SEPARATE OPINION OF JUDGE MORELLI

[Translation]

In the operative provision of its Judgment the Court has found "that it cannot adjudicate upon the merits of the claim of the Federal Republic of Cameroon". I have felt able to subscribe to such an operative provision but cannot accept the reasons on which the Court bases its Judgment. These reasons consist in essence of a finding that the decision requested by Cameroon would be without object.

I cannot subscribe to such a statement and consider, on the contrary, that, as I shall explain in the first part of this separate opinion, Cameroon's claim is fully admissible. In my view the reason why it is not possible to examine the merits of the claim is quite other and lies in the lack of jurisdiction. The second part of this separate opinion will in fact be devoted to the question of jurisdiction. This question, which was not dealt with by the Court and which, having regard to the Court's approach, it had no reason to deal with, cannot be avoided once the claim is deemed, as it is in my view, to be admissible.

I

1. The United Kingdom's preliminary objections raised, *inter alia*, two questions which, in my opinion, are closely interconnected.

The first of these questions relates to the nature of the claim, that is to say the content and characteristics of the decision requested of the Court. There was discussion of whether such a decision would be a judgment with force of *res judicata* or rather a mere advisory opinion; and the question of the declaratory nature of any judgment which might be given by the Court was also raised.

The other question raised by the United Kingdom relates to whether there is a dispute between the United Kingdom and Cameroon.

In raising this question the United Kingdom made numerous references in its Counter-Memorial to Article 19 of the Trusteeship Agreement in order to deny the existence of a dispute with the features required by that Article. It would however seem that from the beginning it was the United Kingdom's intention to deny in general the existence of any dispute between it and Cameroon. The argument of the non-existence of any dispute was subsequently put forward very clearly on several occasions in the oral arguments and it is the subject of the first of the United Kingdom's final submissions.

In any case this is a question which could be raised by the Court *proprio motu*, because of the conclusions to be drawn from a negative answer on the basis of the Statute and the Rules of Court, and thus quite apart from Article 19 of the Trusteeship Agreement. For according to the Statute and Rules of Court the Court can perform its function in contentious proceedings by giving a decision on the merits only on condition that there really is a dispute between the parties. This is a question connected not with the Court's jurisdiction but rather with the admissibility of the claim; it is a question which comes before any question of jurisdiction.

2. As I have already said, the two questions just referred to, one relating to the nature of the claim and the other to the existence of the dispute, are closely interconnected. It might even be said that there is only a single question: whether or not there is a dispute.

If there is no dispute, it becomes unnecessary to consider what is the content of the decision requested of the Court and what the characteristics of such a decision would be, with a view to making the possibility of giving the decision and hence the admissibility of the claim depend on the content and characteristics of the decision requested. For the non-existence of a dispute is in itself a bar to the delivery of any judgment on the merits, because in such a case any judgment would be without object. It is for that reason that the claim would have to be declared inadmissible.

If on the contrary it is considered that there is a dispute (and in its Judgment the Court has found that there is) it would be impossible to deny that it could be settled by judicial means (subject of course to the question of whether or not the Court has jurisdiction in connection with that particular dispute). It is likewise unnecessary on this hypothesis to consider, in connection with the admissibility of the claim, what the characteristics and content of the decision would be. The characteristics and content of the decision could not but be related to the characteristics of the dispute. In the present case, precisely because of the particular characteristics of the dispute (on the assumption that a dispute exists) the judgment could only be purely declaratory. But in the international field there can be no doubt about the possibility of purely declaratory judgments.

3. Once it has been established that there is a dispute, there is no point, in my view, in raising the question of whether the Applicant has an interest, by reference to the principle recognized in certain municipal legal systems according to which it is necessary to have an interest in order to have a right of action.

It should be observed that the interest on which a right of action depends in municipal law is not a substantive interest in connection with the actual merits of the dispute. It is on the contrary an interest of a purely procedural nature: an interest in obtaining a

decision on the merits. In the legal systems to which I have referred this type of interest has a very important role; it is indeed a condition for an action. This is very readily explicable if it is borne in mind that in general such systems make no use of the concept of dispute.

It is on the contrary on the concept of dispute that international proceedings and, in particular, proceedings before the Court, are based. This Court cannot exercise its function in contentious proceedings if a dispute does not exist between the parties. Clearly a dispute implies a reference to a (real or at least supposed) conflict of interests and hence to substantive interests possessed by the parties. But it has already been observed that substantive interest is something other than the procedural interest which is required by municipal law in order to have a right of action. This latter interest is an interest in securing a decision on the merits. In the case of an international dispute, if such a dispute exists (and it has already been said that the existence of a dispute constitutes in itself a condition on which the possibility of a decision on the merits depends) it is clear that in any case each party has an interest in the settlement of the dispute. The interest in securing a decision on the merits is *in re ipsa*, because it is a necessary consequence of the very existence of a dispute. It is thus apparent that the concept of interest in bringing an action has no place of its own in the field of international proceedings.

4. In my opinion a dispute consists of a clash between the respective attitudes of the parties with regard to a certain conflict of interests. Thus the dispute may result from a claim by one of the parties followed either by the denial of that claim by the other party or by a course of conduct by the other party contrary to the claim. But there may also be a dispute resulting first of all from a course of conduct by one of the parties against which the other party raises a protest through the assertion that its own interest should have been achieved by a course of conduct by the first party contrary to that which was in fact adopted.

In the present case if there is a dispute between the United Kingdom and Cameroon it could only be one falling within the second of the above two hypotheses, namely a dispute resulting from a certain course of conduct by the United Kingdom on the one hand and from a protest against that conduct by Cameroon on the other hand. In fact Cameroon has never asserted any claim against the United Kingdom, in particular any claim for reparation on account of the course of conduct complained of.

Since in the present case there could only be a dispute resulting from a course of conduct and a protest, it becomes necessary to examine whether these two constituent elements of a dispute are present.

5. With regard to the first of these two constituent elements of the dispute it must be observed at the outset that solely a course of conduct by the United Kingdom subsequent to the emergence of Cameroon as an independent State could be regarded by the latter as detrimental to its own interest. From this standpoint the critical date is therefore 1 January 1960. While the date of 20 September 1960 (admission of Cameroon to the United Nations) is important in other respects, it is of no importance for the establishment of whether a dispute has occurred between Cameroon and the United Kingdom, and in particular with regard to the first of the constituent elements of such a dispute, namely a course of conduct by the United Kingdom which could be regarded by Cameroon, and really was regarded by Cameroon, as detrimental to its own interest.

In order to establish, with a view to resolving the question of the existence of the dispute, what course of conduct Cameroon finds fault with on the part of the United Kingdom, it would be necessary to take into account the acts if any whereby, before the Application, Cameroon's protest was expressed, these constituting the other element of the dispute. The question of the existence and significance of such acts will be considered later. For the time being it is however possible at least provisionally to refer to the complaints by Cameroon as they are set out in the Application.

In the statement of facts the Application sets out certain events or circumstances which no doubt pre-date 1 January 1960: for example, the fact that, two years after the establishment of the Trusteeship System, there had allegedly been no change in the British zone in the practice instituted at the time of the creation of the Mandate; the constitutional and administrative reforms which occurred in 1949, in 1951, in 1954 and in 1957 within the framework of Nigerian institutions; the non-existence until 1959 of political parties other than Nigerian; indirect suffrage by show of hands and for men only until 1959. But if regard is had to the complaints listed in the statement of the law in the Application and on which Cameroon asks the Court to pronounce, it is apparent that none of them relates to conduct on the part of the United Kingdom which may be regarded as wholly prior to 1 January 1960. The first five points relate to conduct by the United Kingdom which although begun before 1 January 1960, continued after that date, at least in the form of omissions. The last two points, concerning the February 1961 plebiscite, relate solely to conduct subsequent to 1 January 1960.

6. Consideration will now be given to the question of whether there was on the part of Cameroon a protest against the conduct adopted by the United Kingdom after 1 January 1960, that is to say an assertion that the conduct of the United Kingdom was detrimental to an interest which was Cameroon's own interest.

In my opinion it is necessary in this connection to leave aside the complaints expressed by the representative of Cameroon in the Fourth Committee of the General Assembly of the United Nations on 13 April 1961, which had been preceded by the distribution of the Cameroon "White Book" to all the Members of the United Nations. In expressing these complaints through its representative Cameroon acted solely as a member of a collegiate organ of the United Nations. Acting in this capacity it made statements of intention designed to be combined with corresponding statements by other members of the collegiate organ so as to shape the intention of that organ and thereby the intention of the United Nations. It took up a position from the viewpoint of the Organization; it was guided not by its individual interest but by what it considered to be the interest of the Organization.

From the formal standpoint quite another character must be assigned to the statements made on behalf of the Cameroon Government by the French representative in the Trusteeship Council at the meetings of 18 and 23 May 1960. The Government of Cameroon, which was not yet a member of the United Nations, and "which would speak for itself when it took its seat in the General Assembly", had requested France to make known its views on the subject of the plebiscite. The reservations and desires expressed in the Trusteeship Council by the French representative on behalf of Cameroon no doubt represent statements made on behalf of a State which was not yet a member of the Trusteeship Council as a collegiate organ of the United Nations. None the less those statements made through a State member of the Trusteeship Council were no different in respect of their substantive character from the statements made by France on its own behalf and by the other members of the Trusteeship Council; they were no different from the statements which Cameroon intended to make in the General Assembly after its admission to the United Nations and which it did make in the Fourth Committee on 13 April 1961. This was advance participation in the activity of United Nations organs. There were statements which likewise were prompted by the interest of the United Nations and not by Cameroon's individual interest; they were not therefore statements expressing on Cameroon's part a protest which could give rise to a dispute between Cameroon and the United Kingdom.

Nor can such a character be assigned to the communiqué published by the Government of Cameroon on 31 December 1960 or the note verbale of 4 January 1961 by which this communiqué was transmitted to the British Embassy in Yaoundé. As stated by the note verbale, the communiqué set aut "the official views of the Republic of Cameroon and will enable the Aministering Authority fully to inform the people of the Territory under British Administration before the plebiscite next February". The communiqué itself

was addressed not to the Administering Authority but to the "brother people of the Northern Cameroons under British administration" and proposed to it that it "vote unanimously for the reunification with the Republic of Cameroon". The communiqué was transmitted to the Administering Authority for the sole purpose of enabling it to inform the people of the Territory under British administration. This being so, it is clear that the criticisms contained in the preamble of the communiqué, in respect of the conduct of the Administering Authority, cannot be regarded as a formal protest addressed by Cameroon to the United Kingdom.

We thus come to the note of 1 May 1961 from the Cameroon Minister for Foreign Affairs to the Foreign Office. This note refers to a dispute, as an already existing dispute between Cameroon and the United Kingdom, and proposes its judicial settlement. It is beyond doubt that the assertion by one of the parties of the existence of a dispute does not prove that such a dispute really exists, because the existence of a dispute requires to be established objectively. In the present case the assertion in Cameroon's note that there was a dispute between Cameroon and the United Kingdom does not in my opinion correspond to the real situation as it existed on 1 May 1961, the date of the note.

It seems to me, however, that the note, though referring to a dispute asserted to be already in existence and in fact still non-existent, does express, very clearly although indirectly, the point of view of Cameroon with regard to the conduct of the United Kingdom in the performance of its trusteeship for the Northern Cameroons. Cameroon complains of various courses of conduct on the part of the United Kingdom which are the same as those which were later to be the subject of the Application to the Court. It has already been seen that these courses of conduct, as acts or at least omissions, are all subsequent to 1 January 1960, the date of the emergence of Cameroon as an independent State. They are thus courses of conduct which could be detrimental to an interest which might be regarded by Cameroon as its own interest. It appears from the note of 1 May 1961 that Cameroon considered that such detriment had really occurred. This is tantamount to saying that the note contains a protest which could, in combination with the contrary attitude of the United Kingdom against which the protest is directed, give rise to a dispute. I am consequently of the opinion that a dispute has existed between Cameroon and the United Kingdom since 1 May 1961.

Since this is a dispute arising not from a claim followed by a denial but rather from a course of conduct followed by a protest against that conduct, the United Kingdom's reply of 26 May 1961 to Cameroon's note is not relevant as a constituent element of the

dispute; it is therefore of no importance with a view to determining the date of origin of the dispute.

7. The General Assembly's resolution of 26 April 1961 cannot be recognized as having any influence with regard to the existence or non-existence of the dispute. The United Kingdom relies on this resolution and states that by settling the question it had the effect either of putting an end to an already existing dispute or of preventing a dispute arising.

I am of opinion that the General Assembly's resolution as such did not and could not settle any dispute between States such as Cameroon on the one hand and the United Kingdom on the other, even if this dispute could be regarded as already in existence at that time which, in my view, must be denied.

Apart from this, it must be observed that the settlement of a dispute as a legal operation produces legal effects for the parties which must no doubt be taken into account by any court subsequently seised of a request for the resolution of the same dispute. But the settlement of a dispute has not in itself any direct influence on the existence of the dispute as a factual situation in which two States may find themselves. In this connection the relevant concept is something other than the legal settlement or resolution of a dispute; it is the very different concept of extinction or *de facto* cessation of the dispute. A dispute may continue in fact despite its legal resolution; a dispute whose *de facto* cessation has occurred pursuant to its legal resolution or even independently of any legal resolution may recur as a matter of fact.

All this shows that whatever the legal effects of the General Assembly resolution of 21 April 1961 it could not directly bring about the extinction in fact of any dispute which might at that time have existed between Cameroon and the United Kingdom. *A fortiori*, the resolution could not prevent a dispute arising subsequently between the States concerned. For the claim to be admissible it is sufficient to find that there was in fact a dispute between Cameroon and the United Kingdom at the time when proceedings were instituted before the Court.

8. It is on the basis of a certain conception of an international dispute that I have reached the conclusion that there really was a dispute between Cameroon and the United Kingdom at the date of filing of the Application. In order to deny the existence of such a dispute it would be necessary to start from a conception of an international dispute narrower than that which I consider correct, and which I have already set out (see above, para. 4). It would be necessary to consider that a dispute could have as its subject only a future course of conduct by one of the parties and that consequently, as far as the other party is concerned, the dispute could result solely from a claim and not from a protest.

Once this narrow conception of a dispute had been adopted, it would be sufficient to find that in the present case Cameroon has never put forward any claim relating to a course of conduct to be adopted by the United Kingdom in the future, and that, in particular, Cameroon has never claimed any reparation. It would of course not be sufficient to find that no reparation has been asked for in the Application. As a suit may have as its subject not a dispute as a whole but solely a question the resolution of which is necessary for the settlement of the dispute, the fact that in an application only a finding of the violation is asked for does not exclude the existence of a dispute as regards reparation. However, in the present case, there is no dispute at all with reparation as its subject, since even before the Application Cameroon never sought any reparation whatever.

9. I should like now to emphasize the decisive importance, for the purpose of declaring a claim admissible or on the contrary inadmissible, which must be attached to the way in which an international dispute is conceived of.

If the wider, and in my view more correct concept of dispute is adopted, and if it is admitted that a dispute may indeed have as its subject the past conduct of one of the parties, there is no doubt that a dispute of this nature, as a really existing dispute, can be settled by judicial means and that consequently a claim for such settlement must be declared admissible.

There would be no point in raising the question of the usefulness of the decision and hence of the party's interest in asking for it. The answer to such a question would be very easy: since a dispute is regarded as existing, the usefulness of the decision resides precisely in the very settlement of the dispute. Such a decision has undoubted legal effects; it produces precisely the specific legal effects of *res judicata* which consist of placing an obligation on the parties to regard the dispute as having been settled in a particular way. These effects are produced for the future. Although the conduct by one of the parties which is the subject of the decision is past conduct, the legal effect of the decision, that is to say the obligation deriving from it for the parties, concerns their future conduct.

The effects of the decision may become apparent even in relation to a dispute other than that which was the subject of the decision in question; for example, in relation to a dispute which might subsequently arise in respect of the obligation to make reparation in connection with the conduct declared unlawful (or lawful) in the decision. It thus appears that the decision can indeed have an effective application. Thus the decision requested by Cameroon in the present case would be capable of being applied (in the sense I

have described) either by the Court itself or by any other tribunal subsequently seised of a claim for reparation.

10. The foregoing depends on starting from the broader and more correct concept of dispute. If on the contrary, on the basis of a narrower concept of dispute, the possibility of a dispute having as its subject solely the past conduct of one of the parties is excluded, there would be no other course than to draw all the logical conclusions from such a conception. In every case in which only the past conduct of one of the parties is in issue it would be necessary to exclude the possibility of judgment on the merits. Such a judgment would in fact be without object, since there would be no dispute at all in existence.

This is the only logical conclusion which could be reached. It would be illogical on the contrary to seek to make distinctions by circumscribing in some way the scope of the conclusion which has just been set out. In particular it is not possible to make a distinction (as has been attempted) between a course of conduct which cannot recur (such as the conduct in which the United Kingdom is claimed to be at fault in the present case, since the trusteeship has been terminated) and conduct which, although past, could recur in the future, the purpose of such a distinction being to admit in the second case the usefulness of a decision and hence the possibility of giving it. From this is derived, for example, the possibility of a judgment finding a breach of sovereignty, by virtue of the usefulness which such a judgment could have in the case of a further breach occurring.

This would however be usefulness of a quite illusory sort, having regard to the objective limitations on *res judicata* arising from Article 59 of the Court's Statute, according to which the decision has no binding force except "in respect of that particular case" in which the decision is given. The judgment concerning a past course of conduct would not have the force of *res judicata* in respect of future courses of conduct, which would necessarily be different from the course of conduct forming the subject of the decision although more or less similar to it. In connection with future courses of conduct the decision would be of value only in respect of the reasons given for it: its value would hence be analogous to that attaching to an advisory opinion. Moreover, it would not logically be possible to speak of *res judicata* in connection with the past course of conduct either, because, in this connection, the judgment would be without object.

This then would be a most strange decision: one which though devoid of object as a judicial decision would have been delivered because of an alleged usefulness which it might have not as a judicial decision but solely because of the reasons on the basis on which it was given. It would be something having only the mere

appearance of a judgment; something which in substance would be no more than an advisory opinion.

11. The foregoing must lead to the rejection of its starting point, namely the narrow concept of dispute.

In reality there is no reason to make a distinction between past and future courses of conduct as the possible subject of a dispute. There is a dispute not only in the case of a claim, where one of the parties demands that its interest should be achieved, possibly through a certain course of conduct by the other party, but also in the case of a protest, where one of the parties asserts that its interest should have been achieved through a course of conduct by the other party contrary to that in fact adopted. There is no substantive difference between the claim and the protest. A protest is really only a claim with relation to the past.

It is only in this way that it is possible to explain the various judgments which have been given solely on a past course of conduct by one of the parties, such as Judgments Nos. 7 and 49 by the Permanent Court in the *Polish Upper Silesia* and *Memel Territory* cases, and the Judgment by the International Court of Justice in the *Corfu Channel* case in 1949.

In the first of these Judgments the Permanent Court quite simply declared that certain measures by the Polish authorities were contrary to the provisions of a convention (P.C.I.J., Series A, No. 7, pp. 81-82). Similarly in certain of the operative provisions of the Judgment relating to the *Memel Territory,* the Court found that certain acts of the Government of Lithuania were in conformity with the Statute of the Memel Territory and that others were not (P.C.I.J., Series A/B, No. 49, pp. 337-338). Finally, in the Judgment in the *Corfu Channel* case, the International Court of Justice gave judgment that by certain acts of the British Navy the United Kingdom did not violate the sovereignty of Albania, whereas by certain other acts the United Kingdom did violate the sovereignty of Albania, "and that this declaration by the Court constitutes in itself appropriate satisfaction" (*I.C.J. Reports 1949,* p. 36).

There is no doubt that the Judgments cited above all have the force of *res judicata* in respect, of course, of the point forming the subject of the decision, namely the lawful or unlawful character of a certain course of (necessarily past) conduct. It is not possible to speak of *res judicata* in connection with the interpretation of the rules of law on the basis of which that conduct was appraised, this interpretation being only a reason on which the decision was based. Nor is it possible in these Judgments to read into them something which they do not at all contain, namely a prohibition on the performance of similar acts in the future.

In this connection the *Polish Upper Silesia* case is of very special interest. Certain measures by the Polish authorities having been declared unlawful in Judgment No. 7, Germany based itself on this declaration with force of *res judicata* to submit a further Application to the Permanent Court for reparation (for this Application see Judgment No. 8, *Chorzów Factory* case). This is precisely the hypothesis to which I have already referred (see above, para. 9), namely the hypothesis in which a decision on the subject of a certain course of past conduct by one of the parties which has been characterized as unlawful is used, as *res judicata*, with a view to the settlement of another dispute the subject of which is a claim for reparation.

The scope and effects of Judgment No. 7 were subsequently defined by the Permanent Court itself in its Judgment No. 11. After finding that the conclusion reached in Judgment No. 7 as to the unlawful character of the attitude of the Polish Government "has now indisputably acquired the force of *res judicata*" Judgment No. 11 declared:

> "The Court's Judgment No. 7 is in the nature of a declaratory judgment, the intention of which is to ensure recognition of a situation at law, once and for all and with binding force as between the Parties; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned." (P.C.I.J., Series A, No. 13, p. 20.)

From this passage there very clearly emerges the idea that *res judicata* produces its effects in the future even if it concerns, as in that case, the characterization of a course of past conduct.

As regards the *Corfu Channel* case, something should be said of the physiognomy of the dispute submitted to the Court. Albania had indeed asked for reparation (in the form of satisfaction) and consequently from this standpoint the dispute related to a future course of conduct by the United Kingdom. The Court did not uphold this claim by Albania; but this did not prevent the Court, in the operative part of its Judgment, declaring the unlawful nature of the United Kingdom's conduct. Moreover the question arises as to what would have happened if Albania had from the beginning adopted in the matter of reparation an attitude corresponding to that which was subsequently to be taken by the Court, and had refrained from asking for any satisfaction other than that constituted by the declaration of the violation itself. It would seem difficult to suppose that in such a case the Court would have declined to do what it did do, namely declare the violation, on the grounds that in the absence of any claim for reparation there was no dispute to settle.

II

1. Admitted that the claim is admissible, because there really is a dispute between Cameroon and the United Kingdom, it is necessary to consider whether such a dispute is subject to the Court's jurisdiction.

Cameroon founds the jurisdiction of the Court on Article 19 of the Trusteeship Agreement for the Territory of the Cameroons under British Administration approved by the General Assembly of the United Nations on 13 December 1946.

This Agreement was concluded between the United Kingdom on the one hand and the United Nations, acting through the General Assembly, on the other. If this Agreement derived its value solely from general international law, it would have effects only for the parties to it, for the United Kingdom on the one hand and for the United Nations on the other. The Organization might be regarded either as a legal entity separate from the States Members, or as a group of States possessing subjective rights and legal powers exercisable only collectively through particular organs, namely the organs of the United Nations. Whichever of these two theoretical constructions is followed, the practical consequences are unchanged.

If the effects of the Trusteeship Agreement were confined to the two parties to the Agreement this would in the first place make it necessary to construe all the material rules laid down in the Agreement (even the rule in Article 9 concerning equality of treatment and the rule in Article 13 concerning missionaries) as rules creating obligations for the United Kingdom in respect of the Organization and not in respect of the States Members considered individually. Secondly, it would not be possible to construe Article 19 as a true jurisdictional clause, since the Court's jurisdiction can be based only on a rule which is valid for both parties to the dispute. Article 19 could be construed only as a compromissory clause with special features: that is to say a clause binding the United Kingdom vis-à-vis the United Nations to conclude with and at the request of a State Member a special agreement for the submission of a particular dispute to the Court.

However, the consequences I have just indicated must be set aside because the trusteeship agreements are covered not only by general international law but also by a rule of particular law implicitly deriving from the Charter. It is by virtue of that rule that the trusteeship agreements can produce their effects not only for the parties to the agreement, namely the Organization and the administering authority, but also for all the States Members of the United Nations considered individually.

So far as Article 19 of the Trusteeship Agreement for the Territory of the Cameroons under Bristish Administration is concerned in particular, it follows that that Article constitutes a true jurisdictional clause itself conferring jurisdiction on the Court to deal with the disputes contemplated therein and at the same time conferring a corresponding right of action on all the States Members of the United Nations in respect of the United Kingdom.

It is not necessary to state precisely to which of the sources of jurisdiction provided for in Article 36 (1) of the Statute Article 19 of the Trusteeship Agreement must be related: whether in particular it is the reference to the Charter or the reference to treaties and conventions in force which is operative in the present case. It is sufficient to observe that it is possible to apply a very liberal construction to the provision of Article 36 (1) of the Statute: this is because of the purely negative role of such a provision, which does not regulate the subject-matter of the Court's jurisdiction and leaves this task to other rules outside the Statute. These rules may be established in any manner whatever provided that they are established in a way capable of giving them effect in respect of all the parties to the dispute submitted to the Court.

2. This having been said, it becomes necessary to consider whether the dispute which Cameroon asks the Court to decide is included or not in the category of disputes covered by Article 19 of the Trusteeship Agreement. It must in particular be considered whether this dispute may be regarded as a dispute relating "to the interpretation or application of the provisions" of the Agreement within the meaning of Article 19.

Since Article 19 refers to the material provisions of the Agreement it is necessary in order to establish the scope of the jurisdictional clause in that Article to examine the whole of the material provisions of the Agreement.

All these provisions create obligations for the United Kingdom. They must however be classified in two separate categories according to the orientation of the obligations which they impose, that is to say according to the subjects on which the corresponding rights are conferred.

3. Among the substantive provisions of the Trusteeship Agreement there are some (such as the provision in Article 9 concerning equality of treatment and that in Article 13 concerning missionaries) which relate to the individual interests of the various States Members of the United Nations. The provisions in question protect these individual interests by imposing on the United Kingdom obligations vis-à-vis each of the States Members of the United Nations separately. This amounts to saying that these provisions confer on the States Members subjective rights which may be characterized as individual, not only in the sense that these rights may be individually exercised but also in the sense that, on the

basis of these provisions, each State Member is entitled to require from the United Kingdom the conduct provided for solely in respect of its own nationals and not in respect of the nationals of other States Members. It follows that apart from the exceptional case of double nationality there is no possibility of two States, relying on the same legal rule but giving different interpretations to that rule, requiring of the United Kingdom in respect of the same individual two contrasting courses of conduct.

As regards these provisions not only is there no subjective right vested in States other than the State of which the individual is a national, but there is no subjective right vested in the United Nations in this respect. It may well be recognized that, in the exercise of its supervisory power in connection with the Trusteeship, it is possible for the Organization to concern itself even with the way in which the Administering Authority discharges or does not discharge the obligations flowing from the provisions under consideration. But it must be denied that these provisions confer a true subjective right on the Organization which it could exercise even against the attitude adopted in this respect by the State of which the individual is a national. The subjective right is vested in that State alone and it may freely dispose of it.

4. Alongside the provisions which have been considered up to now there are other substantive provisions in the Trusteeship Agreement which are doubtless the most important ones and relate to the administration of the territory and the treatment of its inhabitants. This second category of substantive provisions contemplates interests which are not individual interests of the various States Members of the United Nations but rather collective interests, that is to say interests common to all the States Members.

In general the rules of international law may protect the collective interests of States by different means. Firstly, these rules may confer subjective rights on all the States concerned so that each of them is individually entitled to demand the conduct provided for. As in this eventuality the subjective rights conferred on the various States all contemplate a single course of conduct and not separate courses of conduct (as in the case of the treatment to be accorded to the nationals of different States) there is the possibility of conflicting claims on the part of two or more States relying on the same legal rule but giving different interpretations to that rule.

This eventuality cannot occur when the subjective right is conferred not on several States individually but on a single entity: in particular, on an international organization such as the United Nations. It is evident that if it is desired to deny the Organization legal personality it would be necessary in that case to speak of

subjective rights conferred not on the Organization as a single entity but rather on the States Members, considered, of course, as a group and not individually. If this latter construction is accepted it is necessary to conceive of a subjective right the exercise of which is organized in a certain way, to the effect that the subjective right could be exercised by those in whom it is vested only collectively, that is to say through the corporate organs. In any case, whichever construction may be preferred, it will be found that the State on which the obligation is placed is always faced with the corporate organ; and only the corporate organ may require the discharge of the obligation, acting either on behalf of the Organization as a single entity or on behalf of the States Members as a group. Thus there is no possibility of divergent claims on the basis of the same legal rule.

It is in this way, in my view, that the provisions which constitute the very essence of the trusteeship agreements must be construed: in particular the provisions in the Trusteeship Agreement for the Territory of the Cameroons under British Administration which relate to the administration of the Territory and the treatment of its inhabitants.

These provisions create an obligation for the United Kingdom only vis-à-vis the United Nations and it is solely on the United Nations that those provisions confer subjective rights. That is to say that discharge of the obligations placed on the United Kingdom can be demanded only by the General Assembly or by the Trusteeship Council acting either on behalf of the Organization or on behalf of the States Members as a group. What has been called the administrative supervision vested in these organs is no other than the exercise of the subjective rights conferred either on the Organization or on the States Members considered collectively. There is no subjective right flowing from the provisions in question for each State Member considered individually. The State Member cannot therefore rely on these provisions to make claims against the Administering Authority, with the possibility of these claims conflicting with the attitude adopted by the General Assembly and by the Trusteeship Council. A State Member may not individually seek to overthrow the decisions taken by those organs.

5. The observations which I have just made concerning the characteristics of the substantive provisions of the Trusteeship Agreement are, I think, necessary for a precise statement of the scope of the jurisdictional clause in Article 19.

No doubt this clause contemplates disputes having the characteristic of legal disputes, that is to say disputes in which the claim or protest of one of the parties is based on a legal ground, namely on the assertion by that party that its claim or protest is in accordance with legal rules. More particularly, since Article 19 refers to the substantive provisions of the Agreement, it is necessary that

the party should assert that its claim or protest is in accordance with a substantive provision of the Agreement.

It is however evident that it does not suffice for the party to rely on any provision whatever of the Agreement; it is necessary that the party should more specifically rely on a subjective right deriving for that party from a provision of the Agreement. In other words, for a dispute to fall within the category of disputes contemplated by Article 19 it is necessary either that the party advancing a claim against the Administering Authority should assert on the basis of a provision of the Agreement that it possesses a subjective right to the course of conduct by the Administering Authority which is the subject of the claim, or that the party making a protest should assert that by the course of conduct which is the subject of that protest the Administering Authority has injured a subjective right of that party deriving from the Trusteeship Agreement.

This is but the application to the Trusteeship Agreement of a principle which operates in respect of any jurisdictional clause in a treaty which refers to disputes relating to the interpretation or application of the provisions of that treaty. For a dispute to be regarded as covered by the clause it is in fact necessary that the party should assert a subjective right of its own deriving from the provisions of the treaty.

Take the hypothesis of a collective treaty the substantive provisions of which are directed uniformly at all the parties but confer on the various parties subjective rights which contemplate separate courses of conduct on the part of the State on which the obligation is placed. Take for example an obligation on each contracting State to treat the nationals of each of the other contracting States in a certain way.

On this assumption it is quite certain that all the contracting States may rely on the jurisdictional clause in respect of disputes relating to the interpretation or application of any provision whatever of the treaty. However, for a State to be able to rely on the clause in respect of a particular dispute, it is necessary that it should assert, on the basis of the provisions of the treaty, the existence of a subjective right of its own. If the State in question claims a certain treatment for the nationals of another contracting State, namely a course of conduct which it does not assert to be the subject of a right of its own, the dispute falls outside the clause, and this is true even if reference is made to a provision of the treaty under which the course of conduct in question must be regarded as obligatory.

6. As regards the Trusteeship Agreement for the Territory of the Cameroons under British Administration we have seen that this Agreement contains substantive provisions which undoubtedly confer on the States Members of the United Nations taken individ-

ually subjective rights vis-à-vis the United Kingdom. It is thus quite certain that a dispute in which a State Member of the United Nations asserts a subjective right deriving for it from one of those provisions (which is possible only in respect of the treatment of the nationals of that State) is a dispute covered by the jurisdictional clause of Article 19.

But there are other substantive provisions of the Agreement, those relating to the administration of the Territory and the treatment of its inhabitants. In my view these provisions confer no subjective right on the States Members of the United Nations considered individually. As none of these States can rely individually on a subjective right deriving from the provisions in question, it is not in my view possible to contemplate a dispute between a State Member and the Administering Authority which could be considered as relating to those provisions of the Trusteeship Agreement.

I do not of course deny the possibility of a dispute between a particular State (whether a Member of the United Nations or not) on the one hand, and the Administering Authority on the other, and relating precisely to the administration of the Trust Territory; on the contrary, I have already said that this eventuality is just what has occurred in the present case. I merely deny that such a dispute could be regarded as a dispute relating to the interpretation or application of the Trusteeship Agreement, because in such a dispute it is not possible to rely on a subjective right deriving from the Trusteeship Agreement.

It follows that the reference in Article 19 to the substantive provisions of the Agreement for the purpose of determining the categories of disputes contemplated by Article 19 is a reference which is automatically confined to certain provisions of the Agreement. This is because it is not possible to conceive of there arising between a State Member considered individually and the Administering Authority a dispute having the characteristic of a dispute relating to the interpretation or application of other provisions of the Agreement, namely provisions concerning the administration of the Territory.

This confinement of the reference to certain provisions of the Agreement is in no way contradicted by the very broad terms of Article 19. The wording is "any dispute whatever ..." and not any provision whatever of the Agreement. The dispute may be any dispute whatever, provided that it relates to the interpretation or application of the provisions of the Agreement, and this, for the reasons which I have given, is possible in connection with only part of the provisions of the Agreement.

7. The wording of Article 19 does not contradict but confirms the argument that a dispute concerning the administration of the Trust Territory, although possible in fact, is not a dispute relating

to the interpretation or application of the Trusteeship Agreement.

Article 19 in fact speaks of a dispute which "cannot be settled by negotiation or other means". The other means contemplated by this formula are evidently means, like negotiation, capable of settling disputes between States: conciliation, enquiry, arbitration, etc. Proceedings in the General Assembly, acting under Article 85 of the Charter, and in the Trusteeship Council are not contemplated thereby, for the very simple reason that such proceedings are not intended to settle disputes between States.

From this condition imposed by Article 19 on the jurisdiction of the Court it clearly follows that the Article refers to disputes capable of being settled by negotiation or other means and requires that such means should in the particular case in point have been found ineffective. Now a dispute concerning the administration of the Trust Territory is a dispute which is not capable by its very nature of settlement by negotiation, because it involves a subject-matter which it is not in the power of the parties to dispose of.

In the present case it would have in fact to be denied that there had been negotiations such as would have had to take place after 1 May 1961, the date of the birth of the dispute. But there is really a still further point, and that is that negotiations were not even possible.

It is clear that by the foregoing statement, namely that a dispute concerning the administration of the Trust Territory such as the dispute submitted by Cameroon to the Court is not a dispute which can be settled by negotiation or other means, it is not at all intended to admit that the requirement of Article 19 must be regarded as fulfilled. On the contrary, what is meant is that this is a dispute in connection with which it is quite impossible that such a condition should be fulfilled and that it is therefore a dispute which is not covered by Article 19 at all.

8. The hypothesis of a dispute between a State Member and the Administering Authority concerning the administration of the Territory is actually one which is perfectly possible in fact, but one with which there was no reason for the Trusteeship Agreement to be concerned. This is because the subject-matter of the administration of the Territory is not governed in the substantive provisions of the Agreement by legal relationships between the Administering Authority on the one hand and the States Members considered individually on the other.

Did the Trusteeship Agreement, without, in respect of the administration of the Territory, creating subjective rights for the States Members considered individually, none the less intend to confer on those States a right of action before the Court in this

field? An affirmative answer to this question would signify that a right of action is conceived of as conferred on States for the protection of subjective rights vested not in those States but in the United Nations. It would be a sort of *actio popularis*. But the *actio popularis* is of a quite exceptional nature even in municipal law. In international law such an action is not inconceivable theoretically, but it is difficult to consider it as having been introduced or as capable of being introduced into positive law.

Moreover, it is not apparent why Article 19, while conferring on States a right of action in respect of substantive rights not vested in them, should have made the exercise of such an action dependent on the existence of a dispute to which the State desiring to bring the matter before the Court must be a party. The reference to a dispute and thereby to individual interests of States clearly indicates of itself that the field in which Article 19 is intended to operate is quite other.

9. Since the dispute submitted to the Court is not a dispute relating to the interpretation or application of the provisions of the Trusteeship Agreement within the meaning of Article 19 of the Agreement, I am of opinion that the Court should for this reason have declared that it has no jurisdiction.

In order to reach such a decision the Court would doubtless have found it necessary to interpret the substantive provisions of the Trusteeship Agreement. The Court would first have had to establish that Cameroon considered individually did not possess on the basis of those provisions any subjective right vis-à-vis the United Kingdom in respect of the latter's exercise of the trusteeship for the Northern Cameroons. But it is not the declaration of the non-existence of a substantive subjective right possessed by Cameroon which would have been the subject of the judgment which the Court was called upon to give. A finding that there was no substantive right possessed by Cameroon on the basis of the Trusteeship Agreement would only have been the means whereby the Court could decide that it had no jurisdiction.

This is one of those fairly frequent cases in which the question of jurisdiction arises in close connection with the merits of the case. It is moreover possible to note such a connection in all cases concerned with a jurisdictional clause in a treaty covering disputes relating to the interpretation or application of the substantive provisions of that treaty. In such cases it is necessary, in order to decide on the question of jurisdiction, to interpret those substantive provisions and establish the rights and obligations which they confer on the parties.

(Signed) Gaetano MORELLI.