DISSENTING OPINION OF JUDGE KOROMA

Inadmissibility of request seemingly casuistic — Interpreting while not interpreting the Judgment — Nigeria's submissions — Cameroon's submissions — Existence of dispute — Acknowledgment of Court's jurisdiction — Relevant provisions of Statute and Rules of Court — Need to comply with obligations and Rules of Court in bringing matter before the Court — Absence of clarification could lead to prolongation and confusion of pleading — Res judicata *not contested — "Interpretation" has not resulted in clarification and definition of scope and meaning of Judgment — Request fulfils criteria for interpretation — Court should have acceded to request.*

1. I wish to state that I consider the reasons given in the Judgment for finding the request inadmissible to be somewhat casuistic and, with regret, I am unable to support the Judgment.

2. To have declared the request inadmissible after the Court had stated in paragraph 15 of the Judgment that it made no distinction in its Judgment of 11 June 1998 between "incidents" and "facts" can be read as an oblique, though, in my view, unsatisfactory "interpretation", which does not clarify the meaning and scope of that Judgment. Regrettably, by taking this position the Court would, on the one hand, seem to be trying to meet the object of the request while at the same time rejecting the request itself.

3. Nigeria, in its Application requesting the Court to interpret its Judgment of 11 June 1998, had sought the Court's clarification as to whether Cameroon was entitled at various times, after the submission of its amended Application, to bring before the Court new "incidents", following Cameroon's allegations that Nigeria bore international responsibility "for certain incidents said to have occurred at various places in Bakassi and Lake Chad and along the length of the frontier between those two regions". Nigeria also contended that Cameroon had made allegations involving a number of such "incidents" in its Application of 29 March 1994, its Additional Application of 6 June 1994, its observations of 28 April 1996, and during the oral hearings held from 2 to 11 March 1998. It further pointed out that Cameroon had also stated that it would be able to provide information as to other "incidents" on some unspecified future occasion. It was also its contention that the Court had not specified "which of these alleged incidents are to be considered further as part of the merits of the case". Thus Nigeria maintains that the Judgment "is unclear whether Cameroon was entitled at various times, after the submission of its Amended Application, to bring before the Court new incidents".

4. Nigeria submitted that it would be inadmissible to treat as part of the dispute brought before the Court by the Applications of March and June 1994 alleged incidents occurring subsequent to June 1994, and that Cameroon is entitled in this case to submit only "additional facts in amplification of incidents previously adverted to"; that it was not entitled to submit "entirely new and discrete incidents which are made the subject of new claims of responsibility". Nigeria further submitted that the Judgment of 11 June 1998 was accordingly to be interpreted as meaning that

> "so far as concerns the international responsibility [of] Nigeria . . . the dispute before the Court does not include any alleged incidents other than (at most) those specified in [the] Application . . . and Additional Application".

5. Cameroon, in its written observations, *inter alia*, had contended that it is entitled to rely on all facts, irrespective of their date, that go to establish the continuing violation by Nigeria of its international obligations, and had asked the Court to declare the request inadmissible. Thus a dispute does exist regarding the scope and meaning of the Judgment, and it would have been for the Court to declare that Cameroon is entitled to use only pre-1994 incidents in support of its Application filed in 1994, except, of course, if the Court felt that the scope and meaning of that Judgment was not so limited.

6. In its Judgment the Court acknowledged its jurisdiction, pursuant to Article 60 of the Statute of the Court supplemented by Article 98, paragraph 1, of the Rules of Court, to entertain the request for interpretation of the Judgment. It thereafter proceeded to consider whether the request was admissible, emphasizing that a condition of admissibility of such request is *that the real purpose should be to obtain an interpretation — a clarification of the meaning and scope* of the Judgment. After considering the submissions, the Court concluded that it had made no distinction between "incidents" and "facts" and found that "*additional* incidents"[1] constituted "*additional* facts"[1], and that their introduction in proceedings before the Court was governed by the same Rules.

7. In my view, reference to future "incidents" cannot be the basis of an application of which the Court has already been seised, since this would suggest that at the time the application was filed such dispute did not exist and, as such, would be inconsistent with the statutory obligations and the proper procedure of the Rules of Court, and the Court should have so stated. Put differently, an application instituting proceedings before the Court cannot be based on "incidents" posterior to the filing of that application, as this could lead to confusion and obscurity as to which "incident" or "incidents" had informed those proceedings.

[1] Emphasis added.

8. It follows that, to the extent that the Court's Judgment of 11 June 1998 had laid itself open to the possibility of misconstruction and confusion regarding its scope and meaning, it was both necessary and appropriate for the Court to clarify and/or interpret that Judgment, so as to rid it of any such misunderstanding and confusion. In this regard, where a party requests the Court to clarify its judgment by stating which incident or incidents the Court would consider as forming the basis of an application and to state the relevant cut-off date, this would appear to me to meet the tests for interpretation within the meaning of Article 60 of the Statute and Article 98, paragraph 1, of the Rules of Court. Consequently, while the Court's statement in this Judgment that it made no distinction between "incidents" and "facts" would appear to provide a measure of interpretation, it still leaves open the possibility of misconstruction and confusion, which, if not clarified, could even be at variance with the relevant provisions of the Statute and Rules of Court.

9. Germane to this issue are Article 40 of the Statute and Article 38 of the Rules of Court. Article 40, paragraph 1, of the Statute of the Court provides as follows:

> "Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated."

While Article 38 of the Rules of Court stipulates that

> "1. When proceedings before the Court are instituted by means of an application addressed as specified in Article 40, paragraph 1, of the Statute, the application shall indicate the party making it, the State against which the claim is brought, and the subject of the dispute.
>
> 2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based."

10. Accordingly, and in terms of these provisions, in order for a party to seise the Court of an application regarding a dispute, that dispute, as well as the facts and grounds on which it is based, must already exist and be specified.

11. The Court in paragraph 16 of the Judgment also stated that:

> "The two other submissions, namely that:
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> '*(b)* Cameroon's freedom to present additional facts and legal considerations relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994';

and that:

> '*(c)* the question whether facts alleged by Cameroon are established or not relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994',
>
> endeavour to remove from the Court's consideration elements of law and fact which it has, in its Judgment of 11 June 1998, already authorized Cameroon to present . . ."

and it is therefore unable to entertain the submissions. With respect, this statement leaves itself open to question, especially when it constitutes a ground for rejecting the request. Does the statement mean that since the Court had "authorized" Cameroon to present elements of law and fact, such purported authorization cannot be challenged and if challenged the Court is bound to reject the challenge because it had in the first place authorized their presentation? Furthermore, is it not the prerogative of a party to present the elements of fact and law of its case rather than for the Court to authorize such elements? In the light of such considerations, the statement as formulated appears to leave itself open to procedural as well as juridical challenge.

12. The underlying reason for Article 60 of the Statute is to preserve the integrity and finality of a judgment of the Court — the issue of *res judicata* — a matter not contested in the request. But the provision supplemented by Article 98, paragraph 1, of the Rules of Court also contemplates and allows for the interpretation/clarification of its judgment by the Court so as to give precision and definition to the scope and meaning of such a judgment[2]. Where such precision or clarification is missing, a party is entitled to request the Court to make it.

13. The lack of clarification regarding the meaning and scope of the Judgment could lead to an unnecessary and conceivable prolongation and confusion of pleadings that could have been obviated by the Court's interpretation of its Judgment.

14. The reasons for the request, and hence the clarification sought, are, in my view, both sound and legitimate and meet the criteria set out in the relevant provisions of the Statute and Rules of Court. The request does not create a new issue and is consequential upon the former proceedings. The Applicant had established its interests, both in law and in fact, as worthy of legal protection, in the sense that, as a Party to the dispute, it has an interest of a legal nature in ensuring that the other Party observes the obligations imposed by the Statute and Rules of Court, and to enable it to respond to the Memorial as appropriate and necessary. The Respondent's interest in the dispute before the Court would include its knowing

[2] *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 10.

the specific "incidents" as distinct from "facts" relied on in support of the Application and to which it would be expected to respond in its Counter-Memorial.

15. It is my considered opinion that the "interpretation" given of the Judgment has not rendered the clarification and precision of meaning which the request seeks. The Court should have acceded to the request and found it admissible, as it meets all the criteria set out in the relevant provisions of the Statute and Rules of Court as well as in its jurisprudence.

(Signed) Abdul G. KOROMA.