THE UNIVERSALITY OF INTERNATIONAL LAW, ITS HUMANIST OUTLOOK, AND THE MISSION OF THE HAGUE ACADEMY OF INTERNATIONAL LAW[1]

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I. THE CENTENARY OF THE PEACE PALACE

1. It is a source of great satisfaction to me that the Hague Academy of International Law has decided to associate itself, by means of this Seminar, with the present commemorations of the Centenary of the Peace Palace. The Hague Academy is likewise commemorating, in this year of 2013, its ninetieth anniversary, and its history is intimately linked to that of the Peace Palace, as well as the other institutions hosted in this latter, namely, the International Court of Justice (ICJ), - preceded by the Permanent Court of International Justice (PCIJ), - the Permanent Court of Arbitration (PCA), and the Carnegie Endowment for International Peace. Despite all the turmoil and devastation endured throughout this century, the ideal of a world guided by justice and peace has remained alive. It is this that we commemorate today, in this Peace Palace that has been sheltering succeeding generations of international law scholars who never failed to cherish this ideal.

2. Six years ago, in this same auditorium of the Hague Academy, we commemorated yet another centenary, that of the II Hague Peace Conference.[2] Having expounded the outlook of the Latin American international legal doctrine therein, I keep the most grateful memories of that centennial celebration[3], being again here in the company of Professor Yves Daudet and of other colleagues of the *Curatorium* of the Hague Academy, in this Seminar of a new centennial celebration of today, 15 July 2013. And, allowing myself to be somewhat confident or optimistic, in one decade we will be commemorating yet another centenary, that of the Hague Academy of International Law itself. This succession of three centenaries greatly pleases me, as they represent ideals which have survived the onslaught of time, and have kept on inspiring successive generations of scholars of international law, attentive to the needs and aspirations of whole of humankind.[4]

II. NINETY YEARS OF THE HAGUE ACADEMY

3. In effect, when the historical II Hague Peace Conference of 1907 was held, the idea was already germinating of the creation of a future Academy of International Law, hosted in the Peace Palace by the Carnegie Endowment for International Peace. A project to that effect was developed, *inter alii*, by Tobias M.C. Asser and James Brown Scott, to which the *Institut de Droit International* and the Carnegie Endowment for International Peace associated themselves in 1910. A financial aid granted by the Carnegie Endowment rendered the conclusion of the project possible in 1913, followed by its approval by the *Curatorium* of the Academy in its January 1914 meeting. But the outbreak of the cataclism of the Great War (as the I world war was then called) prevented the first session of the Academy from taking place in mid-1914.

4. Likewise, the III Hague Peace Conference, which was to be convened in the newly inaugurated Peace Palace at The Hague, for the same reason did not take place. The beginning of the academic activities of the Hague Academy was postponed until 1923, nine decades ago. There was initially the idea of linking the work of the Academy with that of the Hague Peace Conferences. Be that as it may, by the time the Academy started functioning, modern international law was no longer Euro-centric; as one of my predecessors in the Academy´s *Curatorium* once put it, on the occasion of the 75th anniversary of our *confrèrie*, the universalist approach prevailed from the outset in the Hague Academy, and became well-established. It would be contrary to the Academy´s

function to pursue a kind of "intellectual strait-jacket"; it instead fostered a variety or pluralism of views or interpretations.[5]

5. By the time the teaching started (in 1923), for example, - as pointed out in the commemoration of the fiftieth anniversary of the Academy, - two trends of international legal doctrine coexisted, in relation to the sources of international law: one privileged treaties and State practice (custom), in the line of legal positivism; the other acknowledged the emergence and relevance of of general principles of law, in the line of jusnaturalism[6], - just as it had happened, three years earlier (June-July 1920), in the work of the League of Nations´ Advisory Committee of Jurists entrusted with the drafting of the Statute of the Permanent Court of International Justice (PCIJ).

6. Attentive to the cultivation of a pluralism of outlooks, the Hague Academy promptly ensured, and has constantly maintained, an international composition, constantly renewed, of its teaching staff, conceiving the General Course as the backbone of its teaching, alongside of the thematic annual courses. This secured its unique dissemination of the knowledge of international law.[7] By the time the Academy commemorated its 75th anniversary, its then Secretary-General, Daniel Bardonnet, recalled that it had been in an atmosphere of idealism that the original statutes of the Academy had been prepared on the occasion of the II Hague Peace Conference of 1907, counting on the enthusiasm of T.M.C. Asser, Nobel Peace Prize of 1911.

7. Yet, it was not until seven years later, in January 1914, that its *Curatorium* met for the first time, presided by L. Renault, Nobel Peace Prize in 1907. However, with the prompt eruption of the Great War, the Academy had to wait another decade for its official inauguration. The outbreak of the first world war, with its widespread violence and atrocities, conveyed the feeling - as narrated in the autobiography of Stefan Zweig - that the world had got used to brutality and inhumanity, as never in many centuries before.[8] Notwithstanding that devastation, the ideal of a world oriented by peace and justice had not vanished. On 14 July 1923, at the *Grande Salle de Justice* in the Peace Palace (where the public sittings of the PCIJ used to take place and where those of the International Court of Justice [ICJ] are held nowadays), the inauguration of the Hague Academy of International Law took place, with the opening of its first study session.[9]

8. The annual study sessions were held continuously from 1923 to 1939, but in 1940 the Hague Academy had to suspend them temporarily (for six years), as a result of the outbreak of the second world war. The annual study sessions restarted in 1947, and, ever since, have been held, continuously and without any other interruptions, until now (mid-2013). Its summer study sessions, in these nine decades of 1923-2013, have become exercises of academic freedom, "une véritable école de liberté", and the corresponding volumes of its *Recueil des Cours* have turned out to be "an integral part of the history of international law" itself.[10] Even beyond that, the Hague Academy has been contributing to the progressive development of international law, without being attached to any "school of thinking", any system ir any specific doctrine; the Hague Academy, in the course of its academic activities, has been showing that international law is not a strictly technical disciplined, but rather a living subject, with a soul, accompanying and shaping history.[11]

9. The academic activities of the Hague Academy encompass teaching (in the annual summer sessions, and external programmes - *infra*), as well as research. In effect, as time went on, the Hague Academy decided to add research to the teaching activity: in 1957, its Centre for Studies and Research in International Law and International Relations held its first annual session. The participants (from 20 to 30) have been ever since grouped in two language sections (English and French), to undertake research on the topics chosen by the *Curatorium* for each year. In this, as well as other of its activities, the Hague Academy has much contributed not only to the systematization, but also to the study of the progressive development of international law.[12]

III. THE UNIVERSALITY OF INTERNATIONAL LAW: THE EXTERNAL PROGRAMMES

10. A Study Group, created in 1965, assisted the *Curatorium* of the Hague Academy of International Law in devising, as from 1967, its External Programme. The decision to create it was taken in the meeting of the *Curatorium* of January 1968, and the External Program was at last launched in 1969, aiming at groups of advanced auditors, such as young professors or diplomats. According to a testimony of the time,

> "les traditions d´impartialité de l´Académie lui faisaient précisément un devoir de tenter organiser à travers le monde des sessions d´un niveau scientifique élevé".[13]

11. The Secretary-General, after choosing the counterparts (among Foreign Ministries and their Diplomatic Schools and local Universities) for the external sessions, was to agree with them on the choice of topical subjects for each session, one particular interest for the region. Participants were to be selected from the countries of the region (some thirty or so), the host country being assured of some seats in the audience. Like all teaching of the Academy, courses were to be conducted in an atmosphere of academic freedom, without necessarily upholding a particular doctrine, and attentive to the current status and the evolution of international law.

12. The motivation for the creation of the External Programme was thus outlined by one of the participants of the Study Group which assisted the *Curatorium* of the Hague Academy in launching the Programme in 1969:

> "l´Académie devait reconnaître sa responsabilité intellectuelle et morale à l´égard de l´évolution du droit international dans un monde en cours de changement et troublé, dans lequel le danger d´une fragmentation de ce droit et la formation de différents systèmes antagonistes demeurait réel et grave. (...) (...) La philosophie profonde du Programme extérieur (...) ne fait que refléter à travers les continents l´idée universaliste qui reste à la base même de l´activité de l´Académie à La Haye (...)".[14]

13. Ever since its first external sessions (in Rabat [Morocco] and in Bogotá), in 1969, marking the beginning of the External Programme, successive external sessions have been held in rotation in distinct continents, countering apparently "fragmenting" tendencies and aiming at bringing the message of the universality of international law to new generations of scholars in distinct continents. As member of the *Curatorium* of the Hague Academy of International Law, I have been a strong supporter of its External Programme, having personally lectured in all but one of the external sessions held in the Americas and the Caribbean in the last two and a half decades, - namely, in Bogotá (1989), Santiago of Chile (1991 and 2011), San José of Costa Rica (1995), Montevideo (1998), Mexico City (2002), Lima (2005), and Santo Domingo (2008). Earlier on, external sessions were also held in Bogotá (1969), Mexico City (1970 and 1979), Buenos Aires (1972 and 1986, and then 2012), Caracas (1975), and Brasília (1983).

14. All these external sessions sessions have focused on topical subjects of the international agenda, of particular interest to the countries of the region. I have many memories of the several external sessions in which I have participated. For example, the one in Central America (San José) in the mid-nineties (1995), coincided - by a conjunction of the stars - with the end of the armed conflicts in Central America, while there remained uncertainties as to the fate of refugees and displaced persons in the region.[15] That memorable external session took place in San José at the time when the Conference of Tegucigalpa marked formally the end of the armed conflicts in the region and the beginning of a new epoch of peaceful relations *between* and *within* the States concerned. The external sessions which followed, in the Southern Cone (Montevideo, 1998), as well as in Mexico City (2002), and in the Andean region (Lima, 2005),[16] beheld new situations of human vulnerability, with the emerging new flows of undocumented migrants.[17] They also addressed the issues of democratization, and of regional and subregional experiments of integration and cooperation.

15. The external session of Santo Domingo (2008) coincided - by a new conjunction of the stars - with the impressive XX Summit of Heads of State and Government of the Group of Rio, which contributed decisively to the preservation of peace in the region, in achieving a historical reconciliation, just before the closing of the tense debates, between the Heads of State and Government of the four countries involved in a serious diplomatic confrontation in the north of the Andean region and in Central America (Ecuador, Colombia, Venezuela and Nicaragua). That Summit, and the external session of Santo Domingo, took place, once again, within the rich juridical tradition of Latin American and Caribbean countries of compliance with, and fidelity to, the principles and norms of International Law.

16. In external sessions of the last 15 years in Latin America, attention has furthermore been devoted to the issues of the relations between universalism and regionalism, and of the common mission of contemporary international tribunals. Discussions were conducted within the vision of the universality of international law, as manifested in that part of the world, - the one I come from. The Academy´s external sessions in Latin America have taken place in the framework of the tradition of the countries of the region of cultivation and fidelity to the principles of international law (such as, e.g., those of the prohibition of use or threat of force in inter-State relations, and of the juridical equality of States),

- besides well-known Latin American doctrines, - permeating distinct chapters of international law, such as those of peaceful settlement of disputes, regulation of spaces (e.g., law of the sea and of international watercourses), international responsibility of States, condition of individuals in international law and human rights, law of treaties, recognition of States and governments, among others.

17. In sum, the external sessions of the Academy held in Latin America have provided the participants, young scholars of international law, the unique occasion to sustain a dialogue *inter se* and with their Professors, on topical issues of the existing law (*lex lata*) of nations, without excluding the projection of this latter into the future (*de lege ferenda*). In this way, by bringing together the teaching and research as well as the promotion of international law, those external sessions of the Academy have devoted themselves also to an understanding of the changing international agenda, dictated by the changing configuration of forces in the international scenario.

IV. THE HAGUE ACADEMY AND THE HUMANIST OUTLOOK OF INTERNATIONAL LAW

18. This is particularly important, as we do not live in a rational world, and it is necessary at least to seek to understand it, keeping in mind the lessons of the past. In endeavouring to do so, it is important to aim at the gradual improvement of the law of nations (*droit des gens*), in this new era of the advent of the new primacy of the *raison d´humanité* over the *raison d´État*. In this way, we can contribute to enabling the humanized law of nations (*droit des gens*) to provide responses to the basic needs and aspirations of the international community as a whole, and, ultimately, of humankind. This is the great task before us today.

19. Throughout its historical trajectory, the Hague Academy has constantly cared to contribute to develop the humanist outlook of international law. Thus, in so far as *human rights* are concerned, the first courses delivered in our Academy were those of A. N. Mandelstam (1923, vol. 1; and 1931, vol. 38). Besides those, there have been 22 other courses to date, among which those of J. Dumas (1937, vol. 59), Hersch Lauterpacht (1947, vol. 70), René Cassin (1951, vol. 79, and lecture of 1974, vol. 140), B. Mirkine-Guetzévitch (1953, vol. 83), E. Hamburger (1959, vol. 97) , F. Ermacora (1968, vol. 124), K. Vasak (1974, vol. 140), H. Gros Espiell (1975, vol. 145), M. Schreiber (1975, vol. 145), G. Arangio-Ruiz (1977, vol. 157), G. Ténékidès (1980, vol. 168), E.G. Bello (1985, vol. 194), A.A. Cançado Trindade (1987, vol. 202; and 2005, vols. 316-317), J.A. Pastor Ridruejo (1991, vol. 228), J. Rideau (1997, vol. 265), A. Moulay Rchid (1997, vol. 268), G. Matscher (1997, vol. 270), P. Kinsch (2005, vol. 318), R. Pisillo Mazzeschi (2008, vol. 333), P.R. Beaumont (2008, vol. 335).

20. As to the *condition of the individual* in international law, there have been 10 courses to date, among which those of N. Bentwich (1929, vol. 29), J. Spiropoulos (1929, vol. 30), S. Séfériadès (1935, vol. 51), C.Th. Eustathiades (1953, vol. 84), G. Sperduti (1956, vol. 89), Y. Ben Achour (1994, vol. 245), E. Decaux (2008, vol. 336). To those one can add 4 other courses, on the *right of individual petition*, namely, the ones of N. Feinberg (1932, vol. 40), J.-C. Witenberg (1932, vol. 41), G. Vedovato (1950, vol. 76), F.A. Von der Heydte (1962, vol. 107). Furthermore, there have been 6 courses on *international humanitarian law*, among which those of H. Coursier (1960, vol. 99), R. J. Wilhelm (1972, vol. 137), D. Momtaz (2001, vol. 292), D. Thürer (2008, vol. 338). One can add 4 courses on *international refugee law*, namely, those of E. Reut-Nicolussi (1948, vol. 73), F. Schnyder (1965, vol. 114), O. Casanovas (2003, vol. 306), J.-Y. Carlier (2007, vol. 332). And one can also add 2 courses of *international criminal law*, namely, those of Q. Saldaña (1925, vol. 10), and J. Graven (1950, vol. 76).

21. Moreover, the Hague Academy´s Centre for Studies and Research in International Law and International Relations, likewise, has also included, in its successive annual topics for studies and research, those which require a humanist outlook. This has been the case, e.g., of the following ones (13 in total so far), in chronological order: "The Protection of Human Rights by International Law" (1967), "Problems of Application of the Humanitarian Law of War to Conflicts not of an International Character" (1973), "International Protection of the Rights of the Child" (1979), "The Legal Status of Refugees" (1980), "The Protection of the Right to Life under Existing Rules of International Law" (1983), "The International Legal Status of Minorities" (1984), "The Application of Humanitarian Law" (1986), "The Right of Asylum" (1989), "International Criminal Justice" (2002), "The Cultural Heritage of Mankind" (2005), "Rules and Institutions of International Humanitarian Law Put to the Test

of Recent Armed Conflicts" (2007), "Cultural Diversity" (2009), and "International Migrations" (2010).

V. CONCLUDING REMARKS

22. This brings me to my concluding remarks. As we have seen, in the course of the last nine decades of its existence, the Hague Academy of International Law has secured academic freedom, the pluralism of ideas, and has cultivated the universality of international law. In all its academic activities, it has pursued the humanist outlook of the law of nations (the *droit des gens*), and passed it on to succeeding generations of our discipline. By the mid-XXth century, in the aftermath of two world wars, the humanist outlook of the law of nations - which had never faded away, - appear consolidated, as evidenced by the conceptual universe of the law of nations: the *Dictionnaire de la Terminologie du Droit International*, published in 1960 by the *Union Académique Internationale*, for example, included expressions such as, *inter alia*, "conscience publique", "justice internationale", "lois de l´humanité", and "morale internationale".[18]

23. The present celebration is a proper occasion to single out the humanist outlook of the law of nations, in this commemoration by the Hague Academy of International Law of the centenary of the Peace Palace, which coincides with the 20th anniversary of the II World Conference of Human Rights, convened by the United Nations in Vienna in mid-1993.[19] Throughout these nine decades, the Hague Academy has operated harmoniously with the other institutions also lodged in the Peace Palace, namely, the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA), and the Carnegie Foundation.

24. All these institutions are, in this second semester of 2013, celebrating the centennial anniversary of the Peace Palace. Each of then is thereby expressing its satisfaction at this celebration, by sponsoring its own Seminar to this effect. Today, 15 July 2013, we are now having the first of these Seminars. In two month´s time, next 23 September 2013, we shall have the Seminar to be held by the International Court of Justice. I have the pleasure to serve today both institutions, and I can here express what I behold as the confidence in a world guided by the imperatives of justice and peace, to the benefit ultimately of humankind as a whole.

25. Each generation has to try at least to understand the world wherein it leaves, so that each one can devise one´s project of life and the goals one purports to attain in one´s lifetime. This is already a great challenge, as life is brief (*vita brevis*). Moreover, the world itself is constantly changing, at times considerably, being, for example, quite different from what it used to be, say, three or four decades ago. Yet, human aspirations towards justice and peace remain the same[20]. In facing the challenges of international law nowadays, one has to consider international law in the course of time. The passing of time is surely the greatest enigma of human existence. But of one thing you can be sure: you have come from your home countries to the Hague Academy of International Law in your youth; the Hague Academy, in turn, will then come with you, will accompany you throughout all your lives, will be a faithful companion of your lifetime of devotion to the study of international law.

The Hague, 15 July 2013.

NOTES

1. Address delivered by Judge Antônio Augusto Cançado Trindade in the Seminar of the Hague Academy of International Law, at The Hague, in commemoration of the centenary of the Peace Palace, on 15 July 2013.
2. [Various Authors,] *Actualité de la Conférence de La Haye de 1907 - II Conférence de la Paix (Colloque de 2007)* (ed. Y. Daudet), Leiden/La Haye, Académie de Droit International/Nijhoff, 2008, pp. 3-302.
3. A.A. Cançado Trindade, "The Presence and Participation of Latin America at the II Hague Peace Conference of 1907", *in ibid.*, pp. 51-84, and cf. pp. 110-112, 115-117, 122 and 205-206 (debates).
4. A.A. Cançado Trindade, "International Law for Humankind: Towards a New *Jus Gentium* -General Course on Public International Law - Part I", 316 *Recueil des Cours de l'Académie de Droit International de la Haye* (2005) pp. 31-439; 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) pp. 19-312.
5. K. Skubiszewski, "The Contribution of the Academy to the Development of the Science and Practice of Public International Law", *in Seventy-Fifth Anniversary of The Hague Academy of International Law (1923-1998)*, The Hague, The Hague Academy of International Law, 1998, pp. 31-32, and cf. pp. 27 and 29-30.
6. A. Verdross, "Coincidences: Deux théories du droit des gens apparues à l´époque de la création de l´Académie de droit international", *in Livre jubilaire de l´Académie de Droit International de La Haye* (1923-1973) (ed. R.-J. Dupuy), Leyde, Sijthoff, 1973, pp. 84-85 and 89-96.
7. K. Skubiszewski, "The Contribution of the Academy...", *op. cit. supra* n. (4), pp. 30 and 33-34.
8. Stefan Zweig, *O Mundo que Eu Vi* [1944, *Die Welt von Gestern*], Rio de Janeiro, Edit. Record, 1999, p. 483, and cf. pp. 272-274, 278, 462, 467, 474, 490 and 503-505.
9. D. Bardonnet, "Présentation", *in Seventy-Fifth Anniversary of The Hague Academy of International Law (1923-1998)*, The Hague, The Hague Academy of International Law, 1998, pp. 10-11.
10. Cf. *ibid.*, pp. 14-15.
11. Cf. *ibid.*, pp. 16 and 18-19.
12. Cf. *ibid.*, pp. 36 and 61-62.
13. R.-J. Dupuy, "Le Programme extérieur", *in Livre jubilaire de l´Académie de Droit International de La Haye* (1923-1973) (ed. R.-J. Dupuy), Leyde, Sijthoff, 1973, p. 161.
14. *Ibid.*, pp. 160 and 173.
15. Cf. [Various Authors,] *Droit international et droits de l´homme / Derecho Internacional y Derechos Humanos - Libro Conmemorativo de la XXIV Sesión del Programa Exterior de la Academia de Derecho Internacional de La Haya* [San José de Costa Rica, 1995] (eds. D. Bardonnet and A.A. Cançado Trindade), San José/La Haye, IIDH, 1996, pp. 13-305.
16. Cf. [Various Authors,] *Democracia y Libertades en el Derecho Internacional Contemporáneo / Democracy and Liberty in Current International Law - Libro Conmemorativo de la XXXIII Sesión del Programa Exterior de la Academia de Derecho Internacional de La Haya* [Lima, 2005], Lima, PUC/Peru, 2005, pp. 9-270.
17. A.A. Cançado Trindade, "Le déracinement et la protection des migrants dans le Droit international des droits de l'homme", 19 *Revue trimestrielle des droits de l'homme* - Bruxelles (2008) n. 74, pp. 289-328.
18. Union Académique Internationale, *Dictionnaire de la Terminologie du Droit International*, Paris, Sirey, 1960, pp. 153-154, 361-362, 379 and 395-396, respectively.
19. For an account, cf. A.A. Cançado Trindade, "Recollections of Some Vitorian and Grotian Moments Shared with Boutros Boutros-Ghali", *in Le 90e. anniversaire de Boutros Boutros-Ghali - Hommage du Curatorium à son Président / The 90th Birthday of Boutros Boutros-Ghali – Tribute of the Curatorium to Its President*, The Hague, Académie de Droit International de La Haye/Nijhoff, 2012, pp. 33-51; and cf. A.A. Cançado Trindade, "Memória da Conferência Mundial de Direitos Humanos (Viena, 1993)", 87/90 *Boletim da Sociedade Brasileira de Direito Internacional* (1993-1994) pp. 9-57.
20. A.A. Cançado Trindade, "The Human Person and International Justice" [W. Friedmann Memorial Award Lecture 2008], 47 *Columbia Journal of Transnational Law* (2008) pp. 16-30.