

International Court of Justice Upholds its Jurisdiction in Case Brought by Cameroon Against Nigeria

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On June 11, 1998, the International Court of Justice (ICJ) ruled that it has jurisdiction in the case brought by Cameroon against Nigeria in 1994. The Court, which is the principal judicial organ of the United Nations entrusted with settling legal disputes between sovereign states, will proceed to consider Cameroon's Application of March 29, 1994, as amended on June 6, 1994, requesting the Court to determine the question of sovereignty over the Bakassi Peninsula (occupied by Nigerian armed forces) and over islands in Lake Chad, and to specify the course of the land and maritime boundary between Cameroon and Nigeria. The Court consists of 15 judges elected to nine-year terms by the UN General Assembly and Security Council, together with two judges ad hoc appointed especially for the duration of the case by Cameroon and Nigeria.

As the basis of the Court's jurisdiction, Cameroon has relied on the declarations made by the two parties accepting the Court's compulsory jurisdiction under Article 36(2) of the ICJ Statute. That provision, known as the "Optional Clause," provides that the states parties to the ICJ Statute (currently all the 185 UN member states and Nauru and Switzerland) may at any time declare that they recognize as compulsory, without special agreement, in relation to any other state accepting the same obligation, the Court's jurisdiction in all legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, or the nature or extent of the reparation to be made for the breach of an international obligation.

On December 13, 1995, Nigeria filed eight "preliminary objections" challenging the Court's jurisdiction and the admissibility of Cameroon's Application. Under the Rules of Court, the filing of preliminary objections (comparable to a motion to dismiss a case) results in the automatic suspension of the main proceedings and the Court must rule on such objections by way of a judgment before the case can proceed.

By 14 votes to 3, the Court rejected Nigeria's first objection that the Court has no jurisdiction to entertain Cameroon's Application. According to the Court, Cameroon did not violate the principle of good faith by not informing Nigeria of its intention and decision to bring a case against Nigeria: by the deposit of Cameroon's declaration of acceptance of the Court's compulsory jurisdiction with the UN Secretary-General on March 3, 1994, Cameroon became a party to the system of the Optional Clause in relation to Nigeria, which deposited its declaration in 1965, and no further condition needed to be fulfilled. The Court

pointed out that the notion of reciprocity, which lies at the core of the Optional Clause system, is concerned with the scope and substance of the commitments entered into (including reservations), and not with the formal conditions of their creation, duration or extinction. Reciprocity is not affected if a declaration is received by other states many months after its formal deposit with the UN Secretary-General.

By 16 votes to 1, the Court rejected Nigeria's second objection that for many years prior to the filing of the Application, Cameroon and Nigeria had in their regular dealings accepted a duty to settle all boundary questions exclusively through the existing bilateral machinery. The Court pointed out that the fact that Cameroon and Nigeria had attempted to solve some of their boundary disputes through bilateral negotiations does not imply that either one had excluded the possibility of bringing any boundary dispute before the ICJ. There is no rule of international law that requires the exhaustion of diplomatic negotiations prior to seizing the Court.

By 15 votes to 2, the Court rejected Nigeria's third objection that the settlement of boundary disputes within the Lake Chad region is subject to the exclusive competence of the Lake Chad Basin Commission. The Court found that this commission is not a judicial body with exclusive authority to rule on the territorial dispute between Cameroon and Nigeria; it is an international organization exercising its powers within a specific geographical area. Its purpose is not to settle regional matters relating to the maintenance of international peace and security under Chapter VIII of the UN Charter. In any event, the existence of procedures for regional negotiation cannot prevent the Court from exercising the functions conferred upon it by the UN Charter and the ICJ Statute.

By 13 votes to 4, the Court rejected Nigeria's fourth objection that the Court should not in these proceedings determine the boundary in Lake Chad to the extent that that boundary constitutes or is constituted by the tripoint in Lake Chad where the frontiers of Cameroon, Chad and Nigeria meet, because it directly affects the Republic of Chad, a third party. The Court found that the legal interests of Chad as a non-party do not rise to the level of constituting "the very subject-matter" of the judgment to be rendered on the merits of Cameroon's Application necessary to prevent the Court from ruling on the dispute. In the Court's view, Cameroon's request to specify the Cameroon-Nigeria frontier from Lake Chad to the sea does not imply that the tripoint could be moved away from the line constituting the Cameroon-Chad boundary.

By 13 votes to 4, the Court rejected Nigeria's fifth objection that there is no dispute concerning boundary delimitation as such throughout the whole length of the boundary from the tripoint in Lake Chad to the sea, subject, within Lake Chad, to the question of the title over Darak and adjacent islands, and without prejudice to the title over the Bakassi Peninsula. Although the Court acknowledged that it cannot be said that the disputes over Darak and the Bakassi Peninsula in themselves concern so large a portion of the 1,000-mile boundary that they would necessarily constitute a dispute concerning the entire boundary, it noted that Nigeria has constantly been reserved in the manner in which it has presented its own position on the matter. Because of Nigeria's position, the exact

scope of the dispute cannot be determined at present, but there does exist a dispute at least as regards the legal bases of the boundary.

By 15 votes to 2, the Court rejected Nigeria's sixth objection that there is no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions, because the material submitted by Cameroon is insufficient in order to enable it to defend itself and to enable the Court to make a fair judicial determination of the legal issues before it. The Court concluded that Cameroon's Application is admissible: it satisfies the Rules of Court by containing a sufficiently precise and succinct statement of the facts and grounds on which Cameroon bases its claim, which it has some latitude in expanding subsequently.

By 12 votes to 5, the Court rejected Nigeria's seventh objection that there is no legal dispute concerning delimitation of the maritime boundary between Cameroon and Nigeria which is at the present time appropriate for resolution by the Court, because no maritime boundary determination is possible prior to the determination of title over the Bakassi Peninsula and, in any event, bilateral negotiations to effect a delimitation by agreement have not taken place. The Court pointed out that it is within its discretion to arrange the order in which it will address those issues, so that it can determine the title over the Bakassi Peninsula and the maritime boundary delimitation successively. Moreover, the parties' Optional Clause declarations do not contain any condition relating to prior negotiations to be conducted within a reasonable time period.

Finally, by 12 votes to 5, the Court declared that Nigeria's eighth objection does not have, in the circumstances of the case, an exclusively preliminary character. According to that objection, the question of maritime delimitation necessarily involves, beyond a point that is some 17 nautical miles from the coast, the rights and interests of third states, and that Cameroon's Application is to that extent inadmissible. Although the Court acknowledged that it appears that rights and interests of third states (in particular Equatorial Guinea and Sao Tome and Principe) will become involved if the Court accedes to Cameroon's request, it found that Nigeria's objection does not possess an exclusively preliminary character because the Court would of necessity have to deal with the merits of Cameroon's request in order to determine whether the rights and interests of third states would indeed be affected by its judgment. In such circumstances, the Rules of Court provide that the objection be settled during the proceedings on the merits, where it might have to be upheld at least in part.

The Court will fix a new time limit for the submission of a Counter-Memorial by Nigeria in response to Cameroon's Memorial setting forth its claims. The Court's preliminary ruling leaves unaffected any defenses on the merits that Nigeria may wish to advance in the subsequent written proceedings and hearings on the merits of the case. The full decision may be found on the Internet at: <http://www.icj-cij.org/>