

INTERNATIONAL COURT OF JUSTICE

APPLICATION

INSTITUTING PROCEEDINGS

filed in the Registry of the Court

on 28 October 1998

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*
(*NIGERIA v. CAMEROON*)

1998
General List
No. 101

APPLICATION OF NIGERIA

1. INTRODUCTION

1. Pursuant to Article 98 of the Rules of Court, Nigeria submits the present Application requesting an interpretation of the Judgment delivered by the Court on 11 June 1998 on the preliminary objections submitted by Nigeria in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon v. Nigeria*). The matter in respect of which there is a dispute as to the meaning or scope of that Judgment is set out in paragraphs 5 to 15 below.

II. ADMISSIBILITY OF THE PRESENT REQUEST

2. Article 98 of the Rules enables the Court to give an interpretation of a judgment if there is a dispute as to its meaning or scope. Article 98 (1) reads as follows:

"In the event of dispute as to the meaning or scope of a judgment any party may make a request for its interpretation, whether the original proceedings were begun by an application or by the notification of a special agreement. "

3. Given the terms of Article 79 (7) of the Rules (which requires the Court to give its decision on preliminary objections "in the form of a judgment"), and the terms of the Court's Judgment of 11 June 1998 (in which the Court stated that it was delivering "the following Judgment"), that Judgment is a judgment which falls within the scope of Article 98 of the Rules.

4. The matters in respect of which questions arise as to the meaning or scope of the Judgment are matters in respect of which Nigeria and Cameroon, either *expressis verbis* or by inference,

hold differing views (cf. paragraphs 87 and 89 of the Court's Judgment of 11 June 1998). There is accordingly a dispute between them as to the interpretation of the Judgment. The differing views of the Parties are specified below.

III. THE PRECISE POINT IN DISPUTE

5. One aspect of the case before the Court is the alleged international responsibility borne by Nigeria for certain incidents said to have occurred at various places in Bakassi and Lake Chad and along the length of the frontier between those two regions. Cameroon made allegations involving a number of such incidents in its Application of 29 March 1994, its Additional Application of 6 June 1994, its Observations of 30 April 1996 on Nigeria's preliminary objections, and during the oral hearings held from 2 to 11 March 1998. Cameroon has also said that Cameroon would be able to provide information as to other incidents on some unspecified future occasion¹. The alleged incidents so far mentioned by Cameroon ranged in time from 1962 to 26 June 1997. The Court's Judgment of 11 June 1998 does not specify which of these alleged incidents are to be considered further as part of the merits of the case. In this respect the meaning and scope of the Judgment requires interpretation.

6. The relevant part of the Judgment is the section which deals with Nigeria's sixth preliminary objection, and in particular paragraphs 99 and 100. In this context, Nigeria had advanced arguments to the effect that Cameroon, although having a degree of latitude in expanding in its Memorial upon alleged incidents referred to in its Applications, was subject to certain limitations. These, it was contended, included restrictions upon the propriety of Cameroon elaborating subsequently on alleged incidents only inadequately identified in Cameroon's Applications, and 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. In that context the Court, in rejecting Nigeria's sixth preliminary objection, noted that it had become an established practice for States submitting an application "to reserve the right to present additional facts and legal considerations", and that "the limit of the freedom to present such facts and considerations is 'that the result is not to transform the dispute brought before the Court by the application into another dispute which is different in character'" (para. 99). In the next paragraph the Court noted that the question whether "the facts alleged by the Applicant" were established or not was a question which belonged to the merits.

7. The Court thus concluded that

(i) the information given by Cameroon about the alleged incidents was adequate to enable the dispute about Nigeria's international responsibility to proceed,

(ii) Cameroon was entitled to present additional facts" so long as the character of the dispute before the Court was not transformed, and

(iii) the question whether or not the "facts" alleged by Cameroon were established was a question for the merits.

8. There is, however, a distinction to be drawn between incidents and the facts relating to them, and in particular between, on the one hand, the submission of additional facts in amplification of incidents previously adverted to only in summary terms, and, on the other, the submission of entirely new and discrete incidents which are made the subject of new

claims of responsibility. The Judgment is not clear to what incidents Cameroon's "additional facts" must relate for purposes of future proceedings on the merits.

9. There is a further distinction which Nigeria believes to be directly relevant. This is the distinction between incidents occurring along the boundary which may (according to Cameroon) serve to show that the boundary is in dispute, and incidents which (according to Cameroon) give rise to international responsibility on the part of Nigeria. The Court concluded, in rejecting Nigeria's sixth preliminary objection, that "a dispute . . . exists between the two Parties, at least as regards the legal bases of the boundary" and that it would be for the Court to pass on this dispute (para. 93); in reaching that conclusion the Court also observed that "The occurrence of boundary incidents certainly has to be taken into account . . . However, not every boundary incident implies a challenge to the boundary." (Para. 90.) Accordingly, Nigeria will in its Counter-Memorial address the boundary question, in the light in particular of boundary incidents alleged by Cameroon in so far as they relate to that question, and meanwhile reserves its position in respect of those incidents in that context. However, the question of incidents along the boundary for which Nigeria is said to bear international responsibility raises different issues in so far as they are invoked in that separate context. While the continued occurrence of boundary incidents may perhaps be relevant as supporting the reality of the proposition that at the date when proceedings were instituted there existed a dispute about the boundary as a whole, allegations of State responsibility arising out of alleged border incidents raise different issues which are specific to the circumstances of each particular alleged incident. Each incident is a separate matter, and the question of international responsibility for each separate incident requires separate consideration.

10. To put these concerns into a specific practical context. they involve the range of incidents mentioned by Cameroon as involving Nigeria's international responsibility for alleged incidents said to have occurred "along the frontier" outside the Bakassi and Lake Chad areas. The Court will recall from the written and oral pleadings on Nigeria's sixth preliminary objection that

(i) Cameroon raised only certain matters as giving rise to alleged international responsibility on the part of Nigeria (see paragraph 20 (*e*) of Cameroon's Application and paragraph 17 (*e*) of Cameroon's Additional Application, referring only to matters set out in specified preceding paragraphs, which concerned incidents arising only in relation to Bakassi or Lake Chad): and

that Cameroon has elsewhere alluded to

(ii) alleged incidents referred to in its Application of 29 March 1994 (but only in relation to Bakassi);

(iii) alleged incidents referred to in its Additional Application of 6 June 1994;

(iv) additional alleged incidents referred to in Cameroon's Memorial of 16 March 1995;

(v) additional alleged incidents referred to in Cameroon's Observations of 30 April 1996,

(vi) additional alleged incidents referred to in Cameroon's oral pleadings presented between 2 and 11 March 1998²; and

(vii) such other incidents as may at some future time be referred to by Cameroon³.

11. The terms of paragraphs 99 and 100 of the Judgment are unclear as to which of those categories of incidents, in so far as they are said to raise issues of international responsibility, may properly be or have been the subject of additional facts to be introduced by Cameroon, and thus be within the scope of the dispute and calling for consideration as part of the merits in relation to questions of responsibility. The Agent for Nigeria has written to the Agent for Cameroon in an attempt to secure Cameroon's agreement to the meaning in this context of the Court's Judgment of 11 June 1998 (copy at Annex I), but it is apparent from the reply of the Agent for Cameroon (copy at Annex II) that Cameroon does not share Nigeria's understanding as to the meaning of the relevant parts of the Court's Judgment. Given the position adopted so far by Cameroon up to the close of the oral proceedings on 11 March 1998, it may be inferred that Cameroon supports the view that incidents in all seven categories are encompassed within the scope of the dispute and thus are to be included in the proceedings on the merits. Nigeria, however, considers that, particularly in view of the context of that part of the Judgment and considerations of law to which Nigeria will refer below, the Court's Judgment is to be interpreted as meaning that, in relation to questions of Nigeria's alleged international responsibility, only the alleged incidents referred to under headings (i) and, subject thereto, (ii) and (iii) above form part of the dispute before the Court. In Nigeria's view, Cameroon's freedom to present additional facts and legal considerations relates only to such alleged incidents.

12. The meaning to be given to the Court's Judgment must be assessed not in the abstract but in the light of the facts of the present case and against the background of certain legal principles applicable to the scope of disputes before the Court. Two strands to the Court's jurisprudence are relevant in this context.

(a) First, Article 36 (2) of the Statute requires that a case brought before the Court must concern a legal dispute: quite apart from the substantive question whether there was or was not a difference of view between the parties sufficient to establish that there was a dispute between them, that provision of the Statute necessarily implies a temporal consideration, namely that (since hypothetical future disputes must be excluded) the dispute must have existed at the time the case is brought, i.e. at the time that the Application initiating proceedings was lodged. By definition, no dispute can have existed at that time in relation to facts which are only alleged to have occurred subsequently. The Court has recently emphasized the importance of the date on which an application was filed (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, Judgment of 27 February 1998, paras. 37, 43).

(b) Second, as the Permanent Court of International Justice stated in the *Prince von Pless Administration (Preliminary Objection)* case, "it is the Application which sets out the subject of the dispute, and the Case, though it may elucidate the terms of the Application, must not go beyond the limits of the claim as set out therein" (*P.C.I.J.*,

Series A/B, No. 52, 1933, p. 14). More recently, in the case concerning Certain Phosphate Lands in Nauru (*Nauru v. Australia*), the Court had to consider a new claim presented by Nauru in its Memorial and after the submission of its Application. The Court, in rejecting that new claim, held that such a new claim could only be allowed if it was "implicit in the application" or arose "directly out of the question which is the subject-matter of that Application" (*I.C.J. Reports 1992*, p. 266 (para. 67)). The Court added that, moreover, if it were to entertain the new claim, "the subject of the dispute on which it would ultimately have to pass would be necessarily distinct from the subject of the dispute originally submitted to it in the Application" (*ibid.*, para. 68). In its Judgment of 11 June 1998 the Court (in the context of Nigeria's seventh preliminary objection) recalled, as a proposition stated generally, "that, in dealing with the cases brought before it, it must adhere to the precise request submitted to it" (para. 107). Given the particularity of issues of international responsibility, questions as to a State's responsibility for some new incident cannot be considered as being part of the precise request previously submitted to the Court, nor as implicit in, or as arising directly out of, some allegation of responsibility for some other totally separate previous incident occurring at a different time and place and involving different circumstances. Additional new, and late-invoked, incidents raise discrete new, and different, issues, involving new, and different, matters of dispute.

13. In the light of the Court's Judgment of 11 June 1998, Nigeria accepts that Cameroon may present additional facts in amplification of the alleged incidents referred to in its Applications as giving rise to international responsibility on the part of Nigeria, and that by presenting such additional facts Cameroon is not transforming the character of the dispute before the Court. However, the Judgment of the Court is unclear whether Cameroon was entitled at various times, after the submission of its Amended Application, to bring before the Court new incidents of alleged international responsibility on the part of Nigeria which had not been previously mentioned by Cameroon. This is particularly problematic in relation to alleged incidents which were subsequent to Cameroon's Applications and which therefore could not have been the subject of claims of State responsibility made by it in its Applications.

14. While Nigeria acknowledges that the submission after the date of the Applications of additional facts relating to previously identified incidents does not transform the character of the dispute, it does not follow that the same is true of the submission of additional facts relating to new, and in particular to post Application (and even post-Memorial, and post-Observations) incidents, and this question is not resolved by the Court's Judgment on the preliminary objections. In Nigeria's view, it is not the case that so long as a single admissible case of international responsibility is raised in an application then any number of other prior or subsequent incidents of alleged international responsibility can later be added and supported by additional facts. In Nigeria's submission, disputes about a State's international responsibility are to be decided on a case-by-case (i.e., incident-by-incident) basis, and a dispute about a State's responsibility for incident A is "necessarily distinct from the subject of [a] dispute originally submitted" about its responsibility for a different incident B. In Nigeria's submission, in accordance with the Statute and the Rules, the Court's Judgment of 11 June 1998 and its earlier jurisprudence, the provision of additional facts as to previously identified incidents does not transform the character of the dispute. On the other hand, the provision of facts about new incidents which are said to give rise to State responsibility does necessarily transform the proceedings by adding disputes which are quite distinct from those previously identified in the Applications. It is on this aspect of the Judgment that Nigeria would welcome interpretation by the Court.

15. As a practical matter Nigeria, as the Respondent State, cannot respond to all of the alleged incidents introduced into the case in a piecemeal fashion long after the scope of the dispute was established by the Applications lodged by Cameroon. In particular, Nigeria manifestly cannot, in its Counter-Memorial, respond to alleged incidents not yet identified by Cameroon but which Cameroon has threatened to introduce into the proceedings in due course. Similarly, Nigeria cannot reasonably respond to alleged incidents which were only introduced in the oral hearings (without supporting documentary evidence) and which related to incidents said to have taken place even after the last of Cameroon's written pleadings before the Court's Judgment of 11 June 1998

16 In the context of Nigeria's preliminary objections, the Court did not deal expressly with the question of which alleged incidents properly fall within the scope of the dispute before the Court (with particular reference to the date of the alleged incidents and the date when it was sought to introduce them into the proceedings) Correspondingly the language of the Judgment leaves room for uncertainty as to the implications to be drawn from it in this context.

IV. SUBMISSIONS

17. 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:

(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

18. In view of Nigeria's need to know the correct interpretation of the Judgment of 11 June 1998 in order to prepare Nigeria's Counter-Memorial, Nigeria respectfully requests the Court to deal with this Application as expeditiously as possible within the framework provided by paragraphs 3 and 4 of Article 98 of the Rules of Court.

21 October 1998

(Signed) ALHAJI ABDULLAHI
IBRAHIM, OFR, SAN,

The Hon. Attorney-General of the
Federation and Minister of
Justice,

Agent of the Federal Republic of
Nigeria.

Annex I

LETTER FROM THE MINISTER OF JUSTICE OF NIGERIA
TO THE MINISTER OF JUSTICE OF CAMEROON

14 September 1998

Case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*
(*Cameroon v. Nigeria*)

I have the honour to refer to the Judgment of the International Court of Justice, dated 11 June 1998, on the preliminary objections raised by Nigeria in this case. There are two aspects of the Judgment on which it would be helpful, in the interests of the proper disposition of the proceedings before the Court, to know whether Cameroon shares the views of Nigeria.

As you will recall, the Court, in rejecting Nigeria's sixth preliminary objection, noted (para. 99) that, within certain limits, a party enjoys a degree of freedom to present facts additional to those set out in its Application. The Court added (para. 100) that whether or not the facts alleged by Cameroon were established was a matter which belonged to the merits. In Nigeria's view' it is not clear from the Judgment of the Court what "facts" the Court was referring to in these passages.

There is, in Nigeria's view, a distinction between particular incidents which are said to have occurred, and the facts relating to those incidents. There is, further, a distinction between incidents in so far as they relate to the existence of a dispute as regards the boundary, and incidents in so far as they are said to give rise to international responsibility on the part of Nigeria.

The Court has confirmed, as Nigeria has always accepted, that Cameroon has some latitude in expanding, in its subsequent written and oral pleadings, upon the facts of incidents which were alleged in its Application and Additional Application to have occurred. What, however, remains unclear from the terms of the Court's Judgment is which incidents, previously referred to in summary terms, may in this way be expanded upon by Cameroon in so far as they relate to questions of Nigeria's alleged international responsibility, and are thus to be regarded as forming part of the merits of the case to which Nigeria must respond in its Counter-Memorial.

In Nigeria's view the Court's Judgment of 11 June 1998, in so far as it relates to questions of international responsibility' means that, subject to the effect of paragraph 17 (*e*) of Cameroon's Additional Application, it is only, and at most, incidents identified in Cameroon's

Application of 29 March 1994 and its Additional Application of 6 June 1994 which may be the subject of additional facts to be adduced by Cameroon and which accordingly fall to be considered further as part of the merits of the case on the issue of international responsibility. Does Cameroon agree?

The second aspect of the Judgment concerns the appropriate stage at which it would be most fruitful to deal with the question of the maritime boundary. The Court, in its Judgment of 11 June 1998, accepted "that it will be difficult if not impossible to determine the delimitation of the maritime boundary between the Parties as long as the title over the Peninsula of Bakassi has not been determined" (para. 106). The Court also held that "it becomes a matter for the Court to arrange the order in which it addresses the issue in such a way that it can deal substantively with each of them" (para. 106).

In Nigeria's view it is overwhelmingly convenient, and (as the Court noted) may even be inescapable, for the question of title to Bakassi, and thus the relevant land boundary, to be settled first, and only thereafter will it be appropriate to deal with the maritime boundary. Does Cameroon agree?

As you will appreciate, these matters are directly relevant to the preparation of Nigeria's Counter-Memorial. Nigeria would accordingly be grateful to learn within 3 weeks of today's date Cameroon's views on the two matters raised in this letter.

Please accept the assurances of my highest consideration.

(Signed) ALHAJI ABDULLAHI
IBRAHIM, OFR, SAN,

Hon. Attorney-General of the
Federation
and Minister of Justice.

Annex II

LETTER FROM THE AGENT OF THE REPUBLIC OF CAMEROON TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

[Translation]

Yaoundé, 30 September 1998.

Re. Letter from the Agent of the Federal Republic of Nigeria of 14 September 1998.

I acknowledge with thanks receipt of the letter of 18 September 1998 from the Deputy-Registrar and of the letter attached thereto from the Agent of the Federal Republic of Nigeria.

Please allow me to express my astonishment and surprise at the somewhat unusual procedure adopted by Nigeria in its correspondence.

Cameroon, which desires that the serious dispute submitted to the Court concerning the Land and Maritime Boundary should be finally settled as soon as possible, considers for its part that the proceedings on the merits, as provided for in the Rules of Court and organized by the Order of 30 June 1998, will accord the Parties an appropriate framework in which to debate, before the Court, any and all questions relating to the case between itself and Nigeria.

I should be grateful if you would be kind enough to forward a copy of this letter to the President and Members of the Court and to the Agent of Nigeria.

(Signed) Laurent Ezzo,

Agent of the Republic of Cameroon.

1. "More examples can be given if necessary when the Court proceeds to the merits."
(Observations of Cameroon, para. 6.04.)

2. Some of these additional alleged incidents were said to have occurred even after the date of Cameroon's Observations of 30 April 1996: see. e.g., the incidents said to have occurred in 1997 and cited (under the heading "Hilé Halifa" and "Yang") in CR98/4, para. 7.

3. See footnote 1 above.