DISSENTING OPINION OF JUDGE BUSTAMANTE

[Translation]

As I am unable to concur in the decision reached by the Court in its Judgment in the present case, I must set out the reasons for my dissenting opinion and also the conclusions at which I have arrived, but I must first say that I do so with the greatest deference towards the opinion of the majority of the Members of the Court.

* * *

1. In its Application dated 30 May 1961, further developed in the Memorial dated 12 December, the Federal Republic of Cameroon asked the Court to state the law, as against the United Kingdom of Great Britain and Northern Ireland, with regard to a dispute the terms of which may be summarized as follows. The question at issue is whether, in the application of the Trusteeship Agreement for the Northern Cameroons concluded with the United Nations on 13 December 1946, the United Kingdom, as the Administering Authority, failed to respect various obligations arising from the said Agreement or from the express instructions of the General Assembly, the consequence of the failure to do so having in fact been that an abnormal and distorted character was given to the plebiscite held on 11 and 12 February 1961 which resulted in a majority decision in favour of the incorporation of the Northern Cameroons in the State of Nigeria.

In its Counter-Memorial dated 14 August 1962, the United Kingdom, without omitting—in so far as the merits are concerned—to rebut the complaints raised by the Applicant Party, put forward several preliminary objections most of which relate to the jurisdiction of the Court whilst some of them are concerned with certain aspects of the inadmissibility of the claim. It is for the Court to decide, in its Judgment, whether these objections are well founded.

2. The question of jurisdiction must be settled—and the Parties are in agreement on this point—in the light of Article 19 of the Trusteeship Agreement for the Territory of the Cameroons under United Kingdom administration. The jurisdiction of the Court is said to be founded on the terms of a treaty or convention "in force", as provided for in the concluding portion of paragraph 1 of Article 36 of the Statute of the Court.

According to that paragraph, the essential condition for establishing the jurisdiction of the Court is that the treaty in question should have been in force at the time when the dispute arose. The two Parties have recognized that the Trusteeship Agreement

was still in force on 30 May 1961, the date of the Republic of Cameroon's Application. Two days later (on 1 June 1961) the Trusteeship Agreement terminated, in accordance with resolution 1608 (XV) of the General Assembly of the United Nations, dated 21 April of the same year.

It could be asserted that if it is the final aim of judicial action to clear up for the future any doubts to which the text of a treaty may give rise, or to prevent in the future the repetition of errors of application already committed in the past, neither of these aims could be achieved if the action were instituted on the eve of the expiration of the treaty. But it must be borne in mind that the aim of legal action in such a case is not always directed towards the future, for the action may also have a retrospective aim in seeking to obtain a judicial finding as to the conformity or non-conformity with the law of an interpretation of a contract which has already been given or of the application of a treaty provision which it is considered was wrongly carried out in practice. In such a case, it seems to me that an Application is always admissible if the problem raised by it is concerned with the period when the treaty was in force. Human deeds or acts involving third parties, irrespective of who commits them—whether a man or a State—give rise to responsibilities, which may in certain cases be determined—in the absence of other means—of settlement by courts of justice. And all this independently of the value of such precedents as the judicial decision may in certain circumstances serve to establish for the purposes of the future application of the law or agreement in question.

3. Article 19 of the Trusteeship Agreement of 13 December 1946 reads as follows:

> "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."

The conditions in which, according to the text cited above, the Court has jurisdiction, may be summed up as follows:

A. *As to the juridical persons* mentioned in the Agreement, the following are considered as being entitled to appear before the Court:

(a) the Administering Authority;
(b) any other Member of the United Nations.

The nature and scope of the intervention of such Member States in proceedings before the Court, whether as parties to the Agreement or as third parties concerned, is a subject of controversy and interpretation, which will be considered later.

B. *As to the subject-matter of the litigation:*

(a) there must be a dispute—any dispute whatever;

(b) this dispute must relate to a question of the interpretation or application of the provisions of the Trusteeship Agreement;

(c) the dispute must be incapable of settlement by negotiation or other means.

I now turn—with regard to the jurisdiction of the Court—to a study of these two important aspects of Article 19 of the Agreement in relation to the particular case raised in the Application and taking into consideration, too, the objections of the respondent Party.

4. The first question that arises in regard to the juridical persons mentioned in Article 19, relates to the nature and scope of intervention in Court proceedings by "another Member of the United Nations", as referred to in that Article. In the United Kingdom view, these States are not *parties* to the Trusteeship Agreements but merely *third* States who are called upon to watch over certain rights of their nationals (Articles 9, 10, 11 and 13 of the Agreement). Consequently, any "other Member" considered individually would not have the right to enter into a judicial dispute with the Administering Authority concerning the interpretation or application of the general provisions (Articles 3 to 8, 12, 14 to 16) of a trusteeship agreement to which it is not a party. Such a claim would be inadmissible because supervision in regard to the general provisions of the Agreement belongs exclusively to the United Nations. The jurisdiction of the Court therefore does not embrace actions of this kind by Member States. In this connection, the United Kingdom noted that, in the case of the Cameroons, it was not a question of the existence of a Mandate agreement under the former system of the League of Nations, but of a trusteeship agreement entered into with the United Nations, these two institutions being governed by norms that are different although inspired by a common object. Thus it follows therefrom that the rights of Member States as provided for in a trusteeship agreement must not be equated with the rights provided for in a Mandate agreement. The latter are more restricted, adds the United Kingdom, and this was admitted in the Judgment delivered by the Court on 21 December 1962 in the *South West Africa* cases (*I.C.J. Reports 1962*, p. 319). According to that Judgment, the judicial protection provided in favour of the populations under the Mandate System did not become necessary in the new Trusteeship System, the reason for this being that, having regard to the structure of the Charter of the United Nations, that Organization undertook to safeguard the rights of the inhabitants of the Trust Territory administratively and in a more comprehensive manner than the Covenant of the League of Nations of 1919, from any possible errors or abuses on the part of the Trusteeship authori-

ties, the clause providing for judicial protection having thereafter no reason to subsist as an essential element of the trusteeship agreements.

In the first place, this interpretation by the Respondent of the significance of the Judgment of 21 December 1962 (case of Ethiopia and Liberia *v.* Union of South Africa) seems to me to be too peremptory and consequently excessive. What the majority of the Court stated in the Judgment in a very general way (*I.C.J. Reports 1962*, p. 342) was that after the coming into force of the new Trusteeship System "the *necessity* for judicial protection" (that is to say, the necessity for inserting the jurisdictional clause in the trusteeship agreements) "was dispensed with"; but this is very far from meaning that such protection thenceforward became superfluous and could not be incorporated in the new trusteeship agreements. On the contrary, the text of the Judgment shows in numerous passages that the judges adhered to this form of judicial safeguard for the benefit of peoples under Trusteeship. The insertion of Article 19 in the text of the Trusteeship Agreement for the Northern Cameroons, which was done with the assent of the United Kingdom, in itself alone shows that the interpretation which I have just given is correct.

It is, however, necessary to make a more thorough study of this question and I shall do so by taking into account not only the Judgment in the *South West Africa* cases of 1962 but also my separate opinion which was appended thereto (*I.C.J. Reports 1962*, p. 349) in which I considered certain aspects that were not mentioned by the majority of the Members of the Court.

According to the Court (*I.C.J. Reports 1962*, p. 329)—

> "The essential principles of the Mandates System consist chiefly in the recognition of certain rights of the peoples of the underdeveloped territories; the establishment of a regime of tutelage for each of such peoples to be exercised by an advanced nation as a 'Mandatory' 'on behalf of the League of Nations'; and the recognition of 'a sacred trust of civilization' laid upon the League as an organized international community and upon its Member States. This system is dedicated to the avowed object of promoting the well-being and development of the peoples concerned and is fortified by setting up safeguards for the protection of their rights."

In another paragraph of its Judgment, the Court says (*I.C.J. Reports 1962*, p. 336):

> "... judicial protection of the sacred trust in each Mandate was an essential feature of the Mandates System. The essence of this system, as conceived by its authors and embodied in Article 22 of the Covenant of the League of Nations, consisted, as stated earlier, of two features: a Mandate conferred upon a Power as 'a sacred trust of civilization' and the 'securities for the performance of this trust'... The administrative supervision by the League constituted a normal security to ensure full performance by the

Mandatory of the 'sacred trust' toward the inhabitants of the mandated territory, but the specially assigned role of the Court was even *more essential* [1], since it was to serve as the final bulwark of protection by recourse to the Court against possible abuse or breaches of the Mandate."

Speaking of the concept of the "sacred trust of civilization" recognized by the Court, I held in my separate opinion in 1962:

(a) that:

"The populations under Mandate are in my view an essential element of the system, because Article 22 of the Covenant recognized them as having various rights, such as personal freedom (prohibition of slavery), freedom of conscience and religion, equitable treatment by the Mandatory, and access to education, economic development and political independence (self-determination). They were thus recognized as having the capacity of legal persons, and this is why in the Mandate agreements those populations are, as I believe, parties possessed of a direct legal interest, although their limited capacity requires that they should have a representative or guardian." (*I.C.J. Reports 1962*, p. 354.)

(b) that:

"The function assigned by the Covenant [of 1922] to the League of Nations as a clearly characterized 'tutelary authority' for such territories [under Mandate], comes particularly clearly out of the text of paragraph 2 of Article 22, according to which the Mandatory is required to exercise its functions '*on behalf of* the League'.

It seems to me that this point is of prime importance for the decision in this case because, starting from the recognition of the direct legal interest which the populations under tutelage possess in their mandate regime and having regard to their capacity as legal persons—for whom the League of Nations is the tutelary authority—many legal consequences flow therefrom. In the first place, the populations under Mandate are in fact parties to the Mandate agreements and represented by the League of Nations. Secondly, the Mandatory's obligation to submit to the supervision of the tutelary authority and account for the exercise of the Mandate is obvious. Finally, from this concept it follows that all the Members of the Organization are jointly and severally responsible for the fulfilment of the 'sacred trust' and for watching over the populations whose destiny has been put under their aegis." (*I.C.J. Reports 1962*, p. 355.)

(c) that:

"The function of the Mandatory is a *responsibility* rather than a right (Article 22, paragraph 2, of the Covenant). The less developed the population under Mandate, the heavier the responsibility of

[1] My italics.

that Mandatory, as in the case of C Mandates (Article 22, paragraph 6)... This is one of the most characteristic features of the system: the Mandatory signifies its acceptance not as a party with an interest in the prospects flowing from the contract but as a collaborator of the international community in its trust of civilizing a certain underdeveloped people." (*I.C.J. Reports 1962*, p. 357.)

I must now add that the most adequate means of determining responsibilities of a legal nature lies in the jurisdiction of the Court.

(d) that the jurisdictional clause inserted in the Mandate agreements—

"is but the implementation of Article 14 of the Covenant of the League of Nations which established recourse to the Permanent Court as the final, although voluntary, means of settling international disputes between States... Again, this safeguard of recourse to judicial jurisdiction is universally accepted for the settlement of all sorts of litigious situations or situations subject to legal interpretation, so that its inclusion in a Mandate agreement does not involve any anomaly.

. . . . . .

In my view, the true significance of the clause providing for recourse to the Court is that of a *security* for *both parties* as to the proper application of the Mandate and the proper exercise of supervision." (*I.C.J. Reports 1962*, pp. 360-361.)

(e) that:

"there is a further reason which obviously the Council of the League of Nations took care to provide for in the compromissory clause. Under Articles 34 and 35 of the Statute of the Permanent Court, only States and the States Members of the League could be parties in cases before the Court in contentious proceedings. The League, which was not a State, could only request 'advisory opinions' (Article 14 of the Covenant); thus should an insoluble difference of view with the Mandatory arise, the intervention of the States Members, the jointly responsible constituent elements of the League, became indispensable as parties to the proceedings." (*I.C.J. Reports 1962*, p. 362.)

In short, I held in my separate opinion that the judicial protection provided for in the jurisdictional clause of the Mandate agreements fulfilled a function of *public interest* for the whole of the international community and consequently authorized any Member State to require the Mandatory to fulfil its obligations properly whether in relation to the interpretation or in the matter of the application of those agreements.

It may be helpful to recall here the transition period between the liquidation of the League of Nations and the constitution of the United Nations, and also the replacement of the former Mandate System by the institution of trusteeship, in order to determine as far as possible whether the right of Member States to take

action under the jurisdictional clause of the trusteeship agreements suffered any restrictions or whether the clause itself should be definitively excluded.

The Assembly of the League of Nations, and also the First Committee, met, around April 1946, in order to settle the position of the Mandates during this transitional period, and all the Mandatory Powers solemnly stated their intention of continuing to administer without change the territories which had been entrusted to them. Together with other States, the United Kingdom—which had been exercising a Mandate over the Cameroons since 1922—then expressed such an intention, stating that it would act "in accordance with the general principles of the existing Mandates". The French delegate stated that—

> "all the territories under the Mandate of his Government would continue to be administered in the spirit of the Covenant and of the Charter ... in pursuance of the execution of the mission entrusted to it by the League of Nations".

The representative of Australia stated that his country considered that the dissolution of the League of Nations did not weaken the obligations of countries administering mandates. The delegate of New Zealand stated that its administration would continue "in accordance with the terms of the Mandate". On all sides, the concept of the "sacred trust" was accepted in the declarations of the Mandatory Powers, without any discrimination being made between the Covenant and the Charter. All these declarations were received and approved by the Assembly of the League of Nations at its meeting on 18 April 1946 (*I.C.J. Reports 1962*, pp. 339-341). It can accordingly be asserted that, despite the dissolution of the League of Nations, there was unanimous agreement among the Mandatory Powers that the Mandates were to continue to be exercised in accordance with the rules of the Mandate agreements, until the Trusteeship System had been finally established.

That system was established on the day when the Charter of the United Nations entered into force. Like Article 22 of the Covenant of the League of Nations, Article 73 of the Charter mentions the "sacred" character of the obligation of Administering States to promote the well-being of the inhabitants of the non-autonomous territories the paramount character of whose interests is explicitly recognized. Articles 75, 76 and 83, paragraphs 2 and 3, are identical with Article 22 of the Covenant in regard to the aims and the object of the new system of trusteeship which are the same as the aims of the United Nations, the new regime continuing to be, like that of the Mandates, an institution in which all States of the world Organization are concerned, that is to say an institution of international public interest. Article 77 stipulates in imperative terms that the territories then held under Mandate were to be placed under the Trusteeship System. Finally, Chapter XIII of the

Charter is concerned with supervision over the actions of the Administering Authority, thus reaffirming in the clearest possible way the principle of that Authority's responsibility in regard to the fulfilment of its mission of trusteeship.

In the light of these basic considerations, the fact at the time when the Charter entered into force, that, the United Kingdom consented to the insertion in the text of the Trusteeship Agreement for the Northern Cameroons (13 December 1946) of Article 19 concerning judicial protection can only be interpreted as a confirmation of its previous policy, which was in favour of considering the new trusteeship as a continuation of the former Mandate and maintaining in the new text the judicial protection clause which appeared in the previous Mandate agreement. Seeing that the General Assembly of the United Nations also signed and approved the said Trusteeship Agreement, no doubt remains as to the fact that the principal organ of the United Nations considered the insertion of Article 19 in the new contractual text as lawful and expedient. Consequently, on the basis that the judicial protection clause does in fact exist by mutual accord in a trusteeship agreement, the validity of which nobody has denied, the only conclusion to be arrived at is that the applicability of the clause must be admitted.

In this connection, attention must be drawn to a detail which is of decisive importance, namely that, in the Trusteeship Agreement for the Northern Cameroons which replaced the Mandate Agreement, the terms of the jurisdictional clause are practically the same as in the former Mandate agreements, without the wording imposing any restriction in regard to the judicial action open to "other Member States" in respect of the interpretation or application of the Agreements, which allows it to be inferred that neither the United Nations nor the United Kingdom intended to diminish the scope conferred upon judicial action in the Mandate agreements by the literal and natural meaning of the text.

I wonder whether, taking this background into consideration, it can reasonably be thought or presumed that the mission entrusted to Member States by the Covenant under the Mandates System could have been curtailed at the moment when the trusteeship came into being. This would mean a retrogression in the tendency of international organizations, always favourable to the protection of unliberated peoples and always directed towards the safeguarding of their rights.

I am prepared to admit that in the articles of the Trusteeship Agreement there can be distinguished two categories of obligations imposed on the Administering Authority: some, which are called individual, concern relations with other Member States or their nationals (Articles 9, 10, 11 and 13) while others are concerned with the tutelary Power's general obligations with regard to the administration of the trust territory (for example, Articles 4, 5, 6, 8,

12 and 14 to 16). But even admitting this distinction, I am unable to concur with the assertion that the competence conferred by Article 19 upon the Court to decide questions of the interpretation or application of the Agreement relates only to questions concerning individual obligations and not to questions concerning the other obligations connected with the general administration of the Territory, supervision in respect of which comes under the allegedly exclusive control of the United Nations. This restrictive interpretation of the jurisdiction of the Court is not, in my opinion, justified. On the contrary, it runs counter to the literal meaning of Article 19. If the Agreement had been intended to be so limited, the sentence in question would not have been worded as it was: "... relating to the interpretation or application *of the provisions* of this [Trusteeship] Agreement...", but would have read: "... relating to the interpretation or application *of Articles 9, 10, 11 and 13* of this Agreement...". There can be no doubt that, according to the text of Article 19, as it is worded, the interpretation and application of *all the provisions* of the Agreement—and not only some of them—are matters capable of being judged by the Court. This amounts to saying that each Member State was given the right to participate, by means of judicial proceedings, in the task of supervising all the obligations of the tutelary authority relating to the general administration of the trusteeship.

From all that I have just said and after deep reflection, it seems to me that it is far from being clear that the scope of the jurisdictional clause of the new trusteeship agreements must be regarded as less comprehensive than that of the clause in the former Mandate agreements. There are good reasons for holding that this clause (of which Article 19 of the Trusteeship Agreement for the Northern Cameroons is an example) gives to the Member States of the United Nations—as is the meaning of its literal text—the right to bring before the Court legal questions concerning the correctness or incorrectness of the interpretation or application which the Administering Authority has given *to the general obligations* which flow from the Trusteeship Agreement whether in regard to the Member State in question or in regard to its nationals or to the peoples of the trust territory. In my opinion, the only problem raised by this particular case is the question whether the Territory of the Northern Cameroons was still, at the date of the Application (30 May 1961), a "trust territory" so far as concerned the implementation of its judicial protection and the safeguarding of the individual interest of the Federal Republic of Cameroon or its nationals. The reply must be affirmative seeing that the United Kingdom Trusteeship in respect of this territory was not to terminate until two days later, that is to say, on 1 June 1961. There is, however, above all one other major reason in favour of this affirmative reply, namely the fact that after 1 June the Northern Cameroons did not cease to be a non-independent country, for it was incorporated as

a province in the State of Nigeria pursuant to the results of the plebiscite of February 1961. As the Application of 30 May 1961 indicated that, so far as the Territory of the Northern Cameroons was concerned, those results were due to the unfavourable influence of certain measures and attitudes of the Administering Authority, it seems obvious that at the very centre of the dispute submitted by the Federal Republic there is a question concerning the exercise of the Trusteeship and, consequently, it is covered by the provisions of the Trusteeship Agreement of 13 December 1946.

5. But this is not the only aspect to be considered in the present case. There is another fact, namely the very special position of the Federal Republic of Cameroon, the direct interest of which in the fate of the peoples of the Territory of the Northern Cameroons springs from points of view both geographical (factor of contiguity) and historical (factor of common origin of the two Cameroons (British and French) in the former German Kamerun). (See the White Book of the Republic of Cameroon and the maps submitted as annexes to the Counter-Memorial of the United Kingdom.)

All that need be done is to place Articles 9, 10, 11 and 13 alongside Article 19 of the Trusteeship Agreement in order to see that Member States can have access to the Court in a twofold capacity: on behalf of their nationals and also on their own behalf, in their own interest as States, when they receive from the Administering Authority, in the application of the trusteeship, unequal treatment in certain matters (social, economic, industrial or commercial) or suffer from some discrimination based on nationality. Thus the first paragraph of Article 9 says:

> "... for all Members of the United Nations *and* [1] their nationals".

Paragraph *(c)* of Article 10 reads:

> "... against Members of the United Nations *or* [1] their nationals".

Article 11 reads:

> "... any Member of the United Nations to claim *for itself or* [1] for its nationals".

In the present case the Federal Republic of Cameroon could not be indifferent to the results of the plebiscite in the Northern Cameroons, whether the people pronounced themselves in favour of Nigeria or for incorporation in the Republic of Cameroon, as was the case in the Southern Cameroons. Interests of a geographical, social, economic, historical, etc., nature were undeniably involved in this choice.

Fundamentally, the Application of the Federal Republic of Cameroon, in asking the Court to pronounce upon the fact that

[1] My italics.

certain measures or attitudes of the Administering Authority were not in conformity with the Trusteeship Agreement for the Northern Cameroons—or with the instructions of the General Assembly—seeks to establish, as one of its main objects, the certainty that there was discrimination by the tutelary State to the prejudice of the Applicant and to the benefit of the State of Nigeria. It seems to me that from this point of view the institution of these proceedings by the Republic of Cameroon cannot be disallowed, not only in consideration of the direct legal interest which it has in the case (Article 62 of the Statute), but because on the date of the Application—30 May 1961—the Republic of Cameroon already possessed the status of membership of the United Nations, which it had acquired as a result of the resolution of the General Assembly of 20 September 1960.

6. With regard to action before the Court, the first condition laid down by Article 19 of the Trusteeship Agreement is that a dispute must exist between the Parties. Taking into account the fact that the Republic of Cameroon, which became independent on 1 January 1960, was admitted to the United Nations on 20 September 1960, the dispute with the United Kingdom as Administering Authority for the Territory of the Northern Cameroons, must have arisen after the date on which Cameroon became independent, for this kind of dispute is conceivable only between two sovereign States. For the purposes of the Court's jurisdiction under Article 19 of the Trusteeship Agreement, it is necessary that the dispute must have taken shape after 20 September 1960, the date on which the admission of the new Republic to the United Nations gave it the right of access to the International Court.

Having established these premises, it must also be recalled that, for the purposes of Article 19 of the Agreement, the dispute must already have existed and have taken shape *before the Application* (*Mavrommatis* case, opinion of Judge Moore), for the said Article permits action before the Court only if the disagreement has proved incapable of settlement by negotiation or other means.

In the present case, an examination of the file leads to the conclusion that the process by which the dispute arose and took shape was more or less as follows:

(a) Documents issued by various organs of the United Nations —the Trusteeship Council, the Fourth Committee, the General Assembly—and submitted by the Parties as annexes to the pleadings or subsequently as documents in evidence, frequently show, above all for the period between 1957 and 1961, the concern of these organs about the system under which the Northern Cameroons was administered under United Kingdom Trusteeship and reveal that a certain irregular situation was affecting the territory, the General Assembly having, at the end of 1959, issued directives for the modification of the administrative organization as the only way of

guaranteeing the impartiality of the plebiscite which was to decide the fate of the Trust Territory. Finally, the representative of France, on behalf of the French Cameroons [1], and the Republic of Cameroon itself when it had just acquired independence, transmitted communications expressing certain reservations with regard to the plebiscite. Clear signs of disagreement had already made themselves evident. The United Kingdom took part in these discussions through its delegates to the United Nations.

(b) The Federal Republic of Cameroon, which had become independent on 1 January 1960 [2], through its Ministry of Foreign Affairs and the Secretariat of State for Information, around March 1961, published and had circulated in official circles—including the United Nations Headquarters—a pamphlet known as "The White Book" wherein allegations were made against the United Kingdom in its capacity as Administering Authority for the Northern Cameroons, viz.:

(1) Dissolution of the personality of the Northern Cameroons resulting from the division of the territory, the administration of which was incorporated with that of two provinces of Nigeria, which was under British tutelage, contrary—according to the Republic of Cameroon—to Article 76 of the Charter of the United Nations;

(2) Failure to respect recommendations 4 and 5 of resolution 1473 (XV) of the General Assembly, dated 12 December 1959, regarding the decentralization and democratization of the Trust Territory and its administrative separation from Nigeria;

(3) Infringement of Article 76 *(b)* of the Charter, as the Administering Authority had not promoted the progressive development of the Territory towards self-government, neglecting the participation of its inhabitants in the administrative services;

(4) Responsibility of the Administering Authority concerning the results of the plebiscite of 11 and 12 February 1961 with regard to irregularities and the absence of safeguards for the preparation and holding of the plebiscite and the methods employed thereafter.

The representative of the United Kingdom answered the complaints contained in the White Book in a letter dated 10 April 1961 to the Chairman of the Fourth Committee (Annex 10 to the Observations of Cameroon). It can thus be affirmed, even though the two Parties had not yet confronted each other *directly* concerning

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[1] 18 May 1960, Doc. T/PV L 086, cited on page 3 of the "White Book" (English version).

[2] Resolution 1349 (XIII) of the General Assembly, 749th Plenary Meeting, 13 March 1959.

the matter in dispute, that a fairly sharp divergence of views had arisen between them.

(c) The third phase in the process of the development of the dispute, in which it assumed its full shape, is the phase comprising the two Notes exchanged between the Minister for Foreign Affairs of the Republic of Cameroon and the United Kingdom Ambassador in Paris acting on behalf of Her Britannic Majesty. In the Cameroonian Note dated 1 May 1961, the points of law which constitute the subject of the disputes are stated (paras. *(a)* to *(d)*), attention being drawn to those Articles of the Trusteeship Agreement which, in the opinion of Cameroon, had been contravened (Articles 5 *(b)* and 6), and also to the provisions of resolution 1473 (XIV) of the General Assembly of the United Nations which had not been respected (Recommendations 4, 6 and 7). In connection with all of these a number of questions were put to Her Majesty's Government as being questions which should be submitted for judicial settlement in accordance with Articles 2 and 33 of the Charter. The statement of the points at issue coincides roughly with that in the White Book, but it is drawn up more carefully and in greater detail. The United Kingdom Memorandum (26 May 1961) gave a categorical reply to the Cameroonian Note: any responsibility in connection with the supposed infringements of the Trusteeship Agreement was denied because, the decisions adopted by the General Assembly of the United Nations having already settled the matter, the disagreement alleged of the Republic of Cameroon was not a disagreement with the United Kingdom but with the United Nations.

The two diplomatic documents to which I have just referred thus contain the essential elements of an international dispute, in other words, a conflict of legal views on one or more points of law with respect to a particular case. Moreover, the "memoranda" reveal that the dispute had taken definitive shape in May 1961, after the admission of the Republic of Cameroon to the United Nations (20 September 1960) and before the expiration of the Trusteeship Agreement (1 June 1961).

In addition the United Kingdom Memorandum provides another element of assistance in forming a judgment, namely the fact that the negotiations entered into by Cameroon with a view to settling the dispute by judicial means led to a "deadlock". The United Kingdom refused to seek a legal solution. In this respect, the condition laid down in Article 19 of the Trusteeship Agreement, concerning the breakdown of negotiations, is fulfilled.

In its Application of 30 May 1961, based on Article 19 of the Trusteeship Agreement, the Republic of Cameroon reiterates to the Court the complaints contained in its Memorandum of 1 May, not omitting to add that the United Kingdom disputed the arguments submitted by the Applicant.

Taking all this historical background into account, I come to the conclusion that a dispute exists between the Republic of Cameroon and the United Kingdom according to the doctrines of international law.

7. The second question which arises is whether the dispute concerns problems relating to the application or interpretation of the Trusteeship Agreement within the meaning of Article 19 thereof. The very wording of the Application makes it possible to give an affirmative answer to this question. The Court is asked to decide whether the United Kingdom, in its capacity as Administering Authority, interpreted and applied, correctly or incorrectly, the Trusteeship Agreement and, in consequence, whether it respected or failed to respect certain articles of the said Agreement and certain decisions of the General Assembly of the United Nations previously accepted by the United Kingdom. It seems obvious to me that the decision to be taken by the Court would constitute an act of interpretation concerning the proper or improper application of the Trusteeship Agreement. The condition laid down in this connection by Article 19 of the Agreement has thus been complied with.

8. The other pleas entered by the Respondent by way of preliminary objections must be analysed here.

(a) In the first place, the United Kingdom considers that the chief aim of the Application is to gainsay the validity of the plebiscite which brought the Trusteeship to an end, all the other complaints against the conduct of the Administering Authority throughout the existence of the Trusteeship being subordinate to this principal motive. But, according to the United Kingdom, the two facts of the holding of the plebiscite and the declaration of the termination of the Trusteeship *do not come within* the terms of the Agreement, which does not provide for any obligation on the part of the tutelary State in this connection, the General Assembly of the United Nations being the only authority which dealt with these aspects, in accordance with Article 85, paragraph 1, of the Charter, in collaboration with the United Kingdom. Consequently, that for which the Application is basically asking relates to a matter which falls outside the field of application of the Trusteeship Agreement and which exceeds the Court's capacity to be seised of the case under the terms of Article 19 of the Agreement.

I must say, in the first place, that an examination of the contents and of the submissions of the Application and Memorial of the Republic of Cameroon does not reveal any claim regarding the annulment of the plebiscite or the reconsideration of the agreement by which the General Assembly terminated the Trusteeship in respect of the Northern Cameroons. The reference to the nullity of the plebiscite that is made in the White Book was not reproduced in the pleadings laid before the Court.

This fact being established, it must be noted that by its very nature and in the literal meaning of those chapters of the Charter which relate to the subject, the system of trusteeship is temporary and transitory, for Article 76 *(b)* of the Charter, read with Articles 73 *(b)* and 87 *(d)* foresees its termination sooner or later. It goes without saying that it would not be possible to fix beforehand in the trusteeship agreements a date for the political emancipation of the Territory or to determine the procedure by means of which the extinction of the trusteeship must be achieved, for everything will depend upon the special circumstances in each territory. It is for this reason that the text of the Charter did not lay down general or rigid provisions to settle in each case the time for the extinction of the trusteeship nor the methods to be applied. But it is precisely on that ground that a reasonable interpretation of the Charter justifies the presumption that these details must be decided, when the proper time comes, by the United Nations in agreement with the Administering Authority. Even supposing, as is asserted by the United Kingdom, that the recommendations made by the General Assembly with respect to these points are not binding upon the Administering Authority, being mere recommendations, that is to say *before* the said Authority has expressed its views thereon, it would nevertheless be true that as from the moment when the said Authority accepted those recommendations and began to apply them in its capacity as the executive organ of the Trusteeship, a legal bond between the tutelary State and the United Nations in the case in question is created and the new function becomes incorporated in the framework of the Trusteeship Agreement as a legal obligation. In the present case, resolutions 1473 (XIV) and 1608 (XV) of the General Assembly were expressly accepted and implemented by the United Kingdom. The operations provided for relating to the preparation and holding of the plebiscite were thus transformed into acts of administration of the Trusteeship for which the Administering Authority was directly responsible: hence liability would be incurred should any incorrect conduct vitiate the results of this consultation of the people.

(b) In the second place, it was argued by way of a preliminary objection that the Federal Republic of Cameroon and all other Members of the United Nations lost any right to complain of any breach of the general obligations imposed upon the Administering Authority by the Trusteeship Agreement on 21 April 1961, when the General Assembly *decided* to approve the plebiscite and to terminate the Trusteeship Agreement (resolution 1608 (XV)). The Cameroonian Application dated 30 May 1961 thus proves to be belated and misplaced.

It seems to me that this argument runs counter to the letter and the intention of resolution 1608 (XV), in which it can be seen that the General Assembly, though meeting on 21 April, decided on that date

that the Trusteeship Agreement—and consequently the Trusteeship itself—should not terminate for the Northern Cameroons until several weeks later, namely on 1 June 1961, that is to say, two days after the filing of the Application. The task of the Administering Authority and its responsibilities thus continued to be in force for the United Kingdom when the Application was filed. This objection of inadmissibility must consequently be dismissed.

(c) In the third place, the United Kingdom asserts—using an argument *ratione temporis*—the issues constituting the subject-matter of the dispute must not be prior to 20 September 1960, when the Republic of Cameroon was admitted as a Member of the United Nations, for that State cannot enjoy the advantages of the judicial protection accorded to Members of the Organization in relation to issues which relate to periods when the Applicant would not have been entitled to appear before the Court. Nor would the Court have had jurisdiction to give judgment.

This contention interprets Article 19 of the Agreement in a *restrictive* way which is not in conformity with the literal text of the provision. According to the terms of Article 19, the Court's jurisdiction extends to—

> "any dispute whatever which should arise between the Administering Authority and another Member of the United Nations".

Having stated this text it is now necessary to interpret it in accordance with the natural meaning of the words. The Article does not take into account the dates of the facts which gave rise to the dispute in connection with the date of the admission of the Member State to the United Nations. It is solely the capacity of *Member* which gives the newly joined State the same rights as other Member States in the matter of taking legal action. If the dispute has arisen in regard to the interpretation or application of a treaty—as is the case here—it is presumed that the facts which gave rise to the dispute can have taken place and occurred at any time during the existence of the treaty. Were it otherwise, the Applicant State could not fulfil its task of watching over the integrity and fidelity of the treaty. It is certainly not inappropriate here to quote a sentence from the Judgment in the *Mavrommatis* case:

> "... in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment". (P.C.I.J., Series A, No. 2, p. 35.)

If—from another aspect—the juridical person which raises the dispute does so in its dual capacity as Member State of the United Nations and independent State representing an individual or special legal interest in the case, it is none the less true that that State may demand the investigation of facts *prior to* its political

emancipation, seeing that an undeniable link of dependence, a sort of successive solidarity, exists between the actual situation on the date of the Application and the events which previously played their part in bringing about that situation during the period of the trusteeship. It is difficult to think of the whole process of the Administering State's conduct during the trusteeship as being divided into watertight or non-communicating compartments. A certain parallel may be found, in this connection, in the field of private law if one recalls the case of an infant who, on achieving full age, seeks to examine his guardian's acts of administration during his minority.

The assertion of inadmissibility *ratione temporis* is thus, in my view, not admissible.

(d) In the fourth place, in the opinion of the United Kingdom, the Application and the Memorial of the Federal Republic of Cameroon do not in any way conduce to any practical effect, as they are limited to asking the Court to "state the law" regarding the points set out as the subject-matter of the dispute, without any request for material reparation, restitution, etc., having been formulated. In other words, supposing that a dispute does exist, the United Kingdom points to the lack of any legal interest impelling the Applicant to ask not only for declaration of its rights but also for the material re-establishment of the legal position which has been infringed. It is therefore claimed that this is an unreal dispute, a moot, which in no way resembles disputes of a normal kind. Such a dispute is said to have no practical reason. In this connection—adds the United Kingdom—it could well be maintained that—the Cameroonian Application constitutes a request for an advisory opinion or is aimed at the staging of an academic debate, but in no case can it be considered as subject-matter for a judgment properly so called on the part of the International Court.

The admissibility of a declaratory legal action at the international level is recognized in advance in paragraph 2 of Article 36 of the Statute of the Court (sub-paragraphs *(a)*, *(b)* and *(c)*). Even though the present case does not relate to an action where jurisdiction is founded upon the optional clause or upon a special agreement, it is nevertheless true that the description of matters within the jurisdiction of the Court contained in paragraph 2 constitutes a statement of general application from which the cases covered by paragraph 1 can also benefit. Furthermore, the doctrine of the admissibility of Applications to the Court for judgments of a merely *declaratory* nature is well known in the case-law of the International Court; I therefore feel that it will be sufficient to refer to this case-law, several pertinent examples of which are cited in the file (for instance, the *Corfu Channel* case), as a ground for dismissing the objection raised. Let us further consider the question concretely.

The Application of Cameroon asks the Court to give a decision on the question whether certain acts or attitudes of the United Kingdom, as Administering Authority, are or are not in accordance with the law, i.e. with certain provisions in the Trusteeship Agreement. The Application also asks the Court to give a decision as to whether the United Kingdom has contravened the law by refraining from giving effect to certain precise decisions of the General Assembly of the United Nations relating to the administration of the Trust Territory. The grounds of law and fact on which these requests are based were specified by the Applicant in the Application, in accordance with the Rules of Court. This is therefore a legal controversy falling under Chapter II of the Statute.

In my view, the character of a request for an advisory opinion must not be attributed to this controversy about the law. The differences are quite clear. In the majority of cases opinions are concerned with making provision for *future* situations: they are opinions sought from the Court in order to be better informed as to how the law must be applied in the future in particular cases which have not yet occurred. In contentious proceedings, on the other hand, cases submitted for decision by the Court almost always relate to the past: they are aimed at obtaining a decision as to the legal effect of acts already committed by the respondent. It is true that, exceptionally, there are advisory opinions which refer to past situations (see the case concerning *Certain Expenses of the United Nations,* 1962); and there are also, above all in the case-law of individual countries, circumstances in which a declaratory judgment can be sought in advance in order to find out whether what one of the parties considers his rights will or will not be considered as such in a future bilateral situation. But here there is a second difference of capital importance between an advisory opinion and a judgment of the Court, namely that the former is in no way *binding* upon those concerned, the opinion given having only moral authority, while the second imposes upon the parties a legal obligation having the force of *res judicata.* In the present case, the judgment sought by the Republic of Cameroon has the characteristics of a contentious judgment.

The argument of the United Kingdom will be recalled: admitting—it states the hypothesis that a dispute exists between the Parties, what would be the practical purpose of a mere statement of the law regarding such dispute? What would be the effect of the Court's judgment with respect to the principle of *res judicata* if there be no judicial decision specifying tangible obligations to be fulfilled by the losing Party? The Written Observations of Cameroon and Counsel for Cameroon in his oral argument replied to these questions raised by the Respondent Party. So far as I am concerned, I feel that the reasoning advanced by the Applicant in this respect is satisfactory, for it is certainly true that the points raised in the Application are susceptible of a decision entail-

ing practical results. In declaratory suits, the pure and simple definition of the law, in favour of one or other of the parties, constitutes in itself a *judgment* which goes beyond the purely speculative or academic field and gives the successful party a truly objective element, namely the adjudication of a right with which what I call his "legal assets" are enriched, that is to say, the whole sum of rights which that party possesses in its capacity as a legal person. If the applicant succeeds, it is precisely the fact of ensuring to him the possession of the property or right in a final and irreversible manner, in virtue of the principle of *res judicata*, which constitutes the practical reparation awarded to the successful party by the declaratory judgment. If it is the respondent who appears in the judgment as the successful party, his legal position is consolidated and all the matters of complaint in the application become without foundation, the effect of the judgment being a public rehabilitation. In the case of the losing party, a certain deterioration or diminution takes place in its personal legal situation under the influence of the *res judicata*, the two elements of this diminution being the obligation to accept without the possibility of objecting thereto the decisions contained in the judgment and, in certain cases, the obligation to discharge the responsibilities, which may result from the court's statement of the law. All these effects of a declaratory judgment become evident to the outside world in a concrete and perceptible fashion and take their place within the field of social or international life beyond any purely moral or individual confines.

It is not for judges to speculate as to what will be or may be all the other material or tangible aims which are sought but not expressed by the Applicant at the time of drawing up its Application: it is well known that usually the statement of the law in a declaratory judgment can be the basis, the point of departure, for other legal actions or other economic or political steps connected with the legal consequences of the judgment. Counsel for Cameroon gave an explanation in this regard. But this concerns only the Applicant. What is essential, I repeat, is that, in my view, the decision which has been asked of the Court in this case was not merely advisory or academic nor simply abstract or theoretical and still less devoid of any real effect. All that was asked for was a judgment as to whether—as a consequence of certain facts—there has or has not been an infringement of certain clauses of a treaty in force between the Parties (Article 36, para. 2, sub-para. *(c)*, of the Statute). In my opinion this Application is admissible.

(e) In the fifth place, although the Application and the Memorial do not mention any infringement of Articles 3 and 7 of the Trusteeship Agreement on the part of the Administering Authority, the United Kingdom's defence pointed out that a reference to this

subject had been made belatedly in the Written Observations of Cameroon on the United Kingdom Counter-Memorial. The Attorney-General drew the Court's attention to this point for, being a new matter of complaint submitted belatedly, the Court, he claimed, could not entertain it, still less give judgment upon it. It is a question of *formal procedural* admissibility.

It seems to me that a wrong view was taken by the Respondent as to the initial omission of a reference to Article 3 of the Agreement. Although it was not referred to explicitly in the Application or the Memorial, it is impliedly mentioned there. In fact, Article 3 of the Agreement does not impose any concrete or special obligation, but rather a general obligation on the Administering Authority to administer the Territory with a view to achieving the basic objectives of trusteeship laid down in Article 76 of the Charter and to collaborate with the United Nations in the discharge of the functions assigned to that Organization by Article 87 of the Charter. It goes without saying that if the Application imputes to the United Kingdom, as Administering Authority, the violation of Articles 5 and 6 of the Agreement, which relate to concrete obligations of the Administering Authority with a view to achieving the aims of the trusteeship, it must be deduced therefrom that the United Kingdom also infringed the provisions of Article 3, which is general and the text of which covers the substance of other Articles of the Agreement which were relied upon by the Applicant.

In the same way, if the Administering Authority accepts as part of its tutelary functions a recommendation by the United Nations concerning the administration of the trusteeship, this acceptance obliges it to give effect punctiliously to the instructions of the Organisation within the meaning of Article 7 and the second part of Article 3 of the Trusteeship Agreement. Seeing that the Federal Republic of Cameroon asserted in its Application that the United Kingdom did not fulfil certain obligations flowing from resolution 1473 (XIV) of the General Assembly, which was adopted with the consent of the United Kingdom, it would follow that an infringement of Article 7 of the Trusteeship Agreement might have taken place. It is true that the Application did not mention the number of the Article in question, but it took account of its contents.

I conclude therefrom that the formal objection of inadmissibility advanced by the United Kingdom with respect to this part of the Applicant's statement of complaints is without foundation.

(f) In the sixth place, the Preliminary Objections of the United Kingdom include a final point which, however, the Attorney-General did not press during the oral proceedings. But I cannot avoid mentioning it, the more so in that this point relates in a certain way to the admissibility of the Application. I have in mind the allegation that the Application and the Memorial were not

drafted in accordance with Article 32 of the Rules of Court, for, contrary to the provisions of that Article, the statement of the facts and the grounds in these pleadings is said to be vague and abstract. The claim is accordingly said to become inadmissible.

But the wording of the Application and the Memorial of Cameroon shows, nevertheless, that the facts mentioned by the Applicant as constituting infringements of the Trusteeship Agreement, and also the legal provisions applicable, were stated with sufficient precision and in sufficient detail. The fact that the final submissions in the Application asked the Court to give judgment upon "*certain* obligations", without specifying them in a concrete manner, is easily explicable seeing that the word "certain" was obviously used with reference to the obligations previously specified in the body of the text. In my view, there has been no infringement of Article 32 of the Rules of Court.

9. The time has now come to examine the final condition imposed upon the Parties by Article 19 of the Trusteeship Agreement in order that any dispute relating to the interpretation or application of its clauses may be submitted to the Court. Article 19 provides that the dispute must be such as cannot be settled by negotiation or other means. One of the United Kingdom's objections relates to this issue.

It is first maintained by the United Kingdom in this connection that no real attempt was made before the Application to settle the dispute (if dispute there be) by means of negotiation. In this connection, I should like to refer to one of the paragraphs above where reference is made to the memoranda, dated 1 and 26 May 1961 respectively, exchanged between the Government of Cameroon and the Foreign Office. I stated there that these documents contain all the elements of a proper and sufficient diplomatic negotiation wherein the subject-matter of the dispute is set out in detail by Cameroon and an amicable proposal is made to submit the dispute to the International Court of Justice. The United Kingdom reply rejects the imputations made against it in respect of matters the responsibility for which, in its opinion, lies not with the Administering Authority but with the United Nations; and it also declines to accept judicial settlement of the matter. The existence of negotiation cannot be denied. These documents furthermore show by their terms that diplomatic negotiation failed, which amounts to saying that the impossibility of reaching an amicable settlement was certain. Moreover, the impossibility of negotiating a settlement other than a judicial one with the United Kingdom follows from the fact that after the date of resolution 1608 (XV) a direct solution of the dispute did not come within the control or the sole decision of the United Kingdom Government, seeing that at that stage in the events it did not have the power by itself to alter a state of affairs created—with its assent—by

a resolution of the General Assembly of the United Nations. The dispute was thus not one that could be settled by friendly negotiation.

There was, according to the United Kingdom, a second condition. Diplomatic negotiation having been ruled out, there might have been—in the words of Article 19—some "other means" by virtue of which the dispute could have been settled. And, in the United Kingdom view, this "other means" of settlement was resolution 1608 (XV) of the General Assembly of the United Nations of 21 April 1961, which, at the same time as it ratified the result of the plebiscite held on 11 and 12 February to decide the fate of the Northern Cameroons, put an end to the situation of Trusteeship and consequently settled the problem of that territory, a judicial solution being thereby precluded.

It seems to me difficult to admit that resolution 1608 (XV) could have had this result. For this to be possible it would have been necessary for there to be complete identity between the points raised in the Application and forming the subject-matter of the dispute, and the points which formed the subject of the General Assembly resolution. A comparison of the two documents, however, shows a marked difference. Whereas the former—the Application—clearly reveals its legal nature, the second—resolution 1608 (XV)—emphasizes its political aim. The aims of the one and of the other are altogether distinct. As has already been stated, the resolution of the General Assembly confirmed or legalized the results of the plebiscites in the two Cameroons, Northern and Southern, and decided that the regime of the Trusteeship under United Kingdom administration should come to an end on two later dates. The Application and the Memorial of the Republic of Cameroon seek to establish the individual responsibility of the United Kingdom as Administering Authority for the Northern Cameroons, with regard to certain acts and matters concerned with its administration of the Trusteeship while it lasted. It would not be right to confuse or identify these two fields of application. That is why, in my opinion, it is far from being correct to say that resolution 1608 (XV) settled the dispute by way of "another means" of settlement. What is true is that the voting of resolution 1608 (XV)—the contents of which did not provide satisfaction for the Applicant's interest—finally gave form to the still nascent dispute between Cameroon and the United Kingdom, and precipitated the filing of the Application.

But there is another still stronger reason for declining to consider resolution 1608 (XV) of the General Assembly as the "other means" of settling the dispute referred to in Article 19 of the Trusteeship Agreement. The most elementary requirement of logic demands that, for such "other means" to be legally valid and effective, it must include as one of its constituent features the intervention and consent of the disputing States, namely in this case,

the Federal Republic of Cameroon and the United Kingdom. That is why I think that, in the intention of the Trusteeship Agreement, the mention which is made of "other means" of settlement is a reference to the means of peaceful settlement specified in Article 33, paragraph 1, of the Charter (enquiry, mediation, arbitration, etc.), all of which are characterized by the mutually agreed participation to a greater or lesser extent, of the two parties in the process of settlement. That is precisely what was lacking in resolution 1608 (XV) of the General Assembly, which was adopted without the consent and even against the vote of the Republic of Cameroon. Seeing, moreover, that this resolution dealt with subjects other than those which constituted the dispute with the United Kingdom, the action of Cameroon, with regard to the dispute itself, was not directed against the binding effects of resolution 1608 (XV). The latter having exhausted administrative or institutional means, and in view of the consequences that the Assembly's decision was going to produce both with regard to the interests of the Republic of Cameroon and also with regard to the inhabitants of the Northern Cameroons, the Applicant decided to follow the other course which was open to it under Article 19 of the Trusteeship Agreement, invoking the judicial safeguard with a view to obtaining, with the administering State, a judicial decision based on law on the issue of the legal responsibilities deriving from the facts. This is a case therefore not of any attitude of rebellion or disobedience in respect of resolution 1608 (XV), but of the legitimate use of another parallel recourse expressly recognized in Article 19 as cited above.

10. This reasoning, however, gives rise to another observation of capital importance on the part of the United Kingdom because, according to that country, if the Application of the Republic of Cameroon is, notwithstanding resolution 1608 (XV) of the General Assembly, to be submitted to the Court, this would in fact amount to establishing a sort of superior Court, and to a veritable revision of the decisions of the United Nations by the Court, which would destroy all the authority of the organs of the international Organization. This kind of dependence or subordination of these organs in relation to the Court would not be in conformity with the spirit of the Charter. According to the Charter, the resolutions of the General Assembly, when adopted by the necessary majority in each case, are definitively binding, even upon Member States who have not voted for them. This observation leads the United Kingdom to dismiss what was called the "duplication" theory according to which the two means, administrative and judicial, can be utilized to settle issues raised in the United Nations.

Considered from a concrete point of view and in relation to the present case, this observation of the United Kingdom is not in accordance with the actual facts. The Application of the Federal

Republic of Cameroon does not seek the waiving of resolution 1608 (XV) or the annulment of the plebiscite in the Northern Cameroons, or the re-establishment of trusteeship for that Territory. There were even during the oral proceedings explicit statements by the Applicant Party to this effect. What the Application asks for is a statement of the law by the Court on the question whether, in the light of the wording of the Trusteeship Agreement of 13 December 1946 and of resolution 1473 (XIV) of the General Assembly, the United Kingdom, in its capacity as Administering Authority for the Northern Cameroons, has or has not committed infringements of certain provisions concerning the application of that Agreement or of that resolution. From this statement of the Application a number of conclusions can be drawn:

First: the legal action is not aimed at the United Nations nor does it call in question any of the resolutions of the organs of that Organization.

Second: the Republic of Cameroon's action is directed against the United Kingdom in its capacity as the individual State entrusted with the administration of the Northern Cameroons under the Trusteeship.

Third: the Application relies on the principle of the responsibility of States as juridical persons of public law for the performance of acts the object of which is the application of international convention freely entered into.

Fourth: in the event of its case being declared well founded, Cameroon has not asked the Court to make any actual order which could bring about a change in the present actual situation in this case, nor to award any material compensation: the Application is thus confined to asking the Court to "state the law" in the manner of a declaratory judgment.

It seems to me that these considerations are in themselves sufficient to rule out the fear that the authority of the United Nations might be affected or diminished by a judgment of the Court settling the present case. No conflict need be contemplated between the two powers.

It remains to examine the question from the general aspect and from that of principle and in the light of the terms of the Charter of the United Nations. The oral proceedings in the present case provide us with abundant material in this connection. To sum up in a couple of words: although the concept of law is not foreign to the administrative activities of official institutions—including the organs of the United Nations—resolutions of this kind are primarily of a political nature and do not always reflect a scrupulous adaptation of the rules of law to political requirements. In the legal sphere, on the other hand, it is exclusively the law which dictates its norms.

So far as concerns international institutions, their statutes define the scope and force of their administrative resolutions and the way in which they are to be amended or revised. In the Charter of the United Nations there is not to be found, with regard to the resolutions of the General Assembly, any provision excluding all judicial jurisdiction. On the contrary, the general purport of the Charter seems to me to reveal a certain parallelism and a clear compatibility of the two institutions.

There is indeed one outstanding idea to be found in the text of several Articles of the Charter in regard to the paramount importance of law and of the legal administration of justice between nations for the purposes of preserving the world from war and achieving the supreme goal of international peace. Starting with its preamble, the Charter proclaims the faith of the peoples of the United Nations *"in fundamental human rights"*[1] and in *"the equal rights*[1] ... of nations large and small". In Article 1 the Charter lays down as one of the purposes of the United Nations "respect for the principle of *equal rights*[1] and *self-determination of peoples*[1] ... encouraging *respect for human rights*[1] and for *fundamental freedoms*[1] for all".

Article 2 mentions as one of the principles of the Organization and its Members that they shall "fulfil in good faith the *obligations*[1] assumed by them in accordance with the present Charter" and "shall settle their international disputes by *peaceful means*[1] in such a manner that international peace and ... justice are not endangered". Articles 7 and 92 mention the International Court of Justice as one of the principal organs of the United Nations and state that its Statute forms an integral part of the Charter. Article 33, paragraph 1, stipulates that:

> "The parties in any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, *shall*[1] first of all, seek a solution by negotiation ... arbitration, *judicial settlement*[1]", etc.

Article 73 of the Charter lays down the premise that "the administration of territories whose peoples have not yet attained a full measure of self-government" constitutes *a responsibility* of the administering States and mentions the fact that the Members "recognize the principle that the interests of the inhabitants of these territories are paramount", and that the protection of them is accepted as a "sacred trust". Article 76 specifies the basic objectives of the Trusteeship system, amongst which it once more mentions "respect for human rights and for fundamental freedoms".

As for the Statute of the International Court of Justice, Article 35 provides that "The Court shall be open to the States parties to the present Statute", that is to say, to all the Member States

[1] My italics.

of the Organization. Lastly, Article 36 determines the scope of the Court's jurisdiction, which can be based on agreement between the parties, on the express provisions of the Charter or on treaties and conventions in force.

This enumeration reveals the importance attributed by the Charter to the concepts of law, justice and the responsibility of States in respect of their legal obligations, and it shows the way in which it was sought to extend the jurisdiction of the International Court of Justice. It would be no exaggeration to say that the function of the Court was regarded by the founders of the United Nations as constituting one of the most striking guarantees for the operation of the new international system.

It would be impossible to reconcile this criterion of the Charter—entirely in favour of legal solutions—with the complete exclusion of the judicial safeguard in cases in which the General Assembly decided upon the fate of trust territories. The administrative decision with regard to the political future of such a territory is one thing, the definition of the responsibilities which, on the legal plane, may be held to be binding upon the administering State in respect of the way in which the trusteeship is exercised is something quite different. The Administering Authority is not there merely to execute automatically the orders of the General Assembly, it is a legal entity which has freely and voluntarily accepted its task, which may formulate observations and reservations with regard to the Assembly's agreements, which may indeed discharge itself of the trust if such agreements conflict with its views and which must, where appropriate, account for its actions to those having a legal interest therein.

Moreover, it must be remembered that having regard to the composition of the United Nations and its character as a supreme world institution on the political plane, no means of judicial action against the institution itself is provided for in the Charter and, consequently, no institutional responsibility can result therefrom in respect of its acts as an institution. But the case is entirely different as regards Member States considered individually. They act within the institution as juridical persons and are as such reponsible to third States in respect of their conduct. I believe that that is precisely one of the reasons for which, so far as relations between States are concerned, the Charter created the judicial safeguard which the Court is called upon to apply. In the particular case which is the subject of the present proceedings, obligations and responsibilities are provided for in the Trusteeship Agreement accepted by the United Kingdom and relating to the Northern Cameroons. Since Article 19 of that Agreement provides a jurisdictional clause for the determination of such responsibilities, I believe it to be my duty as a Judge to decide in favour of jurisdiction.

The judicial guarantee is, in truth, one of the most important pillars of modern society. It means the primacy of law over other factors: interests, negligence, abuse or force. It gives force to the principle of responsibility as a regulating element in social and international conduct. It can prevent further transgressions in the future. In short, it constitutes a manifold guarantee the purpose of which is to state the law when it requires to be stated: either to prevent deviation in the application of the law, or to correct it when it occurs; to adjudicate upon breaches of the law or to establish the responsibility of the offender; a whole mosaic of powers covering all international activities: the conduct of governments, the policies of States, the administrative acts of the great international institutions. It is certainly for this reason that the jurisdictional clause (in this case Article 19 of the Trusteeship Agreement) does not restrict action by States Members of the United Nations by limiting the scope of the judicial protection which it affords, and likewise does not require that the previous consent of the Organization should be given to a Member State which proposes to avail itself of it. To sum up what I have said, it seems to me that Article 19 is an expression of this supreme and indeed universal guarantee for the claiming in the last resort of a decision of a court of justice to settle in law cases or political requirements or interests of any other sort which are capable of causing legal injury to third parties. It is important that this safeguard, which is as necessary as it is useful, should not be weakened.

It is regrettable that, on the basis of the suggestion which was at one time made by the General Assembly of the United Nations, a request for an advisory opinion was not made with regard to the various questions relating to the administration of the Trust Territory of the Cameroons. But this opportunity having been lost, it only remains for the Court—at the present stage of events to deliver its Judgment on the Application of the Republic of Cameroon in accordance with Article 19 of the Trusteeship Agreement. And I must say that in my opinion the Objection based on "duplication" cannot be upheld.

11. The examination which I have just undertaken of the various Objections raised by the United Kingdom to the Application of the Federal Republic of Cameroon reveals that some relate to the admissibility of the claim and others to the jurisdiction of the Court, although the two categories are not clearly independent or distinct, for certain Objections expressed on the basis of inadmissibility also involve a denial of jurisdiction. Looked at from another angle, there are some Objections which relate to simply formalistic or procedural aspects, while others, on the other hand, touch upon the very substance of the dispute and base upon it the inadmissibility of the claim. That is why the Objections of the United Kingdom as a whole at certain times take on a complex

and even inextricable appearance. Nevertheless, I have come to the conclusion that all the Objections are really properly called *preliminary*, as the Respondent has termed them, in the sense that I have not in practice found it necessary to reach a decision upon the merits of the dispute for the purpose of examining the admissibility or the non-admissibility of any particular Objection. It is for these reasons that I have not found it indispensable to reserve some of the Objections, as being *peremptory* ones, for the final judgment on the merits, in the event of the Court's holding that it has jurisdiction.

12. But even if an examination of the Objections raised had led the Court to consider the case put forward in the Application, there is a further question which was raised by the Court, namely whether "the Court, when seised ... is ... compelled in every case to exercise" its "jurisdiction", or whether, having regard to certain "inherent limitations on the exercise of the judicial function" it should refrain from adjudicating in the present case. After an analysis of the relevant pleadings (Application, Memorial, Observations on the Objections, Submissions) "to determine whether the adjudication sought by the Applicant is one which the Court's judicial function permits it to give", the prevailing opinion was that the true intent of the claim was to impugn the injustice of the attachment of the Northern Cameroons to a State other than the Republic of Cameroon, this injustice being due to the fact that the United Kingdom, as Administering Authority, allegedly created such conditions that the trusteeship led to that attachment. Since, however, the Federal Republic expressly stated that it was not asking the Court to redress the alleged injustice or to award reparation of any kind, nor to review the decisions of the General Assembly, it is said that the Court is relegated to an issue remote from reality and asked to give a judgment not capable of effective application. It may be inferred—it is said—that what the Applicant wants is that the Court should consider certain acts of the United Kingdom solely for the purpose of arriving at conclusions conflicting with those expressed by the General Assembly in resolution 1608 (XV); but in spite of that the Applicant has itself recognized that that resolution is definitive and irrevocable, and the judgment of the Court could not, for these reasons, have any practical consequences or fulfil a genuine judicial function. Moreover, since it has been established that the Trusteeship Agreement was validly terminated, it follows that the Trust itself disappeared, that any rights conferred by that Agreement upon other Members of the United Nations came to an end and that the possibility of the application of Article 19 relating to the jurisdiction of the Court ceased to exist on 1 June 1961, particularly if it be borne in mind that the Application included no claim for reparation but merely

sought a finding of a breach of the law. The Court has, therefore, decided to put an end to the present proceedings.

To my great regret, I am bound to express my dissent from these views of the majority of the Court, because it seems to me that the basis on which they rest is not correct. My point of view is, of course, in agreement with the assertion that the claim is for nothing more than a finding of a breach of the law, namely that the United Kingdom, in the application of certain measures, has failed to respect certain obligations provided for in the Trusteeship Agreement or certain instructions of the General Assembly. It is a case in which the legal responsibility of the trustee must be clarified. I have already explained in paragraph 8, sub-paragraph *(d)*, of this Opinion why and how this means of "stating the law", which is the characteristic of declaratory judgments, combines the merits of practical effectiveness and binding force as *res judicata*, these two characteristics representing the typical attributes of a judicial decision. In my opinion, a decision of this kind is clearly included in the function of the administration of justice which imprints its features upon the judicial function of courts, as is provided by Article 36, paragraph 2, sub-paragraph *(c)*, of the Statute of the Court. Precedents to this effect in similar cases are to be found in the decisions of the Permanent Court and of the present Court. (For example, the *Polish Upper Silesia* case, P.C.I.J., Series A, No. 7; the *Corfu Channel* case, *I.C.J. Reports 1949*, p. 36.) In those cases, as in the present case, the judgment or the claim related to the *past* conduct of the Respondent, that is, to its legal responsibilities.

It would not be right to contemplate including in any judgment in the case any provisions designed to modify resolution 1608 (XV) of the General Assembly such as the annulment of the plebiscite, the detaching of the Northern Cameroons from Nigeria or the reinstitution of trusteeship. To do so would be to introduce into the judgment matters not contained in the Application. It must be recalled that the proceedings instituted by the Republic of Cameroon were directed solely against the United Kingdom and not against the United Nations and that the subject-matter of the proceedings relates only to matters concerning the performance, proper or incorrect, of the Trusteeship Agreement by the Respondent, independently of any decisions taken by the General Assembly. There is therefore no risk of the Judgment's producing any conflict between the Applicant and the General Assembly.

Although the Trusteeship Agreement for the Cameroons under British Administration lapsed on 1 June 1961 as a result of resolution 1608 (XV), the assertion that that Agreement can no longer be relied upon for the purposes of judging the conduct of the Administering Authority in the past appears to me to be too absolute and contrary to generally recognized principles with regard to the application of laws. One thing is essential in the present case:

that *future* situations should not be involved since these, clearly, could not be governed by a treaty which had ceased to be in force. The Application is concerned with *past* activities of the United Kingdom, performed during the period of trusteeship. This retrospective situation can only be envisaged in the light of the relevant law in force at that period, that is to say, the Trusteeship Agreement of 13 December 1946. The fact that, shortly after the formulation of the Application, the Trusteeship Agreement ceased to be in force does not detract from the applicability of this principle, for if the application of the Agreement were challenged, the system of legal responsibility of persons would break down and cases—entirely possible—of abuses or transgressions would pass with impunity. The decisions of municipal courts and certain rules of public law furnish useful examples which should not be disregarded on the international plane. In many cases, the rules enacted in a repealed Civil Code have been applied in cases of succession, when the death of a testator occurred at a time when the Code was still in force. Similarly, conflicts have arisen with regard to the unconstitutionality of certain laws of which the text, to determine the point, has had to be read in the light of the provisions of the Constitution under which they were enacted, in spite of the fact that that Constitution had already been replaced by a later Constitution or more than one subsequent Constitution. It seems to me that in such cases, where the judgment must relate to a past situation, the duty of the Court is to place itself at the period of the events which are the subject of the proceedings and to apply the laws then in force, even though they should be no longer in force. The Trusteeship Agreement of 1946 is accordingly properly invoked for the purpose of resolving the present case.

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13. For the foregoing reasons, my opinion is that the claim is admissible, that the preliminary objections of the United Kingdom are not well founded and that the Court has jurisdiction to pass upon the merits of the Application of the Federal Republic of Cameroon.

(Signed) J. L. BUSTAMANTE R.