COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE
AHMADOU SADIO DIALLO

(RÉPUBLIQUE DE GUINÉE c. RÉPUBLIQUE
DÉMOCRATIQUE DU CONGO)

ORDONNANCE DU 20 SEPTEMBRE 2011

2011

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING
AHMADOU SADIO DIALLO

(REPUBLIC OF GUINEA *v.* DEMOCRATIC
REPUBLIC OF THE CONGO)

ORDER OF 20 SEPTEMBER 2011

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INTERNATIONAL COURT OF JUSTICE

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20 September 2011

CASE CONCERNING AHMADOU SADIO DIALLO

(REPUBLIC OF GUINEA *v.* DEMOCRATIC REPUBLIC OF THE CONGO)

ORDER

Present: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; *Registrar* Couvreur.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Article 44 of the Rules of Court,

Having regard to the Judgment delivered by the Court on 30 November 2010 by which it found *inter alia* that the Democratic Republic of the Congo is under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations committed by the Democratic Republic of the Congo,

Having regard to the decision of the Court, set forth in the said Judgment, to settle the question of compensation should the Parties fail to agree on this matter in six months from the date of the Judgment and to reserve for this purpose the subsequent procedure in the case;

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Whereas the time-limit fixed by the Court in the operative part of its Judgment expired on 30 May 2011;

Whereas the Court decided in the said Judgment that, having been sufficiently informed of the facts of the present case, a single exchange of written pleadings by the Parties would be sufficient in order for it to decide on the amount of compensation due to the Republic of Guinea;

Whereas, at a meeting held by the President of the Court with the representatives of the Parties on 14 September 2011, the Agent of the Republic of Guinea indicated that, in view of the time which had already passed since the Judgment was delivered, his Government was prepared to file its Memorial on the question of compensation within one month; and whereas the Co-Agent of the Democratic Republic of Congo, referring to the complex nature of the research to be conducted in order to respond to the claims of the Republic of Guinea on the issue, requested a time-limit of four months for the filing of his Government's Counter-Memorial;

Taking account of the views of the Parties,

Fixes the following time-limits for the filing of the written pleadings on the sole question of compensation due in the present case under paragraphs 163 and 165 (7) of its Judgment of 30 November 2010:

6 December 2011 for the Memorial of the Republic of Guinea;

21 February 2012 for the Counter-Memorial of the Democratic Republic of the Congo.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twentieth day of September, two thousand and eleven, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Guinea and the Government of the Democratic Republic of the Congo, respectively.

(Signed) Hisashi OWADA,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge CANÇADO TRINDADE appends a declaration to the Order of the Court.

(Initialled) H.O.
(Initialled) Ph.C.

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DECLARATION OF JUDGE CANÇADO TRINDADE

1. The situation which the Court has just faced before delivering the present Order is far from satisfactory, and the Order itself can hardly be seen as entirely satisfactory either: although it amounts to a step conducive to a decision on reparations in the present case of *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*, yet a decision to that effect is, once again, postponed by the Court. In my understanding, the Court could, and should, have already decided on the reparations due ultimately to Mr. A. S. Diallo, in its Judgment on the merits, of 30 November 2010. This would have been more in conformity with the principle of humanity, the principle of the good administration of justice *(la bonne administration de la justice)*, and the *mens legis* of the applicable law in the *cas d'espèce*, namely, the 1966 UN Covenant on Civil and Political Rights and the 1981 African Charter on Human and Peoples' Rights, in addition to the 1963 Vienna Convention on Consular Relations (Art. 36 (1) *(b)*)[1]. The material content and the hermeneutics of the rights breached are to be borne in mind for the purpose of reparations.

2. The *mens legis* of the human rights treaties which form the applicable law in the *cas d'espèce* is also to be kept in mind. Both the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights contain provisions extending protection to individuals against unreasonable delays in legal proceedings[2]. Non-compliance with those provisions entail consequences for reparations. In my extensive separate opinion in the Court's Judgment of 30 November 2010 in the present

[1] I pointed this out on the occasion of the Court's adoption of its Judgment of 30 November 2010, in my separate opinion. In fact, the successive episodes in the whole case of *Ahmadou Sadio Diallo* took place at *intra*-State (rather than *inter*-State) level, and concerned a subject of rights who is not a State, but rather an individual, Mr. A. S. Diallo. The rights violated in the *cas d'espèce* were: *(a)* the right to liberty and security of persons; *(b)* the right not to be expelled from a State without a legal basis; *(c)* the right not to be subjected to mistreatment; and *(d)* the right to information on consular assistance in the framework of the guarantees of the due process of law. The victim in this case is an individual, national of the claimant State and subject to the jurisdiction of the respondent State (during the occurrence of the facts of the case at issue).

[2] The Covenant on Civil and Political Rights provides that all persons shall be entitled, in full equality, "[t]o be tried without undue delay" (Art. 14 (3) *(c)*). The Covenant adds that the court seised of a case of deprivation of liberty by arrest or detention is to "decide without delay" on the lawfulness of the detention and is to order the release of the person concerned if the detention is not lawful (Art. 9 (4)). The African Charter on Human and Peoples' Rights, for its part, determines that every individual shall have "the right to be tried within a reasonable time by an impartial court or tribunal" (Art. 7 (1) *(d)*).

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case of *Ahmadou Sadio Diallo*, I deemed it fit to leave on the records my reflections on the right to reparation in the *cas d'espèce*. Almost one year later, I feel obliged to recall them now, under the merciless pressure of time, on the occasion of the Court's adoption of the present Order of today, 20 September 2011. I expressed therein my concern as to the decision then taken that the provision of adequate reparation was to wait still further, until the contending Parties failed to reach an agreement on this issue within the forthcoming six months. To my mind, this resembled "an arbitral, rather than a truly judicial procedure", looking "somewhat disquieting" to me (para. 200).

3. Even more so considering the "prolonged length of time that the handling of this case by the Court has taken", since Guinea's Application of 1998 until the delivery by the Court of its Judgment on the merits of 30 November 2010 (para. 201). Yet, ever since, almost another year has gone by, with the Order the Court has just adopted today, 20 September 2011 : the Court has been handling this case now for almost 13 years, from the end of December 1998 to this end of September 2011. This once again suggests that the time of human justice is not the time of human beings. As I pondered in this respect in my lengthy separate opinion on the Court's Judgment of 30 November 2010, further delays could, and should, have been avoided, *"particularly when reparation for human rights breaches is at stake"* (para. 202)[3].

4. The Court, being the master of its own jurisdiction, in the present circumstances of the *Diallo* case could, and should, have proceeded *ex officio, sponte sua*, to the determination of the reparations due to Mr. A. S. Diallo. The Court is the master also of its own procedure, and unreasonable prolongation of time-limits for the performance of procedural acts to comply with obligations under international law is to be curtailed and avoided. Yet, the issue of reparation has now, after the Judgment of 30 November 2010, once again been postponed. This should not have occurred, as the present case has taken the Court well beyond the inter-State dimension. Reparations could already have been ordered by the Court, since its Judgment of 30 November 2010, largely on the basis of considerations of equity. In my understanding, the State exists for the human person, and contemporary international law — the new *jus*

[3] After all, "the subject *(titulaire)* of the rights breached in the present case is not the applicant State, but the individual concerned, Mr. A. S. Diallo, who is also the ultimate beneficiary of the reparations due" (para. 203). The victim and the *titulaire* of the right to reparation is the individual, whose rights have been breached (paras. 204-205). One can no longer keep on reasoning within the hermetic parametres of the exclusively inter-State dimension (paras. 206-207). In the same separate opinion, I reviewed the available *forms* of reparation (paras. 208-210), bearing in mind the *general* obligation of States parties set forth under Article 2 of the UN Covenant on Civil and Political Rights, and the fact that the duty to provide reparation reflects a fundamental principle of general international law, as acknowledged by this Court in its *jurisprudence constante*.

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gentium — likewise comes into operation for the human person. One should never lose sight of the classic maxim: justice delayed is justice denied.

(*Signed*) Antônio Augusto CANÇADO TRINDADE.

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