

**REQUEST FOR INTERPRETATION OF THE JUDGMENT OF 11 JUNE 1998 IN
THE CASE CONCERNING THE LAND AND MARITIME BOUNDARY
BETWEEN CAMEROON AND NIGERIA
(JURISDICTION)**

(Nigeria v Cameroon)

The following is a Summary of the Judgment of the International Court of Justice delivered on 25 March 1999.

HISTORY OF THE PROCEEDINGS¹

On 28 October 1998 Nigeria instituted proceedings against Cameroon in the International Court of Justice by referring to Article 98 of the Rules of Court. It requested the Court interpret its judgment delivered on 11 June 1998 in the *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria) (Preliminary Objections)*.

Nigeria's request was communicated to Cameroon, which filed written observations on Nigeria's request within the time limit fixed therefor. In the light of the dossier thus submitted by the parties, the Court considered that it had sufficient information on their positions. Therefore, the Court did not deem it necessary to invite the parties "to furnish further written or oral explanations" as allowed by Article 98(4) of the Rules of Court.

THE SUBMISSIONS²

Nigeria presented the following submissions in its Application:

On the basis of the foregoing considerations, Nigeria requests the Court to adjudge and declare that the Court's Judgment of 11 June 1998 is to be interpreted as meaning that:

so far as concerns the international responsibility which Nigeria is said to bear for certain alleged incidents:

- (a) the dispute before the Court does not include any alleged incidents other than (at most) those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994;

¹ Refer paras 1-7 of the Court's Judgment.

² Ibid.

- (b) Cameroon's freedom to present additional facts and legal considerations relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994; and
- (c) the question whether facts alleged by Cameroon are established or not relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994.

Cameroon's submissions in reply were as follows:

Having regard to the Request for Interpretation that is submitted by the Federal Republic of Nigeria dated 21 October 1998, the Republic of Cameroon makes the following submissions:

1. The Republic of Cameroon leaves it to the Court to decide whether it has jurisdiction to rule on a request for interpretation of a decision handed down following incidental proceedings and, in particular, with regard to a judgment concerning the preliminary objections raised by the defending Party;
2. The Republic of Cameroon requests the Court to declare, primarily, that the request by the Federal Republic of Nigeria was inadmissible; and to adjudge and declare that there is no reason to interpret the judgment of 11 June 1998;

Alternatively:

To adjudge and declare that the Republic of Cameroon is entitled to rely on all facts, irrespective of their date, that go to establish the continuing violation by Nigeria of its international obligations; that the Republic of Cameroon may also rely on such facts to enable an assessment to be made of the damage it has suffered and the adequate reparation that is due to it.

THE COURT'S JUDGMENT

*Jurisdiction*³

First, the Court addressed the question of its jurisdiction over the request

³ Refer paras 8-11 of the Court's Judgment.

for interpretation submitted by Nigeria. Nigeria had stated that, in the *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria)*, Cameroon had alleged that Nigeria bore international responsibility “for certain incidents said to have occurred at various places at Bakassi and Lake Chad and along the length of the frontier between those two regions.”

Nigeria contended that the Court’s judgment in that case, delivered on 11 June 1998, did not specify “which of these alleged incidents [were] to be considered further as part of the merits of the case”. Thus, Nigeria maintained that the judgment “[was] unclear [on] whether Cameroon was entitled at various times, after the submission of its Amended Application, to bring before the Court new incidents”.

Nigeria emphasised “the inadmissibility of treating as part of the dispute brought before the Court by the Applications of March and June 1994 alleged incidents occurring subsequently to June 1994”. Accordingly, the judgment of 11 June 1998 was to be interpreted to mean “that so far as concerns the international responsibility [of] Nigeria...the dispute before the Court [did] not include any alleged incidents other than (at most) those specified in [the] Application...and Additional Application”.

In reply, Cameroon recalled that, in its judgment of 11 June 1998, the Court had rejected seven of Nigeria’s preliminary objections and stated that the eighth objection was not of an exclusively preliminary character. Cameroon stated that the Court had recognised further that it had jurisdiction to adjudicate upon the dispute and found that the Application of Cameroon of 29 March 1994, as amended by the Additional Application of 6 June 1994, was admissible.

As a result, Cameroon declared that the parties did “not have to ‘apply’ such a Judgment; they only [had] to take note of it”. Thus, it pleaded that “there [were] very serious doubts about the possibility of bringing a request for interpretation of a Judgment concerning preliminary objections”.

The Court referred to Article 60 of the Statute of the Court which provides:

The Judgment is final and without appeal. In the event of dispute as to the meaning or scope of the Judgment, the Court shall construe it upon the request of any party.

By virtue of the second sentence of Article 60, the Court has jurisdiction to entertain requests for interpretation of any judgment rendered by it. This provision makes no distinction as to the type of judgment concerned. It followed, therefore, that a judgment on preliminary objections, as well as a judgment on the merits, can become the object of a request for interpretation.

However, the Court held that:

the second sentence of Article 60 was inserted in order, if necessary, to enable the Court to make quite clear the points which had been settled with binding force in a Judgment, a request which has not that object does not come within the terms of this provision. (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, Judgment No. 11, 1927, P.C.I.J., Series A, No.13, p. 11).

In consequence, any request for interpretation must relate to the operative part of the judgment and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative part.

The Court recalled that in the *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria*, Nigeria had pleaded a sixth preliminary objection "to the effect that there is no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions". In addition, the Court recalled that in the operative part of its judgment of 11 June 1998, it had rejected the sixth preliminary objection.

The reasons for the rejection are found in the judgment.⁴ They deal in detail with Cameroon's rights as regards the presentation of "facts and legal considerations" that it may wish to put forward in support of its submissions seeking a ruling against Nigeria. The reasons are inseparable from the operative part of the judgment and in this regard the request therefore met the conditions laid down in Article 60 of the Statute in order for the Court to have jurisdiction to entertain Nigeria's request for interpretation of the judgment.

⁴ Refer paras 98-101.

*The Admissibility of Nigeria's Request*⁵

The Court examined the admissibility of Nigeria's request and observed that the question of admissibility needed particular attention because of the need to avoid impairing the finality, and delaying the implementation, of the judgments. For this reason, Article 60 of the Statute provides, in the first place, that judgments are "final and without appeal". The language and structure of Article 60 reflects the primacy of the principle of *res judicata*, a principle that must be maintained.

The Court recalled that in the *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria*, Cameroon, in its Application as amended by its Additional Application, complained in 1994 "of grave and repeated incursions of Nigerian groups and armed forces into Cameroonian territory all along the frontier between the two countries". Further, Cameroon had requested the Court to adjudge that the "internationally unlawful acts" alleged to have occurred in the Bakassi and Lake Chad regions involved the responsibility of Nigeria.

Cameroon developed these submissions in its Memorial of 1995 and its observations of 1996, mentioning some incidents that occurred in other frontier areas or after the date of the Additional Application. To these submissions, Nigeria raised its sixth objection to admissibility. The Court considered that Cameroon must "essentially confine itself to the facts...presented in its Application" and concluded that any subsequent attempt to enlarge the scope of the case was inadmissible. Further, any "additions" presented subsequently with a view to establishing Nigeria's responsibility must be disregarded.

By its judgment of 11 June 1998 the Court:

1. pointed out that it rejected Nigeria's sixth preliminary objection, and explained that "[t]he decision on Nigeria's sixth preliminary objection hinges upon the question of whether the requirements which an application must meet and which are set out in Article 38, paragraph 2, of the Rules of Court are met;
2. added that the term "succinct" used in Article 38(2) of the Rules did not mean "complete" and did not preclude later additions to the statement of the facts and grounds on which the claim was based;

⁵ Refer para 12-16 of the Court's Judgment.

3. reiterated that the question of the conditions for the admissibility of an application at the time of its introduction, and the question of the admissibility of the presentation of additional facts and legal grounds, were two different things;
4. indicated that the limit of the freedom to present additional facts and legal considerations is that there must be no transformation of the dispute brought before the Court by the application into another dispute which is different in character;
5. added that with regard to Nigeria's sixth preliminary objection, the Judgment of 11 June 1998 concluded that "[i]n this case, Cameroon [had] not so transformed the dispute" and that Cameroon's Application met the requirements of Article 38 of the Rules.⁶

Thus, the Court made no distinction between "incidents" and "facts". It found that additional incidents constituted additional facts, and that their introduction in proceedings before the Court was governed by the same rules. In this respect there was no need for the Court to stress that it had and would strictly apply the principle of *audi alteram partem*.

It followed from the foregoing that the Court had clearly dealt with and rejected in its judgment of 11 June 1998, the first of the three submissions [submission (a)] presented by Nigeria at the end of its request for interpretation. The Court would therefore be unable to entertain this first submission without calling into question the effect of the judgment concerned as *res judicata*.

The two other submissions, [(b) and (c)], endeavoured to remove from the Court's consideration elements of law and fact which it had, in its judgment of 11 June 1998, already authorised Cameroon to present, or which Cameroon had not yet put forward. In either case, the Court would be unable to entertain these submissions. It followed from the foregoing that Nigeria's request for interpretation was inadmissible.

The Court, in view of the conclusions reached above, found there was no need to examine whether there was, between the parties, a "dispute as to the meaning or scope of the Judgment" of 11 June 1998, as contemplated by Article 60 of the Statute.

⁶ Interpretation of Judgments Nos 7 and 8 (Factory at Chorzów), Judgment No 11 [1927] Permanent Court of International Justice, Series A, No13, p 11.

*Cost of the Proceedings*⁷

With regard to Cameroon's request that Nigeria be charged with the additional costs caused to Cameroon by Nigeria's request, the Court saw no reason to depart in the present case from the general rule set forth in Article 64 of the Statute. This confirmed the "basic principle regarding the question of costs in contentious proceedings before international tribunals, to the effect that each party shall bear its own": *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*.⁸

The Court's Order

The Court held:⁹

For these reasons, the Court,

(1) by thirteen votes to three,

Declares inadmissible the request for interpretation of the Judgment of 11 June 1998 in the *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria), Preliminary Objections*, presented by Nigeria on 28 October 1998 (Schwebel P; Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans JJ, Mbaye J *ad hoc*; Weeramantry V-P, Koroma J, Ajibola J *ad hoc* [dissenting]);

(2) unanimously,

Rejects Cameroon's request that Nigeria bear the additional costs caused to Cameroon by the above-mentioned request for interpretation.

DISSENTING OPINION OF WEERAMANTRY V-P¹⁰

Weeramantry V-P agreed with the Court that the Application of Nigeria met the conditions laid down in Article 60 of the Statute of the Court, giving the Court jurisdiction to entertain Nigeria's request for interpretation of the Court's Judgment of 11 June 1998. However, he stated that he

⁷ Refer para 18 of the Court's Judgment.

⁸ Advisory Opinion [1973] International Court of Justice Reports 212 at para 98.

⁹ Refer para 19 for the full text of the operative paragraph in the Court's Judgment.

¹⁰ Refer International Court of Justice, Annex to Press Communiqué 99/14 bis.

disagreed with the Court's conclusion that Nigeria's request for interpretation was inadmissible. He pointed out that there was a distinction between subsequent facts and subsequent incidents. Subsequent facts relating to an incident already pleaded would be admissible, but not subsequent facts in the sense of subsequent incidents. Nigeria was therefore entitled to seek a clarification of this aspect.

The critical date for determining what incidents might be pleaded was the date of filing of the application. If later incidents could be brought in, this would pose major obstacles to the case's proper presentation and conduct.

DISSENTING OPINION OF JUDGE KOROMA

Judge Koroma regretted that he could not support the Judgment because the Court should have acceded to the request and found it admissible since it met all the criteria and conditions necessary for the interpretation of a Judgment. He maintained that the Court's judgment of 11 June 1998 had laid itself open to possible misconstruction by the parties leading to confusion, which, if not clarified, could be at variance with the provisions of the Statute and Rules of Court.

In his view, the real purpose of an interpretation was for the Court to give precision to and clarification of the meaning and scope of the judgment in question. When the Court stated that it did not distinguish between "facts" and "incidents" in its judgment of 11 June 1998 and found that "additional incidents" constituted "additional facts", there was room for clarification.

Judge Koroma added that the request should have been declared admissible as the Applicant had established its interests, both in law and in fact. The interests were worthy of legal protection and would ensure that the other party observed the obligations imposed by the Statute and Rules of Court.

OPINION OF AJIBOLA J *AD HOC*

First, Ajibola *J ad hoc* explained why he was of the opinion that the Court, in view of the clearly contentious nature of Nigeria's Application, should have allowed for a second round of pleadings. Although he stated that he agreed with the Court's judgment on the questions of jurisdiction and costs, he felt that the Court should have considered the Nigerian Application admissible. He stated that the Court should have interpreted its judgment of

11 June 1998 because in the two paragraphs that Nigeria had requested for interpretation, the Court had decided on the issue of the procedural right of Cameroon to:

- (a) develop what was “said” in its “Application”; and
- (b) present “additional facts”.

But quite clearly the Court had not determined the issue of additional incidents or new incidents.

The Court should therefore have clarified the category of incidents alleged by Cameroon to be relevant by asking this question: are they pre-1994 incidents only, or pre- and post-1994 incidents?

Equally, the Court should have spelt out very clearly the issue of what additional facts were required from Cameroon and asked the following questions:

- (a) were these additional facts in relation to the incidents before the Applications of Cameroon in 1994 or did they include additional facts concerning incidents subsequent to the year 1994?
- (b) if the Court agreed that Cameroon could file additional facts, was the Court also saying that Cameroon could file particulars of additional incidents after 1994?

Ajibola J *ad hoc* finally pointed out that the word “dispute” in Article 36(2) of the Court’s Statute related only to pre-existing disputes or incidents that occurred before the filing of an application, and definitely not to a future dispute.

POSTSCRIPT

On 30 June 1999 Equatorial Guinea filed an Application requesting permission to intervene in the proceedings in this case concerning *Land and Maritime Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria)*.¹¹

¹¹ Equatorial Guinea’s Application for permission to intervene will shortly be available on the Court’s website at <http://www.icj-cij.org>.

In its Application, Equatorial Guinea stated that the purpose of its intervention was:

to protect [its] legal rights in the Gulf of Guinea by all legal means [and] to inform the Court of Equatorial Guinea's legal rights and interests so that these may remain unaffected as the Court proceeds to address the question of the maritime boundary between Cameroon and Nigeria.

Equatorial Guinea made it clear that it did not seek to intervene in those aspects of the proceedings that related to the land boundary between Cameroon and Nigeria, or to become a party to the case. It further stated that although it was open to the three states to request the Court to determine the Cameroon-Nigeria maritime boundary and its own maritime boundary with these two states, it made no such request. Instead, it wished to continue to seek to determine its maritime boundary with its neighbours by negotiation.

In support of its Application, Equatorial Guinea stressed that one of the claims presented by Cameroon in its Memorial of 16 March 1995 had "ignored the legal rights of Equatorial Guinea in the most flagrant way". It claimed that Cameroon had disregarded the median line, namely, the line dividing maritime zones between two states of which every point is equidistant from the coasts of each of those states. Moreover, it claimed that "in the bilateral diplomacy between Cameroon and Equatorial Guinea, Cameroon...never once hinted that it did not accept the median line as the maritime boundary between itself and Equatorial Guinea".

Equatorial Guinea observed the following:

the general maritime area where the interests of Equatorial Guinea, Nigeria and Cameroon come together is an area of active oil and gas exploration and exploitation.

As a consequence, Equatorial Guinea maintained the following:

[A]ny judgment extending the boundary between Cameroon and Nigeria across the median line with Equatorial Guinea [would] be relied upon by concessionaires who would likely ignore Equatorial Guinea's protests and proceed to explore and exploit resources to the legal and economic detriment [of Equatorial Guinea].

Under Article 83 of the Rules of Court, Equatorial Guinea's Application was immediately communicated to Cameroon and Nigeria. The Court fixed 16 August 1999 as the time limit for the filing of written observations by the parties. It stated that it was for the Court to decide whether the Application for permission to intervene submitted by Equatorial Guinea should be granted. Should an objection be raised to the Application, the Court would hear the parties and Equatorial Guinea before deciding.