

Interview with Judge Antônio A. Cançado Trindade, Inter-American Court of Human Rights

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ABSTRACT

Interview with Judge Antônio A. Cançado Trindade, former President of the Inter-American Court of Human Rights (IACHR), on the occasion of his retirement from the IACHR. He has now been elected Judge at the International Court of Justice in The Hague. Author, international law professor, and renowned jurist, Cançado Trindade discusses his precedential accomplishments while on the bench of the IACHR for more than twelve years, his path to becoming a judge, and his legacy. (Preface by Dean Claudio Grossman, American University Washington College of Law. The Introduction is by Francisco Rivera, Senior Attorney, IACHR.)

The following interview took place on site at the Inter-American Court of Human Rights in San José, Costa Rica on 18 June 2008, honoring the occasion of the retirement of Judge Antônio Cançado Trindade from the Court. The Judge graciously gave me a number of hours of his very limited time, both for the interview and for answering many questions during the editing

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process. I sincerely thank him for his friendship and tremendous generosity of spirit and support.

Judge Antônio A. Cançado Trindade holds a Ph.D. and LL.M. (Cambridge-Yorke Prize) in International Law; is the Former President of the Inter-American Court of Human Rights; Professor of International Law at the University of Brasília, Brazil; Member of the Curatorium of The Hague Academy of International Law and of the Institut de Droit International; Doctor *Honoris Causa* in several Latin American Universities; and is also author of a vast bibliography in more than five languages (including thirty books and almost 500 monographs and articles published in numerous countries.) He was recently elected for a post at the International Court of Justice (ICJ) in The Hague, and took the bench as a Judge at the World Court on 6 February 2009.

I. PREFACE: DEAN CLAUDIO GROSSMAN, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

Judge Antônio Cançado Trindade was one of the most influential judges on the Inter-American Court of Human Rights, greatly contributing to the jurisprudential development of fundamental human rights. His commitment to expanding access to international justice is second to none, and he has championed the cause of victims' rights to direct access to the Court.

Judge Cançado Trindade has also made significant contributions to defining the scope of the state obligation to incorporate the American Convention on Human Rights into the domestic realm, as well as to fully developing the nature and character of international human rights treaties as norms whose purpose is the protection of individuals, and to the development of the law of reparations to include material and non-material damages, symbolic measures of reparations and legislative changes.

As a former member and President of the Inter-American Commission on Human Rights, I had the honor of appearing before Judge Cançado Trindade in numerous cases. I was always tremendously impressed by his keen legal acumen, inquisitive intellect, preparation, and integrity. Many were consistently certain that his presence on the bench would ensure a thorough analysis of each case, and that he would probe and test the factual and legal issues at stake as well as ensure that justice would be achieved.

One way to measure the impact of an individual entrusted with a position of responsibility is to ascertain whether, upon the individual's departure, he or she leaves an institution in far better shape than he or she found it. With regard to Judge Cançado Trindade's impact on the Inter-American Court of Human Rights, there is no doubt that the Court developed significantly as a result of his leadership, superb legal knowledge, commitment, and integrity.

II. INTRODUCTION: FRANCISCO J. RIVERA, SENIOR ATTORNEY, INTER-AMERICAN COURT OF HUMAN RIGHTS

Judge Antônio A. Cançado Trindade, or “Don Antonio,” as we like to call him at the Registry of the Inter-American Court of Human Rights,¹ first walked through the doors of this Tribunal in 1991 as an *ad hoc* judge in two cases against the State of Suriname (*Gangaram Panday and Aloeboetoe et al.*). Subsequently, during the XXIV session of the General Assembly of the Organization of American States held in Belém do Pará, Brazil, he was elected for his first six-year term (1995–2000) as a full member of the Court “from among jurists of the highest moral authority and of recognized competence in the field of human rights.”²

Don Antonio served as the Court’s Vice-President (1997–1999), was re-elected as a Judge for another six-year term, and then served as the Court’s President until 2004. Although his term officially ended in 2006, he would always say that the Court would not get rid of him that easily—and he was right! Don Antonio took full advantage of the Court’s Statute (Article 5.3) and Rules of Procedure (Article 16) and kept coming back to the Tribunal even after his term had ended so that he could participate in cases he had begun to hear that were still pending. In fact, he still manages to visit the Court every summer to teach a seminar on human rights.

We will miss Don Antonio at the Court, but we thank him for his unparalleled contribution to the Court’s jurisprudence (especially his numerous Separate, Concurring, or Dissenting Opinions—in English, Spanish, Portuguese, French, Italian, German, and even Latin!) and know that he will continue to be an influential authority in the development of international law while at the ICJ.

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1. The Inter-American system of protection of human rights consists of human rights norms laid out in the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights, together with corresponding supervisory organs: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, as well as the system’s political organs, consisting of the Permanent Council and the General Assembly of the Organization of American States.

Headquartered in San José, Costa Rica, the Inter-American Court of Human Rights is “an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights” (Article 1 of the Court’s Statute). The Court was created by the entry into force of the American Convention on Human Rights on 18 July 1978, when the eleventh instrument of ratification by a Member State of the Organization of American States was deposited.

The Court can issue advisory as well as adjudicatory decisions. The Court only has adjudicatory jurisdiction over cases brought to it by the Commission or by state parties to the Convention that have recognized the Court’s contentious jurisdiction.

2. American Convention on Human Rights (ACHR), art. 52, *signed* 22 Nov. 1969, O.A.S.T.S. No. 36, O.A.S. Doc. OEA/Ser.LV/II.23, doc. 21, rev. 6 (1979), 1144 U.N.T.S. 123 (*entered into force* 18 July 1978).

LRT: Under your leadership, where was the Inter-American Court of Human Rights (IACHR) focused in the last several years, and where do you see it going in the future, under the new leadership? What do you hope will be accomplished in the IACHR in the coming years, for which you planted the seeds?

AACT: Thank you for these questions. I arrived at the Court at a very important moment, when its case law was just beginning to be constructed. I was elected in 1994, and started my functions as a full judge in 1995. Before that, between 1991 and 1994, I was Judge *Ad Hoc* in two cases concerning Suriname. So in fact, I was actively involved in the jurisprudential construction of the Court from its beginnings until now, and I participated in more than 150 judgments.

In its earlier years, as I recall, most of the cases had to do with Right to Life: basically a cycle of cases involving forced disappearance of persons and of torture. At that time, the Court took a very important step in asserting the triple duty of states: 1) of preventing, 2) of investigating, and 3) of sanctioning.

Then, towards the mid-1990s, a new generation of contentious cases started concerning Due Process, Right to a Fair Trial, and Right to an Effective Remedy. So the Court considerably developed its case law on this backbone of access to international justice. In the second half of the 1990s, it began to diversify its case law with other types of cases, concerning Right to Property, Right to Freedom of Expression, and Right to Freedom of Movement.

LRT: Was this a conscious diversification?

AACT: Yes, to the extent that the Commission (Inter-American Commission of Human Rights, Washington, D.C.) took on such cases to send to the Court. First, to have them resolved; but more than that, so that the Court could say "what the law is," and would start developing the case law on *all* of the rights protected by the American Convention (on Human Rights), not only *some* of those rights. In all these developments, I took the view that a Human Rights Tribunal such as the Inter-American Court is not only meant to settle disputes and cases, but also to explain "what the law is."

I have always been in favor of judgments that are didactic: To my mind, judgments of the Inter-American Court should not just settle the case and achieve protection of human rights, but also have to convince the parties that this is what is right under the American Convention.

So the judgments in my times have been very detailed, with sections on the facts and the law. Also I've always been in favor of hearing as many witnesses and experts as possible, trying to derive elements from different branches of human knowledge and schools of learning—hearing from social

scientists, psychologists, anthropologists—so that we can assess what has happened, and can assess moral damages in a better way. So the judgments during my days were particularly substantial.

Finally, in more recent years, we have started having a new generation of cases, the most recent and very disturbing cases, which concern massacres, and collectivities of victims.

LRT: When would you say that latter stage began?

AACT: It started basically in the beginning of this new century, 2001, with the *Barrios Altos* case, concerning Peru; then in 2003, with *Myrna Mack Chang*, concerning Guatemala; and then in 2004, with the case of the Massacre of *Plan de Sanchez*, also concerning Guatemala. Ever since then, there have been a series of cases concerning Colombia, such as the cases of Massacres of *Mapiripán*, of *Ituango*, and of *Pueblo Bello*. There was a case as well from Suriname—the Massacre of the *Moiwana Community*, and two other recent Peruvian cases of the *Prison of Castro Castro* and the case concerning the *University of La Cantuta*.

All of these cases form a new cycle of cases of great complexity, for the determination of the totality of the victims.

So the case law of the Court has been developing, together with the changing and new needs of protection of human beings.

LRT: To what do you attribute the development of this third, more recent stage of cases concerning massacres? Is it something occurring at the level of the IACHR, or at the Organization of American States (OAS) level, or with international law developments?

AACT: I think it's basically because there is a greater awareness that there is an international jurisdiction, a greater consciousness that this is an additional remedy to the remedies at the domestic law level. When domestic remedies do not function, then there is always this possibility to resort to an international instance.

More than anything, it has to do with the initiative of the complainants—the legal representatives of the victims, or the NGOs that are sponsoring their cause. They are really the ones that have been responsible for bringing these cases to the attention of the organs of the Convention: the Commission and the Court—the Court being the organ of highest hierarchy—because the Commission and the Court do not act *ex officio* on the petitioning system—they have to be *provoked* in order to pronounce themselves.

So it has more to do, in my view, with the growth of awareness and consciousness on the very basis of the national societies, and the willingness of the entities of civil society and of the victims themselves, to seek justice.

LRT: When and how long were you president here at the Court, and how did you become president?

AACT: It was half a decade, 1999 to 2004. On both occasions of my two terms, there was no other candidate, and I was very happy to be elected by all of my colleagues. I was the unanimous choice, and that was a great honor to me.

LRT: What did it mean to be president at the Inter-American Court, and what was involved?

AACT: It was an enormous responsibility I felt that because I devoted myself entirely to the Court and was responsible for the conduct of its work. For instance, in the Court's deliberations, the president plays an important role in trying to obtain consensus of all of the judges to arrive at a decision.

In terms of the relationship of the Court with outside actors, the Court has to keep a dialogue with all those who participate in the Inter-American System. Because the Court has to report annually to the main organs of the OAS, I had to appear before the Permanent Council, the Commission on Juridical and Political Affairs of the OAS, and prepare and present reports to the OAS General Assembly each year.

I also had to keep a good dialogue with the beneficiaries of the system, so I used to receive victims and their legal representatives here. In addition I had to keep a dialogue with the states—the parties to the American Convention, and I received their delegates here in the Court. Finally, I kept a constant dialogue with the academia—I received representatives of different universities from all over the three Americas.

All of this work is the representation of the highest tribunal in the field of human rights in the American continent, and I was very much aware of this responsibility—and it was to this work that I devoted myself entirely.

LRT: What seeds would you say you planted as president and as a judge at the Inter-American Court?

AACT: Well, I had been studying the international law of human rights since the mid-1960s, when I came to the Court I was already knowledgeable about this area. I had written a doctoral thesis on it and I had published extensively before becoming a judge. I was already an established author in the field of international human rights law, so I felt extremely comfortable becoming a judge, in the sense that this is the universe I belong to, in which I was schooled, this is what I believe in, and this is exactly what I prepared myself for.

So, what are the seeds that I planted? To me, the most precious one was access to justice: I defended the cause of the direct access of individuals to international justice. When I arrived at the Court in 1994–1995 as a full judge, the alleged victims did not appear in the proceedings before the Court. They timidly appeared in the Public Hearings as so-called “assistants” to the Inter-American Commission. They couldn’t take the floor, and they had a *capitis diminutio* of being integrated into the delegation of the Commission. It meant that they had a “diminished capacity,” and were handicapped by the fact that they could not argue or act on their own, and had to ask permission of the Commission.

I couldn’t accept that, because individuals are the subjects of rights, the bearers of duties, and since they are the main reason for the existence of this system, they should be able to appear before the Court. So I rebelled against this *capitis diminutio*, and I provoked debate in the Court to change our regulations about this issue. I was the Rapporteur of the Third Regulations (Rules of Procedure) of 1996, and also of the Fourth Regulations, which are the ones that were adopted in 2000, and are still in force today.

This change introduced—which is of major historical importance—the granting of the presence of the individuals themselves, before the Court, presenting their arguments and evidence in an autonomous way—as true subjects of rights under the American Convention. It was an enormous effort, which I was entirely devoted to. We had meetings with experts from all over the world, with governments and NGOs, and with beneficiaries of the system. Finally, consensus was reached and we even managed to get a Resolution of the General Assembly of the OAS asking us to do this. That’s how we now have the presence of individuals before the Court. I felt so happy when this happened, a real sense of accomplishment.

I think that the seed that I planted has grown up into a beautiful tree. This is an acquired conquest, which no one can undermine in the future—as it is now part of the conventional wisdom of the Inter-American System of Human Rights protection . . . or at least no one will ever again question the presence of alleged victims in the proceedings before the Court.

LRT: And is this in place as well in the European and African Courts of Human Rights?

AACT: The African Court of Human Rights is only now beginning to develop its case law, so there is not much to say about that Court. Individuals there will be able to do this, though, as it is established in their Protocol to the African Charter on Human and Peoples’ Rights, which created that Court, and its Rules of Procedure.

But in the European System, it came to be granted gradually, with the change in their Rules of Procedure in 1982, and then with their Ninth Pro-

TOCOL in 1994, and further with the Eleventh Protocol in 1998. Nowadays, since that Court is the sole organ under the European Convention on Human Rights, there is direct access: the right of individual petition to the Court is automatic in the jurisdiction of the European Court of Human Rights.

Here, in the Inter-American System, petitioners have to go through the first instance of the Inter-American Commission of Human Rights—and no one is suggesting that the Commission should cease to exist, because it plays a very important role. There are countries that have not ratified the American Convention, so the Inter-American Commission continues to play a valuable role.

But the important thing is that, once the case of the individual—the case of the alleged victim or victims—is brought by the Commission to the Court, the Commission is *not* the complaining party. The complaining party is the individuals, the petitioners, the original complainants. Then, there is no reason why they should not appear before the Court, and they have indeed been appearing since the current regulations, updated in 2000, entered into force June 2001.

In May 2001, I presented the basis for a Draft Protocol to the American Convention, which remains under study in the Inter-American System to improve the mechanism of protection of the American Convention itself.

LRT: Why has it taken seven years to study this proposal?

AACT: That is a question I often ask myself!

LRT: . . . and now that you're not a judge here at the Court anymore?

AACT: I have finished my term, and now things have come to a standstill in that matter. It's not a matter that's the center of attention anymore. Of course the institutions are what the people who formed them are, are they not? So I hope in the future, this banner will again taken up as a priority.

LRT: What would that look like, if this Draft Protocol to the Convention were adopted?

AACT: The Regulations that are in force should serve as a basis for further additions to be transformed into a Protocol, which would be meant to enhance the mechanism of protection of the American Convention. There are copies of the published book of this Draft Protocol in the Library of the Court, which is shared with the Inter-American Institute of Human Rights.

What I regard as the crucial points of this two-volume book are two things: First, the direct access of individuals to justice at the international level; and, second, the intangibility of the compulsory jurisdiction of the

Court. The two go together. The first volume is doctrinal and the second volume is the Draft Protocol.

LRT: Do you agree with the current term limits for judges here at the Court—a maximum two terms of six years each?

AACT: At the moment, I think it is a reasonable time. A judge shouldn't be here for forever as happens in some tribunals. I think it's good, as there should be an end . . . there is a time to come and there is a time to go! I think it's important that there is a renewal here, so that fresh air is brought to the Court. However, I think that there should be one term only, without re-election, but it should be a longer one—perhaps a nine or eleven year period, but without re-election.

LRT: Why? Because the whole re-election process is so time-consuming, or expensive?

AACT: Yes. And it's much better for the judges themselves, so that they don't have to worry about being re-elected; it's better for the exercise of the judicial function. I'm convinced of that.

LRT: Looking at the Inter-American Court, as it stands now, do you feel that the Court is underutilized for what it was created for?

AACT: So many promises were made, and they were not fulfilled. For example, during the five years of my presidency, I focused on certain points, which have not materialized yet. I'm very happy that you asked me this, because it gives me the opportunity to put this on record.

One of the points on which I insisted with states at the OAS was the creation of a free legal aid system, because most of the complainants happen to be very poor people. They don't have the human and material resources to defend their rights for themselves. So I strongly pushed for the creation of a free legal aid system. The states paid attention to me, but after my five years of presidency, nothing happened, and unfortunately, nothing has happened up till now either.

Another point: During the five years of my presidency, I insisted upon the creation, in the Organization of American States, among the states parties to the American Convention, of a mechanism of supervision of execution of the judgments of the Court. This would consist of the following: Within the Commission on Legal-Judicial & Political Affairs—CAJP is the Spanish acronym—there should be formed a nuclear committee, composed of just a few member states on a rotation basis. They would take up the responsibility to supervise, on a permanent basis, compliance or otherwise with the judgments of the Court.

Until I took up the presidency, this was done only sporadically by the General Assembly of the OAS, which meets once a year and for only a very short time. This supervision of compliance has not been achieved. They presumably paid great attention to my proposals, but nothing has happened with it. There is no permanent procedure of international supervision from the OAS itself of the execution or non-compliance with the judgments of the Court.

So, what was the result of all this? The result is that the Court has had to take up this duty, which is not provided for in the Convention. The Court saw the need to exercise, by itself, the supervision of the compliance or non-compliance by the states with its own judgments. Nowadays, the Court devotes two to three days of a two-week session to do that.

Now, another point I would like to place on the record, is that in case of manifest non-compliance by a state: I strongly support the application of the only sanction that exists in the American Convention, that of its Article 65. During my presidency, this occurred twice.

The first time it occurred was in the year 2000, when it became manifest that Peru under Fujimori would not comply with the judgments—in two cases from those years—and Peru attempted to withdraw the Instrument of Acceptance of the Court's competence on contentious matters. I applied the sanctions of Article 65 in the General Assembly of the OAS, which took place that year in Windsor, Canada.

In 2003, at the General Assembly meeting that took place in Santiago de Chile, I again applied the sanction of Article 65 in a case concerning Trinidad & Tobago, which had denounced the American Convention. The sanction was applied because of the execution of an individual condemned to death. Since then the state no longer carries out death sentences.

However, after my presidency, the Court has taken another orientation, consisting of closing down the cases partially, as states came to comply, little by little, with the judgments of the Inter-American Court. This gives the misleading impression that the judgments are being complied with, because you see only the resolutions of compliance of parts of the judgments.

LRT: So, if there is only partial compliance?

AACT: Then there is partial non-compliance, but this does not appear.

LRT: Is there not will in the Court, as it is constituted today, to work within this sanctioning construct?

AACT: No, unfortunately not. So this is a step backwards, which I am very critical of. I have strongly recommended the Court to apply Article 65 again, so as to bring states that do not comply back to their duties of compliance

with the judgments of the Court, but the Court's majority has preferred to take a pragmatic approach.

I am against pragmatism in this domain of protection. I think that protection is a matter of principle and there is no room under the American Convention for pragmatism.

LRT: Could you talk about the United States not being a signer to the Convention?

AACT: During the five years of my presidency, in all the reports I presented to the General Assembly of the OAS, I drew attention to the need in our region for universality of participation in the American Convention, to the benefit of the Inter-American System. I indicated that expressly, when the US delegation was present, and it listened very attentively: I said that I believed that the presence of Canada, the presence of the United States, and of some Caribbean countries, would greatly enhance the Inter-American System of Protection of Human Rights.

LRT: Their presence as signatories?

AACT: Their presence as ratifiers, more than signers. Their presence as state parties to the American Convention would greatly strengthen and enhance the Inter-American System.

LRT: Why have the US, Canada, and these few small Caribbean countries *not* ratified the Convention?

AACT: It has to do with what some of them told me—the delegates from those countries with whom I always kept a dialogue—that it had basically to do with Article 4, the Right to Life Article of the Convention—which addresses the question of either the beginning of life and abortion, or else the issue of the death penalty. Their main difficulties have to do with the phraseology concerning the “beginning of life,” and then also with the gradual elimination of the death penalty. Article 4 says: life begins, in principle, at the time of conception.

For Canada, it's basically the question of abortion. For the US and some of the Caribbean countries, it's the question of the death penalty.

So it is fair to say that the countries that have not yet ratified the American Convention have a historical debt with the system. And they should come to terms with this debt, because they could greatly strengthen the system of protection if they were within the American Convention.

LRT: So, currently, because they haven't ratified the American Convention, what is the status of human rights violations that might involve these countries?

AACT: Well, because of this, there are different degrees of obligations on the part of Member States of the OAS. Some of the states that have ratified—out of the thirty-four member states of the OAS, twenty-five have done so—they have accepted all the conventional obligations. And of these, twenty-one have accepted the jurisdiction of the Court for contentious matters. So these twenty-one, at least, have accepted in full, all the obligations under the American Convention.

Now, as for the others, they appear only before the Inter-American Commission on Human Rights, not on the basis of the Convention, but rather only on the basis of the American Declaration on the Rights and Duties of Man of 1948, together with the Human Rights Provisions of the OAS Charter.

LRT: What do you think might develop here at the Court in the future, in terms of issues that have not been brought here yet?

AACT: It's very difficult to predict, and I'm very careful not to do so because this is conjecture, is it not? But I would say that most of the case law has had a strong start, in these last fifteen years or so when I've been on the Court, where we have the leading cases on most of the articles of the Convention which pertain to the protected rights. I feel very fortunate to have actively participated in all of this, but there will most certainly be new cases that will bring up new aspects that have not yet been dealt with. This is in the nature of international protection of human rights.

Needs of protection change as times evolve, and at the moment, for instance, there is a very worrisome diversity in the sources of violations of human rights, so there might be very complex cases coming to the Court relating to unknown or non-identified sources of violations of rights, violations perpetrated by clandestine groups, and by unidentified agents. These will raise very difficult questions of evidence. So the complexities grow greater as time goes on, and the needs of protection change accordingly.

At the moment, the difficulties the Court faces—of diversification in the sources of violations—point in this direction, bringing together, for instance, in my view, international human rights law, international refugee law, and international humanitarian law.

LRT: What else would you like to share with American lawyers and other professionals who are reading this interview, who may be unfamiliar with the Inter-American Court?

AACT: I've seen that there is a great amount of interest amongst legal scholars in the United States in the case law of the Court. I was very pleased

recently that students at Columbia University have taken upon themselves the decision to outline the importance of the case law of the Court during my years here, and I saw that some of them were very knowledgeable on this subject. The same thing has happened in other academic circles in the US, and this is a comfort for those of us who have worked in this field for many years, because it assures us that what we have done, will indeed continue.

LRT: Do you think that US human rights and international lawyers can play a role in advocating that the United States ratify the American Convention, such as the members of the American Bar Association's Section on International Law and the American Society of International Law?

A ACT: Yes, absolutely. Definitely. There are many who are active with this, who are sending letters and trying to convince those responsible for this decision making as to the importance of accepting the Convention obligations of protection.

During my presidency, I received visits of representatives of the American Bar Association, and also senators from Canada. Both the US and Canada sent high-level representatives of the legal profession, and I received them with great satisfaction. We kept a dialogue going with them all those years, and I hope this will in the future bring positive results insofar as the insertion of the US and Canada within the Inter-American System is concerned—to the effect that the obligations will be the same to all the states of our region.

LRT: Let's talk a bit about your personal background, and why and how you became a lawyer and a judge, as well as an academic. What was the catalyst for you?

A ACT: I always identified myself with the subject of international and human rights law. I think that we choose the subject as much as the subject chooses us! I was in my second year of law school, and I preferred not to attend certain subjects and classes, so I just stayed in the library reading international law. . . . I missed a lot of those lectures on other branches of law!

LRT: Did you have lawyers in your family?

A ACT: No, but I was interested in the legal world since my adolescence, and international law always attracted my attention. I think the vocation manifests itself very early in one's life.

LRT: What kind of work did your parents do?

A ACT: They are doctors, in the private sector, and I am the outcast!

LRT: Did they want you to be a doctor?

AACT: No, they didn't put any pressure on me, I was entirely free. I am the only one who is an international lawyer in my family.

LRT: How many brothers and sisters do you have?

AACT: There are five of us, and they are all in what we call the "private sector"—they are doctors, dentists, ophthalmologists—highly specialized doctors, but I am the outcast amongst them!

LRT: So where did your inspiration come from as a teenager? Did you read in the newspaper about international events?

AACT: Yes, this attracted my attention, and I think I just started being attracted by international relations and law—I wasn't interested at all in private law.

LRT: What was the academic program in Brazil you went through as a student?

AACT: In Brazil, it's different—it's a system similar to the one in Continental Europe. That is, it's a five-year course, and you have to do the entrance exams for a particular subject or a profession. So at the end of high school, before the entrance exams, one has already decided to follow a profession. It's somewhat different from the United States. If you find you don't like what you have chosen, then you have to undergo another entrance examination for another branch of learning.

I already knew, at that point in my life, that I wanted to practice international law as a career. So after that, when I finished the five-year B.A. course there in Belo Horizonte, Brazil, I was determined to pursue that career as a young man.

So I went to Britain in 1972, did a series of interviews and then obtained a scholarship to move to England from Brazil. That was in 1973, when I went to Cambridge.

LRT: How did you learn all these languages you know, other than Portuguese? Did you parents send you to special language classes?

AACT: Yes, I always loved languages and literature, and I took my examinations on languages at the British Council and at the Alliance Française. And while I was in secondary school, I visited the United States and other Latin American countries. I was very much interested in this. I went for a

specific purpose: to see what would be useful for me for the future, and I did informational interviews in various universities as well.

After University in Brazil, I decided on Cambridge, and attended Sidney Sussex College and the Law Faculty, and stayed there for six years, during which time I was awarded the LL.M. and the Ph.D.

LRT: Had you looked at US post-graduate programs?

AACT: I had decided on Britain because I was very interested in what was going on at the time at the Council of Europe. This attracted my attention from the beginning. Every year I spent nine months in Cambridge, and three months in Strasbourg, as a training officer at the Council of Europe in the Division of Human Rights. So, I saw the application of the European Convention on Human Rights from its earlier stages when the first cases were still being heard by the European Court. They had just a few cases at that time.

Years later, when I came to the Inter-American Court as Judge, it was like the realization of an old dream, because in my university years, I became acquainted with the European system. I knew the whole community of human rights in Europe. I was not only in the United Kingdom all the time; I went to France as well, so I could practice the language, and also to Italy.

In those years, I always went to seminars on these travels—I didn't do "tourism"—I always linked my trips to academic events, and I think I made very good use of my time in Europe. It was, for me, a matter of self-discipline. Especially the years in Cambridge and Strasbourg were years of training and self-discipline, for academic life.

In Cambridge, I concentrated on the topic of my Ph.D. dissertation, which was a full-time job. I wrote a thesis of more than 1700 pages! (*Developments in the Rule of Exhaustion of Local Remedies in International Law* (1977).)

LRT: You won the Yorke Prize for that?

AACT: Yes, and then I followed through on my obligation to return to Brazil, to keep the link with my university, and I moved then from Belo Horizonte to Brasilia. I had spent six years abroad without any trips back home, and when I got back, I didn't feel very comfortable there anymore. So I decided to go to the United Nations in 1977. I went to Geneva, and did a six-month in-training contract position within the old Human Rights Division, which later on became the Center of Human Rights, and which nowadays is the United Nations High Commissioner for Human Rights.

So I was there at the very beginning, when the Covenant on Civil and Political Rights was entering into force, in 1977–1978. For those very first cases taken on by the Human Rights Committee, I was there in the UN

Secretariat. I was the first Latin American to be awarded the Diploma from the International Institute of Human Rights in Strasbourg, and I received it personally from the Nobel Peace Prize Laureate René Cassin in 1974, a few months before he died.

I'd say I consider myself one of the first generation of scholars of international human rights law, in the early and mid-1970s. After the training in the UN in Geneva, I decided to return again to Brazil, because I thought the UN did not provide the conditions I was expecting in order to follow my career path. I preferred an academic life then.

LRT: But then you became a Judge with the Inter-American Court?

AACT: Yes, years later, but I remain an academic to this day, and also, the Court is a part-time tribunal. It's not a *permanent* tribunal, which would be a full-time position.

LRT: What if the Court had been a full-time tribunal?

AACT: I would have taken a leave of absence from the university, completed my terms as a judge, and then I would have continued teaching. This year is my thirtieth anniversary of teaching international law and international human rights law.

LRT: We know [as of the time of this interview in June 2008] that you've been nominated as a candidate for the post of Judge of the International Court of Justice (ICJ) in The Hague. [Note: In November 2008, Judge Cançado Trindade was elected to the ICJ by the largest majority in UN history. He took the bench at the World Court on 6 February 2009.] If you are voted in, how will that affect your academic life?

AACT: Well, I'm completing thirty years of academic life, I have an academic spirit, and I love academic work! I think any international tribunal needs someone with the rigors of an academic.

LRT: Some scholars in the academic world focus on research and writing, which obviously you've done—just look at your tremendous bibliography. I also get the strong sense of your love of being an educator, not just in the classroom, but I see this in your eloquent judicial opinions as well.

AACT: Yes, this is why I told you earlier, that I think that the judgments of an international tribunal do have a pedagogical sense as well. It's not only a matter of settling a dispute, and I emphasize this point: it's also a matter of saying "what the law is." . . . Also the concept of the judicial function is different from one judge to another.

For instance, there are some judges who think that it's only a matter of applying the law. There are other judges who say it is also a matter of creating the law. I absolutely support a more *creative* role of an international case law, of an international human rights tribunal.

I think that the most important developments that we've had in the Inter-American System of Human Rights Protection result from this praetorian creation of the Inter-American Court—in the sense that the advances that we have achieved in our case law are those that resulted from initiatives of reasoning of the Court in its decisions. For example, from the very beginning of the case law of the Court, the Court said that states always have the triple duty of preventing, of investigating, and of sanctioning violations of human rights.

Then, during my years at the Court, we strongly upheld, and we continue to uphold, the view that access to justice means not only formal access to justice, but also material access to justice. This is a very creative approach.

This means that the right of access to justice requires Articles 8 and 25 of the Convention combined: That is, Article 25, the Right to an Effective Remedy, together with Article 8, the Guarantees of Due Process of Law. So, access to justice means the formal access, plus respect for the guarantees of the due process of law, plus the right to a proper judgment, and the execution of the judgment! It means everything: If one of these elements is missing, there is no material access to justice. So, this is creative thinking.

When we support, for example, the combination between the general duties of Articles 1.1 and 2 of the American Convention, together with the protected rights of the Convention, then we have also creative thinking of the Inter-American Court. All of this took place during my years at the Court, and I think that this case law has been very forward-looking.

So, I think that the academic background helps a lot, in order to give strength to the reasoning process. A judgment has to reason and to persuade. If the parties are not persuaded that that is what the law is, they'll not abide by the judgment.

LRT: Let's talk more about these extraordinary Concurrences and Dissenting Opinions you have written during your years here at the Court. How and when did you decide to write these separate opinions?

AACT: This is actually a very important question. Whenever I felt that the consensus reached by all of us judges was not satisfactory to me, and did not include all the points that I thought it should, then I decided to append to the judgments either a Dissenting Opinion, Concurring Opinion, or a Separate Opinion. If I was in agreement with the conclusion of the judgment but not with the reasoning, then I issued a Separate Opinion.

If I did not agree with both the reasoning and the conclusion, I wrote a Dissenting Opinion. If I agreed with everything but thought I could add some more elements to it, I issued a Concurring Opinion. It takes a lot of time to do this, and a lot of vocation and identification of oneself with the subject matter.

One of my colleagues used to tell me, in a very sympathetic and friendly manner, "Look, this is self-inflicted pain!" But the hours and hours I spent on these opinions are now part of the Court's history and part of the history of international human rights law. I think many points were clarified by my opinions that were not so clear in the judgments themselves.

LRT: When you write a Concurrence or Dissent jointly with another judge, how does that take place?

AACT: This was not very frequent, but it took place a couple of times. In the course of the discussions that we have, in the plenary, sometimes similar views are expressed by another colleague, and then we decide to express them jointly, if we really coincide wholly in all the arguments that we put forward.

LRT: I have found your personal separate opinions to be particularly fascinating, because you go beyond the law to references to poetry, like Samuel Taylor Coleridge's "The Rime of the Ancient Mariner," and to other great literature. You enter into the realm of philosophical questions, of speculations on life and death. Could you comment on this process?

AACT: I'll tell you, as time went on I found that law does not provide an answer to everything! And sometimes we find elements for having an answer, which we might never find otherwise, in the domain of the arts. So I am a strong supporter of resorting to the world of literature, to find some explanations. For instance, in the human rights cases before the Court, some of the cases reveal—like those concerning massacres, among others—that we are living with human misery, with evil that some people do to others and to themselves. In order to understand some of the grave violations of human rights that have taken place, and that continue to take place every day—not only in this region of the world, but everywhere—the law does not provide an answer to everything. I was so moved by some of the cases that I adjudicated that I could not restrain myself from incursions into philosophy, sometimes even into theology, and more often into literature, in order to try to find something that would complete the reasoning of the Court.

LRT: Who was your audience when you were writing these Special Opinions? Did you look toward the future of the development of the law in this process?

AACT: With regard to the development of the law, I think of the victims themselves, and I think of the state that acts in good faith. Above all, the victims—this is what the system exists for: to fulfill their needs of protection . . . and the future. And I can tell you something: this has also had a great repercussion among the young generations, wherever I go.

LRT: The young generations of lawyers?

AACT: No, not necessarily . . . also sometimes the young generations of human rights workers who do not have a legal background. . . . I have visited all the countries in Latin America, and have attended so many seminars, so many academic events, and I am often very impressed by the fact that young people come and talk to me. They know the Court's judgments, and some of them recall parts of the reflections I made in the Opinions that are appended to these judgments.

This is very gratifying, because you know the erosion of time takes everything away. But when you know that young people learn and identify themselves with the cause that has driven us to do this, there is a feeling of continuity in time. That younger people are taking this flag that once we took up, and they'll take this fight on in the future—and continue to defend human rights for the years to come.

LRT: As you speak of the passing of time and passing the torch, I wonder how you see your legacy. For example, what would you like to have written in your obituary? What would you want said about what you have achieved, what you wanted to achieve?

AACT: I haven't thought of that before . . . but when the moment comes, I would like to be at peace with myself.

LRT: Does "being at peace" with yourself relate to your life from here forward, like possibly becoming a judge at the World Court in The Hague?

AACT: Yes, absolutely, it's about the cause of justice, and the realization of justice.

LRT: Speaking about the ICJ: why did you accept the nomination, why go there at this point in your life?

AACT: I have accepted the nomination because, first of all, many people recommended that I do so, and people who know me told me that the International Court of Justice is now facing new cases of different natures, and they stand in need of persons with a background like mine, in the field of human rights.

And then, because I can no longer work in a human rights tribunal like this one here in Costa Rica, which is what I really love—the field of international protection of human rights—but now it seems that cases are coming before other tribunals, such as the ICJ, that have to do with violations of human rights, and they need persons as judges with a human rights background, and I can serve the cause of realization of international justice in another tribunal.

LRT: You mentioned earlier a reference to theology in your separate opinions. Were you raised in a strong religious background, or do you have a spiritual practice now that is important in your life?

AACT: Well, very briefly, because I'm not sure if these personal details will be of interest to readers! I think that religion in anyone's life is very personal. I am not a follower of any religion; I am a "free thinker," and I read from all of the religions. However, I would say that I am a very religious person, although I do not follow any religion. "Religion" comes from Latin: "*re ligare*"—when you link yourself to the cosmos, and try to find the explanation to the mystery that surrounds human life—that's it! So, I am a very religious person.

LRT: Would you call that being a humanitarian?

AACT: In a way, because I am concerned with the condition of humankind, yes.

LRT: So, we've come to a few last questions that I have for you: First, when you look back at your years as a Judge at the Inter-American Court of Human Rights (from 1995–2008), and as President of the Court (from 1999–2004), which case or cases would you say you are most proud of?

AACT: Look, I'll tell you one thing: it's very difficult to point out one or two, because there are so many, and each case was a universe in itself. So I couldn't pick out one or two.

But, there are some I will never forget, and I can mention them to you: Among the contentious cases, I could mention *Bámaca Velásquez* (from

Guatemala), I could mention the *Street Children* case (from Guatemala), and I could mention *The Last Temptation of Christ* case, concerning Chile, because of the exemplary compliance with that case. I could point out all of the *Massacre* cases, because they had a tremendous impact on me.

Insofar as the Advisory Opinions are concerned, I would single out three of them: First, the Sixteenth Advisory Opinion in 1999 on “The Right of Information in relation to Consular Assistance within the Framework of the Guarantees of Due Process of Law”; Second, the 2002 Advisory Opinion on “The Juridical Condition and Rights of the Child”; and, Third, the 2003 Advisory Opinion on “The Juridical Condition and Rights of Undocumented Migrants.”

These cases are the ones that come to my mind immediately, but of course there were so many other cases.

LRT: Which would you say was most difficult case of your years at the Court?

AACT: There have been a number that have been very difficult: some on matters of fact, and some on matters of law. As to the facts, those cases concerning massacres present very difficult elements—like sometimes when the evidence is destroyed. Like I said, each case is a universe of its own.

LRT: And which cases presented the most challenges in regard to matters of law?

AACT: It depends very much—you know, some of them involve an examination of compatibility or otherwise of the domestic laws of the states with the American Convention on Human Rights, which presents particular difficulties.

LRT: If you could re-do or revisit one case again, which one would it be?

AACT: I’ll answer you this way: I would hope that all of these cases of human rights violations that we have already decided upon, would never happen again.