

**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)**

Judgment of 25 March 1999

In its Judgment, the Court by thirteen votes against three declared inadmissible Nigeria's request for interpretation of the Judgment delivered by the Court on 11 June 1998 in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections.

This was the first time that the Court had been called upon to rule on a request for interpretation of a judgment on preliminary objections.

In its Judgment, the Court further rejected unanimously Cameroon's request that Nigeria bear the additional costs caused to Cameroon by the request for interpretation.

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; Judges ad hoc Mbaye, Ajibola; Registrar Valencia-Ospina.

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The full text of the operative paragraph of the Judgment reads as follows:

"19. 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;

IN FAVOUR: President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans; Judge ad hoc Mbaye;

AGAINST: Vice-President Weeramantry; Judge Koroma; Judge ad hoc Ajibola.

(2) Unanimously,

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

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Vice-President Weeramantry, Judge Koroma, and Judge ad hoc Ajibola appended dissenting opinions to the Judgment of the Court.

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History of the proceedings and submissions of the Parties
(paras. 1-7)

The Court begins by recalling that, on 28 October 1998, Nigeria instituted proceedings whereby, referring to Article 98 of the Rules of Court, it requested the Court to interpret the Judgment delivered by the Court 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 the request within the time limit fixed therefor. In the light of the dossier thus submitted to it, the Court, considering that it had sufficient information on the positions of the Parties, did not deem it necessary to invite them "to furnish further written or oral explanations", as Article 98, paragraph 4, of the Rules allows it to do.

Nigeria chose Mr. Bola Ajibola and Cameroon Mr. Kéba Mbaye to sit as judges ad hoc in the case.

The Parties presented the following submissions:

On behalf of Nigeria:
in the 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;

(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."

On behalf of Cameroon:

in the written observations:

"On these grounds,

Having regard to the Request for Interpretation 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:

– *Primarily:*

To declare the request by the Federal Republic of Nigeria inadmissible; 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 jurisdiction over Nigeria's request for interpretation
(paras. 8-11)

The Court first addresses the question of its jurisdiction over the request for interpretation submitted by Nigeria. Nigeria states that, in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Cameroon 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 contends that 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". Thus Nigeria maintains that the Judgment "is unclear [as to] whether Cameroon was entitled at various times, after the submission of its Amended Application, to bring before the Court new incidents". Nigeria further emphasizes "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". The Judgment of 11 June 1998 was accordingly to be interpreted as meaning "that so far as concerns the international responsibility [of] Nigeria ... the dispute before the Court does not include any alleged incidents other than (at most) those specified in [the] Application ... and Additional Application".

Cameroon, for its part, recalls in its written observations that, in its Judgment of 11 June 1998, the Court rejected seven of Nigeria's preliminary objections and stated that the eighth objection was not of an exclusively preliminary character; the Court further recognized 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. Cameroon declares that the Parties "do not have to 'apply' such a judgment; they only have to take note of it". While leaving the question to the appreciation of the Court, it states that "there are very serious doubts about the possibility of bringing a request for interpretation of a judgment concerning preliminary objections".

The Court observes that Article 60 of the Statute 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 follows, therefore, that a judgment on preliminary objections, just as well as a judgment on the merits, can be the object of a request for interpretation. However, “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 insofar as these are inseparable from the operative part.

The Court then recalls that in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*, Nigeria had put forward 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”; and that in the operative part of its Judgment of 11 June 1998, the Court [r]ejects the sixth preliminary objection. The reasons for this are set out in paragraphs 98 to 101 of the Judgment. These deal in detail with Cameroon’s rights as regards the presentation of “facts and legal considerations” that it might wish to put forward in support of its submissions seeking a ruling against Nigeria. These reasons are inseparable from the operative part of the Judgment and in this regard the request therefore meets the conditions laid down by Article 60 of the Statute in order for the Court to have jurisdiction to entertain a request for interpretation of a judgment.

The admissibility of Nigeria’s request (paras. 12-16)

The Court then examines the admissibility of Nigeria’s request. It observes that the question of the admissibility of requests for interpretation of the Court’s judgments needs particular attention because of the need to avoid impairing the finality, and delaying the implementation, of these judgments. It is not without reason that Article 60 of the Statute lays down, in the first place, that judgments are “final and without appeal”. The language and structure of Article 60 reflect the primacy of the principle of *res judicata*. That principle must be maintained.

The Court then recalls 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”. It further requested the Court to adjudge that the “internationally unlawful acts” alleged to have occurred in the Bakassi and Lake Chad regions involve the responsibility of Nigeria. Cameroon developed these submissions in its Memorial of 1995 and its observations of 1996, mentioning some incidents having occurred in other

frontier areas or after the date of the Additional Application. To these submissions, Nigeria raised its sixth objection to admissibility. It 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 and that “additions” presented subsequently with a view to establishing Nigeria’s responsibility must be disregarded.

The Court points out that by its Judgment of 11 June 1998, 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”, adding that the term “succinct” used in Article 38, paragraph 2, of the Rules does not mean “complete” and does not preclude later additions to the statement of the facts and grounds on which the claim is based. The Court reiterates 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, are two different things. In its Judgment of 11 June 1998, the Court 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. With regard to Nigeria’s sixth preliminary objection, the Judgment of 11 June 1998 has concluded that “[i]n this case, Cameroon has not so transformed the dispute” and that Cameroon’s Application met the requirements of Article 38 of the Rules (*ibid.*, p. 319, para. 100). Thus, the Court made no distinction between “incidents” and “facts”; it found that additional incidents constitute additional facts, and that their introduction in proceedings before the Court is governed by the same rules. In this respect there is no need for the Court to stress that it has and will strictly apply the principle of *audi alteram partem*. It follows from the foregoing that the Court has already 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)] endeavour to remove from the Court’s consideration elements of law and fact which it has, in its Judgment of 11 June 1998, already authorized Cameroon to present, or which Cameroon has not yet put forward. In either case, the Court would be unable to entertain these submissions. It follows from the foregoing that Nigeria’s request for interpretation is inadmissible.

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The Court, in view of the conclusions reached above, finds that there is no need for it to examine whether there is, 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.

Cost of the proceedings
(para. 18)

With regard to Cameroon’s request that Nigeria be charged with the additional costs caused to Cameroon by Nigeria’s request, the Court sees no reason to depart in the present case from the general rule set forth in Article 64 of the Statute, which confirms 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, Advisory Opinion, I.C.J. Reports 1973, p. 212, para. 98*).

Dissenting opinion of Vice-President Weeramantry

Vice-President Weeramantry expressed agreement with the Court that the Application of Nigeria met the conditions laid down in Article 60 of the Statute 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 disagreed with the Court’s conclusion that Nigeria’s request for interpretation was inadmissible.

He points out that there is 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 may be pleaded is the date of filing of the application. If later incidents could be brought in, this would pose major obstacles to the proper presentation and conduct of the case.

Dissenting opinion of Judge Koroma

In his dissenting opinion, Judge Koroma regretted that he could not support the Judgment, as in his view 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 is for the Court to give *precision and clarification* of the meaning and scope of the Judgment in question and when the Court stated that it had not distinguished between “incidents” and “facts” in its Judgment of 11 June 1998 and had found that “*additional incidents*” constituted “*additional facts*”, there was room for clarification.

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

Dissenting opinion of Judge Ajibola

Judge Ajibola, in his dissenting opinion, first explained why he is 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.

He then stated that he agreed with the Court’s Judgment insofar as the questions of jurisdiction and of costs were concerned; but that he was of the view that the Court should have considered the Nigerian Application admissible.

The Court should have interpreted its Judgment of 11 June 1998 because in the two paragraphs that Nigeria is requesting the Court to interpret, the Court has decided on the issue of the procedural right of Cameroon to: (a) develop what is “said” in its “Application” and (b) present “additional facts”. But quite clearly the Court has not determined the issue of *additional incidents* or *new incidents*.

The Court should therefore, in Judge Ajibola’s view, have clarified the category of incidents alleged by Cameroon to be relevant: are they pre-1994 incidents only, or pre- and post-1994 incidents? The issue of what additional facts are required from Cameroon should equally have been spelt out very clearly by the Court: are these additional facts in relation to the incidents before the Applications of Cameroon in 1994 or do they include additional facts concerning incidents subsequent to the year 1994? If the Court agrees that Cameroon may file *additional facts*, is the Court also saying that Cameroon can file particulars of *additional incidents* after 1994?

Judge Ajibola finally pointed out that, in his view, the word “dispute” in Article 36, paragraph 2, of the Court’s Statute relates only to pre-existing disputes or incidents that occurred before the filing of an application, but definitely not to a future dispute.