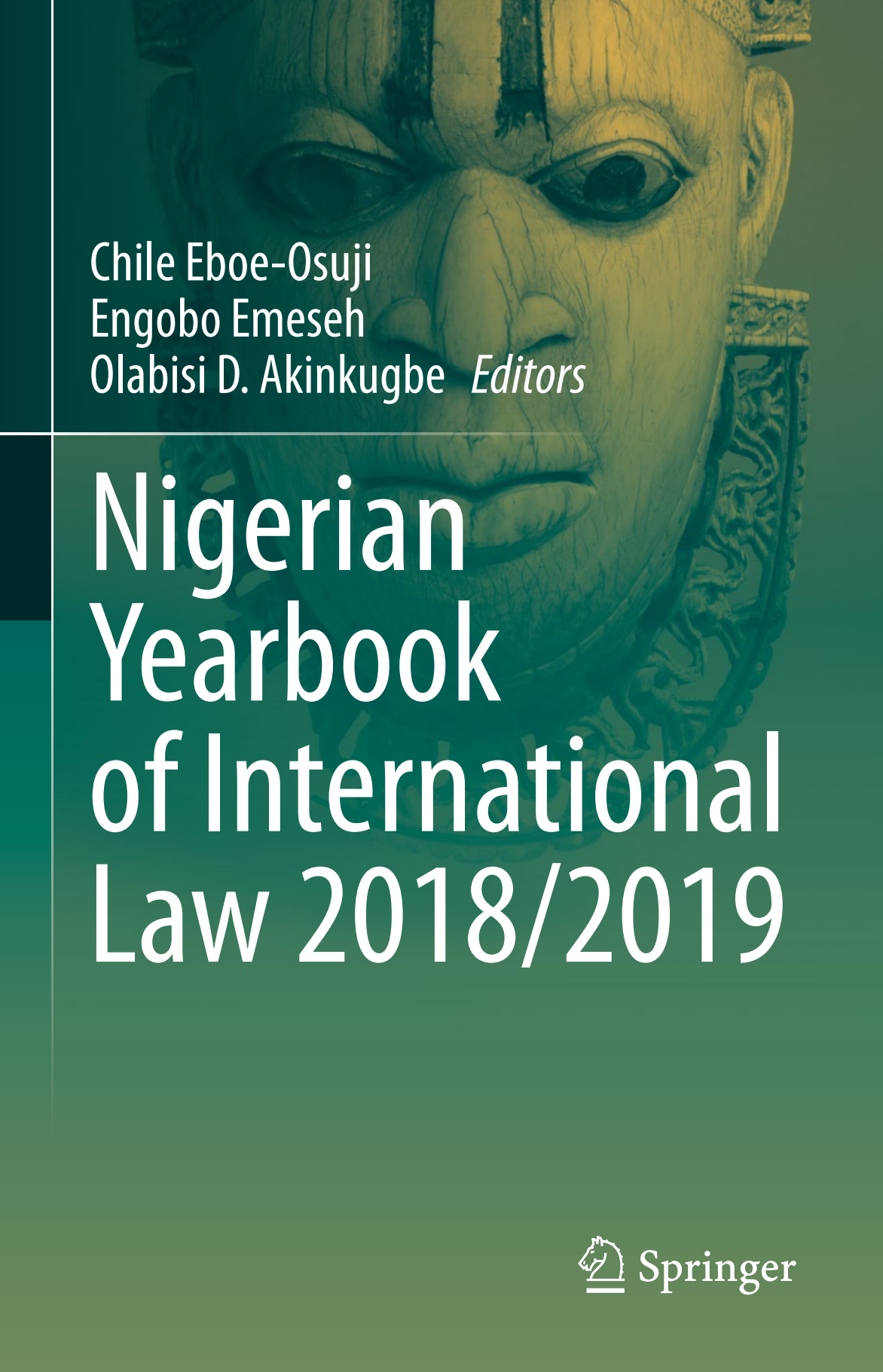

Chile Eboe-Osuji
Engobo Emeseh
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Nigerian Yearbook of International Law 2018/2019

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The NYBIL has as its main aim analysis of, commentaries on, and reporting of developments in international law that are mostly of relevance within the context of Nigeria in particular, Africa, the black diaspora of the world, and the developing world more generally. But, it is stressed that the publication is not exclusive in that regard: contributions from the perspective of the wider world are also strongly encouraged and welcomed.

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Preface

On behalf of the Editorial Board of the *Nigerian Yearbook of International Law* (NYbIL), I am delighted to present the second volume of the NYbIL.

International law and the scholarly spaces created in relation thereto have not always welcomed voices, perspectives, and critical interventions from the periphery. The contest to refine international law to account for and be accountable to these diverse views has been undertaken across generations of scholars from the Global South. In this regard, essential questions that have been at the heart of insightful analysis by these Global South scholars regarding established international legal orders, and the foundations of international law, as well as its practices have been at the heart of many of the insightful analysis that scholars and jurists in historical and contemporary contexts have undertaken. I am glad that the excellent contributions to this second volume of the NYbIL are built on its inaugural issue in providing critical interventions by a diverse group of scholars and jurists from Nigeria and across the world.

On a personal note, I am extremely thankful to have had the opportunity to not only be part of an amazing team of editors but also curate this volume of the NYbIL with excellent contributions from Nigerians and non-Nigerians who are enthusiastic about redressing the failed promises of international law. For this achievement, I wish to thank Professor Olabisi D. Akinkugbe, Professor Engobo Emeseh, and Ms Odo Ogwuma.

The task of completing the rigor that comes with similar initiatives goes beyond the editorial team. The NYbIL fills an important vacuum for hosting critical and analytical contributions from scholars and jurists all around the world on various subject matters under the broad rubric of international law. To be able to do this, we rely on our peer-reviewers who, in addition to many other tasks they are undertaking, agreed to review the submissions. As such, I would like to thank all our peer-reviewers who did a terrific job of ensuring that we bring our readers the best scholarship from the authors. In turn, I would also like to extend my gratitude on behalf of the editors to Springer Publications Ltd and to Dr. Brigitte Reschke for her support.

The incisive and insightful analysis by all the authors who are experts in their fields holds a great promise for our readers. The editors are glad to bring this second volume of the yearbook to our esteemed readers.

The Hague, The Netherlands — Chile Eboe-Osuji
Bradford, UK — Engobo Emeseh
Halifax, NS, Canada — Olabisi D. Akinkugbe

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International Law

New Reflections on Humankind as a Subject of International Law

Antônio Augusto Cançado Trindade

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1 Introduction: A Preliminary Precision

I have been devoting particular attention, along many years, to the condition of humankind as subject of international law. For example, in my General Course of Public International Law, delivered at the Hague Academy of International Law in 2005, I dedicated a whole chapter to the matter.[1] Now that we approach the end of the second decade of the twenty-first century, it is proper to retake my reflections on

[1] Cançado Trindade (2005a), pp. 318–333; and, subsequently, Cançado Trindade (2013a), pp. 275–288.

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the issue, in my perception of much relevance to the present and the future of international. May I start with a preliminary precision.

At the present stage of the progressive development of international law, States no longer have the monopoly of the condition of subjects of international law; they share such condition with international organizations and individuals or groups of individuals, and peoples, and humankind is also endowed with the statute of subject of international law. States cannot thus any longer consider international as being at service of their own interests only. In effect, interests or strategies of individual States cannot pretend to overcome the generaux and superior interest of the international community in domains touching it directly (like, for example, those of disarmament, human rights protection and humanitarian law, protection of the environment, and the erradication of poverty).[2]

2 The Central Place of the Human Person and Limits to State Voluntarism

A basic feature, and a remarkable contribution of the joint work of international human rights tribunals can be found, in my perception, in the position they have firmly taken of asserting precisely the *central place* of the human person in the domain of protection of rights inherent to her, and of setting *limits to State voluntarism*, thus safeguarding the integrity of the respective human rights Conventions and the primacy of considerations of *ordre public* over the "will" of individual States.

There is a growing awareness nowadays that the exercise of the international judicial function encompasses, besides settling disputes, *to say what the Law is* (*juris dictio*), thus contributing to the progressive development of international law.[3] In *saying what the Law is*, international tribunals are to take into account law and justice together, as situations of injustice are not sustainable.

In effect, I have singled this out in the ICJ, e.g., in my extensive Dissenting Opinion (paras. 1-316) in the case of *Jurisdictional Immunities of the State* (Germany *versus* Italy, with Greece intervening, merits, Judgment of 03.02.2012), warning that there cannot be State immunity for international crimes perpetrated in execution of a State policy. I sustained that the victims of oppression and atrocities have the *right to the Law* (*droit au Droit/derecho al Derecho*), the right of access to

[2] A. A. Cançado Trindade, *O Direito Internacional em um Mundo em Transformação*, Rio de Janeiro, Ed. Renovar, 2002, pp. 1068, 1083 and 1094–1095.

[3] Cf., in this sense, e.g., Cançado Trindade (2013b), pp. 16–17; Cançado Trindade (2015a), pp. 345–347; [Various Authors,] *International Judicial Lawmaking* (eds. A. von Bogandy and I. Venzke), Heidelberg, Springer, 2012, pp. 9–15 and 35–36; von Bogandy and Venzke (2016) [reed.], pp. 49 and 62.

justice, which cannot be restrained in cases of *delicta imperii*, of crimes of State[4] (cf. *infra*). The central place is that of the human person.

The basic posture is *principiste*, without making undue concessions to State voluntarism. The assertion of an *objective* law, beyond the "will" of individual States, is, in my perception, 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.[5] The assertion of the *unity* of the law is intertwined with the *rule of law* at national and international levels, as access to justice takes place, and ought to be preserved, at both levels.[6]

3 The Perception and Awareness of Common and Superior Interests of Humankind as Such

In the contemporary law of nations, States are no longer the sole subjects of international law; they nowadays coexist, in that condition, with international organizations and individuals and groups of individuals; and, moreover, humankind as such has also emerged as a subject of international law. As a result, humankind coexists with States, without replacing them; and States can no longer seek the pursuance of their own interests as the sole motivation for the shaping of contemporary international law.

In effect, the pursuance of State interests has an impact on the effectiveness of international law; but the interests of each individual State cannot make abstraction of, or seek to prevail upon, the pursuance of the fulfilment of the general and superior interests of the international community in matters of direct concern to this latter (such as, e.g., disarmament, human rights and environmental protection, eradication of poverty, among others).[7]

Experience shows that it is when such general interests are duly taken into account, and are made to prevail, by States as well as by other subjects of international law, that this latter has advance. It could hardly be denied that the advances of international law along the last decades have been achieved when the general, superior interests of humankind have been properly acknowledged and given expression to (such as, e.g., in International Human Rights Law, in International Environmental Law, in the Law of the Sea, in the Law of Outer Space). States themselves have contributed to those advances, whenever they have placed basic

[4]For a case-study, cf. Cançado Trindade (2013c), pp. 5–305; Cançado Trindade (2017b), pp. 69–77.

[5]Cançado Trindade (2013a), ch. VI, pp. 139–161; Cançado Trindade (2010), pp. 11–26; Brus (1995), pp. 142 and 182–183.

[6]Cançado Trindade (2017c), pp. 53–56.

[7]A.A. Cançado Trindade, *O Direito Internacional em um Mundo em Transformação*, Rio de Janeiro, Ed. Renovar, 2002, pp. 1068, 1083 and 1094–1095.

considerations of humanity and the general interests of the international community as a whole above their own individual interests.

In this connection, the ultimate aim of *jus cogens*, with its gradually expanded material content, is precisely that of securing the prevalence of the interests and most fundamental values of the international community as a whole.[8] There are, in fact, international obligations pertaining to the safeguard of fundamental values of the international community itself, which are distinct from other international obligations; hence the emergence of concepts such as that of obligations *erga omnes*, ensuing from *jus cogens*, in contemporary international law.[9]

The examination of humankind as a subject of international law does not exhaust itself in the identification and assertion of common and superior interests and values. It is to be kept in mind that international crimes and violations of *jus cogens* affect the basic values of the international community as a whole, and given their particular gravity, entail *aggravated* international responsibility, with all legal consequences.[10]

The key point of humankind as subject of international law calls for the consideration of the fundamental principle of humanity and the basic considerations of humanity which nowadays mark presence in the whole *corpus juris* of international law[11] (with a conceptual precision), of the legal consequences of the emergence of humankind as a subject of international law, of the relevance of the human rights framework, and, last but not least, of the question of humankinds capacity to act and its legal representation.

4 The Fundamental Principle of Humanity

The treatment dispensed to human beings, in any circumstances, ought to abide by the *principle of humanity*, which permeates the whole *corpus juris* of International Law in general, and International Humanitarian Law in particular, conventional as well as customary.[12] Acts which,—under certain international treaties or conventions,—were regarded as amounting to genocide, or as grave violations of

[8]Cf. Cançado Trindade (2009a), pp. 3–29; Cançado Trindade (2009b), pp. 65–79; Gaja (2011), pp. 46–50; Lachs (1980), p. 205. On the importance of securing values, cf. Husson-Rochcongar (2012), pp. 1–941.

[9]The classic vision of a sole and undifferentiated regime of international responsibility no longer corresponds to the present stage of evolution of the matter in contemporary international law; Starace (1976), pp. 272–275, and cf. pp. 289, 297 and 308.

[10]Cf. A.A. Cançado Trindade, *El Ejercicio de la Función Judicial Internacional - Memorias de la Corte Interamericana de Derechos Humanos*, 5th. rev. ed., Belo Horizonte/Brazil, Edit. Del Rey, 2018, ch. VII, pp. 59-74; Cançado Trindade (2005b), pp. 253–269; Cançado Trindade (2011a), pp. 27–46.

[11]Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. XVI–XXIII, pp. 393–528.

[12]Cf. Cançado Trindade (2013d), pp. 188–197; Cançado Trindade (2016), pp. 61–74.

International Humanitarian Law, were already prohibited even before the entry into force of such treaties or conventions, by *general* international law.

One may here invoke, in the framework of this latter, e.g., the universal recognition of the aforementioned principle of humanity.[13] In the perennial lesson of a learned jusphilosopher, "if not the laws themselves, at least their content was already in force" before the perpetration of the atrocities of the twentieth century, in distinct latitudes; in other words, added G. Radbruch,

> those laws respond, by their content, to a Law superior to the laws (. . .). Whereby we see how, by the turn of a century of legal positivism, that old idea of a Law superior to the laws is reborn (. . .). The way to reach the settlement of these problems is already implicit in the name that the philosophy of Law used to have in the old Universities and which, after many years of not being used, comes to reemerge today: in the name and in the concept of *natural law*.[14]

It may be recalled that the *ad hoc* International Criminal Tribunal for Rwanda [ICTR] rightly pondered, in the case of *J.-P. Akayesu* (Judgment of 02.09.1998), that the concept of crimes against humanity had already been recognized well before the Nuremberg Tribunal itself (1945–1946). The Martens clause contributed to that effect (cf. *infra*); in fact, expressions similar to that of those crimes, invoking victimized humanity, appeared much earlier in human history.[15] The same ICTR pointed out, in the case *J. Kambanda* (Judgment of 04.09.1998), that in all periods of human history genocide has inflicted great losses to humankind, the victims being not only the persons slaughtered but humanity itself (in acts of genocide as well as in crimes against humanity).[16]

It can hardly be doubted the content of the condemnation of grave violations of human rights, of acts of genocide, of crimes against humanity, and of other atrocities, was already engraved in human conscience, well before their tipification or codification at international level, be it in the 1948 Convention against Genocide, or in other treaties of human rights or of International Humanitarian Law. Nowadays, international crimes are condemned by general as well as conventional international law. This development has been fostered by the universal juridical conscience, which, in my understanding, is the ultimate material source of all Law.[17]

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[13]In this respect, it has already been pointed out that "it is increasingly believed that the role of international law is to ensure a minimum of guarantees and of humanity for all, whether in time of peace or in time of war"; Pictet (1966), pp. 29–30.

[14]Radbruch (1965), p. 180.

[15]Paras. 565–566 of that Judgment.

[16]Paras. 15–16 of that Judgment. An equal reasoning is found in the Judgments of the same Tribunal in the aforementioned case *J.P. Akayesu*, as well as in the case *O. Serushago* (Judgment of 05.02.1999, para. 15).

[17]Cf., e.g., Inter-American Court of Human Rights [IACtHR], case of the *Massacre of Plan de Sánchez versus Guatemala* (merits, Judgment of 29.04.2004), Separate Opinion of Judge A.A. Cançado Trindade, par. 13; IACtHR, Advisory Opinion n. 18 (of 17.09.2003), on the *Juridical Condition and Rights of Undocumented Migrants*, Concurring Opinion of Judge A.A. Cançado Trindade, paras. 21–30.

Contemporary (conventional and general) international law has been characterized to a large extent by the emergence and evolution of its peremptory norms (the *jus cogens*), and a greater consciousness, in a virtually universal scale, of the principle of humanity.[18] Grave violations of human rights, acts of genocide, crimes against humanity, among other atrocities, are in breach of absolute prohibitions of *jus cogens.*[19] The feeling of *humaneness*—proper of a new *jus gentium*, of the twenty-first century,—comes to permeate the whole *corpus juris* of contemporary international law.

I have called this development,—*inter alia*, in my Concurring Opinion in the Advisory Opinion n. 16 (of 01.10.1999), of the Inter-American Court of Human Rights [IACtHR], on the *Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*,—a historical process of a true *humanization* of International Law.[20] I have been developing this understanding also in successive Individual Opinions lately in the International Court of Justice (ICJ) as well (cf. *infra*).

In its historical trajectory, the ICJ's 1951 Advisory Opinion on the *Reservations to the Convention against Genocide* sustained the recognition of the principles underlying that Convention as principles which are "binding on States, even without any conventional obligation".[21] In its *jurisprudence constante*, the IACtHR, in interpreting and applying the American Convention on Human Rights, has consistently invoked the general principles of law.[22] The same has done the European Court of Human Rights [ECtHR], in its interpretation and application of the European Convention on Human Rights.[23]

Among such principles, those endowed with a truly fundamental character form the *substratum* of the legal order itself, disclosing the *right to the Law* of which are *titulaires* all human beings.[24] In the domain of the International Law of Human Rights, the fundamental principles of the *dignity of the human person* and of the *inalienability of the rights which are inherent to her* fall under this category. In its Advisory Opinion n. 18, on the *Juridical Condition of Undocumented Migrants* (2003), the IACtHR expressly referred to both principles.[25]

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[18]Elias (2002), pp. 11–12.

[19]Cf., as to crimes against humanity, cf. Jurovics (2002), pp. 1–448; and Bassiouni (1999), pp. 210–211. And cf., as to acts of genocide, Cançado Trindade (2015b), pp. 9–265.

[20]Para. 35 of the Concurring Opinion.

[21]ICJ, *ICJ Reports* (1951) p. 23.

[22]Cf., *inter alia*, e.g., IACtHR, case of the *Five Pensioners versus Peru* (Judgment of 28.02.2003), para. 156; IACtHR, Advisory Opinion n. 17, on the *Juridical Condition and Human Rights of the Child* (of 28.08.2002), paras. 66 and 87; IACtHR, Advisory Opinion n. 16, on the *Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law* (of 01.10.1999), paras. 58, 113 and 128. For a study, cf. Cançado Trindade (2004), pp. 59–71.

[23]Cf. Caflisch and Cançado Trindade (2004), pp. 5–62.

[24]Cançado Trindade (2003), pp. 524–525.

[25]Para. 157 of that Advisory Opinion. In my own Concurring Opinion (paras. 1–89) in that Advisory Opinion, I made a detailed and extensive account of my own conception of the

The prevalence of the principle of respect of the dignity of the human person is identified with the ultimate aim itself of Law, of the legal order, both national and international. By virtue of this fundamental principle, every person ought to be respected (in her honour and in her beliefs) by the simple fact of belonging to humankind, irrespective of any circumstance.[26] The principle of the inalienability of the rights inherent to the human being, in its turn, is identified with a basic assumption of the construction of the whole *corpus juris* of the International Law of Human Rights. As to the principles of International Humanitarian Law, it has been convincingly argued that one should consider Humanitarian Law treaties as a whole as constituting the expression—and the development—of such general principles, applicable in any circumstances, so as to secure a better protection to those victimized.[27]

In the *Mucic et allii* case (Judgment of 20.02.2001), the *ad hoc* International Criminal Tribunal for the Former Yugoslavia [ICTFY] (Appeals Chamber) pondered that both International Humanitarian Law and the International Law of Human Rights take as a "starting point" their common concern to safeguard human dignity, which forms the basis of their minimum standards of humanity.[28] In fact, the principle of humanity can be understood in distinct ways. Firstly, it can be conceived as a principle underlying the prohibition of inhuman treatment, established by Article 3 common to the four Geneva Conventions of 1949. Secondly, the principle referred to can be invoked by reference to humankind as a whole, in relation to matters of common, general and direct interest to it. And thirdly, the same principle can be employed to qualify a given quality of human behaviour (humaneness).

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fundamental role and central position of the general principles of law in every legal system (national or international); cf. also A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. III, pp. 55–86.

[26] Maurer (1999), p. 18.

[27] Abi-Saab (1987), pp. 386 and 389; and cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. III, pp. 55–86.

[28] Para. 149 of that Judgment. - Earlier on, in the *Celebici* case (Judgment of 16.11.1998), the aforementioned ICTFY (Trial Chamber) qualified as *inhuman treatment* an intentional or deliberate act or omission which causes serious suffering (or mental or physical damage), or constitutes a serious attack on human dignity; thus, the Tribunal added, "inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed 'grave breaches' in the Conventions fall" (para. 543). Shortly afterwards, in the *T. Blaskic* case (Judgment of 03.03.2000), the same Tribunal (Trial Chamber) reiterated this position (para. 154).

5 The Human Factor in International Adjudication: Conscience Above the "Will"

As already indicated, there has been lately a jurisprudential construction attentive to the principle of humanity (*supra*), but there remains a long way to road, so as to overcome persisting obstacles, to the ultimate benefit of humankind.[29] Conscience, in my understanding, stands above the "will" of States, as I have lately had the occasion to reiterate in four recent Dissenting Opinions that I presented in the ICJ, to which I shall now turn.

5.1 The Absolute Prohibition and Condemnation of Genocide

It may here be recalled that, in its Judgment (of 03.02.2015) in the case of the *Application of the Convention against Genocide* (Croatia *versus* Serbia), the ICJ held that, while the prohibition of genocide has the character of *jus cogens*, and the Genocide Convention contains obligations *erga omnes*, its own jurisdiction is based on consent, on which it depends even when the dispute submitted to it relates to alleged violation of norms having peremptory character. After its own examination of the facts, it decided to reject the Applicant's claim.

I appended a lengthy and strong Dissenting Opinion to that Judgment of the ICJ, wherein I began by drawing attention to the framework of the settlement of the dispute at issue, ineluctably linked to the imperative of the *realization of justice*, in the light of *fundamental considerations of humanity*. The *principle of humanity*, in my perception, permeates the whole Convention against Genocide, essentially *people-oriented*, as well as the whole *corpus juris* of protection of the rights of the human person, which is essentially *victim-oriented*, encompassing the converging trends of the International Law of Human Rights, International Humanitarian Law and the International Law of Refugees, besides contemporary International Criminal Law (para. 84).[30]

The principle of humanity,—I proceeded,—has a clear incidence in the protection of human beings, in particular in situations of *vulnerability* or *defencelessness* (paras. 58–65). The Genocide Convention is *people-centered* and *victim-oriented* (rather than State-centric) thus showing the need, in the adjudication of the *cas d'espèce*, to go beyond the strict inter-State outlook, focusing attention on the people

[29]For a recent study, cf. Cançado Trindade (2018a), pp. 98–136.

[30]Cf. Cançado Trindade (2000), pp. 1–66.—The rights protected thereunder, in any circumstances, are not reduced to those "granted" by the State: they are *inherent to the human person*, and ought thus to be respected by the State. The protected rights are *superior and anterior to the State*, and must thus be respected by this latter, by all States.—Cf. also, more recently, cf. Cançado Trindade et al. (2017), pp. 1–221.

or population concerned, in pursuance of a humanist outlook, in the light of the principle of humanity.[31]

In interpreting and applying the Genocide Convention,—I added,—attention is to be turned to the victims, human groups in situations of vulnerability or defencelessness, rather than to inter-State susceptibilities (paras. 494–496). The imperative of the *realization of justice*, calls here for a people-centered outlook, focused on the victims (pp. 520–522); it acknowledges that conscience (*recta ratio*) stands above the "will" of States (para. 518).[32]

5.2 The Absolute Prohibition of Nuclear Weapons

There are other recent examples to the same effect. In its Judgments (of 10.05.2016) in the three recent cases of *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marshall Islands *versus* United Kingdom, India and Pakistan), e.g., the ICJ decided, by a split-majority, to uphold one of the preliminary objections, grounded on the alleged absence of a dispute between the contending parties. The ICJ then found that it could not proceed to the consideration of the merits of the cases.

In my extensive Dissenting Opinions appended to those three Judgments, I strongly criticized the "formalistic reasoning" of the ICJ for the determination of the existence of a dispute, introducing a higher threshold that went beyond its own *jurisprudence constante* (paras 11–12). As there is no general requirement of prior notice of the applicant State's intention to initiate proceedings before the ICJ (para. 13),[33]—I added—the ICJ has unduly heightened the threshold to establish the existence of a dispute, in laying down the "awareness" requirement, seemingly "undermining its own ability to infer the existence of a dispute from the conflicting courses of conduct of the contending parties" (para. 19).

Moreover, in my three Dissenting Opinions in the present three cases of *Nuclear Disarmament Obligations*, I deemed it necessary to warn that the presence of evil has marked human existence along the centuries. Ever since the eruption of the nuclear age in August 1945, some of the world's great thinkers have been inquiring whether humankind has a future (paras. 93–101), and have been drawing attention to the imperative of respect for life and the relevance of humanist values (paras. 102–114).

Also in international legal doctrine there have been those who have been stressing the needed prevalence of human conscience, the universal juridical conscience (as "the ultimate material source of international law"), over State voluntarism (paras. 115–118). This is the position I have upheld, pondering that

[31]For a recent study, cf. Cançado Trindade (2017d), pp. 223–271.

[32]For a case-study, cf. Cançado Trindade (2015b), pp. 9–265.

[33]Nor of prior "exhaustion" of diplomatic negotiations (para. 14), I added.

> one cannot face the new challenges confronting the whole international community keeping in mind only State susceptibilities; such is the case with the obligation to render the world free of nuclear weapons, an imperative of *recta ratio* and not a derivative of the 'will' of States. In effect, to keep hope alive it is necessary to bear always in mind humankind as a whole (para. 119).

In my next line of considerations, I focused on the attention of the U.N. Charter to peoples (as shown in several of its provisions) and also to the safeguard of values common to humankind, and to respect for life and human dignity. This new vision advanced by the U.N. Charter, and espoused by the Law of the United Nations, has, in my perception,

> an incidence upon judicial settlement of international disputes. Thus, the fact that the ICJ's mechanism for the handling of contentious cases is an inter-State one, does not mean that its reasoning should also pursue a strictly inter-State dimension; that will depend on the nature and substance of the cases lodged with it. And there have been several cases lodged with the Court that required a reasoning going well beyond the inter-State dimension. Such reasoning beyond the inter-State dimension is faithful to the U.N. Charter, the ICJ being 'the principal judicial organ of the United Nations' (para. 125).

The nature of a case before the ICJ,—I proceeded,—may well call for a reasoning going beyond the strictly inter-State outlook, as the *cas d'espèce* concerning the obligation of nuclear disarmament,—a matter of concern to humankind as a whole,—which requires attention to be focused on peoples, in pursuance of a humanist outlook. The distinct series of U.N. General Assembly resolutions,—I proceeded,—give expression to an *opinio juris communis* in condemnation of nuclear weapons (paras. 45 and 150).

And as also sustained by general principles of international law and international legal doctrine,—I added,—nuclear weapons are in breach of international law, of International Humanitarian Law and of the International Law of Human Rights, of the U.N. Charter, and of *jus cogens*, for the devastating effects and sufferings they can inflict upon humankind as a whole (paras. 142–143).

I further warned that the survival of humankind cannot be made to depend on the "will" and the insistence on "national security interests" of a handful of privileged States; the "universal juridical conscience stands well above the 'will' of individual States" (paras. 150 and 224). In the path towards nuclear disarmament,—I went on,—the peoples of the world cannot remain hostage of individual State consent, in the light of the current historical process of *humanization* of international law (paras. 190–193).

This process of *humanization* which stands against the positivist outlook unduly overlooks the *opinio juris communis* as to the illegality of all weapons of mass destruction, including nuclear weapons, and the obligation of nuclear disarmament, under contemporary international law (paras. 194–200). Conventional and customary international law go together,—I added,—in the domain of the protection of the human person, as disclosed by the Martens clause, with an incidence on the prohibition of nuclear weapons (paras. 201–209 and 315). After all, the existence of nuclear weapons is the contemporary tragedy of the nuclear age; today, more than ever, human beings need protection from themselves. Nuclear weapons have no

ethics, and ethics cannot be separated from law, as taught by jusnaturalist thinking (para. 213).

The initiatives, *inter alia*, of the establishment of nuclear-weapon-free zones, and of the Conferences on the Humanitarian Impact of Nuclear Weapons (paras. 246–287), "have gone beyond the inter-State outlook"; in my perception, there is great need, in the present domain, "to keep on looking beyond States, so as to behold peoples' and humankind's quest for survival in our times" (para. 299). Furthermore, as nuclear weapons, "as from their conception, have been associated with overwhelming destruction" (para. 300), there is great need of keeping attentive to issues of principle and to fundamental values (para. 316).

In my own understanding,—I added,—*opinio juris communis*—to which U.N. General Assembly resolutions have much contributed—has had a much broader dimension than the subjective element of custom, being a key element in the formation of a law of conscience, so as to rid the world of the inhuman threat of nuclear weapons (paras. 296–308). There is nowadays a vast *corpus juris* on matters of concern to the international community as a whole, overcoming the traditional inter-State paradigm of the international legal order (paras. 309–310).

This can no longer be overlooked in our days: the inter-State mechanism of the *contentieux* before the ICJ "cannot be invoked in justification for an inter-State reasoning" (para. 310). As "the principal judicial organ" of the United Nations,—I proceeded,—"the ICJ has to bear in mind not only States, but also 'we, the peoples', on whose behalf the U.N. Charter was adopted" (para. 314). I then concluded that "[a] world with arsenals of nuclear weapons, like ours, is bound to destroy its past, dangerously threatens the present, and has no future at all. Nuclear weapons pave the way into nothingness" (para. 331).[34]

The disappointing outcome of the aforementioned three cases of *Nuclear Disarmament Obligations*, dismissed by the ICJ's majority, was followed by the reassuring initiative of the U.N. General Assembly to decide, at the end of December 2016, to convene its Conference on the Treaty of Prohibition of Nuclear Weapons. The work of the Conference extended from March to July 2017, culminating with the adoption (on 07.07.2017) of that Treaty,—with full support of Delegations of African and Latin American countries, among others,—keeping alive the hope for the future of humankind.

6 Humankind and Considerations of Humanity: A Conceptual Precision

From the preceding considerations it can be promptly perceived that distinct meanings have been attributed to the term "humanity" in contemporary international law, such as those found in the jurisprudential construction of the former *ad hoc* ICTFY

[34]For a recent case-study, cf. Cançado Trindade (2017e), pp. 41–224.

and the ICTR (*supra*). This construction is clear in associating "humanity" with the universal principle of respect for the dignity of the human person, or the sense of *humaneness*.

The ECtHR and the IACtHR, for their part, have expressed the same concern by extensively resorting to general principles of law in their converging *jurisprudence constante*. The ICJ has likewise resorted to "elementary considerations of humanity", in a similar line of thinking.[35] The sense of humaneness and the concern with the needed respect for human dignity have thus marked their presence in the case-law of contemporary international tribunals.

When one comes, however, to consider the expansion of international legal personality, that is, the emergence of new subjects of today's universal international law, a conceptual precision is here rendered necessary. The expanded international law of our days encompasses, as its subjects, apart from the States, also international organizations, and human beings, either individually or collectively,—disclosing a basic feature of what I see it fit to denominate the historical process of *humanization* of international law.[36] In the framework of this latter and in addition to those subjects, *humankind* has in my view also emerged as a subject of international law.

The term "humankind" appears not as a synonym of "humanity" (*supra*), but endowed with a distinct and very concrete meaning: humankind encompasses all the members of the human species as a whole (including, in a temporal dimension,[37] present as well as future generations). In fact, there is nowadays a growing body of international instruments (treaties, declaratory and other resolutions, among others) containing express references to "mankind" or "humankind", and attributing rights to it. There are nowadays some conceptual constructions in course to give concrete expression, with juridical consequences, to rights attributed to humankind.[38] It is likely that this conceptual development will intensify in the years to come. Up to the present, all this results from the aforementioned growing perception and awareness of common and superior interests, and of fundamental values, shared by the international community as a whole.

[35]Cançado Trindade (1996), pp. 53–71, and cf. pp. 73–88.

[36]Cf. Cançado Trindade (2015c), pp. 3–789; Cançado Trindade (2013e), pp. 1–324; Cançado Trindade (2013f), pp. 7–185; Cançado Trindade (2012), pp. 45–368.

[37]Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. II, pp. 31–51.

[38]Cf. *ibid*., ch. XII-XV, pp. 291-390. - And cf. [Various Authors,] *Crimes internationaux et juridictions internationales* (eds. A. Cassese and M. Delmas-Marty), Paris, PUF, 2002, pp. 71, 198 and 256, and cf. pp. 24, 26 and 259–261.

7 The Emergence of Humankind as a Subject of International Law

Along the evolution of contemporary international law, the international legal personality, as already pointed out, became no longer the monopoly of the States. These latter, as well as international organizations and human beings (taken individually and collectively) became *titulaires* of rights and bearers of duties emanating directly from international law.[39] And humankind has gradually come also to appear as a subject of contemporary international law, of the new *jus gentium* of the twenty-first century. Although this is a recent development, its roots go back to the legal thinking of the beginning of the second half of the twentieth century, or even earlier.

It may be recalled that the "conscience of mankind" received judicial recognition already in the Advisory Opinion of 1951 of the ICJ on *Reservations to the Convention against Genocide,*[40] reappearing in the Draft Articles on the International Responsibility of States (of 1976) of the U.N. International Law Commission [ILC].[41] In doctrine, some of the first formulations of the common law of mankind were undertaken in the early twentieth century, from the twenties[42] onwards. In the late forties, Alejandro Álvarez stated that the population (as a constitutive element of statehood) had at last entered into international life, and what mattered most was the identification of the common interests of the international community as a whole; to the Chilean jurist, it was the international juridical conscience and the sentiment of justice that were to achieve the reconstruction of International Law.[43]

This line of thinking was to be retaken, in a systematized way, by C.W. Jenks, in 1958,[44] and R.-J. Dupuy, in 1986,[45] among others; and in 1966, D. Evrigenis called for a new "universal law".[46] On his turn, in a visionary article published in 1950, M. Bourquin called for the attribution to the international community of the function of "guardian of objective law", above all in face of the threat of a "massified" civilization. The State itself acted—distinctly from the traditional conception—not

[39]Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. VII-X, pp. 165–273.

[40]*ICJ Reports* (1951) p. 23.

[41]With the inclusion of Article 19, on "international crimes" and "international delicts"; cf. United Nations, *Yearbook of the International Law Commission [YILC]* (1976)-II, part II, pp. 120–122 and 108–110. And cf., subsequently, provisions of the Draft Code of Offences against the Peace and Security of Mankind, of the same Commission; U.N., *YILC* (1986)-II, part I, pp. 56–57, and Draft Articles of 1991.

[42]Cf. Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. I, III and VI, pp. 9–29, 55–86 and 139–161, respectively.

[43]A. Álvarez, "Méthodes de la codification du Droit international public - Rapport", *in Annuaire de l'Institut de Droit International* - Session de Lausanne (1947) pp. 45–47, 50–51, 54, 63–64 and 68–70.

[44]Jenks (1958), pp. 1–442; and cf. Jenks (1973), pp. 330–346.

[45]Dupuy (1986), pp. 11–182.

[46]Evrigenis (1966), Berlin, Deutsche Gesellschaft für die Vereinten Nationen, 1966, pp. 26–34.

solely in the pursuance of its own interest, but also as a member of such international community. The traditional voluntarist conception of international law,

> en faisant de la volonté de l´État la seule force génératrice du droit, (. . .) déforme le phénomène juridique; (. . .) elle oublie que le droit est inhérent a toute société, qu´il existe là-même où aucune organisation étatique ne participe à son élaboration.[47]

The human problems which conform the contemporary international agenda have inevitably drawn increasing attention to the conditions of living of human beings everywhere, with a direct bearing in the construction of Law itself. Human beings were again to occupy a central place in the law of nations,—which led M. Bourquin to conclude that

> ni au point de vue de son objet, ni même au point de vue de sa structure, le droit des gens ne peut se définir comme un droit inter-étatique.[48]

Two decades later, in face of the developments in the law of outer space, there was support in expert writing for the view that the *comunitas humani generis* (which reflected the "moral unity of the human kind" in the line of the thinking of Francisco de Vitoria) already presented a juridical profile, rendering "humanity" itself a "subject of Law", because "its existence as a moral and political unity" is an idea which "is progressively becoming reality with all the juridical implications that it entails".[49]

Ever since, this line of thinking has been attracting growing attention, at least on the part of the more lucid doctrine. To S. Sucharitkul, e.g., there is no reason to impede humanity to be subject of International Law, it being possible to that effect to be represented by the international community itself; this is a conception which is to prevail, through the *humanization* of international law, so as "to strengthen the juridical statute of the human being as subject of law" and to save humanity from an "imminent disaster" (the nuclear threat).[50]

In the lucid observation of Nagendra Singh, the fact that, as time went on, concepts and norms of international law have attained universal acknowledgment (in such domains as International Humanitarian Law, the law of treaties, diplomatic and consular law), independently of the multicultural composition of the international community, reveals the evolution of International Law towards universalization.[51] The need to research into the *status conscientiae* of the States was stressed by R. Quadri, who insisted on the international juridical conscience as the material source of the international legal order wherein pluralism prevailed.[52] In Italian

[47] Bourquin (1950), pp. 35 and 45, and cf. pp. 21–54.

[48] *Ibid*., p. 54, and cf. p. 38.

[49] Legaz y Lacambra (1970), p. 554, and cf. pp. 549–559.

[50] Sucharitkul (1984), pp. 419 and 425–427.

[51] Nagendra Singh, "The Basic Concept of Universality and the Development of International Law", *in L'avenir du Droit international dans un monde multiculturel*, *op. cit. supra* n. (50), pp. 240–241, 246 and 256–257.

[52] Quadri (1964), pp. 326, 332, 336–337, 339 and 350–351.

international legal doctrine, addressing the "unity of the juridical world", a warning is found to the effect that

> il faut voir dans la conscience commune des peuples, ou conscience universelle, la source des normes suprêmes du droit international. (. . .) Les principes qui śinscrivent dans la conscience universelle (. . .) sont à considérer comme également présents dans les ordres juridiques internes (. . .).[53]

The rights of humanity transcend, by definition, reciprocity, proper of relations at the purely inter-State level.[54] It has been contended that the international community should guide itself in the sense of restructuring the international system so as to secure the survival and well-being of humankind as a whole.[55] There are other pertinent manifestations to this effect that are to be taken into account and kept in mind.

The U.N. International Law Commission, while elaborating its Draft Code of Offences against the Peace and Security of Mankind, advanced the understanding (in 1986) that it was possible to conceive a crime against humanity "in the threefold sense of cruelty directed against human existence, the degradation of human dignity and the destruction of human culture". The individual being a guardian of basic ethical values and a custodian of human dignity, an attack that he suffered could amount to a crime against humanity to the extent that such attack came to shock "human conscience"; one could thus find,—in the outlook of the ILC,—a "natural link" between the human kind and the individual, one being "the expression of the other", what led to the conclusion that the term "humanity" (in the expression "crime against humanity") meant the human kind as a whole and "in its various individual and collective manifestations".[56]

In fact, already in the beginnings of international law, recourse was made to "fundamental notions of humanity" which governed the conduct of States. What subsequently was denominated "crimes against humanity" emanated, originally, from customary international law,[57] to develop conceptually, later on, in the ambit of International Humanitarian Law,[58] and, more recently, in that of International Criminal Law.[59] Crimes against humanity are today typified in the Rome Statute of the permanent International Criminal Court (Article 7).[60] We are, here, in the domain of *jus cogens.*[61]

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[53]Sperduti (1989), pp. 884–885.

[54]Dupuy (1991), p. 137.

[55]Allott (1992), pp. 219–252, esp. p. 251; and cf. Allott (1990), pp. 10 and 186.

[56]U.N., *Yearbook of the International Law Commission* (1986)-II, part I, pp. 56–57.

[57]Ratner and Abrams (1997), pp. 45–48.

[58]Cf. Pictet (1983), pp. 107 and 77; Swinarski (1990), p. 20.

[59]Cf. Robinson (1999), pp. 43–57; and, for the historical antecedents, cf., e.g., Fujita (2000), pp. 1–15.

[60]Cf., e.g., Lee (1999), pp. 30–31 and 90–102; Bassiouni (1999), pp. 332 and 363–368.

[61]Bassiouni (1996), pp. 67–74.

In the occurrence of such crimes victimizing human beings, humanity itself is likewise victimized. This has in fact been expressly acknowledged by the former ICTFY in the *Tadic* case (1997), wherein it held that a crime against humanity is perpetrated not only against the victims themselves, but against humanity as a whole. Again in the *Erdemovic* case (1996), the Tribunal sustained that crimes against humanity "shock the collective conscience", harm human beings and transcend them, as humanity itself becomes a victim of them.[62]

Significant indications pointing towards a common law of mankind can be found in several treaties in force, in distinct domains of International Law. The notion of cultural heritage of mankind, for example, can be found, e.g., in the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage.[63] In the ambit of International Environmental Law, ever since the 1972 Stockholm Declaration of the U.N. Conference on the Human Environment referred to the "common good of mankind" (Principle 18), examples in this same line have multiplied themselves, in numerous treaties whereby States Parties contracted obligations in the common superior interest of humankind.[64]

It so happens that mankind gradually emerges, and is acknowledged, in contemporary international law, and increasingly so, as a subject of rights in distinct domains (such as, e.g., International Human Rights Law, International Criminal Law, International Environmental Law, international regulation of spaces, among others). A distinct aspect,—the proper treatment of which remaining still to be undertaken,—is that of its capacity to act.

8 Legal Consequences of the Acknowledgement of Humankind as Subject of International Law

8.1 The Relevance of the Human Rights Framework

Recourse to the very notion of humankind as subject of international law promptly brings into the fore, or places the whole discussion within, the human rights framework,—and this should be properly emphasized, it should not be left implicit or neglected as allegedly redundant. Just as law, or the rule of law itself, does not operate in a vacuum, humankind is neither a social nor a legal abstraction: it is

[62] Jones (1999), pp. 111–112.

[63] Preceded by, e.g., the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

[64] E.g., examples *in*: A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. XIII, pp. 327–352. In addition, another example is found implicit in references to "human health" in some treaties of environmental law, such as, e.g., the Vienna Convention for the Protection of the Ozone Layer (of 1985), preamble and Article 2; the Montreal Protocol on Substances that Destroy the Ozone Layer (of 1987), preamble; and Article 1 of the three aforementioned Conventions on marine pollution.

composed of human collectivities, of all human beings of flesh and bone, living in human societies and extended in time. Just as a couple of decades ago there were questions which were "withdrawn" from the domestic jurisdiction of States to become matters of *international* concern (essentially, in cases pertaining to human rights protection and self-determination of peoples),[65] there are nowadays global issues (such as climate change and disarmament) which are being erected as *common* concern of mankind.

Here, again, the contribution of international human rights protection and environmental protection heralds the end of reciprocity and the emergence of *erga omnes* obligations. The human rights framework is ineluctably present in the consideration also of the system of protection of the human environment in all its aspects; we are here ultimately confronted with the crucial question of survival of the humankind, with the assertion—in face of threats to the human environment—of the fundamental human right to live.

8.2 The Question of the Capacity to Act and Legal Representation.

A subject of law is generally regarded as a bearer of rights and duties conferred upon him, also endowed with the capacity to act. While it is clear today that humankind is the addressee of international norms and has emerged as a subject of international law (the law of the *comunitas humani generis*), its capacity to act is still *in statu nascendi*; this raises the issue of its legal representation. In this connection, an advanced form of representation, despite its shortcomings, is that of the 1982 U.N. Convention on the Law of the Sea,[66] given the degree of institutionalization achieved (through the creation of the International Seabed Authority).

We are at the beginning of a conceptual construction which may still take a long time and considerable endeavours. The conception of humankind, in a time framework encompassing present and future generations, presents the double advantage of not neglecting the time factor[67] and not isolating one generation from the others. This would lead to the difficulty, already detected in expert writing, of asserting rights of future generations, which do not yet exist and may be rather remote in time;

[65]Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. VII, pp. 165–179.

[66]Cf. Blanc Altemir (1992), pp. 37–44 and 243–244; Paquerot (2002), pp. 91–92; and cf. Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. XIII, pp. 327–352.

[67]Cf. Cf. A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2nd. rev. ed., *op. cit. supra* n. (5), ch. II, pp. 31–51.

yet, it is quite conceivable to establish, among the living, legal representation on behalf of humankind, comprising its present and future segments.[68]

The overriding principle of human solidarity holds the living, the present generation, accountable to the unborn (future generations, for the stewardship of the common heritage or concern of humankind, so as not to leave to those who are still to come the world in a worse condition than it found it. After all,

> We all live in time. The passing of time affects our juridical condition. The passing of time should strengthen the bonds of solidarity which link the living to their dead, bringing them closer together. The passing of time should strengthen the ties of solidarity which unite all human beings, young and old, who experience a greater or lesser degree of vulnerability in different moments along their existence. (. . .) In a general way, it is at the beginning and the end of the existential time that one experiences greater vulnerability, in face of the proximity of the unknown (. . .).[69]

We are here still in the first steps, and there remains of course a long way to go in order to attain a more perfected and improved system of legal representation of humankind in international law, so that the rights recognized to it thus far can be properly vindicated on a widespread basis. In my understanding, the present limitations of the capacity to act on behalf of humankind itself at international level in no way affect its emerging legal personality, its condition of subject of International Law.

As I deemed it fit to state in my Concurring Opinion in the Advisory Opinion n. 17 of the IACtHR, on the *Juridical Condition and Human Rights of the Child* (2002), the international juridical personality of all human beings remains intact, irrespective of the existential condition[70] or limitations of the juridical capacity to exercise their rights for themselves; what ultimately matters is that they all have the right to a legal order (at domestic as well as international levels) which effectively protects the rights inherent to them (para. 71). And this applies to all human beings as well as to humankind as a whole.[71]

In historical perspective, humankind as such firmly manifests itself in the treatment of persons in situations of vulnerability, or even defencelessness. When *jus gentium* began to correspond to the *droit des gens*, il came to be considered by its "founding fathers" (F. de Vitoria, A. Gentili, F. Suárez, H. Grotius, S. Pufendorf, C. Wolff) as a law regulating the international community composed of human beings organized socially in (emerging) States, coexisting in harmony with human

[68]Cf. discussion and suggestions *in*: [Various Authors,] *Future Generations and International Law* (eds. E. Agius, S. Busuttil *et alii*), London, Earthscan Publs., 1998, pp. 3–165.

[69]IACtHR, Advisory Opinion n. 17 (of 28.08.2002) on the *Juridical Condition and Human Rights of the Child*, Concurring Opinion of Judge A.A. Cançado Trindade, paras. 4–5.

[70]E.g., children, elderly persons, persons with disability, stateless persons, or any other.

[71]Cf. Cançado Trindade (2011b), pp. 1–236; Cançado Trindade (2001a), pp. 9–104; Cançado Trindade (2001b), pp. 31–63; Cançado Trindade (2018b), pp. 13–49; A.A. Cançado Trindade, "Reflexiones sobre la Presencia de la Persona Humana en el Contencioso Interestatal ante la Corte Internacional de Justicia: Desarrollos Recientes", 17 *Anuario*..., *op. cit. supra* n. (31), pp. 223–271.

kind, thus corresponding to the *jus necessarium* of the *societas gentium.*[72] This latter prevails over the "will" of individual States, in due respect to each human being and to the benefit of the common good.[73]

In any case, the gradual advances so far achieved towards a regime of legal representation of humankind,—which are bound to continue in the years to come,—added to the recognition of its condition as subject of international law, constitute yet another manifestation of the current process of *humanization* of public international law. The original conception of *totus orbis* of Francisco de Vitoria in the sixteenth century has ever since paved the way for the formation and crystallization of the notions of an international community as a whole and of a true universal international law,[74] having humankind as such among its subjects.

That conception can and should continue to be cultivated in our troubled times, in the context of the circumstances of the contemporary international scenario, if we really wish to leave a better world to the next generations. In my understanding, we have already entered into the *terra nova* of the new *jus gentium* of the early twenty-first century, the international law for humankind. The adoption of the 2017 Treaty of Prohibition of Nuclear Weapons[75] constitutes, in my perception, another example of the current historical process of the *humanization* of the law of nations.

This significant recent initiative towards nuclear disarmament is nowadays added to other manifestations of the humanization of contemporary international law,[76] to the ultimate benefit of humankind as a whole. Human conscience stands above the "will". There is great need today to keep on pursuing the humanization of contemporary international law; it is important to remain attentive to the vindication of the rights of humankind.

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[72]Cf. F. de Vitoria, *Relecciones del Estado, de los Indios, y del Derecho de la Guerra* (with an Introduction by A. Gómez Robledo), Mexico, Ed. Porrúa, 1985, pp. XLV and LXXXIV; and cf. Cançado Trindade (2008a), pp. 197–212; Cançado Trindade (2014a), pp. 40–109; Cançado Trindade (2016b), pp. 19–51; Cançado Trindade (2016c), pp. 17–55; Cançado Trindade (2016d), pp.15–43.

[73]A.A. Cançado Trindade, *A Humanização do Direito Internacional*, 2nd. rev. ed., *op. cit. supra* n. (36), pp. 9–14, 172, 318–319, 393 and 408; and cf. Cançado Trindade (2008b), pp. 1–187.

[74]We have already reached a stage of evolution of our discipline which has surely transcended the fragmented *jus inter gentes* of the not too distant past.

[75]For an account, cf. Cançado Trindade (2016e), pp. 151–284; Cançado Trindade (2017a), pp. 11–49.

[76]On this historical process, cf. A.A. Cançado Trindade, *A Humanização do Direito Internacional*, 2nd. rev. ed., *op. cit. supra* n. (36), pp. 3–789; A.A. Cançado Trindade, *International Law for Humankind - Towards a New Jus Gentium*, 2a. rev. ed., *op cit. supra* n. (5), pp. 1–726; Cançado Trindade (2014b), pp. 1–324; A.A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, *op. cit. supra* n. (36), pp. 7–185; Cançado Trindade (2012), pp. 45–368; A.A. Cançado Trindade, *Os Tribunais Internacionais e a Realização da Justiça*, 2nd. rev. ed., *op. cit. supra* n. (6), pp. 1–467.