

## CASE CONCERNING THE LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA (CAMEROON v. NIGERIA) (PROVISIONAL MEASURES)

Order of 15 March 1996

In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), the Court issued an Order indicating the following provisional measures:

“(1) Unanimously,

Both Parties should ensure that no action of any kind, and particularly no action by their armed forces, is taken which might prejudice the rights of the other in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before it;

(2) By sixteen votes to one,

Both Parties should observe the agreement reached between the Ministers for Foreign Affairs in Kara, Togo, on 17 February 1996, for the cessation of all hostilities in the Bakassi Peninsula;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; Judge *ad hoc* Mbaye;

AGAINST: Judge *ad hoc* Ajibola;

(3) By twelve votes to five,

Both Parties should ensure that the presence of any armed forces in the Bakassi Peninsula does not extend beyond the positions in which they were situated prior to 3 February 1996;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Ranjeva, Herczegh, Fleischhauer, Koroma, Ferrari Bravo, Higgins, Parra-Aranguren; Judge *ad hoc* Mbaye;

AGAINST: Judges Shahabuddeen, Weeramantry, Shi, Vereshchetin; Judge *ad hoc* Ajibola;

(4) By sixteen votes to one,

Both Parties should take all necessary steps to conserve evidence relevant to the present case within the disputed area;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; Judge *ad hoc* Mbaye;

AGAINST: Judge *ad hoc* Ajibola;

(5) By sixteen votes to one,

Both Parties should lend every assistance to the fact-finding mission which the Secretary-General of the United Nations has proposed to send to the Bakassi Peninsula.

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; Judge *ad hoc* Mbaye;

AGAINST: Judge *ad hoc* Ajibola.”

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Judges Oda, Shahabuddeen, Ranjeva and Koroma appended declarations to the Order of the Court; Judges Weeramantry, Shi and Vereshchetin appended a joint declaration to the Order of the Court.

Judge *ad hoc* Mbaye appended a declaration to the Order of the Court.

Judge *ad hoc* Ajibola appended a separate opinion to the Order of the Court.

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

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In its Order, the Court recalls that on 29 March 1994, Cameroon instituted proceedings against Nigeria in respect of a dispute described as “relat[ing] essentially to the question of sovereignty over the Bakassi Peninsula”.

In the Application, Cameroon, basing the jurisdiction of the Court on the declarations made by the two States pursuant to Article 36, paragraph 2, of the Statute, states that “Cameroon’s title [to the Bakassi Peninsula] is contested” by Nigeria; that “since the end of 1993, this contestation has taken the form of an aggression by . . . Nigeria, whose troops are occupying several Cameroonian localities in the Bakassi Peninsula”; and that this “has resulted in great prejudice to . . . Cameroon, for which the Court is respectfully requested to order reparation”. Cameroon further states that the “delimitation [of the maritime boundary between the two States] has remained a partial one and [that], despite many attempts to complete it, the two Parties have been unable to do so”; and it accordingly requests the Court, “in order to avoid further incidents between the two countries, . . . to determine the course of the maritime boundary between the two States beyond the line fixed in 1975”.

At the close of its Application, Cameroon presents the following submissions:

“On the basis of the foregoing statement of facts and legal grounds, the Republic of Cameroon, while reserving for itself the right to complement, amend or modify the present Application in the course of the proceedings and to submit to the Court a request for the indication of provisional measures should they prove to be necessary, asks the Court to adjudge and declare:

(a) that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*);

(c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;

(d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian Peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;

(e) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian Peninsula of Bakassi;

(e’) that the internationally unlawful acts referred to under (a), (b), (c), (d) and (e) above involve the responsibility of the Federal Republic of Nigeria;

(e’’) that consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria.

(f) In order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions”.

On 6 June 1994, Cameroon filed an Additional Application “for the purpose of extending the subject of the dispute” to a further dispute, described in that Additional Application as “relat[ing] essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad”.

In that Additional Application, it is indicated that “Cameroon’s title to [that part of the territory] is contested by . . . Nigeria”; and that

“that contestation initially took the form of a massive introduction of Nigerian nationals into the disputed area, followed by an introduction of Nigerian security forces, effected prior to the official statement of its claim by the Government of the Federal Republic of Nigeria quite recently, for the first time”.

In its Additional Application, Cameroon also requested the Court “to specify definitively” the frontier between the two States from Lake Chad to the sea, and asked it to join the two Applications and “to examine the whole in a single case”.

At the close of its Additional Application, Cameroon presented the following submissions:

“On the basis of the foregoing statement of facts and legal grounds, and subject to the reservations expressed in paragraph 20 of its Application of 29 March 1994, the Republic of Cameroon asks the Court to adjudge and declare:

(a) that sovereignty over the disputed parcel in the area of Lake Chad is Cameroonian, by virtue of international law, and that that parcel is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*), and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

(c) that the Federal Republic of Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, has violated and is violating its obligations under treaty law and customary law;

(d) that in view of these legal obligations, mentioned above, the Federal Republic of Nigeria has the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad;

(e) that the internationally unlawful acts referred to under (a), (b), (c) and (d) above involve the responsibility of the Federal Republic of Nigeria;

(e') that consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria;

(f) that 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 the Federal Republic of Nigeria in regard to the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea".

The Court recalls that at a meeting which the President of the Court held with the representatives of the Parties on 14 June 1994, the Agent of Nigeria stated that he had no objection to the Additional Application being treated, in accordance with the wish expressed by Cameroon, as an amendment to the initial Application, so that the Court could deal with the whole in a single case; and that by an Order dated 16 June 1994 the Court indicated that it had no objection itself to such a procedure.

It further refers to the fact that Cameroon filed its Memorial on the merits and that Nigeria filed certain preliminary objections to the jurisdiction of the Court and the admissibility of the claims of Cameroon.

The Order then recounts that on 12 February 1996 the Agent of Cameroon, referring to the "grave incidents which have taken place between the . . . forces [of the two Parties] in the Bakassi Peninsula since . . . 3 February 1996", communicated to the Court a request for the indication of provisional measures based on Article 41 of the Statute and on Article 73 of the Rules of Court, at the close of which Cameroon asked the Court to indicate the following measures:

- “1. the armed forces of the Parties shall withdraw to the position they were occupying before the Nigerian armed attack of 3 February 1996;
2. the Parties shall abstain from all military activity along the entire boundary until the judgment of the Court takes place;
3. the Parties shall abstain from any act or action which might hamper the gathering of evidence in the present case”.

The Court then refers to a communication of 16 February 1996 by the Agent of Nigeria entitled "Cameroonian Government forces Nigerians to register and vote in municipal elections", which concluded in the following terms:

“The Nigerian Government hereby invites the International Court of Justice to note this protest and call the Government of Cameroon to order.

. . . [T]he Government of Cameroon should be warned to desist from further harassment of Nigerian citizens in the Bakassi Peninsula until the final determination of the case pending at the International Court of Justice.”

The Court finally recalls that hearings were held on 5, 6 and 8 March 1996.

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The Court begins by considering that the two Parties have each made a declaration recognizing the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute neither of which includes any reservation and that those declarations constitute a *prima facie* basis upon which the Court's jurisdiction in the present case might be founded. The Court further considers that the consolidated Application of Cameroon does not appear *prima facie* to be inadmissible in the light of the preliminary objections raised by Nigeria.

The Court goes on to observe that the power conferred upon it by Article 41 of the Statute of the Court and Article 73 of the Rules of Court to indicate provisional measures has as its object to preserve the respective rights of the Parties, pending a decision of the Court, and presupposes that irreparable prejudice shall not be caused to rights which are the subject of dispute in judicial proceedings; that it follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent; and that such measures are only justified if there is urgency.

The Court finds that the mediation conducted by the President of the Republic of Togo and the ensuing communiqué announcing the cessation of all hostilities published on 17 February 1996 do not deprive the Court of the rights and duties pertaining to it in the case brought before it. It is clear from the submissions of both Parties to the Court that there were military incidents and that they caused suffering and occasioned fatalities—of both military and civilian personnel—while causing others to be wounded or unaccounted for, as well as causing major material damage. The rights at issue in these proceedings are sovereign rights which the Parties claim over territory, and these rights also concern persons; and armed actions have regrettably occurred on territory which is the subject of proceedings before the Court.

Independently of the requests for the indication of provisional measures submitted by the Parties to preserve specific rights, the Court possesses by virtue of Article 41 of the Statute the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that circumstances so require.

The Court finds that the events that have given rise to the request, and more especially the killing of persons, have caused irreparable damage to the rights that the Parties may have over the Peninsula; that persons in the disputed area and, as a consequence, the rights of the Parties within that area are exposed to serious risk of further irreparable damage; and that armed actions within the territory in dispute could jeopardize the existence of evidence relevant to the present case. From the elements of information available to it, the Court takes the view that there is a risk that events likely to aggravate or extend the dispute may occur again, thus rendering any settlement of that dispute more difficult.

The Court here observes that, in the context of the proceedings concerning the indication of provisional measures, it cannot make definitive findings of fact or of imputability, and that the right of each Party to dispute the facts alleged against it, to challenge the attribution to it of responsibility for those facts, and to submit arguments, if appropriate, in respect of the merits must remain unaffected by the Court's decision.

The Court then draws attention to the fact that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case, or any questions relating to the admissibility of the Application or relating to the merits themselves, and leaves unaffected the right of the Governments of Cameroon and Nigeria to submit arguments in respect of those questions.

After mentioning letters of the President of the Security Council, dated 29 February 1996, which call upon the two Parties:

“to respect the cease-fire they agreed to on 17 February in Kara, Togo, . . . to refrain from further violence . . . [and] and to take necessary steps to return their forces to the positions they occupied before the dispute was referred to the International Court [of Justice]”,

and also the proposal of the Secretary-General of the United Nations to dispatch a fact-finding mission into the Bakassi Peninsula, the Court indicates the provisional measures cited above.

#### *Declaration of Judge Oda*

In his declaration, Judge Oda points out, first, that in his view the date given in the passage reading “the presence of any armed forces in the Bakassi Peninsula does not extend beyond the position in which they were situated prior to 3 February 1996” should have been 29 March 1994, that is, the date on which Cameroon filed the Application instituting proceedings in this case and the date which seems to be indicated in the mediation proposed by the President of Togo.

Secondly, he signals his concern about the use of the term “irreparable damage” in paragraph 42 of the Order in view of the fact that the damage the Court finds to have been caused may not concern the real subject of the case, while, in addition, the Court has not been able to form any clear and precise idea of events.

#### *Declaration of Judge Shahabuddeen*

In his declaration, Judge Shahabuddeen affirmed that the Court’s Order should help to maintain friendly relations between two fraternal and neighbouring countries. He had voted for four of the five elements of the *dispositif*, but did not think that there was a satisfactory juridical basis for the remaining element. It was essential that a provisional measure limiting the movement of troops should incorporate a clear physical benchmark with reference to which it could be determined whether the limitation was observed. In this case, the evidence did not permit the Court to specify such a benchmark. This being so, the particular provisional measure could lead to new dispute, instead of serving the intended purpose of avoiding conflict.

#### *Declaration of Judge Ranjeva*

Judge Ranjeva, in his declaration appended to the Order, points to the development of a new “given” in international judicial relations, i.e., the appearance of a step in the procedure consisting of a request for the indication of provisional measures on account of the occurrence of an armed conflict grafted on to a legal dispute. In that hypothesis, and when the circumstances of the case so require (exposure of the rights of the Parties to a risk of irreparable damage, urgency . . .), the Court may indicate measures of a

military character, according to a jurisprudence already defined in the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*. When ordering those provisional measures, the Court is not acting as an authority invested with any general police power but as the principal judicial organ participating in the objectives of the maintenance of international peace and security which come within the remit of the United Nations.

#### *Declaration of Judge Koroma*

In his declaration, Judge Koroma pointed out that he had voted in favour of the Order on the clear understanding that it does not prejudice the issues before the Court, but rather aims to preserve the respective rights of either Party.

He was of the view that, on the basis of the material before the Court, the possibility of a further military engagement between the armed forces of both countries, resulting in irreparable damage including further loss of human life, of itself provides the Court with sufficient reason to grant the Order.

It is hoped that the Order will discourage either Party from taking any measures which might cause irreparable damage to the millions of each of the Parties’ nationals residing in the other’s territory, and will help reduce tension between the two States and restore the fraternal relations which have always existed between the two countries, pending the decision of the Court.

#### *Joint declaration of Judges Weeramantry, Shi and Vereshchetin*

Judges Weeramantry, Shi and Vereshchetin voted with the majority of the Court in regard to items 1, 2, 4 and 5 in the *dispositif*, but were unable to support the majority of the Court in relation to item 3.

The reason for their inability to support this clause was that the Parties had given the Court two entirely different versions in regard to the incidents of 3 February 1996. These different versions involve entirely different positions in regard to the location of their respective armed forces on that date.

The Court Order, requiring the Parties to ensure that the presence of any armed forces in the Bakassi Peninsula should not extend beyond the positions in which they were situated prior to 3 February 1996, in effect leaves it to each Party to determine what that position was and to act upon that determination. These positions may well be contradictory, thus leaving open the possibility of confusion upon the ground. The Order may thus be interpreted as containing an internal contradiction.

For these reasons, these Judges were unable to support item 3 of the *dispositif*.

#### *Declaration of Judge Mbaye*

Having stressed the “striking similarities” between the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*, *Provisional Measures*, and the present proceedings relating to the request for the indication of provisional measures (case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*), Judge Mbaye, while accepting that cases are rarely identical, welcomed the fact that the Court had consolidated the jurisprudence of the Chamber in the former of the above-mentioned cases, by indicating that “both Parties should ensure that the pres-

ence of any armed forces in the Bakassi Peninsula does not extend beyond the positions in which they were situated prior to 3 February 1996". He considers that this provision, taken together with the indication in the Order that the Parties "should ensure that no action of any kind . . . is taken . . . which might aggravate or extend the dispute" or impede the collection of evidence, constitutes a set of indications indispensable in the case of events of the same kind as those forming the basis of the present request for the indication of provisional measures.

*Separate opinion of Judge Ajibola*

I voted along with the other Members of the Court with regard to the first of the provisional measures indicated in this Order because I believe that such a measure, which accords with the Statute and Rules of Court (Article 41 of the Statute of the Court and Article 75 (2) of the Rules), is also in

consonance with the jurisprudence of the Court. The Court on similar matters likewise involving armed incidents has not in the recent past hesitated to indicate such provisional measures, as can be seen in such cases as *United States of America v. Nicaragua*, *Frontier Dispute (Burkina Faso/ Republic of Mali)* and the *Bosnia* case relating to the Genocide Convention. The Order is in line with many of the Court's recent indications that both parties should avoid any acts or actions that might aggravate or extend the dispute. The Court has the power and duty to so indicate.

However, I regret to say that I am unable to vote with the rest of the Members of the Court on the remaining provisional measures which the Court has indicated because they are unnecessary, non-legal and "counter-productive". It is my belief that it is not the duty of the Court to indicate such measures when it has referred to the circumstances in the recital which, in my view, is enough.