunals<sup>127</sup>. In both Courts in which he served as Judge, Cançado Trindade has been the most active Justice to make use of procedural cross-fertilization. As of 2018, at the IACtHR, the Justice has made 56 references to ICJ jurisprudence and, at the ICJ, 18 references to the jurisprudence of the Inter-American Court<sup>128</sup>. The late international Judge leaves a rich legacy for future generations of scholars and practitioners of international law.

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## ANNEX

## 1. LIST OF CASES IN WHICH CANÇADO TRINDADE HAS PROFFERED VOTES AT THE INTER-AMERICAN COURT OF HUMAN RIGHTS

<i>Date of judgment</i>	<i>Case</i>
04/12/1991	Gangaram Panday Vs. Surinam (Preliminary objections)
18/01/1995	El Amparo Vs. Venezuela (Merits)
31/01/1996	Loayza Tamayo Vs. Perú (Preliminary objections)
02/07/1996	Blake Vs. Guatemala (Preliminary objections)
17/09/1997	Loayza Tamayo Vs. Perú (Merits)
24/01/1998	Blake Vs. Guatemala (Merits)
04/09/1998	Castillo Petruzzi y otros Vs. Perú (Preliminary objections)
27/11/1998	Loayza Tamayo Vs. Perú (Reparations, Costs)
27/11/1998	Castillo Páez Vs. Perú (Reparations, Costs)
22/01/1999	Blake Vs. Guatemala (Reparations, Costs)
19/11/1999	“Niños de la Calle” (Villagrán Morales y otros) Vs. Guatemala (Merits)
04/02/2000	Las Palmeras Vs. Colombia (Preliminary objections)
25/11/2000	Bámaca Velásquez Vs. Guatemala (Merits)
05/02/2001	La Última Tentación de Cristo (Olmedo Bustos y otros) Vs. Chile (Merits)
14/03/2001	Barrios Altos Vs. Perú (Merits)
26/05/2001	“Niños de la Calle” (Villagrán Morales y otros) Vs. Guatemala (Reparations, Costs)
31/08/2001	Comunidad Mayagna (Sumo) Awas Tingni Vs. Nicaragua (Merits, Reparations, Costs)
01/09/2001	Hilaire Vs. Trinidad y Tobago (Preliminary objections)
01/09/2001	Benjamin Vs. Trinidad y Tobago (Preliminary objections)
01/09/2001	Constantine Vs. Trinidad y Tobago (Preliminary objections)
03/12/2001	Cantoral Benavides Vs. Perú (Reparations, Costs)
06/12/2001	Las Palmeras Vs. Colombia (Merits)
22/02/2002	Bámaca Velásquez Vs. Guatemala (Reparations, Costs)
27/02/2002	Trujillo Oroza Vs. Bolivia (Reparations, Costs)
25/11/2003	Myrna Mack Chang Vs. Guatemala (Merits, Reparations, Costs)
29/04/2004	Masacre Plan de Sánchez Vs. Guatemala (Merits)
08/07/2004	Hermanos Gómez Paquiyauri Vs. Perú (Merits, Reparations, Costs)



02/09/2004	Instituto de Reeducação del Menor Vs. Paraguay
07/09/2004	Tibi Vs. Ecuador (Preliminary objections, Merits, Reparations, Costs)
19/11/2004	Masacre Plan de Sánchez Vs. Guatemala (Reparations)
11/03/2005	Caesar Vs. Trinidad y Tobago (Merits, Reparations, Costs)
15/06/2005	Comunidad Moiwana Vs. Surinam (Preliminary objections)
23/06/2005	Yatama Vs. Nicaragua (Preliminary objections, Merits, Reparations, Costs)
24/06/2005	Acosta Calderón Vs. Ecuador (Merits, Reparations, Costs)
08/09/2005	Yean y Bosico Vs. República Dominicana
12/09/2005	Gutiérrez Soler Vs. Colombia
15/09/2005	“Masacre de Mapiripán” Vs. Colombia
22/11/2005	Gómez Palomino Vs. Perú (Merits, Reparations, Costs)
28/11/2005	Blanco Romero y otros Vs. Venezuela (Merits, Reparations, Costs)
30/11/2005	Ximenes Lopes Vs. Brasil (Preliminary objections)
31/01/2006	Masacre de Pueblo Bello Vs. Colombia
01/02/2006	López Álvarez Vs. Honduras (Merits, Reparations, Costs)
06/02/2006	Comunidad Indígena Yakye Axa Vs. Paraguay (Interpretation of Sentence on Merits, Reparations, Costs)
07/02/2006	Acevedo Jaramillo y otros Vs. Perú (Preliminary objections, Merits, Reparations, Costs)
08/02/2006	Comunidad Moiwana Vs. Surinam (Interpretation of Sentence on Merits)
29/03/2006	Comunidad Indígena Sawhoyamaxa Vs. Paraguay (Merits, Reparations, Costs)
06/04/2006	Baldeón García Vs. Perú (Merits, Reparations, Costs)
01/07/2006	Masacres de Ituango Vs. Colombia
04/07/2006	Ximenes Lopes Vs. Brasil
21/09/2006	Servellón García y otros Vs. Honduras
22/09/2006	Goiburú y otros Vs. Paraguay (Merits, Reparations, Costs)
26/09/2006	Almonacid Arellano y otros Vs. Chile (Preliminary objections, Merits, Reparations, Costs)
24/11/2006	Trabajadores Cesados del Congreso (Aguado Alfaro y otros) Vs. Perú (Preliminary objections, Merits, Reparations, Costs)
25/11/2006	Penal Miguel Castro Castro Vs. Perú (Merits, Reparations, Costs)
26/11/2006	La Cantuta Vs. Perú (Merits, Reparations, Costs)
30/11/2007	La Cantuta Vs. Perú (interpretação da sentença de Merits, Reparations, Costs)

02/08/2008 Penal Miguel Castro Castro Vs. Perú (Interpretation of Sentence on Merits, Reparations, Costs)

## 2. LIST OF CASES IN WHICH CANÇADO TRINDADE HAS PROFERED VOTES AT THE INTERNATIONAL COURT OF JUSTICE

*Date of last judgment*    *Case*

11/06/2015	Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia) (Order of Discontinuance)
20/04/2010	Pulp Mills on the River Uruguay (Argentina v. Uruguay)
22/07/2010	Accordance with international law of the unilateral declaration of independence in respect of Kosovo
30/11/2010	Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)
01/04/2011	Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)
01/02/2012	Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development
03/02/2012	Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)
20/07/2012	Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)
16/04/2013	Frontier Dispute (Burkina Faso/Niger)
11/11/2013	Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)
31/03/2014	Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)
03/02/2015	Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)
16/12/2015	Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)
16/12/2015	Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)
17/03/2016	Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)

- 05/10/2016 Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)
- 05/10/2016 Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)
- 05/10/2016 Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)
- 01/10/2018 Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)
- 25/02/2019 Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965
- 17/07/2019 Jadhav (India v. Pakistan)
- 8/11/2019 Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)
- 23/01/2020 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar) (Order on Provisional Measures)
- 14/07/2020 Appeal relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)
- 14/07/2020 Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)
- 3/02/2021 Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)
- 23/07/2021 Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)
- 21/04/2022 Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)

