

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

DEMANDE EN INTERPRÉTATION
DE L'ARRÊT DU 11 JUIN 1998 EN L'AFFAIRE
DE LA *FRONTIÈRE TERRESTRE ET MARITIME*
ENTRE LE CAMEROUN ET LE NIGÉRIA
(*CAMEROUN c. NIGÉRIA*),
EXCEPTIONS PRÉLIMINAIRES
(NIGÉRIA c. CAMEROUN)

ARRÊT DU 25 MARS 1999

1999

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

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

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25 MARCH 1999

JUDGMENT

INTERNATIONAL COURT OF JUSTICE

YEAR 1999

25 March 1999

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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)

Article 60 of the Statute — Jurisdiction of the Court to entertain a request for interpretation of a judgment on preliminary objections — Request can relate only to the operative part of the judgment and to reasons inseparable therefrom.

Admissibility of the request for interpretation:

Need to avoid impairing the finality of the judgment to be interpreted or delaying implementation thereof — Primacy of the principle of res judicata.

Judgment of 11 June 1998 — Rejection of Nigeria's sixth preliminary objection — Question of the conditions for 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 — Principle that the freedom to present additional facts and legal considerations not included in the application is subject to the limitation that the dispute must not be transformed — Finding that Cameroon had not so transformed the dispute — Additional "incidents" and additional "facts" — Principle of audi alteram partem.

Submissions of the request already considered and rejected in the Judgment of 11 June 1998 — Submissions seeking to remove from the Court's consideration elements of fact and law the presentation of which has already been authorized by that Judgment, or which have not yet been put forward.

Costs — Articles 64 of the Statute and 97 of the Rules — General rule that each party shall bear its own costs.

JUDGMENT

Present: President SCHWEBEL; *Vice-President* WEERAMANTRY; *Judges* ODA, BEDJAOUI, GUILLAUME, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOLMANS; *Judges ad hoc* MBAYE, AJIBOLA; *Registrar* VALENCIA-OSPINA.

In the case concerning the request for interpretation of the Judgment of 11 June 1998,

between

the Federal Republic of Nigeria,

represented by

H.E. Mr. Alhaji Abdullahi Ibrahim, SAN, OFR, Honourable Attorney-General of the Federation and Minister of Justice,
as Agent,

and

the Republic of Cameroon,

represented by

H.E. Mr. Laurent Eso, Minister of Justice, Keeper of the Seals,
as Agent;

Mr. Maurice Kamto, Professor at the University of Yaoundé II, Member of the Paris Bar,

Mr. Peter Ntamark, Professor of Law at the Faculty of Laws and Political Science, University of Yaoundé II, Barrister-at-Law, member of the Inner Temple,

as Co-Agents;

Mr. Alain Pellet, Professor at the University of Paris X-Nanterre and at the Institut d'études politiques, Paris,

as Deputy-Agent,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 28 October 1998, the Government of the Federal Republic of Nigeria (hereinafter called "Nigeria") filed in the Registry of the Court an Application instituting proceedings dated 21 October 1998, 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*.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was forthwith communicated to the Government of the Republic of Cameroon (hereinafter called "Cameroon") by the Deputy-Registrar. At the same time, the Parties were informed that the senior judge, acting pursuant to Articles 13, paragraph 3, and 98, paragraph 3, of the Rules of Court, had fixed 3 December 1998 as the time-limit for Cameroon to submit its written observations on Nigeria's request for interpretation.

3. Pursuant to Article 40, paragraph 3, of the Statute, all States entitled to appear before the Court were informed of the Application.

4. On 13 November 1998, within the time-limit fixed, the Government of Cameroon filed in the Registry its written observations on the Nigerian request.

5. In 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.

6. Since the Court included upon the Bench no judge of the nationality of the Parties, each of them availed itself of the right conferred by Article 31, paragraph 3, of the Statute to proceed to choose a judge *ad hoc* to sit in the case: Nigeria chose Mr. Bola Ajibola and Cameroon Mr. Kéba Mbaye.

*

7. In the course of the proceedings 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.”

* * *

8. The Court will first address 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 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”. Cameroon is also said to have “made allegations involving a number of such incidents in its Application of 29 March 1994, its Additional Application of 6 June 1994, its Observations of 30 April 1996 . . . and during the oral hearings held from 2 to 11 March 1998”. According to Nigeria, Cameroon had “also said that [it] would be able to provide information as to other incidents on some unspecified future occasion”. 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”. Cameroon, it is said, is entitled in this case to submit, in due course, only “additional facts in amplification of incidents previously adverted to”; it was not entitled to submit “entirely new and discrete incidents which are made the subject of new claims of responsibility”. 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”.

9. For its part, Cameroon recalls in its written observations on Nigeria’s request for interpretation that, in its Judgment of 11 June 1998, the Court rejected seven of the preliminary objections of lack of jurisdiction and inadmissibility raised by Nigeria and stated that, in the circumstances of the case, the eighth objection was not of an exclusively preliminary character; in that Judgment, the Court further recognized that it had jurisdiction to adjudicate upon the dispute and found that the Application filed by the Republic of Cameroon on 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”.

*

10. 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.” This provision is supplemented by Article 98 of the Rules of Court, paragraph 1 of which provides: “In the event of dispute as to the meaning or scope of a judgment any party may make a request for its interpretation . . .”

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 in so far as these are inseparable from the operative part.

11. 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". In its Judgment of 11 June, the Court summarized Nigeria's position on this point:

"Nigeria contends that the submissions of Cameroon do not meet the standards required by Article 38 of the Rules of Court and general principles of law regarding the adequate presentation of facts . . . [W]hat Cameroon has presented to the Court does not give Nigeria the knowledge which it needs . . . Similarly, in Nigeria's view, the material submitted is so sparse that it does not enable the Court to carry out fair and effective judicial determination . . . While Nigeria acknowledge[d] that a State has some latitude in expanding later what it ha[d] said in its Application and in its Memorial, Cameroon [was] said to be essentially restricted in its elaboration to the case as presented in its Application." (*I.C.J. Reports 1998*, p. 317, para. 96.)

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 (*ibid.*, p. 318, para. 99). 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.

* *

12. The Court will now examine the admissibility of the request of Nigeria. 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". Thereafter, the Article provides that in the case of a "dispute as to the meaning or scope of the judgment", it shall be construed by the Court upon the request of any party. The language and structure of Article 60 reflect the primacy of the principle of *res judicata*. That principle must be maintained. The Court adheres to what it has previously held, namely that

"[t]he real purpose of the request must be to obtain an interpretation of the judgment. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided. Any other construction of Article 60 of the Statute

would nullify the provision of the article that the judgment is final and without appeal.” (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case, Judgment, I.C.J. Reports 1950*, p. 402.)

In its Judgment on the *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*Tunisia v. Libyan Arab Jamahiriya*), the Court similarly held that

“[i]t is however a condition of admissibility of a request for interpretation . . . that the real purpose of the request be to obtain an interpretation — a clarification of that meaning and scope (*I.C.J. Reports 1985*, p. 223, para. 56)”.

13. In the present case, the Court would initially recall what were Cameroon’s submissions with regard to the alleged frontier incidents in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*. In its Application as amended by its Additional Application, Cameroon 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.

In its Memorial of 16 March 1995, Cameroon developed these submissions by emphasizing that, as a result of the “internationally unlawful acts” set out in pages 561 to 648 of the Memorial, Nigeria had incurred international responsibility. This document dealt not only with incidents in the Bakassi and Lake Chad regions, but also with those in other frontier areas and in particular at Tipsan. Then, in its observations of 30 April 1996, Cameroon confirmed its previous submissions and in Annex I to those observations listed incidents relating to 42 localities situated along the length of the frontier. Some of the incidents mentioned in Cameroon’s Memorial and observations had occurred after the date of the Additional Application.

14. To these submissions, Nigeria raised its sixth objection to admissibility. It argued that Cameroon’s initial Application as amended restricted itself to vague allegations as to “the dates, circumstances and precise locations of the alleged incursions and incidents”. It added that this Application “made no claim as to Nigeria’s international responsibility in relation to acts occurring outside Bakassi and Lake Chad”. It considered that Cameroon must “essentially confine itself to the facts . . . presented in its Application”. From this it 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.

15. By its Judgment of 11 June 1998, the Court rejected Nigeria's sixth preliminary objection. The Court 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" (*I.C.J. Reports 1998*, p. 318, para. 98). The Court added that the term "succinct" used in Article 38, paragraph 2, of the Rules ("[the Application] shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based") 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 also found that the latitude of an applicant State, in developing what it has said in its application, is not strictly limited, as suggested by Nigeria. The Court underlined, *inter alia*, that that conclusion cannot be drawn from the Court's pronouncement on the importance of the point of time of the submission of the application as the critical date for the determination of its admissibility as "these pronouncements do not refer to the content of applications (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*), *Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 26, para. 44; and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, *Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 130, para. 43)" (*ibid.*, p. 318, para. 99). The Court wishes to reiterate 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. The Court indicated, in its Judgment of 11 June 1998, 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. Whether that is the case ultimately has to be decided by the Court in each individual case in which the question arises. 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" (*ibid.*, p. 319, para. 100) and that Cameroon's Application met the requirements of Article 38 of the Rules. 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*.

16. 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 presented by Nigeria at the end of its request for interpretation, namely that:

“(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”.

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, namely that:

“(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 that:

“(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”,

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.

* *

17. In view of the conclusions it has reached above, there is no need for the Court 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.

* *

18. In its written observations, Cameroon seeks not only to have the Court declare Nigeria’s request for interpretation inadmissible, it also requests that, in conformity with Article 97 of the Rules, Nigeria be charged with the additional costs caused to Cameroon by Nigeria’s request.

Article 64 of the Statute provides that “[u]nless otherwise decided by the Court, each party shall bear its own costs”. This provision is given effect by Article 97 of the Rules of Court. While anticipating the possi-

bility of exceptions, in circumstances which it does not specify, Article 64 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).

The Court sees no reason to depart in the present case from the general rule set forth in Article 64 of the Statute.

* * *

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.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-fifth day of March, one thousand nine hundred and ninety-nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Federal Republic of Nigeria and the Government of the Republic of Cameroon respectively.

(*Signed*) Stephen M. SCHWEBEL,
President.

(*Signed*) Eduardo VALENCIA-OSPINA,
Registrar.

Vice-President WEERAMANTRY, Judge KOROMA, and Judge *ad hoc* AJIBOLA append dissenting opinions to the Judgment of the Court.

(Initialed) S.M.S.

(Initialed) E.V.O.
