CHAPTER 9

*International Legal Personality of Individuals and the Right to Procedural Equality in International Administrative Law*
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)

I Introduction

1. I have concurred with my vote to the adoption today, 01st February 2012, by the International Court of Justice (ICJ), of the present Advisory Opinion on Judgment n. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development. The course of the advisory proceedings has, however, raised points to which I attach much importance, and in relation to which I feel bound to leave on the records the foundations of my position thereon. I propose thus to dwell upon such points in the present Separate Opinion, in a logical sequence, and with a constructive spirit, so as to shed some light on certain matters which lay on the foundations of contemporary international law as well as the internal law of the United Nations, which seem to me to require the utmost attention.

2. In this understanding, I purport to examine, in the present Separate Opinion, a series of interrelated points, having, as common denominator, the fundamental question of procedural equality in the access of individuals to justice at international level. To start with, I shall address the points which are predominantly factual in the context of the present Advisory Opinion, namely: (a) the factual background of the present matter lodged with the Court; (b) the determination of compliance with Judgment n. 2867 of 2010 of the ILOAT favourable to the individual complainant; (c) the difficulties in the compliance with Judgment n. 2867 of 2010 of the ILOAT favourable to the individual complainant; (d) the individual complainant’s appeal for equality of arms and realization of justice; and (e) the contrasting positions of the individual complainant and the IFAD as to the present request for an Advisory Opinion of the ICJ.

3. Next, I shall focus on the points of juridical epistemology, which in my view are deserving of attention and care, and from which we can extract lessons in the light of the present Advisory Opinion. Those points are the