DECISIONS OF INTERNATIONAL TRIBUNALS: THE INTERNATIONAL COURT OF JUSTICE

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I. RECENT CASES

THE LAND AND MARITIME BOUNDARY CASE (*CAMEROON* v. *NIGERIA*)—THE INTERVENTION BY EQUATORIAL GUINEA[1]

A. Introduction

On 21 October 1999 the International Court made an order in which it accepted an Application by Equatorial Guinea to intervene in the case brought by the Republic of Cameroon against the Federal Republic of Nigeria over their land and maritime boundary. The proceedings in this case, which began as long ago as March 1994, are developing into something of a saga. In February 1996 Cameroon submitted a request for the indication of provisional measures of protection under Article 41 of the Statute, and by an order in the following month the Court indicated certain measures.[2] Meanwhile, Nigeria had filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the case which were dealt with in a judgment in June 1998.[3] Four months after the Court's decision Nigeria requested an interpretation of the judgment under Article 60 of the Statute, but in a further judgment in March 1999 the request was held inadmissible.[4]

One of the objections to admissibility considered by the Court in its 1998 judgment related to the maritime boundary between Cameroon and Nigeria which it was claimed the Court could not determine without involving the rights and interests of other States bordering on the Gulf of Guinea. As five States

* The aim of this annual section is to provide a guide to the current work of the ICJ by summarising the essential aspects of recent cases and highlighting points of particular significance.

1. *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*, Application by Equatorial Guinea for Permission to Intervene, Order of 21 October 1999, I.C.J. Rep. 1999. All references are to the version of the text provided by the Registry of the Court and available on the Court's website.

2. See the Court's order of 15 Mar. 1996, I.C.J. Rep. 1996, 13 and the author's case-note in (1997) 46 I.C.L.Q. 676.

3. See the Court's judgment of 11 June 1998, I.C.J. Rep. 1998, 275 and the author's case-note in (1999) 48 I.C.L.Q. 651.

4. See the Court's judgment of 25 Mar. 1999, I.C.J. Rep. 1999 and the above case-note at 657–658.

border on the Gulf and there was no agreed delimitation between any pair, the Court agreed that the rights and interests of third States, in particular those of Equatorial Guinea and São Tomé and Principe, would become involved in any determination of the Cameroon–Nigeria boundary. However, the Court found that, to decide whether the rights and interests of third States would actually be affected by its judgment, it would first have to deal with the merits of Cameroon's request. It therefore decided that this objection should be joined to the merits. In drawing its conclusion the Court observed that it could not "rule out the possibility that the impact of the judgment required by Cameroon on the rights and interests of the third States could be such that the Court would be prevented from rendering it in the absence of these States", adding that "whether such third States would choose to intervene in these proceedings pursuant to the Statute remains to be seen".[5] The Application by Equatorial Guinea, to which the present note relates, was therefore not unexpected.

B. Equatorial Guinea's Application and the Court's Order

Equatorial Guinea's Application, which was made on 30 June 1999, relied on Article 62 of the Statute of the Court and Article 81 of its Rules. The former allows a State to submit a request for permission to intervene when it considers that it has "an interest of a legal nature which may be affected by the decision in the case" and the latter provides that such an application must set out the interest concerned, the "precise object of the intervention" and "any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties in the case". In 1990 a Chamber of the Court gave Nicaragua permission to make a limited intervention in the *Land, Island and Maritime Frontier* case,[6] but this was the only previous case in which an application under Article 62 had been successful. Accordingly, the full Court's treatment of Equatorial Guinea's request was awaited with interest.

Equatorial Guinea asserted that its "interest of a legal nature" stemmed from the sovereign rights and jurisdiction which it claimed up to the median lines separating its maritime zones from those of Nigeria and Cameroon. Emphasising that it was not seeking a determination of its marine boundaries, Equatorial Guinea stated that the protection of its rights and interests required that any Cameroon–Nigeria boundary determined by the Court should not cross the median lines.[7] Thus, the "precise object of the intervention" was to protect its legal rights and to inform the Court of the nature of the relevant legal rights and interests.[8] As regards the issue of jurisdiction, Equatorial Guinea stated that it did not seek to be a party to the case, that there was no pre-existing basis of jurisdiction that would permit it to do so and that consequently "Equatorial Guinea's request to intervene is based solely upon Article 62 of the Statute of the Court."[9]

5. Judgment of 11 June 1998, note 3 above, para.116.
6. *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, Application to Intervene, Judgment, I.C.J. Rep. 1990, 92, and the editor's case-note in (1992) 41 I.C.L.Q. 896.
7. Order, para.3.
8. *Idem*, para.4.
9. *Idem*, para.5.

In accordance with Article 83 of the Rules copies of Equatorial Guinea's Application were transmitted to Cameroon and to Nigeria which were given until 16 August to submit their written observations. Both States did so and neither objected to the Application, although Cameroon reserved its position "in relation to the validity and possible consequences of the unilateral delimitation undertaken by Equatorial Guinea".[10] Previous cases involving Article 62 have proved highly contentious and whether allowing the intervention, as the Chamber did in the *Land, Island and Maritime Frontier* case, or refusing it, as the full Court did in the *Libya–Tunisia*[11] and *Libya–Malta* cases,[12] the Court has dealt with the matter in a fully reasoned judgment.[13] In the present case, however, it adopted a different approach and accepted the request in a brief (and unanimous) order.

In its order the Court indicated that in its opinion "Equatorial Guinea has sufficiently established that it has an interest of a legal nature which could be affected by any judgment which the Court might hand down for the purpose of determining the maritime boundary between Cameroon and Nigeria".[14] This conclusion was, of course, no great surprise given the Court's treatment of the position of third States in its 1998 judgment on jurisdiction and admissibility. Likewise, it was to be expected that the Court would confirm the Chamber's ruling in the *Land, Island and Maritime Frontier* case that an intervention with the object of informing the Court of the nature of the legal rights of the State which are in issue in the dispute is in accordance with the function of intervention.[15]

Altogether more significant is the Court's endorsement of the Chamber's decision that "the existence of a valid link of jurisdiction between the would-be intervener and the parties is not a requirement for the success of the application".[16] In 1990 this important ruling had enabled Nicaragua to intervene as a non-party in the absence of a jurisdictional link with Honduras and El Salvador. However, the jurisdictional implications of Article 62 having long been a matter of controversy, it was by no means certain that the Chamber's approach would be adopted by the full Court.[17] Now that Equatorial Guinea has been allowed to intervene with no jurisdictional link with Cameroon or Nigeria, the point should no longer be open to argument.

C. Conclusion

By virtue of the Court's order Equatorial Guinea has been allowed to intervene in the case "to the extent, in the manner and for the purposes set out in its

10. *Idem*, para.9.

11. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Application for Permission to Intervene, Judgment, I.C.J. Rep. 1981, 3.

12. *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Application for Permission to Intervene, Judgment, I.C.J. Rep. 1984, 3.

13. For discussion and analysis of the previous case-law see S. Rosenne, *Intervention before the International Court of Justice* (1993) and J. M. Ruda, "Intervention before the International Court of Justice", in V. Lowe and M. Fitzmaurice, *Fifty Years of the International Court of Justice*, (1996) p.487.

14. Order, para.13.

15. Order, para.14, quoting para.90 of the 1990 judgment.

16. Order, para.15, quoting para.100 of the 1990 judgment.

17. See on this point E. Lauterpacht, *Aspects of the Administration of International Justice* (1991) pp.29–30.

Application". This means that it will be able to provide the Court with details of its boundary claim and then take part in the oral hearings.[18] On the other hand, as it is a non-party, Equatorial Guinea, like Nicaragua in the earlier case, has no right to appoint a judge *ad hoc* under Article 31 of the Statute, nor will it be bound by the eventual judgment under Article 59. In its order the Court fixed 4 April 2001 as the time limit for the filing of Equatorial Guinea's written statement and 4 July 2001 as the time limit for the filing of the written observations of Cameroon and Nigeria on Equatorial Guinea's statement.

In a further procedural twist on the same day that Equatorial Guinea made its Application to intervene, the Court made an order concerning counter-claims raised by Nigeria in its Counter-Memorial.[19] The counter-claims in question relate to various incursions on the Cameroon–Nigeria border for which Nigeria claims that Cameroon is internationally responsible. Having found that they were sufficiently connected with the subject-matter of Cameroon's claims and satisfied the other requirements of the Rules, the Court held the counter-claims admissible and ruled that they should form part of the current proceedings. In view of the new situation thus created, it also decided that a second round of written pleadings was warranted and fixed time limits accordingly.

The decision to admit Nigeria's counter-claims, which was not contested by Cameroon, adds to a small but growing case law on this aspect of the Court's jurisprudence.[20] The same may be said of the order permitting Equatorial Guinea's intervention where, as noted earlier, the Court's comments on jurisdiction are particularly significant. For students of the Court these developments, like other recent initiatives,[21] show how from a procedural standpoint international adjudication is coming to resemble national litigation in practice as well as in theory. In the context of the particular case the effect of the latest steps will naturally be to delay even further the Court's eventual decision on the merits, a consequence which, for Nigeria at least, is probably not unwelcome.

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18. On Nicaragua's participation in the *Land, Island and Maritime Frontier* case and the value of intervention generally see J. G. Merrills, "Reflections on the incidental jurisdiction of the International Court of Justice", in M. D. Evans (ed.), *Remedies in International Law: The Institutional Dilemma* (1998) p.51 at pp.58–64.

19. *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*. Order of 30 June 1999, I.C.J. Rep. 1999.

20. Counter-claims have been admitted in both the *Genocide Convention* case and the *Oil Platforms* case; see the Court's orders of 17 Dec. 1997 I.C.J. Rep. 1997, 243, and 10 Mar. 1998, I.C.J. Rep. 1998, 190, respectively and the case-note by P. H. F. Bekker in (1998) 92 A.J.I.L. 508.

21. For example the extensive use of discovery in the *Heathrow Airport* arbitration, 102 I.L.R. 216. For discussion of this and other aspects of the case see S. M. Witten, "The US–UK arbitration concerning Heathrow Airport user charges", (1995) 89 A.J.I.L. 174.