

The Prosecutor and the Judge Benjamin Ferencz and Antonio Cassese - Interviews and Writings

Meeting Benjamin Ferencz and Antonio Cassese

Anyone who has met Benjamin Ferencz and Antonio Cassese knows that here are two men totally committed to the defense of human rights and human dignity. They are by the strength of their personalities guides and tutors. They offer inspiration and an irresistible a remedy against cynicism. Both Benjamin Ferencz and Antonio Cassese have many stories to tell about the power politics and self-interest of states and their leaders and about the excessive violence and cruelty individuals can commit when they get the opportunity. But they also teach us that one need not be a blind optimist to go in search of direction and progress through law. For them to believe this is of itself no small achievement, since their work has confronted them with human behavior at its worst.

This book is published to celebrate the Praemium Erasmianum awarded in November 2009 to Benjamin Ferencz, the former Nuremberg prosecutor and Antonio Cassese, the first president of the International Tribunal for the former Yugoslavia (ICTY) and current president of the Special Tribunal for Lebanon. The prosecutor and the judge together embody the history of international criminal law from Nuremberg to The Hague. The choice to interview the laureates was based first and foremost on the wish to introduce these two remarkable personalities, well known among their colleagues in the lively international legal community, to a wider audience.

The idea for this book is rooted in a book Antonio Cassese published in 1993. At the end of 1970's, Cassese interviewed in depth the great Dutch international lawyer, B.V.A. Röling, who had been a judge at the Tokyo tribunal, the post Second World War International Military Tribunal for the Far East. For several reasons, the book saw the light only years later, in the watershed year of 1993. In that year, the Tribunal for the former Yugoslavia was established by the UN Security Council to try the war crimes being committed in the heart of Europe. To this day The Tokyo Trial and beyond remains a treasure trove of observations and wisdom: many of the issues Cassese and Röling covered in their conversations have lost none of their urgency.

Cassese's connection with Röling was forged in scholarship and a clear-headed critical approach of international criminal law. By no coincidence, Ben Ferencz and Bert Röling also met in the course of their advocacy to have "aggression" properly defined by the United Nations. Both fiercely independent, both men were deeply aware that every war brings about unspeakable horrors and grief and should be prevented by all available means.

The very first time I saw Ben Ferencz in action was in Rome in 1998. Within the span of five weeks the treaty for the International Criminal Court had to be hammered out. There was a strong sense of momentum, of now-or-never. Debates raged day and night, in the great conference rooms, in the back chambers and in the corridors. In the middle of it all Ferencz could be found, tirelessly working on unwilling or uninformed delegations. I saw government representatives, NGO members and journalists bestow their respect on this former Nuremberg prosecutor. And, Ferencz, who is not the most patient of men showed an immense patience in his explanations of the complicated legal and political subjects at stake. The ICC founding treaty came to pass. The crime of aggression made it to the final text only at the very last stage of the negotiations. But the crucial issue of the court's jurisdiction over this crime was postponed. It may have been a blow for its champion, but Ben Ferencz saw it as another step forward and he continued to explain, to lobby and to travel the world. It was hard to catch him in one place. With the review conference of the ICC looming in 2010, he moved from meeting to lecture to conference, from New York to Saint Petersburg to Salzburg, always on the same mission, delivering his mantra: stop the war. And, most immediately, he urges his audience: make it possible for the ICC to prosecute crimes of aggression.

At times during the interviews, when we expressed our concerns about legal and human shortcomings in the burgeoning ICC, Ferencz plainly told us that we had our noses too close to the ground. We should take our distance. What may seem stagnation at the time can be seen as part of an important development with hindsight.

Antonio Cassese came from international humanitarian law and human rights law to the new field of international criminal law. At one point in the interview he told us: "The body of international law is made up of a set of rules that gradually emerge, and as a result the common conscience of mankind is found in customary international law."

Cassese pairs his conviction that the law of humanity is anything but a stagnant, unmovable system with his own deep awareness that the dignity of humanity is not safe in the hands of the state. At the same time he has an open mind for the many efforts by individuals representing the state, to do what is right. He has a keen eye for the beauty and the power of the language of criminal law, with its precise definitions and qualifications.

In his first report as president of the ICTY to the General Assembly of the UN in 1994, Antonio Cassese quoted from Benjamin Ferencz' statement held on 29 September 1947 in the Einsatzgruppen trial in Nuremberg: "if these men be immune, then law has lost its meaning, and men must live in fear". The judge sided with the prosecutor.

After some years in Florence, Cassese is once again drawn to the epicentre of international criminal law, the Dutch city of The Hague, this time as president of the Lebanon tribunal. His life often shifts among his many roles from being a judge on the bench to leading the UN Commission of Enquiry to Sudan and then again to periods with a different perspective as scholar, teacher, editor, commentator and writer of innumerable articles and books. But never do these changes bring about disconnection. Cassese keeps his nose to the ground, to use the words of Ben Ferencz, and combines a talent for seeing and thinking through the themes of international law with great clarity and command of detail.

On the wall of his office we found a text by Bertolt Brecht: "Von Natur bin ich ein schwer beherrschbarer Mensch. Autorität, die nicht durch meinen Respekt entsteht, verwerfe ich mit Ärger, und Gesetze kann ich nur als vorläufige und fortwährend zu ändernde Vorschläge, das menschliche Zusammenleben regulierend, betrachten." (I am by nature a man who is difficult to control. I reject with outrage any authority that does not rest on my respect. And I regard laws only as

provisional and soon to be changed proposals for regulating human intercourse.). It speaks for itself and for Cassese.