

LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA (CAMEROON v. NIGERIA) (Permission to intervene by Equatorial Guinea)

Order of 21 October 1999

By its Order the Court authorized Equatorial Guinea to intervene in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria) “to the extent, in the manner and for the purposes set out in its Application for permission to intervene”.

The Court took the decision unanimously.

The Court was composed as follows: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judges ad hoc Mbaye, Ajibola; Registrar Valencia-Ospina.

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The complete text of the Order is as follows:

“The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 48 and 62 of the Statute of the Court and to Articles 81, 83, 84 and 85 of the Rules of Court,

Having regard to the Application filed by the Republic of Cameroon in the Registry of the Court on 29 March 1994 instituting proceedings against the Federal Republic of Nigeria in respect of a dispute described as ‘relat[ing] essentially to the question of sovereignty over the Bakassi Peninsula’, in which the Court was also requested ‘to determine the course of the maritime boundary between the two States beyond the line fixed in 1975’,

Having regard to the Additional Application submitted by Cameroon on 6 June 1994,

Having regard to the Order of 16 June 1994, whereby the Court indicated that it had no objection to the Additional Application being treated as an amendment to the initial Application and fixed the time limits for the filing of the Memorial of Cameroon and the Counter-Memorial of Nigeria, respectively,

Having regard to the Memorial filed by Cameroon and the preliminary objections submitted by Nigeria within the time limits thus fixed,

Having regard to the Judgment of 11 June 1998, whereby the Court ruled on the preliminary objections raised by Nigeria,

Having regard to the Order of 30 June 1998, whereby the Court fixed a new time limit for the filing of the Counter-Memorial of Nigeria, and to the Order of 3 March 1999, whereby it extended that time limit,

Having regard to the Counter-Memorial filed by Nigeria within the time limit thus extended,

Having regard to the Order of 30 June 1999, whereby the Court decided inter alia that Cameroon should submit a Reply and Nigeria should submit a Rejoinder, and fixed 4 April 2000 and 4 January 2001 respectively as the time limits for the filing of those pleadings,

Makes the following Order:

1. Whereas, by a letter dated 27 June 1999, received in the Registry on 30 June 1999, the Prime Minister of the Republic of Equatorial Guinea submitted to the Court an ‘Application ... to intervene in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)* pursuant to Article 62 of the Statute of the Court and Article 81 of the Rules of the Court’; and whereas that same letter appointed H.E. Mr. Ricardo Mangue Obama N’Fube, Minister of State, Secretary-General of the Presidency of the Government, as Agent;

2. Whereas, in the introduction to its Application, Equatorial Guinea refers to the eighth preliminary objection raised by Nigeria in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)* and quotes as follows paragraph 116 of the Judgment handed down by the Court on 11 June 1998 on the objections of Nigeria (*I.C.J. Reports 1998*, p. 324):

“The Court notes that the geographical location of the territories of the other States bordering the Gulf of Guinea, and in particular Equatorial Guinea and Sao Tome and Principe, demonstrates that it is evident that the prolongation of the maritime boundary between the Parties ... will eventually run into maritime zones where the rights and interests of Cameroon and Nigeria will overlap those of third States. It thus appears that rights and interests of third States will become involved if the Court accedes to Cameroon’s request ... The Court cannot therefore, in the present case, give a decision on the eighth preliminary objection as a preliminary matter. In order to determine where a prolonged maritime boundary ... would run, where and to what extent it would meet possible claims of other States, and how its judgment would affect the rights and interests of these States, the Court would of necessity have to deal with the merits of Cameroon’s request. At the same time, the Court cannot rule out the possibility that the impact of the judgment required by Cameroon on the rights and interests of third States could be such that the Court would be prevented

from rendering it in the absence of these States, and that consequently Nigeria's eighth preliminary objection would have to be upheld at least in part. *Whether such third States would choose to exercise their rights to intervene in these proceedings pursuant to the Statute remains to be seen.* (Emphasis added)';

and whereas Equatorial Guinea adds:

'It is in this context that Equatorial Guinea comes before the Court. Equatorial Guinea wishes to be very clear that it has no intention of intervening in those aspects of the proceedings that relate to the land boundary between Cameroon and Nigeria, including determination of sovereignty over the Bakassi Peninsula. It is only the maritime boundary aspects of the case before the Court with which Equatorial Guinea is concerned; and, as is explained more fully below, it is the purpose of Equatorial Guinea's intervention 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, the parties to the case before it. Equatorial Guinea does *not* seek to become a party to the case.';

3. Whereas, in its Application, Equatorial Guinea, referring to Article 81, paragraph 2 (a), of the Rules of Court sets out *inter alia* in these terms 'the interest of a legal nature which [it] considers may be affected by the decision in that case':

'in accordance with its national law, Equatorial Guinea claims the sovereign rights and jurisdiction which pertain to it under international law up to the median line between Equatorial Guinea and Nigeria on the one hand, and between Equatorial Guinea and Cameroon on the other hand. It is these legal rights and interests which Equatorial Guinea seeks to protect ... Equatorial Guinea ... wishes to emphasize that it does not seek the Court's determination of its boundaries with Cameroon or Nigeria. Equatorial Guinea does wish to protect its legal rights and interests, however, and that requires that any Cameroon-Nigeria maritime boundary that may be determined by the Court should not cross over the median line with Equatorial Guinea. If the Court were to determine a Cameroon-Nigeria maritime boundary that extended into Equatorial Guinea waters, as defined by the median line, Equatorial Guinea's rights and interests would be prejudiced ... It is the purpose of Equatorial Guinea to present and to demonstrate its legal rights and interests to the Court and, as appropriate, to state its views as to how the maritime boundary claims of Cameroon or Nigeria may or may not affect the legal rights and interests of Equatorial Guinea';

4. Whereas, in its Application, Equatorial Guinea, referring to Article 81, paragraph 2 (b) of the Rules of

Court, sets out 'the precise object of the intervention' as follows:

'First, generally, to protect the legal rights of the Republic of Equatorial Guinea in the Gulf of Guinea by all legal means available, and in this regard, therefore, to make use of the procedure established by Article 62 of the Statute of the Court.

Second, to inform the Court of the nature of the legal rights and interests of Equatorial Guinea that could be affected by the Court's decision in the light of the maritime boundary claims advanced by the Parties to the case before the Court';

5. Whereas, in its Application, Equatorial Guinea, referring to Article 81, paragraph 2 (c) of the Rules of Court, expresses the following opinion concerning the 'basis of jurisdiction which is claimed to exist as between [it] and the parties to the case':

'The Republic of Equatorial Guinea does not seek to be a party to the case before the Court. There is no basis for jurisdiction under the Statute and Rules of the Court which arises out of the pre-existing understandings between Equatorial Guinea, Nigeria and Cameroon. Equatorial Guinea has not made a declaration under Article 36.2 of the Statute of the Court nor is there an agreement in force among the three States which confers jurisdiction on the Court in this regard. It would be open, of course, to the three countries affirmatively to request the Court not only to determine the Cameroon-Nigeria maritime boundary but also to determine Equatorial Guinea's maritime boundaries with these two States. However, Equatorial Guinea has made no such request and wishes to continue to seek to determine its maritime boundaries with its neighbours through negotiations.

Accordingly, Equatorial Guinea's request to intervene is based solely upon Article 62 of the Statute of the Court';

6. Whereas, in ending its Application, Equatorial Guinea formulates the following conclusion:

'On the basis of the foregoing observations, Equatorial Guinea respectfully requests permission to intervene in the present proceedings between Cameroon and Nigeria for the object and purpose specified herein, and to participate in those proceedings in accordance with Article 85 of the Rules of the Court';

7. Whereas, in accordance with Article 83, paragraph 1, of the Rules of Court, the Deputy-Registrar, by letters dated 30 June 1999, transmitted certified copies of the Application for permission to intervene to the Government of Cameroon and the Government of Nigeria, which were informed that the Court had fixed 16 August 1999 as the time limit for the submission of their written observations on that Application; and whereas, in accordance with paragraph 2 of that same provision, the Deputy-Registrar, on 30 June 1999, also

transmitted a copy of the Application to the Secretary-General of the United Nations;

8. Whereas Cameroon and Nigeria each submitted written observations within the time limit thus fixed; and whereas the Registry transmitted to each Party a copy of the other's observations, as well as copies of the observations of both Parties to Equatorial Guinea;

9. Whereas, in its written observations, Cameroon informs the Court that it 'has no objection in principle to [the intervention of Equatorial Guinea], limited to the maritime boundary, which could allow the Court to be better informed on the general background to the case and to determine more completely the dispute submitted to it'; whereas it adds, referring to the Judgment handed down by the Court on 11 June 1998 (Preliminary Objections), that 'the Court envisaged the possibility that third States might intervene, among which was clearly the Republic of Equatorial Guinea'; and whereas it considers that 'the intervention of Equatorial Guinea should allow the Court to decide on a delimitation of the boundary which will be stable and final in relation to the States involved'; and whereas, in those same written observations, Cameroon moreover

'entirely reserves its position in relation to the validity and possible consequences of the unilateral delimitation undertaken by Equatorial Guinea, whose claims, based solely on the principle of equidistance, do not take into account the special geographical features of the area in dispute';

10. Whereas, in its written observations, Nigeria notes that 'Equatorial Guinea does not seek to intervene as a party in the proceedings'; and whereas it adds the following:

'Whether or not Equatorial Guinea's Application is accepted, it will in Nigeria's view make no difference to the legal position of Nigeria to the present proceedings, or to the jurisdiction of the Court. On that basis, Nigeria leaves it to the Court to judge whether and to what extent it is appropriate or useful to grant Equatorial Guinea's Application';

11. Whereas communications were subsequently addressed to the Registry by the Parties and by Equatorial Guinea, and whereas the Registry transmitted copies of each of those communications to the other two States; whereas Equatorial Guinea, by a letter dated 3 September 1999, noted that neither Cameroon nor Nigeria 'ha[d] objected in principle to the intervention of Equatorial Guinea'; whereas Nigeria, by a letter dated 13 September 1999, referred to certain passages in the written observations of Cameroon and maintained that Cameroon 'misrepresent[ed] the position' of Equatorial Guinea, in that '[a]s Nigeria understands the position, Equatorial Guinea did not seek to intervene as a party, but as a third party'; whereas Cameroon, by a letter dated 11 October 1999, indicated that 'it [did] not dispute the right of Equatorial Guinea to intervene as a non-party intervener' and expressed the view that 'it [was] not for Nigeria to take the place of Equatorial

Guinea in deciding on the latter's entitlement to intervene', it being for the Court itself to determine the legal effects of such an intervention; and whereas Equatorial Guinea, in a further communication, dated 11 October 1999, observed that 'there [could] be no question of the Court's eventual Judgment determining the maritime boundaries of Equatorial Guinea, whether with Cameroon or Nigeria' and that it '[sought] the status of a non-party intervener';

12. Whereas neither of the Parties objects to the Application by Equatorial Guinea for permission to intervene being granted;

13. Whereas, in the opinion of the Court, Equatorial Guinea has sufficiently established that it has an interest of a legal nature which could be affected by any judgment which the Court might hand down for the purpose of determining the maritime boundary between Cameroon and Nigeria;

14. Whereas, moreover, as a Chamber of the Court has already had occasion to observe,

'[s]o far as the object of [a State's] intervention is 'to inform the Court of the nature of the legal rights [of that State] which are in issue in the dispute', it cannot be said that this object is not a proper one: it seems indeed to accord with the function of intervention' (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application by Nicaragua for permission to intervene, Judgment of 13 September 1990, I.C.J. Reports 1990, p. 130, para. 90*);

15. Whereas in addition, as the same Chamber pointed out,

'[i]t ... follows ... from the juridical nature and from the purposes of intervention that the existence of a valid link of jurisdiction between the would-be intervener and the parties is not a requirement for the success of the application. On the contrary, the procedure of intervention is to ensure that a State with possibly affected interests may be permitted to intervene even though there is no jurisdictional link and it therefore cannot become a party' (*ibid.*, p. 135, para. 100);

16. Whereas, in view of the position of the Parties and the conclusions which the Court itself has reached, the Court considers that there is nothing to prevent the Application by Equatorial Guinea for permission to intervene from being granted;

17. Whereas copies of the pleadings and documents annexed, as filed in the case at present, have already been communicated to Equatorial Guinea pursuant to Article 53, paragraph 1, of the Rules of Court; and whereas a copy of the Reply of Cameroon and of the Rejoinder of Nigeria, which the Court has directed them to submit pursuant to its Order of 30 June 1999, will also be so communicated; whereas, in accordance with the provisions of Article 85 of the Rules of Court, it is necessary to fix time limits for the filing, respectively, of a 'written statement' by Equatorial Guinea and of

‘written observations’ by Cameroon and by Nigeria on that statement; and whereas those time limits must ‘so far as possible, coincide with those already fixed for the pleadings in the case’, in the present instance by the above-mentioned Order of 30 June 1999;

18. For these reasons,

The Court,

Unanimously,

1. *Decides* that the Republic of Equatorial Guinea is permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in its Application for permission to intervene;

2. *Fixes* the following time limits for the filing of the written statement and the written observations referred to in Article 85, paragraph 1, of the Rules of Court:

4 April 2001 for the written statement of the Republic of Equatorial Guinea;

4 July 2001 for the written observations of the Republic of Cameroon and of the Federal Republic of Nigeria;

3. *Reserves* the subsequent procedure for further decision.”

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Background information

On 30 June 1999 Equatorial Guinea filed an Application for permission to intervene in the above-mentioned case. It 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 relate to the land boundary between Cameroon and Nigeria, nor to become a party to the case. It further stated that, although it would be open to the three countries to request the Court not only to determine the Cameroon-Nigeria maritime boundary but also to determine Equatorial Guinea’s maritime boundary with these two States, Equatorial Guinea had made no such request and 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 “ignored the legal rights of Equatorial Guinea in the most flagrant way” because it disregarded the median line (the line dividing maritime zones between two States of which every point is equidistant from the coasts of each of those States) and that, moreover, “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”. Observing that “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”, Equatorial Guinea maintained that “any 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 that country.

Under Article 83 of the Rules of Court, Equatorial Guinea’s Application was immediately communicated to Cameroon and Nigeria, and the Court fixed 16 August 1999 as the time limit for the filing of written observations by those States.