M. Cherif Bassiouni
(1937-2017)

Cherif’s Friends. *In Memoriam*

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Memories and personal reflections on M. Cherif Bassiouni

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The 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 Strasbourg 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 Nima.

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 Irkeri 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.

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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’ (3rd 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).

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 30th 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).