

SEPARATE OPINION OF JUDGE PARRA-ARANGUREN

Nigeria's fourth preliminary objection — The determination of the States "affected" by the decision of the Court belongs to the merits — It cannot be left to the Parties but must be made by the Court — The decision, at the jurisdictional stage, that the interests of Chad are not affected, precludes the possibility of its eventual subsequent intervention according to Article 62 of the Statute of the Court — The objection does not have, in the circumstances of the case, an exclusively preliminary character.

1. I have voted against subparagraph 1 (*d*) of the operative part of the Judgment rejecting the fourth preliminary objection raised by Nigeria for the following reasons:

2. Nigeria's fourth preliminary objection requests the Court not to determine in these proceedings the boundary in Lake Chad to the extent that that boundary constitutes or is determined by the tripoint Nigeria-Cameroon-Chad in Lake Chad, because its location affects a third State, the Republic of Chad. Nigeria also stated that the matter raised by its objection is not affected whether it

“is considered as one going to the Court's jurisdiction (on the analogy of the principle in the case concerning *Monetary Gold Removed from Rome in 1943*, Judgment, *I.C.J. Reports 1954*, p. 32, as applied by the Court, most recently, in the case concerning *East Timor (Portugal v. Australia)*, Judgment, *I.C.J. Reports 1995*, p. 90) or as to the admissibility of the proceedings (on the analogy of cases such as the case concerning *Northern Cameroons*, *I.C.J. Reports 1963*, p. 32)” (Preliminary Objections of the Federal Republic of Nigeria, p. 84, para. 4.11).

3. The question of third States “affected” by the decision on the merits was examined by the Court in its Judgment of 26 November 1984 in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility*. On that occasion it was stated that:

“this is a question concerning matters of substance relating to the merits of the case: obviously the question of what States may be ‘affected’ by the decision on the merits is not in itself a jurisdictional problem” (*I.C.J. Reports 1984*, p. 425, para. 76).

4. I am in agreement with the principle embodied in the above quotation. I therefore support paragraph 78 of the Judgment, in which it is maintained that Nigeria's claims to Darak and adjacent islands could

bring about a redetermination of the situation of the tripoint Nigeria-Cameroon-Chad in Lake Chad, and that these claims cannot be considered by the Court at this stage of the proceedings.

5. I cannot accept, however, the statement at the end of paragraph 78, in which it is concluded that the Court, in due course, will be in a position to take its decision regarding the redetermination of the tripoint Nigeria-Cameroon-Chad “without pronouncing on interests that Chad may have, as the Court will demonstrate hereafter”. This statement clearly runs counter to the jurisprudence of the Court in the *Nicaragua* case, as quoted above, which I consider correct. Accordingly, in my opinion it is not possible for the Court, at this stage of the proceedings, to decide whether or not the redetermination of the tripoint Nigeria-Cameroon-Chad in Lake Chad may be made “without pronouncing on interests that Chad may have”.

6. Paragraph 79 of the Judgment repeats that the request made by Cameroon to

“‘specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea’ (para. 17 (*f*)) of the Additional Application), may affect the tripoint, i.e., the point where the frontiers of Cameroon, Chad and Nigeria meet”;

and in order to demonstrate why the legal interests of the Republic of Chad are not affected the Court states:

“However, the request to specify the frontier between Cameroon and Nigeria from Lake Chad to the sea does not imply that the tripoint could be moved away from the line constituting the Cameroon-Chad boundary. Neither Cameroon nor Nigeria contests the current course of that boundary in the centre of Lake Chad as it is described in the ‘technical document of the demarcation of the . . . boundaries’ mentioned in paragraph 65 above . . . Any redefinition of the point where the frontier between Cameroon and Nigeria meets the Chad-Cameroon frontier could in the circumstances only lead to a moving of the tripoint along the line of the frontier in the Lake between Chad and Cameroon. Thus, the legal interests of Chad as a third State not party to the case do not constitute the very subject-matter of the judgment to be rendered on the merits of Cameroon’s Application; and therefore, the absence of Chad does not prevent the Court from proceeding to a specification of the border between Cameroon and Nigeria in the Lake.”

7. As stated by the Court in its Judgment of 26 November 1984, rendered in the *Nicaragua* case, “[c]ertainly the determination of the States ‘affected’ could not be left to the parties but must be made by the Court” (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility*, I.C.J.

Reports 1984, p. 425, para. 75). Consequently, in my opinion, it is not for Cameroon and Nigeria to decide whether the interests of the Republic of Chad are affected or not, as suggested in paragraph 79 of the Judgment.

8. I agree with the statement in paragraph 79 that “the legal interests of Chad as a third State not party to the case do not constitute the very subject-matter of the judgment to be rendered on the merits of Cameroon’s Application”; but I cannot accept that, at this stage of the proceedings, the Court can decide whether the interests of the Republic of Chad are “affected” by the determination of the tripoint Nigeria-Cameroon-Chad in Lake Chad, and in the affirmative, to what extent. Such a determination is a matter for the merits, as decided by the Court in the *Nicaragua* case, because “it is only when the general lines of the judgment to be given become clear that the States ‘affected’ could be identified” (*I.C.J. Reports 1984*, p. 425, para. 75).

9. I am in agreement with paragraph 81 of the Judgment, when it states that “Whether the location of the tripoint in Lake Chad has actually to be changed from its present position will follow from the judgment on the merits of Cameroon’s Application.” Therefore, it is very difficult for me to understand how the Court, at this stage of the proceedings, may also decide in the same paragraph that an eventual and unknown change of the tripoint Nigeria-Cameroon-Chad in Lake Chad “would have no consequence for Chad”.

10. According to Article 62 of the Statute, “[s]hould a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene”. Consequently, in stating that the interest of the Republic of Chad is not affected by the determination of the tripoint Nigeria-Cameroon-Chad in Lake Chad, as it does in paragraphs 78, 79 and 81 of the Judgment, the Court is, at the same time, precluding any possible intervention by the Republic of Chad at a later stage of the present case between Cameroon and Nigeria. In my opinion, this is a quite astonishing decision, in particular because the Court does not have the slightest idea as to what is the viewpoint of the Republic of Chad on the matter.

11. In the above-mentioned Judgment of 26 November 1984, rendered in the *Nicaragua* case, the Court examined in particular the reservation made by the United States, when depositing its Optional Clause declaration, to exclude disputes arising under multilateral treaties unless all parties to the treaty affected by the decision were also parties to the case; and it stated:

“since the procedural technique formerly available of joinder of preliminary objections to the merits has been done away with since the 1972 revision of the Rules of Court, the Court has no choice but to

avail itself of Article 79, paragraph 7, of the present Rules of Court, and declare that the objection based on the multilateral treaty reservation of the United States Declaration of Acceptance does not possess, in the circumstances of the case, an exclusively preliminary character, and that consequently it does not constitute an obstacle for the Court to entertain the proceedings instituted by Nicaragua under the Application of 9 April 1984” (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility*, I.C.J. Reports 1984, pp. 425-426, para. 76).

12. The reasons stated by the Court on that occasion are applicable to the fourth preliminary objection raised by Nigeria requesting the Court not to determine in these proceedings the boundary in Lake Chad to the extent that that boundary constitutes or is determined by the tripoint Nigeria-Cameroon-Chad in Lake Chad, because its location directly affects a third State, the Republic of Chad. Accordingly, in my opinion, the Court should have declared that the objection does not have, in the circumstances of the case, an exclusively preliminary character.

(Signed) Gonzalo PARRA-ARANGUREN.