SEPARATE OPINION OF JUDGE CANÇADO TRINDADE

1. It is necessary and relevant here to consider the present decision of the International Court of Justice (ICJ) within the handling of compliance with the need to secure the proper reparations due to the victims of the horrors inflicted upon them as determined by the Court's Judgment of 19.12.2005. For a long time I have been insisting within the ICJ upon the need to proceed promptly to the determination of reparations for the grave breaches of the International Law of Human Rights and International Humanitarian Law. The delays by the ICJ so far are unacceptable to me.

2. In my own understanding, there is need to move beyond the unsatisfactory inter-State outlook, if one is to foster the progressive development of international law in the domain of reparations, in particular collective reparations. Prolonged delays are most regrettable, particularly from the perspective of the victims. Already the "founding fathers" of international law went well beyond the strict inter-State outlook, and were particularly attentive to the duty of prompt reparation for damages.

3. It is in jusnaturalist thinking — as from the XVIth century — that the goal of prompt reparation was properly pursued. Legal positivist thinking — as from the late XIXth century — unduly placed the "will" of States above *recta ratio*. It is in jusnaturalist thinking — revived as it is nowadays — that the notion of *justice* has always occupied a central position, orienting *law* as a whole; *justice*, in sum, is at the beginning of all *law*, being, moreover, its ultimate end.

I. The Relevance of Due Compliance with the Right to Reparations.

4. In my Declaration presented in the ICJ's Order of 11.04.2016, in the case opposing *D.R. Congo versus Uganda*, I expressed my concern with the undue prolongation of time of proceedings (since 2005) as to the due reparations in the *cas d'espèce* (paras. 1-10). I added that

> "According to a *célèbre* maxim, *justice delayed is justice denied*. This point was object of meditation already in Seneca's *Letters to Lucilius* (*circa* 62-64 A.D.). In the search for the realization of justice, undue delays are indeed to be avoided. The victims (in armed conflicts) of grave breaches of the International Law of Human Rights and of International Humanitarian Law have a *right to reparations*, — most likely collective reparations, and in their distinct forms, — within a reasonable time.
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> Ancient Stoic thinking was already conscious of the perennial mystery surrounding human existence, that of the passing of time. Stoicism, in its perennial wisdom, recommended (as in, e.g., Seneca's *De Brevitate Vitae*, *circa* 40 A.D.) to keep always in mind all times — past, present and future — jointly: time past, by means of remembrance; time present, so as to make the best use of it (in search of justice); and time future, so as to anticipate and prevent all one can, thus seeking to make life longer.
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> The duty of reparation is firmly-rooted in the history of the law of nations. The acknowledgment of such duty goes back to its origins, to the perennial lessons of the "founding fathers" of international law" (paras. 12 and 14-15).

5. May I add that in this respect, there are relevant passages in the significant references of classic works[1]. Such a duty of reparation for injuries was in my view "clearly seen as a response to an *international need*"[2], in conformity with the *recta ratio*, — "whether the beneficiaries were (emerging) States, peoples, groups or individuals. The *recta ratio* provided the basis for the regulation of human relations with the due respect for each other's rights[3]".

6. After all, as I have pondered in my earlier Declaration appended to the Court's previous Order of 01.07.2015 in the *cas d'espèce*, and I have reiterated in the ICJ's new Order adopted on 11.04.2016,

> "Reparations, in cases involving grave breaches of the International Law of Human Rights and of International Humanitarian Law (...) are to be resolved by the Court itself within a reasonable time, bearing in mind not State susceptibilities, but rather the suffering of human beings, — the surviving victims, and their close relatives, — prolonged in time, and the need to alleviate it. The aforementioned breaches and prompt compliance with the duty of reparation for damages, are not be separated in time: they form an indissoluble whole" (para. 7, and cf. para. 19).

7. In the present case, the ultimate beneficiaries of reparations for damages resulting from grave breaches of the International Law of Human Rights and International Humanitarian Law (as determined by the ICJ itself) are the human beings victimized. They are the *titulaires* of the right to reparations, as subjects of the law of nations, as conceived and sustained, in historical perspective, by the "founding fathers" of international law. This is deeply-rooted in the historical trajectory of our discipline. As *titulaires* of that right, they have, in the *cas d'espèce*, been waiting for reparations for a far too long a time; many of them have already passed away. *Justitia longa, vita brevis* (cf. para. 20).

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[1] Of, e.g., Francisco de Vitoria (Second *Relectio* — *De Indis*, 1538-1539); Hugo Grotius (*De Jure Belli ac Pacis*, 1625, book II, ch. 17); Samuel Pufendorf (*Elementorum Jurisprudentiae Universalis* — *Libri Duo*, 1672; and *On the Duty of Man and Citizen According to Natural Law*, 1673); Christian Wolff (*Jus Gentium Methodo Scientifica Pertractatum*, 1764; and *Principes du droit de la nature et des gens*, 1758); among others, such as the pertinent considerations also of Alberico Gentili (*De Jure Belli*, 1598); Francisco Suárez (*De Legibus ac Deo Legislatore*, 1612); Cornelius van Bynkershoek (*De Foro Legatorum*, 1721; and *Questiones Juris Publici* — *Libri Duo*, 1737) (paras. 16-17). There is nothing new under the sun. The more we do research on the classics of international law (largely forgotten in our hectic days), the more we find reflections on the victims' right to reparations for injuries, — also present in the writings of, e.g., Juan de la Peña I then (*De Bello contra Insulanos*, 1545); Bartolomé de Las Casas (*De Regia Potestate*, 1571); Juan Roa Dávila (*De Regnorum Justitia*, 1591); Juan Zapata y Sandoval (*De Justitia Distributiva et Acceptione Personarum ei Opposita Disceptatio*, 1609) (paras. 16-17).

[2] J. Brown Scott, *The Spanish Origin of International Law — Francisco de Vitoria and His Law of Nations*, Oxford/London, Clarendon Press/H. Milford, 1934, pp. 140, 150, 163, 165, 172, 210-211 and 282-283; and cf. also, Association Internationale Vitoria-Suarez, *Vitoria et Suarez: Contribution des théologiens au Droit international moderne*, Paris, Pédone, 1939, pp. 73-74, and cf. pp. 169-170; A.A. Cançado Trindade, "Prefacio", *in Escuela Ibérica de la Paz (1511-1694) — La Conciencia Crítica de la Conquista y Colonización de América* (eds. P. Calafate and R.E. Mandado Gutiérrez), Santander, Ed. Universidad de Cantabria, 2014, pp. 40-109.

[3] The *right reason* lies at the basis of the law of nations, being the spirit of justice in the line of natural law thinking; this trend of international legal thinking has always much valued the *realization of justice*, pursuant to a "superior value of justice". P. Foriers, *L'organisation de la paix chez Grotius et l'école de droit naturel* [1961], Paris, J. Vrin, 1987, pp. 293, 333, 373 and 375 [reed. of study originally published *in*: *Recueil de la Société Jean Bodin pour l'histoire comparative des institutions*, vol. 15-part II, Bruxelles, Libr. Encyclopédique, 1961].

II. The Need of Prompt Compliance with the Right to Reparations.

8. In my recent book published in 2019 in Fortaleza (Brazil), I have focused my attention on the right to reparation, its origin and historical evolution in international law itself[4]. In the *cas d'espèce*, I have drawn attention to the importance of a due approach to the reparations claimed for violations of the International Law of Human Rights and International Humanitarian Law, and the need to obtain further and prompt information from the parties on the identification of multiple victims.

9. It is critical to me that, to start with, there has been a focus unduly on compensation only, while the Court should address reparations in all their forms; moreover, one cannot refer unduly and only to calculation of the number of individual victims, but it should bear in mind the complexity of the present case of mass murder, of a considerable high number of victims, and the impossibility of identifying them all. Furthermore, one cannot refer unduly to monetary amount of damage only, while it should concentrate on distinct forms of reparation (satisfaction, rehabilitation of victims, guarantee of non-repetition). In addition, one should focus on collective rather than individual reparations.

10. Last but not least, one cannot refer unduly to calculation of damages and establishment of monetary equivalent thereof, and, to that end, invoke precedents of the Iran-US Claims Tribunal, the UNCC and the Eritrea-Ethiopia Claims Commission, while it should rather concentrate on the relevant case law on reparations of international human rights tribunals, in particular the jurisprudence in cases of massacres of the Inter-American Court of Human Rights.

11. The ICJ's present Order of 08.09.2020 designates the four independent experts to assist the Court in the determination of the reparations, as necessary. In my own position, this could and should have been made a long time ago; it could not have been so time-consumed; it is correct that it has been finally made, and that any further delay should have been avoided. The designation of the four independent experts should in my view already have been made some time ago.

III. The Relevance of Prompt Reparations for Grave Breaches of the International Law of Human Rights and International Humanitarian Law.

12. Furthermore in my understanding, prompt reparations need to be claimed for grave violations of the International Law of Human Rights and of International Humanitarian Law. I have addressed the need of identification of numerous victims, and the importance of appointment of a committee of experts to gather additional information for the determination of an appropriate reparation.

13. Furthermore, as to the additional identification of collective reparations, I can address the relevant case-law on collective reparations in cases of massacres; I can focus on the international case-law on collective reparations in cases of massacres, in the case-law in particular and mainly of the Inter-American Court of Human Rights[5], followed as well as by those of the European Court of

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[4] A.A. Cançado Trindade, *Direito à Reparação — Origem e Evolução no Direito Internacional*, Fortaleza, FB/Univ. Edit., 2019, pp. 5-285.

[5] Cf., e.g., A.A. Cançado Trindade, *La Responsabilidad del Estado en Casos de Masacres - Dificultades y Avances Contemporáneos en la Justicia Internacional*, Mexico, Edit. Porrúa/Escuela Libre de Derecho, 2018, pp. 1-104; A.A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, Buenos Aires, Edit. Ad-Hoc, 2013, pp. 7-185; A.A. Cançado Trindade, *El Acceso Directo del Individuo a los Tribunales Internacionales de Derechos Humanos*, Bilbao, Universidad de Deusto, 2001, pp. 9-104.

Human Rights, and of the International Criminal Court. Furthermore, both the IACtHR and the ECtHR have pronounced in recent years on cases of *continuing situations* in grave violations of the rights of the human person[6], and of the International Criminal Court; thanks to the work of all those international tribunals, the international community no longer accepts impunity for international crimes[7], for *grave* violations of the rights of the human person.

14. In the handling by the ICJ of the present case concerning *Armed Activities on the Territory of the Congo* (reparations), there were already 11 years since the ICJ delivered its Judgment (of 19.12.2005) on the merits, wherein grave breaches were established by the Court;

> "yet, the numerous victims still wait for reparations. And this is the third time, in the ongoing proceedings on reparations, that I have deemed it fit to leave on the records my concerns as to the continuing and undue prolongation of time, to the detriment of the victims themselves[8]. *Tempus fugit*" (para. 5).

15. In its aforementioned Judgment of 2005, the ICJ was particularly attentive to those grave breaches of massacres of civilians, incitement of ethnic conflicts among groups, forced displacement of persons, among others, having drawn attention to the need of reparation, though unfortunately without setting up a reasonable time-limit for that. In the current written phase of proceedings on reparations in the *cas d'espèce*, special attention has again been devoted to those grave breaches (e.g., in the region of Ituri and the city of Kisangani) (para. 6).

16. In the case of *Armed Activities on the Territory of the Congo* (reparations, D.R. Congo *versus* Uganda), I have always opposed postponing again the hearings on reparations in the present case, and my position has remained a solitary dissenting one; the ICJ's majority rescheduled the oral hearings on reparations several occasions. I have remained very critical of the ICJ. I have always been of the understanding that attention to the prolonged suffering of numerous victims stands well above attention to susceptibilities of contending States.

17. Earlier on, in my previous Separate Opinion of 06.12.2016 in the case of *Armed Activities on the Territory of the Congo* (Order on reparations, D.R. Congo *versus* Uganda), I began summarizing my concerns in four interrelated points, namely: a) the undue prolongation of time in the adjudication of cases of grave violations of international law; b) breach and reparation conforming an indissoluble whole; c) the fundamental duty of prompt reparation; and d) reparations in distinct forms. I turned to each of them in sequence (paras. 2 and following).

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[6] Cf. A.A. Cançado Trindade, "Le développement du Droit international des droits de l'homme à travers l'activité et la jurisprudence des Cours européenne et interaméricaine des droits de l'homme", 16 *Revue universelle des droits de l'homme* (2004) pp. 177-180; A.A. Cançado Trindade, *A Visão Humanista da Missão dos Tribunais Internacionais Contemporâneos*, The Hague/Fortaleza, IBDH/IIDH, 2016, pp. 3-283 ; A.A. Cançado Trindade, *Os Tribunais Internacionais e a Realização da Justiça*, 3rd. ed., Belo Horizonte, Edit. Del Rey, 2019, pp. 3-514.

[7] Cf. S. Zappalà, *La justice pénale internationale*, Paris, Montchrestien, 2007, pp. 15, 19, 23, 29, 31, 34-35, 43, 135, 137 and 145-146.

[8] Cf., earlier on, ICJ, case of *Armed Activities on the Territory of the Congo* (D.R. Congo *versus* Uganda, Order of 01.07.2015), Declaration of Judge Cançado Trindade, paras. 1-7; ICJ, case of *Armed Activities on the Territory of the Congo* (D.R. Congo *versus* Uganda, Order of 11.04.2016), Declaration of Judge Cançado Trindade, paras. 1-20.

18. To my perception, breach of basic rights and needed prompt reparation conformed an indissoluble whole, and I have recalled that

> "the duty of reparation is deeply and firmly-rooted in the history of the law of nations, going back to its origins, when it marked presence in the writings of the "founding fathers" of our discipline, who expressly referred to it in the light of the principle *neminem laedere*. (…)
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> Thus, already in the first half of the XVIth century, Francisco de Vitoria held, in his celebrated Second *Relectio — De Indis* (1538-1539), that "the enemy who has done the wrong is bound to give all this redress"[9]; there is a duty, even amidst armed hostilities, to make restitution (of losses) and to provide reparation for "all damages"[10]. F. de Vitoria found inspiration in the much earlier writings of Thomas Aquinas (from the XIIIth century), and pursued an anthropocentric outlook in his lectures at the University of Salamanca[11].
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> The new humanist thinking came thus to mark presence in the emerging law of nations. In the second half of the XVIth century, Bartolomé de Las Casas, in his *De Regia Potestate* (1571), after invoking the lessons of Thomas Aquinas, also asserted the duty of *restitutio* and reparation for damages[12]. In one of his best-known works, *Brevísima Relación de la Destrucción de las Indias* (1552), B. de Las Casas not only denounced the numerous massacres of native people, but also asserted the duty of reparations for damages[13]. Still in the XVIth century, the duty of *restitutio* and reparation for damages was Juan Roa Dávila, in his *De Regnorum Iusticia* (1591), also referring to Thomas Aquinas[14].
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> Later on, in the XVIIth century, Hugo Grotius, in his well-known *De Jure Belli ac Pacis* (1625), dedicated a whole chapter to the obligation of reparation for damages (book II, chapter 17)[15]. He kept in mind the dictates of *recta ratio*. To him, the "injured party" was not necessarily a State; he referred to distinct kinds of damage caused by breaches of "rights resulting to us", or from "losses suffered by negligence"; such damages or losses created an obligation of reparation[16].

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[9] Franciscus de Victoria, *Second Relectio — On the Indians* [*De Indis*] [1538-1539], Oxford/London, Clarendon Press/H. Milford, 1934 [reed.], p. LV.

[10] *Ibid*., p. LV; and cf. Francisco de Vitoria, "Relección Segunda — De los Indios" [1538-1539], *in Obras de Francisco de Vitoria — Relecciones eológicas* (ed. T. Urdañoz), Madrid, BAC, 1955, p. 827.

[11] As from his first lecture, cf. Francisco de Vitoria, *Sobre el Poder Civil* [*Relectio de Potestate Civili*, 1528] (ed. J. Cordero Pando), Salamanca, Edit. San Estéban, 2009 [reed.], pp. 22 and 44.

[12] Bartolomé de Las Casas, *De Regia Potestate o Derecho de Autodeterminación* [1571] (eds. L. Pereña, J.M. Pérez-Prendes, V. Abril and J. Azcárraga), CSIC, Madrid, 1969, p. 72.

[13] Bartolomé de Las Casas, *Brevísima Relación de la Destrucción de las Indias* [1552], Barcelona, Ediciones 29, 2004 [reed.], pp. 14, 17, 23, 27, 31, 45, 50, 72-73, 87 and 89-90 (massacres); Bartolomé de Las Casas, *Brevísima Relación de la Destruición de las Indias* [1552], Barcelona, Ed. Galaxia Gutenberg / Universidad de Alicante, 2009, pp. 91-92 and 116-117.

[14] Juan Roa Dávila, *De Regnorum Iusticia o El Control Democrático* [1591] (eds. L. Pereña, J.M. Pérez-Prendes and V. Abril), Madrid, CSIC/Instituto Francisco de Vitoria, 1970, pp. 59 and 63.

[15] Hugonis Grotii, *De Iure Belli Ac Pacis* [1625], book II, ch. XVII, The Hague, M. Nijhoff, 1948, pp. 79-82.

[16] *Ibid*., pp. 79-80, paras. I and VIII-IX; and cf. H. Grotius, *Le droit de la guerre et de la paix* [1625] (eds. D. Alland and S. Goyard-Fabre), Paris, PUF, 2005 [reed.], pp. 415-416 and 418, paras. I and VIII-IX.

Also in the XVIIth century, Samuel Pufendorf, in his thoughtful book *On the Duty of Man and Citizen According to Natural Law* (1673), stressed the need to provide reparation for damages at the same time that condemned by natural law vengeance, so as to secure peace. He warned that, without providing *restitutio*,

> 'men in their wickedness will not refrain from harming each other; and the one who has suffered loss will not readily bring himself to make peace with the other as long as he has not obtained compensation. (...) The obligation to make restitution for loss arises not only from harm done with intentional malice but also from harm done by negligence or by easily avoidable fault, without direct intention'[17].

Subsequently, in the XVIIIth century, also in the line of jusnaturalist thinking, Christian Wolff, in his book *Principes du droit de la nature et des gens* (1758), also asserted the duty of appropriate reparation for damages[18]. Other examples could be added, but the aforementioned suffice for the purpose of the present Separate Opinion. It is not surprising to find that the "founding fathers" of international law were particularly attentive to the duty of reparation for damages. They addressed reparations in respect of distinct sorts of disputes, concerning distinct subjects, — States as well as nations, peoples, groups and individuals.

Already in the XVIth century, F. de Vitoria viewed the international community of emerging States as "co-extensive with humanity", and the provision of redress corresponded to "an international need"[19] in conformity with *recta ratio*. The emerging *jus naturae et gentium* was universalist, directed to all peoples; law and ethics went together, in the search for justice[20]. Reminiscent of Cicero's ideal of *societas hominum*[21], the "founding fathers" of international law conceived a "universal society of the human kind" (*commune humani generis societas*) encompassing all the aforementioned subjects of the law of nations (*droit des gens*).

The reductionist outlook of the international legal order, which came to prevail in the XIXth and early XXth centuries, beholding only absolute State sovereignties and subsuming human beings thereunder, led reparations into a standstill and blocked their conceptual development. This latter has been retaken in current times, contributing to the historical process of humanization of contemporary international law.

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[17] Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law* [1673] (eds. J. Tully and M. Silverthorne), Cambridge, Cambridge University Press, 2003 [reprint], pp. 57-58, and cf. pp. 59-60.

[18] Christian Wolff, *Principes du droit de la nature et des gens* [1758], vol. III, Caen, Ed. Université de Caen, 2011 [reed.], ch. VI, pp. 293-294, 296-297 and 306.

[19] Cf. Association Internationale Vitoria-Suarez, *Vitoria et Suarez: Contribution des théologiens au Droit international moderne*, Paris, Pédone, 1939, pp. 73-74, and cf. pp. 169-170; J. Brown Scott, *The Spanish Origin of International Law — Francisco de Vitoria and His Law of Nations*, Oxford/London, Clarendon Press/H. Milford, 1934, pp. 282-283.

[20] [Various Authors,] *Alberico Gentili — Giustizia, Guerra, Imperio* (Atti del Convegno di San Ginesio, sett. 2010), Milano, Giuffrè Edit., 2014, pp. 275 and 320, and cf. pp. 299-300 and 327.

[21] Cf., *inter alii*, e.g., M. Luque Frías, *Vigencia del Pensamiento Ciceroniano en las Relecciones Jurídico-Teológicas del Maestro Francisco de Vitoria*, Granada, Edit. Comares, 2012, pp. 70, 95, 164, 272-273, 275, 278-279, 284, 398-399 and 418-419; A.A. Cançado Trindade and V.F.D. Cançado Trindade, "A Pré-História do Princípio de Humanidade Consagrado no Direito das Gentes: O Legado Perene do Pensamento Estóico", *in O Princípio de Humanidade e a Salvaguarda da Pessoa Humana* (eds. A.A. Cançado Trindade and C. Barros Leal), Fortaleza/Brazil, IBDH/IIDH, 2016, pp. 49-84.

> The legacy of the "founding fathers" of international law has been preserved in the most lucid international legal doctrine, from the XVIth-XVIIth centuries to date. It marks its presence in the universality of the law of nations, in the acknowledgment of the importance of general principles of law, in the relevance attributed to *recta ratio*. It also marks its presence in the acknowledgment of the indissoluble whole conformed by breach and prompt reparation.
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> Reparations — in particular collective reparations — are at last attracting growing attention of international legal doctrine in our days, as well as in case-law" (paras. 10-19).

19. In effect, may I here recall (para. 5) that breach of rights and the reparation due form an indissoluble whole: the duty of reparation is deeply and firmly-rooted in the history of the law of nations (*droit des gens*), going back to its origins, when it marked presence in the writings of the "founding fathers" of our discipline, who expressly referred to it in the light of the principle *neminem laedere*. It is relevant to face new challenges in the international legal order "from an essentially humanist approach" (para. 30), moving "beyond the unsatisfactory inter-State outlook", thus fostering "the progressive development of international law in the domain of reparations, in particular collective reparations" (para. 31). In my own understanding,

> "It is in jusnaturalist thinking — as from the XVIth century — that the goal of prompt reparation was properly pursued. Legal positivist thinking — as from the late XIXth century — unduly placed the "will" of States above *recta ratio*. It is in jusnaturalist thinking — revived as it is nowadays — that the notion of *justice* has always occupied a central position, orienting *law* as a whole; *justice*, in sum, is at the beginning of all *law*, being, moreover, its ultimate end" (para. 32).

20. In my understanding, the ICJ is not conditioned or limited by what the parties request or want, not even in the fixing of time-limits. As I have been pointing out within the ICJ time and time again, — and I reiterate it herein, the Court is not an arbitral tribunal. The ICJ is master of its own procedure, also in the fixing of time-limits, in the path towards the realization of justice, avoiding the undue prolongation of time (para. 28).

21. The international community counts nowadays on the configuration of a true *droit au Droit*, of the persons victimized in any circumstances, including amidst the most complete adversity. As I have recently warned, at the Hague Academy of International Law, in my own lectures on "Les tribunaux internationaux et leur mission commune de réalisation de la justice: développements, état actuel et perspectives" (391 *RCADI* (2017) p. 50), in this respect, in my perception "the most sombre that exists in human nature (in grave violations of human rights and international humanitarian law, some of them with extreme cruelty)", have reinforced my firm belief that victims of oppression and atrocities have the *right to the Law* (*droit au Droit*), the right of access to justice, which cannot be restrained in cases of *delicta imperii*, of crimes of State; the central place is that of the human person.

22. *Continuing situations* in grave violations of the rights of the human person, have been condemned by both the IACtHR and the ECtHR, have pronounced in recent years on such grave violations of the rights of the human person. The *reparatio* seeks to avoid the perduration of the aggravation of the extreme harm already done to the human victims, with a careful attention to *fundamental human values*. Contrary to what legal positivism assumes, with its professed self-sufficiency, in my understanding, law and ethics are ineluctably interrelated, and this is to be taken into account for a faithful realization of justice.

23. This vision has historically marked presence since the very origins of the law of nations (*droit des gens*), and has never been minimized by the more lucid international legal doctrine, untouched by the misleading distortions of legal positivism. The fundamental principle of humanity upholding human dignity, of utmost importance, has been asserted in the jurisprudential construction of contemporary international tribunals. I have recently addressed this criticism in my recent study "Reflections on the International Adjudication of Cases of Grave Violations of Rights of the Human Person", originally published at the 9 *Journal of International Humanitarian Legal Studies* (2018) pp. 98-136, — recently presented by me, in French, as a *magna* lecture at the Law Faculty of the Université Aix-Marseille, in Aix-en-Provence, France, on 30.10.2018, followed by the second lecture, in English, ministered at the Peace Palace of the International Court of Justice, at The Hague, on 17.01.2019.

24. In addressing, therein, the international adjudication of cases of *grave* violations of rights of the human person, the aforementioned threshold of *gravity* of those breaches brings to my mind the profound thinking of Simone Weil, shortly before her death in 1943, expressed in her book *La pesanteur et la grâce* / *Gravity and Grace* (containing some of her writings up to May 1942), published posthumously (in French in 1947 and in English in 1952), wherein she pointed out, with much insight:

> "L'innocent qui souffre sait la vérité sur son bourreau, le bourreau ne la sait pas. Le mal que l'innocent sent en lui-même est dans son bourreau, mais il n'y est pas sensible. L'innocent ne peut connaître le mal que comme souffrance. Ce qui dans le criminel n'est pas sensible, c'est le crime. Ce qui dans l'innocent n'est pas sensible, c'est l'innocence. / The innocent victim who suffers knows the truth about his executioner, the executioner does not know it. The evil which the innocent victim feels in himself is in his executioner, but he is not sensible of the fact. The innocent victim can only know the evil in the shape of suffering. That which is not felt by the criminal is his own crime. That which is not felt by the innocent victim is his own innocence" (S. Weil, *La pesanteur et la grâce* [1947], Paris, Libr. Plon, 1991, pp. 133-134; S. Weil, *Gravity and Grace* [1952], Lincoln, University of Nebraska Press, 1997, p. 122).

25. The consolidation of the international legal personality (active as well as passive) of individuals, as subjects of international law, enhances accountability at international level for grave violations of the rights of the human person. Individuals are also bearers of duties under international law, and this further reflects the consolidation of their international legal personality. Developments in international legal personality and international accountability go hand in hand, giving expression to the formation of the *opinio juris communis* to the effect that the gravity of violations of fundamental rights of the human person affects directly basic values of the international community as a whole.

26. *Justitia longa, vita brevis*; the time of human justice is not the time of human beings. If we care to seek new and forward-looking ideas to endeavour to overcome this *décalage*, we are likely to find them in the lessons of the "founding fathers" of international law. Although the world has entirely changed from the times of the "founding fathers" of the law of nations (*droit des gens*) to our own, the fulfilment of human aspirations and the search for the realization of justice are a-temporal, remain always present, as imperatives of the human condition itself (para. 29).

27. The lessons of the "founding fathers" of the law of nations (*droit des gens*) remain thus as contemporary as ever, and forward-looking in our days. The duty of prompt reparation forms part of their perennial legacy. That legacy is to keep being cultivated[22], so as to face new challenges that contemporary international tribunals face in our days, from an essentially humanist approach (para. 30).

28. In my own understanding, one is to move beyond the unsatisfactory inter-State outlook, if one is to foster the progressive development of international law in the domain of reparations, in particular collective reparations. Prolonged delays are most regrettable, particularly from the perspective of the victims. As already seen, the "founding fathers" of international law went well beyond the strict inter-State outlook, and were particularly attentive to the duty of prompt reparation for damages (para. 31).

29. In sum, it is in jusnaturalist thinking — as from the XVIth century — that the goal of prompt reparation was properly pursued. Legal positivist thinking — as from the late XIXth century — unduly placed the "will" of States above *recta ratio*. It is in jusnaturalist thinking — revived as it is nowadays[23] — that the notion of *justice* has always occupied a central position, orienting *law* as a whole; *justice*, in sum, is at the beginning of all *law*, being, moreover, its ultimate end (para. 32).

(Signed) Antônio Augusto CANÇADO TRINDADE.

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[22] On that legacy, cf., recently, A.A. Cançado Trindade, *A Humanização do Direito Internacional*, 2nd. rev. ed., Belo Horizonte/Brazil, Edit. Del Rey, 2015, ch. XXIX ("The Perennity of the Teachings of the 'Founding Fathers' of International Law"), 2015, pp. 647-676.

[23] Cf., in the last decades, e.g., *inter alii*, A.A. Cançado Trindade, *O Direito Internacional em um Mundo em Transformação*, Rio de Janeiro, Edit. Renovar, 2002, pp. 1028-1029, 1051-1052 and 1075-1094 (universal values underlying the new *jus gentium*, common to the whole of humankind, to all human beings — *civitas maxima gentium*); J. Maritain, *Los Derechos del Hombre y la Ley Natural*, Buenos Aires, Ed. Leviatán, 1982 [reimpr.], pp. 79-80, and cf. p. 104 (the human person transcending the State, and having a destiny superior to time). Cf. also, e.g., [Various Authors,] *Droit naturel et droits de l'homme — Actes des Journées internationales de la Société d'Histoire du Droit* (Grenoble-Vizille, mai 2009 — ed. M. Mathieu), Grenoble, Presses Universitaires de Grenoble, 2011, pp. 40-43, 52-53, 336-337 and 342.