INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE NORTHERN CAMEROONS

(CAMEROON *v.* UNITED KINGDOM)
PRELIMINARY OBJECTIONS

JUDGMENT OF 2 DECEMBER 1963

1963

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU CAMEROUN SEPTENTRIONAL

(CAMEROUN c. ROYAUME-UNI)
EXCEPTIONS PRÉLIMINAIRES

ARRÊT DU 2 DÉCEMBRE 1963

This Judgment should be cited as follows:

"Case concerning the Northern Cameroons (Cameroon v. *United Kingdom), Preliminary Objections, Judgment of 2 December 1963: I.C.J. Reports 1963, p. 15."*

Le présent arrêt doit être cité comme suit:

« *Affaire du Cameroun septentrional (Cameroun c. Royaume-Uni), Exceptions préliminaires, Arrêt du 2 décembre 1963: C.I.J. Recueil 1963, p. 15.* »

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CASE CONCERNING THE NORTHERN CAMEROONS

(CAMEROON *v.* UNITED KINGDOM) PRELIMINARY OBJECTIONS

Preliminary questions: existence of a dispute between Parties; compliance of Application with Article 32 (2) of Rules of Court—Trusteeship Agreement for Territory of Cameroons under British Administration—Seising of Court and administration of justice—Judicial function and limitations on its exercise—Termination of Trusteeship Agreement by decision of General Assembly and legal effects thereof—Alleged breaches of Trusteeship Agreement—Nature of claim and relief sought—Declaratory judgments—Inability of Court in present case to render a judgment capable of effective application.

JUDGMENT

Present: *President* WINIARSKI; *Vice-President* ALFARO; *Judges* BASDEVANT, BADAWI, MORENO QUINTANA, WELLINGTON KOO, SPIROPOULOS, Sir Percy SPENDER, Sir Gerald FITZMAURICE, KORETSKY, TANAKA, BUSTAMANTE Y RIVERO, JESSUP, MORELLI; *Judge ad hoc* BEB A DON; *Registrar* GARNIER-COIGNET.

In the case concerning the Northern Cameroons,

between

the Federal Republic of Cameroon,

represented by

H.E. M. Vincent de Paul Ahanda, Ambassador of the Federal Republic of Cameroon to Belgium, Luxembourg and the Netherlands,

as Agent,

and by

Mr. Paul Engo, Judge,
as Assistant Agent,

assisted by

M. Prosper Weil, Professor at the Nice Faculty of Law and Economics (University of Aix-Marseille),

M. Robert Parant, Judge, Director of Judicial Affairs and of the Seal, Ministry of Justice,

as Counsel,

M. El Hadji Moussa Yaya, Deputy, Vice-President of the Federal National Assembly,

M. Eloi Langoul, *Conseiller référendaire* of the Supreme Court of Eastern Cameroon, Principal Private Secretary to the Minister of State for Justice and Keeper of the Seals,

M. François-Xavier Tchoungui, Principal Private Secretary to the Minister for Foreign Affairs,

as Advisers,

and

M. Charles Debbasch, Lecturer *agrégé* at the Faculty of Law and Economics of the University of Grenoble,

M. Paul Isoart, Assistant Lecturer at the Nice Faculty of Law and Economics (University of Aix-Marseille),

as Experts,

and

the United Kingdom of Great Britain and Northern Ireland,

represented by

Sir Francis Vallat, K.C.M.G., Q.C., Legal Adviser to the Foreign Office,

as Agent,

and by

Mr. P. J. Allott, an Assistant Legal Adviser, Foreign Office,

as Assistant Agent,

assisted by

Rt. Hon. Sir John Hobson, O.B.E., T.D., Q.C., M.P., Attorney-General,

Mr. M. E. Bathurst, C.M.G., C.B.E., a member of the English Bar,
Mr. D. H. N. Johnson, Professor of International and Air Law in the University of London,
as Counsel,

and

Mr. P. R. A. Mansfield, West and Central African Department, Foreign Office,
as Adviser,

THE COURT,

composed as above,

delivers the following Judgment:

On 30 May 1961 the Ambassador of Cameroon to France handed to the Registrar an Application which, referring to a dispute between his Government and the Government of the United Kingdom, prayed the Court to adjudge and declare that, in the application of the Trusteeship Agreement for the Territory of the Cameroons under British Administration approved by the General Assembly of the United Nations on 13 December 1946, the United Kingdom failed, with regard to the Northern Cameroons, to respect certain obligations directly or indirectly flowing from that Agreement. To found the jurisdiction of the Court the Application relies on Article 19 of the Trusteeship Agreement.

In accordance with Article 40, paragraph 2, of the Statute of the Court, the Application was communicated to the Government of the United Kingdom. In accordance with paragraph 3 of the same Article, the other Members of the United Nations and the non-member States entitled to appear before the Court were notified.

Time-limits for the filing of the Memorial and the Counter-Memorial were fixed by an Order of 6 July 1961 and subsequently extended at the request of the Parties by Orders of 2 November 1961, 25 April and 10 July 1962. The Memorial and Counter-Memorial were filed within the time-limits so extended. In the Counter-Memorial, filed on 14 August 1962, the Government of the United Kingdom not only referred to the merits of the case but also raised preliminary objections under Article 62 of the Rules of Court. Accordingly, an Order of 3 September 1962 recorded that by virtue of the provisions of Article 62, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended and fixed 1 December 1962 as the time-limit within which the Government of Cameroon might present a written statement of its observations and submissions on the preliminary objections. At the request of the Government of Cameroon this time-limit was extended to 1 March 1963 by an Order of 27 November 1962 and further extended to 1 July 1963 by an Order of 11 January 1963.

The statement having been presented within the time-limit so extended, the case became ready for hearing in respect of the preliminary objections.

Pursuant to Article 31, paragraph 2, of the Statute, the Government of Cameroon chose M. Philémon Beb a Don, Ambassador of Cameroon to France, to sit as Judge *ad hoc* in the present case.

On 19-23, 25-27, 30 September and 1 and 3 October 1963, hearings were held in the course of which the Court heard the oral arguments and replies of Sir Francis Vallat, Agent, and Sir John Hobson, Counsel, on behalf of the Government of the United Kingdom; and of M. Vincent de Paul Ahanda, Agent, Mr. Paul Engo, Assistant Agent, and M. Prosper Weil, Counsel, on behalf of the Government of Cameroon.

In the written proceedings, the following Submissions were presented by the Parties:

On behalf of the Government of Cameroon,

in the Application:

"May it please the Court:

. . . . . .

to notify the present Application, in accordance with Article 40, paragraph 2, of the Statute of the Court to the Government of the United Kingdom;

to adjudge and declare, whether the Government of the United Kingdom appears or not, and after such time-limits as the Court may fix: that the United Kingdom has, in the application of the Trusteeship Agreement of 13 December 1946, failed to respect certain obligations directly or indirectly flowing therefrom on the various points set out above";

in the Memorial:

"The submissions of the Federal Republic of Cameroon are as follows: may it please the Court to find in favour of the submissions of its Application instituting proceedings and, in particular, to adjudge and declare:

that the United Kingdom has, in the application of the Trusteeship Agreement of 13 December 1946, failed to respect certain obligations directly or indirectly flowing therefrom on the various points set out above."

On behalf of the Government of the United Kingdom,

in the Counter-Memorial:

"112. The British Government submit that the Court should hold and declare:

(i) that, for the reasons stated in Part I of this Counter-Memorial, the Court has no jurisdiction in this case;

(ii) that, if, contrary to the submission of the British Government, the Court holds that it has jurisdiction, for the reasons stated in Parts II and III of this Counter-Memorial, the allegations made by the Republic of Cameroon of breach of the obligations of the United Kingdom under the Trusteeship Agreement are without foundation."

On behalf of the Government of Cameroon,

in the Observations and Submissions on the preliminary objection:

"On the basis of the foregoing observations, and reserving all its rights with regard to the merits of the case, the Federal Republic of Cameroon has the honour to lay the following submissions before the Court:

May it please the Court:

1. To dismiss the preliminary objection of the United Kingdom to the effect that the Court should declare that it has no jurisdiction;

2. To dismiss the preliminary objection of the United Kingdom based on failure to observe the provisions of Article 32, paragraph 2, of the Rules of Court;

3. To adjudge and declare that the United Kingdom has, in the interpretation and application of the Trusteeship Agreement for the Territory of the Cameroons under British Administration, failed to respect certain obligations directly or indirectly flowing from the said Agreement, and in particular from Articles 3, 5, 6 and 7 thereof."

In the oral proceedings the following Submissions were presented by the Parties:

On behalf of the Government of the United Kingdom,

at the hearing on 23 September 1963:

"For the reasons which I have presented to the Court, I now submit that it should hold and declare that the Court has no jurisdiction in this case, and I sustain the first conclusion in paragraph 112 of the United Kingdom Counter-Memorial."

On behalf of the Government of Cameroon,

after the hearing on 27 September 1963:

"May it please the Court:

1. To dismiss the preliminary objection of the United Kingdom to the effect that the Court should declare that it has no jurisdiction;

2. To dismiss the preliminary objection of the United Kingdom based on failure to observe the provisions of Article 32, paragraph 2, of the Rules of Court;

3. To adjudge and declare that the United Kingdom has, in the interpretation and application of the Trusteeship Agreement for

the Territory of the Cameroons under British Administration, failed to respect certain obligations directly or indirectly flowing from the said Agreement, and in particular from Articles 3, 5, 6 and 7 thereof."

On behalf of the Government of the United Kingdom,

at the hearing on 1 October 1963:

"For the reasons given in the Counter-Memorial and the oral statements presented on behalf of the United Kingdom during the present hearing, the United Kingdom makes the following submissions:

(1) that there has not at any time been a dispute as alleged in the Application in this case;

(2) that there has not been or was not on 30 May 1961, as alleged in the Application, a dispute falling within Article 19 of the Trusteeship Agreement for the Territory of the Cameroons under United Kingdom Administration;

(3) that, in any event, there is no dispute before the Court upon which the Court is entitled to adjudicate.

May it, therefore, please the Court:

Having regard to each and all of the above submissions, to uphold the preliminary objections of the United Kingdom and to declare that the Court is without jurisdiction in the present case and that the Court will not proceed to examine the merits."

On behalf of the Government of Cameroon,

at the hearing on 3 October 1963:

"For the reasons given in its pleadings and oral statements, the Federal Republic of Cameroon has the honour to make the following submissions:

May it please the Court:

1. To dismiss the preliminary objections of the United Kingdom to the effect that the Court should declare that it has no jurisdiction;

2. To declare that it has jurisdiction to examine the merits of the claim of the Federal Republic of Cameroon to the effect that the Court should adjudge and declare that the United Kingdom has, in the interpretation and application of the Trusteeship Agreement for the Territory of the Cameroons under British Administration, failed to respect certain obligations directly or indirectly flowing from the said Agreement, and in particular from Articles 3, 5, 6 and 7 thereof."

The President having asked the Agent of the Government of the United Kingdom whether he had any observations to make on the submissions thus presented by the Government of Cameroon, the Agent stated that he had no comment to make in so far as the submissions related to the question of jurisdiction and the preliminary objections of the United Kingdom.

* * *

In order to be in a position to pass upon the submissions of the Parties, the Court must take into account certain facts which underlie the Applicant's complaints. Although the Court will subsequently enter into some points in greater detail, it will, at the outset, present in broad outline the facts which it has found to be important to an appreciation of the case.

The historical background of the Application filed by the Republic of Cameroon on 30 May 1961 relates to one of the several important political developments affecting certain territories in the continent of Africa which have taken place in recent years. The territory here in question, known as the Northern Cameroons, formed part of the "oversea possessions" the rights and titles to which Germany renounced under Article 119 of the Treaty of Versailles of 28 June 1919, and which were placed under the Mandates System of the League of Nations. In conformity with a decision of the Council of Four at the Peace Conference, the Governments of France and Great Britain recommended that the territory which had been known as the German protectorate of Kamerun should be divided into two Mandates, the one to be administered by France and the other by Great Britain. This recommendation was accepted and the Mandates were established.

After the creation of the United Nations, the French and British Governments proposed to place these mandated territories under the International Trusteeship System. Trusteeship Agreements for the Territory of the Cameroons under British Administration and for the Territory of the Cameroons under French Administration with the approval of the General Assembly of the United Nations entered into force on 13 December 1946.

The Government of the United Kingdom as the Administering Authority maintained in the Trust Territory of the Cameroons the same administrative arrangements which it had first instituted when the Mandate was accepted. Under these arrangements the territory was divided into a northern region and a southern region. The Northern Cameroons was itself not a geographical whole but was in two sections, separated by a narrow strip of the territory of what was then the British Protectorate of Nigeria which bordered the entire western side of the Mandate. The Northern Cameroons was administered as part of the two northern provinces of Nigeria, Bornu and Adamawa. The Southern Cameroons was administered until 1939 as a separate Cameroons Province of Southern Nigeria. Thereafter, the Southern Cameroons was joined for administrative purposes to the eastern provinces of Nigeria as a separate province.

The Trust Territory of the Cameroons under French Administration, which formed the entire eastern and most of the northern frontier of the Trust Territory of the Cameroons under British

Administration, attained independence as the Republic of Cameroon on 1 January 1960. On 20 September 1960 the Republic of Cameroon became a Member of the United Nations. On 1 October 1961, pursuant to the results of a plebiscite conducted under the auspices of the United Nations, the Southern Cameroons joined the Republic of Cameroon within which it then became incorporated.

Meanwhile, also consequent upon a plebiscite conducted under the auspices of the United Nations on 11 and 12 February 1961, the Northern Cameroons on 1 June 1961 joined the Federation of Nigeria which had become independent on 1 October 1960 and which was admitted as a Member of the United Nations six days later. The Northern Cameroons became and remains a separate province of the Northern Region of Nigeria.

The situation of the Trust Territories of the Cameroons under French Administration and of the Cameroons under British Administration received much attention from the Trusteeship Council of the United Nations and from the General Assembly itself. Indeed, the General Assembly on 5 December 1958 decided to resume its thirteenth session in February 1959 "to consider exclusively the question of the future of the Trust Territories of the Cameroons under French Administration and the Cameroons under United Kingdom Administration". In addition, the whole question of administrative unions in trust territories was over many years the subject of repeated study within the United Nations.

The reports of visiting missions to the two Trust Territories of the Cameroons under French and British administration respectively, the proceedings of the Trusteeship Council and of the Fourth Committee of the General Assembly as well as the reports of the United Nations Plebiscite Commissioner who supervised plebiscites held in the Trust Territory of the Cameroons under British Administration, afford abundant background for the questions raised by the Republic of Cameroon in its Application of 30 May 1961 instituting proceedings against the United Kingdom. Since proceedings on the merits were suspended as recorded in the Order of 3 September 1962, the Court, as already noted, refers to this body of material only for the purpose of indicating the setting in which it has been called upon to consider the Application and Memorial of the Republic of Cameroon and the Preliminary Objections thereto which have been filed by the United Kingdom. It is necessary, however, by way of clarification of what follows, to refer specifically to three of the resolutions adopted by the General Assembly of the United Nations.

On 13 March 1959, the General Assembly adopted resolution 1350 (XIII). It recommended that the Administering Authority, in consultation with a United Nations Plebiscite Commissioner, organize under the supervision of the United Nations separate plebiscites in the northern and southern parts of the Cameroons under British administration "in order to ascertain the wishes of

the inhabitants of the Territory concerning their future". In the Southern Cameroons, the plebiscite was held on 11 February 1961; the vote registered a decision "to achieve independence by joining the independent Republic of Cameroun". In the Northern Cameroons a first plebiscite was held on 7 November 1959; the vote was in favour of deciding their future at a later date. Accordingly, by resolution 1473 (XIV) of 12 December 1959, the General Assembly recommended that a second plebiscite be held in the Northern Cameroons in which the people would be asked whether they wished "to achieve independence" by joining the independent Republic of Cameroon or by joining the independent Federation of Nigeria. By the same resolution, the General Assembly recommended that the United Kingdom should meanwhile take various steps including the initiation without delay of the "separation of the administration of the Northern Cameroons from that of Nigeria and that this process should be completed by 1 October 1960". It is one of the complaints of the Republic of Cameroon as Applicant here, that the United Kingdom as Administering Authority failed to take the necessary steps to comply with this recommendation.

The plebiscite was held on 11 and 12 February 1961, and on 21 April 1961 the General Assembly adopted resolution 1608 (XV) which has special significance in this case. The resolution includes the following three paragraphs:

"2. *Endorses* the results of the plebiscites that:

(a) The people of the Northern Cameroons have, by a substantial majority, decided to achieve independence by joining the independent Federation of Nigeria;

(b) The people of the Southern Cameroons have similarly decided to achieve independence by joining the independent Republic of Cameroun;

3. *Considers that,* the people of the two parts of the Trust Territory having freely and secretly expressed their wishes with regard to their respective futures in accordance with General Assembly resolutions 1352 (XIV) and 1473 (XIV), the decisions made by them through democratic processes under the supervision of the United Nations should be immediately implemented;

4. *Decides* that, the plebiscites having been taken separately with differing results, the Trusteeship Agreement of 13 December 1946 concerning the Cameroons under United Kingdom administration shall be terminated, in accordance with Article 76 *b* of the Charter of the United Nations and in agreement with the Administering Authority, in the following manner:

(a) With respect to the Northern Cameroons, on 1 June 1961, upon its joining the Federation of Nigeria as a separate province of the Northern Region of Nigeria;

(b) With respect to the Southern Cameroons, on 1 October 1961, upon its joining the Republic of Cameroun;".

The Republic of Cameroon voted against the adoption of this resolution.

Although in a Memorandum of 1 May 1961 from the Republic of Cameroon Ministry of Foreign Affairs transmitted to the United Kingdom (which hereafter will more particularly be referred to) the position was taken that the Trusteeship could not be terminated without the consent of the Republic of Cameroon "in its capacity as a State directly concerned", the Applicant did not maintain this position and the fact that the Trusteeship Agreement was terminated by the General Assembly's resolution 1608 (XV), is now admitted by both Parties.

Even before the discussions which led up to resolution 1608 (XV), the Republic of Cameroon expressed its dissatisfaction with the manner in which the separation of the administration of the Northern Cameroons from that of Nigeria was being implemented by the United Kingdom. As early as May 1960, before the Republic of Cameroon became a Member of the United Nations, its point of view was expounded on its behalf by the representative of France in the Trusteeship Council. After its admission to membership of the United Nations, by a communiqué attached to a note verbale of 4 January 1961 to the United Kingdom, the Republic of Cameroon asserted on its own behalf that this administrative separation had not been made effective and that the United Kingdom as Administering Authority had not conducted the peoples of the Northern Cameroons to self-government as provided in Article 76 *(b)* of the Charter of the United Nations. Thereafter, and after the plebiscite of February 1961, representatives of the Republic of Cameroon through numerous interventions in the Fourth Committee of the General Assembly and in the plenary sessions of the Assembly, made known its objections to certain alleged practices, acts or omissions on the part of the local trusteeship authorities during the period preceding the plebiscite and during the course of the plebiscite itself which it claimed altered the normal course of the consultation with the people and involved consequences in conflict with the Trusteeship Agreement. Throughout, the Republic of Cameroon emphasized its view that the "rule of unity" had been disregarded by the Administering Authority and thereby the political development of the Trust Territory had been altered.

These objections, together with the allegations by the Republic of Cameroon that the Administrative separation recommended in General Assembly resolution 1473 (XIV) had not been effected, and the complaint that the whole Trust Territory had not been administered as a single administrative unit, were developed in a Cameroon White Book distributed by it to all Members of the United Nations in March 1961 when the results of the second

plebiscite in the Northern Cameroons were being debated in the Fourth Committee of the General Assembly. In response to this White Book, letters in rebuttal were similarly distributed by the representatives of the United Kingdom and of Nigeria. It was following this exchange and the attendant debates that the General Assembly adopted resolution 1608 (XV) previously referred to.

Following the adoption of the General Assembly's resolution 1608 (XV), the Republic of Cameroon, on 1 May 1961, addressed a communication to the United Kingdom in which it referred to complaints "of a legal character" which had been advanced by it and which it wished to have considered by this Court. The complaints are listed in its communication and they correspond with those which in the Application are stated to be the matters relating to the execution of the Trusteeship Agreement on the part of the Administering Authority and constituting the subject of the dispute between the Republic of Cameroon and the United Kingdom. Its communication referred to a dispute concerning the application of the Trusteeship Agreement and requested the United Kingdom to enter into a special agreement for the purpose of bringing the same before this Court. No reference was made in the communication of the Republic of Cameroon to Article 19 of the Trusteeship Agreement which hereafter will be referred to.

To this communication the United Kingdom replied on 26 May 1961 stating that the dispute did not appear to be between it and the Republic of Cameroon but between the latter and the United Nations General Assembly. The policies or practices with which the Republic of Cameroon found fault, the reply goes on to state, had been endorsed by the United Nations and the United Kingdom did not deem it proper to submit to the International Court a dispute concerning these. To refer the matter to this Court, the letter proceeded to say, would call in question the decision of the General Assembly as set out in its resolution 1608 (XV) and introduce an element of uncertainty into a matter decided by the Assembly. For these stated reasons the United Kingdom declared they were unable to comply with the request of the Republic of Cameroon to refer the matter to this Court.

Four days later, on 30 May 1961, the Republic of Cameroon submitted its Application to the Court, basing the jurisdiction of the Court on Article 19 of the Trusteeship Agreement which reads as follows:

> "*Article 19.* If any dispute whatever should arise between the Administering Authority and another Member of the United Nations relating to the interpretation or application of the provisions of this Agreement, such dispute, if it cannot be settled by negotiation or other means, shall be submitted to the International Court of Justice, provided for in Chapter XIV of the United Nations Charter."

Pursuant to General Assembly resolution 1608 (XV), the Trusteeship Agreement was terminated, with respect to the Northern Cameroons, two days later, on 1 June 1961.

* * *

The Application lists the following complaints:

"*(a)* The Northern Cameroons have not, in spite of the text of Article 5, § B, of the Trusteeship Agreement, been administered as a separate territory within an administrative union, but as an integral part of Nigeria.

(b) Article 6 of the Trusteeship Agreement laid down as objectives the development of free political institutions, a progressively increasing share for the inhabitants of the Territory in the administrative services, their participation in advisory and legislative bodies and in the government of the Territory. These objectives, in the opinion of the Republic of Cameroon, have not been attained.

(c) The Trusteeship Agreement did not authorize the Administering Power to administer the Territory as two separate parts, contrary to the rule of unity, in accordance with two administrative systems and following separate courses of political development.

(d) The provisions of § 7 of Resolution 1473 relating to the separation of the administration of the Northern Cameroons from that of Nigeria have not been followed.

(e) The measures provided for in § 6 of the same Resolution in order to achieve further decentralization of governmental functions and the effective democratization of the system of local government have not been implemented.

(f) The conditions laid down by § 4 of the Resolution for the drawing up of electoral lists were interpreted in a discriminatory manner, by giving an improper interpretation to the qualification of ordinary residence.

(g) Practices, acts or omissions of the local Trusteeship authorities during the period preceding the plebiscite and during the elections themselves altered the normal course of the consultation and involved consequences in conflict with the Trusteeship Agreement."

The formulation of the grievances of the Republic of Cameroon is stated in differing language in the Application, its Memorial, its Written Observations and Submissions and its Final Submissions. It suffices at this point, and in the light of what has already been said, to quote from the Final Submissions the prayer—

"that the Court should adjudge and declare that the United Kingdom has, in the interpretation and application of the Trusteeship Agreement for the Territory of the Cameroons under British Administration, failed to respect certain obligations directly or indirectly flowing from the said Agreement, and in particular from Articles 3, 5, 6 and 7 thereof".

The Counter-Memorial of the United Kingdom, in Part II thereof, dealt with the merits of the case, the stated reason being that the United Kingdom thought assertions of the Republic of Cameroon should not remain unanswered. Part I of the Counter-Memorial raised a number of preliminary objections.

These objections were developed at considerable length during the course of the oral hearing. For reasons which will subsequently appear, the Court does not find it necessary to consider all the objections, nor to determine whether all of them are objections to jurisdiction or to admissibility or based on other grounds. During the course of the oral hearing little distinction if any was made by the Parties themselves between "jurisdiction" and "admissibility". There are however two objections which the Court thinks should be disposed of at this stage.

The first of these objections is the contention of the United Kingdom that there is no "dispute" between itself and the Republic of Cameroon. If any dispute did at the date of the Application exist, it is the United Kingdom's contention that it was between the Republic of Cameroon and the United Nations or its General Assembly.

The Court is not concerned with the question whether or not any dispute in relation to the same subject-matter existed between the Republic of Cameroon and the United Nations or the General Assembly. In the view of the Court it is sufficient to say that, having regard to the facts already stated in this Judgment, the opposing views of the Parties as to the interpretation and application of relevant Articles of the Trusteeship Agreement, reveal the existence of a dispute in the sense recognized by the jurisprudence of the Court and of its predecessor, between the Republic of Cameroon and the United Kingdom at the date of the Application.

The other preliminary objection, that the Court finds it convenient at this stage to deal with, is based on Article 32 (2) of the Rules of Court which provides that when a case is brought before it by means of an application, the application must not only indicate the subject of the dispute as laid down in Article 40 of the Court's Statute but it must also "as far as possible" specify the provision on which the Applicant founds the jurisdiction of the Court, and state the precise nature of the claim and the grounds on which it is based.

In the Observations and Submissions of the Republic of Cameroon, this objection is treated separately as one to the admissibility of the Application and the Memorial.

The Court cannot be indifferent to any failure, whether by Applicant or Respondent, to comply with its Rules which have been framed in accordance with Article 30 of its Statute. The Permanent Court of International Justice in several cases felt called upon to consider whether the formal requirements of its Rules had been met. In such matters of form it tended to "take a broad

view". (*The "Société Commerciale de Belgique"*, P.C.I.J., Series A/B, No. 78, p. 173.) The Court agrees with the view expressed by the Permanent Court in the *Mavrommatis Palestine Concessions* case (P.C.I.J., Series A, No. 2, p. 34):

> "The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law."

The Court is quite conscious of the Applicant's deeply felt concern over events referred to in its pleadings and if there were no other reason which in its opinion would prevent it from examining the case on the merits, it would not refuse to proceed because of the lack of what the Permanent Court in the case of the *Interpretation of the Statute of the Memel Territory*, called a "convenient and appropriate method in which to bring the difference of opinion before the Court" (P.C.I.J., Series A/B, No. 49, p. 311).

The Court notes that whilst under Article 40 of its Statute the subject of a dispute brought before the Court *shall be* indicated, Article 32 (2) of the Rules of Court requires the Applicant "as far as possible" to do certain things. These words apply not only to specifying the provision on which the Applicant founds the jurisdiction of the Court, but also to stating the precise nature of the claim and giving a succinct statement of the facts and grounds on which the claim is based. In the view of the Court the Applicant has sufficiently complied with the provisions of Article 32 (2) of the Rules and the preliminary objection based upon non-compliance therewith is accordingly without substance.

* * *

The arguments of the Parties have at times been at cross-purposes because of the absence of a common meaning ascribed to such terms as "interest" and "admissibility". The Court recognizes that these words in differing contexts may have varying connotations but it does not find it necessary in the present case to explore the meaning of these terms. For the purposes of the present case, a factual analysis undertaken in the light of certain guiding principles may suffice to conduce to the resolution of the issues to which the Court directs its attention.

The geographical propinquity of the Republic of Cameroon to the former Trust Territory of the Northern Cameroons, and the degree of affinity between the populations of the two regions, led the Republic of Cameroon to view the developments regarding the former Trust Territory with intense concern. The Court cannot blind its eyes to the indisputable fact that if the result of the plebiscite in the Northern Cameroons had not favoured joining the Federation of Nigeria, it would have favoured joining the Republic of Cameroon. No third choice was presented in the questions framed

by the General Assembly and no other alternative was contemporaneously discussed.

The Republic of Cameroon, as a Member of the United Nations as from 20 September 1960, had a right to apply to the Court and by the filing of the Application of 30 May 1961 the Court was seised. This procedural right to apply to the Court, where, whatever the outcome, all aspects of a matter can be discussed in the objective atmosphere of a court of justice, is by no means insubstantial. The filing of an application instituting proceedings, however, does not prejudge the action which the Court may take to deal with the case.

In its Judgment of 18 November 1953 on the Preliminary Objection in the *Nottebohm* case (*I.C.J. Reports 1953*, p. 122), the Court had occasion to deal at some length with the nature of seisin and the consequences of seising the Court. As this Court said in that Judgment: "the seising of the Court is one thing, the administration of justice is another". It is the act of the Applicant which seises the Court but even if the Court, when seised, finds that it has jurisdiction, the Court is not compelled in every case to exercise that jurisdiction. There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court's judicial integrity.

In the *Free Zones* case, the Permanent Court referred to three different considerations which would lead it to decline to give judgment on questions posed by the parties. These were raised by the Court *proprio motu*. In the Order of 19 August 1929 (P.C.I.J., Series A, No. 22, p. 15), the Court in the first place said that—

> "the Court cannot as a general rule be compelled to choose between constructions [of a treaty] determined beforehand none of which may correspond to the opinion at which it may arrive..."

In the second place, in its Judgment of 7 June 1932 in the same case (P.C.I.J., Series A/B, No. 46, p. 161) the Court said:

> "After mature consideration, the Court maintains its opinion that it would be incompatible with the Statute, and with its position as a Court of Justice, to give a judgment which would be dependent for its validity on the subsequent approval of the Parties."

Finally the Court went on to say (at p. 162), in regard to paragraph 2 of Article 2 of the Special Agreement which would have involved a

decision by the Court on questions such as specific tariff exemptions to be established, that the task thus assigned to the Court by the parties was "unsuitable to the role of a Court of Justice". Moreover, the "interplay of economic interests" posed questions—

> "outside the sphere in which a Court of Justice, concerned with the application of rules of law, can help in the solution of disputes between two States".

The Court may, of course, give advisory opinions—not at the request of a State but at the request of a duly authorized organ or agency of the United Nations. But both the Permanent Court of International Justice and this Court have emphasized the fact that the Court's authority to give advisory opinions must be exercised as a judicial function. Both Courts have had occasion to make pronouncements concerning requests for advisory opinions, which are equally applicable to the proper role of the Court in disposing of contested cases; in both situations, the Court is exercising a judicial function. That function is circumscribed by inherent limitations which are none the less imperative because they may be difficult to catalogue, and may not frequently present themselves as a conclusive bar to adjudication in a concrete case. Nevertheless, it is always a matter for the determination of the Court whether its judicial functions are involved. This Court, like the Permanent Court of International Justice, has always been guided by the principle which the latter stated in the case concerning the *Status of Eastern Carelia* on 23 July 1923:

> "The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court." (P.C.I.J., Series B, No. 5, p. 29.)

In the *Haya de la Torre* case (*I.C.J. Reports 1951*, pp. 78-79), the Court noted that both parties sought from the Court a decision "as to the manner in which the asylum should be terminated". It ordered that the asylum should terminate but refused to indicate means to be employed to give effect to its order. The Court said:

> "The interrogative form in which they have formulated their Submissions shows that they desire that the Court should make a choice amongst the various courses by which the asylum may be terminated. But these courses are conditioned by facts and by possibilities which, to a very large extent, the Parties are alone in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on considerations of practicability or of political expediency; it is not part of the Court's judicial function to make such a choice."

To determine whether the adjudication sought by the Applicant is one which the Court's judicial function permits it to give, the Court must take into account certain facts in the present case.

* * *

The Applicant's explanations of what it does and does not ask the Court to decide, are variously formulated in its written and oral pleadings. The Court believes that the clearest explanation is to be found in the Applicant's Observations and Submissions as follows:

> "When a State brings an action before the Court on the basis of a provision of the nature of Article 19 of the Trusteeship Agreement for the Cameroons under British administration, it may no doubt in certain cases, in addition to seeking a finding that a violation of the Trusteeship Agreement has been committed, ask the Court to declare that the administering Power is under an obligation to put an end to that violation. Thus, in the *South West Africa* cases, Ethiopia and Liberia in their submissions asked the Court both for a finding of certain violations (the policy of apartheid, failure to render annual reports, failure to transmit petitions, etc.) and for a declaration that South Africa is under an obligation to bring these violations to an end. But this can only be so when what is involved is what might be called a 'continuing violation' capable of being stopped pursuant to the Court's Judgment. When, on the other hand, the breach of the agreement has been finally consummated and it is physically impossible to undo the past, the Applicant State is no longer in a position to ask the Court for more than a finding, with force of *res judicata*, that the Trusteeship Agreement has not been respected by the administering Power.
>
> In the case in point the violations referred to have been finally consummated, and the Republic of Cameroon cannot ask for a *restitutio in integrum* having the effect of non-occurrence of the union with Nigeria and non-division of the Territory, or fulfilment of the objectives laid down in Article 6 of the Agreement, or observance of Resolution 1473; it can only ask for a finding by the Court of the breaches of the Trusteeship Agreement committed by the Administering Authority."

In the course of his oral argument, Counsel for the Applicant said:

> "The Republic of Cameroon considers in fact that, by administering the Northern Cameroons as it did, the Administering Authority created such conditions that the Trusteeship led to the attachment of the northern part of the Cameroons to a State other than the Republic of Cameroon."

In the Cameroon White Book already mentioned, it is said that "failure to separate the administrations of the two territories destroyed an essential guarantee of impartiality and effectively sabotaged the plebiscite". The White Book continued by saying:

"The only acceptable solution to avoid a monstrous injustice ... is to declare the plebiscite ... null and void..."

The injustice alleged seems clearly enough to have been "the attachment of the northern part of the Cameroons to a State other than the Republic of Cameroon".

But the Court is not asked to redress the alleged injustice; it is not asked to detach territory from Nigeria; it is not asked to restore to the Republic of Cameroon peoples or territories claimed to have been lost; it is not asked to award reparation of any kind.

It was not to this Court but to the General Assembly of the United Nations that the Republic of Cameroon directed the argument and the plea for a declaration that the plebiscite was null and void. In paragraphs numbered 2 and 3 of resolution 1608 (XV), the General Assembly rejected the Cameroon plea. Whatever the motivation of the General Assembly in reaching the conclusions contained in those paragraphs, whether or not it was acting wholly on the political plane and without the Court finding it necessary to consider here whether or not the General Assembly based its action on a correct interpretation of the Trusteeship Agreement, there is no doubt—and indeed no controversy—that the resolution had definitive legal effect. The plebiscite was not declared null and void but, on the contrary, its results were endorsed and the General Assembly decided that the Trusteeship Agreement should be terminated with respect to the Northern Cameroons on 1 June 1961. In the event, the termination of the Trusteeship Agreement was a legal effect of the conclusions in paragraphs 2 and 3 of resolution 1608 (XV). The Applicant here has expressly said it does not ask the Court to revise or to reverse those conclusions of the General Assembly or those decisions as such, and it is not therefore necessary to consider whether the Court could exercise such an authority. But the Applicant does ask the Court to appreciate certain facts and to reach conclusions on those facts at variance with the conclusions stated by the General Assembly in resolution 1608 (XV).

If the Court were to decide that it can deal with the case on the merits, and if thereafter, following argument on the merits, the Court decided, *inter alia*, that the establishment and the maintenance of the administrative union between the Northern Cameroons and Nigeria was a violation of the Trusteeship Agreement, it would still remain true that the General Assembly, acting within its acknowledged competence, was not persuaded that either the administrative union, or other alleged factors, invalidated the plebiscite as a free expression of the will of the people. Since the Court has not, in the Applicant's submissions, been asked to review that conclusion of the General Assembly, a decision by the Court, for example that the Administering Authority had violated the

Trusteeship Agreement, would not establish a causal connection between that violation and the result of the plebiscite.

Moreover, the termination of the Trusteeship Agreement and the ensuing joinder of the Northern Cameroons to the Federation of Nigeria were not the acts of the United Kingdom but the result of actions of the General Assembly, actions to which the United Kingdom assented. Counsel for the Republic of Cameroon admitted that it was the United Nations which terminated the Trusteeship. He said:

> "Cameroon is not asking the Court to criticize the United Nations; Cameroon is not asking the Court to say that the United Nations was wrong in terminating the Trusteeship; Cameroon is not asking the Court to pronounce the annulment of resolution 1608. The Court, of course, would not be competent to do that..."

The administrative union, as established during the Trusteeship, whether legally or illegally, no longer exists. The Republic of Cameroon, however, contends that its interest in knowing whether that union was a violation of the Trusteeship Agreement, is not a merely academic one. It in fact contends that there was a causal connection between the allegedly illegal administrative union and the alleged invalidity of the plebiscite. Counsel for the Republic of Cameroon made this contention clear in a passage already quoted.

But the Applicant has stated that it does not ask the Court to invalidate the plebiscite; indeed as noted, it recognizes the Court could not do so. It has not asked the Court to find any causal connection between the alleged maladministration and the result of the vote favouring union with the Federation of Nigeria. As a result, the Court is relegated to an issue remote from reality.

If the Court were to proceed and were to hold that the Applicant's contentions were all sound on the merits, it would still be impossible for the Court to render a judgment capable of effective application. The role of the Court is not the same as that of the General Assembly. The decisions of the General Assembly would not be reversed by the judgment of the Court. The Trusteeship Agreement would not be revived and given new life by the judgment. The former Trust Territory of the Northern Cameroons would not be joined to the Republic of Cameroon. The union of that territory with the Federation of Nigeria would not be invalidated. The United Kingdom would have no right or authority to take any action with a view to satisfying the underlying desires of the Republic of Cameroon. In accordance with Article 59 of the Statute, the judgment would not be binding on Nigeria, or on any other State, or on any organ of the United Nations. These truths are not controverted by the Applicant.

The function of the Court is to state the law, but it may pronounce judgment only in connection with concrete cases where there

exists at the time of the adjudication an actual controversy involving a conflict of legal interests between the parties. The Court's judgment must have some practical consequence in the sense that it can affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations. No judgment on the merits in this case could satisfy these essentials of the judicial function.

* * *

The Trusteeship Agreement with respect to the Northern Cameroons having been validly terminated by resolution 1608 (XV), the Trust itself disappeared; the United Kingdom ceased to have the rights and duties of a trustee with respect to the Cameroons; and what was formerly the Trust Territory of the Northern Cameroons has joined the independent Federation of Nigeria and is now a part of that State.

Looking at the situation brought about by the termination of the Trusteeship Agreement from the point of view of a Member of the United Nations, other than the Administering Authority itself, it is clear that any rights which may have been granted by the Articles of the Trusteeship Agreement to other Members of the United Nations or their nationals came to an end. This is not to say that, for example, property rights which might have been obtained in accordance with certain Articles of the Trusteeship Agreement and which might have vested before the termination of the Agreement, would have been divested by the termination. It is the fact, however, that after 1 June 1961 when the Trust over the Northern Cameroons ceased to exist, no other Member of the United Nations could thereafter claim any of the rights or privileges in the Northern Cameroons which might have been originally granted by the Trusteeship Agreement. No such claim could be made on the United Kingdom which as trustee was *functus officio* and divested of all power and authority and responsibility in the area. No such claim could be made on Nigeria, which now has sovereignty over the territory, since Nigeria was not a party to the Trusteeship Agreement and never had any obligations under it. Nor is it apparent how such a claim could be made against the United Nations itself. Moreover, pursuant to Article 59 of the Statute a judgment of the Court in this case would bind only the two Parties.

The claim of the Republic of Cameroon is solely for a finding of a breach of the law. No further action is asked of the Court or can be added. Normally when the Court pronounces a judicial condemnation there is room for the application of Article 94 of the Charter. That is not the case here. Normally under the International Trusteeship System such a finding, if the Court were competent to make it, might lead the General Assembly to do whatever it thought

useful or desirable in the light of the judgment pronounced as between a Member of the United Nations and an Administering Authority for the territory in question. In the present case, however, the General Assembly is no longer competent pursuant to the termination of the Trusteeship as a result of resolution 1608 (XV).

Nevertheless, it may be contended that if during the life of the Trusteeship the Trustee was responsible for some act in violation of the terms of the Trusteeship Agreement which resulted in damage to another Member of the United Nations or to one of its nationals, a claim for reparation would not be liquidated by the termination of the Trust. Of course Article 19 of the Agreement which provided for the jurisdiction of the Court in the cases which it covered, was terminated with all other Articles of the Agreement, so that after 1 June 1961 it could not be invoked as a basis for the Court's jurisdiction. The Application in the instant case was filed before 1 June 1961 but it does not include, and the Applicant has expressly stated that it does not make, any claim for reparation.

The Court is aware of the fact that the arguments of both Parties made frequent references to the Judgment of the Court of 21 December 1962 in the *South West Africa* cases. The arguments dealt with the question whether conclusions arrived at in the consideration of the Mandates System under the League of Nations were applicable to the Trusteeship System under the United Nations, and whether, and if so to what extent, Article 19 of the Trusteeship Agreement of 1946 for the Cameroons was to be given in certain respects an interpretation similar to that given to Article 7 of the Mandate for South West Africa.

The Court does not find it necessary to pronounce an opinion on these points which, in so far as concerns the operation or administration of the Trusteeship for the Northern Cameroons, can have only an academic interest since that Trusteeship is no longer in existence, and no determination reached by the Court could be given effect to by the former Administering Authority.

Nevertheless, for the purpose of testing certain contentions in this case, the Court will consider what conclusions would be reached if it were common ground that Article 19 of the Trusteeship Agreement of 13 December 1946 for the Cameroons under British Administration was designed to provide a form of judicial protection in the particular interest of the inhabitants of the territory and in the general interest in the successful functioning of the International Trusteeship System; that this judicial protection was provided and existed side by side with the various provisions for administrative supervision and control through the Trusteeship Council, its visiting missions, hearing of petitioners, and action by the General Assembly; that any Member of the United Nations had a right to

invoke this judicial protection and specifically that the Republic of Cameroon had the right to invoke it by filing an application in this Court. It would then follow that in filing its Application on 30 May 1961, the Republic of Cameroon exercised a procedural right which appertained to it—a procedural right which was to be exercised in the general interest, whatever may have been the material individual interest of the Republic of Cameroon. But within two days after the filing of the Application the substantive interest which that procedural right would have protected, disappeared with the termination of the Trusteeship Agreement with respect to the Northern Cameroons. After 1 June 1961 there was no "trust territory" and no inhabitants for whose protection the trust functions could be exercised. It must be assumed that the General Assembly was mindful of the general interest when, acting within its competence, it decided on the termination of the Trust with respect to the Northern Cameroons and the joinder of the Northern Cameroons to the Federation of Nigeria. Thereafter, and as a result of this decision of the General Assembly, the whole system of administrative supervision came to an end. Thereafter the United Nations could not, under the authority of Article 87 of the Charter, send into the Territory a visiting mission to report on prevailing conditions. The Trusteeship Council could no longer examine petitions from inhabitants of the Territory, as indeed it decided at its 1178th meeting on 11 January 1962. The General Assembly could no longer make recommendations based upon its functions under Chapters XII and XIII of the Charter.

The Court cannot agree that under these circumstances the judicial protection claimed by the Applicant to have existed under the Trusteeship System, would have alone survived when all of the concomitant elements to which it was related had disappeared. Accordingly, the Republic of Cameroon would not have had a right after 1 June 1961, when the Trusteeship Agreement was terminated and the Trust itself came to an end, to ask the Court to adjudicate at this stage upon questions affecting the rights of the inhabitants of the former Trust Territory and the general interest in the successful functioning of the Trusteeship System.

* * *

Throughout these proceedings the contention of the Republic of Cameroon has been that all it seeks is a declaratory judgment of the Court that prior to the termination of the Trusteeship Agreement with respect to the Northern Cameroons, the United Kingdom had breached the provisions of the Agreement, and that, if its Application were admissible and the Court had jurisdiction to proceed to the merits, such a declaratory judgment is not only one the Court could make but one that it should make.

That the Court may, in an appropriate case, make a declaratory judgment is indisputable. The Court has, however, already indicated that even if, when seised of an Application, the Court finds that it has jurisdiction, it is not obliged to exercise it in all cases. If the Court is satisfied, whatever the nature of the relief claimed, that to adjudicate on the merits of an Application would be inconsistent with its judicial function, it should refuse to do so.

Moreover the Court observes that if in a declaratory judgment it expounds a rule of customary law or interprets a treaty which remains in force, its judgment has a continuing applicability. But in this case there is a dispute about the interpretation and application of a treaty—the Trusteeship Agreement—which has now been terminated, is no longer in force, and there can be no opportunity for a future act of interpretation or application of that treaty in accordance with any judgment the Court might render.

In its *Interpretation of Judgments Nos. 7 and 8 (the Chorzów Factory)* (P.C.I.J., Series A, No. 13, p. 20) the Court said:

> "The Court's Judgment No. 7 is in the nature of a declaratory judgment, the intention of which is to ensure recognition of a situation at law, once and for all and with binding force as between the Parties; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned."

The Applicant, however, seeks to minimize the importance of the forward reach of a judgment of the Court. It has maintained that it is seeking merely a statement of the law which would "constitute a vital pronouncement for the people of Cameroon". It has indeed asked the Court not to consider the aftermath of its judgment and in this connection it has cited the judgment of the Court in the *Haya de la Torre* case, quoted above. But there is a difference between the Court's considering the manner of compliance with its Judgment, or the likelihood of compliance, and, on the other hand, considering whether the judgment, if rendered, would be susceptible of any compliance or execution whatever, at any time in the future.

As the Court said in the *Haya de la Torre* case, it cannot concern itself with the choice among various practical steps which a State may take to comply with a judgment. It may also be agreed, as Counsel for the Applicant suggested, that after a judgment is rendered, the use which the successful party makes of the judgment is a matter which lies on the political and not on the judicial plane. But it is not the function of a court merely to provide a basis for political action if no question of actual legal rights is involved. Whenever the Court adjudicates on the merits of a dispute, one or the other party, or both parties, as a factual matter, are in a position to take some retroactive or prospective action or avoidance of

action, which would constitute a compliance with the Court's judgment or a defiance thereof. That is not the situation here.

* * *

The Court must discharge the duty to which it has already called attention—the duty to safeguard the judicial function. Whether or not at the moment the Application was filed there was jurisdiction in the Court to adjudicate upon the dispute submitted to it, circumstances that have since arisen render any adjudication devoid of purpose. Under these conditions, for the Court to proceed further in the case would not, in its opinion, be a proper discharge of its duties.

The answer to the question whether the judicial function is engaged may, in certain cases where the issue is raised, need to wait upon an examination of the merits. In the present case, however, it is already evident that it cannot be engaged. No purpose accordingly would be served by undertaking an examination of the merits in the case for the purpose of reaching a decision which, in the light of the circumstances to which the Court has already called attention, ineluctably must be made.

* * *

For the reasons which it has given, the Court has not felt called upon to pass expressly upon the several submissions of the Respondent, in the form in which they have been cast. The Court finds that the proper limits of its judicial function do not permit it to entertain the claims submitted to it in the Application of which it has been seised, with a view to a decision having the authority of *res judicata* between the Republic of Cameroon and the United Kingdom. Any judgment which the Court might pronounce would be without object.

For these reasons,

THE COURT,

by ten votes to five,

finds that it cannot adjudicate upon the merits of the claim of the Federal Republic of Cameroon.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this second day of December, one thousand nine hundred and sixty-three, 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 Cameroon and to the Government of the United Kingdom of Great Britain and Northern Ireland, respectively.

(Signed) B. WINIARSKI,
President.

(Signed) GARNIER-COIGNET,
Registrar.

Judge SPIROPOULOS makes the following declaration:

I do not share the view of the Court. I consider that the Application of the Republic of Cameroon is admissible and that the Court has jurisdiction to examine the merits of the dispute of which it is seised.

Judge KORETSKY makes the following declaration:

I cannot agree with the Judgment of the Court, as it has been reached without observance of relevant rules and principles laid down in the Rules of Court.

The Judgment was adopted in the stage of an examination of a preliminary objection, which delimits itself quite precisely from the stage of an examination of the merits of an Application. The Court passed by the question of its jurisdiction and turned to the question of the inadmissibility of the claims of the Republic of Cameroon.

If the question of inadmissibility is raised, not on the ground of non-observance of the purely formal requirements of the Rules, e.g. non-observance of Article 32 (2) of the Rules, but in respect of the substance of the Application *(ratione materiae)*, then the Court should first decide on its jurisdiction and subsequently consider the plea of inadmissibility. This is a broadly accepted rule. I venture to cite, from among many authoritative opinions, the statement of Judge Sir Percy Spender in his Separate Opinion in the *Interhandel* case (*I.C.J. Reports 1959*, p. 54) that the Court was obliged first to satisfy itself that it has jurisdiction and then to treat a plea to the admissibility of the Application. The same was said by Judge Sir Hersch Lauterpacht in his Dissenting Opinion (*ibid.*, p. 100) "that according to the established practice of the Court preliminary objections must be examined—and rejected—before the plea of admissibility is examined".

But the Court has said in this case, without dealing with the question of its jurisdiction, that a judgment on the claims of the Republic of Cameroon "would be without object"—that is, the Court has appraised Cameroon's claims on their merits. Such an appraisal could only be made at a later stage in the proceedings (on the merits), and by such an appraisal the Court substituted for the stage of deciding on preliminary objections to jurisdiction the stage of deciding the case on its merits.

One cannot regard rules of procedure as being simply technical. They determine not only a way of proceeding but procedural rights of parties as well. Their strict observance in the International Court of Justice, one might say, is even more important than in national courts. The Court may not change them *en passant* in deciding a given case. A revision of the Rules of Court should be effected (if necessary) in an orderly manner and, in any case, the changed rules should be known to parties beforehand.

Thus the Court, in accordance with the Rules of Court, ought first to have decided whether it had—or had not—jurisdiction in this case without prejudging its future decision in this case on the merits and then, observing the Rules of Court, to have passed to a further stage of the proceedings connected with the examination of the claims of the Republic of Cameroon on their merits.

Judge JESSUP makes the following declaration:

In view of the reasoning in the Judgment of the Court, with which I entirely agree, I do not find it necessary to explain why I believe that, if it were necessary to pass upon the jurisdictional issues which have been raised, the reasoning in pages 422 to 436 of my Separate Opinion in the *South West Africa* cases (*I.C.J. Reports 1962*, p. 319) would be equally valid here.

Judges WELLINGTON KOO, Sir Percy SPENDER, Sir Gerald FITZMAURICE and MORELLI append to the Judgment of the Court statements of their Separate Opinions.

Judges BADAWI and BUSTAMANTE Y RIVERO and Judge *ad hoc* BEB A DON append to the Judgment of the Court statements of their Dissenting Opinions.

(Initialled) B. W.

(Initialled) G.-C.
