

# Personal Remarks on Antonio Cassese and His Vision of International Law and International Criminal Justice along the Road He Walked

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## Abstract

This article is a journey through the life of Antonio Cassese, a giant of international law, no doubt one of the most prominent international lawyers of the twentieth century, and the ‘architect of international criminal justice’. From his first steps in the academic community in Pisa in the early 1960s to his well-known contributions as first president of the International Criminal Tribunal for the former Yugoslavia, he became a prolific author and editor of seminal books and commentaries on international law and international criminal law, as well as founder of groundbreaking law journals.

## Key words

biography; Cassese; ICTY; life and work; tribute

## I. AN ‘EPILOGUE’, BUT NOT THE END

On 22 October 2011, Antonio Cassese, ‘Nino’ to all his numerous friends, passed away in Florence surrounded by the love of his close family: his wife Silvia, his children Francesco and Teresa with her husband Alessandro, and his two adored granddaughters, Bianca and Veronica. In the heart and thoughts of many of us, who were so lucky as to share with him part of our lives, he undoubtedly remains somebody who left an indelible mark. I am also pretty sure that objectively nobody would deny that he is a man who left important traces in the history of international law and international criminal law.

There is no doubt that Nino was a great personality both for the strength of his vision and for his unique ability to transpose it into reality. The UN Secretary-General, on the day of the sad event, issued a press statement in which he described Nino as a:

giant of international law, as a loyal friend who was always there when the Organization needed his wise counsel and dedicated services, and mostly as an exceptionally

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charming and warm human being who courageously stood up for justice, for human rights and for humanity.<sup>1</sup>

The president of the Italian republic emphasized that he was a master of legal culture and an example of a civil servant engaged in the fight for justice, democracy, and human rights.<sup>2</sup> Many others highlighted his courage, intellectual honesty, and clarity of vision – his wisdom, but also his passion.<sup>3</sup> Not much can or should be added to those statements. On a more specific level, on 16 November 2011 in The Hague,<sup>4</sup> one of his cities of adoption (the other being Florence: he was born in southern Italy, Atripalda, in the province of Avellino near Naples, but had made Florence his home town since the 1970s), a touching ceremony was organized and attended by many of his friends and colleagues.<sup>5</sup> At that ceremony, his closest pupil, my good friend and ‘academic sister’, Paola Gaeta, depicted a perfect portrait of the man and the scholar – a person who cared for the well-being of humanity, a person who thought law had to be at the service of the human beings, and not the other way around. This was indeed Nino: a wonderful and cheerful man who cared enormously for other human beings, and a complex and rich personality as reflected in his writings, and his academic and non-academic activities, who believed every day and every energy had to be invested in making the world a better place.<sup>6</sup>

## 2. PROLOGUE: ‘THE ROAD HE WALKED’

In these remarks, I will trace a concise professional biography of Nino, going through his career and mentioning in passing some of his uncountable writings. In so doing, I will certainly leave out some experiences and many publications but a detailed enumeration of both can be found on Nino’s website ([www.antonio-cassese.it](http://www.antonio-cassese.it)).

My impression is that Nino had at least four distinct, albeit intertwined, phases in his professional life: first, his academic beginning and his establishment as professor of international law in Italy (from the 1960s to the mid-1970s); second, his affirmation as an academic at the international level and his posting at the European University Institute (EUI) (from the mid-1970s to the early 1990s); third, the experiences in institution building, as a practitioner of international law, initially at the European Committee on the Prevention of Torture (1989–92), then with the foundation of international criminal law at the helm of the International Criminal Tribunal for the former Yugoslavia (ICTY) as president (1993–97) and as a judge (until 2000),

1 See SG/SM/13895, 24 October 2011 (reproducing a statement issued on 22 October 2011), available at [www.un.org/News/Press/docs/2011/sgsm13895.doc.htm](http://www.un.org/News/Press/docs/2011/sgsm13895.doc.htm).

2 See the document at [www.quirinale.it/elementi/Continua.aspx?tipo=4&key=12430](http://www.quirinale.it/elementi/Continua.aspx?tipo=4&key=12430).

3 See, e.g., the statement of Italy’s minister of foreign affairs, available at [www.esteri.it/MAE/IT/Sala\\_Printa/ArchivioNotizie/Comunicati/2011/10/20111024\\_Cassese.htm](http://www.esteri.it/MAE/IT/Sala_Printa/ArchivioNotizie/Comunicati/2011/10/20111024_Cassese.htm).

4 As is well known, in The Hague, Nino spent several years, first at the International Criminal Tribunal for the former Yugoslavia (ICTY) and, more recently, heading the Special Tribunal for Lebanon (STL).

5 The event and the speeches that were delivered are available at [www.stl-tsl.org/en/about-the-stl/events/walking-the-road-he-paved-tribute-to-antonio-cassese](http://www.stl-tsl.org/en/about-the-stl/events/walking-the-road-he-paved-tribute-to-antonio-cassese) and several documents can be found from that page; see also the website of the Geneva Academy of Human Rights and Humanitarian Law (headed by Nino’s two best pupils, Andrew Clapham and Paola Gaeta), which devoted a section to the memory of Nino, available at [www.adh-geneva.ch/about-us/tribute-to-antonio-cassese](http://www.adh-geneva.ch/about-us/tribute-to-antonio-cassese).

6 See, in this regard, the heartfelt obituary posted on the website of the Geneva Academy.

and, thereafter, back in service when needed such as with the UN Commission of inquiry on Darfur (2004–05) or reviewing the judicial efficiency of the Special Court for Sierra Leone in 2006 and, more recently, with the Special Tribunal for Lebanon, since 2009; and, finally, the renewed top-flight academic push with his more recent works on international law and international criminal law, which he essentially undertook after he had stepped down from the ICTY (from 2000 onwards). In all of these phases, Nino always tried to have an academic approach, but never wanted to remain too far from the ‘dirty job’ of being involved with the reality of international law, and strived to integrate these two aspects into one another, always with a view to reflecting on the prospects of the systems and open new avenues for the future.

### 2.1. The first years (1958–74)

Nino studied and graduated in Pisa, where he had attended the *collegio giuridico* annexed to the Scuola Normale Superiore (which was eventually transformed into the Scuola Superiore Sant’Anna). In Pisa, at the Law School, he then started his academic career and got the chair in international law.<sup>7</sup> Pisa was (and is) one of the best universities and law schools in Italy. However, Nino certainly wanted to broaden his horizons: perhaps he needed a more diverse academic environment, perhaps he just wanted to change landscape; certainly, law and legal technicalities were not sufficient for him. He could not have stayed too long exclusively among lawyers; thus, in 1974–05, he moved to Florence, where he joined the School of Political Sciences ‘Cesare Alfieri’, an academic ‘milieu’ that was more in line with Nino’s broad intellectual interests, for he was a lawyer amidst historians, economists, and political and social scientists and he could engage in a dialogue much broader in scope and, to a large extent, richer in complexity than the discussions among jurists. Nino never saw law as something that could be understood by looking at legal provisions alone. He always perceived the political dimensions that exist behind norms.

### 2.2. The Florentine age (1975–93)

In Florence, Nino became one of the best-known scholars in the field of international law in Europe and laid the foundations for becoming one of the most respected figures worldwide in the field. In those years, he also played a role in international settings (an activity that he had already started while in Pisa). In particular, as a member of the Italian delegation, he was actively involved in the negotiations of the 1977 Additional Protocols to the Geneva Conventions of 1949. Meanwhile, at the university, he co-ordinated important research projects on the laws of war, on human rights, on UN law, on the use of force, and on parliamentary control over

7 In Pisa, under the guidance of Giuseppe Sperduti (a mentor he subsequently shared with other well-known Italian international lawyers, Natalino Ronzitti and Roberto Barsotti, two of his younger colleagues in Pisa), he worked on his first books, *Il diritto interno nel processo internazionale* (1962) (in English, *Municipal Law in International Proceedings*) and *Il controllo internazionale: contributo alla teoria delle funzioni di organizzazione dell’ordinamento internazionale* (1971) (in English, *International Monitoring: Contribution to the Theory of the Functions of Organizations in the International Legal Order*), and on several articles mainly published in Italian law journals.

foreign policy;<sup>8</sup> he authored fundamental books (among these I would cite *International Law in a Divided World* and *Violenza e diritto nell'era nucleare*)<sup>9</sup> and outstanding essays (I refer in particular to the Commentaries to the provisions on international law of the Italian Constitution).<sup>10</sup> In the 1980s, he taught a seminal course at the Hague Academy of International Law on 'Modern Constitutions and International Law'.<sup>11</sup> He undertook research and published various articles in English and French (in particular, I would mention, because I find it really inspirational, the article on civil war – 'La guerre civile' – published in the *Revue générale de droit international public* in 1986).

In Florence, Nino soon got in touch with the stimulating environment of the EUI that, for many reasons, was perfectly in line with his approach to legal studies: multidisciplinary and open to cross-fertilization. In the mid-1980s, he became professor at the EUI and, there, his vision could expand and acquire extra vigour. At the institute, he undertook important research projects dealing with self-determination, human rights, and state responsibility, which led him to author notable books (such as the masterly *Self-Determination of Peoples: A Legal Reappraisal* (1995) but also the book interview with a great man of whom Nino was extremely fond, Bert V. A. Röling<sup>12</sup>) or edit others (such as those co-edited with Andrew Clapham and/or Joseph Weiler).<sup>13</sup> Always at the EUI in those years, together with Weiler and Bruno Simma, and a few other friends, Nino created the *European Journal of International Law* and was also among the founders of the *Academy of European Law*.

### 2.3. From Florence to The Hague in the service of the international community (1993–2000, 2009–11)

From Florence, between the late 1980s and the beginning of the 1990s, he also started his activity as international institution 'maker', always coupling his practical experience with an academic touch. He was the first chairman of the European Committee for the Prevention of Torture (on this experience, he wrote a great book, *Umano e Disumano: Commissariati e Prigionieri nell'Europa di Oggi*).<sup>14</sup>

Subsequently, in 1993, he was elected by the General Assembly to the first international criminal tribunal after Nuremberg, the ICTY, and he was then chosen by his fellow judges as president of that tribunal. No need to dwell at any length on the role

8 See the books he edited: *Control of Foreign Policy in Western Democracies*, 2 vols. (1982); *The New Humanitarian Law of Armed Conflict* (1979–80); *UN Law Fundamental Rights: Two Topics in International Law* (1979); *United Nations Peace-Keeping: Legal Essays* (1978).

9 The latter, originally published in Italian (1986), was subsequently translated into English and French.

10 A. Branca (ed.), *Commentario alla Costituzione*, in various volumes. Antonio Cassese contributed to three of them respectively with commentaries on Arts. 10–11, 80, and 87 of the Italian Constitution (1975–79).

11 In *Recueil des cours*, Vol. 192, 1985 III, 331–476.

12 A. Cassese and B. V. A. Röling, *The Tokyo Trial and Beyond: Reflections of a Peacemaker* (1994).

13 See, e.g., the project European Union, the Human Rights Challenge; A. Clapham, *Human Rights and the European Community: A Critical Overview*; and A. Cassese, A. Clapham, and J. Weiler (eds.), *Human Rights and the European Community: Methods of Protection* (1991); and *Human Rights and the European Community: The Substantive Law* (1991); see also J. Weiler, A. Cassese, and M. Spinedi (eds.), *International Crimes of State: A Critical Analysis of the ILC's Draft Article 19 on State Responsibility* (1989).

14 Originally published in Italian (1994) and translated into English with the title *Inhuman States: Imprisonment, Detention and Torture in Europe Today* (1996).

played by Nino in his capacity both as president and as judge, since, compared to all his previous experiences, the work at the ICTY was more than ever under scrutiny by both the academic community and public opinion at large. In discharging his duties as president of the European Committee first, and of the ICTY later on, Nino was always guided by the objective of making things work. He never saw his role just as an honour; on the contrary, the ceremonial part was something he did not really appreciate. He saw it rather as an onus: a duty to be better than the others, to lead by example, and to do whatever possible to create an effective mechanism that would make the difference. He wanted to ensure the success of the institutions he was involved with. And, as many of those who have worked with him know, failure was not an option and inaction was banned.

In 2000, Nino left The Hague and the ICTY to go back to Florence and resume his teaching at the University of Florence, which opened what I consider the fourth phase, in which he laid down his vision of the future of international law and international criminal law. However, as is well known, even this new phase was not purely academic, since he was called to chair the UN Commission of Inquiry on Darfur (2004–05), reviewed the judicial efficiency of the Sierra Leone Special Court (2006), and, in March 2009, he went back to The Hague to face another challenge and serve as judge and first president of the Special Tribunal for Lebanon.

#### 2.4. Cassese's vision for the future (2000 onwards)

Coming back to Florence from The Hague towards the end of 2000, Nino went back to academia with renewed energy and enthusiasm. Also, he would sometimes frankly say that working was for him the best way to prevent depression. He prepared a totally new textbook on international law.<sup>15</sup> He undertook several major research projects, and taught in France<sup>16</sup> and the United States. He also realized that international criminal law required a much more solid scholarly and intellectual basis; contrary to many in this area, he strongly believed that fruitful co-operation between lawyers with different backgrounds (mostly criminal lawyers and international lawyers, but also human rights lawyers: the tribes, as Andrew Clapham lucidly described them<sup>17</sup>) was indeed necessary in order to be able one day to create the real international criminal lawyer. He then redoubled efforts to provide such a solid basis, with conferences, seminars, research projects, articles, and books. Together with Paola Gaeta and John Jones (with whom he had shared most of the intense work at the ICTY), he edited the monumental commentary to the Rome Statute<sup>18</sup> and authored his *International Criminal Law* (2003). Almost in parallel, he launched

15 A. Cassese, *International Law* (2001).

16 He was appointed at the 'Pascal' Chair and, in this capacity, together with Mireille Delmas-Marty, he coordinated an important research project on international crimes between domestic and international courts; see A. Cassese and M. Delmas-Marty (eds.), *Juridictions nationales et crimes internationaux* (2002); and *Crimes internationaux et juridictions internationales* (2002).

17 A. Clapham, 'Concluding Remarks: Three Tribes Engage on the Future of International Criminal Law', (2011) 9 JICJ 689.

18 A. Cassese, *The Rome Statute of the International Criminal Court: A Commentary* (2002), in two volumes.

the *Journal of International Criminal Justice*, which appeared for the first time in 2003, with three issues per year that soon moved to five. I would just recall that:

[the] Journal started its activities in mid-2002 in a cold and dark office in the ground floor (as gloomy as a basement) of the then seat of the Dipartimento di Studi sullo Stato of Florence University. Much like a 'bottega fiorentina' of the Renaissance, this was the product of the joint efforts of a small group of artisans assisting the maestro, Antonio (Nino) Cassese, the founder, Editor-in-chief and leading light of [the] Journal.<sup>19</sup>

In the same years, at the EUI, he set the foundations of an incredibly forward-looking project for training opportunities for professionals in the area of criminal justice on international criminal law (the ETHICS project), which organized workshops in Africa, Asia, Latin America, and Eastern Europe. Only a few years later, he undertook the preparation and completion of the *Oxford Companion to International Criminal Justice*<sup>20</sup> and thereafter imagined the creation of a new series focusing on international criminal law. Moreover, Nino was extraordinarily generous not only with his enthusiasm, his attention, and his ideas, but also in a more material way: actually, when he was awarded two important prizes with monetary recognitions, namely the Erasmus and the Antonio Feltrinelli Prizes, he decided to devote all the money involved to support initiatives aimed at promoting high-level research and publication by young scholars in the field of international criminal justice. In particular, he created the Antonio Cassese Prize for International Criminal Studies,<sup>21</sup> which is intended to support young scholars who present challenging research themes in the area of international criminal law.

In all these adventures, he always liked to be surrounded by colleagues, including younger scholars and practitioners with whom he would enthusiastically debate about recent decisions by national or international courts, and discuss ideas and new projects for the future in exciting mutual exchanges of an unbelievable richness. His love for new ideas and younger people was really moving. And also, in this sense, he was a great 'maestro' who was always able to provide inspiration and support, and create interest and energy.

Furthermore, all along, Cassese remained committed to a broader pedagogical role. Nino strongly believed in the need to provide public opinion with all the necessary information to follow and evaluate international relations in light of international law. This is also why, besides all his scholarly writings, at least since the 1980s, he regularly contributed to Italian newspapers with articles on the most controversial and sensitive developments of world affairs.<sup>22</sup> He rightly believed that 'information' and 'education' are essential to proper democratic deliberation.

19 'Editorial', (2009) 7 JICJ 1.

20 Published by Oxford University Press in 2009.

21 See [www.oxfordjournals.org/our\\_journals/jicjus/cassese\\_prize.html](http://www.oxfordjournals.org/our_journals/jicjus/cassese_prize.html).

22 See, in this regard, the collection of some of his articles in *Il sogno dei diritti umani* (2008), as well as the anthology of selected excerpts of other eminent personalities in the area of human rights that he edited, *Voci contro la barbarie: La battaglia per i diritti umani attraverso la voce dei suoi protagonisti* (2008).

### 3. 'THE ROAD HE PAVED': A BRIDGE TO THE FUTURE

The reflections by Nino that are published in this issue of the *Leiden Journal of International Law* on legality and legitimacy in international criminal justice are a luminous example of Nino's way of approaching law and legal problems. The approach is scientific, the method follows the rigour of legal interpretative techniques, and the elaboration and the discourse are proper to jurists. However, the standing and vision go far beyond. He never forgets what he considered to be the real objectives of law. This article is a very good illustration of Nino's approach to the building of international criminal law, but it also represents a glimpse at his approach to international law more broadly. On the one hand, it attests to the concern to ground his positions on solid legal arguments, following well-known reasoning techniques recognized by lawyers; on the other, it expresses the need to look beyond law and beyond any legalistic approach to institutional and normative realities, to build something valuable for the future.

In this paper, Nino tackled issues concerning the legitimacy of international criminal-justice institutions (which clearly seem ultimately more relevant than mere issues of legality, and can even override legality: think of Nuremberg, for example). The sphere of legality emerges as important but we are reminded that it cannot be solely on this ground that international criminal justice should be assessed. Legality and legitimacy are two mutually reinforcing notions; when legality is coupled with legitimacy, it becomes even stronger and it can make a real difference. The values protected, the efficiency of the operation of the mechanism in discharging its duties, are so essential to its functions that they ultimately determine the overall success of an institution. It is essentially by having this in mind that one could look back at the spirit of the *Tadić* decision on jurisdiction of 2 October 1995, for example, but also the decision in the *Blaškić Subpoena* proceedings of 1997, in which the Appeals Chamber allowed the interested state, Croatia, to present its appeal and its views in that case on the basis of a newly adopted rule (Rule 108 *bis* of the Rules of Procedure and Evidence (RPE)).

The ability to look at the future is another distinctive trait of Nino, who always wanted to analyse the possible evolution of legal realities with a view to imagining their prospects. This is also a hint to his more general approach to any activity, even where invested with an institutional role. In a very interesting way, Nino adored looking back at the past, at history, but never as an end per se. It was more to draw inspiration, identify precedents, find forgotten or unknown cases; he would always read them with an open mind in an attempt to build something more solid, more convincing, more appropriate for the future.

Nino was full of imagination and curiosity, but always based his ideas and proposals on hard (very hard) work. He was animated by great passion, tempered, however, with a dose of rationality; he was certainly humble but no less ambitious (in a most clever way). He wanted to make a difference and nobody can deny he did. I do not want to overstate his role in building the edifice of international criminal justice but he was rightly described as 'a visionary and the

architect of international criminal justice' by the president of the ICTY, Theodor Meron.<sup>23</sup>

Many people certainly play and have played an important role in turning international criminal justice into reality but, to a large extent, Nino had a special place among the founding fathers. He saw international criminal law as the mechanism that could ensure compliance with those principles that impose respect for fundamental rights.

Was there a prevailing trait in Nino's work and personality? I believe that two main elements characterize his work as international lawyer. First of all, Nino was a 'concrete dreamer' or a 'utopian positivist', as described elsewhere.<sup>24</sup> He had dreams and knew it was possible to make them concrete only through hard work, which he would never refuse to do. Second, he was a lawyer, but he never believed solely in the strength of the technicalities of law. He saw law – as he himself abundantly wrote on various occasions – as a tool to make the world a better place and the life of human beings slightly better. He thought that each one of us has a moral duty to do something every day to make our life more meaningful and improve society.<sup>25</sup>

The main underlying theme of all his activities (especially the most recent) was an ongoing pedagogical project that aims at contributing to develop ideas for the future, trying to imagine the world and international law in 20–30 years' time. And in this same vein was also his very last project: a book (in print) on the future of international law seen as a realistic utopia, with contributions by several scholars and practitioners who were selected by Nino having in mind one main aspect: their ability to make an effort to imagine international law at the service of a better future for humanity.<sup>26</sup>

The companion, the journal, the Cassese Prize, and the book series are all examples of the way in which Nino conceived his profession. He was a teacher who showed by example, a researcher who would dig by himself the dusty archives in search of an unknown case or forgotten pages, a great scholar who would work and rework on a paper, paragraph, or sentence again and again, and rewrite it a dozen times if needed to improve it and make it clearer and more precise. Certainly, he was never closed in the 'ivory tower'. On the contrary, he was a man of action. He liked contemplation but he never sat and waited (actually, all those who knew him understand that the verb 'to wait' was not in Nino's vocabulary). He liked to understand and see how the world goes, but he also wanted to intervene to make changes happen. The Special Tribunal for Lebanon very appropriately entitled the 16 November Tribute 'Walking the Road He Paved'. As I have tried to show, Nino paved so much ground that I am afraid (and glad at the same time) we are just at the beginning of a very long journey, but at least we should be comforted by the fact that the direction has been clearly indicated.

23 See the obituary posted at [www.haguejusticeportal.net/smartsite.html?id=12971](http://www.haguejusticeportal.net/smartsite.html?id=12971).

24 P. Gaeta and S. Zappalà (eds.), *Presentation to 'The Human Dimension of International Law. Antonio Cassese Selected Papers'* (2008).

25 The story of the sparrow recounted in the piece by one of his best friends is exemplary in this regard; see L. Condorelli, 'Nino Cassese and the Sparrow's Feet', in *ibid.*, at xlix–lii.

26 A. Cassese, *Realizing Utopia: The Future of International Law* (forthcoming).