I. Introduction

Several international courts—not only those dedicated to the protection of human or humanitarian rights—have in recent times given a new profile to international law. These courts have considered individual rights and particular interests in their pronouncements.

Since we cannot consider all the existing jurisprudence regarding this matter in such a brief paper, we have selected three recent cases that illustrate this new approach to international law: the Order of the International Court of Justice (ICJ) (24 May 2007) in the case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo) Preliminary Objections; the Eleventh Arbitration Award of the Ad Hoc Arbitration Court of MERCOSUR (6 September 2006) in the case Failure of the Argentine State to adopt appropriate measures to prevent and/or terminate the impediments to free movement arising from the blocking in Argentine territory of the access roads to the General San Martín and General Artigas international bridges connecting the Argentine Republic with the Republic of Uruguay; and the Decision on Liability of 3 October 2006 of the International Centre for Settlement of Investment Disputes (ICSID) in the case of the Proceedings between LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. (Claimants) and the Argentine Republic (Respondent).

II. Humanisation of the International Court of Justice

The International Court of Justice (hereinafter ICJ), both in its contentious and advisory jurisdictions, has considered the development of international law with special reference to the direct rights of individuals.

Theodor Meron recalls that already in 1928 the Permanent Court of International Justice (PCIJ) (Advisory Opinion of 3 March 1928 in the case of the Jurisdiction of the Courts of Danzig (PCIJ-Ser. B), N° 15, pp. 17–18) had recognised

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that States through treaties may grant direct rights to individuals or impose direct obligations on them, rights that would be enforced by national courts. Nevertheless, for the purposes of our analysis, it is worth noting that the PCIJ Advisory Opinion is based on a different situation. We must emphasise that direct rights (which the Advisory Opinion refers to) were recognised in the treaties by the States themselves and not by courts in non-compliance with conventional provisions—a frequent situation nowadays in an increasing number of tribunals.

The ICJ Order of 24 May 2007 in the case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo) Preliminary Objections is an example of this new perception of international law.

Guinea exercised diplomatic protection, and alleged that Mr. Diallo’s arrest, detention and expulsion were, inter alia, violations of the principle that aliens should be treated in accordance with “a minimum standard of civilization.” Nevertheless, the ICJ went beyond that point in the following consideration:

39. The Court will recall that under customary international law, as reflected in Article 1 of the draft Articles on Diplomatic Protection of the International Law Commission (hereinafter the “ILC”), “diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility” (Article 1 of the draft Articles on Diplomatic Protection adopted by the ILC at its Fifty-eighth Session (2006), ILC Report, doc. A/61/10, p. 24).

Owing to the substantive development of international law over recent decades in respect of the rights it accords to individuals, the scope ratione materiae

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2 Ahmadou Sadio Diallo, a businessman of Guinean nationality, was imprisoned by the authorities of the Democratic Republic of Congo, after being resident in that State for thirty-two (32) years, despoiled of his sizable investments, businesses, movable and immovable property and bank accounts, and then expelled. On 28 December 1998, the Government of the Republic of Guinea filed in the Registry of the Court an Application instituting proceedings against the Democratic Republic of Congo.
3 Guinea, in the Memorial on the Merits, maintained, inter alia, “that in arbitrarily arresting and expelling its national, Mr. Ahmadou Sadio Diallo; in not at that time respecting his right to the benefit of the provisions of the [1963] Vienna Convention on Consular Relations; in subjecting him to humiliating and degrading treatment; in depriving him of the exercise of his rights of ownership and management in respect of the companies founded by him in the Democratic Republic of Congo (DRC); in preventing him from pursuing recovery of the numerous debts owed to him—to himself personally and to the said companies—both by the DRC itself and by other contractual partners; in not paying its own debts to him and to his companies, the DRC has committed internationally wrongful acts which engage its responsibility to the Republic of Guinea” (Para 11.1(1)).