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BOOK REVIEWS

Antonio Cançado Trindade, *The Access of Individuals to International Justice*, Oxford, Oxford University Press, 2011, 236pp., ISBN 9780199580965, (p/b) £29.99; 9780199580958, (h/b) £60.00.
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The book describes a new trend in international legal scholarship which started in the last quarter of the twentieth century and is referred to as the 'humanization of international law'.[1] The present book is the outcome of a general course on international human rights law given by Judge Cançado Trindade at the Academy of European Law of the European University Institute in Florence in June 2007.

The author has been an august exponent and defender of the individual's right to directly access international tribunals to claim justice for violations of human rights for over three decades. He has done much to change the legal thinking in this regard, especially as a judge and ultimately the president of the Inter-American Court of Human Rights during the period 1991–2006.[2]

The right of access to justice, at national as well as international level, is the cornerstone of the international protection of human rights and not only comprises formal access to a tribunal, but also guarantees due process of law, the right to a fair trial, due reparations, and a faithful execution of judgments.

The book contains eleven chapters, seven of which discuss theoretical conceptions such as the evolution of the human being as a subject of international law, the right to international individual petition, the right to an effective domestic remedy and its interrelation with due process of law, the interaction between international and domestic law, the preservation of the integrity of international jurisdiction, and new developments in the notion of 'potential victim'. Three further chapters consider concrete cases of victims in situations of great adversity and the final chapter considers overcoming obstacles to direct access to justice. A total of 700 footnotes enrich the dense text, which is not easy to read for those outside the legal branch as many subtle issues look alike, but are treated from a slightly different angle. The discussion

1 See also T. Meron, *The Humanization of International Law* (2006).
2 A. A. Cançado Trindade, *Derecho Internacional de los Derechos Humanos: Esencia y Trascendencia (Votos en La Corte Interamericana de Derechos Humanos 1991–2006)* (2007). The book contains 90 provocative and stimulating opinions in advisory as well as contentious procedures.

in subsection 3 of the first chapter on the rescue of the individual as a subject of international law is difficult to understand if one lacks knowledge of the historical evolution of international law itself. As an example, the author submits that the consolidation of the international legal personality of individuals as active as well as passive subjects of international law entails accountability in international law for abuses perpetrated against human beings. These developments of individual rights and duties go hand in hand and this evolution bears witness to the formation of an *opinio juris communis* that the gravity of certain violations of fundamental rights of the human person directly affects the basic values of the international community as a whole.

The discussion on the right of individual petition illustrates developments in the European, inter-American and African system, which is gradually coming of age. The jurisprudence shows the evolution from individuals having *locus standi in judicio*, which is a formal requisite to appear before a tribunal, towards a *jus standi*, which is the capacity to defend oneself before a tribunal from the beginning to the end.

One could imagine the reversal of Chapter 2 on the right to individual petition with Chapter 3 on the right to an effective domestic remedy, as the lack of an effective domestic remedy is a prerequisite for entering an international petition. As the author points out in detail, the interaction between international and domestic law passes through the process of the exhaustion of local remedies.[3]

Indeed, whether lodging a complaint of violations of international human rights law before international tribunals or before the increasing number of international human rights treaty bodies, conceding the right of individual petition, exhaustion of local remedies at the national level is a *sine qua non* for any success at the international level. It is the state's duty to provide such local remedies.

He considers in detail the jurisprudence on international petition under the first Optional Protocol of the International Covenant on Civil and Political Rights. This human rights treaty body is the *primus inter pares* of the individual complaint procedure, whether at the admissibility stage or on the merits. Although merely soft law, its quasi-judicial 'views' have led to changes in many domestic legislations, and international human rights tribunals do not hesitate to cite them. The creation in 1991 of a special rapporteur on follow-up of views has influenced all other treaty bodies.[4]

This book's leitmotif is that hopefully international law will reach the day when human conscience attains a stage of evolution so as no longer to admit the adoption of national laws, administrative acts, or judgments that obstruct the application

3 See his 'Developments in the Rule of Exhaustion of Local Remedies in International Law' doctoral thesis defended at the Cambridge Law Faculty in February 1978 and crowned with the York prize. See also A. A. Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law* (1983).

4 In this connection, see J. Möller and A. de Zayas, *The United Nations Human Rights Case Law 1977–2008: A Handbook* (2009). The book considers in detail 1472 cases, but the 2011 Annual Report of the Human Rights Committee (A/66/40(VOL. I) and A/66/40(VOL. II, PART II)) already has 1959 cases listed. This is in sharp contrast with the individual complaint procedure under the Committee against Torture, which since its inception in 1989 has considered 462 cases (2011 Annual Report A/66/44), and the individual complaint procedure under the Committee on the Elimination of Racial Discrimination, which although being the first human rights treaty adopted, only listed 45 cases (2011 Annual Report, A/66/18).

of the international norms of protection integrated into the domestic legal order (p. 111).

Another important issue discussed in the book is the notion of 'potential victim'. The author demonstrates that gradually, through the adoption of additional protocols at the European level or through the improvement of the rules of procedure at the inter-American level, the *corpus juris* of international human rights law returned the victim, including the potential victim, to the central position in the normative order. Indeed, the notion of victim, in a larger sense, marks its presence not only in relation to the *legitimatio ad causam*, but also for purposes of reparations. The notion of 'potential victim' necessarily enlarges the circle of complainants.

Chapters 8 and 9 on the protection of victims in situations of great adversity discuss new developments in international human rights law, such as the protection of migrants and internally displaced persons as well as the right to information on consular assistance in the framework of guarantees of due process of law, an issue which came before the International Court of Justice in 1998, 2001, and 2004.[5]

Chapter 10 on access of justice for victims of massacres and crimes of state reveals, for the author, an unfortunate trend in the law of state responsibility. Influenced by his Latin American background and his various opinions in the case law of the Inter-American Court of Human Rights, he castigates the International Law Commission for having dropped the notion of crimes of state, first adopted as Article 19 in 1976,[6] 'so as to obtain approval of its Articles on International Responsibility of the State' in 2001 (p. 180).

> In the respective contentious proceedings before the International American Court of Human Rights, almost all those cases of massacres counted, significantly, on the recognition of international responsibility on the part of the respondent States themselves for the occurrence of the crimes, to the effect of determining the wrongful acts of the past so as to avoid their repetition. (p. 180)

The author considers the position of the Commission 'evasive and unconvincing and nowadays unsustainable', and invited the ILC on several occasions, in his legal opinions, to reconsider the matter. He concludes that 'whether the ILC recognizes it or not, crimes of state do exist as have some of the respondent states themselves expressly confessed before the IACtHR' (pp. 180, 181).

Research on the matter shows that the Commission devoted during its 1995 and 1996 sessions considerable time to the issue and came to the conclusion that Article 19 presented a number of substantial problems relating to the definition of crimes of

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5 See *Vienna Convention on Consular Relations (Paraguay v. United States of America)*, Provisional Measures, Order of 9 April 1998, [1998] ICJ Rep. 248; *LaGrand (Germany v. United States of America)*, Provisional Measures, Order of 3 March 1999, [1998] ICJ Rep. 9; *LaGrand (Germany v. United States of America)*, Judgment, Judgement of 27 June 2001, [2001] ICJ Rep. 466; *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgement, Judgment of 31 March 2004, [2004] ICJ Rep. 12; *Request for the Interpretation of Judgement of 31 March 2004 in the Case Concerning* Avena and other Mexican Nationals (Mexico v. United States of America) *(Mexico v. United States of America)*, Provisional Measures, Order of 16 July 2008, [2008] ICJ Rep. 311; *Request for the Interpretation of Judgement of 31 March 2004 in the Case Concerning* Avena and other Mexican Nationals (Mexico v. United States of America) *(Mexico v. United States of America)*, Judgment, Judgment of 19 January 2009, [2009] ICJ Rep. 3.

6 ILC Draft Articles on State Responsibility, 1976 YILC, Vol. II (Part Two), at 75.

states such as the appropriate organ for making decisions on when a crime of state had been committed and the consequences of such a crime.[7]

Indeed, the Commission concluded in 1998 that 'following the debate it was noted that no consensus existed on the notion of state crimes and that draft Article 19 would be put aside'.[8]

The final chapter of the book proposes the expansion of the material content of international *jus cogens* as 'it goes well beyond the law of treaties, extending itself to the domain of state responsibility and ultimately to any juridical act' (p. 198). The author perceives it as a new *jus gentium*, the International Law for Humankind (p. 198).[9]

One may wonder whether his conception of the content of *jus cogens* is currently considered *lex lata*, as among the human rights community there is still no consensus as to which human rights are indeed considered *jus cogens*, let alone extending the concept to any juridical act.

The author's final assessment is that at the beginning of the twenty-first century a universal juridical conscience has emerged as the ultimate material source of law, restoring the human being as a subject of both domestic and international law and as the final addressee of all juridical norms. This includes the emergence of a new *ordre public* and encompassing *jus cogens* norms as well as obligations *erga omnes* of protection, obligations towards the community as a whole (p. 208).[10]

The book should convince the reader that the individual's right to *jus standi* as a further development to his *standi in judicio* is an important step in the evolution of international human rights protection before international tribunals. It is the author's 'credo' towards a *lex ferenda* which one day may come of age. The book has profound substance and definitely makes a contribution not only to existing, but probably also to future, legal scholarship.

The book is accompanied by an extensive list of cases; a table of international treaties, conventions, and instruments; and a 17-page select bibliography. It is well suited for international human rights courses at postgraduate university level and could also be an important guide for international human rights practitioners.

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7 See The Concept of 'State Crime' as contained in Article 19 of Part One of the Draft, 1995 YILC, Vol. II (Part Two), at 47; and Draft Articles on State Responsibility – Chapter IV: International Crimes, 1996 YILC, Vol. II (Part Two), at 70. See also the very elucidatory article by the late D. Bowett, 'Crimes of State and the 1996 Report of the International Law Commission on State Responsibility', (1998) 9 EJIL 163.

8 Interim Conclusions of the Commission on Draft Article 19, 1998 YILC, Vol. II (Part Two), at 77.

9 See A. A. Cançado Trindade, *International Law for Humankind: Towards a New Jus Gentium (I and II): General Course on Public International Law, Vol. 316 and 317* (2005), republished in 2010 as Volume 6 of The Hague Academy of International Law Monographs series.

10 See *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase, Judgment of 5 February 1970, [1970] ICJ Rep. 3, at 32 para. 33.

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