

**M. Cherif Bassiouni**  
**(1937-2017)**



**Cherif's Friends. *In Memoriam***

**J.L. de la Cuesta/R. Ottenhof/J.F. Thony (eds.)**

**Presented in the occasion of the naming of the  
M. CHERIF BASSIOUNI CENTRE**

**Siracusa, 23 September 2018**

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From left to right: G. Polimeni, P. Wilkitzki, K. Ligeti, H. Epp., J. Vervaele, U. Sundberg, A.M. Stile, M.C. Bassiouni, J.F. Thony, J.L. de la Cuesta, R. Ottenhof, A. Wazir



M.C. Bassiouni and the Staff

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## **M. Cherif Bassiouni: a resplendent light shining forth upon the future**

**Luis ARROYO ZAPATERO**

President, International Society of Social Defense;  
AIDP Vice-President, and honorary president of the Spanish Group

I knew of Cherif Bassiouni when commencing my doctoral studies. In the final convulsive years of Francoism, Marino Barbero Santos, in his professorial chair of the old university of Valladolid, explained what the AIDP was to the three students who would in good time have to become university professors. He described to us with great detail and enthusiasm how the patriarch of Spanish-American criminal Law, and disciple of Von Liszt, don Luis Jiménez de Asúa, had become Vice-President of the AIDP, recounting his survival after the war, and the institute of Freiburg to which don Luis had been invited, the first Spaniard under the august presidency of Hans Heinrich Jescheck. He also spoke of a powerful Secretary General, enchanting in any of the languages that he spoke so perfectly, whom he also described in detail: a young official, decorated in the Egyptian army during the Suez war, successful European and American ventures,

with the support of a diplomatic family, with a professorial chair at the DePaul University of Chicago and highly influential in the State Department and at the United Nations.

The destinies of both men coincided various times: in the first place, on the occasion of the inauguration of the Institute in Sicily, at Syracuse, which the professor to whom we render homage directed, and another one at Messina, in which Barbero Santos participated and at which I was to be the first international scholarship student. It all happened as a consequence of my having to await a criminal trial before a tribunal on public order, a circumstance that had excluded me from any student grant or fellowship in Franco's Spain. The Institute of Syracuse was admirably founded with total success. It is enough to see the photograph of the first promotion of the international seminary of young criminal law students of that time, where José Luis

de la Cuesta and Christine Van den Wyngaert stand out, and to see that it has ever since been schooling the greatest specialists of international criminal law in the world.

My destiny led me to prepare my doctoral degree together with Hans Joachim Hirsch at the University of Cologne from 1975 to 1977, and I returned to Spain after the first elections in 1977. Barbero Santos, who was president of the Spanish group, organized the first AIDP congress, with the full support of the first democratic government. It was held with great success in Madrid and Plasencia. On that occasion, I contacted Jescheck and Vassalli. An ordinary edition in Spanish of the *Revue* was published, after a fiery debate with hundreds of messages exchanged within the Spanish group and the Secretary General, who had no wish to add to the languages of the journal, beyond the traditional languages of English and French. What would they think today seeing that it is only published in English? Many other people followed that meeting from a distance, among whom I wish to recall the memory of the following:

At the board meetings in Paris that I always attended following my election as president of the Spanish group after 2002, the final sessions were

invariably a magnificent spectacle, as Bassiouni at his best addressed us all over the roundtables of the *Maison des Avocats*, giving us news, pointing out problems and seducing each and every one of us in so many languages. I recall a very unique evening in which with deep emotion he shared the news with us of the retrieval of the minutes of the meeting in Nuremburg at which the AIDP had been reconstituted, by that time with Americans and Russians, listening attentively to simultaneous translations of the proceedings of the international court, on 18 May 1946. I think that the international congress at the Hague was certainly the most special moment of the professional life of Cherif Bassiouni, at which he presented the final report of his grand project. *The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimization, and Post-Conflict Justice*, published in 2 volumes, in *Intersentia*, Brussels, Belgium, 2010. We were all around him: magistrates from the International Court of Justice, from the International Criminal Court, and from the ad-hoc Courts and Tribunals, presidents of scientific societies, academic institutions. All there with him. He reaffirmed there his titanic work, of a lifetime advancing the convention against

torture, the international criminal court and the civilizing effect of the United Nations and its institutions in a world of inexhaustible ferocity.

In Beijing, in 2005, at the congress that appointed José Luis De la Cuesta president he was troubled, both due to family reasons and his journey to the volcanic mayhem of Afghanistan and the terrifying awareness of having lived through a great farce there.

In Doha, at the convention of the United Nations, he participated in the homage to Gao Ming Xuan, on the occasion of the award of the Beccaria Medal that the Société Internationale de Défense Sociale presented to him. He was not optimistic, neither with regard to the abolition of the death penalty, nor with regard to the rest, he saw the world with great concern and left all

of us concerned too.

The most emotional moment perhaps for me was his speech before the Spanish parliament, with the presidents of the parliament, the Supreme Court, the General Attorney of the State, at the award of the Beccaria Medal to him and to Mireille Demas-Martí: an outstanding partner. It was late in the day and, after the *laudatio* that Muñoz Conde delivered, he left the papers on the table and in a Spanish tinged with Mediterranean overtones explained to us the reasons of this life dedicated to protecting the weakest through the progress of international law.

Bassiouni and his passionate works and complete academic grounding will not fade away and his example shines forth among us.





## Honoring Cherif Bassiouni: A Life Battling Tyrants

Christopher L. BLAKESLEY

Professor Emeritus, Louisiana State University, Professor Emeritus University of Nevada Las Vegas – Barrick Distinguished Scholar, University of Nevada L.V.

I am honored to have walked this troubled world with my dear friend, Cherif Bassiouni, as we tried to do some good. Cherif did much more than I. Rest in Peace, dear Cherif! W.H. Auden's poems resonate with me; inspiring an appreciation of the profound importance of my dear friend, Cherif Bassiouni's life's work.

**Epitaph on a Tyrant by  
W.H. Auden (1939)**

*Perfection, of a kind, was what he was  
after,  
And the poetry he invented was easy to  
understand;  
He knew human folly like the back of  
his hand,  
And was greatly interested in armies  
and fleets;  
When he laughed, respectable senators*

*burst with laughter,  
And when he cried the little children  
died in the streets<sup>1</sup>.*

Too many children die in the streets. Our all too common inhumanity to each other is staggering. These lovely and terrible poems reflect the horrors that Cherif fought against. My small part in battling tyrants with Cherif was and is an honor<sup>2</sup>. I take joy and solace from the privilege of working with Cherif<sup>3</sup>. The battle against such depredation revivifies Cherif in my soul and revivifies all the lovely days spent working with him and all our wonderful friends. Auden's poetry often echoes life's pain and suffering, often caused by actions taken by so many, destroying and damaging so many and so much. The pain is personal and general. Atrocity,

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<sup>1</sup> W.H. Auden, Epitaph of a Tyrant. You can listen to Auden read this poem on [http://www.dailymotion.com/video/xqq1r8\\_w-h-auden-epitaph-on-a-tyrant\\_creation](http://www.dailymotion.com/video/xqq1r8_w-h-auden-epitaph-on-a-tyrant_creation)

<sup>2</sup> See M. Cherif Bassiouni and Christopher L. Blakesley, The Need for an International Criminal Court in the New International World Order, 25 Vand. J. Transnat'l. L. 151 (1992).

<sup>3</sup> See M. Cherif Bassiouni and Christopher L. Blakesley, The Need for an International Criminal Court in the New International World Order, 25 Vand. J. Transnat'l. L. 151 (1992).

depredation, and tyranny are ancient and current. Have we reached a place and time where issues are too often settled by gas and bomb, or have we always been there? At any rate, we ignore the need to address such outrage at our peril, lest we become functional enablers of atrocity, torture, and other depredations. Respect for our common value as human beings and the importance of mitigating suffering perhaps necessitate a proper and just international criminal justice system. I fondly remember Cherif's first invitation to participate in a working group in Noto, Sicily - where my baggage never arrived, but Helmut Epp kindly lent me his tennis shorts, so I could relax on the beach and swim in the Mediterranean. I still feel the joy of working with Cherif and all our friends in such lovely places as Siracusa, Sicily, Paris, France, Budapest, Hungary, Budapest, Hungary, Rio de Janeiro, Brazil, Chicago, Illinois, and others. I fondly recall chairing our working group for the report on fighting organized crime, working closely with Cherif, Françoise Tulkens, and Abdel Azim Wazir in Alexandria, Egypt and

Budapest, Hungary.

Cherif saw the need for a proper, viable, and honorable international criminal justice system that promotes humanitarian values, accountability for all those in any state or group who have committed atrocity and which maintains human rights protections for both those accused of and those who fall victim to atrocity. Great poetry and fiction also provide insight into and inspiration for the need. Consider Goran Simic's lovely and terribly sad poem, written in 1993, alluding to several of my favorite characters forlornly bearing witness to the destruction and burning of Sarajevo's Town hall (Vijecnica) – the National University Library.

### LAMENT FOR VIJECNICA

by Goran Simic<sup>4</sup>

*The National Library burned for three  
days last August*

*and the city was choked with black  
snow.*

*Set free from the stacks, characters  
wandered streets,*

*Mingling with passers-by and the souls  
of dead soldiers.*

*I saw Werther sitting on the ruined*

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<sup>4</sup> GORAN SIMIĆ *Lament for Vijecnica* (1993), in *SPRINTING FROM THE GRAVEYARD* 14 (English Translation by David Harsent, 1997), also available at <http://permalink.gmane.org/gmane.education.libraries.mela/8352>. See Patty Gerstenblith, *The Destruction of Cultural Heritage: A Crime against Property or a Crime against People?*, 15 J. Marshall Rev. Intell. Prop. L. 336 (2016).

*graveyard fence;  
I saw Quasimoto swinging one-handed  
from a minaret.  
Raskolnikov and Mersault whispered  
together for days  
in my cellar; Gavroche paraded in  
camouflage fatigues;  
Yossarian was already selling spares to  
the enemy; for  
A few dinars young Sawyer would dive  
off Princip's bridge.  
Each day—more ghosts and fewer people  
alive; and  
The terrible suspicion formed that the  
shells fell just for me.  
I locked myself in the house. I leafed  
through tourist guides.  
I didn't come out until the radio  
told me  
How they'd taken ten tons of coals from  
the deepest cellar  
of the burned-out National Library<sup>5</sup>.*

Too many great works and monuments to heritage go up in smoke. Cherif understood that achieving international criminal justice is an exercise in public international law, comparative law, language, and culture. These are intellectual activities –verbs– that can be useful in revealing and making

functional the “instinctive and deepest moral values” innate in us<sup>6</sup>. Language, culture, poetry, and fiction, provide inspiration for and insight into the need for an international criminal justice system. This is because these reveal our common personhood and solidarity, which underlie our need for such a system. Considering the need to establish viable international criminal justice and what it needs to be is also something of a jurisprudential reflection on atrocious crime and punishment, which are part of the ethos, pathos, and logos of life and law. Law, itself, is like a language—a culture. An international criminal justice system ultimately will have its own culture, language, nature, and law. Considering the need for such a system and figuring out what it needs to be are a matter of applying international law and comparative law. The way we address this need will be an intellectual memoir for better or worse<sup>7</sup>. Cherif Bassiouni's life in these arenas represents a positive and important intellectual and action memoir. I am honored to have played a small part in this memoir.

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<sup>5</sup> *Id.*

<sup>6</sup> See Christopher L. Blakesley, *Law, Language, Crime, and Culture: The Value and Risks of Comparative Law*, 49 *Crim. L. Bull.* 438 (2013).

<sup>7</sup> See Christopher L. Blakesley, *Wrestling Tyrants: Do We Need an International Criminal Justice System?*, 48 *The University of the Pacific Law Review* 175 (2017).



## In Memoriam

Emma BONINO

Senatrice e fondatrice di No Peace Without Justice

**È** passato quasi un anno dalla morte dell'amico Cherif Bassiouni. In un momento in cui i valori e i principi per i quali ha combattuto sono di nuovo gravemente minacciati, la sua mancanza è profonda e la sua assenza è palpabile.

Il Professor Bassiouni, Cherif, era famoso in tutto il mondo – non solo nella comunità giuridica o in quella per la difesa dei diritti umani – per il suo instancabile lavoro a favore delle vittime di gravi crimini, sempre dalla parte della giustizia e di un forte ordinamento giuridico internazionale. Cherif era una delle menti giuridiche dei nostri tempi e promuoveva e difendeva la legge come mezzo per proteggere e difendere le persone. Il suo lavoro su varie commissioni internazionali, inchieste e anche altrove è stato strumentale per portare la necessaria chiarezza, attenzione e rigore intellettuali all'allora nascente mondo della giustizia penale internazionale.

Mi piace pensare a lui come a un

collega attivista per i diritti civili e politici e per la libertà. Aveva intuito, e credo avesse ragione, che la libertà più importante di tutti è la “libertà dalla paura” e che è diritto di tutti quello di essere liberi dalla paura con la certezza che nessuno possa portarti via nel cuore della notte.

A livello personale, era immensamente premuroso, elegante e generoso di spirito. Un vero gentiluomo d'altri tempi. Ma, a differenza della maggior parte di noi, la sua eredità va ben oltre alle sue squisite caratteristiche personali: i Tribunali Criminali Internazionali per l'ex-Jugoslavia e per il Ruanda, che erano per molti versi i precursori del Tribunale Penale Internazionale permanente, non sarebbero stati istituiti senza il suo rigore intellettuale, la sua implacabile difesa e le sue capacità politiche.

La stessa Corte Penale Internazionale non sarebbe nata senza la sua dedizione e il suo impegno. Ricordo la passione con cui ha lavorato con i nostri amici a No Peace Without Justice dal 1995 al

1998 per determinare quel supporto necessario alla Conferenza diplomatica che alla fine avrebbe stabilito lo Statuto di Roma della CPI. Insieme, abbiamo fatto una campagna a Roma e a Parigi e ci siamo anche ritrovati a Dakar, lavorando con un giovane attivista senegalese per i diritti umani, Sikidi Kaba, che oggi è il Ministro degli Affari Esteri del Senegal e ha appena concluso il suo mandato come Presidente della Assemblea degli Stati Parte della CPI). Con lui abbiamo lavorato per promuovere la leadership africana a sostegno della Conferenza di Roma e altrove, dall'Uruguay fino al Porto di Spagna, dove ha ispirato il Presidente Arthur Robinson a riunire gli Stati CARICOM e dell'America Latina per sostenere la giustizia internazionale.

Alla stessa Conferenza di Roma, come presidente del Comitato di redazione, Cherif lasciò un segno indelebile; il suo successo rappresenta uno dei più grandi segnali al mondo che l'impunità non sarebbe stata più accettata.

Più tardi, ma molti anni prima rispetto ad altri, Cherif ha intravisto gli emergenti segnali delle attuali difficoltà che la CPI sta affrontando come efficace deterrente a livello globale. Ancora una volta, ci siamo

trovati a fare campagne insieme, per promuovere l'idea che la CPI non può essere la risposta (o l'alibi) per ogni atrocità. Ha intuito, prima di molti altri, il valore insito nella promozione di processi di responsabilità nazionale, che spezzino il ciclo dell'impunità a livello locale, di modo da essere più vicini alle società colpite dai conflitti e determinando un maggiore potenziale di impatto sulle dinamiche politiche rispetto all'impunità.

Dati i recenti sviluppi in campo e in tutto il mondo, sappiamo che il lavoro non è finito. Ma il suo impegno e la prolifica produzione di studi ci hanno insegnato qualcosa, cioè di continuare a lavorare di fronte agli ostacoli apparentemente insormontabili messi in atto da coloro che vogliono servire prima i propri interessi rispetto a quelli del loro popolo o dell'umanità.

L'eredità di Cherif per me è forse proprio questa: lavorare instancabilmente per proteggere i diritti umani e lo stato di diritto, e per scoraggiare e negare coloro che vorrebbero abusarne – qualunque sia lo stato del mondo, qualunque sia il forum, chiunque sia l'accusato. Spero che con i nostri amici di No Peace Without Justice possiamo continuare a servire fedelmente questa visione.

## In Memoriam: M. Cherif Bassiouni

Leonard L. CAVISE

Professor of Law, Emeritus, DePaul College of Law;  
Former Deputy Secretary-General, Association Internationale de Droit Penal

Elsewhere in this memorial tome, the reader will find detailed descriptions of Cherif's many international contributions as a leading voice in international organizations united around questions of due process and freedom for the oppressed. From the Chairmanship of the Drafting Committee of the International Criminal Code to his leadership in the international community of scholars, others will write of his prodigious legacy. As a former faculty colleague of Cherif's at the DePaul College of Law, I have chosen to write of Cherif's accomplishments at DePaul, his home base for over 40 years.

Cherif was named a Professor of Law at the law faculty in 1964. He was given the honorific titles of Distinguished Research Professor in 2002 and Professor of Law Emeritus in 2009. He was given the DePaul Via Sapientiae award, the highest award available to honor faculty "who have

made distinctive and extraordinary contributions to the University throughout their professional lives." To continue speaking solely of DePaul's recognition of Cherif's work, he received various distinguished service awards, the humanitarian award, faculty service award, the "Spirit of DePaul" award, and the excellence in scholarship awards. He was University Marshall for five years and a member of several very select committees, including Dean's selection, special events, and curriculum committees.

At the law school, Cherif will perhaps be best remembered as a co-founder and, subsequently, President of the school's International Human Rights Law Institute. In that capacity, he raised over \$20 million for the Institute's work, establishing important projects in Latin America, Central and Eastern Europe, and the Middle East, including an important rehabilitative project in Iraq beginning in 2003. The Institute was



a singular presence at the College of Law, with foreign jurists and law students coming to DePaul on a regular basis to either learn the American trial system or simply to increase appreciation in the United States for the various legal systems of the world. Cherif made certain that our visitors had access to our foremost authorities in various disciplines. He made sure that his classes also met with our guests so that generations of DePaul students would have an international and human rights perspective unavailable at the time in practically any other U.S. law school. European scholars and jurists also made it a point to put DePaul on their itineraries not only to meet with Cherif (who would immediately cajole them into taking on positions of responsibility in the AIDP) but also to take advantage of DePaul's international profile and myriad resources. Several eminent European friends even today recall their "fellowship" or "intern" days at DePaul, always under the sponsorship of Cherif.

Everyone at DePaul will also remember Cherif's work as the Special Rapporteur for War Crimes in the former Yugoslavia. The "command room" for the investigations conducted by Cherif and his staff was on the eighth floor of

the College of Law, where thousands of sensitive files, videotapes, and court documents were kept under lock and key for use in the tribunal. The energy with which Cherif approached this great responsibility was remarkable. To supervise the investigation would, in itself, be enough. Somehow, Cherif managed to travel widely in search of evidence and to inform the world of the atrocities he had documented and, at the same time, he ran the Institute, taught his classes, raised the money and eventually pursued the prosecution of a large number of war criminals, perhaps the largest and most significant since the Nuremberg trials.

Others will speak here of the war crimes investigations, just as others will write of his undying allegiance to his beloved Siracusa Institute and its programs of experts from around the world. Many at DePaul were able to share in the work of the investigations and of the Institute. Cherif facilitated the involvement of many of us in his work. For most at DePaul, it was their first exposure to international work and, for many, it had a lifetime, transformative effect.

Though Cherif's scholarship has been discussed and analyzed by many, it is perhaps worth repeating that, while Cherif was at DePaul, he wrote most of those 24 books and his 256 articles.

Many of those works were written in one of the four languages in which Cherif was fluent. Many others were translated into a score of other languages. Whether he was writing about Sharia or Arabic law, comparative criminal procedure, the rights of the extradited, torture, substantive criminal law or any number of historical works, Cherif's body of work can certainly be described as encyclopedic. Perhaps more than any other scholar in international criminal law and procedure, Cherif was a master analyst and synthesizer. He wrote as he spoke: thoroughly, structurally flawlessly, and articulately. Regardless of his U.N. obligations, his role as a leader in the non-governmental organization community, or his regular administrative and teaching duties, scholarship and the advancement of both theoretical and practical understanding was always high on his daily agenda, including weekends when Cherif would "relax" by writing.

Not to be overlooked is Cherif's role as a litigator and consultant. Cited in hundreds of legal opinions and thousands of legal journals, it was only natural that Cherif would be sought out both for his advice but

also for his actual representation in various sorts of lawsuits, particularly when he thought he could help the Arab community in Chicago.

As a law professor, Cherif taught literally thousands of students in a wide variety of courses at DePaul. He often picked his best students to help him in one of his projects du jour. It would be nearly impossible to estimate how many DePaul law students served as research assistants to Cherif and, consequently, used him as an inspiration to continue international human rights work.

On perhaps a less professional and more personal note, I also recall Cherif fondly as an entertainer. I remember many a night in the salon of the Villa Politi in Siracusa when Cherif would gather a number of the dignitaries around him from a handful of countries and entertain them all with his stories from the trenches. I particularly recall his joke-telling abilities. He could tell jokes with a true comedian's sense of timing in four languages and then translate for anyone who couldn't follow along. Always at the center of attention and always worthy of the intense focus, Cherif Bassiouni was a leader in every sense of the word.



## In Memoriam

Dany COHEN

Agrégé des Facultés de droit, Professeur des Universités à Sciences Po (Paris)

C'est au milieu des années 80 que remonte mon premier contact avec Chérif Bassiouni. Je ne peux cependant pas dire que j'ai alors fait sa connaissance: d'abord parce que, comme beaucoup, je le connaissais déjà de nom; ensuite parce j'eus ce premier contact à distance et sans le voir: dans un dossier pénal, il venait, sur une question complexe, de suggérer mon nom. C'est seulement en 1989, lorsqu'il m'invita à participer aux journées d'études organisées à Syracuse par l'AIDP, que je l'ai rencontré physiquement.

On ne pouvait qu'être impressionné par l'aisance déconcertante avec laquelle il répondait à chaque interlocuteur dans la langue de ce dernier, passant de l'anglais à l'italien, au français, à l'arabe, sans l'ombre d'une hésitation. Et l'on était d'emblée séduit par ses qualités intellectuelles – et, ce qui est moins fréquent, son intelligence des situations – son brio, la rapidité de son esprit.

Cette intelligence, sa position, l'élégance de son expression et de ses manières, auraient pu instaurer une distance, spécialement à l'égard des plus jeunes; mais sa façon affable, chaleureuse, souvent drôle, enveloppait l'intimidé, créant un climat bonhomme qui donnait presque l'impression d'être de ses familiers.

Un soir, à Syracuse, ses amis lui offrirent un vieil armagnac; manipulant la bouteille, s'attardant sur l'étiquette, qu'il semblait lire comme un texte législatif, il tourna vers eux – qui s'attendent à voir la réaction de plaisir du gratifié – un visage gourmand et faussement dubitatif: «il ne doit pas être très bon, puisque je lis Bas armagnac».

Je l'ai revu à quelques reprises, à Syracuse, à Chicago, à Paris, avec le même plaisir; et quoique nos rencontres fussent très espacées, il donnait à chaque fois la stimulante sensation de reprendre une conversation interrompue la veille.

C'est cela qui me restera de lui.

A Chicago, où j'étais allé le voir à l'occasion de la mission organisée en 2001 par la Fédération Internationale des droits de l'Homme sur la peine de mort aux Etats-Unis, il avait affiné ma perception des réalités judiciaires américaines et m'avait mis en contact avec notre collègue Andrea Lyon, dont j'avais admiré le travail et la capacité à mettre en lumière, avec ses étudiants, des erreurs judiciaires fatales.

Cartésienne, rigoureuse, sa pensée n'en reposait pas moins sur un socle

de valeurs humanistes, qu'il tenait manifestement (et à juste titre) pour universelles; il n'était pas dans son tempérament de les brandir en étendard, mais elles affleuraient dans son discours, comme autant d'éléments solides striant l'eau d'un torrent. Dans cet univers singulier du droit pénal, où les flambées de démagogie, mêlées à ce que les manuels classiques appelaient «les nécessités de la répression», menacent par endroits de tout emporter, cette fermeté joviale contribuait à la noblesse de Chérif Bassiouni.

## **M. Cherif Bassiouni: admired professor and great President of the AIDP**

**José Luis DE LA CUESTA**

Honorary President, AIDP

Member of the Board of Directors, Siracusa International Institute for  
Criminal Justice and Human Rights

**T**he first time I met Cherif Bassiouni was in Siracusa, in December 1976. Always on the alert for the training opportunities that were open to his disciples, our mentor Antonio Beristain heard that the ISISC was preparing a Specialized Seminar on International Criminal Law for doctoral students (2-14 December) and made the necessary arrangements so that both, Luz Muñoz, already Graduate, and me, could attend the seminar. Even if I had already started collaborating with the Criminal Law Department, I was still a student of the Law Degree at the Faculty of Law in San Sebastian. The opening lecture of the Course was given by the Dean of the ISISC, M. Cherif Bassiouni, Professor at the DePaul University (Chicago) and recently elected new Secretary General of the International Association of Penal Law (AIDP). For someone who was used to traditional, and too often unattractive, lectures at the Faculty, the impact was colossal.

After giving a warm welcome to everyone with his elegant cordiality – greeting, by the way, everyone in their respective language –, he proceeded to present the history, object and content of international criminal law, skillfully encouraging the participation of all those present in a way that I will never forget. The evenings around the staircase of access to the rooms of Hotel Villa Politi, entertained by the guitar of Christine Van den Wyngaert, are also unforgettable. During those evenings, besides singing, and in an excellent environment of communication and camaraderie, students and professors shared reflections on international issues, the criminal system, our concerns about the future of academic life in different countries... The Seminar, which was followed by an International Conference on teaching, research and practice in International Criminal Law (December 14-17 1976), marked me deeply. The attraction for Bassiouni's work led me to propose him the

translation into Spanish of different texts, and particularly, his Project of International Criminal Code. Furthermore, since then, the concern for the international regulation of the issues addressed has been present in my studies and research.

After having completed the doctoral thesis and once appointed Senior Lecturer Reynald Ottenhof invited me to participate in the editorial team of the *Revue Internationale de Droit Pénal*, with the purpose, among others, of opening the *Revue* to the publication of texts in Spanish. After the election of Bassiouni as AIDP President in the Congress of Wien, 1989, I joined his Executive Committee as one of the Deputies to the Secretary General; he also appointed me as a member of the Board of Directors of ISISC in 1992. In the summer of 1994 I had the opportunity to benefit from a research stay at the International Human Rights Institute of DePaul University, and to experience once again his (and Len Cavise's) great and generous hospitality. I remember with special affection the visit to his house on the edge of Lake Michigan, where my son Imanol, who accompanied me, enjoyed particularly talking to Cherif's father, a retired diplomat, whose good sense, culture and experience aroused the admiration of

all of us.

All those who have had the privilege to collaborate closely with a personality of the charisma and qualities of Cherif, have asked ourselves more than once where his strength came from in his contagious passion for justice and international criminal law: leading him, for instance, to seek private funds to support the Committee of experts established by the UN Security Council – who had nominated him as Chairman – during the investigation of war crimes in the former Yugoslavia, since such a Committee was not receiving the necessary resources from the bureaucratic structures of the United Nations.

I think it was in one of those unforgettable evenings at Hotel Villa Politi that I heard him explain an event of his childhood, which I have later seen described in more detail in the extract of his acceptance speech of the *Wolfgang Friedmann Memorial Award* [*Columbia Journal of Transnational Law*, 51:1, 2012]. In 1942, when he was only five years old, he saw his mother crying, when, hiding both behind a curtain, they listened from the hallway how a German Jewish visitor explained to his father, in the hall, what was happening in the German concentration camps. Noticing the

restlessness of the child, his mother explained to him the terrible things that were happening in Germany: that they marked the Jews as animals before killing them. That made a deep impression on him to the point of going out with his toy gun “to kill Hitler”, the one responsible for such atrocities, during the next German bombing of Cairo. As Cherif himself recognised, these experiences remained deeply recorded in his heart and decisively affected the course of his life as a jurist and as a person. A jurist trained in Cairo, France, Switzerland and different universities of the United States of America

(Indiana University, John Marshall Law School, University of George Washington), who finally stayed in Chicago, at DePaul University, member since 1964 of its Faculty Council. A person who dedicated his life to the construction of an international criminal justice system, able to fight effectively against the most serious international violations of human rights and for whom, as he summarized in his farewell message, truth, justice and peace are fundamental values that all of us, and especially jurists, must strive to ensure and promote.

In the AIDP, Bassiouni entered the



M.C. Bassiouni and Jose Luis de la Cuesta



Executive Committee in 1972, with his nomination as Deputy Secretary General; he was then elected Secretary General by the General Assembly in 1974 and President in 1989, remaining in office until 2004. His more than thirty years of direct service to the AIDP constitute one of the most brilliant stages of the life of our Association, with intense presence and influence at international level. Such evolution reached its peak with the approval of the Statute of the International Criminal Court by the Diplomatic Conference of Rome, in which Bassiouni presided over the Drafting Committee.

At the end of his third term in 2004, Cherif Bassiouni decided not to stand for re-election and was appointed Honorary President. Being elected at the Beijing Congress as the successor of such a high personality – the president and excellent professor who I greeted for the first time in Siracusa, when I was still a student, in December 1976, and with whom I had the privilege of collaborating intensely during long decades – constitutes, undoubtedly, the highest honour received in my academic life and I will always be grateful from the depths of my heart.

## Thank you Cherif

### Helmut J. EPP

Vice-President in charge of External Relations, AIDP.  
Member of the Board of Directors, Siracusa International Institute  
Judge (ret.), Vienna, Austria

The first time I met Professor Bassiouni was the “famous” conference of young penalists in Varna, Bulgaria in 1976. It was my first appearance outside Austria, where I had joined the AIDP in 1975 when entering the department of international criminal law and human rights of the Ministry of Justice. The Austrian National Group of AIDP had been established only one year earlier at the AIDP Congress in Budapest in 1974.

While I myself was a bit insecure in an environment that should later become my big family, I was overwhelmed by the friendliness of Cherif at this conference in which I met for the first and only time also other famous AIDP representatives of the 1970ies as Prof. Laszlo Viski and Prof. Grebing.

In the time after this Varna Conference I visited the Siracusa Institute quite often and had the chance to get better acquainted to Cherif. What was so very exciting was

on the one hand Cherif’s readiness to openly listen to his conversational partner and on the other hand to explain in his absolutely fascinating way situations, legal problems and viable solutions.

It was also in Siracusa that I met Cherif’s wife Nina, who passed away so very untimely, and his stepdaughter Lisa, whom my wife Bettina and I myself met again after Cherif’s passing away here in Vienna. The real big event in which I collaborated closely with Cherif Bassiouni was the 1989 AIDP Congress. I cannot remember how often Cherif mentioned this Vienna Congress which marked the 100th birthday of AIDP/IKV. I think it was his conviction that this was a very important congress that took place in the charm of Vienna and where he was elected president of AIDP with Reynald Ottenhof at his side as secretary general. This congress marked also my entry into the core of the Association being elected

assistant treasurer.

From now on I was involved in the scientific and administrative life of the Association, experiencing the scope of knowledge and the influence of the Association in the development of international criminal law. The most important development was certainly the creation of the International Criminal Court in which Cherif played a vital role, eventually as president of the drafting committee in Rome. I am sure that this was Cherif's most prime achievement also with a view to the furthering of world peace and justice. However, one must not disregard the role Cherif played in an area which was unknown to many of us, i.e. in international negotiations in many areas of the world, of which I would just like to emphasize the Israeli/Palestinian peace process in which he was a trusted partner of both sides based on his knowledge, diplomatic standing, humanitarian convictions and impartiality. A particular task which must have challenged him to his physical limits were the UN mandates to investigate into the war crimes in Ex-Yugoslavia. But these investigations were undoubtedly necessary for the peace process on the Balkans and led finally to the war crime tribunal where Cherif's conviction of an

international criminal justice found its practical application.

The 1994 AIDP World Congress in Rio de Janeiro brought my election as secretary general of the Association. This election demonstrated to me the deep understanding I had with Cherif without being in continuous contact. But when things had to be done on the administrative level Cherif knew that he could rely on me and he honored it by giving me free reign in this area while he himself concentrated on the scientific side of the Association's agenda. So I had the honor to assist the Association until 2004 under Cherif's presidency, when he ended his mandate at the Beijing Congress, while I continued in the capacity a secretary general until 2009.

I just wanted to mention that Cherif and I crossed swords also in one extradition case without knowing one another where I represented the Austrian government before a New York state attorney while Cherif was on the side of the defendant. We often remembered this case at later times.

I think Cherif was always happy when having a chance to travel to Austria. He called me quite often to tell me that he was in Austria for a day or two and he invited me to have breakfast together for quick chat at his

preferred hotel on the Vienna Ring, the Bristol where he always resided when being in Vienna.

Upon proposal of Cherif I became also member of the board of directors of the Siracusa Institute, which gave me the opportunity to meet Cherif at least twice a year, at the occasion of the AIDP board meeting in Paris in summer and the Institute's board meeting in December.

I am still sorry that I could not attend

the Institute's board meeting in 2016 and take part in his birthday celebration. Cherif and I exchanged season greetings after this meeting when Cherif told me that I had been missed. There again was his warm-heartedness, his openness and affection. I did not know that I was not to see him again.

Good-bye Cherif, and thank you for all your kindness.



## Une mémorable soirée autour de Chérif Bassiouni

François FALLETTI

Ancien procureur général de Paris. Avocat (Carlara international)

Membre du Conseil de Direction, AIDP

Ancien président de l'association internationale des procureurs (IAP)

C'était une de ces soirées d'hiver pendant lesquelles la nuit étend sur Syracuse sa fraîche obscurité aux antipodes de l'incandescence de l'été. Le visiteur peine alors à imaginer la ville d'Archimède baignée quelques mois plus tôt dans la brûlante atmosphère du cœur de la Méditerranée. Il réalise avec une pointe d'impatience combien le temps sera encore long jusqu'au retour triomphal de la lumière qui sied si bien à la terre de Sicile. Même le trop court éclat d'un soleil bas sur l'horizon semblait ce jour là conçu pour mieux souligner la présence lointaine du volcan qui dispersait ses cendres noires sur les trottoirs de la ville aux deux théâtres.

En cette soirée de décembre, pourtant, au Grand Hôtel, l'atmosphère était joyeuse. Le comité directeur de l'AIDP prenait un peu de détente après quelques longues journées d'un travail ardu. A la même période, l'institut avait accueilli un séminaire associant une vingtaine

d'experts pour plancher sur l'élaboration de lois types devant servir de modèle aux Etats pour transposer les conventions des Nations-Unies dans le domaine de l'extradition et de l'entraide pénale. Les discussions avaient été vives, spécialement, comme toujours, entre les tenants de la *common law* et les spécialistes du droit continental, dont j'étais, avant que nous ne finalisions des projets conciliant autant que faire se peut les exigences découlant des différentes traditions juridiques.

Au terme de ces journées aussi étirées que passionnantes, un diner d'adieu était bien mérité! C'est dire combien la trentaine de convives issus de toutes les parties du globe avaient plaisir à échanger librement sur les sujets les plus divers dans un climat d'amitié. Dans ces moments là s'incarne la fascinante force de l'AIDP, construite sur l'enrichissement mutuel apporté par la diversité de ses membres, tous experts avertis de leur matière.

Au milieu de cette petite foule, un

homme, un symbole à lui tout seul de cette force tranquille du Droit, dont le nom seul suffisait à imposer respect et silence dès qu'il prenait la parole, se mêlait pour l'heure au bruyant tumulte des conversations. Au cœur d'une équipe dynamique et chaleureuse, Chérif Bassiouni n'incarnait-il pas l'AIDP, toujours imprégné de ses attaches égyptiennes, son ancrage à Chicago, ses liens avec la France, ses contacts soutenus avec tant de lieux à travers le monde? L'un des membres du bureau vint soudain me tirer de ces méditations à peine troublées par la plaisante dégustation des premiers antipasti.

«Chérif a été récemment distingué dans l'ordre français de la Légion d'Honneur», chuchota-t-il à mon oreille en adoptant la mine d'un conspirateur sicilien, avant de poursuivre: «Il en est très fier. La cérémonie de remise a eu lieu il y a quelque temps. Malheureusement, pour d'évidentes raisons, il n'a pas pu associer à ce grand moment tous ceux qu'il aurait voulu y voir participer, dispersés au quatre coins du Monde. Il faut que tu dises quelques mots comme si on était le jour de la cérémonie de remise».

Bien difficile de répondre par la négative à une telle sollicitation, qui demeurait un honneur en dépit de l'atmosphère détendue. Pas simple

pourtant de concevoir dans le seul temps du plat de résistance un propos illustrant une carrière aussi riche!

J'étais bien embarrassé. «Mais pourquoi moi? Il y a bien d'autres personnes qui seraient mieux qualifiées pour s'exprimer au sujet de Chérif», lançais-je en un effort désespéré de fuir quelque peu lâchement une mission dont je mesurais instantanément qu'il fallait qu'elle soit au niveau d'une assistance aussi choisie et des éminentes qualités du récipiendaire.

«Parce que tu sais bien tout ce que Chérif a apporté au Droit pénal international, parce que tu es procureur général, tu as l'habitude, et en plus tu es français, ce qui convient évidemment mieux s'agissant d'une Légion d'Honneur!». Imparable! Je satisfaisais bien en effet aux trois critères...

Lorsque nous arrivâmes à la fin du dîner et que les couteaux tintèrent sur les verres pour inviter au silence, je me levais et tint devant ce grand Maître du droit pénal international un discours soulignant, aussi bien que je le pus, son immense apport, tant pour sa contribution décisive à la doctrine que vis-à-vis des praticiens et décideurs politiques. Il m'écouta, partagé entre sérieux et amusement, avec ce regard plein de douceur et de conviction qui le caractérisait, avant

d'apporter sa réponse, brillante et inspirée, selon l'usage des cérémonies de remises de médailles.

Ces quelques instants de chaleur communicative entre tous sont le fruit de l'esprit qu'avait su insuffler Chérif à notre communauté de juristes tous passionnés de Droit international. Ils sont de ceux qui demeurent dans la mémoire et vous

soutiennent des années durant dans cette belle mission de rayonnement du Droit à laquelle nous sommes tant attachés par delà la distance et les différences.

Merci, Monsieur le Président Bassiouni, d'avoir su auprès de tant de juristes et de décideurs à travers le Monde initier un souffle puissant qui ne s'épuisera jamais.





## The legacy of my friend M. Cherif Bassiouni

**Benjamin B. FERENCZ**

Honorary Membre of the Board of Directors, AIDP  
Former Chief Prosecutor for the United States Army  
at the Einsatzgruppen Trial at Nuremberg, Germany

**O**n Sept. 5, 2017, just two days before he died, my friend M. Cherif Bassiouni sent me a solemn farewell note: “From God we come and to God we return”. He cited Prophet Mohammad, Pope Paul IV and Rabbi Simeon ben Gamaliel to express the diverse religious values that had guided his own life. What they all had in common was their search for truth, justice and peace in the world. These have been my own guiding goals as well.

Born in Cairo, on December 9, 1937. Cherif served in the Egyptian army and was educated in Europe before migrating to the United States in 1962. His career as a lawyer was phenomenal. For many years, he was noted as a distinguished Professor at DePaul University in Chicago. His teaching and lectures were buttressed by an avalanche of books and articles that made him an outstanding leader in the field of international criminal law. He was elected President of several prominent legal organizations and the

organizer of important conferences in Siracusa and special courses for students from different parts of the world. Those from underdeveloped countries were eligible for scholarships. He will be missed at future meetings of the Association of Criminal Law (AIDP) and its related human rights organizations. In all his teachings Professor Bassiouni sought to protect the legal and human rights of people everywhere. The highest tribute we can pay to the memory of this important leader of international law is to recall and honor the principles for which he stood.

Bassiouni’s textbooks chronicled the evolutionary progress of international law from its early origins through the Nuremberg trials and thereafter. We shared the view that the person who might be credited as the originator of modern international criminal law was the Romanian diplomat Vaspasien V. Pella whose book “La Criminalite Collective des Etats et le Droit Penal de l’avenir”, conveyed his

concern that British pound notes were being forged by many other countries, and there was no legal way to hold such official criminals to account. He called for the creation of an international criminal court.

I had studied Pella's writings as a student at the Harvard Law School and had corresponded with him and his work at the League of Nations. Following his death in New York in 1960, I called upon his widow to pay my respects. Since she knew that I shared the views of her late husband, she offered to give me a large collection of Pella's books. I suggested that nearby Columbia University might be a more appropriate recipient. She then asked me to accept a small box that held an engraved medal that had been presented to Pella in recognition of many years of service as President of the Association International de Droit Penale (AIDP). The obverse side showed an embossed figure of a well – decorated Pella – which resembled my friend Cherif!

Many years later, when the AIDP was celebrating 25 years of service by its then President – Cherif Bassiouni – I decided to fly to Budapest to present the Pella Medal to him. It was understood that the medal would be passed along to whatever person – male or female – who had earned

recognition for outstanding advancement of international criminal law. Several years later, Cherif handed it over (in an elaborate frame), to highly respected Professor William Schabas, who is now the guardian of this special trophy.

In a world torn by incessant strife, Bassiouni's erudite writings, lectures and organized conferences appealed for a more humane world governed by law. The International Criminal Court set up at Nuremberg by the victorious allied powers after World War Two, sought to define and clarify the permissible limits of human behavior. They recognized that crimes are committed by individuals who should be held to account in a court of law. Aggression was condemned as "The supreme international crime". The Russians labelled it a "Crime Against Peace".

In December 1945, the first General Assembly of the new United Nations agreed to criminalize "the crime of aggression". The precise parameters of that offense were not spelled out. UN committees were mandated to seek consensus. It would be a long time in coming. In 2013 Cherif Bassiouni was assigned to head the drafting committee when nations of the world assembled in Kampala Uganda, to seek final agreement on a revised statute for the planned international

Criminal Court. An acceptable definition of aggression as a crime punishable by an international court is still a major stumbling block.

It should have become apparent, that major powers led by the United States, were not willing to allow any untried foreign court to decide whether their military action was lawful. They found problems with every proposed solution. Although I had written extensively on aggression and noted some progress. I gradually became convinced that those who were concerned with halting war-making would be well advised to also seek another path to world peace. It finally dawned upon me, that a solution was staring us in the face.

The Rome Statute creating the International Criminal Court, held the answer in Article 7 dealing with offenses that can be prosecuted as Crimes against humanity. It lists over a dozen different categories of atrocities, such as murder, extermination, rape, deportation, torture and "other inhumane acts of a similar character" etc., etc., many of which inevitably occur during periods of armed conflict. They also violate prohibitions proclaimed in countless human rights declarations reflecting the views of decent people everywhere. Perpetrators and accomplices of massive cruelties

should be put on notice that their days of immunity are numbered.

To reinforce my new thinking, I consulted a number of outstanding scholars whose views on crimes against humanity (CAH) I respected. Cherif Bassiouni, who had authored a book on Crimes Against Humanity, was one of the first. I cornered him in Washington as we were leaving an American Society of International Law meeting. "Tell me Cherif", I asked, "Can we charge aggression as a crime against humanity?" "of course!", came the immediate response. We then went on to agree that, of course, a fair trial would be mandatory. Professor Leila Nadya Sadat of Washington University in St. Louis, another dear friend was also a prominent author on the topic having edited an excellent book "Seeking Accountability for the Unlawful Use of Force". Professor William Schabas, another renowned scholar who wrote on the subject, after some hesitation, had supportive views. The greatest encouragement came from Cherif in a letter dated April 6, 2012: "I think it was a brilliant idea to think of inserting "aggression" as part of CAH".

Unfortunately, the world is still torn by human rights violations and the illegal use of armed force in violation of the UN Charter. The enduring

legacy of Cherif Bassiouni should be recognition that, despite great odds, he was not discouraged and pointed

the way to a more humane and peaceful world bound by the rule of law. No one should ask for more.



From left to right: William A. Schabas,  
Benjamin B. Ferencz, M. Cherif Bassiouni

## **Cherif Bassiouni, professeur de droit pénal international et citoyen du monde**

**Jean-Paul LABORDE**

Conseiller honoraire à la Cour de cassation

Ambassadeur itinérant de l'Assemblée parlementaire de la Méditerranée

**J'** ai connu Cherif Bassiouni alors que je menais une vie tout à fait classique de procureur de la République à Saint-Pierre de la Réunion. J'étais venu pour une réunion des procureurs de toute la France à l'École nationale de la magistrature, à Paris. À l'occasion de cette réunion avait été organisée une session de réflexion sur le changement éventuel de la procédure pénale française du modèle inquisitoire au modèle accusatoire qui tirait, en ces temps-là le petit monde de la procédure pénale en France. Et c'est ainsi que j'ai entendu une voix, parlant un français parfait et qui nous disait que le problème n'était pas du changement de l'inquisitoire à l'accusatoire mais bien plus d'une augmentation sensible des principes du contradictoire que ce soit dans les procédures inquisitoires ou accusatoires. Il disait alors qu'il habitait les États-Unis et était reconnu comme l'un des plus grands professeurs de droit pénal qu'il ne

fallait surtout pas changer le système inquisitoire pour le système accusatoire, ce dernier étant encore plus injuste que le premier. Il ajoutait que le système accusatoire était un système où l'argent était roi et qu'il était encore plus injuste que le premier. Dans cette même session, il y avait également le professeur Jean Pradel et le professeur Reynald Ottenhof, tous les deux bien connus de tous et qui défendaient tous les deux la même position. C'était un matin et Cherif Bassiouni partait l'après-midi pour Rome pour aller voir le professeur Vassalli. Il se trouve qu'en moins de deux heures, compte-tenu de cette position très importante qu'il avait exprimée durant la session à l'École nationale de la magistrature, une réunion fut organisée entre lui et le ministre délégué à la justice de l'époque, Georges Kiejman. J'ai pu assister à l'entretien durant lequel j'ai compris combien Cherif Bassiouni était à la fois attaché aux droits de l'homme et porteur d'une vision très

claire de l'avenir de la procédure pénale qu'elle soit française ou internationale. La réforme ne fut pas adoptée mais les éléments contradictoires entrèrent vraiment dans la procédure pénale française. Chérif avait deviné où étaient à la fois les intérêts de la procédure pénale et de l'enquête d'une part et des droits de la personne humaine et de la protection de l'État de droit, d'autre part. Plus il est reparti pour ses voyages interminables, voyageur infatigable au service du droit pénal, de la procédure pénale et des droits de la personne humaine.

Je rentrais tranquillement à l'Île de la Réunion et reprenais mon travail de procureur sans penser que cette rencontre allait bouleverser ma vie professionnelle et personnelle. Les hasards de la carrière faisant que je devais rentrer à Paris quelque temps après, je reçus un jour une communication téléphonique du secrétaire général de l'époque de l'Association internationale droit pénal, Reynald Ottenhof. Il me demandait, au nom du professeur Bassiouni, de participer à la commission d'enquête des Nations Unies sur les crimes commis en Ex-Yougoslavie. Je répondais que cela me paraissait difficile, au regard des fonctions de l'Inspection des services pénitentiaires français que j'exerçais à

l'époque. C'était sans connaître la force de persuasion de Cherif Bassiouni lorsqu'il voulait quelque chose et c'est ainsi que je me suis retrouvé à ses côtés à Genève, pour deux mois, sur instruction conjuguée du ministère des affaires étrangères et du ministère de la justice français! J'étais donc pris dans la spirale du droit pénal international et je me retrouvais très rapidement secrétaire général adjoint de l'Association internationale de droit pénal dont il était le président et secrétaire général de la Revue internationale de droit pénal dont le rédacteur en chef était Reynald Ottenhof. Immédiatement Chérif m'a fait connaître l'Institut de Syracuse. Lorsque j'ai rejoint, peu de temps après, sur sa recommandation, l'Office des Nations Unies contre la Drogue et le Crime, j'y retrouvais mon ami Jean-François Thony que je mettais en relation avec Cherif Bassiouni... La suite vous la connaissez! Voilà comment Chérif nous a fait contracter le virus du droit pénal international qui ne nous a plus quitté! Il savait mieux que personne entraîner les femmes et les hommes à sa suite, dans cette passion incroyable qu'il avait pour les droits de l'homme et le droit pénal international. D'autres parleront mieux que moi de son rôle éminent dans la création à la fois du Tribunal Pénal International

pour l'Ex-Yougoslavie et de la Cour pénale internationale, et en particulier dans son texte fondateur du Statut de Rome. Mais ce n'est qu'une petite partie de sa connaissance et de son implication dans le développement du droit pénal international. Tout d'abord impliqué dans la reconstruction de la justice en Afghanistan et en Irak, puis allant constater les violations des droits humains en Lybie, il était de tous les combats et l'Institut servait de lieu de réflexion et de caisse de résonance pour mieux repartir dans ces combats. Tous les amoureux, les combattants du droit pénal international sont passés par Syracuse pour venir rencontrer Cherif et discuter librement des stratégies à mener. Mais, il a été également un des acteurs les plus éminents, à la fois sur le plan théorique et pratique, du développement des instruments et outils du droit pénal transnational. Ses écrits sur l'extradition, l'entraide judiciaire et les autres mécanismes de la coopération dans sa matière pénale constituent des ouvrages uniques sur ces matières. Ils nous ont aussi ouvert le chemin et donné la vision qui permettent aujourd'hui à la communauté internationale de concilier les impératifs des droits de la personne humaine et ceux de la lutte contre la criminalité transnationale

organisée, plus spécialement les mafias. Initiateur avec Eduardo Vetere, l'ancien directeur du Centre International pour la Prévention du Crime, il a milité avec acharnement, à l'Institut international de Syracuse pour que cette pieuvre soit vaincue. Mais ne parler de Cherif qu'en évoquant son aspect professionnel, serait amputer son portrait d'une grande partie de lui-même car il était, avant tout, un amoureux de la vie, de cultures aussi variées que celles du Moyen-Orient, de l'Amérique Centrale, du Nord et du Sud, de l'Asie en passant par l'Europe. Chaque fois, il se glissait dans ces cultures si différentes comme si elles étaient les siennes. Évidemment, ses talents incroyables de polyglotte l'y aidaient fort mais quand même!!! Il était partout chez lui, sans façon, sans effort! Bien sûr, il était chez lui en France puisqu'après avoir étudié chez les Pères jésuites du Caire alors qu'il était musulman, il s'est retrouvé à la Faculté de Dijon... qu'il a quitté pour se battre contre la France et le Royaume Uni durant la guerre de 1956, guerre durant laquelle il a accompli des exploits incroyables qui lui ont valu la plus haute décoration égyptienne. Mais il a quitté son pays lorsqu'il a vu que les droits de la personne humaine n'y étaient plus respectés... et il est arrivé aux États-



Unis pour devenir ce qu'il a été, un des plus grands professeurs de droit pénal de notre temps.  
Tout ça pourquoi me direz-vous?

Parce que Cherif était citoyen du monde, un vrai et grand citoyen de notre planète qu'il aimait tant.



From left to right: J.L. de la Cuesta, R. Ottenhof, B. Leroy, G. Vassalli,  
J.F. Thony, M.C. Bassiuni, E. Epp.  
Second row from the left: J.P. Laborde, L. Arroyo Zapatero

## Memories and personal reflections on M. Cherif Bassiouni

**Raimo LAHTI**

Vice-President, AIDP. University of Helsinki, Finland

**T**he subjects related to my meetings and discussions with M. Cherif Bassiouni can be divided into the following spheres: Association Internationale de Droit Pénal (AIDP); extradition and other international co-operation in penal matters; preparation of the establishment of International Criminal Tribunals and the general principles governing international criminal law.

I had the privilege of getting familiar with M. Cherif Bassiouni since my early years as a researcher and a young member of the AIDP. My encounters with him continued from 1969 to the middle of 2010s, primarily within the activities of the AIDP, the Siracusa Institute (ISISC) and United Nations (UN) quinquennial Congresses. Our formal relationship developed into a friendship, and also my wife Varpu enjoyed this friendship with Cherif and Nina.

M. Cherif Bassiouni was very inspiring and encouraging for my

research work and teaching orientation. He emphasized the importance of international scientific contacts, and he taught me to understand the significance of international and transnational criminal law as an academic subject. This learning was an impetus to me to introduce a major subject 'Comparative and international criminal law and criminal justice' into the curriculum of an international LL.M. diploma program of my Law Faculty at the University of Helsinki, launched in 1992.

After having been in 1978 elected as a successor of my teacher, Professor Inkeri Anttila, into the Board of Directors of the AIDP and later to the Chairman of the Finnish Group of the AIDP, I have in line with M. Cherif Bassiouni's advice strived for securing that Finland would be properly represented in AIDP's scientific meetings as reporters and that especially young penalists should be tempted to participate in them.

The Finnish Group should also be willing to arrange preparatory colloquia preceding AIDP Congresses and otherwise further AIDP's objectives.

\* \* \*

As a young assistant in criminal law I took part in the Tenth International Congress of Penal Law in Rome 1969. Its Section IV dealt with the actual problems of extradition. M. Cherif Bassiouni has in several occasions recalled his memories as the United States rapporteur to that congress and its preceding conferences in Freiburg i.Br. and Siracusa. He challenged certain prevailing views by expressing concerns about human rights. In his textbook 'International Extradition: United States and Practice' (3<sup>rd</sup> ed. 1996, p. 5) Bassiouni reminds us that "the emergence of human rights in international law has given rise to a new legal status to one of the participants, the individual, thus placing some limitations on the power of the respective sovereigns that did not exist historically". Bassiouni also (*ibid.* p. 835) refers to the resolution, introduced by him in Siracusa 1969, where it is recommended that "the individual who is the subject of extradition procedure may uphold before

national and international jurisdictions the prerogatives recognized to him by the international treaties, including of course those referencing human rights". (Similarly also in Article XI of the Rome resolution 1969: RIDP, vol. 86, 2015, p. 311).

Over 20 years later, when M. Cherif Bassiouni had been elected to the President of the AIDP, I made as Chairman of the Finnish Group a proposal to organize the preparatory colloquium regarding Section IV in Helsinki 1992 preceding the Fifteenth International Congress of Penal Law (to be arranged in Rio de Janeiro 1994). The proposal was accepted, and also Bassiouni attended Helsinki to open the colloquium. Two kinds of issues were dealt with in Helsinki: the regionalization of international criminal law, and the protection of human rights in international cooperation in criminal proceedings. The Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), was the co-organizer of the colloquium.

The Rio de Janeiro resolution 1994 based on the results of the Helsinki colloquium continued the endeavours of M. Cherif Bassiouni by emphasizing the protection of human rights within the framework of

international cooperation in criminal matters; similarly, the growing recognition of the individual as a subject of public international law should be fostered. The development of multilateral instruments on cooperation in criminal matters was advocated, and also – in order to prevent impunity – the establishment of impartial permanent international courts of criminal jurisdiction was recommended, as “pursued by the AIDP for decades”. (See RIDP, vol. 65:1-2, 1994; and Articles I.1, 10, II.1 of the resolution 1994: RIDP, vol. 86, 2015, p. 386-387).

Extradition and human rights were in the 1990s also under the scrutiny of International Law Association’s committee, which in its reports recognized a need for extradition treaties to accord more fully with the developments in the field of human rights. When I belonged to a working group set up by the Ministry of Justice for preparing Finland’s contribution to the Ninth UN Congress on the Prevention of Crime and the Treatment of Offenders, to be arranged in Cairo 1995, I proposed that Finland would introduce a draft resolution, later entitled ‘International cooperation and practical technical assistance for strengthening the rule of law: development of UN model

agreements’. My idea was accepted and so, as a Finnish delegate in Cairo, I consulted about the draft resolution also with M. Cherif Bassiouni, who was invited to address the general assembly of the Congress. The resolution was adopted by the Congress and later by the Economic and Social Council of the UN.

The next step in the UN decision-making process took place in Siracusa, where AIDP and ISISC in December 1996 hosted an intergovernmental expert group meeting under the leadership of M. Cherif Bassiouni; I represented there Finland’s Government. In its report, the expert group proposed certain revisions to the Model Treaty on Extradition, and those were endorsed by the sixth session of the Commission on Crime Prevention and Criminal Justice and subsequently approved by the General Assembly in Resolution 52/88 of 12 December 1997. (See the website of UNODC: [https://www.unodc.org/pdf/model\\_treaty\\_extradition\\_revised\\_manual.pdf](https://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf) ). For me it was a pleasant experience to deliberate in the expert group meeting with Bassiouni and the active representatives of Germany and the USA and notice his skills to balance between divergent opinions and disagreements between negotiators. In the discussion I defended the strengthening of the rule of law and

human rights when revising the UN Model Treaties, according to the original draft resolution proposed by Finland.

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M. Cherif Bassiouni's decisive contribution to the establishment of International Criminal Tribunals is well-known, and his inputs are well documented (see, e.g., Bassiouni, *Chronology of Efforts to Establish an International Criminal Court*, in: *AIDP. A Historic Record 1889-2014*, 2015, p. 377-405). I have had the pleasure to take part in several such occasions where Bassiouni purposefully headed the drafting a code or statute for the establishment of such an international court or where he thoroughly explained his ideas on the subject.

M. Cherif Bassiouni presented his draft international criminal code in the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders, in Caracas 1980, in which I participated as an independent researcher and I got a stimulus to specialize in international criminal law. Ten years later Bassiouni invited me among 51 experts to an important meeting at the Siracusa Institute (ISISC) in June 1990 for modifying his draft code. The combined text was entitled 'A Policy

Perspective on the Control of Transnational and International Criminal and for the Establishment of an International Criminal Tribunal', and it was submitted to the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, in Havana 1990.

I took part in the Havana Congress as a member of the Finnish delegation. The establishment of an International Criminal Court was discussed, and the Siracusa text and a report of International Law Commission's work so far, introduced by Commission's Secretary Vladimir Kotliar, were available for that purpose. Divergent opinions were expressed on the issue, although a positive attitude became dominant among Nordic countries and in the larger "Western block". The Finnish standpoint was positive from the beginning, and I argued for it and presented it on behalf of the delegation authorized by its Head, Minister of Justice Tarja Halonen. This standpoint can be read from the Congress resolution on combating terrorism. Nevertheless, according to Bassiouni (*op. cit.* p. 387), "only some supportive language appeared in the final report and resolutions of the Congress". The traditional Nordic opinion, which was changed in Havana, had emphasized that it is

enough to rely on national enforcements of international criminal law under the condition that the universality principle is applicable as for criminal jurisdiction.

When M. Cherif Bassiouni visited Helsinki in September 1992, he also held a guest lecture on 'The Establishment of an International Criminal Court' at the University of Helsinki. This occasion took place at a time when Bassiouni had just finished his 'Draft Statute International Criminal Tribunal' – on which I organized a consultation in the Ministry of Foreign Affairs –, and Special Rapporteur Tadeusz Mazowiecki had proposed the establishment of a Commission of Experts to investigate war crimes in the former Yugoslavia. Therefore I was as Bassiouni's host surprised, when he in his lecture did not foresee the establishment of an International Criminal Court as realistic in the new future. The introduction to the Draft Statute ends forebodingly with Bassiouni's statement from July 1992 (*op. cit.* p. 393): "If this Tribunal (or court) can be achieved, then the dreamers of today will be the architects of the world of tomorrow". Fortunately, M. Cherif Bassiouni proved to be the architect of the world of tomorrow! In under a year the *Ad hoc* International Criminal

Tribunal for former Yugoslavia was established by the Resolution 827 (1993) and one year later the *Ad hoc* International Tribunal for Rwanda by the Resolution 955 (1994) of the Security Council, and seven years later the Diplomatic Conference adopted the International Criminal Court in Rome (1998). Bassiouni had a key position in creating all these international courts. Bassiouni belonged to the Commission of Experts to investigate war crimes in the former Yugoslavia, appointed by the Resolution 780 (1992) of the Security Council, and he served as Vice-President of the *Ad hoc* Committee in 1995 and as Vice-President of the Preparatory Committee 1996-1998 as well as the President of the Drafting Committee of the Plenipotentiary Conference of the UN for preparing the Statute of the International Criminal Court. Meanwhile, my role was as a member of the Advisory Group to consult the Finnish Ministry of Foreign Affairs in the negotiations for the preparation of the establishment of the International Criminal Court in 1995-1998 and in the process for the ratification of the Rome Statute in 1998-2000. Finland as a party to the Treaty from the beginning of 1 July 2002 has been a strong supporter of the International Criminal Court, and the Rome

Statute has been fully implemented into Finnish national legislation.

Soon after the International Criminal Court had begun its functioning in 2002 M. Cherif Bassiouni organized an international conference entitled 'International Criminal Law: Quo Vadis?' on the occasion of the 30<sup>th</sup> anniversary of ISSC in Siracusa (see the Proceedings, in: *Nouvelles études pénales*, No 19, AIDP 2004). I was invited to its panel to debate about the harmonization of the general principles of international criminal

law. It was gratifying to notice similarities in our thinking. We both advocated for enhancing the harmonization of the general principles of international criminal law between supranational criminal justice system and national criminal justice systems. As Bassiouni stated: "International criminal justice is more than an idea, it is an ideal which represents the commonly shared values of the international community. Its time has come". (See Proceedings p. 88-90 and 345-351).

## To my dear friend Cherif

**Ekkehart MÜLLER-RAPPARD**

Former Director of Human Rights, Office of the Council of Europe

**C**herif, you were an exceptionally gifted teacher who could easily share your enthusiasm with your audience – students, civil servants and other academics alike – and carry them along your own path, fully convinced by your arguments and eager to actively support your own vision. How come? How did you manage this?

Being yourself fluent in at least half a dozen languages I know of, you were able, Cherif, to talk to most of your interlocutors in their own native tongue. This was a tremendous asset for creating a feeling of familiarity, for establishing proximity with whomever you met, whatever their social status. More important, however, was what you had to say. With your remarkable capacity for summing up the most relevant aspects of highly complicated matters and for precisely formulating your conclusions, you were used, Cherif, to speaking to the point and, whoever your interlocutor, the latter

would easily understand you and grasp immediately what you considered important and pertinent. Yet, what really prompted those including myself, who listened to you for the first time, to support your views and, as the case may be, to cooperate with you on all sorts of interesting topics, this was your own attitude: Cherif, you were a deeply human fellow who expressively showed others your consideration and respect. I would even claim that it was your own thoughtfulness for those around you which made you so many friends and admirers. Nevertheless, I have to recall as well in this respect that sometimes, when your modesty ran away or when you were no longer hiding your intellectual superiority and your Egyptian origins and social background, you encountered quite serious adversity in your professional life. Indeed, although, because of your high ambitions and expectations you had worked very



hard with no adequate rest ever, to become who you were and to be known in all the circles of interest to you, you showed too much ease in grasping and then presenting your subjects, without any written support, thanks to your fabulous memory. You were simply too brilliant, Cherif, to avoid arousing, besides a lot of admiration, quite a bit of jealousy and even fear. This had happened before we first met at the Siracusa Institute in the early 1980s – more than 35 years ago, when we both had already reached our 40s – and it was to happen a few times more later on when, despite all your undisputed qualifications, energy and intellectual output, your nationalities and profile allegedly did not fit what was officially required. We often and at length discussed in private your fight against international bureaucracies and what you called ‘the power of mediocrity’ unfortunately prevailing in many Western democracies and the tendency there to pass over the best and toughest when it comes to promotions, elections or appointments, for the sake and comfort of the many ‘equals’ who fear, if not hate, due fair and open competition. We had a good laugh together at my helpless, purely formal, defence of the administrative structures as they happen to be and of

the ‘obedient’ civil servants, including myself, and their frequent staying if not decisive powers. There is not much we can change when it comes to the so-called ‘Natur der Sache’! However, from this point of view, ‘the nature of things’, we exchanged another series of subtle legal arguments about the ‘raison d’être’ and the real impact of all the resolutions, recommendations, protocols and conventions in the drafting of which we were both involved, the output of the Siracusa Institute almost surpassing that of the Council of Europe’s Division of Crime Problems: against the argument that the new flood of our legal texts would obviously hinder and delay the implementation of the older ones, contrary to our main goal after all, you prevailed, Cherif, by pointing out that there was no adequate implementation yet and hence there existed an obvious need and the justification for putting more and renewed public pressure with a view of at least some new partial achievements.

This was particularly true as regards the cumbersome text of the draft Code of the International Court of Criminal Justice discussed and prepared over many years under your guidance, first at the Siracusa Institute and then pushed with your help, inter alia, through the U.N. fora: the adoption of the text and its

worldwide ratification justified both your previous vision and your tremendous efforts to achieve it. The need for training of those called upon to apply the text of this masterwork you fathered with due world fame will surely remain and hopefully allow those to be trained to assemble for that purpose at your beloved Institute and to meet there what we called the 'Spirit of Siracusa'.

Cherif, apart from Chicago, Siracusa, Geneva and Strasburg I remember many additional private encounters elsewhere, meeting with our respective families, collecting your honorary degrees in Austria, Germany or France, trips to Egypt with pharaonic receptions and an

ancient culture quite alien to the introduction of such strange new Western concepts as that of accountability for people in public authority... There is no single major event in our relationship I could pinpoint; no particular action or sentence of yours which impressed me more than anything else; there is just this wonderful feeling of genuine friendship with you which remains. As you yourself put it in just four short lines in your last Christmas card to me in December 2016, "Another year goes by... and it brings to mind how fleeting life is... what really counts are our good friends".

Cherif, I miss you a lot.



## C'était Cherif

### Reynald OTTENHOF

Professeur émérite, Université de Nantes (France), Vice-Président honoraire, AIDP  
Vice-Président honoraire, Institut International Syracuse.  
Directeur honoraire de la Revue Internationale de Droit Pénal

**P**endant plus de quarante ans passés au service de l'AIDP et de l'Institut de Syracuse, j'ai eu l'opportunité de connaître les plus éminentes personnalités qui ont marqué la vie de ces deux institutions. J'ai servi sous le mandat de pas moins de sept présidents. Cela m'a valu le triste privilège de rédiger de nombreux hommages posthumes dans la Revue Internationale de Droit Pénal, au nom de l'amitié que nous avons partagée.

Jamais je n'avais songé devoir en faire de même pour Chérif! Sans doute, au fond de moi-même, je le croyais immortel... Son énergie, sa puissance de travail, son rayonnement et l'étendue de son savoir me paraissaient le tenir, à l'image de ces sages de l'antiquité, à l'abri d'un départ de ce monde. Hélas, il a bien fallu apprendre la terrible nouvelle. Aujourd'hui, me remémorant les années d'amitié partagée, je dois dire: «C'était Chérif!».

Pour moi, Chérif n'était pas seulement

un ami, plutôt un «grand frère», mon aîné de deux ans, si proche et si affectueux.

Nous nous sommes rencontrés pour la première fois en 1972, lors de l'inauguration de l'Institut de Syracuse. Notre jeune âge, au sein de cette assemblée de notables, nous a rapprochés. Puis notre destin commun s'est développé sans discontinuer au sein de l'AIDP. Nous avons servi ensemble, dans nos fonctions respectives, du Congrès de Budapest (1974) à celui de Beijing (2004). Pendant cette période, l'AIDP est passée de deux cents membres cotisants, à plus de deux mille. Nous avons créé une cinquantaine de groupes nationaux, le Comité scientifique, la catégorie des jeunes pénalistes, développé les relations au sein des «quatre grandes associations» sœurs. Les publications ont été renouvelées, avec l'instauration d'un Comité de rédaction de la Revue Internationale de Droit Pénal et la création de la série des «Nouvelles

Etudes Pénales». L'Association s'est vue dotée du statut consultatif auprès des Nations Unies, du Conseil de l'Europe et de l'Union européenne. Elle a, grâce à l'énergie et au travail inlassable de Chérif, largement contribué à l'adoption du Statut de Rome créant la Cour Pénale Internationale. Nous avons œuvré tous les deux, dans la plus grande complémentarité, avec le soutien des différents organes de l'Association, sans oublier l'aide précieuse de collègues dévoués, tels Helmut Epp et José Luis de la Cuesta. Grâce à l'action de Robert Cario et de Catherine Thony, le recouvrement des cotisations, si difficile à effectuer, a permis d'assurer le financement des activités. De ces années de labeur partagé je ne dirai rien de plus, laissant aux historiens éventuels le soin d'évoquer cette période de la vie de l'Association, où l'amitié constituait le moteur de l'action commune.

Evoquer la mémoire de Chérif, c'est d'abord pour moi évoquer l'homme qu'il était. Quand je songe à lui, je me dis «c'était Chérif...». De tous mes amis étrangers, il était, au même titre que José Luis de la Cuesta, le plus «français». De ses humanités chez les Jésuites, à l'Ecole puis au Lycée français du Caire, il avait acquis une langue et une culture classiques qu'il

plaçait au dessus de toute autre. Fuyant l'Egypte de Nasser, il entreprit des études à la Faculté de Droit de Dijon, où il remporta le prix de Droit civil à l'issue de la première année. Contraint de quitter la France en raison des événements d'Algérie, il gagna Genève où il fut accueilli à l'Université par Jean Graven, futur Président de l'AIDP.

Son attachement à la langue française fut toujours sans faille. La défense du français au sein de l'AIDP, en tant que langue fondatrice de l'Association et de l'Institut de Syracuse, lui paraissait indispensable au rayonnement de l'une et de l'autre de ces institutions. A sa demande, nous fûmes reçus par Alain Decaux, historien célèbre, membre de l'Académie française, en sa qualité de Ministre de la Francophonie. Chérif souhaitait obtenir l'aide du Gouvernement en vue d'aider les pays africains francophones à intégrer l'AIDP. La conversation s'orienta vite vers l'évocation de l'histoire de France. Chérif était un admirateur de l'empereur Napoléon. Les veilles de réunion du Conseil à Paris, il nous arrivait de nous rendre dans une boutique du Palais Royal où Chérif achetait des figurines de plomb des soldats de l'Empire. De retour dans sa maison du Michigan, il reconstituait les grandes batailles napoléoniennes,

imaginant chaque fois de nouvelles stratégies. C'est donc avec beaucoup de regrets, me disait-il, qu'il a vécu l'inéluctable déclin de la langue française au sein de l'AIDP. L'obtention du grade d'officier de la Légion d'honneur, la plus haute distinction française, rarement décernée à titre étranger, est heureusement venue combler ses vœux.

C'était Chérif, attentif aux autres, à leurs soucis et leurs peines. Son affection s'étendait à notre petite famille, spécialement à notre fille Anna qu'il a connue dès sa petite enfance. Lorsque celle-ci connut d'importants problèmes de santé, il manifesta sa sollicitude jusqu'à soumettre à des amis médecins de Chicago les éléments du diagnostic et du traitement qu'elle suivait. Il nous avait baptisé «La famille Pélican», s'inspirant d'un célèbre poème du poète français Alfred de Musset, appris dans son enfance, et qu'il aimait réciter avec émotion.

Dans le même ordre d'idée, j'évoquerai un souvenir personnel qui m'a beaucoup touché. En 1979, je fus victime d'un grave accident de la circulation qui me valut une longue et pénible hospitalisation. Un dimanche de juin, alors que je venais de regagner mon domicile, et que j'effectuais difficilement, après quatre mois

d'immobilisation mes premiers pas, je vis arriver à la maison Chérif et son épouse, accompagnés du Professeur Vassalli et de sa femme. A l'issue du Conseil de Direction de Paris, ils avaient décidé de louer une voiture et de traverser la France pour me rendre visite à Pau. Cette visite inattendue fut pour moi d'un grand réconfort.

De ces innombrables témoignages d'amitié, je me garderai d'oublier le plus douloureux d'entre eux. Nombreux sont ceux qui, au sein de l'Association, se souviennent du terrible attentat de l'hôtel Sémiramis au Caire, où se déroulait un Colloque franco-égyptien de l'AIDP. Lors de ce lâche attentat, dans lequel nos collègues Fernand Boulan et Luigi Daga ont perdu la vie, j'échappai miraculeusement à la balle qui m'était destinée. Vers trois heures du matin, de retour dans ma chambre d'hôtel, après avoir quitté l'hôpital où j'avais accompagné les corps de mes amis, le téléphone sonna. C'était Chérif! Il m'appelait de son hôtel de Sarajevo, où il enquêtait pour le compte des Nations Unies sur les crimes de guerre commis dans l'ex Yougoslavie pour me témoigner son amitié.

Les derniers jours de sa vie, j'ai suivi avec tristesse l'évolution inéluctable de sa maladie. Nous nous téléphonions souvent. On sentait ses forces le quitter petit à petit. Il n'en laissait rien paraître

et continuait à se montrer attentif à chacun d'entre nous.

Des problèmes de santé ne m'ont pas permis de prendre alors un vol pour Chicago. J'en éprouve aujourd'hui encore de profonds regrets. Mais un jour viendra, un dimanche peut-être.

Vers 17 heures, le téléphone sonnera, comme nous en avons l'habitude. J'entendrai son appel à venir le rejoindre. Et nous nous retrouverons, j'en suis sûr, dans la même fraternité. Pour toujours. Je dirai, une dernière fois: «C'était Chérif!».



R. Ottenhof et M.C. Bassiouni

## Ricordo di Cherif Bassiouni (1937-2017)

Mario PISANI

Professore di Diritto Processuale Penale, Milano  
Membro onorario Consiglio di Direzione, AIDP

All'età di anni 80 non ancora compiuti, il 25 settembre è mancato, a Chicago, il prof. Cherif Bassiouni. Ne ha dato notizia anche il *New York Times* del 9 ottobre: *M. Cherif Bassiouni, War-Crimes Jurist and Human Rights Champion Is Dead at 79*.

Ogni periodo di quel necrologio potrebbe prestarsi ad amplissimi sviluppi, tanti e tanto diversi sono stati i campi operativi nei quali si è venuta affermando la singolare personalità dello scomparso: “celebre giurista egizio-americano che contribuì alla fondazione di due tribunali dei crimini di guerra e che viene ampiamente riconosciuto come un padre nobile della moderna

giustizia penale internazionale”.

Già nel 1997, presentando un suo lavoro<sup>8</sup>, Vassalli indicava il collega ora defunto come “il giurista che negli ultimi decenni si è dimostrato come il più impegnato nello studio del diritto internazionale penale e nell’elaborazione delle sue fonti<sup>9</sup>”.

E così proseguiva, tra l’altro, il ricordo del giornale americano: “... discendente da una eminente famiglia egiziana, [Bassiouni] era un misto di raffinato intellettuale, diplomatico ed attivista dei diritti dell’uomo, tanto a suo agio nelle istituzioni accademiche quanto attivo nell’investigare e denunciare crimini nelle zone di conflitto”.

Dopo gli studi giovanili nell’Università

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<sup>8</sup> M.C. BASSIOUNI, *Indagine sui crimini di guerra nell'ex-Jugoslavia (L'operato della Commissione degli esperti del Consiglio di Sicurezza e il suo rapporto finale)*, Milano, Giuffrè, 1997. Vassalli, *ibid.*, p. XIII, nota (2), si limitava a menzionare alcune delle sue trattazioni principali: *International Criminal Law*, 3 voll., New York, 1986. *Crimes against Humanity in International Criminal Law*, l'Aja, 1992; *The Law of International Criminal Tribunal for the Former Yugoslavia*, New York, 1996.

<sup>9</sup> M.C. BASSIOUNI, *Le fonti e il contenuto del diritto penale internazionale – Un quadro teorico*, Milano, Giuffrè, 1999.



del Cairo, egli aveva approfondito la sua preparazione giuridica in Francia, in Svizzera e negli Stati Uniti (Indiana University, John Marshall Law School, George Washington University). A Chicago, presso la DePaul University, si radicò, per svilupparsi nel corso di molti anni (1964-2009), il suo fervido insegnamento accademico.

Può anche dirsi che, almeno in gran parte, la sua vita si sia poi identificata con l'Associazione Internazionale di Diritto Penale (AIDP), di cui era stato segretario generale dal 1974 al 1989, e da quell'anno Presidente, per tre mandati quinquennali, fino al 2004, per poi divenirne Presidente onorario. In quei contesti, dopo esserne stato co-fondatore, per quarantacinque anni è stato alla testa, o per meglio dire al servizio, dell'ISISC di Siracusa<sup>10</sup>: come segretario, a decorrere dal 1972, e poi come Direttore, dal 1976, e quindi Presidente dal 1988 alla fine del 2015. Col volger del tempo l'Istituto di Siracusa è notoriamente divenuto un centro di rilevanza mondiale per incontri di studio e conferenze

internazionali sulle materie penalistiche, anche per l'elaborazione e la predisposizione di documenti e progetti di tipo normativo a vari livelli.

Negli Stati Uniti ha operato come consulente, dal 1973 al 2003, del Dipartimento di Stato e del Dipartimento della Giustizia, e dalle Nazioni Unite ha ricevuto ben ventidue incarichi come presidente o componente di commissioni di studio ed indagine, in settori e su materie diverse e complementari.

Sul piano della concreta operatività in ambito internazionale, il nome di Bassiouni è poi collegato, in particolar modo<sup>11</sup>, alla creazione della Corte penale internazionale. Come si è scritto nel documento della sua *nomination* per il Premio Nobel della pace del 1999<sup>12</sup>, era stato eletto da 161 Paesi come presidente del *Drafting Committee* della Conferenza diplomatica di Roma del 1998. Ed ancora: "Il cammino attraverso il quale la Conferenza veniva procedendo non avrebbe potuto concludersi alla scadenza del 17 luglio

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<sup>10</sup> A quell'acronimo, che stava ad indicare l'*Institut Supérieur International de Sciences Criminelles*, corrisponde oggi l'intitolazione *Siracusa International Institut for Criminal Justice and Human Rights*.

<sup>11</sup> "... in special way", scrive la *Rev. int. de dr. pén.*, 2015, p. 1315. Seguirà, tra le altre, la vicenda dell'istituzione del Tribunale per il Ruanda.

<sup>12</sup> Il documento recava la firma del prof. Gerhard O. W. Müller: v. *Rev. int. de dr. pén.*, 2015 (86), p. 1213.

se fosse mancata la *leadership* del prof. Bassiouni, la sua competenza e il duro lavoro come presidente della stesura del testo. In precedenza egli era stato vice-presidente del comitato preparatorio e vice-presidente dell'*Ad hoc Committee*, ai quali aveva contribuito in modo significativo”.

Per sottolineare i particolari legami con l'Italia<sup>13</sup>, oltre all'Istituto di Siracusa sembra il caso di ricordare l'attribuzione della laurea *honoris causa*, nel 1981, da parte dell'Università di Torino – cui farà seguito una cospicua serie di altri analoghi riconoscimenti, fino a quello di Salisburgo, del 2013 – oltre che il conferimento, proprio a cominciare dal nostro Paese, di titoli onorifici (Bassiouni vi era particolarmente sensibile): da commendatore (1976) fino a Cavaliere di Gran Croce (2006).

Tra i titoli onorifici che vennero dopo non poteva mancare quello della francese *Légion d'Honneur* (2003), e – per venire ancora all'Italia, ma per iniziativa e cura della *Société Internationale de Défense Sociale* – della medaglia Beccaria (2007).

In un suo recentissimo messaggio, per l'appunto occasionato dalla scomparsa

del Presidente onorario dell'ISISC, il nuovo presidente, Jean-François Thony, ha avuto modo di scrivere: “Probabilmente io non ho mai incontrato una persona di una tale energia magnetica, capace di coinvolgere subito i suoi interlocutori. Verosimilmente ciò è da ricondursi al fatto che egli era in grado di parlare la lingua di metà popolazione della terra: l'arabo e l'inglese, naturalmente, ma anche il francese, l'italiano, lo spagnolo, il tedesco ...”.

E ricordava anche una tipica espressione dell'amico Cherif, concernente la necessità di una progressiva elaborazione delle idee e dei programmi: “ecco quello che noi potremmo fare” (“voilà ce que nous pourrions faire”).

Ma oggi, quello che noi, colleghi, amici ed estimatori di Bassiouni ci sentiamo di dover fare, è l'omaggio da rendere, anche per il tempo e la memoria, alla sua spiccatissima intelligenza creatrice, ai grandi orizzonti del suo pensiero e del suo operare, all'impegno inesauribile in vari modi dispiegato sui campi sterminati, e tormentati, della giustizia e dell'ingiustizia.

E qualcuno, o anche molti, tra di noi,

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<sup>13</sup> È meritevole di particolare considerazione anche l'ampio studio intitolato *La valutazione delle conseguenze dei conflitti – L'accertamento delle responsabilità e l'impunità*, in *Criminalia* 2010, pp. 23-69.

ricorderanno pure le virtù dell'uomo, che non erano poche. Egli conosceva, tra l'altro, e praticava, i sentimenti e il

valore dell'amicizia, e possedeva anche una grande capacità di sorriso (nella buona e nella cattiva sorte).



From left to right:  
E. Klemen-Bassiouni, Mrs. Pisani, R. Ottenhof, M.C. Bassiouni, M. Pisani

## **Cherif M. Bassiouni – “Hope for Peace and Justice”**

**His Royal Highness PRINCE EL HASSAN BIN TALAL**

**C**herif M. Bassiouni's life and work was influenced by his quest for social justice, respect for the other, human dignity and freedom for the people of his homeland, Egypt, as well as for all peoples in our troubled world. True to the code and scripts of ancient law, originally written onto cuneiform tablets, Cherif played a major role in post-conflict justice in Iraq and in many other places of conflict. He supported the establishment of democratic forms of government based on the rule of law, independent judiciaries and national peace. It was always of utmost importance to him in his work on conflict analyses and resolution, to listen to the silent majority, the voiceless, the marginalised and the excluded. Most of all he listened to victims.

Nominated for the Nobel Peace Prize in 1999 and as the author and editor

of numerous books and articles on international criminal law and human rights, he was an avid historian who had a keen interest in politics and interfaith. Over Cherif's many years of work in criminal law, he was appointed to numerous positions representing the United Nations: in Libya; Afghanistan and Yugoslavia, to name a few. His interest in all that is right, moved him to consult on projects of great importance, including drug trafficking and terrorism. He also defended the American hostages in Iran in the late 70s – 1980.

As Emeritus Professor of Law at De Paul University, Chicago<sup>14</sup>, Cherif believed that in a rapidly changing world, sustainable development must be founded on justice. I had the pleasure of visiting the institute in Siracusa<sup>15</sup> which was established by

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<sup>14</sup> The Institute of Higher Studies in Criminal Science.

<sup>15</sup> Siracusa International Institute for Criminal Justice and Human Rights.

Cherif and where he influenced and taught students international and comparative criminal justice.

During the *Egyptian Revolution*, commonly known as the *Arab Spring*, from February 2011 to August 2014, Cherif delivered commentary and analysis of events in his newsletter, *Egypt Update*, in which he expressed his continued hope for respect for human rights. In his recent book<sup>16</sup> he vowed that “the Egyptian people’s quest for social justice, dignity of persons and freedom would continue”. He worked closely with the United Nations and during the *Arab Spring*, Cherif was keen for us to bring together a high-level group of experts on promoting democracy in the Arab world to be hosted by the European Commission.

On so many occasions, he and I discussed these subjects, often in deep frustration, always hoping that the continuing crises facing the Middle East could somehow end in peace and understanding. We agreed that the first lesson to be drawn would be for Arab nations to draw together and create new regional co-operation mechanisms. His brief visits to Amman always centred around serious discussion as well as evenings of laughter and friendship.

He was a sincere friend who was always ready to discuss our mutual longing for respect for the other, whomsoever and wheresoever they may be. It is with fondness I recall those conversations over the years on subjects of common and mutual interest – peace and justice for all.



Prince El Hassan Bin Talal and M.C. Bassiouni

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<sup>16</sup> *Chronicles of the Egyptian Revolution and its Aftermath: 2011-2016.*

## **Fulfilling Cherif's Legacy: Advancing Fact-Finding, Accountability and International Criminal Justice**

**Stephen J. RAPP**

Distinguished Fellow at the United States Holocaust Memorial Museum's Center for the Prevention of Genocide, Former Prosecutor at the Special Court for Sierra Leone and Chief Prosecutor at the ICT for Rwanda

A few days before Cherif Bassiouni's death in September 2017, I found on my doorstep in Georgetown a package containing the gift of what was to be the last of his 24 books. I tore open the package, and after smiling on his seeing his still strong personal inscription, I heard again from its pages his voice and passion as he described the challenges that he overcame in leading the UN Commission of Experts in the former Yugoslavia. In fact, the UN did not provide it with a budget, and Cherif was required to find the necessary resources by asking private donors to contribute funds and supportive States to provide in-kind assistance. At each turn, he faced obstruction in the UN bureaucracy and resistance by the representatives of States that owed it cooperation. In the end he led 35 missions to the former Yugoslavia at the time when the crimes were being committed. In the process his commission uncovered 187 mass graves, interviewed 223 victims of

rape and sexual assault, and laid a solid foundation for the trials of the ICTY.

But such robust fact-finding followed by effective criminal justice has only rarely been the response to the mass atrocities that have been perpetrated during our lifetimes. In November 2008, I joined Cherif at the launch in Geneva of his "World Study on Conflicts, Victimizations, and Post-Conflict Justice". It was a project that was to map the 310 situations of mass atrocity that have occurred across the world since WWII—in conflicts international and civil, and also during outbreaks of organized inter-group violence. For each, his final report published in 2010 described how innocent people had been intentionally dehumanized and then raped, tortured, killed. For each, his report also described the rarely sufficient efforts to achieve truth and justice.

We now see the year 2010 as almost the high point in the global campaign

to end impunity. In 2018, the trend is not to protect the victims, but to protect the perpetrators, and the perpetrators know it. The UNHCR tells us that we now have 68.5 million men, women and children displaced from their homes, either having fled across international frontiers, or within their own countries—a new record. The vast majority who have crossed hostile seas and braved barricaded borders have done so because it was impossible for them to live safely in their own communities. Most have escaped from zones of civil conflict, and not to escape crossfire, but because they were the targets, far more so than were the combatants. But one positive trend since 2010 has been establishment of UN Fact-Finding Missions (FFMs) or Commissions of Inquiry (CoIs), even in situations where great powers were opposed to their creation. This has been possible in the UN Human Rights Council (HRC) where no Member State has a veto and a mandate can be adopted if more vote yes than no. In the years since 2010, the HRC has mandated CoIs or FFMs for Cote d'Ivoire, Libya, Syria, North Korea, Eritrea, Sri Lanka, Iraq, South Sudan, Burundi, DR Congo, Myanmar, Palestine, and Yemen. But sadly, most of these FFMs and COIs have not been provided with the

resources, staff, or facilities that is necessary to lay a strong foundation for post-conflict justice.

After his leadership of the Commission of Experts for the former Yugoslavia, Cherif was to participate in four more of these inquiries. In a 2012 speech to a group of international prosecutors he described the perennial challenges:

...I cannot rationally understand why it is that every time you have a commission of inquiry... we have to start from zero. Why is that we all have to start from scratch?

...Why don't we have a simple database program that every commission can use to input data or information so that the data can be compared? ...It doesn't make sense.

Why don't we have a real manual of what we call best practices? Those of us who have been in the military see that manuals do work. I've never seen practices translated into a manual. So if you're a new chairman appointed to a commission, here's the manual. Step 1, you do this, Step 2, you do this, Step 3, you do this, so we're not reinventing the wheel. It doesn't happen. We reinvent the wheel on logistics, on the resources, on the personnel, on almost everything, and it continues like this.

At some point you can say, "Well, it's the nature of the beast", but I think

you get to the point where you ask whether there is any method to this madness. Is it intentional? Is the sense of realpolitik so overpowering that there is an inertial force that brings about these obstacles and prevents us from moving forward?

Yet for Cherif it was never enough to complain. In 2013, he launched in Siracusa a project for the “Establishment of Principles and Best Practices for International and National Commissions of Inquiry”. The result was the Siracusa Guidelines—a blueprint for how to organize, resource, and operate these commissions if they were to serve effectively the cause of truth and justice.

In years since the Siracusa Principles were published, the situation has not significantly improved. It appears that organization of each CoI and FFM is still only the part-time responsibility of two employees in the Office of the High Commissioner for Human Rights (OHCHR). These two prepare the budget for each inquiry that must be approved by UN General Assembly committees in New York. They sometimes see proposals for the hiring of certain experts cut from the budget.

There is now a book of guidance published by the OHCHR in 2015, entitled *Commissions of Inquiry and*

*Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, but it lacks the step-by-step approach that Cherif proposed. There are internal guidelines, but these appear to strongly favor obtaining information from “primary sources,” usually survivors who have escaped to places of relative safety. This is understandable from the point of view of evaluating credibility, but ends up favoring the gathering of information on what prosecutors call the “crime-base” rather than on “linkage,” the kind of information that ties sometimes distant high-level actors to the atrocities being committed at the “crime-base.”

Such linkage evidence is more often to be found in the troves of documents or digital material often collected by civil society groups, but the OHCHR and the individual commissions do not have capacity to gather, verify, analyze, and preserve large volumes of documentary or digital evidence. Finally, there is still the disconnection between fact-finding missions and criminal justice processes, similar to what Cherif faced in the former Yugoslavia. Most of the evidence gathered by these missions will remain unavailable in trials until OHCHR is provided with the capacity to maintain a searchable



archive of material gathered by COIs and FFMs, and to manage contacts with witnesses, so that it can respond appropriately to official requests from national or international courts.

Fortunately, efforts have begun to remedy some of these deficiencies. In December 2016, the UN General Assembly (UNGA), by a vote of 105-15, adopted a resolution to create an International, Impartial, Independent Mechanism for Syria (*IIIM*). This was a situation where there had been an active HRC-created CoI in business since August 2011, but the UNGA majority found that there remained a need for the UN to pursue “practical steps... to ensure justice for all victims...” through action “to collect, consolidate, preserve and analyze evidence... to prepare files in order to facilitate and expedite fair and independent criminal proceedings in... courts or tribunals that have or may in the future have jurisdiction over these crimes...”.

Three months later the HRC itself expanded the mandate of the South Sudan CoI to require it to do the kind of work that the Syria CoI had not done, and which had led the UNGA to create a separate Syria IIIM. In Resolution 34/25 of March 24, 2017, the UN HRC directed its Commission for Human Rights in South Sudan “to collect and preserve

evidence” and to make this evidence “available to all transitional justice mechanisms... including the hybrid court for South Sudan”.

Of course, if HRC-created CoIs and FFMs are going to be able to do this work effectively, Cherif recognized that they need the kind of planning, operational support, and expert staffing called for in Siracusa Guidelines 5, 6, and 7. In our last conversation in Siracusa we discussed the practical steps that could be taken to provide this capacity. I brought him up to date on the work of the Group of Practitioners in Fact-finding and Accountability that had been convened by the US Holocaust Memorial Museum and The Hague Institute for Global Justice. He was pleased to hear that our primary recommendation had been the creation of a small permanent secretariat in the OHCHR, modestly titled as a “Support Team” or ST to plan, prepare, and resource the work of CoIs and FFMs and to respond to the requests of national or international authorities.

In the last months of his tenure at OHCHR, High Commissioner Zeid Raad al-Hussein has proposed to the UN budget committee (ACABQ) that a senior position be authorized to take the lead in supporting HRC-created CoIs and FFMs. Given budgetary

realities, this work will initially require the voluntary funding of willing States. Outreach is now underway to seek commitments to provide the necessary contributions.

The strengthening of the global capacity to obtain the evidence to hold the perpetrators of mass atrocities to account cannot come too soon. Unless international institutions do a better job of accountability, the actions taken by the Assad regime, by the opposing leaders in South Sudan, and by the *Tatmadaw* in Myanmar, will be the tactics employed elsewhere, wherever those in power face insurgencies or where they seek to weaken the threat to their continued control by casting opponents as subversives, and then as lesser beings deserving of humiliation,

injury, and extermination.

In the last chapter of his last book, Cherif wrote of the reversals in the years since the UN Commission of Experts and Yugoslavia Tribunal were established, and of an increasingly hostile global environment that is undermining respect for human rights and international criminal law. On the last page he offered a prescription: “work better with our commissions of inquiry, fact-finding missions, and other bodies to advance truth finding, accountability, and international criminal justice”.

If we are to have any chance to avert even greater atrocities than the world has experienced to date, we must work as Cherif did to make these bodies truly effective.



M.C. Bassiouni and C. van den Wyngaert in the middle, S. Rapp seated second from right; Giovanni Pasqua and Hatem Aly standing, first and second from right



## In memoria del prof. M. Cherif Bassiouni: “I Bassiouni’s Boys”

**Ezechia Paolo REALE**

Segretario Generale, Siracusa International Institute for Criminal Justice and Human Rights

**C**herif Bassiouni era universalmente conosciuto come eccellente conoscitore ed instancabile divulgatore del diritto penale internazionale e del diritto umanitario; come straordinario diplomatico, capace di condurre con successo le trattative più difficili; come lavoratore instancabile e guida esigente, sia che si trovasse a dormire in una tenda per investigare per conto dell’ONU i crimini internazionali commessi nella ex Jugoslavia sia che dirigesse dalla sua scrivania di Presidente l’Associazione Internazionale di Diritto Penale o l’Istituto Superiore Internazionale di Scienze Criminali, la sua creatura – come amava definirla – fondata nel 1972, che oggi gode dello status di organismo consultivo presso le Nazioni Unite e che, nei suoi 45 anni di studio, ricerca e formazione nel campo della giustizia penale internazionale e comparata e dei diritti umani, ha organizzato oltre 600 conferenze, workshop, seminari di formazione e riunioni di esperti, che hanno portato a Siracusa, complessivamente, oltre

51.000 giuristi provenienti da 171 paesi di tutto il mondo.

Della figura pubblica di Cherif Bassiouni tanti possono testimoniare e così numerose sono state le sue attività e le sue ricerche, alcune di carattere realmente straordinario e capaci di influenzare il corso del pensiero giuridico e delle relazioni tra Stati e tra popoli, che sarebbe vano provare in poche pagine a ricordarle tutte.

Oltre al ruolo insostituibile nella nascita e nella storia dell’Istituto Superiore Internazionale di Scienze Criminali (ISISC), oggi Siracusa International Institute for Criminal Justice and Human Rights, Cherif Bassiouni è stato Professore di Diritto presso la DePaul University di Chicago, presso la quale ha insegnato per 45 anni, dal 1964 al 2009 ed è stato uno dei membri fondatori dell’Istituto Internazionale sui Diritti Umani della stessa università, che ha presieduto dal 1990 al 2008. È stato inoltre, dopo aver ricoperto la carica di Segretario Generale dal 1974 al 1989, il Presidente dell’Associazione

Internazionale di Diritto Penale (AIDP) dal 1989 al 2004, anno in cui ne è divenuto Presidente Onorario.

A partire dal 1975, il Professor Bassiouni ha ricoperto 22 cariche in seno alle Nazioni Unite, fra le quali meritano la menzione quelle di Presidente della Commissione di Inchiesta per la Libia (2011-2012); di Esperto Indipendente per i Diritti Umani in Afghanistan (2004-2006); di Presidente del Comitato di Redazione della Conferenza Diplomatica sull'Istituzione di una Corte Penale Internazionale (1998); di Vice-Presidente del Comitato Preparatorio dell'Assemblea Generale per l'Istituzione di una Corte Penale Internazionale (1996-1998); di Vice-Presidente del Comitato Ad Hoc dell'Assemblea Generale per l'Istituzione di una Corte Penale Internazionale (1995); e di Presidente della Commissione di Esperti per Investigare le Violazioni al Diritto Umanitario Internazionale nell'ex-Jugoslavia (1993-1994).

Cherif Bassiouni ha ricevuto, nell'arco della sua vita, 10 lauree ad honorem in 7 paesi ed ha avuto conferiti i massimi riconoscimenti in 8 paesi, compresa la Legion d'Onore in Francia, la Gran Croce al Merito in Germania ed in Austria e l'Ordine al Merito della Repubblica (Cavaliere di Gran Croce, Grand'Ufficiale e Commendatore) in Italia.

Della figura privata di Cherif, amico vigile ed attento, guida paterna ed affettuosa, conservo gelosamente i miei personali ed indelebili ricordi che non è possibile condividere attraverso uno scritto che non può mai avere la capacità di ritrarre o descrivere un sentimento, un rapporto umano duraturo e, quindi, ricco e complesso.

Io, però, voglio ricordarlo da una prospettiva diversa, quella che ho avuto il privilegio di vivere grazie al mio impegno ormai ventennale nell'istituto di Siracusa.

Voglio ricordarlo per la sua enorme, e forse poco conosciuta, capacità di farsi amare dai giovani e, nel contempo, di farsi da loro rispettare. La formazione dei giovani per lui era la chiave di accesso ad un futuro dove l'odio ed i conflitti si trovassero relegati in angoli sempre più stretti e bui, lasciando spazio alla libertà ed alla tolleranza, al rispetto dei diritti fondamentali, al riconoscimento della comune natura di ogni essere umano. Ed ai giovani dedicava spazi e tempi ed offriva occasioni ed attenzioni che, forse, dall'esterno pochi hanno potuto percepire, se non gli stessi interessati. Durante i corsi dedicati all'International Criminal Law, riservati, come da lui fortemente voluto, ai giovani giuristi e diventati oramai un prestigioso appuntamento annuale immancabile per l'Istituto di

Siracusa con una partecipazione sempre più ricca e qualificata di giuristi provenienti da tutti i continenti, non mancava mai di dedicarsi all'ascolto ed alla conversazione con singoli o con piccoli gruppi di ragazzi, di partecipare attivamente ai loro momenti conviviali, di condividere in modo totale la loro esperienza, di provare a renderla per loro gioiosa sul piano personale, oltre che ricca sul piano scientifico.

Ed in quei momenti, ancor più che durante le sue magistrali lezioni di diritto, accolte sempre da una lunga e riconoscente ovazione finale, conquistava i giovani, con la sua straordinaria capacità di aprire il loro cuore alla speranza in un mondo migliore regolato dal diritto. Capi, conversando con lui, che occuparsi di diritto non è sempre e soltanto attività intellettuale, ma – se vissuta con intensità non limitata alla cattedra o alle aule giudiziarie – capacità di modificare in meglio il mondo in cui viviamo, di riparare ingiustizie, ma ancor più di evitare ingiustizie future. Giovani timorosi ed incerti per quello che riservava loro il futuro entravano in contatto diretto ed in sintonia con chi aveva agito negli scenari più complessi e difficili senza mai perdere la speranza, senza mai arrendersi, anche quando poteva essere comodo o utile sul piano personale o, più semplicemente, anche quando ai più

l'insuccesso sembrava inevitabile.

Quella persona che la sua cultura, la sua preparazione, la storia della sua vita avevano reso così importante non solo non era inavvicinabile, come molte stars dei vari firmamenti sociali, ma addirittura si avvicinava e cercava il contatto umano, mostrava interesse per gli altri, per le loro aspirazioni, per i loro problemi.

Ai giovani mostrava panorami diversi da quelli da loro immaginati: un diritto internazionale ed umanitario che non si ferma alla scrivania, che va sul campo, nei luoghi ove se ne sente maggiormente la necessità: in Jugoslavia come in Albania, in Libia come in Afghanistan, in Iraq come a Guantanamo; che assume personale responsabilità nelle sedi internazionali in cui si adottano le decisioni, che fonda le sue riflessioni sui testi normativi, ma indirizza le sue ricerche sui lati dolorosi della vita reale.

Scherzando gli dicevo che era l'Indiana Jones del diritto e lui – a questo audace accostamento al noto personaggio cinematografico con il quale condivideva il coraggio ingenuo oltre al rango accademico – sorrideva sempre, senza però concordare apertamente, con il sorriso coinvolgente ed a volte enigmatico che spesso dedicava ai suoi interlocutori.

Ed in tutte le sue attività sul campo, quelle che ai miei occhi gli avevano meritato la definizione di Indiana

Jones del diritto, nella sua squadra, insieme a personalità di grande spessore scientifico e tecnico, non mancava mai un gruppo di giovani, quelli a cui lui facendoli partecipi dell'azione, e non solo della parola, trasmetteva il senso profondo della difesa dei diritti, scudo da innalzare proprio nei luoghi dove tutto appare ingiusto e senza speranza.

Quei giovani, indistintamente e nell'alternanza delle generazioni, erano e sono "i suoi ragazzi", o meglio i "Bassiouni's boys".

La prima volta che ho sentito questa definizione ero alle Nazioni Unite, nelle aule dove gli Stati riunivano le proprie delegazioni diplomatiche per provare a fare nascere quella che era, a quel tempo, l'eterna incompiuta del diritto penale internazionale, la Corte Penale Internazionale.

Con l'entusiasmo dei trent'anni, alla guida di un piccolo drappello di giuristi ancora più giovani, collaboravo con Cherif Bassiouni, una delle due o tre persone alle quali il mondo deve l'istituzione della Corte, il cui ruolo e la cui autorevolezza incuteva in quella sede soggezione anche ai diplomatici più esperti ed ai giuristi più accreditati.

Al nostro passaggio, sempre in movimento per dare supporto alle delegazioni africane o asiatiche di paesi che a causa delle difficoltà economiche non potevano godere di un legal

advisor nazionale o per recuperare la copia dell'ultimo "paper" distribuito alle delegazioni diplomatiche o degli emendamenti proposti al testo sul quale queste ultime lavoravano, un nuovo componente di una delegazione nazionale di un paese europeo rivolgendosi al suo più esperto vicino chiese, stupito, chi fossero quei ragazzi che si muovevano nella sala così sicuri di sé, pur senza appartenere ad alcuna delegazione diplomatica, con il solo badge identificativo di una NGO scientifica.

La risposta del suo interlocutore – con tono quasi infastidito dal dover condividere ciò che gli appariva sin troppo ovvio – fu solo sussurrata, ma non abbastanza per impedirmi di ascoltarla "Quelli? Quelli sono i Bassiouni's boys".

In questi venti anni ne ho poi visti tanti di Bassiouni's boys al fianco di Cherif prima e poi con prestigiosi ruoli nei propri paesi e nelle organizzazioni internazionali: tutti con gli occhi accesi da una speranza che non si spegne, con il sorriso di chi sa che sta contribuendo a realizzare qualcosa di importante, poco importa se il proprio contributo resterà piccolo o oscuro, con la serenità di chi sa che da qualche altra parte del mondo altri stanno agendo nella stessa direzione, lottando contro l'oppressione e l'ingiustizia, come il prof. Bassiouni aveva loro insegnato.

Ed era facile sino a ieri riconoscere un

Bassiouni's boy.

All'arrivo di Cherif in un contesto formale ed ufficiale, in qualsiasi paese ci trovassimo, c'era sempre qualcuno, un ministro della giustizia, un alto magistrato, un parlamentare, un membro di Corte Costituzionale, un capo della polizia, un ambasciatore che scattava in piedi, trascurando il protocollo, per dare un abbraccio deferente a Cherif, lasciando spesso i presenti frastornati a chiedersi con lo sguardo quale potente della terra fosse entrato in quella sala.

Quel ministro, quel magistrato, quel parlamentare, quell'ambasciatore era stato un Bassiouni's boy, e lo era rimasto!

Invariabile in questi casi era la risposta di Cherif, mentre ricambiava con affetto l'abbraccio del suo ex allievo:

“Ma io sono soltanto un professore di diritto – teneva subito a specificare – sei tu ora quello importante, quello che può incidere in concreto sul futuro di tutti”.

Non era così, e tutti lo sapevamo, ma ora che Cherif non c'è più, quella sua risposta è più vera e diventa un monito ed una raccomandazione per chi ha avuto il privilegio di conoscerlo.

Ancora per molti anni il suo pensiero e le sue azioni costituiranno guida sicura non solo per i Bassiouni's boys, che certamente non potranno mai dimenticarne gli insegnamenti, ma anche per le generazioni che si affacciano con fiducia ad un mondo difficile nel quale desiderano operare per restituirlo interamente alle regole del diritto, alle relazioni pacifiche tra i popoli, al rispetto della persona umana.



M.C. Bassiouni and Ezechia P. Reale





## Remembering M. Cherif Bassiouni

Leila Nadya SADAT

James Carr Professor of International Criminal Law,  
Director, Whitney R. Harris World Law Institute.  
Washington University School of Law

On September 25, 2017, the world lost a great soul, Professor M. Cherif Bassiouni. Cherif was a friend, a colleague, a mentor and an inspiration to me personally, and to many like me. A truly global citizen, Cherif was brilliant, creative, hardworking, and skilled in international diplomacy, as well as fluent in at least six languages. Cherif was often referred to as the “father” of international criminal law. From the torture convention to the Statute of the International Criminal Court, his fingerprints are on every major international criminal law instrument of the past fifty years, including the emerging new convention on crimes against humanity. He understood the relationship between international law, international institutions and global politics extraordinarily well, perhaps more than any other scholar of his generation, and used his considerable intellect not only to write academic treatises, but also to create legal frameworks and

institutions to restrain state violence. As a scholar, Cherif wrote and edited seventy-five books and several hundred law review articles in Arabic, English, French Italian and Spanish. His publications have been repeatedly cited as authority by the Yugoslavia Tribunal the Rwanda Tribunal and the United States Supreme Court (to name a few) and were always thoroughly researched, beautifully written and copiously footnoted. I had the honor to be a co-author on the casebook he initiated with Jordan Paust on *International Criminal Law*, the first of its kind in the United States, and which went through four editions.

A native of Egypt, trained in Universities there, in Europe and in the United States, he ultimately made his way to Chicago, a city he called home for the entirety of his academic life, and which now has a street named in his honor. He joined the faculty of DePaul College of Law in 1964 where he founded the

International Human Rights Institute; and was instrumental in establishing the International Institute of Higher Studies in Siracusa, Italy which he headed until 2015, and which has trained more than 48,000 jurists from over 167 countries<sup>17</sup>.

He worked extensively with the United Nations, and was appointed to co-chair the committee of experts tasked with drafting an anti-torture convention, chaired the commission to investigate atrocities in the former Yugoslavia<sup>18</sup>, and chaired the drafting committee of the Rome Diplomatic Conference that established the International Criminal Court. His time investigating atrocities in Yugoslavia had a profound effect upon him; he would tell story after story of his encounters with sobbing and devastated witnesses and victims who had been scarred for life by the terrible conflict. He exhumed mass graves, fought with UN bureaucracy, and ultimately produced a report that led to the establishment of the International Criminal Tribunal for the former Yugoslavia, which only

recently concluded its last trials.

Cherif regularly lectured all over the world, bearing witness to what he had seen; training young minds to follow in his footsteps, and perhaps most importantly, enjoying life. Cherif would always pause to dine with friends, to listen to music, to take in the beauty of the earth even in the midst of war and sorrow. I feel privileged to have been by his side on many of these occasions, and to have heard his wisdom, laughed with him, and worked both on the Rome Statute and on the new crimes against humanity convention with him, among other projects. I am not alone in having had that experience – many of us could tell similar stories. Indeed, Cherif was generous with his time, his expertise and his friendship. He became a member of the International Criminal Court Committee that I chaired on behalf of the American Branch of the International Law Association – and motivated us to produce not only several reports on the draft statute as it was evolving, but a Model Statute that was published and distributed at

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<sup>17</sup> The Institute was recently renamed “The Siracusa International Institute for criminal justice and human rights”.

<sup>18</sup> Cherif’s last printed work details the history and activities of the so-called 780 Commission, a book that I received just prior to his death. *See* M. CHERIF BASSIOUNI: INVESTIGATING WAR CRIMES IN THE FORMER YUGOSLAVIA WAR 1992-1994 (Intersentia: 2017).

the Rome Conference<sup>19</sup>. He subsequently served as a member of the Whitney R. Harris Institute's International Council, and on the Steering Committee of the *Crimes Against Humanity Initiative*.

Cherif was nominated for the Nobel Peace Prize in 1999 by the Association Internationale de Droit Pénale, an honor that he most surely deserved. He received the French Legion of Honor, the Hague Prize in International Law and the Order of Merit from Austria, Egypt, France, Germany and Italy, as well as honorary doctorates from several universities.

Cherif wrote, "The pursuit of truth and justice requires, among other things, moral courage, at times physical courage, the strength to overcome fear, and fighting off the temptations of reward for ignoring wrongs. It also requires determination, willingness to sacrifice, a sense of honor and dignity and perseverance when things seem impossible". He had all these qualities and more. He was also a devoted husband and wonderful father to his stepchildren,

loved music and art, and in spite of his immersion in a field addressing the darkest deeds of humankind, was a bon vivant who laughed easily, smiled readily and enjoyed the company of friends.

Cherif was a devout Muslim who was not immune to the pain caused by the discrimination he often endured as an Arab American and Muslim in a country that too often has forgotten the principles of religious freedom enshrined in its founding documents. We shared a common heritage and understanding of the trials of being Arab American in the United States. Some of his very first writings as a young academic concerned the question of Palestine, including an essay on *The Middle East in Transition: From War to War, a Proposed Solution*, an astonishingly brave writing for a young academic at a U.S. University<sup>20</sup>. Yet "nevertheless he persisted", and was never bitter or angry, understanding that only through tolerance and education could understanding and peace be brought forth. He quoted Christian and Talmudic texts as often as the

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<sup>19</sup> L. Sadat & M. Cherif Bassiouni (eds.), *Model Draft Statute for the International Criminal Court Based on the Preparatory Committee's Text to the Diplomatic Conference, Rome, June 15-July 17, 1998*, 13ter NOUVELLES ETUDES PÉNALES (1998).

<sup>20</sup> M. Cherif Bassiouni, *The Middle East in Transition: From War to War, a Proposed Solution*, 4 INT'L. LAWYER 379 (1970).

Qu-ran, and would, I think be pleased to have me finish this short remembrance of him with a text attributed to the Talmud that sums up his devotion to justice and peace:

*Do not be daunted by the enormity of the world's grief;*

*Do justly now.*

*Love mercy, now.*

*Walk humbly, now.*

*You are not obligated to complete the work,*

*But neither are you free to abandon it.*

Thank you Cherif, for all you gave us during your too short time on this earth; we may have lost a father, but your work and your legacy endure.



M.C. Bassiouni and Leila N. Sadat

## **Heroes have the whole earth for their tomb**

**William A. Schabas**

Member of the Board of Directors, Siracusa International Institute.

Professor of International law, Middlesex University London.

Professor of International Criminal law and Human Rights, Leiden University

**H**eroes have the whole earth for their tomb', said Pericles in the famous funeral oration reported by Thucydides. 'And in lands far from their own, where the column with its epitaph declares it, there is enshrined in every breast a record unwritten with no tablet to preserve it, except that of the heart'. Pericles thought the whole earth comprised Asia Minor and the eastern Mediterranean, including the strip of North Africa where Cherif Bassiouni was born. Today, however, the 'whole earth' that hosts Cherif's tomb encompasses the entire planet, where his loss is mourned by all of those who cherish justice and human rights.

Cherif nourished a vision of international criminal justice during decades when the idea was not popular. Even those who appreciated the idea of an international criminal court thought the idea to be unrealistic, utopian, perhaps anachronistic. Over the years, he generated a bibliography of stunning proportions. His prolific pen

chronicled the history of international justice. He wrote of the factors that accounted for its progress and those that explained its setbacks. When things revived, in the early 1990s, Cherif's encyclopaedic works were invaluable in charting the way forward. When I was studying law, many years before I had ever met Cherif Bassiouni, his name was known to me from the library shelves. International criminal law was then a rather mysterious niche. If it was taught at universities at all, the subject was treated as one of history, a curious episode following the Second World War that was unlikely to be repeated. We may well ask whether the cooling embers left by Nuremberg and Tokyo would have survived at all had it not been for Cherif's contribution.

Even when he began to slow down, at an age long after most take their retirement, Cherif continued to write and to publish. He produced a book on Egypt's 'Arab spring', and then one on the Balkan fact-finding commission

that preceded the International Criminal Tribunal for the former Yugoslavia. Until the last days of his final illness, Cherif was still focussed on writing his own memoirs, a work that alas remains unfinished. If the burst of creativity in these last years is any guide, he still had much more to give. There were more books to write, and more ideas to develop. In that sense, his passing is more than the tragic loss of a dear friend, colleague, and comrade in arms.

At our last meeting, only days before his passing, we talked of many things: the retreat on Lake Michigan that he loved so much, his fabulous collection of toy soldiers belonging to Napoleon's imperial regiment, and his love of music. He was engaged in organising classical concerts in juvenile detention centres by

distinguished musicians in the Chicago area. His favourite composer? Beethoven, said Cherif. His favourite work was the seventh symphony, an unusual choice, but then he was an unusual man of great culture. Perhaps the ponderous cadences of its familiar slow movement reflect a life marked by patience but also determination.

Cherif Bassiouni, the global hero, had many dimensions. A brief note cannot aspire to describe them all. His friends and admirers will continue to communicate Cherif's huge legacy and to share his infectious enthusiasm. But even when our voices are stilled, his writings will endure. His name will resonate for generations of scholars, activists and campaigners for principles of international law, the laws of humanity, and the requirements of the public conscience.



M.C. Bassiouni and William A. Schabas

## **La tutela dei diritti umani come lascito per le generazioni future: in ricordo di M. Cherif Bassiouni**

**Paola SEVERINO**

Presidente Gruppo Italiano AIDP. Vice Presidente LUISS Guido Carli.  
Vice Presidente Siracusa International Institute

**N**on è compito semplice descrivere in poche righe la figura e l'operato del Prof. Mahmoud Cherif Bassiouni, accademico di fama mondiale, padre del diritto penale internazionale e instancabile difensore dei diritti umani. Alla luce del rapporto di stima e amicizia che mi univa al Professore, sono onorata di essere stata scelta – in vista del convegno di Siracusa a lui dedicato – per questa testimonianza, in cui mi piacerebbe provare a raccontare – al di là del profilo scientifico – che cosa il Prof. Bassiouni abbia rappresentato per l'Associazione internazionale di diritto penale e, in modo particolare, per il nostro Paese. Anche in questo ricordo personale, non posso non prendere le mosse dallo straordinario *background* accademico e professionale del Prof. Bassiouni: nel corso della sua brillante carriera, rivestendo diversi e prestigiosissimi ruoli in ambito accademico e istituzionale, egli ha contribuito a *fondare* il sistema di giustizia penale internazionale come

oggi lo conosciamo.

Professore emerito alla DePaul University di Chicago, dove ha insegnato per oltre quarant'anni e dove ha fondato e presieduto l'*International Human Rights Law Institute*, a partire dal 1975 è stato nominato quale esperto per numerosi incarichi in seno alle Nazioni Unite, in materia di crimini di guerra, diritti delle vittime, violazione dei diritti umani.

La sua instancabile passione per il diritto internazionale umanitario ha fatto sì che, su questo terreno, egli sia divenuto un indiscusso punto di riferimento. Voglio qui ricordare particolarmente il suo fondamentale apporto durante i lavori che condussero alla elaborazione dello Statuto di Roma: dapprima Vicepresidente del Comitato *ad hoc* (1995) e del Comitato Preparatorio (1996-1998) dell'Assemblea generale per l'istituzione di una Corte penale internazionale, nel 1998 egli fu Presidente del Comitato di redazione



della Conferenza diplomatica per l'istituzione della medesima Corte. Ebbi l'onore di partecipare alla Conferenza, di cui ricorre quest'anno il ventesimo anniversario, e ricordo ancora la fatica di mettere insieme un Codice penale internazionale, coniugando culture giuridiche profondamente diverse, e l'emozione di aver visto, in quella notte di luglio, illuminarsi di tante luci verdi il cartellone del voto dei Paesi partecipanti alla Conferenza. La difficile attività di mediazione che il Prof. Bassiouni svolse in questa veste gli valse, invero, una candidatura per il premio Nobel per la pace nel 1999. Dicevo, tuttavia, che è al legame speciale, intenso e duraturo del Prof. Bassiouni con l'Italia che vorrei dedicare queste mie riflessioni. Quale protagonista dell'attività dell'Associazione internazionale di diritto penale – della quale negli anni è stato Presidente, Segretario generale e Presidente onorario –, il Prof. Bassiouni scelse infatti proprio Siracusa per fondare un Istituto internazionale dedicato allo studio del diritto penale e dei diritti umani. Dal 1972, anno di fondazione dell'ISISC - *International Institute for Criminal Justice and Human Rights*, centinaia di studenti, accademici, magistrati e professionisti provenienti da ogni parte del mondo hanno così

avuto l'occasione di partecipare alle conferenze, agli incontri, ai corsi di formazione che periodicamente si svolgono nella splendida cornice del capoluogo siciliano.

L'Istituto di Siracusa ha sempre rappresentato un ponte tra realtà diverse, rivolto tanto a Occidente – già durante gli anni Ottanta, quando in Sicilia partivano le prime indagini su Cosa Nostra, numerosi seminari hanno gettato luce sugli affari delle cosche negli Stati Uniti, ponendo la base per accordi di cooperazione in seguito conclusi tra i Governi italiano e statunitense –, quanto a Oriente – se solo si pensi alle conferenze e ai *workshop* organizzati con delegazioni provenienti da Paesi arabi –, con l'obiettivo ultimo – vera stella polare di tutte le attività realizzate – di promuovere la tutela dei diritti umani su scala globale.

In diverse occasioni ho avuto la fortuna di ascoltare il Prof. Bassiouni, rimanendo colpita dall'equilibrio, dal garbo, e, al contempo, dal carisma dell'uomo, in grado di trasmettere all'uditorio la sua passione per i temi della giustizia penale internazionale. Ricordo la sua capacità unica di renderli comprensibili e vicini, nel rimarcare la necessità che essi dovessero essere oggetto non solo di riflessione scientifica, ma altresì priorità nelle agende politiche e nel

dibattito pubblico.

In questo senso, anche il reato di tortura e il portato di civiltà che esso esprime possono essere considerati lasciti indiretti dell'opera del Prof. Bassiouni; il tema, come sappiamo, è stato di recente preso in esame anche dal legislatore italiano il quale, dopo un lungo e travagliato *iter*, ha infine introdotto nel codice penale una apposita incriminazione, all'art. 613-*bis*.

Già nel 1978 si era costituito in seno all'AIDP un comitato di giuristi provenienti da diversi Paesi – di cui anche il Prof. Bassiouni faceva parte – il quale predispose una prima bozza del Protocollo opzionale alla bozza di Convenzione sulla tortura. Tale testo ha affrontato il tema in una chiara prospettiva di *criminalizzazione*, approccio poi seguito anche nella versione finale della Convenzione contro la tortura e altre pene o trattamenti crudeli, inumani o degradanti (*UNCAT*) del 1984.

L'eredità giuridica che il Prof. Bassiouni ci lascia è, in una parola, *inestimabile*. Il nostro Paese, come ho sin qui ricordato, gli deve moltissimo, soprattutto perché, precorrendo i tempi, egli ebbe l'intuizione – potrei dire, la *visione* – di individuare il Mediterraneo, e l'Italia in modo particolare, quale snodo cruciale nella

costruzione di un'area di convivenza tra culture diverse.

Non minore la portata del suo contributo umano allo sviluppo di una sorta di “incubatore” di giovani studiosi provenienti da tutte le parti del mondo. Ricordo con particolare emozione la prima relazione che svolsi a Siracusa, giovanissima e al cospetto di tutti i grandi Maestri del diritto penale. Il tema era quello delle qualifiche soggettive nello statuto penale della Pubblica Amministrazione e il contenuto di quel testo si tradusse, nella riforma del 1991, nel nuovo testo degli artt. 357 e 358 del codice penale. Al di là del caso personale, vorrei ricordare come intere generazioni di penalisti e processualpenalisti italiani e stranieri abbiano trovato, nella sede dell'ISISC, un luogo accogliente e aperto al confronto internazionale e intergenerazionale.

Il *Siracusa Institute*, continuatore della grande tradizione che ho sin qui per rapidi tratti ripercorso, ha l'onore e l'onere di proseguire a farsi portavoce e promotore dei valori di legalità, stato di diritto e tutela dei diritti umani, i quali hanno, sin dalla fondazione, contrassegnato le iniziative dell'ISISC, testimoniando lo spirito che ha animato il suo Padre fondatore. In tempi difficili come quelli che oggi viviamo, in cui la pace e il dialogo tra

i popoli sembrano essere messi fortemente in discussione, dobbiamo allora impegnarci per preservare e

diffondere ulteriormente il messaggio – più che mai attuale e denso di significato – del Prof. Bassiuni.



Paola Severino and M.C. Bassiuni

## Contributo per M. Cherif Bassiouni: La nascita dell'ISISC

Alfonso M. STILE

Vice Presidente, AIDP, Membro onorario Consiglio di Amministrazione, Siracusa International Institute. Avvocato.

Professore Emerito di Diritto Penale, La Sapienza Università di Roma

**L**a mia conoscenza con Cherif Bassiouni coincide esattamente con la inaugurazione dell'ISISC.

Nel lontano 1972 ero un trentenne alquanto attivo con una certa esperienza internazionale anche per la lunga permanenza in Germania, libero docente di diritto penale a Napoli dal 1968, professore incaricato di diritto penale nell'Università di Urbino dall'anno successivo.

Ero sposato da poco e l'invito cortesemente trasmessomi da un avvocato siciliano amico, Giacomo Barletta Caldarera, fu accolto con grande entusiasmo per una pluralità di ragioni: si trattava di una iniziativa di carattere internazionale, non tanto frequente all'epoca e perciò stimolante in funzione di nuove conoscenze e relazioni; non ero mai stato a Siracusa, la cui storia mi era però ben nota; avevo l'occasione di un piacevole soggiorno con mia moglie in una località certamente amena e interessante, tutta da scoprire.

Quel che non potevo immaginare era

che dalla partecipazione a quell'incontro a Siracusa sarebbe derivato un marcato indirizzo della mia attività nei decenni successivi. La ragione di questo condizionamento fu essenzialmente una: l'incontro con Cherif Bassiouni.

Temo di essere restato uno dei pochi "testimoni oculari" dell'inaugurazione dell'ISISC e spero di essere scusato se mi dilungo.

Quando arrivai a via Agati, nella sede che ci avrebbe ospitato per tanti anni, ferveva l'animazione per i lavori finali dell'inaugurazione. Evidentemente c'era un po' di ritardo, che a me, napoletano, non faceva grande impressione: occorreva sistemare gli ospiti, che man mano arrivavano, registrare i microfoni e così via.

Proprio durante le prove finali dei microfoni che davano ancora qualche problema, in luogo del comune "prova, prova, uno, due, tre, quattro", prese la parola un giovane bruno, magro ed elegante che attirò la mia attenzione per un linguaggio particolarmente

forbito. Probabilmente per l'inaugurazione occorreva attendere qualche autorità ritardataria, per cui l'intrattenitore cominciò a parlare disinvoltamente di temi generali e più vicini all'oggetto del convegno. E tanto con una padronanza linguistica stupefacente che gli consentiva di rivolgersi agli ospiti stranieri nella lingua madre di ciascuno. Sinceramente ammirato, non potei fare a meno di dire a mia moglie che sedeva accanto a me: "Ma vedi questo siciliano come è bravo! Ma chi è?". E infatti conoscevo la maggior parte dei colleghi italiani, coetanei o un po' più anziani. Nel corso della giornata la mia curiosità venne presto soddisfatta: dopo l'inaugurazione avemmo modo di presentarci e di approfondire da subito la conoscenza con la partecipazione delle rispettive signore. Ovviamente si trattava di Cherif, che mi affascino con la sua storia avventurosa, con la molteplicità delle esperienze universitarie e dei rapporti accademici. Soprattutto mi impressionò la intensità del suo impegno verso l'AIDP di cui era già Vice Segretario Generale, nonché il marcato interesse per l'erigendo ISISC, considerato quale potenziale importante supporto dell'attività dell'Associazione. Mi sentii subito suo amico con la precisa sensazione di reciprocità.

Oltre a impressionarmi mi contagiò. Io avevo già partecipato al Congresso Internazionale di Roma del 1969, dopo una prolungata frequenza del Max Planck di Freiburg e quindi ero a conoscenza delle linee generali di azione dell'AIDP e di alcune (per me) mitiche personalità che ne facevano parte e occupavano cariche direttive. Ma tutto questo dall'esterno. Cherif mi introdusse con semplicità verso molti di questi autorevoli personaggi, prima di tutti con il Prof. Pierre Bouzat, Presidente dell'AIDP e sponsor della costituzione dell'Istituto di Siracusa, supportato in questo dal Prof. Giovanni Leone, Presidente della Repubblica, già Presidente del Gruppo Italiano dell'AIDP, che aveva contribuito in maniera determinante alla splendida riuscita del Congresso di Roma. Inoltre mi fece partecipe delle regole, della organizzazione e della prassi dell'AIDP.

Quei pochi giorni passati insieme furono decisivi per il mio legame, mai cessato, con l'ISISC e l'AIDP; decisivi grazie alla straordinaria capacità di coinvolgimento di Cherif Bassiouni: quel giovane studioso di pochi anni maggiore di me riuscì a inculcarmi, con il suo entusiasmo e la sua intraprendenza uno stimolo fortissimo ad occuparmi tanto della storica Associazione quanto del giovane Istituto di Siracusa, del quale già

tracciava le strade della futura operatività.

Per l'Associazione fui "indotto" a seguire l'attività del gruppo italiano e a costituire una sezione napoletana che iniziò ad operare alla grande e in breve tempo assunse una posizione di rilievo a livello nazionale. Ovviamente con il supporto di Cherif che in più occasioni fu invitato da me a Napoli per incontri e conferenze che destarono l'unanime ammirazione e l'acquisizione di soci qualificati.

Per l'ISISC una partecipazione costante alle attività internazionali promosse da Cherif, di cui non dimenticherò quella dedicata al terrorismo internazionale del 1975, mi pare, con incontri aperti e perfino cordiali addirittura tra penalisti israeliani e islamici pure in un momento di straordinaria tensione internazionale. Questo per sottolineare la straordinaria capacità di aggregazione che caratterizzava, fin da allora, questo giovane professore e che è rimasta immutata fino ai suoi ultimi giorni.

Vorrei ricordare che a conclusione della conferenza Cherif invitò tutti a recitare il Paternoster, una preghiera che – disse – poteva star bene a tutti indistintamente: un momento di intensa spiritualità che non ho mai dimenticato.

Voglio concludere con un ultimo

ricordo, sempre relativo agli albori dell'ISISC. Pochi anni dopo l'inaugurazione dell'Istituto si manifestarono alcune serie difficoltà economiche (per problemi di cassa dovuti ai ritardi degli Enti finanziatori) culminate con la decisione dell'AIDP di recedere dalla istituzione, poi ratificata nel settembre 1974 al Congresso di Budapest.

Sembrava proprio che l'ISISC fosse destinato ad una fine precoce, come tante analoghe iniziative. Fortunatamente questa decisione non venne formalizzata, anche per la determinazione di Cherif Bassiouni, eletto intanto Segretario Generale dell'AIDP a Budapest e con il supporto del Presidente Bouzat.

A livello locale gli sforzi volti a perfezionare gli impegni finanziari degli enti sostenitori locali – non posso omettere di ricordare quelli del Procuratore della Repubblica, dott. Giuseppe La Rosa – e una provvida legge regionale, consentirono al Consiglio Direttivo dell'AIDP di Parigi del maggio 1976 di rivedere la precedente posizione e di ratificare l'operato di Cherif Bassiouni, Segretario Generale, per la ripresa dell'attività dell'Istituto in sintonia con l'AIDP.

Ricordo nitidamente quella seduta del Consiglio parigino, perché ero stato chiamato a farne parte per la prima

volta per cooptazione: un grande onore per me, giovane ordinario trentacinquenne, grazie essenzialmente all'amicizia di Cherif oltre che ai buoni rapporti con altri autorevoli esponenti dell'Associazione come G. Vassalli, H.H. Jescheck e P. Bouzat. Doverosamente feci il mio esordio proprio con un caldo intervento a favore dell'ISISC, in un momento in cui le acque erano ancora agitate.

Da allora ha inizio la gestione sostanziale e formale di questo Istituto da parte di Cherif Bassiouni, che ne è stato indiscutibilmente il padre.

A me fu consentito organizzare in modo sistematico incontri tra i professori di diritto penale italiani che partecipavano massicciamente portando con sé i migliori allievi. I giovani penalisti che si incontravano a Siracusa sono tutti diventati autorevoli professori (e poi alcuni Presidi e Rettori) e ho ragione di credere che quei seminari, dove qualunque ventenne aveva il diritto di parlare e di sostenere la propria opinione in assoluta libertà, abbiano lasciato una traccia profonda nella loro personalità di studiosi.

I tempi erano diversi da quelli odierni e le occasioni di incontro non certo frequenti come oggi. In questa attività Cherif mi lasciava carta bianca, sapendo che avrei utilizzato al meglio i budget disponibili, anche perché

l'Istituto aveva bisogno di una base di consenso culturale anche in Italia, intanto che la sua fama si estendeva per il mondo intero.

La storia dei successivi 40 anni segnala una serie straordinaria di successi dell'ISISC di Bassiouni, non senza difficoltà seriali oggetto di confidenze e sfoghi, tutte superate da un impegno incessante e da una capacità espositiva e argomentativa unica.

Sempre più proiettato nella dimensione internazionale in funzione di una migliore tutela dei diritti dell'uomo, e specie con riferimento ad aree geografiche potenzialmente meno ricettive, l'ISISC è e resta un elemento fondamentale nella cultura giuridica di tanti Paesi mediorientali e non solo: un faro nell'orizzonte anche sanguinoso di tali ragioni. Questo faro è illuminato dalla Fede e dai principi di giustizia e di pace che hanno contraddistinto il contributo di Cherif alla nostra storia, e sono certo che il fatto che l'ISISC gli sia sopravvissuto abbia costituito e costituisca per Cherif una delle sue più grandi soddisfazioni.

L'ISISC, il cui nome è modificato oggi in *Siracusa International Institute for Criminal Justice and Human Rights*, è e resterà sempre – non solo per me – l'Istituto di Cherif Bassiouni.

## Les grandes qualités humaines ont un nom

**Jean-François THONY**

Président de l'Institut International de Syracuse de Justice Criminelle et  
Droits de l'Homme. Vice-président exécutif, AIDP  
Procureur général de la Cour d'Appel de Rennes (France).  
Président de la Conférence nationale des procureurs généraux

**P**arler de Cherif sans être immédiatement submergé par l'émotion est une chose difficile. Plusieurs mois après sa disparition, le vide est toujours aussi grand, «son trou dans l'eau ne s'est pas refermé» pour paraphraser Georges Brassens, et je gage que «cent ans après, il manquera encore»... Tiens, lorsque je pense à lui, ce sont des paroles de chansons françaises qui me viennent à l'esprit, et en particulier «les copains d'abord». Cela étonnera-t-il quelqu'un? Ce qui émerge quand on pense à lui, c'est en effet que ce grand amateur de chansons françaises avait su créer autour de lui un vrai «groupe de copains», auquel il a été fidèle toute sa vie. Un copain qui rentrait dans le groupe, ce n'était jamais autre chose qu'une personne avec qui Cherif se sentait bien, se sentait serein. Il choisissait son entourage sans jamais faire de calculs, sans chercher son intérêt, mais pour étancher sa soif des autres, comme si chacun des «copains» était une île sur

laquelle il aimait à se reposer. Il s'attardait toujours auprès de l'un d'eux, s'amusait à l'entendre raconter une histoire cocasse, et ne ratait jamais une occasion d'entonner une chanson avec eux, grivoise si possible, autour d'une guitare.

C'était cela, Cherif, et bien d'autres choses. Quelques mots le caractérisent:

**Charisme.** Cherif était fascinant, pour ses étudiants, pour ses interlocuteurs, pour son auditoire, pour tous ceux qui travaillaient avec lui. Etait-ce la bienveillance qui se lisait sur son visage, l'attention qu'il portait à tous ceux qui lui parlaient, voire le souci qu'il avait de toujours convaincre plutôt que d'imposer une opinion? C'était peut-être aussi la personnification d'un combat, celui des droits de l'homme et de la justice pénale internationale. En rencontrant l'homme, on rencontrait aussi l'expérience de 50 années de ce combat, on rencontrait le chef de tant de commissions internationales



d'enquête, on rencontrait une somme de savoirs, un véritable polyglotte, une référence dans le domaine du droit pénal international. Comment ne pas être fasciné. Bien sûr, Cherif savait se mettre en scène, construisant lui-même un peu de son propre mythe, affichant ses rencontres avec les plus grands de ce monde dans des cadres photographiques qu'un mur entier ne suffisait pas à accrocher, ou une salle remplie de coupures de presse à sa gloire! Mais c'est aussi cela qui fascinait chez lui.

**Humanité.** Rien d'étonnant à ce que Cherif soit devenu un des hérauts de la lutte contre les crimes contre l'humanité. Il débordait lui-même d'humanité, elle était dans ses gènes, dans son regard, dans ses sourires. Homme d'autorité qui savait parfois être tranchant avec ses proches, il donnait l'impression de se reprocher immédiatement un mot un peu trop dur ou un jugement trop forcé sur quelqu'un. Il complétait aussitôt son propos d'un mot plein de bonté ou de bienveillance à l'égard de celui contre lequel il pestait peu de temps auparavant... Il faisait toujours preuve d'une grande empathie pour ceux qui souffraient ou qui étaient dans la peine. Mais ce mot d'humanité qui le caractérise, c'est aussi celui du genre humain pour lequel il s'est battu à tous les moments

de sa vie. Il aurait pu se contenter d'être un grand professeur de droit, il a préféré faire de sa vie une mission, pourfendant les atteintes aux droits de l'homme sans jamais penser à sa sécurité personnelle, voire à l'inimitié que cela pourrait générer de la part d'individus, ou d'Etats. Il s'est souvent ouvert à moi du fait que tout au long de sa carrière professionnelle, les prises de position qui ont été les siennes au nom de la lutte contre l'impunité lui ont valu d'être écarté de postes prestigieux ou d'opportunités de carrière, en raison des barrages opposés par certains Etats. Mais ce n'était pas le plus important pour lui.

**Eloquence.** La volonté de Cherif de ne jamais se contenter d'affirmer quelque chose mais au contraire de toujours convaincre a fait de lui un talentueux orateur, quelle que soit la langue dans laquelle il s'exprimait. Je me souviendrai toujours d'une des premières rencontres que j'ai eues avec lui. Nous étions dans les anciens locaux de l'Institut de Syracuse, via Agati, dans ce petit amphithéâtre souvent bondé. Cherif prit la parole pour introduire le sujet du jour: l'extradition. Pendant une heure et demi, il fit, sans note, un cours magistral sans rien oublier de toutes les problématiques liées à l'extradition, matière pourtant ô combien aride, devant un auditoire

fasciné. On aurait entendu une mouche voler. Il y avait chez lui un goût de l'éloquence, un plaisir de s'exprimer qui expliquent son incroyable facilité à jongler avec 6 ou 7 langues différentes, sans que personne ne puisse percevoir un quelconque accent.

**Respect.** Cherif était profondément respectueux des autres, à commencer par le plus petit d'entre eux. Respect des opinions. Il écoutait avec attention celui qui lui apportait la contradiction, et s'efforçait de se mettre à sa place, pour mieux comprendre son point de vue. Il ne coupait jamais la parole à personne, trop respectueux de laisser à chacun la possibilité de s'exprimer. Respect des religions. Lui qui a grandi dans une région du monde qui est le berceau des trois grandes religions monothéistes, qui a vu et vécu les drames que les haines religieuses pouvaient engendrer, en Egypte ou à Sarajevo, ne cessait de mettre en avant ce qui rapprochait les religions plutôt que ce qui les divisait. Respect des gens, des cultures, des origines. Mais il imposait naturellement le respect également. On parlait de lui avec dévotion, on se félicitait d'avoir rencontré «le» professeur Bassiouni. Je me souviendrai toujours du jour où, jeune fonctionnaire des Nations Unies à Vienne, on m'avait annoncé

la prochaine visite dans les locaux «du» Professeur Bassiouni – que je ne connaissais pas – avec une telle déférence qu'il ne pouvait s'agir que d'une personne hors du commun. J'avais donc été faire un tour dans le couloir où il devait avoir sa réunion, et je l'avais vu de dos, dans l'embrasure d'une porte. Je n'en garde que l'image d'une crinière blanche et bouclée, celle «du» Professeur Bassiouni. J'ai pour lui un immense respect.

**Intelligence.** Quelle intelligence! Pas une intelligence brute, il n'était pas une machine à calculer, mais une intelligence subtile, qui mettait la puissance de sa pensée au service d'une analyse plus fine, qui savait prendre en compte la complexité du facteur humain. La finesse de sa pensée forçait l'admiration. Lors d'une discussion avec lui, il n'était jamais la peine de lui expliquer deux fois la même chose. Il vous écoutait d'un air attentif, et lorsque vous aviez fini de parler, il reprenait votre analyse pour lui donner une dimension stratégique. Et comme il n'était pas qu'un pur esprit, et cherchait toujours à transformer un problème en une solution et donc une action, le cheminement stratégique se sa pensée se terminait invariablement par «voilà ce que nous allons faire».

**Foi.** «Si tu vois le mal, tu dois le

corriger; avec ta main, avec tes mots ou avec ton regard ou dans ton cœur. Prophète Mahomet». «Si tu veux la paix, travaille pour la justice. Pape Paul VI». «Le monde repose sur trois piliers, la vérité, la justice et la paix. Rabbin Siméon Ben Gamaliel ». Que de fois Cherif a-t-il conclu ses propos en citant ensemble ces trois sentences... il y avait chez lui une véritable fascination à rapprocher les religions et à montrer qu'elles portaient toutes les mêmes valeurs de paix et de justice. Rien d'étonnant de la part d'un homme qui, bien que de religion musulmane, avait été élevé chez les jésuites au Caire pendant sa jeunesse. Il avait une culture théologique très étendue et, l'âge avançant, le fait religieux était devenu

pour lui une part importante de sa vie personnelle. En témoigne son «Hadj», qu'il a fait à 71 ans pour la première fois dans sa vie. Tout en respectant les prescriptions de l'Islam, il n'en était pas moins un des animateurs de la paroisse protestante de son quartier à Chicago avec son épouse Elaine! Il confiait volontiers, vers la fin de sa vie, que son rapprochement avec son Dieu lui avait apporté une grande paix intérieure, paix qui l'a soutenu pendant la souffrance de la maladie et lui a permis d'y faire face avec sérénité.

\* \* \*

Charisme, humanité, éloquence, respect, intelligence, foi.  
C, H, E, R, I, F.  
Merci Cherif.



Jean-François Thony and M.C. Bassiouni

## **Prof. Bassiouni and International Criminal Law in Japan**

**Kanako TAKAYAMA**

Member of the Board of Directors, Siracusa International Institute.  
Kyoto University (Japan)

**W**hen I started my activities in the Young Penalists' Section of the International Association of Penal Law in 2001, Japan was not yet a signatory of the International Criminal Court. Although the Japanese delegation including Professor Kuniji Shibahara, a former Vice President of the Association, contributed to the adoption of its statute, the government led by the prime minister Junichiro Koizumi (2001-2006) was highly reluctant to ratify the statute, because the United States were antagonistic to the ICC and Koizumi was firmly determined to follow the American policy. Still, academics and diplomats from Japan were supporting a prompt ratification. Professor Bassiouni encouraged us continuously by holding conferences, seminars and lectures as well as by addressing the Japanese government.

Another issue we young penalists were discussing was the trafficking in human beings. At that time, Japan was criticized heavily due to its connivance

of illegal women traffic mainly from Asian countries but refusing introduction of new penal clauses to punish such conducts. There, Professor Bassiouni was making worldwide efforts to appeal and inspire international public opinion.

In 2004, the "Trafficking in Persons Report" of the United States Department of State criticized Japan as "a destination country for Asian, Latin American, and Eastern European women and children trafficked for the purposes of forced labor and sexual exploitation", while "[t]he Government of Japan does not fully comply with the minimum standards for the elimination of trafficking". Then Japan decided to introduce a new 226bis in the Penal Code to criminalize "Buying or Selling of Human Beings" in 2005.

Japan finally became the 105th member state of the ICC in 2007 and had a judge elected in the same year. It did not change its Penal Code and just enacted the ICC Cooperation Act, in which several conducts

disturbing the ICC proceedings were defined as criminal offenses. Since then, Japan has been the largest financial contributor to the ICC. It once seemed relatively independent from the American foreign strategy but has become again closer to it since Palestine became a member state and Israel asked Japan for support in related matters.

These courses are examples to show that international law develops not only according to theories and ideas, but is strongly influenced by real politics. All the more, the role that academics and lawyers would play is important. For example, strong support of the Japanese judges in the ICC among the population could put a break on Japan's mere following in the footsteps of the U.S.

In June 2015, I became an organizing member of the "Association of Scholars Opposed to the Security-related Bills" in Japan together with a Nobel Prize winner, members of the Japan Academy and other prominent professors. The bill provided for Japan's Self-Defense Forces to cooperate actively with U.S. and other foreign military operations overseas against Article 9 of the Constitution, "land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized". Then, on June 13, 2015,

I attended the IAPL meeting in Paris and met Professor Bassiouni to hear that he had been in Japan at the end of the previous year in order to persuade Japanese government to stop this legislation. Our efforts went in vain and Japan sent a new troop to South Sudan in November 2016 on the basis of the new law. However, the government decided to withdraw troops by May 2017, after scandals of the Prime Minister and his wife relating to land-sale to a nationalist school came to light.

I was much moved by Professor Bassiouni's engagement even in Japanese foreign affairs. It reminded me of our visiting Hagia Sophia in Istanbul during the International Congress of Penal Law in 2009. Professor Bassiouni and I were in the same visitors group. To see inside of that old temple, I was strongly impressed by the fact that the Islamic symbols were put next to Christian mosaics without hiding them. I said, "Muslims didn't destroy those icons, but respected them!". Then Professor Bassiouni told me, "Yes. The world must be like this". I, a Buddhist, was given a lot of encouragement and support from him. He put values on mutual understanding of and respect to all religions. He always practiced it. Sometimes there were even risks of attack but he never changed his goals. We will progress in the same direction.

## M. Cherif Bassiouni and Malaika

### Christine VAN DEN WYNGAERT

Vice-president, AIDP. Honorary member of the Board of Directors, Siracusa International Institute. Judge at the Kosovo Specialist Chambers.  
Formerly judge at the ICJ, ICTY and ICC

I had the privilege of belonging to the first generation of the so-called “young penalists” at the institute in Siracusa in December 1976, more than 40 years ago. This is when I first met Cherif Bassiouni, in the staircase of Hotel Villa Politi, while he was coming down the stairs, engaged in a vivid discussion with the then president of the AIPD, professor Pierre Bouzat from France. I remember my surprise at seeing such a young handsome man. Having read many of his books and articles, I had expected to meet a wise but boring grey-haired stripe-suited professor, but there he was, in his late thirties, the rising star in the AIDP where he had just become the secretary general and then succeed to the same professor Bouzat with whom he was discussing in the staircase, as the president of the Association.

Like so many others, I was galvanized by his intelligence, wisdom and charisma. Even before I met him, he had inspired me through his writings on extradition law, more particularly

an article he wrote on the political offence exception to extradition, which had persuaded me to write a doctoral dissertation on that very subject. Over the years, I had many opportunities to discuss my PhD with him and to benefit from his academic wisdom. When my book came out a few years later, he briefly praised me but at the same time warned me not to rest on my laurels. This was Cherif: encouraging but also demanding and insisting that his students give the best of themselves.

But there was also something else. My choice to become an academic was a reluctant one, because at the time I was also studying classical guitar at the Royal Conservatory of Music in Brussels, and my interest in music was at least as big or even greater than my interest in law. This first seminar of young penalists in 1976 lasted three long weeks, so I had to take my guitar with me to do my obligatory daily practicing. Hotel Villa Politi was far from the maddening crowd of Ortigia and the rest of the city, so

most of us spent these long December evenings there together, building strong bonds of friendship, long before the Internet, Facebook and Twitter were there to distract us socially. Quite naturally, during those long evenings, a habit grew of me playing the guitar and making my fellow students sing songs from their respective countries. The big hall in Villa Politi with the enormous staircase, and the terrace outside, set the scenery for many singing sessions. Among the francophones, the so-called “chanson gaillardes” (somewhat naughty and daring student songs) became very popular. All the French students and professors knew them, with professor Reynald Ottenhof taking the lead. To our surprise, Cherif Bassiouni also knew these songs from his days as a student in Dijon, and happily joined in the chorus. I have a fond memory of one of those memorable summer nights at Villa Politi that, as can be imagined, never went without some delicious Sicilian wines. That night, we had what I would call today a #MeToo moment thinking of the often extravagant kindness that one of the professors was displaying towards the female students. In that momentum, we went out into the garden to a spot, just below the room of professor and AIDP president Bouzat. Together we sang the song of “Le père Dupanloup

est un cochon” substituting the – quite daring lyrics – with “Le père Bouzat”. But there were also songs in English, Hebrew, German, Italian, Spanish and in many other languages. Soon, the singing sessions at Villa Politi became a tradition after heavy days of academic exchanges at the Institute. Cherif’s favourite song was the song “Malaika, nakupenda malaika”, which over the years became the hymn of the Institute. It was a song in Swahili, which meant that the burden of learning the song in a foreign language was equal for all. Nearly all the students and professors in those days knew the song and joined in the refrain.

At one occasion, we even sang it “officially” at the Institute, in the conference room. This was at the closing ceremony of the now notorious expert’s meeting that prepared the Draft Convention on the Suppression of Torture (1977), which later made it into the UN convention that we all know. Cherif had asked me to bring my guitar to the Institute and, at the end of the ceremony, sing the song together with the participants. And it happened: all those experts, including Stephan Trechsel (then a member of the European Commission on Human Rights), Nial McDermott (then president of the International Commission of Jurists) and Nigel

Rodley (then with Amnesty International) all sang Malaika with us. It was a day to remember.

But we did not only sing. A lot of work was done during the many seminars and expert meetings at the Institute. For me, and for so many of my contemporaries, the Siracusa Institute and the person of Cherif Bassiouni were essential in our personal development as academics and practitioners. Of special importance were the brainstormings organized by Cherif trying to legally conceptualize the idea of an international criminal court. This was a dream, a sheer fantasy in the 70ies and 80ies, at a time when students and academics interested in ICL were not taken seriously because we were practicing a discipline that did not exist. When eventually the ad hoc tribunals and the ICC were created, times had radically changed. Many of the jeunes pénalistes who had been dreaming of an international criminal court made it to new international institutions in The Hague, as judges, prosecutors or defense lawyers. I myself am a living example of that fairy tale, together with Alfons Orié, Stephan Trechsel, Bert Swart, Sharon Williams, Wolfgang Schomburg, Albin Eser, Frank Höpfl and many others.

It was Cherif who laid the ground for it al. In his capacity as the Chairman of the UN Commission of Experts,

which documented the horrendous crimes being committed in the former Yugoslavia in the 1990ies he paved the way to the creation of the ICTY. Likewise, he was the driving force behind civil society and their weighing in on governments to support the very idea of a Court, a Court that would judge the abominable atrocities of our time. His universally accepted expertise in international criminal law and his vision earned him the unanimous election to the chairmanship of the drafting committee of the 1998 Rome Conference on the establishment of the International Criminal Court. We were all very proud to see him excel in all these functions. At the same time we were and still are sorry and angry over the fact that, for base political reasons, Cherif, who deserved it most, was never given the high prosecutorial or judicial mandate he deserved in these institutions. The International Criminal Court would be very different today, if Cherif would have had the opportunity to contribute to the institution from within.

In the past few years, we could see that “our” Cherif was gradually growing weaker. Yet, at his 75th birthday banquet in Villa Politi, he still insisted that the song Malaika be sung. And then there was this email of him, dated 3 April 2017, telling me of his creeping illness and the pain of the



treatments that he had to undergo. At the same time, he was adamant that he would come to the ICL course in Siracusa in May and that he would see me then. We did indeed meet, sadly, for the last time. In the courtyard of the Institute, with the help of Assia and Stefania, he had organized what would be the last singing session at the Institute. It came as a total surprise to me. There it was: the guitar, the students, and Cherif asking me to sing his revered song Malaika, nakupenda malaika. Everybody joined, including the younger generation of students who were at the Institute for the first time. It was a moment of great, yet sad, happiness because most of us, and also Cherif most probably, knew that

this was probably the very last moment that the song would be sang in his presence. I will never forget this last moment when we hugged goodbye, anticipating to meet again at the big celebration of his 80th anniversary at the Institute in December 2017. Yet, in our hearts, neither of us was confident that it would happen. But then, as he wrote in this email of April 2017, “I am in peace with the Lord and when my time comes I am ready to go without much regret”.

Thank you Cherif, in the name of all those who have sang “malaika” with you over the years, having shared this little musical extra with you that is the envy of many.



From left to right: Prof. Joachin Hermann, M.C. Bassiouni, C. Van den Wyngaert, R. Ottenhof, a friend

## M. Cherif Bassiouni and his visionary drive for a humanitarian justice system

John VERVAELE

President, AIDP. Member of the Board of Directors of the Siracusa International Institute for Criminal Justice and Human Rights

In his 30 years in the lead of the AIDP, first as Secretary General (1974-1989) and afterwards as President (1989-2004), Cherif did put the AIDP at the forefront in the international community. Thanks to him the AIDP could contribute in a substantive way to the elaboration and establishment of the ICC and the Rome Statute.

The reach of his work goes however much beyond international criminal law and the international criminal tribunals. He always has been very much interested in the interaction between human rights protection and criminal justice and in new forms of transitional criminal justice that could contribute to peace and fair justice. His work on international cooperation in criminal matters was also mainly inspired by his drive for a more humanitarian justice worldwide.

Capturing the personality of Cherif and his endeavor in words is as good as impossible. He always wanted to go beyond borders and convert dreams

in reality. Humanitarian, borderless universal justice was his mission. But he was also aware that in these new territories, beyond existing borders, law and justice has to be written and rewritten.

He was like Octavio Paz in “Libertad bajo Palabra”, *Liberté sur Parole*:

*“Allá, donde terminan las fronteras, los caminos se borran. Donde empieza el silencio. Avanzo lentamente y pueblo la noche de estrellas, de palabras, de la respiración de un agua remota que me espera donde comienza el alba.*

*Invento la víspera, la noche, el día siguiente que se levanta en su lecho de piedra y recorre con ojos límpidos un mundo penosamente soñado. Sostengo al árbol, a la nube, a la roca, al mar; presentimiento de dicha, invenciones que desfallecen y vacilan frente a la luz que disgrega.*

*(...).*

*«Là où cessent les frontières, les chemins s'effacent. Là commence le silence. J'avance lentement et je peuple la nuit d'étoiles, de paroles, de la respiration d'une eau lointaine qui m'attend où paraît l'aube.*

*J'invente la veille, la nuit, le jour qui se lève de son lit de pierre et parcourt, yeux limpides, un monde péniblement rêvé. Je soutiens l'arbre, le nuage, le rocher, la mer, pressentiment de joie – inventions qui*

*s'évanouissent et vacillent face à la lumière qui se désagrège.*

*(...)*

*Contre le silence et le vacarme, j'invente la Parole, liberté qui s'invente elle-même et m'invente, chaque jour».*

With his heritage it our duty to ensure that his torch of "Liberté sur parole" passes borders and creates justice and peace. Thanks, Cherif, for all your guidance!

## **Professor M. Cherif Bassiouni, pedagogue, networker, true friend**

**Peter WILKITZKI**

Honorary Vice-president, AIDP. General Director Criminal Law,  
German Federal Ministry of Justice, Berlin (retired).  
Professor, University of Cologne (Germany)

**W**hile preparing this humble contribution to the conference on Professor Bassiouni's legacy I came across the fascinating book edited by the Siracusa Institute honouring the occasion of its 40th anniversary in 2012. Once again I enjoyed looking at its amazing "Pictorial History" containing photographs of conferences and meetings during those forty years, photos which you also found and still find in the rooms, corridors and staircases of the Institute's old and new premises and which make strolling through the rooms together with old friends, looking for and discovering traces of meetings with them years or decades ago, an even more nostalgic and fascinating adventure. The oldest photo in this book in which I discovered myself shows the members of a working group on Transfer of Prisoners (1984) which brought together experts from Europe (West and East) and other

continents.

In fact, this was not my first stay at the Institute; already some years beforehand Cherif had brought together many senior and younger colleagues in the field of International Criminal Law, academics and practitioners, who would now be my fellows during my whole professional life. Those of us who did not already have a passion for ICL inevitably fell in love with the discipline when listening to this exceptional academic, President of the International Association of Penal Law and of the Institute, who had such an astounding talent to explain even difficult and complex subjects, without a manuscript, ready for printing and with his immense pedagogical talent. Most of us were not native speakers in any of the many languages mastered by Cherif, but none of us had problems in understanding his clear and lucid lectures, presented in such a

fascinating, suspenseful manner that his audience was spellbound.

And the newcomers invited by him to conferences and working groups not only became friends with each other, but Cherif also gave them the feeling that he himself, the “father of ICL” admired worldwide, later nominated for the Nobel Peace Prize, wanted us, greenhorns or not, to become his friends. And then he would ever after remain an exemplary friend, inviting us to a wealth of outstanding events (outstanding not only by virtue of their scientific quality and their value for practitioners but also of the accompanying social events, such as the legendary final dinners at Villa Politi), pampering us with unique hospitality and giving us hints for exploring new fields in ICL. Closely and with active support he followed his friends’ professional lives, including, if need be, writing letters of recommendation to national governments and statesmen where this might be helpful for a personal career. Wherever possible and in particular after painful backlashes (unfortunately not a rare phenomenon in this field) he gave us incentives and new energy to participate, each of us in their own place, in the common fight against

international crime and immunity.

Today, many years after retiring from my civil service and academic career, it is difficult for me to name a single foreign colleague and friend whom I did not for the first time or very early in my professional life meet at some “Bassiouni event”.

Let me just mention for the sake of example two of my dearest friends whom I first met at Siracusa and later in many places all around the world: Steve Thaman, from USA, and Mordechai Kremnitzer, from Israel. Both of them, like me, have meanwhile taken up residence in Berlin, and each time they come here, we and our spouses have a great time together with chats full of “You remember when we met in... at ...?”. The list could go on endlessly: Gino Polimeni, from Italy, Don Piragoff, from Canada, Helmut Epp, from Austria, Jean-Francois Thony, from France, José-Luis de la Cuesta, from Spain, André Klip, from The Netherlands, *e tutti quanti*. Not to forget my wife, Anita Ušacka, who, after starting her first term as Latvian Judge at the ICC, joined this circle of friends after co-organizing the Siracusa courses for strengthening the judicial capacity of the first 18 ICC judges.

All of us knew that at the end of the

day we owed to Cherif many of our bigger and smaller achievements with respect to our common goals and ideals, in keeping with his maxim (my favourite one and which

I passed on to my students):

*Some people see things and ask "Why?".*

*Others dream of things and ask "Why not?".*



On the occasion of his 70 anniversary at Grand Hotel Villa Politi, Siracusa

## Cari ricordi

### Lo STAFF dell'Istituto

**A**lla fine di questo libro, dopo tutte le belle parole scritte su M. Cherif Bassiouni, a noi staff dell'Istituto non resta che entrare in punta di piedi per contribuire a questa raccolta con i nostri ricordi più cari.

Mille libri potremmo scrivere ancora su di lui, poiché mille e più di mille sono i momenti passati insieme nel corso degli anni, momenti di cui ognuno di noi conserva nel cuore un ricordo speciale ed indelebile. Chi può infatti dimenticare il suo incedere severo all'interno dell'Istituto, la sua attenzione ai più piccoli dettagli, il suo fare autoritario ma sempre affettuoso, le sue braccia conserte alla scrivania, il dito passato sulla cornice dei quadri per controllarne la polvere?

Quando ci preparavamo al suo arrivo, vi era in noi la consapevolezza che ci avrebbe dapprima scrutato in silenzio per poi azionare i suoi poteri magici e comprendere immediatamente se stavamo lavorando a quello che ci aveva chiesto la volta precedente o se avevamo bleffato su qualcosa.

In realtà abbiamo sempre sospettato che avesse occhi e orecchie di altra natura, poiché di noi e dell'Istituto sapeva sempre tutto, nonostante la distanza. “*Ma se non c'è stato .... come diavolo avrà fatto a saperlo?? Mah...!*”, ripetevamo scuotendo la testa.

Ognuno di noi negli anni ha intessuto con lui un rapporto unico ed individuale, alimentando la convinzione di conoscerlo come nessun altro; ognuno di noi conserva in segreto un aneddoto particolare o curioso, una frase o un bigliettino con la lista di cose che non andavano dimenticate e che ci lasciava sulla scrivania la sera prima di uscire dall'ufficio, sempre per ultimo. “*Vai, vai, a domani!*” ci diceva. Sapevamo che si sarebbe attardato ancora un poco e poi avrebbe spento tutte le luci.

*Ali* ricorda che amava i sandwich al pollo e si metteva dietro di lui per ore ad indicargli dove appendere i quadri, *Assia* che la chiamava Assiuccia, *Filippo* ricorda le pagine interminabili di appunti delle riunioni, che iniziavano sempre con: “*aspettati qui due minuti!*” e duravano delle ore, *Gabriele* non può dimenticare il momento in cui l'ha conosciuto e l'effetto che gli fece vederlo di presenza dopo averne sentito tanto parlare da noi, *Nella* ripensa ancora a tutte le piccole cose personali che le chiedeva di fare perché a Siracusa si sentiva a casa,



*Sebastiano* ricorda le serate a fare quadrare i conti, *Stefania L.* le lunghe email piene di correzioni al programma del corso ICL e le mille versioni denominate 'final', *Stefania M.* rivede gli innumerevoli schemi finanziari che le richiedeva affinché tutti potessero orientarsi facilmente nelle strade tortuose del bilancio, e di certo *Tobias* non ha dimenticato i lunghi scambi di emails da Chicago.

Noi tutti ti pensiamo sempre caro Professor Bassiouni (o MCB come in molti lo chiamavano e come lui spesso si firmava) ci manchi sempre e sempre ci mancherai, ma ci aiuta il suono della tua voce, burbera e al contempo bonaria, che riecheggia ancora tra queste pareti ed è un po' come la sveglia della mattina che ci spinge incessantemente e ci incoraggia a fare del nostro meglio per la vita, la lunga vita dell'Istituto.

Con affetto,

*Ali, Assia, Filippo, Gabriele, Nella, Sebastiano, Stefania L., Stefania M., Tobias*

Tanti altri amici che hanno lavorato con lui in Istituto dovrebbero essere qui menzionati, ci rammarichiamo di non poterlo fare e speriamo che non ce ne vorranno.



M.C. Bassiouni and the Staff



Egypt 2006



Aeolian Islands 2006



South Pole 2013



Some relax



Emperor Cherif



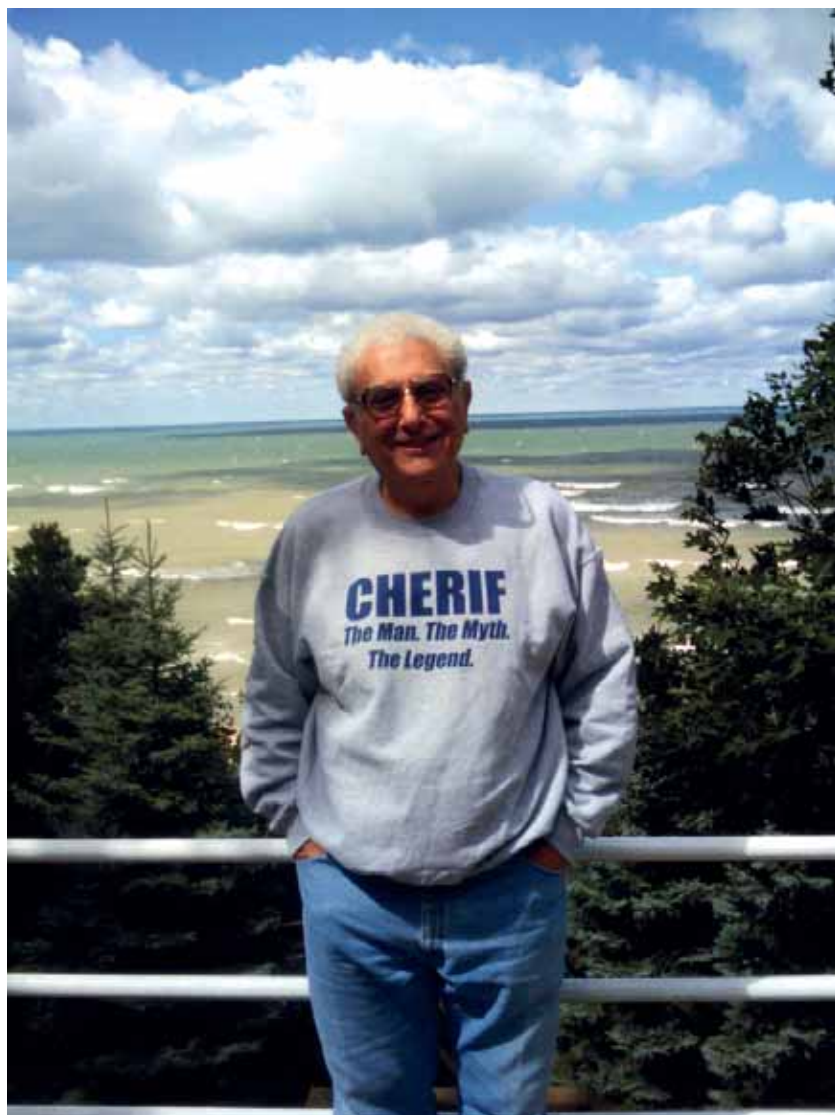
Sailing



Khaled M. Ahmed and M.C. Bassiouni



From left to right: Hatem Aly, Kelly and M.C. Bassiouni



Michigan 2010





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