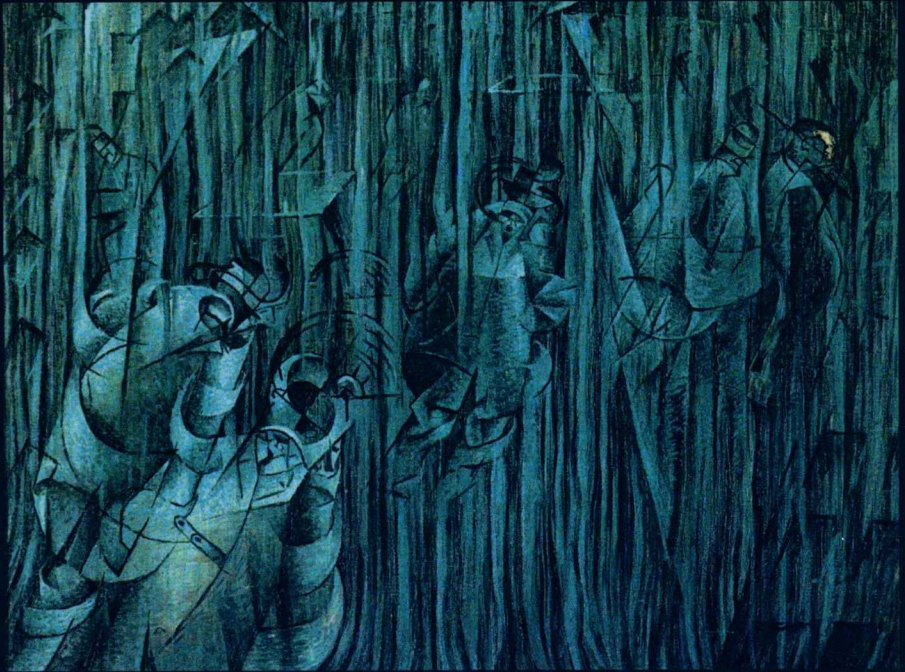


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International Law and the Protection of Humanity

Essays in Honor of Flavia Lattanzi



Edited by *Pia Acconci, David Donat Cattin,
Antonio Marchesi, Giuseppe Palmisano
and Valeria Santori*

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Preface

Valeria Santori

Flavia Lattanzi is a former Professor at the Universities of Pisa, Sassari, Teramo and Roma Tre and served as Judge *ad litem* at the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. On the occasion of Professor Lattanzi's retirement from her university teaching of international law, the editors, as her friends and former students, and the contributors, both academicians and practitioners from various countries who have had the privilege of working with her, dedicate the publication of this volume of essays to her.

The volume includes works in the fields of human rights, international humanitarian law, international criminal law and humanitarian assistance, as well as on other areas of international law relating to the protection of humanity. These are topics to which Flavia Lattanzi has given her outstanding contribution as well as her determined and unrelenting professional and personal commitment.

Honouring the work of Professor Lattanzi in just the space of a few lines is a challenging enterprise, as her work has spanned many areas and topics, as well as professions. If academic work has been the centrepiece of Professor Lattanzi's career, not less has been her engagement as a practitioner and as a human being: she has been, *inter alia*, an adviser to the Italian government, a judge in international criminal tribunals, a member of the International Humanitarian Fact-Finding Commission in Geneva, and an active promoter of human rights, with a perceptive attention to the instances and struggles of civil society. A few highlights might offer a glimpse of her invaluable contribution to the development and advancement of international law.

Professor Lattanzi developed her academic career under the inspiration of two among the most respected Italian, and internationally renowned, international law scholars: Roberto Ago and Gaetano Arangio-Ruiz. She continued and emulated their approach to the study of international law and the analysis of relevant practice (international and domestic) characterised by strict scientific rigor and unwavering intellectual honesty. Her scholarly production is varied and extensive and has continued uninterrupted throughout Professor Lattanzi's career, up to this very day.

In addition to her early work in the area of private international law and international arbitration, a topic that she continued to cultivate thereafter also under the broader rubric of International Economic Law, Professor Lattanzi's

scientific interest soon focussed on human rights issues. A seminal book published in 1983 addressed, with a comprehensive and innovative approach, a problem that remains, still nowadays, fundamentally unresolved: the question of the guarantees of human rights, *i.e.* “those legal instruments that, in either a direct or indirect way, in either a preventive or *ex-post* manner, aim to ensure compliance with international norms on human rights.”¹ In that book, some main lines that represent constant and ever developing threads of Judge Lattanzi’s academic and professional work are either addressed or embedded.

First, the firm conviction that the respect for human rights is an indispensable precondition for durable peace. The notion that human rights and peace are two strictly intertwined and inter-dependent values and that there can be no genuine peace without respect for human dignity is one of that work’s main conclusions and will remain a constant element of Professor Lattanzi’s thought and deeds.

Second, and in line with that conviction, the notion that grave breaches of human rights, including the refusal to provide assistance to populations in distress (or the denial of access from others to this end), can imply a threat to international peace and security and can warrant the use of force. Force, however, is only admissible as a last resort measure (“guarantee”) where other mechanisms have failed, and exclusively in compliance with strict criteria to ensure that force is resorted to solely to stop such violations and not to pursue other goals. Professor Lattanzi stresses how such “interventions of humanity,” as she defines them in her “Assistenza umanitaria and intervento di umanità” of 1997,² must be carried out on the *proper territory* where the emergency situation for the population has arisen, while they are not a ‘humanitarian war’ against the State – or a non-state entity – likely responsible for such a situation. The study of the international legal regime regulating the provision of humanitarian assistance, understood as relief coming from outside of the borders of the State concerned at the request or with the consent of that State, and humanitarian intervention, understood as a “coercive action of a State on the territory of another State - or in the territory controlled by a rebel group in the affected State - in order to protect and relieve a population whose survival is at risk,”³ has been one of the major contribution of Judge Lattanzi to the scholarly debate in this area.

1 F. Lattanzi, *Garanzie dei diritti dell'uomo nel diritto internazionale generale*, Dott. A. Giuffrè ed., 1983, pp. 75–76.

2 F. Lattanzi, *Assistenza umanitaria e intervento di umanità*, Giappichelli, Torino, 1997.

3 See, most recently, *Humanitarian Assistance*, in A. Clapham, P. Gaeta, M. Sassoli (eds.), *The 1949 Geneva Conventions. A Commentary*, Oxford, 2015, p. 232 *et seq.*

Third, guarantees against human rights violations include the question of the punishment of *delicta iuris gentium* or core crimes under International Law, a theme that has become the flagship of Professor Lattanzi's scientific production in the last 25 years. Many of her academic works are devoted to studying treaty-based and customary international law crimes and their adjudication, both at the level of domestic jurisdiction and internationally. The jurisdictional regime, alongside the lengthy process that brought to the establishment of the International Criminal Court ("ICC"), has been an area in which Flavia Lattanzi left a unique mark. In the 1993 issue of the *Rivista Italiana di Diritto Internazionale*, for example, she provided, for the first time in a scholarly writing, the definition of the principle of complementarity.⁴

Her contribution to the law and practice of international criminal jurisdictions developed ahead of, and in parallel to, the creation, by the United Nations Security Council, of the *ad hoc* International Criminal Tribunal for Rwanda and the Former Yugoslavia. When she became a Judge, Flavia Lattanzi continued to imprint her interpretation of law as applied to facts in key decisions and judgements. As the only trial Judge having served on both *ad hoc* Tribunals, as *ad litem* or reserve Judge, she sat on the bench of various cases dealing with charges of genocide, crimes against humanity and violations of the laws and customs of war (war crimes). Just before she left the Tribunal for the Former Yugoslavia, two important Judgments were issued, the Karadzic trial's judgment, for which Judge Lattanzi sat as a reserve Judge or "fourth Judge" with an expertise in Public International Law, and the Šešelj Trial's Judgment, to which Judge Lattanzi attached a strongly critical and courageous dissenting opinion challenging most (if not all) of the majority findings leading to his acquittal.⁵

4 See F. Lattanzi, 'Riflessioni sulla competenza di una corte penale internazionale', (1993) 3 *Rivista di diritto internazionale*, p. 665. This pivotal article of Flavia Lattanzi was written on the basis of the 1993 draft Statute for an ICC elaborated by the International Law Commission, one year before the 1994's controversial version of the ILC Draft Statute.

5 Judge Lattanzi, in particular, concluded that "Under the pretext that the Prosecution did not do its job well – one can always do better, and the Trial Chamber could have also done better from the outset of this case, notwithstanding the difficulties it encountered during the trial – the majority sets aside all the rules of international humanitarian law that existed before the creation of the Tribunal and all the applicable law established since the inception of the Tribunal in order to acquit Vojislav Šešelj. On reading the majority's Judgement, I felt I was thrown back in time to a period in human history, centuries ago, when one said – and it was the Romans who used to say this to justify their bloody conquests and murders of their political opponents in civil wars: 'silent enim leges inter arma' (*In time of war, the laws fall silent, Cicero*)."
See ICTY, *Summary of the Partially Dissenting Opinion*, 31 March 2016, available at http://www.icty.org/x/cases/seselj/tjug/en/160331_summary_of_the_partially_dissenting_

Flavia Lattanzi also provided expert advice to the Italian government during the negotiation of the ICC Statute in the Rome and during the Preparatory Commission in New York. While disappointed by some underachievement in the negotiation of the statute of an institution that she, like many others, would have liked to see entrusted with more effective powers *vis-à-vis* national jurisdictions, she resolved herself to engage in and encourage scholarly proposals to improve this institution and its operation. A particular focus of her contribution in this area concerns the question of the Court's complementary character *vis-à-vis* national jurisdictions and the role of States in implementing the principles and norms of the Rome Statute in their domestic legal order. Ensuring that States are well equipped with norms, prohibitions and sanctions suitable effectively to prevent and repress international crimes and ensuring compliance with international norms in the crucial area of cooperation with the Court became key priorities in her scholarly work. Back in 1999, she established and led, together with another international scholar,⁶ the Teramo (and later Rome) Research Group, composed of academics, government representatives and other practitioners, which addressed what were, at the time, some of the most burning issues within the debate surrounding the establishment of the Court. In two volumes, the group analysed, from the perspective of several legal systems, the general strategy of ratification, constitutional issues as well as the question of how domestic legislation was adopted or drafted in order to comply with the challenge of cooperation with the Court. At the national level, she contributed to Italy's efforts in this context, including as a Member and then President of a commission set up by the Italian Ministry of Justice on the implementation of international rules in the matter of judicial assistance and cooperation in criminal matters.

Last, but not least, Professor Lattanzi nurtured and trained scores of young academics, lawyers and other practitioners in international criminal law, human rights law and international humanitarian law, including with her contribution, as founder, scientific director and/or lecturer of the International Master's course on International Co-operation against International and Transnational Crimes at University of Teramo, the Arusha School of International Criminal Law and Human Rights, the Gaborone School on International Criminal Jurisdictions at the University of Botswana and of many other academic initiatives. Many of her students and pupils are currently directly

opinion.pdf. Judge Lattanzi has been praised by international commentators in the media due her firm and unequivocal position against the majority of Judges.

6 The Group was established and launched with Professor Klaus Kreß of the University of Cologne.

or indirectly involved in the work of the ICC and other international criminal jurisdictions.

The list of contributors to this volume is a testimony to Professor Lattanzi's professional and human reach as well as to the variety of her work and professional experiences. The editors would like to thank all those that contributed to this volume for their work and dedication in seeing this project through to completion. More would have readily contributed had it not been for their concurring commitments and for the deadlines imposed by the editors.

The editors, having greatly benefited from Professor Lattanzi's support, advice and wisdom while enjoying her inspiring personality, and feeling that they can speak also on behalf of the contributors to this volume, wish her every success in her continued and important work towards promoting the respect of humanity as the indispensable foundation of our current and future international coexistence.

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- (14) 'Eccesso di potere e ultrapetizione nel giudizio arbitrale' (Exceeding Arbitrators' Powers), *ibidem*, p. 596 *et seq.*
- (15) 'Il Tribunale Iran-Stati Uniti: nazionalizzazione di beni stranieri e standard dell'indennizzo' (The Iran-United States Claims Tribunal: Nationalization of Foreign Property and the Standard of Compensation), *ibidem*, p. 886 *et seq.*
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