

# EDUCATION, UNIVERSALITY AND HUMANISM: THE HUMAN PERSON AND THE MISSION OF INTERNATIONAL TRIBUNALS\*

## EDUCAÇÃO, UNIVERSALIDADE E HUMANISMO: A PESSOA HUMANA E A MISSÃO DOS TRIBUNAIS INTERNACIONAIS

ANTÔNIO AUGUSTO CANÇADO TRINDADE\*\*

### ABSTRACT

The birth and historical evolution of Universities around the world have been attached to the universal cultivation of the humanities. *Universitas* and *humanitas* go together, with humanists always attentive to the centrality of fundamental human values. Universities have a spiritual dimension. The cycle of U.N. World Conferences focused on living conditions of the population everywhere. There is need of a people-centred outlook in contemporary international law. Contemporary international tribunals have acknowledged the relevance of general principles of law. Such principles are a manifestation of the universal juridical conscience, the ultimate material source of all law. An objective law is thus conformed, on solid foundations (and well beyond the “will” of individual States), in the line of jusnaturalist thinking.

**KEYWORDS:** *Universitas* and *humanitas*. Humanist thinking. Values. Centrality of general principles of law. Universal juridical conscience. Objective law. Jusnaturalist thinking.

### RESUMO

O surgimento e a evolução histórica das Universidades ao redor do mundo têm estado ligados ao cultivo universal das humanidades. *Universitas* e *humanitas* avançam juntas, com os humanistas sempre atentos à centralidade dos valores humanos fundamentais. As Universidades têm uma dimensão espiritual. O ciclo das Conferências Mundiais da ONU concentrou-se nas condições de vida da população em toda parte. Há necessidade de um enfoque centrado nos povos no direito internacional contemporâneo. Os tribunais internacionais contemporâneos têm reconhecido a relevância dos princípios gerais do direito. Tais princípios são uma manifestação da consciência jurídica universal, fonte material última de todo o direito. Conforma-se assim um direito objetivo, com fundamentos sólidos (e bem além da “vontade” dos Estados individuais), na linha do pensamento jusnaturalista.

**PALAVRAS-CHAVE:** *Universitas* e *humanitas*. Pensamento humanista. Valores. Centralidade dos princípios gerais do direito. Consciência jurídica universal. Direito objetivo. Pensamento jusnaturalista.

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\*\* Judge of the International Court of Justice. Former President of the Inter-American Court of Human Rights. Emeritus Professor of International Law of the University of Brasília, Brazil. Member of the *Curatorium* of The Hague Academy of International Law, and of the *Institut de Droit International*. E-mail: a.cançado-trindade@icj-cij.org

**SUMMARY:** 1 *Universitas* and *Humanitas*. 2 Knowledge and Humaneness. 3 The Legacy of U.N. World Conferences. 4 International Judicial Recognition of the Right to Education. 5 Contemporary International Tribunals in Their Common Mission of Realization of Justice. **Annex:** The Importance of Education.

## 1 UNIVERSITAS AND HUMANITAS

It is a great honour to me to come to India for this ceremony: I feel indeed touched by this highly significant initiative of Kiiit University of Bhubaneswar towards me, coming, as I do, from another part of the world, Latin America. This initiative of awarding me the Doctorate *honoris causa*, in the present ceremony, in its School of Law, on this Sunday morning, 26 November 2017, is a sign of the universality, proper to the *Universitas*.

In the historical evolution of Universities around the world, a trend of thinking - the humanities - has consistently concentrated on the “transcendental humanity” of human beings. Humanism is also proper to *Universitas*. And *Universitas* and *humanitas* go together: this memorable ceremony bears witness of that. Contrary to the view - of compartmentalized or “specialized” knowledge - that truth could only be reached by empirical investigation. humanists, in their cultivation of general knowledge, continued to insist on the centrality of the *values*.

In the present age of so-called mass “globalization”, or “globalized” massification, attention to cultural identity, in the framework of the universality of the human kind, continues to be regarded as necessary, so that we can live in harmony in the cosmos, respecting the differences which conform that universality, and defend ourselves against the chaos and the irrationality that surround us.

It is necessary today to keep on insisting on the central role of humanities, - encompassing literature, philosophy, history, law, language and education - within the *Universitas*. Cultural legacy, within the framework of universalism, will never be replaced by the simple preparation for professional exercise. University teaching is to remain attentive to *education*, surrounded by human values.

The effectiveness of the right to education is of fundamental importance, in the light of the basic principle of equality and non-discrimination. True education, well beyond professionalization, awakens in the youth of the new generations their *vocation* to an integral life, from the start not limited by the vicissitudes of the entry in careers of specialized knowledge.

The search for knowledge and understanding cannot be limited by the self-sufficiency of “professionalization courses”. The youth hopes to acquire knowledge so as to understand the surrounding world and one’s own existence, and to live with lucidity in one’s own time. We live nowadays, in any country of the world, amidst the imprevisibility and the chaos, more or less institutionalized, and amidst violence, in distinct degrees.

Never, as throughout the XXth century and beginning of the XXIst century, so much progress was achieved in science and technology tragically accompanied by so much destruction and cruelty, exemplified by successive acts of genocide, atrocities and massive and grave violations of human rights and international humanitarian law. Lessons from the past appear to have been forgotten.

The XXth century rested marked by its tragic contradictions, by its oscillations between advances and steps backwards, by the divorce between wisdom and specialized knowledge, by the antinomy between the domain of sciences and the lack of control of human impulses. The great thinkers of the XXth century were unanimous in pointing out these contradictions, as I have been pointing out, in recent years, in my writings and in several of my Individual Opinions, presented successively in the Inter-American Court of Human Rights (IACtHR)<sup>1</sup>, and in the International Court of Justice (ICJ)<sup>2</sup>.

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1 Assembled in: A.A. Cançado Trindade, *Esencia y Transcendencia del Derecho Internacional de los Derechos Humanos (Votos en la Corte Interamericana de Derechos Humanos, 1991-2008)*, vols. I-III, 2nd. rev. ed., Mexico D.F., Ed. Cámara de Diputados, 2015, vol. I, pp. 3-687; vol. II, pp. 3-439; vol. III, pp. 3-421.

2 Assembled in: Judge A.A. Cançado Trindade - *The Construction of a Humanized International Law - A Collection of Individual Opinions (1991-2013)*, vol. I (IACtHR), Leiden, Brill/Nijhoff, 2014, pp. 9-852; vol. II (ICJ), Leiden, Brill/Nijhoff, 2014, pp. 853-1876; vol. III (ICJ), Leiden, Brill/Nijhoff, 2017, pp. 9-764.

## 2 KNOWLEDGE AND HUMANENESS

Professions, multiplied in modern times, have led to specializations, which respond and correspond to the needs of the social *milieu*. Even if it today there prevails, in the majority of the Universities, an unsatisfactory search of “specialized” or “professionalizing” knowledge (rationalized in function of “social needs” which do not take care of the personal needs of each human being), there are also those - perhaps a minority, today as in the recent past - which have not lost sight of the fact that the meaning of existence cannot be acquired by means of a simple search of satisfaction of material needs; the cultivation of culture is part of the search for spiritual development, so as to be able to interpret the past, to understand the present, and to give a meaning to one’s own life<sup>3</sup>.

Earlier this morning of 26.11.2017, shortly before the present ceremony here at the School of Law of Kiiit University of Bhubaneswar, I have had the occasion to visit the Kalinga Institute of Social Sciences (KISS), and to address briefly its 27,000 thousand students<sup>4</sup>. May I here ponder - in tribute to the honorable Founder Professor Achyuta Samanta, present here, - that the Kiss Institute is an example to the world, having flourished here in India, always attentive to learning, in its longstanding and venerable history in the domain of education; nowadays as well as in ancient times, India has remained home to Universities, including some of the oldest in the world.

Nowhere else can the intergenerational dialogue be cultivated in a more gratifying way as in the Universities, anywhere. This is an attribute which belongs to them by an intrinsic requirement: that of the encounter between generations, living harmoniously each one within its own time, with the due understanding, and the difficult but necessary acceptance, of the ineluctable passing of time. As to the present, Universities, which have also a spiritual dimension, have

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3 Cf., in this sense, Hermann Hesse, *Uma Biblioteca da Literatura Universal [circa 1945]*, Lisbon, Edit. Cavallo de Ferro, 2010, pp. 9-10 and 105.

4 Text reproduced in the Annex, *infra*.

to influence public affairs, given the need to convey the humanist mentality advanced herein also to scientists and specialists.

Cultural expression, in its highest form, is, after all, spiritual. And Universities can count only on critical reflection and the right reason (*recta ratio*) to reassert their true vocation as centres of universal learning, and formation of cultured persons, competent professionals who understand the world wherein they live, and well disposed to contribute to the improvement of the human condition. Some degree of transdisciplinary or multidisciplinary instruction serves the concern as to the need to convey to the new generations a necessarily humanist perspective, that may enable them to understand the world and to preserve basic values to be transmitted to their fellow human beings and their descendants.

Hope is to be kept and nourished. We should never forget that, it is in moments of crisis of values (such as the one we currently witness in the international scenario) that advances have been achieved. Thus, in one of the rare glimpses of lucidity along the XXth century, in the aftermath of the II World War, the General Assembly adopted the U.N. Universal Declaration of Human Rights, on 10 December 1948.

In this respect, may it here be recalled that, seven decades ago, in mid-1947, while the old Commission of Human Rights of the United Nations was preparing the draft of the Universal Declaration of Human Rights, UNESCO consulted the main thinkers of that time all over the world on the main issues to be addressed in its elaboration. May I here single out - as I have done in my *Treatise on the International Law of Human Rights* (vols. I-III)<sup>5</sup> published in Brazil, - some of the responses to the questionnaire then circulated by UNESCO, which appear to be endowed with topicality nowadays, seven decades later.

While Teilhard de Chardin insisted on the guarantee of the freedom of the individual in face of the forces of collectivity, Jacques Maritain defended the jusnaturalist foundation of the rights to be

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5 A.A. Cançado Trindade, *Tratado de Direito Internacional dos Direitos Humanos*, vol. I, 2nd. ed, Porto Alegre/Brazil, S.A. Fabris Ed., 2003, pp. 55-57.

proclaimed<sup>6</sup>. Mahatma Gandhi stressed the relations between rights and duties, while Chung-Shu Lo underlined the importance of the rights to life and to the “expression of oneself”; for his part, S.V. Puntambekar stressed the relevance of essential individual freedoms and virtues as fundamental values of human life and conduct<sup>7</sup>.

Looking at the forthcoming steps then to be taken, Levi Carneiro stressed the need of the Universal Declaration, - after the conclusion of its drafting by the U.N. Commission of Human Rights and its adoption by the U.N. General Assembly, - being furthermore accompanied by a binding international convention<sup>8</sup>. At the end of the UNESCO meetings in Paris (from 26 June to 02 July 1947, its Commission on Philosophical Principles of Human Rights joined its conclusions in a document titled “Bases of an International Declaration of Human Rights”<sup>9</sup>. Universality and humaneness marked presence therein.

In 1948, the same year of the U.N. adoption of the Universal Declaration of Human Rights, in approaching the end of his life, Mahatma Gandhi, father of this nation, had his autobiography written and published. In it, he gave expression, *inter alia*, to his own views on education. True education in ideal conditions, - he wrote, - can be imparted “only by the parents”, the family itself; it should do “full justice to the young people”, giving “the first place to the culture of the heart or the building of character”<sup>10</sup>. It requires “literary training”, with attention to distinct cultures, so as to foster understanding. This amounts to the training of the spirit, - he added, - in early preparation for life, helping the young

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6 *Los Derechos del Hombre - Estudios y Comentarios en torno a la Nueva Declaración Universal Reunidos por la UNESCO*, Mexico/Buenos Aires, Fondo de Cultura Económica, 1949, pp. 97-98 (Teilhard de Chardin), pp. 14-22 and 69-74 (Jacques Maritain).

7 *Ibid.*, p. 23 (M.K. Gandhi), pp. 169-172 (Chung-Shu Lo), and pp. 177-180 (S.V. Puntambekar).

8 *Ibid.*, pp. 160-164 (Levi Carneiro).

9 *Ibid.*, appendix II, pp. 233-246, esp. p. 235.

10 M. Gandhi, *Autobiography - The Story of My Experiments with Truth* [1948], N.Y., Dover Publs., 1983, p. 298.

to “learn to discriminate between good and evil”<sup>11</sup>.

The 1948 U.N. Universal Declaration of Human Rights irradiated itself, paving the way for the adoption of successive and numerous human rights conventions and instruments (complementary at global and regional levels), and the historical process of *generalization* of protection of the rights inherent to the human person, projecting itself at both international and national levels<sup>12</sup>. All these developments, that occurred along the last decades (from 1948 to date), are examined in detail in my aforementioned *Treatise*, including the legacy of the two U.N. World Conferences of Human Rights (Teheran, 1968; and Vienna, 1993)<sup>13</sup>, among others, in the framework of the more recent cycle of U.N. World Conferences, which I shall now turn attention to.

### 3 THE LEGACY OF U.N. WORLD CONFERENCES.

The evolution of the *corpus juris gentium* of the protection of the rights of the human person has undergone two global assessments. In historical perspective, the I World Conference on Human Rights (1968) much contributed with the global vision of the indivisibility and interrelatedness of all human rights, thus overcoming the compartmentalized view that used to prevail in the bipolarity characteristic of the cold war period.

The II World Conference on Human Rights (1993), for its part, focused on the application of the instruments of that *corpus juris gentium* (the indivisibility of human rights in practice), with special attention to discriminated or disadvantaged persons, to vulnerable groups, to the poor and the socially marginalized and excluded, - to all those, in sum, in greater need of protection. Between the I and II World

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11 *Ibid.*, pp. 299-302 and 304.

12 Cf. A.A. Cançado Trindade, “The International Law of Human Rights at the Dawn of the XXIst Century”, 3 *Cursos Euromediterráneos Bancaja de Derecho Internacional* (1999), Castellón/Spain, Ed. Aranzadi, 2000, pp. 145-221; A.A. Cançado Trindade, “Values and Significance of the Universal Declaration of Human Rights at the World and Regional Levels”, in *Recueil des Cours - Textes et Sommaires - XXIX Session d’Enseignement* (1998), Strasbourg, IIDH, 1998, pp. 101-115.

13 A.A. Cançado Trindade, *Tratado...*, *op. cit. supra* n. (5), pp. 77-338.

Conferences, 25 years lapsed. Ever since the II World Conference until now (end of 2017), 24 more years have lapsed, but in our days no initiative has been taken to date to convene a III World Conference of the kind, in my perception much needed.

In a wide framework, the remarkable transformations, in the last decades, in the contemporary world scenario have disclosed the considerable density of our times, which are of profound reflection on the very bases of international society, and indeed of the gradual formation of the international agenda of the United Nations. The cycle of World Conferences convened by the United Nations, initiated in 1992<sup>14</sup>, has disclosed a concern, also with the precarious living conditions, in distinct circumstances, dramatically affecting greater segments of the population in many parts of the world nowadays.

There has been, ever since, a growing call for the pursuance of social justice *among* and *within* nations. These recent years are being marked by an over-all reassessment of many concepts in the light of the consideration of global issues (human rights, social justice, social development, environment, population, human settlements, human security and peace), affecting the whole of humankind<sup>15</sup>. This process has generated a universal dialogue and concertation, as clearly disclosed by their final documents (declarations and programmes of action).

Those U.N. World Conferences have disclosed, as their common denominator, the recognition of the legitimacy of the concern of the international community as a whole with the conditions of living of all human beings. Those World Conferences have indeed been particularly attentive to the *conditions of life* and special needs of protection in particular of vulnerable groups and the poorer segments of the population. This is reflected in various passages

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14 Namely, World Conferences on Environment and Development, Rio de Janeiro, 1992; on Human Rights, Vienna, 1993; on Population and Development, Cairo, 1994; on Social Development, Copenhagen, 1995; on Rights of Women, Beijing, 1995; on Human Settlements - Habitat-II, Istanbul, 1996; and World Conference against Racism, Durban/South Africa, 2001.

15 A.A. Cançado Trindade, "Sustainable Human Development and Conditions of Living as a Matter of Legitimate International Concern: The Legacy of the U.N. World Conferences", in *Japan and International Law - Past, Present and Future* (ed. Nisuke Ando), The Hague, Kluwer, 1999, pp. 295 and 307-309.



of their lengthy final documents, which place human beings at the centre of their concerns. In focusing on vulnerable groups (such as, among others, those formed by the poorest segments of society), the immediate concern has been with meeting basic human needs, and, from there, fostering people's empowerment<sup>16</sup>.

In effect, in recent years I have been drawing attention to the legacy of those World Conferences, in successive Individual Opinions, earlier in the IACtHR, and more recently in the ICJ. Earlier this year, for example, in my Separate Opinion in the case of the *Application of the ICSFT Convention and of the CERD Convention (Ukraine versus Russian Federation, ICJ's Order of 19.04.2017)*, I pondered that the aforementioned cycle of U.N. World Conferences (along the nineties and beginning of the last decade)

came significantly to disclose a common denominator, giving cohesion to the final documents they adopted, namely, the recognition of the legitimacy of the concern of the international community as a whole with the *conditions of living* of the population everywhere... The U.N. World Conference of Vienna (1993), in particular, added an important element to this common denominator, namely, the special attention devoted to the *vulnerable segments* of the population everywhere. The protection of the vulnerable constitutes the great legacy of the II World Conference of Human Rights (Vienna, 1993)<sup>17</sup>: more than any other of the World Conferences of that cycle, it presented, given its wide theme, a systemic vision of all segments of the population affected by vulnerability or extreme adversity... The Declaration and Programme of Action of Vienna, final document adopted by the 1993 Vienna Conference, sought to concentrate special attention on persons suffering from discrimination and vulnerable groups, on the socially excluded, in greater need of protection<sup>18</sup>. The aforementioned document much contributed to the recognition of the

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16 A.A. Cançado Trindade, *Tratado...*, *op. cit. supra* n. (5), pp. 77-338; A.A. Cançado Trindade, "Memória da Conferência Mundial de Direitos Humanos (Viena, 1993)", 87/90 *Boletim da Sociedade Brasileira de Direito Internacional* (1993-1994) pp. 9-57.

17 Cf. A.A. Cançado Trindade, *A Proteção dos Vulneráveis como Legado da II Conferência Mundial de Direitos Humanos (1993-2013)*, Fortaleza/Brazil, IBDH/IIDH/SLADI, 2014, pp. 13-363.

18 A.A. Cançado Trindade, "Nouvelles réflexions sur l'interdépendence ou l'indivisibilité de tous les droits de l'homme, une décennie après la Conférence Mondiale de Vienne", in *El Derecho Internacional: Normas, Hechos y Valores - Liber Amicorum J.A. Pastor Ridruejo* (eds. L. Caflisch *et alii*), Madrid, Universidad Complutense, 2005, pp. 59-73.

*centrality* of victims in the present domain of protection, with special attention to their living conditions amidst vulnerability. In its legacy, such centrality of the victims is projected until current times, and underlined in cases of systematic violation of their fundamental rights, amidst particularly *aggravating* circumstances<sup>19</sup> (paras. 53-55).

Furthermore, the aforementioned recent cycle of U.N. World Conferences has sought to elevate human rights related issues to a central place on the agenda of contemporary international relations, on the basis of the understanding that human rights do in fact permeate all areas of human activity. The recognition of this reality corresponds to a new *ethos* of our times. It is the privilege of contemporary international lawyers, faithful to the historical origins of our discipline, to contribute to recover and to reestablish the central position of human beings in the universe of the law of nations (*droit des gens*).

#### 4 INTERNATIONAL JUDICIAL RECOGNITION OF THE RIGHT TO EDUCATION

In the international adjudication of human rights cases, it so happens that the right to education marks its presence in legal reasoning even when the rights at stake are other protected rights under human rights Conventions, - such as the fundamental rights to life and to personal integrity. This has been so, for example, in respect of the *reparations* due to those victimized. May I briefly refer, in this respect, among others<sup>20</sup>, to my two Separate Opinions

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19 Cf. A.A. Cançado Trindade, *State Responsibility in Cases of Massacres: Contemporary Advances in International Justice*, Utrecht, Universiteit Utrecht, 2011, pp. 1-71; A.A. Cançado Trindade, *The Access of Individuals to International Justice*, Oxford, Oxford University Press, 2011, ch. X, pp. 179-191; A.A. Cançado Trindade, “Die Entwicklung des interamerikanischen Systems zum Schutz der Menschenrechte”, 70 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2010) pp. 629-699.

20 For example, educational measures had been ordered by the IACtHR as exemplary forms of reparation. For example, in the case of *Aloeboetoe et alii, versus Suriname* (Judgment of 10.09.1993), the IACtHR ordered the reopening of a school and the creation of a foundation to assist the beneficiaries; in the case of the “*Street Children*” (*Villagrán Morales and Others*) *versus Guatemala* (Judgment of 26.05.2001), the IACtHR determined the designation of an educational centre allusive to the victims in the *cas d’espèce*; likewise, in the case of *Trujillo Oroza*, pertaining to Bolivia (Judgment of

in the cases adjudicated by the Inter-American Court of Human Rights (IACtHR) of *Gómez Palomino versus Peru* (Judgment of 22.11.2005), and of *Blanco Romero and Others versus Venezuela* (Judgment of 28.11.2005), where I recalled that educational measures had been ordered by the IACtHR as exemplary forms of reparation, meant to provide *satisfaction* to the victims.

Furthermore, in both Separate Opinions I deemed it fit to point out that educational measures in human rights go beyond means of *reparations* (such as satisfaction), as they also pertain to the *prevention* of human rights violations, disclosing the *temporal dimension* of the safeguard of those rights. In my Separate Opinion in the aforementioned case of *Blanco Romero and Others*, in particular, I singled out that the IACtHR had ordered, as one of the measures of reparation, as a form of *satisfaction* and *guarantee of non-repetition* of the harmful acts, that the respondent State was to implement a programme of formation in human rights (for members of its forces) (paras. 16-17).

And in my Separate Opinion in the aforementioned *Gómez Palomino* case, I then concluded that

Educational measures in human rights thus have a wider dimension than that of reparations, as they are also preventive measures, to combat violence and abuses against the human person. They assume a special relevance nowadays (...): one cannot lose sight of the fact that education is a public good (in search of the common good), and not a simple commodity abandoned to the “logic” (or rather, the lack of logic) of the market (...), and that, in the mid- and long-run, many of the challenges of the protection of human rights can only be effectively faced through education (para. 13).

Moreover, in my Separate Opinion in the case of the “*Street Children*” (*Villagrán Morales and Others*) *versus Guatemala*

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27.02.2002), the IACtHR again ordered the designation of an educational centre with the name of the victim. There were cases in which reparations of the kind were meant to provide *satisfaction* to the victims. Thus, in the case of *Cantoral Benavides*, concerning Peru (Judgment of 03.12.2001), for example, the IACtHR ordered the State to provide a scholarship of University studies to the victim; and in the case of *Barrios Altos* (Judgment of 30.11.2001), pertaining to the same respondent State, the IACtHR determined the provision of educational grants, in addition to health services.

(reparations, IACtHR's Judgment of 26.05.2001), I warned that the suffering of the marginalized or excluded ones "is ineluctably projected into the whole social *corpus*. The supreme injustice of the state of poverty inflicted upon the unfortunate ones contaminates the whole social *milieu*" (para. 22). An educational centre was designated with a name referring to the young victims in the *cas d'espèce* (para. 31), who, before having been "cruelly and arbitrarily deprived of their lives", had already been "deprived of creating and developing a project of life (and of seeking a meaning for their existence)" (para. 33).

Subsequently, in the case of the *Institute of Reeducation of Minors versus Paraguay* (Judgment of 02.09.2004), the IACtHR related education to the right to life in its wide dimension, comprising the living conditions with dignity<sup>21</sup>. The fact that the adolescents concerned had not counted on an educational programme (to which the respondent State was bound) was aggravated by the social marginalization wherein they found themselves; the lack of access to education reduced further their possibilities of reinsertion into their social *milieu*, and of development of their project of life.

In my Separate Opinion, I stressed that the IACtHR's Judgment in the present case of the *Institute of Reeducation of Minors* aptly retook its outlook of the right to life encompassing dignified conditions of living<sup>22</sup>, with the acknowledgment that all human beings, even in the utmost defencelessness, - like the adolescents in the *cas d'espèce*, who had been socially marginalized and deprived of education for rehabilitation, - were subjects (*titulaires*) of rights and not simple objects of protection<sup>23</sup>.

Likewise, within the ICJ, on successive occasions I have drawn attention to the need of a people-centred outlook in contemporary

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21 An outlook inaugurated by the IACtHR in the aforementioned case of the "*Street Children*" (merits, 1999).

22 As it originally propounded in the paradigmatic case of the "*Street Children*" (*Villagrán Morales and Others versus Guatemala*, 1999-2001).

23 For a study, cf. A.A. Cançado Trindade, "*Universitas and Humanitas: A Plea for Greater Awareness of Current Challenges*", in *International Journal for Education Law and Policy* - Brussels/Antwerp (2013 - Special Issue: Dignity in Education [Proceedings of the II World Conference on the Right to Education]) pp. 7-16.

international law, with increasing attention to the centrality of the sufferings of peoples (e.g., my Separate Opinion in the ICJ's Advisory Opinion on the *Declaration of Independence of Kosovo*, of 22.07.2010), to the fundamental principle of humanity, in the protection of those in utmost vulnerability and even defencelessness (e.g., my Dissenting Opinion in the case of the *Convention against Genocide, Croatia versus Serbia*, Judgment of 03.02.2015; my Dissenting Opinion in the case of the *Jurisdictional Immunities of States, Germany versus Italy, Greece intervening*, Judgment of 03.02.2012; my Dissenting Opinion in the case of the *Application of the CERD Convention, Georgia versus Russian Federation*, Judgment of 01.04.2011)<sup>24</sup>.

More recently, in my Separate Opinion in the aforementioned case of the *Application of the ICSFT Convention and of the CERD Convention* (ICJ's Order of 19.04.2017), I addressed the matter at length, pondering *inter alia* that

It is significant that, in our times, cases pertaining to situations of extreme adversity or vulnerability of human beings have been brought to the attention of the ICJ as well as other international tribunals. This is, in my perception, a sign of the new paradigm of the *humanized* international law, the new *jus gentium*<sup>25</sup> of our times, sensitive and attentive to the needs of protection of the human person in any circumstances of vulnerability. The case-law of international human rights tribunals is particularly illustrative in this respect (para. 17).

On 23 March 2011, the U.N. Human Rights Council adopted the *United Nations Declaration on Human Rights Education and Training*, shortly afterwards adopted by the U.N. General Assembly itself, on 19 December 2011. The 2011 Declaration observes that

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24 Cf. also, in the same sense, my Separate Opinion in the case of *Questions Relating to the Obligation to Prosecute or Extradite* (Belgium versus Senegal, merits, Judgment of 20.07.2012), and my Separate Opinion in the case of *A.S. Diallo* (Guinea versus D.R. Congo, merits, Judgment of 30.11.2010).

25 Cf. A.A. Cançado Trindade, *A Humanização do Direito Internacional*, 1st. ed., Belo Horizonte/Brazil, Edit. Del Rey, 2006, pp. 3-409; 2nd. rev. ed., Belo Horizonte/Brazil, Edit. Del Rey, 2015, pp. 3-782; A.A. Cançado Trindade, *La Humanización del Derecho Internacional Contemporáneo*, México, Edit. Porrúa/IMDPC, 2013, pp. 1-324; A.A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, Buenos Aires, Ed. Ad-Hoc, 2013, pp. 7-185.

human rights education and training are to embrace “the diversity of civilizations, religions, cultures and traditions of different countries, as it is reflected in the universality of human rights” (Article 5(3)).

The 2011 Declaration is in line with the 1948 Universal Declaration of Human Rights; this latter, in asserting (in its holistic vision), in Article 26(1), that “[E]veryone has the right to education”, which is to be “free, at least in the elementary and fundamental stages”, adds that “[E]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms” (Article 26(2)).

In my own view, the new *jus gentium* of our times is centred on the human person<sup>26</sup>. The International Law of Human Rights has much contributed to rescue the centrality of the human person in the present-day *corpus juris gentium*. The right to education, and the rights in education, are enshrined herein, to the benefit of the ultimate addressees of legal norms, the human beings. States ought to proceed accordingly, reassuming their responsibility as to the human right to education.

## 5 CONTEMPORARY INTERNATIONAL TRIBUNALS IN THEIR COMMON MISSION OF REALIZATION OF JUSTICE.

Nowadays, the international community fortunately counts on a wide range of international tribunals, adjudicating cases that take place not only at *inter-State* level, but also at *intra-State* level. This invites us to approach their work from the correct perspective of the *justiciables* themselves and their needs of protection, bringing us closer to their common mission of securing the realization of international justice, either at *inter-State* or at *intra-State* level.

From this standpoint, each international tribunal has its own importance, in a wider framework encompassing the most distinct

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26 Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, Leiden/The Hague, Nijhoff/The Hague Academy of International Law, 2010, pp. 1-726; A.A. Cançado Trindade, *The Access of Individuals to International Justice*, Oxford, Oxford University Press, 2011, pp. 1-236; A.A. Cançado Trindade, *Le Droit international pour la personne humaine*, Paris, Pédone, 2012, pp. 45-368.

situations to be adjudicated, in each respective domain of operation. They contribute to the historical recovery of the position of the human person as subject of the law of nations (*droit des gens*), which constitutes, in my understanding, the most important legacy of the international legal thinking of the last six and a half decades<sup>27</sup>.

International human rights tribunals have drawn attention to the position of *centrality* of the victims, the *justiciables*, giving testimony, together with international criminal tribunals, of the expansion of international jurisdiction, of international responsibility, and of international personality and capacity. This is a notable feature of our times, in the present era of international tribunals. Access to justice has much enlarged, in distinct latitudes and circumstances.

Due to their work, the international community no longer accepts impunity for international crimes, for *grave* violations of human rights and of international humanitarian law. Their work has also a preventive dimension. There is nowadays the configuration of a true right to the Law (*droit au Droit*), of the persons victimized in any circumstances, including amidst the most complete adversity<sup>28</sup>.

International tribunals, in bringing justice to those victimized, even in situations of systematic and generalized violence, and mass atrocities, furthermore contribute decisively to the primacy of the *rule of law* at national and international levels, demonstrating that no one is above the law, - neither the rulers, nor the ruled, nor the States themselves. International law applies directly to States, to international organizations, and to individuals.

Moreover, international tribunals have ascribed great importance to general principles of law, reaffirmed time and time again, and retaining full validity in our days<sup>29</sup>. Legal positivism has

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27 A.A. Cançado Trindade, *Évolution du Droit international au droit des gens - L'accès des particuliers à la justice internationale: le regard d'un juge*, Paris, Pédone, 2008, pp. 1-187; A.A. Cançado Trindade, *Le Droit international pour la personne humaine*, Paris, Pédone, 2012, pp. 45-368.

28 A.A. Cançado Trindade, *The Access of Individuals to International Justice*, Oxford, Oxford University Press, 2011, pp. 196-198, and cf. pp. 132-191.

29 A.A. Cançado Trindade, "Foundations of International Law: The Role and Importance

always attempted, in vain, to minimize their role, but the truth is that, without those principles, there is no legal system at all, be it national or international. They give expression to the idea of an *objective justice*, paving the way to the application of the *universal* international law.

In my own conception, general principles of international law inform and conform the norms and rules of international law, being a manifestation of the universal juridical conscience, the ultimate *material* source of all Law; in the evolving *jus gentium* of our times, basic considerations of humanity play a role of the utmost importance<sup>30</sup>. The assertion of an *objective* law, beyond the will of individual States, is a revival of jusnaturalist thinking. After all, the basic foundations of international law emanate ultimately from the human conscience, from the universal juridical conscience, and not from the “will” of individual States.

Last but not least, the reassuring co-existence of multiple international tribunals has considerably enlarged the number of *justiciables*, in all parts of the world, even in situations of great adversity or vulnerability, if not defencelessness. The operation of international tribunals, in a harmonious and co-ordinated way, is essential to the gradual realization of the old ideal of international justice, as well as to the constant renewal of faith and hope in the construction of a world with prevailing justice. May I thank all of you for the kind attention with which you have distinguished me in this memorable ceremony at Kiiit University of Bhubaneswar, here in India.

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of Its Basic Principles”, in *XXX Curso de Derecho Internacional Organizado por el Comité Jurídico Interamericano* - OAS (2003) pp. 359-415.

30 A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2<sup>nd</sup>. rev. ed., Leiden/The Hague, Nijhoff, 2013, pp. 1-726.



## ANNEX: THE IMPORTANCE OF EDUCATION<sup>31</sup>

ANTÔNIO AUGUSTO CANÇADO TRINDADE

I am very pleased and gratified to visit your Kalinga Institute of Social Sciences (KISS), and to meet all of you here in Bhubaneswar today, in this early morning of 26 November 2017, in your place of studies and formation. Your Kiss Institute is a unique example to the whole world. You have here a special opportunity in education, very important to your lives, so as to seek to understand the world surrounding us, the world wherein we live.

This goal, of understanding the world, has been pursued by successive generations, along the centuries, since the antiquity. After all, human life is brief, and it is thus necessary to try to understand it, in time and space. It is necessary to learn to live well along the passing of time, to learn to live well in the space of the world wherein we stand.

The passing of time is the greatest enigma of our existence. We can only get used to living with it with peace of mind, if we pursue in our path seeking knowledge and understanding. We all have always much to learn, not only in order to work, but first of all in order to understand. *Ars longa, vita brevis*: this calls upon us to educate ourselves promptly and constantly.

This is an ineluctable duty we have towards ourselves, so as to render our existence meaningful. This is also an ineluctable duty we have towards those we love and those we live and work with, in harmony. May I extend to all of you my very best wishes in your studies and formation, now and in the years to come. I shall never forget this memorable meeting with all of you here at Kiss Institute in Bhubaneswar today. Thank you all for your kind attention.

Bhubaneswar, India,  
26 November 2017.

A.A.C.T.

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31 Brief address pronounced by the Author to the 27,000 students of the Kalinga Institute of Social Sciences (Kiss), in Bhubaneswar, Odisha, India, on 26 November 2017.

