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CASE CONCERNING THE LAND AND MARITIME BOUNDARY
 BETWEEN CAMEROON AND NIGERIA

(CAMEROON *v.* NIGERIA)¹

International Court of Justice

Preliminary Objections. 11 June 1998

(Schwebel, *President*; Weeramantry, *Vice-President*; Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans and Rezek, *Judges*; Mbaye² and Ajibola,³ *Judges ad hoc*)

Request for Interpretation of Judgment. 25 March 1999

(Schwebel, *President*; Weeramantry, *Vice-President*; Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren and Kooijmans, *Judges*; Mbaye and Ajibola, *Judges ad hoc*)

¹ For lists of counsel, see para. 15 of the Judgment on Preliminary Objections and para. 24 of the Judgment on the Merits. Summary prepared by Ms Karen Lee.
² Judge ad hoc designated by Cameroon. ³ Judge ad hoc designated by Nigeria.

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141 ILR 1*Application for Permission to Intervene.* 21 October 1999(Schwebel, *President*; Weeramantry, *Vice-President*; Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans and Rezek, *Judges*; Mbaye and Ajibola, *Judges ad hoc*)*Merits.* 10 October 2002(Guillaume, *President*; Shi, *Vice-President*; Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal and Elaraby, *Judges*; Mbaye and Ajibola, *Judges ad hoc*)

SUMMARY: *The facts*:—Cameroon and Nigeria, States on the west coast of Africa with adjacent coastlines, shared a land boundary extending from Lake Chad in the north to the Bakassi Peninsula, in the Gulf of Guinea, in the south. The Gulf of Guinea was bounded by other States, in particular by Equatorial Guinea, whose Bioko Island lay opposite the Parties' coastlines. While the delimitation of the Parties' maritime boundary was a more recent issue, the land boundary dispute could be charted from the nineteenth and early twentieth centuries when European Powers acted to partition Africa, through to changes under the League of Nations mandate system, United Nations trusteeships and independence.

On 29 March 1994, Cameroon filed an Application relating to a dispute between itself and Nigeria regarding title to territory in the Bakassi Peninsula. The Application accused Nigeria of acts of aggression and alleged that, since 1993, Nigerian forces had occupied territory belonging to Cameroon. The Application also asked the Court to determine the maritime boundary between Cameroon and Nigeria in those areas in which it had not already been agreed. The Application invoked, as the basis for jurisdiction in the case, the declarations made by the two States under Article 36(2) of the Statute of the Court. Cameroon subsequently lodged an Additional Application regarding territory in the area of Lake Chad. The Parties agreed to treat the two Applications as a single case.⁴ Nigeria raised preliminary objections to the jurisdiction of the Court and the admissibility of the Applications.

On 15 March 1996, the Court indicated provisional measures of protection (106 ILR 144) at the request of Cameroon after armed clashes in the Bakassi Peninsula between the armed forces of Cameroon and Nigeria on 3 February 1996.

⁴ The requests made by Cameroon in the Application and Additional Application are set out at paras. 16 and 17 of the Judgment on Preliminary Objections.

Details of the principal instruments relevant for the Court in determining the land and maritime boundary between the Parties can be found at paras. 32-8 of the Judgment on the Merits.

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Excerpt[More information](#)*Judgment on Preliminary Objections (11 June 1998)*

Nigeria raised eight preliminary objections. In its first objection Nigeria contended that the Court had no jurisdiction to entertain Cameroon's Application. Nigeria argued that it had no way of knowing that Cameroon had deposited a Declaration accepting the Court's compulsory jurisdiction when the Application was filed; that there was an absence of reciprocity. It claimed that Cameroon had acted prematurely and improperly. Cameroon contended that its Application fulfilled the Statute's requirements.

In its second objection Nigeria stated that the Parties had implicitly agreed to settle all boundary disputes through the existing bilateral machinery,⁵ not to resort to the Court. In the alternative, Nigeria claimed that Cameroon by its conduct was estopped from turning to the Court. Nigeria also invoked the principle of good faith and the *pacta sunt servanda* rule. Cameroon maintained that the bilateral bodies were temporary and that there was no agreement between the Parties, explicit or implicit, vesting them with exclusive jurisdiction. Cameroon denied the applicability of estoppel, the principle of good faith and the *pacta sunt servanda* rule.

In its third objection Nigeria contended that the settlement of boundary disputes within the Lake Chad region was subject to the exclusive competence of the Lake Chad Basin Commission ("LCBC").⁶ Cameroon submitted that no provision of the LCBC's Statute established exclusivity in relation to boundary delimitation. Neither could exclusivity be inferred from the conduct of Member States.

In its fourth objection Nigeria contended that the Court should not determine the boundary in Lake Chad to the extent that the boundary constituted or was constituted by the tripoint⁷ in the Lake. It argued that this tripoint could not be determined by the Court because it affected a third State, the Republic of Chad. Cameroon claimed that the Court had to exercise its jurisdiction over the totality of the disputed boundary.

In its fifth objection Nigeria contended that there was 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. For Cameroon, its existing boundary with Nigeria was precisely delimited by the former colonial powers and by decisions of the League of Nations and acts of the United Nations.

⁵ The negotiations between the Parties concerning the delimitation or the demarcation of the boundary, active from 1970 to 1975 and then interrupted until 1991, were carried out in various frameworks and at various levels: Heads of State, Foreign Ministers and experts.

⁶ The Statute of the Lake Chad Basin Commission was annexed to the Convention concerning the Development of the Lake Chad Basin, signed on 22 May 1964, by Cameroon, Chad, Niger and Nigeria. One of the Commission's responsibilities under Article IX(g) was "to examine complaints and to promote the settlement of disputes and the resolution of differences". For further details, see paras. 64-5 of the Judgment on Preliminary Objections.

⁷ The tripoint was the point where the frontiers of Cameroon, Chad and Nigeria met.

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These delimitations were confirmed or completed by agreements made directly between Cameroon and Nigeria after their independence. Cameroon asserted that, since Nigeria claimed title to the Bakassi Peninsula, Darak and adjacent islands, it contested the validity of those legal instruments and thus called into question the entire boundary which was based on them.

In its sixth objection Nigeria contended that there was no basis for a judicial determination that it bore international responsibility for alleged frontier incursions. Nigeria claimed that Cameroon's submissions did not adequately present the facts in accordance with the Court Rules and general principles of law. Cameroon claimed to have clearly stated that the facts were indicative and could be amplified on the merits.

In its seventh objection Nigeria contended that there was no legal dispute concerning delimitation of the maritime boundary between the two Parties at the present time appropriate for resolution by the Court. Nigeria claimed that title to the Bakassi Peninsula had to be determined first and then the Court could not properly be seised by the unilateral application of Cameroon since there were insufficient prior negotiations with regard to the maritime boundary beyond point G as prescribed by Articles 74(2) and 83(2) of the United Nations Convention on the Law of the Sea, 1982. Cameroon asserted that the Court had discretion on how to address the merits and proceedings could be instituted without negotiations, which had occurred in any event.

In its eighth objection Nigeria contended that the question of maritime delimitation necessarily involved the rights and interests of third States and was to that extent inadmissible. Cameroon asserted that the maritime delimitation that it requested only concerned the Parties to the present dispute and that the interests of other States were preserved.

Held (by fourteen votes to three, Vice-President Weeramantry, Judge Koroma and Judge ad hoc Ajibola dissenting):—The Court had jurisdiction to adjudicate on the merits of the dispute on the basis of Article 36(2) of the Statute. The Application, as amended by the Additional Application, was admissible.

(1) (by fourteen votes to three, Vice-President Weeramantry, Judge Koroma and Judge ad hoc Ajibola dissenting) The first preliminary objection was rejected. The Court had jurisdiction to entertain Cameroon's Application.

(a) In making a declaration of acceptance, a State Party was deemed to accept the jurisdiction of the Court in its relations with States that would deposit declarations in the future, as well as with those States already party to the Optional Clause. As soon as a declaration of acceptance was deposited, the consensual bond was established. No further condition needed to be fulfilled.⁸ The Vienna Convention on the Law of Treaties had also adopted this general rule of the Court confirmed in subsequent case law (paras. 21-35).

⁸ *Case Concerning Right of Passage over Indian Territory (Portugal v. India)* (Preliminary Objections), Judgment of 26 November 1957, 24 ILR 840 ("Right of Passage case").

(b) The good faith international law principle, although basic and well established, was not a source of obligation where none would otherwise exist. Cameroon was not bound to inform Nigeria that it intended or had subscribed to the Optional Clause nor that it intended to bring proceedings before the Court. In any event, Nigeria was not unaware of Cameroon's intentions (paras. 36-40).

(c) Cameroon's Application was not filed in a manner contrary to Article 36 of the Statute. It was not made in violation of a right which Nigeria might claim under the Statute, or by virtue of its Declaration, as it was in force on the date of filing of Cameroon's Application. The principle of reciprocity was not affected by any delay in the receipt of copies of the Declaration by the Parties to the Statute (paras. 41-7).

(2) (by sixteen votes to one, Judge Koroma dissenting) The second preliminary objection was rejected. The Parties were not bound to settle all boundary disputes through the existing bilateral machinery.

(a) There was no precondition of exhaustion of diplomatic negotiations for a matter to be referred to the Court. No reservation had been included in the Declarations of Nigeria or Cameroon on the date of filing of the Application. In attempting to resolve some of the boundary issues bilaterally, there was no implication that either of the two States had excluded the possibility of bringing any boundary dispute before other fora, in particular the Court (paras. 48-56).

(b) Conditions for estoppel were not fulfilled. Cameroon did not attribute an exclusive character to negotiations with Nigeria. Neither had Nigeria changed position to its own detriment or suffered prejudice. Nigeria had not been prejudiced as a result of Cameroon instituting proceedings before the Court instead of pursuing negotiations. Nigeria could not rely on the principle of good faith and the *pacta sunt servanda* rule, which related only to the fulfilment of existing obligations (paras. 57-60).

(3) (by fifteen votes to two, Judge Koroma and Judge ad hoc Ajibola dissenting) The third preliminary objection was rejected. The settlement of boundary disputes within the Lake Chad region was not subject to the exclusive competence of the LCBC.

(a) From treaty texts and practice, the LCBC was an international organization exercising its powers within a specific geographical area. It did not fall under Chapter VIII of the United Nations Charter since it did not have as its purpose the settlement at a regional level of matters relating to the maintenance of international peace and security. In any event, procedures for regional negotiation could not prevent the Court from exercising its functions (paras. 61-8).

(b) The LCBC was not a tribunal. No provision of the Convention of 22 May 1964 ascribed exclusive jurisdiction to the LCBC regarding the settlement of boundary disputes. Neither had Cameroon accepted that the LCBC had jurisdiction to settle the present dispute. The Court need not decline to rule on the merits of Cameroon's Application for reason of judicial propriety (paras. 69-73).

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(4) (by thirteen votes to four, Judges Oda, Koroma and Parra-Aranguren and Judge ad hoc Ajibola dissenting) The fourth preliminary objection was rejected. The Court could determine the boundary in Lake Chad to the extent that the boundary constituted or was constituted by the tripoint in the Lake since the legal interests of Chad, as a third State not party to the case, did not constitute the very subject matter of the judgment to be rendered on the merits of Cameroon's Application (paras. 74-83).

(5) (by thirteen votes to four, Judges Oda, Koroma and Vereshchetin and Judge ad hoc Ajibola dissenting) The fifth preliminary objection was rejected. Although the exact scope of the dispute could not be determined at present due to Nigeria's position, a dispute nevertheless existed, at least as regarded the legal bases of the boundary. It was for the Court to pass upon this dispute.

(a) Disputes existed with respect to Darak and adjacent islands and the village of Tipsan. There was also a dispute regarding the Bakassi Peninsula, which might affect the maritime boundary between the two Parties. These disputes, however, did not concern so large a portion of the boundary as to constitute a dispute concerning the whole of the boundary necessarily (paras. 84-8).

(b) Although Nigeria had not explicitly challenged the whole of the boundary, a position could be inferred. Nigeria's challenge to the validity of existing titles to Bakassi, Darak and Tipsan did not necessarily call into question the validity of the instruments on which the course of the entire boundary was based thus proving the existence of a dispute concerning the whole boundary. Neither did boundary incidents by themselves establish a dispute as to the entire boundary (paras. 89-90).

(c) While stating that there was no dispute concerning boundary delimitation as such, Nigeria had not indicated its agreement with Cameroon on the course of that boundary or on its legal basis and had not informed the Court on its future position. As such the Court could not decline to examine Cameroon's submission, aimed at a definitive interpretation of its boundary with Nigeria from Lake Chad to the sea, on the ground that there was no dispute between the States (paras. 91-4).

(6) (by fifteen votes to two, Judge Koroma and Judge ad hoc Ajibola dissenting) The sixth preliminary objection was rejected. The Court could determine whether Nigeria bore international responsibility for alleged frontier incursions. Cameroon's Application was admissible since it fulfilled the conditions laid down in Article 38(2) of the Court Rules. It contained a sufficiently precise statement of the facts and grounds on which Cameroon based its claim (paras. 95-102).

(7) (by twelve votes to five, Judges Oda, Koroma, Higgins and Kooijmans and Judge ad hoc Ajibola dissenting) The seventh preliminary objection was rejected. There was a legal dispute concerning delimitation of the maritime boundary between the two Parties at the present time appropriate for resolution by the Court.

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(a) Since the determination of title over the Bakassi Peninsula, necessary to delimit the maritime boundary, was also before the Court, it was within the Court's discretion to order the issues appropriately (paras. 103-6).

(b) The Court had been seised on the basis of declarations made under Article 36(2) of the Court Statute, not on Part XV of the United Nations Convention on the Law of the Sea in pursuance of Article 36(1). Since those declarations did not contain any conditions on prior negotiations, Cameroon's claim was admissible (paras. 37-111).

(8) (by twelve votes to five, Judges Oda, Koroma, Higgins and Kooijmans and Judge ad hoc Ajibola dissenting) The eighth preliminary objection did not have an exclusively preliminary character in the circumstances of the case. The Court would have to deal with the merits of Cameroon's request in order to determine how the rights and interests of third States would be affected and whether it would be prevented from rendering judgment in the absence of those States (paras. 112-17).

Separate Opinion of Judge Oda: Cameroon's Application lacked precision and was inadequate. Cameroon could not bring unilaterally to the Court a case concerning simple demarcation of a boundary line either on land or at sea since it was not a legal dispute under Article 36(2) of the Court Statute. The only part of Cameroon's Application that was a legal dispute, over which the Court had jurisdiction, was related to actual incidents which took place as territorial and boundary disputes in the border lands between the two States. Nigeria might be responsible for violating international law by its alleged incursion into alleged Cameroonian territory and thus liable to pay reparation. The legitimacy of the boundary line claimed by Cameroon would thereby be determined at the merits phase. Apart from Nigeria's objection to the Court's jurisdiction, most objections concerning the border incidents and borderline of the territory were for the merits phase (pp. 83-97).

Separate Opinion of Judge Vereshchetin: Nigeria's fifth preliminary objection did not possess an exclusively preliminary character within the meaning of Article 79(7) of the Court Rules. Factually, the Parties' competing claims over territories situated in three sectors of their common boundary, Bakassi Peninsula, Darak and adjacent islands and Tipsan, together with sporadic incidents elsewhere on the boundary, did not justify the sweeping conclusion that a dispute had already manifestly arisen concerning the whole length of the boundary between the two States. This finding was also ill founded in point of law as the Court had not objectively determined that the legal basis of the whole of the boundary was challenged by one of the Parties (pp. 97-100).

Separate Opinion of Judge Higgins: There was no legal dispute concerning delimitation of the maritime boundary between the two Parties appropriate for resolution by the Court. The real issue regarding negotiation was whether a dispute existed at all over maritime delimitation. The Court had to satisfy itself that a dispute existed. That was a matter for objective determination.