

## THE NORTHERN CAMEROONS CASE

IN 1961, the Federal Republic of Cameroon filed an application with the International Court of Justice, requesting the Court to declare that the United Kingdom, in its administration of the Northern Cameroons, had violated certain articles of a trusteeship agreement.<sup>1</sup> Jurisdiction was grounded upon article 19 of this agreement which provided that in the event of a dispute between a member of the United Nations and the administering authority, the dispute might be submitted to the International Court of Justice.<sup>2</sup> On December 2, 1963, in announcing its decision on the preliminary objections, the Court declined to proceed further in the case because it considered that the proper limits of its judicial function did not permit an adjudication upon the merits of Cameroon's claim.<sup>3</sup> The decision raises interesting questions concerning the scope and nature of the Court's jurisdiction under the International Trusteeship System.<sup>4</sup> Of more immediate significance, however, is the World

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<sup>1</sup> Northern Cameroons Case, [1963] I.C.J. Rep. 15, at 17 [hereinafter cited as *Cameroons Case*]. In its application, the Republic of Cameroon also alleged that the United Kingdom had violated a United Nations General Assembly resolution. In its final submission, however, Cameroon complained only that the United Kingdom had failed to "respect certain obligations directly or indirectly flowing from the said [trusteeship] Agreement, and in particular from Articles 3, 5, 6 and 7 thereof." *Id.* at 20. Articles 3, 6 and 7 provided that the United Kingdom would administer the trusteeship territory so as to achieve, in collaboration with the General Assembly and Trusteeship Council, the basic objectives of the trusteeship system as stated in article 76 of the United Nations Charter, including the political advancement of the trust territory's inhabitants. On the other hand, the United Kingdom was given full governmental powers over the trust territory, and, significantly, as will be seen later, was entitled, under article 5, to "constitute the Territory into a customs, fiscal or administrative union or federation with adjacent territory under his 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." U.N. Doc. No. T/8 (1947). See U.N. CHARTER arts. 75-91.

<sup>2</sup> *Cameroons Case* at 25. "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." *Ibid.* See also U.N. Doc. No. T/8 (1947); [1946-1947] I.C.J.Y.B. 230.

<sup>3</sup> *Cameroons Case* at 38. The Court's vote was ten to five. One permanent judge took no part in the case. The fifteenth judge was M. Beb a Don, Ambassador of Cameroon to France. Cameroon appointed him as judge *ad hoc* pursuant to article 31 (2) of the Court's statute, which provides: "If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge." Judge Fitzmaurice, of British nationality, was a member of the Court.

<sup>4</sup> For a discussion of some of these questions see notes 18-21 *infra*.

Court's full statement of the essentials of its judicial function and its determination to guard carefully its judicial integrity in contentious as well as advisory proceedings. To comprehend the basis for and implications of the decision, it will be necessary, as the Court itself did, to trace briefly the history and background of the dispute.<sup>5</sup>

On December 13, 1946, the Cameroons, previously administered by Britain and France under the League of Nations Mandates System, were placed under the United Nations Trusteeship System.<sup>6</sup> Britain continued to administer two areas, known as the Southern and Northern Cameroons, which lay contiguous to and east of the British Protectorate of Nigeria.<sup>7</sup> The Northern

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<sup>5</sup> The Court looked primarily to proceedings within the United Nations, particularly those of the Trusteeship Council, the Fourth Committee (Trusteeship) of the General Assembly, and the General Assembly itself. In addition the Court referred to special reports submitted to the United Nations by its Visiting Mission to West Africa, by the U.N. Plebiscite Commissioner in the Cameroons, and by the Administering Authority.

<sup>6</sup> December 13 was the date upon which the U.N. General Assembly approved the trusteeship agreement. U.N. GEN. ASS. OFF. REC. 1st Sess., Plenary 62 (A/258) (1946). Though chapters XII and XIII of the U.N. Charter describe the scope, aims and terms of the International Trusteeship System, the administering authority must make a separate agreement for each trusteeship, setting forth the specific terms under which each territory is to be administered. The trusteeship agreement becomes effective upon its approval by the U.N. General Assembly. U.N. CHARTER arts. 75, 77, 81, 85. See KELSEN, *THE LAW OF THE UNITED NATIONS* 570-609 (1950).

As a German protectorate, Cameroons had originally been a single entity. However, in 1919, Germany renounced all right and title to its overseas possessions under article 119 of the Treaty of Versailles. The administration of the Cameroons was then divided between Britain and France and placed under the Mandates System of the League of Nations. *Cameroons Case* at 21. Upon the dissolution of the League in April 1946, Britain and France chose to place the mandates under the United Nations trusteeship system. See U.N. CHARTER art. 77, para. 1 (a).

<sup>7</sup> The International Trusteeship System carries forward the main principles and purposes of the Mandates System; thus Britain's administrative arrangements for the Cameroons continued much the same as before. However, the two systems differ in that the United Nations has been able to exert somewhat broader supervisory powers over the trusteeships. This in large part is due to the enhanced stature of the United Nations over the League in world affairs, and to the strong movement, since 1945, toward independence and self-government among dependent peoples. Among the important institutional differences between the Mandates and the Trusteeships is the United Nations' right to visit trust territories with the administering authority's consent. Visiting missions have thus visited most of the trust areas every three years and from their findings have come recommendations and consequently the initiative for reforms and steps toward independence. Sayre, *Legal Problems Arising from the United Nations Trusteeship System*, 42 AM. J. INT'L L. 263, 267 (1948). See also TOUSSAINT, *THE TRUSTEESHIP SYSTEM OF THE UNITED NATIONS* 60-61, 171-80, 195-99 (1956). It was a U.N. Visiting Mission's report which led to recommendations for the plebiscites in the British Cameroons. *Report of the Visiting Mission on the Cameroons under United Kingdom Administration*, U.N. Doc. No. T/1426 (1958). Concerning the Trusteeship System generally, and the extent to which it differs from the Mandates System, see Sayre, *supra* at 265, and TOUSSAINT, *op. cit. supra*.

Cameroons was divided into two sections,<sup>8</sup> each one being administered as an integral part of Nigeria.<sup>9</sup> This administrative arrangement forms the main source of the present dispute between the Republic of Cameroon and the United Kingdom. Cameroon, which until its independence on January 1, 1960, comprised the French portion of the Cameroons Trusteeship, claimed that in not ruling the Northern Cameroons as a single entity separately from Nigeria, Britain irreparably prejudiced the future political status of the area in controvention of the trusteeship agreement. Until May, 1961, Cameroon confined its dispute to discussions within the political organs of the United Nations.<sup>10</sup> In 1959, before the dispute arose in the United Nations, the General Assembly had recommended that a plebiscite be held in order to ascertain whether the inhabitants of the British Cameroons wished to join Nigeria or Cameroon.<sup>11</sup> In a plebiscite subsequently held in February, 1961 under United Nations auspices, a majority of the inhabitants of the Northern Cameroons voted freely and secretly to join permanently with Nigeria.<sup>12</sup> Despite Cameroon's criticisms of the United Kingdom's administration, the results of the plebiscite were endorsed by the United Nations General Assembly which voted to end the trusteeship agreement on June 1, 1961.<sup>13</sup> With the United Kingdom's

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<sup>8</sup> These sections, consisting of two elongated triangles stretching southward from Lake Chad in the north, were separated by a portion of Nigeria forty-five miles in width. See maps in U.N. GEN. ASS. OFF. REC. 15th Sess., Annexes, vol. 1, at 86 (1960-1961).

<sup>9</sup> The Court itself refrained from saying that the Northern Cameroons was administered as an "integral" part of Nigeria. The United Kingdom and the United Nations Plebiscite Commissioner, however, gave this description of the administrative arrangement. THE CAMEROONS UNDER UNITED KINGDOM ADMINISTRATION. REPORT BY UNITED KINGDOM TO GENERAL ASSEMBLY OF THE UNITED NATIONS 13 (1958); *Report of United Nations Commissioner for the Supervision of the Plebiscite in the Cameroons*, U.N. Doc. No. T/1491 and Corr. 1, Add. 1 (1959).

<sup>10</sup> As Cameroon did not achieve independence until 1960 and did not become a member of the United Nations until September of that year, it had a relatively short time in which to develop its objections since the U.N. General Assembly voted in April, 1961, to end the trusteeship and to allow the Northern Cameroons to become part of Nigeria. France, however, had made Cameroon's complaints known in May, 1960. *Cameroons Case* at 24.

<sup>11</sup> U.N. GEN. ASS. OFF. REC. 14th Sess., Plenary 857 (A/4354) (1959).

<sup>12</sup> *Report of United Nations Plebiscite Commissioner*, U.N. Doc. No. T/1556/Appendix and Add. 1 & 2 (1961). *Cameroons Case* at 23-25.

<sup>13</sup> *Ibid.* U.N. GEN. ASS. OFF. REC. 15th Sess., Plenary 995 (A/4738) (1961). In a "White Book" circulated among all U.N. members, Cameroon set forth its objections to the United Kingdom's administration, claiming that "failure to separate the administrations of the two territories destroyed an essential guarantee of impartiality and effectively sabotaged the plebiscite . . . . The only acceptable solution to avoid a monstrous injustice . . . is to declare the plebiscite . . . null and void . . . ." *Came-*

approval, the trusteeship ended on that date and the Northern Cameroons became part of Nigeria.<sup>14</sup> On May 30, 1961, two days before the trusteeship agreement expired, the Republic of Cameroon filed its application with the International Court of Justice.<sup>15</sup>

The Court dealt first with the preliminary objection raised by the United Kingdom that the Court had no jurisdiction under article 19 of the trusteeship agreement, since no "dispute" existed between itself and the Republic of Cameroon.<sup>16</sup> If any dispute existed, declared the United Kingdom, it was between Cameroon and the United Nations General Assembly.<sup>17</sup> The Court rejected this and another objection upon principles well-settled in the Court's jurisprudence, and thus little significance attaches to this phase of the proceeding.<sup>18</sup> However, the Court never determined decisively

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*roons Case* at 31-32. See also the Fourth Committee debates of April, 1961, prior to the U.N. General Assembly approval of the plebiscite. U.N. GEN. ASS. OFF. REC., 15th Sess., 4th Comm. 294-385 (A/C.4/SR 1141-53) (1961).

<sup>14</sup> With the exception of that pertaining to Italian Somaliland, the U.N. trusteeship agreements contained no provisions for their termination. For this reason the legal arrangements by which they would be terminated were at first in doubt. Sayre, *supra* note 7, at 288-90. The International Court in the instant case confirmed the General Assembly's practice of terminating the agreements by resolution, and in doing so suggested that General Assembly resolutions have important legal effect. See text at 556-58 *infra*.

<sup>15</sup> "The Republic of Cameroon, as a Member of the United Nations . . . had a right to apply to the Court and by the filing of the Application of 30 May 1961 the Court was seised." *Cameroons Case* at 29. Cameroon had tried but failed to persuade the United Kingdom to submit the issue to the International Court by special agreement. The United Kingdom maintained that Cameroon's grievance was with the United Nations, an argument which was pursued as a preliminary objection in the case. *Id.* at 25. See also text accompanying note 17 *infra*.

<sup>16</sup> *Cameroons Case* at 20.

<sup>17</sup> *Id.* at 27.

<sup>18</sup> As to the question of a dispute the Court merely observed: "In the view of the Court it is sufficient to say that, having regard to the facts already stated in this Judgment, the opposing views of the Parties as to the interpretation and application of relevant Articles of the Trusteeship agreement, reveal the existence of a dispute in the sense recognized by the jurisprudence of the Court and of its predecessor . . ." *Id.* at 27. The Permanent Court of International Justice defined a "dispute" as a "disagreement on a point of law or fact, a conflict of legal views or of interests between two persons." *Mavrommatis Concessions Case*, P.C.I.J., ser. A, No. 2, at 11 (1924). The present Court has said: "Whether there exists an international dispute is a matter for objective determination" and a dispute exists if a situation has arisen "in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations." *Interpretation of Peace Treaties Case*, [1950] I.C.J. Rep. 65, at 74. More recently, interpreting a jurisdictional clause very similar to the one in the *Cameroons Case*, the Court took a broad view of the meaning of the phrase "any dispute whatever." *South West Africa Cases*, [1962] I.C.J. Rep. 319, at 343. See note 2 *supra*.

The other objection related to a question of pleading. Rule 32(2) of the Court provides that: "[T]he application must . . . indicate . . . the subject of the dispute.

whether it had jurisdiction to entertain Cameroon's complaint.<sup>19</sup> Had its competence been established, the Court might have found that both it and the United Nations General Assembly had concurrent jurisdiction over the same subject matter.<sup>20</sup> Though the separate opinions of four Judges suggest that the Court had no jurisdiction in this case,<sup>21</sup> the Court avoided this sensitive question by first

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It must also, as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court, state the precise nature of the claim and give a succinct statement of the facts and grounds on which the claim is based." The Court considered that Cameroon had complied with these requirements, bearing in mind the phrase "as far as possible," and the fact that "the Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law." *Cameroons Case* at 27-28, citing *Mavrommatis Concessions Case*, P.C.I.J., ser. A, No. 2, at 34 (1924).

<sup>19</sup> The reason for this was that the Court declined to decide several of the objections to its jurisdiction. In their pleadings, the parties made frequent references to the South West African Cases, [1962] I.C.J. Rep. 319, since the jurisdictional clause involved in those cases was substantially the same as that involved in the *Cameroons Case*, (article 19, *supra* note 2) and in the former cases the Court had accepted jurisdiction. The preferred rule of treaty construction, applied in the South West Africa Case, is the "natural and ordinary meaning" rule whereby the words of a treaty are read in their natural and ordinary sense, without reference to extraneous sources, in order to discover the intention of the parties. In view of this preference and its application to a jurisdictional clause not significantly different from article 19, it would seem that the Court would have had jurisdiction in the *Cameroons Case*. See LAUTERPACHT, *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT* 49-60 (1958); Fitzmaurice, *Law and Procedure of the International Court of Justice: Treaty Interpretation and Other Treaty Points*, 33 BRIT. YB. INT'L L. 203 (1957). This reasoning seems to have influenced the four dissenting judges, who argued that the Court did have jurisdiction in this case. See, e.g., the dissent of Judge Bustamante, who could see no distinction between the two jurisdictional clauses. *Cameroons Case* 154-183. Four of the majority of the Court disagreed, however, and set forth their arguments against this view in separate opinions. See note 21 *infra*.

<sup>20</sup> The Court does not foreclose such a possibility. It observed, however, that if it was competent to adjudicate the dispute, and make a finding of a breach of law, such a finding "might lead the General Assembly to do whatever it thought useful or desirable in the light of the judgment pronounced as between a Member of the United Nations and an Administering Authority for the territory in question." *Cameroons Case* at 34-35.

<sup>21</sup> Judge Spender, with whom Judge Fitzmaurice agreed, would give article 19 of the trusteeship agreement a restrictive interpretation. *Cf.* note 19 *supra*. He felt that there were inherent differences between the Mandates System and the International Trusteeship System such that the parties to the agreement could not have intended that the Court should have jurisdiction over disputes of this nature. The Court's jurisdiction, he said, was confined to the two articles of the agreement whereby U.N. members were granted certain legal rights in regard to the trusteeship territory, such as equal treatment in social, economic, industrial and commercial matters (arts. 9 and 11). *Cameroons Case* 65-96, 111-130. Judge Wellington Koo looked closely at article 19 and observed that a dispute could only be brought to the Court "if it cannot be settled by negotiations or other means." Since the General Assembly had heard the dispute and decided to end the trusteeship, the dispute had been settled by "other means," hence the Court had no jurisdiction. *Cameroons Case* 50-64. Judge Morelli in his separate opinion considered that the Court lacked jurisdiction since the dispute submitted was not a dispute "relating to the interpretation or applica-

considering the propriety of engaging its function and by finding reasons for dismissal on this ground.<sup>22</sup>

The basis for this refusal to adjudicate on the merits was founded in the Court's concern in preserving its judicial integrity. It established first that the right to determine the limitations on the exercise of judicial function rested with the Court:

There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court's judicial integrity.<sup>23</sup>

The Court supported this statement with earlier cases in which it had declined to proceed to judgment although endowed with jurisdiction to do so, for example, because the parties had agreed in advance not to be bound by the decision, or because the questions posed could not be answered by the application of legal rules.<sup>24</sup>

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tion" of the provisions of the trusteeship agreement within the meaning of article 19. *Id.* at 131-49.

<sup>22</sup> Judge Koretsky, dissenting, objected to this procedure. He argued that a question of jurisdiction must, according to the rules of the Court, be decided before reaching what he termed the "admissibility" (propriety?) of a claim. By not following this procedure the Court here, he felt, had decided the merits of the claim before deciding the jurisdictional question. *Cameroons Case* 39-40. Judge Fitzmaurice's answer to this point was that "there would clearly be an element of absurdity in the Court going through all the motions of establishing its jurisdiction, if it considered it must then in any event decline to examine the claim on this ground [propriety]." *Id.* at 105; see also *id.* at 100-08. See ROSENNE, *THE INTERNATIONAL COURT OF JUSTICE*, 256, 460 (1957); Fitzmaurice, *The Law and Procedure of the International Court of Justice 1951-54; Questions of Jurisdiction, Competence and Procedure*, 34 *BRIT. YB. INT'L L.* 1, 21-22 (1958).

The Court itself adopted a flexible approach: "The answer to the question whether the judicial function is engaged may, in certain cases where the issue is raised, need to wait upon an examination of the merits. In the present case, however, it is already evident that it cannot be engaged. No purpose accordingly would be served by undertaking an examination of the merits of the case for the purpose of reaching a decision which, in the light of the circumstances to which the Court has already called attention, ineluctably must be made." *Cameroons Case* at 38.

<sup>23</sup> *Cameroons Case* at 29.

<sup>24</sup> *Id.* at 29-31. The Court cited the *Free Zones Case*, P.C.I.J., ser. A/B, No. 46 (1932) where the parties had agreed beforehand to accept only certain constructions of a treaty, thus limiting the Court's range of choice. Also cited was the *Haya de la Torre Case*, [1951] I.C.J. Rep. 71, in which the Court refused to choose the manner in which the asylum should be terminated since the "choice . . . could not be based on legal considerations, but only on considerations of practicability or of political expediency; it is not part of the Court's judicial function to make such a choice." *Id.* at 79.

Though these previous decisions are distinguishable from the situation presented in the instant case, the general principle they embody is pertinent. They confirm the right of the Court to refuse to engage its judicial function when in its discretion it considers it improper to do so. Although this rule has never been doubted,<sup>25</sup> it is only with respect to advisory opinions that the statute and rules of the Court explicitly grant such a discretionary power.<sup>26</sup>

Having established its role as the guardian of its own judicial integrity, the Court proceeded to describe the touchstones by which it would be guided in determining the propriety or impropriety of engaging its judicial function. It gave two reasons for not proceeding further in the case. First, it examined the nature of the legal question placed before it. The Republic of Cameroon did not ask for reparation but merely sought a declaration that the United Kingdom had violated the trusteeship agreement.<sup>27</sup> It did not ask the Court to find a causal connection between the alleged violations and the results of the plebiscite, and thus declare the plebiscite null and void and the trusteeship agreement resuscitated.<sup>28</sup> Cameroon conceded that the Court could not reverse the General Assembly's decision to endorse the plebiscite and to terminate the agreement.<sup>29</sup> This admission was neither explicitly approved nor disapproved by

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<sup>25</sup> See, e.g., ROSENNE, *op. cit. supra* note 22, at 47, 65, 256, 460; Fitzmaurice, *supra* note 22, at 21-22. Both writers cite the Monetary Gold Case, [1954] I.C.J. Rep. 19, as authority. The Court did not mention this case, but cited the Eastern Carelia Case, P.C.I.J., ser. B, No. 5 (1923). Both cases are similar since, in each, the Court refused to proceed to the merits because some third nation, not subject to the Court's jurisdiction, was a necessary party to the suit.

<sup>26</sup> Article 65 (1) of the statute of the Court provides: "The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request." In the Interpretation of Peace Treaties Case, [1950] I.C.J. Rep. 65, the Court stated: "Article 65 of the Statute is permissive. It gives the Court the power to examine whether circumstances of the case are of such a character as should lead it to decline to the answer the Request." *Id.* at 72. See Cheng, *The Scope and Limits of the Advisory Jurisdiction of the International Court of Justice—I*, 24 THE SOLICITOR 187, 188 (1957); Sloan, *Advisory Jurisdiction of the International Court of Justice*, 38 CALIF. L. REV. 830 (1950).

<sup>27</sup> *Cameroons Case* at 31-32. Cameroon could not have asked for reparation. See note 39 *infra*.

<sup>28</sup> The absence of such a request was clearly inconsistent with the objections raised by Cameroon in the United Nations political organs. See note 13 *supra*. The Court noted the inconsistency. *Cameroons Case* at 31-33.

<sup>29</sup> "But the Applicant has stated that it does not ask the Court to invalidate the plebiscite; indeed as noted, it recognizes the Court could not do so. It has not asked the Court to find any causal connection between the alleged maladministration and the result of the vote favouring union with the Federation of Nigeria." *Cameroons Case* at 33.

the Court. Several highly significant statements of the Court seem to establish, however, that a General Assembly resolution can have legally binding effect and hence is not reviewable by the Court. It stated that there was neither any doubt nor in fact any controversy, that the General Assembly resolution approving the plebiscite and terminating the trusteeship agreements had "definitive legal effect," although General Assembly resolutions are usually only recommendations, and are not legally binding upon United Nations members.<sup>30</sup>

But due to the peculiarities of this case, it is arguable, upon either of two theories, that the General Assembly resolution had a legally binding effect. First, the two parties whose consent was necessary to amend or terminate the trusteeship agreement were the United Kingdom and the U.N. General Assembly. It may therefore be argued that since both these parties approved the resolution endorsing the plebiscite and recommending that the trusteeship be terminated, the resolution amounted to a definitive agreement between the United Kingdom and the General Assembly to terminate the trusteeship. Agreements by the contracting parties to terminate international conventions certainly have definitive legal effect. Secondly, it may be argued that the U.N. General Assembly can unilaterally end a trusteeship agreement by reason of its general supervisory power over the trusteeship system.<sup>31</sup> If the General Assembly considered that the basic objectives of the trusteeship, as set forth in article 76 (b) of the United Nations Charter, had been achieved, there would be no longer any reason for the trust. In addition, if it was argued that the administering authority's consent was legally indispensable to the termination of the trust, then the administering authority could continue to rule the trust territory no matter when or for how long the objectives of the International Trusteeship System had been achieved. Such a veto power would be inconsistent with the purposes of the system and would undermine its effectiveness. Thus the General Assembly, representing the general community interest, seemingly has the right to unilaterally declare the trusteeship at an end. This view seems to be espoused by the Court:

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<sup>30</sup> *Id.* at 32. See Kelsen, *op. cit. supra* note 6, at 459.

<sup>31</sup> See U.N. CHARTER arts. 75, 85.

[T]he termination of the Trusteeship Agreement and the ensuing joinder of the Northern Cameroons to the Federation of Nigeria were not the acts of the United Kingdom but the result of actions of the General Assembly, actions to which the United Kingdom assented.<sup>32</sup>

In other words, the United Kingdom's approval was unnecessary since, legally, the prime responsibility for terminating the trusteeship agreement rested with the General Assembly.<sup>33</sup> In the light of this reasoning, it is not surprising that the Court considered that Cameroon's claim did not present a "concrete issue" for which a legal remedy was available.<sup>34</sup>

Secondly, not only was the issue presented of purely academic interest, but also any judgment rendered would have lacked effective application. This, too, militated against a judicial determination of Cameroon's claim:

[The court] may pronounce judgment only . . . where there exists at the time of the adjudication an actual controversy involving a conflict of legal interests between the parties. The Court's judgment must have some practical consequence in the sense that it can affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations. No judgment on the merits in this case could satisfy these essentials of the judicial function.<sup>35</sup>

The Court reinforced this statement of law later in the opinion by observing that, though in certain cases it may render a declaratory judgment, such a judgment must have a continuing applicability before judicial function will be engaged.<sup>36</sup> Since the trust is ended,

<sup>32</sup> *Cameroons Case* at 33.

<sup>33</sup> *But See* KELSEN, *op. cit. supra* note 6, at 657; Gross, *Limitations upon the Judicial Function*, 58 AM. J. INT'L L. 415, 430 n.69 (1964).

<sup>34</sup> "[T]he Court is relegated to an issue remote from reality" and "may pronounce judgment only in connection with concrete cases . . ." *Cameroons Case* at 33.

<sup>35</sup> *Id.* at 33-34.

<sup>36</sup> *Id.* at 36-37: Judge Badawi, dissenting, urged that a declaratory judgment could be given in this case. He argued that, in the Anglo-Saxon and North American legal systems, the use of declaratory judgments has developed differently than in the European and international legal systems. Though effective application is essential in the former systems, he stated, it is not considered so in continental and international law. He cited the *Corfu Channel Case*, [1949] I.C.J. Rep. 4, 36, as authority for his view. There the Court stated: "[T]he United Kingdom violated the sovereignty of the People's Republic of Albania, and . . . this declaration by the Court constitutes in itself appropriate satisfaction." In Judge Badawi's opinion, this was a declaratory judgment in the sense accepted in Europe, and recognized in international law in proceedings before arbitral and other tribunals, and the case was almost identical with the present one. *Cameroons Case* 150-53. Judge Badawi's views do not appear well considered. See LAUTERPACHT, *op. cit. supra* note 19, at 250-52; Gross, *supra* note 33, at 419-23.

a declaration interpreting the meaning or application of its provisions is pointless. In the terminology of American jurisprudence, the question has been rendered "moot" by the termination of the trust.<sup>37</sup> Even if a judgment were rendered in Cameroon's favor it could be given no effect since neither the United Kingdom nor the United Nations had any authority over the Northern Cameroons after July 1, 1961.<sup>38</sup>

In view of the termination of the trusteeship agreement before the adjudication of the case, it is difficult to perceive how Cameroon could have avoided the submission of a moot point. Furthermore, the grounds upon which its particular claim were based precluded any award of damages.<sup>39</sup> Cameroon came to court too late. The moment the General Assembly voted to end the trusteeship agreement, the United Kingdom's liability for prior violations ceased for all practical purposes, although from a narrow reading of the Court's

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<sup>37</sup> See, e.g., *San Mateo County v. Southern Pac. R.R.*, 116 U.S. 138 (1885); *Mills v. Green*, 159 U.S. 651 (1895). In the *Mills* case the Supreme Court observed: "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Id.* at 653. See also Note, 22 *IND. L.J.* 235 (1947).

<sup>38</sup> *Cameroons Case* at 33-34. Under article 59 of the statute of the Court the judgment would bind only parties to the suit; thus Nigeria would not be bound by the decision. *Ibid.* Also, the Court indicated that: "Normally when the Court pronounces a judicial condemnation there is room for the application of Article 94 of the [United Nations] Charter. That is not the case here." *Id.* at 34. Article 94 of the Charter provides that a member of the United Nations shall comply with the Court's judgments in any case to which it is a party, and that if a party fails to comply, the U.N. Security Council may take measures to give effect to the judgment.

<sup>39</sup> The Court does not explicitly state that Cameroon could not have sought damages. However, in order to test certain contentions by the parties, the Court stated that, assuming it had jurisdiction and that article 19 was designed to provide a form of judicial protection in the particular interest of the territory's inhabitants, it would follow that Cameroon had "a procedural right which was to be exercised in the general interest, whatever may have been the material individual interest of the Republic of Cameroon." *Cameroons Case* at 36. Since, after June 1, 1961, there was no trust territory and no inhabitants for whose protection the trust functions could be exercised, the substantive interest which Cameroon's "procedural right" was designed to protect disappeared with the termination of the trusteeship agreement. *Ibid.* The implication of this statement by the Court is that Cameroon's complaint was based upon a legal right which it could exercise only in the general interest in order to protect the trust territory's inhabitants, and which did not bestow an individual right upon Cameroon for harm which it might suffer. *Ibid.* Cf. *South West Africa Cases*, [1962] *I.C.J. Rep.* 319, 335-42, 422-36. Not all claims arising out of the trusteeship agreement were liquidated by the termination of the agreement since certain of its articles confer, in accordance with article 76(d) of the U.N. Charter, individual rights upon United Nations members. Cameroon's claim, however, was not based upon any of these articles. Cf. note 21 *supra*.

reasoning, it appears that Cameroon's claim was not liquidated until the actual termination of the trusteeship agreement.<sup>40</sup> What the Court's decision would have been, if at the time of adjudication the General Assembly had voted to end the agreement but the termination had not yet occurred, must remain speculative.<sup>41</sup>

The World Court's determination not to answer legal questions unless essential to the disposition of the case demonstrates the caution and restraint with which it exercises its judicial function.<sup>42</sup> Its effectiveness in fostering the growth of international law and the judicial settlement of international disputes rests in the respect which its decisions command. There are strong reasons for refraining from rendering a decision when it can have no legal effect but instead may serve as an instrument for political dispute.<sup>43</sup> Faced squarely with the task of defining the limits of its own judicial function for the first time, the Court felt that a clear statement of the essentials of this function was necessary. This statement serves as reassurance to those who question the validity of the Court as a court of law. By referring to its own case law as authority for its power to refuse to engage its judicial function, the Court also emphasized that continuity and stability of legal principles underlie its jurisprudence.<sup>44</sup> The decision suggests that the Court is aware of its

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<sup>40</sup> Concluding its hypothetical statement outlined in note 39 *supra*, the Court said: "Accordingly, the Republic of Cameroon would not have had a right after 1 June 1961, when the Trusteeship Agreement was terminated and the Trust itself came to an end, to ask the Court to adjudicate at this stage upon questions affecting the rights of the inhabitants of the former Trust Territory . . ." *Cameroons Case* at 36.

<sup>41</sup> The Court's reasoning relied primarily upon the actual termination of the agreement. But it would appear, from the Court's statement that the General Assembly's decision to terminate the trust had a definitive legal effect, that it was this General Assembly resolution which rendered Cameroon's claim moot, not the termination of the trust.

<sup>42</sup> Cf. LAUTERPACHT, *op. cit. supra* note 19, at 77-84.

<sup>43</sup> This was probably one reason for Cameroon's desire for a judgment in its favor. As Judge Wellington Koo pointed out: "The interest which the Republic of Cameroon now claims to have cannot be of a legal character; it is only a political interest of its own . . ." *Cameroons Case* at 46. The court itself observed: "But it is not the function of a court merely to provide a basis for political action if no question of actual legal right is involved." *Id.* at 37.

<sup>44</sup> See SCHWARZENBERGER, *INTERNATIONAL LAW* 37-66 (1957). It should be pointed out that the prior cases cited by the Court established as a general proposition only the Court's *right* to define the limits of its judicial function. They did not set forth any general definition of these limits but were restricted in their definition to the facts stated therein. In the present case, the Court's broad statement of the essentials of its judicial function can only have been derived by reference to "general principles of law recognized by civilised nations." See STATUTE OF THE COURT art. 38; Cheng, *The Scope and Limits of the Advisory Jurisdiction of the International Court of Justice—II*, 24 *THE SOLICITOR* 219, 220-22 (1957). The World Court was obviously

important responsibility for encouraging acceptance of the judicial process as a means of resolving international disputes. In taking the approach it did, the Court tried not only to do justice in this particular case, but also to render an opinion consonant with accepted standards of legal jurisprudence. Certainty of law and high standards of judicial integrity are essential in predisposing nations to accept the World Court's jurisdiction.<sup>45</sup>

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conscious of the practice of municipal tribunals, and Judge Fitzmaurice, in referring to the unique nature of Cameroon's claim, described it as "moot" in the sense given to that term in United States legal terminology. *Cameroons Case* at 97 n.1. This suggests, perhaps, one of the main sources of the World Court's statement of principle. Cf. note 37 *supra*.

<sup>45</sup> "For Governments have often manifested an inclination to make the scope of obligatory jurisdiction conferred upon international tribunals dependent upon the existence of clear rules of international law." LAUTERPACHT, *op. cit. supra* note 19, at 7.