SEPARATE OPINION OF JUDGE WELLINGTON KOO

I concur in the final conclusion reached by the majority of the Court in the case, namely that any judgment the Court might pronounce on the merits would be without object and incompatible with the Court's judicial function. But I have arrived at it generally by a different line of reasoning. In my view it is also important that fuller consideration should have been given to the more pertinent submissions of the Parties so as to deduce additional reasons in support of the conclusion, thereby broadening and strengthening the basis of the Judgment. Accordingly, I propose to make a separate statement of my opinion.

1. In this case the Application was filed by the Agent for the Government of the Republic of Cameroon on 30 May 1961 and followed by its Memorial dated 12 December 1961. The submissions in both instruments are identical, asking the Court 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 in the respective documents.

2. The Counter-Memorial of the United Kingdom contains two parts. Part I on "The Jurisdiction of the Court" maintains that the Cameroon complaints do not fall within Article 19 of the Trusteeship Agreement and that the Application and the Memorial do not meet the requirements of the Rules of Court. For these and other reasons stated therein, the United Kingdom makes the submission that the Court is "without jurisdiction in the case and should refuse to hear it".

3. The Applicant in its Observations makes three submissions. The first asks the Court to dismiss the preliminary objection of the United Kingdom contending that the Court has no jurisdiction and the second asks for dismissal of the preliminary objection based on failure to observe the provisions of Article 32, paragraph 2, of the Rules of Court. The third submission is identical with that formulated in the Application and the Memorial.

4. At the end of the first part of the oral pleading Counsel for the United Kingdom submitted that the Court should hold and declare that it had no jurisdiction in this case and that he sustained the first conclusion in paragraph 112 of the United Kingdom Memorial. The Respondent's final submissions were presented by its Agent at the end of the oral pleading, which appear to have modified its earlier submissions and which are in the following terms:

"(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 the 30th 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."

Accordingly, the formal request to the Court is "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".

5. On the other hand, the Applicant presented three formal submissions at the end of the first part of the oral pleading and only two formal submissions at the end of the last part. The difference consists in the deletion of the submission relating to the preliminary objection of the United Kingdom based on failure to observe the provisions of Article 32, paragraph 2, of the Rules of Court; otherwise the two sets of submissions are identical not only between them but also with the two formal submissions in the Observations of the Government of the Federal Republic of Cameroon.

I

6. From the foregoing account of the successive submissions of the Parties in the case it appears clear that the single issue before the Court in the present phase of the proceedings is the question whether the Court has jurisdiction to hear and adjudicate on the merits.

7. Before commencing consideration of the issue of jurisdiction, it is, however, important to deal first with the preliminary question whether the requirements of Article 32, paragraph 2, of the Rules of Court have been met by the Application instituting proceedings in the present case. For if it is found to be irregular, it must be deemed as inadmissible and the Court cannot give further consideration to it. This determination is independent of the question whether the Respondent has failed to insist upon the objection and of the fact that the Applicant has omitted this point in its final submissions.

8. The provision of said Rule 32 relied on by the Respondent requires that the Application—

"must also, as far as possible ... state the precise nature of the claim and give a succinct statement of the facts and grounds on which the claim is based, these facts and grounds being developed in the Memorial, to which evidence will be annexed".

It has been contended by the Respondent in its Counter-Memorial that neither the Application nor the Memorial of the Republic

of Cameroon complies with this Rule inasmuch as neither specifies the "certain obligations" flowing from the Trusteeship Agreement which the United Kingdom is alleged to have failed to fulfil.

9. On reference to the Application, however, it is seen that the complaints are enumerated on page 19 and in the submissions thereof it is again stated that the United Kingdom "failed to respect certain obligations ... on the various points set out above". These complaints are again specified in paragraph 3, page 5, of the Memorial. Moreover, Rule 32 only calls for these indications "as far as possible". The criticism of the Respondent on this point therefore cannot be considered as well founded.

10. As regards the principal issue of jurisdiction in the case, it appears clear from the written and oral pleadings of the two Parties that the main arguments respectively in support and denial of the jurisdiction of the Court centre on Article 19 of the Trusteeship Agreement of 13 December 1946 for the Territory of the Cameroons between the United Nations on the one part and the United Kingdom as Administering Authority on the other. This provision reads:

> "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."

I will now examine the opposing arguments of the two Parties and assess their respective values.

11. In the first place it is the contention of the Respondent that there never has been a dispute between the United Kingdom and the Republic of Cameroon in the sense in which the word was used in Article 19 of the Trusteeship Agreement. It was said: "If the existence of a dispute in that sense is not proved, there is no question but that the attempt to invoke Article 19 fails *in limine*." The Applicant maintains, on the other hand, that a dispute has arisen and continues to exist. It refers as evidence of its existence, among other statements and communications, to a pamphlet distributed to all Members of the General Assembly at the end of March 1961 and entitled "Position of the Republic of the Cameroon following the plebiscite of 11th and 12th February 1961 in the Northern portion of the Territory of the Cameroon under the administration of the United Kingdom of Great Britain and Northern Ireland"; to the letter dated 10 April 1961 addressed by the representative of the United Kingdom on the Fourth Committee of the General Assembly to its Chairman and circulated to its Members in reply to this Cameroon "White Book", and to the exchange of Notes between the two Parties of 1 and 26 May 1961 annexed to the Cameroon Memorial.

12. What constitutes a dispute under international law has been indicated on several occasions by both the Permanent Court and this Court. Briefly it is "a disagreement on a point of law or fact, a conflict of legal views or interests between two persons" (*Mavrommatis* case, P.C.I.J., Series A, No. 2, p. 11). In its Advisory Opinion in the *Interpretation of Peace Treaties* this Court finds that "international disputes have arisen" where "the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations" (*I.C.J. Reports 1950*, p. 74). In the light of these definitions, there can be no doubt that at least *prima facie* a dispute has arisen between the Parties in the instant case.

II

13. It is true that an international dispute, just as a cause of action in municipal law, must embody or imply the existence of a legal right or interest at issue in order to be justiciable. Although the two Parties recognize this factor as one of the essential conditions of its existence and consider it as common ground between them, the Respondent contends that it is lacking in the present dispute, because Article 19 of the Trusteeship Agreement, on which the Application relies to uphold the jurisdiction of the Court to adjudicate the case, does not confer a right or interest on the Applicant as a third party to the Agreement to enforce the general obligations of the Administering Authority but that this right or interest appertains to the United Nations alone as the other party to the said instrument. According to this contention, another Member of the United Nations is entitled to invoke Article 19 against the Administering Authority of a given trust territory only when its individual rights or those of its nationals conferred by the Trusteeship Agreement were prejudiced by the action or non-action of said authority, but no such prejudice has been claimed by the Applicant. In support of this view, Counsel for the Respondent cites the Judgment of this Court in the *South West Africa* cases (*I.C.J. Reports 1962*, p. 319) and maintains that because the nature, structure and working of the Trusteeship System is basically different from the Mandates System under the League of Nations, judicial protection of the general interests of the inhabitants of the trust territories is no longer essential.

14. On the part of the Applicant, it is argued that there is nothing in the wording of Article 19 to justify such a restrictive interpretation and that the very fact that its broad language expressly refers to "the interpretation or application of the provisions of the Agreement" demonstrates clearly that any dispute relating

to one or more of the said provisions falls within its purview for adjudication by the Court.

15. While the contention of the Respondent appears plausible because of the great differences between the Trusteeship System under the Charter and the Mandates System under the Covenant, it cannot be accepted as generally correct. The fact that the phrase "any dispute whatever ... relating to the interpretation or application of the provisions of the Agreement" is obviously comprehensive and unqualified and is subject only to the conditions expressly stated in the Article, warrants careful consideration in drawing any general conclusion on the ground of interpretation.

16. Normally protection of the interests of the inhabitants of trust territories under the Charter is part of the functions of the General Assembly with the Trusteeship Council to assist it in the exercise thereof and, in respect of the strategic areas thereof, comes under the authority of the Security Council. But the general interest of the United Nations Members in due performance by the Administering Authority of its undertakings in the relevant Trusteeship Agreement subsists at the same time. Judicial protection of these interests is not precluded under Article 19. Though the occasions for invoking it may be infrequent, it nevertheless exists side by side with administrative supervision by the General Assembly and the Trusteeship Council and by the Security Council as the case may be. For there may well be circumstances, perhaps rare and exceptional, which would justify another Member of the United Nations to invoke the Court's jurisdiction for the purpose of assuring protection of the interests of the inhabitants of the trust territory. For example, when the debate in the Trusteeship Council or the General Assembly on a particular legal point relating to the question of conformity or non-conformity of the action of the Administering Authority with the particular trusteeship agreement and involving the interpretation or application of its provisions, becomes protracted and confused with no prospect of an early settlement because of the impossibility of obtaining a requisite majority vote to approve a resolution requesting the Court for an advisory opinion on the legal question, there is nothing in the language of Article 19 to preclude another Member from bringing the question before the Court in the form of a dispute with the Administering Authority for judicial determination of the legal question at issue. Moreover, in view of the basic objectives of the Trusteeship System as stated in Article 76, such recourse would not only fall within the purview of an adjudication clause such as Article 19 of the Trusteeship Agreement under consideration but also would be necessary in order to expedite a settlement by the General Assembly or the Trusteeship Council in the interests of the particular trust territory or its inhabitants.

17. It is not correct or justifiable to give such a sweeping interpretation, as claimed by the Respondent, of the broad terms of Article 19 as would exclude the possibility of another Member of the United Nations invoking the Court against the Administering Authority in a dispute relating to the interests of the trust territory or its inhabitants. The character, purport, structure and working of the Trusteeship System, being different from those of the Mandates System and resulting in a much broader and more effective supervision of the administration of the trust territories than in the case of the Mandates, may render recourse to judicial protection less necessary but the right of another Member to invoke it, as shown above, subsists for the intended purpose of protecting the interests of the people of the trust territory and thereby advancing the basic objectives of the Trusteeship System prescribed in the Charter.

18. In connection with the question of a legal interest as the indispensable basis of a justiciable dispute, the Applicant lays emphasis on its possession of an interest said to be special and individual in character and different from that of the other Members of the United Nations in addition to its interest simply as a Member of the United Nations. That this is a genuine and important interest of the Applicant can be easily appreciated. But, as such, it is clearly not an interest within the purview of Article 19. On analysis it is found to have been a contingent interest before 11-12 February 1961 and dependent for its materialization upon the outcome of the plebiscite held in the Northern Cameroons on these two days. If the result of the consultation had been in favour of the alternative "achieving independence by joining the independent Republic of Cameroon", this interest would have been satisfied and therefore would have ceased to exist. It has become a definite interest only since the result of the said plebiscite was officially proclaimed to have been in favour of joining the independent Federation of Nigeria. But by that time the people of the Northern Cameroons had achieved the basic objective of Article 76 b of the Charter and attained independence. This result was confirmed in due course by resolution 1608 (XV) of the General Assembly of 21 April 1961, which also decided to terminate on the specified dates the Trusteeship Agreement of 13 December 1946 concerning the Cameroons under United Kingdom administration. The interest which the Republic of Cameroon now claims to have cannot be of a legal character; it is only a political interest of its own, falling outside the scope of Article 19.

III

19. On denying the jurisdiction of the Court the Respondent has also raised an objection based on the contention that "The Republic of Cameroon was never a party to the Trusteeship Agree-

ment and only enjoyed the benefits of Membership of the United Nations from 20 September 1960", and that—

> "If ... the Republic of Cameroun on and after 20 September, 1960 was entitled to rely on Article 19 of the Agreement, it is not ... entitled to rely on matters occurring during the currency of the Agreement prior to 20 September, 1960 to establish a dispute before that date with the United Kingdom for the purpose of giving the Court jurisdiction. Nor ... in the event of a dispute sufficient to comply with the requirement of Article 19 arising after 20 September, 1960 is the Republic of Cameroun entitled to ask the Court to pronounce upon matters which occurred before that date."

20. Manifestly this is an argument based on the principle of *ratione temporis*. But the date of admission to Membership is not a crucial date except that only on and from 20 September 1960 the Republic of Cameroon is vested with all the rights and obligations of Membership. In other words, on that day it acquired the status or capacity of Membership to qualify under Article 19 as "another Member". Once this capacity is acquired, it is irrelevant as regards any dispute which it raises with the Administering Authority under the said Article. As to the subject-matter of a dispute, the right of a Member to raise it is not limited by the date of its admission to the United Nations. As soon as a State acquires the status of Membership, its rights and obligations under the Charter must be the same as all the other Members, and under the Trusteeship Agreement the same as all Members other than the Administering Authority. No differentiation or distinction among Members on the basis of their respective dates of admission is provided for in the Charter or justifiable in principle and practice.

IV

21. The Respondent also contests the applicability of Article 19 in question and advances the following argument:

> "All the complaints made are related to the purpose of falsifying the plebiscite in the Northern Cameroons. The Trusteeship Agreement did not, however, provide for its own termination far less for the holding of any plebiscite preparatory to termination. Questions about the validity of the plebiscite are not, therefore, related at all either to the application or to the interpretation of the provisions in the Trusteeship Agreement and therefore cannot be submitted to this Court under Article 19 of that Agreement."

A reading of the text of the Application, with the clear enumeration of seven complaints *(a)* to *(g)* which are confirmed in the Memorial, however, shows that while *(d)* and *(f)* relate to the question of observance of General Assembly resolution 1473, and *(g)* relates to

"Practices, acts or omissions of the local trusteeship authorities ... preceding the plebiscite and during the elections themselves", the first three complaints *(a)*, *(b)* and *(c)* all relate to specific provisions of the Trusteeship Agreement, citing Articles 5 and 6 of the Trusteeship Agreement as not having been observed by the Administering Authority.

22. It is true that no single article of the Trusteeship Agreement provides for its own termination. But this is necessarily implied, for under Article 3 of the Agreement "the Administering Authority undertakes to administer the Territory in such a manner as to achieve the basic objectives of the International Trusteeship System laid down in Article 76 of the United Nations Charter"; Article 5 *(b)* confers certain powers on the Administering Authority in administering the trust territory only "where such measures are not inconsistent with the basic objectives of the International Trusteeship System ..."; and Article 6 enjoins the Administering Authority "to promote the development of free political institutions suited to the Territory" and "to this end" to take all appropriate measures "with a view to the political advancement of the inhabitants of the Territory in accordance with Article 76 *(b)* of the United Nations Charter". When we refer back to this paragraph, we find it reads as follows:

> "*(b)* to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned...".

23. To ascertain the wishes of the people of a trust territory and enable them to express them freely, a plebiscite is generally recognized as the most appropriate mode of procedure to provide for free and secret voting; and when they vote for independence, their vote, if it is the vote of a requisite majority, necessarily means in effect also a vote for the extinction of their status as the inhabitants of a trust territory and therefore for the termination of the particular trusteeship agreement. This is what the people of the Northern Cameroons did when the second plebiscite was held for them to vote on 11-12 February 1961. In practical effect the attainment of independence or self-government under the Charter and the achievement of this objective under the Trusteeship Agreement were synonymous with the termination of the said Agreement, subject only to the formal endorsement of the General Assembly, which was, in the present case, duly given by resolution 1608 (XV). It seems reasonable, therefore, to conclude that the question of the validity of the plebiscite and that of the termination of the Trusteeship Agreement relate, if strictly speaking not to the interpretation,

certainly to the application of the said Agreement. Accordingly, the objection to the jurisdiction of the Court, based on the contention that Article 19 of the Trusteeship Agreement does not provide for its own termination nor for a plebiscite, is not well founded.

V

24. Another contention of the Respondent to deny jurisdiction in the case is that "under Article 19 the only disputes which can be submitted to or considered by this Court are disputes which cannot be settled by negotiations or other means", and yet "no real attempt was made before 30 May 1961 to settle the dispute (assuming it to have existed) by negotiation"; and that "a proposal to submit the dispute to the Court, like that contained in the Cameroon Note of 1 May 1961, cannot amount to negotiation; rather the opposite".

25. In considering this objection, it is to be recalled that both the Permanent Court and this Court have stated to the same effect that when the parties to a dispute have both defined their position and have both clearly indicated that they insist upon their respective views with no possibility of any modification or compromise, and when a deadlock is thus reached, it can be reasonably concluded that the dispute cannot be settled by negotiation. No particular form or procedure of negotiation is required, nor is any importance to be attached to the duration of such negotiation (Case of *Mavrommatis Palestine Concessions*, P.C.I.J., Series A, No. 2, p. 13; *South West Africa* cases, *I.C.J. Reports 1962*, p. 345).

26. In the present case the sharp conflict of views of the two Parties clearly appeared early in 1961 and efforts were made to resolve it through the United Nations. The Government of Cameroon, following the announcement of the results of the plebiscite of 11-12 February 1961, circulated to the Members of the General Assembly, at the end of March 1961, the so-called "White Book" already referred to above, and containing "a detailed exposition of the Cameroonian contentions and of the legal grounds in support thereof". In essence the complaints set out therein against the United Kingdom as Administering Authority consisted in alleging want of "respect for the personality of the Cameroons" and failure to carry out the recommendations of resolution 1473 (XIV) of 12 December 1959 to take steps "to secure a wider decentralization of administrative powers and an effective democratization of the local administration in the northern portion of the Trust Territory" and "for the administrative separation of Northern Cameroon and Nigeria, such separation to take effect from 1 October 1960". Besides, there were complaints against "irregularities and absence of guarantees in the preparation of the plebiscite", "during the

plebiscite campaign" and "in the conduct of the plebiscite". The United Kingdom Government, in a letter addressed to the Chairman of the Fourth Committee of the General Assembly on 10 April 1961, also mentioned earlier, stated its views in answer to these complaints. The opposing contentions of the Parties were again set forth in the discussion and debates in the United Nations. In a statement in the said Committee, the Minister of Foreign Affairs of Cameroon complained in detail of the failure of the United Kingdom as Administering Authority to observe certain provisions of the Trusteeship Agreement, referring expressly to Articles 3, 5, 6, 7 and 10 therein, Article 76 of the Charter and certain resolutions of the General Assembly. Negotiation by this recognized method of parliamentary diplomacy failed to resolve the dispute between the Parties and a deadlock was reached.

27. There was, moreover, an exchange of diplomatic notes on the subject-matter of the dispute which took place on 1-26 May 1961 just before the termination of the Trusteeship Agreement on 1 June 1961, in respect of the Northern Cameroons, as decided by resolution 1608. Whether this exchange can properly be considered as another step of negotiation or merely as relating to the proposal to refer the dispute to this Court for adjudication is immaterial. In any event it constitutes a confirmation of the sharp contrast of the views of the two Parties and the deadlock already reached. Nothing could be clearer than the resultant impossibility of settling the dispute by further negotiation, the more especially in view of the earlier adoption by the General Assembly of resolution 1608 (XV).

VI

28. The said resolution of the General Assembly is a determinant factor in the present case. It was adopted by a requisite majority at the 995th Plenary Meeting with the concurrence of the Administering Authority and the negative vote of the Republic of Cameroon, on a report from the Fourth Committee in which the questions of the implementation of the results of the plebiscites held in the northern and southern portions of the Cameroons under United Kingdom administration and the termination of the Trusteeship Agreement of 13 December 1946 had been extensively debated. This resolution, after recalling in its preamble the relevant resolutions it had previously approved and declaring to have examined the report of the United Nations Plebiscite Commissioner concerning the two plebiscites held earlier in the Northern and Southern Cameroons and the report of the Trusteeship Council thereon,

"*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 Cameroon.

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 13th December 1946, concerning the Cameroons under United Kingdom administration shall be terminated, in accordance with Article 76 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 1st 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 1st October 1961, upon its joining the Republic of Cameroon."

The resolution ends by inviting:

"the Administering Authority, the Government of the Southern Cameroons and the Republic of Cameroon to initiate urgent discussions with a view to finalizing, before 1st October 1961, the arrangements by which the agreed and declared policies of the parties concerned will be implemented".

29. The arrangements thus prescribed were completed and the decisions of the General Assembly embodied in the said resolution were duly implemented so that the Northern Cameroons today forms a part of the sovereign and independent Federation of Nigeria, just as the Southern Cameroons now constitutes a part of the sovereign and independent Federal Republic of Cameroon.

30. It appears clear that the whole matter of the Trusteeship of the Cameroons formerly under United Kingdom administration has been definitively and completely settled and the Trusteeship Agreement relating thereto irrevocably terminated on 1 June 1961 with respect to the Northern Cameroons, as already mentioned, and on 1 October 1961 with respect to the Southern Cameroons.

31. Now the same resolution 1608 (XV) in settling the whole matter of the Trusteeship of the Cameroons, by necessary implication and effect, has also settled the dispute between the present

Parties. This settlement thus fulfils the condition of exclusion from the scope of Article 19 prescribed by the term "settled by ... other means". These words, it will be noted are a significant addition in Article 19 which is otherwise substantially identical in wording with the text of Article 12 of the former Mandate conferred on His Britannic Majesty in respect of the Cameroons. The resulting situation is that although negotiation between the Parties failed to settle their dispute, the same was in effect settled by resolution 1608 (XV) just as the Applicant's complaints relating to the alleged irregularities of the plebiscite of 11-12 February 1961 were resolved by it in that it instead formally endorsed the result of the plebiscite.

32. It has been contended, however, that the term "settled by ... other means" in Article 19 does not embrace a settlement by an organ of the United Nations: that, like negotiation, it denotes such other means of direct settlement between the parties to a given dispute as enquiry, mediation, conciliation, arbitration, judicial settlement, etc., enumerated in Article 33 of the Charter under Chapter VI on Pacific Settlement of Disputes. But on referring to this provision it is seen that the various means listed include "resort to regional agencies or arrangements or other peaceful means of their own choice". The emphasis here is obviously on the "peaceful" character of the means to be chosen by the parties for a settlement of their dispute; and no means of settlement which fulfils this qualification is precluded before bringing the dispute to the United Nations. In other words settlement by the General Assembly is one of the implicitly recognized means. This view is borne out by the record.

33. A debate in a special sub-committee of the Fourth Committee of the General Assembly took place in December 1946, on a Chinese proposal to amend the adjudication provision, Article XVI, of the proposed trusteeship agreement for Western Samoa from New Zealand for approval and a similar Article in the seven other proposed trusteeship agreements from the United Kingdom for the Cameroons and from other States for other territories so as to make it obligatory to bring all disputes under the said provision to the Trusteeship Council for settlement, and to authorize the Trusteeship Council to, "if necessary, refer the matter to the International Court of Justice for an advisory opinion". The proposal was withdrawn after it was made clear by the other speakers that settlement of a dispute with the Administering Authority by the Trusteeship Council was not excluded under the proposed Article for adjudication, but only that "this would occur through the normal processes of the Trusteeship System rather than through a clause such as the one proposed by the Chinese representative" (G.A.O.R., 2nd Pt., 1st Session, Fourth Committee,

Trusteeship, Part II, Summary Records of Sub. Com. I, pp. 85-88). This shows clearly that the term "by negotiation or similar means" was understood by all to include settlement by the Trusteeship Council, consequently also by the General Assembly. The phrase "by negotiation or *other* means" actually embodied in Article 19 of the Trusteeship Agreement for the Cameroons under United Kingdom Administration would seem to indicate even a wider range of means for settlement, if that be possible.

34. The assertion has also been made that any other means of settlement than negotiation prescribed in Article 19 must be of voluntary choice by the parties and that the Applicant State in this case by its very act of invoking the Court to adjudicate on the dispute indicates the absence of such consent on its part to this means of settlement. But it will be recalled that not only the Government of the Republic of Cameroon circulated the "White Book" among the Members of the General Assembly relating to its complaints against the United Kingdom as Administering Authority of the Northern Cameroons but also its representatives, including its Minister for Foreign Affairs, freely and of its own accord participated in the debates of the Fourth Committee and the General Assembly on the very questions which are now described as the subject-matter of the dispute with the Respondent, and took part in the final vote on resolution 1608. It had obviously expected a settlement favourable to its own view that the result of the plebiscite in Northern Cameroons because of the "irregularities" it had alleged should not be endorsed by the United Nations. Although the actual outcome of the vote in the General Assembly was a disappointment to it, there can be no doubt that its choice of this means of settlement was at the outset entirely voluntary on its part. The fact that the Applicant has more than once declared its acceptance of this settlement by resolution 1608, as will be seen later in this statement, further confirms its recognition of decision by the General Assembly as one of the means of settlement.

35. It has also been contended that resolution 1608 (XV) settled only the question of implementing the results of the plebiscites and that of terminating the Trusteeship Agreement but that it did not deal with the complaint now presented to the Court in the Application of breaches by the United Kingdom of obligations of the Administering Authority undertaken in the said Agreement. It is claimed, to quote the language of the Applicant's Counsel that—

> "the discussions which led up to resolution 1608 did not bear at all on the precise question that is submitted to the Court

today, namely, the question whether the Administering Authority correctly interpreted and applied certain provisions of the Trusteeship Agreement."

36. It should be noted, however, that the various complaints stated in the Application and repeated in the Memorial are substantially the same as those enumerated in the "White Book", which was circulated to the representatives of the Members of the United Nations in the General Assembly towards the end of March 1961, and which was answered by a letter in rebuttal of the allegations addressed by the United Kingdom representative to the Chairman of the Fourth Committee on 10 April 1961 and circulated among the Members of the General Assembly. As has been pointed out earlier, the issues raised in these two documents were debated in the Fourth Committee when the same complaints were reiterated by the Minister for Foreign Affairs of the Republic of Cameroon in the meetings of the said Committee. These debates were summarized in the report of the Trusteeship Council to the General Assembly which, in adopting resolution 1608 (XV), took full note of its contents. The only difference consisted in the addition in the Observations of the Applicant of Articles 3 and 7 of the Trusteeship Agreement to the list of provisions alleged to have been violated by the Administering Authority. This addition, however, does not alter the general positions taken respectively by the Parties before the Court nor in any way affect the main issue of jurisdiction now under consideration.

37. In a word, the essence of the Applicant's contention is that resolution 1608 (XV) cannot be considered as having settled the dispute between Cameroon and the United Kingdom. It is asserted that this resolution only decides the termination of the Trusteeship and does not contain any provision settling the dispute now before the Court.

38. Of course it may be said that the dispute in question was not settled by the said resolution, because it is not one with the United Nations but between two individual States. But this could only be a superficial and formalistic view. While the parties to the dispute are distinct from the General Assembly or the body of other Members of the United Nations, the determinant fact is that the subject-matter of the dispute is identical with part of the subject-matter of the whole question of the Trusteeship of the Cameroons finally settled by resolution 1608 (XV). The authorization by the General Assembly to hold the plebiscites, the endorsement of their results and the decision to terminate the Trusteeship Agreement of the Cameroons under United Kingdom Administration constitute a settlement of the whole matter of the said Trusteeship. This complete series of acts embodied in the said resolution was manifestly based on the premise that the Administering Authority had fulfilled its obligations it had undertaken toward the trust territory and its in-

habitants, as well as toward the United Nations. It is commonplace to say that when the whole question of conformity or non-conformity of the conduct of the Administering Authority with the provisions of the Trusteeship Agreement has been settled, there can no longer be any question of conformity or non-conformity with certain provisions under the same Agreement. The whole must necessarily include the part.

39. It would be a different matter if the Applicant were complaining of violations of certain of its individual rights or those of its nationals under the Trusteeship Agreement. For such a question might not have been necessarily included in a settlement of all the questions relating to the promotion of the general interests of the trust territory or its inhabitants by the Administering Authority in conformity with its obligations under the Agreement. But the complaints of the Applicant in the present case are confined to the alleged failure of the United Kingdom to fulfil its obligations toward the territory and inhabitants of the Northern Cameroons. The interest of which the Applicant is seeking judicial protection is a common interest, possessed not only by the United Nations primarily, nor by the Applicant State alone, but also by every other Member thereof. When all questions relating to this same common interest have been disposed of and settled resulting in the achievement of the basic objective of the Trusteeship of the Cameroons under United Kingdom administration in accordance with Article 76 *(b)* of the Charter and the termination of the Trusteeship Agreement of 13 December 1946, it necessarily means that the subject-matter of the present dispute has in fact been disposed of and settled at the same time.

40. The reasons for this view are patent and do not call for much elaboration. When the General Assembly acted to adopt resolution 1608 (XV) it could not have failed to take account of all the questions and issues involved. The text of this resolution was originally prepared by the Trusteeship Council and it was revised in the Fourth Committee as the result of the discussions therein. As has already been referred to, it was recommended in its final form to the General Assembly for adoption and accompanied by a report from the said Committee summarizing the discussions and the different viewpoints of the delegates bearing not only on the text of the recommended resolution but also on the questions debated including the views of the representative of the Republic of Cameroon. The fact that resolution 1608 (XV) did not itself refer to any of the complaints made by the Government of Cameroon against the Administering Authority does not mean that in adopting the said resolution the General Assembly was unaware of either the complaints of the Applicant or its views relating to the conduct of the United Kingdom in administering the former trust territory of the Cameroons.

41. Moroever, without entering into a discussion of points which belong to the merits, it should be pointed out that one of the basic objectives of the Trusteeship System, as expressly provided in Article 76 *(b)* of the Charter, is, as has already been noted above, to promote the advancement of the inhabitants of the trust territories and—

> "their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned".

In acting to implement the results of the plebiscites as the freely expressed wishes of the people of the trust territory of the Cameroons, the General Assembly was discharging one of its most solemn obligations as it was also exercising one of its most important functions under Article 85 of the Charter. It was entitled under this provision to settle all other matters relating to the administration of a trust territory in subordination to the early achievement of the stated basic objective, which is the primary purpose of the Trusteeship System. It would be illogical to assume, as it would have been self-contradictory for the General Assembly to consider, that the Administering Authority had failed to observe the obligations undertaken in the Trusteeship Agreement to promote the development of the inhabitants of the trust territory towards self-government or independence, when it was deciding that the basic objective of the Trusteeship had been achieved by the Administering Authority and that therefore the Trusteeship Agreement could and should be terminated.

VII

42. The Applicant has further contended that resolution 1608 (XV) was adopted by the General Assembly to settle the question of the Trusteeship of the Cameroons on the political plane, based upon considerations of political expediency and realism, and not on the legal plane; and that therefore all the legal issues, such as those raised by the Republic of Cameroon here, have remained to be settled judicially by this Court under Article 19 of the Trusteeship Agreement.

43. This contention, in my view, runs counter to the intent, purpose, structure and operation of the whole Trusteeship System as provided for in Chapters XII and XIII of the Charter. The administration and supervision of all trust territories are placed under the United Nations. The General Assembly with the co-operation and assistance of the Trusteeship Council exercises, under Article 85, all the functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic. Since it is therein expressly provided that these functions include the approval of

the terms of the trusteeship agreements and of their alteration or amendment, it goes without saying that they also include the function of terminating such agreements with the concurrence of the respective administering authorities, because termination of such trusteeship agreements is necessarily implied in the achievement of the basic objective of self-government or independence of every trust territory. To claim that the General Assembly is not entitled, under the Charter, to terminate any trusteeship agreement of a non-strategic territory definitively and finally, including all legal questions which may have been raised in connection with the problems of termination, would in effect mean that the General Assembly had no power, notwithstanding the express provision of Article 85, to settle, once and for all, all matters related to the trust territory or its inhabitants and that any settlement made by it must be regarded as provisional and subject to review by this Court in respect of the legal issues involved in the settlement made by the General Assembly in exercise of its authorized functions under the Charter. Such a construction would import a very serious element of uncertainty into every act of the General Assembly in terminating a trusteeship agreement and tend to undermine the primary purpose and the basic principles of the Trusteeship System.

44. That Counsel for the Applicant sees the untenability of the claim as originally submitted is evidenced by a supplementary explanation in the following terms:

> "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, any more than the Court would be competent to reinstitute the Trusteeship or to hammer out a new Trusteeship Agreement. The situation is, after all, quite simple. The General Assembly's decision is final, conclusive, in its own sphere."

Later, in the same explanation, it is added:

> "The United Kingdom argues and puts forward its objections as if the dispute related to the question whether the General Assembly was entitled to terminate the Trusteeship, or whether it did well to terminate the Trusteeship, in 1961. But that is not the subject of the dispute for no one denies that it was within the power of the General Assembly, in agreement with the Administering Authority, to terminate the Trusteeship, just as it decided to approve the Trusteeship Agreement in 1946. The United Kingdom argues and puts forward its objections as if we were asking the Court to reopen the discussion that was closed in the United Nations on 21 April 1961. If we were asking the Court to do that it would be bound, of course, to find that it had no jurisdiction, for it does not come

within the powers of the judicial organ either to decide to place a territory under Trusteeship or to decide to terminate a Trusteeship, nor yet again to reinstitute a Trusteeship régime."

45. This statement clarifies the position of the Applicant on the question under discussion. There is no doubt that it accepts resolution 1608 (XV) implementing the results of plebiscites of the peoples of the Northern and Southern Cameroons and terminating the Trusteeship Agreement of 13 December 1946 as final and conclusive. What, then, is the true nature of the claim? What is the precise question which the Applicant asks the Court to decide? The answer is given in the following proposition formulated by the Applicant's Counsel:

"... there is nothing to prevent the Court, within the framework of its own attributions, which are judicial attributions, from pronouncing upon the dispute between Cameroon and the United Kingdom on the question whether, from the beginning to the end of the Trusteeship, the United Kingdom in its capacity as Administering Authority, correctly interpreted and applied the provisions of the Trusteeship Agreement, for that is a dispute which the General Assembly did not settle in any way".

46. But even thus framed, the question does not justify the Court to assume jurisdiction. For apart from what has already been shown above that the settlement of the present legal dispute must have, by necessary implication, been included in the over-all settlement of the whole Trusteeship of the Cameroons by resolution 1608 (XV), there are the published proceedings of the Trusteeship Council and the General Assembly relating to the Trust Territory of the Cameroons, which contain the annual reports of the Administering Authority, the questionnaires, the petitions from the inhabitants of the territory, the reports of United Nations visiting missions, those by the Committee on Administrative Unions, and the resolutions of the Trusteeship Council and the General Assembly taking note of their contents or recommending particular measures to the Administering Authority for further implementation of the provisions of the Trusteeship Agreement with due regard to the basic objectives of the Trusteeship System. Whether and to what extent the Administering Authority had, in administering the trust territory, observed its obligations on a particular question under the Trusteeship Agreement was considered and debated each year by the Trusteeship Council and the General Assembly when examining the Annual Report from the Administering Authority, and appropriate recommendations were duly made for improvement in the administration.

47. It is also to be noted that in considering the question whether the Administering Authority did or did not observe its obligations under the Trusteeship Agreement, the General Assembly and the Trusteeship Council did not confine their attention to the provisions

of the Charter and the Trusteeship Agreement, but also took into account the recommendations of the successive resolutions previously adopted for the Administering Authority to carry out. These recommendations were not always based merely on specific provisions of the Trusteeship Agreement; they often partook of the character of interpreting, modifying or supplementing the terms of the Trusteeship Agreement. This the General Assembly was entitled to do under Article 85 of the Charter, and did it all for the purpose of achieving, and achieving as early as possible, the overriding aim, the basic objective of the Trust, which was and is the achievement of self-government or independence for each particular trust territory and its inhabitants. Thus resolution 226 (III) of 18 Novemenber 1948 recommended that the Administering Authority "take all possible steps to accelerate the progressive development towards self-government or independence of the Trust Territories they administer". Resolution 320 (IV) of 15 November 1949 expressed its full support of the Council's recommendations to administering authorities for the adoption by the latter of measures which would hasten the advancement of the trust territories towards self-government or independence in accordance with the objectives laid down in Article 76 *(b)* of the Charter. Resolution 558 (VI) of 18 January 1952 called for information concerning measures taken or contemplated towards self-government or independence, and, *inter alia*, the estimated period of time required for such measures and for the attainment of the ultimate objective. This was reaffirmed by resolution 858 (IX) of 15 December 1955. The underlying purpose of all these acts was that the administering authority of each trust territory should faithfully discharge its obligations under the particular trusteeship agreement and in conformity with the special resolutions adopted by the Trusteeship Council and the General Assembly.

48. Also take, for example, the question of administrative unions affecting trust territories, which forms one of the complaints of the Applicant in the present case, relating to Article 5 *(b)* of the Trusteeship Agreement. General Assembly resolution 224 (III) of 18 November 1948 "endorsed" the observation of the Trusteeship Council that an administrative union "must remain strictly administrative in its nature and its scope, and that its operation must not have the effect of creating any conditions which will obstruct the separate development of the Trust Territory, in the fields of political, economic, social and educational advancement, as a distinct entity". This resolution also recommended, among other measures:

> "*(c)* Request, whenever appropriate, an advisory opinion of the International Court of Justice as to whether such unions are within the scope of and compatible with, the stipulations of the Charter

and the terms of the Trusteeship Agreements as approved by the General Assembly;

"*(d)* Invite the Administering Authorities to make available to the Council such information relating to administrative unions as will facilitate the investigation by the Council referred to above;

"*(e)* Report specifically to the next regular session of the General Assembly on the results of the Council's investigations and the action taken by it."

Resolution 326 (IV) of 15 November 1949—

"*Recommends* to the Trusteeship Council to complete the investigations, paying particular attention to the following:

. . . . . .

(b) The desirability, should it be impossible as a consequence of the establishment of an administrative union to furnish clear and precise separate financial, statistical and other data relating to a Trust Territory, of the Administering Authority concerned accepting such supervision by the Trusteeship Council over the unified administration as the Council may consider necessary for the effective discharge of its high responsibilities under the Charter..."

The same resolution recommended the Trusteeship Council—

"to complete its investigation, in accordance with the terms of General Assembly resolution 224 (III) and of the present resolution, and present a special report to the next session of the General Assembly on the results of its investigation and the action taken by it, with particular reference to any safeguards which the Council may consider it necessary to request of the Administering Authorities concerned, and that the Council continue likewise to observe the development of such unions and to report to the General Assembly at its regular sessions".

49. The above-mentioned resolutions of the General Assembly were followed by other resolutions in succeeding years on the same subject of administrative unions affecting trust territories such as resolution 648 (VII) of 20 December 1952, which is one of the most comprehensive acts of the General Assembly and which lists "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have yet attained a full measure of self-government" with an annex of "Factors indicative of the attainment of independence or of other separate systems of self-government". Resolution 1473 (XIV) of 12 December 1959 dealt specially with the Trust Territory of the Cameroons under United Kingdom Administration in respect of the Northern part of the Territory. Among other provisions, it:

"6. Recommends that the necessary measures should be taken without delay for the further decentralization of governmental functions and the effective democratization of the system of local government in the northern part of the Trust Territory.

7. Recommends that the Administering Authority should initiate without delay the separation of the administration of the Northern Cameroons from that of Nigeria and that this process should be completed by 1st October, 1960.

8. Requests the Administering Authority to report on the process of separation to the Trusteeship Council at its twenty-sixth session, and requests the Council to submit a report on this matter to the General Assembly at its fifteenth session."

50. Resolution 1608 (XV) of the General Assembly of 21 April 1961 endorsing the results of the plebiscites for the Northern and Southern portions of the Trust Territory of the Cameroons under United Kingdom Administration was only the culminating act of a series of other resolutions dealing with various questions of legal as well as political and administrative character, always with a view to the speedy achievement of the basic objective of the Trusteeship and its early termination.

51. Therefore, when the ultimate objective of a Trust is attained, and the particular Trusteeship Agreement is terminated, all questions relating to the Administering Authority's observance of the obligations thereunder are obviously intended to have been settled also. Doubtless this was the intention and purpose of resolution 1608 (XV), which is a legally valid act of the competent body.

VIII

52. What the Applicant asks the Court to do is, in fact, to sort out certain legal points relating to the administration of the former Trust Territory of the Cameroons under United Kingdom Administration, dissociate them from the over-all settlement of the whole question of the Trusteeship including the termination of the Trusteeship Agreement, and to adjudge and declare that formerly in administering the trust territory, the United Kingdom failed to observe certain obligations it had undertaken in the said Agreement. In other words, the Court is asked to render a declaratory judgment pronouncing on legal issues which, though alleged to be relating to the interpretation or application of the Trusteeship Agreement, had in fact been considered in substance by the General Assembly from year to year in the past, and had formed the subject-matter of action taken by it in the form of recommendations or decisions. Moreover, the said Trusteeship Agreement on which the complaints of the Applicant are based, had been validly terminated, and the trust territory concerned had been declared to have attained independence in accordance with the freely expressed wishes of its inhabitants.

53. The cases cited by Counsel of the Applicant in support of the plea for a declaratory judgment do not in fact support it. Just consider the more important of these cases and it will at once be seen that the judgments or advisory opinions respectively given by the Court therein, while they may be or are declaratory in character, all relate to a controversy or dispute involving an existing legal right or interest and bear a direct and determining effect on the legal position of the parties at issue.

54. Thus as regards the case concerning *Certain German Interests in Polish Upper Silesia* (P.C.I.J., Series A, No. 6), although the Court overruled "the objection based on the abstract character of the question" and referred to "numerous clauses giving the Court compulsory jurisdiction in questions of the interpretation and application of a treaty, and these clauses, among which is included Article 23 of the Geneva Convention, appear also to cover interpretations unconnected with concrete cases of application", the Judgment actually given by the Court in the case, though in the form of a declaration of the law involved, bore directly on, and was meant to settle, the disputes between the parties concerning the legal position of German property, rights and interests in Upper Silesia. The interpretation of the relevant provisions of a treaty asked of the Court could not have had more concrete cases for application.

55. This fact, in essence, is equally true of the Judgment in the case of *Chorzów Factory* (Jurisdiction) (P.C.I.J., Series A, No. 9), which stated:

> "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the Convention itself."

The foregoing declaration may appear to be in abstract form but it gives a legal construction of an international convention then still in force, to be applied forthwith to a concrete case, concerning the right of ownership of Chorzów Factory, which had been settled along with the other claims in favour of the Applicant in the case of *Certain German Interests in Polish Upper Silesia.*

56. The decision of the Permanent Court in the case of the *Interpretation of the Statute of the Memel Territory* related to a live, even acute, dispute between the United Kingdom, France, Italy and Japan on the one part and the Lithuanian Republic on the other "as to whether certain acts of the latter Government are in conformity with the Statute of the Memel Territory annexed to the Convention of May 8, 1924, concerning Memel". It is true that although the Court drew attention "to the inconvenience" resulting from the fact that certain questions "are formulated as questions purely *in abstracto*, without any reference to the facts of the dispute

which has arisen", it nevertheless assumed jurisdiction and adjudicated on all the six questions submitted by the Applicants. But this was done not only to resolve a confused and disturbing situation in the territory but also to meet—

> "the intention of the Four Powers ... to obtain an interpretation of the Statute [of the Memel Territory] which would serve as a guide for the future". (P.C.I.J., Series A/B, No. 49, p. 337.)

In other words, though the Court considered certain questions submitted to it were put in abstract form it did not refrain from passing on them judicially, because they were intended to serve very practical purposes in the concrete situation.

57. Likewise, the *Corfu Channel* case upon which the Applicant places much reliance to uphold its submission for a declaration of non-observance by the Respondent of certain obligations it had assumed as Administering Authority under the Trusteeship Agreement of 13 December 1946, does not lend support to its claim. The Court in giving "judgment that ... the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction" (*I.C.J. Reports 1949*, p. 36) discharged its judicial function to settle a concrete dispute relating to a serious, unresolved situation both of fact and law.

58. This is equally true of the *Fisheries* case *(I.C.J. Reports 1951)* and the *Haya de la Torre* case. In the latter case, after referring to its Judgment in the *Asylum* case with the finding that "the grant of asylum by the Colombian Government to Victor Raúl de la Torre was not made in conformity with Article 2, paragraph 2, ... of [the Havana] Convention",

> "the Court observes that the Judgment confined itself ... to defining the legal relations which the Havana Convention had established between the Parties. It did not give any directions to the Parties and entails for them only the obligation of compliance therewith" (*Haya de la Torre, I.C.J. Reports 1951*, p. 79).

This Judgment, though it took the form of a declaration defining the legal relations of the parties under the Havana Convention, was clearly intended to resolve the pending dispute before the Court between Peru and Colombia. True, it did not give any directions as to how the asylum might be terminated but there can be no doubt that in the Court's view it should and could be terminated. For the same Judgment made clear that it was not for the Court to make a choice "amongst the various courses by which the asylum may be terminated", since—

> "these courses are conditioned by facts and possibilities which, to a very large extent, the Parties alone are in a position to appreciate. A choice amongst them could not be based on legal considerations, but only on considerations of practicability or political expediency; it is no part of the Court's judicial function." *(Ibid.)*

Thus there can be no question but that the declaratory judgment was made in the case because it was intended to serve the practical purpose or need of putting an end to the asylum by clarifying the legal relations of the parties under the Havana Convention and leaving the choice of the means of compliance to the parties. The issues leading to the Judgment were far from abstract or academic in character.

59. Although this Court is not precluded either under international law or under its own Statute from pronouncing a declaratory judgment, the present case is not one which falls within its judicial function. While it may be true that a declaratory judgment is not concerned with the question of possibility of implementation or any practical effect, this rule, if it be a rule, certainly does not mean that the Court is bound to render a declaratory judgment even though it could only be one of the nature of an academic pronouncement or a moot decision. No declaratory judgment is called for where an Application asks for it, as in the present case, only with reference to a legal issue or issues which have already been settled or which relate only to facts or situations which have ceased to be capable of giving rise to a dispute in future in a similar state of legal relations. In other words, repect is due from the Court to the situation which now obtains in regard to the former Trusteeship of the Cameroons under United Kingdom Administration and the terminated Agreement of 13 December 1946, involving, as it does, facts which make it impossible for the Court to render judgment [1].

60. For the reasons I have stated, I conclude that the Court should decline to assume jurisdiction to hear the merits of the instant case.

(Signed) WELLINGTON KOO.

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[1] See Judge Winiarski's Dissenting Opinion in the case of *Interpretation of Peace Treaties, I.C.J. Reports 1950*, p. 92.