DISSENTING OPINION OF JUDGE BEB A DON

[Translation]

As I cannot subscribe to the Judgment of the Court in this case, I wish to avail myself of the right conferred by Article 57 of the Statute of the Court to set out here the reasons for my dissent.

In the following statement, I shall not examine all the objections raised by the United Kingdom. I shall merely endeavour to show that the grounds adopted by the Court for saying that "it cannot adjudicate upon the merits of the claim of the Federal Republic of Cameroon" are not conclusive. It seems clear to me, however, that my reasoning will be better understood if certain events are briefly recalled at the outset.

Before the First World War the Northern Cameroons in issue in this case were part of the territory of Kamerun under German protectorate.

After the war, Germany having renounced her rights and titles over her "oversea possessions" under the Treaty of Versailles, Kamerun was divided into two mandated territories, one being entrusted to France and the other to Great Britain.

The aim of the Mandates System was to ensure the well-being and development of the peoples of the territories concerned and securities for the protection of their rights were embodied in the system. It was thus conceived primarily in the interests of these peoples and for that reason it was stated that a "sacred trust of civilization" was laid on the Mandatories.

As was rightly emphasized by the Court in the *South West Africa* cases (*I.C.J. Reports 1962*, p. 329):

> "The rights of the Mandatory in relation to the mandated territory and the inhabitants have their foundation in the obligations of the Mandatory and they are, so to speak, mere tools given to enable it to fulfil its obligations."

In 1946, the United Nations having replaced the League of Nations, the Mandates System was transformed into the Trusteeship System and the two parts of the Cameroons were placed under this new system, but under the administration of the same Powers.

Under the Trusteeship System the safeguards for the rights of the peoples of the trust territories were substantially increased and supervision by international bodies was strengthened and its organization improved.

Thus in 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, the following provisions are to be found:

"Article 3.—The Administering Authority undertakes to administer the Territory in such a manner as to achieve the basic objectives of the International Trusteeship System laid down in Article 76 of the United Nations Charter. The Administering Authority further undertakes to collaborate fully with the General Assembly of the United Nations and the Trusteeship Council in the discharge of all their functions as defined in Article 87 of the United Nations Charter, and to facilitate any periodic visits to the Territory which they may deem necessary, at times to be agreed upon with the administering Authority.

Article 5.—For the above-mentioned purposes and for all purposes of this Agreement, as may be necessary, the Administering Authority:

(a) Shall have full powers of legislation, administration and jurisdiction in the Territory and shall administer it in accordance with the authority's own laws as an integral part of its territory with such modification as may be required by local conditions and subject to the provisions of the United Nations Charter and of this Agreement;

(b) Shall be entitled to constitute the Territory into a customs, fiscal or administrative union or federation with adjacent territories under its sovereignty or control, and to establish common services between such territories and the Territory where such measures are not inconsistent with the basic objectives of the International Trusteeship System and with the terms of this Agreement;

(c) And shall be entitled to establish naval, military and air bases, to erect fortifications, to station and employ his own forces in the Territory and to take all such other measures as are in his opinion necessary for the defence of the Territory and for ensuring that it plays its part in the maintenance of international peace and security. To this end the Administering Authority may make use of volunteer forces, facilities and assistance from the Territory in carrying out the obligations towards the Security Council undertaken in this regard by the Administering Authority, as well as for local defence and the maintenance of law and order within the Territory.

Article 6.—The Administering Authority shall promote the development of free political institutions suited to the Territory. To this end the Administering Authority shall assure to the inhabitants of the Territory a progressively increasing share in the administrative and other services of the Territory; shall develop the participation of the inhabitants of the Territory in advisory and legislative bodies and in the government of the Territory, both central and local, as may be appropriate to the particular circumstances of the Territory and its people; and shall take all other appropriate measures with a view to the political advancement of the inhabitants of the Territory in accordance with Article 76 *(b)* of the United Nations Charter. In considering the measures to be taken under this article the Administering Authority shall, in the interests of the inhabitants, have special regard to the provisions of Article 5 *(a)* of this Agreement.

Article 7.—The Administering Authority undertakes to apply in the Territory the provisions of any international conventions and recommendations already existing or hereafter drawn up by the United Nations or by the specialized agencies referred to in Article 57 of the Charter, which may be appropriate to the particular circumstances of the Territory and which would conduce to the achievement of the basic objectives of the International Trusteeship System."

Article 19 of this Agreement entrusted the International Court of Justice specially with the judicial protection of the trusteeship system.

* * *

By an Application of 30 May 1961 the Republic of Cameroon instituted before the Court proceedings against the United Kingdom relating to the interpretation and application of the Trusteeship Agreement of 13 December 1946 for the Cameroons under British administration. The Application also referred to the failure to implement resolution 1473 adopted by the United Nations General Assembly on 12 December 1959 concerning the future of the northern part of the Cameroons under United Kingdom administration.

The provisions of this text referred to in the Application are paragraphs 4, 6 and 7 in which the General Assembly:

"4. *Recommends* that the plebiscite be conducted on the basis of universal adult suffrage, all those over the age of twenty-one and ordinarily resident in the Northern Cameroons being qualified to vote;"

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

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

Certainly at the date of the filing of the Application of the Republic of Cameroon resolution 1608 (XV) adopted on 21 April 1961 by the General Assembly (see Judgment, pp. 23-24) was already in existence, but it was to enter into force in respect of the Northern Cameroons only from 1 June 1961.

It follows from this that when the Application was filed in the Registry of the Court by the Agent for the Republic of Cameroon the Trusteeship Agreement of 13 December 1946 was in force and so was the trusteeship regime governed by that Agreement. Under

the terms of Article 19 of the Agreement, which constituted the law applicable to the Application, proceedings were instituted within the proper time-limits and the Court was validly seised in accordance with the provisions of Article 40 of the Statute and Article 32 of the Rules of Court.

The Agreement and the trusteeship were terminated on 1 June 1961 by virtue of resolution 1608 (XV). There can be no doubt that an application filed in the Registry of the Court after that date would not validly seise the Court, for Article 19 of the Trusteeship Agreement which constituted the basis for the Court's jurisdiction having disappeared and hence its implementation being no longer possible, such an application would lack any legal basis and would be inadmissible.

In the present case the situation is different. Here, the expiry of the Trusteeship Agreement occurred only after the Court had been properly seised.

No fact subsequent to the seisin of the Court, in particular the circumstance that the Trusteeship Agreement terminated during the proceedings, could be capable of re-opening the issue of such properly established jurisdiction.

In the *Nottebohm* case (Judgment of 18 November 1953), the International Court of Justice had to settle a question similar to that under consideration here.

On 17 December 1951 the Government of the Principality of Liechtenstein filed an Application instituting proceedings before the Court against the Republic of Guatemala, concerning the conduct of the Guatemalan authorities in respect of M. Nottebohm, who was regarded by the Applicant as a national of Liechtenstein.

The Government of Guatemala raised a preliminary objection to the jurisdiction of the Court on the ground that the declaration made on 27 January 1947 by which the Guatemalan Government recognized as compulsory, *ipso facto* and without special agreement, the jurisdiction of the Court, had expired on 26 January 1952 [1], and that therefore the Court no longer had jurisdiction to hear and determine cases affecting Guatemala.

The circumstances of the case were as follows.

At the time of the filing of the Application by Liechtenstein, the Guatemalan declaration was in force; however, it lapsed a few weeks later.

The Court consequently had to ascertain and decide—

> "whether the expiry on January 26th, 1952, of the Declaration by which Guatemala accepted the compulsory jurisdiction of the Court has had the effect of depriving the Court of its jurisdiction to adjudicate on the claim stated in the Application, of which it was seised on December 17th, 1951, by the Government of Liechtenstein".

[1] This declaration had been made for a period of five years and did not provide for its tacit renewal.

The Court's reasoning in this connection is of particular interest for the present case and it therefore seems to me necessary to reproduce the essential passages here:

> "The Application was filed in the Registry of the Court on December 17th, 1951. At the time of its filing, the Declarations of acceptance of the compulsory jurisdiction of the Court by Guatemala and by Liechtenstein [1] were both in force. Article 36 of the Statute and these Declarations determined the law governing the Application. In accordance with these Declarations, the Application was filed in sufficient time validly to effect the seisin of the Court under Articles 36 and 40 of the Statute and Article 32 of the Rules." (*I.C.J. Reports 1953*, p. 120.)

. . . . . .

> "The seising of the Court is one thing, the administration of justice is another... Once the Court has been regularly seised, the Court must exercise its powers, as these are defined in the Statute. After that, the expiry of the period fixed for one of the Declarations on which the Application was founded is an event which is unrelated to the exercise of the powers conferred on the Court by the Statute, which the Court must exercise whenever it has been regularly seised..."

. . . . . .

> "The subsequent lapse of the Declaration of Guatemala, by reason of the expiry of the period for which it was subscribed, cannot invalidate the Application if the latter was regular..." (*I.C.J. Reports 1953*, pp. 122-123.)
>
> "An extrinsic fact such as the subsequent lapse of the Declaration, by reason of the expiry of the period or by denunciation, cannot deprive the Court of the jurisdiction already established." (*I.C.J. Reports 1953*, p. 123.)

From this reasoning the Court drew the conclusion that—

> "the expiry on January 26th, 1952, of the five-year period for which the Government of Guatemala subscribed to a Declaration accepting the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute, does not affect any jurisdiction which the Court may have to deal with the claim presented in the Application of which it was seised on December 17th, 1951, by the Government of the Principality of Liechtenstein..." (*I.C.J. Reports 1953*, p. 124.)

Following this Judgment, which was unanimous, Judge Klaestad declared that he had voted for the rejection of the Preliminary Objection of Guatemala on the ground that the jurisdiction of the

[1] Liechtenstein's declaration was dated 10 March 1950. It was for an indefinite period, but could be "revoked" subject to one year's notice.

Court existed at the moment when the Application of Liechtenstein was filed. He added that the fact that the Declaration by which Guatemala had accepted the compulsory jurisdiction of the Court had expired some time after the filing of that Application could have no effect as regards the Court's jurisdiction to deal with the merits of the dispute, that jurisdiction having been definitively established by the filing of the Application.

The Court's decision in this case is completely in accordance with the undisputed concept of procedural law which requires that the right of action and the jurisdiction should be established at the date of the Application.

Because of the identity of the circumstances surrounding the seisin of the Court in the two cases, I believe that the approach which properly prevailed in the *Nottebohm* case is equally valid in the present case.

For this reason it is difficult to understand how the Court can take into account events which occurred after 1 June 1961 to arrive at the conclusion that—

> "circumstances that have since arisen render any adjudication devoid of purpose".

* * *

Undoubtedly the Court neither is nor can be compelled to exercise its jurisdiction in all cases. But the Court, which is a final tribunal for the settlement of international disputes, may refrain from exercising its jurisdiction only where it is clear beyond doubt that to exercise it would impair the Court's judicial character. In the present case, however, there is nothing to prevent the Court exercising its jurisdiction.

* * *

The circumstances which have occurred since 1 June 1961 are not in my view of such a kind as to prevent the Court from dealing with the merits of the Application of the Federal Republic of Cameroon. A brief review of these circumstances will I hope make it possible to show that the judgment asked of the Court by Cameroon does not lie outside its judicial function.

It is not disputed that resolution 1608 (XV) of 21 April 1961 had a final legal effect. By virtue of that resolution the Trusteeship Agreement was finally terminated; the United Kingdom is no longer the Administering Authority for the Northern Cameroons; the latter has been joined to the Federation of Nigeria; the right to seise the Court on the basis of Article 19 of the Trusteeship Agreement has disappeared. But having said this it is necessary to consider on the one hand the proper scope of resolution 1608 and on the other the subject of Cameroon's Application.

The resolution of 21 April 1961 settled two questions. In the first place it endorsed the result of the plebiscite; in the second place it terminated the Trusteeship Agreement. In both cases these are decisions taken in the political field. The debates in the General Assembly related only to the termination of the Trusteeship. At no time was the question of the interpretation or application of the Trusteeship Agreement considered. On the contrary, as the record of the discussion shows, many delegates among those who were in favour of the resolution stated that they did not intend to concern themselves with the question of whether the Trusteeship Agreement had been correctly interpreted and applied by the United Kingdom, but were speaking only on the question of the termination of the Trusteeship. Moreover, the resolution contains no provision referring to the way in which the United Kingdom interpreted and applied the Trusteeship Agreement.

It is clear that this resolution, despite its subject and the nature of the organ which adopted it, had a legal effect. But it seems to me difficult to affirm that by that legal effect it terminated the dispute between the Federal Republic of Cameroon and the United Kingdom.

* * *

The Republic of Cameroon asks the Court—

> "To adjudge and declare that the United Kingdom has, in the interpretation and application of the Trusteeship Agreement for the Territory of the Cameroons under British administration, failed to respect certain obligations directly or indirectly flowing from the said Agreement, and in particular from Articles 3, 5, 6 and 7 thereof."

According to this submission Cameroon sought to refer a legal dispute to the Court. The existence of this dispute is not denied by the Court. What is requested of the Court is to appraise, from the judicial (and not the political) standpoint, the way in which the United Kingdom administered the Cameroons under British administration. To hear and determine such a claim is definitely within the Court's function.

The Court should not decline to deal with the merits of the claim on the ground that its decision might lead to conclusions contrary to the provisions of resolution 1608 (XV). This resolution, as has already been said, settled a question which is quite different from the question now before the Court. It did not and could not settle a dispute relating to the interpretation and application of the Trusteeship Agreement.

On more that one occasion in the past the Court has stressed that its role and that of the other organs of the United Nations were different in character. In this connection it will suffice to cite the example

of the *Upper Silesia (Minority Schools)* case. In this case, the Polish Agent maintained that the dispute submitted to the Court by the German Government had already been settled by the Council of the League of Nations by virtue of the Geneva Convention and that further proceedings in the same case should not be instituted before the Court. The Polish Agent declared:

> "I am therefore entitled to consider that the matter was settled by the Council of the League of Nations, which is the final authority as regards measures to be taken, and that it would be dangerous to seek to establish another procedure which might impair that which has already been followed."

The Permanent Court of International Justice did not accept this argument by the Polish Agent. It stated:

> "The situation arising from the co-existence of these powers [those of the Council of the League] and of the jurisdiction conferred upon the Court by Article 72, paragraph 3, has not been defined by the Convention. But in the absence of any special regulation in this respect, the Court thinks it appropriate to recall its earlier observation, namely, that the two jurisdictions are different in character. In any case, it is clear from the discussions which took place before the Council that the latter did not wish to settle the question of law raised by the German representative and a solution to which is requested by the Application which gave rise to the present proceedings."

Earlier, the Court had declared that "there is no dispute which States entitled to appear before the Court cannot refer to it".

Referring to the first paragraph of Article 36 of its Statute according to which:

> "The jurisdiction of the Court comprises all cases which the Parties refer to it and all matters specially provided for in treaties and conventions in force",

the Court added that the principle contained in this provision only became inoperative in those exceptional cases in which the dispute which States might desire to refer to it would fall within the exclusive jurisdiction reserved to some other authority.

After this reasoning the Court declared that it had jurisdiction to examine the merits of the German claim. It thus overruled the arguments put forward by the Polish Agent. This however was indeed a dispute in which there was a duality of jurisdiction as between the Council and the Court and in which it might be feared that the Court's decision would be in contradiction with the Council's decision.

In the present case there is no such situation. The Court is not called upon, as the General Assembly was, to decide on the termination of the Trusteeship Agreement. Resolution 1608 (XV) dealt

with a political problem. The Court, the judicial organ, is requested to settle, with authority of *res judicata*, the question of interpretation and application of the Trusteeship Agreement of which it has been seised.

* * *

The Application of the Federal Republic of Cameroon, in order to establish the jurisdiction of the Court, relied upon Article 19 of the Trusteeship Agreement which reads as follows:

> "*Article 19*. 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."

This Article makes no provision for duality of jurisdiction as between the Court and the General Assembly or another organ of the United Nations in respect of conflicts arising from the interpretation or application of the Trusteeship Agreement. Many means were provided for the protection of the Trusteeship System: visiting missions, individual or collective petitions, annual reports and discussions in the Trusteeship Council, replies to questionnaires, debates in the General Assembly and, finally, recourse to the Court on the basis of Article 19. If the framers of the Agreement had intended to add another means of redress to this list, by empowering the General Assembly, at the same time as the Court, to deal with disputes under Article 19, they would have done so clearly and in terms. But they did not do so and it must therefore be concluded that the disputes referred to in that Article come within the jurisdiction of the Court alone.

Moreover, it must not be forgotten, as has been stressed, that during the debates in the General Assembly on resolution 1608 (XV) a large number of delegates among those who were in favour of that resolution made it quite clear that the only subject under discussion in the General Assembly was the question of the termination of the Trusteeship and that it was no part of the Assembly's intention to deal with the legal question of whether the United Kingdom had administered the Northern Cameroons in accordance with the provisions of the Trusteeship Agreement. In so doing the Assembly no doubt considered that this question was outside the scope of its administrative supervision and could be settled only by the Court which had been entrusted with judicial protection.

It follows therefore that the judgment which Cameroon asks the Court to give in a field thus reserved to its jurisdiction alone cannot

be regarded as capable of contradicting the conclusions arrived at by the General Assembly in its resolution 1608 (XV).

In the pleadings and during the oral arguments the distinction between the General Assembly's role and that of the Court was developed at length by Counsel for the Applicant. It was said in particular that—

> "the distinction between the political and judicial is a major factor in international affairs".

The Court has long recognized this truth and in the present case it should draw the inevitable logical conclusions from it. To maintain on the one hand that "the role of the Court is not the same as that of the General Assembly" and on the other that "the decisions of the General Assembly would not be reversed by the Judgment of the Court", whereas in neither case are the same field of competence or even the same questions involved, is difficult to understand.

By seising the Court the Federal Republic of Cameroon certainly made use of a right which belonged to it in its capacity as a State Member of the United Nations, but it had also another interest in doing so: its personal State interest which is not possessed by any other Member of the United Nations. Thus Cameroon, more than any other Member of the United Nations, was entitled to criticize the way in which the Trusteeship for the Northern Cameroons operated. This twofold interest could not disappear with the termination of the Trusteeship Agreement which occurred when the machinery of judicial protection had already been set in motion. This interest persists without need for a claim for reparation by the Applicant.

At all stages of the proceedings Cameroon maintained that it proposed "simply to ask the Court to state the law, and no more".

It is thus a declaratory judgment that the Applicant is seeking to obtain from the Court. Such a judgment, as recognized by the Court itself, is intended—

> "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".

The decision asked of the Court in the present proceedings is completely in accord with this definition. In fact, by the Trusteeship Agreement, the United Kingdom undertook certain obligations; it undertook to administer the Cameroons under British administration in accordance with the terms of that Agreement. The Federal Republic of Cameroon maintains that, in respect of the Northern Cameroons, the United Kingdom, by its conduct during

the exercise of the Trusteeship, failed to respect the stipulations of the 1946 Agreement, and this is denied by the Respondent. There is thus a dispute of a legal character relating to the interpretation and application of the Agreement. Cameroon has brought this dispute before the Court. However important the developments which occurred after the seisin of the Court, there persists between the Parties a legal conflict, an uncertainty which the Court must resolve. The nature of the dispute is not such as to require a material prejudice. The mere conflict of points of view concerning the interpretation of an agreement suffices. The judgment in such a case cannot be anything but declaratory, and examples of such judgments are not lacking in the jurisprudence of the Permanent Court of International Justice and this Court.

In the *Polish Upper Silesia* case (Judgment No. 7), the Permanent Court made the following statement concerning declaratory judgments:

> "There are numerous clauses giving the Court compulsory jurisdiction in questions of the interpretation and application of a treaty, and these clauses, amongst which is included Article 23 of the Geneva Convention, appear also to cover *interpretations unconnected with concrete cases of application* [1]. Moreover, there is no lack of clauses which refer solely to the interpretation of a treaty; for example, letter *a* of paragraph 2 of Article 36 of the Court's Statute. There seems to be no reason why States should not be able to ask the Court to give an *abstract interpretation* [1] of a treaty; rather would it appear that this is one of the most important functions which it can fulfil."

Further on, the Court added:

> "It should also be noted that the possibility of a judgment having a purely declaratory effect has been foreseen in Article 63 of the Statute, as well as in Article 36 already mentioned." (P.C.I.J., Series A, No. 7, pp. 18-19.)

In this case the Court, referring to the provisions of its Statute —the same Articles 36 and 63 that exist today—delivered a declaratory judgment without insisting on the requirement of effective application.

Another example of a purely declaratory judgment is provided by the case concerning the *Interpretation of the Statute of the Memel Territory* (P.C.I.J., Series A/B, No. 47).

In this case the Applicant States (United Kingdom, France, Italy and Japan) asked the Permanent Court to decide:

> "(1) whether the Governor of the Memel Territory has the right to dismiss the President of the Directorate;

[1] Emphasis added.

(2) in the case of an affirmative decision, whether this right only exists under certain conditions or in certain circumstances, and what those conditions or circumstances are;

(3) if the right to dismiss the President of the Directorate is admitted, whether such dismissal involves the termination of the appointments of the other members of the Directorate;

(4) if the right to dismiss the President of the Directorate only exists under certain conditions or in certain circumstances, whether the dismissal of M. Böttcher, carried out on February 6th, 1932, is in order in the circumstances in which it took place;

(5) whether, in the circumstances in which it took place, the appointment of the Directorate presided over by M. Simaitis is in order;

(6) whether the dissolution of the Diet, carried out by the Governor of the Memel Territory on March 22nd, 1932, when the Directorate presided over by M. Simaitis had not received the confidence of the Diet, is in order."

Despite the interrogative form of the questions put, the Court none the less, by a large majority, gave judgment on the merits of the six questions without requiring in this case either that its judgment should be capable of practical application.

A third example of a declaratory judgment should be cited, that of the *Corfu Channel* case, decided by the present Court.

The relevant question in that case concerned violation by the United Kingdom of Albanian sovereignty. During the oral arguments concerning this dispute Counsel for the Albanian Government formally declared that Albania was not asking for material reparation, was not claiming "any sum of money".

He concluded:

> "What we desire is the declaration of the Court from a legal point of view..." (*I.C.J. Reports 1949*, p. 26.)

This claim was not dismissed by the Court as theoretical. On the contrary, it unanimously gave judgment—

> "that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the Peoples Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction". (*I.C.J. Reports 1949*, p. 36.)

The three above examples of declaratory judgments have this in common: in each case—

the Court confined itself to stating legal truth, to finding a breach of the law;

there was no claim for material reparation;

there was no practical application.

It should not however be concluded that a declaratory judgment has no practical effect. In the first place it puts a final end to the dispute with force of *res judicata;* it is binding on the Parties, which can never again raise the same question before the Court; a declaratory judgment, a mere declaration of the law may in itself constitute appropriate satisfaction (*Corfu Channel* case); finally it may provide the basis for diplomatic negotiations.

It is in fact a judgment having the effects listed above that Cameroon asked the Court to give, and the requirement of effective and practical application imposed by the Court in this case is not warranted.

The function conferred by Article 38 of its Statute on the Court, the principal judicial organ of the United Nations, is "to decide in accordance with international law such disputes as are submitted to it". It must act in such a way as to avoid introducing into its jurisprudence contradictory elements. The harmony and consistency of the Court's jurisprudence are the basic foundations for the authority of its judgments. The Court must also avoid giving the impression, in connection with its present Judgment, of a case of denial of justice.

* * *

For the reasons developed above, I conclude that the claim of the Republic of Cameroon is admissible and that the Court has jurisdiction to examine it on the merits.

(Signed) Philémon L. B. BEB A DON.