

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING THE LAND AND MARITIME BOUNDARY (Cameroon v Nigeria) PROVISIONAL MEASURES

[1996] ICJ Reports

On 12 February 1996, Cameroon made a request for the indication of provisional measures in this case. It referred to grave incidents which had taken place between the forces of Cameroon and Nigeria in the Bakassi Peninsula¹ since 3 February 1996.

ORDER

On 15 March 1996, the International Court of Justice issued an Order indicating the following provisional measures:

- (1) The parties should ensure that no action of any kind, and particularly no action by their armed forces, be taken which might prejudice the rights of the other regarding whatever judgment the Court might render in the case, or which might aggravate or extend the dispute before it (unanimous).
- (2) The parties should observe the agreement reached between the Ministers for Foreign Affairs in Kara, Togo on 17 February 1996, for the cessation of all hostilities in the Bakassi Peninsula (Bedjaoui P, Schwebel V-P, Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren JJ, Mbaye J *ad hoc*; Ajibola J *ad hoc* dissenting).
- (3) The parties should ensure that the presence of any armed forces in the Bakassi Peninsula did not extend beyond the positions in which they were situated prior to 3 February 1996 (Bedjaoui P, Schwebel V-P, Oda, Guillaume, Ranjeva, Herczegh, Fleischhauer, Koroma, Ferrari Bravo, Higgins, Parra-Aranguren JJ, Mbaye J *ad hoc*;

¹ Site of frontier dispute.

- Shahabuddeen, Weeramantry, Shi, Vereshchetin JJ, Ajibola J *ad hoc* dissenting).
- (4) The parties should take all necessary steps to conserve evidence relevant to the present case within the disputed area (Bedjaoui P, Schwebel V-P, Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren JJ, Mbaye J *ad hoc*; Ajibola J *ad hoc* dissenting).
- (5) The parties should lend every assistance to the fact-finding mission which the Secretary-General of the United Nations had proposed to send to the Bakassi Peninsula (Bedjaoui P, Schwebel V-P, Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren JJ, Mbaye J *ad hoc*; Ajibola J *ad hoc* dissenting). Oda, Shahabuddeen, Ranjeva and Koroma JJ appended declarations to the Order of the Court; Weeramantry, Shi and Vereshchetin JJ appended a joint declaration. Mbaye J *ad hoc* appended a separate declaration and Ajibola J *ad hoc* appended a separate opinion to the Order of the Court.

THE PROCEEDINGS

On 29 March 1994, Cameroon instituted proceedings against Nigeria in respect of a dispute described as relating essentially to the question of sovereignty over the Bakassi Peninsula. In the Application, Cameroon based the jurisdiction of the Court on the declarations made by the two states pursuant to Article 36(2) of the Court's Statute. It stated that Cameroon's title to the Bakassi Peninsula was contested by Nigeria; that since the end of 1993, this contest had taken the form of aggression by Nigeria whose troops were occupying several Cameroonian localities in the Bakassi Peninsula. It claimed that this had resulted in great prejudice to Cameroon, for which the Court was requested to order reparation.

Cameroon further stated that the delimitation of the maritime boundary between the two States had remained a partial one and despite many attempts to complete it, the two parties had been unable to do so. Accordingly, it 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.

At the close of its Application, Cameroon presented the following submissions:

On the basis of the foregoing statement of facts and legal grounds, Cameroon, while reserving for itself the right to complement, amend or modify the present Application in the course of the proceedings and to submit to the Court a request for the indication of provisional measures should they prove to be necessary, asked the Court to adjudge and declare the following:

- (a) That Sovereignty over the Peninsula of Bakassi was Cameroonian, by virtue of international law, and that that Peninsula was an integral part of the territory of Cameroon.
- (b) That Nigeria had violated and was violating the fundamental principle of respect for frontiers inherited from colonisation (*uti possidetis juris*).
- (c) By using force against Cameroon, Nigeria had violated and was violating its obligations under international treaty law and customary law.
- (d) Nigeria, by militarily occupying Bakassi, had violated and was violating the obligations incumbent upon it by virtue of treaty law and customary law.
- (e) In view of the breaches of the above legal obligation, Nigeria had the express duty to end its military presence in Cameroonian territory, and effect an immediate and unconditional withdrawal of its troops from Bakassi. Furthermore, (i) the internationally unlawful acts referred to under paragraphs (a)-(e) above involved the responsibility of Nigeria; and (ii) consequently, and on account of the material and non-material damage inflicted upon Cameroon, reparation in an amount to be determined by the Court was due from Nigeria to Cameroon. This reserved the introduction before the Court of proceedings for a precise assessment of the damage caused by Nigeria.
- (f) In order to prevent any dispute arising between the two states concerning their maritime boundary, Cameroon requested the Court to proceed to prolong the course of its maritime boundary with Nigeria up to the limit of the maritime zones which international law placed under their respective jurisdictions.

On 6 June 1996, Cameroon filed an Additional Application to extend the subject of the dispute to a further dispute, described in that Additional Application as relating essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad.

In that Additional Application, Cameroon indicated that its title to that part of the territory was contested by Nigeria and that:

that contestation initially took the form of a massive introduction of Nigerian nationals into the disputed area, followed by an introduction of Nigerian security forces, effected prior to the official statement of its claim by the Government of the Federal Republic of Nigeria quite recently, for the first time.

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 closing, Cameroon submitted that, on the basis of the foregoing statement of facts and legal grounds, and subject to the reservations expressed in paragraph 20 of its Application of 29 March 1994, it asked the Court to adjudge and declare the following:

- (a) That sovereignty over the disputed parcel in the area of Lake Chad was Cameroonian by virtue of international law, and that that parcel was an integral part of the territory of Cameroon.
- (b) That Nigeria had violated and was violating the fundamental principle of respect for frontiers inherited from colonisation (*uti possidetis juris*), and its recent legal commitments concerning the demarcation of frontiers in Lake Chad.
- (c) That Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, had violated and was violating its obligations under treaty law and customary law.
- (d) That in view of the legal obligations mentioned above, Nigeria had the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad.

- (e) That the internationally unlawful acts referred to under paragraphs (a)-(d) above involved the responsibility of Nigeria. That consequently, and on account of the material and non-material damage inflicted upon Cameroon, reparation in an amount to be determined by the Court was due from Nigeria to Cameroon. It also reserved the introduction before the Court of proceedings for a precise assessment of the damage caused by Nigeria.
- (f) That in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two states, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of Nigeria regarding the legal instruments that defined the frontier between the two states and the exact course of that frontier, Cameroon asked the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea.

The Court recalled that 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. This allowed the Court to 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.

It further referred to the fact that Cameroon filed its Memorial on the merits and that Nigeria filed certain preliminary objections to the jurisdiction of the Court and the admissibility of the claims of Cameroon.

The Order then recounted that on 12 February 1996 the Agent of Cameroon referred to the grave incidents which have taken place between the forces of the two states in the Bakassi Peninsula since 3 February 1996. The Agent communicated to the Court a request for the indication of provisional measures based on Article 41 of the Statute of the Court and Article 73 of the Rules of Court, at the close of which Cameroon asked the Court to indicate the following measures:

- (1) the armed forces of the parties should withdraw to the position they were occupying before the Nigerian armed attack of 3 February 1996;

- (2) the parties should abstain from all military activity along the entire boundary until the judgment of the Court took place; and
- (3) the parties should abstain from any act or action which might hamper the gathering of evidence in the present case.

The Court then referred to a communication of 16 February 1996 by the Agent of Nigeria entitled "Cameroonian Government forces Nigerians to register and vote in municipal elections", which concluded in the following terms:

the Nigerian Government hereby invites the International Court of Justice to note this protest and call the Government of Cameroon to order; and

the Government of Cameroon should be warned to desist from further harassment of Nigerian citizens in the Bakassi Peninsula until the final determination of the case pending at the International Court of Justice.

THE JUDGMENT

The Court began by considering that the two parties had each made a declaration recognising the compulsory jurisdiction of the Court in accordance with Article 36(2) of the Statute, neither of which included any reservation. Those declarations constituted a *prima facie* basis upon which the Court's jurisdiction in the case was founded. The Court considered that the consolidated Application of Cameroon did not appear *prima facie* to be inadmissible in the light of the preliminary objections raised by Nigeria.

The Court observed that the power conferred upon it by Article 41 of the Statute of the Court and Article 73 of the Rules of Court to indicate provisional measures had as its object to preserve the respective rights of the parties, pending a decision of the Court. It presupposed that irreparable prejudice should not be caused to rights which were the subject of dispute in the judicial proceedings. It followed that the Court should be concerned to preserve by such measures the rights which might subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent, and that such measures were only justified if there was urgency.

The Court found that the mediation conducted by the President of the Republic of Togo and the ensuing communiqué announcing the cessation of all hostilities published on 17 February 1996 did not deprive the Court of the rights and duties pertaining to it in the case before it. It was clear from the submissions of both parties that there were military incidents and that they caused suffering, occasioned fatalities of both military and civilian personnel, caused others to be wounded or unaccounted for, and caused major material damage. The rights at issue in the proceedings were sovereign rights which the parties claimed over territory, and the rights also concerned persons. Further, armed actions had occurred on territory which was the subject of proceedings before the Court.

Independently of the requests for the indication of provisional measures submitted by the parties to preserve specific rights, the Court possessed by virtue of Article 41 of the Statute the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considered that circumstances so required.

The Court found that the events that had given rise to the request, and especially the killing of persons, had caused irreparable damage to the rights that the parties might have had over the Peninsula. Persons in the disputed area and, as a consequence, the rights of the parties within that area were exposed to serious risk of further irreparable damage. Armed actions within the territory in dispute could also jeopardise the existence of evidence relevant to the case. From the elements of information available to it, the Court took the view that there was a risk that events likely to aggravate or extend the dispute might occur again, thus rendering any settlement of that dispute more difficult.

The Court observed that, in the context of the proceedings concerning the indication of provisional measures, it could not make definitive findings of fact or of imputability. The right of each party to dispute the facts alleged against it, to challenge the attribution to it of responsibility for those facts, and to submit arguments, if appropriate, in respect of the merits, should remain unaffected by the Court's decision.

The Court held that the decision given in the proceedings in no way prejudged the question of its jurisdiction to deal with the merits of the case, or any questions relating to the admissibility of the Application, or relating

to the merits themselves. It left unaffected the right of the governments of both states to submit arguments in respect of those questions.

The letters of the President of the Security Council dated 29 February 1996, were mentioned. The letters had called upon the two parties:

to respect the ceasefire they agreed to on 17 February in Kara, Togo; to refrain from further violence; and to take necessary steps to return their forces to the positions they occupied before the dispute was referred to the International Court [of Justice].

The letters also proposed the despatch of a fact-finding mission into the Bakassi Peninsula. The Court then indicated the provisional measures cited.

ANNEXURE²

DECLARATION OF ODA J

First, Oda J pointed out that in his view the date given in the passage reading “the presence of any armed forces in the Bakassi Peninsula does not extend beyond the position in which they were situated prior to 3 February 1996” should have been 29 March 1994. This was the date on which Cameroon filed the Application instituting proceedings in this case and the date which seemed to be indicated in the mediation proposed by the President of Togo.

Secondly, he signalled his concern about the use of the term “irreparable damage” in paragraph 42 of the Order in view of the fact that the damage the Court found to have been caused might not concern the real subject of the case. In addition, the Court had not been able to form any clear and precise idea of events.

DECLARATION OF SHAHABUDEEN J

Shahabuddeen J affirmed that the Court’s Order should help to maintain friendly relations between two fraternal and neighbouring states. He had

² This is a summary of the separate Declarations of the judges.

voted for four of the five elements of the *dispositif*, but did not think that there was a satisfactory juridical basis for the remaining element. It was essential that a provisional measure limiting the movement of troops should incorporate a clear physical benchmark with reference to which it could be determined whether the limitation was observed. In this case, the evidence did not permit the Court to specify such a benchmark. That being so, the particular provisional measure could lead to new dispute, instead of serving the intended purpose of avoiding conflict.

DECLARATION OF RANJEVA J

Ranjeva J pointed to the development of a new “given” in international judicial relations, namely, the appearance of a step in the procedure consisting of a request for the indication of provisional measures on account of the occurrence of an armed conflict grafted on to a legal dispute. In that hypothesis, and when the circumstances of the case so required (exposure of the rights of the parties to a risk of irreparable damage, and urgency), the Court could indicate measures of a military character, according to a jurisprudence already defined in the case concerning the *Frontier Dispute*.³ When ordering those provisional measures, the Court was not acting as an authority invested with any general police power but as the principal judicial organ participating in the objectives of the maintenance of international peace and security within the remit of the United Nations.

DECLARATION OF KOROMA J

Koroma J stated that he had voted in favour of the Order on the clear understanding that it did not prejudice the issues before the Court, but rather, it was aimed to preserve the respective rights of the parties. The possibility of a further military engagement between the armed forces of both states, resulting in irreparable damage including further loss of human life, of itself provided the Court with sufficient reason to grant the Order.

He hoped that the Order would discourage the states from taking any measures which might cause irreparable damage to millions of their nationals residing in the other’s territory. He also hoped the Order would help reduce tension between the two states and restore the fraternal

³ *Burkina Faso v Republic of Mali* [1985] ICJ Reports 6.

relations which had always existed between them, pending the Court's decision.

JOINT DECLARATION OF WEERAMANTRY, SHI AND VERESHCHETIN JJ

Weeramantry, Shi and Vereshchetin JJ voted with the majority of the Court on the items in the *dispositif*, with the exception of item (3). The reason for their inability to support item (3) was that the parties had given the Court two entirely different versions on the incidents of 3 February 1996. These different versions involved entirely different positions on the location of their respective armed forces on that date.

The Court Order, requiring the parties to ensure that the presence of any armed forces in the Bakassi Peninsula should not extend beyond the positions in which they were situated prior to 3 February 1996, in effect left it to each party to determine what that position was and to act upon that determination. These positions might well be contradictory and left open the possibility of confusion upon the ground. Consequently, the Order might be interpreted as containing an internal contradiction.

DECLARATION OF MBAYE J AD HOC

Having stressed the "striking similarities" between the case concerning the *Frontier Dispute*⁴, and the present proceedings relating to the request for the indication of provisional measures, Mbaye J *ad hoc*, while accepting that cases were rarely identical, welcomed the fact that the Court had consolidated the jurisprudence of the Chamber. It indicated that "both Parties should ensure that the presence of any armed forces in the Bakassi Peninsula [did] not extend beyond the positions in which they were situated prior to 3 February 1996". He considered that this provision, taken together with the indication in the Order that the parties should ensure that no action of any kind was taken which might aggravate or extend the dispute or impede the collection of evidence, constituted a set of indications indispensable in the case of events of the same kind, as those forming the basis of the present request for the indication of provisional measures.

⁴ Ibid.

SEPARATE OPINION OF AJIBOLA J *AD HOC*

Ajibola J *ad hoc* voted with the other judges on the first provisional measure. He believed that such a measure accorded with the Statute and Rules of the Court (Article 41 of the Statute and Article 75(2) of the Rules). It was also in consonance with the jurisprudence of the Court. The Court on similar matters involving armed incidents had not hesitated to indicate such provisional measures. This was seen in recent cases like *Nicaragua v United States of America*,⁵ *Frontier Dispute*⁶ and the *Bosnia case*⁷ relating to the Genocide Convention. The Order accorded with many of the Court's recent indications which required both parties to avoid any acts or actions that might aggravate or extend the dispute. The Court had the power and indeed the duty to so indicate.

However, Ajibola J *ad hoc* would not vote with the rest of the Court on the remaining provisional measures because he felt they were unnecessary, non-legal and counter-productive. He said it was not the duty of the Court to indicate such measures, and reference to the circumstances in the recital was enough.

⁵ (*Jurisdiction*) [1984] ICJ Reports 392; (*Merits*) [1986] ICJ Reports 14.

⁶ See note 3 above.

⁷ Unreported; see below.