

SEPARATE OPINION OF JUDGE ODA

TABLE OF CONTENTS

	<i>Paragraphs</i>
I. INTRODUCTORY REMARKS	1-4
II. CAMEROON'S APPLICATION AS A WHOLE	5-15
1. The structure of Cameroon's 1994 Application	6-11
2. The submissions contained in Cameroon's 1995 Memorial	12-15
III. REQUEST FOR DELIMITATION OF A BOUNDARY LINE	16-28
1. The drawing of a maritime boundary	17-23
2. Lake and land boundary	24-26
3. Part III — Conclusion	27-28
IV. THE LEGAL DISPUTES WHICH MAY BE SUBMITTED TO THE COURT	29-31
V. CONCLUSIONS	32-33

I. INTRODUCTORY REMARKS

1. I voted in favour of subparagraph 3, as well as of subparagraph 1 (*a*), of the operative part of the Judgment, as I agree that the Court, on the basis of Article 36 (2) of the Court's Statute, has jurisdiction to adjudicate upon certain of the issues unilaterally presented by Cameroon. I share the view expressed in the Judgment concerning the interpretation and application of the Optional Clause of the Statute.

I have given this opinion the title of "separate" opinion, rather than "dissenting" opinion, mainly because, in spite of my negative votes on some points relating to admissibility, I support, in general, the Court's jurisdiction to entertain certain of the claims in Cameroon's Applications.

2. I also voted in favour of subparagraph 4, as I believe that some, but not all, of the issues in the Application are admissible. But I cast my vote on some of the subsections of subparagraph 1 and on subparagraph 2 reluctantly, as the Judges are not permitted, for any reason whatsoever, to abstain from voting on the operative part of the Judgment. Otherwise I would have abstained from voting on certain of Nigeria's objections relating to the admissibility of Cameroon's Application on the ground that Cameroon's claims were presented in a somewhat irregular way, as I shall explain later, while Nigeria's objections do not necessarily correspond to those claims and do not appear to have been formulated in a proper manner.

Thus, in seeking, both in the Judgment as a whole and in its operative part, to deal with Nigeria's objections in isolation, the Court has adopted an approach which, in my view, is not wholly adequate.

3. Cameroon's Application lacks precision and some parts of it do *not*, in my view, constitute a claim which may properly be presented to the Court by a *unilateral* application of one of the parties to a dispute. Among the contentions that Cameroon has made, only some very limited issues can be deemed as falling within the purview of the Court's jurisdiction. Just as Cameroon's Application lacks precision and is inadequate, so Nigeria's objections are also quite irregular.

The question of whether or not Cameroon's Application is admissible falls irrefutably within the competence of the Court. Although the Court is still at the jurisdictional phase due to Nigeria's presentation of preliminary objections, it does not necessarily have to restrict itself to a discussion of Nigeria's objections, but must also examine more carefully, on its own initiative, the substance of Cameroon's Application.

In addition, Nigeria, in raising a number of preliminary objections, seems to have confused the question of admissibility of the claims with the matters to be argued at the merits stage. Thus the Court is faced with an extremely difficult situation at this jurisdictional stage of the case.

4. The Court should have attempted *proprio motu* to scrutinize whether

or not any of Cameroon's claims made in its Application are admissible — with or without reference to Nigeria's objections.

II. CAMEROON'S APPLICATION AS A WHOLE

5. Cameroon's position has lacked clarity from the outset. Its Application appears to me to be so irregular that, from the standpoint of the Court, it should only have been received after a number of modifications. I shall begin with an examination of the irregular aspects of Cameroon's Application itself, which causes us so much difficulty in dealing with the present case.

1. *The Structure of Cameroon's 1994 Application*

6. On examination of the various Court documents, I note that on 29 March 1994 Cameroon filed with the Registry an "Application instituting proceedings" and on 6 June 1994 an "Application additional to the Application instituting proceedings". Having heard Cameroon's wishes, and having also ascertained that Nigeria "had no objection to the *Additional Application* being treated, in accordance with the wishes expressed by Cameroon, as an *amendment* to the initial Application" (emphasis added), the Court decided, on 16 June 1994, to deal with these two originally distinct Applications as a single case (see Judgment, para. 5).

7. The Court's document entitled "Application instituting proceedings filed in the Registry of the Court on 29 March 1994 — *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*" (bearing the legend "1994 General List No. 94") contains:

- (I) the letter of the Cameroonian Ambassador to the Netherlands, addressed to the Registrar, dated 28 March 1994 (p. 3);
- (II) the "Application instituting proceedings" (undated but filed in the Registry on 29 March 1994) (hereinafter referred to as "Application-I") (p. 5); and
- (III) the "Application additional to the Application instituting proceedings brought by the Republic of Cameroon filed in the Registry of the Court on 29 March 1994" (on which no date is indicated but which was actually filed in the Registry on 6 June 1994) (hereinafter referred to as "Application-II") (p. 77).

The confused structure of these documents produced by the Court conveys an impression of the irregularity of the case.

8. The two Applications, Application-I and Application-II, each consist of five sections (the titles of which are identical in both Applications), namely, Section I ("Subject of the Dispute"), Section II ("The Facts"), Section III ("The Jurisdiction of the Court"), Section IV ("The Legal Grounds

upon Which Cameroon Bases Its Case”) and Section V (“Decision Requested”). In each Application, the content of Section III is approximately the same. In each case the Section indicates, explicitly or implicitly if not in identical terms, that both Parties have accepted the Court’s compulsory jurisdiction in conformity with Article 36 (2) of the Statute, without any reservation. By contrast, the other four Sections in both Application-I and Application-II tend to complement one another.

9. *Application-I*. In Section I (“Subject of the Dispute”), paragraphs 1 and 2 deal with the disputes relating essentially to the question of sovereignty over the Bakassi Peninsula, whereas paragraph 3, without referring to any particular dispute, mentions simply the issue of the maritime boundary in the Gulf of Guinea beyond the terminal point (namely point G) of the boundary line alleged by Cameroon in the mouth of the Cross River.

Section II (“The Facts”) traces the history over the past century of some parts of the boundary in the so-called “hinterland” including the Bakassi Peninsula. Mention is made solely of the land area, particularly the Bakassi Peninsula. If any frontier incidents or aggressions are mentioned here, they are limited mainly to the Bakassi Peninsula. The subject of maritime delimitation is not mentioned at all in this section.

In Section IV (“The Legal Grounds upon Which Cameroon Bases Its Case”) a great deal is said concerning Nigeria’s impairment of Cameroon’s sovereignty and territorial integrity, mainly in the Bakassi Peninsula, and Nigeria’s violation of the prohibition of the use of force. There is no mention of the maritime boundary in this section either.

In Section V (“Decision Requested”) all the seven items (a), (b), (c), (d), (e), (e’) and (e’), which are quoted in full in paragraph 16 of the Judgment, and on which Cameroon asks the Court to adjudge and declare, appear to relate to questions and incidents concerning the Bakassi Peninsula. Only in item (f) does Cameroon, “[i]n order to prevent any dispute arising between the two States”, request the Court “to proceed to prolong the course of its maritime boundary with [Nigeria] up to the limit of the maritime zones which international law places under the respective jurisdictions”, in other words, the course of the boundary of the continental shelf and the exclusive economic zone within the Gulf of Guinea.

Most of the issues mentioned throughout Application-I, except for the maritime delimitation in the Gulf of Guinea, are related mainly to the border incidents in the Bakassi Peninsula. Those issues seem to constitute the real “legal dispute” between the two States for which interim measures were indicated by the Court in 1996 (*Land and Maritime Boundary between Cameroon and Nigeria, Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996*, p. 11).

It may be observed that Sections I, II, IV and V, entitled “Subject of

the Dispute”, “The Facts”, “The Legal Grounds” and “Decision Requested”, respectively, are thus presented in a random fashion.

10. *Application-II*. Section I (“Subject of the Dispute”) deals with the question relating to Lake Chad, but in that same section Cameroon refers to the course of the boundary from Lake Chad to the sea. It is said that Nigeria’s challenge to Cameroon’s sovereignty took the form of “a massive introduction of Nigerian nationals into the disputed area, followed by an introduction of Nigerian security forces”.

In Section II (“The Facts”) most of the discussion is devoted to the subject of Lake Chad, but reference is also made in paragraph 6 to the “illegal and massive presence” of Nigerian nationals in various parts along the boundary from Lake Chad to the sea. In paragraph 7 the prolonged presence of the Nigerian security forces is mentioned *only* in Cameroon’s part of Lake Chad.

In Section IV (“The Legal Grounds upon Which Cameroon Bases Its Case”) Nigeria’s alleged occupation of the territory of Cameroon is mentioned extensively, but this concerns *only* the part of Cameroon in Lake Chad.

Under Section V (“Decision Requested”), the six items (a), (b), (c), (d), (e) and (e’) (which are quoted in full in paragraph 17 of the Judgment) seem to relate *only* to Lake Chad, but in item (f) Cameroon requests that the Court *specify the frontier* “from Lake Chad to the sea” in view of the repeated incursions of Nigeria into Cameroon’s territory.

In Application-II, as with Application-I, the four Sections I, II, IV and V, entitled “Subject of the Dispute”, “The Facts”, “The Legal Grounds”, and “Decision Requested”, respectively, are presented in a random fashion.

11. It should also be noted that, because of the random fashion of presentation and the irregular nature of each corresponding section of Application-I and Application-II (except for Section III (“The Jurisdiction of the Court”), the sections are not sufficiently interrelated. This makes the present case extremely complicated, and a proper understanding of the issues involved very difficult.

2. *The Submissions Contained in Cameroon’s 1995 Memorial*

12. On 16 March 1995 Cameroon filed its Memorial within the time-limit prescribed in the Court’s Order dated 16 June 1994 (*Land and Maritime Boundary between Cameroon and Nigeria, I.C.J. Reports 1994*, p. 104). In fact, the text of “the decision that the Court is asked to hand down” read out by the Registrar of the Court, at the President’s request, at the beginning of the oral pleadings on 2 March 1998 was taken only from Section V (“Decision Requested”) as it appears in both Application-I and Application-II. The “submissions” made by Cameroon in its Memorial were not even mentioned on that day in the Registrar’s statement.

The main part of the “submissions” contained in Cameroon’s Memo-

rial is quoted in part below (the full text is quoted in the Judgment, paragraph 18). Cameroon requests the Court

“to adjudge and declare:

- (a) That the lake and land boundary between Cameroon and Nigeria takes the following course: [Cameroon indicates a line from Lake Chad to the sea reflecting the alleged existing boundary provided for by treaties or international documents].
- (b) That notably, therefore, sovereignty over the Peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.
- (c) That the boundary of the maritime zones appertaining respectively to [Cameroon] and to [Nigeria] follows the following course: [Cameroon indicates (1) a line covering the offshore area provided for in the 1975 Maroua Declaration (first subparagraph of submission (c)) and (2) a line beyond the offshore area, as indicated above, for the delimitation of the exclusive economic zone and the continental shelf (second subparagraph of submission (c))].
- (d) That by contesting the courses of the boundary defined above under (a) and (c), [Nigeria] has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*) and its legal commitments concerning the demarcation of frontiers in Lake Chad and land and maritime delimitation.
- (e) That by using force against [Cameroon] and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian Peninsula of Bakassi, and by making repeated incursions, both civilian and military, all along the boundary between the two countries, [Nigeria] has violated and is violating its obligations under international treaty law and customary law.
- (f) That [Nigeria] has the express duty of putting an end to its civilian and military presence in Cameroonian territory and, in particular, of effecting an immediate and unconditional withdrawal of its troops from the occupied area of Lake Chad and from the Cameroonian Peninsula of Bakassi and of refraining from such acts in the future;
- (g) That the internationally wrongful acts referred to above and described in detail in the body of this Memorial involve the responsibility of [Nigeria].
- (h) That, consequently, and on account of the material and non-material damage inflicted upon [Cameroon], reparation in a form to be determined by the Court is due from [Nigeria] to [Cameroon].” (Memorial of Cameroon, Vol. I, pp. 669-671.)

13. As in the Section entitled “Decision Requested” in Application-I and Application-II, these eight submissions ((a)-(h)) in the 1995 Memorial are complex and presented in a complicated manner. I am somewhat surprised to find that these “submissions” do not correspond particularly well to the “Decision Requested” (Section V) in Application-I and Application-II; nor does what Cameroon asks the Court to adjudge and declare, in its 1995 Memorial, even constitute an amendment to the “Decision Requested” in the 1994 Applications. It is thus difficult, given this confused presentation, to ascertain Cameroon’s real intentions in bringing the present case before the Court.

Accordingly, I consider that Cameroon has failed to formulate adequately the issues set out under the title “Subject of the Dispute” (Section I) and “Decision Requested” (Section V) in Application-I and Application-II, respectively, which issues could have been, and indeed should have been, amplified in the “submissions” made in the Memorial. In my view Cameroon’s claims require clarification, and in effect the Court is having to make good the apparent irregularities in the Applications and in the “submissions” so that they may be presented in a proper form.

14. Careful examination of the submissions discloses the following inconsistencies on points of details. *Firstly*, I note that

- submission (a) concerning the lake and land boundary corresponds to item (f) of Section V (“Decision Requested”) of Application-II;
- submission (c), second subparagraph, concerning the boundary of the maritime zone (exclusive economic zone and continental shelf) corresponds to a part of item (f) of Section V (“Decision Requested”) of Application-I,

and that by these submissions Cameroon simply asks the Court to *specify a boundary line either on land or at sea*. Submission (c), first subparagraph, concerning the boundary in the offshore area is not mentioned at all in the 1994 Application and Cameroon further contends in this connection in submission (d) that Nigeria, by contesting the course put forward by Cameroon in submissions (a) and (c), has violated and is violating the interests of Cameroon.

15. *Secondly*, I note that the submissions also include the actual boundary disputes, which constitute “legal disputes”. Thus:

- submission (b), concerning the sovereignty over the Bakassi Peninsula and over the parcel in the area of Lake Chad, in particular over Darak and its region, corresponds to the seven items (a) to (e’’) inclusive in Section V (“Decision Requested”) of Application-I and to the six items (a) to (e’) inclusive in Section V (“Decision Requested”) of Application-II, respectively;
- submission (e), referring to repeated incursions all along the boundary between the two countries, corresponds to the allegation set out in item (f) in Section V (“Decision Requested”) of Application-II,

- namely that Nigeria, by using force against Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian Peninsula of Bakassi, and by making repeated incursions all along the boundary between the two countries “has violated and is violating its obligations under international treaty law and customary law”;
- submissions *(e)*, *(f)*, *(g)* and *(h)*, concerning the alleged violation by Nigeria of its obligations under international law, the removal by Nigeria of “its military presence”, the alleged “responsibility” to be borne by Nigeria, and the payment of “reparation”, which are essentially related to the “legal disputes” as mentioned above, are in fact referred to in items *(b)* to *(e’)* of Section V (“Decision Requested”) of Application-I and also in items *(b)* to *(e’)* of Section V of Application-II.

III. REQUEST FOR DELIMITATION OF A BOUNDARY LINE

16. As stated above, in a part of its Application Cameroon requests the Court to specify the boundary line with Nigeria both at sea and on land, and to prolong the maritime boundary.

1. *The Drawing of a Maritime Boundary*

17. My *first* main point is the *issue of maritime matters*. In this respect, Cameroon’s Application and “submissions” are not entirely consistent. In its 1994 Application-I, Cameroon “[i]n order to prevent any dispute between the two States concerning their maritime boundary” requests the Court

“to proceed to prolong the course of its maritime boundary with [Nigeria] up to the limit of the maritime zones which international law places under their respective jurisdictions” (Section V, item *(f)*; emphasis added).

This is clearly a request solely for delimitation of the exclusive economic zone and the continental shelf between Cameroon and Nigeria in the Gulf of Guinea.

In contrast, in submission *(c)* of its 1995 Memorial, Cameroon not only refers to the question of the delimitation of the exclusive economic zone and the continental shelf beyond those narrow coastal areas in the Gulf of Guinea (second subparagraph of submission *(c)*) but also asks the Court to declare the course of the boundary in the areas at the mouth of the Cross River close to the coast (first subparagraph of submission *(c)*).

18. *Maritime delimitation in the mouth of the Cross River*. The delimitation in the offshore area at the mouth of the Cross River depends

entirely on which country, either Cameroon or Nigeria, has sovereignty over the Bakassi Peninsula. The delimitation line down to point G, as indicated by Cameroon pursuant to the Maroua Declaration of 1975, is based on the firm assumption that the Bakassi Peninsula is in Cameroonian territory.

It may well be that Cameroon's maritime boundary in the mouth of the Cross River could only be challenged by Nigeria in connection with its alleged claim to sovereignty over the Bakassi Peninsula. Otherwise the maritime boundary in the mouth of the Cross River could not be a "legal dispute". Unless the territoriality of that region is settled, the question of the maritime delimitation in this coastal sea area would obviously be meaningless. I repeat that submission (c), first subparagraph, is not *per se* a subject that may be presented to this Court.

Incidentally, though, I should like to reiterate that this issue concerning the frontier in the coastal sea areas in the mouth of the Cross River was not referred to or mentioned at all in the 1994 Application-I.

19. *Maritime delimitation in the Gulf of Guinea.* The delimitation of the exclusive economic zone and the continental shelf between neighbouring States beyond the limit of their territorial seas also cannot be an issue in the present case unless, as in the case of the offshore areas in the mouth of the Cross River, as mentioned above, the land boundary between Cameroon and Nigeria at the coast is settled by those neighbouring States. More concretely, the issue of maritime delimitation in the whole vast area of the Gulf of Guinea cannot arise independently of the territoriality of the Bakassi Peninsula. In fact the Parties have not even negotiated on such a delimitation, and no "legal dispute" has ever arisen between the two States on the delimitation of the exclusive economic zone and the continental shelf.

20. More generally, the delimitation of the exclusive economic zone and the continental shelf shall, according to the 1982 United Nations Convention on the Law of the Sea, be "effected by agreement on the basis of international law . . . in order to achieve an equitable solution" (Arts. 74 and 83).

In the event that a delimitation of the maritime boundary line for the exclusive economic zone or the continental shelf is required between neighbouring States, the firm wishes of the parties to delimit their respective areas must in general exist, and negotiation must be continued for this purpose. The relevant parties, after negotiation, may determine the line by agreement and, if they fail to agree, they may then seek a third-party judgment. However, the mere fact that the parties have not been able to reach agreement on the delimitation in their negotiations does not constitute a "legal dispute".

21. There has been no negotiation between Cameroon and Nigeria

with a view to deciding on the delimitation of the exclusive economic zone and the continental shelf, nor has a “legal dispute” arisen between Cameroon and Nigeria which might fall within the purview of Article 36 (2) of the Court’s Statute.

If the Court considers that Cameroon’s Application concerning the delimitation of the exclusive economic zone and the continental shelf can be entertained on the grounds that there is a “legal dispute” under the circumstances appertaining to this case, then there will be hundreds of similar disputes that could be brought to the Court from all parts of the world.

22. Over the past 20 years, I have made known my belief that maritime delimitation may be dealt with more properly by recourse to arbitration than to judicial settlement. However, I concede that the Court cannot, in principle, refuse to receive a request for demarcation of a maritime boundary *if* that request is made *jointly* by the parties. It should be noted that delimitation cases have in the past been brought to the Court by *special agreement* under Article 36 (1) of the Court’s Statute — namely, the cases concerning the *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*; the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*; the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*; the chamber case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*; the chamber case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*; and the chamber case concerning *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*.

23. In conclusion, Cameroon’s request that the Court specify the boundary or prolong the maritime boundary stated in item (f) of Section V (“Decision Requested”) of Application-I and in submission (c), both first and second subparagraphs, is not a matter that can be unilaterally presented to the Court. The Court should have refused Cameroon’s request, as mentioned above, as it is not competent to entertain such a unilateral application.

2. Lake and Land Boundary

24. The *second* main point that I would like to take up in connection with the drawing of a boundary line is the *issue of the lake and land boundary* between Cameroon and Nigeria. Item (f) of Section V (“Decision Requested”) in Application-II states:

“[t]hat in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of [Nigeria] in regard to the legal instruments defining the frontier between the two

countries and the exact course of that frontier, [Cameroon] respectfully asks the Court to specify definitively the frontier between Cameroon and [Nigeria] from Lake Chad to the sea” (emphasis added).

In submission (a) Cameroon requests the Court “to adjudge and declare . . . that the lake and land boundary between Cameroon and Nigeria takes the . . . course [as indicated by Cameroon in concrete terms]”.

25. The fact is that there have occurred certain incidents of trespass by Nigerian armed forces or authorities into the border areas which Cameroon claims to be its own territory, as demarcated by the existing demarcation line interpreted from the diplomatic documents or historical facts. Such disputes have been reported in a certain parcel in the area of Lake Chad and in the Bakassi Peninsula, as well as in certain other border areas.

Cameroon deems all the incidents reported in these areas to be simply trespass in its territory by Nigeria. By contrast, Nigeria may certainly refuse to accept that these incidents were trespass and may consider that the areas or locations where the incidents occurred were its own territory. These are examples of typical boundary disputes that constitute “legal disputes” and, when a “legal dispute” concerning boundary incidents is filed with the Court Registry, the Court would certainly need to ascertain whether the boundary claimed by the Applicant has been violated and whether historically or legally it is the legitimate boundary.

However, Cameroon’s request that the Court definitively specify the frontier in the lake and on land is quite a different matter. Cameroon’s contentions should not have concerned the *demarcation* of the boundary line.

The simple fact that one State wishes to specify the frontier between it and a neighbouring State does *not* constitute a “legal dispute” between those States. Cameroon’s unilateral request for a boundary line to be indicated between its territory and Nigeria’s from Lake Chad to the sea cannot be regarded as constituting a “legal dispute”, in terms of Article 36 (2) of the Statute, which may be presented unilaterally to the International Court of Justice for its adjudication.

26. I do not deny that the International Court of Justice is competent to undertake the indication of a boundary line if States refer such a matter to it under Article 36 (1) of the Statute. If Cameroon had wished, with the concurrence of Nigeria, to revise its boundary which it claimed as legitimate on the basis of legal or historical title, it could have done so by means of negotiations with the latter. If such negotiations failed, the parties would then certainly be free to seek a decision of the International Court of Justice by agreement. However, this case does not come under that category.

3. Part III — Conclusion

27. In concluding my argument in sections 1 and 2 of part III above, I am bound to point out, first of all, that the Court's decisions requested in item (*f*) of Section V of Cameroon's Application-I and Application-II, respectively, and in submissions (*c*) and (*a*) in the Cameroonian Memorial, namely, to specify the course of a boundary line or the frontier — either at sea or on land — between Cameroon and Nigeria, cannot be a subject to be presented unilaterally to this Court. This is far different from a "legal dispute" which can be the object of a unilateral application in a case between States which have both accepted the compulsory jurisdiction of the Court under Article 36 (2) of the Statute.

It is not a function of any judicial organ to accede to a unilateral request for the demarcation of a boundary line, which cannot be deemed to constitute a "legal dispute", as the issues which may be brought unilaterally under Article 36 (2) of the Statute are limited to "legal disputes".

28. In this respect, item (*f*) of Section V ("Decision Requested") in both Application-I and Application-II, as well as submissions (*c*) and (*a*) in the Memorial, should be set aside. In other words, Cameroon's request that the Court indicate a boundary line, either at sea or on land, cannot be considered as falling within the purview of the Court's jurisdiction.

As I consider that Nigeria's fourth, fifth, seventh and eighth objections relate to this point in that respect, I voted in support of those objections.

IV. THE LEGAL DISPUTES WHICH MAY BE SUBMITTED TO THE COURT

29. The only part of Cameroon's Application which can be regarded as being the presentation of a "legal dispute" under Article 36 (2) of the Statute — which the Court has jurisdiction to entertain — is related to actual incidents which took place as territorial and boundary disputes in the border lands between the two States.

I would suggest that in the present case Cameroon's Applications should have been related to the following "legal disputes":

- (1) as regards the Bakassi Peninsula, which territory Cameroon claims to be its own, a great number of intrusions by Nigerian authorities has been reported as indicated in items (*a*) to (*e*) of Section V ("Decision Requested") of Application-I;
- (2) as regards Lake Chad, which is divided among the four countries that border on its shores, Cameroon described some incursions by

Nigerian authorities into its parcel in that area, as indicated in items (a) to (e') of Section V ("Decision Requested") of Application-II; and,

- (3) as regards the certain border areas from Lake Chad to the sea, Cameroon describes incursions as referred to in item (f) of Section V ("Decision Requested") of Application-II.

30. These three main issues, as indicated above and as demonstrated in Application-I and Application-II, are again presented in the "submissions" of the Memorial in the following manner:

"[Cameroon] . . . request[s] that the Court . . . adjudge and declare:

.
 (b) That notably . . . sovereignty over the Peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(e) That by using force against [Cameroon] and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian Peninsula of Bakassi, and by making repeated incursions, both civilian and military, all along the boundary between the two countries, [Nigeria] has violated and is violating its obligations under international treaty law and customary law."

In connection with these incidents of trespass, Cameroon contended that Nigeria should bear responsibility and should pay reparation for the repeated incursions into those areas.

31. I conclude that the Court has jurisdiction to entertain Cameroon's Applications relating to the "legal disputes" arising out of the alleged intrusion by Nigeria into the territory in which Cameroon is allegedly entitled to sovereignty and territoriality; in other words, by the alleged violation by Nigeria of Cameroon's sovereignty in the Bakassi Peninsula and in a certain parcel in the area of Lake Chad, as well as in certain other border areas.

The issues of whether or not Nigeria has trespassed on territory claimed by Cameroon, namely in the Bakassi Peninsula and in the area of Lake Chad and elsewhere, and, in other words, whether or not the relevant areas where such trespass is alleged to have occurred were Cameroon's territory at the time of the incidents, and thus whether Nigeria has breached Cameroon's rights, and must bear responsibility and pay reparation for such breach, should certainly constitute the substance of the merits at a later stage of the proceedings in the present case. It would be open to Nigeria to lay claim to such areas on the basis of whatever diplomatic or historical facts might be available to it, and such a situation would be capable of constituting a "legal dispute".

V. CONCLUSIONS

32. It may not be necessary to draw any conclusions in addition to what I have stated above. However, if I may repeat myself, Cameroon *cannot* bring unilaterally to the Court a case concerning simple demarcation of a boundary line either on land or at sea. In contrast, the alleged incursion by Nigeria into the alleged territory of Cameroon, for which violation of international law Nigeria may be responsible and may be liable to pay reparation, is the kind of "legal dispute" that *can* be unilaterally brought to the Court by Cameroon. The question of whether or not the boundary line which Cameroon has claimed is legitimate should be decided by the Court at the merits phase but, I repeat, that should not be a question of the simple demarcation of a boundary line between two States.

33. In connection with Cameroon's Application, Nigeria certainly is free to challenge the jurisdiction of the Court to entertain that Application and its admissibility. Nigeria in fact did so. I submit, however, that apart from Nigeria's objection to the Court's jurisdiction (first preliminary objection), most of the objections raised by that Party concerning the border incidents and the borderline of the territory (second, third and sixth preliminary objections) are matters that should be dealt with at the merits phase.

(Signed) Shigeru ODA.