

**CASE CONCERNING LAND AND MARITIME BOUNDARY BETWEEN
CAMEROON AND NIGERIA (CAMEROON v. NIGERIA) (PRELIMINARY
OBJECTIONS)**

Judgment of 11 June 1998

In its Judgment on preliminary objections filed by Nigeria in the case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), the Court found that it has jurisdiction to deal with the merits of the case brought before it by Cameroon. It also found that Cameroon's claims were admissible.

In an Application dated 29 March 1994, amended on 6 June 1994, Cameroon asked the Court to determine the question of sovereignty over the Bakassi Peninsula and over islands in Lake Chad, and to specify the course of the land and maritime boundary between itself and Nigeria. As a basis of the Court's jurisdiction, Cameroon referred to the declarations made by both States accepting its jurisdiction as compulsory (Article 36, paragraph 2, of the Statute of the Court).

On 13 December 1995 Nigeria raised eight preliminary objections challenging the jurisdiction of the Court and the admissibility of Cameroon's claims.

The Court was composed as follows: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer,

Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judges ad hoc Mbaye, Ajibola; Registrar Valencia-Ospina.

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The complete text of the operative paragraph of the Judgment reads as follows:

"118. For these reasons,

THE COURT,

(1) (a) by fourteen votes to three,

Rejects the first preliminary objection;

IN FAVOUR: President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Vice-President Weeramantry; Judge Koroma; Judge ad hoc Ajibola;

(b) by sixteen votes to one,

Continued on next page

Rejects the second preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judges ad hoc Mbaye, Ajibola;

AGAINST: Judge Koroma;

(c) by fifteen votes to two,

Rejects the third preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

(d) by thirteen votes to four,

Rejects the fourth preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma, Parra-Aranguren; Judge ad hoc Ajibola;

(e) by thirteen votes to four,

Rejects the fifth preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma, Vereshchetin; Judge ad hoc Ajibola;

(f) by fifteen votes to two,

Rejects the sixth preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

(g) by twelve votes to five,

Rejects the seventh preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Parra-Aranguren, Rezek; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma, Higgins, Kooijmans; Judge ad hoc Ajibola;

(2) by twelve votes to five,

Declares that the eighth preliminary objection does not have, in the circumstances of the case, an exclusively preliminary character;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Parra-Aranguren, Rezek; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma, Higgins, Kooijmans; Judge ad hoc Ajibola;

(3) by fourteen votes to three,

Finds that, on the basis of Article 36, paragraph 2, of the Statute, it has jurisdiction to adjudicate upon the dispute;

IN FAVOUR: President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Vice-President Weeramantry; Judge Koroma; Judge ad hoc Ajibola;

(4) by fourteen votes to three,

Finds that the Application filed by the Republic of Cameroon on 29 March 1994, as amended by the Additional Application of 6 June 1994, is admissible;

IN FAVOUR: President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Vice-President Weeramantry; Judge Koroma; Judge ad hoc Ajibola.”

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Judges Oda, Vereshchetin, Higgins, Parra-Aranguren and Kooijmans appended separate opinions to the Judgment of the Court. Vice-President Weeramantry, Judge Koroma and Judge ad hoc Ajibola appended dissenting opinions to the Judgment of the Court.

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Review of the proceedings and submissions
(paras. 1-19)

The Court begins by recalling 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”. Cameroon further stated in its Application 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”. It accordingly requested 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”. In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

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

part of the territory of Cameroon in the area of Lake Chad". 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". In order to found the jurisdiction of the Court, the Additional Application referred to the "basis of ... jurisdiction ... already ... indicated" in the Application instituting proceedings of 29 March 1994.

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. By an Order dated 16 June 1994, the Court indicated that it had no objection itself to such a procedure, and fixed time limits for the filing of written pleadings.

Cameroon duly filed its Memorial. Within the time limit fixed for the filing of its Counter-Memorial, Nigeria filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Accordingly, by an Order dated 10 January 1996, the President of the Court, noting that, under Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended, fixed 15 May 1996 as the time limit within which Cameroon might present a written statement of its observations and submissions on the preliminary objections. Cameroon duly filed such a statement.

Cameroon chose Mr. Kéba Mbaye, and Nigeria Mr. Bola Ajibola to sit as judge ad hoc.

The Court had further, in response to a request made by Cameroon and after hearing the Parties, indicated certain provisional measures by an Order dated 15 March 1996.

Hearings on the preliminary objections were held between 2 and 11 March 1998.

The requests made by Cameroon in its Application and its Additional Application, as well as the submissions presented by it in its Memorial (cf. paras. 16-18 of the Judgment) have not been reproduced in this summary for the sake of brevity.

The eight objections which Nigeria raised in its Preliminary Objections and at the hearing of 9 March 1998 (cf. paras. 18 and 19 of the Judgment) have neither been reproduced. The Court's description of the subject of each preliminary objection is to be found in the relevant part of this summary. Cameroon, in its written statement on the objections and at the hearing of 11 March 1998, requested the Court to dismiss the objections or in the alternative to join them to the merits; and to declare that it had jurisdiction to deal with the case and that the Application was admissible.

First Preliminary Objection (paras. 21-47)

Nigeria's first objection contends that the Court has no jurisdiction to entertain Cameroon's Application.

In this regard, Nigeria notes that it had accepted the Court's compulsory jurisdiction by a declaration dated 14 August 1965, deposited with the Secretary-General of the United Nations on 3 September 1965. Cameroon had also accepted the Court's compulsory jurisdiction by a declaration deposited with the Secretary-General on 3 March 1994. The Secretary-General transmitted copies of the Cameroon Declaration to the Parties to the Statute eleven-and-a-half months later. Nigeria maintains, accordingly, that it had no way of knowing, and did not actually know, on the date of the filing of the Application, i.e., 29 March 1994, that Cameroon had deposited a declaration. Cameroon consequently is alleged to have "acted prematurely". By proceeding in this way, the Applicant "is alleged to have violated its obligation to act in good faith", "abused the system instituted by Article 36, paragraph 2, of the Statute" and disregarded "the condition of reciprocity" provided for by that Article and by Nigeria's Declaration. The Court consequently does not have jurisdiction to hear the Application.

In contrast, Cameroon contends that its Application fulfils all the conditions required by the Statute. It notes that in the case concerning *Right of Passage over Indian Territory*, the Court held that

"the Statute does not prescribe any interval between the deposit by a State of its Declaration of Acceptance and the filing of an Application by that State, and that the principle of reciprocity is not affected by any delay in the receipt of copies of the Declaration by the Parties to the Statute" (*Right of Passage over Indian Territory, Preliminary Objections, Judgment, I.C.J. Reports 1957, p. 147*).

Cameroon indicates that there is no reason not to follow this precedent, at the risk of undermining the system of compulsory jurisdiction provided by the Optional Clause. It adds that the Cameroonian Declaration was in force as early as 3 March 1994, as at that date it was registered in accordance with Article 102 of the United Nations Charter. Cameroon states that in any event Nigeria has acted, since the beginning of these proceedings, in such a way that it should be regarded as having accepted the jurisdiction of the Court.

Nigeria argues in reply that the "case concerning the *Right of Passage over Indian Territory*, was a first impression", that the Judgment given is outdated, and that it is an isolated one; that international law, especially as it relates to good faith, has evolved since and that in accordance with Article 59 of the Statute, that Judgment only has the force of *res judicata* as between the parties and in respect of that case. For these reasons, the solution adopted in 1957 should not be adopted here. Nigeria does not accept the reasoning of Cameroon based on Article 102 of the Charter. Nigeria also contends that there is no question of its having consented to the jurisdiction of the Court in the case and hence there is no *forum prorogatum*.

Cameroon contests each of these arguments.

Quoting the provisions of Article 36, paragraphs 2 and 4 of its Statute, the Court recalls that in the case concerning

Right of Passage over Indian Territory, it concluded, in the light of these provisions, that:

“by the deposit of its Declaration of Acceptance with the Secretary-General, the accepting State becomes a Party to the system of the Optional Clause in relation to the other declarant States, with all the rights and obligations deriving from Article 36. The contractual relation between the Parties and the compulsory jurisdiction of the Court resulting there from are established, ‘*ipso facto* and without special agreement’, by the fact of the making of the Declaration ... For it is on that very day that the consensual bond, which is the basis of the Optional Clause, comes into being between the States concerned.”. (*Right of Passage over Indian Territory*, I.C.J. Reports 1957, p. 146)

The conclusions thus reached by the Court in 1957 reflect the very essence of the Optional Clause providing for acceptance of the Court’s compulsory jurisdiction. Any State party to the Statute, in adhering to the jurisdiction of the Court in accordance with Article 36, paragraph 2, accepts jurisdiction in its relations with States previously having adhered to that clause. At the same time, it makes a standing offer to the other States party to the Statute which have not yet deposited a declaration of acceptance. The day one of those States accepts that offer by depositing in its turn its declaration of acceptance, the consensual bond is established and no further condition needs to be fulfilled.

Having recalled that its decision in the case concerning *Right of Passage over Indian Territory* has been reaffirmed in subsequent cases, the Court observes that it is true, as argued by Nigeria, that the Court’s judgments, in accordance with Article 59 of the Statute, bind only the parties to and in respect of a particular case. There can be no question of holding Nigeria to decisions reached by the Court in previous cases. The real question is whether, in this case, there is cause not to follow the reasoning and conclusions of earlier cases.

After examining the legislative history of the provisions of the Vienna Convention on the Law of Treaties, which Nigeria relies on with regard to its argument that the interpretation given in 1957 to Article 36, paragraph 4, of the Statute should be reconsidered in the light of the evolution of the law of treaties which has occurred since, the Court concludes that the general rule reflected in Articles 16 and 24 of the Vienna Convention, which, the Court observes, may only be applied to declarations accepting the Court’s jurisdiction as obligatory by analogy, is that: the deposit of instruments of ratification, acceptance, approval or accession to a treaty establishes the consent of a State to be bound by a treaty; and that the treaty enters into force as regards that State on the day of the deposit. Thus the rules adopted in this sphere by the Vienna Convention correspond to the solution adopted by the Court in the case concerning *Right of Passage over Indian Territory*. That solution should be maintained.

Nigeria maintains however that, in any event, Cameroon could not file an application before the Court without allowing a reasonable period to elapse “as would ... have

enabled the Secretary-General to take the action required of him in relation to Cameroon’s Declaration of 3 March 1994”. Compliance with that time period is essential, the more so because, according to Nigeria, the Court, in its Judgment of 26 November 1984 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, required a reasonable time for the withdrawal of declarations under the Optional Clause.

The Court considers that its conclusion in respect of the withdrawal of declarations under the Optional Clause in the Judgment of 1984 is not applicable to the deposit of those declarations. Withdrawal ends existing consensual bonds, while deposit establishes such bonds. The effect of withdrawal is therefore purely and simply to deprive other States which have already accepted the jurisdiction of the Court of the right they had to bring proceedings before it, against the withdrawing State. In contrast, the deposit of a declaration does not deprive those States of any accrued right. Accordingly no time period is required for the establishment of a consensual bond following such a deposit.

Nigeria’s second argument is that Cameroon omitted to inform it that it intended to accept the jurisdiction of the Court, then that it had accepted that jurisdiction and, lastly, that it intended to file an application. Nigeria further argued that Cameroon even continued, during the first three months of 1994, to maintain bilateral contacts with it on boundary questions while preparing itself to address the Court. Such conduct, Nigeria contends, infringes upon the principle of good faith which today plays a larger role in the case-law of the Court than before, and should not be accepted.

Cameroon, for its part, argues that it had no obligation to inform Nigeria in advance of its intentions, or of its decisions. It adds that in any event “Nigeria was not at all surprised by the filing of Cameroon’s Application and ... knew perfectly well what Cameroon’s intentions were in that regard several weeks before the filing”. The principle of good faith was not at all disregarded.

The Court observes that the principle of good faith is a well-established principle of international law. It notes, however, that although that principle is “one of the basic principles governing the creation and performance of legal obligations ... it is not in itself a source of obligation where none would otherwise exist”. There is no specific obligation in international law for States to inform other States party to the Statute that they intend to subscribe or have subscribed to the Optional Clause. Consequently, Cameroon was not bound to inform Nigeria that it intended to subscribe or had subscribed to the Optional Clause. Cameroon was not bound either to inform Nigeria of its intention to bring proceedings before the Court. In the absence of any such obligations and of any infringement of Nigeria’s corresponding rights, Nigeria may not justifiably rely upon the principle of good faith in support of its submissions.

On the facts of the matter, to which the Parties devoted considerable attention, and quite apart from legal considerations, the Court adds that Nigeria was not unaware of Cameroon’s intentions. In that connection, the Court

refers to a communication from Nigeria to the Security Council, dated 4 March 1994; to the information contained in the *Journal of the United Nations*, issued on that same day; and to statements made at the extraordinary general meeting of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity of 11 March 1994.

Nigeria recalls in the third place that, by its Declaration deposited on 3 September 1965, it had recognized

“as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the International Court of Justice in conformity with Article 36, paragraph 2, of the Statute of the Court”.

Nigeria maintains that on the date on which Cameroon’s Application was filed, it did not know that Cameroon had accepted the Court’s compulsory jurisdiction. Accordingly it could not have brought an application against Cameroon. There was an absence of reciprocity on that date. The condition contained in the Nigerian Declaration was operative; consequently, the Court does not have jurisdiction to hear the Application. Cameroon disputes this argument in fact as well as in law. It states that, in the minds of the States party to the Optional Clause, the condition of reciprocity never possessed the meaning which Nigeria now ascribes to it.

The Court, noting that it has on numerous occasions had to consider what meaning it is appropriate to give to the condition of reciprocity in the implementation of Article 36, paragraph 2, of the Statute, observes that, in the final analysis, the notion of reciprocity 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; and that, consequently, the principle of reciprocity is not affected by any delay in the receipt of copies of the Declaration by the Parties to the Statute.

The Court considers that Nigeria does not offer evidence in support of its argument that it intended to insert into its Declaration of 14 August 1965 a condition of reciprocity with a different meaning from the one which the Court had drawn from such clauses in 1957.

The additional phrase of the pertinent sentence in the Nigerian Declaration, “that is to say, on the sole condition of reciprocity” must be understood as explanatory and not adding any further condition. This interpretation is “in harmony with a natural and reasonable way of reading the text” and Nigeria’s condition of reciprocity cannot be treated as a reservation *ratione temporis*.

Nigeria’s first preliminary objection is accordingly rejected. The Court observes that it is therefore not called upon to examine the reasoning put forward by Cameroon under Article 102 of the Charter, nor Cameroon’s alternative submissions based on *forum prorogatum*. In any event, the Court has jurisdiction to pass upon Cameroon’s Application.

Second Preliminary Objection (paras. 48-60)

Nigeria raises a second preliminary objection stating that “for a period of at least 24 years prior to the filing of the Application the Parties have in their regular dealings accepted a duty to settle all boundary questions through the existing bilateral machinery”.

According to Nigeria, an implicit agreement is thus said to have been reached with a view to resorting exclusively to such machinery and to refraining from relying on the jurisdiction of the International Court of Justice. In the alternative, Nigeria claims that by its conduct Cameroon is estopped from turning to the Court. Finally, Nigeria invokes the principle of good faith and the rule *pacta sunt servanda* in support of this argument.

Cameroon maintains that the bilateral bodies which dealt with various boundary difficulties that had emerged between the two countries had only been temporary and that no permanent institutional machinery had been set up. It contends that no explicit or implicit agreement had been established between the Parties with a view to vesting exclusive jurisdiction in such bodies. Finally, according to Cameroon, the conditions laid down in the Court’s case-law for the application of estoppel to arise were not fulfilled here. Therefore, there was no occasion to apply the principle of good faith and the rule *pacta sunt servanda*.

Reviewing the relevant facts the Court notes that the negotiations between the two States concerning the delimitation or the demarcation of the boundary were carried out in various frameworks and at various levels: Heads of State, Foreign Ministers, experts. The negotiations were active during the period 1970 to 1975 and then were interrupted until 1991.

Turning to legal considerations, the Court then considers the first branch of the Nigerian objection. It recalls that, “negotiation and judicial settlement are enumerated together in Article 33 of the Charter of the United Nations as means for the peaceful settlement of disputes”. It observes that neither in the Charter nor otherwise in international law is any general rule to be found to the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the Court and that no such precondition was embodied in the Statute of the Permanent Court of International Justice, contrary to a proposal by the Advisory Committee of Jurists in 1920. Nor is it to be found in Article 36 of the Statute of the Court. Neither was a reservation containing a precondition of this type included in the Declarations of Nigeria or Cameroon on the date of the filing of the Application. Moreover, the fact that the two States have attempted to solve some of the boundary issues dividing them during bilateral contacts, did not imply that either one had excluded the possibility of bringing any boundary dispute concerning it before other fora, and in particular the International Court of Justice. The first branch of Nigeria’s objection accordingly is not accepted.

Turning to the second branch of the objection, the Court then examines whether the conditions laid down in its jurisprudence for an estoppel are present in the instant case.

It observes that an estoppel would only arise if by its acts or declarations Cameroon had consistently made it fully clear that it had agreed to settle the boundary dispute submitted to the Court by bilateral avenues alone. It would further be necessary that, by relying on such an attitude, Nigeria had changed position to its own detriment or had suffered some prejudice. These conditions are not fulfilled in this case. Indeed, Cameroon did not attribute an exclusive character to the negotiations conducted with Nigeria, nor, as far as it appears, did Nigeria. Furthermore, Nigeria does not show that it has changed its position to its detriment or that it has sustained prejudice. In bringing proceedings before the Court, Cameroon did not disregard the legal rules relied on by Nigeria in support of its second objection. Consequently, Nigeria is not justified in relying on the principle of good faith and the rule *pacta sunt servanda*, both of which relate only to the fulfilment of existing obligations. The second branch of Nigeria's objection is not accepted.

The second preliminary objection as a whole is thus rejected.

Third Preliminary Objection (paras. 61-73)

In its third preliminary objection, Nigeria contends that "the settlement of boundary disputes within the Lake Chad region is subject to the exclusive competence of the Lake Chad Basin Commission".

In support of this argument, Nigeria invokes the treaty texts governing the Statute of the Commission as well as the practice of member States. It argues that "the procedures for settlement by the Commission are binding upon the Parties" and that Cameroon was thus barred from raising the matter before the Court on the basis of Article 36, paragraph 2, of the Statute.

For its part, Cameroon submits to the Court that "no provision of the Statute of the Lake Chad Basin Commission establishes in favour of that international organization any exclusive competence in relation to boundary delimitation". It adds that no such exclusive jurisdiction can be inferred from the conduct of member States.

It is in the light of the treaty texts and the practice that the Court then considers the positions of the Parties on this matter. For its part, Nigeria first of all contends that "the role and Statute of the Commission" must be understood "in the framework of regional agencies" referred to in Article 52 of the United Nations Charter. It accordingly concludes that "the Commission has an exclusive power in relation to issues of security and public order in the region of Lake Chad and that these issues appropriately encompass the business of boundary demarcation".

Cameroon argues, for its part, that the Commission does not constitute a regional arrangement or agency within the

meaning of Article 52 of the Charter, pointing in particular to the fact that "there has never been any question of extending this category to international regional organizations of a technical nature which, like the [Commission], can include a mechanism for the peaceful settlement of disputes or for the promotion of that kind of settlement".

The Court concludes from its analysis of the treaty texts and the practice of Member States that the Lake Chad Basin Commission is an international organization exercising its powers within a specific geographical area; that it does not however have as its purpose the settlement at a regional level of matters relating to the maintenance of international peace and security and thus does not fall under Chapter VIII of the Charter.

However, even were it otherwise, Nigeria's argument to that effect should nonetheless be set aside, because the existence of procedures for regional negotiation whatever their nature, cannot prevent the Court from exercising the functions conferred upon it by the Charter and the Statute. The contention of Nigeria that the Commission should be seen as a tribunal falling under the provisions of Article 95 of the United Nations Charter must also be set aside.

The Court further concludes that the Commission has never been given jurisdiction, and *a fortiori* exclusive jurisdiction, to rule on the territorial dispute now involving Cameroon and Nigeria before the Court, a dispute which moreover did not as yet exist in 1983. It points out in addition that the conditions laid down in its case-law for an estoppel to arise, as set out above, are not fulfilled in this case. Indeed, Cameroon has not accepted that the Commission has jurisdiction to settle the boundary dispute now submitted to the Court.

In the alternative, Nigeria finally argues that, on account of the demarcation under way in the Lake Chad Basin Commission, the Court "cannot rule out the consideration of the need for judicial restraint on grounds of judicial propriety" and should decline to rule on the merits of Cameroon's Application.

It is not for the Court at this stage to rule upon the opposing arguments brought forward by the Parties in this respect. It need only note that Nigeria cannot assert both that the demarcation procedure initiated within the Lake Chad Commission was not completed and that, at the same time, that procedure rendered Cameroon's submissions moot. There is thus no reason of judicial propriety which should make the Court decline to rule on the merits of those submissions.

In the light of the above considerations, the Court rejects Nigeria's third preliminary objection.

Fourth Preliminary Objection (paras. 74-83)

The Court then turns to the fourth preliminary objection raised by Nigeria. This objection contends 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 the Lake.”

Nigeria holds that the location of the tripoint within Lake Chad directly affects a third State, the Republic of Chad, and that the Court therefore cannot determine this tripoint.

The Court recalls that it has always acknowledged as one of the fundamental principles of its Statute that no dispute between States can be decided without their consent to its jurisdiction. Nevertheless, the Court has also emphasized that it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case; and the Court has only declined to exercise jurisdiction when the interests of the third State constitute the very subject matter of the judgment to be rendered on the merits.

The Court observes that the submissions presented to it by Cameroon refer to the frontier between Cameroon and Nigeria and to that frontier alone. They do not refer to the frontier between Cameroon and the Republic of Chad. Certainly, the request 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.

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 contest the current course of that boundary in the centre of Lake Chad as it is described in the “technical document on the demarcation of the ... boundaries” mentioned in paragraph 65 of the Judgment. Incidents between Nigeria and Chad in the Lake, as referred to by Nigeria, concern Nigeria and Chad but not Cameroon or its boundary with Chad. 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.

The fourth preliminary objection is accordingly rejected.

Fifth Preliminary Objection (paras. 84-94)

In its fifth preliminary objection Nigeria alleges 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.

The Court recalls that, in the sense accepted in its jurisprudence and that of its predecessor, a dispute is a disagreement on a point of law or fact, a conflict of legal views or interests between parties; and that, in order to establish the existence of a dispute, it must be shown that the claim of one party is positively opposed by the other and further, that whether there exists an international dispute is a matter for objective determination.

On the basis of these criteria, there can be no doubt about the existence of disputes with respect to Darak and adjacent islands, the village of Tipsan, as well as the Peninsula of Bakassi. This latter dispute, as indicated by Cameroon, might have a bearing on the maritime boundary between the two Parties.

All of these disputes concern the boundary between Cameroon and Nigeria. However, given the great length of that boundary, which runs over more than 1,600 km from Lake Chad to the sea, it cannot be said that these disputes in themselves concern so large a portion of the boundary that they would necessarily constitute a dispute concerning the whole of the boundary. Even taken together with the existing boundary disputes, the incidents and incursions reported by Cameroon do not establish by themselves the existence of a dispute concerning all of the boundary between Cameroon and Nigeria.

However, the Court notes that Nigeria has constantly been reserved in the manner in which it has presented its own position on the matter. Although Nigeria knew about Cameroon’s preoccupation and concerns, it has repeated, and has not gone beyond, the statement that there is no dispute concerning “boundary delimitation as such”. Nigeria has shown the same caution in replying to the question asked by a Member of the Court in the oral proceedings, as to whether Nigeria’s assertion that there is no dispute as regards the land boundary between the two States (subject to the existing problems in the Bakassi Peninsula and the Darak region) signifies,

“that, these two sectors apart, there is agreement between Nigeria and Cameroon on the geographical coordinates of this boundary as they result from the texts relied on by Cameroon in its Application and its Memorial”.

The Court notes that, in its reply, Nigeria does not indicate whether or not it agrees with Cameroon on the course of the boundary or on its legal basis, though clearly it does differ with Cameroon about Darak and adjacent islands, Tipsan and Bakassi. Nigeria states that the existing land boundary is not described by reference to geographical coordinates but by reference to physical features. As to the legal basis on which the boundary rests, Nigeria refers to “relevant instruments” without specifying which these instruments are apart from saying that they pre-date independence and that, since independence, no bilateral agreements “expressly confirming or otherwise describing the pre-independence boundary by reference to geographical coordinates” have been concluded between the Parties. That wording seems to suggest that the existing instruments may require confirmation. Moreover, Nigeria refers to “well-

established practice both before and after independence” as one of the legal bases of the boundary whose course, it states, “has continued to be accepted in practice”; however, it does not indicate what that practice is.

The Court points out that Nigeria is entitled not to advance arguments that it considers are for the merits at the present stage of the proceedings; in the circumstances however, the Court finds itself in a situation in which it cannot decline to examine the submission of Cameroon which aims at a definitive determination of its boundary with Nigeria from Lake Chad to the sea on the ground that there is no dispute between the two States. Because of Nigeria’s position, the exact scope of this dispute cannot be determined at present; a dispute nevertheless exists between the two Parties, at least as regards the legal bases of the boundary. It is for the Court to pass upon this dispute.

The fifth preliminary objection raised by Nigeria is thus rejected.

Sixth Preliminary Objection (paras. 95-102)

The Court then turns to Nigeria’s sixth preliminary objection which is to the effect that there is no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions.

Nigeria contends that the submissions of Cameroon do not meet the standard required by Article 38 of the Rules of Court and general principles of law regarding the adequate presentation of facts on which Cameroon’s request is based, including dates, the circumstances and precise locations of the alleged incursions and incidents into and on Cameroonian territory. Nigeria maintains that what Cameroon has presented to the Court does not give Nigeria the knowledge which it needs and to which it is entitled in order to prepare its reply. 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 of, or make determination on, the issues of State responsibility and reparation raised by Cameroon. While Nigeria acknowledges that a State has some latitude in expanding later on what it has said in its Application and in its Memorial, Cameroon is said to be essentially restricted in its elaboration to the case as presented in its Application.

Cameroon insists that it stated clearly in its pleadings that the facts referred to in order to establish Nigeria’s responsibility were only of an indicative nature and that it could, where necessary, amplify those facts when it comes to the merits. Cameroon refers to the requirements established in Article 38, paragraph 2, of the Rules and which call for a “succinct” presentation of the facts. It holds that parties are free to develop the facts of the case presented in the application or to render them more precise in the course of the proceedings.

The Court observes that the 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 in the present instance. The requirements set out in Article 38, paragraph 2, are that the Application shall “specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based”. The Court notes that “succinct”, in the ordinary meaning to be given to this term, does not mean “complete” and neither the context in which the term is used in Article 38, paragraph 2, of the Rules of Court nor the object and purpose of that provision indicate that it should be interpreted in that way. Article 38, paragraph 2, does therefore not preclude later additions to the statement of the facts and grounds on which a claim is based. Nor does it provide that the latitude of an applicant State, in developing what it has said in its application is strictly limited, as suggested by Nigeria.

As regards the meaning to be given to the term “succinct”, the Court would simply note that Cameroon’s Application contains a sufficiently precise statement of the facts and grounds on which the Applicant bases its claim. That statement fulfils the conditions laid down in Article 38, paragraph 2, and the Application is accordingly admissible.

Lastly, the Court cannot agree that the lack of sufficient clarity and completeness in Cameroon’s Application and its inadequate character, as perceived by Nigeria, make it impossible for Nigeria to respond effectively to the allegations which have been presented or makes it impossible for the Court ultimately to make a fair and effective determination in the light of the arguments and the evidence then before it. It is the applicant which must bear the consequences of an application that gives an inadequate rendering of the facts and grounds on which the claim is based.

The Court consequently rejects the sixth preliminary objection raised by Nigeria.

Seventh Preliminary Objection (paras. 103-111)

In its seventh preliminary objection Nigeria contends that there is no legal dispute concerning delimitation of the maritime boundary between the two Parties which is at the present time appropriate for resolution by the Court.

Nigeria says that this is so for two reasons: in the first place, no determination of a maritime boundary is possible prior to the determination of title in respect of the Bakassi Peninsula. Secondly, at the juncture when there is a determination of the question of title over the Bakassi Peninsula, the issues of maritime delimitation will not be admissible in the absence of prior sufficient action by the Parties, on a footing of equality, to effect a delimitation “by agreement on the basis of international law”.

The Court initially addresses the first argument presented by Nigeria. The Court accepts that it will be difficult if not impossible to determine the delimitation of the maritime boundary between the Parties as long as the title over the Peninsula of Bakassi has not been determined. Since both questions are before the Court, it becomes a matter for the Court to arrange the order in which it

addresses the issues in such a way that it can deal substantively with each of them. That is a matter which lies within the Court's discretion and which cannot be the basis of a preliminary objection. This argument therefore has to be dismissed.

As to the second argument of Nigeria, the Court recalls that, in dealing with the cases brought before it, it must adhere to the precise request submitted to it. What is in dispute between the Parties and what the Court has to decide now is whether the alleged absence of sufficient effort at negotiation constitutes an impediment for the Court to accept Cameroon's claim as admissible or not. This matter is of a genuinely preliminary character and has to be decided under Article 79 of the Rules of Court.

In this connection, Cameroon and Nigeria refer to the United Nations Convention on the Law of the Sea, to which they are parties.

However, the Court notes that, in this case, it has not been seized on the basis of Article 36, paragraph 1, of the Statute, and, in pursuance of it, in accordance with Part XV of the United Nations Convention on the Law of the Sea relating to the settlement of disputes arising between the parties to the Convention with respect to its interpretation or application. It has been seized on the basis of declarations made under Article 36, paragraph 2, of the Statute, which declarations do not contain any condition relating to prior negotiations to be conducted within a reasonable time period. The second argument of Nigeria cannot therefore be upheld.

The Court finds in addition that, beyond point G (cf. point (3) of the submissions in Cameroon's Memorial), the dispute between the Parties has been defined with sufficient precision for the Court to be validly seized of it.

It therefore rejects the seventh preliminary objection.

Eighth Preliminary Objection (paras. 112-117)

The Court then deals with the eighth and last of the preliminary objections presented by Nigeria. With that objection Nigeria contends, in the context of and supplementary to the seventh preliminary objection, that the question of maritime delimitation necessarily involves the rights and interests of third States and is to that extent inadmissible.

The Court notes, as do the Parties, that the problem of rights and interests of third States arises only for the prolongation, as requested by Cameroon, of the maritime boundary seawards beyond point G.

What the Court has to examine under the eighth preliminary objection is therefore whether that prolongation would involve rights and interests of third States and whether that would prevent it from proceeding to such prolongation. The Court notes that from the geographical location of the territories of the other States bordering the Gulf of Guinea, and in particular Equatorial Guinea and Sao Tome and Principe, it appears that rights and interests of third States will become involved if the Court accedes to

Cameroon's request. The Court recalls that it has affirmed, that one of the fundamental principles of its Statute is that it cannot decide a dispute between States without the consent of those States to its jurisdiction. However, it has also stated that it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case.

The Court cannot therefore, in the present case, give a decision on the eighth preliminary objection as a preliminary matter. In order to determine where a prolonged maritime boundary beyond point G would run, where and to what extent it would meet possible claims of other States, and how its judgment would affect the rights and interests of these States, the Court would of necessity have to deal with the merits of Cameroon's request. At the same time, the Court cannot rule out the possibility that the impact of the judgment required by Cameroon on the rights and interests of the third States could be such that the Court would be prevented from rendering it in the absence of these States, and that consequently Nigeria's eighth preliminary objection would have to be upheld at least in part. Whether such third States would choose to exercise their rights to intervene in these proceedings pursuant to the Statute remains to be seen.

The Court concludes that therefore the eighth preliminary objection of Nigeria does not possess, in the circumstances of the case, an exclusively preliminary character.

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For the above reasons the Court, in the operative paragraph of the Judgment, rejects the first preliminary objection by fourteen votes to three; the second by sixteen votes to one; the third by fifteen votes to two; the fourth and the fifth by thirteen votes to four; the sixth by fifteen votes to two; the seventh by twelve votes to five; declares, by twelve votes to five, that the eighth preliminary objection does not have, in the circumstances of the case, an exclusively preliminary character; and finds, by fourteen votes to three, that, on the basis of Article 36, paragraph 2, of the Statute, it has jurisdiction to adjudicate upon the dispute; and, by fourteen votes to three, that the Application filed by the Republic of Cameroon on 29 March 1994, as amended by the Additional Application of 6 June 1994, is admissible.

Separate opinion of Judge Oda

Judge Oda shares the view of the Court that it has jurisdiction to adjudicate on certain of the requests presented unilaterally by Cameroon. In his view, however, the presentation of Cameroon's March 1994 Application and June 1994 Application, as well as the "submissions" in the 1995 Memorial (which do not necessarily correspond to the Applications), is inadequate. This makes the present case extremely complicated and difficult to follow. However, Judge Oda finds that Cameroon's contentions are basically two in number: one being a request to specify the boundary line both on land and at sea and the other being

the judicial settlement of the matter of the trespass which took place in the border areas, namely in the Bakassi Peninsula, in Lake Chad and at certain land borders.

With regard to the indication of a boundary, Judge Oda pointed out that, apart from the question of the delimitation of the offshore areas in the mouth of the Cross River, and the prolongation of the delimitation of the exclusive economic zone and the continental shelf in the ocean area in the Gulf of Guinea — issues totally dependent on the territoriality of the Bakassi Peninsula — the delimitation of the *maritime boundary* cannot be the object of the adjudication of the Court, unless it is requested jointly by the Parties, as the simple failure of negotiations between States does not mean that a “legal dispute” has occurred under Article 36 (2) of the Statute. The simple specification of the *land* boundary also cannot be deemed as constituting a “legal dispute” which the Court can entertain, unless jointly requested to do so by the Parties under Article 36 (1) of the Statute.

Judge Oda holds the view that the real “legal dispute” in the present case involves Cameroon’s claim to sovereignty over the Bakassi Peninsula, the part of Lake Chad and certain border areas — which sovereignty has, according to Cameroon, been violated by incursions of Nigerian civilians and military personnel — and Nigeria’s challenge to such a claim. If the Court is in a position to entertain Cameroon’s Application, it should certainly decide whether or not Cameroon’s claims to sovereignty over the disputed areas are justified, but this would not be the same as a simple request to specify the boundary line, over which matter the Court does not have jurisdiction. Judge Oda further stated that, in his view, the larger part of the issues advanced by Nigeria regarding the “legal dispute” on sovereignty over the boundary areas are matters that should be dealt with at the merits phase.

Separate opinion of Judge Vereshchetin

In his separate opinion, Judge Vereshchetin states that he is unable to vote in favour of point 1 (e) of the Judgment, dealing with the fifth preliminary objection of Nigeria, because of his belief that the finding on which that part of the Judgment is based is not duly supported by the evidence offered by the Applicant and does not stand the test of objective determination.

For the Court to decide on the existence of a dispute between the two Parties as to the legal bases of the whole of the boundary, it must previously have been established that the Republic of Nigeria challenges the validity of the legal title to the whole of the boundary relied on by the Republic of Cameroon, or relies on a different legal title, or places a different interpretation on a given legal instrument relating to the entire boundary. None of those conclusions may be “positively” inferred from the documents or statements presented to the Court.

The repeated statements of Nigeria to the effect that there is no dispute concerning “boundary delimitation as such” and the reserved and cautious formulations in its reply given to the question of the Court may signify the

disinclination of Nigeria to unfold its legal arguments on the merits. True, they may also be viewed as evidence of the probable emergence of a broader dispute. However, the real scope of such a dispute, if any, its parameters and concrete consequences can be clarified only at the merits stage when the Court has compared the maps produced by both Parties and more fully heard and assessed the substance of their interpretation of the respective legal instruments. In the view of Judge Vereshchetin, this prompts the conclusion that the fifth objection of Nigeria does not possess an exclusively preliminary character within the meaning of Article 79, paragraph 7, of the Rules of Court, and therefore cannot be dismissed at this stage of the proceedings.

Separate opinion of Judge Higgins

Judge Higgins has voted with the majority on all elements in the Court’s Judgment save for paragraph (1) (g) of the *dispositif*.

In its seventh preliminary objection Nigeria claimed that there “is no legal dispute concerning delimitation of the maritime boundary between the two Parties which is at the present time appropriate for resolution by the Court” because, first, it was necessary initially to determine title in respect of the Bakassi Peninsula and second, there was an “absence of sufficient action by the Parties, on a footing of equality, to effect a delimitation by ‘agreement on the basis of international law’”.

Judge Higgins agrees with the response of the Court in rejecting each of these claims on inadmissibility. In her separate opinion she contends, however, that there was another matter which the Court should have addressed *proprio motu*, namely that no dispute appears to exist relating to the maritime boundary, at least beyond point G as designated by Cameroon. This emerges both from the way Cameroon itself formulates its Application, where it asks for a delimitation of the maritime boundary “In order to *prevent any dispute arising ...*” (emphasis added) and from the absence of any evidence offered in the written or oral pleadings as to the existence of such a dispute. There have been no claims beyond point G that have been put by one party and rejected by the other.

The fact that Nigeria and Cameroon have not been able to have detailed negotiations on the line beyond point G does not mean that a dispute exists beyond that point on Cameroon’s proposed line, suggested for the first time in these proceedings before the Court.

Nor can it be the case that the existence of a territorial dispute automatically entitles an applicant State to request the delimitation of the maritime boundary, without anything further being required to be shown as to that maritime frontier.

Although it is not normally the task of the Court to suggest additional grounds of inadmissibility beyond those a respondent State chooses to advance, the existence of a dispute is a requirement of the Court’s jurisdiction under Article 38 of the Statute and the Court should have addressed the matter *proprio motu*.

Separate opinion of Judge Parra-Aranguren

Judge Parra-Aranguren voted against subparagraph 1 (d) of the operative part of the Judgment, which rejects 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 the Lake, because its location directly affects a third State, the Republic of Chad. On this point the Court did not follow its decision in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility*, where it had stated that the determination of the third States "affected" by the decision is not in itself a jurisdictional problem, but a question belonging to the merits (*I.C.J. Reports 1984*, p. 425, para. 76). This is the applicable principle and in the Judge's view, at this stage of the proceedings the Court is not entitled to decide, as it has done, that the future determination on the merits of the tripoint Nigeria-Cameroon-Chad will not have any consequence for the Republic of Chad. The Court's decision unreasonably precludes any subsequent intervention by the Republic of Chad under Article 62 of the Statute of the Court. Therefore the fourth preliminary objection raised by Nigeria should not have been rejected and the Court should have declared that, in the circumstances of the case, the objection was not of an exclusively preliminary character.

Separate opinion of Judge Kooijmans

In his separate opinion Judge Kooijmans sets out why he voted against paragraphs 1 (g) and 2 of the *dispositif*. He voted against paragraph 1 (g), as in his opinion the seventh preliminary objection should have been partially upheld, since there does not exist a legal dispute between the Parties as to the continuation of the maritime boundary beyond point G. Although he agrees that the point was not raised specifically by Nigeria, he is of the opinion that the Court should have determined *proprio motu* whether there is a dispute in the sense of the Statute. In the present case Cameroon requested the Court to determine the whole of the maritime boundary without ever before having formulated a specific claim with regard to the more seaward part of that boundary. It was only in the Memorial that its submission was further substantiated. It therefore cannot be said that there is a claim of Cameroon which, at the date of the filing of the Application, was "positively opposed" by Nigeria as the Court according to its case-law requires.

Since in his view the seventh objection should have been upheld as regards the maritime boundary beyond point G and since the issue of the rights and interests of third parties (the subject of the eighth preliminary objection) only arises in respect of that part of the boundary, that objection has become without object. Judge Kooijmans consequently voted against paragraph 2. But also for other reasons he cannot agree with what the Court said with regard to the eighth objection. Although in general an objection dealing with rights and interests of third States does not possess an

exclusively preliminary character, it is Judge Kooijmans' view that in the present case the Court, for reasons of judicial propriety, would have done better to uphold it in the preliminary phase. The most important third country involved is Equatorial Guinea. Both Cameroon and Nigeria agreed in 1993 that State's involvement in the delimitation of the boundary was essential and that negotiations should get started. In view of this recognition by Cameroon of the necessity of negotiations it seems not proper and reasonable to induce Equatorial Guinea to reveal its legal position by means of an intervention under Article 62 of the Statute before such negotiations have even begun.

Dissenting opinion of Vice-President Weeramantry

Vice-President Weeramantry, in his dissenting opinion, expresses disagreement with the Court's findings on Nigeria's first objection. The Vice-President expresses the view that the 1957 decision in *Right of Passage over Indian Territory* is in need of review. That decision implies that the State which is sought to be bound by the declaration of another State can be so bound without knowing of that declaration, and thus overlooks the consensual basis of the Court's jurisdiction under Article 36, paragraph 2, of the Statute. It also does not give effect to the imperative terms of Article 36, paragraph 4, requiring communication by the Secretariat of such declarations. The opinion sets out eight reasons why, in Judge Weeramantry's view, the *Right of Passage* decision needs to be reviewed.

The opinion also draws in perspectives from comparative law regarding the notion of consensus and the need for communication of acceptance if a consensual relationship is to be formed. These perspectives can be used under Article 38, paragraph 1 (c) of the Statute. Referring, inter alia, to Grotius' endorsement of the need for communication of acceptance if a State is to be bound by a consensual obligation, the opinion also stresses the need for ensuring that the party sought to be bound should not be taken by surprise.

Dissenting opinion of Judge Koroma

In his dissenting opinion Judge Koroma regretted that he could not share the opinion of the majority of the Court that it has jurisdiction to pass upon Cameroon's Application. In his view, for a State to be entitled to invoke the compulsory jurisdiction of the Court, the conditions stipulated in Article 36, paragraphs 2 and 4, of the Statute must have been met. In a situation where those conditions have not been satisfied, as in the present case, jurisdiction cannot be said to have been conferred on the Court, nor can the Court impose such jurisdiction on a State against its will.

The Judge further stated that this phase of the matter should have been governed by the provisions of the Statute, rather than the Court allowing its decision to have been substantively controlled by the decision in the *Right of Passage* case.

Dissenting opinion of Judge Ajibola

In my dissenting opinion I voted against the decision of the majority of the Members of the Court on the first, third, fourth, fifth, sixth, second part of the seventh and the eighth preliminary objections filed by Nigeria. I, however, voted with the majority of the Members of the Court with regard to the decision of the Court on the second preliminary objection and the first part of the seventh preliminary objection and I state my reasons for doing so therein.

The most important aspect of this dissenting opinion deals with my disagreement with the decision of the Court to follow its earlier decision in the case concerning *Right of Passage over Indian Territory*, which I now consider to be bad case-law. Fundamentally, the reason for so doing is

premised on the fact that Article 36 (4) of the Statute was wrongly or inadequately interpreted in 1957 and the time has come for the same to be corrected after 41 years. Paragraph 4 of Article 36 provides that declarations under the Optional Clause “shall” be “*deposited*” with the Secretary-General of the United Nations and the same “shall” be “*transmitted*” to all the States Members and to the Registrar of the Court. While the Court rightly and properly interpreted the former in the 1957 case it failed to do so in the case of the latter requirement for the main reason that such a situation would bring “uncertainty” into the operation of the declaration vis-à-vis the “accepting State”. This argument is most unconvincing and it is anything but a correct interpretation of Article 36 (4) as a whole.