

Introduction

May I devote these brief words of Introduction to the contents and purpose of this book are derived from the General Course on International Human Rights Law, that I delivered at the Academy of European Law of the European University Institute, in Florence, in June 2007. The *Leitmotiv* which permeates the present work – the direct access of the human person to international justice – is one which I have been cultivating for a great many years. It is, in particular, ineluctably permeated by my recollections, still fresh in my memory, of the jurisprudential construction of the Inter-American Court of Human Rights during the years I served the Court as its Judge and President. This book presents and develops the basic message of my General Course of Florence, throughout which attention was focused largely on the direct access of individuals to international human rights tribunals (such as, mainly though not exclusively, the European and Inter-American Courts) in operation, for four compelling reasons.

First, because such access represents the essence of the international protection of human rights, the counterposition of individual petitioners to respondent States; secondly, because that access further represents the culmination of a long evolution, namely, that of the gradual consolidation of the international legal capacity of individuals as subjects of International Law; thirdly, because the direct access of individuals to international justice ultimately permeates the whole *corpus juris* of the International Law of Human Rights; and fourthly, because the judicial solution is, in my view, the most perfected and advanced means of vindication of rights and settlement of disputes, in the present domain of protection, at intra-State level.

Thus, the case-law examined herein is drawn essentially – but not exclusively – from that of international human rights tribunals. It is only too natural that I devoted special regard to the case-law of the Inter-American Court of Human Rights, as its former President: in 12 one-hour lectures delivered in my General Course at the Academy of European Law, I purported *inter alia* to summarize my 12 years of endeavours within that international Court to consolidate the direct access of individuals to it. The subject is here retaken in a larger perspective, focusing on the individual's international subjectivity mostly in its active dimension, but without overlooking its passive dimension (e.g., in the framework of the International Criminal Court). In so far as contemporary international tribunals are concerned, reference is at times made to the case-law of international criminal

¹ Attention is also turned to the recently-established African Court on Human and Peoples' Rights.

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tribunals,² or else to decisions of other international human rights organs (e.g., at United Nations level) – though attention is concentrated on the case-law of the international tribunals (mainly Inter-American and European Courts) of human rights, in operation for a much longer time.

The consideration of such case-law does not intend to be exhaustive, but rather illustrative, of the position taken by those international tribunals, and their contribution to the issues dealt with, and examined herein, pertaining to the *Leitmotiv* of the General Course. Such issues are distributed in the eleven chapters that compose the present book, in such a way as to cover, in logical sequence, the following aspects of the central theme:

- a the historical recovery of the human person as subject of the law of nations (*droit des gens*);
- b the exercise of the right of access to international justice: the right of international individual petition;
- c access to justice at international level and the right to an effective domestic remedy;
- d access to justice: the safeguard and preservation of the integrity of international jurisdiction;
- e access to international justice in relation to the interaction between international law and domestic law;
- f the interrelation between the access to justice (right to an effective remedy) and the guarantees of the due process of law;
- g new developments in the notion of ‘potential victim’: the preventive dimension of protection;
- h the protection of victims in situations of great adversity or defencelessness (including cases of massacres); and
- i the overcoming of obstacles to direct access to justice.

The way will then be paved for the presentation of my conclusions. The approach pursued in the present book ineluctably purports to dedicate special attention to the consolidation of the position of the human person before international tribunals, in particular those of human rights, in pursuance or vindication of the rights inherent to her. I believe my approach is fully justified – as evidenced by some remarkable jurisprudential advances in recent years – at a time when, moreover, a growing importance is attributed to the role reserved to contemporary international tribunals, disclosing the phenomenon which is currently being called the ‘jurisdictionalization’ or ‘judicialization’ of the international legal order.³

² Besides the International Criminal Court, the *ad hoc* International Criminal Tribunals for the Former Yugoslavia and for Rwanda.

³ Cf., e.g., [Various Authors,] *La juridictionnalisation du Droit international* (Colloque de Lille de la Société Française de Droit International), Paris, Pédone, 2003, pp. 7–545; A.A. Cançado Trindade, “International Law for Humankind: Towards a New *Jus Gentium* – General Course on Public International Law – Part II”, 317 *Recueil des Cours de l’Académie de Droit International de la Haye* (2005), ch. XXV, pp. 217–45.

In the course of my study, I shall also refer – whenever relevant for the aforementioned basic purpose of this book, namely, the demonstration of the consolidation of the direct access of the human person to international justice – to my own experience as a former long-standing Judge (1991–2006) and President (1999–2004) of one of those two international tribunals, the Inter-American Court of Human Rights. As, throughout all those years of exercise of my judicial functions, I was all the time attentive to the central issue of the direct access of individuals to the international jurisdiction for the vindication of their rights,⁴ it is only too natural that I have chosen this fundamental issue – which, in my understanding, best reflects the essence and transcendence of the International Law of Human Rights – as the *idée-force* or *Leitmotiv* of my General Course delivered in the summer of 2007 at the Academy of European Law at Florence.

Last but not least, I would like to leave on record my appreciation for the fruitful and open dialogue sustained with the students and participants in the course of my 12 one-hour lectures at the Academy of European Law. In addition, my recognition is extended to two distinguished colleagues for several years: Professor Francesco Francioni, for the invitation, and to him and to Professor Pierre-Marie Dupuy, for the warm hospitality in Florence, as well as to Ms Anny Bremner, for the attention and care during my academic visit to the Academy of European Law of the European University Institute.

The Hague, 4 February 2009.

A.A.C.T.

⁴ Which constitutes the essential key-point of the bases for a *Draft Protocol to the American Convention on Human Rights to Strengthen Its Mechanism of Protection*, which I elaborated, as *rapporteur* of the IACtHR, and presented, on behalf of the Court, as its President, to the General Assembly of the Organization of American States (OAS) in 2001, and which remains in its agenda until now (mid-2007); cf. A.A. Cançado Trindade, *Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos, para Fortalecer Su Mecanismo de Protección*, vol. II, 1st. ed., San José of Costa Rica, IACtHR, 2001, pp. 1–668, esp. pp. 1–64; and vol. II, 2nd. ed., 2003, pp. 1–1015.