

# Contents

Preface            xv

General Introduction            1

## BOOK 1

### Inter-American Court of Human Rights

- 1 **The Right of International Individual Petition**            9
  - 1 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *Castillo Petruzzi and Others versus Peru* (Preliminary Objections, Judgment of 04.09.1998)            10
  - 2 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of the *Five Pensioners versus Peru* (Reparations, Judgment of 28.02.2003)            30
  
- 2 **The Crystallization of the International Legal Personality of the Human Person in Its New Dimension**            39
  - 1 Concurring Opinion of Judge A.A. Cançado Trindade in the Advisory Opinion n. 17 on the *Juridical Condition and Human Rights of the Child* (of 28.08.2002)            40
  - 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *La Cantuta versus Peru* (Interpretation of Judgment of 30.11.2007)            69
  
- 3 **The Humanization of International Law**            99
  - 1 Separate Opinion of Judge A.A. Cançado Trindade in the Case *Blake versus Guatemala* (Preliminary Objections, Judgment of 02.07.1996)            100
  - 2 Concurring Opinion of Judge A.A. Cançado Trindade in the 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)            106
  - 3 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Caesar versus Trinidad and Tobago* (Merits, Judgment of 11.03.2005)            122
  - 4 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *Communities of Jiguamiandó and Curbaradó Versus Colombia* (Provisional Measures, of 07.02.2006)            160

- 4 The Centrality of the Suffering of the Victims** 165
- 1 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Bulacio versus Argentina* (Reparations, Judgment of 18.09.2003) 166
  - 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Servellón García et alii versus Honduras* (Reparations, Judgment of 21.09.2006) 180
- 5 Time and Law: The Projection of Human Suffering in Time** 197
- 1 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Bámaca Velásquez versus Guatemala* (Merits, Judgment of 25.11.2000) 198
  - 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the “Street Children” (*Villagrán Morales and Others versus Guatemala*, Reparations, Judgment of 26.05.2001) 213
  - 3 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Bámaca Velásquez versus Guatemala* (Reparations, Judgment of 22.02.2002) 233
- 6 Origin and Basis of the International Responsibility of the State** 247
- 1 Dissenting Opinion of Judge A.A. Cançado Trindade in the Case *El Amparo versus Venezuela* (Interpretation of Judgment of 16.04.1997) 248
  - 2 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of “*The Last Temptation of Christ*” (*Olmedo Bustos and Others*) versus Chile (Merits, Judgment of 05.02.2001) 259
  - 3 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Trujillo Oroza versus Bolivia* (Judgment of 27.02.2002) 280
  - 4 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Brothers Gómez Paquiyauri versus Peru* (Judgment of 08.07.2004) 289
- 7 Incompatibility of Self-Amnesties with the American Convention on Human Rights** 309
- 1 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *Barrios Altos versus Peru* (Merits, Judgment of 14.03.2001) 310
  - 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Almonacid Arellano versus Chile* (Merits, Judgment of 26.09.2006) 322

- 8 **The *Jus Cogens* Prohibition of Torture** 337
- 1 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *Maritza Urrutia versus Guatemala* (Judgment of 27.11.2003) 338
- 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Tibi versus Ecuador* (Reparations, Judgment of 07.09.2004) 344
- 3 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Baldeón García versus Peru* (Judgment of 06.04.2006) 360
- 9 **Enforced Disappearance of Persons as a Continuing Violation of Human Rights in Breach of *Jus Cogens*** 367
- 1 Separate Opinion of Judge A.A. Cançado Trindade in the Case *Blake Versus Guatemala* (Merits, Judgment of 24.01.1998) 368
- 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case *Blake versus Guatemala* (Reparations, Judgment of 22.01.1999) 385
- 10 **The Role of General Principles of Law and the Material Content in Expansion of *Jus Cogens*** 409
- Concurring Opinion of Judge A.A. Cançado Trindade in Advisory Opinion n. 18 on the *Juridical Condition and Rights of Undocumented Migrants* (of 17.09.2003) 410
- 11 **Access to Justice as an Imperative of *Jus Cogens*** 455
- 1 Opinion Individuelle du Juge A.A. Cançado Trindade dans l'affaire du *Massacre de Pueblo Bello versus Colombie* (Réparations, Arrêt du 31.01.2006) 456
- 2 Opinion Individuelle du Juge A.A. Cançado Trindade dans l'affaire de *Goiburú et Autres versus Paraguay* (Réparations, Arrêt du 22.09.2006) 488
- 12 **Compulsory Jurisdiction of the Inter-American Court of Human Rights under the American Convention on Human Rights** 521
- Separate Opinion[s] of Judge A.A. Cançado Trindade in the Case[s] of *Hilaire [and Benjamin and Constantine and Others] versus Trinidad and Tobago* (Preliminary Objections, Judgment[s] of 01.09.2001) 522
- 13 **Interpretation of the American Convention on Human Rights and Mechanism of Protection Thereunder** 543
- 1 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Gangaram Panday versus Suriname* (Preliminary Objections, Judgment of 04.12.1991) 544

- 2 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *Paniagua Morales and Others versus Guatemala* (Resolution, of 11.09.1995) 550
- 3 Dissenting Opinion of Judge A.A. Cançado Trindade in the Case of *Genie Lacayo versus Nicaragua* (Appeal of Revision of Judgment, Resolution of 13.09.1997) 552
- 14 **Basis of the Jurisdiction of the Inter-American Court of Human Rights in Advisory Matters** 563  
 Concurring Opinion of Judge A.A. Cançado Trindade in the Advisory Opinion n. 15 on *Reports of the Inter-American Commission on Human Rights* (of 14.11.1997) 564
- 15 **Crime of State and Aggravated International Responsibility of the State** 579
- 1 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Myrna Mack Chang versus Guatemala* (Judgment of 27.11.2003) 580
- 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Massacre of Plan de Sánchez versus Guatemala* (Merits, Judgment of 29.04.2004) 606
- 3 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Massacre of Plan de Sánchez versus Guatemala* (Reparations, Judgment of 19.11.2004) 625
- 4 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Massacres of Ituango versus Colombia* (Reparations, Judgment of 01.07.2006) 636
- 16 **Reparations for Damage to the Project of Life and to the Project of After-Life (Spiritual Damage)** 661
- 1 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Cantoral Benavides versus Peru* (Reparations, Judgment of 03.12.2001) 662
- 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Moiwana Community versus Suriname* (Merits, Judgment of 15.06.2005) 667
- 3 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Gutiérrez Soler versus Colombia* (Merits, Judgment of 12.09.2005) 703

- 17 **Wide Scope of Conventional Obligations of Protection under Human Rights Treaties** 715
- 1 Dissenting Opinion of Judge A.A. Cançado Trindade in the Case of *El Amparo versus Venezuela* (Reparations, Judgment of 14.09.1996) 716
  - 2 Dissenting Opinion of Judge A.A. Cançado Trindade in the Case of *Caballero Delgado y Santana versus Colombia* (Reparations, Judgment of 29.01.1997) 721
  - 3 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Las Palmeras versus Colombia* (Preliminary Objections, Judgment of 04.02.2000) 733
  - 4 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *Hilaire, Constantine and Benjamin versus Trinidad and Tobago* (Merits, Judgment of 21.06.2002) 740
- 18 **The Universal Juridical Conscience and the Right to Cultural Identity** 761
- Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Indigenous Community Sawhoyamaya versus Paraguay* (Judgment of 29.03.2006) 762
- 19 **The Legal Regime of Provisional Measures of Protection and Their Tutelary Character** 799
- 1 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *James et alii versus Trinidad and Tobago* (Provisional Measures, of 25.05.1999) 800
  - 2 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *Haitians and Dominicans of Haitian Origin in the Dominican Republic versus Dominican Republic* (Provisional Measures, of 18.08.2000) 806
  - 3 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of *The Children and Adolescents Deprived of Freedom in the "Complex of Tatuapé" of FEBEM versus Brazil* (Provisional Measures, of 17.11.2005) 816
- 20 **Obligations *Erga Omnes* of Protection and *Drittwirkung*** 821
- 1 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of the *Community of Peace of San José de Apartadó versus Colombia* (Provisional Measures, of 18.06.2002) 822

- 2 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of the *Indigenous People of Sarayaku versus Ecuador* (Provisional Measures, of 06.07.2004) 830
- 3 Concurring Opinion of Judge A.A. Cançado Trindade in the Case of the *Television Channel "Globovisión" versus Venezuela* (Provisional Measures, of 04.09.2004) 836
- 4 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Prisons of Mendoza versus Argentina* (Provisional Measures, of 30.03.2006) 844

## BOOK 2

## International Court of Justice

- 1 **The Presence of the Human Person in the Essence of Inter-State Disputes** 853  
 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Pulp Mills* (Argentina versus Uruguay, Judgment of 20.04.2010) 854
- 2 **Territory and People Together: The Overcoming of the Exclusively Territorialist Outlook** 939  
 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Request for Interpretation of the Judgment of 1962 in the Case of the Temple of Preah Vihear* (Cambodia versus Thailand, Order, Provisional Measures, of 18.07.2011) 940
- 3 **Demarcation of Frontiers and Living Conditions of Nomadic Populations** 987  
 Separate Opinion of Judge A.A. Cançado Trindade in the *Frontier Dispute Case* (Burkina Faso versus Niger, Judgment of 16.04.2013) 988
- 4 **The Human Ends of the State and their Projection onto the International Legal Order** 1031  
 Separate Opinion of Judge A.A. Cançado Trindade in the Advisory Opinion on the *Declaration of Independence of Kosovo* (of 22.07.2010) 1032
- 5 **The Relevance of Compromissory Clauses in Human Rights Treaties** 1133
  - 1 Dissenting Opinion of Judge A.A. Cançado Trindade in the Case of *Questions Relating to the Obligation to Prosecute or Extradite* (Belgium versus Senegal, Order, Provisional Measures, of 28.05.2009) 1134

- 2 Dissenting Opinion of Judge A.A. Cançado Trindade in the Case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Georgia versus Russian Federation, Preliminary Objections, of 01.04.2011) 1173
- 6 **The Relevance of Compromissory Clauses in Environmental Law Treaties** 1267  
 Separate Opinion in the Case of *Whaling in the Antarctic* (Australia versus Japan, New Zealand's Declaration of Intervention, Order of 06.02.2013) 1268
- 7 **The Primacy of the Right of Access to Justice over State Immunities in Face of International Crimes** 1297  
 1 Dissenting Opinion of Judge A.A. Cançado Trindade in the Case of the *Jurisdictional Immunities of the State* (Germany versus Italy, Order, Counter-Claim, of 06.07.2010) 1298  
 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Jurisdictional Immunities of the State* (Germany versus Italy, Order, Greece's Request to Intervene, of 04.07.2011) 1370  
 3 Dissenting Opinion of Judge A.A. Cançado Trindade in the Case of the *Jurisdictional Immunities of the State* (Germany versus Italy, Greece intervening, Judgment of 03.02.2012) 1399
- 8 **The *Jus Cogens* Prohibition of Torture and the Principle of Universal Jurisdiction** 1523  
 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Questions Relating to the Obligation to Prosecute or Extradite* (Belgium versus Senegal, Merits, Judgment of 20.07.2012) 1524
- 9 **International Legal Personality of Individuals and the Right to Procedural Equality in International Administrative Law** 1601  
 Separate Opinion of Judge A.A. Cançado Trindade in the Advisory Opinion on *Judgment n. 2867 of the ILO Administrative Tribunal upon a Complaint Filed against IFAD* (of 01.02.2012) 1602
- 10 **Violations of Human Rights Established by the International Court of Justice** 1649  
 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *A.S. Diallo* (Guinea versus D.R. Congo, Merits, Judgment of 30.11.2010) 1650

- 11 The Individual as Beneficiary of Reparations in Inter-State Cases 1741**
- 1 Declaration of Judge A.A. Cançado Trindade in the Case of *A.S. Diallo* (Guinea versus D.R. Congo, Order of 20.09.2011) 1742
- 2 Separate Opinion Judge A.A. Cançado Trindade in the Case of *A.S. Diallo* (Guinea versus D.R. Congo, Reparations, Judgment of 19.06.2012) 1745
- 12 The Relevance of General Principles of International Law 1787**
- Separate Opinion of Judge A.A. Cançado Trindade in the Case of the *Request for Interpretation of the Judgment of 1962 in the Case of the Temple of Preah Vihear* (Cambodia versus Thailand, Interpretation of Judgment, of 11.11.2013) 1788
- 13 The Autonomous Legal Regime of Provisional Measures of Protection 1815**
- 1 Dissenting Opinion of Judge A.A. Cançado Trindade in the Cases of *Construction of a Road in Costa Rica along the San Juan River* and of *Certain Activities Carried Out by Nicaragua in the Border Area* (Nicaragua versus Costa Rica, and Costa Rica versus Nicaragua, Provisional Measures, Order of 16.07.2013) 1816
- 2 Separate Opinion of Judge A.A. Cançado Trindade in the Case of *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica versus Nicaragua, Provisional Measures, Order of 22.11.2013) 1847
- 14 Joinder of Cases 1865**
- Separate Opinion of Judge A.A. Cançado Trindade in the Cases of *Construction of a Road in Costa Rica along the San Juan River* and of *Certain Activities Carried Out by Nicaragua in the Border Area* (Nicaragua versus Costa Rica, Costa Rica versus Nicaragua, Joinder, Order of 17.04.2013) 1866