10 October 2002
General List No. 94

INTERNATIONAL COURT OF JUSTICE

LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA

CAMEROON
v.
NIGERIA

ORDER

Return Home

BEFORE: President: Guillaume;
Vice-President: Shi;
Judges: Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby;
Judges ad hoc: Mbaye, Ajibola

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Citation: Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nig.), 2002 I.C.J. 303 (Order of Oct. 10)

Represented By: Cameroon: H.E. Mr. Amadou Ali, Minister of State responsible for Justice, Keeper of the Seals, as Agent;
Mr. Maurice Kamto, Dean, Faculty of Law and Political Science, University of Yaounde II, member of the International Law Commission, avocat at the Paris Bar, societe d' avocats Lysias;
Mr. Peter Ntamark, Professor, Faculty of Law and Political Science, University of Yaounde II, Barrister-at-Law, member of the Inner Temple, as Co-Agents, Counsel and Advocates;
Mr. Alain Pellet, Professor, University of Paris X-Nanterre, member and former Chairman of the International Law Commission, as Deputy Agent, Counsel and Advocate;
Mr. Joseph-Marie Bipoun Woum, Professor, Faculty of Law and Political Science, University of Yaounde II, former Dean, former Minister, as Special Adviser and Advocate;
Mr. Michel Aurillac, former Minister, Honorary conseiller d' Etat, retired avocet;
Mr. Jean-Pierre Cot, Emeritus Professor, University of Paris 1 (Pantheon-Sorbonne), former Minister;
Mr. Maurice Mendelson, Q.C., Emeritus Professor of International Law, University of London, Barrister-at-Law;
Mr. Malcolm N. Shaw, Sir Robert Jennings Professor of International Law, Faculty of Law, University of Leicester, Barrister-at-Law;
Mr. Bruno Simma, Professor, University of Munich, member of the International Law Commission;
Sir Ian Sinclair, K.C.M.G., Q.C., Barrister-at-Law, former member of the

International Law Commission;
Mr. Christian Tomuschat, Professor, Humboldt University of Berlin, former member and Chairman, International Law Commission;
Mr. Olivier Corten, Professor of International Law, Faculty of Law, Universite libre de Bruxelles;
Mr. Daniel Khan, Lecturer, International Law Institute, University of Munich;
Mr. Jean-Marc Thouvenin, Professor, University of Paris X-Nanterre, avocat at the Paris Bar, societe d' avocats Lysias, as Counsel and Advocates;
Mr. Eric Diamantis, avocat at the Paris Bar, Moquet, Bordes & Associes;
Mr. Jean-Pierre Mignard, avocat at the Paris Bar, societe d' avocats Lysias;
Mr. Joseph Tjop, Consultant to societe d' avocats Lysias, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris X-Nanterre, as Counsel;
General Pierre Semengue, Controller-General of the Armed Forces, former Chief of Staff of the Armed Forces;
Major-General James Tataw, Logistics Adviser, Former Chief of Staff of the Army;
H.E. Ms Isabelle Bassong, Ambassador of Cameroon to the Benelux Countries and to the European Union;
H.E.Mr. Pascal Biloa Tang, Ambassador of Cameroon to France, H.E. Mr. Martin Belinga Eboutou, Ambassador, Permanent Representative of Cameroon to the United Nations in New York;
Mr. Etienne Ateba, Minister-Counsellor, Charge d'affaires a.i. at the Embassy of Cameroon, The Hague;
Mr. Robert Akamba, Principal Civil Administrator, Charge de mission, General Secretariat of the Presidency of the Republic;
Mr. Anicet Abanda Atangana, Attache to the General Secretariat of the Presidency of the Republic, Lecturer, University of Yaounde II;
Mr. Ernest Bodo Abanda, Director of the Cadastral Survey, member, National Boundary Commission;
Mr. Ousmane Mey, former Provincial Governor;
Chief Samuel Moka Liffafa Endeley, Honorary Magistrate, Barrister-at-Law, member of the Middle Temple, former President of the Administrative Chamber of the Supreme Court;
Maitre Marc Sassen, Advocate and Legal Adviser, Petten, Tideman & Sassen, The Hague;
Mr. Francis Fai Yengo, former Provincial Governor, Director, Organisation du Territoire, Ministry of Territorial Administration;
Mr. Jean Mbenoun, Director, Central Administration, General Secretariat of the Presidency of the Republic;
Mr. Edouard Etoundi, Director, Central Administration, General Secretariat of the Presidency of the Republic;
Mr. Robert Tanda, diplomat, Ministry of Foreign Affairs, as Advisers;
Mr. Samuel Betha Sona, Geological Engineer, Consulting Expert to the United Nations for the Law of the Sea;
Mr. Thomson Fitt Takang, Department Head, Central Administration, General Secretariat of the Presidency of the Republic;
Mr. Jean-Jacques Koum, Director of Exploration, National Hydrocarbons Company (SNH), Commander Jean-Pierre Meloupou, Head of Africa Division at the Ministry of Defence;
Mr. Paul Moby Etia, Geographer, Director, Institut national de

cartographie;
Mr. Andre Loudet, Cartographic Engineer, Mr. Andre Roubertou, ingenieur general del'armement C.R. (hydrographer), as Experts;
Ms Marie Florence Kollo-Efon, Principal Translator-Interpreter, as Translator-Interpreter; Ms Celine Negre, Researcher, Centre d'etudes de droit international de Nanterre (CEDIN), University of Paris X-Nanterre;
Ms Sandrine Barbier, Researcher, Centre d' etudes de droit international de Nanterre (CEDIN), University of Paris X-Nanterre,
Mr. Richard Penda Keba, Certified Professor of History, cabinet of the Minister of State for Justice, former proviseur de lycees, as Research Assistants;
Mr. Boukar Oumara;
Mr. Guy Roger Eba' a;
Mr. Aristide Esso;
Mr. Nkende Forbibake;
Mr. Nfan Bile;
Mr. Eithel Mbocka;
Mr. Olinga Nyozo'o, as Media Officers;
Ms Renee Bakker;
Ms Laurence Polirsztok;
Ms Mireille Jung;
Mr. Nigel McCollum;
Ms Tete Beatrice Epeti-Kame, as Secretaries;

Nigeria: H.E. the Honourable Musa E. Abdullahi, Minister of State for Justice of the Federal Government of Nigeria, as Agent;
Chief Richard Akinjide SAN, Former Attorney-General of the Federation, member of the English Bar, former member of the International Law Commission, Alhaji Abdullahi Ibrahim CON, SAN, Commissioner, International Boundaries, National Boundary Commission of Nigeria, Former Attorney-General of the Federation, as Co-Agents;
Mrs. Nella Andem-Ewa, Attorney-General and Commissioner for Justice, Cross River State, Mr. Ian Brownlie, C.B.E., Q.C., member of the International Law Commission, member of the English Bar, member of the Institute of International Law;
Sir Arthur Watts, K.C.M.G., Q.C., member of the English Bar, member of the Institute of International Law;
Mr. James Crawford, S.C., Whewell Professor of International Law, University of Cambridge, member of the English and Australian Bars, member of the Institute of International Law;
Mr. Georges Abi-Saab, Honorary Professor, Graduate Institute of International Studies, Geneva, member of the Institute of International Law;
Mr. Alastair Macdonald, Land Surveyor, Former Director, Ordnance Survey, Great Britain, as Counsel and Advocates;
Mr. Timothy H. Daniel, Partner, D. J. Freeman, Solicitors, City of London;
Mr. Alan Perry, Partner, D. J. Freeman, Solicitors, City of London;
Mr. David Lerer, Solicitor, D. J. Freeman, Solicitors, City of London;
Mr. Christopher Hackford, Solicitor, D. J. Freeman, Solicitors, City of London, Ms Charlotte Breide, Solicitor, D. J. Freeman, Solicitors, City of London;

Mr. Ned Beale, Trainee, D. J. Freeman, Solicitors, City of London;
Mr. Geoffrey Marston, Fellow of Sidney Sussex College, University of Cambridge; member of the Bar of England and Wales;
Mr. Maxwell Gidado, Senior Special Assistant to the President (Legal and Constitutional Matters), former Attorney-General and Commissioner for Justice, Adamawa State;
Mr. A. O. Cukwurah, Co-Counsel, Former UN (OPAS) Boundary Adviser to the Kingdom of Lesotho, Former Commissioner, Inter-State Boundaries, National Boundary Commission;
Mr. I. Ayua, member, Nigerian Legal Team;
Mr. K. A. Adabale, Director (International and Comparative Law) Ministry of Justice;
Mr. Jalal Arabi, member, Nigerian Legal Team, Mr. Gbola Akinola, member, Nigerian Legal Team;
Mr. K. M. Tumsah, Special Assistant to Director-General, National Boundary Commission and Secretary to the Legal Team, as Counsel;
H.E. the Honourable Dubem Onyia, Minister of State for Foreign Affairs;
Alhaji Dahiru Bobbo, Director-General, National Boundary Commission;
Mr. F. A. Kassim, Surveyor-General of the Federation;
Alhaji S. M. Diggi, Director (International Boundaries), National Boundary Commission;
Colonel A. B. Maitama, Ministry of Defence;
Mr. Aliyu Nasir, Special Assistant to the Minister of State for Justice, as Advisers;
Mr. Chris Carleton, C.B.E., United Kingdom Hydrographic Office;
Mr. Dick Gent, United Kingdom Hydrographic Office;
Mr. Clive Schofield, International Boundaries Research Unit, University of Durham;
Mr. Scott B. Edmonds, Director of Cartographic Operations, International Mapping Associates;
Mr. Robert C. Rizzutti, Senior Mapping Specialist, International Mapping Associates;
Mr. Bruce Daniel, International Mapping Associates, Ms Victoria J. Taylor, International Mapping Associates, Ms Stephanie Kim Clark, International Mapping Associates;
Mr. Robin Cleverly, Exploration Manager, NPA Group, Ms Claire Ainsworth, NPA Group, as Scientific and Technical Advisers;
Mr. Mohammed Jibrilla, Computer Expert, National Boundary Commission;
Ms Coralie Ayad, Secretary, D. J. Freeman, Solicitors, City of London;
Ms Claire Goodacre, Secretary, D. J. Freeman, Solicitors, City of London;
Ms Sarah Bickell, Secretary, D. J. Freeman, Solicitors, City of London;
Ms Michelle Burgoine, IT Specialist, D. J. Freeman, Solicitors, City of London, as Administrators;
Mr. Geoffrey Anika;
Mr. Mau Onowu;
Mr. Austeen Elewodalu;
Mr. Usman Magawata, as Media Officers;

Guinea: H.E. Mr. Ricardo Mangue Obama N' Fube, Minister of State for Labour and Social Security, as Agent and Counsel;

H.E. Mr. Ruben Maye Nsue Mangue, Minister of Justice and Religion, Vice-President of the National Boundary Commission;
H.E. Mr. Cristobal Manana Ela Nchama, Minister of Mines and Energy, Vice-President of the National Boundary Commission;
H.E. Mr. Antonio Nzambi Nlonga, Attorney-General of the State;
Mr. Domingo Mba Esono, National Director of the Equatorial Guinea National Petroleum Company, member of the National Boundary Commission;
H.E. Juan Olo Mba Nzang, former Minister of Mines and Energy, as Advisers;
Mr. Pierre-Marie Dupuy, Professor of Public International Law at the University of Paris (Pantheon-Assas) and at the European University Institute, Florence;
Mr. David A. Colson, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., member of the California State Bar and District of Columbia Bar, as Counsel and Advocates; Sir Derek Bowett, C.B.E., Q.C., as Senior Counsel;
Mr. Derek C. Smith, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., member of the District of Columbia Bar and Virginia State Bar, as Counsel;
Ms Jannette E. Hasan, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., member of the District of Columbia Bar and Florida State Bar;
Mr. Herve Blatry, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Paris, avocat a la Cour, member of the Paris Bar, as Legal Experts;
Mr. Coalter G. Lathrop, Sovereign Geographic Inc., Chapel Hill, North Carolina;
Mr. Alexander M. Tait, Equator Graphics Inc., Silver Spring, Maryland, as Technical Experts.

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THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 29 March 1994 the Government of the Republic of Cameroon (hereinafter referred to as "Cameroon") filed in the Registry of the Court an Application instituting proceedings against the Government of the Federal Republic of Nigeria (hereinafter referred to as "Nigeria") concerning a dispute described as "relating essentially to the question of sovereignty over the Bakassi Peninsula". Cameroon further stated in its Application that the "delimitation [of the maritime boundary between the two States] has remained a partial one and [that], despite many attempts to complete it, the two parties have been unable to do so". Consequently, it requested the Court, "in order to avoid further incidents between the two countries, . . . to determine the course of the maritime boundary between the two States beyond the line fixed in 1975".

In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately communicated to the Government of Nigeria by the Registrar.

3. On 6 June 1994 Cameroon filed in the Registry an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described in that Additional Application as "relating essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad". Cameroon also requested the Court, in its Additional Application, "to specify definitively" the frontier between the two States from Lake Chad to the sea, and asked it to join the two Applications and "to examine the whole in a single case". In order to found the jurisdiction of the Court, the Additional Application referred to the "basis of . . . jurisdiction . . . already . . . indicated" in the Application instituting proceedings of 29 March 1994.

4. On 7 June 1994 the Registrar communicated the Additional Application to the Government of Nigeria.

5. At a meeting held by the President of the Court with the representatives of the Parties on 14 June 1994 the Agent of Cameroon explained that his Government had not intended to submit a separate Application and that the Additional Application had instead been designed as an amendment to the initial Application; the Agent of Nigeria, for his part, declared that his Government did not object to the Additional Application being treated as an amendment to the initial Application, so that the Court might examine the whole in a single case.[p313]

6. By an Order of 16 June 1994 the Court indicated that it had no objection to such a procedure and fixed 16 March 1995 and 18 December 1995 respectively as the time-limits for the filing of the Memorial of Cameroon and the Counter-Memorial of Nigeria.

7. Pursuant to Article 40, paragraph 3, of the Statute, all States entitled to appear before the Court were notified of the Application.

8. Cameroon duly filed its Memorial within the time-limit prescribed for that purpose.

9. Within the time-limit fixed for the filing of its Counter-Memorial, Nigeria filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Accordingly, by an Order dated 10 January 1996 the President of the Court, noting that under Article 79, paragraph 3, of the Rules of Court the proceedings on the merits were suspended, fixed 15 May 1996 as the time-limit within which Cameroon might present a written statement of its observations and submissions on the preliminary objections.

Cameroon duly filed such a statement within the time-limit so prescribed, and the case became ready for hearing in respect of the preliminary objections.

10. Since the Court included upon the Bench no judge of the nationality of the Parties, each Party exercised its right under Article 31, paragraph 3, of the Statute to choose a judge ad hoc to sit in the case. Cameroon chose Mr. Keba Mbaye and Nigeria chose Mr. Bola Ajibola.

11. By a letter of 10 February 1996, received in the Registry on 12 February 1996,

Cameroon made a request for the indication of provisional measures under Article 41 of the Statute. By an Order dated 15 March 1996 the Court, after hearing the Parties, indicated certain provisional measures.

12. The Court held hearings on the preliminary objections raised by Nigeria from 2 to 11 March 1998. In its Judgment of 11 June 1998 the Court found that it had jurisdiction to adjudicate upon the merits of the dispute and that Cameroon's requests were admissible. The Court rejected seven of the preliminary objections raised by Nigeria and declared that the eighth did not have an exclusively preliminary character, and that it would rule on it in the Judgment to be rendered on the merits.

13. By an Order of 30 June 1998 the Court fixed 31 March 1999 as the new time-limit for the filing of Nigeria's Counter-Memorial.

14. On 28 October 1998 Nigeria submitted a request for interpretation of the Judgment delivered by the Court on 11 June 1998 on the preliminary objections; that request became a new case, separate from the present proceedings. By Judgment dated 25 March 1999 the Court decided that Nigeria's request for interpretation was inadmissible.

15. On 16 November 1998 the Government of the Republic of Equatorial Guinea (hereinafter "Equatorial Guinea") requested a copy of the Memorial filed by Cameroon and of the maps produced to the Court by the Parties at the oral proceedings on the preliminary objections. The Parties were consulted in accordance with Article 53, paragraph 1, of the Rules of Court and informed the Court that they did not object to the communication to the Government of Equatorial Guinea of the documents requested by it. The documents in question were transmitted to Equatorial Guinea on 8 December 1998.

16. By an Order of 3 March 1999 the Court extended to 31 May 1999 the time-limit for the filing of the Counter-Memorial.[p314]

Nigeria duly filed its Counter-Memorial within the time-limit as thus extended. That pleading included counter-claims.

17. At a meeting held by the President of the Court with the Agents of the Parties on 28 June 1999 Cameroon indicated that it did not object to Nigeria's submission of the counter-claims set out in the Counter-Memorial, and the Parties agreed that a Reply and a Rejoinder were necessary in this case.

By an Order of 30 June 1999 the Court declared Nigeria's counter-claims admissible, decided that Cameroon should submit a Reply and Nigeria a Rejoinder and fixed 4 April 2000 and 4 January 2001 respectively as the time-limits for the filing of these two pleadings. In its Order the Court also reserved the right of Cameroon to present its views in writing a second time on the Nigerian counter-claims in an additional pleading which might be the subject of a subsequent Order.

The Reply and the Rejoinder were duly filed within the time-limits so fixed.

18. On 30 June 1999 the Republic of Equatorial Guinea filed in the Registry an Application for permission to intervene in the case pursuant to Article 62 of the Statute. According to that Application, the object of the intervention sought was to "protect the legal rights of the Republic of Equatorial Guinea in the Gulf of Guinea by all legal means available" and to "inform the Court of the nature of the legal rights and interests of Equatorial Guinea that could be affected by the Court's decision in the light of the maritime boundary claims advanced by the parties to the case before the Court". In its

Application Equatorial Guinea further indicated that it "d[id] not seek to become a party to the case".

In accordance with the provisions of Article 83 of the Rules of Court, the Application for permission to intervene by Equatorial Guinea was immediately communicated to Cameroon and to Nigeria, and the Court fixed 16 August 1999 as the time-limit for the filing of written observations by those States. Each of the two States filed its observations within the time-limit so fixed, and those observations were transmitted to the opposing Party and to Equatorial Guinea. On 3 September 1999 the Agent of Equatorial Guinea informed the Court of the views of his Government on the observations made by the Parties; Equatorial Guinea noted that neither of the two Parties had objected in principle to the intervention, and it expressed the view that hearings were not necessary to decide whether the Application for permission to intervene should be granted.

By an Order of 21 October 1999 the Court, considering that Equatorial Guinea had sufficiently established that it had 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, authorized it to intervene in the case to the extent, in the manner and for the purposes set out in its Application. The Court further fixed the following time-limits for the filing of the written statement and the written observations referred to in Article 85, paragraph 1, of the Rules of Court: 4 April 2001 for the written statement of Equatorial Guinea and 4 July 2001 for the written observations of Cameroon and of Nigeria on that statement.

The written statement of Equatorial Guinea and the written observations of the Parties were duly filed within the time-limits so fixed.

19. By a letter of 24 January 2001 the Agent of Cameroon, referring to the [p315] above-mentioned Order of 30 June 1999, informed the Court that his Government wished to present its views in writing a second time on Nigeria's counter-claims and suggested that 4 July 2001 be fixed as the time-limit for the filing of that additional pleading. The Agent of Nigeria indicated in a letter of 6 February 2001 that his Government had no objection to that request. By an Order of 20 February 2001 the Court authorized the presentation by Cameroon of an additional pleading relating exclusively to the counter-claims submitted by Nigeria and fixed 4 July 2001 as the time-limit for the filing of that pleading.

Cameroon duly filed the additional pleading within the time-limit so fixed, and the case became ready for hearing.

20. At a meeting held by the President of the Court with the Agents of the Parties and of Equatorial Guinea on 12 September 2001 the three States expressed heir agreement that the oral proceedings on the merits should open early in 2002; they also presented their views on the organization of those proceedings. The Court fixed 18 February 2002 as the date for the opening of the oral proceedings and adopted the schedule for them. By letters dated 24 September 2001 the Registrar informed the Parties and Equatorial Guinea of that decision.

21. By a letter of 8 January 2002 Cameroon informed the Court that it wished to be given the opportunity to reply orally, even if only briefly, to any observations Nigeria might make during its last round of oral arguments relating to the counter-claims it had submitted. Nigeria was duly informed of that request, which the Court decided to grant, the Agents of the Parties being so informed by letters from the Registrar dated 7 February 2002.

22. By a letter of 11 January 2002 Cameroon expressed the desire to produce further documents in accordance with Article 56 of the Rules of Court. As provided in paragraph 1 of that Article, those documents were communicated to Nigeria. By a letter of 29 January 2002 the Co-Agent of Nigeria informed the Court that his Government objected to the production of those new documents, on the grounds, inter alia, that Cameroon had not explained why the documents, although described as being "of great importance", "[had] not [been] submitted to the Court at the appropriate time, and in any event prior to the closure of the written procedure". That letter was communicated to the Agent of Cameroon, who, by a letter of 1 February 2002, explained inter alia that in the light of the argument developed in Nigeria's Rejoinder his Government had "found that a number of documents whose production it had not judged indispensable at the time of its Reply turned out to be more important than previously thought". The Court decided not to authorize the production of the documents, with the exception of those relating to events subsequent to Cameroon's Reply. The Court also decided to authorize Nigeria, if it so desired, to file documents in reply to the new documents produced by Cameroon and to present any observations on them during the oral proceedings. The Agents of the Parties were so informed by letters from the Registrar dated 7 February 2002.

23. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made available to the public at the opening of the oral proceedings. After consulting the Parties and Equatorial Guinea, the Court decided that the same should apply to the written statement of the intervening [p316]State and the written observations of the two Parties on that statement.

24. Public hearings were held from 18 February to 21 March 2002, at which the Court heard the oral arguments and replies of:

For Cameroon: H.E. Mr. Amadou Ali,
Mr. Maurice Kamto,
Mr. Alain Pellet,
Mr. Peter Y. Ntamark,
Mr. Malcolm N. Shaw,
Mr. Bruno Simma,
Mr. Jean-Pierre Cot,
Mr. Daniel Khan,
Mr. Joseph-Marie Bipoun Woum,
Mr. Michel Aurillac,
Mr. Christian Tomuschat,
Mr. Maurice Mendelson,
Mr. Jean-Marc Thouvenin,
Mr. Olivier Corten,
Sir Ian Sinclair.
For Nigeria: H.E. the Honourable Musa E. Abdullahi,
Mrs. Nella Andem-Ewa,
Sir Arthur Watts,
Mr. Ian Brownlie,
Mr. Georges Abi-Saab,
Alhaji Abdullahi Ibrahim,
Mr. Alastair Macdonald,
Mr. James Crawford,
Mr. Richard Akinjide.
For Equatorial Guinea: H.E. Mr. Ricardo Mangue Obama N' Fube,
Mr. David A. Colson,

Mr. Pierre-Marie Dupuy.

At the hearings questions were put by Members of the Court, to which replies were given orally and in writing. Each Party submitted its written comments, in accordance with Article 72 of the Rules of Court, on the other's written replies.

*

25. In its Application, Cameroon made the following requests:

"On the basis of the foregoing statement of facts and legal grounds, the Republic of Cameroon, while reserving for itself the right to complement, amend or modify the present Application in the course of the proceedings and to submit to the Court a request for the indication of provisional measures should they prove to be necessary, asks the Court to adjudge and declare:

(a) that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the [p317] fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris);

(c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;

(d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian Peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;

(e) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian Peninsula of Bakassi;

(e') that the internationally unlawful acts referred to under (a), (b), (c), (d) and (e) above involve the responsibility of the Federal Republic of Nigeria;

(e") that, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria.

(f) In order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions."

In its Additional Application, Cameroon made the following requests:

"On the basis of the foregoing statement of facts and legal grounds, and subject to the

reservations expressed in paragraph 20 of its Application of 29 March 1994, the Republic of Cameroon asks the Court to adjudge and declare:

(a) that sovereignty over the disputed parcel in the area of Lake Chad is Cameroonian, by virtue of international law, and that that parcel is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris), and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

(c) that the Federal Republic of Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, has violated and is violating its obligations under treaty law and customary law;

(d) that in view of these legal obligations, mentioned above, the Federal Republic of Nigeria has the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad;

(e) that the internationally unlawful acts referred to under (a), (b), (c) [p318] and (d) above involve the responsibility of the Federal Republic of Nigeria;

(e') that consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria.

(f) That in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of the Federal Republic of Nigeria in regard to the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea."

26. In the course of the written proceedings the following submissions were presented by the Parties:

On behalf of the Government of Cameroon,

in the Memorial:

"The Republic of Cameroon has the honour to request that the Court be pleased to adjudge and declare:

(a) That the lake and land boundary between Cameroon and Nigeria takes the following course:

-- from the point at longitude 14 [degree] 04' 59"9999 E of Greenwich and latitude 13 [degree] 05' 00"0001 N, it then runs through the point located at longitude 14 [degree] 12' 11"7 E and latitude 12 [degree] 32' 17"4 N;

-- thence it follows the course fixed by the Franco-British Declaration of 10 July 1919, as specified in paragraphs 3 to 60 of the Thomson/Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931, as far as the 'very prominent peak' described in the latter provision and called by the usual name of 'Mount Kombon' ;

-- from Mount Kombon the boundary then runs to 'Pillar 64' mentioned in paragraph 12 of the Anglo-German Agreement of Obokum of 12 April 1913 and follows, in that sector, the course described in Section 6 (1) of the British Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946;

-- from Pillar 64 it follows the course described in paragraphs 13 to 21 of the Obokum Agreement of 12 April 1913 as far as Pillar 114 on the Cross River;

-- thence, as far as the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs 16 to 21 of the Anglo-German Agreement of 11 March 1913.

(b) That in consequence, inter alia, sovereignty over the Peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the [p319] area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(c) That the boundary of the maritime zones appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows the following course:

-- from the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe to 'point 12', that boundary is determined by the 'compromise line' entered on British Admiralty Chart No. 3343 by the Heads of State of the two countries on 4 April 1971 (Yaounde Declaration) and, from that 'point 12' to 'point G', by the Declaration signed at Maroua on 1 June 1975;

-- from point G that boundary then swings south-westward in the direction which is indicated by points G, H, I, J and K represented on the sketch-map on page 556 of this Memorial and meets the requirement for an equitable solution, up to the outer limit of the maritime zones which international law places under the respective jurisdictions of the two Parties.

(d) That by contesting the courses of the boundary defined above under (a) and (c), the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris) and its legal commitments concerning the demarcation of frontiers in Lake Chad and land and maritime delimitation.

(e) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian Peninsula of Bakassi, and by making repeated incursions, both civilian and military, all along the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.

(f) That the Federal Republic of Nigeria has the express duty of putting an end to its civilian and military presence in Cameroonian territory and, in particular, of effecting an

immediate and unconditional withdrawal of its troops from the occupied area of Lake Chad and from the Cameroonian Peninsula of Bakassi and of refraining from such acts in the future;

(g) That the internationally wrongful acts referred to above and described in detail in the body of this Memorial involve the responsibility of the Federal Republic of Nigeria.

(h) That, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in a form to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon.

The Republic of Cameroon further has the honour to request the Court to permit it to present an assessment of the amount of compensation due to it as reparation for the damage it has suffered as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria, at a subsequent stage of the proceedings.

These submissions are lodged subject to any points of fact and law and any evidence that may subsequently be lodged; the Republic of Cameroon [p320] reserves the right to complete or amend them, as necessary, in accordance with the Statute and the Rules of Court."

in the Reply:

"The Republic of Cameroon has the honour to request that the Court be pleased to adjudge and declare:

(a) That the land boundary between Cameroon and Nigeria takes the following course:

-- from the point at longitude 14 [degree] 04' 59"9999 east of Greenwich and latitude 13 [degree] 05' 00"0001 north, it then runs through the point located at longitude 14 [degree] 12' 11"7005 east and latitude 12 [degree] 32' 17"4013 north, in accordance with the Franco-British Declaration of 10 July 1919 and the Thomson-Marchand Declaration of 29 December 1929 and 31 January 1930, confirmed by the Exchange of Letters of 9 January 1931;

-- thence it follows the course fixed by these instruments as far as the 'very prominent peak' described in paragraph 60 of the Thomson-Marchand Declaration and called by the usual name of 'Mount Kombon';

-- from 'Mount Kombon' the boundary then runs to 'Pillar 64' mentioned in paragraph 12 of the Anglo-German Agreement of Obokum of 12 April 1913 and follows, in that sector, the course described in Section 6 (1) of the British Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946;

-- from Pillar 64 it follows the course described in paragraphs 13 to 21 of the Obokum Agreement of 12 April 1913 as far as Pillar 114 on the Cross River;

-- thence, as far as the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs 16 to 21 of the Anglo-German Agreement of 11 March 1913.

(b) That, in consequence, inter alia, sovereignty over the Peninsula of Bakassi and over the

disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(c) That the boundary of the maritime zones appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows the following course:

-- from the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe to 'point 12', that boundary is determined by the 'compromise line' entered on British Admiralty Chart No. 3433 by the Heads of State of the two countries on 4 April 1971 (Yaounde Declaration) and, from that 'point 12' to 'point G', by the Declaration signed at Maroua on 1 June 1975;

-- from point G that boundary then swings south-westward in the direction which is indicated by Points G, H with co-ordinates 8 [degree] 21' 16" east and 4 [degree] 17' 00" north, I (7 [degree] 55' 40" east and 3 [degree] 46' 00" north), J (7 [degree] 12' 08" east and 3 [degree] 12' 35" north) and K (6 [degree] 45' 22" east and 3 [degree] 01' 05" north), represented on the sketch-map R21 on [p321] page 411 of this Reply and which meets the requirement for an equitable solution, up to the outer limit of the maritime zones which international law places under the respective jurisdictions of the two Parties.

(d) That in attempting to modify unilaterally and by force the courses of the boundary defined
above under (a) and (c), the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris) and its legal commitments concerning land and maritime delimitation.

(e) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian Peninsula of Bakassi, and by making repeated incursions, both civilian and military, all along the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.

(f) That the Federal Republic of Nigeria has the express duty of putting an end to its civilian and military presence in Cameroonian territory and, in particular, of effecting an immediate and unconditional withdrawal of its troops from the occupied area of Lake Chad and from the Cameroonian Peninsula of Bakassi and of refraining from such acts in the future.

(g) That the internationally wrongful acts referred to above and described in detail in the Memorial of the Republic of Cameroon and in the present Reply engage the responsibility of the Federal Republic of Nigeria.

(h) That, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in a form to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon.

The Republic of Cameroon further has the honour to request the Court to permit it to present an assessment of the amount of compensation due to it as reparation for the damage it has suffered as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria, at a subsequent stage of the proceedings.

The Republic of Cameroon also asks the Court to declare that the counter-claims of the

Federal Republic of Nigeria are unfounded both in fact and in law, and to reject them. These submissions are lodged subject to any points of fact and law and any evidence that may subsequently be lodged; the Republic of Cameroon reserves the right to supplement or amend them, as necessary, in accordance with the Statute and the Rules of Court."

in the additional pleading entitled "Observations of Cameroon by Way of Rejoinder":

"The Republic of Cameroon has the honour to request that it may please the International Court of Justice to adjudge and declare that the counter-claims of the Federal Republic of Nigeria, which appear to be inadmissible in light of the arguments put forward in the Rejoinder, in any event have no basis in fact or in law, and to reject them."[p322]

On behalf of the Government of Nigeria,

in the Counter-Memorial:

"For the reasons given herein, the Federal Republic of Nigeria, reserving the right to amend and modify these submissions in the light of the further pleadings in this case, respectfully requests that the Court should:

(1) as a preliminary matter decide to deal with the issues relating to the land boundary;

(2) as to Lake Chad, adjudge and declare:

-- that sovereignty over the areas in Lake Chad defined in Chapter 14 of this Counter-Memorial (including the Nigerian settlements identified in paragraph 14.5 hereof) is vested in the Federal Republic of Nigeria;

-- that the proposed 'demarcation' under the auspices of the Lake Chad Basin Commission, not having been ratified by Nigeria, is not binding upon it;

-- that outstanding issues of the delimitation and demarcation within the area of Lake Chad are to be resolved by the Parties to the Lake Chad Basin Commission within the framework of the constitution and procedures of the Commission;

(3) as to the central sectors of the land boundary:

-- acknowledging that the parties recognise that the boundary between the mouth of the Ebeji River and the point on the thalweg of the Akpa Yafe which is opposite the mid-point of the mouth of Archibong Creek is delimited by the following instruments:

(a) paragraphs 3-60 of the Thomson/Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931,

(b) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, section 6(1) and the Second Schedule thereto,

(c) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913,

(d) Articles XV-XVII of the Anglo-German Treaty of 11 March 1913; and

-- acknowledging further that uncertainties as to the interpretation and application of these instruments, and established local agreements in certain areas, mean that the actual course

of the boundary cannot be definitively specified merely by reference to those instruments;

affirm that the instruments mentioned above are binding on the parties (unless lawfully varied by them) as to the course of the land boundary;

(4) as to the Bakassi Peninsula, adjudge and declare:

-- that sovereignty over the Peninsula (as defined in Chapter 11 hereof) is vested in the Federal Republic of Nigeria;

(5) as to the maritime boundary, adjudge and declare:

(a) that the Court lacks jurisdiction to deal with Cameroon's claim-line, to the extent that it impinges on areas claimed by Equatorial [p323] Guinea and/or Sao Tome e Principe (which areas are provisionally identified in Figure 20.3 herein), or alternatively that Cameroon's claim is inadmissible to that extent; and

(b) that the parties are under an obligation, pursuant to Articles 76 and 83 of the United Nations Law of the Sea Convention, to negotiate in good faith with a view to agreeing on an equitable delimitation of their respective maritime zones, such delimitation to take into account, in particular, the need to respect existing rights to explore and exploit the mineral resources of the continental shelf, granted by either party prior to 29 March 1994 without written protest from the other, and the need to respect the reasonable maritime claims of third States;

(6) as to Cameroon's claims of State responsibility, adjudge and declare that those claims are unfounded in fact and law; and

(7) as to Nigeria's counter-claims as specified in Part VI of this Counter-Memorial, adjudge and declare that Cameroon bears responsibility to Nigeria in respect of those claims, the amount of reparation due therefor, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment."

in the Rejoinder:

"For the reasons given herein, the Federal Republic of Nigeria, reserving the right to amend and modify these submissions in the light of any further pleadings in this case, respectfully requests that the Court should:

(1) as to the Bakassi Peninsula, adjudge and declare:

(a) that sovereignty over the Peninsula is vested in the Federal Republic of Nigeria;

(b) that Nigeria's sovereignty over Bakassi extends up to the boundary with Cameroon described in Chapter 11 of Nigeria's Counter-Memorial;

(2) as to Lake Chad, adjudge and declare:

(a) that the proposed 'demarcation' under the auspices of the Lake Chad Basin Commission, not having been ratified by Nigeria, is not binding upon it;

(b) that sovereignty over the areas in Lake Chad defined in paragraph 5.9 of this Rejoinder and depicted in Figs. 5.2 and 5.3 facing page 242 (and including the Nigerian settlements identified in paragraph 4.1 of this Rejoinder) is vested in the Federal Republic of Nigeria;

(c) that outstanding issues of the delimitation and demarcation within the area of Lake Chad are to be resolved by the Parties to the Lake Chad Basin Commission within the framework of the constitution and procedures of the Commission;

(d) that in any event, the operation intended to lead to an overall delimitation of boundaries on Lake Chad is legally without preju-[p324]dice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon;

(3) as to the central sectors of the land boundary, adjudge and declare:

(a) that the Court's jurisdiction extends to the definitive specification of the land boundary between Lake Chad and the sea;

(b) that the mouth of the Ebeji, marking the beginning of the land boundary, is located at the point where the north-east channel of the Ebeji flows into the feature marked 'Pond' on the Map shown as Fig. 7.1 of this Rejoinder, which location is at latitude 12 [degree] 31' 45" N, longitude 14 [degree] 13' 00" E (Adindan Datum);

(c) that subject to the clarifications, interpretations and variations explained in Chapter 7 of this Rejoinder, the land boundary between the mouth of the Ebeji and the point on the thalweg of the Akpa Yafe which is opposite the mid-point of the mouth of Archibong Creek is delimited by the terms of:

(i) paragraphs 2-61 of the Thomson-Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931;

(ii) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, section 6(1) and the Second Schedule thereto;

(iii) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913; and

(iv) Articles XV to XVII of the Anglo-German Treaty of 11 March 1913;

(d) that the effect of the first two of those instruments, as clarified, interpreted or varied in the manner identified by Nigeria, is as set out in the Appendix to Chapter 8 and delineated in the maps in the Atlas submitted with this Rejoinder;

(4) as to the maritime boundary, adjudge and declare:

(a) that the Court lacks jurisdiction over Cameroon's maritime claim from the point at

which its claim line enters waters claimed by or recognised by Nigeria as belonging to Equatorial Guinea, or alternatively that Cameroon's claim is inadmissible to that extent;

(b) that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is inadmissible, and that the parties are under an obligation, pursuant to Articles 74 and 83 of the United Nations Law of the Sea Convention, to negotiate in good faith with a view to agreeing on an equitable delimitation of their respective maritime zones, such delimitation to take into account, in particular, the need to respect existing rights to explore and exploit the mineral resources of the continental shelf, granted by either party prior to 29 March 1994 without written protest from the other, and the need to respect the reasonable maritime claims of third States;[p323]

(c) in the alternative, that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is unfounded in law and is rejected;

(d) that, to the extent that Cameroon's claim to a maritime boundary may be held admissible in the present proceedings, Cameroon's claim to a maritime boundary to the west and south of the area of overlapping licences, as shown on Fig. 10.2 of this Rejoinder, is rejected;

(e) that the respective territorial waters of the two States are divided by a median line boundary within the Rio del Rey;

(f) that, beyond the Rio del Rey, the respective maritime zones of the parties are to be delimited in accordance with the principle of equidistance, to the point where the line so drawn meets the median line boundary with Equatorial Guinea at approximately 4 [degree] 6' N, 8 [degree] 30' E;

(5) as to Cameroon's claims of State responsibility, adjudge and declare:

that, to the extent to which any such claims are still maintained by Cameroon, and are admissible, those claims are unfounded in fact and law; and

(6) as to Nigeria's counter-claims, as specified in Part VI of the Counter-Memorial and in Chapter 18 of this Rejoinder, adjudge and declare:

that Cameroon bears responsibility to Nigeria in respect of each of those claims, the amount of reparation due therefor, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment."

27. At the oral proceedings, the following submissions were presented by the Parties: On behalf of the Government of Cameroon,

"Pursuant to the provisions of Article 60, paragraph 2, of the Rules of Court the Republic of Cameroon has the honour to request that the International Court of Justice be pleased to adjudge and declare:

(a) That the land boundary between Cameroon and Nigeria takes the following course:

-- from the point designated by the co-ordinates 13 [degree] 05' north and 14 [degree] 05' east, the boundary follows a straight line as far as the mouth of the Ebeji, situated at the point located at the co-ordinates 12 [degree] 32' 17" north and 14 [degree] 12' 12" east, as

defined within the framework of the LCBC and constituting an authoritative interpretation of the Milner-Simon Declaration of 10 July 1919 and the Thomson-Marchand Declarations of 29 December 1929 and 31 January 1930, as confirmed by the Exchange of Letters of 9 January 1931; in the alternative, the mouth of the Ebeji is situated at the point located at the co-ordinates 12 [degree] 31' 12" north and 14 [degree] 11' 48" east;

-- from that point it follows the course fixed by those instruments as [p326] far as the 'very prominent peak' described in paragraph 60 of the Thomson-Marchand Declaration and called by the usual name of 'Mount Kombon';

-- from 'Mount Kombon' the boundary then runs to 'Pillar 64' mentioned in paragraph 12 of the Anglo-German Agreement of Obokum of 12 April 1913 and follows, in that sector, the course described in Section 6 (1) of the British Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946;

-- from Pillar 64 it follows the course described in paragraphs 13 to 21 of the Obokum Agreement of 12 April 1913 as far as Pillar 114 on the Cross River;

-- thence, as far as the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs XVI to XXI of the Anglo-German Agreement of 11 March 1913.

(b) That in consequence, inter alia, sovereignty over the peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(c) That the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course:

-- from the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe to point '12', that boundary is confirmed by the 'compromise line' entered on British Admiralty Chart No. 3433 by the Heads of State of the two countries on 4 April 1971 (Yaounde II Declaration) and, from that point 12 to point 'G', by the Declaration signed at Maroua on 1 June 1975;

-- from point G the equitable line follows the direction indicated by points G, H (co-ordinates 8 [degree] 21' 16" east and 4 [degree] 17' north), I (7 [degree] 55' 40" east and 3 [degree] 46' north), J (7 [degree] 12' 08" east and 3 [degree] 12' 35" north), K (6 [degree] 45' 22" east and 3 [degree] 01' 05" north), and continues from K up to the outer limit of the maritime zones which international law places under the respective jurisdiction of the two Parties.

(d) That in attempting to modify unilaterally and by force the courses of the boundary defined above under (a) and (c), the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris), as well as its legal obligations concerning the land and maritime delimitation.

(e) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian peninsula of Bakassi, and by making repeated incursions throughout the length of the

boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.

(f) That the Federal Republic of Nigeria has the express duty of putting an end to its administrative and military presence in Cameroonian territory and, in particular, of effecting an immediate and uncondi-[p327]tional evacuation of its troops from the occupied area of Lake Chad and from the Cameroonian peninsula of Bakassi and of refraining from such acts in the future.

(g) That in failing to comply with the Order for the indication of provisional measures rendered by the Court on 15 March 1996 the Federal Republic of Nigeria has been in breach of its international obligations.

(h) That the internationally wrongful acts referred to above and described in detail in the written pleadings and oral argument of the Republic of Cameroon engage the responsibility of the Federal Republic of Nigeria.

(i) That, consequently, on account of the material and moral injury suffered by the Republic of Cameroon reparation in a form to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon.

The Republic of Cameroon further has the honour to request the Court to permit it, at a subsequent stage of the proceedings, to present an assessment of the amount of compensation due to it as reparation for the injury suffered by it as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria.

The Republic of Cameroon also asks the Court to declare that the counter-claims of the Federal Republic of Nigeria are unfounded both in fact and in law, and to reject them."

On behalf of the Government of Nigeria,

"The Federal Republic of Nigeria respectfully requests that the Court should

1. as to the Bakassi Peninsula, adjudge and declare:

(a) that sovereignty over the Peninsula is vested in the Federal Republic of Nigeria;

(b) that Nigeria's sovereignty over Bakassi extends up to the boundary with Cameroon described in Chapter 11 of Nigeria's Counter-Memorial;

2. as to Lake Chad, adjudge and declare:

(a) that the proposed delimitation and demarcation under the auspices of the Lake Chad Basin Commission, not having been accepted by Nigeria, is not binding upon it;

(b) that sovereignty over the areas in Lake Chad defined in paragraph 5.9 of Nigeria's Rejoinder and depicted in Figs. 5.2 and 5.3 facing page 242 (and including the Nigerian settlements identified in paragraph 4.1 of Nigeria's Rejoinder) is vested in the Federal Republic of Nigeria;

(c) that in any event the process which has taken place within the framework of the Lake Chad Basin Commission, and which was intended to lead to an overall delimitation and

demarcation of boundaries on Lake Chad, is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon; [p328]

3. as to the central sectors of the land boundary, adjudge and declare:

(a) that the Court's jurisdiction extends to the definitive specification of the land boundary between Lake Chad and the sea;

(b) that the mouth of the Ebeji, marking the beginning of the land boundary, is located at the point where the north-east channel of the Ebeji flows into the feature marked 'Pond' on the map shown as Fig. 7.1 of Nigeria's Rejoinder, which location is at latitude 12 [degree] 31' 45" N, longitude 14 [degree] 13' 00" E (Adindan Datum);

(c) that subject to the interpretations proposed in Chapter 7 of Nigeria's Rejoinder, the land boundary between the mouth of the Ebeji and the point on the thalweg of the Akpa Yafe which is opposite the midpoint of the mouth of Archibong Creek is delimited by the terms of the relevant boundary instruments, namely:

(i) paragraphs 2-61 of the Thomson-Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931;

(ii) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, (Section 6 (1) and the Second Schedule thereto);

(iii) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913; and

(iv) Articles XV to XVII of the Anglo-German Treaty of 11 March 1913; and

(d) that the interpretations proposed in Chapter 7 of Nigeria's Rejoinder, and the associated action there identified in respect of each of the locations where the delimitation in the relevant boundary instruments is defective or uncertain, are confirmed;

4. as to the maritime boundary, adjudge and declare:

(a) that the Court lacks jurisdiction over Cameroon's maritime claim from the point at which its claim line enters waters claimed against Cameroon by Equatorial Guinea, or alternatively that Cameroon's claim is inadmissible to that extent;

(b) that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is inadmissible, and that the parties are under an obligation, pursuant to Articles 74 and 83 of the United Nations Law of the Sea Convention, to negotiate in good faith with a view to agreeing on an equitable delimitation of their respective maritime zones, such delimitation to take into account, in particular, the need to respect existing rights to explore and exploit the mineral resources of the continental shelf, granted by either party prior to 29 March 1994 without written protest from the other, and the need to respect the reasonable maritime claims of third States;

(c) in the alternative, that Cameroon's claim to a maritime boundary [p329] based on the

global division of maritime zones in the Gulf of Guinea is unfounded in law and is rejected;

(d) that, to the extent that Cameroon's claim to a maritime boundary may be held admissible in the present proceedings, Cameroon's claim to a maritime boundary to the west and south of the area of overlapping licenses, as shown in Fig. 10.2 of Nigeria's Rejoinder, is rejected;

(e) that the respective territorial waters of the two States are divided by a median line boundary within the Rio del Rey;

(f) that, beyond the Rio del Rey, the respective maritime zones of the parties are to be delimited by a line drawn in accordance with the principle of equidistance, until the approximate point where that line meets the median line boundary with Equatorial Guinea, i.e. at approximately 4 [degree] 6' N, 8 [degree] 30' E;

5. as to Cameroon's claims of State responsibility, adjudge and declare:

that, to the extent to which any such claims are still maintained by Cameroon, and are admissible, those claims are unfounded in fact and law; and,

6. as to Nigeria's counter-claims as specified in Part VI of Nigeria's Counter-Memorial and in Chapter 18 of Nigeria's Rejoinder, adjudge and declare:

that Cameroon bears responsibility to Nigeria in respect of each of those claims, the amount of reparation due therefor, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment."

*

28. At the end of the written statement submitted by it in accordance with Article 85, paragraph 1, of the Rules of Court, Equatorial Guinea stated inter alia:

"Equatorial Guinea's request is simple and straightforward, founded in the jurisprudence of the Court, makes good sense in the practice of the international community and is consistent with the practice of the three States in the region concerned: its request is that the Court refrain from delimiting a maritime boundary between Nigeria and Cameroon in any area that is more proximate to Equatorial Guinea than to the Parties to the case before the Court. Equatorial Guinea believes it has presented a number of good reasons for the Court to adopt this position."

29. At the end of the oral observations submitted by it with respect to the subject-matter of the intervention in accordance with Article 85, paragraph 3, of the Rules of Court, Equatorial Guinea stated inter alia:

"We ask the Court not to delimit a maritime boundary between Cameroon and Nigeria in areas lying closer to Equatorial Guinea than to the coasts of the two Parties or to express any opinion which could prejudice our interests in the context of our maritime boundary negotiations with [p330] our neighbours . . . Safeguarding the interests of the third State in these proceedings means that the delimitation between Nigeria and Cameroon decided by the Court must necessarily remain to the north of the median line between Equatorial Guinea's Bioko Island and the mainland."

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30. Cameroon and Nigeria are States situated on the west coast of Africa. Their land boundary extends from Lake Chad in the north to the Bakassi Peninsula in the south. Their coastlines are adjacent and are washed by the waters of the Gulf of Guinea.
Four States border Lake Chad: Cameroon, Chad, Niger and Nigeria. The waters of the lake have varied greatly over time.

In its northern part, the land boundary between Cameroon and Nigeria passes through hot dry plains around Lake Chad, at an altitude of about 300 m. It then passes through mountains, cultivated high ground or pastures, watered by various rivers and streams. It then descends in stages to areas of savannah and forest until it reaches the sea.

The coastal region where the southern part of the land boundary ends is the area of the Bakassi Peninsula. This peninsula, situated in the hollow of the Gulf of Guinea, is bounded by the River Akwayafe to the west and by the Rio del Rey to the east. It is an amphibious environment, characterized by an abundance of water, fish stocks and mangrove vegetation. The Gulf of Guinea, which is concave in character at the level of the Cameroonian and Nigerian coastlines, is bounded by other States, in particular by Equatorial Guinea, whose Bioko Island lies opposite the Parties' coastlines.
**

31. The dispute between the Parties as regards their land boundary falls within an historical framework marked initially, in the nineteenth and early twentieth centuries, by the actions of the European Powers with a view to the partitioning of Africa, followed by changes in the status of the relevant territories under the League of Nations mandate system, then the United Nations trusteeships, and finally by the territories' accession to independence. This history is reflected in a number of conventions and treaties, diplomatic exchanges, certain administrative instruments, maps of the period and various documents, which have been provided to the Court by the Parties.
The delimitation of the Parties' maritime boundary is an issue of more recent origin, the history of which likewise involves various international instruments.

32. The Court will now give some particulars of the principal instruments which are relevant for purposes of determining the course of the [p331] land and maritime boundary between the Parties. It will later describe in detail and analyse certain of those instruments.

33. At the end of the nineteenth and the beginning of the twentieth centuries, various agreements were concluded by Germany, France and Great Britain to delimit the boundaries of their respective colonial territories. Thus the boundary between France and Great Britain was defined by the Convention between those two States Respecting the Delimitation of the Frontier between the British and French Possessions to the East of the Niger, signed at London on 29 May 1906 (hereinafter the "Franco-British Convention of 1906"), as supplemented by a Protocol of the same name dated 19 February 1910 (hereinafter the "Franco-British Protocol of 1910"). The Franco-German boundary was defined by the Convention between the French Republic and Germany for the Delimitation of the Colonies of French Congo and of Cameroon and French and German Spheres of Influence in the Region of Lake Chad, signed at Berlin on 15 March 1894, and by the Franco-German Convention Confirming the Protocol of 9 April 1908 Defining the Boundaries between the French Congo and Cameroon, signed at Berlin on 18 April 1908 (hereinafter the "Franco-German Convention of 1908"). The boundary between Great Britain and Germany was first defined by the Agreement between Great Britain and Germany respecting Boundaries in Africa, signed at Berlin on 15 November 1893, and supplemented by a further Agreement of 19 March 1906 respecting the Boundary between

British and German Territories from Yola to Lake Chad (hereinafter the "Anglo-German Agreement of 1906"). The southern part of the boundary was subsequently redefined by two Agreements concluded between Great Britain and Germany in 1913. The first of these Agreements, signed in London on 11 March 1913 (hereinafter, the "Anglo-German Agreement of 11 March 1913"), concerned "(1) The Settlement of the Frontier between Nigeria and the Cameroons, from Yola to the Sea and (2) The Regulation of Navigation on the Cross River" and covered some 1,100 km of boundary; the second, signed at Obokum on 12 April 1913 by Hans Detzner and W. V. Nugent representing Germany and Great Britain respectively (hereinafter the "Anglo-German Agreement of 12 April 1913"), concerned the Demarcation of the Anglo-German Boundary between Nigeria and the Cameroons from Yola to the Cross River and included eight accompanying maps.

34. At the end of the First World War, all the territories belonging to Germany in the region, extending from Lake Chad to the sea, were apportioned between France and Great Britain by the Treaty of Versailles and then placed under British or French mandate by agreement with the League of Nations. As a result it was necessary to define the limits separating the mandated territories. The first instrument drawn up for this purpose was the Franco-British Declaration signed on 10 July 1919 by Viscount Milner, the British Secretary of State for the Colonies, and Henry Simon, the French Minister for the Colonies (hereinafter the "Milner-Simon Declaration"). With a view to clarifying this initial instru-[p332]ment, on 29 December 1929 and 31 January 1930 Sir Graeme Thomson, Governor of the Colony and Protectorate of Nigeria, and Paul Marchand, commissaire de la Republique francaise au Cameroun, signed a further very detailed agreement (hereinafter the "Thomson-Marchand Declaration"). This Declaration was approved and incorporated in an Exchange of Notes dated 9 January 1931 between A. de Fleuriau, the French Ambassador in London, and Arthur Henderson, the British Foreign Minister (hereinafter the "Henderson-Fleuriau Exchange of Notes").

35. Following the Second World War, the British and French mandates over the Cameroons were replaced by United Nations trusteeship agreements. The trusteeship agreements for the British Cameroons and for the Cameroons under French administration were both approved by the General Assembly on 13 December 1946. These agreements referred to the line laid down by the Milner-Simon Declaration to describe the respective territories placed under the trusteeship of the two European Powers.

Pursuant to a decision taken by Great Britain on 2 August 1946 regarding the territories then under British mandate, namely the 1946 Order in Council Providing for the Administration of the Nigeria Protectorate and Cameroons (hereinafter the "1946 Order in Council"), the regions placed under its trusteeship were divided into two for administrative purposes, thus giving birth to the Northern Cameroons and the Southern Cameroons. The 1946 Order in Council contained a series of provisions describing the line separating these two regions and provided that they would be administered from Nigeria.

On 1 January 1960 the French Cameroons acceded to independence on the basis of the boundaries inherited from the previous period. Nigeria did likewise on 1 October 1960.

In accordance with United Nations directives, the British Government organized separate plebiscites in the Northern and Southern Cameroons, "in order to ascertain the wishes of the inhabitants . . . concerning their future" (General Assembly resolution 1350 (XIII) of 13 March 1959). In those plebiscites, held on 11 and 12 February 1961, the population of the Northern Cameroons "decided to achieve independence by joining the independent Federation of Nigeria", whereas the population of the Southern Cameroons "decided to achieve independence by joining the independent Republic of Cameroon" (General Assembly resolution 1608 (XV) of 21 April 1961).

36. As regards the frontier in Lake Chad, on 22 May 1964 the four States bordering the lake signed a Convention establishing the Lake Chad Basin Commission (hereinafter the "LCBC"). As the Court recalled in its Judgment of 11 June 1998 (Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998, pp. 304-305, paras. 64-65), the functions of the LCBC are laid down in Article IX of its Statute, as annexed to the [p333] 1964 Convention. Under the terms of this provision, the LCBC inter alia prepares "general regulations which will permit the full application of the principles set forth in the present Convention and its annexed Statute, and [to] ensure their effective application". It exercises various powers with a view to co-ordinating action by the member States regarding the use of the waters of the basin. According to Article IX, paragraph (g), one of its functions is "to examine complaints and to promote the settlement of disputes". Over the years the member States of the LCBC have conferred certain additional powers on it. Thus, following incidents in 1983 among riparian States in the Lake Chad area, an extraordinary meeting of the LCBC was called from 21 to 23 July 1983 in Lagos (Nigeria), on the initiative of the Heads of State concerned, in order to give it the task of dealing with certain boundary and security issues. The LCBC has met regularly since to discuss these issues.

37. The question of the boundary in Bakassi and of sovereignty over the peninsula also involves specific instruments.

On 10 September 1884 Great Britain and the Kings and Chiefs of Old Calabar concluded a Treaty of Protection (hereinafter the "1884 Treaty"). Under this Treaty, Great Britain undertook to extend its protection to these Kings and Chiefs, who in turn agreed and promised inter alia to refrain from entering into any agreements or treaties with foreign nations or Powers without the prior approval of the British Government.

Shortly before the First World War, the British Government concluded two agreements with Germany, dated respectively 11 March and 12 April 1913 (see paragraph 33 above), whose objects included "the Settlement of the Frontier between Nigeria and the Cameroons, from Yola to the Sea" and which placed the Bakassi Peninsula in German territory.

38. The maritime boundary between Cameroon and Nigeria was not the subject of negotiations until relatively recently. Thus, apart from the Anglo-German Agreements of 11 March and 12 April 1913 in so far as they refer to the endpoint of the land boundary on the coast, all the legal instruments concerning the maritime boundary between Cameroon and Nigeria post-date the independence of those two States.
In this regard, the two countries agreed to establish a "joint boundary commission", which on 14 August 1970, at the conclusion of a meeting held in Yaounde (Cameroon), adopted a declaration (hereinafter the "Yaounde I Declaration") whereby Cameroon and Nigeria decided that "the delimitation of the boundaries between the two countries [would] be carried out in three stages", the first of these being "the delimitation of the maritime boundary".

The work of that commission led to a second declaration, done at Yaounde on 4 April 1971 (hereinafter the "Yaounde II Declaration"), [p334] whereby the Heads of State of the two countries agreed to regard as their maritime boundary, "as far as the 3-nautical-mile limit", a line running from a point 1 to a point 12, which they had drawn and signed on British Admiralty Chart No. 3433 annexed to that declaration.

Four years later, on 1 June 1975, the Heads of State of Cameroon and Nigeria signed an agreement at Maroua (Cameroon) for the partial delimitation of the maritime boundary

between the two States (hereinafter the "Maroua Declaration"). By this declaration they agreed to extend the line of their maritime boundary, and accordingly adopted a boundary line defined by a series of points running from point 12 as referred to above to a point designated as G. British Admiralty Chart No. 3433, marked up accordingly, was likewise annexed to that Declaration.

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39. Having described the geographical and historical background to the present dispute, the Court will now address the delimitation of the different sectors of the boundary between Cameroon and Nigeria. To do so, the Court will begin by defining the boundary line in the Lake Chad area. It will then determine the line from Lake Chad to the Bakassi Peninsula, before examining the question of the boundary in Bakassi and of sovereignty over the peninsula. The Court will then address the question of the delimitation between the two States' respective maritime areas. The last part of the Judgment will be devoted to the issues of State responsibility raised by the Parties.

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40. The Court will first address the issue of the delimitation of the boundary in the Lake Chad area. In its final submissions Cameroon requests the Court to adjudge and declare that in this area the boundary between the two Parties takes the following course:

"from the point designated by the co-ordinates 13 [degree] 05' N and 14 [degree] 05' E, the boundary follows a straight line as far as the mouth of the Ebeji, situated at the point located at the co-ordinates 12 [degree] 32' 17" N and 14 [degree] 12' 12" E, as defined within the framework of the LCBC and constituting an authoritative interpretation of the Milner-Simon Declaration of 10 July 1919 and the Thomson-Marchand Declarations of 29 December 1929 and 31 January 1930, as confirmed by the Exchange of Letters of 9 January 1931; in the alternative, the mouth of the Ebeji is situated at the point located at the co-ordinates 12 [degree] 31' 12" N and 14 [degree] 11' 48" E".

In its final submissions, Nigeria, for its part, requests the Court to adjudge and declare: [p335]

"(a) that the proposed delimitation and demarcation under the auspices of the Lake Chad Basin Commission, not having been accepted by Nigeria, is not binding upon it;

(b) that sovereignty over the areas in Lake Chad defined in paragraph 5.9 of Nigeria's Rejoinder and depicted in figs. 5.2 and 5.3 facing page 242 (and including the Nigerian settlements identified in paragraph 4.1 of Nigeria's Rejoinder) is vested in the Federal Republic of Nigeria;

(c) that in any event the process which has taken place within the framework of the Lake Chad Basin Commission, and which was intended to lead to an overall delimitation and demarcation of boundaries on Lake Chad, is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon".

Since Cameroon and Nigeria disagree on the existence of a definitive delimitation in the Lake Chad area, the Court will first examine whether the 1919 Declaration and the subsequent instruments which bear on delimitation in this area have established a frontier that is binding on the Parties. The Court will subsequently address the argument of Nigeria

based on the historical consolidation of its claimed title.

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41. In support of its position, Cameroon argues generally that its boundary with Nigeria in Lake Chad was the subject of a conventional delimitation between France and the United Kingdom, the former colonial Powers, and of a demarcation under the auspices of the LCBC.

According to Cameroon, the boundary line in Lake Chad was established by the Milner-Simon Declaration of 1919. Article 1 of the "Description of the Franco-British frontier, marked on the [Moisel] map of the Cameroons, scale 1/300,000", annexed to that Declaration, stated that the frontier would start "from the meeting-point of the three old British, French and German frontiers situated in Lake Chad in latitude 13 [degree]05'N and in approximately longitude 14 [degree] 05' E of Greenwich" and that from there the frontier would be determined by "[a] straight line to the mouth of the Ebeji". The boundary line established by this Declaration was rendered more precise by the Thomson-Marchand Declaration of 1929-1930, the text of which was subsequently incorporated in the Henderson-Fleuriau Exchange of Notes of 1931. Accordingly, Cameroon claims that the boundary in Lake Chad was delimited by this latter instrument.

42. Cameroon also cites certain maps, which are claimed to confirm the course of the conventionally delimited boundary. In particular, Cameroon cites the Moisel map annexed to the Milner-Simon Declaration, the [p336] relevant sheet of which was published in 1912, and the map appended to the Thomson-Marchand Declaration, which, it argues, constitutes the official map annexed to the Henderson-Fleuriau Exchange of Notes of 1931 and has thus acquired the value of a "territorial title". Cameroon points out that these maps have "never been the subject of the slightest representation or objection from the United Kingdom or the Federal Republic of Nigeria" and that "there exists no map, not even a Nigerian one, showing a boundary line as claimed by Nigeria in Lake Chad".

Cameroon contends that the line of the boundary was expressly incorporated in the Trusteeship Agreement for the Territory of Cameroon under French administration approved by the General Assembly of the United Nations on 13 December 1946 and was subsequently "transferred to Cameroon and Nigeria on independence by application of the principle of uti possidetis".

43. Cameroon further contends that changes in the physical characteristics of Lake Chad and of the Ebeji River cannot affect the course of the boundary line, for, "by opting in this sector of the boundary to apply the technique of geographical co-ordinates joined by a straight line, the contracting parties protected the boundary line against natural variation in the configuration of the lake and its tributary river"; and that this desire to achieve a stable, definitive boundary despite hydrological variations is, moreover, borne out by prior agreements relative to the status of the islands in Lake Chad (Franco-British Convention of 1906 and Franco-German Convention of 1908). In any event, according to Cameroon, under Article 62, paragraph 2, of the Vienna Convention of 23 May 1969 on the Law of Treaties, a fundamental change of circumstances is not applicable to a treaty establishing a boundary.

44. Nor, in Cameroon's view, can the conventional delimitation in Lake Chad be called into question because there has been no effective demarcation of the boundary on the ground. Cameroon argues in that respect that Nigeria

"has, in principle, recognized the international boundaries in Lake Chad that were

established prior to its independence, and the matter of the determination of those lake frontiers had never been addressed prior to the border incidents that occurred in the Lake between Nigeria and Chad from April to June 1983".

Cameroon recalls that, following those incidents,

"the Heads of State of the Member countries of the LCBC approved a proposal aimed at the convening, at the earliest possible time, of a meeting of the Commission at ministerial level, with a view to setting up a joint technical committee to be entrusted with the delimitation of the international boundaries between the four States which between them share Lake Chad",

and that the LCBC accordingly held an Extraordinary Session from 21 to 23 July 1983 in Lagos at which two technical sub-committees were [p337] formed: "a sub-committee responsible for border delimitation and a sub-committee responsible for security". Cameroon further states that "the terminology employed by the parties [was] imprecise in places, as happens in such circumstances", but that "an examination of the mandate given to the Commissioners and experts charged with the operation leaves no room for doubt": it was "confined to the demarcation of the boundary, to the exclusion of any delimitation operation".

As evidence of this Cameroon cites the fact that the sub-committee responsible for border delimitation retained as working documents various bilateral conventions and agreements concluded between Germany, France and the United Kingdom between 1906 and 1931, including the Henderson-Fleuriau Exchange of Notes of 1931. Cameroon points out that the delimitation instruments thus relied on "were never disputed by the representatives of Nigeria throughout the proceedings, even at the highest level, in particular during the summits of Heads of State and Government", that "the demarcation of boundaries in Lake Chad has been the subject of significant work over a good ten years" and that "in this regard the riparian States of Lake Chad have co-operated at all levels: experts, Commissioners, Ministers, Heads of States -- without the slightest reservation being raised as to the quality of work accomplished over a very substantial period". Cameroon emphasizes that, inter alia, the LCBC defined more precisely the co-ordinates of the tripoint in Lake Chad (which were fixed at 13 [degree] 05' 00"0001 latitude North and 14 [degree] 04' 59"9999 longitude East) and also defined those of the mouth of the Ebeji, as described in the Henderson-Fleuriau Exchange of Notes (fixing them at 12 [degree] 32' 17"4 North and 14 [degree] 12' 11 "7 East). It further states that those co-ordinates were approved by the national Commissioners of Cameroon, Chad, Niger and Nigeria on 2 December 1988.

According to Cameroon, the overall validity of the demarcation works carried out under the auspices of the LCBC is to be addressed in the following terms:

"The demarcation operation proper was at certain points criticized by the Nigerian representatives. However, those representatives ultimately declared themselves satisfied with the accuracy of these operations. All the works were approved unanimously by the experts, the Commissioners and the Heads of State themselves. At no time did the Nigerian representatives call into question the conventional delimitation or the instruments which decided it. It was only at the ratification stage that Nigeria made its opposition known."

Cameroon contends that Nigeria's refusal to ratify the result of the boundary demarcation work in Lake Chad in no way impugns the validity of the previous delimitation instruments; it simply demonstrates how far Nigeria has drawn back from the demarcation operation carried out by the LCBC.

45. For its part, Nigeria contends that the Lake Chad area has never been the subject of any form of delimitation. It argues that the Thomson-[p338] Marchand Declaration of 1929-1930 did not involve a final determination of the Anglo-French boundary in regard to Lake Chad but provided for delimitation by a boundary commission. Nigeria further points out that, according to the Note signed by the British Secretary of State, Henderson, the Thomson-Marchand Declaration "[was] only the result of a preliminary survey" and that "the actual delimitation [could] now be entrusted to the boundary commission envisaged for this purpose by Article 1 of the Mandate". In Nigeria's opinion, it was thus clearly apparent from the 1931 Henderson-Fleuriau Exchange of Notes that in relation to Lake Chad, by contrast with other parts of the land boundary between the two Parties, these arrangements were "essentially procedural and programmatic" and it was only after the delimitation work had been carried out -- which was not the case for Lake Chad -- that there would be agreement.
According to Nigeria, the use in Article 1 of the "Description of the Franco-British frontier, marked on the [Moisel] map of the Cameroons, scale 1/300,000", annexed to the 1919 Milner-Simon Declaration, of the word "approximately", in relation to 14 [degree] 05' E, together with the fact that the mouth of the Ebeji has shifted through time, meant that the frontier in this area was still not fully delimited. Subsequent instruments did not, according to Nigeria, rectify these shortcomings; and the absence of a fully delimited frontier was one of several reasons why there was no demarcation of the frontier agreed to until this very day.

46. Nigeria further contends that the work of the LCBC involved both delimitation and demarcation of the boundary within Lake Chad and that it did not produce a result which was final and binding on Nigeria in the absence of a ratification of the documents relating to that work.

47. In sum, Cameroon contends that the boundary in the Lake Chad area runs from the point designated by the co-ordinates 13 [degree] 05' N and 14 [degree] 05' E in a straight line to the mouth of the Ebeji. It regards the governing instruments as the Milner-Simon Declaration of 1919, and the Thomson-Marchand Declaration of 1929-1930, as incorporated in the 1931 Henderson-Fleuriau Exchange of Notes. Nigeria, on the other hand, argues that there is not a fully delimited boundary in the Lake Chad area and that, through historical consolidation of title and the acquiescence of Cameroon, Nigeria has title over the areas, including 33 named settlements, depicted in figures 5.2 and 5.3 facing page 242 of its Rejoinder.

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48. The Court recalls that in the late nineteenth and early twentieth centuries the colonial boundaries in the Lake Chad area had been the subject of a series of bilateral agreements entered into between Germany, [p339] France and Great Britain (see paragraph 33 above). After the First World War a strip of territory to the east of the western frontier of the former German Cameroon became the British Mandate over the Cameroons. It was thus necessary to re-establish a boundary, commencing in the lake itself, between the newly created British and French mandates. This was achieved through the Milner-Simon Declaration of 1919, which has the status of an international agreement. By this Declaration, France and Great Britain agreed:

"to determine the frontier, separating the territories of the Cameroons placed respectively under the authority of their Governments, as it is traced on the map Moisel 1:300,000, annexed to the present declaration and defined in the description in three articles also annexed hereto".

No definite tripoint in Lake Chad could be determined from previous instruments, on the basis of which it might be located either at 13 [degree] 00' or at 13 [degree] 05' latitude north, whilst the meridian of longitude was described simply as situated "35' east of the centre of Kukawa". These aspects were clarified and rendered more precise by the Milner-Simon Declaration, which provided:

"The frontier will start from the meeting-point of the three old British, French and German frontiers situated in Lake Chad in latitude 13 [degree] 05' N and in approximately longitude 14 [degree] 05' E of Greenwich.
Thence the frontier would be determined as follows:

1. A straight line to the mouth of the Ebeji;

....."
The Moisel 1:300,000 map was stated to be the map "to which reference is made in the description of the frontier" and was annexed to the Declaration; a further map of the Cameroons, scale 1:2,000,000, was attached "to illustrate the description of the . . . frontier".

49. Article 1 of the Mandate conferred on Great Britain by the League of Nations confirmed the line specified in the Milner-Simon Declaration. It provided:

"The territory for which a Mandate is conferred upon His Britannic Majesty comprises that part of the Cameroons which lies to the west of the line laid down in the Declaration signed on the 10th July, 1919, of which a copy is annexed hereto.

This line may, however, be slightly modified by mutual agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interests of the inhabitants or by reason of any inaccuracies in the map, Moisel 1:300,000, annexed to the Declaration, to adhere strictly to the line laid down therein. [p340]

The delimitation on the spot of this line shall be carried out in accordance with the provisions of the said Declaration.

The final report of the Mixed Commission shall give the exact description of the boundary line as traced on the spot; maps signed by the Commissioners shall be annexed to the report . . . "

The Court observes that the entitlement, by mutual agreement, to make modest alterations to the line, either by reason of any shown inaccuracies of the Moisel map or of the interests of the inhabitants, was already provided for in the Milner-Simon Declaration. This, together with the line itself, was approved by the Council of the League of Nations. These provisions in no way suggest a frontier line that is not fully delimited. The Court further considers that "delimitation on the spot of this line ... in accordance with the provisions of the said Declaration" is a clear reference to demarcation notwithstanding the terminology chosen. Also carried forward from the Milner-Simon Declaration was the idea of a boundary commission. The anticipated detailed demarcation by this Commission equally presupposes a frontier already regarded as essentially delimited.

50. Although the two Mandatory Powers did not in fact "delimit on the spot" in Lake Chad or the vicinity, they did continue in various sectors of the frontier to make the agreement as

detailed as possible. Thus the Thomson-Marchand Declaration of 1929-1930 described the frontier separating the two mandated territories in considerably more detail than hitherto. The Declaration stated that "the undersigned . . . [had] agreed to determine the frontier, separating [the said] territories, as . . . traced on the map annexed to [that] declaration and defined in the description also annexed thereto". Some 138 clauses were specified. So far as the Lake Chad area was concerned the Declaration affirmed that the frontier began at the tripoint of the old British-French-German frontiers, 13 [degree] 05' latitude north and approximately 14 [degree] 05' longitude east. Then the frontier went in a straight line to the mouth of the Ebeji; and it then followed the course of that river, bearing on its upper part the names Lewejil, Labejed, Ngalarem, Lebeit and Ngada, as far as the confluence of the Rivers Kalia and Lebaiit.

This Declaration was approved and incorporated in the Henderson-Fleuriau Exchange of Notes of 1931 (see paragraph 34 above). As Fleuriau put it, the Declaration "is intended to describe the line to be followed by the Delimitation Commission, more exactly than was done in the Milner-Simon Declaration of 1919". The Court observes that this would facilitate the envisaged demarcation task given to the Commission. Fleuriau conceded that the Thomson-Marchand Declaration was "a preliminary survey only", thus implying that even more detail might one day [p341] be agreed between the parties. That the frontier was nonetheless in fact now specified in sufficient detail was affirmed by Henderson's Note in reply to Fleuriau, stating that the line described in the 1929-1930 Declaration "[did] in substance define the frontier in question".

That this Declaration and Exchange of Notes were preliminary to the future task of demarcation by a boundary commission does not mean, as Nigeria claims, that the 1931 Agreement was merely "programmatic" in nature.

The Thomson-Marchand Declaration, as approved and incorporated in the Henderson-Fleuriau Exchange of Notes, has the status of an international agreement. The Court acknowledges that the Declaration does have some technical imperfections and that certain details remained to be specified. However, it finds that the Declaration provided for a delimitation that was sufficient in general for demarcation.

51. Nigeria has argued that the boundary in this area had nonetheless remained undetermined for two important reasons: in the first place, the reference to the longitude as "approximately 14 [degree] 05' east" of Greenwich had not been made more precise; second, the meaning to be given to the words "the mouth of the Ebeji" was unclear in the light of the changes to the course of the river and the shrinking dimensions of the lake.

The Court observes that specific reference to the Thomson-Marchand Declaration of 1929-1930 and to the 1931 Henderson-Fleuriau Exchange of Notes was made in the Trusteeship Agreements for the territory of the Cameroons under British Administration, and for the territory of Cameroon under French Administration, each approved on 13 December 1946. Although the language of each is not entirely identical, they each take the boundary as being defined by the Milner-Simon Declaration "and determined more exactly" in the Thomson-Marchand Declaration, as incorporated in the Henderson-Fleuriau Exchange of Notes.

The Court notes that, whereas the Mandate had reserved to the two Mandatory Powers the right of joint minor modification, in the interests of the inhabitants or because of inaccuracies in the Moisel map attached to the Milner-Simon Declaration, under the Trusteeship Agreements that right was preserved only on the former ground. The implication is that any problems associated with inaccuracies of the Moisel 1:300,000 map were by 1946 regarded as having been resolved.

52. Despite the uncertainties in regard to the longitudinal reading of the tripoint in Lake Chad and the location of the mouth of the Ebeji, and while no demarcation had taken place in Lake Chad before the independence of Nigeria and of Cameroon, the Court is of the view that the governing instruments show that, certainly by 1931, the frontier in the Lake Chad area was indeed delimited and agreed by Great Britain and France.

Moreover, the Court cannot fail to observe that Nigeria was consulted during the negotiations for its independence, and again during the [p342]plebiscites that were to determine the future of the populations of the Northern and Southern Cameroons (see paragraph 35 above). At no time did it suggest, either so far as the Lake Chad area was concerned, or elsewhere, that the frontiers there remained to be delimited.

53. The Court is further of the view that the work of the LCBC, from 1983 to 1991, affirms such an interpretation.

It recalls that, as a consequence of incidents occurring in the Lake Chad area in 1983, the Heads of State of the member States of the LCBC had convened an extraordinary session of the Commission. The report of that session in 1983 indicates that there were two topics listed on the agenda: "border delimitation problems" and "security matters". This did not, however, signify an understanding by the members that the Commission's work was to make proposals on a non-delimited frontier, as is shown by the report itself. All substantive aspects contained within it refer to these agenda items as "demarcation" and "security". Indeed, the generalized agenda for the first of the two Sub-Committees which was established was entitled "Agenda for the Committee on Demarcation". There was envisaged an exchange of information and relevant documents on the boundary (item 1) and the establishment of a Joint Demarcation Team (item 3). Equally, the agenda for the Committee on Security included an item on the security of the demarcation team.

The Court observes that the following year, in November 1984, the "Sub-Commission Responsible for the Demarcation of Borders" agreed to adopt, as working documents, the various bilateral agreements and instruments which had been concluded in the years 1906 to 1931 between Germany, France and the United Kingdom. These were identified as the Franco-British Convention of 1906; the Franco-German Convention of 1908; the Franco-British Protocol of 1910 and the Henderson-Fleuriau Exchange of Notes of 1931. The Sub-Commission also addressed the following matters: "the actual demarcation of the borders", "aerial photography of the area", "ground survey and mapping".

The report submitted in 1985 by the current Chairman of the Council of Ministers of the LCBC to the Fifth Conference of Heads of State clearly indicated that the "border problems" arose from the absence of "demarcation", and referred expressly to the "technical specifications for the border demarcation" drawn up by the Sub-Commission. The Sixth Conference of Heads of State, in 1987, took a decision on "Border Demarcation", whereby the member States agreed to "finance the cost of the demarcation exercise". That decision further provided that the work would start "in March 1988". At a meeting held in March 1988 the experts of the LCBC member States accordingly adopted three documents concerning respectively: 1. "Technical Specifications for boundary demarcation, Aerial Photogrammetry and Topographical Mapping in the Lake Chad at a scale of 1/50,000"; 2. "General Condi-[p343]]tions of the International Invitation for Tenders"; 3. "Applications for Tenders".

54. The Court is unable to accept Nigeria's contention that the LCBC was from 1983 to 1991 engaged in both delimitation and demarcation. The records show that, although the term "delimitation" was used from time to time, in introducing clauses or in agenda

headings, it was the term "demarcation" that was most frequently used. Moreover, the nature of the work was that of demarcation.

The Court notes further that the LCBC entrusted to the Institut geographique national-France International (IGN-FI) the following tasks, specified in Article 5 of the Contract concluded with IGN-FI, as approved on 26 May 1988:

"(i) Reconnaissance and marking out of the 21 points approached and the 7 boundary limit points.

(ii) Placing of 62 intermediate markers: at a maximum of 5 km between them.

(iii) Demarcation of the coordinates of the boundary markers and intermediate markers."

For the performance of this task there was passed to IGN-FI the "texts and documents concerning the delimitation of the boundaries in Lake Chad" (Contract, Art. 7) -- namely, the legal instruments already listed in the 1984 Report of the Sub-Committee, with the addition of the Minutes signed on 2 March 1988 concerning the position of the northern limit of the border between Chad and Niger. IGN-FI completed its demarcation work in 1990, having set up two principal beacons at each end of the border between Cameroon and Nigeria in Lake Chad (that is, at the tripoint and at the mouth of the Ebeji), as well as 13 intermediate beacons. The Report of the Marking Out of the Boundary completed by IGN-FI was then signed by the experts of each member State of the LCBC. During their Seventh Summit in February 1990, the Heads of State and Governments of the LCBC "took note of the satisfactory achievement" and "directed that the Commissioners should get the appropriate documents ready within three months and were authorized to sign on behalf of their countries". However, Nigeria declined to sign the Report, expressing dissatisfaction over inter alia, beacon-numbering, the non-demolition of a beacon, and the non-stabilization of GPS and Azimuth stations. These items were clearly matters of demarcation. Shortly thereafter, the national experts ordered additional beaconing work to complete the work of IGN-FI. After several attempts, the work of the LCBC was finally completed and, at their Eighth Summit on 23 March 1994, the Heads of State of the LCBC decided to approve the final demarcation report as signed by the national experts and the executive secretariat of the LCBC and referred to in the Minutes of the Summit as "the technical document on the demarcation of the international bound-[p344]aries of Member States in Lake Chad". Those Minutes specified that "each country should adopt the document in accordance with its national laws", and that "the document should be signed latest by the next summit of the Commission". Nigeria has not done so. Cameroon accordingly acknowledges that it is not an instrument which binds Nigeria.

55. The Court observes that the LCBC had engaged for seven years in a technical exercise of demarcation, on the basis of instruments that were agreed to be the instruments delimiting the frontier in Lake Chad. The issues of the location of the mouth of the Ebeji, and the designation of the tripoint longitude in terms other than "approximate", were assigned to the LCBC. There is no indication that Nigeria regarded these issues as so grave that the frontier was to be viewed as "not delimited" by the designated instruments. The Court notes that, as regards the land boundary southwards from the mouth of the Ebeji, Nigeria accepts that the designated instruments defined the boundary, but that certain uncertainties and defects should be confirmed and cured. In the view of the Court, Nigeria followed this same approach in participating in the demarcation work of the LCBC from 1984 to 1990.

The Court agrees with the Parties that Nigeria is not bound by the Marking Out Report. Nonetheless, this finding of law implies neither that the governing legal instruments on

delimitation were put in question, nor that Nigeria did not continue to be bound by them. In sum, the Court finds that the Milner-Simon Declaration of 1919, as well as the 1929-1930 Thomson-Marchand Declaration as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931, delimit the boundary between Cameroon and Nigeria in the Lake Chad area. The map attached by the parties to the Exchange of Notes is to be regarded as an agreed clarification of the Moisel map. The Lake Chad border area is thus delimited, notwithstanding that there are two questions that remain to be examined by the Court, namely the precise location of the longitudinal co-ordinate of the Cameroon-Nigeria-Chad tripoint in Lake Chad and the question of the mouth of the Ebeji.

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56. Cameroon, while accepting that the Report of the Marking Out of the International Boundaries in the Lake Chad is not binding on Nigeria, nonetheless asks the Court to find that the proposals of the LCBC as regards the tripoint and the mouth of the Ebeji "constitut[e] an authoritative interpretation of the Milner-Simon Declaration and the Thomson-Marchand Declaration, as confirmed by the Exchange of Letters of 9 January 1931".

The Court cannot accept this request. At no time was the LCBC asked to act by the successors to those instruments as their agent in reaching an [p345] authoritative interpretation of them. Moreover, the very fact that the outcome of the technical demarcation work was agreed in March 1994 to require adoption under national laws indicates that it was in no position to engage in "authoritative interpretation" sua sponte.

57. This does not, however, preclude the Court, when called upon to specify the frontier, from finding work that has been done by others to be useful. According to the governing instruments, the co-ordinates of the tripoint in Lake Chad are latitude 13 [degree] 05'north and "approximately" longitude 14 [degree] 05' east. The Court has examined the Moisel map annexed to the Milner-Simon Declaration of 1919 and the map attached to the Henderson-Fleuriau Exchange of Notes of 1931. Following that examination, it reaches the same conclusions as the LCBC and considers that the longitudinal co-ordinate of the tripoint is situated at 14 [degree] 04' 59"9999 longitude east, rather than at "approximately" 14 [degree] 05'. The minimal difference between these two specifications confirms, moreover, that this never presented an issue so significant as to leave the frontier in this area "undetermined".

58. As for the specification of the frontier as it passes in a straight line from the tripoint to the mouth of the Ebeji, various solutions have been proposed by the Parties. This ending point of the straight line running from the tripoint was never described in the delimiting instruments by reference to co-ordinates. The map to illustrate the Anglo-French Declaration defining the Cameroons Boundary, annexed to the Exchange of Notes of 1931 probably shortly after their conclusion, shows a single stream of the Ebeji having its mouth on the lake just beyond Wulgo. The 1931 map states: "Note: The extent of the water in Lake Chad is variable and indeterminate."

Certainly since 1931 the pattern has generally been one of marked recession of the waters. The lake today appears to be significantly reduced from its size at the time of the Henderson-Fleuriau Exchange of Notes. The River Ebeji today has no single mouth through which it discharges its waters into the lake. Rather, it divides into two channels as it approaches the lake. On the basis of the information the Parties have made available to the Court, it appears that the eastern channel terminates in water that is short of the present Lake Chad. The western channel seems to terminate in a muddy area close to the present water line.

Cameroon's position is that the mouth of the Ebeji should be specified by the Court as lying on the co-ordinates determined for that purpose by the LCBC, that being an "authentic interpretation" of the Declaration and 1931 Exchanges. The Court has already indicated why the Report of the Marking Out of Boundaries by the LCBC is not to be so regarded. Cameroon asks the Court to find that "in the alternative, the mouth of the Ebeji is situated at the point located at the co-ordinates 12 [degree] 31'12"N and 14 [degree] 11' 48" E". Thus Cameroon prefers, in its alternative argument, the "mouth" of the western channel, and bases itself on tests adduced by [p346] this Court in the case concerning Kasikili/Sedudu Island (Botswana/Namibia) (I.C.J. Reports 1999, pp. 1064-1072, paras. 30-40) for identifying "the main channel". In particular, it refers to greater flow and depth of this channel. Nigeria, on the other hand, requests the Court to prefer the mouth of the longer, eastern channel as "the mouth" of the River Ebeji, finding support for that proposition in the Palena arbitration of 9 December 1966, which spoke of the importance of length, size of drainage area, and discharge (38 International Law Reports (ILR), pp. 93-95).

59. The Court notes that the text of the Thomson-Marchand Declaration of 1929-1930, incorporated in 1931 in the Henderson-Fleuriau Exchange of Notes, refers to "the mouth of the Ebeji". Thus the task of the Court is not, as in the Kasikili/Sedudu Island case, to determine the "main channel" of the river but to identify its "mouth". In order to interpret this expression, the Court must seek to ascertain the intention of the parties at the time. The text of the above instruments as well as the Moisel map annexed to the Milner-Simon Declaration and the map attached to the Henderson-Fleuriau Exchange of Notes show that the parties only envisaged one mouth.
The Court notes that the co-ordinates, as calculated on the two maps, for the mouth of the Ebeji in the area just north of the site indicated as that of Wulgo are strikingly similar. Moreover these co-ordinates are identical with those used by the LCBC when, in reliance on those same maps, it sought to locate the mouth of the Ebeji as it was understood by the parties in 1931. The point there identified is north both of the "mouth" suggested by Cameroon for the western channel in its alternative argument and of the "mouth" proposed by Nigeria for the eastern channel.

60. On the basis of the above factors, the Court concludes that the mouth of the River Ebeji, as referred to in the instruments confirmed in the Henderson-Fleuriau Exchange of Notes of 1931, lies at 14 [degree] 12' 12" longitude east and 12 [degree] 32' 17" latitude north.

61. From this point the frontier must run in a straight line to the point where the River Ebeji bifurcates into two branches, the Parties being in agreement that that point lies on the boundary. The geographical co-ordinates of that point are 14 [degree] 12' 03" longitude east and 12 [degree] 30' 14" latitude north (see below, p. 50, sketch-map No. 1).

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[p347]

Legend of Sketch-Maps Nos. 1-2 and 4-12

[p348]

Sketch-Map No. 1 The Mouth of the Ebeji

62. The Court turns now to Nigeria's claim based on its presence in certain areas of Lake

Chad. Nigeria has asked the Court to adjudge and declare that [p349]

"the process which has taken place within the framework of the Lake Chad Basin Commission, and which was intended to lead to an overall delimitation and demarcation of boundaries on Lake Chad, is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon".

Thus Nigeria claims sovereignty over areas in Lake Chad which include certain named villages. These villages, according to the nomenclature used by Nigeria, are the following: Aisa Kura, Ba shakka, Chika'a, Darak, Darak Gana, Doron Liman, Doron Mallam (Doro Kirta), Dororoya, Fagge, Garin Wanzam, Gorea Changi, Gorea Gutun, Jribrillaram, Kafuram, Kamunna, Kanumburi, Karakaya, Kasuram Mareya, Katti Kime, Kirta Wulgo, Koloram, Logon Labi, Loko Naira, Mukdala, Murdas, Naga'a, Naira, Nimeri, Njia Buniba, Ramin Dorinna, Sabon Tumbu, Sagir and Sokotoram. Nigeria explains that these villages have been established either on what is now the dried up lake bed, or on islands which are surrounded by water perennially or on locations which are islands in the wet season only.

Nigeria contends that its claim rests on three bases, which each apply both individually and jointly and one of which would be sufficient on its own:

"(1) long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title;

(2) effective administration by Nigeria, acting as sovereign and an absence of protest; and

(3) manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over Darak and the associated Lake Chad villages".

Among the components of the historical consolidation of its title over the disputed areas, Nigeria cites: (1) the attitude and affiliations of the population of Darak and the other Lake Chad villages, the Nigerian nationality of the inhabitants of those villages; (2) the existence of historical links with Nigeria in the area, and in particular the maintenance of the system of traditional chiefs and the role of the Shehu of Borno; (3) the exercise of authority by the traditional chiefs, which is claimed to be still an important element within the State structure of modern Nigeria; (4) the long settlement of Nigerian nationals in the area; and (5) the peaceful administration of the disputed villages by the Federal Government of Nigeria and the State of Borno.

Nigeria further contends that Cameroon's evidence of its State activities in the Lake Chad area has serious flaws; in particular, it contends that the greater part of that evidence relates only to the years 1982 to 1988, whereas the evidence regarding Nigerian activities covers a substantially longer period. Moreover, Cameroon supplied no evidence in [p350] regard to a substantial number of the villages claimed by Nigeria. Nigeria further notes that "many of the documents produced on behalf of Cameroon are entirely programmatic in content, involving the planning of census tours and so forth, in the absence of evidence that the events actually occurred". Nigeria further points out that any consideration of Cameroon's evidence regarding its State activities is bound to take account of the fact that it was only in 1994 that Cameroon first protested against the Nigerian administration of the villages, and that this silence on the part of Cameroon is of particular significance in light of the fact that Nigeria's State activities were entirely open and visible to all.

Finally, Nigeria contends that Cameroon acquiesced in the peaceful exercise of Nigerian

sovereignty over the disputed areas and that that acquiescence constitutes a major element in the process of historical consolidation of title. It claims that Cameroon's acquiescence in Nigeria's sovereign activities had a triple role. The first was the role that it played alongside the other elements of historical consolidation. Its second, and independent, role was that of confirming a title on the basis of the peaceful possession of the territory in dispute, that is to say, the effective administration of the Lake Chad villages by Nigeria, acting as sovereign, together with an absence of protest on the part of Cameroon. Thirdly, Nigeria contends that acquiescence may be characterized as the main component of title, that is, providing the essence and very foundation of title rather than a confirmation of a title necessarily anterior to and independent of the process of acquiescence. There can be no doubt, according to Nigeria, that in appropriate conditions a tribunal can properly recognize a title based on tacit consent or acquiescence.

As evidence of Cameroon's acquiescence in the exercise of Nigerian sovereignty over the disputed areas, Nigeria relies in particular on the fact that the settlement of these villages by Nigerian nationals openly carrying on peaceful activities, and Nigeria's peaceful administration of those villages, aroused no protest of any kind from Cameroon before April 1994, and that Cameroon's armed incursions in 1987, which disturbed the Nigerian administrative status quo and were repulsed by the Nigerian villagers and security forces, did not result in any claim to the area by Cameroon.

63. For its part, Cameroon contends that, as the holder of a conventional territorial title to the disputed areas, it does not have to demonstrate the effective exercise of its sovereignty over those areas, since a valid conventional title prevails over any effectivites to the contrary. Hence, no form of historical consolidation can prevail over a conventional territorial title in the absence of clear consent on the part of the holder of that title to the cession of part of its territory. Cameroon is [p351] accordingly only asserting effectivites as a subsidiary ground of claim, "an auxiliary means of support for [its] conventional titles". Thus, it contends that it has exercised its sovereignty in accordance with international law by peacefully administering the areas claimed by Nigeria and cites many examples of the alleged exercise of that sovereignty.

The establishment of Nigerian villages on the Cameroonian side of the boundary by private individuals followed by Nigerian public services must therefore, in Cameroon's view, be treated as acts of conquest which cannot found a valid territorial title under international law. Cameroon states that it has never acquiesced in the modification of its conventional boundary with Nigeria; it argues that acquiescence in a boundary change must, in order to bind a State, be the act of competent authorities and that in this regard the attitude of the central authorities must prevail over that of the local ones. Hence, according to Cameroon, once the Cameroonian central authorities became aware of the Nigerian claims, they proceeded to react so as to preserve the rights of Cameroon; they did so first in the context of the LCBC, then through a Note from the Cameroonian Ministry of Foreign Affairs dated 21 April 1994.

Finally, Cameroon claims that an estoppel has arisen which today prevents Nigeria from challenging the existing conventional delimitation. Thus it argues that, for very many years, including while the LCBC demarcation work was proceeding, Nigeria accepted the conventional delimitation of Lake Chad without any form of protest, thus adopting an attitude which clearly and consistently demonstrated its acceptance of that boundary. Since Cameroon had relied in good faith on that attitude in order to collaborate in the demarcation operation, it would be prejudicial to it if Nigeria were entitled to invoke conduct on the ground that conflicted with its previous attitude.

64. The Court first observes that the work of the LCBC was intended to lead to an overall demarcation of a frontier already delimited. Although the result of the demarcation process

is not binding on Nigeria, that fact has no legal implication for the pre-existing frontier delimitation. It necessarily follows that Nigeria's claim based on the theory of historical consolidation of title and on the acquiescence of Cameroon must be assessed by reference to this initial determination of the Court. During the oral pleadings Cameroon's assertion that Nigerian effectivites were contra legem was dismissed by Nigeria as "completely question-begging and circular". The Court notes, however, that now that it has made its findings that the frontier in Lake Chad was delimited long before the work of the LCBC began, it necessarily follows that any Nigerian effectivites are indeed to be evaluated for their legal consequences as acts contra legem. [p352]

65. The Court will now examine Nigeria's argument based on historical consolidation of title.

The Court observes in this respect that in the Fisheries case (United Kingdom v. Norway) (I.C.J. Reports 1951, p. 130) it had referred to certain maritime delimitation decrees promulgated by Norway almost a century earlier which had been adopted and applied for decades without any opposition. These decrees were said by the Court to represent "a well-defined and uniform system . . . which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States" (ibid., p. 137). The Court notes, however, that the notion of historical consolidation has never been used as a basis of title in other territorial disputes, whether in its own or in other case law.

Nigeria contends that the notion of historical consolidation has been developed by academic writers, and relies on that theory, associating it with the maxim quieta non movere.

The Court notes that the theory of historical consolidation is highly controversial and cannot replace the established modes of acquisition of title under international law, which take into account many other important variables of fact and law. It further observes that nothing in the Fisheries Judgment suggests that the "historical consolidation" referred to, in connection with the external boundaries of the territorial sea, allows land occupation to prevail over an established treaty title. Moreover, the facts and circumstances put forward by Nigeria with respect to the Lake Chad villages concern a period of some 20 years, which is in any event far too short, even according to the theory relied on by it. Nigeria's arguments on this point cannot therefore be upheld.

66. Nigeria further states that the peaceful possession on which it relies, coupled with acts of administration, represents a manifestation of sovereignty and is thus a specific element of its other two claimed heads of title, namely: on the one hand, effective administration by Nigeria, acting as sovereign, and the absence of protests; and, on the other, manifestations of sovereignty by Nigeria over Darak and the neighbouring villages, together with acquiescence by Cameroon in such sovereignty.

67. In this regard, it may be observed that the gradual settling of Nigerians in the villages was followed in turn by support provided by the Ngala Local Government in Nigeria, along with a degree of administration and supervision.

Setting aside evidence relating to the years including and after 1994, when the Court was seised of the case, the Court notes that from the early 1980s until 1993 reports were made to Ngala Local Government, which provided support for health clinics in villages and mobile health units, along with advice on disease control. Evidence of this nature has [p353] been submitted as regards Kirta Wulgo, Darak and Katti Kime. There is evidence of the provision of education funding by the Ngala Local Government in 1988 for the

Nigerian village of Wulgo and its dependent settlements, and for Katti Kime, Darak, Chika'a and Naga'a and for Darak in 1991. In 1989 there was an education levy in Wulgo and its dependencies and in 1992 some funding provided for classrooms in Naga'a. The Court has been shown evidence relating to the assessment and collection of taxes in Wulgo and its dependencies in 1980-1981; and to payments made to Ngala Local Government by the Fisherman's Cooperative operating in the villages in question in 1982-4. Among the documents submitted to the Court is a copy of a decision in 1981 by the Wulgo Area Court in a case involving litigants residing in Darak.

Some of these activities -- the organization of public health and education facilities, policing, the administration of justice -- could normally be considered to be acts a titre de souverain. The Court notes, however, that, as there was a pre-existing title held by Cameroon in this area of the lake, the pertinent legal test is whether there was thus evidenced acquiescence by Cameroon in the passing of title from itself to Nigeria.

68. In this context the Court also observes that Cameroon's own activities in the Lake Chad area have only a limited bearing on the issue of title.

The Court has already ruled on a number of occasions on the legal relationship between "effectivites" and titles. In the Frontier Dispute (Burkina Faso/Republic of Mali), it pointed out that in this regard "a distinction must be drawn among several eventualities", stating inter alia that:

"Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the effectivite does not co-exist with any legal title, it must invariably be taken into consideration." (I.C.J. Reports 1986, p. 587, ara. 63.)(See also Territorial Dispute (Libyan Arab Jamahiriya/Chad), I.C.J. Reports 1994, pp. 75-76, para. 38.)

It is this first eventuality here envisaged by the Court, and not the second, which corresponds to the situation obtaining in the present case. Thus Cameroon held the legal title to territory lying to the east of the boundary as fixed by the applicable instruments (see paragraph 53 above). Hence the conduct of Cameroon in that territory has pertinence only for the question of whether it acquiesced in the establishment of a change in treaty title, which cannot be wholly precluded as a possibility in law (Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: [p354] Nicaragua intervening), I.C.J. Reports 1992, pp. 408-409, para. 80). The evidence presented to the Court suggests that before 1987 there was some administrative activity by Cameroon in the island and lake-bed villages that were beginning to be established. There were yearly administrative visits from 1982 to 1985; the villages of Chika'a, Naga'a, Katti Kime and Darak participated in elections for the presidency of the Republic of Cameroon; administrative action was undertaken for the maintenance of law and order in Naga'a, Gorea Changi and Katti Kime. The 1984 census included 18 villages, among them Darak. Appointments of village chiefs were referred for approval to the Cameroon prefect. As for the collection of taxes by Cameroon, there is modest evidence relating to Katti Kime, Naga'a and Chika'a for the years 1983 to 1985.

69. It appears from the case file that the control of certain local Cameroonian officials over the area was limited. As Nigerian settlements, and the organization within them of village life, became supplemented from 1987 onwards by Nigerian administration and the presence of Nigerian troops, Cameroon restricted its protests to a few "incidents" (notably the taking over of the fisheries training station at Katti Kime), rather than to the evolving

situation as such. There is some evidence however that Cameroon continued sporadically to seek to exercise some administrative control in these areas, albeit with little success in this later period.

Cameroon has put to the Court that it did not regard the activities of Nigeria in Lake Chad in the years 1984 to 1994 as a titre de souverain, because Nigeria was in those years fully participating in the work entrusted to the LCBC and its contractors, and agreed that they should work on the basis of the various treaty instruments which governed title. The Court cannot accept Nigeria's argument that the explanation given by Cameroon depends upon the supposition that the Report of Experts was binding upon Nigeria automatically. It depends rather upon the agreed basis upon which the demarcation work was to be carried out.

On 14 April 1994, Nigeria in a diplomatic Note, for the first time claimed sovereignty over Darak. Cameroon firmly protested in a Note Verbale of 21 April 1994, expressing "its profound shock at the presumption that Darak is part of Nigerian territory", and reiterating its own sovereignty. Shortly after, it also enlarged the scope of its Application to the Court.

70. The Court finds that the above events, taken together, show that there was no acquiescence by Cameroon in the abandonment of its title in the area in favour of Nigeria. Accordingly, the Court concludes that the situation was essentially one where the effectivites adduced by Nigeria did not correspond to the law, and that accordingly "preference should [p355] be given to the holder of the title" (Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986, p. 587, para. 63).

The Court therefore concludes that, as regards the settlements situated to the east of the frontier confirmed in the Henderson-Fleuriau Exchange of Notes of 1931, sovereignty has continued to lie with Cameroon (see below, p. 57, sketch-map No. 2).

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71. Having examined the question of the delimitation in the area of Lake Chad, the Court will now consider the course of the land boundary from Lake Chad to the Bakassi Peninsula.

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72. In its Additional Application filed on 6 June 1994, Cameroon requested the Court "to specify definitively" the frontier between Cameroon and Nigeria from Lake Chad to the sea. According to Cameroon, the land boundary between Cameroon and Nigeria consists of three sectors, each of which is clearly delimited by a separate instrument.

73. The first such sector of the land boundary as referred to by Cameroon extends from the conventional mouth of the Ebeji as far as the "prominent peak" named by Cameroon as "Mount Kombon" (see below, p. 62, sketch-map No. 3, on which this sector is shown in orange). Cameroon asks the Court to hold that the Thomson-Marchand Declaration, incorporated in the Henderson-Fleuriau Exchange of Notes of 1931, delimits this sector and constitutes the legal basis upon which its future demarcation can be based.

74. The second sector runs from "Mount Kombon" to "pillar 64" as referred to in Article 12 of the Anglo-German Agreement of 12 April 1913 (see below, p. 62, sketch-map No. 3, on which this sector is shown in mauve). The sector of the boundary in question is claimed by Cameroon to have its legal basis in the British Order in Council of 2 August 1946, which described in detail the line dividing the northern and southern parts of what was then the mandated territory of the British Cameroons. According to Cameroon, the Order

in Council reaffirmed the line decided upon earlier by the mandatory Power for reasons of administrative convenience, and confirmed subsequently by the relevant international organs, namely, the Permanent Mandates Commission and the Trusteeship Council. Cameroon claims that the internal line between the Northern and Southern Cameroons described in the Order in Council was ipso facto converted into the international boundary between Nigeria and Cameroon when the trusteeship regime was terminated following the plebiscites of 11 and 12 February 1961.

75. The third sector, running from pillar 64 to the sea (see below, p. 62, sketch-map No. 3, on which this sector is shown in brown), is said by Cameroon to have been delimited by the Anglo-German Agreements

[p356]

Sketch-Map No. 2. Boundary in the Lake Chad Area

[p357] of 11 March and 12 April 1913, both agreements containing maps on which the boundary line is depicted (namely, the two sheets of map TSGS 2240 annexed to the 11 March Agreement, and sheets Nos. 5 to 8 of map GSGS 2700 annexed to the 12 April Agreement). Cameroon insists that its claim in relation to the entire course of this sector of the boundary, including the Bakassi Peninsula, can be resolved by the application "pure and simple" of the Anglo-German Agreements of 1913 and the annexed cartographic material.

76. With the exception of what it calls the "Bakassi provisions" of the Anglo-German Agreement of 11 March 1913, Nigeria, for its part, does not dispute the relevance and applicability of the four instruments invoked by Cameroon with respect to the course of these three sectors of the land boundary.

77. The question upon which the Parties differ is the nature of the task which the Court should undertake. The respective positions of the Parties on this point changed somewhat in the course of the proceedings. Thus, in its Additional Application, Cameroon requested the Court "to specify definitively the frontier between [it] and the Federal Republic of Nigeria from Lake Chad to the sea". Then, in its written pleadings and at the hearings, it requested the Court to confirm the course of the frontier as indicated in the delimitation instruments, emphasizing that, in requesting the Court "to specify definitively" the frontier between Cameroon and Nigeria, it had not requested the Court itself to undertake a delimitation of that frontier. It maintains those requests in its final submissions.

78. In the preliminary objections phase of the case, Nigeria, for its part, first argued that there was no territorial dispute between the Parties from Lake Chad to the Bakassi Peninsula. That preliminary objection having been rejected by the Court in its Judgment of 11 June 1998, Nigeria subsequently indicated a number of specific locations on the land boundary which, in its view, called for some form of consideration by the Court, either because the delimitation instruments themselves were "defective", or because they had been applied by Cameroon in a way which was "manifestly at variance" with their terms. While Nigeria accepts the application of the instruments concerned "in principle", it considers that, if the Court were merely to confirm these delimitation instruments, that would not resolve the differences between the Parties in regard to the course of the boundary, and there would be no guarantee that others would not arise in the future. Nigeria therefore asks the Court to "clarify" the delimitation in the areas in which the delimitation instruments are defective and to correct the boundary line claimed by Cameroon in the areas where Nigeria maintains Cameroon is not observing the clear terms of these instruments.

79. Cameroon also acknowledges that there are some ambiguities and [p358] uncertainties in the delimitation instruments in question. It admits further that there may be certain difficulties in demarcating the line delimited by these instruments, for instance because of changes in the location of watercourses, swamps, tracks, villages or pillars referred to in those instruments, or because the location of a watershed requires detailed hydrological investigation. However, Cameroon insists that the Court cannot, on the pretext of interpreting them, modify the applicable texts, and it claims that this is precisely what Nigeria is requesting the Court to do.

80. Cameroon contends that a distinction must be maintained between, on the one hand, the concept of delimitation (being the process by which the course of a boundary is described in words or maps in a legal instrument) and, on the other, the concept of demarcation (being the process by which the course of the boundary so described is marked out on the ground). It points out that in the present case what the Court is being asked to do is to confirm the delimitation of the boundary and not to effect its demarcation. It considers that the correction of a number of "minor defects" in the instruments, the elimination of various uncertainties and the solution of any existing geographical difficulties are matters of demarcation. Cameroon considers these to be questions to be settled by the Parties in the light of the Court's decision on the delimitation of the boundary as a whole. At the start of the first round of oral argument, Cameroon accordingly declared itself willing to engage in a demarcation effort with Nigeria wherever his should prove to be necessary to render the course of the boundary more precise. In the second round of oral argument, Cameroon proposed to Nigeria that a demarcation body should be set up under the auspices of the Court or of the United Nations in order to undertake the demarcation of those boundary sectors as yet undemarcated, or in respect of which the Court's Judgment left some uncertainties, but made it clear that, if the Court considered that it should itself settle certain of the problems raised by Nigeria, it would have no objection to this.

81. Although it does not accept Cameroon's proposal for the establishment of a demarcation body, Nigeria agrees that purely technical matters should be settled at the demarcation stage. It claims, however, that the points of difficulty it has identified represent substantive delimitation issues. It believes that a detailed specification of the land boundary is necessary if future border problems are to be avoided and any eventual demarcation is to take place on a sound basis.

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82. The Court notes that Cameroon and Nigeria agree that the land boundary between their respective territories from Lake Chad onwards has already been delimited, partly by the Thomson-Marchand Declara-[p359]tion incorporated in the Henderson-Fleuriau Exchange of Notes of 1931, partly by the British Order in Council of 2 August 1946 and partly by the Anglo-German Agreements of 11 March and 12 April 1913. The Court likewise notes that, with the exception of the provisions concerning Bakassi contained in Articles XVIII et seq. of the Anglo-German Agreement of 11 March 1913, Cameroon and Nigeria both accept the validity of the four above-mentioned legal instruments which effected this delimitation. The Court will therefore not be required to address these issues further in relation to the sector of the boundary from Lake Chad to the point defined in fine in Article XVII of the Anglo-German Agreement of March 1913. The Court will, however, have to return to them in regard to the sector of the land boundary situated beyond that point, in the part of its Judgment dealing with the Bakassi Peninsula (see paragraphs 193-225 below).

83. Independently of the issues which have just been mentioned, a problem has continued to divide the Parties in regard to the land boundary. It concerns the nature and extent of the

role which the Court is called upon to play in relation to the sectors of the land boundary in respect of which there has been disagreement between the Parties at various stages of the proceedings, either on the ground that the relevant instruments of delimitation were claimed to be defective or because the interpretation of those instruments was disputed. The Court notes that, while the positions of the Parties on this issue have undergone a significant change and have clearly become closer in the course of the proceedings, they still appear unable to agree on what the Court's precise task should be in this regard.

84. The Parties have devoted lengthy arguments to the difference between delimitation and demarcation and to the Court's power to carry out one or other of these operations. As the Court had occasion to state in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad)(I.C.J. Reports 1994, p. 28, para. 56), the delimitation of a boundary consists in its "definition", whereas the demarcation of a boundary, which presupposes its prior delimitation, consists of operations marking it out on the ground. In the present case, the Parties have acknowledged the existence and validity of the instruments whose purpose was to effect the delimitation between their respective territories; moreover, both Parties have insisted time and again that they are not asking the Court to carry out demarcation operations, for which they themselves will be responsible at a later stage. The Court's task is thus neither to effect a delimitation de novo of the boundary nor to demarcate it.

85. The task which Cameroon referred to the Court in its Application is "to specify definitively" (emphasis added by the Court) the course of the land boundary as fixed by the relevant instruments of delimitation. Since the land boundary has already been delimited by various legal instruments, it is indeed necessary, in order to specify its course definitively, to confirm that those instruments are binding on the Parties and [p360] are applicable. However, contrary to what Cameroon appeared to be arguing at certain stages in the proceedings, the Court cannot fulfil the task entrusted to it in this case by limiting itself to such confirmation. Thus, when the actual content of these instruments is the subject of dispute between the Parties, the Court, in order to specify the course of the boundary in question definitively, is bound to examine them more closely. The dispute between Cameroon and Nigeria over certain points on the land boundary between Lake Chad and Bakassi is in reality simply a dispute over the interpretation or application of particular provisions of the instruments delimiting that boundary. It is this dispute which the Court will now endeavour to settle.

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86. For this purpose, the Court will consider in succession each of the points in dispute along the land boundary from Lake Chad to the Bakassi Peninsula, designating them as follows: (1) Limani; (2) the Keraua (Kirewa or Kirawa) River; (3) the Kohom River; (4) the watershed from Ngosi to Humsiki (Roumsiki)/Kamale/Turu (the Mandara Mountains); (5) from Mount Kuli to Bourha/Maduguva (incorrect watershed line on Moisel's map); (6) Kotcha (Koja); (7) source of the Tsikakiri River; (8) from Beacon 6 to Wamni Budungo; (9) Maio Senche; (10) Jimbare and Sapeo; (11) Noumberou-Banglang; (12) Tipsan; (13) crossing the Maio Yin; (14) the Hambere Range area; (15) from the Hambere Range to the Mburi River (Lip and Yang); (16) Bissaula-Tosso; (17) the Sama River. For the sake of clarity, these points will be dealt with according to their order of appearance along a north-south line following the course of the land boundary from Lake Chad towards the sea as indicated on the attached general sketch-map (see below, p. 62, sketch-map No. 3). Likewise, for the sake of convenience, the relevant paragraphs of the Thomson-Marchand Declaration and the 1946 Order in Council will be set out in full before the discussion of each point. In addition, wherever possible, the Court will accompany its decisions on the points in dispute with illustrative sketches or maps. Lastly it will address the question of pillar 64 and additional points on the land border that have been discussed by the Parties.

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Limani

87. Paragraphs 13 and 14 of the Thomson-Marchand Declaration determine the boundary as follows:

"13. Thence going on and meeting the bed of a better defined stream crossing the marsh of Kulujia and Kodo as far as a marsh named Agzabame.

[p361]

Sketch-Map No. 3. Points in Dispute between Lake Chad and Bakassi Peninsula

[p362]

14. Thence crossing this marsh where it reaches a river passing quite close to the village of Limanti (Limani) to a confluence at about 2 kilometres to the north-west of this village."

88. Nigeria observes that between the Agzabame Marsh and the modern town of Banki, which lies 3 km north-west of Limani, the river referred to in paragraph 14 of the Thomson-Marchand Declaration in fact has four channels. Nigeria advocates following the southernmost channel. It claims that this channel, which does not appear on sheet "Ybiri N.W." of the 1:50,000 map of Nigeria prepared by the Directorate of Overseas Surveys (DOS), is shown on the aerial photograph of the area submitted by it. It contends that the southern channel of the river corresponds to the boundary line shown on a sketch-map signed in 1921 by French and British officials which fixed the provisional boundary some 300 m north of Limani and south of Narki. It points out that this channel does indeed flow to a confluence 2 km north-west of Limani, as stated in paragraph 14 of the Thomson-Marchand Declaration.

89. Cameroon acknowledges that "the problem lies in determining the stream which flows out of the Agzabame marsh, passes quite close to Limani and flows to a confluence at 2 km to the north-west of this village". It argues that the boundary should follow the second channel from the north. According to Cameroon, Nigeria is inventing non-existent river channels, since the channel it proposes does not appear on its own maps; as for the 1921 sketch-map, it has no legal status and in any event confirms Cameroon's view. Finally, Cameroon points out that "on the ground, the Lamido of Limani in Cameroon governs the inhabitants of Narki".

90. The Court notes that in the Limani area the interpretation of the Thomson-Marchand Declaration raises difficulties. The Declaration simply refers to "a river" in this area, whereas there are in fact several river channels between the Agzabame marsh and the "confluence at about 2 kilometres to the north-west [of the village of Limanti (Limani)]" (para. 14 of the Declaration).

A careful study of the wording of the Thomson-Marchand Declaration and of the map and other evidence provided by the Parties leads the Court to the following conclusions. In the first place, the Court observes that the second channel from the north, proposed by Cameroon as the course of the boundary, is unacceptable. That channel does not meet the requirements of paragraph 14 of the Declaration, on the one hand because its distance from the village of Limani precludes it from being regarded, in the context of paragraph 14 of the Declaration, as "passing quite close" to Limani and, on the other, because its

confluence is situated to the north-north-east of the village and not to the "north-west".

The southern channel proposed by Nigeria poses other problems. Its immediate proximity to the village of Limani and its apparent correspondence with the sketch-map signed by French and British administrators [p363] in 1921 are not in doubt. However, this channel does not appear on any map. Moreover, a stereoscopic examination of the aerial photographs of the area shows that, while there is indeed a small watercourse running from the Ngassaoua River to the point indicated by Nigeria, it is very short and quickly peters out, well before the Agzabame marsh, which is incompatible with the wording of paragraph 13 of the Thomson-Marchand Declaration. This small watercourse also runs much closer to Narki than Nigeria suggests. The Court cannot therefore accept this channel either.

The Court notes, however, that the river has another channel, called Nargo on DOS sheet "Ybiri N.W.", reproduced at page 23 of the atlas annexed to Nigeria's Rejoinder, which meets the conditions specified in the Thomson-Marchand Declaration. This channel does indeed start from the Agzabame marsh, passes to the north of Narki and to the south of Tarmoa, runs not far from Limani and reaches a confluence which is about 2 km north-west of Limani. The Court therefore considers that this is the channel to which the drafters of the Thomson-Marchand Declaration were referring.

91. Accordingly, the Court concludes that the "river" mentioned in paragraph 14 of the Thomson-Marchand Declaration is the channel running between Narki and Tarmoa, and that from the Agzabame marsh the boundary must follow that channel to its confluence with the Ngassaoua River (see below, p. 64, sketch-map No. 4).

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The Keraua (Kirewa or Kirawa) River

92. Paragraph 18 of the Thomson-Marchand Declaration determines the boundary as follows:

"18. Thence following the Keraua as far as its confluence in the mountains with a river coming from the west and known by the 'Kirdis' inhabiting the mountains under the name of Kohom (shown on Moisel's map under the name of Gatagule), cutting into two parts the village of Keraua and separating the two villages of Ishigashiya."

93. Nigeria maintains that paragraph 18 of the Thomson-Marchand Declaration "is defective in that there are in this area two courses of the Keraua (now Kirawa) River, and the Thomson-Marchand Declaration provides no guidance as to which channel forms the boundary". In its opinion, the boundary should follow the eastern channel, which is continuous and well-defined, in contrast to the western channel, as shown by the 1:50,000 map included by it in its Rejoinder and by the 1963 aerial photographs. Nigeria denies that this is an artificial channel and adds that Moisel's map places on Nigerian territory two villages called Schriwe and Ndeba, corresponding to the present-day villages of Cherive and Ndabakora, situated between the two channels.

94. Cameroon for its part asserts that "the problem arises from the

[p364]

Sketch-Map No. 4 - Limani

[p365] fact that Nigeria has dug an artificial channel in the vicinity of the village of Gange, changing the Kerawa's course and diverting its waters in order to move the riverbed and, as a consequence, the course of the boundary". Cameroon therefore maintains that the boundary should be the western channel, which is the normal course of the river, even though it has temporarily dried up as a result of the diversion of the waters. It adds that the village of Cherive no longer exists on the ground and that Cameroon peacefully administers this area.

95. The Court notes that, in the area of the Keraua (Kirewa or Kirawa) River, the interpretation of paragraph 18 of the Thomson-Marchand Declaration raises difficulties, since the wording of this provision merely makes the boundary follow "the Keraua", whereas at this point that river splits into two channels: a western channel and an eastern channel. The Court's task is thus to identify the channel which the boundary is to follow pursuant to the Thomson-Marchand Declaration.

The Court has first examined Cameroon's argument that the course of the Keraua River has been diverted by Nigeria as a result of an artificial channel constructed by it in the vicinity of the village of Gange. The Court considers that Cameroon has provided no evidence of its assertions on this point. Nor has the cartographic and photographic material in the Court's possession enabled it to confirm the existence of works to divert the course of the river near Gange.
Neither can the Court accept Nigeria's argument that preference should be given to the eastern channel because it is broader and better defined than the western channel, since the aerial photographs of the area which the Court has studied show that the two channels are comparable in size.

The Court notes, however, that according to the Moisel map the boundary runs, as Nigeria maintains, just to the east of two villages called Schriwe and Ndeba, which are on the site now occupied by the villages of Cherive and Ndabakora, and which the map places on Nigerian territory. Only the eastern channel meets this condition.

96. The Court accordingly concludes that paragraph 18 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the eastern channel of the Keraua River.

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The Kohom River

97. Paragraph 19 of the Thomson-Marchand Declaration determines the boundary as follows:

"19. Thence it runs from this confluence as far as the top of Mount Ngosi in a south-westerly direction given by the course of the Kohom (Gatagule) which is taken as the natural boundary from its confluence as far as its source in Mount Ngosi; the villages of [p366] Matagum and Hijie being left to France, and the sections of Uledde and of Laherre situated to the north of the Kohom to England; those of Tchidoui (Hiduwe) situated to the south of Kohom to France."

98. Nigeria contends that paragraph 19 of the Thomson-Marchand Declaration "is defective in that it assumes that the River Kohom has its source in Mount Ngossi", which it alleges is not the case. It explains that the drafters of the Thomson-Marchand Declaration were mistaken in believing the Kohom to be the Keraua (Kirawa) River tributary flowing north-easterly from Mount Ngosi, a mountain which, in Nigeria's view, is readily

identifiable. It contends that this mistake derives from a sketch-map prepared in March 1926 by British and French colonial officials and used in the preparation of the Thomson-Marchand Declaration. According to Nigeria, "the river which rises on Mount Ngossi is the Bogaza River". Nigeria acknowledges that the Kohom is indeed a tributary of the Keraua, but one which rises well to the north. It therefore proposes that the boundary should follow the Kohom, as Nigeria has identified it, to its source "nearest to the point at which the Bogaza River makes its abrupt turn to the south-east", and then follow the course of the Bogaza to Mount Ngosi.

99. For its part, Cameroon maintains that the Ngosi is a mountain chain, not a single peak, and that both the Kohom and Bogaza Rivers have their sources there. Cameroon believes that "the terms of the [Thomson-Marchand] Declaration are sufficiently clear to identify the river which the Kirdis (Matakams) call the Kohom in the area". It considers that this river lies to the north of the watercourse which Nigeria has identified as the Kohom.

100. The Court notes that the initial problem posed by paragraph 19 of the Thomson-Marchand Declaration consists in the identification of the course of the River Kohom, along which the boundary is to pass. After a detailed study of the map evidence available to it, the Court has reached the conclusion that, as Nigeria contends, it is indeed the River Bogaza which has its source in Mount Ngosi, and not the River Kohom. The question whether the text of the Thomson-Marchand Declaration must be taken as referring to a single Mount Ngosi or to the Ngosi Mountains in the plural is irrelevant here, since, irrespective of the course of the Kohom indicated by the Parties, that river does not have its source in the vicinity of Mount Ngosi. The Court's task is accordingly to determine where the drafters of the Thomson-Marchand Declaration intended the boundary to run in this area when they described it as following the course of a river called "Kohom".

101. In order to locate the course of the Kohom, the Court has first examined the text of the Thomson-Marchand Declaration, which has not provided a decisive answer. Thus the Court has been unable to find, on any of the maps provided by the Parties, a single one of the villages and localities mentioned in paragraph 19 of the Declaration. Likewise, the [p367] provision in paragraph 18 of the Declaration that the boundary is to follow the course of the River Kohom from its confluence "in the mountains" with the Keraua has not enabled the Court to identify the course of the Kohom, given in particular that neither the course proposed by Cameroon, nor that submitted by Nigeria, corresponds to such a description.

The Court has therefore had to have recourse to other means of interpretation. Thus it has carefully examined the sketch-map prepared in March 1926 by the French and British officials which served as the basis for the drafting of paragraphs 18 and 19 of the Thomson-Marchand Declaration. As Nigeria pointed out in its Rejoinder, this sketch-map does indeed show what the intention of the Parties was at the time, when they referred to the River Kohom. The sketch-map is particularly helpful, since it includes very clear indications in regard to the relief of the area and the direction of the river, which the Court has been able to compare with the maps provided by the Parties. The Court is able to determine, on the basis of this comparison, that the Kohom whose course the Thomson-Marchand Declaration provides for the boundary to follow is that indicated by Cameroon. In this regard, the Court notes first that the 1926 sketch-map indicates very clearly, just before the boundary turns sharply to the south, a tributary descending from Mount Kolika and flowing into the Kohom. Such a tributary is to be found on the river identified by Cameroon as the Kohom but not on that proposed by Nigeria. The Court would further observe that the 1926 sketch-map quite clearly indicates that the boundary passes well to the north of the Matakam Mountains, as does the line claimed by Cameroon, whereas that favoured by Nigeria passes well to the south of those mountains.

The Court notes, however, that the boundary line claimed by Cameroon in this area runs on past the source of the river which the Court has identified as the Kohom. Nor can the Court disregard the fact that the Thomson-Marchand Declaration expressly provides that the boundary must follow a river which has its source in Mount Ngosi. In order to comply with the Thomson-Marchand Declaration, it is therefore necessary to join the source of the River Kohom, as identified by the Court, to the River Bogaza, which rises on Mount Ngosi.

102. The Court accordingly concludes that paragraph 19 of the Thomson-Marchand Declaration should be interpreted as providing for the boundary to follow the course of the River Kohom, as identified by the Court, as far as its source at 13 [degree] 44' 24" longitude east and 10 [degree] 59' 09" latitude north, and then to follow a straight line in a southerly direction until it reaches the peak shown as having an elevation of 861 m on the 1:50,000 map in Figure 7.8 at page 334 of Nigeria's Rejoinder and located at 13 [degree] 45' 45" longitude east and 10 [degree] 59' 45" latitude north, before following the River Bogaza in a south-westerly direction as far as the summit of Mount Ngosi (see below, p. 69, sketch-map No. 5).

[p368]

Sketch-Map No. 5. The Kohom River

*[p369]

The watershed from Ngosi to Humsiki (Roumsiki)/Kamale/Turu (the Mandara Mountains)

103. Paragraphs 20 to 24 of the Thomson-Marchand Declaration determine the boundary as follows:

"20. Thence on a line in a south-westerly direction following the tops of the mountain range of Ngosi, leaving to France the parts of Ngosi situated on the eastern slopes, and to England the parts situated on the western slopes, to a point situated between the source of the River Zimunkara and the source of the River Devurua; the watershed so defined also leaves the village of Bugelta to England and the village of Turuto France.

21. Thence in a south-south-westerly direction, leaving the village of Dile on the British side, the village of Libam on the French side to the hill of Matakam.

22. Thence running due west to a point to the south of the village of Wisik where it turns to the south on a line running along the watershed and passing by Mabas on the French side, after which it leaves Wula on the English side running south and bounded by cultivated land to the east of the line of the watershed.

23. Thence passing Humunsi on the French side the boundary lies between the mountains of Jel and Kamale Mogode on the French side and running along the watershed.

24. Thence passing Humsiki, including the farmlands of the valley to the west of the village on the French side, the boundary crosses Mount Kuli."

104. Nigeria contends that paragraphs 20 to 24 of the Thomson-Marchand Declaration clearly delimit the boundary in the area by reference to a watershed line and that this line should therefore be followed, rather than the line proposed by Cameroon. It emphasizes

the fact that the Cameroonian village of Turu, which the Thomson-Marchand Declaration places in Cameroonian territory, has expanded onto Nigerian territory. It also points out that Cameroon's road makes incursions into Nigerian territory and that map No. 6 produced by Cameroon in Volume II of its Reply moves the boundary between 500 and 800 m westwards into Nigerian territory throughout the sector.

105. For its part, Cameroon argues that the disagreement "is the result of a divergence in the marking of the watershed on the maps". Cameroon notes that the concept of a watershed is a complex one and that it is particularly difficult to determine such a line along steep escarpments, as is the case here. It contends that the boundary line it has drawn does indeed follow the watershed at least until the vicinity of Humsiki (or Roumsiki). From that point, the boundary must necessarily deviate from the watershed because, according to the Thomson-Marchand Declaration, it must cross Mount Kuli and leave the farmlands west of the village to [p370] Cameroon. Cameroon adds that the village of Turu is situated entirely on Cameroonian territory.

106. The Court notes that the problem in the area between Ngosi and Humsiki derives from the fact that Cameroon and Nigeria apply the provisions of paragraphs 20 to 24 of the Thomson-Marchand Declaration in different ways. In this sector of the boundary the Court's task is thus to determine the course of the boundary by reference to the terms of the Thomson-Marchand Declaration, that is to say by reference essentially to the crest line, to the line of the watershed and to the villages which are to lie to either side of the boundary. The Court will address this question section by section.

107. From Ngosi to Turu, the boundary follows the line of the watershed as provided by paragraph 20 of the Thomson-Marchand Declaration. On this point the Court notes that the watershed line proposed by Cameroon crosses a number of watercourses and thus cannot be accepted. The watershed line presented by Nigeria, which over the greater part of its length follows the road running southwards from Devura, appears more credible. The Court must, however, point out that that road remains throughout its length within Cameroonian territory. As regards the village of Turu, the Court recalls moreover that, while it may interpret the provisions of delimitation instruments where their language requires this, it may not modify the course of the boundary as established by those instruments. In the present case, the Parties do not dispute that the boundary follows the line of the watershed. That boundary line may not therefore be modified by the Court. Hence, if it should prove that the village of Turu has spread into Nigerian territory beyond the watershed line, it would be up to the Parties to find a solution to any resultant problems, with a view to ensuring that the rights and interests of the local population are respected.

108. From Turu to Mabas, the Parties disagree on the course of the boundary as described in paragraphs 21 and 22 of the Thomson-Marchand Declaration only at two points: one to the south of Wisik, where the Court sees no reason not to adopt the line indicated by Cameroon, and the other near Mabas. There, the line indicated by Cameroon crosses certain watercourses and therefore cannot be the watershed line. Nor does the line favoured by Nigeria appear suitable, since it passes through Mabas, whereas the Declaration provides that that village should remain entirely on the French side ("pass[es] by Mabas on the French side"/ "franchit Mabas, sur le cote francais"). Hence at this point the boundary must follow the watershed line, whilst leaving all of the village of Mabas on the Cameroonian side. Here too the Court considers that, where the road running south from Turu follows the boundary, it remains at all times on Cameroonian territory.

109. From Mabas to Ouro Mavoum, the line of the watershed has not been in issue between the Parties. [p371]

110. From Ouro Mavoum to the mountains of Jel, passing through Humunsi (Roumzou), the boundary follows the line proposed by Nigeria whilst leaving all of the road on Cameroonian territory. Thus the Court finds that the line proposed by Cameroon cannot be accepted: while that line does indeed correspond to the watershed line, paragraph 22 of the Thomson-Marchand Declaration places the boundary at this point not on that line, but along a line bounded by cultivated land lying "to the east of the line of the watershed".

111. From the mountains of Jel to Mogode, the boundary again follows the watershed line. The line indicated by Cameroon crosses numerous watercourses and must therefore be rejected. The line favoured by Nigeria appears to be more correct.

112. From Mogode to Humsiki (Roumsiki), the boundary continues to follow the watershed line, whilst leaving all of the road on Cameroonian territory. Here again the line proposed by Cameroon must be rejected, since it crosses numerous watercourses. The Nigerian line appears more suitable, provided that the road remains throughout on the Cameroonian side of the boundary and that the line leaves all of Humsiki to Cameroon.

113. Beyond Humsiki, the boundary continues to follow the line proposed by Nigeria. That line appears, moreover, more favourable to Cameroon than the one shown on its own maps, and in any event Cameroon has never challenged Nigeria's claims at this point on the boundary.

114. The Court concludes from the foregoing that in the area between Ngosi and Humsiki the boundary follows the course described by paragraphs 20 to 24 of the Thomson-Marchand Declaration as clarified by the Court.

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From Mount Kuli to Bourha/Maduguva (incorrect watershed line on Moisel's map)

115. Paragraph 25 of the Thomson-Marchand Declaration determines the boundary as follows:

"25. Thence running due south between Mukta (British) and Muti (French) the incorrect line of the watershed shown by Moisel on his map being adhered to, leaving Bourha and Dihi on the French side, Madogoba Gamdira on the British, Bugela or Bukula, Madoudji, Kadanahanga on the French, Ouda, Tua and Tsambourga on the British side, and Buka on the French side."

116. Nigeria contends that paragraph 25 of the Thomson-Marchand Declaration, which provides for the boundary to follow "the incorrect line of the watershed"

"is defective in that the requirement to follow a watershed line which is expressly admitted to be incorrect, shown on a 90 year old map [p372] which displays very little detail, can be interpreted in a number of ways".

Nigeria thus proposes simplifying the line up to the point where Moisel's line cuts the true watershed north of Bourha. That simplification is claimed to be justified by a proces-verbal of 1920, which provides for the boundary to follow the centre of a track running from Muti towards Bourha. South of Bourha, Nigeria proposes following the true watershed, leaving Bourha on Nigerian territory.

117. Cameroon, for its part, argues that the Thomson-Marchand Declaration "deliberately places the boundary along 'the incorrect line of the watershed' shown by Moisel on his map", and accordingly proposes adhering strictly to the transposition of Moisel's line onto a modern map and on the ground. It adds that the 1920 proces-verbal cited by Nigeria was mistranslated into English and that the French original provides no support whatsoever for Nigeria's position.

118. The Court notes that the text of paragraph 25 of the Thomson-Marchand Declaration provides quite expressly that the boundary is to follow "the incorrect line of the watershed shown by Moisel on his map". Since the authors of the Declaration prescribed a clear course for the boundary, the Court cannot deviate from that course.

The Court has carefully studied the Moisel map and has compared the data provided by it with those available on the best modern maps, and in particular sheet "Uba N.E." of the 1969 DOS 1:50,000 map of Nigeria and sheet NC-33-XIV-2c "Mokolo 2c" of the 1965 Institut geographique national (IGN) 1:50,000 map of Central Africa, both of which were provided to the Court by Nigeria. The Court observes that, while the Moisel map contains some errors in this area, it nonetheless provides certain objective criteria that permit the course of the "incorrect line of the watershed" to be readily transposed onto modern maps. The Court notes first that on the Moisel map the "incorrect line of the watershed" is clearly shown as remaining at all times to the east of the meridian 13 [degree] 30' longitude east. The Court further notes that a certain number of localities are indicated as lying either to the east or to the west of the incorrect line and must accordingly remain on the same side of the boundary after that line has been transposed onto modern maps.

The Court cannot accept the line presented by Cameroon as corresponding to a transposition of the "incorrect line of the watershed". That line lies throughout its length to the west of the meridian 13 [degree] 30' longitude east. Nigeria's transposition of the "incorrect line of the watershed" poses other problems. While it places this line at all times to the east of the meridian 13 [degree] 30' longitude east, it cannot, however, be accepted, since it consists of a series of angled lines, whereas the line on the Moisel map follows a winding course.

119. The Court accordingly concludes that paragraph 25 of the Thomson-Marchand Declaration should be interpreted as providing for the boundary to run from Mount Kuli to the point marking the beginning of the "incorrect line of the watershed", located at 13 [degree] 31' 47" longitude east and 10 [degree] 27' 48" latitude north, having reached that point by following the correct line of the watershed. Then, from that point, the boundary follows the "incorrect line of the watershed" to the point marking the end of that line, located at 13 [degree] 30' 55" longitude east and 10 [degree] 15' 46" latitude north. Between these two points the boundary follows the course indicated on the map annexed to this JudgmentFN1, which was prepared by the Court by transposing the "incorrect line of the watershed" from the Moisel map to the first edition of sheet "UbaN.E." of the DOS 1:50,000 map of Nigeria. From this latter point, the boundary will again follow the correct line of the watershed in a southerly direction.

FN1 A copy of this map will be found in a pocket at the end of this fascicle or inside the back cover of the volume of I.C.J. Reports 2002. [Note by the Registry.]

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Kotcha (Koja)

120. Paragraphs 26 and 27 of the Thomson-Marchand Declaration determine the boundary as follows:

"26. Thence the boundary runs through Mount Mulikia (named also Lourougoua).

27. Thence from the top of Mount Mulikia to the source of the Tsikakiri, leaving Kotcha to Britain and Dumo to France and following a line marked by four provisional landmarks erected in September 1920 by Messrs. Vereker and Pition."

121. According to Nigeria, paragraphs 26 and 27 of the Thomson-Marchand Declaration pose a problem in that only one of the four landmarks erected in 1920 referred to in those paragraphs is possibly identifiable today. It therefore proposes that, before arriving at that cairn, the boundary should follow the watershed, except in the vicinity of Kotcha, where the farmland lying on the Cameroonian side of the watershed line which is worked by farmers from Kotcha would be left to Nigeria, in order to take account of the fact that the Nigerian village of Kotcha has expanded to either side of that line.

122. Cameroon considers that the boundary line sought by Nigeria in the vicinity of Kotcha is contrary to the Thomson-Marchand Declaration and that the text of the Declaration should be respected. The remainder of the line proposed by Nigeria in this area, following the line of the watershed, is not contested by Cameroon.

123. The Court finds that, in the Kotcha area, the difficulty derives solely from the fact, as Nigeria recognizes, that the Nigerian village of Kotcha has spread over onto the Cameroonian side of the boundary. As the Court has already had occasion to point out in regard to the village [p374] of Turu, it has no power to modify a delimited boundary line, even in a case where a village previously situated on one side of the boundary has spread beyond it. It is instead up to the Parties to find a solution to any resultant problems, with a view to respecting the rights and interests of the local population.

124. The Court accordingly concludes that the boundary in the Kotcha area, as described in paragraphs 26 and 27 of the Thomson-Marchand Declaration, follows the line of the watershed, including where it passes close to the village of Kotcha, the cultivated land lying on the Cameroonian side of the watershed remaining on Cameroonian territory.

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Source of the Tsikakiri River

125. Paragraph 27 of the Thomson-Marchand Declaration determines the boundary as follows:

"27. Thence from the top of Mount Mulikia to the source of the Tsikakiri, leaving Kotcha to Britain and Dumo to France and following a line marked by four provisional landmarks erected in September 1920 by Messrs. Vereker and Pition."

126. Nigeria observes that the Tsikakiri River referred to in paragraph 27 of the Thomson-Marchand Declaration has three possible sources. It asserts that, contrary to Cameroon's

contention, the boundary should be one of the southern tributaries, not the northern tributary, since only the southern tributaries originate at the crest line, as implied by the Declaration.

127. For its part, Cameroon asserts that the northern tributary is the true source of the Tsikakiri and the one to be taken into account. It contends that the spot indicated by an arrow on Figure 7.14 at page 344 of Nigeria's Rejoinder as the source of the southern tributary is nothing of the kind.

128. The Court notes that the interpretation of paragraph 27 of the Thomson-Marchand Declaration poses problems because the Tsikakiri River has more than one source, whereas the Declaration simply states that the boundary passes through "the source" of the Tsikakiri without providing any indication as to which source is to be chosen. The Court would first observe that, in terms of geographical theory, there exists no definition enabling the principal source of a river to be identified with full certainty where that river has several sources. However, the task of the Court is not to identify the "geographical" source of the Tsikakiri, but to identify the source through which the drafters of the Thomson-Marchand Declaration intended that the boundary should pass. Considering that the Thomson-Marchand Declaration delimited the boundary in general by means of a physical description of the terrain, it may reasonably be assumed that the drafters of the Declaration, in referring to the source [p375] of the Tsikakiri, intended to designate a point which could be readily identified, both on maps and on the ground. Thus the Court notes that one of the sources of the Tsikakiri stands out from the others. This is a source situated at 13 [degree] 16' 55" longitude east and 10 [degree] 02' 02" latitude north and having the highest elevation which is not proposed by either of the Parties.

129. The Court accordingly concludes that, in the area referred to in paragraph 27 of the Thomson-Marchand Declaration, the boundary starts from a point having co-ordinates 13 [degree] 17' 50" longitude east and 10 [degree] 03' 32" latitude north, which is located in the vicinity of Dumo. From there, the boundary runs in a straight line to the point which the Court has identified as the "source of the Tsikakiri" as referred to in the Declaration, and then follows that river (see below, p. 76, sketch-map No. 6).

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From Beacon 6 to Wamni Budungo

130. Paragraphs 33 and 34 of the Thomson-Marchand Declaration determine the boundary as follows:

"33. Thence a line starting from Beacon 6, passing Beacon 7, finishing at the old Beacon 8.

34. Thence from this mark 8 placed on the left bank of the Mao Youwai, a small stream flowing from the west and emptying itself into the Mayo Faro, in a straight line running towards the south-west and reaching the summit of Wamni Range, a very prominent peak to the north of a chain of mountains extending towards the Alantika Mountains, and situated to the east of the old frontier mark No. 10."

131. In respect of the course of the boundary from Beacon 6 to Wamni Budungo, Nigeria states that Beacons 6 and 8, through which the Thomson-Marchand Declaration provides for the boundary to pass, have not been found. Some traces of Beacon 7 are said to remain at its location. Citing paragraph 32 of the Thomson-Marchand Declaration, which refers to the "old British-German Frontier", it argues that an attempt should therefore be made to locate those beacons by reference to the 1906 Anglo-German Agreement, which served as the basis for fixing the course of the boundary in this area. Thus Annex I to that

Agreement, which was drafted in 1903, contains a description of the method employed to determine the locations of the beacons. Paragraph 3 of the Annex provides:

"the line then follows the median line of the Faro up-stream, as far as the junction of the Mao Hesso with the main stream; and afterwards the median line of the Mao Hesso, as far as a post, No. 6, on the left bank of the Mao Hesso, about 3 km north-west of Beka. It then runs from the median line of the river at right angles to its course, to No. 6 post."

[p376]

Sketch-Map No. 6. Source of the Tsikakiri River.

[p377]

Paragraph 4 then goes on to explain:

"From No. 6 post the line runs straight to a conspicuous rock, on a slight eminence on the road from Gurin to Karin. This rock has a boundary mark (No. 7) "D [ILLEGIBLE SYMBOL] B" (Deutsch-British) cut into it. From this rock it runs straight to a post, No. 8, fixed on the road at the entrance to the pass through the Karin Hills, north of the village of Karin."

Nigeria claims that, pursuant to that method, Beacon 6 is situated on the left bank of the Mao Hesso about 3 km north-west of Beka, while Beacon 8 is situated at the intersection of the extension of the line joining Beacons 6 and 7 and the stream mentioned in paragraph 34 of the Thomson-Marchand Declaration.

132. For its part, Cameroon states that the problem in this area consists in identifying all of the beacons referred to in paragraphs 33 and 34 of the Thomson-Marchand Declaration, including Beacon 7, which Cameroon denies to be the one described by Nigeria, and identifying the summit of Wamni Range. Cameroon nevertheless stresses that this is a problem of demarcation, not delimitation.

133. The Court notes that the interpretation of paragraphs 33 and 34 of the Thomson-Marchand Declaration raises a problem in that those provisions describe the line of the boundary as passing through three beacons of which at least two have now disappeared.

The Court has studied most attentively the text of Annex I to the Anglo-German Agreement of 1906, as well as the cartographic material provided to it by the Parties, in order to discover the location of these beacons. The Court thus notes that the point indicated by Nigeria as corresponding to Beacon 6 and situated at 12 [degree] 53' 15" longitude east and 9 [degree] 04' 19" latitude north does indeed reflect the terms of the description of it given in the Agreement, since it lies on the left bank of the Mao Hesso 3 km to the north-west of the village of Beka. The Court likewise considers that the point indicated by Nigeria as corresponding to Beacon 7 and situated at 12 [degree] 51' 55" longitude east and 9 [degree] 01' 03" latitude north must be accepted. Although Nigeria has produced no evidence of Beacon 7 having been found at that point, its location does indeed correspond to the description in the 1906 Anglo-German Agreement, particularly in view of the fact that it is the only high ground in that area. As regards the location of Beacon 8, which is described as situated at the entrance to the pass through the Karin Hills on the road crossing the pass, and on the left bank of the Mao Youwai, it is the point proposed by Cameroon, located at 12 [degree] 49' 22" longitude east and 8 [degree] 58' 18" latitude north, which must be taken to be the correct one, since it satisfies both the conditions laid down by the 1906 Agreement and those in paragraph 34 of the Thomson-Marchand

Declaration.

134. The Court accordingly concludes that paragraphs 33 and 34 of the Thomson-Marchand Declaration must be interpreted as providing [p378] for the boundary to pass through the points having the above-mentioned co-ordinates, which it has identified as corresponding to Beacons 6, 7 and 8 as referred to in those paragraphs (see below, p. 78, sketch-map No. 7).

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Maio Senche

135. Paragraph 35 of the Thomson-Marchand Declaration determines the boundary as follows:

"35. Thence the frontier follows the watershed from the Mao Wari to the west and from the Mao Faro to the east, where it rejoins the Alantika Range, it follows the line of the watershed of the Benue to the north-west and of the Faro to the south-east as far as the south peak of the Alantika Mountains to a point 2 kilometres to the north of the source of the River Mali."

136. Nigeria contends that the boundary in this sector must follow the watershed. It points out that the line claimed by Cameroon in this area displaces the boundary from the watershed which the boundary is to follow pursuant to paragraph 35 of the Thomson-Marchand Declaration, "thereby attributing to Cameroon the small village of Batou (Batodi Dampti) and some 1,200 hectares of land territory" (CN 2002/39, p. 21).

137. For its part, Cameroon maintains that "the representation of the watershed as it crosses the Alantika Range and the location of the village of Batou" is solely a problem of demarcation.

138. The Court notes that, in the Maio Senche area, covered by paragraph 35 of the Thomson-Marchand Declaration, the difficulty lies in identifying the line of the watershed, of which the two Parties have proposed differing cartographic representations.

139. The Court confirms that the boundary in the Maio Senche area follows the line of the watershed between the Benue and the Faro. Paragraph 35 of the Thomson-Marchand Declaration is quite clear on this point, which is indeed not disputed by the Parties. After studying the cartographic material provided to it by the Parties, the Court observes that it cannot accept the watershed line proposed by Cameroon, in particular because it follows the course of a river over the greater part of its length, which is incompatible with the concept of the line of a watershed. The watershed line passes, as Nigeria contends, between the basin of the Maio Senche and that of the two rivers to the south (see below, p. 80, sketch-map No. 8).

[p379]

Sketch-Map No. 7. from Beacon No. 6 to Wamni Budungo

[p380]

Sketch-Map No. 8. Maio Senehe

*[p381]

Jimbare and Sapeo

140. Paragraphs 35 to 38 of the Thomson-Marchand Declaration determine the boundary as follows:

"35. Thence the frontier follows the watershed from the Mao Wari to the west and from the Mao Faro to the east, where it rejoins the Alantika Range, it follows the line of the watershed of the Benue to the north-west and of the Faro to the south-east as far as the south peak of the Mountains to a point 2 kilometres to the north of the source of the River Mali.

36. Thence from this peak by the River Sassiri, leaving Kobi to France and Kobi Leinde to Great Britain, Tebou and Tscho to France, as far as the confluence with the first stream coming from the Balakossa Range (this confluence touches the Kobodji Mapeo Track), from this stream towards the south, leaving Uro Belo to Great Britain and Nanaoua to France.

37. Thence the boundary rejoins the old boundary about Lapao in French territory, following the line of the watershed of the Balakossa range as far as a point situated to the west of the source of the Labidje or Kadam River, which flows into the River Deo, and from the River Sampee flowing into the River Baleo to the north-west.

38. Thence from this point along the line of the watershed between the River Baleo and the River Noumberou along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, turning by this village, which is in Nigeria, going up a valley north-east and then south-east, which crosses the Banglang range about a kilometre to the south of the source of the Kordo River."

141. In regard to the course of that part of the land boundary described in paragraphs 35 to 38 of the Thomson-Marchand Declaration, Nigeria first notes that the wording of the Declaration is defective in many respects and proposes to clarify it. It contends that the Court should find that the south peak of the Alantika mountains is Hosere Bila, situated 2 km north of the source of the Mali River. It further points out that the Sassiri River referred to in paragraph 36 of the Thomson-Marchand Declaration does not flow from Hosere Bila but from the Balakossa Range lying further to the south, and that the river referred to in paragraph 36 is in fact the Leinde or Lugga. It adds that, south of Nananoua, the description of the boundary should be clarified and modified by the Court, since the text of paragraphs 37 and 38 of the Thomson-Marchand Declaration and the accompanying map are mutually contradictory. It explains that the intention of the British and French Governments had since 1920 been to attribute Jimbare to France and Sapeo to Great Britain. In this connection it points out that on 12 November 1920 a joint proposal to this effect had been signed by W. D. K. Mair, a British Dis-[p382]trict Officer, and Captain Louis Pition, representing the French administration (hereinafter the "Mair-Pition Joint Proposal"), following a delimitation mission on the ground, that proposal being subsequently incorporated into a document signed on 16 October 1930 by R.Logan, British District Officer, and Lieutenant J. Le Brun, representing the French administration (hereinafter the "Logan-Le Brun proces-verbal"). Nigeria claims that this document, drawn up after the Thomson-Marchand Declaration was prepared but before it was signed, was intended to set out a solution on the ground to the difficulties created by the text of the Thomson-Marchand Declaration and that it has been respected since then by both Parties.

Nigeria contends that, while part of the proposals in the Logan-Le Brun proces-verbal were incorporated into the text of the Thomson-Marchand Declaration, the drafters forgot to

amend also the part of the Declaration concerning Jimbare and Sapeo; as far as Sapeo was concerned, the proposals in the Logan-Le Brun proces-verbal were nonetheless shown on the 1931 map annexed to the Declaration. In Nigeria's view, it is the map which should therefore be followed and not the text of the Declaration, since this "does not accord with the extensive practice on the ground for the past three quarters of a century". Thus it asserts that Sapeo was treated as Nigerian during the 1959 and 1961 plebiscites and that Nigeria is responsible for its administration. In Nigeria's view, the solution is therefore to construe the Thomson-Marchand Declaration in the light of the Mair-Pition Joint Proposal, of the Logan-Le Brun proces-verbal and of the well-established local practice. The new description based on the Logan-Le Brun proces-verbal would result in leaving all of the Balakossa Range to Cameroon and giving Nigeria the Sapeo plain on the southern side of Hosere Sapeo. It contends that the modified boundary line was moreover accepted by Cameroon in a letter dated 17 March 1979 to the "Prefect of Benue Department" from the Sub-Prefect of Poli Subdivision.

142. Cameroon agrees with Nigeria that the peak referred to in paragraph 35 of the Thomson-Marchand Declaration is Hosere Bila and that the rivers whose courses are to be followed in this area are indeed first the Leinde and then the Sassiri. Cameroon maintains, however, that south of Nananoua only the Thomson-Marchand Declaration should be used in order to establish the course of the boundary; it argues that, although the Mair-Pition Joint Proposal was submitted to France and Great Britain, it was not accepted by them and not incorporated in the Thomson-Marchand Declaration; the same applied to the Logan-Le Brun proces-verbal. As regards the 1979 letter, Cameroon observes that "[a mere sub-prefect] had not properly understood the true legal position". In Cameroon's view, the text of the Thomson-Marchand Declaration should therefore be adhered to.

143. The Court notes that the interpretation of paragraphs 35 to 38 of the Thomson-Marchand Declaration poses problems, since the description of the boundary therein appears both to contain a series of material [p383] errors and, in certain places, to contradict the representation of that boundary on the 1931 map appended to the Declaration.

The Court notes, however, that, as regards the area to the north of Nananoua as referred to in paragraph 36 of the Thomson-Marchand Declaration, the Parties agree that the rivers whose courses form the boundary are the Leinde and the Sassiri. Similarly, the cartographic representations of this section of the boundary proposed by the Parties correspond in every respect.

To the south of Nananoua, on the other hand, there is no agreement between Cameroon and Nigeria.

144. The Court will first address the Sapeo area. After carefully studying the maps provided by the Parties and the Logan-Le Brun proces-verbal, the Court finds that, as Nigeria claims, it is indeed the boundary described in that proces-verbal and not that described in the Thomson-Marchand Declaration which was transposed onto the 1931 map appended to the Declaration. The Court further notes that, in practice, Sapeo has always been regarded as lying in Nigerian territory. Thus Sapeo was regarded as Nigerian in the 1959 and 1961 plebiscites. While Cameroon has stated in its written pleadings that it regarded as "insufficient" the various items of evidence presented by Nigeria as proof of its administration of the village of Sapeo, it has however not seriously challenged them. Cameroon has also never claimed to exercise any form of administration over the village. The letter of 17 March 1979 from the Sub-Prefect of Poli Subdivision to the "Prefect of Benue Department" indicates that Cameroon was aware of Nigeria's administration of Sapeo. The Court accordingly considers that in this area the Thomson-Marchand

Declaration should be interpreted in accordance with the intention of its authors, as manifested on the map appended thereto and on the ground, namely so as to make the boundary follow the course described in the Logan-Le Brun proces-verbal.

145. Turning next to the situation in the Jimbare area, the Court notes that, contrary to what occurred in regard to Sapeo, the modification of the boundary provided for in the Logan-Le Brun proces-verbal was not transposed onto the 1931 map appended to the Thomson-Marchand Declaration in respect of the Jimbare area. The course of the boundary on the map is as described in the Declaration. The Court nonetheless takes the view that it is the course as described in the Logan-Le Brun proces-verbal which must also prevail here. As the Court has just found, the Logan-Le Brun course in effect corresponds to the intention of the authors of the Declaration throughout this region. In its Rejoinder Nigeria has moreover accepted this interpretation of the Thomson-Marchand Declaration, which is favourable to Cameroon, whilst the latter has not opposed it.

146. The Court accordingly concludes, first, that paragraphs 35 and 36 of the Thomson-Marchand Declaration must be interpreted as providing [p384] for the boundary to pass over Hosere Bila, which it has identified as the "south peak of the Alantika Mountains" referred to in paragraph 35, and then from that point along the River Leinde and the River Sassiri "as far as the confluence with the first stream coming from the Balakossa Range".

The Court further concludes that paragraphs 37 and 38 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the course described in paragraph 1 of the Logan-Le Brun proces-verbal, as shown by Nigeria in Figures 7.15 and 7.16 at pages 346 and 350 of its Rejoinder.

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Noumberou-Banglang

147. Paragraph 38 of the Thomson-Marchand Declaration determines the boundary as follows:

"38. Thence from this point along the line of the watershed between the River Baleo and the River Noumberou along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, turning by this village, which is in Nigeria, going up a valley north-east and then south-east, which crosses the Banglang range about a kilometre to the south of the source of the Kordo River."

148. Nigeria considers that paragraph 38 of the Thomson-Marchand Declaration is also defective in that it describes the boundary as "going up a valley north-east and then south-east", whereas the only valley in the area runs north-west and then south-west. According to Nigeria, this error was noted in the 1930 Logan-Le Brun proces-verbal and rectified by a provision for the boundary to follow "the main course of the Mayo Namberu upstream to its source in a well-defined saddle approx. 1/2 mile to the east of the main summit of Hossere Banglang".

149. For its part, Cameroon stands by the definition of the boundary set out in paragraphs 37 and 38 of the Thomson-Marchand Declaration.

150. The Court notes that the final part of paragraph 38 of the Thomson-Marchand Declaration poses problems of interpretation in that it contains fundamental errors of a material nature. After examining the cartographic material provided by the Parties, the Court has thus reached the conclusion, as Nigeria contends, that there is no valley in the

area running "north-east, then south-east", contrary to what is stated in the text of this paragraph. The Court will therefore endeavour to identify the course which the authors of the Thomson-Marchand Declaration intended the boundary to follow in this area.

The Court notes that in this regard only the part of the boundary situated to the south of the source of the Noumberou poses any problem. [p385]

To the north of that point, Cameroon and Nigeria agree that the boundary should follow the course of the Noumberou. The course of the boundary shown on the Cameroonian and Nigerian maps confirms that agreement.

However, to the south of the source of the Noumberou, the cartographic representations of the boundary presented by the Parties diverge.

151. The Court observes that, while the text of the Thomson-Marchand Declaration contains scant information enabling it to determine the precise course of the boundary in this sector, the description of it in the Logan-Le Brun proces-verbal is, however, far more detailed and enables such a determination to be made. The Court recalls that it has already had occasion to use the text of that proces-verbal in order to interpret the Thomson-Marchand Declaration, where it was clear that its terms corresponded to the intention of the authors of the Declaration (see paragraph 143 above). The Court has no doubt that this is again the case here. It notes in particular that the Logan-Le Brun proces-verbal and paragraph 38 of the Thomson-Marchand Declaration appear to make the boundary in this sector terminate at the same point. Thus the Logan-Le Brun proces-verbal provides that the boundary runs to Mount Tapare, situated "about a mile to the south of the source of the Mayo Kordo", whilst the English text of the Thomson-Marchand Declaration provides for the boundary to pass through a point "about a kilometre to the south of the source of the Kordo River". The French text of paragraph 38 omits the phrase "to the south of". The Court is bound moreover to note in this regard that the part of the boundary situated to the north of the source of the Noumberou, on which the Parties are in agreement, follows the boundary established by the Logan-Le Brun proces-verbal.

The Court considers that it is the boundary line proposed by Nigeria which is to be preferred. That is the line which runs most directly to Hosere Tapere, located at 12 [degree] 14' 30" longitude east and 8 [degree] 22' 00" latitude north, the point indicated by the Logan-Le Brun proces-verbal as the terminal for this section of the boundary. That line is moreover more favourable to Cameroon than the line shown on its own maps, and Cameroon has not opposed it.

152. The Court accordingly concludes that the final part of paragraph 38 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the course of the River Noumberou as far as its source, and then from that point to run in a straight line as far as Hosere Tapere as identified by the Court (see below, p. 86, sketch-map No. 9).

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Tipsan

153. Paragraphs 40 and 41 of the Thomson-Marchand Declaration determine the boundary as follows:

[p386]

Sketch-Map No. 9. Noumberou-Banglang.

[p387]

"40. Thence along a line parallel to the Bare Fort Lamy Track and 2 kilometres to the west of this track, which remains in French territory.

41. Thence a line parallel to and distant 2 kilometres to the west from this road (which is approximately that marked Faulborn, January 1908, on Moisel's map) to a point on the Maio Tipsal (Tiba, Tibsat or Tussa on Moisel's map) 2 kilometres to the south-west of the point at which the road crosses said Maio Tipsal."

154. Both Nigeria and Cameroon agreed at the hearings that the description of the boundary set out in paragraphs 40 and 41 of the Declaration is clear.

Cameroon maintains, however, that there is a demarcation problem in this area, namely in identifying on the ground the features mentioned in those provisions. Specifically, it contends that there is a locality called Tipsan on Cameroonian territory some 3 km from the town of Kontcha.

Nigeria denies the existence of a village called Tipsan on the Cameroonian side of the boundary, claiming that the only place called Tipsan is an immigration post situated on Nigerian territory.

155. The Court observes that at the hearings the Parties agreed that the boundary must follow a line running parallel to the Fort Lamy-Bare road some 2 km to the west thereof, as paragraph 41 of the Thomson-Marchand Declaration provides. The Court takes note of that agreement. However, the Court considers that, in order to remove any doubt, it should identify the terminal point of this section of the boundary -- namely the point situated on the Mayo Tipsal "2 kilometres to the south-west of the point at which the road crosses said Mayo Tipsal" -- as corresponding to the co-ordinates 12 [degree] 12' 45" longitude east and 7 [degree] 58' 49" latitude north.

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Crossing the Maio Yin

156. Paragraphs 48 and 49 of the Thomson-Marchand Declaration determine the boundary as follows:

"48. Thence to Hosere Lowul, which is well over 2 kilometres from the Kwancha-Banyo main road. This peak (Hosere Lowul) lies on a magnetic bearing of 296 from the apex of the Genderu Pass on the above-mentioned main road. From this apex, which is distant 3 1/2 miles from Genderu Rest-house, and which lies between a peak of Hosere M' Bailaji (to the west) and a smaller hill, known as Hosere Burutol, to the east, Hosere M'Bailaji has a magnetic bearing of 45 and Hosere Burutol one of 185.

49. Thence a line, crossing the Maio Yin at a point some 4 kilometres to the west of the figure 1,200 (denoting height in metres of a [p388] low conical hill) on Moisel's map E 2, to a prominent conical peak, Hosere Gulungel, at the foot of which (in French Territory) is a spring impregnated with potash, which is well-known to all cattle-owners in the vicinity. This Hosere Gulungel has a magnetic bearing of 228 from the point (5 miles from Genderu Rest-house, which is known locally as 'Kampani Massa' on the main Kwancha-Banyo road where it (Hosere Gulungel) first comes into view. From this same point the magnetic

bearing to Hosere Lowul is 11. The Salt lick of Banare lies in British Territory."

157. Nigeria considers that paragraphs 48 and 49 of the Thomson-Marchand Declaration are too vague, in particular in respect of the location of the precise point where the boundary crosses the Maio Yin; the Court should therefore identify that point.

158. In Cameroon's view, the two paragraphs of the Thomson-Marchand Declaration in question do not require any clarification by the Court; the two peaks and the straight line to be drawn between them, as well as the point at which the river is crossed, are identified in precise enough terms to make this simply a question of demarcation.

159. The Court observes that, while Nigeria did in its Counter-Memorial raise the question of the course of the boundary where it crosses the Maio Yin as described in paragraph 49 of the Thomson-Marchand Declaration, it did not return to this point in its Rejoinder, or at the hearings. Nor did Nigeria challenge Cameroon's argument that the problem in this area is merely one of demarcation. The Court accordingly considers that it is not necessary to specify the co-ordinates of the points through which, pursuant to the Declaration, the boundary is to pass in this area.

160. The Court accordingly confirms that the boundary in the area where it crosses the Maio Yin follows the course described in paragraphs 48 and 49 of the Thomson-Marchand Declaration.

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The Hambere Range area

161. Paragraphs 60 and 61 of the Thomson-Marchand Declaration determine the boundary as follows:

"60. Thence the Frontier follows the watershed amongst these Hosere Hambere (or Gesumi) to the north of the sources of the Maio Kombe, Maio Gur and Maio Malam to a fairly prominent, pointed peak which lies on a magnetic bearing of 17 [degree] from a cairn of stones, 8 feet high, erected on the 15th September, 1920, on the south side of the above Banyo-Kumbo-Bamenda road at a point 1 mile from N'Yorong Rest-camp and 8 1/2 miles from Songkorong village.

61. From this peak in the Hosere Hambere (or Gesumi), which is [p389] situated just to the east of the visible source of the Maio M'Fi (or Baban), the Frontier follows the watershed, visible all the way from the Cairn, between the Maio Malam to east (French) and the Maio M'Fi (or Baban) to west (British), till it cuts the Banyo-Kumbo-Bamenda road at the Cairn. This Cairn is immediately under the highest peak of the Hosere Nangban, which is shown on Moisel's map F 2 as Hosere Jadji, but Jadji is really the name of the Pagan head of N'Yorong village."

162. In respect of the sector of the boundary delimited by paragraphs 60 and 61 of the Thomson-Marchand Declaration, Nigeria asserts that the peak described therein as being "fairly prominent", which in the English version of the text is further described as "pointed", is "Itang Hill". It claims to have identified this peak as lying on a magnetic bearing of 17 [degree] from a point whose co-ordinates are 11 [degree] 11' 55" longitude east and 6 [degree] 24' 05" latitude north, where it claims to have located "with a fair degree of probability" the site of the cairn referred to in paragraph 60 of the Thomson-Marchand Declaration. As that peak is not however on the watershed, contrary to what is provided in paragraphs 60 and 61 of the Declaration, the boundary should, according to

Nigeria, be drawn by connecting the crest line to Itang Hill north-east of this summit, and then by following the escarpment to the south-west of the Nigerian village of Sanya, where it would join the watershed line.

163. For its part, Cameroon argues that identifying the "fairly prominent" peak referred to in paragraph 60 of the Thomson-Marchand Declaration and in the 1946 Order in Council is purely a problem of demarcation. It further contends that the solution proposed by Nigeria could be intended to justify encroachments in the Tamnyar area by arbitrarily moving the watershed line and that no map shows a village called Sanya.
164. The Court notes that paragraphs 60 and 61 of the Thomson-Marchand Declaration raise problems of interpretation, since they provide for the boundary to pass over "a fairly prominent peak" without any further clarification (although in the English text of paragraph 60, that peak is further described as "pointed"), and the Parties have differing views as to the location of that peak.

165. The Court observes that paragraphs 60 and 61 contain a number of indications which are helpful in locating the "fairly prominent, pointed peak" referred to therein. First, those paragraphs state that the peak must be located on the watershed passing through the Hosere Hambere. Thus paragraph 60 provides that the peak is to be reached, coming from the east, by following "the watershed amongst these Hosere Hambere (or Gesumi)". The French text of paragraph 61 further provides that from the peak "la frontiere continue de suivre la ligne de partage des eaux" [the boundary continues to follow the line of the watershed] (emphasis added by the Court). Moreover, the fact that the peak referred to in para-[p390]graph 60 must lie on the watershed passing through the Hosere Hambere has been accepted by Nigeria as a basic requirement for the course of the boundary in this sector. Secondly, paragraphs 60 and 61 make it clear that this peak lies on a "bearing" -- described in the English text as "magnetic" -- of 17 [degree] from a "cairn of stones" erected in 1920 and situated "on the south side of the . . . Banyo-Kumbo-Bamenda road", "immediately under the highest peak of the Hosere Nangban". Thirdly, paragraph 61 states that the line of the watershed from the peak separates the Mayo Malam and the Mayo M'Fi basins, and that it is visible from the cairn used to calculate the magnetic bearing of 17 [degree]. Fourthly, the English text of paragraph 61 further states that this peak is "situated just to the east of the visible source of the Maio M'Fi", while the French text omits the adverb "just".

166. The Court has studied with the greatest care the maps provided by the Parties, and in particular the course of the watershed running through the Hosere Hambere. On the basis of this study, it has concluded that the fairly prominent pointed peak referred to in paragraph 60 of the Thomson-Marchand Declaration is not Itang Hill as Nigeria contends.

Thus the Court observes that, while Itang Hill does indeed lie on a magnetic bearing of 17 [degree](a true bearing of 8 [degree] after conversion) calculated from the point which Nigeria describes as corresponding to the site of the stone cairn referred to in paragraph 60 and located on a meridian lying to the east of that of the sources of the River M'Fi, it does not, however, satisfy any of the other criteria prescribed by paragraphs 60 and 61. Thus Itang Hill does not lie on the watershed running through the Hosere Hambere, which is located 2 km to the north. Moreover, at no time does the watershed between the Mayo Malam and the Mayo M'Fi come at all close to Itang Hill.

167. The Court notes, on the other hand, that following the line of the watershed through the Hosere Hambere from the east, in accordance with paragraph 60, brings one to a very prominent peak, Tamnyar, which satisfies the conditions laid down in the Thomson-Marchand Declaration and whose elevation is greater than that of Itang Hill. This peak is shown on Figure 7.37 reproduced at page 388 of Nigeria's Rejoinder as bearing the name

Tamnyar and having an elevation of 5,968 feet, or approximately 1,820 m. In addition to the essential fact that the watershed through the Hosere Hambere passes over the foothills of this peak, the Court notes that Tamnyar is also located on a meridian lying to the east of that of the sources of the M'Fi and that the watershed on which it lies does indeed, after turning to the south, become the watershed between the Mayo Malam and the Mayo M'Fi. The Court further notes that Tamnyar Peak lies on a bearing almost identical to that of Itang Hill.

168. The Court concludes from the foregoing that paragraph 60 of the [p391] Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the line of the watershed through the Hosere Hambere or Gesumi, as shown on sheet NB-32-XVIII-3a-3b of the 1955 IGN 1:50,000 map of Cameroon, produced in the proceedings by Nigeria, as far as the foot of Tamnyar Peak, which the Court has identified as the "fairly prominent, pointed peak" referred to in the Declaration (see below, p. 94, sketch-map No. 10).

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From the Hambere Range to the Mburi River (Lip and Yang)

169. The 1946 Order in Council determines the boundary from west to east as follows:

"thence the River Mburi southwards to its junction with an unnamed stream about one mile north of the point where the new Kumbo-Banyo road crosses the River Mburi at Nyan (alias Nton), the said point being about four miles south-east by east of Muwe; thence along this unnamed stream on a general true bearing of 120 [degree] for one and a half miles to its source at a point on the new Kumbo-Banyo road, near the source of the River Mfi; thence on a true bearing of 100 [degree] for three and five-sixths miles along the crest of the mountains to the prominent peak which marks the Franco-British frontier."

170. According to Nigeria, the second part of the land boundary, as fixed by the 1946 Order in Council, must begin east of "Tonn Hill". It takes the view, contrary to what Cameroon claims, that the "fairly prominent, pointed peak" as referred to in the English text of paragraph 60 of the Thomson-Marchand Declaration and the "prominent peak" referred to in the Order in Council, which fixes the point where the boundary departs from this area in a westerly direction, are not identical. It points out that the peak specified in the Order in Council is not described as "pointed"; in its view, this peak is "Tonn Hill". The two sections of the boundary should accordingly be joined by drawing a line along the crest line from Itang Hill to Tonn Hill. Nigeria maintains that from that point the text of the Order in Council is ambiguous and defective in that it does not correspond to the local topography. Thus the Kumbo-Banyo road does not cross the river at Nyan (Yang) but 1 1/4 miles to the north and neither of the two streams in this area exactly matches the description given in the text and, in particular, neither has its source on the road near the source of the M'Fi. Nigeria states that a British colonial official, Dr. Jeffreys, carried out a survey on the ground in 1941 following tribal disputes; the boundary between British-mandated Northern and Southern Cameroons was then fixed to the west of a cairn placed on the Bang-Yang track near Yang along a line different from that laid down in the 1946 Order in Council. The description of that line was sub-[p392]sequently confirmed in 1953 at a meeting in Yang between provincial officials and representatives of the local communities regarding the geographical boundaries applicable for purposes of tax collection in the area. Nigeria contends that it is this line which should be followed. To the east of the cairn placed on the Bang-Yang track, Nigeria proposes following the watershed up to Tonn Hill.

171. Cameroon maintains that the problem raised by Nigeria is merely one of demarcating the line described in the 1946 Order in Council. It contends that the "prominent" peak referred to in the Order in Council can only be the "fairly prominent, pointed peak" referred to in paragraph 60 of the Thomson-Marchand Declaration. At the hearings, it challenged the existence and validity of the "Jeffreys Boundary" relied upon by Nigeria. While stressing that the line of the boundary in this area is determined by the relevant provisions of the 1946 Order in Council, Cameroon stated that in its view the boundary "runs along the Maven River, then the Makwe River, then through the pillar set up by Jeffreys and then along a crest line to the fairly prominent, pointed peak known as Mount Kombon".

172. The Court notes that the interpretation of the Order in Council of 1946 raises two fundamental difficulties in the area between the "fairly prominent pointed peak" referred to in the Thomson-Marchand Declaration and the River Mburi. The first lies in joining up the lines prescribed by the two texts and, in particular, in identifying the peak described in the Order in Council as "prominent", without further clarification. The second consists in determining the course of the boundary beyond that point.

173. The Court has first sought to identify the "prominent peak", starting point for the sector of the boundary delimited by the Order in Council. The Court has placed particular emphasis on the issue of whether the "prominent peak" referred to in the Order in Council corresponds to the "fairly prominent, pointed peak" mentioned in paragraph 60 of the Thomson-Marchand Declaration, which the Court has already identified, or whether it is some other peak. Here too, the Court notes that the text of the Order in Council contains a certain amount of information regarding identification of the peak in question. Thus it states that the peak "marks the Franco-British frontier" and that it lies some 3.83 miles from a specific point close to the sources of the M'Fi on a true bearing of 100 [degree]. The Court finds, however, that, when transposed onto the maps in its possession, these data do not enable it to identify the location of the "prominent peak" referred to in the Order in Council. The Court observes in particular that the only peak identifiable by calculating a distance of 3.83 miles on a geographical bearing of 100 [degree] from the sources of the River M'Fi is Mount Kombon, indicated on Figure 7.37 in Nigeria's Rejoinder as having an elevation of 1,658 m. However, that peak is located far to the east of the former Franco-British frontier and [p393] can in no circumstances be regarded as marking that frontier. Nor does Mount Kombon lie on a crest line as prescribed by the Order in Council. Similarly, the criteria laid down by the Order in Council do not enable either Tonn Hill, or Itang Hill, or Tamnyar Peak, or any other specific peak, to be identified as the "prominent peak" over which it provides for the boundary to pass.

174. While unable to designate a specific peak, the Court has nonetheless been able to identify the crest line of which that peak must form part. Thus the 1946 Order in Council provides that the "prominent peak" over which the boundary is to pass lies along the crest of the mountains which mark the former Franco-British frontier. That crest line is readily identifiable. It begins at the point where the watershed through the Hosere Hambere turns suddenly to the south at the locality named Galadima Wanderi on Figure 7.37 in Nigeria's Rejoinder, then runs due south until it approaches the point named Tonn Hill on that same Figure. The intention of the drafters of the Order in Council was to have the boundary follow this crest line. As a result, what the Court has to do is to trace a line joining the peak referred to in paragraph 60 of the Thomson-Marchand Declaration, namely Tamnyar Peak, to that crest line. The watershed through the Hosere Hambere, on which Tamnyar Peak lies, extends naturally as far as the crest line marking the former Franco-British frontier, starting point of the sector of the boundary delimited by the 1946 Order in Council. It is thus possible to link the boundary sectors delimited by the two texts by following, from Tamnyar Peak, that watershed as represented on sheet NB-32-XVIII-3a-3b of the 1955

IGN 1:50,000 map of Cameroon, produced in the proceedings by Nigeria.

175. The Court then addressed the question of the course of the boundary from that crest line. The Court would begin by noting that it cannot interpret the Order in Council on the basis of a decision alleged to have been taken unilaterally by a British official in 1941, five years before the adoption of the Order, whose terms were not incorporated in the Order and which Nigeria itself recognizes that it has been impossible to locate. It is the Order in Council of 1946, and it alone, which secured international recognition by being transformed into an instrument of international delimitation when the Southern Cameroons under British mandate were incorporated into the newly independent Cameroon.

176. The Court observes that the 1946 Order in Council contains a great deal of information on the course of the boundary in this area. Thus it provides for the boundary to follow the River Mburi to its junction with a stream "about one mile north of the point where the new Kumbo-Banyo road crosses the River Mburi", a point which, according to the Order, is located "at Nyan". The Order adds that the boundary [p394] then follows this stream on a "general true bearing of 120 [degree]" as far as its source 1.5 miles away "near the source of the River Mfi". Finally, from there the boundary is required to follow a crest on "a true bearing of 100 [degree]" to the "prominent peak which marks the Franco-British frontier".

177. The Court has carefully studied the maps provided to it by the Parties. It notes that, while the topography of the area does not exactly correspond to the description of it in the Order in Council, the Court has nevertheless been able to locate on these maps a sufficient number of elements of that description to enable it to determine the course of the boundary. That course corresponds neither to the line claimed by Cameroon nor to that claimed by Nigeria.

178. The Court notes first that the names of the villages and rivers in the area vary greatly from one map to another. As Nigeria has pointed out, this is particularly true of the River Mburi, which is sometimes called the Manton or Mantu, sometimes the Ntem, and sometimes the Maven, and that its course changes according to the name given to it.

The Court next notes that the village of Yang does indeed correspond, as Nigeria contends, to that of Nyan referred to in the Order in Council, and that, as Nigeria stressed, the "new Kumbo-Banyo road" does not cross the River Mburi at Nyan, but to the north of Nyan. The Court notes, however, that there is, between the sources of the M'Fi and a point situated 1 mile north of Nyan, a river whose course corresponds to the description in the Order of the boundary to the east of Nyan: this is the river called Namkwer on the first edition of the sheet, "Mambilla S.W.",
of the 1965 DOS 1:50,000 map of Nigeria, provided to the Court by Nigeria. This river, whose source is indeed in the immediate vicinity of the western sources of the River M'Fi, flows from its source on a general true bearing of 120 [degree], over a distance slightly greater than 1.5 miles, to a point situated 1 mile north of Nyan, where it joins the River Mburi, as shown on sheet 11 of the third edition of the 1953 Survey Department 1:500,000 map of Nigeria, provided to the Court by Cameroon, and on the sketch-maps projected by Nigeria at the oral proceedings. Moreover, the source of the River Namkwer lies precisely on the crest line which, further east, marks the former Franco-British frontier and on which the "prominent peak" described in the Order in Council must be situated. It accordingly follows that the boundary to the east of Nyan follows the course of the River Namkwer and this crest line.

In respect of the section of the boundary lying west of Nyan, the Court would first note that the Parties agree on the point at which the boundary, following the River Mburi from

the north as described in the Order in Council, should turn eastward. The Parties also agree that the boundary must follow the River Mburi, also here called the Maven or Ntem, for a distance of slightly more than 2 km to the point where it divides [p395] into two. The Court would next note that the Order in Council provides for the boundary to follow the course of the River Mburi to its junction with a watercourse which the Court has identified as the River Namkwer. However, only the northern branch of the River Mburi/Maven/Ntem joins the River Namkwer. Thus the boundary must follow this branch.

179. From all of the foregoing, the Court concludes that, from east to west, the boundary first follows the watershed line through the Hosere Hambere from Tamnyar Peak to the point where that line reaches the crest line marking the former Franco-British frontier. In accordance with the 1946 Order in Council, the boundary then follows this crest line southward, then west-south-west to the source of the River Namkwer and then follows the course of that river to its confluence with the River Mburi, 1 mile north of Nyan. From that point, the boundary follows the course of the River Mburi. It first runs northwards for a distance of approximately 2 km, and then takes a south-westerly course for some 3 km and then west-north-west along a stretch where the river is also called the Maven or the Ntem. Then, some 2 km further on, it turns to run due north where the River Mburi is also called the Manton or Ntem (see below, p. 94, sketch-map No. 10).

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Bissaula-Tosso

180. The 1946 British Order in Council determines the boundary as follows:

"thence a straight line to the highest point of Tosso Mountain; thence in a straight line eastwards to a point on the main Kentu-Bamenda road where it is crossed by an unnamed tributary of the River Akbang (Heboro on Sheet E of Moisel's map on Scale 1/300,000) -- the said point being marked by a cairn; thence down the stream to its junction with the River Akbang; thence the River Akbang to its junction with the River Donga; thence the River Donga to its junction with the River Mburi."

181. Nigeria asserts that the 1946 Order in Council requires interpretation because the Akbang River has several tributaries. According to Nigeria, the southern tributary is the correct one, because it alone crosses the Kentu-Bamenda road, as required by the Order in Council. Nigeria further states that it has found the cairn described in the delimitation text at the spot which it proposes.

182. Cameroon maintains that Nigeria's interpretation of the Order in Council and of the maps is incorrect and that the Akbang lies further to

[p396]

Sketch-Map No. 10. The Hambere Range Area from the Humbere Range to the Mburi River.

[p397] the east than Nigeria claims. Further, it rejects Nigeria's claim that the cairn has been identified. According to Cameroon, the problem remains simply one of demarcation.

183. The Court notes that the problem in the Bissaula-Tosso area consists in determining which tributary of the River Akbang crosses the Kentu-Bamenda road and is thus the tributary which the Order in Council provides for the boundary to follow.

A study of the text of the 1946 Order in Council and of the maps available to the Court has led the Court to the conclusion that the River Akbang is indeed the river indicated by Nigeria and that it has two main tributaries, one to the north, the other to the south, as Nigeria claims. The question is then which of these tributaries is the one where the Order in Council provides for the boundary to run.

The Court observes that the northern tributary of the River Akbang cannot be the correct one. While it does flow close beside the Kentu-Bamenda road, it never crosses it, however, and could not do so, since in this area the road runs along the line of the watershed.

The Court finds, on the other hand, that the southern tributary of the Akbang does indeed cross the Kentu-Bamenda road as Nigeria claims. It is accordingly the course of the boundary proposed by Nigeria which must be preferred.

184. The Court therefore concludes that the 1946 Order in Council should be interpreted as providing for the boundary to run through the point where the southern tributary of the River Akbang, as identified by the Court, crosses the Kentu-Bamenda road, and then from that point along the southern tributary until its junction with the River Akbang.

*

The Sama River

185. The 1946 Order in Council determines the boundary as follows:

"From boundary post 64 on the old Anglo-German frontier the line follows the River Gamana upstream to the point where it is joined by the River Sama; thence up the River Sama to the point where it divides into two; thence a straight line to the highest point of Tosso Mountain."

186. Nigeria observes that the relevant provisions of the 1946 Order in Council are defective inasmuch as they place the boundary along the Sama River; it claims that they fail to provide a clear indication of which tributary should be used in identifying the point where the river "divides into two". According to Nigeria, this tributary should be the southern tributary of the Sama River, since it is three times the length of the northern tributary, has a flow equal to that of the river itself upstream of the confluence, and empties into a T-junction in a larger valley.
[p398]

187. According to Cameroon, on the other hand, "the Parties have always looked to the northern tributary of the Sama as the course of the boundary".

188. The Court notes that the interpretation of the Order in Council poses problems in regard to the River Sama, since the river has two tributaries, and hence two places where it "divides into two" as the Order in Council prescribes, but the Order does not specify which of those two places is to be used in order to determine the course of the boundary.

The Court has begun by addressing Nigeria's argument that the southern tributary should be preferred because it is longer and has a greater flow and the point of division occurs in a larger valley. The Court observes that, while Nigeria's observations in regard to the length of the tributaries and the topography of the area are confirmed by the maps which it has presented, this is not, however, the case in respect of other maps. Thus the Court notes in particular that, on the Moisel map, the two tributaries are of the same length and size. Moreover, the Court has no information enabling the flow to be determined. The Court

accordingly cannot accept Nigeria's argument.

Nor can the Court accept Cameroon's argument that the Parties have always in practice taken the northern tributary as determining the boundary. Cameroon has provided no evidence of this practice.

The Court considers, however, that a reading of the text of the Order in Council permits it to determine which tributary should be used in order to fix the boundary. The Court observes in this connection that, just as with the Thomson-Marchand Declaration, the Order in Council describes the course of the boundary by reference to the area's physical characteristics. Here again, the text of this description must have been drafted in such a way as to render the course of the boundary as readily identifiable as possible. The description of the boundary in the Order in Council starts from the north, and provides for it to run "up the River Sama to the point where it divides into two". Thus the inference is that the drafters of the Order in Council intended that the boundary should pass through the first confluence reached coming from the north. It is accordingly that confluence which must be chosen, as Cameroon contends.

189. The Court concludes from the foregoing that the Order in Council of 1946 must be interpreted as providing for the boundary to run up the River Sama to the confluence of its first tributary, that being the point, with co-ordinates 10 [degree] 10' 23" longitude east and 6 [degree] 56' 29" latitude north, which the Court has identified as the one specified in the Order in Council where the River Sama "divides into two"; and then, from that point, along a straight line to the highest point of Mount Tosso.
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Pillar 64

190. Having initially expressed differing positions, Cameroon and [p399] Nigeria agreed at the hearings that pillar 64 lies north of the Gamana River and that the boundary described in the 1946 Order in Council must terminate at the intersection of the straight line joining pillars 64 and 65 with the median line of the Gamana River. The Court takes note of this agreement and therefore need no longer address this point.

*

Other points

191. At the hearings and in the written responses to the questions put by Members of the Court, a number of additional points concerning the boundary were discussed by Cameroon and Nigeria. Brief mentions were thus made of the village of Djarandoua, the confluence of the Benue and the Maio Tiel, Dorofi, the Obodu Cattle Ranch and pillar 103. No submissions were, however, presented by the Parties on these points. The Court is accordingly not required to adjudicate upon them.

192. The Court accordingly concludes that, in the disputed areas, the land boundary between Cameroon and Nigeria from Lake Chad to the Bakassi Peninsula is fixed by the relevant instruments of delimitation specified in paragraphs 73 to 75 above as interpreted by the Court in paragraphs 87 to 191 of this Judgment.

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193. The Court will next address the issue of the boundary in Bakassi and the question of sovereignty over the Bakassi Peninsula. In its final submissions Cameroon asks the Court

to adjudge and declare

"(a) that the land boundary between Cameroon and Nigeria takes the following course:

.....

-- thence
[from Pillar 114 on the Cross River], as far as the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs XVI to XXI of the Anglo-German Agreement of 11 March 1913.

(b) That, in consequence, inter alia, sovereignty over the peninsula of Bakassi . . . is Cameroonian."

Nigeria takes the contrary position. In its final submissions it requests that the Court should
[p400]

"(1) as to the Bakassi Peninsula, adjudge and declare:

(a) that sovereignty over the Peninsula is vested in the Federal Republic of Nigeria;

(b) that Nigeria's sovereignty over Bakassi extends up to the boundary with Cameroon described in Chapter 11 of Nigeria's Counter-Memorial".

194. Cameroon contends that the Anglo-German Agreement of 11 March 1913 fixed the course of the boundary between the Parties in the area of the Bakassi Peninsula, placing the latter on the German side of the boundary. Hence, when Cameroon and Nigeria acceded to independence, this boundary became that between the two countries, successor States to the colonial powers and bound by the principle of uti possidetis. For its part, Nigeria argues generally that title lay in 1913 with the Kings and Chiefs of Old Calabar, and was retained by them until the territory passed to Nigeria upon independence. Great Britain was therefore unable to pass title to Bakassi because it had no title to pass (nemo dat quod non habet); as a result, the relevant provisions of the Anglo-German Agreement of 11 March 1913 must be regarded as ineffective.

Nigeria further claims that that Agreement is defective on the grounds that it is contrary to the Preamble to the General Act of the Conference of Berlin of 26 February 1885, that it was not approved by the German Parliament and that it was abrogated as a result of Article 289 of the Treaty of Versailles of 28 June 1919.

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195. Before addressing the question of whether Great Britain was entitled to pass title to Bakassi through the Anglo-German Agreement of 11 March 1913, the Court will examine these three arguments of Nigeria concerning the defectiveness of that Agreement.

As regards the argument based on the General Act of the Conference of Berlin, the Court notes that, having been raised very briefly by Nigeria in its Counter-Memorial, it was not pursued either in the Rejoinder or at the hearings. It is therefore unnecessary for the Court to consider it.
196. Nigeria further contends that, under contemporary German domestic legislation, all treaties providing for cession or acquisition of colonial territory by Germany had to be

approved by Parliament. It points out that the Anglo-German Agreement of 11 March 1913 was not so approved. It argues that the Agreement involved the acquisition of colonial territory, namely the Bakassi Peninsula, and accordingly ought to have been "approved by the German Parliament, at least so far as its Bakassi provisions were concerned".

Cameroon's position was that "the German Government took the view that in the case of Bakassi the issue was one of simple boundary rectifica-[p401]tion, because Bakassi had already been treated previously as belonging de facto to Germany"; and thus parliamentary approval was not required.

197. The Court notes that Germany itself considered that the procedures prescribed by its domestic law had been complied with; nor did Great Britain ever raise any question in relation thereto. The Agreement had, moreover, been officially published in both countries. It is therefore irrelevant that the Anglo-German Agreement of 11 March 1913 was not approved by the German Parliament. Nigeria's argument on this point accordingly cannot be upheld.

198. In relation to the Treaty of Versailles, Nigeria points out that Article 289 thereof provided for "the revival of pre-war bilateral treaties concluded by Germany on notification to Germany by the other party". It contends that, since Great Britain had taken no steps under Article 289 to revive the Agreement of 11 March 1913, it was accordingly abrogated; thus Cameroon "could not have succeeded to the [Agreement] itself".

Cameroon argues that Article 289 of the Treaty of Versailles did not have any legal effect on the Agreement of 11 March 1913, because "the scope of this Article was limited to treaties of an economic nature in the broad sense of the term" -- which in Cameroon's view was confirmed by the context of the Article, its position within the scheme of the Treaty, its drafting history and its object and purpose in light of the Treaty as a whole.

199. The Court notes that since 1916 Germany had no longer exercised any territorial authority in Cameroon. Under Articles 118 and 119 of the Versailles Treaty, Germany relinquished its title to its overseas possessions. As a result, Great Britain had no reason to include the Anglo-German Agreement of 11 March 1913 among the "bilateral treaties or conventions" which it wished to revive with Germany. Thus it follows that this argument of Nigeria must in any event be rejected.

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200. The Court now turns to the question of whether Great Britain was entitled to pass title to Bakassi through the Anglo-German Agreement of 11 March 1913.

In this regard, Cameroon contends that the Agreement of 11 March 1913 fixed the course of the boundary between the Parties in the area of the Bakassi Peninsula and placed the latter on the Cameroonian side of the boundary. It relies for this purpose on Articles XVIII to XXI of the said Agreement, which provide inter alia that the boundary "follows the thalweg of the Akwayafe as far as a straight line joining Bakasi Point and King Point" (Art. XVIII) and that "should the lower course of the Akwayafe so change its mouth as to transfer it to the Rio del Rey, it is agreed that the area now known as the Bakasi Peninsula shall still remain [p402] German territory" (Art. XX). Cameroon further states that, since the entry into force of the Agreement of March 1913, Bakassi has belonged to its predecessors, and that sovereignty over the peninsula is today vested in Cameroon.

201. Nigeria does not contest that the meaning of these provisions is to allocate the Bakassi Peninsula to Germany. It does, however, insist that these terms were never put into effect,

and indeed were invalid on various grounds, though the other Articles of the Agreement of 11 March 1913 remained valid.

Nigeria contends that the title to sovereignty over Bakassi on which it relies was originally vested in the Kings and Chiefs of Old Calabar. It argues that in the pre-colonial era the City States of the Calabar region constituted an "acephalous federation" consisting of "independent entities with international legal personality". It considers that, under the Treaty of Protection signed on 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar, the latter retained their separate international status and rights, including their power to enter into relationships with "other international persons", although under the Treaty that power could only be exercised with the knowledge and approval of the British Government. According to Nigeria, the Treaty only conferred certain limited rights on Great Britain; in no way did it transfer sovereignty to Britain over the territories of the Kings and Chiefs of Old Calabar.

Nigeria argues that, since Great Britain did not have sovereignty over those territories in 1913, it could not cede them to a third party. It followed that the relevant part of the Anglo-German Agreement of 11 March 1913 was "outwith the treaty-making power of Great Britain, and that part was not binding on the Kings and Chiefs of Old Calabar". Nigeria adds that the limitations on Great Britain's powers under the 1884 Treaty of Protection,

"and in particular its lack of sovereignty over the Bakassi Peninsula and thus its lack of legal authority in international law to dispose of title to it, must have been known to Germany at the time the 1913 Treaty was concluded, or ought to have been on the assumption that Germany was conducting itself in a reasonably prudent way".

In Nigeria's view, the invalidity of the Agreement of 11 March 1913 on grounds of inconsistency with the principle nemo dat quod non habet applied only, however, "to those parts of the Treaty which purport to prescribe a boundary which, if effective, would have involved a cession of territory to Germany", that is to say, essentially Articles XVIII to XXII. The remaining provisions of the Treaty were untainted by that defect and accordingly remained in force and fully effective; they were self-standing provisions, and their application was not dependent upon the Bakassi [p403] provisions, which, being in law defective, were to be severed from the rest of the Agreement.

202. In reply, Cameroon contends that Nigeria's argument that Great Britain had no legal power to cede the Bakassi Peninsula by treaty is manifestly unfounded.

In Cameroon's view, the treaty signed on 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar established a "colonial protectorate" and, "in the practice of the period, there was little fundamental difference at international level, in terms of territorial acquisition, between colonies and colonial protectorates". Substantive differences between the status of colony and that of a colonial protectorate were matters of the national law of the colonial Powers rather than of international law. The key element of the colonial protectorate was the "assumption of external sovereignty by the protecting State", which manifested itself principally through

"the acquisition and exercise of the capacity and power to cede part of the protected territory by international treaty, without any intervention by the population or entity in question".

Cameroon further argues that, even on the hypothesis that Great Britain did not have legal capacity to transfer sovereignty over the Bakassi Peninsula under the Agreement of 11 March 1913, Nigeria could not invoke that circumstance as rendering the Agreement invalid. It points out that neither Great Britain nor Nigeria, the successor State, ever sought to claim that the Agreement was invalid on this ground; in this regard Cameroon states

that,

"on the contrary, until the start of the 1990s Nigeria had unambiguously confirmed and accepted the 1913 boundary line in its diplomatic and consular practice, its official geographical and cartographic publications and indeed in its statements and conduct in the political field",

and that "the same was true as regards the appurtenance of the Bakassi Peninsula to Cameroon". Cameroon further states that there is no other circumstance which might be relied on to render the Agreement of 11 March 1913 invalid.

Cameroon also contends that, in any event, the Agreement of 11 March 1913 forms an indivisible whole and that it is not possible to sever from it the provisions concerning the Bakassi Peninsula. It maintains that "there is a strong presumption that treaties accepted as valid must be interpreted as a whole and all their provisions respected and applied"; and that "parties cannot choose the provisions of a treaty which are to be applied and those which are not -- they cannot 'pick [p404] and choose' -- , unless there is a provision enabling them to act in that way".

203. The Court first observes that during the era of the Berlin Conference the European Powers entered into many treaties with local rulers. Great Britain concluded some 350 treaties with the local chiefs of the Niger delta. Among these were treaties in July 1884 with the Kings and Chiefs of Opobo and, in September 1884, with the Kings and Chiefs of Old Calabar. That these were regarded as notable personages is clear from the fact that these treaties were concluded by the consul, expressly as the representative of Queen Victoria, and the British undertakings of "gracious favour and protection" were those of Her Majesty the Queen of Great Britain and Ireland.

In turn, under Article II of the Treaty of 10 September 1884,

"The King and Chiefs of Old Calabar agree[d] and promise[d] to refrain from entering into any correspondence, Agreement, or Treaty with any foreign nation or Power, except with the knowledge and sanction of Her Britannic Majesty's Government."

The Treaty with the Kings and Chiefs of Old Calabar did not specify the territory to which the British Crown was to extend "gracious favour and protection", nor did it indicate the territories over which each of the Kings and Chiefs signatory to the Treaty exercised his powers. However, the consul who negotiated and signed the Treaty, said of Old Calabar "this country with its dependencies extends from Tom Shots . . . to the River Rumby (on the west of the Cameroon Mountains), both inclusive". Some six years later, in 1890, another British consul, Johnston, reported to the Foreign Office that "the rule of the Old Calabar Chiefs extends far beyond the Akpayafe River to the very base of the Cameroon Mountains". The Court observes that, while this territory extends considerably eastwards of Bakassi, Johnston did report that the Old Calabar Chiefs had withdrawn from the lands east of the Ndian. Bakassi and the Rio del Rey lay to the west of the Ndian, an area referred to by Johnston as "their real, undoubted territory".

In the view of the Court Great Britain had a clear understanding of the area ruled at different times by the Kings and Chiefs of Old Calabar, and of their standing.

204. Nigeria has contended that the very title of the 1884 Treaty and the reference in Article I to the undertaking of "protection", shows that Britain had no entitlement to do more than protect, and in particular had no entitlement to cede the territory concerned to third States: "nemo dat quod non habet".

205. The Court calls attention to the fact that the international legal status of a "Treaty of Protection" entered into under the law obtaining at the time cannot be deduced from its title alone. Some treaties of protect-[p405]tion were entered into with entities which retained thereunder a previously existing sovereignty under international law. This was the case whether the protected party was henceforth termed "protectorat" (as in the case of Morocco, Tunisia and Madagascar (1885; 1895) in their treaty relations with France) or "a protected State" (as in the case of Bahrain and Qatar in their treaty relations with Great Britain). In sub-Saharan Africa, however, treaties termed "treaties of protection" were entered into not with States, but rather with important indigenous rulers exercising local rule over identifiable areas of territory.

In relation to a treaty of this kind in another part of the world, Max Huber, sitting as sole arbitrator in the Island of Palmas case, explained that such a treaty

"is not an agreement between equals; it is rather a form of internal organisation of a colonial territory, on the basis of autonomy of the natives . . . And thus suzerainty over the native States becomes the basis of territorial sovereignty as towards other members of the community of nations." (RIIA, Vol. II, pp. 858-859.)

The Court points out that these concepts also found expression in the Western Sahara Advisory Opinion. There the Court stated that in territories that were not terra nullius, but were inhabited by tribes or people having a social and political organization, "agreements concluded with local rulers . . . were regarded as derivative roots of title" (Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 39, para. 80). Even if this mode of acquisition does not reflect current international law, the principle of intertemporal law requires that the legal consequences of the treaties concluded at that time in the Niger delta be given effect today, in the present dispute.

206. The choice of a protectorate treaty by Great Britain was a question of the preferred manner of rule. Elsewhere, and specifically in the Lagos region, treaties for cession of land were being entered into with local rulers. It was precisely a reflection of those differences that within Nigeria there was the Colony of Lagos and the Niger Coast Protectorate, later to become the Protectorate of Southern Nigeria.

207. In the view of the Court many factors point to the 1884 Treaty signed with the Kings and Chiefs of Old Calabar as not establishing an international protectorate. It was one of a multitude in a region where the local Rulers were not regarded as States. Indeed, apart from the parallel declarations of various lesser Chiefs agreeing to be bound by the 1884 Treaty, there is not even convincing evidence of a central federal power. There appears in Old Calabar rather to have been individual townships, headed by Chiefs, who regarded themselves as owing a general allegiance to more important Kings and Chiefs. Further, from the [p406] outset Britain regarded itself as administering the territories comprised in the 1884 Treaty, and not just protecting them. Consul Johnston reported in 1888 that "the country between the boundary of Lagos and the German boundary of Cameroons" was "administered by Her Majesty's Consular Officers, under various Orders in Council". The fact that a delegation was sent to London by the Kings and Chiefs of Old Calabar in 1913 to discuss matters of land tenure cannot be considered as implying international personality. It simply confirms the British administration by indirect rule.

Nigeria itself has been unable to point to any role, in matters relevant to the present case, played by the Kings and Chiefs of Old Calabar after the conclusion of the 1884 Treaty. In responding to a question of a Member of the Court Nigeria stated "It is not possible to say with clarity and certainty what happened to the international legal personality of the Kings

and Chiefs of Old Calabar after 1885."

The Court notes that a characteristic of an international protectorate is that of ongoing meetings and discussions between the protecting Power and the Rulers of the Protectorate. In the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) the Court was presented with substantial documentation of this character, in large part being old British State papers. In the present case the Court was informed that "Nigeria can neither say that no such meetings ever took place, or that they did take place . . . the records which would enable the question to be answered probably no longer exist . . ."

208. As to when the Kings and Chiefs ceased to exist as a separate entity, Nigeria told the Court it "is not a question susceptible of a clear-cut answer".

The Court notes in this regard that in 1885 Great Britain had established by proclamation a "British Protectorate of the Niger Districts" (which subsequently changed names a number of times), incorporating in a single entity the various territories covered by the treaties of protection entered into in the region since July 1884. The Court further notes that there is no reference to Old Calabar in any of the various British Orders in Council, of whatever date, which list protectorates and protected States. The same is true of the British Protected Persons Order of 1934, the Schedule to which refers to "Nigerian Protectorate and Cameroons under British Mandate". Nor is there any reference to Old Calabar in the Second Schedule to the British Protectorates, Protected States and Protected Persons Order in Council, 1949, though in the First Schedule there is a reference to the "Nigerian Protectorate".

Moreover, the Court has been presented with no evidence of any pro-[p407]test in 1913 by the Kings and Chiefs of Old Calabar; nor of any action by them to pass territory to Nigeria as it emerged to independence in 1960.

209. The Court thus concludes that, under the law at the time, Great Britain was in a position in 1913 to determine its boundaries with Germany in respect of Nigeria, including in the southern section.
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210. The Court will now examine the treatment, in the period 1913 to 1960, of the southern sector of the boundary as defined by the Anglo-German Agreement of 11 March 1913.

Cameroon contends that the mandate and trusteeship period, and the subsequent independence process, show recognition on the part of the international community of Cameroon's attachment to the Bakassi Peninsula.

Following the First World War, it was decided that the German colony of Cameroon should be administered in partitioned form by Britain and France under the framework of League of Nations mandate arrangements. Bakassi is said to have formed part of the area of the British Cameroons termed Southern Cameroons. This territorial definition is said to have been repeated in the trusteeship agreements which succeeded the mandates system after the Second World War. According to Cameroon, there was never any doubt in the minds of the British authorities that Bakassi formed part of the mandated and trusteeship territory of the Cameroons since Bakassi had formed part of German Cameroon pursuant to the Anglo-German Agreement of 11 March 1913. Moreover, although the British Cameroons Order in Council of 1923 established that the Northern and Southern Cameroons would be administered "as if they formed part of" Nigeria, Cameroon emphasized that this was

merely an administrative arrangement which did not lead to the incorporation of these territories into Nigeria. Cameroon produces documentary evidence, British Orders in Council and maps which, it claims, evidence that Bakassi is consistently placed within the British Cameroons throughout this period.

Cameroon further recalls that the United Nations plebiscites, held on 11 and 12 February 1961, resulted in a clear majority in the Northern Cameroons voting to join Nigeria, and a clear majority in the Southern Cameroons voting to join Cameroon. It maintains that the process of holding the plebiscite meant that the areas that fell within the Northern and Southern Cameroons had to be ascertained. Cameroon points out that the map attached to the Report of the United Nations Plebiscite Commissioner shows that the Bakassi Peninsula formed part of the Victoria South West plebiscite district in the south-east corner of Cameroon. This would show that the peninsula was recognized by the United Nations [p408] as being a part of the Southern Cameroons. Cameroon also emphasizes the absence of protest by Nigeria to the proposed boundary during the independence process, and the fact that Nigeria voted in favour of General Assembly resolution 1608 (XV) by which the British trusteeship was formally terminated.

Cameroon further refers to the maritime negotiations between Nigeria and Cameroon since independence, which resulted in instruments under which Nigeria is said to have recognized the validity of the Anglo-German Agreement of 11 March 1913, the boundary deriving from it, and Cameroon's sovereignty over the Bakassi Peninsula. These instruments included the Nigerian Note No. 570 of 27 March 1962, the Yaounde II Agreement of 4 April 1971, the Kano Agreement of 1 September 1974 and the Maroua Agreement of 1 June 1975.

Cameroon finally refers to its granting of permits for hydrocarbon exploration and exploitation over the Bakassi Peninsula itself and offshore, commencing in the early 1960s as well as to a number of consular and ambassadorial visits to the Bakassi region by Nigerian consuls and ambassadors, whose conduct in requesting permission and co-operation from the Cameroonian local officials and expressing thanks for it is said to corroborate Cameroon's claim to sovereignty over Bakassi.

211. Nigeria for its part argues that, at all times while the 1884 Treaty remained in force, Great Britain continued to lack power to give Bakassi away. As such, it claims that no amount of British activity in relation to Bakassi in the mandate or trusteeship periods could have severed Bakassi from the Nigeria protectorate. It draws additional support from the fact that, in practice throughout the period from 1913 to 1960, Bakassi was administered from and as part of Nigeria, and was never administered from or as part of Cameroon. Nigeria also asserts that there is no documentary evidence that the population of the Bakassi Peninsula participated in the United Nations plebiscite; the description of the Victoria South West plebiscite district in the Commissioner's Report does not refer to any areas situated in the Bakassi Peninsula.

Nigeria further denies the binding nature of the delimitation agreements referred to by Cameroon, in particular the Maroua Declaration, whose adoption, it claims, was never approved by the Supreme Military Council in contravention of Nigeria's constitutional requirements. It also denies the evidentiary value of the visits to the Bakassi region by Nigerian dignitaries referred to by Cameroon, on the basis that consular officials are not mandated to deal with issues of title to territory, nor to make assessments of questions of sovereignty, and, as such, their actions cannot be taken to impact upon these questions. Finally, on the issue of the granting of oil exploration permits and production agreements, [p409] Nigeria argues inter alia that "the area in dispute was the subject of competing exploration activities" and that "the incidence of oil-related activities was not . . . regarded

[by the Parties] as conclusive of the issue of sovereignty".

212. The Court notes that after the First World War Germany renounced its colonial possessions. Under the Versailles Treaty the German possessions of Cameroon were divided between Great Britain and France. In 1922 Great Britain accepted the mandate of the League of Nations for "that part [of the former German colony] of the Cameroons which lay to the west of the line laid down in the [Milner-Simon] Declaration signed on the 10th July, 1919". Bakassi was necessarily comprised within the mandate. Great Britain had no powers unilaterally to alter the boundary nor did it make any request to the League of Nations for any such alteration. The League Council was notified, and did not object to, the British suggestion that it administer Southern Cameroon together with the eastern region of the Protectorate of Nigeria. Thus the British Order in Council of 26 June 1923 providing for the Administration of the Mandated Territory of the British Cameroons stipulated that British Cameroons lying southwards of the line described in the Schedule would be administered "as if it formed part of" the southern provinces of the Protectorate of Nigeria. The Court observes that the terminology used in the Order in Council preserved the distinctive status of the mandated territory, while allowing the convenience of a common administration. The Nigerian thesis must therefore be rejected.

When, after the Second World War and the establishment of the United Nations, the mandate was converted to a trusteeship, the territorial situation remained exactly the same. The "as if provision continued in place, and again the Administering Authority had no authority unilaterally to alter the boundaries of the trusteeship territory. Thus for the entire period from 1922 until 1961 (when the Trusteeship was terminated), Bakassi was comprised within British Cameroon. The boundary between Bakassi and Nigeria, notwithstanding the administrative arrangements, remained an international boundary.

The Court is unable to accept Nigeria's contention that until its independence in 1961, and notwithstanding the Anglo-German Agreement of 11 March 1913, the Bakassi Peninsula had remained under the sovereignty of the Kings and Chiefs of Old Calabar. Neither the League of Nations nor the United Nations considered that to be the position.

213. Equally, the Court has seen no evidence that Nigeria thought that upon independence it was acquiring Bakassi from the Kings and Chiefs of Old Calabar. Nigeria itself raised no query as to the extent of its territory in this region upon attaining independence. [p410]

The Court notes in particular that there was nothing which might have led Nigeria to believe that the plebiscite which took place in the Southern Cameroons in 1961 under United Nations supervision did not include Bakassi.

It is true that the Southern Cameroons Plebiscite Order in Council, 1960 makes no mention of any polling station bearing the name of a Bakassi village. Nor, however, does the Order in Council specifically exclude Bakassi from its scope. The Order simply refers to the Southern Cameroons as a whole. But at that time it was already clearly established that Bakassi formed part of the Southern Cameroons under British trusteeship. The boundaries of that territory had been precisely defined in the "Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954", issued pursuant to the Nigeria (Constitution) Order in Council, 1951. That Proclamation, repeating the provisions of the Anglo-German Agreement of 11 March 1913, provided in particular: "From the sea the boundary follows the navigable channel of the River Akpa-Yafe; thence follows the thalweg of the aforesaid River Akpa-Yafe upstream to its confluence with the Rivers Akpa-Korum and Ebe." That the 1960 Order in Council applied to the Southern Cameroons as a whole is further confirmed by the fact, as noted in the Report of the United Nations Plebiscite Commissioner for the Cameroons under United Kingdom

Administration, that the 26 "plebiscite districts" established by the 1960 Order in Council corresponded to the "electoral constituencies for the Southern Cameroons House of Assembly".

The United Nations map indicating the voting districts for the plebiscite also reflected the provisions of the Agreement of 11 March 1913 reiterated in the above-mentioned 1954 Proclamation.

The Court further observes that this frontier line was acknowledged in turn by Nigeria when it voted in favour of General Assembly resolution 1608 (XV), which both terminated the Trusteeship and approved the results of the plebiscite.

214. Shortly after, in Note Verbale No. 570 of 27 March 1962 addressed to Cameroon, Nigeria referred to certain oil licensing blocks. A sketch-map was appended to the Note, from which it is clear that the block "N" referred to lay directly south of the Bakassi Peninsula. The block was described as offshore Cameroon. The Note Verbale further stated "the boundary follows the lower courses of the Apka-Yafe River, where there appears to be no uncertainty, and then out into the Cross River estuary". Nigeria clearly regarded the Bakassi Peninsula as part of Cameroon. The Court further notes that this perception was reflected in all Nigerian official maps up until 1972.

This common understanding of where title lay in Bakassi continued [p411] through until the late 1970s, when the Parties were engaging in discussions on their maritime frontier. In this respect, Article XXI of the Anglo-German Agreement of 11 March 1913 provided:

"From the centre of the navigable channel on a line joining Bakassi Point and King Point, the boundary shall follow the centre of the navigable channel of the Akwayafe River as far as the 3-mile limit of territorial jurisdiction. For the purpose of defining this boundary, the navigable channel of the Akwayafe River shall be considered to lie wholly to the east of the navigable channel of the Cross and Calabar Rivers."

Article XXII provided that: "The 3-mile limit shall, as regards the mouth of the estuary, be taken as a line 3 nautical miles seaward of a line joining Sandy Point and Tom Shot Point."

In 1970 Cameroon and Nigeria decided to carry out a total delimitation and demarcation of their boundaries, starting from the sea. Under the terms of Article 2 of the Yaounde I Declaration of 14 August 1970 and the agreement reached in the Yaounde II Declaration of 4 April 1971 with its signed appended chart, it was agreed to fix the boundary in the Akwayafe estuary from point 1 to point 12 (see paragraph 38 above). Then, by declaration signed at Maroua on 1 June 1975, the two Heads of State "agreed to extend the delineation of the maritime boundary between the countries from Point 12 to Point G on the Admiralty Chart No. 3433 annexed to this Declaration" and precisely defined the boundary by reference to maritime co-ordinates (see paragraph 38 above). The Court finds that it is clear from each one of these elements that the Parties took it as a given that Bakassi belonged to Cameroon. Nigeria, drawing on the full weight of its experts as well as its most senior political figures, understood Bakassi to be under Cameroon sovereignty.

This remains the case quite regardless of the need to recalculate the co-ordinates of point B through an Exchange of Letters of 12 June and 17 July 1975 between the Heads of State concerned; and quite regardless whether the Maroua Declaration constituted an international agreement by which Nigeria was bound. The Court addresses these aspects at paragraphs 262 to 268 below.

Accordingly, the Court finds that at that time Nigeria accepted that it was bound by

Articles XVIII to XXII of the Anglo-German Agreement of 11 March 1913, and that it recognized Cameroonian sovereignty over the Bakassi Peninsula.

215. In the view of the Court, this common understanding of the Parties is also reflected by the geographic pattern of the oil concessions granted by the two Parties up to 1991. While no precise offshore delimitation lines were adhered to in the grants made, their underlying assumption was that Cameroon had the right to the resources in those waters that depended on the land boundary in Bakassi as fixed in the Anglo-German Agreement of 11 March 1913. It is true, as Nigeria insists, that [p412] oil licensing "is certainly not a cession of territory". The Court finds, however, that the geographic pattern of the licensing is consistent with the understanding of the Parties, evidenced elsewhere, as to pre-existing Cameroon title in Bakassi. Nor can this striking consistency (save for a very few exceptions) be explained by the contention that the Parties simply chose to deal with matters of oil exploitation in a manner wholly unrelated to territorial title.

216. In assessing whether Nigeria, as an independent State, acknowledged the applicability of the provisions of the Anglo-German Agreement of 11 March 1913 relating to Bakassi, the Court has also taken account of certain formal requests up until the 1980s submitted by the Nigerian Embassy in Yaounde, or by the Nigerian consular authorities, before going to visit their nationals residing in Bakassi. This Nigerian acknowledgment of Cameroon sovereignty is in no way dependent upon proof that any particular official visit did in fact take place.

217. For all of these reasons the Court finds that the Anglo-German Agreement of 11 March 1913 was valid and applicable in its entirety. Accordingly, the Court has no need to address the arguments advanced by Cameroon and Nigeria as to the severability of treaty provisions, whether generally or as regards boundary treaties.

Equally, the Court has not found it necessary to pronounce upon the arguments of uti possidetis advanced by the Parties in relation to Bakassi.

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218. The Court now turns to further claims to Bakassi relied on by Nigeria. Nigeria advances "three distinct but interrelated bases of title over the Bakassi Peninsula":

"(i) Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar, which title vested in Nigeria at the time of independence in 1960;

(ii) peaceful possession by Nigeria, acting as sovereign, and an absence of protest by Cameroon; and

(iii) manifestations of sovereignty by Nigeria together with acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula."

Nigeria particularly emphasizes that the title on the basis of historical consolidation, together with acquiescence, in the period since the inde-[p413]pendence of Nigeria, "constitutes an independent and self-sufficient title to Bakassi". Nigeria perceived the situation as comparable to that in the Minquiers and Ecrehos case, in which both parties contended that they retained an ancient title (I.C.J. Reports 1953, p. 53) but the Court considered that "What is of decisive importance . . . is . . . the evidence which relates directly to the possession of the Ecrehos and Minquiers groups." (Ibid., p. 57.) Nigeria also presents evidence of various State activities, together with other components of historic

consolidation of title. It contends inter alia that Nigerian authorities had collected tax as part of a consistent pattern of activity, that Nigeria had established health centres for the benefit of the communities at Bakassi, often with the assistance of local communities, and that its health centre at Ikang on the other side of the Akwayafe treated patients from Bakassi. Nigeria also refers to a number of other miscellaneous State activities during the post-independence era, including the use of Nigerian currency for both public and commercial purposes or the use of Nigerian passports by residents of Bakassi.

219. Cameroon for its part argues that a legal treaty title cannot be displaced by what in its view amounts to no more than a number of alleged effectivites. It contends that after the conferral of the Mandate, Great Britain's administration of the region was carried out, not on behalf of the Kings and Chiefs of Old Calabar, nor on behalf of Nigeria, but as the mandatory Power under Article 22, paragraph 1, of the League Covenant acting on behalf of the international community and the inhabitants of the Southern Cameroons. Cameroon further denies the existence of historical consolidation as a separate basis of legal title. What Nigeria brings under this concept is, in Cameroon's view, nothing more than "the establishment of title by adverse possession, which has traditionally been labelled as 'acquisitive prescription'". Cameroon also contends that, in order to establish prescription, the acts of the State which does not hold title must be carried out in a sovereign capacity, under a claim of right, openly, peacefully, without protest or competing activity by the existing sovereign, and for a sufficiently long time. In Cameroon's view, if these criteria are applied to the evidence adduced by Nigeria, this would eliminate the whole of Nigeria's list of effectivites. Referring to the Judgment of the Chamber in the Frontier Dispute (Burkina Faso/Republic of Mali), Cameroon finally maintains that, in a case of prescription, if there is a conflict of effectivites, "preference should be given to the holder of the title".

220. The Court first recalls its finding above regarding the claim to an ancient title to Bakassi derived from the Kings and Chiefs of Old Calabar. It follows therefrom that at the time of Nigeria's accession to independence there existed no Nigerian title capable of being confirmed subsequently by "long occupation" (see paragraph 212 above). On the [p404] contrary, on the date of its independence Cameroon succeeded to title over Bakassi as established by the Anglo-German Agreement of 11 March 1913 (see paragraphs 213-214 above).

Historical consolidation was also invoked in connection with the first of Nigeria's further claimed bases of title, namely peaceful possession in the absence of protest. The Court notes that it has already addressed these aspects of the theory of historical consolidation in paragraphs 62 to 70 above. The Court thus finds that invocation of historical consolidation cannot in any event vest title to Bakassi in Nigeria, where its "occupation" of the peninsula is adverse to Cameroon's prior treaty title and where, moreover, the possession has been for a limited period.

The Court cannot therefore accept this first basis of title over Bakassi relied on by Nigeria.

221. The Court will now deal with other aspects of the second and third bases of title advanced by Nigeria, and finds it convenient to deal with these interrelated matters together. Localities in Bakassi will be given either their Nigerian or their Cameroonian names as appropriate.

The Court finds that the evidence before it indicates that the small population of Bakassi already present in the early 1960s grew with the influx from Nigeria in 1968 as a result of the civil war in that country. Gradually sizeable centres of population were established. The Parties are in disagreement as to the total number of Nigerian nationals living in the

peninsula today, but it is clear that it has grown considerably from the modest numbers reported in the 1953 and 1963 population censuses. Nor is there any reason to doubt the Efik and Effiat toponomy of the settlements, or their relationships with Nigeria. But these facts of themselves do not establish Nigerian title over Bakassi territory; nor can they serve as an element in a claim for historical consolidation of title, for reasons already given by the Court (see paragraphs 64-70).

222. Nigeria has relied before the Court, in considerable detail, often with supporting evidence, on many activities in Bakassi that it regards as proof both of settled Nigerian administration and of acts in exercise of sovereign authority. Among these acts are the establishment of schools, the provision of health facilities for many of the settlements and some tax collection.

It is true that the provision of education in the Bakassi settlements appears to be largely Nigerian. Religious schools were established in 1960 at Archibong, in 1968 at Atabong and in Abana in 1969. These were not supported by public funds, but were under the authority of the Nigerian [p415] examination and education authorities. Community schools were also established at Atabong East in 1968, Mbenonong in 1975 and Nwanyo in 1981. The schools established in Abana in 1992, and in Archibong and Atabong in 1993, were Nigerian government schools or State secondary schools.

There is evidence that since 1959 health centres have been established with the assistance of local communities receiving supplies, guidance and training for personnel in Nigeria. The ten centres include centres established at Archibong in 1959, Mbenonong in 1960, Atabong West in 1968, Abana in 1991 and Atabong East in 1992.

There was also some collection of tax, certainly from Akwa, Archibong, Moen Mong, Naranyo, Atabong and Abana.

Nigeria notes that Cameroon failed actively to protest these administrative activities of Nigeria before 1994 (save, notably, the building by Nigeria of a primary school in Abana in 1969). It also contends that the case law of this Court, and of certain arbitral awards, makes clear that such acts are indeed acts a titre de souverain, and as such relevant to the question of territorial title (Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953; Western Sahara, Advisory Opinion, I.C.J. Reports 1975; Rann of Kutch, Arbitral Award, 50 ILR 1; Beagle Channel Arbitration, 52ILR 93).

223. The Court observes, however, that in none of these cases were the acts referred to acts contra legem; those precedents are therefore not relevant. The legal question of whether effectivites suggest that title lies with one country rather than another is not the same legal question as whether such effectivites can serve to displace an established treaty title. As the Chamber of the Court made clear in the Frontier Dispute (Burkina Faso/Republic of Mali), where there is a conflict between title and effectivites, preference will be given to the former (I.C.J. Reports 1986, Judgment, pp. 586-587, para. 63).

In the view of the Court the more relevant legal question in this case is whether the conduct of Cameroon, as the title holder, can be viewed as an acquiescence in the loss of the treaty title that it inherited upon independence. There is some evidence that Cameroon attempted, inter alia, to collect tax from Nigerian residents, in the year 1981-1982, in Idaboto I and II, Jabare I and II, Kombo Abedimo, Naumsi Wan and Forisane (West and East Atabong, Abana and Ine Ikoi). But it engaged in only occasional direct acts of administration in Bakassi, having limited material resources to devote to this distant area. [p416]

However, its title was already established. Moreover, as the Court has shown above (see paragraph 213), in 1961-1962 Nigeria clearly and publicly recognized Cameroon title to Bakassi. That continued to be the position until at least 1975, when Nigeria signed the Maroua Declaration. No Nigerian effectivites in Bakassi before that time can be said to have legal significance for demonstrating a Nigerian title; this may in part explain the absence of Cameroon protests regarding health, education and tax activity in Nigeria. The Court also notes that Cameroon had since its independence engaged in activities which made clear that it in no way was abandoning its title to Bakassi. Cameroon and Nigeria participated from 1971 to 1975 in the negotiations leading to the Yaounde, Kano and Maroua Declarations, with the maritime line clearly being predicated upon Cameroon's title to Bakassi. Cameroon also granted hydrocarbon licences over the peninsula and its waters, again evidencing that it had not abandoned title in the face of the significant Nigerian presence in Bakassi or any Nigerian effectivites contra legem. And protest was immediately made regarding Nigerian military action in 1994.

224. The Court considers that the foregoing shows that Nigeria could not have been acting a titre de souverain before the late 1970s, as it did not consider itself to have title over Bakassi; and in the ensuing period the evidence does not indicate an acquiescence by Cameroon in the abandonment of its title in favour of Nigeria.

For all of these reasons the Court is also unable to accept the second and third bases of title to Bakassi advanced by Nigeria.

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225. The Court accordingly concludes that the boundary between Cameroon and Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913, and that sovereignty over the peninsula lies with Cameroon.

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226. The Court will now turn to the maritime boundary between Cameroon and Nigeria.

In its Application filed on 29 March 1994 under Article 36, paragraph 2, of the Statute Cameroon requested the Court, "in order to avoid further incidents between the two countries, . . . to determine the course of the maritime boundary between the two States beyond the line [p417] fixed in 1975". In its final submissions presented to the Court at the end of the oral proceedings on 21 March 2002, Cameroon maintained its request for the drawing of the maritime boundary, but it did so in a different form. Cameroon now requests that the Court confirm that "the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and the Federal Republic of Nigeria takes the following course", which Cameroon describes in detail in the two subparagraphs of paragraph (c) of its submissions.

Nigeria claims that the Court should refuse to carry out in whole or in part the delimitation requested by Cameroon, first, because the delimitation affects areas claimed by third States, and, secondly, because the requirement of prior negotiations has not been satisfied.

The Court must first deal with these arguments of Nigeria.

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227. Nigeria maintains that the Court cannot carry out the delimitation requested by Cameroon, since the prolongation of the maritime boundary between the Parties seawards

beyond point G will rapidly run into maritime zones where the rights and interests of Cameroon and Nigeria will overlap those of third States. In this regard it recalls that its eighth preliminary objection was "that the question of maritime delimitation necessarily involves the rights and interests of third States and is to that extent inadmissible". It observes that the Court, in considering that preliminary objection in its Judgment of 11 June 1998, held that the objection did "not possess, in the circumstances of the case, an exclusively preliminary character" (I.C.J. Reports 1998, p. 325, para. 117).

228. Citing inter alia the case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) (I.C.J. Reports 1985, pp. 24-28, paras. 20-23), the Judgment of the Chamber of this Court in the Frontier Dispute (Burkina Faso/Republic of Mali) (I.C.J. Reports 1986, p. 578, para. 47) and the decision of the Arbitral Tribunal in the Eritrea/Yemen Award (Second Phase), Nigeria contends that the Court has no jurisdiction over the Cameroon claim to the extent that it touches on or affects areas claimed by third States, and that the Court's lack of jurisdiction is not affected by whether or not the third State in question has intervened, unless it has intervened with a view to becoming a party to the proceedings and its intervention has been accepted on that basis.

229. Nigeria maintains in particular that the maritime delimitation line claimed by Cameroon encroaches on areas claimed by Equatorial Guinea. Accordingly, Nigeria states, if the Court were to uphold the line claimed by Cameroon vis-à-vis Nigeria, it would by clear and necessary implication be rejecting the claims of Equatorial Guinea concerning these areas. Nigeria argues that the Court must exclude from the scope of its [p418] Judgment in this case all those areas of the delimitation zone which overlap with Equatorial Guinea's claims, provided that those claims satisfy the test of being credible in law. It considers that all claims of Equatorial Guinea which are within a strict equidistance line satisfy this test of legal credibility, and that the Court therefore cannot in its Judgment draw a delimitation line beyond the tripoint equidistant from the coasts of Cameroon, Nigeria and Equatorial Guinea.

230. Nigeria further contends that, since Equatorial Guinea has not intervened as a party, the Court has no additional substantive jurisdiction over that State by reason of the intervention under Article 62 of the Statute. It adds that it is not enough to say, as Cameroon does, that a decision of the Court would not be binding on Equatorial Guinea or on Sao Tome and Principe, since such a judgment would nonetheless "create an impression of finality which would operate in practice as a kind of presumption". According to Nigeria, the role of a non-party intervener in a case before the Court is to inform the Court of its position, so that the Court may refrain from encroaching in its decision on credible claims of that third party, thus enabling it to safeguard those claims without adjudicating upon them.

231. Nigeria accordingly concludes that the Court lacks jurisdiction to deal with the maritime delimitation line claimed by Cameroon, to the extent that it impinges on areas claimed by Equatorial Guinea or by Sao Tome and Principe, or alternatively, that the maritime delimitation line claimed by Cameroon is inadmissible to that extent.

232. Cameroon for its part claims that no delimitation in this case can affect Equatorial Guinea or Sao Tome and Principe, as the Court's Judgment will be res inter alios acta for all States other than itself and Nigeria. Referring to the Judgment of the Court in the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982, p. 91, para. 130), Cameroon contends that most of the maritime boundary agreements that are already in force would never have come into being if it had not been possible for the States concerned to reach a bilateral agreement on a maritime boundary without there being any prerequisite as to the participation of all such States as might potentially be

involved in the area in question. It insists that in the present case there is no reason why the Court should not determine the respective rights of Cameroon and Nigeria without prejudging the rights, of whatever nature, of Equatorial Guinea and Sao Tome and Principe.

233. Cameroon states that it is not asking the Court to rule on the course of its maritime boundary with Equatorial Guinea or Sao Tome and Principe, or even to indicate the location of any tripoint where the borders of the Parties and the border of one or the other of these States meet. Indeed Cameroon agrees that the Court has no power to do so. Cameroon asks the Court to specify the course of the maritime boundary between the two Parties in these proceedings "up to the outer limit of the [p419] maritime zones which international law places under the respective jurisdictions of the two Parties". Cameroon argues that this will not amount to a decision by the Court that this outer limit is a tripoint which affects Equatorial Guinea or Sao Tome and Principe. Moreover, in accordance with Article 59 of the Statute, the Judgment will in any event not be opposable to those States as regards the course of their own boundaries. In support of its argument, Cameroon relies inter alia on the Judgment of the Chamber in the Frontier Dispute (Burkina Faso/Republic of Mali) (I.C.J. Reports 1986, p. 554) and on that of the Court in the Territorial Dispute (Libyan Arab Jamahiriya/Chad) (I.C.J. Reports 1994, p. 6). Cameroon argues that the reasoning applied in those Judgments, which related to land boundaries, should be no different when maritime boundaries are involved. Cameroon contends that the effect of the Court's Judgment would be the same as a bilateral maritime delimitation treaty, which will not be opposable as such to third States, but by which the two parties to the treaty may agree to fix their maritime boundary up to a tripoint decided bilaterally, without the participation of the third State concerned.

234. Cameroon contends that it is not seeking to implicate third States; nor is it asking the Court to solve its problems with Equatorial Guinea or with Sao Tome and Principe at Nigeria's expense. Rather, it is asking it to take into account the entire geographic situation in the region, and in particular the disadvantage suffered by Cameroon as a result of its position in the centre of a highly concave coastline, which results in the claims of the adjoining States having a "pincer" effect upon its own claims. It is simply asking the Court "to move, as it were, the Nigerian part of the pincers in a way which reflects the geography".

235. Cameroon argues that non-party intervention cannot prevent the Court from fully settling the dispute before it:

"Where the parties do not oppose the intervention and the latter is authorized, as in the present case, . . . the Court may (and must, in accordance with the mission incumbent upon it definitively to settle the disputes referred to it) proceed to a complete delimitation, whether or not the latter is legally binding on the intervening party . . . " ;

otherwise "the intervention regime would cease to have any point". Cameroon argues that the purpose of Equatorial Guinea's intervention is essentially to inform the Court with regard to the whole range of interests at stake in the area concerned and to enable it with full knowledge of the facts to undertake a complete and final delimitation. [p420] Nonetheless, in so doing, the Court will need to ensure that it does not prejudice the interests of the intervening State, the relevance of which it is for the Court to assess. Further, Cameroon contends that an intervening State cannot, by making fanciful claims, preclude the Court from ruling in its judgment on the area to which such claims relate.

236. Cameroon adds that there are several ways in which the rights of Equatorial Guinea could be protected, should the Court find this necessary, including by moving the

delimitation line to take full account of those rights, by refraining from ruling on the delimitation in the area where there seems to be a problem, by making the line a discontinuous one, or by indicating the direction of the boundary without ruling on a terminal point. It emphasizes that the task of the Court should be to provide as complete a solution as possible to the dispute between the Parties.

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237. The Court would first observe that its finding in its Judgment of 11 June 1998 on the eighth preliminary objection of Nigeria that that preliminary objection did "not have, in the circumstances of the case, an exclusively preliminary character" (I.C.J. Reports 1998, p. 326, para. 118 (2)) requires it to deal now with the preliminary objection before proceeding further on the merits. That this is so follows from the provisions on preliminary objections adopted by the Court in its Rules in 1972 and retained in 1978, which provide that the Court is to give a decision

"by which it shall either uphold the objection, reject it, or declare that the objection does not possess in the circumstances of the case, an exclusively preliminary character. If the Court rejects the objection or declares that it does not possess an exclusively preliminary character, it shall fix time-limits for the further proceedings." (Rules of Court, Art. 79, para. 7.)

(See Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998, pp. 27-28, paras. 49-50; Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998, pp. 132-134, paras. 48-49; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment (I.C.J. Reports 1986, p. 30, para. 40.) Since Nigeria maintains its objection, the Court must now rule on it. [p421]

238. The jurisdiction of the Court is founded on the consent of the parties. The Court cannot therefore decide upon legal rights of third States not parties to the proceedings. In the present case there are States other than the parties to these proceedings whose rights might be affected, namely Equatorial Guinea and Sao Tome and Principe. Those rights cannot be determined by decision of the Court unless Equatorial Guinea and Sao Tome and Principe have become parties to the proceedings. Equatorial Guinea has indeed requested -- and has been granted -- permission to intervene, but as a non-party intervener only. Sao Tome and Principe has chosen not to intervene on any basis.

The Court considers that, in particular in the case of maritime delimitations where the maritime areas of several States are involved, the protection afforded by Article 59 of the Statute may not always be sufficient. In the present case, Article 59 may not sufficiently protect Equatorial Guinea or Sao Tome and Principe from the effects -- even if only indirect -- of a judgment affecting their legal rights. The jurisprudence cited by Cameroon does not prove otherwise. In its decision in the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), the Court did not deal with rights of third States; what was principally at issue there was the question of proportionality of coastline lengths in relation to the process of delimitation between the parties (I.C.J. Reports 1982, p. 91, para. 130). It follows that, in fixing the maritime boundary between Cameroon and Nigeria, the Court must ensure that it does not adopt any position which might affect the rights of Equatorial Guinea and Sao Tome and Principe. Nor does the Court accept Cameroon's contention that the reasoning in the Frontier Dispute (Burkina Faso/Republic of Mali)

(I.C.J. Reports 1986, p. 554) and the Territorial Dispute (Libyan Arab Jamahiriya/Chad) (I.C.J. Reports 1994, p. 6) in regard to land boundaries is necessarily transposable to those concerning maritime boundaries. These are two distinct areas of the law, to which different factors and considerations apply. Moreover, in relation to the specific issue of the tripoint, the Court notes that both Parties agree that it should not fix one. It is indeed not entitled to do so. In determining any line, the Court must take account of this.

In view of the foregoing, the Court concludes that it cannot rule on Cameroon's claims in so far as they might affect rights of Equatorial Guinea and Sao Tome and Principe. Nonetheless, the mere presence of those two States, whose rights might be affected by the decision of the Court, does not in itself preclude the Court from having jurisdiction over a maritime delimitation between the Parties to the case before it, namely Cameroon and Nigeria, although it must remain mindful, as always in situations of this kind, of the limitations on its jurisdiction that such presence imposes.

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239. The issue of prior negotiation between the Parties in relation to the maritime delimitation likewise was previously considered by the Court in its Judgment of 11 June 1998 on the preliminary objections of Nigeria, i.e., under the seventh preliminary objection of Nigeria. In relation to that objection, Nigeria had argued, inter alia, that the Court cannot properly be seised by the unilateral application of one State in relation to the delimitation of an exclusive economic zone or continental shelf boundary if that State had made no attempt to reach agreement with the respondent State over that boundary, contrary to the provisions of Articles 74 and 83 of the United Nations Convention on the Law of the Sea of 10 December 1982. The Court rejected this argument, noting that,

"in this case, it had not been seised on the basis of Article 36, paragraph 1, of the Statute, and, in pursuance of it, in accordance with Part XV of the United Nations Convention on the Law of the Sea relating to the settlement of disputes arising between the parties to the Convention with respect to its interpretation or application".

The Court had, on the contrary, "been seised on the basis of declarations made under Article 36, paragraph 2", and those declarations "[did] not contain any condition relating to prior negotiations to be conducted within a reasonable time period" (I.C.J. Reports 1998, p. 322, para. 109).

240. Nigeria states that it accepts this decision, but argues that the Court's jurisdiction is a separate question from the substantive law applicable to the dispute. The Court's Judgment of 11 June 1998 was concerned only with the former question. As to the question of the substantive law applicable to the dispute, Nigeria argues that Article 74, paragraph 1, and Article 83, paragraph 1, of the United Nations Convention on the Law of the Sea require that the parties to a dispute over maritime delimitation should first attempt to resolve their dispute by negotiation. According to Nigeria, these provisions lay down a substantive rule, not a procedural prerequisite. Negotiation is prescribed as the proper and primary way of achieving an equitable maritime delimitation, and the Court is not a forum for negotiations.

241. Nigeria accepts that, to the extent that the dispute over the maritime boundary pertains to areas around point G and to the areas of overlapping licences, this requirement has been satisfied. However, it maintains that waters to the south of 4 [degree] and 3 [degree] latitude north and even 2 [degree], have never been the subject of any attempt at negotiation with Nigeria or, as far as Nigeria is aware, with any other affected State. According to Nigeria, the first time that it had notice that Cameroon was departing from the status quo, and was claiming an "equitable line" beyond point G, was when it received

Cameroon's Memorial. It contends that Cameroon made no prior attempt even to present its claim at diplomatic level. While [p423] Nigeria accepts the Court's finding in its 1998 Judgment that "Cameroon and Nigeria entered into negotiations with a view to determining the whole of the maritime boundary" (I.C.J. Reports 1998, p. 322, para. 110), it insists that those negotiations were not even remotely concerned with the line now claimed by Cameroon in any of its versions. Rather, these negotiations are said to have been directed to establishing the location of the tripoint between Cameroon, Nigeria and Equatorial Guinea, on the basis of an acceptance that there was a de facto maritime border in the area. Nigeria concludes that Cameroon's claim beyond the area of the overlapping licences, or to the extent that it concerns the areas to the west and south-west of Bioko, is inadmissible.

242. For its part, Cameroon contends that Nigeria is "resurrecting" the second branch of its seventh preliminary objection, which the Court rejected in its Judgment of 11 June 1998, and that Nigeria is attempting, in thinly disguised terms, to persuade the Court to reconsider that decision. It maintains that negotiation is only a first attempt towards achieving maritime delimitation, the next being, should that attempt fail, delimitation by a judicial or arbitral body. This is expressly recognized by paragraph 2 of Articles 74 and 83 of the United Nations Convention on the Law of the Sea, which stipulate that if "no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in part XV".

243. Cameroon argues that, while point G may be the last point on which there was agreement between the Parties in the delimitation of their maritime boundary, it was not the last point on which there were negotiations. It insists that, even if they proved to be unfruitful, there were in fact intense negotiations between the two States which, from the outset, focused on the entire maritime boundary, a fact which was acknowledged in the Court's Judgment of 11 June 1998, in which it found that "Cameroon and Nigeria entered into negotiations with a view to determining the whole of the maritime boundary" (I.C.J. Reports 1998, p. 322, para. 110; emphasis added by Cameroon). Cameroon says that a negotiated agreement concerning the entire boundary had proved impossible, and that Cameroon has acted in consequence by submitting the matter to the Court. It adds that, if the two Parties were not able to go further in the negotiations, it was because the bad faith displayed by Nigeria either ruined any hope of reaching a new agreement or removed in advance the value of any agreement which might have been arrived at. Cameroon insists that, since it was the conduct of Nigeria that led to this impasse, Nigeria cannot now take advantage of its own wrongful behaviour to prevent Cameroon from achieving full and final settlement of the dispute between the two States by bringing the matter before this Court. Cameroon concludes that, as the Parties have been unable to reach agreement, it is for the Court to substitute itself for them and to delimit the [p424] joint maritime boundary upon which they have been unable to agree beyond point G. It argues that for the Court to refrain from delimiting beyond point G would leave a major source of conflict between the two Parties. Such an abstention on the Court's part would also implicitly uphold the maritime division agreed upon by Nigeria and Equatorial Guinea in the Treaty of 23 September 2000, which Cameroon contends was concluded in utter disregard of its own rights. It adds that no provision of the Convention precludes the limits of the exclusive economic zone and the continental shelf of a coastal State from being determined by an international tribunal, at the express request of that State within the context of settlement of a dispute brought before it.

244. The Court noted in its Judgment of 11 June 1998 (I.C.J. Reports 1998, p. 321, para. 107 and p. 322, para. 110) that negotiations between the Governments of Cameroon and Nigeria concerning the entire maritime delimitation -- up to point G and beyond -- were conducted as far back as the 1970s. These negotiations did not lead to an agreement.

However, Articles 74 and 83 of the United Nations Law of the Sea Convention do not require that delimitation negotiations should be successful; like all similar obligations to negotiate in international law, the negotiations have to be conducted in good faith. The Court reaffirms its finding in regard to the preliminary objections that negotiations have indeed taken place. Moreover, if, following unsuccessful negotiations, judicial proceedings are instituted and one of the parties then alters its claim, Articles 74 and 83 of the Law of the Sea Convention would not require that the proceedings be suspended while new negotiations were conducted. It is of course true that the Court is not a negotiating forum. In such a situation, however, the new claim would have to be dealt with exclusively by judicial means. Any other solution would lead to delays and complications in the process of delimitation of continental shelves and exclusive economic zones. The Law of the Sea Convention does not require such a suspension of the proceedings.

245. As to negotiations with Equatorial Guinea and Sao Tome and Principe, the Court does not find that it follows from Articles 74 and 83 of the Law of the Sea Convention that the drawing of the maritime boundary between Cameroon and Nigeria presupposes that simultaneous negotiations between all four States involved have taken place.

The Court is therefore in a position to proceed to the delimitation of the maritime boundary between Cameroon and Nigeria in so far as the rights of Equatorial Guinea and Sao Tome and Principe are not affected.

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246. In order to do this, the Court will deal with Cameroon's claim on [p425] maritime delimitation, as well as with the submissions of Nigeria on the issue.

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247. The Court turns now to Cameroon's request for the tracing of a precise line of maritime delimitation. It will first address the sector of the maritime boundary up to point G.

248. According to Cameroon, the maritime boundary between Cameroon and Nigeria is divided into two sectors. The first, from the mouth of the Akwayafe River to point G fixed by the Maroua Declaration of 1 June 1975, is said to have been delimited by valid international agreements between the Parties. In relation to this sector, Cameroon asks the Court merely to confirm that delimitation, which it says that Nigeria is now seeking to reopen. The sector beyond point G remains to be delimited, and Cameroon requests the Court to fix the limits of the Parties' respective areas in this sector, so as to put a complete and final end to the dispute between them.

249. The delimitation of the first sector, from the mouth of the Akwayafe River to point G, is said by Cameroon to be based mainly on three international legal instruments, namely the Anglo-German Agreement of 11 March 1913, the Cameroon-Nigeria Agreement of 4 April 1971, comprising the Yaounde II Declaration and the appended Chart 3433, and the Maroua Declaration of 1 June 1975.

250. Cameroon argues that the Anglo-German Agreement of 11 March 1913 fixes the point at which the maritime boundary is anchored to the land at the mouth of the Akwayafe, at the intersection of the thalweg of that river and a "straight line joining Bakassi Point and King Point". From the mouth of the Akwayafe, Cameroon invokes Article XXI of the Agreement, which provides that "the boundary shall follow the centre of the navigable channel of the Akwayafe River as far as the 3-mile limit of territorial jurisdiction", as well as Article XXII thereof, which states that the said limit shall be

"taken as a line 3 nautical miles seaward of a line joining Sandy Point and Tom Shot Point".

251. Cameroon points out that in 1970 a Joint Commission was established, its first task being to delimit the maritime boundary between Cameroon and Nigeria. Its initial objective was to determine the course of the boundary as far as the 3-mile limit. Its work resulted in the Yaounde II Declaration of 4 April 1971, under which the Heads of State of the two parties adopted a "compromise line" which they jointly drew and signed on British Admiralty Chart 3433. Starting from the straight line joining Bakassi Point and King Point, the line consisted of 12 numbered points, whose precise co-ordinates were determined by the Commission, meeting in Lagos pursuant to the Declaration, the following June. Cameroon contends that that Declaration represented an international agreement binding on both Parties and that this fact was later confirmed by the terms of the Maroua Declaration of 1 June 1975, which was likewise a [p426] binding international agreement (see paragraphs 252 and 253 below).

252. Thereafter, according to Cameroon, between 1971 and 1975 a number of unsuccessful attempts to reach agreement on the delimitation of further parts of the maritime boundary were made. It was only at the summit meeting held in Maroua from 30 May to 1 June 1975 that an agreement could be reached on the definitive course of the maritime boundary from point 12 to point G. The Joint Communique issued at the end of that meeting was signed by the Heads of State. Cameroon draws particular attention to the statement in the Communique that the signatories "have reached full agreement on the exact course of the maritime boundary" (emphasis added by Cameroon).

253. Cameroon accordingly maintains that the Yaounde II Declaration and the Maroua Declaration thus provide a binding definition of the boundary delimiting the respective maritime spaces of Cameroon and Nigeria.

Cameroon argues that the signing of the Maroua Agreement by the Heads of State of Nigeria and Cameroon on 1 June 1975 expresses the consent of the two States to be bound by that treaty; that the two Heads of State manifested their intention to be bound by the instrument they signed; that no reservation or condition was expressed in the text, and that the instrument was not expressed to be subject to ratification; that the publication of the Joint Communique signed by the Heads of State is also proof of that consent; that the validity of the Maroua Agreement was confirmed by the subsequent exchange of letters between the Heads of State of the two countries correcting a technical error in the calculation of one of the points on the newly agreed line; and that the reference to Yaounde II in the Maroua Agreement confirms that the legal status of the former is no different from that of the latter.

Cameroon further argues that these conclusions are confirmed by the publicity given to the partial maritime boundary established by the Maroua Agreement, which was notified to the Secretariat of the United Nations and published in a whole range of publications which have widespread coverage and are well known in the field of maritime boundary delimitation. It contends that they are, moreover, confirmed by the contemporary practice of States, by the Vienna Convention on the Law of Treaties and by the fact that international law comes down unequivocally in favour of the stability and permanence of boundary agreements, whether land or maritime.

254. Nigeria for its part draws no distinction between the area up to point G and the area beyond. It denies the existence of a maritime delimitation up to that point, and maintains that the whole maritime delimitation must be undertaken de novo. Nonetheless, Nigeria does advance specific arguments regarding the area up to point G, which it is appropriate

to address in this part of the Judgment.

255. In the first place, on the basis of its claim to sovereignty over the [p427] Bakassi Peninsula, Nigeria contends that the line of the maritime boundary between itself and Cameroon will commence in the waters of the Rio del Rey and run down the median line towards the open sea. Since the Court has already found that sovereignty over the Bakassi Peninsula lies with Cameroon and not with Nigeria (see paragraph 225 above), it is unnecessary to deal any further with this argument of Nigeria.

256. Nigeria further contends that, even if Cameroon's claim to Bakassi were valid, Cameroon's claim to a maritime boundary should have taken into account the wells and other installations on each side of the line established by the oil practice and should not change the status quo in this respect. Thus, Cameroon would have been justified in claiming at most a maritime boundary proceeding southwards, then south-westwards to the equidistance line between East Point (Nigeria) and West Point (Bakassi), and then along the equidistance line until it reached the maritime boundary with Bioko (Equatorial Guinea), at the approximate position longitude 8 [degree] 19' east and latitude 4 [degree] 4' north, while leaving a zone of 500 m around the Parties' fixed installations.

257. In relation to the Yaounde II Declaration, Nigeria contends that it was not a binding agreement, but simply represented the record of a meeting which "formed part of an ongoing programme of meetings relating to the maritime boundary", and that the matter "was subject to further discussion at subsequent meetings".

258. Nigeria likewise regards the Maroua Declaration as lacking legal validity, since it "was not ratified by the Supreme Military Council" after being signed by the Nigerian Head of State. It states that under the Nigerian constitution in force at the relevant time -- June 1975 -- executive acts were in general to be carried out by the Supreme Military Council or subject to its approval. It notes that States are normally expected to follow legislative and constitutional developments in neighbouring States which have an impact upon the inter-State relations of those States, and that few limits can be more important than those affecting the treaty-making power. It adds that on 23 August 1974, nine months before the Maroua Declaration, the then Head of State of Nigeria had written to the then Head of State of Cameroon, explaining, with reference to a meeting with the latter in August 1972 at Garoua, that "the proposals of the experts based on the documents they prepared on the 4th April 1971 were not acceptable to the Nigerian Government", and that the views and recommendations of the joint commission "must be subject to the agreement of the two Governments". Nigeria contends that this shows that any arrangements that might be agreed between the two Heads of State were subject to the subsequent and separate approval of the Nigerian Government. [p428]

Nigeria says that Cameroon, according to an objective test based upon the provisions of the Vienna Convention, either knew or, conducting itself in a normally prudent manner, should have known that the Head of State of Nigeria did not have the authority to make legally binding commitments without referring back to the Nigerian Government -- at that time the Supreme Military Council -- and that it should therefore have been "objectively evident" to Cameroon, within the meaning of Article 46, paragraph 2, of the Vienna Convention on the Law of Treaties that the Head of State of Nigeria did not have unrestricted authority. Nigeria adds that Article 7, paragraph 2, of the Vienna Convention on the Law of Treaties, which provides that Heads of State and Heads of Government "in virtue of their functions and without having to produce full powers . . . are considered as representing their State", is solely concerned with the way in which a person's function as a State's representative is established, but does not deal with the extent of that person's powers when exercising that representative function.

259. Nigeria further states that since 1977, in bilateral summits between Heads of State and between boundary experts, it has confirmed that the Maroua Declaration was not ratified and was therefore not binding on Nigeria. It argues that it is clear also from minutes of meetings held in Yaounde in 1991 and 1993 that Nigeria had never accepted that it was bound by the Maroua Declaration.

260. Cameroon rejects the argument of Nigeria that the Maroua Declaration can be regarded as a nullity by Nigeria on the ground that it was not ratified by Nigeria's Supreme Military Council. Cameroon denies that any communication was made during a 1977 meeting between the two Heads of State to the effect that the Declaration was not binding on Nigeria, and claims that it was not until 1978, some three-and-a-half years after the Declaration, that Nigeria announced its intention to challenge it. Cameroon argues that Nigeria has not shown that the constitution of Nigeria did in fact require the agreement to be ratified by the Supreme Military Council. In any event, invoking Article 7, paragraph 2, of the Vienna Convention on the Law of Treaties, Cameroon argues that as a matter of international law a Head of State is always considered as representing his or her State for the purpose of expressing the consent of the State to be bound by a treaty. Cameroon also maintains that, even if there was a violation of the internal law of Nigeria, the alleged violation was not "manifest", and did not concern a rule of internal law "of fundamental importance", within the meaning of Article 46, paragraph 1, of the Vienna Convention on the Law of Treaties.

261. The Court has already found that the Anglo-German Agreement of 11 March 1913 is valid and applicable in its entirety and that, in consequence, territorial title to the Bakassi Peninsula lies with Cameroon (see paragraph 225 above). It follows from these findings that the mari-[p429]time boundary between Cameroon and Nigeria lies to the west of the Bakassi Peninsula and not to the east, in the Rio del Rey. It also follows from these findings that the maritime boundary between the Parties is "anchored" to the mainland at the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe River in accordance with Articles XVIII and XXI of the said Anglo-German Agreement.

262. It is apparent from the documents provided to the Court by the Parties that, irrespective of what may have been the intentions of its original signatories, the Yaounde II Declaration was called into question on a number of occasions by Nigeria subsequently to its signature and to the Joint Boundary Commission meeting of June 1971, in particular at a Commission meeting of May 1972, and again at a meeting of the two Heads of State at Garoua in August 1972, where the Head of State of Nigeria, described it as "unacceptable". Moreover, the Head of State of Nigeria subsequently confirmed his position in the letter of 23 August 1974 to his Cameroonian counterpart (see paragraph 258 above).
However, it is unnecessary to determine the status of the Declaration in isolation, since the line described therein is confirmed by the terms of the Maroua Declaration, which refers in its third paragraph to "Point 12 . . . situated at the end of the line of the maritime boundary adopted by the two Heads of State on April 4, 1971". If the Maroua Declaration represents an international agreement binding on both parties, it necessarily follows that the line contained in the Yaounde II Declaration, including the co-ordinates as agreed at the June 1971 meeting of the Joint Boundary Commission, is also binding on them.

263. The Court considers that the Maroua Declaration constitutes an international agreement concluded between States in written form and tracing a boundary; it is thus governed by international law and constitutes a treaty in the sense of the Vienna Convention on the Law of Treaties (see Art. 2, para. 1), to which Nigeria has been a party since 1969 and Cameroon since 1991, and which in any case reflects customary

international law in this respect.

264. The Court cannot accept the argument that the Maroua Declaration was invalid under international law because it was signed by the Nigerian Head of State of the time but never ratified. Thus while in international practice a two-step procedure consisting of signature and ratification is frequently provided for in provisions regarding entry into force of a treaty, there are also cases where a treaty enters into force immediately upon signature. Both customary international law and the Vienna Convention on the Law of Treaties leave it completely up to States which procedure they want to follow. Under the Maroua Declaration, "the two Heads of State of Cameroon and Nigeria agreed to extend the delineation of the maritime boundary between the two countries from Point 12 to Point G on the Admiralty Chart No. 3433 annexed to this Declara-[p430]tion". In the Court's view, that Declaration entered into force immediately upon its signature.

265. The Court will now address Nigeria's argument that its constitutional rules regarding the conclusion of treaties were not complied with. In this regard the Court recalls that Article 46, paragraph 1, of the Vienna Convention provides that "[a] State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent". It is true that the paragraph goes on to say "unless that violation was manifest and concerned a rule of its internal law of fundamental importance", while paragraph 2 of Article 46 provides that "[a] violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith". The rules concerning the authority to sign treaties for a State are constitutional rules of fundamental importance. However, a limitation of a Head of State's capacity in this respect is not manifest in the sense of Article 46, paragraph 2, unless at least properly publicized. This is particularly so because Heads of State belong to the group of persons who, in accordance with Article 7, paragraph 2, of the Convention "in virtue of their functions and without having to produce full powers" are considered as representing their State.

The Court cannot accept Nigeria's argument that Article 7, paragraph 2, of the Vienna Convention on the Law of Treaties is solely concerned with the way in which a person's function as a State's representative is established, but does not deal with the extent of that person's powers when exercising that representative function. The Court notes that the commentary of the International Law Commission on Article 7, paragraph 2, expressly states that "Heads of State . . . are considered as representing their State for the purpose of performing all acts relating to the conclusion of a treaty" (ILC Commentary, Art. 6 (of what was then the draft Convention), para. 4, Yearbook of the International Law Commission, 1966, Vol. II, p. 193).

266. Nigeria further argues that Cameroon knew, or ought to have known, that the Head of State of Nigeria had no power legally to bind Nigeria without consulting the Nigerian Government. In this regard the Court notes that there is no general legal obligation for States to keep themselves informed of legislative and constitutional developments in other States which are or may become important for the international relations of these States.

In this case the Head of State of Nigeria had in August 1974 stated in his letter to the Head of State of Cameroon that the views of the Joint Commission "must be subject to the agreement of the two Governments". However, in the following paragraph of that same letter, he [p431] further indicated: "It has always been my belief that we can, both, together re-examine the situation and reach an appropriate and acceptable decision on the matter." Contrary to Nigeria's contention, the Court considers that these two statements, read together, cannot be regarded as a specific warning to Cameroon that the Nigerian Government would not be bound by any commitment entered into by the Head of State.

And in particular they could not be understood as relating to any commitment to be made at Maroua nine months later. The letter in question in fact concerned a meeting to be held at Kano, Nigeria, from 30 August to 1 September 1974. This letter seems to have been part of a pattern which marked the Parties' boundary negotiations between 1970 and 1975, in which the two Heads of State took the initiative of resolving difficulties in those negotiations through person-to-person agreements, including those at Yaounde II and Maroua.

267. The Court further observes that in July 1975 the two Parties inserted a correction in the Maroua Declaration, that in so acting they treated the Declaration as valid and applicable, and that Nigeria does not claim to have contested its validity or applicability prior to 1977.

268. In these circumstances the Maroua Declaration, as well as the Yaounde II Declaration, have to be considered as binding and as establishing a legal obligation on Nigeria. It follows that it is unnecessary for the Court to address Nigeria's argument regarding the oil practice in the sector up to point G (see paragraph 256 above). Thus the maritime boundary between Cameroon and Nigeria up to and including point G must be considered to have been established on a conventional basis by the Anglo-German Agreement of 11 March 1913, the Yaounde II Declaration of 4 April 1971 and the Maroua Declaration of 1 June 1975, and takes the following course: starting from the straight line joining Bakassi Point and King Point, the line follows the "compromise line" jointly drawn at Yaounde on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 appended to the Yaounde II Declaration of 4 April 1971, and passing through 12 numbered points, whose precise co-ordinates were determined by the two countries' Joint Commission meeting in Lagos in June 1971; from point 12 on that compromise line the course of the boundary follows the line to point G specified in the Maroua Declaration of 1 June 1975, as corrected by the exchange of letters between the Heads of State of Cameroon and Nigeria of 12 June and 17 July 1975.

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269. The Court will now address the maritime boundary beyond point G, where no maritime boundary delimitation has been agreed. Cameroon states that this is a classic case of maritime delimitation between States with adjacent coasts which have been unable to reach [p432] agreement on the line to be drawn between their respective exclusive economic zones and continental shelves, although in this case the special circumstances of the geographical situation are particularly marked, and the Court is also required to take account of the interests of third States.

270. As regards the exercise of delimitation, Cameroon argues that the law on the delimitation of maritime boundaries is dominated by the fundamental principle that any delimitation must lead to an equitable solution. In support of this contention, it cites paragraph 1 of Articles 74 and 83 of the 1982 Law of the Sea Convention and a number of decisions of this Court or of arbitral tribunals. In particular, it cites the North Sea Continental Shelf cases (I.C.J. Reports 1969, p. 4), which, it claims, adopted equity as the applicable legal concept. It also quotes, inter alia, the Court's dictum in the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) (I.C.J. Reports 1993, p. 62, para. 54), where it is stated that "the aim in each and every situation must be to achieve 'an equitable result'", as well as a dictum of the Court of Arbitration to similar effect in the case concerning Delimitation of the Continental Shelf (United Kingdom/France) (United Nations Reports on International Arbitration Awards (RIAA)), Vol. XVIII, p. 57, para. 97). Cameroon also refers to the Court's most recent jurisprudence in the matter in the case concerning Maritime Delimitation and Territorial

Questions between Qatar and Bahrain (Qatar v. Bahrain), and in particular the Court's statement that it should "first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line". But Cameroon adds that it does not believe that the Court intended thereby to call into question its own previous jurisprudence establishing that "the fundamental principle . . . the essential purpose, the sole purpose, is to arrive at an equitable solution".

271. Cameroon accordingly concludes that there is no single method of maritime delimitation; the choice of method depends on the circumstances specific to each case. In support of this contention, it cites inter alia the dictum of the Chamber in the case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area that

"the most appropriate criteria, and the method or combination of methods most likely to yield a result consonant with what the law indicates, can only be determined in relation to each particular case and its specific characteristics" (I.C.J. Reports 1984, p. 290, para. 81).

Cameroon insists on the fact that the equidistance principle is not a principle of customary law that is automatically applicable in every maritime boundary delimitation between States whose coasts are adjacent, observ-[p433]ing that, if a strict equidistance line were drawn, it would be entitled to practically no exclusive economic zone or continental shelf, despite the fact that it has a longer relevant coastline than Nigeria.

272. Citing the Court's case law and the approach adopted by the Arbitral Tribunal in the case concerning the Delimitation of the Guinea and Guinea-Bissau Maritime Boundary (International Legal Materials (ILM), Vol. 25 (1986), p. 252), Cameroon contends that, because of the particular geography of the Gulf of Guinea, it is necessary to determine the relevant area within which the delimitation itself is to be undertaken, and that such an area may include the coastlines of third States. According to Cameroon, the relevant area in the present case consists of that part of the Gulf of Guinea bounded by a straight line running from Akasso in Nigeria to Cap Lopez in Gabon. Within that area, Cameroon has presented to Nigeria and to the Court what it calls an equitable line, subtended by "projection lines" connecting points on the "relevant coasts", a number of which are in fact situated in third States. It claims that this line represents an equidistance line adjusted to take account of the relevant circumstances so as to produce an equitable solution, and insists that this is not an attempt to "refashion geography". It adds that a single delimitation line of the maritime boundary is appropriate in this case and that Nigeria has accepted that this is so. The relevant circumstances to be taken into account according to Cameroon are the following: the overall situation in the Gulf of Guinea, where the continental shelves of Cameroon, Nigeria and Equatorial Guinea overlap, so that none of the three countries can lay claim, within the natural extension of the land territory of the other, to exclusive rights over the continental shelf; Cameroon's legal right to a continental shelf representing the frontal projection of its coasts; the general configuration of Cameroon's and Nigeria's coasts, and in particular the concavity of Cameroon's coastline, which creates a virtual "enclavement" of Cameroon, and the change in direction of Nigeria's coast from Akasso; the relative lengths of the coastlines involved; the presence of Bioko Island opposite the coast of Cameroon. In relation to each of these circumstances, Cameroon cites jurisprudence which is claimed to support the delimitation line which it proposes.

273. As regards the first four of the above circumstances, Cameroon relies in particular on the North Sea Continental Shelf cases (I.C.J. Reports 1969, p. 4), the case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (I.C.J. Reports 1984, p. 246), the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (I.C.J. Reports 1982, p. 18), the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) (I.C.J. Reports 1993, p. 38) and the

Arbitral Award in the case concerning the Delimitation of the Guinea and Guinea-Bissau Maritime Boundary (ILM, Vol. 25 (1986), p. 252). It contends that in all of these cases the circumstances in question led the court or tribunal in question to make [p434] an adjustment of the equidistance line in order to achieve an equitable result -- in some cases a very substantial one, amounting, as for example in the Jan Mayen case, to an actual "shifting" of the line (I.C.J. Reports 1993, p. 79, para. 90), and, in the North Sea Continental Shelf cases, to an increase of some 37.5 per cent in the area of continental shelf which equidistance alone accorded to Germany. Cameroon also cites the solution found by the Arbitral Tribunal in the case concerning the Delimitation of Maritime Areas between Canada and the French Republic (St.Pierre et Miquelon) (ILM, Vol.31 (1992), p. 1149) in order to overcome St. Pierre's enclavement and give it uninterrupted equitable access to the continental shelf.
274. In relation to the fifth circumstance, the presence opposite its coast of Bioko Island, which is part of Equatorial Guinea, but is closer to the coast of Cameroon than to that of Equatorial Guinea, Cameroon draws an analogy with the case concerning the Delimitation of the Continental Shelf (United Kingdom/France) (RIAA, Vol. XVIII, p. 3), in which the Court of Arbitration refused to attribute to the Channel Islands the full effect claimed by Great Britain and decided that they were an enclave lying totally within the French continental shelf.

Cameroon further contends, arguing a contrario from the Court's reasoning in the case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) (I.C.J. Reports 1985, p. 42, para. 53), that "the delimitation regime is not identical for an island State and for a dependent, isolated island falling under the sovereignty of a State". Arguing that Bioko should not necessarily be given its full effect, it insists that what must be avoided at all costs is a "radical and absolute cut-off of the projection of [Cameroon's] coastal front". In this regard it cites a dictum from the Award in the case concerning Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon), in which the Arbitral Tribunal stated that "the delimitation must leave to a State the areas that constitute the natural prolongation or seaward extension of its coasts, so that the delimitation must avoid any cut-off effect of those prolongations or seaward extensions" (ILM, Vol. 31 (1992), p. 1167, para. 58).

275. On the basis of these arguments, Cameroon, in its final submissions, asks the Court to delimit as follows the maritime areas appertaining respectively to Cameroon and Nigeria beyond point G:

" -- from point G the equitable line follows the direction indicated by points G, H (co-ordinates 8 [degree] 21' 16" east and 4 [degree] 17'north), I (7 [degree] 55' 40" east and 3 [degree] 46' north), J (7 [degree] 12' 08" east and 3 [degree] 12' 35" north), K (6 [degree] 45' 22" east and 3 [degree] 01' 05" north), and continues from K up to the outer limit of the maritime zones which international law places under the respective jurisdiction of the two Parties". [p435]

276. Nigeria agrees that it is appropriate in the present case to determine a single maritime boundary, but it rejects Cameroon's line. It describes it as fanciful and constructed in defiance of the basic concepts and rules of international law. It criticizes both the line's construction and the "equitableness" of the result in light of the jurisprudence. It directs its criticism of the construction essentially to five points: the actual nature of the line; the relevant coasts used in its construction; the treatment of the islands in this construction; the definition of the area relevant to the delimitation; the method followed in the construction of the line.

277. In relation to the nature of the line proposed by Cameroon, Nigeria contends that this

is not a "delimitation line" but an "exclusion line". The Cameroonian line is claimed to

"pre-empt any delimitation between Nigeria and the two States whose coasts face its own with no intervening obstacle, i.e., Equatorial Guinea and Sao Tome and Principe, in areas that at each point are nearer to and more closely connected with the coasts of these three States than with the Cameroonian coastline".

In that sense it is claimed to be an exclusion line and hence incompatible with international law.

278. As regards relevant coasts, Nigeria, citing Articles 15, 74 and 83 of the 1982 Convention on the Law of the Sea, points out that the coasts to be taken into account in the construction of a maritime delimitation line must be "adjacent" or "opposite". Moreover, they must be coasts of the parties, and not those of a third State. In this regard Nigeria considers that the relevant coast of Nigeria is that running west from its boundary with Cameroon as far as Akasso (where it changes direction north-westwards, turning its back on the Gulf of Guinea), and that of Cameroon is the coast running east from the boundary between the two States and then south, as far as Debundsha Point, which marks the beginning of the blocking effect of Bioko Island. Moreover, according to Nigeria, Cameroon's line fails to take due account of the criterion of proportionality which, Nigeria claims, is in its own favour by a factor of between 1:1.3 and 1:3.2, depending on the precise points used.

279. As to the treatment of the islands, Nigeria begins by recalling the dictum of the Court in 1969 that "there can never be any question of completely refashioning nature" (North Sea Continental Shelf, I.C.J. Reports 1969, p. 49, para. 91).

Nigeria contends that the Cameroonian line seeks radically to refashion the physical geography of the Gulf of Guinea by eliminating the important string of islands which cuts it into two almost centrally from top to bottom. Moreover, the existence of Bioko, an island substantial in area and population and the seat of the capital of the Republic of Equatorial Guinea, is totally ignored. In any event, according to Nigeria, Bioko cannot simply be treated as a relevant circumstance; it is a major [p436] part of an independent State, possessing its own maritime areas, on which the Court is not entitled to encroach. And the same is true, in Nigeria's view, further south, in regard to the archipelago of Sao Tome and Principe.

Nigeria contends that Cameroon's "equitable line" allows none of these islands any effect at all, taking account only of the mainland coasts, while, moreover, ignoring the impact upon the latter of the presence of Bioko (see paragraph 278 above). Citing the 1982 Convention on the Law of the Sea and the relevant jurisprudence, in particular paragraph 185 of the recent Judgment of the Court in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Nigeria insists that Cameroon's approach cannot be correct in law. Nigeria accepts that the islands may sometimes be given only partial effect, as occurred in the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) regarding the Kerkennah Islands (I.C.J. Reports 1982, pp. 88-89, paras. 128-129). It also notes that a solution of enclavement may on occasion be adopted, as occurred in the Arbitral Award in the Delimitation of the Continental Shelf (United Kingdom/France) (RIAA, Vol. XVIII, p. 3), in regard to the Channel Islands. However, Nigeria points out that in both these cases the islands belonged to one of the parties to the delimitation, whereas here they belong to third States and hence their effects cannot be moderated, in the absence of some other relevant or special circumstance justifying this.

280. In relation to the third and fourth points, definition of the relevant area and method of construction of the line, Nigeria queries the very notion of what Cameroon calls "total relevant area", insisting that the only relevant area is that enclosed by the "relevant coasts" (see paragraph 278 above). It contends that, in reality, Cameroon is seeking to transform a gulf with five riparian States into one with only two: itself and Nigeria. Effectively, according to Nigeria, Cameroon seeks to compensate for the injustice of nature close to the coastline by appropriating extensive areas further out to sea. Nigeria observes that States' maritime areas are simply adjuncts to the land, representing the seaward projection and prolongation of the coastline generating them, and must accordingly be adjacent to, and "closely connected with", that coastline. Nigeria contends that it would be contrary to these principles to construct a line producing an area which dwindles away close to the coastline generating it, but then expands the further it goes from its coastline, displacing itself from its axis so as to take on a course lying closer to, and more directly linked with, other coastlines. It argues that the restrictions on a State's maritime areas close to the coast cannot be relieved by allocating spaces to it far out to sea.

Nigeria contends that it cannot be responsible for compensating Cameroon in the north-western sector for disadvantages it may possibly suffer [p437] as a result of its natural situation in the sectors to the east and to the south of Bioko, in particular as a result of the direction of Cameroon's coast at that point and of the existence of Bioko itself. Nigeria further states that Cameroon's rejection of any reliance on the criteria of appurtenance, equidistance and natural prolongation are inconsistent with modern methods of delimitation. It points out that international tribunals generally start from an equidistance line, which is then adjusted to take into account other relevant circumstances. According to Nigeria, such circumstances do not normally include geographical disadvantage: international law does not refashion the geographical situation of States. Nigeria adds that, while the Court has in the past been sensitive to some geographical features which might have a significant distorting effect on the delimitation of maritime areas, these have always been minor geographical peculiarities specific to the underlying geographical situation of the States concerned. That underlying geographical situation has, on the other hand, always been taken as given and the Court has never considered that a State's maritime front in its entirety could be ignored or could be given anything other than its full effect.

281. As regards the equitable character of Cameroon's line, Nigeria argues that it is not the function of the Court to delimit the continental shelf by reference to general considerations of equity. It maintains that, according to the Court's jurisprudence, delimiting the continental shelf involves establishing the boundaries of an area already appertaining to a State, not determining de novo such an area. Delimitation in an equitable manner is not the same thing as awarding a just and equitable share of a previously undelimited area. After undertaking a detailed analysis of various cases relied on by Cameroon, in particular the North Sea Continental Shelf cases (I.C.J. Reports 1969, p. 1), the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (I.C.J. Reports 1982, p. 18) and the decision of the Arbitral Tribunal in the case concerning the Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon) (ILM, Vol. 31 (1992), p. 1149), Nigeria concludes that nothing done in those cases can justify Cameroon's radical departure from the methods, rules and legal principles of maritime delimitation, in favour of a line which is not so much "equitable" as fanciful. According to Nigeria, these cases demonstrate the limitations of equity: it can be used to mitigate the effects of "minor features that might produce disproportionate results if the principle and method of equidistance were applied mechanically", but not in order completely to refashion nature.

282. Nigeria further argues that the Parties' conduct in respect of the granting and exploitation of oil concessions, leading to the establishment of de facto lines, plays a very important role in establishing maritime boundaries. It contends that, within the area to be delimited, the Court cannot redistribute the oil concessions established by the practice of

Nigeria, [p438] Equatorial Guinea and Cameroon, and that it must respect the configuration of the concessions in its determination of the course of the maritime boundary. In Nigeria's view, international jurisprudence has never disregarded such practice in order to redistribute oil concessions, and this restrained approach is all the more understandable because the change in long-standing rights and oil concessions resulting from such a redistribution would create major difficulties and would not be in keeping with the equitable considerations which must be taken into account in delimitation.

According to Nigeria, Cameroon's line of delimitation completely disregards the substantial, long-standing practice, followed by Nigeria as well as by Cameroon, in respect of oil exploration and exploitation activity on the continental shelf, and would result in allotting to Cameroon a large number of concessions belonging to Nigeria or Equatorial Guinea, in which billions of dollars in infrastructure have been invested. Nigeria states that its oil concession practice is long established, contending that, contrary to what Cameroon claims (see paragraph 283 below), it dates back to well before 1970, when, according to Cameroon, its maritime delimitation dispute with Nigeria arose. The existence of any areas of overlapping licences is moreover considered by Nigeria to be without effect on the evidentiary weight of oil practice. Nigeria states that its operations within the maritime areas now claimed by Cameroon have always been particularly significant and completely open; Cameroon never disputed them and lodged no protest until the date on which these proceedings were instituted. Nigeria concludes that its oil practice in the area was public, open and of long duration, and is therefore a basis for acquiescence and the establishment of vested rights. It denies that it failed in an obligation to inform Cameroon of this practice, and states that the information was in any event publicly available.

283. In reply to Nigeria's argument on the oil practice, Cameroon, for its part, maintains that the existence and limits of oil concessions have been given only limited significance in matters of maritime delimitation in international case law. This limited significance is said to accord with the essential nature of the concept of the continental shelf, over which coastal States have an inherent right which "does not depend on its being exercised" (North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 22, para. 19). Cameroon argues that the granting of oil concessions is a unilateral fait accompli, and not a legal fact that is opposable to another State.

In the area immediately south of point G, Cameroon claims that there are in fact areas of overlap of the concessions granted by Cameroon, Equatorial Guinea and Nigeria, and that, because of this, it cannot be said that there is any consensual line of oil practices forming a de facto line which could serve as a basis for delimitation. In the area further [p439] south of point G. Cameroon argues that there can be no question of a de facto line, since Cameroon refrained from granting any concessions there, due to the negotiations between the Parties and the present proceedings. According to Cameroon, Nigeria, by granting concessions in this area, has sought to present the Court with a fait accompli.

Moreover, Cameroon claims that Nigeria's description of the State practice in terms of oil concessions and the conclusions it draws therefrom are erroneous. Cameroon insists that, contrary to Nigeria's claim, the concessions cited by Nigeria are all (with the exception of concession OML 67) subsequent to 1990, well after the maritime delimitation dispute arose at the end of the 1970s, while three of them were even granted after the Application instituting proceedings was filed and therefore are of no relevance for purposes of settling the present dispute.

Further, Cameroon states that nothing can be inferred from its silence with regard to Nigerian concessions, since the Nigerian authorities never informed Cameroon, as they had promised to do, of new concessions and Nigeria itself has remained silent with respect

to Cameroonian concessions, even when these encroached on zones which Nigeria appears to consider as its own.

284. Having dealt earlier with the nature, purpose and effects of Equatorial Guinea's intervention (see paragraphs 227-238 above), the Court will now briefly summarize Equatorial Guinea's arguments in regard to the course of the maritime boundary between Cameroon and Nigeria. Essentially, Equatorial Guinea requests the Court to "refrain from delimiting a maritime boundary between Nigeria and Cameroon in any area that is more proximate to Equatorial Guinea than to the Parties to the case before the Court", or from "express[ing] any opinion which could prejudice [Equatorial Guinea's] interests in the context of [its] maritime boundary negotiations with [its] neighbours". It asks that the boundary to be fixed by the Court should nowhere encroach upon the median line between its own coasts and those of Cameroon and Nigeria, which it regards as "a reasonable expression of its legal rights and interests that must not be transgressed in proceedings to which Equatorial Guinea is not a party". Equatorial Guinea stresses that, if the Court's decision in the present case were to involve such an encroachment, this would cause it "irreparable harm" and would "lead to a great deal of confusion", notwithstanding the protection afforded by Article 59 of the Court's Statute.

Equatorial Guinea has a number of specific criticisms of the "equitable line" proposed by Cameroon, of which, moreover, it claims it only became aware in December 1998. It contends that in prior negotiations Cameroon had always acknowledged that the median line represented the boundary between their respective maritime areas and that this had been confirmed by the two States' oil practice. However, according to [p440] Equatorial Guinea, Cameroon's equitable line not only encroaches upon the two countries' median line but also upon that between Equatorial Guinea and Nigeria and, moreover, fails to take account of the three States' very substantial oil practice. According to Equatorial Guinea, if the Court were to accept Cameroon's proposed line, there would no longer even be a maritime boundary between Equatorial Guinea and Nigeria, and hence no tripoint between the three countries, despite the fact that Cameroon, in prior negotiations with Equatorial Guinea, and in its own legislation, had always acknowledged that such a tripoint existed.

Equatorial Guinea further contends that to give effect to Cameroon's line would result in the complete enclavement of Bioko Island. Finally, Equatorial Guinea refers to the Treaty of 23 September 2000 delimiting its maritime boundary with Nigeria. While Equatorial Guinea recognizes that that Treaty cannot be binding on Cameroon (res inter alios acta), it contends that, equally, Cameroon cannot seek to benefit from it. Hence, the fact that, under the Treaty, the maritime area allocated to Nigeria extends into waters lying on Equatorial Guinea's side of the median line is not a circumstance on which Cameroon is entitled to rely for purposes of its claim against Nigeria.

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285. The Court observes that the maritime areas on whose delimitation it is to rule in this part of the Judgment lie beyond the outer limit of the respective territorial seas of the two States. The Court further recalls that the Parties agree that it is to rule on the maritime delimitation in accordance with international law. Both Cameroon and Nigeria are parties to the United Nations Law of the Sea Convention of 10 December 1982, which they ratified on 19 November 1985 and 14 August 1986 respectively. Accordingly the relevant provisions of that Convention are applicable, and in particular Articles 74 and 83 thereof, which concern delimitation of the continental shelf and the exclusive economic zone between States with opposite or adjacent coasts. Paragraph 1 of those Articles provides that such delimitation must be effected in such a way as to "achieve an equitable solution".

286. The Court also notes that the Parties agreed in their written pleadings that the delimitation between their maritime areas should be effected by a single line. As the Court had occasion to recall in its Judgment of 16 March 2001 in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain),

"the concept of a single maritime boundary does not stem from multilateral treaty law but from State practice, and . . . finds its explanation in the wish of States to establish one uninterrupted boundary line delimiting the various -- partially coincident -- zones of maritime jurisdiction appertaining to them" (I.C.J. Reports 2001, para. 173). [p441]

In the present case, the Court's task is accordingly to determine, with effect from point G, a single line of delimitation for the coincident zones of jurisdiction within the restricted area in respect of which it is competent to give a ruling.

287. The Chamber formed by the Court in the case concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) noted that the determination of such a line

"can only be carried out by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of [the zones] to the detriment of the other, and at the same time is such as to be equally suitable to the division of either of them" (I.C.J. Reports 1984, p. 327, para. 194).

The Chamber then added that "preference would henceforth ... be given to criteria that, because of their more neutral character, are best suited for use in a multi-purpose delimitation" (I.C.J. Reports 1984, p. 327, para. 194).

Likewise, after noting the link between the continental shelf and the exclusive economic zone, the Court stated in the Continental Shelf (Libyan Arab Jamahiriy a/Malta) case that

"even though the present case relates only to the delimitation of the continental shelf and not to that of the exclusive economic zone, the principles and rules underlying the latter concept cannot be left out of consideration. As the 1982 Convention demonstrates, the two institutions -- continental shelf and exclusive economic zone -- are linked together in modern law." (I.C.J. Reports 1985, p. 33, para. 33.)

288. The Court has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are when a line covering several zones of coincident jurisdictions is to be determined. They are expressed in the so-called equitable principles/relevant circumstances method. This method, which is very similar to the equidistance/special circumstances method applicable in delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an "equitable result".

289. Thus, in the case concerning Maritime Delimitation in the Area between Greenland and Jan May en (Denmark v. Norway), the Court, which had been asked to draw a single maritime boundary, took the view, with regard to delimitation of the continental shelf, that

"even if it were appropriate to apply . . . customary law concerning the continental shelf as developed in the decided cases, it is in accord with precedents to begin with the median line as a provisional line and then to ask whether 'special circumstances' require any adjust-[p442]ment or shifting of that line" (I.C.J. Reports 1993, Judgment, p. 61, para. 51).

In seeking to ascertain whether there were in that case factors which should cause it to adjust or shift the median line in order to achieve an "equitable result", the Court stated:

"it is thus apparent that special circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle. General international law, as it has developed through the case-law of the Court and arbitral jurisprudence, and through the work of the Third United Nations Conference on the Law of the Sea, has employed the concept of 'relevant circumstances'. This concept can be described as a fact necessary to be taken into account in the delimitation process." (Ibid., p. 62, para. 55.)

In the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) the Court further stated that

"for the delimitation of the maritime zones beyond the 12-mile zone it [would] first provisionally draw an equidistance line and then consider whether there [were] circumstances which must lead to an adjustment of that line" (I.C.J. Reports 2001, para. 230).

290. The Court will apply the same method in the present case.
Before it can draw an equidistance line and consider whether there are relevant circumstances that might make it necessary to adjust that line, the Court must, however, define the relevant coastlines of the Parties by reference to which the location of the base points to be used in the construction of the equidistance line will be determined.

As the Court made clear in its Judgment in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain),

"the equidistance line is the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured." (I.C.J. Reports 2001, para. 177.)

291. In the present case the Court cannot accept Cameroon's contention, on the one hand, that account should be taken of the coastline of the Gulf of Guinea from Akasso (Nigeria) to Cap Lopez (Gabon) in order to delimit Cameroon's maritime boundary with Nigeria, and, on the other, that no account should be taken of the greater part of the coastline of Bioko Island. First, the maritime boundary between Cameroon and Nigeria can only be determined by reference to points on the coastlines of these two States and not of third States. Secondly, the presence of Bioko makes itself felt from Debundsha, at the point where the Cameroon coast turns south-south-east. Bioko is not an island belonging [p443] to either of the two Parties. It is a constituent part of a third State, Equatorial Guinea. North and east of Bioko the maritime rights of Cameroon and Equatorial Guinea have not yet been determined. The part of the Cameroon coastline beyond Debundsha Point faces Bioko. It cannot therefore be treated as facing Nigeria so as to be relevant to the maritime delimitation between Cameroon and Nigeria (see below, p. 137, sketch-map No. 11).

292. Once the base points have been established in accordance with the above-mentioned principles laid down by the Court in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), it will be possible to determine the equidistance line between the relevant coastlines of the two States. As the Court has already had occasion to explain, this equidistance line cannot be extended beyond a point where it might affect rights of Equatorial Guinea. This limitation on the length of the equidistance line is unavoidable, whatever the base points used. In the present case the Court has determined that the land-based anchorage points to be used in the

construction of the equidistance line are West Point and East Point, as determined on the 1994 edition of British Admiralty Chart 3433. These two points, situated respectively at 8 [degree] 16' 38" longitude east and 4 [degree] 31' 59" latitude north and 8 [degree] 30' 14" longitude east and 4 [degree] 30' 06" latitude north, correspond to the most southerly points on the low-water line for Nigeria and Cameroon to either side of the bay formed by the estuaries of the Akwayafe and Cross Rivers. Given the configuration of the coastlines and the limited area within which the Court has jurisdiction to effect the delimitation, no other base point was necessary for the Court in order to undertake this operation.

293. The Court will now consider whether there are circumstances that might make it necessary to adjust this equidistance line in order to achieve an equitable result.

As the Court stated in the Continental Shelf (Libyan Arab Jamahiriya/Malta) case:

"the equidistance method is not the only method applicable to the present dispute, and it does not even have the benefit of a presumption in its favour. Thus, under existing law, it must be demonstrated that the equidistance method leads to an equitable result in the case in question." (I.C.J. Reports 1985, p. 47, para. 63.)

294. The Court is bound to stress in this connection that delimiting with a concern to achieving an equitable result, as required by current international law, is not the same as delimiting in equity. The Court's jurisprudence shows that, in disputes relating to maritime delimitation, equity is not a method of delimitation, but solely an aim that should be borne in mind in effecting the delimitation.

295. The geographical configuration of the maritime areas that the Court is called upon to delimit is a given. It is not an element open to

[p444]

Sketch-Map No. 11. Gulf of Guinea

[p445] modification by the Court but a fact on the basis of which the Court must effect the delimitation. As the Court had occasion to state in the North Sea Continental Shelf cases, "equity does not necessarily imply equality", and in a delimitation exercise "there can never be any question of completely refashioning nature" (I.C.J. Reports 1969, p. 49, para. 91). Although certain geographical peculiarities of maritime areas to be delimited may be taken into account by the Court, this is solely as relevant circumstances, for the purpose, if necessary, of adjusting or shifting the provisional delimitation line. Here again, as the Court decided in the North Sea Continental Shelf cases, the Court is not required to take all such geographical peculiarities into account in order to adjust or shift the provisional delimitation line:

"it is therefore not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result" (I.C.J. Reports 1969, p. 50, para. 91).

296. Cameroon contends that the concavity of the Gulf of Guinea in general, and of Cameroon's coastline in particular, creates a virtual enclavement of Cameroon, which constitutes a special circumstance to be taken into account in the delimitation process.

Nigeria argues that it is not for the Court to compensate Cameroon for any disadvantages

suffered by it as a direct consequence of the geography of the area. It stresses that it is not the purpose of international law to refashion geography.

297. The Court does not deny that the concavity of the coastline may be a circumstance relevant to delimitation, as it was held it to be by the Court in the North Sea Continental Shelf cases and as was also so held by the Arbitral Tribunal in the case concerning the Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, decisions on which Cameroon relies.
Nevertheless the Court stresses that this can only be the case when such concavity lies within the area to be delimited. Thus, in the Guinea/Guinea-Bissau case, the Arbitral Tribunal did not address the disadvantage resulting from the concavity of the coast from a general viewpoint, but solely in connection with the precise course of the delimitation line between Guinea and Guinea-Bissau (ILM, Vol. 25 (1986), p. 295, para. 104). In the present case the Court has already determined that the coastlines relevant to delimitation between Cameroon and Nigeria do not include all of the coastlines of the two States within the Gulf of Guinea. The Court notes that the sectors of coastline relevant to the present delimitation exhibit no particular concavity. Thus the concavity of Cameroon's coastline is apparent primarily in the sector where it faces Bioko.

Consequently the Court does not consider that the configuration of the [p446] coastlines relevant to the delimitation represents a circumstance that would justify shifting the equidistance line as Cameroon requests.

298. Cameroon further contends that the presence of Bioko Island constitutes a relevant circumstance which should be taken into account by the Court for purposes of the delimitation. It argues that Bioko Island substantially reduces the seaward projection of Cameroon's coastline.
Here again Nigeria takes the view that it is not for the Court to compensate Cameroon for any disadvantages suffered by it as a direct consequence of the geography of the area.

299. The Court accepts that islands have sometimes been taken into account as a relevant circumstance in delimitation when such islands lay within the zone to be delimited and fell under the sovereignty of one of the parties. This occurred in particular in the case concerning the Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic (RIAA, Vol. XVIII, p. 3), on which Cameroon relies. However, in that case, contrary to what Cameroon contends, the Court of Arbitration sought to draw a delimitation line and not to provide equitable compensation for a natural inequality.

In the present case Bioko Island is subject to the sovereignty of Equatorial Guinea, a State which is not a party to the proceedings. Consequently the effect of Bioko Island on the seaward projection of the Cameroonian coastal front is an issue between Cameroon and Equatorial Guinea and not between Cameroon and Nigeria, and is not relevant to the issue of delimitation before the Court.

The Court does not therefore regard the presence of Bioko Island as a circumstance that would justify the shifting of the equidistance line as Cameroon claims.

300. Lastly, Cameroon invokes the disparity between the length of its coastline and that of Nigeria in the Gulf of Guinea as a relevant circumstance that justifies shifting the delimitation line towards the north-west.

For its part, Nigeria considers that Cameroon fails to respect the criteria of proportionality of coastline length, which would operate rather in Nigeria's favour.

301. The Court acknowledges, as it noted in the cases concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) (I.C.J. Reports 1984, p. 336, paras. 221-222) and Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) (I.C.J. Reports 1993, p. 34, para. 68), that a substantial difference in the lengths of the parties' respective coastlines may be a factor to be taken into consideration in order to adjust or shift the provisional delimitation line. The Court notes that in the present case, whichever coastline of Nigeria is regarded as relevant, the relevant coastline of Cameroon, as described in paragraph 291, is not longer than that of Nigeria. There is therefore [p447] no reason to shift the equidistance line in favour of Cameroon on this ground.

302. Before ruling on the delimitation line between Cameroon and Nigeria, the Court must still address the question raised by Nigeria whether the oil practice of the Parties provides helpful indications for purposes of the delimitation of their respective maritime areas.

303. Thus Nigeria contends that State practice with regard to oil concessions is a decisive factor in the establishment of maritime boundaries. In particular it takes the view that the Court cannot, through maritime delimitation, redistribute such oil concessions between the States party to the delimitation.

Cameroon, for its part, maintains that the existence of oil concessions has never been accorded particular significance in matters of maritime delimitation in international law.

304. Both the Court and arbitral tribunals have had occasion to deal with the role of oil practice in maritime delimitation disputes. In the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (I.C.J. Reports 1982, p. 18), the Court examined for the first time the question of the significance of oil concessions for maritime delimitation. On that occasion the Court did not take into consideration "the direct northward line asserted as boundary of the Libyan petroleum zones" (I.C.J. Reports 1982, p. 83, para. 117), because that line had "been found . . . to be wanting in those respects [that would have made it opposable] to the other Party" (ibid.); however, the Court found that close to the coasts the concessions of the parties showed and confirmed the existence of a modus vivendi (ibid., p. 84, para. 119). In the case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) the Chamber of the Court underlined the importance of those findings when it stressed that in that case there did not exist any modus vivendi (I.C.J. Reports 1984, pp. 310-311, paras. 149-152). In that case the Chamber considered that, notwithstanding the alleged coincidence of the American and Canadian oil concessions, the situation was totally different from the Tunisia/Libya case. In the case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta (I.C.J. Reports 1985, p. 13) the Court considered that the indications given by the parties could not be viewed as evidence of acquiescence (ibid., pp. 28-29, paras. 24-25). As to arbitration, the Arbitral Tribunal in the Guinea/Guinea Bissau case declined to take into consideration an oil concession granted by Portugal (ILM, Vol. 25 (1986), p. 281, para. 63). The Arbitral Tribunal in the case concerning Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon) accorded no importance to the oil concessions granted by the parties (ILM, Vol. 31 (1992), pp. 1174-1175, paras. 89-91). Overall, it follows from the jurisprudence that, although the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled, oil concessions and oil wells are not in themselves to be considered as [p448] relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account. In the present case there is no agreement between the Parties regarding

oil concessions.

The Court is therefore of the opinion that the oil practice of the Parties is not a factor to be taken into account in the maritime delimitation in the present case.

305. The Court also sought to ascertain whether there were other reasons that might have made an adjustment of the equidistance line necessary in order to achieve an equitable result. It came to the conclusion that there were no such reasons in the present case.

306. The Court accordingly decides that the equidistance line represents an equitable result for the delimitation of the area in respect of which it has jurisdiction to give a ruling.

307. The Court notes, however, that point G, which was determined by the two Parties in the Maroua Declaration of 1 June 1975, does not lie on the equidistance line between Cameroon and Nigeria, but to the east of that line. Cameroon is therefore entitled to request that from point G the boundary of the Parties' respective maritime areas should return to the equidistance line. This Cameroon seeks to achieve by drawing a delimitation line at an azimuth of 270 [degree] from point G to a point situated at 8 [degree] 21' 16" longitude east and 4 [degree] 17' 00" latitude north. The Court, having carefully studied a variety of charts, observes that the point on the equidistance line which is obtained by following a loxodrome having an azimuth of 270 [degree] from point G is located at co-ordinates slightly different from those put forward by Cameroon. The Court accordingly considers that from point G the delimitation line should directly join the equidistance line at a point with co-ordinates 8 [degree] 21' 20" longitude east and 4 [degree] 17' 00" latitude north, which will be called X. The boundary between the respective maritime areas of Cameroon and Nigeria will therefore continue beyond point G in a westward direction until it reaches point X at the above-mentioned co-ordinates. The boundary will turn at point X and continue southwards along the equidistance line. However, the equidistance line adopted by the Court cannot be extended very far. The Court has already stated that it can take no decision that might affect rights of Equatorial Guinea, which is not a party to the proceedings. In these circumstances the Court considers that it can do no more than indicate the general direction, from point X, of the boundary between the Parties' maritime areas. The boundary will follow a loxodrome having an azimuth of 187 [degree] 52' 27" (see below, p. 142, sketch-map No. 12).

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308. The Court will now address Cameroon's submissions concerning

[p449]

Sketch-Map No. 2. Maritime Boundary.

[p450] Nigeria's State responsibility and Nigeria's counter-claims concerning Cameroon's State responsibility.

309. In this connection, Cameroon puts forward two separate series of submissions concerning, on the one hand, the Lake Chad area and the Bakassi Peninsula and, on the other, the remaining sectors of the land and maritime boundary.

310. In respect of the Lake Chad area, Cameroon states that Nigerian fishermen have over recent decades gradually settled on Cameroonian territory as the lake has receded. According to Cameroon, from the middle of the 1980s the Nigerian army made repeated incursions into the Cameroonian territory on which those fishermen had settled. Those

incidents are alleged to have been followed by a full-scale invasion beginning in 1987, so that by 1994 a total of 18 villages and six islands were occupied by Nigeria and continue to be so occupied.

In respect of Bakassi, Cameroon states that before 1993 the Nigerian army had on several occasions temporarily infiltrated into the peninsula and had even attempted in 1990 to establish a "bridgehead" at Jabane, but did not maintain any military presence in Bakassi at that time; Cameroon, on the contrary, had established a sub-prefecture at Idabato, together with all the administrative, military and security services appertaining thereto. Then, in December 1993, the Nigerian armed forces are said to have launched an attack on the peninsula as part of a carefully and deliberately planned invasion; Nigeria subsequently maintained and advanced its occupation, establishing a second bridgehead at Diamond in July 1994. In February 1996, following an attack by Nigerian troops, the Cameroonian post at Idabato is alleged to have fallen into Nigeria's hands. The same fate is said to have subsequently befallen the Cameroonian posts at Uzama and Kombo a Janea. These Cameroonian territories are allegedly still occupied.

Cameroon contends that, in thus invading and occupying its territory, Nigeria has violated, and continues to violate, its obligations under conventional and customary international law. In particular, Cameroon claims that Nigeria's actions are contrary to the principle of non-use of force set out in Article 2, paragraph 4, of the United Nations Charter and to the principle of non-intervention repeatedly upheld by the Court, as well as being incompatible with Cameroon's territorial sovereignty.
Cameroon contends that these actions imputable to Nigeria are wrongful, and that Nigeria is accordingly under an obligation to "put an end to its administrative and military presence in Cameroonian territory and, in particular, to effect an immediate and unconditional evacuation of its troops from the occupied area of Lake Chad and from the Cameroonian peninsula of Bakassi". Cameroon states that Nigeria must "[refrain] from such acts in the future", that Nigeria's international responsibility is engaged and that none of the grounds of defence provided by interna-[p451]tional law can be upheld. Consequently, Cameroon claims that reparation is due to it "on account of the material and moral injury suffered".

311. For its part, Nigeria states that it was not only in peaceful possession of the Lake Chad area and the Bakassi region at the time of the alleged invasions but had been since independence. Its deployment of force is alleged to have been for the purpose of resolving internal problems and responding to Cameroon's campaign of systematic encroachment on Nigerian territory. Nigeria claims to have acted in self-defence. It further contends that, even if the Court should find that Cameroon has sovereignty over these areas, the Nigerian presence there was the result of a "reasonable mistake" or "honest belief". Accordingly, Nigeria cannot be held internationally responsible for conduct which, at the time it took place, Nigeria had every reason to believe was lawful.

312. The Court will recall that in paragraphs 57, 60, 61 and 225 of the present Judgment it fixed the boundary between the two States in the Lake Chad area and the Bakassi Peninsula. Nigeria does not deny that Nigerian armed forces and a Nigerian administration are currently in place in these areas which the Court has determined are Cameroonian territory, adding in respect of the establishment of the municipality of Bakassi that, if the Court were to recognize Cameroon's sovereignty over such areas, there is nothing irreversible in the relevant arrangements made by Nigeria. The same reasoning clearly applies to other spheres of civil administration, as well as to military or police forces.

313. The Court has already had occasion to deal with situations of this kind. In the case concerning the Temple of Preah Vihear, it held that the temple was situated on territory

falling under the sovereignty of Cambodia. From this it concluded that "Thailand [was] under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (Merits, Judgment, I.C.J. Reports 1962, p. 37).

More recently, in the Territorial Dispute (Libyan Arab Jamahiriya/Chad), the Court fixed the boundary between those two States along a course which allocated to Chad territories in which Libya had set up a civil administration and stationed military forces. Following that Judgment of 3 February 1994, the two States on 4 April 1994 signed an agreement with a view to implementing the Judgment; that agreement provided for Libya's evacuation of the territories in question, to be monitored by a group of observers to be established by the Security Council. The evacuation was completed on 31 May 1994.

314. The Court notes that Nigeria is under an obligation in the present case expeditiously and without condition to withdraw its administration and its military and police forces from that area of Lake Chad which falls within Cameroon's sovereignty and from the Bakassi Peninsula.

315. The Court further observes that Cameroon is under an obligation [p452] expeditiously and without condition to withdraw any administration or military or police forces which may be present in areas along the land boundary from Lake Chad to the Bakassi Peninsula which pursuant to the present Judgment fall within the sovereignty of Nigeria. Nigeria has the same obligation in regard to any administration or military or police forces which may be present in areas along the land boundary from Lake Chad to the Bakassi Peninsula which pursuant to the present Judgment fall within the sovereignty of Cameroon.

316. The Court further notes that the implementation of the present Judgment will afford the Parties a beneficial opportunity to co-operate in the interests of the population concerned, in order notably to enable it to continue to have access to educational and health services comparable to those it currently enjoys. Such co-operation will be especially helpful, with a view to the maintenance of security, during the withdrawal of the Nigerian administration and military and police forces.

317. Moreover, on 21 March 2002 the Agent of Cameroon stated before the Court that "over three million Nigerians live on Cameroonian territory, where, without any restriction, they engage in various activities, and are well integrated into Cameroonian society". He went on to declare that, "faithful to its traditional policy of hospitality and tolerance, Cameroon will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area". The Court takes note with satisfaction of the commitment thus undertaken in respect of these areas where many Nigerian nationals reside.

318. Cameroon, however, is not only asking the Court for an end to Nigeria's administrative and military presence in Cameroonian territory but also for guarantees of non-repetition in the future. Such submissions are undoubtedly admissible (LaGrand (Germany v. United States of America), Judgment of 27 June 2001, paras. 117 et seq.). However, the Judgment delivered today specifies in definitive and mandatory terms the land and maritime boundary between the two States. With all uncertainty dispelled in this regard, the Court cannot envisage a situation where either Party, after withdrawing its military and police forces and administration from the other's territory, would fail to respect the territorial sovereignty of that Party. Hence Cameroon's submissions on this point cannot be upheld.

319. In the circumstances of the case, the Court considers moreover that, by the very fact of the present Judgment and of the evacuation of the Cameroonian territory occupied by

Nigeria, the injury suffered by Cameroon by reason of the occupation of its territory will in all events have been sufficiently addressed. The Court will not therefore seek to ascertain whether and to what extent Nigeria's responsibility to Cameroon has been engaged as a result of that occupation.

320. Cameroon further contends that Nigeria has failed to comply with the Order indicating provisional measures handed down by the [p453] Court on 15 March 1996 and has thereby breached its international obligations. Nigeria maintains that these claims are "without substance".

321. In its Judgment of 27 June 2001 in the LaGrand case (Germany v. United States of America), the Court reached "the conclusion that orders on provisional measures under Article 41 [of the Statute] have binding effect" (I.C.J. Reports 2001, para. 109). However, it is "the litigant seeking to establish a fact who bears the burden of proving it; and in cases where evidence may not be forthcoming, a submission may in the judgment be rejected as unproved" (Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 437, para. 101). Thus in the present case it is for Cameroon to show that Nigeria acted in violation of the provisional measures indicated in the Order of 15 March 1996.

322. In this case, the Court had already noted in the above Order that it was unable to form any "clear and precise" picture of the events taking place in Bakassi in February 1996 (I.C.J. Reports 2001, para. 38). The same is true in respect of events in the peninsula after the Order of 15 March 1996 was handed down. Cameroon has not established the facts which it bears the burden of proving, and its submissions on this point must accordingly be rejected.

323. Finally, Cameroon complains of various boundary incidents occurring not only in Bakassi and the Lake Chad area but also at sea and all along the land boundary between the two States between 1970 and 2001. Cameroon made clear in its Reply and at the oral proceedings that it was not seeking a ruling on Nigeria's responsibility in respect of each of these incidents taken in isolation. In its final submissions, Cameroon requests the Court to adjudge that "by making repeated incursions throughout the length of the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international . . . law" and that its responsibility is therefore engaged, notably because of the casualties inflicted.
Nigeria contends that these submissions cannot be ruled upon as a whole and that they must be addressed by considering the alleged incidents one by one. It asks the Court to reject the said submissions and, for its part, presents counter-claims concerning numerous incidents along the boundary which, according to Nigeria, engage Cameroon's State responsibility. Cameroon asks the Court to reject those submissions.

324. The Court finds that, here again, neither of the Parties sufficiently proves the facts which it alleges, or their imputability to the other Party. The Court is therefore unable to uphold either Cameroon's submissions or Nigeria's counter-claims based on the incidents cited.

***[p454]

325. For these reasons,

THE COURT,

I. (A) By fourteen votes to two,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is delimited by the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

(B) By fourteen votes to two,

Decides that the line of the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is as follows:

From a tripoint in Lake Chad lying at 14 [degree] 04' 59"9999 longitude east and 13 [degree] 05' latitude north, in a straight line to the mouth of the River Ebeji, lying at 14 [degree] 12' 12" longitude east and 12 [degree] 32' 17" latitude north; and from there in a straight line to the point where the River Ebeji bifurcates, located at 14 [degree] 12' 03" longitude east and 12 [degree] 30' 14" latitude north;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

II. (A) By fifteen votes to one,
Decides that the land boundary between the Republic of Cameroon and the Federal Republic of Nigeria is delimited, from Lake Chad to the Bakassi Peninsula, by the following instruments:

(i) from the point where the River Ebeji bifurcates as far as Tamnyar Peak, by paragraphs 2 to 60 of the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

(ii) from Tamnyar Peak to pillar 64 referred to in Article XII of the Anglo-German Agreement of 12 April 1913, by the British Order in Council of 2 August 1946;

(iii) from pillar 64 to the Bakassi Peninsula, by the Anglo-German Agreements of 11 March and 12 April 1913;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judges ad hoc Mbaye, Ajibola;

AGAINST: Judge Koroma; [p455]

(B) Unanimously,

Decides that the aforesaid instruments are to be interpreted in the manner set out in paragraphs 91, 96, 102, 114, 119, 124, 129, 134, 139, 146, 152, 155, 160, 168, 179, 184 and 189 of the present Judgment;

III. (A) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Koroma, Rezek; Judge ad hoc Ajibola;

(B) By thirteen votes to three,

Decides that sovereignty over the Bakassi Peninsula lies with the Republic of Cameroon;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Koroma, Rezek; Judge ad hoc Ajibola;
(C) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi follows the thalweg of the Akpakorum (Akwayafe) River, dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as the straight line joining Bakassi Point and King Point;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Koroma, Rezek; Judge ad hoc Ajibola;

IV. (A) By thirteen votes to three,

Finds, having addressed Nigeria's eighth preliminary objection, which it declared in its Judgment of 11 June 1998 not to have an exclusively preliminary character in the circumstances of the case, that it has jurisdiction over the claims submitted to it by the Republic of Cameroon regarding the delimitation of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria, and that those claims are admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma; Judge ad hoc Ajibola; [p456]

(B) By thirteen votes to three,

Decides that, up to point G below, the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the

following course:

-- starting from the point of intersection of the centre of the navigable channel of the Akwayafe River with the straight line joining Bakassi Point and King Point as referred to in point III (C) above, the boundary follows the "compromise line" drawn jointly at Yaounde on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 (Yaounde II Declaration) and passing through 12 numbered points, whose co-ordinates are as follows:

	Longitude	Latitude
point 1:	8 [degree] 30' 44" E,	4 [degree] 40' 28" N
point 2:	8 [degree] 30' 00" E,	4 [degree] 40' 00" N
point 3:	8 [degree] 28' 50" E,	4 [degree] 39' 00" N
point 4:	8 [degree] 27' 52" E,	4 [degree] 38' 00" N
point 5:	8 [degree] 27' 09" E,	4 [degree] 37' 00" N
point 6:	8 [degree] 26' 36" E,	4 [degree] 36' 00" N
point 7:	8 [degree] 26' 03" E,	4 [degree] 35' 00" N
point 8:	8 [degree] 25' 42" E,	4 [degree] 34' 18" N
point 9:	8 [degree] 25' 35" E,	4 [degree] 34' 00" N
point 10:	8 [degree] 25' 08" E,	4 [degree] 33' 00" N
point 11:	8 [degree] 24' 47" E,	4 [degree] 32' 00" N
point 12:	8 [degree] 24' 38" E,	4 [degree] 31' 26" N

-- from point 12, the boundary follows the line adopted in the Declaration signed by the Heads of State of Cameroon and Nigeria at Maroua on 1 June 1975 (Maroua Declaration), as corrected by the exchange of letters between the said Heads of State of 12 June and 17 July 1975; that line passes through points A to G, whose co-ordinates are as follows:

	Longitude	Latitude
point A:	8 [degree] 24' 24" E,	4 [degree] 31' 30" N
point A1:	8 [degree] 24' 24" E,	4 [degree] 31' 20" N
point B:	8 [degree] 24' 10" E,	4 [degree] 26' 32" N
point C:	8 [degree] 23' 42" E,	4 [degree] 23' 28" N
point D:	8 [degree] 22' 41" E,	4 [degree] 20' 00" N
point E:	8 [degree] 22' 17" E,	4 [degree] 19' 32" N
point F:	8 [degree] 22' 19" E,	4 [degree] 18' 46" N
point G:	8 [degree] 22' 19" E,	4 [degree] 17' 00" N;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby;

Judge ad hoc Mbaye;

AGAINST: Judges Koroma, Rezek; Judge ad hoc Ajibola; [p457]

(C) Unanimously,

Decides that, from point G, the boundary line between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 270 [degree] as far as the equidistance line passing through the midpoint of the line joining West Point and East Point; the boundary meets this equidistance line at a point X, with co-ordinates 8 [degree] 21' 20" longitude east and 4 [degree] 17' 00" latitude north;

(D) Unanimously,

Decides that, from point X, the boundary between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 187 [degree] 52' 27";
V. (A) By fourteen votes to two,

Decides that the Federal Republic of Nigeria is under an obligation expeditiously and without condition to withdraw its administration and its military and police forces from the territories which fall within the sovereignty of the Republic of Cameroon pursuant to points I and III of this operative paragraph;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

(B) Unanimously,

Decides that the Republic of Cameroon is under an obligation expeditiously and without condition to withdraw any administration or military or police forces which may be present in the territories which fall within the sovereignty of the Federal Republic of Nigeria pursuant to point II of this operative paragraph. The Federal Republic of Nigeria has the same obligation in respect of the territories which fall within the sovereignty of the Republic of Cameroon pursuant to point II of this operative paragraph;

(C) By fifteen votes to one,

Takes note of the commitment undertaken by the Republic of Cameroon at the hearings that, "faithful to its traditional policy of hospitality and tolerance", it "will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area";

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judges ad hoc Mbaye, Ajibola;

AGAINST: Judge Parra-Aranguren; [p458]

(D) Unanimously,

Rejects all other submissions of the Republic of Cameroon regarding the State responsibility of the Federal Republic of Nigeria;

(E) Unanimously,

Rejects the counter-claims of the Federal Republic of Nigeria.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this tenth day of October, two thousand and two, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Cameroon, the Government of the Federal Republic of Nigeria, and the Government of the Republic of Equatorial Guinea, respectively.

(Signed) Gilbert GUILLAUME,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge ODA appends a declaration to the Judgment of the Court; Judge RANJEVA appends a separate opinion to the Judgment of the Court; Judge HERCZEGH appends a declaration to the Judgment of the Court; Judge KOROMA appends a dissenting opinion to the Judgment of the Court; Judge PARRA-ARANGUREN appends a separate opinion to the Judgment of the Court; Judge REZEK appends a declaration to the Judgment of the Court; Judge Al-Khasawneh and Judge ad hoc MBA YE append separate opinions to the Judgment of the Court; Judge ad hoc AJIBOLA appends a dissenting opinion to the Judgment of the Court.

(Initialled) G.G.
(Initialled) Ph.C. [p459]

DECLARATION OF JUDGE ODA

I. The Bakassi Peninsula and Land Boundaries — Main Issues of the Present Case

1. The present case, as unilaterally presented to the Court in March and June 1994 by Cameroon, is one in which "[t]he dispute relates essentially to the question of sovereignty over the Bakassi Peninsula" (Cameroon's Application instituting proceedings, p. 5, para. 1, emphasis added) and

"[the] aspect of the dispute relates essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad . . . and to the course of the boundary between the Republic of Cameroon and the Federal Republic of Nigeria, from Lake Chad to the sea." (Additional Application, p. 77, para. 1, emphasis added.)

While the present Judgment has my full support in respect of these three questions, which alone constitute the essence of the present case, I wish to express the several reservations set out below. [p460]

A. The Bakassi Peninsula (Subparagraph III of the Operative Part of the Judgment)

2. With regard to the status of the Bakassi Peninsula, which is the main issue in the present case, I fully agree with the Court's decision in point III (B) of the operative part of the Judgment that "sovereignty over the Bakassi Peninsula lies with the Republic of Cameroon" (Judgment, para. 325 III (B)).

B. Land Boundaries (Subparagraphs I and II of the Operative Part of the Judgment)

3. With regard to the land boundary between Cameroon and Nigeria in Lake Chad and in the area from Lake Chad to the sea, I support the Court's decisions in subparagraphs I and II in the operative part of the Judgment. Yet I have some reservations concerning the Court's determi-nation of the boundary as the straight line "[fjrom a tripoint in Lake Chad lying at 14° 04'59" 9999 longitude east and 13° 05' latitude north ... to the mouth of the River Ebeji" (Judgment, para. 325 I (B)). The Court states in paragraph 57 of the Judgment that,

"[f]ollowing that examination [the examination of the Moisel map annexed to the Milner-Simon Declaration of 1919 and the map attached to the Henderson-Fleuriau Exchange of Notes of 1931], it . . . considers that the longitudinal co-ordinate of the tripoint is situated at 14°04'59"9999 longitude east, rather than at 'approximately' 14° 05' east [thus reaching the same conclusions as the LCBC (Lake Chad Basin Commission)]".

It is difficult to understand why the Court has seen fit to speak of such a precise point. In fact, a measurement of 1/10,000 of a second (in other words, the difference between 14° 05' and 14° 04'59"9999) in respect of the longitude in this region of low latitude represents less than 3 mm and has no significant effect on any map. It is not meaningful for the Court to specify any spot to 1/10,000 of a second. It would be sufficient for the Court in this respect to refer simply to the "tripoint" as indicated in the report of the Lake Chad Basin Commission.

C. Difference of Positions Taken by the Parties towards Sovereignty over the Bakassi Peninsula and towards the Land Boundaries (Subparagraph V of the Operative Part of the Judgment)

4. I note that the decisions in points V (A), (B), (C) and (D) of the operative part of the Judgment all relate to the issues dealt with in subparagraphs I, II and III of the operative part. These decisions mainly concern the status of the Bakassi Peninsula and the boundaries in Lake Chad and in the area from Lake Chad to the sea, but not the mari-[p461]time boundaries dealt with in the immediately preceding subparagraph, subparagraph IV. The placement of this subparagraph V not before but after subparagraph IV gives the impression, however, that the Court takes a very different view of the relationship between these paragraphs.

5. It is a matter of course that Nigeria must withdraw its "administration and its military and police forces" (Judgment, para. 325 V (A)) from the area concerned, which the Court now decides is Cameroonian territory, without the need for any further decision by the Court. Yet, the withdrawal should be conducted in accordance with arrangements to be agreed upon by the Parties, due consideration also being given to the orderly repatriation of those Nigerian nationals wishing to leave the area.

6. I assume that the Court's position (implicit in point V (C) of the operative part) that no State responsibility was engaged in connection with any incidents having occurred in the area which Nigeria previously claimed to be under its sovereignty is based on the reasons stated in para-graphs 323 and 324 of the Judgment. This point should be more clearly expressed in subparagraphs I, II and III of the operative part rather than being dealt with as a separate and independent holding after subparagraph IV of the operative part, dealing with the maritime boundary.

7. The question of Nigeria's counter-claims, rejected in point V (D) of the operative part, was already decided in the process of the Court's decisions on territorial sovereignty over the Bakassi Peninsula and on the land boundaries in Lake Chad and in the area from Lake Chad to the sea, as the Court states in the two paragraphs of the Judgment referred to above (paras. 323 and 324).

8. Point V (B) refers to Cameroon's commitment as to the future treatment of Nigerian nationals on its territory. The Court clearly noted that commitment in paragraph 317 in the reasoning of the Judgment and this matter requires no further decision in the operative part.

II. The Maritime Boundaries (Subparagraph IV of the Operative Part of the Judgment)

9. I have stronger reservations concerning the Court's decision in subparagraph IV of the operative part on the "maritime boundary" issues. Rather, I share very few of the Court's views in respect of the "maritime boundary". I did however vote in favour of points IV (B) and (C), but only because the boundary lines drawn therein, whether concrete or not, are not wholly inappropriate and do not in fact cause any harm.

10. The mishandling of the "maritime boundary" issues by the Court has resulted, I believe, from, first, Cameroon's misguided presentation of [p462] the case to the Court and, second, the Court's confusion and misunderstanding with regard to the fundamental nature of the law relating to "maritime delimitation". I will point out the procedural errors involving the maritime boundary issues in Cameroon's presentation and in the Court's response, before also drawing attention to substantive errors in Cameroon's Application and the Court's Judgment, resulting notably from the failure to recognize the difference between areas close to shore and those further out to sea. These procedural and substantive errors have significantly clouded the issues in this case.

A. Procedural Errors

11. First, I must point out that the present case, as referred to the Court on 29 March and 6 June 1994, did not involve any "legal dispute", within the meaning of Article 36, paragraph 2, of the Court's Statute, concerning the "maritime boundary". In its Application of March 1994, Cameroon states (as already noted above) that "[t]he dispute relates essentially to the question of sovereignty over the Bakassi Peninsula" (emphasis added) and asks the Court to adjudge and declare on various points relating to the status of the Bakassi Peninsula. Indeed, the Court properly ruled on these points in subparagraphs I, II and III of the operative part of the Judgment. However, the "maritime boundary" issue was not regarded by Cameroon in the March 1994 Application as a question having given rise to a "dispute". The "maritime boundary" is not mentioned in the Application as an object of a "dispute" but is referred to in unique terms. The June 1994 (additional) Application says nothing whatsoever about the "maritime boundary".

12. Cameroon, in the section of its March 1994 Application entitled "subject of the dispute", refers as follows to the maritime boundary, without mentioning this as being the subject of a "dispute":

"[T]he maritime boundary between the two States has been the subject of several delimitation agreements, from the Agreement of 11 March 1913 to the Maroua Declaration of 1 June 1975. However, this delimitation has remained a partial one and, despite many attempts to complete it, the two parties have been unable to do so. In order to avoid further incidents between the two countries, the Republic of Cameroon requests the Court to determine the course of the maritime boundary between the two States beyond the line fixed in 1975." (Application of 29 March 1994, p. 5, para. 3.)

As I see it, the words "maritime boundary" in the first line of the quotation above refer to a boundary in the immediate offshore areas. In the latter part of the same quotation, Cameroon refers to the boundary in the vast ocean, the boundary "beyond the line fixed in 1975 [point G]". In [p463]its March 1994 Application, Cameroon does not identify either the "many attempts to complete [the delimitation]" "beyond the line fixed in 1975 [point G]" or the previous "incidents between the two countries" which occurred in that area if indeed "further" incidents are to be prevented. Contrary to the Court's assertion (paragraph 239 of the present Judgment and paragraph 110 of the 1998 Judgment), no evidence of any incident in the areas beyond point G or of any negotiation to draw the boundary beyond point G was presented to the Court, either in the March 1994 Application itself or during the written and oral proceedings.

13. In connection with the "decision requested" in that Application, Cameroon states under item (f) (in wording quite different from that in requests (a) to (e"), in which Cameroon asks the Court to "adjudge and declare"), as follows:

"(f) In order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions." (Application of 29 March 1994, p. 15, para. 20.)

Item (f) contains nothing to indicate that there is a "decision requested" of the Court; rather Cameroon here requests the drawing of a boundary course. In my view, in regard to the "maritime boundary" Cameroon cannot be seen to be asking the Court to adjudge and declare on any "legal dispute" within the meaning of Article 36, paragraph 2, of the Court's Statute.

14. It was natural for Nigeria to raise objections concerning the Court's jurisdiction in this respect in December 1995. In its 1998 Judgment regarding preliminary objections raised in the present case, the Court however rejected Nigeria's objections with regard to the delimitation of the maritime boundary (/. C.J. Reports 1998, p. 275). With all due respect for the Court's authority, I still consider that, as stated in my separate opinion appended to that Judgment (I.C.J. Reports 1998, p. 328), the Court erred in so deciding. Notwithstanding the Court's 1998 Judgment, the fact remains that there was in 1994 no "legal dispute" concerning the "maritime boundary" which Cameroon could unilaterally bring to the Court for adjudication under Article 36, paragraph 2, of the Court's Statute and Article 38 of the Rules of Court.

15. Secondly, it must be noted that Cameroon changed the gravamen of the present case (which it brought in March and June 1994) in the submissions subsequently presented in its 1995 Memorial. Cameroon first presented its own maritime boundary claim, identified by map co-ordi-[p464]nates, in its Memorial (Livre I, p. 669). These submissions are far different in nature from the "decision requested" in connection with the "maritime boundary" in the March 1994 Application. I believe that the 1995 submissions did not fall within the purview of the original March 1994 Application. The Court should have taken cognizance of this fundamental and essential alteration of Cameroon's position in the case during the jurisdictional phase. The Court however failed in 1998 to do so and, a fortiori, failed to realize that the 1995 submissions regarding the "maritime boundary" issue had effected an essential change in the complexion of the entire case.

16. As already noted, Cameroon did not describe in the March 1994 Application or even in the 1995 submissions any "legal dispute" between Nigeria and it concerning the "maritime boundary". Cameroon presented its "maritime boundary" claim in the 1995 submissions. While Nigeria contended in the submissions in its 1999 Counter-Memorial that Cameroon's "maritime claim" was "inadmissible" for various reasons (Counter-Memorial of Nigeria, Vol. III, p. 834), it was only in 2001, in its Rejoinder, that Nigeria first asserted certain maritime boundary claims in opposition to Cameroon's claims (Rejoinder of Nigeria, Vol. III, p. 765).

17. In the light of the procedural error on the part of the Applicant, Cameroon, I voted against point IV (A) of the operative part of the present Judgment.

B. Substantive Error

18. After having explained that Cameroon's referral to the Court of the "maritime boundary" aspects of the present case was highly irregular, I shall now turn to the merits of the case in respect of the "maritime boundary". Underlying both Cameroon's mishandling of the case and the Court's confusion and misunderstanding is, I believe, the failure to recognize the essential difference between the narrow sea-belt around the land, i.e., the expanse of water within the 12-mile territorial sea (which, for the sake of convenience, I shall call the "inner sea") and the wider offshore area of the continental shelf (which, again for convenience, I shall call the "outer sea"). This difference is reflected in the difference between the two regimes, that of the territorial sea on the one hand and the continental shelf on the otherFN1. The delimitation of the territorial sea and the delimitation of the continental shelf are radically different in nature and I submit that this difference is completely overlooked in the present Judgment. I shall return to this issue towards the end of this declaration.

FN1The comments below concerning the continental shelf apply in general to the exclusive economic zone as well.

[p465]

(I) Boundary in the "inner sea" (up to point G)

19. I must point out first of all that the Court does not grasp the true meaning of the "maritime boundary" in the "inner sea" in this case. I would suggest that the disagreement between Cameroon and Nigeria in respect of the "inner sea" is not, in fact, an issue concerning the "mari-time boundary" but is an issue relating solely to the status of the Bakassi Peninsula (that is to say, whether the boundary between the two States should lie to the west or to the east of the Bakassi Peninsula). The issue of the "maritime boundary" in the "inner sea", i.e., up to point G, is for all practical purposes resolved in subparagraph III of the operative part, when the Court, by reference to the 1913 Anglo-German Agreement, adjudges that the Bakassi Peninsula is part of Cameroon's territory, thereby determining that the boundary between the two States lies to the west of the Bakassi Peninsula, and once the Court takes note of the 1971 Second Yaounde Declaration, setting out the compromise reached by the Heads of State of the two countries, and of the 1975 Maroua Declaration signed by the two Heads of State.

20. The Court should have had nothing more to say with regard to the maritime boundary in the "inner sea" (up to point G). Accordingly, I find it senseless for the Court to present the two tables of co-ordinates referring to the "inner sea" as a Court decision in the operative part of the Judgment (Judgment, para. 325 IV (B)). There was no "maritime boundary" issue as such in respect of the "inner sea". Cameroon itself did not put forward any such co-ordinates in its claim or submission; nor did Nigeria raise any such issue.

(2) Boundary of the continental shelf in the "outer sea" (beyond point G)

21. With regard to the "maritime boundary" in the "outer sea", reference must be made again to the March 1994 Application and it is worth quoting Cameroon once more:

"[T]he maritime boundary between the two States has been the subject of several delimitation agreements, from the Agreement of 11 March 1913 to the Maroua Declaration of 1 June 1975. However, this delimitation has remained a partial one and, despite many attempts to complete it, the two parties have been unable to do so. In order to avoid further

incidents between the two countries, the Republic of Cameroon requests the Court to determine the course of the maritime boundary between the two States beyond [point G]." (Application of 29 March 1994, p. 5, para. 3.)

As I stated above, notwithstanding this assertion, there has been no incident in the "outer sea" between the two States and no negotiations have [p466] been held to determine the boundary of the continental shelf beyond point G.

22. In point IV (D) of the operative part, the Court in fact does not respond at all to Cameroon's and Nigeria's respective submissions concerning the maritime boundary in the "outer sea" and renders a decision establishing a line different from the Parties' respective claim lines. If the Court now has no more to say on this point than that the boundary "follows a loxodrome having an azimuth of 187° 52'27"", as set out in point IV (D) of the operative part, which in no way responds to Cameroon's submissions, then the implication could be that the Court admits that Cameroon's framing of the question of the boundary in the "outer sea" as a legal issue is clearly unjustified in this case of unilateral application. Yet the Court "[djecides that ... the boundary . . . follows a loxodrome having an azimuth of 187° 52'27"" (Judgment, para. 325 IV (D)).

23. I would question whether the Court gave any thought to the fact that specifying a line with the precision of one second results in a difference of only a few metres, even at the point lying at the 200-mile limit from the coast. The Court does not specify how far the line should extend, whether just several miles from the coast or even 200 miles out to sea. Rather than deciding upon the line itself, the Court would appear to suggest that the boundary line should be drawn, as agreed by the Parties, along the equidistance line. It appears to me that the Court's mistaken treatment of the maritime boundary in the "outer sea" may derive from its failure to understand the law governing the determination of the continental shelf boundary.

(3) Rule governing the boundary of the continental shelf

24. Cameroon's obvious error in unilaterally submitting to the Court the issue of the maritime boundary in the "outer sea" as the object of a "legal dispute" merits further examination. Unlike land boundaries (including that of the territorial sea), which relate essentially to the question of territorial sovereignty, the boundary of the continental shelf in the "outer sea", not being the subject of a legal dispute, cannot, in principle, be determined simply by applying a legal rule or principle. No legal rule or principle mandates recognition of a given line as the only one accept-able under international law. The concrete boundary line may be chosen by negotiation from among the infinite number of possibilities falling within the bounds of equity. This is the view I propounded, after an extensive analysis of the issues and the travaux préparatoires, in my sepa-rate opinion appended to the Court's Judgment in the case concerning Maritime Delimitation in the Area between Greenland and Jan May en {I.C.J. Reports 1993, p. 109). [p467]

25. Article 6 of the 1958 Geneva Convention on the Continental Shelf provides "the boundary of the continental shelf . . . shall be determined by agreement between [the parties]". It is important to note that even at the time of its adoption, this rule was fundamentally different from that applicable to the territorial sea, where recourse to the median line is the governing principle (1958 Geneva Convention on the Territorial Sea, Art. 12). The basic principle that the continental shelf boundary should be agreed upon by negotiation was carried over into the 1982 United Nations Convention on the Law of the Sea (Art. 83).

26. It is certainly true that a provision simply stating that the boundary should be agreed

upon by negotiation does not identify any precise boundary line and, in fact, the outcome of negotiations concerning the continental shelf boundary is dictated by the relative bargaining power of the parties. But the 1958 Convention did offer a guiding principle where negotiations fail: "[i]n the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line [in the case of opposite coasts]" and "the boundary shall be determined by application of the principle of equidistance [in the case of adjacent coasts]" (Art. 6, paras. 1 and 2). This so-called "equidistance (median) line + special circumstances" rule could have been applied in various ways aiming at an "equitable solution".

27. Having realized that this provision did not lay down any objective criteria for drawing the boundary, the drafters of the 1982 United Nations Convention on the Law of the Sea attempted to formulate such criteria but, after much effort over several years, could do no better than come to the compromise solution now found in the 1982 Convention:

" 1. The delimitation of the continental shelf . . . shall be effected by agreement on the basis of international law ... in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV [settlement of disputes]." (Art. 83.)

28. I am afraid that great misunderstanding prevails in academic circles regarding interpretation of these provisions. I must state, first, that the provisions of Article 83, paragraph 2, do not constitute a compromissory clause such as is referred to in Article 36, paragraph 1, of the Court's Statute; secondly, the fact that boundary negotiations have failed does not in itself mean that a "(legal) dispute" has arisen; and, thirdly, the provisions of Article 83, paragraph 2, should not be interpreted as conferring compulsory jurisdiction on those institutions listed in Article 287 of Part XV. Notwithstanding the title of Section 2 ("Compulsory Procedures entailing Binding Decisions") of Part XV of the 1982 Convention, it is clear that Section 2, when read in conjunction with Section 3 ("Limitations and Exceptions to Applicability of Section 2"),[p468]
does not provide for such procedures in a boundary delimitation case referred to any of those institutions, including this Court.

29. It is submitted that the Court could well act as a third-party authority if it were asked jointly by the parties to draw such a line. The present case was, however, brought before the Court unilaterally by Cameroon. At the time Cameroon initiated the case, Nigeria expressed no desire to entrust to the Court the determination of this segment of the boundary between the two States; in fact, Nigeria expressed its opposition to Cameroon's approach, as manifested by its objection to the Court's jurisdiction in this respect in December 1995.

30. I would like to point out that Cameroon and Nigeria had not even started negotiations to agree upon the delimitation of the continental shelf and understandably so, since the status of the Bakassi Peninsula, from which the continental shelf extends, was not certain. In that context the Court could not initiate compulsory procedures entailing a binding decision. The Court could not "decide" any specific line. The Court could only have determined the line if it had been requested jointly by the Parties to decide upon one specific line; however, this is not such a case. I voted in favour of point IV (D) of the operative part for the reason that the general orientation described by the Court in that paragraph, though misguided in itself as I suggested above in paragraph 22, is not likely to cause any harm.

(Signed) Shigeru Oda. [p469]

SEPARATE OPINION OF JUDGE RANJEVA [Translation]

1. I subscribe both to the operative parts and the reasoning of the present Judgment, which will, I trust, achieve a final settlement of the dispute between the two Parties. I welcome the commitment made by the Presidents of Cameroon and Nigeria before the United Nations Secretary-General on 5 September last with a view to securing enforcement of the decision to be handed down by the Court (United Nations News Centre, 12 September 2002). Once again, African States have been concerned to reaffirm their faith in the law and in the judicial settlement of their disputes. In legal terms, the significance of this commitment should be viewed in light of the consensual basis of the Court's jurisdiction. Prior consent to jurisdiction is the basis of the parties' undertaking to accept without reservation any decision which the Court s called upon to give in disputes between them. Whether or not there is iny specific diplomatic commitment, the parties to a dispute are bound once they have expressed their consent, and any objections regarding admissibility or jurisdiction have been dismissed. The Judgment is binding without any other special or additional condition. It follows that the declaration of 5 September 2002 merely constitutes a diplomatic demarche confirming the preexisting legal obligation represented by prior consent to jurisdiction.

2. My purpose in this opinion is to consider the interpretation which in my view should be given to the notion of "the 1 iw at the time" (Judgment, para. 209). To understand the scope of this notion, reference should be made to the Arbitral Award of the President of the French Republic between Great Britain and Portugal concerning Delagoa Bay of 24 July 1875 (H. La. Fontaine, Pasicrisie Internationale 1794-1900: histoire documentaire des arbitrages internationaux), to the text of Article 38 of the Statute of the Court and to the silence of the Judgment regarding the characterization of the treaties concluded by the Chiefs of Old Calabar with the representative of Old Ca abar. The criterion of "civilized nation" represented the qualifying condition in order to be accorded the juridical status of international subject. Without formal recognition of sovereignty on the part of the civilized nations, traditional indigenous societies, African societies in particular, did not have the [p470] status of subjects of international law, even where their territory was not necessarily res nullius, as was made clear in the Advisory Opinion on the Western Sahara case (I.C.J. Reports 1975, p. 12). But does the refusal to accord any international status to such treaties justify reliance on the simple generic concept of "the law at the time' when characterizing in strictly legal terms territorial situations obtaining during the colonial period? The problem is whether, in this case, the rules of intertemporal law are sufficient to explain and justify the disappearance from the international scene of this ancient entity, the Chiefs of Old Calabar.

3. Literal application of the principles of intertemporal law leads to a surprising conclusion, which could be expressed in the following maxim: "in treaty relations with indigenous chiefs, pacta non servanda sunt". Thus it is difficult, without recourse to legal artifice, to justify the idea that a protected entity could consent to being dispossessed of its legal personality or of its territory. In a civil contract, any unilateral dissolution of an entity recognized under the terms of the contract is regarded as a breach of the contractual obligations and sanctions must follow. Can the absence of the conditions required for a valid international treaty render such surprising consequences acceptable? The inequality and denial of rights inherent in colonial practice in relation to indigenous peoples and to colonies is currently recognized as an elementary truth; there is a resultant duty to memorialize these injustices and at the same time to acknowledge an historical fact. The destruction of international personality is procured by an act of force: through debellatio or under an agreement between equals. But to contend that an international personality has disappeared by consent is verging on fraud. Application of the rules of intertemporal law

cannot justify conclusions so contrary to fundamental norms, not even on the basis of the special nature of relationships with indigenous chiefs.

The International Court of Justice should be reluctant to accept that, in the name of intertemporal law, the maxim pacta servanda sunt may be circumvented. The Court's decision must not be interpreted as encouraging any impugnment of the principle of the sanctity of contracts. If we analyse the relationship between the various norms and principles of international law, it is clear that the maxim pacta servanda sunt cannot be treated on the same basis as the rules of intertemporal law, which serve merely as auxiliary means of interpretation of the primary rule, pacta servanda sunt. Any interpretation seeking to impugn that fundamental rule is misconceived. The main purpose of the rules of intertemporal law is to strengthen legal security in international relations. The binding nature of international treaties derives not from the mechanical or formal application of a principle but from the nature of commitments freely undertaken, expressing the consent of States to be bound. Only the impact of norms of jus cogens can justify any impugnment of the consensus principle. Thus the legal framework provides a tool for [p471] analysing the consent and intentions of States but cannot replace those intentions.

4. In the present case, application of the rules of intertemporal law raises the problem of the Judgment's acceptance of the conduct of the protecting Power, which proceeded to liquidate the entity of Old Calabar. A distinction must be drawn between justification and acceptance of a legal situation. Thus the situations which the law addresses may have originated either in a legal instrument, that is to say a manifestation of wills intended to produce legal effects, or in a legal fact, that is to say an occurrence, a situation having taken place irrespective of any consent by the States concerned and producing effects in law. It follows that the instruments adopted by the colonial Power constituted legal facts, around which evolved and developed regimes governing territorial rights, as well as the personal rights of the populations concerned. This analysis is con-firmed by the decision in the case concerning the Frontier Dispute (Burkina Fasol Republic of Mali) (I.C.J. Reports 1986, p. 554). The Chamber directly applied French colonial law not qua colonial law but as the normative reference source applicable, without passing any judgment thereon or seeking to legitimize colonial law by reliance on the rules of intertemporal law.

5. Criticism of the "unilateralism" of the colonial Powers in ultimately treating agreements concluded with indigenous rulers as "scraps of paper" is nothing new. I would cite here the thesis of Mr. Nazif, submitted to the University of Batavia in 1928, on the disappearance of the Kingdom of Madagascar in international law (De val van hzt Rijk Merina — La chute du Royaume de Merina). I would also recall the position taken by the Malagasy plenipotentiaries in 1895 when they confronted France with the argument that the independence of the Kingdom was an issue distinct from its ability to repay its loan, the official pretext for the despatch of the expeditionary force. Conversely, the tabula rasa principle has been invoked in order to refuse a right of Stale succession to treaties concluded by the monarchy. This precedent was recalled at the time of the annexation of Czechoslovakia by the Third Reich.

6. For these reasons, it would have been preferable to speak of international law when referring to the law governing relations between the European Powers or with sovereigns recognized by the European Powers, and of colonial law or acts, as appropriate, when addressing the relationship between the European Powers and indigenous chiefs. Such a distinction or classification permits a better understanding of the legal framework of colonization.

(Signed) Raymond Ranjeva. [p472]

DECLARATION OF JUDGE HERCZEGH

[Translation]

I voted for all points of the operative paragraph of the Judgment, with which I am in complete agreement. They express the same conclusions that I had reached after examining the case.

I cannot however subscribe to the proposition set out in paragraph 238 of the reasoning, which states inter alia:

"The Court considers that, in particular in the case of maritime delimitations where the maritime areas of several States are involved, the protection afforded by Article 59 of the Statute may not always be sufficient. In the present case, Article 59 may not sufficiently protect Equatorial Guinea or Sao Tome and Principe from the effects — even if only indirect — of a judgment affecting their legal rights."

I see in this passage a scarcely veiled criticism, which I cannot share, of the Court's Statute, which is an integral part of the United Nations Charter. Article 59 of the Statute provides as follows: "The decision of the Court has no binding force except between the pirties and in respect of that particular case." That is a necessary, indeed inevitable, consequence of the fact that the Court's jurisdiction is founded on the consent of the parties. The Court must ensure that it takes no decision which oversteps the limits laid down by Article 59 and which would in consequence be without binding force and remain a dead letter. This is not only a principle of the sound administration of justice, but also an obligation incumbent upon the Court deriving from its function as laid down by its Statute, namely, in particular, to decide in accordance with international law such disputes as are submitted to it.

In certain circumstances, satisfying the obligation not to affect the rights of third States may pose problems for the Court, which explains and justifies the inclusion in its Statute of a provision concerning the intervention of a State which considers that it has an interest in a dispute of a legal nature which may be affected by the decision in the case (Art. 62). The Judgment of 14 April 1981 in the case concerning the Continental Shelf (Tunisia!Libyan Arab Jamahiriya), Application for Permission to Intervene, and the separate opinions of Judges Morozov, Oda and Schwebel appended to that Judgment, and then the Judgment of 21 March 1984 in the case concerning Continental Shelf (Libyan Arab Jamahiriya!Malta), Application for Permission tc Intervene, and the dis-[p473]senting opinions of Judges Sette-Camara, Oda, Schwebel and Jennings clearly demonstrate the complexity of the problem and the Court's efforts to give a consistent interpretation of the relevant provisions of the Statute and to apply them in accordance with their letter and their spirit. The last word has yet to be said in this debate. However, as Judge Schwebel so aptly put it: "Article 59 cannot, by any canon of interpretation, be read so as to read Article 62 out of the Statute" (I.C.J. Reports 1984, p. 134, para. 9). Moreover, at least in my opinion, it cannot be said that the protection afforded to the rights of third parties by Article 59 of the Statute might be insufficient. The criticism of this Article strikes me as misplaced.
This is not a rule of law which, in itself, might be said sufficiently to protect or not to protect a legal interest of a particular country. It is, rather, a provision which it is for the Court to interpret and apply in such a way that such protection is made as effective as possible. Hence, whether that protection proves to be sufficient or not depends on the Court. In the present case the Court carefully considered the legal interests of Equatorial Guinea and Sao Tome and Principe and it was in that sense and in that spirit that it rendered its Jucgment concerning the determination of the maritime boundary between

Cameroon and Nigeria. In order to do so it had no need whatever to make a critical remark in regard to an Article of the Statute.

(Signed) Geza Herczegh. [p474]

DISSENTING OPINION OF JUDGE KOROMA

1. Perhaps nowhere is the category of the peaceful settlement of disputes more imperative than in territorial and boundary disputes between neighbouring States, given the potential for such disputes to escalate with destructive consequences for the States concerned.

2. But this notwithstanding, with reference to the Court's role as an arm of preventive diplomacy, i.e., being seised of disputes which seem entirely political but which have a legal component, the President of the Court told the United Nations General Assembly in 1991 that the Court's mission was to declare and apply the law, and that it would range outside that task at its peril and at the peril of international law (see Sir Robert Jennings, "The Role of the International Court of Justice", British Year Book of International Law (BYBIL), 1997, p. 3). Therefore, even in performing this role the Court is bound, pursuant to its Statute, to apply relevant treaties and conventions as well as general principles of law recognized by the Parties (Statute of the Court, Art. 38). Hence, the Court cannot allow itself to abdicate this judicial responsibility.

3. I am, however, obliged to observe that the conclusion reached by the Court with respect to the 1884 Treaty between Great Britain and the Kings and Chiefs of Old Calabar regarding the Bakassi Peninsula is tantamount to a recognition of political reality rather than to an application of the treaty and the relevant legal principles. In my view, it is not the function of the Court to recognize or consecrate political reality but rather to apply the law in ruling on disputes before it. Nor can I concur with the Court's response to the claim of "historical consolidation" by Nigeria in this case, the implication being that conventional title based on the 1913 Anglo-German Agreement is the only valid means of acquiring title or that the mode of territorial acquisition is closed. If the latter were the case, there would have been no place in the Court's jurisprudence for prescriptive title, etc. In my view, the approaches taken by the Court to reach its conclusions on these two issues are both fundamentally flawed. [p475]

The main purpose of applying the law is to do justice and where the law is not correctly applied it could lead to an injustice. It is principally because of my disagreement with the conclusions and findings of the Court regarding these two issues that I have decided to exercise the faculty to enter this dissenting opinion as provided for by the Statute.

4. In this dispute both Parties maintain that the main focus is the Bakassi Peninsula, although they expect different results. In its final submissions with respect to Bakassi, the Republic of Cameroon, inter alia, requested the Court to adjudge and declare that sovereignty over the peninsula is Cameroonian. In both its Memorial and pleadings before the Court, Cameroon relied mainly for its title on the Anglo-German Agreement of 11 March 1913 and on various effectivites.

5. The Republic of Nigeria, for its part, requested the Court to adjudge and declare that sovereignty over the Bakassi is vested in the Federal Republic of Nigeria. It based its claim to sovereignty over the peninsula on original title, as confirmed by the Treaty of Protection which the Kings and Chiefs of Old Calabar signed with Great Britain on 10 September 1884 and mainly on historical consolidation. In this regard, Nigeria contended that parts of the Anglo-German Agreement of 11 March 1913, under which Bakassi was ceded by Great

Britain to Ger-many and subsequently inherited by Cameroon as successor State, were invalid as Great Britain was not entitled to cede the territory pursuant to the 1884 Treaty, which was a treaty of protection and in no way transferred sovereignty to Great Britain over the territories of the Kings and Chiefs of Old Calabar. Nigeria further argued that the 1913 Agreement was also invalid on grounds of inconsistency with the principle nemo dat quod non habet. In Nigeria's view, however, such invalidity only applied to those parts of the Agreement which purport to prescribe the boundary and which, if effective, would have involved a cession of territory to Germany, that is to say, essentially Articles XVIII to XXII.

6. In paragraph 209 of the Judgment, the Court reached the conclusion that under the applicable law at the time Great Britain was in a position in 1913 to determine its boundary with Germany, based on the 1913 Agreement. In paragraph 212 of the Judgment, the Court stated that it is unable to accept that until Nigeria's independence in 1961, and notwithstanding the Anglo-German Agreement of 11 March 1913, the Bakassi Peninsula had remained under the sovereignty of the Kings and Chiefs of Old Calabar. The Court went on to find that Nigeria, at the time, accepted that Articles XVIII to XXII of the Anglo-German Agreement of 1913 were valid and in effect, and that it recognized Cameroonian sovereignty over the Bakassi Peninsula (paragraph 214). Based on these findings, the Court, in its operative paragraphs, decided that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German [p476] Agreement of 11 March 1913; and that sovereignty over the Bakassi Peninsula lies with the Republic of Cameroon.

7. This conclusion, with respect, is unsustainable, both in the light of the 1884 Treaty and in the light of the material evidence which was before the Court. The findings are in clear violation of the express provisions of the 1884 Treaty and contrary to the intention of one of the parties to the 1884 Treaty — that of the Kings and Chiefs of Old Calabar — and hence to the rule of pacta sunt servanda, i.e., the sanctity of treaties. This finding, in violation of the applicable treaty and clearly in breach of the principle of pacta sunt servanda, is not only illegal but unjust.

8. Moreover, I am also unable to accept that the categories of legal title to territory are restricted to what the Court described as the "established" modes, in its response to the contention that the principle of historical consolidation was a valid basis for territorial title, that is to say that proven long use, coupled with a complex of interests and relations, as in the present case, can have the effect of attaching a territory to a given State. In my opinion, founded on the jurisprudence of the Court {Fisheries (UnitedKingdom v. Norway), Judgment, I.C.J. Reports 1951, p. 139; Minquiers and Ecrehos (United Kingdom!France), Judgment, I.C.J. Reports 1953, p. 57; Land, Island and Maritime Frontier Dispute (El Salvador!Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992, p. 565, para. 345), historical consolidation, if supported by the requisite evidence, can be a sound and valid means of establishing territorial title in international law. When, therefore, such evidence is presented to the Court, as in this case, it does not seem legally justified to reject such evidence because it is categorized under a particular rubric. Rather than being preoccupied with the "label" of the evidence, the Court's essential judicial function should be to assess and interpret the evidence before it objectively, so as to determine whether or not such evidence is sufficient to establish title to the territory in question.

9. As stated earlier, Nigeria's claim to Bakassi is, on the basis of original title, vested in the Kings and Chiefs of Old Calabar, the geographical extent of which covered south-eastern Nigeria and which in the 1700s was peopled mainly by the Efiks and the Efiat. Historically, the territorial authority of the Kings and Chiefs of Old Calabar is said to have extended as far east as the Rio del Rey. Nigeria pointed out that the limits of the territorial

authority of the Kings and Chiefs of Old Calabar are conveniently represented by two inland waterways known as the Archibong Creek and Ikankau Creek; that the area known as Old Calabar was the centre of Efik activity and authority and included towns such as Duke Town, Creek Town, Henshaw Town and Obutong Town; that other Efik towns further afield included Tom Shott's Town and Arsibon's (now Archibong); that each of these towns, or virtually city States, had its own King or Chief from whom, by the early nineteenth century, the para-[p477]mount chieftancy or kingship — later the Obongship — of Old Calabar evolved; that in the nineteenth century Old Calabar and its Efik Houses had established their authority not only over the area around Old Calabar, but also over all the lands between Cross River and the Rio del Rey. Furthermore, through economic, social and cultural links, the Kings and Chiefs of Old Calabar exercised control over their citizens. In particular, through the Ekpe shrine, the Kings and Chiefs ensured the effective administration of justice, the maintenance of peace and security and the development of the resources within their territory. The material evidence before the Court thus showed that the activities of Old Calabar included the founding of settlements of increasing permanence in the Bakassi Peninsula which were within the dominions of Old Calabar.

10. The Court was also furnished with evidence that the British Consul Hewett, who negotiated the 1884 Treaty of Protection between Great Britain and the Kings and Chiefs of Old Calabar, described Old Calabar in the following terms: "This country with its dependencies extends from Tom Shots ... to the River Rumby (on the west of Cameroon Mountains), both inclusive" (Counter-Memorial of Nigeria, Vol. I, p. 95). "The Chiefs of Tom Shot country, of Efut ... the country about the River Rumby, made declarations that they were subject to Old Calabar" (CR 2002/8, p. 45, para. 31), an important and significant statement emanating from an official who had direct and first-hand knowledge of the area and evidencing and confirming the extent of Old Calabar. Later evidence of this was provided in 1890 by another British Consul, Johnston, who stated that "the rule of the Old Calabar Chiefs extended far beyond the Akpayafe River to the very base of the Cameroons" (Counter-Memorial of Nigeria, Vol. I, p. 95), and qualified this by adding that the "Efik people . . . only went as far east as the right bank of the Ndian River" (ibid.). According to Johnston, who had travelled the region extensively:

"[fjhe trade and rule of the Old Calabar Chiefs extended, in 1887, considerably further to the east than the Ndian River

……

The left or eastern bank of the Akpayafe and the land between that river and the Ndian is under the rule of Asibon or Archibong Edem III, a big Chief of Old Calabar." (Ibid.)

11. On the basis of this evidence, Nigeria maintained that Bakassi and the Rio del Rey are demonstrably to the west of the Ndian River, and Bakassi was part of Old Calabar's outlands. Nigeria maintained that the 1884 Treaty between the Kings and Chiefs of Old Calabar and Great Britain extended over this territory and was a treaty of protection and not one in which the territory was ceded to Great Britain. In the light of the foregoing, Nigeria complained that parts of the Agreement of 1913 [p478] which Great Britain concluded with Germany were inconsistent with the 1884 Treaty of Protection and therefore invalid. In Nigeria's view, the offending Articles were the following:

"XVIII. Thence it follows the thalweg of the Akpakorum (Akwayafe) River, dividing the Mangrove Islands near Ikang in the way shown on the aforesaid map T.S.G.S. 2240, sheet 2. It then follows the thalweg of the Akwayafe as far as a straight line joining Bakasi Point and King Point.

XIX. Should the thalweg of the Lower Akwayafe, upstream from the line Bakasi Point-King Point, change its position in such a way as to affect the relative positions of the

thalweg and the Mangrove Islands, a new adjustment of the boundary shall be made, on the basis of the new positions, as determined by a map to be made for the purpose.

XX. Should the lower course of the Akwayafe so change its mouth as to transfer it to the Rio del Rey, it is agreed that the area now known as the Bakasi Peninsula shall still remain German territory. The same condition applies to any portion of territory now agreed to as being British, which may be cut off in a similar way.

XXI. From the centre of the navigable channel on a line joining Bakasi Point and King Point, the boundary shall follow the centre of the navigable channel of the Akwayafe River as far as the 3-mile limit of territorial jurisdiction. For the purpose of defining this boundary, the navigable channel of the Akwayafe River shall be considered to lie wholly to the east of the navigable channel of the Cross and Calabar Rivers.

XXII. The 3-mile limit shall, as regards the mouth of the estuary, be taken as a line 3 nautical miles seaward of a line joining Sandy Point and Tom Shot Point."

Nigeria claims that the effect of this Agreement was that Great Britain passed title to Bakassi to Cameroon, which it was not entitled to do.

12. Cameroon, on the other hand, contended that it would be inappropriate to talk of Old Calabar as if it possessed international personality or as if it was recognized as a State during that period with defined territorial limits which Nigeria could have inherited.

13. The Court, in paragraph 207 of its Judgment, held that the 1884 Treaty signed with the Kings and Chiefs of Old Calabar did not establish an international protectorate and it went on to say that from the outset Britain regarded itself as administering the territories comprised in the 1884 Treaty, and not just protecting them, and that the fact that a delegation was sent to London by the Kings and Chiefs of Old Calabar in 1913 to discuss matters of land tenure cannot be considered as implying international personality and simply confirmed the British administration by indirect rule. According to the Judgment, the Court held that Nigeria [p479] itself had not been able to say with clarity and certainty what happened to the international personality of the Kings and Chiefs of Old Calabar after 1885. This implies that the 1884 Treaty did not mean what was stated in it and Great Britain was entitled to alienate the territory covered by the Treaty of Protection despite the express provisions of that Treaty.

14. With respect, the reasoning given in support of the finding amounts to a serious distraction from the legal issues at hand. The duty of the Court, in my view, would have been to undertake a proper examination of the Treaty with a view to establishing its intention and meaning. The 1884 Treaty provides as follows:

"Article 1. Her Majesty the Queen of Great Britain and Ireland, &c, in compliance with the request of the Kings, Chiefs, and people of Old Calabar, hereby undertakes to extend to them, and to the territory under their authority and jurisdiction, her gracious favour and protection.
Article 2. The Kings and Chiefs of Old Calabar agree and promise to refrain from entering into any correspondence, Agreement, or Treaty with any foreign nation or Power, except with the knowledge and sanction of Her Britannic Majesty's Government." (Counter-Memorial of Nigeria, Vol. I, p. 109; emphasis added.)

15. The Treaty is thus unambiguously clear. Great Britain undertook to extend "her gracious favour and protection" to the Kings, Chiefs and people of Old Calabar. According to jurisprudence, a treaty whose terms and provisions are clear does not need to be

interpreted. Nor may interpretation be used as a pretext to deny the clear meaning of a legal instrument. However, if the Court chooses to interpret the treaty it has to be interpreted in accordance with the applicable international rules at the time the treaty was concluded. Since the purpose of interpreting a treaty is to ascertain the intention of the parties to the treaty, there is, therefore, no reason to interpret the 1884 Treaty otherwise than in accordance with the international rules which operated at that time and which included the principle of pacta sunt servanda (the sanctity of treaties). Thus, if the Court had interpreted the 1884 Treaty, even in the light of the then exist-ing canons of interpretation, the legal meaning that would have emerged is that the Queen of Great Britain and Ireland undertook to extend to the territory under the authority and jurisdiction of the Kings and Chiefs of Old Calabar "her gracious favour and protection". The creation of the protectorate by the 1884 Treaty did not involve any cession or transfer of territory. On the contrary, the protecting Power — Great Britain — was only to protect the citizens of Old Calabar and not to dispossess them of their territory. Nor did the Treaty confer rights of sovereignty on Great Britain. On the contrary, it conferred a duty of protection and not for the benefit of a third party. Accordingly, since the Treaty was validly concluded and this has not been demurred, and Great Britain even raised it [p480] against other European States whenever their interests were in conflict in the region, Great Britain thus recognized the sovereignty of the Kings and Chiefs and people of Old Calabar over their territory and this cannot subsequently be denied. The 1884 Treaty thus constitutes evidence of an acknowledgment by Great Britain that the Kings and Chiefs of Old Calabar were capable of entering into a treaty relationship with a foreign Power and that they were recognized as capable of acting at an international level. Therefore, to argue that the 1884 Treaty did not mean what it said would not only be inconsistent with the express provisions of the Treaty itself, but would also be contrary to the rule of pacta sunt servanda (the sanctity of treaties), a rule which forms an integral part of international law and is as old as international law itself. In other words, it is impossible for a State to be released by its own unilateral decision from its obligations under a treaty which it has signed, whatever the relevant method or period. Thus, given that the 1884 Treaty was a treaty of protection and not one of cession involving the alienation of territory, it follows that Great Britain's authority in relation to the Kings and Chiefs of Old Calabar did not include the power to conclude on their behalf treaties which entitled the protecting State to alienate the territory of the protected State; therefore, the relevant parts of the 1913 Anglo-German Agreement, by which Great Britain purportedly ceded the territory of the Kings and Chiefs of Old Calabar to Germany, lay outside the treaty-making competence of Great Britain, and were not binding on the Kings and Chiefs of Old Calabar nor ultimately on Nigeria as the successor State. There is, therefore, no legal basis on which to hold, as the Court has done in this case, that the protector State was entitled to cede territory without the consent and in breach of the protective agreement, by stating that "from the outset Britain regarded itself as administering the territories comprised in the 1884 Treaty, and not just protecting them" (para. 207) or that under the law prevalent at the time (in 1913) Great Britain was entitled "to determine its boundaries" (para. 209), even when this affected the territory of a protected State without its consent and inconsistent with the provisions of the relevant Treaty. These conclusions are totally at variance with the express provisions of the 1884 Treaty and in violation of the principle of pacta sunt servanda. Moreover, by concluding the 1884 Treaty, it is clear that the territory of Old Calabar was not regarded as a terra nullius but a politically and socially organized community which was recognized as such and which entered into a treaty relationship with Great Britain, a treaty Great Britain felt able to raise against other European States.

16. The foregoing is the correct conclusion which the Court would have reached had it taken the proper approach of interpreting the Treaty with respect to the territory of Old Calabar. Such examination would have shown that the Treaty precluded Great Britain from ceding the terri-[p481]tory in question. It would also have revealed that Britain was not

entitled to cede Bakassi under the terms of the Treaty. Such a finding would have been founded in law. It is common knowledge that territorial titles were acquired by European States in Africa by treaties of cession, but in the case of a protectorate treaty the sovereignty which inhered in the local ruler would be split in such a way that the protector State would exercise rights of external sovereignty in favour of the protected entity whilst the internal sovereignty would continue to be exercised by the local kings and rulers. In this regard, some African protectorate treaties, such as the 1884 Treaty with the Kings and Chiefs of Old Calabar, were expressed in negative clauses, which imposed restrictions on the contracting rulers as far as exercising their external sovereignty is concerned. Under such a treaty, the Kings and Chiefs undertook not to enter into treaties with other Powers, not to maintain relations (including diplomatic intercourse), not to go to war with such Powers, and, most importantly, not to cede territory. Thus, the clause prohibiting transfer of territory to "other" European Powers was considered the most important within the framework of the protectorate. In the case of the 1884 Treaty between the Kings and Chiefs of Old Calabar and Great Britain, Great Britain was not authorized in the international relations of the Kings and Chiefs of Old Calabar, or otherwise, to act in their name and on their behalf, nor did the Kings and Chiefs give up their right and power to make treaties and agreements with foreign States, but agreed that they would do so only after having first informed the British Government and having obtained its approval.

17. In my view, the position with regard to protectorates is correctly stated in the latest edition of Oppenheim. According to the author:

"An arrangement may be entered into whereby one state, while retaining to some extent its separate identity as a state, is subject to a kind of guardianship by another state. The circumstances in which this occurs and the consequences which result vary from case to case, and depend upon the particular provisions of the arrangement between the two states concerned.
…….
Protectorate is, however, a conception which lacks exact legal precision, as its real meaning depends very much upon the special case . . .
The position within the international community of a state under protection is defined by the treaty of protection which enumerates the reciprocal rights and duties of the protecting and the protected states. Each case must therefore be treated according to its own merits . . . But it is characteristic of a protectorate that the protected state always has, and retains, for some purposes, a position of its own as an international person and a subject of international law."' (Oppenheim's International Law, Sir Robert Jennings and [p482]Sir Arthur Watts (eds.), 9th ed., Vol. I, pp. 267-269; emphasis added.)

18. It was against this background and on this basis that the Court should have looked at the 1884 Treaty, a treaty of protection which specifies the terms of protection and the rights and obligations, which did not include authority to alienate territory. Bakassi was part of the terri-torial scope of the 1884 Treaty of Protection and could not have been changed without the consent of the Kings and Chiefs of Old Calabar. Thus, to the extent that evidence of such consent was not provided, there was no basis even under the applicable law at that time for Great Britain to be able to determine its boundaries with Germany in respect of Bakassi, and to the extent that such determination was detrimental to the interests of Old Calabar it should have been declared invalid by the Court. The Judgment did not make it clear what the Court had in mind by saying that Great Britain was in a position to determine its boundary in 1913, because the primary question is whether Great Britain was entitled to alienate the territory which included Bakassi in 1913. And since the answer to this question has to be in the negative, the 1913 Anglo-German Agreement could not and cannot be regarded as valid.

19. It follows from the above that I cannot agree with the Court's findings that the maritime boundary between Cameroon and Nigeria lies to the west of the Bakassi Peninsula and not to the east in the Rio del Rey. Nor can I accept that the maritime boundary between the Parties is "anchored" to the mainland at the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe River in accordance with Articles XVIII and XXI of the 1913 Anglo-German Agreement. The Court reached these findings on the basis of the 1913 Agreement which, as I have already demonstrated, is invalid as far as those of its provisions relating to Bakassi are concerned. This invalidity alone should have prevented the Court from reaching the aforementioned conclusions (ex una causa, nullitas) or (ex injuria non oritus jus).

Historical Consolidation

20. Another aspect of the Judgment which has given me much cause for legal concern is the Court's refusal to assess Nigeria's evidence relating to historical consolidation, which was one of the main grounds of it's claim to territorial title to Bakassi and with respect to some villages which had grown up around Lake Chad, and the Court's treatment with regard to the concept itself. Nigeria claimed that historical consolidation, which is founded upon proven long use, coupled with a complex of interests and relations which, in themselves, have the effect of attaching a territory, constitutes a legal basis of territorial title. [p483]

21. With reference to the established villages around Lake Chad, Nigeria cited various elements of local government administration in support of its claim of historical consolidation and effectivités including: legal jurisdiction, taxation, authority of traditional rulers and the fact that the settlements were populated by Nigerian nationals.

22. With reference to the Anglo-German Agreement of 1913 and despite its invalidity in relation to the 1884 Treaty between Great Britain and the Kings and Chiefs of Old Calabar, Nigeria argues that the weight of evidence suggests that there was no German occupation or adminis-tration of Bakassi, and no significant pattern of German activities there, in the period between March 1913 and May 1916. It pointed out that the realities of administrative development in the peninsula between 1913 and 1916 showed that Bakassi continued to be administered as part of Nigeria and that the administration and governance of the area came virtually exclusively from Nigeria. Nigeria also stated that, as far as local government was concerned, the British in 1922 introduced a system of indirect rule, using "Warrant Chiefs", and that in 1933 the system of indi-rect rule was superseded by a native authority system introduced by the Native Authorities Ordinance of 1933. Nigeria explained out that in 1950 this overburdened system of local government was rationalized by the Eastern Region Local Government Ordinance No. 60 of 1950, leading in 1955 to the three-tier system of local government which was later replaced by a two-tier system under the eastern regional local government law.

23. As far as legal jurisdiction was concerned, Nigeria pointed out that native courts were established in the first years of British rule under their system of indirect rule and that the Native Authorities Ordinance of 1933 introduced new native courts organized along similar lines to the local native councils. The Court was also informed that the people of the Bakassi region were paying taxes to the Calabar and Eket authorities, and that these divisions within Nigeria were collecting the taxes. Further evidence was that a Methodist school was established at Abana on Bakassi in 1937 and that a census was conducted in the area under the auspices of the Eket Division in 1953. Ties with the traditional authorities of Old Calabar continued uninterrupted and public order was maintained with the investigation of crime. There was also evidence of the exercising of ecclesiastical jurisdiction as well as the delimitation of electoral wards and the citizens participated in

parliamentary elections and were enumerated in the census. Public works and development administration were carried out as well as the exercising of military jurisdiction. Thus a considerable amount and volume of evidence was presented to substantiate the claim of historical consolidation including education, public health, the granting of oil exploration permits and production agreements, the collection of taxes, the collection of custom duties, the use of Nigerian passports by residents of the Bakassi Peninsula, the regu-[p484] lation of emigration in Bakassi, and that the territory itself had been the subject of internal Nigerian State rivalry.

24. Nigeria maintained that there was acquiescence to all these activities, some of which had been carried out over a long period. It contended that acquiescence in this respect had a threefold role: (1) as a significant element in the process of historical consolidation of title; (2) that it con-firms a title on the basis of peaceful possession of the territory concerned; (3) that it may be characterized as the main component of title. Nigeria submitted that the Government of Cameroon acquiesced in the long-established Nigerian administration of the Bakassi region and to most of the aforementioned activities until 1972 onwards when there were various Cameroonian initiatives, and in particular the project of renaming villages, which clearly demonstrates the previous absence of Cameroonian administration. Nigeria submits that at no stage did Cameroon exercise peaceful possession of the peninsula and that from the time of independence in 1960 until 1972, the Government of Cameroon failed to challenge the legitimate Nigerian presence in the region.

25. Responding to the claim of title based on historical consolidation, the Court, in paragraph 65 of the Judgment, stated that apart from in the Fisheries (United Kingdom v. Norway) case "[this] notion . . . has never been used as a basis of title in other territorial disputes, whether in its own or in other case law" — and that nothing in the Fisheries Judgment suggested that the "historical consolidation" referred to allowed land occupation to prevail over an established treaty title. The Court also stated that "the established modes of acquisition of title . . . take into account many other important variables of fact and law" (ibid.), which are not taken into consideration by the "over-generalized" concept of "historical consolidation".

26. In my view, the categories of legal title to territory cannot be regarded as finite. The jurisprudence of the Court has never spoken of "modes of acquisition", which is a creation of doctrine. Just as the Court has recognized prescriptive rights to territory, so there is a basis for historical consolidation as a means of establishing a territorial claim. Nor can the concept of historical consolidation as a mode of territorial title be regarded as "over-generalized" and alien to jurisprudence. Both municipal and international law including the Court's jurisprudence, recognize a situation of continuous and peaceful display of authority — proven usage — combined with a complex of interests in and relations to a territory, which, when generally known and accepted, expressly or tacitly, could constitute title based on historical consolidation. The "important variables" of the so-called established modes of acquisition, which the [p485] Court did not define, are not absent in historical consolidation. If anything, they are even more prevalent — the complex of interests and relations being continuous and extending over many years plus acquiescence. Historical consolidation also caters for a situation where there has been a clear loss or absence of title through abandonment or inactivity on the one side, and an effective exercise of jurisdiction and control, continuously maintained, on the other (see Fitzmaurice, "General Principles of International Law", Recueil des cours de l'Académie de droit international de La Haye, 1957, p. 148).

27. Failure of a State to react to a claim may, under certain conditions, not amount to acquiescence, though in most cases it will. In the Minquiers and Ecrehos case, France

pleaded that it was impossible to keep under surveillance the activities of the United Kingdom with respect to the islets. Responding to this argument, Judge Carneiro replied that France was obliged to keep the disputed territory under surveillance and failure to exercise such surveillance and ignorance of what was going on on the islets indicate that France was not exercising sovereignty in the area (Judgment, I.C.J. Reports 1953, p. 106). In the Anglo-Norwegian Fisheries case, the Court held that Great Britain, being a maritime Power traditionally concerned with the law of the sea, with an interest in the fisheries of the North Sea could not have been ignorant of Norwegian practice and could not rely on an absence of protest, relevant in proving historic title (Judgment, I.C.J. Reports 1951, p. 139). Thus a passive course of conduct involving failure to protest may be taken into account in determining acquiescence in a territorial dispute. If the circumstances are such that some reaction within a reasonable period is called for on the part of a State, the latter, if it fails to react, must be said to have acquiesced. "Qui tacet consentiré videtur si loqui debuisset ac potuisset. "

28. Regarding the length of time required to prove title on the basis of historical consolidation, every material situation calls for its own solution, based on the balancing of competing claims and depending on the area. Title may be proved even without reference to the period of time during which sovereignty had coalesced over the territory in dispute. In paragraph 65 of the Judgment, the Court stated that "the facts and circumstances put forward by Nigeria . . . concern a period of some 20 years, which is in any event far too short, even according to the theory relied on by it". While proven long usage is an important element to consolidate title on a historical basis, however, and depending on the area, that period may sometimes be shorter. What is required is an assessment of all the elements to determine whether the facts presented establish the claim. [p486]

29. With reference to the matter at hand, the evidence of original title on which Nigeria bases its claim to Bakassi can be found in the administration of Bakassi on the part of the Kings and Chiefs of Old Calabar before and after the conclusion of the 1884 Treaty with Great Britain, the exercising of authority by traditional rulers, the Efik and Efiat toponymy of the territory, its ethnic affiliation with Nigeria but not with Cameroon, the long-established settlement of Nigerians in the territory and the manifestation of sovereign acts, such as tax collection, census-taking, the provision of education and public health services. The acquiescence of Cameroon in this long-established Nigerian administration of the territory, the permanent population, the significant affiliations of a Nigerian character, do substantiate a claim based on historical consolidation and which in turn militates in favour of territorial title and stability. The claim to territorial title to Bakassi and to the Nigerian settlements around Lade Chad was thus adequately substantiated and there is no legal justification to cast doubt on its legal basis and integrity.

30. Since the basis of the Court's finding on Bakassi has relied mainly on its evaluation of the Anglo-German Agreement of 1913,1 cannot help but point out that even in the Court's jurisprudence, conventional title is only one way of establishing title to territory. The Chamber of the Court in the Frontier Dispute (Burkina FasolRepublic of Mali) case makes the following observation:

"The Chamber also feels obliged to dispel a misunderstanding which might arise from this distinction between 'delimitation disputes' and 'disputes as to attribution of territory'. One of the effects of this distinction is to contrast 'legal titles' and 'effectivites'. In this context, the term 'legal title' appears to denote documentary evidence alone. It is hardly necessary to recall that this is not the only accepted meaning of the word 'title'. Indeed, the Parties have used this word in different senses. In fact, the concept of title may also, and more generally, comprehend both any evidence which may establish the existence of a right, and the actual source of that right. The Chamber will rule at the appropriate juncture on the

relevance of the evidence produced by the Parties for the purpose of establishing their respective rights in this case. It will now turn to the question of the rules applicable to the case; in so doing, it will, inter alia, ascertain the source of the rights claimed by the Parties." (Judgment, I.C.J. Reports 1986, p. 564, para. 18; emphasis added.)

This position was further confirmed by another Chamber of the Court in 1992 in the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador!Honduras: Nicaragua intervening) :

"The term 'title' has in fact been used at times in these proceedings [p487] in such a way as to leave unclear which of several possible meanings is to be attached to it; some basic distinctions may therefore perhaps be usefully stated. As the Chamber in the Frontier Dispute case observed, the word 'title' is generally not limited to documentary evidence alone, but comprehends 'both any evidence which may establish the existence of a right, and the actual source of that right' (I.C.J. Reports 1986, p. 564, para. 18)." (Judgment, I.C.J. Reports 1992, p. 388, para. 45.)

Notwithstanding the foregoing, it is regrettable for the Court to have made the 1913 Anglo-German Agreement the main basis of its finding, since this Agreement, in my view, was patently unjust.

31. To sum up my position, by denying the legal validity of the 1884 Treaty whilst at the same time declaring valid the Anglo-German Agreement of 1913, the Court decided to recognize a political reality over the express provisions of the 1884 Treaty. The justification for this choice does not appear legal to me. It would not be justified for the Court, given its mission, if it were to be regarded as having consecrated an act which is evidently anti-legal. I regret this situation and it explains my position in this matter.

(Signed) Abdul G. KOROMA. [p488]

SEPARATE OPINION OF JUDGE PARRA-ARANGUREN

The operative part of the Judgment should only reply to the final submissions of the Parties.

1. I have voted for the operative part of the Judgment, with the exception of point V (C), but my favourable vote does not mean that I share each and every part of the reasoning followed by the Court in reaching its conclusions.

2. I have voted against point V (C) of the operative part of the Judgment where the Court:

"Takes note of the commitment undertaken by the Republic of Cameroon at the hearings that, 'faithful to its traditional policy of hospitality and tolerance', it 'will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area'."

3. The reasons for my dissent are the following.

4. Very recently, on 14 February 2002, the Court stated:

"The Court would recall the well-established principle that 'it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions' (Asylum, Judgment, I.C.J. Reports 1950, p. 402). While the Court is thus not entitled to decide upon questions not

asked of it, the non ultra petita rule nonetheless cannot preclude the Court from addressing certain legal points in its reasoning." (Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium), Judgment, I.C.J. Reports 2002, pp. 18-19, para. 43.)

5. Neither Cameroon nor Nigeria has requested the Court in its submissions to take note of the commitment undertaken by Cameroon at the hearings that "it will continue to afford protection to Nigerians living in the [Bakassi] Peninsula". Therefore, in my opinion, the Court had to abstain from taking note of such commitment in the operative part of the Judgment, even though the Court is entitled to address it in its reasoning, as it did in paragraph 317 of the Judgment.

(Signed) Gonzalo Parra-Aranguren. [p489]

DECLARATION OF JUDGE REZEK

[Translation]

It is rare to find in classic international law propositions as flimsy — and as inadmissibly so in moral terms — as those which would have it that agreements entered into the past between colonial Powers and indigenous communities — organized communities which had been masters of their territories for centuries and were subject to a recognized authority — are not treaties, because "native chiefs and tribes are neither States nor International Organizations; and thus possess no treaty-making capacity" (The Law of Treaties, 1961, p. 53). While expressing in these terms the doctrine prevailing in Europe in his time, Arnold McNair nevertheless pointed out that the matter had been understood differently in the United States, where the indigenous communities were recognized as foreign nations until promulgation of the Indian Appropriations Act of 3 March 1871, which made them wards of, and integrated them into, the Union. The agreements which these communities had entered into with the Federal Government were regarded as tieaties, to be honoured as such; moreover, if they required interpretation, the Supreme Court applied the rule contra proferentem.

In the Western Sahara case, the Court appears to have rejected the notion that a European Power could unilaterally appropriate a territory inhabited by indigenous communities. It found that even nomadic tribes inhabiting a territory and having a social and political organization had a personality sufficient under international law fcr their territory not to be considered terra nullius. According to that jurisprudence, title of sovereignty over a territory thus inhabited cannot therefore be acquired by occupation but only "through agreements concluded with local rulers" (I.C.J. Reports 1975, p. 39, para. 80).

In the present case, the Bakassi Peninsula was part of the territory of Old Calabar, subject to the original rule of its Kings and Chiefs. The Applicant itself, paradoxically required by the circumstances to espouse some particularly unacceptable propositions of colonialist discourse, has sought to cast doubt on the existence and independence of that rule by recourse to considerations which, rather, confirm them. Moreover, only the 1884 Treaty, concluded with that form of local rule, could have justified the functions assumed by Great Britain when it became the protecting State of those territories, for, if the Kings and Chiefs of Old Calabar did not have capacity to enter into an international agreement, if the 1884 Treaty was not a treaty and had no legal force whatsoever, it must [p490] be asked what was the basis for Great Britain to assert its authority over these territories, by what mysterious divine right did it set itself up as the protecting State of these areas of Africa.

Pursuant to the 1884 Treaty, Great Britain bestowed upon itself the power to oversee the

African nation's foreign relations, without granting itself authority to negotiate in its name, let alone to settle or relinquish any claim of whatever nature during international negotiations, and in particular to dispose of any part of the nation's territory. The unlawfulness of the act of cession renders the Anglo-Germs n Treaty of 11 March 1913 invalid in so far as, in defining the last sector of the land boundary, it determines the treatment of Bakassi.

The defect in the provisions concerning the Bakassi Peninsula does not however affect the validity of the remainder of the Treaty. This is the situation provided for in Article 44 (3) (a) of the Vienna Convention on the Law of Treaties, which could in theory be overridden by the effect of the next subparagraph, were it possible to show that the cession of Bakassi was an essential condition of Germany's consent to the rest of the Treaty; but, as far as I recall, no one so argued.

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Further, I am unable to regard the Maroua Decliration of 1 June 1975 as a treaty, and therefore to draw the resultant inferences. I even have some difficulty in viewing it as a treaty which was signed but never entered into force, failing ratification by the two parties. Rather, I see it as a declaration by the two Heads of States, further to other similar declarations that were never followed up, thus demonstrating that they were not definitive as sources of law. True, formal adoption of the document by the organs vested with treaty-making power would have given rise to a conventional instrument. That is to say that, no matter what the title or form of a text, no matter what procedure was followed in negotiating it, that text can obviously become a treaty if the parties' competent organs ultimately express their consent. Here, the Respondent has stated, without being challenged, that the Maroua Declaration was not ratified by Nigeria, failing approval by the competent organ under the constitution in force at the time.

The Vienna Convention provides a remarkably simple definition of the unusual circumstances under which a State can deny the legal force of a treaty by reason of flawed consent of this sort. Tire internal rule which was not respected must be a fundamental one and its violation must have been manifest, i.e., the other party could not under normal circumstances have been unaware of the violation. It is my view, however, that Cameroon was not entitled to believe that the Declarition in question was indeed a perfected treaty, entering into force on the date of its signing. I [p491] know of no legal order which authorizes a representative of a Government alone definitively to conclude and put into ef ect, on the basis of his sole authority, a treaty concerning a boundary, whether on land or at sea — and ergo the territory — of the State. I ask myself whether there is any part of the world where such a failure to respjct the most basic for-malities would be compatible with the complex and primordial nature of an international boundary treaty.

It is to be expected that the case concerning the Legal Status of Eastern Greenland (P.C.I.J., Series AIB, No. 53, p. 22) would be referred to in a discussion of this sort. It is sometimes forgotten that the Court never said that one of the ways in which treaties could be concluded was by oral agreement. The Court did not state that the Ihlen Declaration was a treaty. It said that Norway was bound by the guarantees given by the Norwegian Minister to the Danish ambassador. Thus, there are other, less formal, ways by which a State can create international obligations for itself. That is not the issue. The question is whether an international agreement concerning the determination of a boundary can take a form other than that of a treaty in the strict sense, even when the land or maritime areas concerned are not large or when the boundary has not been the subject of long-standing dispute and uncertainty.

Thus, I cannot join the majority in respect of sovereignty over the Bakassi Peninsula and adjacent waters. In my view those areas fall under the sovereignty of the Respondent.

(Signed) Francisco Rezek. [p492]

SEPARATE OPINION OF JUDGE AL-KHASAWNEH

1. The reasons that led me to concur with the majority view regarding the appurtenance of the Bakassi Peninsula to Cameroon are adequately [p493] reflected in paragraphs 214 to 216 of the Judgment, namely that in the period leading to its independence in 1961 and since then till the early 1990s, Nigeria, by its actions and omissions and through statements emanating from its officials and legal experts, left no room for doubt that it had acknowledged Cameroonian sovereignty in the Bakassi Peninsula. It goes without saying, therefore, that I associate myself with the reasoning in this part of the Judgment. What needs to be said, however, is that this was all the Court needed to do, and all it should have done, to dispose satisfactorily of the issue of territorial sovereignty over Bakassi in Cameroon's favour.

2. Instead the Court chose, quite unnecessarily, to revert to the question of the validity of the 1913 Agreement between Great Britain and Germany under which the former ceded the entire territory of the Kings and Chiefs of Old Calabar — which territory corresponds to the Bakassi Peninsula — to Germany without the consent of those Kings and Chiefs, notwithstanding that Great Britain had entered earlier into a Treaty of Protection with them in 1884 under which, in return for their agreeing and promising "to refrain from entering into any correspondence, Agree-ment or Treaty, with any foreign nation or Power, except with the knowledge and sanction of Her Britannic Majesty's Government", Her Majesty would extend Her "favour and protection" to them. It must be noted here that the 1884 Treaty was concluded by the British Consul expressly as the representative of Queen Victoria.

3. Reversion to those treaties was not only unnecessary as I stated earlier, it was also unfortunate, for the attempt at reconciling a duty of protection on the one hand with, on the other, the subsequent alienation of the entire territory of the protected entity — regardless of whether that entity possessed international legal personality or not — cannot be an easy matter, not only due to the moral difficulties that such an attempt would entail, but also, as a matter of law, because the distinction between colonies, protectorates and the so-called "colonial protectorates" is steeped in confusion both under international law and under the laws of the colonial Powers themselves, the confusion arising mainly from the fact that it was considerations of pragmatism and political convenience that determined the status of those territories, though problems of nomenclature are also a contributory factor. Needless to say, such confusion engenders doubt as to whether the colonial/protecting Power possessed or even claimed title.

In addition, if the Judgment is to constitute a legally and morally defensible scheme, it cannot merely content itself with a formalistic appraisal of the issues involved. Such issues include the true scope of intertemporal law and the extent to which it should be judged by contemporary values that the Court ought to foster; an ascertainment of State practice at the relevant time and the role of the Berlin Conference [p494] on West Africa of 1885; the question, whether that practice — assuming it permitted the acquisition of title in the so-called colonial protectorates — could be invoked in an African case when no African State had participated in the formation of such alleged practice; the relevance of the fundamental rule pacta sunt servanda on the passing of title and the normative value to be attached to the consistent practice of the colonial Power in question (Great Britain) of distinguishing

between colonies on the one hand and protectorates on the other. Only when a serious attempt has been made to analyse this host of relevant and interrelated considerations can it be said that the question repeatedly and forcefully posed by Sir Arthur Watts as counsel for Nigeria — Who gave Great Britain the right to give away Bakassi? And when? And how? — would be answered. To my mind, the Judgment, by taking for granted such premises as the existence of a category of protectorates indistinguishable from colonies, or the right of colonial Powers to deal with African potentates on the basis that the fundamental rule pacta sunt servanda does not exist, has failed to answer that question. To the extent that these are central issues in this case and have implications that go beyond it, I feel I must append my thoughts on them in a separate opinion.

4. It is evident that the Bakassi Peninsula was not a terra nullius when Great Britain entered into a Treaty of Protection with the Kings and Chiefs of Old Calabar in 1884. As Judge Dillard cogently summarized the matter in his separate opinion in the Western Sahara case: "[a]s was cryptically put in the proceedings: you do not protect a terra nullius. On this point there is little disagreement." (Advisory Opinion, I.C.J. Reports 1975, p. 124.) Yet it was also in that Advisory Opinion that the Court implied, at least prima facie, that, even if the territory in question was not a terra nullius, this would not in itself preclude the colonial Power from acquiring a derivative root of title, as opposed to an original title, which could be obtained only by occupation (presumably effective occupation of terrae nullius) (ibid., p. 39, para. 80). In the present case, the Judgment has relied mainly on that passage (paragraph 205) in support of the contention that, the absence of a terra nullius status notwithstanding, Great Britain had in fact acquired sovereignty to the Bakassi Peninsula through a derivative root of title. Prima facie, Western Sahara may seem to lend support to such a proposition. Though it should not be forgotten that the passage cited was an obiter dictum. Secundo facie, however, the support lent seems negligible indeed, for in that instance the Court was not enquiring whether Spain held valid legal title but was answering a distinct, specific question: Was Western Sahara (Río de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius) ? Indeed in paragraph 82 of that Opinion the Court expressly declined to pronounce upon "the legal character or the legality of the titles which led to Spain becoming the administering Power of Western Sahara" (ibid., p. 40, para. 82), even though there was much [p495] material before it on this precise question as well as requests to answer it. Moreover, when the Court said that "in the case of such territories (territories that are not terrae nullius) the acquisition of sovereignty was not generally considered as effected unilaterally through 'occupation' of terra nullius by original title but through agreements concluded with local rulers" {I.C.J. Reports 1975, p. 39, para. 80), it was referring in general to agreements that had the effect of passing title from those rulers who pos-sessed it on the basis of original title to the new administering/protecting Powers, who through such agreements acquired derivative title. Clearly the crucial factor is the agreement itself, and whilst it is entirely possible that such agreements vested sovereignty in the newcomers it is equally possible that they did not, in which case sovereignty was retained by the local ruler under an agreed scheme of protection or administration. These are questions of treaty interpretation and of the subsequent practice of the parties and cannot be circumvented by the invention of a fic-titious sub-category of protectorates termed "colonial protectorates" where title is assumed to pass automatically and regardless of the terms of the treaty of protection to the protecting Power, for that would be incompatible with the fundamental rule pacta sunt servanda and would lead to what has been termed "institutionalized treaty breach", a situation that no rule of intertemporal law has ever excused. It would also blur the distinction that the Court was trying to make between title automatically assumed on the basis of effective occupation on the one hand, and title assumed on the basis of agreement with local rulers on the other.

5. If the Court's Advisory Opinion in the Western Sahara case does not furnish the basis for

the proposition that agreements of protection with local chiefs are always the source of valid title acquired through derivative roots, could such a proposition be safely advanced on the basis of passages from arbitrator Max Huber's often quoted Award in the Island of Palmas case (United Nations, Reports of International Arbitral Awards (RIAA), Vol. II, pp. 858-859), for at least there that learned and renowned judge spoke with dogmatic certainty leaving nothing to possible interpretations? The problem with Max Huber's analysis however is not its lack of clarity but rather that it is clearly wrong.

In the first place he starts from the premise that because such agreements are not between equals they are: "rather a form of internal organisation of a colonial territory on the basis of autonomy for the natives . . . And thus suzerainty over the native State becomes the basis of territorial sovereignty as towards other members of the community of nations." [p496]

Such an approach is a confusion of inequality in status on the one hand and inequality in power on the other. That local rulers and chiefs were weak is apparent from their agreeing to enter into treaties of protection, but this does not detract from the fact that they had the capacity to enter into treaty relations.

Secondly, it is characterized by its sweeping generalization, the assumption being that the local chiefs or rulers, no matter how valid and old their title and how clear the display of their sovereignty and the degree of their organization and regardless of the terms of the Treaty of Protection in question, are deemed to have become virtual colonies or vassal States under the suzerainty of the protecting colonial Power even if — as was not uncommon — control over them was nominal and even if in subsequent dealings with the metropolitan State they continued to be treated as retaining some sovereignty, for example, for the purposes of sovereign immunity, or by being dealt with by the Foreign Ministry of the colonial Power. It is difficult to understand how a local ruler would be considered to be entitled to absolute sovereign immunity and to have been divested of his territorial sovereignty at one and the same time. See, for example, Mighell v. Sultan of Johore [1894] QB 149 and Sultan of Johore v. Abu-bakar Tunku Arts Bendahar and Others [1952] AC 318. These cases are all the more relevant since they related to local rulers in the same region that Max Huber was dealing with in the Island of Palmas Award, i.e. South-East Asia, and were decided by the courts of the same metropolitan State that entered into a treaty of protection with the Kings and Chiefs of Calabar.

Thirdly, such an approach is clearly rooted in a Eurocentric conception of international law based on notions of otherness, as evidenced by the fact that there were at the time in Europe protected principalities without anyone seriously entertaining the idea that they had lost their sovereignty to the protecting Power and could be disposed of at its will. Intertemporal law is general in its application, its underlying rationale and unity of purpose being time (tempore) as its name implies, not geography, and cannot be divided into regional intertemporal law, all the more so when no State in the concerned region, be it sub-Saharan Africa or South-East Asia, participated in its formation.

Fourthly, Max Huber's approach is based on an extreme interpretation of the theory of constitutive recognition. A theory, suffice it to say, that remains no more than a theory and has as many opponents as it has adherents.

6. Lastly, it is doubtful — and this is not without irony — that Max Huber's generalization about suzerainty and vassalage with regard to the so-called colonial protectorates is supported by the State practice of the time. To the "local rulers" the notion that they had given up their sovereignty upon entering into a treaty of protection or a treaty of commerce [p497] and friendship which were sometimes of the same ilk, would be astonishingFN1. This is not to suggest that there were no cases when such loss of sovereignty ever took

place, but that it is again a question of treaty interpretation and subsequent practice of the parties. Similarly, for the protecting Powers themselves, in many cases they were not seeking colonial title but merely spheres of influence or dominance, or domination in the sense of power and jurisdiction and not in the sense of territorial dominion.

FN1 Sometimes a treaty of protection was called a treaty of friendship in the local language, for example, the 1887 Treaty of Uccialli between Italy and Ethiopia was denounced later by Menelik the Ethiopian Emperor on the ground that the Italian and Amharic texts differed. In the Italian text the Emperor "consents to avail himself of the Italian Government for any negotiations which he may enter into with other powers or governments", the Amharic text reads "may use" the Italians as intermediaries. The Emperor of Ethiopia saw the treaty as one of friendship, the Italian Government, on the other hand, viewed it as a treaty of protection. (A. H. M. Jones and E. Monroe, History of Ethiopia, pp. 139140.)

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7. To be sure, treaties of protection were sometimes a first step towards the development of a full colonial title, or as they have been described, "a legal lever for acquiring an inchoate title to territory: a title capable of being perfected more or less at leisure" (D. J. Latham Brown, "The Ethiopia-Somaliland Frontier Dispute", International and Comparative Law Quarterly (ICLQ), Vol. 5, pp. 254-255) but until that happened and in the absence of provisions which may be interpreted as conveying title, they remained a lever and no more. Some examples from State practice will serve to illustrate the point, all the more so in view of the fact that they were contemporaneous with the Congress of Berlin era.

(a) In 1885 the British Foreign Office gave its view that

"a protectorate involves not the direct assumption of territorial sovereignty but is 'the recognition of the right of the aborigines, or other actual inhabitants to their own country, with no further assumption of territorial rights than is necessary to maintain the paramount authority and discharge the duties of the protecting power'" (FO 403/9, No. 92 (14 January 1885) cited by Malcolm Shaw, Title to Territory in Africa, footnote 155, p. 283).

(b) In 1884 a number of treaties were concluded with local chiefs in Bechuanaland, where internal and external sovereignty gradually passed to the protecting Power: Great Britain. In the following year a British protectorate was made a crown colony and its governor exercised jurisdiction over the protected territory as well. Nevertheless, a British court in R. v. Crewe maintained the distinction between colonies on the one hand and protectorates on the other, [p498] L. J. Vaughan Williams noting that the "the Bechuanaland protectorate is under His Majesty's dominion in the sense of power and jurisdiction, but is not under his dominion in the sense of territorial dominion" ([1910] 2 KB 603-604, cited by Malcolm Shaw, Title to Territory in Africa, footnote 161, p. 283; emphasis added).

(c) In 1884 and 1886 respectively agreements were signed between Great Britain and the Chiefs of five Somali tribes. In the first series of agreements the Somali Chiefs covenanted not to alienate their territory unless to the British Government. In the second (consisting of five agreements), they agreed and promised to "refrain from entering into any correspondence, Agreement or Treaty with any foreign nation or Power, except with the knowledge and sanction of Her Majesty's Government". For their part the British Government undertook "to extend to them and to the territories under their authority and jurisdiction the gracious favour and protection of Her Majesty the Queen Empress". In

1897 the Somali tribes' grazing areas were ceded by Great Britain to Ethiopia. After the defeat of Italy in World War II those territories were placed under the British Military Administration for Somalia. In 1954 that administration was withdrawn from those territories in accordance with a treaty negotiated de novo between Great Britain and Ethiopia which in effect upheld the 1897 Treaty over the agreements with the Somali Chiefs, though with some guarantees for the grazing rights of the Somali tribes. The inconsistency between the cession to Ethiopia in 1897 of what the Somalis regarded as their traditional land and the earlier treaties of protection was the subject of a debate in the House of Commons where, we are told by a commentator (D. J. Latham Brown, op. cit., pp. 254-255), that the Secretary of State for the Colonies regretted "the treaty of 1897 but, like much that has happened before, it is impossible to undo it". While the words of one Member of Parliament were more telling:

"the tribal elders voluntarily placed themselves under British protection. They sought it for the maintenance of their independence, the preservation of order and other good and sufficient reasons. In short there seems to be argument that at no time was any territory transferred. Consequently, it was not in our power to give away that which we did not possess."

Whilst in the event the cession was in practice confirmed by the 1954 Treaty, this was done by circumventing the maxim nemo dat quod non habet but not by denying it or by pretending that Great Britain had acquired title. Instead the alleged superior character of an international treaty over agreements with the Somali Chiefs, together with the lack of their delineated territorial expanse, were cited in an [p499] endeavour to explain the inconsistency between the different treaty obligations undertaken to the Somali Chiefs and Ethiopia, respectively. At any rate, there was at least an attempt at a rationale, which is sadly missing in our Judgment, which states with full-throated ease that the 1884 Treaty of Protection did not preclude the transfer of Bakassi to Germany merely because it established a colonial protectorate.

(d) British colonial policy during the relevant period was marked by a consistent insistence on distinguishing between colonies and protectorates. Upholding such a distinction was a major aim of British diplomacy in the Berlin Conference, where it triumphed over imperialist latecomers intent upon achieving nothing less than the threshold of effective occupation and who, moreover, derided the concept of protection as "prises de possession sur le papier". It is reasonable to assume that such a distinction was not insisted upon for purely formal or descriptive motives, but for pragmatic reasons that have been commented upon extensively by historians (Robinson and Gallagher, Africa and the Victorians: The Official Mind of Imperialism, 1961). Whatever these motives might have been, what matters is that a normative differentiation was attached to this distinction and was reflected in British practiceFN2.

FN2 Oppenheim's International Law, Sir Robert Jennings and Sir Arthur Watts (eds.), 9th ed., Vol. I, p. 269; footnote 9 contains a list of British practice and court decisions generally supportive of a distinction between colonies and the so-called colonial protectorate.

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8. It would appear, therefore, that support for the contention that treaties of protection in sub-Saharan Africa allowed generally for the transfer of sovereignty to the colonial/protecting Power cannot be safely established by reference to the Island of Palmas

Award nor to the alleged practice of the Berlin Conference era, a practice from which, at best, no firm inferences can be drawn and which in fact supports retention of a normative distinction between colonies and the so-called colonial protectorates and the consequent upholding of the maxim nemo dat quod non habet.

9. So far I have attempted to demonstrate that the existence of a category of protectorates, the so-called "colonial protectorates", where the protecting Power was free to dispose of the protected territory at will, is a proposition that neither State practice nor judicial precedent supports and is, in all probability, no more than a fiction existing in the minds of some commentators who try to find ex post facto legitimization for unfathomable and illegal facts by the invention of sub-categories where normally applicable rules do not operate. Be this as it may, let us assume, arguendo — if only for the sake of completeness — that the Berlin Con-[p500] ference on West Africa did sanction such behaviour as evidenced by the State practice emanating from it. Could this practice be invoked in an African dispute when no African State has participated in the formation of such practice? To my mind the answer must be clearly in the negative, and it matters not that the present dispute is between two African States. What is material is that the argument used by counsel for one State — Cameroon — is rooted in the alleged legitimacy of this practice which is claimed to be opposable to the other Party.

10. A further question is the extent to which the operation of the rule (or principle) of intertemporal lawFN3 should shield such practice from judicial scrutiny taking place at a much later time when other rules of international law, regarding the sovereign equality of States, self-determination, non-discrimination and to some extent (for this area is sadly only rudimentarily developed, both from the procedural and the substantive aspects) the rights of indigenous peoples, have to be appraised by judges called upon to decide a contemporary dispute.

FN3 For different names used to connote the status of intertemporal law see T. O. Elias, "The Doctrine of Inter-temporal Law", American Journal of International Law, Vol. 74, 1980, p. 285.

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11. Let me start by recalling that the concept of the intertemporal law is an irretrievably elusive one. At first sight it looks simple. To quote Max Huber once more: "A juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when such a dispute in regard to it arises or falls to be settled." (RIAA, Vol. II, p. 845.)

12. At a general level, the proposition is sustainable, but when we come to enquire more closely into its operation, problems start to arise: is appreciation in the light of the law contemporary with the judicial act, for example, a treaty of protection, the same as interpretation of such a treaty in the light of contemporaneous law? Or does it merely mean that in interpreting a treaty of the past one should be mindful, in applying the time-honoured and established canons of treaty interpretation, of the temporal context that may shed light on the presumed intention of the parties and thus help ascertain it? Should such a legal act (a treaty) be interpreted against the background that the object and purpose of the treaty was the guaranteeing or upholding of a certain principle, for example, that the mandate system is a "sacred trust of civilization" (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970), I.C.J. Reports 1971, p. 16)? Similarly, in

interpreting a [p501] treaty of protection should not the law contemporary with the legal act be read against the background of the concept of protection which, like the concept of the mandate, connotes an element of guardianshipFN4 traceable to the great Roman jurist Ulpian who said: "for certain purposes of the law some cities and municipalities are to be treated as minors". A concept that therefore excludes notions of ownership. It should not be forgotten that, in appreciating the law contemporary with the 1884 Treaty, we should be mindful that the ancient concept of protection antedates the Berlin Conference; thus, to cite a few examples, Great Britain had established a protectorate over the Ionian Islands in 1814 which was maintained in accordance with the classical concept of protection which excluded any notion of sovereignty of the protecting Power, and much earlier during the Muslim Conquests many agreements of protection were concluded with local rulers in certain parts of Europe and else-whereFN5. After 1885, State practice, to use the words of one commentator "revealed a tendency to deform the original classic concept of the protectorate and to convert it into an instrument of colonialism"' (Alexandro-wicz, The Role of Treaties in the European-African Confrontation in the Nineteenth Century, African International Legal History, p. 55, cited by Malcolm Shaw in Title to Territory in Africa, p. 47; emphasis added). Would then the operation of intertemporal law not require us as judges to appraise not just the practice but the fact that it was a deformation of the concept and practice of protection against the background that the object of the protectorate system — like the mandatory system — is a form of guardianship that by definition excludes notions of territorial ownership or territorial dominion? To my mind this is the relevant law that should be appreciated as a consequence of the rule of intertemporal law and it cannot be reduced to a mere review of a deformation, half-Kafkaesque, half-Orwellian, where friendship means interference in the internal affairs and protection means loss of sovereignty and dismemberment and the conclusion of treaties means instantaneous breach. Put differently, ascertainment of the true meaning of intertemporal law requires us to enquire into the quality of the juridical act in the light not only of [p502] the alleged practice, but in the light of the totality of the law relating to protection, i.e. with reference to its object and taking into account other rules relevant at the time. Did the practice of South Africa conform to the object and purpose of the mandate system as "a sacred trust of civilization"? And, similarly, did the practice of alienating protected territory conform to the notion that the concept of protection is based upon legally developed notions of guardianship which by definition exclude the concept that protection is synonymous with territorial ownership?

FN4 Oppenheim's International Law, Sir Robert Jennings and Sir Arthur Watts (eds.), 9th ed., Vol. I, p. 267.

FN5 For example, the Treaty of Tudmir of Rajab 94 AH-April 731 AD, concluded between Abdulaziz Son of Musa Son of Nusair the Ummayyad Governor of Spain and Theo-demir, representative of local fortress-chiefs in South-East Spain, an area encompassing the modern region of Murcia, Alicante and Valencia; the pact itself transformed political power from the Hispanic Visigoths to the Ummayyads of Damascus, but rights in property and other rights were retained by those chiefs and their descendants. For the text of the treaty see Negotiating Cultures, Bilingual Surrender Treaties in Moslem-Crusader Spain under James the Conqueror, edited by Robin Burns and Paul Cliveddan, p. 202. Many similar treaties of protection were entered into by the Ottomans with various principalities in Eastern Europe where dominion in the sense of power passed to the Ottomans but ownership rights and other rights were retained by the indigenous European chiefs.

Also relevant in appreciating the law contemporary with the legal act in question, i.e. a treaty, is the requirement that other rules of law should be taken cognizance of. Paramount among these is the fundamental rule pacta sunt servanda, arguably the most important rule in international law and indeed in law generally, and one which cannot be overturned by the assumed practice of some States. I am not aware that in the Berlin Conference era that rule had ceased to exist.

13. At any rate, intertemporal law as formulated by Max Huber is not as static as some would like to think, for it should not be forgotten that its elusiveness is further increased by his immediately following statement that "the existence of the right, in other words, its continued manifestation, shall follow the conditions required by the evolution of law" (RIAA, Vol. II, p. 845).

14. It is beyond the scope of this separate opinion to enter into the well-known and legitimate debate on the scope of the rule or principle of intertemporal law arising out of the combination by Max Huber of evolutionary and static elements in his formulation of the concept. Suffice it to say that the confusion was such that neither the International Law Commission, guided by its distinguished and learned Special Rapporteur on the topic Sir Humphrey Waldock, nor the Vienna Conference itself, were able to resolve the issue, with the consequence that the concept of intertemporal law was dropped from the 1969 Vienna Convention on the Law of Treaties, Article 31 of that instrument containing no expressly temporal element and merely speaking "of relevant rules of law" and Article 64 in fact following an opposite direction in the case of a subsequently emerging rule of jus cogens.

15. In other words, we are not faced with a simple well-defined rule capable of automatic application, but rather with a perplexing idea that was incapable of finding a place in the 1969 Vienna Convention. Nor has the concept of intertemporal law found support in judicial decisions, where it has been often overcome with the aid of a belated discovery of the intention of the parties as was the case in the Aegean Sea case, or by reading the provisions of modern law into the treaty, which was the [p503] approach that the Court took in its Advisory Opinion on Namibia when it stated that: "an international instrument must be interpreted and applied within the overall framework of the juridical system in force at the time of interpretation" (Legal Consequence for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970), I.C.J. Reports 1971, p. 31).

16. Furthermore, it is perhaps in the realm of criminal law that the rule of intertemporal law comes to the forefront and lends itself to delineation. This is so because the temporal aspect in the maxim nullum crimen nulla poena sine lege requires a precise definition, yet it was precisely in this same realm that the rule has been significantly abandoned. Thus, the operation of the rule would have acted to shield the perpetrators of grave crimes in World War II from criminalization because many of these crimes were not part of positive law, but in the event, as is well known, that protection afforded by adherence to intertemporal law was not accepted. If such was the case where the law was more precise, the concept itself more readily delineated and the consequences, criminalization, grave, I see no reason why a behaviour that is incompatible with modern rules of international law and morally unacceptable by modern values underlying those rules should be shielded by reference to intertemporal law, all the more so when the reprobation of later times manifests itself not in criminalization but merely in invalidation.

17. It would thus seem reasonable to assert that in speaking of intertemporal law, we are faced with a confusing concept the status of which as a rule, or principle, or doctrine, or rule of interpretation, is steeped in controversy and which was consciously dropped from the 1969 Convention on the Law of Treaties and consistently rejected in successive

decisions of the European Court of Human Rights, not to speak of the way it was overcome by certain decisions of this Court and abandoned in the realm of grave crimes, ironically the very area where it can be said to have some delineation and coherence. In other words, it is a truncated concept on which the hopes of finding the basis for ceding Bakassi to Germany in 1913 are misplaced.

18. In paragraph 205 the Judgment draws attention to "the fact that the international legal status of a 'Treaty of Protection' entered into under the law obtaining at the time cannot be deduced from its title alone". In support of this assertion the Judgment goes on to illustrate by examples:

"Some treaties of protection were entered into with entities which retained thereunder a previously existing sovereignty under international law. This was the case whether the protected party was hence[p504] forth termed 'protectorate' (as in the case of Morocco, Tunisia and Madagascar (in their treaty relations with France) or a 'protected state' (as in the case of Qatar and Bahrain in their treaty relations with Great Britain)."

19. This reasoning calls for two comments: Firstly, whilst it is true that the international legal status of a "treaty of protection" cannot be deduced from its title alone, that title must nevertheless have some impact, for we can instantly glean from the title that the entity in ques-tion was not a terra nullius given that "you do not protect a terra nul-lius". We can also safely deduce from the title that the subject-matter was protection and not colonial title. We can further deduce that the entity in question had the capacity to enter into treaty relations and, unless we start from the false premise that one party to a treaty can unilaterally determine the international status of the other, we can also deduce that the treaty has international legal standing.

Secondly, the Judgment seeks to distinguish between this case and other cases where it had occasion to pronounce on the existence of an international legal personality of the protected party: Morocco and Tunisia with regard to France and Qatar and Bahrain with regard to Great Britain, but again this argues that the so-called colonial protectorates are part and parcel of protectorates in general and do not constitute a sub-category unless the will of one party, the protecting Power, is decisive. Moreover, in the case of Qatar and Bahrain these sheikhdoms were not independent States when Britain entered into treaty relations of protection with them but Ottoman dominions ruled under the suzerainty of the Ottoman Empire by local chiefs. The same is true of Tunisia. It would be ironic for the Court to decide that those who were under Ottoman suzerainty were in fact sovereign because it suited practical considerations of British policy that they should be so seen, and not those chiefs who were under no one's sovereignty or suzerainty when Great Britain entered into treaties of protection. Not only would this make colonial law and not international law the determining factor, it would also raise doubts regarding the broad consistency of the Court's decisions.

20. Leaving aside the question of title, the plain words of the treaty — and it is a mercifully brief one — leave no room for doubts that what was at issue was nothing but "favour and protection" in return for agreeing not to enter into treaties with other Powers without British sanction. There is no reference to a transfer of territorial sovereignty, either by calling it a cession or otherwise to use the terminology employed by the Court in the Western Sahara Advisory Opinion in paragraph 80. The lack of any intent to transfer territorial sovereignty can be safely arrived [p505] at by reference to the maxim inclusio unius exclusio alterius and by the fact that it was protection and not ownership that was the subject of that treaty.

21. The situation was not altered by the fact that Great Britain in fact went on to administer

the territory in question (Judgment, para. 207) for this was exactly the same situation in the Bechuanaland Protectorate referred to above (see para. 7 above) but where, nevertheless, a British court maintained the distinction between a colony on the one hand and a protectorate on the other, or to use its exact words: "a protectorate under his Majesty's dominion in the sense of power and jurisdiction it was not under his dominion in the sense of territorial dominion" (emphasis added). Moreover, the administration of a protected State can perfectly co-exist with protection. Nor was the situation altered by the British decision to incorporate the territories of the Kings and Chiefs of Old Calabar into the Niger Coast Protectorate. The situation did alter, however, in 1913 when Great Britain ceded present-day Bakassi to Germany, for what the Kings and Chiefs had consented to was British and not German protection and because, moreover, that cession implied powers associated with territorial sovereignty that Great Britain did not possess.

22. There is a strong presumption in international law against the incidental loss of sovereignty, but it is a rebuttable presumption, and whilst the case of the Kings and Chiefs of Old Calabar was not weakened by the treaty itself, their subsequent behaviour certainly has had that effect. It is said that the God of sovereignty is a jealous God but apparently not in Bakassi, for, in reflecting on this case, one cannot but notice an extreme passivity and inaction on their part that managed to rebut the presumption. Apart from a single trip in 1913 to London, when a delegation sent on their behalf discussed matters relating to land tenure, they remained silent in the face of momentous events that had an impact on their status. Most notably, their failure to protest at the cession of their territory to Germany under the 1913 Agreement leaves me with no choice but to conclude that they had given their consent to that transfer volenti non fit injuria. It is for this reason alone — and not the surrealistic interpretation of the Treaty of 1884 or the reference to a fictitious sub-category of colonial protectorates, nor the equally fictitious reference to a form of intertemporal law that would shield a deformed practice of the concept of protection from invalidation — that I have voted in favour of point III (A) of the dispositif relating to those provisions of the 1913 Agreement that deal with Bakassi.

(Signed) Awn Al-Khasawneh. [p506]

SEPARATE OPINION OF JUDGE MBAYE

[Translation]

Introduction

1. I share the findings reached by the Court; it is absolutely correct:

(a) in concluding, in respect of the Lake Chad region, having determined the endpoint of the lake boundary at the "mouth of the Ebeji", that

— "as regards the settlements situated to the east of the frontier confirmed in the Henderson-Fleuriau Exchange of Notes of 1931, sovereignty has continued to lie with Cameroon"; and

(b) in confirming, as regards Bakassi, that "soveieignty over the peninsula lies with Cameroon".

In so doing, the Court has made the law prevail over the fait accompli.

2. The proceedings have thus drawn to a close after passing through numerous phases which, although costing a great deal of time, did at least have the merit of clarifying the

substantive issue before the Court. This has enabled the Court to achieve a comprehensive and definitive settlement of a border dispute which for some 19 years has divided two brother countries of Africa: Cameroon and Nigeria. This dispute, in the form that it was referred to the Court, concerned the entire course of the boundary, both terrestrial and maritime, separating the areas over which each State has jurisdiction.

3. Like the Parties, the Court divided the boundary into a number of sectors:

— the Lake Chad region,
— the land boundary between Lake Chad and B ikassi,
— Bakassi,
— the maritime boundary.

4. Apart from the preliminary objection that the Court joined to the [p507] merits by its Judgment of 11 June 1998, three further issues were added to the matters arising from the points mentioned above. Those issues were:
— the intervention of Equatorial Guinea,
— Cameroon's responsibility claim,
— Nigeria's counter-claim.

5. Although I voted in favour of the entire dispositif of the Judgment, I felt that it would be appropriate to draft a separate opinion setting out a number of considerations emphasizing certain points that I regard as being of particular significance, or addressing issues on which my responses may be somewhat different to those given by the Court. In the present opinion I will confine myself to brief comments on the Lake Chad region and Bakassi, after saying a few words about the principle of the intangibility of colonial frontiers, before going on to make a number of observations on maritime delimitation and on the issue of responsibility.

6. But first, it seems to me that a few preliminary remarks of a general nature would be helpful.

Section 1. General Considerations

7. I propose to make a number of observations linked to the context of the dispute which may help to make it more readily understandable.

1. The States in Question

8. The dispute submitted to the Court involved two States of sub-Saharan Africa, on the one hand Cameroon and on the other Nigeria, a country regarded on that continent as, relatively speaking, a great Power. The Agent of Nigeria said as much in guarded lerms on 28 February 2002 in opening the first round of his country's oral argument. He gave an impressive list of the substantial roles which Nigeria has played and continues to play in Africa.

It is a fact that, in Africa, Nigeria is perceived as a Power not only in demographic terms (120 million inhabitants), but also in economic, social and military terms. Within the sub-region where il is situated, that State is both respected and feared, and those feelings extend over a good part of western and central Africa. It is not impossible that Nigeria seeks, to some extent and indeed quite legitimately, to derive advantage from that fear which it inspires. The circumstances and events of the present dispute would certainly not contradict such an observation.

2. The Means Chosen by the Parties to Defend Their Positions

9. Each of the Parties to the present dispute chose the ground on which it wished to position itself in order to argue its case. [p508]

Thus in this case, from the filing of the Application right up to the end of the oral pleadings, one had the impression that there was one Party which clung for all it was worth to the letter of the law, and one which relied more on facts, albeit dressed up in a legal guise.

10. On the one side we had Cameroon, which had placed the matter before the OAU, then the United Nations, and then the Court, and on the other there was Nigeria, which had criticized Cameroon for each of these initiatives concerning an issue which, according to Nigeria's repre-sentatives, could have been settled by dialogue ard negotiation.

11. Cameroon relied on the principle of uti possidetis juris and generally on legal titles founded essentially on treaties, agreements, declarations, and decisions of the League of Nations and of the United Nations.

12. Nigeria, for its part, sought out weaknesses capable of undermining the validity of the legal titles relied upon by Cameroon, and based the essence of its position before the Court on effectivites.

13. This situation cannot have escaped the Court's notice and neither the written pleadings nor the argument of the Parties' counsel have been able to efface the impression produced by it.

Where Cameroon invoked a legal title, Nigeria spoke of history, of geography, of ethnology and of the "historical consolidation of title". Of course, this is not a criticism, simply an observation. Each party to proceedings is free to choose the terrain on which it wishes to place the judicial debate.

3. The Raison d'Etre for Respect for Colonial Boundaries

14. Many countries of sub-Saharan Africa, and more particularly those of western and central Africa, have been troubled since independence by an instability which precludes a serious and continuous search for true solutions to underdevelopment. Such instability fosters poverty.

15. The founding fathers of the African nations, who sought to disprove the forecast that Africa had "got off to a bad start", had decided, as the Chamber pointed out in the Frontier Dispute (Burkina FasolRepublic of Mali) case, "at their first summit conference after the creation of the Organization of African Unity", in resolution AGH/Res.16 (1), to adopt the principle of uti possidetis juris (I.C.J. Reports 1986, p. 565, para. 22). At all costs they wanted to avoid laving the boundaries bequeathed by the colonial Powers (however absurd, illogical or badly drawn, and even where they divided ethnic groups or tribes), called into question. This is clear from the fact that, at the conference of African peoples held in Accra in December 1958 (thus less than six years before the Cairo conference), African leaders stated in a resolution on frontiers that: "the artificial barriers and boundaries drawn by imperialists to divide the African peoples to the detriment of Afrcans must be abolished or adjusted . . ." (cited by Zidane Meriboute in La codification de la suc- [p509] cession d'Etats aux traites — Decolonisation, secession, unification, p. 119).

The African nations thus had to choose between two routes. They were well aware of the

evils which could follow from a rejection of the colonial frontiers in terms of the stability of the new States. They chose to opt for the intangibility of those frontiers.

16. That is why both Parties in the present case have paid particular attention to the issue of respect for colonial boundaries. That is a further reason why I feel I should return to that issue.
17. One of Nigeria's counsel stated at the hearing of 6 March 2002 that this is an important case and that the Court's decision "will have serious consequences". He was absolutely right.

Indeed the whole of Africa has been awaiting ihe Court's Judgment, fearing any impugnment of the principle of the "intangibility of colonial frontiers".

18. That is also why I regret that the Court, while not rejecting that principle (far from it) and applying it in practice, did not find it necessary to discuss the issue further, merely stating, in relation to Bakassi in particular, that it "has not found it necessary to pronounce upon the argu-ments of uti possidetis".

19. Respect for colonial boundaries is a principle of exceptional significance in Africa. The strict application of such respect is a prerequisite for peace and security on that continent. The dispute between Cameroon and Nigeria has raised new questions as to the principle's specific scope. It was the Court's duty forcibly to reaffirm the obligation of unconditional respect incumbent upon every African State.

The reason for this was set out by the Court i:i the Frontier Dispute (Burkina FasolRepublic of Mali) case:

"In fact, however, the maintenance of the t3rritorial status quo in Africa is often seen as the wisest course, to preserve what has been achieved by peoples who have struggled for their independence, and to avoid a disruption which would deprive the continent of the gains achieved by much sacrifice. The essential requirement of stability in order to survive, to develop and gradually to consolidate their independence in all fields, has induced African States judiciously to consent to the respecting of colonial frontiers, and to take account of it in the interpretation of the principle of self-determination of peoples." (I.C. J. Reports 1986, p. 567, para. 25.)

4. Nationality and Ethnicity in Africa

20. In relation to the Lake Chad region, the Court encountered the issue of nationality/ethnicity conflicts that are so frequent in Africa.

We should never lose sight of the fact that, in Africa, the majority of countries were attributed their nationality only some 50 years ago.

By contrast, ethnic groups have existed, and have often straddled the [p510] international boundaries between the new States, since time immemorial.

As a result certain authors have written that in Africa, "contrary to what occurred in Europe, the State preceded the Nation", although this may not always be the case.

21. Whatever the truth of the matter, a nationality which has been superimposed on ethnic groupings is, without the intervention of the public authorities, felt much less strongly than ethnicity. It may very well be that two Kanuris (an ethnic group in the Lak; Chad region) of dif-ferent nationalities feel much closer to one another than a Kanuri and a Hausa

(another ethnic group in that region) of the same nationality. Certain serious problems of the African continent ire explicable on this basis. One can thus be easily led astray in good faith, attributing to nationality what is solely a matter of ethnicity. Such a proposition might be applied in the present case to the Lake Chad region and to the arguments of Nigeria in this respect as regards the Nigerian villages.

It was this situation in Africa that impelled Pelissier to write in Les Pay sans du Senegal, on page
23: "National consciousness has not erased the rich diversity of a long past . . . Deeply Senegalese for a few decades only, our regions have been since time immemorial . . . Wolof, Serer, Toucouleur, Manding, Diola, Balant, etc. . . ."

22. Throughout the length of the boundary between Cameroon and Nigeria, it would seem that, for a very long time and notwithstanding the various political statuses enjoyed by these regions in the course of their history (German, British or French possessions, independence), the indigenous populations have settled according to their ethnic affinities and their economic needs in total disregard of territorial boundaries and nationality, and that Governments have subsequently sought to take advantage of the particular situations thus created. This context did not escape the attention of the Court in the present case (see para. 67 of the Judgment). That is why Africa's salvation lies in respect for colonial boundaries, expressed unequivocally and without recourse to subtle distinctions. Later on we will consider the two exceptions to this proposition.

Section 2. Determination of the Course of the Lake and Land Boundary between the Two States

23. The Court, as always in disputes like the present case, has determined the boundary between the two countries with precision, without assuming the role of a demarcation authority (para. 84 of the Judgment).

24. I deliberately use the word "determination" and am employing it in a general sense which encompasses the terms " delimitation", "demarcation" and "indication". I find it particularly appropriate in the present case, with "determine" meaning here: to indica e with precision. The Court uses an equivalent term, in particular in paragraph 85 of its Judg-[p511]ment when it states the purpose of its task as being "ro specify definitively the course of the . . . boundary . . ." (emphasis added by the Court). It nevertheless defines and distinguishes between the two terms delimitation and demarcation, as we shall see later.

1. The Boundary in the Lake Chad Region

A. The instruments applicable

25. When we address the question of whether or not there exists a boundary between Cameroon and Nigeria in Lake Chad, we find ourselves dealing mainly with the 1919 Milner-Simon Declaration. That Declaration was clarified in 1930 by the Thomson-Marchand Declaration, which was confirmed and incorporated in the Henderson-Fleuriau Exchange of Notes between France and Great Britain on 9 January 1931.
Those instruments had never been challenged until quite recently. They describe the boundary in some detail from the "junction of the three old British, French and German boundaries at a point in Lake Chad 13° 05" latitude north and approximately 14° 05" longitude east of Greenwich" to the Atlantic Ocean (Preamble to the Thomson-Marchand Declaration).

26. The Thomson-Marchand Declaration contains 138 paragraphs. Signed on behalf of

Great Britain by the Governor of the Colony and the Protectorates of Nigeria and on behalf of France by the Governor of the French Cameroons, it is, in my view, together with the Notes and the accompanying Moisel map, a legally valid agreement which binds the two Parties in the present case.

27. Nigeria and Cameroon agree on this point. The Court clearly stated that:

"the Thomson-Marchand Declaration, as approved and incorporated in the Henderson-Fleuriau Exchange of Notes, has the status of an international agreement. The Court acknowledges that the Declaration does have some technical imperfections and that certain details remained to be specified. However, it finds that the Declaration provided for a delimitation that was sufficient in general for demarcation." (Para. 50 of the Judgment.)

28. However, as Nigeria had levied a certain lumber of criticisms at the Declaration, it would not be unhelpful to address that one of those criticisms which seems to me to carry the most weight for the Respondent, notwithstanding the clear demonstration by the Court in reaching the conclusion cited above.

B. Legal force and significance of the Thomson-Marchand Declaration

29. For Nigeria, the Exchange of Notes which might give the Thomson-Marchand Declaration the appearance of an agreement in reality did [p512] not fix the boundary between its territory and that of Cameroon. Nigeria based its argument on the following provision of 1 he Notes exchanged by the French and British authorities, in which we read in almost identical terms that:

"The Declaration is not the product of a boundary commission constituted for the purpose of carrying out the provisions of Article 1 of the Mandate, but only the result of a preliminary survey conducted in order to determine more exactly than was done in the Milner-Simon Declaration of 1919 the line ultimately to be followed by the boundary Commission."

30. I would first of all observe that in the "Notes" from the representatives of France and Great Britain, the above-citec passage is followed by this passage:

"nonetheless the Declaration does in substance define the frontier; and ... it is therefore desirable that the agreement embodied therein shall be confirmed by the two Governments in order that the actual delimitation of the boundary may then be entrusted to a boundary commission, appointed for the purpose in accordance with the provisions of Article 1 of the Mandate".

This passage is particularly helpful in shedding ight on the intention of the signatory parties.

31. Nigeria argued that the Thomson-Marchand Declaration represented only an announcement of the procedure to be followed and of a programme to be implemented.

32. Cameroon, on the other hand, accorded it the binding force of a valid legal instrument.

33. It is readily apparent simply from reading paragraph 3 of the two Notes that there was a will on the part of both parties, Great Britain on the one hand, France on the other, to resolve the problem of the boundary of their "possessions", as they were called at that period. Thus in paragraph 3 the word "confirm" appears twice as does the word "agreement". It seems to me not unhelpful to quote paragraph 3, which reads as follows:

"His Majesty's Government note that the French Government by their note under reference confirm, for their part, the agreement embodied in the Declaration; and I have ihe honour in reply to inform Your Excellency hereby that His Majesty's Government similarly confirm this agreement."

There was certainly an agreement, as the Court found.

34. In the course of oral argument, Nigeria eventually recognized that the Declaration was an instrument which both Parties accepted. However, it noted that the Declaration contained defects which required more than a simple process of demarcation. Nigeria enumerated 22 such defects, which the Court examined in detail in paragraphs 86 to 192 of its Judgment. I will not dwell on that. [p513]

35. One of Nigeria's counsel claimed that the texts delimiting the frontier were so badly drafted in a number of places that they could not be regarded as instruments of delimitation, and ihat such delimitation remained to be effected. Nigeria's counsel stated that "the colonial boundary agreements of the period 1906 to 1931 did net produce a conclusive delimitation in the Lake Chad region". Counsel then listed 33 villages in the Lake Chad region which he claimed were Nigerian, with the apparent exception of one, said to be inhabited by Malian nationals.

The Court did not accept his claim.

C. Delimitation — demarcation

(i) General considerations

36. The Parties stressed the distinction between delimitation and demarcation (para. 84 of the Judgment). This debate, looked at from a viewpoint contemporary with the instruments applicable in the present case, was rightly approached by the Court with caution. It gave a clear definition (in the paragraph cited) of delimitation on the one hand and demarcation on the other. But the important thing was to determine the boundary between the two States. The Court did so without overstepping its judicial role, confining itself to interpreting and applying the legal instruments which delimit that boundary.

37. Thus it was for the Court in this case to interpret the Fleuriau-Henderson Exchange of Notes and the Thomson-Tvlarchand Declaration. It performed that task successfully.

38. In my view, when the two authorities representing Great Britain and France speak in their respective Notes of: "the actual delimitation [delimitations proprement dites/", what they mean is what in this case the Parties finally agreed to call "demarcation".

I believe that, on studying the abundance of detail contained in the Thomson-Marchand Declaration, one is bound to reach that conclusion, subject to the defects or "defective delimitations" cited by Nigeria.

39. Nigeria enumerated a number of such defective delimitations, as I have already pointed out. The Court examined each of them and, through reasoning based on law or on findings of fact, reached conclusions that I will not venture to discuss here, even though some of them do not pre-cisely correspond to those which I myself had reached. Once applied on the ground, the consequence of choosing one solution rather than another will, in any event, be relatively minimal.

(ii) The LCBC

40. As regards demarcation, according to Cameroon the Lake Chad Basin Commission (LCBC) was charged with the task of undertaking the demarcation of the boundary, although the Commission itself spoke of delimitation (see Lagos Declaration of 21 June 1971). [p514]

41. According to Nigeria, the LCBC also undertook a true delimitation, which of course, in logical terms, justified the Respondent's position that there had been no prior delimitation. And Nigeria stressed the fact that the demarcation works did not bind it, sine; it had never accepted their conclusions.

42. In its 1998 Judgment on the Preliminary Objections, the Court described the LCBC's task. In this regard, it speaks of demarcation.

43. Created in 1964, the LCBC became involved with the delimitation of the boundary following incidents between Cameroon and Nigeria in 1983 in the Lake Chad region. The States concerned agreed to adopt as working documents dealing with the "delimitatioa" of the boundaries in Lake Chad "various bilateral treaties and agreements concluded between Germany and Great Britain between 1906 and 1913". The experts proposed that the boundary as thus delimited "be demarcated".

Thus the LCBC's task was one of demarcation as the Court found (I.C.J. Reports 1998, pp. 305, 307 and 308, paras 65 and 70) in its Judgment on Nigeria's preliminary objections. This is reiterated by the Court in paragraph 55 of the present Judgment, where it indicates: "The Court observes that the LCBC had engaged for seven years in a technical exercise of demarcation, on the basis of instruments that were agreed to be the instruments delimiting the frontier in Lake Chad."

D. Cartography

44. In the present case, there has been an outright battle of maps.

The old maps, in particular those used in the preparation of the Thomson-Marchand Declaration (especially the Moisel map), were heavily criticized by Nigeria. One of its counsel charged that they contained approximations and even errors, as well as gaps and contradictions.

45. Naturally, maps dating from 1919, 1930 ar 1931 will inevitably reflect the weaknesses of the contemporary techniques employed in their preparation. But that is not a sufficient reason to reject en bloc the information which they provide. Moreover, we should not forget what the Court has said on maps in general:

"maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. [p515]

Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to

establish or reconstitute the real facts." (Frontier Dispute (Burkina FasolRepublic of Mali) I.C.J. Reports 1986, p. 582, para. 54; see also Kasikilil Sedudu Island (Botswana!Namibia), I.C.J. Reports 1999 (II), p. 1098, para. 84.)

However, in the present case, the Anglo-German Agreement of 1913 does accord a certain importance to the maps (see final provisions of that Agreement).

E. Effectivites and legal title

46. The debate in the present case largely focused on the opposition between legal title and effectivites.

(i) General considerations

47. In order to make good the alleged absence cf delimitation, Nigeria invoked effectivites — effectivites which confirmed its historic title. To illustrate its argument, it cited the occupation of Darak and the surrounding villages by Nigerians, together with a whole series of other facts which, according to Nigeria, clearly demonstrated the exercise of its sovereignty in the part of the Lake Chad area which it claimed. Nigeria even contended that there had been acquiescence on the part of Cameroon.

48. The Court addresses this issue at length in paragraphs 64 et seq. of its Judgment, stating clearly that: "any Nigerian effectivites are indeed to be evaluated for their legal consequences as acts contra legem" (para. 64 of the Judgment).

The Court moreover rejected Nigeria's argument as to alleged acquiescence on the part of Cameroon.

49. I can only approve such conclusions; in paiticular, the absence of any acquiescence by Cameroon in the present case is quite clear. Acquiescence to an extension of sovereignty over a portion of the national territory of a State requires a long period and a clear and unequivocal voluntary acceptance, which is not the situation in the present case. The circumstances in the Temple of Preah Vihear and El Salvador!Honduras cases were different from those in the Cameroon \. Nigeria case.

50. Neither during the colonial period, nor during the periods of Mandate and Trusteeship, nor since independence, his there occurred any consent by Cameroon which would enable those areas to be considered as forming part of Nigeria.

51. Evidence of the absence of acquiescence is indeed provided by the [p516] very existence of the LCBC, of its work and of the way in which the two Parties continuously collaborated in the exercise of the functions conferred upon it by the countries involved. In this regard, it makes no difference that Nigeria subsequently refused to associate itself with the LCBC's conclusions.

52. In any event, the Court rightly affirmed tha: where there is a legal title (and in this case there is a legal title), that litle must prevail over effectivites. The Chamber in the Frontier Dispute 'Burkina FasolRepublic of Mali) case forcibly restated this in regard to uti possidetis juris.

53. In this connection, note should be taken of the very interesting passages of the Court's Judgment (paras. 65 et seq.) in which it addresses the highly controversial theory of the "historical consolidation of title", observing that:

"nothing in the Fisheries Judgment suggests that the 'historical consolidation' referred to, in connection with the external boundaries of the territorial sea, allows land occupation to prevail over an established treaty title".

54. I consider it unnecessary to add to the length of this opinion by enlarging on what the Chamber said in the Frontier Dispute (Burkina Fasol Republic of Mali) case. I agree with the COL rt that the effectivites in the present case cannot prevail over legal title. In this regard, the Chamber took up a position which permits of no ambiguity:

"Where the act corresponds exactly to law, where effective administration is additional to the uti possidetis juris, the only role of effectivite is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title." (I.C.J. Reports 1986, pp. 586 and 587, para. 63.)

55. The Court has adopted the same position in the present case.

In my view, as regards frontier disputes, the actual continuous and peaceful display of State functions (which is not the case here) can serve as the sound and natural criterion of territorial sovereignty.
That principle only holds good, however, on ccndition that "no conventional line of sufficient topographical precision exists or if there are gaps in the frontiers otherwise established, or if a conventional line leaves room for doubt" (Reports of International Arbitral Awards (RIAA), Vol. II, p. 840; Revue generate de droit international public, pp. 165-166, cited in I.C.J. Reports 1999 (II), separate opinior of Judge Kooijmans, p. 1146, para. 14). [p517]

(ii) The Nigerian villages in Lake Chad

56. I now come to the question of the so-called "Nigerian" villages in the Lake Chad region. I will not go back over what counsel for Cameroon have already said about these villages, in particular their relatively recent character, moreover emphasized by the Court in the present Judg-ment (para. 65), and their establishment following the retreat of the shores of Lake Chad.

57. 1 would simply mention an issue, already referred to in passing in my general considerations, on which the Parties did not enlarge, namely that of the nationality of villagers settled beside, o" straddling, an African boundary. This is a phenomenon that we find all over the continent. In settling under such circumstances, the villagers in question have no sense at all of doing so in pursuance of a national identity, with which efforts have only been made to imbue them for just over 10 years, but because it is a custom in Africa to ignore linear boundaries, which are a foreign importation, especially when men and women of the same ethnic origin live on the other side. Moreover, as counsel for Nigeria pointed out in oral argument, "the villages move with the water '.

This is in all likelihood what has occurred in the case of the Nigerian villages along the shore of Lake Chad, whose surface has varied considerably over the years in the form of a marked recession of the waters (para. 58 of the Judgment).

58. By the same token, we find in Gambia v llages of Wolofs from Senegal and vice versa. Often what counts is ethnicity and not nationality, which is a recent notion in Africa. One of Nigeria's counsel recognized that among the Lake Chad villages there is one said to be Malian — a point which speaks for itself.

59. In the case concerning KasikililSeduau Island (Botswana! Namibia), the Court had to deal with the problem of the Masubia, who had settled on the island in dispute, and of whcm the Court said "the activities of the Masubia on the Island were an independent issue from that of title to the Island" (I.C.J. Reports 1999 (II), p. 1106, para. 98). The existence of a colony of Nigerians in Lake Chad, to the east of the border, has no bearing on the sovereignty of the territories where they have been living. That is also a separate issue to that of the title to the territory where those Nigerians are living.

F. Determination of the mouth of the Ebeji

60. The course of the boundary in Lake Chad raised a problem which Nigeria opportunely highlighted. This problem represented an example of the work of interpretation which Nigeria invited the Court to carry out and which Cameroon accepted that it should do.

61. According to the Thomson-Marchand Declaration, the lake boundary starts from a tripoint with co-ordinates 13° 05" latitude north and approximately 14° 05" longitude east. [p518]

It is also stated that the boundary runs in a stiaight line.

62. The problem arises in regard to the endpoint of that straight line. The Declaration places this at the "mouth of the Ebeji" without indicating the exact co-ordinates. Unfortunately, this river now flows into Lake Chad down two channels and not from a single mouth. Each Party endeavoured to show that the mouth contemplated by the applicable instrument now takes or should take the form of the channel that supported its respective arguments. Cameroon opted for the western channel and Nigeria for the eastern one. The LCBC had found a compromise solution which Nigeria did not accept.

63. The Court had to settle the problem thus posed and it did so.

The Court had to ascertain the intentions of the parties to the Declaration and at the same time seek to place itself at the time when that Declaration was signed. Such a solution was not totally adapted to the present case. Eventually, based on the relevant factors, the Court found itself with three choices:

— to choose one of the two channels,
— to adopt the proposal of the LCBC, or
— to interpret the Declaration itself.

The Court favoured the latter solution. For my part, I would certainly agree with that.

64. Addressing the concerns of Nigeria, which had spoken of the fate and conduct of the "Nigerian" inhabitants if Ihe territories which it claimed were to be recognized as belonging to Cameroon, the Court acknowledged the undertaking by the Agent of Cameroon on behalf of his country that the Nigerians remaining in Cameroon would continue to live there under the same conditions as other persons of other nationalities, just as occurs in other parts of Africa and indeed elsewhere. By doing so the Court gave legal weight to this unilateral undertaking invoked in the judicial debate. It was entitled to do so. It thus recorded that undertaking as follows in the dispositif of the Judgment:

"Takes note of the commitment undertaken by the Republic of Cameroon at the hearings that, 'faithful to ts traditional policy of hospitality and tolerance', it 'will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area'" (para.

V (C)).

On this point we can observe that what is true for Lake Chad is equally so for Bakassi.

2. Bakassi

65. Nigeria's essential argument on the issue of Bakassi was that Great Britain could not cede to Germany what did not belong to it. And Nigeria then enlarged upon the theory of the existence in this region of [p519] Kings and Chiefs whose territory could not be disposed of without their consent. Nigeria recognized that these Kings and Chiefs inhabited the territory of an "acephalous federation" rather than any form of regional political subdivision. It nonetheless accorded them international personality and relied for this purpose on a colonial treat} of 1884 (see C below) and on a number of other arguments, including the nemo dat quod non habet principle, which the Court examined in detail and to which I will not return.

66. Nigeria's argument against the 1913 Franco-German Agreement further relied on its alleged non-opposability; but any such non-oppos-ability would since have been made good by the conduct of the parties, following that of the colonial Powers. But I shall return later to the matter of the Kings and Chiefs of Old Calabar (see D below).

Moreover, on the subject of whether Bakassi bei onged to one Party or the other, a number of key questions were raised that cannot be addressed, in my view, without first considering the validity of colonial treaties.

A. Colonial treaties

(i) The validity of colonial treaties in general

67. Various treaties were signed in Africa between the colonial Powers and the "kinglets" of the time, as they were called in the history books of school children of my generation, not without a certain contempt which numbers of Africans have remarked upon and deplored. In the Bakassi Peninsula alone, the Agent of Nigeria counted 17 such treaties, on one of which he focused as being a treaty under international law. This was the Treaty of 1884 between Great Britain and the Kings and Chiefs of Old Calabar. Such treaties were concluded by the dozen in the course of the colonization from which Africa has so greatly suffered. This historical reality is emphasized by the Court in paragraph 203 of its Judgment. Their purpose was simply to serve the "dismemberment" decreed against Africa at the Berlin Conference or earlier.

68. In sub-Saharan Africa, the sole purpose of the protectorates which resulted from the colonial treaties was to create a system of indirect administration. They could be distinguished frorr treaties of protection which were international in character. The kings and chiefs in the admin-istrative divisions formed by the villages, districts and provinces took over the duties of the colonizers. Such situations were not unusual and could hardly be said to attribute any real personal power to these local authorities. Thus in Senegal such kings and chiefs eollected taxes, administered justice, took censuses, etc. They still exist ir certain countries with or without power. In Senegal a statute gave them their quietus.

69. Such "colonial treaties" protected the inhabitants and the territory where they lived against other colonial Powers, basically, and quite simply for the benefit of the European signatory. In the present case the [p520]treaties involved were indeed colonial protectorate treaties or treaties of protection.

70. The Court described them as having been 'entered into not with States, but rather with important indigenous ruleis exercising local rule over identifiable areas of territory" (para. 205 of the Judgment).

This is a disguised way of saying that they were "colonial treaties".

71. What view should be taken of colonial treaties?

Thus the agreements or treaties signed in sub-Saharan Africa before or after the Berlin Conference by the colonizing States with the numerous "kinglets" (as they were called) were simply intended to warn the other colonial Powers that specific parts of the black continent were now a possession falling within the zone of influence of a given European State. Thus, the General Act of the Berlin Conference (Chap. VI, Art. 34) provides: "The Power which henceforth shall take possession of a territory upon the coast of the African continent situated outside of its present possessions . . . shall accompany the respective Ect with a notification addressed to the other . . . Powers ..."

That is true not only of Nigeria and Cameroon but of everywhere else in Africa. Such treaties of protection of the kino cited by counsel for Nigeria were signed by the dozen. The Court itself has pointed this out in its Judgment. They had no validity in international law. To accord them such validity now would be to open a Pandora's box. The chiefs themselves had no precise idea of the territorial boundaries of the areas which they governed.

72. The problem here is not to make a value jucgment today concerning those rules and practices but rather, in the context of intertemporal law, to take note of them. The Court does not have the authority to revise international law. It is not entitled to assess the practices of past times, still less to rely on such assessment in support of a decision. The Court should simply, where necessary, note the characteristics and rules of the various phases in the development of international law in order to interpret it and apply it to the facts of the period in question.

73. It should be recalled that the notion of a liiear frontier is not an African one. It was imported into the continent by the colonial Powers. That does not mean to say that human groupings in pre-colonial Africa placed no reliance on boundaries. But these were natural: rivers, mountains, forests, etc. The black African concept was one of tribes and ethnic groups with their chiefs, "wherever they [were] to be found", as Nigeria's Agent put it. The power of the chief was exercised over subjects and to some extent over villages or townships. When historians speak of African kingdoms or empires what is very often actually meant is groupings of settlements whose inhabitants acknowledged the suzerainty of a particular king or chief.

74. Moreover, the colonial treaties in question were rarely signed by the duly authorized representatives of the colonial State. Often, those who signed them were explorers, merchants, navigators, sometimes junior military officers. But these treaties which they signed enabled the [p521] colonial State whose nationals they were to dispose of the areas conquered, explored or simply visited pending their annexation pure and simple. This word "annexation", with its ambiguous meaning given the distance from the countries in question, was a convenient way of reflecting the colonizers' right to dispose of the territory concerned, the territory in their "possession" (to employ the term found in the General Act of the Berlin Conference). It is on this basis that Professor Pierre-François Gonidec states in the Encyclopédie juridique de l'Afrique on page 24 of Volume II : "the annexed territories became an integral part of the territory of the colonial State. In consequence, the latter had a free right of disposal over them and could cede them to foreign States according to its political needs". And Gonidec continues by giving an example: "thus we

have the 1911 Agreement involving a swap between Germany and France in Equatorial Africa and Morocco".

This statement by one of the greatest experts in African law applies very well to our case. Gonidec adds, moreover: "there was only one Government left, that of the métropole, subject to some form of delegation to local representatives of the central Power or to the use of traditional chiefs as auxiliaries of the colonial Power".

It was this situation that Nigeria invoked in support of its position. The system of indirect rule, for which there were many reasons, was employed everywhere in Africa.

75. Finally, I cannot resist the temptation to cite one more passage from Gonidec:

"In international terms, the annexed countries lost all personality. In truth, they were considered never to have been legal persons (since they were not recognized as having the status of States). However, those carrying out colonial conquest agreed to enter into agreements called 'treaties' with African authorities . . . and this implied that African countries did have international personality. Subsequently, however, some legal experts maintained that in reality these were not genuine treaties but mere agreements under internal law, basing this argument on the fact that they had not been concluded between independent States. This enabled those pseudo-protectorates to be easily annexed (generally by men; decree)." (Emphasis added.)

Colonial delimitation treaties were subsequently rehabilitated.

(ii) Specific value of colonial delimitation treaties

76. I wish to return once more to the question of the respect for colonial boundaries.

77. As has already been said, the countries of Africa, meeting in Cairo in 1964, adopted resolution AGH/Res.16 (1), under which: "all Member States [of the Organization of African Unity] pledge themselves to respect the frontiers existing on their achievement of national independence". [p522]

78. The Parties agreed that this principle, which they called uti possidetis juris, was applicable to the present case. The Court did not see fit to have recourse to it. I regret that.

This principle clearly means that Nigeria could lot challenge today a boundary which existed for 47 years before its independence and which Nigeria itself unequivocally accepted as the boundary between its territory and that of Cameroon from 1960 to 1977.

If one were not to accept this, what would be the purpose of the principle of respect for colonial boundaries? If we refer to paragraphs 19 to 26 of the Court's Judgment in the Frontier Dispute case, we can clearly see the importance attached by Africa, and by the Court too, to the principle.

The Chamber stated:

"Although there is no need, for the purposes of the present case, to show that this is a firmly established principie of international law where decolonization is concerned, the Chamber nonetheless wishes to emphasize its general scope, in view of its exceptional importance for the African continent and for the two Parties" {I.C.J. Reports 1986, p. 565, para. 20);

and continued:

"It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power." (Ibid.)

79. When African States speak of uti possidetis juris, they employ the phrase "intangibility of colonial frontiers". These words best reflect their common view. Of course it would be unreasonable to conclude from this that frontiers are immutable. They can certainly be modified, not by invoking their technical defects but only in accordance with the rules of international law — in other words, by mutual agreement or by judicial decisions. In the latter case, the forum seised of the matter must confine itself to interpreting the instruments determining the boundary and must not rewrite them. In other words, it may remedy material defects but not alleged legal errors. Two cases illustrate this point, '"he case of the mouth of the Ebeji (a material defect) and the case of the "Nigerian" villages of Lake Chad (an alleged legal error). This second case would involve a legal rectification. The same applies to the historical consolidation invoked by Nigeria in respect of Bakassi. The Court does not have a power of rectification. A court cannot change a clear provision. That would exceed its power.

80. My general conclusion on the dispute is the same as that of the [p523] Court: there is indeed a boundary between Nigeria and Cameroon. That boundary derives from the following instruments:

— the Thomson-Marchand Declaration,
— the 1913 Agreements,
— the Order in Council of 1946.

Any other decision would have represented an attempt by the Court to change the law so as to make it coincide with what it regarded as being normal and fair and consistent with the reality on the ground. That approach is possible in intellectual and political terms. But the Court states the law. It has a jurisprudence, which it is bound to respect and which it is not entitled to change save in case of absolute necessity and on the basis of sound legal reasoning. That is not the case here.

81. In this respect, it will be recalled that, in relation to an alleged "clash" of new declarations of acceptance of the compulsory jurisdiction of the Court with declarations already existing, Nigeria was perfectly well aware of the Court's established jurisprudence on this question; but what Nigeria wanted was in essence that the Court sho \\d change what actually existed. The Court did not agree to follow that route. It remained firm to its jurisprudence. The Court's mission is to contribute to the establishment of peace by applying the law. That law must be applied in all cases.

82. Returning to my general conclusion in the present dispute, it should be noted that in the Encyclopédie juridique de l'Afrique, in Volume Il dealing with "international law and interna ional relations", there is a chapter devoted to "national territory". That chapter was written by Professor Chemillier-Gendreau and Mr. Dominique Rosenberg. In paragraph (2), entitled "the case-by-case situation between African States", there is a subheading "C" entitled "the boundaries between Cameroon and Nigeria".

I should like to quote what the Encyclopaedia has to say:

"On 12 July 1884, the territories of Cameroon became a German Protectorate and that was notified to the other Powers on 15 October 1884. On 5 June 1885 a British Protectorate, initially called the Oil Rivers Protectorate and then the Niger Coast Protectorate, was established to the west of that of Cameroon . . . [These two posses-sions] were definitively delimited by the Agreements of 11 March and 12 April 1913." (Encyclopédie juridique de l'Afrique, p. 76.)

Later in the same text we read the following:

"Thus the boundary runs from Lake Chad up to the River Gamana on the basis of the above-mentioned agreements of 1931, with the subsequent transverse section of the boundary from the River Gamana to Mount Kombon being a British colonial boundary which became the international boundary aier the plebiscites of 1961." (Ibid, p. 77.)
[p524]

The authors then summarized the situation as follows: "Thus from the River Gamana to the Cross River, then to the sea, the boundary is that laid down by the Anglo-German Agreements of 11 March 1913." (Encyclopédie juridique de l'Afrique, p. 76.)

83. This is the lake and land boundary as derived from the law rather than from faits accomplis. The conclusion reached by the Court confirms this. As it says, "Bakassi is Cameroonian". And this is indeed what was said by one of Africa's greatest jurists — who also happens to be Nigerian. The letter produced to the Court in which he states that Bakassi belongs to Cameroon is a fact which the Court had in its possession, even though it refrained from relying on it.

Having discussed the colonial treaties, I will tarn now to two issues related to such treaties: the 1884 Treaty and the question of the Kings and Chiefs of Old Calabar.

B. Legal force of the 1884 Treaty

84. The Treaty of Protection of 1884 between Great Britain and the Kings and Chiefs of Old Calabar resembles a great many other agreements establishing a colonial protectorate of the kind described below by Sibert. Its legal force is the same, as can be seen from a reading of the extract provided by counsel for Nigeria.

85. Great Britain was not bound, in terms of the contemporary practice, by the adage nemo dat quod non habet, for the good reason that the territory whose boundaries it had agreed to determine jointly with another colonial Power had been "annexed" by it. How could it have been required to be bound by this adage, given that Gemany itself was under no obligation to comply with the terms of a "treaty" of whose very existence it may well have been entirely unaware. In any event, Germany was protected by the well-known rule regarding ihe relative effect of treaties (res inter alios acta).

86. The Parties did not place any emphasis or the treatment of this question in the Arbitral Award concerning the Island of Palmas (non-opposability to the Dutch Government of the Spanish-American Peace Treaty of 10 December 1898 ceding to the United States the Philippines and its dependencies, including the Island of Palmas, occupied since 1677 by the Netherlands (RIAA, Vol. V, pp. 471-473)), despite the fact that the Award was quoted in extenso by counsel for Nigeria.

87. The Court could not simply place a parentaesis around that part of the 1913 Agreement which relates to Bakassi, on the sole ground that the "City States belonging to the Kings and Chiefs of Old Calabar" were covered by it.

It followed that Nigeria's argument based on "historical consolidation of title" was bound to fail here, as it did in the Lake Chad region.

Thus it was to the instruments of 1913 that the Court had to look in order to determine the course of the boundary in he present case, interpreting or clarifying them as required. [p525]

88. Moreover, as I have already indicated, I believe we should avoid involving ourselves too much in the semantic controversy as between "delimitation" and "demarcation". The essential I es in what the Parties asked of the Court in pursuance of its task of adjudication : to determine the boundary between the two States concerned, in accordance with its Statute.

C. The question of the Kings and Chiefs of Old Calabar

89. There were a certain number of us, in particular before the accession of African States to independence, who fought against the doctrinal notions of "terra nullius" or "absence of sovereignty" which had served as a pretext for colonization. Our struggle was a political one. African historians came to the rescue of the politicians in order to restore the dignity of the African kings and chiefs and to re-establish the truth about the past.

90. African kings and chiefs were indeed the lawful representatives of their subjects. However "they governed not the land but the people" (Encyclopédie juridique de l'Afrique, Vol. 2, pp 68-69). Counsel for Nigeria stated as much.

91. Before the acts of independence of the 1960s (and still today) it was and is necessary to correct the mistakes of a betrayal of history. African leaders were very well aware of this when their countries acceded to independence; they urged it. But in 1964 they preferred to align them-selves not with historical truth but with the law, in decreeing that colonial boundaries should not be touched. They thus closed the road to any secessionist notions. That is why, when Biafra defied the principle in 1967, they united behind Nigeria in order to fight the secessionists.

92. What of the colonial protectorates? According to Max Huber (Island of Palmas case):

"it is not an agreement between equals; it is rather a form of internal organisation of a colonial territory, on the basis of autonomy for the natives. . . And thus suzerainty over the native State becomes the basis of territorial sovereignty as towards other members of the community of nations" (RIAA, Vol. II, p. 858; Revue générale de droit international public, Vol. XLII, 1935, p. 187).

Once again, it is not a matter of casting a value judgment on rules that prevailed in the late nineteenth and early twentieth century, but of noting with due objectivity what they meant at the time. Colonial protectorates do not generally meet the criteria of statehood (see Bengt Brons in International Law — Achievements and Prospects, Vol. 1, p. 54).

Colonial protectorates are described by Marcel Sibert as follows: "a Power sought to extend its exclusive right of action over 'non-civilized' countries . . . which it did not wish to annex immediately as colonies" (Traité de droit international public, Vol. I, p. 157, para. 111).

One is entitled to disagree with such a practice — as I do personally — and above all with the terms used. [p526]

93. The fact remains that this was legally true o' entire territories and even more so of townships under the influence of k ings or chiefs, as well as of other rules of which we disapprove today. This form of protection had a purely personal value. The individual protected was the chief, even if, through the misuse of language, the word "territory" was to be found in the agreements. He was protected against his local rivals, against slavery and against other disasters and above all his territory was protected, and carefully delimited (sometimes on the basis of gunshot range as in Gambia), against other colonizers. When the General Act of the Berlin Conference speaks of the "possessions" of the "signatory Powers", it makes no distinction between those Powers which had acquired possessions and those which had taken on protectorates.

The foregoing remarks apply to the Kings and Chiefs of Old Calabar.

The questions posed by Judge Kooijmans in regard to these Kings and Chiefs produced replies which were ambiguous, not to say embarrassed, and which confirm the above remarks, which have had a decisive effect on the identification of the point where the boundary reaches the sea.

D. Terminal point of the boundary on the coast

94. The land boundary terminates at the sea.

It is surprising that Nigeria should have located this terminal point on the Rio del Rey.

95. Cameroon pointed out that Nigeria sought to rely on prior negotiations in order to make the Akwayafe disappear from the definition of the boundary (despite more recent negotiations) and to replace it with the Rio del Rey. But Nigeria could not do otherwise as long as it sought to shelter behind the fragile screen of the Kings and Chiefs of Old Calabar in order to protect its position in regard to Bakassi. It fortified this screen with the notion of "historical consolidation", which could have no effect on the legal title of Cameroon.

96. The boundary is clearly defined by the 1913 Agreements (the last instruments accepted by the Parties and concluded by their colonial predecessors). Both Parties agreed on this, if we leave out of account the matter of the Kings and Chiefs of Old Calabar. Following the thalweg of the River Akwayafe, it terminates at the midpoint of a line joining Bakassi Point to King Point and it is from here that the maritime delimitation must start.

97. This is a reply to Nigeria's eighth preliminary objection, which moreover lost much of its force once it was accepted that the boundary had been clearly delimited and that its endpoint on the coast was indeed that indicated by the 1913 Agreement. This objection was also weakened as regards its second limb by the fact that Equatorial Guinea intervened in the case, even if it did so, as was made clear by the Court, "without being a party", as it was perfectly entitled to do. [p527]

98. It is true that Nigeria contended that the Yaounde II and Maroua Agreements did not indicate the starting point of the dividing line between the two States' maritime areas as being situated at the "mouth" of the Akwayafe.

99. But this argument is contradicted by the negotiations between the two countries, which referred to the 1913 Agreement, and by British Admiralty Chart No. 3433, which served as the oasis for those Agreements, and on which the Heads of State of Cameroon and Nigeria marked a line and appended their signatures.

Section 3. The Maritime Boundary

100. As regards the maritime boundary, the Court had to address the request by Cameroon "for the tracing of a precise line of maritime delimitation". In support of that request, Cameroon had produced an equitable line.

101. The most important issue in regard to the determination of the maritime boundary concerned the Maroua Declaration, whose validity was challenged by Nigeria, its importance being emphasized by the Court in the following terrns:

"If the Maroua Declaration represents an international agreement binding on both parties, it necessarily follows that the line contained in the Yaounde II Declaration, including the co-ordinates as agreed at the June 1971 meeting of the Joint Boundary Commission, is also binding on them." (Para. 262 of the Judgment.)

1. The Maroua Declaration

A. Identification of the problem

102. As regards the question of whether or not negotiations had taken place, and as the Court had already pointed out when examining [Nigeria's] seventh preliminary objection,

"it ha[d] not been seised on the basis of Article 36, paragraph 1, of the Statute, and, in pursuance of it, in accordance with Part XV of the United Nations Convention on the Law of the Sea relating to the settlement of disputes arising between the parties to the Convention with respect to its interpretation or application" (I.C.J. Reports 1998, pp. 321-322, para. 109).

The Court explained that

"[i]t ha[d] been seised on the basis of declarations made under Article 36, paragraph 2, of the Statute, which declarations do not contain any condition relating to prior negotiations to be conducted within a reasonable time period" (ibid., p. 322, para. 109). [p528]

The Court did nonetheless state that: "Cameroon and Nigeria entered into negotiations with a view to determining the whole of the maritime boundary" (I.C.J. Reports 1998, p. 322, para. 110) and that "[i]t was during these negotiations that the Maroua Declaration relating to the course of the maritime boundary up to point G was drawn up" (ibid.).

We may conclude from these passages that there were indeed negotiations between the two Parties with an undetermined geographical objective and that these negotiations resulted, up to point G, in an agreement known as the "Maroua Declaration".

That Declaration was regarded by Cameroon as legally binding on the two Parties, whereas Nigeria took the contrary view.

103. It should be recalled that Nigeria had raised an eighth preliminary objection. The Court joined that objection to the merits. Before dealing with the maritime delimitation, it was necessary to settle the incidental point raised by this eighth Nigerian objection. I have already stated the Court's finding above in respect of the first limb of that objection.

104. Nigeria also argued that the question of the maritime delimitation between its territory and that of Cameroon necessarily affected the rights and interests of third States and that

Cameroon's claim in this regard was accordingly inadmissible.

105. The Court had stated in its 1998 Judgment that this eighth objection "d[id] not have, in the circumstances of the case an exclusively preliminary character" (I.C.J. Reports 1998, p. 326, operative para. 118 (2)) and took the view that it was thus required to decide how far beyond point G it could extend the line separating the two Parties' respective maritime areas.

In very clear terms, the Court stated (para. 292 of the Judgment) and repeated that "it [could] take no decision that might affect rights of Equatorial Guinea, which [was] not a party to the proceedings" (para. 307 of the Judgment). On this point I will make (infra, para. 136) an observa-tion that I consider to be logical and fair.

106. The Court thus had to determine whether or not there was an existing delimitation as far as point G. I think it is unnecessary for me to emphasize the need to effect this delimitation without disassociating it from the land delimitation, that is to say, to determine the starting point on the coast for the maritime delimitation (see Nigeria's eighth preliminary objection). The answer is obvious.

107. Nigeria insisted that this delimitation must take place after the determination of its starting point on the coast. It subsequently moved this point to the east to the Rio del Rey. But for over five years Nigeria negotiated on the basis of a different point, situated further to the west, on the River Akwayafe.

108. In any event, the incidental issue was settled. The Court held that the starting point for the maritime delimitation was the terminal point of [p529] the 1913 boundary on the line joining Bakassi Point and King Point. This conclusion follows from what the Court decided as to the validity of the 1913 Agreement.

109. From that starting point as far as point 12, he agreement between the Heads of States which gave rise to the so-called "compromise line" (Yaounde II Agreement) had to be treated as having been definitively accepted by the Parties. The compromise line was extended by a line as far as point G. The Court regarded the line starting from the coast and ending at point G as a legally established maritime delimitation.

From point 12 to point G, the delimitation is governed by a decision known as the "Maroua Declaration". That decision, as I have already said, was regarded by Cameroon as an agreement binding on both Parties, whereas Nigeria took the contrary view.

110. The Court settled the issue as to whether the Maroua Declaration of 1 June 1975 was binding on both Cameroon and Nigeria. In its view:
"the Maroua Declaration constitutes an international agreement concluded between States in written form and tracing a boundary; it is thus governed by international law and constitutes a treaty in the sense of the Vienna Convention on the Law of Treaties (see Art. 2, para. 1), to which Nigeria has been a party since 1969 and Cameroon since 1991, and which in any case reflects customary international law in this respect" (para. 263 of the Judgment).

111. This conclusion, as pointed out earlier, applies ipso jure to the Yaounde II Declaration.

112. Nigeria considered that the Maroua Declaration was tainted by two defects and that it was not bound by it. It seems to me to be helpful to return to this point.

113. First, Nigeria contended that President Gowon, who signed the Agreement, could not

bind his country without the consent of the "Supreme Military Council".

114. Secondly, Nigeria contended that the alleged agreement had been neither ratified nor published.

I should like to address first the issue of ratification.

B. The question of the ratification of the Maroua Declaration

115. Nigeria took the view that the internal legal requirements in regard to the ratification of the Declaration were not satisfied.

116. From a purely formal point of view, one is entitled to discuss, as Nigeria did, the issue of whether or not the Maroua Declaration is a treaty in the strict sense of the term. The Court settled that point.

117. But is it necessary for a declaration of the type in question to be a treaty in the formal sense of the term in order to produce effects in the circumstances of the present case? The Court has always answered such a [p530] question in the negative. If the Maroua Declaration were to be disregarded, that would be a serious precedent, which would certainly undermine the legal security which should govern reiations between States, in particular where those relations are established at the highest levels of State authority. Under Article 7, paragraph 2 (a), of the Vienna Convention on the Law of Treaties, Heads of State are included among those State authorities who are entitled to represent their countries "without having to produce full powers".

118. That is why I wholeheartedly agree with the Court's decision that "the Maroua Declaration, as well as the Yaounde II Declaration, have to be considered as binding and as establishing a legal obligation on Nigeria" (para. 268 of the Judgment) as a result of the cii cumstances in which it was adopted.

119. Many writers consider generally, without even relying on a category of "agreements in simplified form", as one of Cameroon's counsel did, that the ratification of treaties is not always necessary. In the present case the Court, considering that "[b]oth customary international law and the Vienna Convention on the Law of Treaties leave it completely up to States which procedure they want to follow", observed that here the two Heads of State had come to an agreement and further concluded that the "Declaration entered into force immediately upon its signature" (para. 264 of the Judgment). A prime concern of writers, and with reason, is the question of legal security in international relations. In this regard Marcel Sibert writes in his Traite de droit international public that:

"in the interest of morality and sincerity in international relations, in the interest also of the effectiveness that one is entitled to expect of States' treaty-making activities, it is desirable that the Law of Nations should continue to evolve in regard to ratification and finally to abandon its extreme positions and to adopt the doctrine of the 'juste milieu' that we have felt entitled to advocate" (Vol. II, p. 230, para. 904).

120. And what Sibert specifically recommends is to apply Nicolas Poli-tis's proposition (quoted by Sibert) that: "under the new international order ... a tendency seems to be developing no longer to regard as absolute and unconditional the right to refuse to ratify" {op. cit, p. 230).

C. The question of the powers of the Nigerian signatory of the Maroua Declaration

121. The second defect alleged by Nigeria against the Maroua Declaration is that President Gowon had no power to sign it, which amounts to saying that the Agreement was void.

122. In the event of conflict between international law and domestic law, it is the former which must prevail. And this is what the Vienna [p531] Convention on the Law of Treaties does (see Sir Robert Jennings, in International Law — Achievements and Prospects, pp. 65 and 166).

123. According to Article 27 of the Convention, "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

This provision continues as follows: "this rule is without prejudice to Article 46".

Counsel for Cameroon accordingly drew attention to the pertinence of Article 46 of the Convention in the present case. He recalled that:

" 1. A State may not invoke the fact that is consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

Counsel drew attention to the fact that any violation capable of invalidating the competence of President Gowon at the time must be "manifest", as Article 46, paragraph 2, cited above provides.

Counsel, after discussing the point at length, reached the conclusion that President Gowon did indeed have the power to bind his country.

He added that, in any event, the alleged violation of the provision of Nigeria's internal law by President Gowon (if there was one) was far from being "manifest", given all the constitutional legislative or administrative changes that had taken place in regard to the powers of the Head of the Nigerian State, particularly between 1966 and 1978. He emphasized that the complexity of the legislation in question was such that it was unreasonable to expect President Ahidjo, co-signatory of the Agreement, to be aware that his interlocutor, in signing the Maroua Declaration and the final communique which accompanied it, was manifestly violating a provision of internal Nigerian law.

124. As the Court noted: "there is no general legal obligation for States to keep themselves informed of legislative and constitutional developments in other States which are or may become important for the international relations of these States" (para. 266 of the Judgment).

125. It follows from this that, without even addressing the issue of ratification, the Court was entitled to hold that the Maroua Declaration represented an obligation undertaken by both Parties and was accordingly opposable to both of them. It duly did so, adding that: [p532]

"while in international practice a two-step procedure consisting of signature and ratification is frequently provided for in provisions regarding entry into force of a treaty, there are also cases where a treaty enters into force immediately upon signature. Both customary international law and the Vienna Convention on the Law of Treaties leave it

completely up to States which procedure they want to follow" (para. 264 of the Judgment).

126. In the Court's view, as we have already seen, what applies in regard to the Maroua Declaration applies equally mutatis mutandis to the Yaounde II Declaration.

2. The Maritime Delimitation beyond Point G

A. The Court's jurisprudence

127. As regards the maritime delimitation beyond point G, each of the Parties expressed itself at length, as did Equatorial Guinea as intervener. Cameroon even proposed a line separating the mai itime areas of the two Parties.

128. Nigeria and Equatorial Guinea criticized that line for various reasons.

129. The Court applied the well-established principle that it has developed over the years.

130. As regards maritime delimitation for States with adjacent or opposing coasts, "the legal rule is now clear". This statement comes from the speech given by the President of this Court on 31 October 2001 to the Sixth Committee of the United Nations General Assembly. The rule, which has emerged after a long period of maturation, applies both to the territorial sea and to the continental shelf and the exclusive economic zone.

131. The Parties in the present case wanted the boundaries of their respective sovereignty or sovereign rights to be determined by a single line.

Of course, as the President pointed out, "each case nonetheless remains an individual one, in which the different circumstances invoked by the parties must be weighed with care" (see the above-mentioned speech of 31 October 2001). The legal rule to which the President refers is the following:

"The Court must first determine provisionally the equidistance line. It must then ask itself whether there are special or relevant circumstances requiring this line to be adjusted with a view to achieving equitable results." (Ibid.)

B. Special circumstances

132. As regards special circumstances, the Court considered whether there were any such circumstances "that might make it necessary to [p533] adjust [the] equidistance line" that it had drawn 'in order to achieve an equitable result" (para. 293 of the Judgment). What first comes to mind in the present case is the concavity of the Gulf of Guinea and of Cameroon's coastline. Bioko Island is also a factor here. As the Court stated in the Continental Shelf (Libyan Arab JamahiriyalMalta) case:

"the equidistance method is not the only method applicable to the present dispute, and it does not even have the benefit of a presumption in its favour. Thus, under existing law, it must be demonstrated that the equidistance method leads to an equitable result in the case in question." (I.C.J. Reports 1985, p. 47, para. 63.)

The Court referred to "the concavity of the Gulf of Guinea in general, and of Cameroon's coastline in particular" (para. 296 of the Judgment). Cameroon, in the words of the Court:

"contends that the concavity of the Gulf of Guinea in general, and of Cameroon's coastline in particular, creates a virtual enclavement of Cameroon, which constitutes a special

circumstance to be taken into account in the delimitation process.

Nigeria argues that it is not for the Court to compensate Cameroon for any disadvantages suffered by it as a direct consequence of the geography of the area. It stresses that it is not the purpose of international law to refashion geography."

As regards the presence of Bioko Island (para. 298 of the Judgment), the Court stated:

"Cameroon further contends that the presence of Bioko Island constitutes a relevant circumstance which should be taken into account by the Court for purposes of the delimitation. It argues that Bioko Island substantially reduces the seaward projection of Cameroon's coastline.

Here again Nigeria takes the view that it is not for the Court to compensate Cameroon for any disadvantages suffered by it as a direct consequence of the geography of the a-ea."

However, the Court refrained from affording any effect to these two circumstances.

133. For my part, I regret this. It is desirable in maritime delimitation (the result of which has to be equitable) that any circumstance capable of contributing to that goal should be regarded as relevant.

134. The Court stresses that: "delimiting with a concern to achieving an equitable result, as required by current international law, is not the same as delimiting in equity" (para. 294 of the Judgment).

This principle cannot be disputed, even though it differs slightly from what the Court stated with a certain subtlety in the North Sea Continental Shelf cases (l.C.J. Reports 1969, p. 22, para. 18).

135. For my own part, subject to the above-mentioned observation, I [p534] believe that the Court has applied its jurisprudence. Up to a certain point, the Court has confined itself, as it had already done in the Tunisia! Libya case, to indicating a direction rather than drawing a finished line. This was required in view of the rights of third States.

136. In this respect, it should however be noted that, in promulgating a decree determining the limits of its sovereign rights, Equatorial Guinea gave an indication of its legal interests. In so doing, it was well aware that the maritime area in this part of the Gulf of Guinea belonged to three States, Nigeria, Cameroon and itself, since it had already recognized that between these three countries' respective areas there was a tripoint (even if the location of that point had not yet been determined). That decree could have been amended by Equatorial Guinea by the same unilateral means. It preferred to have recourse to a treaty with Nigeria. The legal result is the same. That treaty thus amended the decree. Some protection is admittedly afforded by the relative effect of treaties. Nonetheless, the treaty does have the effect of modifying the claims of Equatorial Guinea in the same way as an internal act of that State would have done. In con-sequence, Equatorial Guinea was not entitled to argue before the Court that in relation to another State its claims remained those which had been indicated by decree. Such a position is illogical ir my view.

It follows from this that, as regards the course of the line, the Court was not circumscribed by the limit laid down by Equatorial Guinea's decree but rather by the treaty signed by Equatorial Guinea with Nigeria in the year 2000.

137. As regards the relevant circumstances, it is quite clear that Cameroon has not been

blessed by nature and that it is not for the Court to rectify that. But that should not prevent the Court from pursuing the aim of achieving an equitable result in the delimitation to be effected by it. Achieving an equitable result is not the same as delimiting in equity. That is not at issue. But the notion of an equitable result is only a legal one inasmuch as it is used in international law. The remit of its application is no different for a delimited area rather than "a previously undelimited area" (I.C.J. Reports 1969, p. 22, para. 18). This means that after it has carried out the delimitation, the Court is required to ask itself: "is the result we have reached equitable"? The rest is simply a matter of subtle reasoning.

And in response to that question, I do not believe, in view of the circumstances that for my part I regard as relevant but that the Court preferred to ignore, that the answer must inevitably be "yes".

SECTION 4. RESPONSIBILITY

138. The issue of responsibility was considered by the Court under the twin heads of Cameroon's reparation claim and Nigeria's counterclaim.

139. In its submissions at the close of its oral argument, Cameroon [p535] requested the Court to find that Nigeria had violated the fundamental principle of uti possidetis, as well as its legal obligations regarding the non-use of force against Cameroon and compliance with the Court's Order of 15 March 1996 indicating provisional measures. It asked the Court to find that Nigeria's responsibility was engaged by these wrongful acts and that reparation was due to it on this account.

140. On the basis of those allegations, Cameroon requested inter alia a declaration that Nigeria must put an end to its presence, both civil and military, on Cameroonian territory, and in particular that it must forthwith and unconditionally evacuate its troops from the occupied area of Lake Chad and the Bakassi Peninsula and that it must refrain from such actions in the future.

Cameroon further pleaded the absence of any circumstances capable of precluding the wrongfulness of the acts imputed by it to Nigeria.

141. Nigeria did not accept Cameroon's positicn on responsibility. In its final submissions, Nigeria argued that Cameroon's State responsibility claims, even if admissible, were in any event unfov. nded and must be dismissed.

Nigeria did not confine itself to rebutting Cameroon's charges against it. It considered that Cameroon bore responsibility for the acts set out in its Counter-Memorial and Rejoinder, and claimed reparations on that account.

142. The Parties' formal submissions give a mo "e precise indication of their claims and defences in terms of responsibility and reparations.

I will simply confine myself here to a few observations.

143. It is for the Court to verify the merits of claims for reparation. Availing itself of this power, the Court considered that its order for the withdrawal of the administration and of military or police forces sufficiently addressed the injury caused by the Nigerian occupation and that in consequence it would "not therefore seek to ascertain whether and to what extent Nigeria's responsibility to Cameroon ha[d] been engaged as a result of that occupation" (para. 319 of the Judgment). By this decision, the Court did not state that Nigeria was not responsible. It moreover indicated (para. 64 of the Judgment previously

cited): "any Nigerian effectivites are indeed to be evaluated for their legal consequences as acts contra legem".

144. Moreover, in accordance with a well-esiablished rule of procedure, it is of course for each party to prove the facts which it alleges. The Court therefore had to ensure that this requirement had been properly met. The Court did so with regard to the incidents for which the Parties held each other responsible. It was entitled to do so. Nigeria contended that, in any event, its actions were covered by self-defence or by other circumstances precluding any wrongfulness (para. 321 of the Judgment).

145. Cameroon considered that its territory had been invaded and occupied and that such occupation had occurred by force without its consent, which constituted a violation of Nigeria's international obligations. [p536]

146. Nigeria contended that it was present in good faith in areas which it regarded as forming part of its territory and that, on the contrary, it was Cameroon which had made incursions and created incidents, thus rendering itself responsible for a certain number of acts which had injured Nigeria and on account of which it claimed reparation.

147. It is appropriate to recall the view of Eduardo Jimenez de Arechaga and Attila Tanzi (in International Law — Achievements and Prospects, Vol. I, p. 369) that, once there has been a breach of an international obligation and consequent injury to a State, the State having suffered the injury is entitled to claim reparation from the State responsible.

148. The Court preferred to dismiss any claim for reparation, considering that "Nigeria is under an obligation in the present case expeditiously and without condition to withdraw its administration and its military and police forces from that area of Lake Chad which falls within Cameroon's sovereignty and from the Bakassi Peninsula" (para. 314 of the Judgment). It adds:

"In the circumstances of the case, the Court considers moreover that, by the very fact of the present Judgment and of the evacuation of the Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon by reason of the occupation of its territory will in all events have been sufficiently addressed. The Court will not therefore seek to ascertain whether and to what extent Nigeria's responsibility to Cameroon has been engaged as a result of that occupation." (Para. 319 of the Judgment.)

149. With regard to the other facts invoked by the Parties, it concludes:

"The Court finds that, here again, neither of the Parties sufficiently proves the facts which it alleges, or their imputability to the other Party. The Court is therefore unable to uphold either Cameroon's submissions or Nigeria's counter-claims based on the incidents cited." (Para. 324 of the Judgment.)

While this solution is certainly correct in law for the reasons that I have set out above, yet, when the facts of the case are examined, one can only conclude that Nigeria did indeed commit unlawful acts. For this reason I find it somewhat regrettable that Cameroon's claims for reparation have not been satisfied, precisely because it has been granted exclusive sovereignty over certain areas of the Lake Chad region and of Bakassi that Nigeria has been occupying, notwithstanding the protests of the egitimate sovereign and in full awareness of the law governing its borders with Cameroon, since it disputed the titles on which that law is founded by invoking effectivites bearing the hallmark of fats accomplis.

150. All that remains to be said, in my humble opinion, is that the Court has rendered a Judgment based on sound reasoning which I am sure will alleviate the concerns aroused in Africa by this dispute between [p537] Cameroon and Nigeria, familiar even to the man in the street as the Bakassi case. The Judgment will contribute to the establishment of peace between two brother countries of Africa and throughout the region.

(Signed) Kéba Mbaye. [p538]

DISSENTING OPINION OF JUDGE AJIBOLA

Introduction

1. The Court, notwithstanding the unusually large request of Cameroon's Applications has comprehensively dealt with all the submissions presented to it by the Parties. However, I am compelled to write this dissenting opinion because it is difficult for me to agree with some of the Court's decisions. There are five main sectors involved in this case, Lake Chad, the land boundary, Bakassi Peninsula, maritime delimitation and the issue of State responsibility. I have no difficulty in accepting and voting in favour of the Court's decision on State responsibility (although my separate view on this will be stated later), some aspects of the maritime delimitation and land boundary. My dissenting opinion will therefore centre on the Court's decision as regards the issue of sovereignty over the Bakassi Peninsula and the delimitation of Lake Chad. But before dealing with these points, I intend to touch upon certain issues regarding the genesis of the case, the function of the Court and some general observations about the Judgment.

2. This is a unique case for many reasons; first, because of the unusually large claim filed by the Applicant, secondly because it is a claim dealing with maritime and land boundary issues at the same time, and thirdly because, apart from the request for land and maritime delimitation, there is also the request involving State responsibility against Nigeria. It is also a case that has taken over eight years before the Court, involving applications for interim measures, jurisdiction and admissibility, and the intervention of Equatorial Guinea on maritime delimitation.

3. On both sides of the boundary, it cannot be denied that incidents involving serious clashes and hostilities have occurred in recent times. On the other hand, a series of efforts have been made to resolve this boundary dispute between the Parties at regional and international levels. It can therefore be said that the situation on the ground is volatile and explo[p539]sive. Added to all this is the fact that Cameroon declared that there are over three million Nigerians in Cameroon. There are about 150,000 Nigerians living in the Bakassi Peninsula alone. In a situation of this nature and in a case of this kind, what is supposed to be the function of the Court? The Court must primarily concern itself with its judicial function and decide the Applications before it in accordance with its Statute and with principles of international law.

4. At the same time, the Court must constantly remind itself of its position and obligations as a principal organ of the United Nations (Art. 7, para. 1, of the Charter). The Court must therefore ensure that it has a cardinal duty to encourage, by its judgments, all member States of the United Nations to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations (Art. 2, para. 4, of the Charter). The paramount obligation of the Court is to give a decision that will do justice in accordance with the maintenance of international peace and security in any region of the world. The Court is constantly aware of this obligation, for example, the Court took

cognisance of resolutions 731 (1992), and 748 (1992) of the Security Council, in the cases of the Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (Libyan Arab Jamahiriya v. United States), when it refused to order the interim measure requested by Libya. Indeed, in the present case, at the interim measures stage, the Court ordered that "[b]oth Parties should lend every assistance to the fact-finding mission which the Secretary-General of the United Nations has proposed to send to the Bakassi Peninsula" (I.C.J. Reports 1996 (I), p. 25). In performing this exercise it is part of the duty of the Court, in its application of international law, to ensure that conflicting considerations are balanced between opposing claims.

5. An aspect of the Award of Judge Max Huber in the Island of Palmas case of October 1924 threw some light on such conflicting interests:

"It is accepted that every law aims at assuring the coexistence of interests deserving of legal protection. That is undoubtedly true also of international law. The conflicting interests in this case, in connection with the question of indemnification of aliens, are, on the one hand, the interest of the State in the exercise of authority in its own territory without interference or supervision by foreign States, and, on the other hand, the interest of the State in seeing the rights of its nationals in a foreign country respected and effectively protected." (H. Lauterpacht, The Function of Law in International Community, p. 121.) [p540]

6. The balancing of conflicting interests in a very sensitive case of this nature is not strange to the Court and this has reflected in some of its recent judgments, like the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) (I.C.J. Reports 1993, p. 38), where equity played a major role to allow for a fair and just allocation and delimitation of the maritime boundary; the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (l.C.J. Reports 2001, p. 40), a case decided in such a manner as to ensure peace and stability between both parties, to the extent that both felt satisfied with the Judgment of the Court; the Kasikilil Sedudu Island (Botswana! Namibia) case (I.C.J. Reports 1999 (II), p. 1045), which encouraged both parties to settle their disputes amicably.

7. In matters of land and maritime boundaries such balancing of conflicting interests or adjustment in cases involving different legal or conventional titles cannot be considered as non-judicial. As will be mentioned later, these are cases where effectivites or historical consolidation have been given consideration over and above legal title. Some examples were given by A. L. W. Munkman in her article:

"It is perhaps necessary to consider at this point the view that arbitrators dispose of wider powers of adjustment or minor legislation, a greater discretion in taking account of the 'equities' of the particular situation, than do strictly judicial tribunals, that is, permanent courts. There seems to be no real basis for any suggestion that the scope of considerations which judicial, as opposed to arbitral, tribunals may take account of is narrower: a wide range of social, economic and geographical criteria were explicitly taken account of in the Anglo-Norwegian Fisheries and North Sea Continental Shelf cases, and historical and cultural considerations were not of themselves described as irrelevant in the Temple case. In the Jaworzina case, the Permanent Court explicitly invoked the notion of the historic boundaries of the States in dispute, and the ethnographical factors presuming in their favour." ("Adjudication and Adjustment — International Judicial Decision and the Settlement of Territorial and Boundary Disputes", British Year Book of International Law, 1972-1973, p. 113.)

8. There are other cases decided by the Court or its predecessor, the Permanent Court of International Justice, that may also be mentioned, which lend credence to the fact that international permanent courts are determined to ensure that at the end of the day both parties to such disputes are happy about the decision and that it is not a case of giving judgment in favour of any of the parties considered to be the "title-holder". Recently, the Eritrea/Ethiopia Boundary Commission gave its decision in [p541] the land boundary dispute which has for many years been the cause of serious armed conflict between the two parties. On 14 April 2002, when the decision was delivered, both parties returned to their respective capitals rejoicing that they were satisfied with the decision of the Commission.

9. Munkman went further to enumerate some other cases:

"In the British Guiana Boundary cases decisions on 'allocation' of substantial portions of territory and on the 'delimitation' of the boundary between the areas awarded to each party were combined — as also in the Rann of Kutch award. In the Jaworzina Boundary case, the Permanent Court in effect gave a decision on the allocation and delimitation of a boundary on the basis of the status quo ante. The North Atlantic Fisheries and Gulf of Fonseca cases (in so far as they related to bays) and the Anglo-Norwegian Fisheries case involved decisions on the allocation of sea areas and their delimitation and, in the latter case, the technical problem of baseline demarcation." (Op. cit., p. 115.)

10. In a case of this nature, the proper course for the Court to follow is not only one of mere legal formalism in favour of one party. It must weigh and balance the legal titles of both parties and take also into consideration the situation on the ground, particularly in Lake Chad and the Bakassi Peninsula. It will be difficult, if not impossible, for the Court not to recognize the status quo. To overlook such a situation will not ensure justice in this case. Such an oversight might have contributed to the protracted and judicially unsatisfactory course of the Hungarian Optants dispute between Romania and Hungary of 1927. A learned author (who was once a judge of this Court) offered a solution:

"But the course which is believed to be the proper one, and which is suggested by the position adopted by international tribunals in other cases, would be to evolve a legal rule constituting a judicial compromise between the legally recognized claims of territorial sovereignty, on the one hand, and the internationally recognized rights of aliens, on the other hand." (H. Lauterpacht, The Function of Law in the International Community, p. 122.)

Lake Chad

11. As regards the Lake Chad Basin, I voted against the decisions of the Court as stated in paragraph 325 I (A) and (B) of the Judgment, because they fail to take into consideration the submissions of Nigeria based on effectivites and historical consolidation; hence my decision to write a dissenting opinion. Admittedly, the Thompson-Marchand Decla-[p542]ration of 1929-1930 as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931 is relevant, but that is only one aspect (but not all) of what the Court should consider in order to effect the necessary judicial delimitation. In the Court's interpretation of the Declaration it must effect the necessary adjustments of the boundary to give room for the situation on the ground as recognized by international law.

12. The Court, in reaching its decision on Lake Chad, relied very heavily or perhaps solely on certain instruments that formed the bedrock of Cameroon's case. These instruments are:

— the Milner-Simon Declaration of 10 July 1919, with the annexed Moisel map;
— the Thompson-Marchand Declaration of 1929-1930, as confirmed by the Henderson-

Fleuriau Exchange of Notes of 9 January 1931 (paragraphs 50 and 58 of the Judgment);
— the LCBC Reports and the agreements emanating from them.

13. The Court, in its Judgment, rejects Nigeria's claim to the 33 villages in Lake Chad which is based on effectivites. The Court examines and relies on the Moisel map annexed to the Milner-Simon Declaration of 1919 and the map attached the Henderson-Fleuriau Exchange of Notes of 9 January 1931. It concludes that the co-ordinates of the tripoint must be 14° 04'59" 9999 longitude east, rather than at approximately 14° 05' longitude east, thus virtually reaching the same conclusions as the LCBC (para. 57 of the Judgment) . On the question of the location of the mouth of the Ebeji, the Court decides (paras. 58-60 of the Judgment) that it is located where the river bifurcates into two branches, with the geographical co-ordinates of 14° 12'03" longitude east and 12° 13' 17" latitude north. However, the Court rejects the claim of Nigeria based on the historical consolidation of its title (para. 62 of the Judgment). Apparently, the Court rejects the contention of Cameroon that the proposals of the LCBC as regards the tripoint and the location of the mouth of the Ebeji constitutes an authoritative interpretation of the Milner-Simon Declaration of 10 July 1919 and the Thompson-Marchand Declaration of 1929-1930, as confirmed by the Exchange of Letters of 9 January 1931. Yet, it appears to me that the ultimate conclusion reached by the Court amounts to a difference without distinction because the Court, in finding the co-ordinates of the tripoint, reaches virtually the same conclusions as the LCBC having taken into consideration the same Moisel map and the Thompson-Marchand Declaration of 1929-1930, as confirmed by the Henderson-Fleuriau Exchange of Notes of 9 January 1931. This opinion therefore touches on all these instruments, the LCBC Report and agreements emanating therefrom, as well as the issue of effectivites and historical consolidation.

14. In its Additional Application to the Court, dated 6 June 1994, Cameroon asked the Court to confirm Cameroonian sovereignty over the [p543] disputed parcel in the area of Lake Chad. Cameroon failed to describe with certainty what it described as the disputed area in the Lake Chad region. However, in its submission, the claim was further amplified in that it is seeking for sovereignty over the area of Lake Chad and, in particular, over Darak. In addition, Cameroon claims more specifically.

"that the land boundary . . . takes the following course:

— from the point at longitude 14° 04'59" 9999 E of Greenwich and latitude 13° 05'00" 0001N, it then runs through the point located at longitude 14°12'11"7005E and latitude 12°32' 17"4013N (Reply of Cameroon, Vol. I, p. 591, para. 13.01). [Translations by the Registry.]

15. The nature of the dispute can partly be gleaned from the pleadings of Cameroon:

"The instrument of conventional delimitation is not in dispute. That instrument is the Exchange of Notes between Henderson and de Fleuriau of 9 January 1931 . . ., the validity of which is recognized by Nigeria, even if it disputes its applicability to Lake Chad ..." (Ibid., p. 101, para. 3.04.)

And that:

"Initially, the boundary was delimited by the Milner-Simon Declaration of 10 July 1919 . . . However, this delimitation, while undergoing no change in relation to Lake Chad, was rendered more precise in 1931 by the two governments concerned, on the basis of a survey conducted by the two High Commissioners, the results of which are set out in the Thompson-Marchand Declaration of 29 December 1929 and 3 January 1930 ..." (Ibid., p.

102, para. 3.05.)

16. The position of Nigeria is reflected in its pleadings as follows:

"The purpose of the present Chapter is to demonstrate that there has been no final determination of the boundary within Lake Chad between Nigeria and Cameroon. This demonstration involves the following elements:

First: the colonial boundary agreements of the period 1906 to 1931 did not produce a conclusive delimitation in the Lake Chad region.

Second: the uncertainties remained after the Independence of Nigeria and Cameroon.

Third: the work of the Lake Chad Basin Commission did not produce delimitation, which was final and binding on Nigeria." (Counter-Memorial of Nigeria, Vol. II, p. 379, para. 16.1.)

17. What then is the nature of Cameroon's request to the Court? In this area of the boundary, Cameroon is asking for a confirmation of its sovereignty over Lake Chad and, in particular, Darak. In this case, going [p544] through the oral and written pleadings, there appears to be a disagreement between the Parties on the issue of delimitation and demarcation. The argument of Cameroon is that the area of Lake Chad had been delimited and demarcated while, on the other hand, Nigeria asserts that the area had neither been so delimited nor demarcated.

18. Cameroon simply bases its claim on the Milner-Simon Declaration of 1919 and the Thompson-Marchand Declaration as confirmed by the Henderson-Fleuriau Exchange Notes of 1931. These are the documents, according to Cameroon that delimit the boundary in Lake Chad. Nigeria, on the other hand, whilst accepting the relevance of those instruments in principle, argues that the boundary is not delimited by these instruments as such. Nigeria goes further to state that these instruments relate only to the land boundary between Lake Chad and Bakassi and do not apply to the boundary in Lake Chad. In addition, Nigeria concludes that

"Thus, as at 1 June 1961, the date upon which Northern Came-roons was incorporated into the independent Federation of Nigeria, the process of delimitation and demarcation of the boundary in Lake Chad was still at an embryonic stage." (Ibid., Vol. II, p. 376, para. 15.99.)

Cameroon partially or tacitly agrees with this conclusion of Nigeria by responding that:

"The observation [of Nigeria] is partially correct, concerning the demarcation of the lake boundary, since Nigeria has not formally accepted the result of the works carried out within the framework of the LCBC. It is without foundation for the delimitation, which was effected with satisfactory precision by the Exchange of Notes of 9 January 1931, in a manner which was not in the least 'embryonic'." (Reply of Cameroon, Vol. I, p. 103, para. 3.11.)

19. Unfortunately, all the attempts made to effect a delimitation and demarcation of the boundary in the Lake Chad area failed. Before World War I, all the correspondence, notes, declarations and agreements entered into between Great Britain and Germany failed to achieve the purpose of delimitation. Similarly, all the attempts made between France and Great Britain after World War I equally failed. Subsequent attempts made at the beginning of World War II did not achieve the purpose of delimiting the boundary, let alone

demarcating it. The following are the attempts:

Before World War I

(a) Agreement between Great Britain and Germany respecting Boundaries in Africa, signed at Berlin, 15 November 1893 (Counter-Memorial of Nigeria, Vol. IV, Ann. 28);
(b) Convention between the French Republic and Germany for the Delimitation of the Colonies of French Congo and of Cameroon [p246] and of French and German Spheres of Influence in the Region of Lake Chad, signed at Berlin 15 March 1894 (Counter-Memorial of Nigeria, Vol. IV, Ann. 29);
(c) Convention between the United Kingdom and France for the Delimitation of their Respective Possessions to the West of the Niger, and of their Respective Possessions and Spheres of Influence to the East of that River, signed at Paris 14 June 1898 (ibid., Ann. 30);
(d) Anglo-German Agreement signed 12 December 1902 (ibid., Ann. 33);
(e) Anglo-German Protocol signed at Ullgo, Lake Chad, 24 February 1904 (ibid., Ann. 34);
(f) Convention between the United Kingdom and France respecting Newfoundland and West and Central Africa, signed at London, 8 April 1904 (ibid., Ann. 35);
(g) Agreement between the United Kingdom and Germany respecting the Boundary between British and German Territories from Yola to Lake Chad, signed at London, 19 March 1906 (ibid., Ann. 38);
(h) Convention between the United Kingdom and France respecting the Delimitation of the Frontier between the British and French Possessions to the East of the Niger, signed at London, 29 May 1906 (ibid., Ann. 39);
(i) Convention between France and Germany confirming the Protocol of 9 April defining the Boundaries between French Congo and the Cameroons, signed at Berlin, 18 April 1908 (ibid., Ann. 40);
(j) Agreement between the United Kingdom and France respecting the Delimitation of the Frontier between the British and French Possessions East of the Niger (approved by Exchange of Notes, 17 May/1 July 1911), signed at London, 19 February 1910 (ibid., Vol. V, Ann. 43).

Since World War I

(a) The Picot/Strachey Lines, February 1916 and the Crewe/Cambon Exchange of Notes, March 1916 (ibid., Vol. IX, Anns. 226, 228229).

20. If we leave for the moment the two crucial Declarations of 1919 and 1931, which failed to delimit the boundary, all subsequent attempts to effect the delimitation from 1931 to 1938 equally failed. Even by that time, the Boundary Commission, under the Permanent Mandates Commission did not make any tangible progress to effect the proposed task of demarcation. Based on the preliminary study of the boundary that they had provisionally defined, it was in 1937 that the Joint Commission started its work. However, the outbreak of World War II put a halt to the Commission's work. A report of 15 January 1942, communicated to the Colonial Office by the Governor of Nigeria indicated that the commissioners had executed only 135 miles of the boundary out of a total length of approximately 1,200 miles (ibid., Vol. IX, Ann. 371). [p546]

21. Going back to the 1919 Milner-Simon Declaration, it is described as an agreement

"to determine the frontier, separating the territories of the Cam-eroons placed respectively under the authority of their Governments, as it is traced on the map Moisel 1:300,000, annexed to the present declaration and defined in the description in three articles also

annexed hereto" (Counter-Memorial of Nigeria, Vol. V, Ann. 50, p. 481; emphasis added).
That boundary as described by the Milner-Simon Declaration is patently inaccurate, unreliable and deficient. It is admitted by both Parties that the Moisel map attached to the Declaration is unreliable, even as regards the co-ordinates (i.e., latitude 13° 05' N and longitude 14° 05' E), which was only drawn to approximation. In some aspects, the Agreement itself is vague. It is no surprise that the Declaration anticipates "further local delimitation". Article 2, paragraph 1, of the Declaration reads thus:

"It is understood that at the time of the local delimitation of the frontier, where the natural features to be followed are not indicated in the above description, the Commissioners of the two Governments will, as far as possible, but without changing the attribution of the villages named in Article 1, lay down the frontier in accordance with natural features (rivers, hills or watersheds).

The Boundary Commissioners shall be authorised to make such minor modifications of the frontier line as may appear to them necessary in order to avoid separating the villages from their agricultural lands. Such deviations shall be clearly marked on special maps and submitted for the approval of the two Governments. Pending such approval, the deviations shall be provisionally recognised and respected." (Ibid., Vol. V, Ann. 50, p. 483; emphasis added.)

22. In fact, with regard to this Declaration, the letter of Lord Curzon, in its first paragraph, indicates that Great Britain only agreed with the French Government as "provisional entry into force pending the definitive settlement of the regime to be applied in these territories" (ibid., Vol. IX, Ann. 239, p. 1865; emphasis added). Hence, by 27 May 1921, a suggestion was made by France to Great Britain, that it was preferable to leave the delimitation until after the mandates have been obtained from the League of Nations. The letter of the British Ambassador of 23 October 1921, in its second paragraph, gave a very clear indication of the problems with the Milner-Simon Declaration. In that letter, he suggested that Article 1 of the Draft Mandate should be recast to contain the following provision:

"This line may, however, be slightly altered by agreement between [p547] His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interests of the inhabitants or by reason of any inaccuracies in the map (Moisel 1:300,000) annexed to the declaration to adhere strictly to the line laid down therein.)" (Counter-Memorial of Nigeria, Vol. IX, Ann. 243, p. 1881; emphasis added.)

23. The advice of the British Ambassador, Hardinge of Penshurst, referred to above, was accepted by the League of Nations in July 1922, in order to effect the necessary amendments to the Milner-Simon Declaration. There again, in Article 1 of the League of Nations instrument, the interest of the inhabitants was to be taken into consideration as well as correcting the inaccuracies of the Moisel map of 1:300,000 scale, which incidentally is relatively too small for boundary delimitation exercises. The important point in all this is that the Court fails to give consideration to the interests of the Nigerian inhabitants in all 33 villages claimed by Nigeria in this sector of Lake Chad.
It can therefore be observed that even during the Mandate there is a tacit consideration given to effectivites in terms of the interest of the inhabitants in any of the localities where this is desirable.

24. The Thompson-Marchand Declaration was an improvement on the Milner-Simon Declaration because it introduced an improved map that was annexed to that Declaration. Furthermore, it mentioned the identification of a straight line as far as the mouth of the Ebeji. Here again, we find that the process had not yet reached the delimitation stage, let

alone demarcation. In the same paragraph of the letter of de Fleuriau of 9 January 1931, he remarked:

"Your Excellency will no doubt have received the text of same Declaration and will certainly have observed that it concerns a preliminary survey only. This is intended to describe the line to be followed by the Delimitation Commission, more exactly than was done in the Milner-Simon Declaration of 1919." (Ibid., Vol. V, Ann. 54, p. 538; emphasis added.)

In reply to de Fleuriau's letter, Arthur Henderson correspondingly replied that a boundary commission would have to be constituted in order to take over a preliminary survey that had been conducted in order to carry out actual delimitation of the boundary.

25. Under the United Nations Trusteeship in 1946, attempts were also made at delimiting the boundary in Lake Chad, which did not materialize up to 1948, and after. The report presented by the United Kingdom Trusteeship for the Cameroons touched on the boundary issues vis-a-vis the Thompson-Marchand Declaration and states as follows:

"The Territory to which this Agreement applies comprises that part of the Cameroons lying to the west of the boundary defined by [p548] the Franco-British Declaration of 10 July 1919, and more exactly defined in the Declaration made by the Governor of the Colony and Protectorate of Nigeria and the Governor of the Cameroons under French mandate which was confirmed by the exchange of Notes between His Majesty's Government in the United Kingdom and the French Government of 9 January 1931. This line may, however be slightly modified by mutual agreement between His Majesty's Gov-ernment in the United Kingdom and the Government of the French Republic where an examination of the localities shows that it is desirable in the interest of the inhabitants." (Counter-Memorial of Nigeria, Vol. V, Ann. 56, pp. 579-581; emphasis added.)

26. One remarkably persistent issue that kept recurring in many of the agreements just mentioned is the interest of the inhabitants, whenever delimitation or even demarcation had to be effected. Unfortunately, this modification has not been carried out till today. It started with the British Ambassador in 1921; was engrafted into the League of Nations instruments as Article 1; and was again contained in Article 1 in the Trusteeship Agreement of 13 December 1946, all clearly expressing the need to modify the boundary by "mutual agreement between His Majesty's Gov-ernment in the United Kingdom and the Government of the French Republic where an examination of the localities shows that it is desirable in the interest of the inhabitants" {ibid, Ann. 56, p. 581).
27. Has this modification ever been carried out? Can that problem be ignored or dismissed, especially now that Nigeria is claiming 33 villages in Lake Chad? In any attempt to delimit this area of the boundary in the Lake Chad area, should this not be taken into consideration? Yet the Court fails to consider this claim of Nigeria regarding its inhabitants in Lake Chad.

28. In effect therefore, the judicial assignment of the Court entails a conclusive settlement of this dispute first, by interpreting the instruments involved, then take into consideration the interest of the inhabitants' effectivites and historical consolidation. A similar assignment was performed by this Court in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad) in 1994 on what constitutes the initial task of the Court. The Court therein described its assignment thus:

"The Court will first consider Article 3 of the 1955 Treaty, together with the Annex to which that Article refers, in order to decide whether or not that Treaty resulted in a conventional boundary between the territories of the Parties. If the ¡955 Treaty did result in

a boundary, this furnishes the answer to the issues raised by the Parties: it would be a response at one and the same time to the Libyan request to determine the limits of the respective territories of the Parties and to the request of Chad to determine the course of the [p549] frontier. The Court's initial task must therefore be to interpret the relevant provisions of the 1955 Treaty, on which the Parties have taken divergent positions" (I.C.J. Reports 1994, p. 20, para. 38; emphasis added.)

29. In view of the claim of Nigeria over certain specific places, where the inhabitants are affiliated to Nigeria and are being administered by Nigeria, this provision in the Agreement ought to have been seriously taken into consideration by the Court in its interpretation of the boundary line, hence my disagreement with the decision of the Court.

30. The Parties' concept and arguments aside, it is important to determine the duty of the Court as regards the dispute in Lake Chad. Clearly, the Court is not called upon to demarcate and, quite obviously, this is outside the assignment of the Court. Is this therefore a case of delimita-tion or attribution for the Court? In a case of this nature, where there are conflicting claims by the parties as to the location of the boundary and disputed territorial sovereignty, the cardinal assignment of the Court is, first to deal with the determination of the boundary by way of judicial delimitation and subsequently to deal with the conflicting territorial claims of the parties.

31. As indicated earlier, there are claims and counter-claims as to whether the Lake Chad basin had been delimited or demarcated. Presumably, if both Parties had definitively concluded the agreements on delimitation and a fortiori demarcation, this Application might not be filed by Cameroon. The preliminary objection of Nigeria on this point was rejected by the Court. The duty of the Court here therefore is to determine whether the boundary in Lake Chad had been delimited or not. If it had not been delimited, it is the Court's duty to carry out such an exercise as a judicial function. Even if the Court finds that it had already been "delimited" by certain instruments, the Court will still need to examine those instruments and then carry out its own definitive determination of the boundary. The Court ought to ascertain the true legal line in terms of interpreting those instruments in relation to the descriptive content of such boundary which, inter alia, must relate not only to its toponomy, geography, topography and human factors, but also apply the rules of interpretation in accordance with the Vienna Convention on the Law of Treaties of 1969, particularly its Article 31. With respect to this Convention, the Court is bound to take into consideration not only the ordinary meaning of the instruments but also the conduct and practice of the Parties which, unfortunately, the Court fails to do in the Judgment.

Lake Chad and the Work of the LCBC

32. There is a curious turning point in the boundary dispute between Cameroon and Nigeria which is quite remarkable and worthy of mention here. The Vlllth Summit Meeting of the LCBC was held on 21-23 March [p550] 1994 in Abuja, Nigeria. At the meeting, the four Heads of State including that of Cameroon were present. The decision of the Summit echoes the consensus reached as follows:

"A. Boundary demarcation

— to approve the technical document on the demarcation of the international boundaries of member States in the Lake Chad, as endorsed by the national experts and the Executive Secretariat of the LCBC.
— that each country should adopt the document in accordance with its national laws.
— that the document should be signed latest by the next summit of the Commission.
— to instruct state/local administrations of each country to mount social mobilization

campaigns to educate the local populations on the demarcation and their rights and privileges on the Lake.
— congratulated the Commissioners, the national experts, the Executive Secretariat and the Contractor IGN-France for a job well done." (Counter-Memorial of Nigeria, Vol. II, pp. 407-408, para. 16.57.)

33. Yet, precisely five days after this apparently cordial meeting of Heads of State in Abuja, where they expressed the view that the work of the LCBC had been satisfactorily carried out, Cameroon filed the Application for the confirmation of its sovereignty over certain areas of Lake Chad and over Darak. This was the same area of boundary that the Cameroonian Head of State, along with his Nigerian counterpart had, only recently, endorsed.

34. The second unfortunate aspect of this litigation is that the LCBC, its Executive Secretary, members, experts and the IGN laboured from 1983 to 1994 to ensure the final determination of the border in this sector between Cameroon and Nigeria. However, it appears that this has now become an exercise in futility — much ado about nothing — with colossal waste of time, effort and money, since neither Nigeria nor Cameroon ratified the boundary agreement (Cameroon later ratified in 1997). Cameroon has now applied to the Court to start de novo what was close to an agreement between the Parties. Must Cameroon approbate and reprobate? The findings of the LCBC are not binding either directly or indirectly on the Court and neither is the LCBC bound by whatever may be the decision of the Court on this area of the boundary. The jurisdiction of the Court is consensual and it cannot bind other members of the LCBC, such as Niger and Chad, who are not parties before the Court (Art. 59 of the Statute of the Court). The Court is entitled to deal with the bipoint between Cameroon and Nigeria but not the tripoint between Cameroon, Chad and Niger. [p551]

35. The Court had already expressed its view and made some observations during the jurisdictional phase of this case as regards the dispute between both Parties in the Lake Chad area. It is pertinent to refer to the observations of the Court herein before we proceed further:

"the Court notes that, with regard to the whole of the boundary, there is no explicit challenge from Nigeria. However, a disagreement on a point of law or fact, a conflict of legal views or interests, or the positive opposition of the claim of one party by the other need not necessarily be stated expressis verbis. In the determination of the existence of a dispute, as in other matters, the position or the attitude of a party can be established by inference, whatever the professed view of that party. In this respect the Court does not find persuasive the argument of Cameroon that the challenge by Nigeria to the validity of the existing titles to Bakassi, Darak and Tipsan, necessarily calls into question the validity as such of the instruments on which the course of the entire boundary from the tripoint in Lake Chad to the sea is based, and therefore proves the existence of a dispute concerning the whole of the boundary." (I.C.J. Reports 1998, p. 315, para. 89.)

36. The assignment given to the LCBC's Sub-Committee on Boundary Matters, which started in 1983, was completed in March 1994. IGN of France was engaged to carry out the work which it completed in July-1993 and submitted to the Executive Secretary; eventually all the experts of the member States signed the report. Subsequently, at the meeting of Heads of State in Abuja in March 1994, all the Heads of State present signed the boundary documents, subject to ratification by each member State. Cameroon did not ratify until 1997 and Nigeria has not ratified to date. The IXth Summit of Heads of State was held in Chad in 1995. At that time, the Application of Cameroon was already pending before the Court and both Cameroon and Nigeria were absent from the Meeting.

37. What then is the legal effect of the work of the LCBC, with its report and documents not ratified by all the member States before the IXth Summit of Heads of State in 1995? Although all the Heads of State present during the VIII th Summit signed it, each country still had to adopt it in accordance with its own national laws. The document had to be ratified no later than the next Summit of the Commission in 1995, in order to give it legal force. Cameroon and Nigeria failed to ratify before the "next Summit", even though Cameroon ratified subsequently. Since the other two countries, Niger and Chad, are not before the Court they are not bound by the decision of the Court. This is a fundamental principle that the Court has pronounced upon many occasions. In the jurisdictional phase of the case, this principle was once again reiterated thus:

"The Court recalls that it has always acknowledged as one of the fundamental principles of its Statute that no dispute between States [p552] can be decided without their consent to its jurisdiction (Monetary Gold Removed from Rome in 1943, Judgment, I.C.J. Reports 1954, p. 32). Nevertheless, the Court has also emphasized that it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case; and the Court has only declined to exercise jurisdiction when the interests of the third State 'constitute the very subject-matter of the judgment to be rendered on the merits' (Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 61, para. 55; East Timor (Portugal v. Australia), Judgment, I.C.J Reports 1995, pp. 104-105, para. 34)." (I.C.J. Reports 1998, p. 312, para. 79.)

38. In the above circumstances, and as the Court rightly decided, the Agreement is not opposable to Nigeria and hence Nigeria is not bound by it. Similarly, it cannot be said that this Agreement must be recognized by all the member States of the LCBC. In the minutes of the VHIth Summit of the Heads of State and Government in Abuja 1994, the decision reached was:

"— that each country should adopt the document in accordance
with its national laws.
— that the document should be signed latest by the next summit of the Commission" (Counter-Memorial of Nigeria, Vol. X, Ann. 285, Decision No. 5, p. 13).

In the absence of any evidence that these decisions have been carried out by Cameroon and Nigeria, the document obviously will not be binding on the Parties in this case.

39. Article 46 of the Vienna Convention on the Law of Treaties is relevant here. Although all the Heads of State signed the documents in Abuja in 1994 (which Article 7 seeks to protect and validate), it is clear from their decision that before the Agreement could enter into force, it must be adopted and ratified by all the LCBC member States.

40. The task of the LCBC, which involves its Executive Secretary, the members and experts from member States, covered the period from 1983 until 1994. The establishment of the LCBC was prompted by the disturbances in that region during the year 1983, which necessitated the con-vening of the meeting of its members in Lagos from 21 to 23 July 1983. The Sub-Committee on the Delimitation of the Borders was saddled with the responsibility of the boundary determination. Necessary logistical problems (including funding) delayed the exercise until 1988 when the contract for the demarcation was signed between the LCBC and 1GN International of France on 26 May 1988.

41. Cameroon puts emphasis on the stage of the work of the contractor in 1990. It referred to the Report on the Marking-Out of the Inter-[p553]national Boundaries in Lake Chad..

The experts of the LCBC introduced this Report in the following terms:

"We the undersigned,

experts from the Member States of the CBLT/LCBC (Cameroon, Niger, Nigeria and Chad), duly designated by our States to supervise and monitor the work on the demarcation of our boundaries in accordance with resolution No. 2 adopted by our Governments at their Sixth Summit Meeting held in N'Djamena on 28 and 29 October 1987.

……

have proceeded, from 13 June 1988 to 12 February 1990, to effect the delimitation and marking-out of the said boundaries and submit to the approval of the respective Governments the following description of the boundaries that we marked out." (Counter-Memorial of Nigeria, Vol. II, p. 403, para. 16.50; emphasis added.)

42. The argument of Cameroon as stated above can be faulted on five grounds: firstly, the document completed and to be submitted is a mere report and not a binding agreement; secondly, not all the experts from member States signed; thirdly, the Report was still incomplete; fourthly, the Report itself states that it was being submitted to the Heads of State for approval; and, fifthly, the task of the experts was not to approve the work of IGN of France: they were only mandated to supervise and monitor the work. As regards the nature of the document as a report, even the Memorial of Cameroon referred to above expressly described it as such. It was introduced as the Report on the Marking-Out of the International Boundaries and no more.

43. The task of the Commission on the Boundary was not concluded in 1990 but continued through 1991, 1992 and 1993. This was because IGN International of France had not completed the technical task and the expert of Nigeria and, at another stage, the expert of Chad, were not satisfied with the Report and they insisted on some technical amendments. The comment of Nigeria on this point is very illuminating:

"At a meeting of LCBC Experts in January 1992, Nigeria indicated that it was now ready to implement the resolution of the 39th Meeting and to sign the 'report on demarcation' (NPO 75). The Commission noted the intention of the experts to implement the resolution by June 1992 (page 715 of NPO 75). At the 41st Session of the Commission in April 1993 (see extracts of Minutes at NC-M 284), it was reported that the experts has gone back to the field, finalized the technical aspects of the job and all signed the demarcation document. However, because of a dispute regarding the location of Beacon VI on the Chad/Cameroon boundary, the Chad Commissioner stated that he was unable to endorse that aspect of [p554] the work, and as a result of there being a lack of consensus, it was resolved that the 'documents regarding the demarcation exercise' be signed by the Executive Secretary and made available to the Commissioners for presentation to their Governments so that the issue could be finalised at the next Summit." (Counter-Memorial of Nigeria, Vol. II, p. 406, para. 16.54.)

44. As reflected in the memorandum of Nigeria in November of 1990 at the 39th meeting of the Commissioners, the Nigerian delegation refused to sign the report for the reason that was expressed thus:

"In November 1990, at their 39th meeting, the Commissioners resolved that the national experts should go back to the field to complete some specific jobs relating to two intermediate beacons ... In the course of the discussions of the relevant subcommission, the position of the Nigerian delegation as recorded in the Minutes was as follows . . .

'For its part, the fourth delegation, i.e. that of NIGERIA, considered that the project was not fully completed (the failure to number beacon II-III.l, substandard quality of numbering by LCBC, non-demolition of beacon II-V.l which was wrongly erected, non stabilisation of GPS and Azimuth station on lines I-II and II-V and disappearance of two GPS stations on line I-II).'

In consequence, Nigeria refused to sign the Report of the experts on the beaconing. At a June 1991 meeting of experts, Nigeria rejected this resolution of the 39th Meeting . . ." (Ibid., Vol. II, p. 405, para. 16.52.)

45. As referred to earlier, the experts of member States were not mandated to sign the final agreement for or on behalf of the Governments or Heads of State. They were instructed to prepare and submit a report for the approval of the Heads of State at their Summit, which they did at the VHIth Summit, for their signature. That precisely was their undertaking as stated in the Report. They unequivocally expressed the duty that they were called upon to carry out — "to supervise and monitor". Therefore, whatever was signed by the experts of member States cannot bind the Parties in this case. It cannot, therefore be said that the mission entrusted to the LCBC and the manner in which it was carried out resulted in the recognition by the LCBC member States that a delimitation in the Lake Chad area already existed. The Commission was not so mandated. The ultimate decision lies with the Heads of State. In 1994, the Report was accepted and approved by the Heads of State signing the document that was to be subsequently ratified. That ratification did not happen, at least [p555] as far as Nigeria is concerned. Hence my view is that the Court ought to ignore the report and agreement of the LCBC. Tacitly, therefore, the decision of the Court to reject Cameroon's submission that the Parties are bound by the LCBC's Report is valid. However, the Court ought to have taken into consideration other factors, such as effectivites and historical consolidation in order to come to a determination on the delimitation of Lake Chad.

Delimitation and Demarcation

46. Reading through the oral and the written pleadings in this case one must admit that there is a degree of misunderstanding or even confusion in the use of the words delimitation and demarcation. Perhaps, for the purpose of elucidation and to clear the apparent convolution, we may borrow a definition of these two terminologies from a textbook on international law:

"The distinction sometimes made between artificial and natural boundaries is geographical rather than legal, for so-called natural boundaries, making use of natural features such as rivers or mountains usually need further definition in order to produce a precise boundary line. The common practice for land boundaries is, in a boundary treaty or award, to describe the boundary line in words, i.e. to 'delimit' it; and then to appoint boundary commissions, usually joint, to apply the delimitation to the ground and if necessary to mark it with boundary posts or the like, i.e. to 'demarcate' it." (Oppenheim's International Law, 9th ed., Vol. 1 (Peace), Parts 2-4, Sir Robert Jennings and Sir Arthur Watts (eds.), p. 662.)

47. The claim of Cameroon is that the LCBC has delimited the boundary with the aid of the relevant instruments already mentioned. The view of Nigeria is that nothing has been delimited or demarcated conclusively. Nigeria agrees that certain instruments are relevant for the purpose of delimitation but that the area of Lake Chad is not part of it. Cameroon argues that the demarcation had been fully and finally effected by the LCBC and the same sanctioned by the Heads of State. For the reason already given above, I disagree with Cameroon, as the Court has also done. However, since delimitation precedes demarcation,

and delimitation in this case is not just simply confirming the instruments that delimit, but these instruments must be given judicial interpretation having regard to the conflicting view of the Parties, the Court is therefore called upon to determine the issue of delimitation, whilst the Parties will undertake that of demarcation. But in doing so the Court fails to take into consideration factors other than the instruments.
[p556]

Lake Chad Basin: Effectivites and Historical Consolidation

48. As mentioned earlier, and based on the evidence presented to the Court by both Parties on this matter and particularly Nigeria, I am strongly of the view that the issue of effectivite and historical consolidation ought invariably to be given consideration in this case. My reason for saying so has been partly explained in the introductory part of this opinion and partly in the sector on Bakassi Peninsula below. Here reference must be made to the jurisprudence of the Court, in the Frontier Dispute (Burkina FasolRepublic of Mali) case, particularly in terms of the pronouncement of the Court with regard to the position of effectivites in relation to legal title. There is enough reason and justification for the Court to take these legal principles of historical consolidation and effectivites into consideration. It has been established that in so many areas in Lake Chad, the Milner-Simon Declaration of 1919 with the annexed Moisel map and the Thompson-Marchand Declaration of 1929-1930, as confirmed by the Henderson-Fleuriau Exchange of Notes of 9 January 1931, are not sufficiently precise and in most cases inaccurate to present a clear picture of delimitation in Lake Chad. The boundary thus requires adjustments and clarifications which can only be taken care of by effectivites and historical consolidation.

49. The Lake Chad basin is constantly in a state of flux as to its waters and its inhabitants kept moving with the receding waters from time to time. Some of the settlements and villages have been there for over 40 years. Undoubtedly, this is a situation where effectivite has an important role to play. In the Island of Palmas case, Max Huber held that the island ought to be attributed to the Netherlands on the ground that:

"the establishment of Netherlands authority, attested also by external signs of sovereignty, had already reached such a degree of development that the importance of maintaining this state of things ought to be considered as prevailing over a claim possibly based either on discovery in very distant times and unsupported by occupation, or on mere geographical position" (H. Lauterpacht, The Function of Law in International Community, p. 120).

Added to all these uncertainties in the area of Lake Chad is the fact that there has never been any definitive delimitation, let alone demarcation. A clear picture of the situation in Lake Chad is that the inhabitants have been living at large regardless of where the boundary lies, and some of them have been there for many years. It is precisely a situation like this that calls for justice in favour of these inhabitants, most of whom owe allegiance to Ngala local government in Nigeria and their Nigerian Bula-[p557] mas (chiefs). This spread of inhabitants in Lake Chad is not unusual, we have similar examples in the area of the land boundary between Nigeria and Cameroon where, for example, in the Nigerian village of Koja, the Nigerian inhabitants have spread over into the Cameroonian side of the boundary. Again, in the Cameroonian village of Turu, the inhabitants have spread into the Nigerian territory. The Court in its wisdom has decided to allow the Parties to resolve these incursions themselves by peaceful settlement. The arbitrator in the Island of Palmas case established the general rules which ought to guide the judge in deciding matters of this nature by weighing the relative merits of the titles claimed. He said:

"International law, like law in general, has the object of assuring the coexistence of different interests which are worthy of legal protection. If, as in the present instance, only

one of two conflicting interests is to prevail, because sovereignty can be attributed to but one of the Parties, the interest which involves the maintenance of a state of things having offered at the critical time to the inhabitants of the disputed territory, and to other States, a certain guarantee for the respect of their rights ought, in doubt, to prevail over an interest which — supposing it to be recognized in international law — has not yet received any concrete form of development." (H. Lauterpacht, op. cit., pp. 119-120.)

In my view, this statement of Max Huber is reflected in the Frontier Dispute (Burkina FasolRepublic of Mali) case, that:

"In the event that the effectivite does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The effect ivites can then play an essential role in showing how the title is interpreted in practice." (I.C.J. Reports 1986, p. 587, para. 63; emphasis added.)

50. In this particular case therefore, it is effectivite that can assist in fully complementing the content of the legal title. This definitely is not a case of effectivite contra legem, but one that must invariably be given recognition and consideration. Quite patently, the Frontier Dispute (Burkina FasolRepublic of Mali) case is the authority on this point. The Court cannot interpret a part of paragraph 63 of the Judgment in that case, and leave the other part uninterpreted. After all, Cameroon in effect accepted the overwhelming evidence of effectivites put forward by Nigeria.

51. Nigeria strongly and extensively pinpoints the obvious deficiencies in many of these instruments. Cameroon also agrees with many of the deficiencies as highlighted by Nigeria. One example is the Moisel map as [p558] well as the map attached to the 1931 Declaration. Another problematic area is the mouth of the Ebeji. The difficulties encountered by the LCBC throughout the duration of their work on the Lake Chad boundary is not unconnected with the problems of inaccuracies, uncertainties and incongruities when it comes to delimitation and demarcation.

52. The role of effectivite which deals majorly with the conduct and practice of the parties and has its legal basis founded on some of the provisions of the Vienna Convention on the Law of Treaties of 1969, particularly its paragraph 31, has as its advantage, the need to ensure stability along the boundaries of two States. Short of invalidating a legal title that bears no relation to the situation on the ground, effectivite comes in to play the role of sustaining complementarily the boundary based on the practice and conduct of the parties over the years which, in effect, is simi-lar to the principle of uti possidetis juris (de facto). Consequently, effectivite comes in to adjust, vary or amend such boundary as may be structurally established by the legal title.
53. This view is not strange to the Court. Apart from certain inferences made by it on a similar matter in the KasikililSedudu Island (Botswana/Namibia) case, an illustration of such a principle was made in the Advisory Opinion of 1971 in the case concerning the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), where the Court states:

"This procedure followed by the Security Council, which has continued unchanged after the amendment in 1965 of Article 27 of the Charter, has been generally accepted by Members of the United Nations and evidences a general practice of that Organization." (I.C.J. Reports 1971, p. 22, para. 22.)

54. Similarly, in 1962, the Court had another opportunity to pronounce on the conduct and

practice of the parties with regard to a map which the Court considered to have been accepted as the outcome of the work on delimitation between Cambodia and Thailand in the case concerning the Temple of Preah Vihear. In that case the Court decided that:

"Thailand in 1908-1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory. The Court considers further that, looked at as a whole, Thailand's subsequent conduct confirms and bears out her original acceptance, and that Thailand's acts on the ground do not suffice to negative this. Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line." (I.C.J. Reports 1962, pp. 32-33; emphasis added.)
[p559]

In this case, Nigeria relies very heavily on effectivites to justify its claim over the 33 villages mentioned in its Counter-Memorial and filed bundles of documents in support of it, which clearly show its uninterrupted occupation of such places over the years.

55. Nigeria describes with particularity that the settlements are not heavily populated, and are headed by Bulamas. The houses are generally built of grass and mud. Fishing and farming are practised on the available fertile land and water. The people there are Nigerians and are pre-dominantly of Nigerian tribes, i.e., Hausa, Fulani, Kanuri, and in some cases I bo, Yoruba, Shuwa Arabs and Sara. They also have in some places Malians, Cameroonians and Chadians who, even though few, also pay community taxes to Nigerian Local Government Authorities (Ngala and Marte Local Government Authorities).

56. According to Nigeria, some of these villages were established as far back as 1959. Documentary evidence in support of Nigeria's effectivites in the Lake Chad basin was rather overwhelming. Nigeria's activities in these villages, viz., the appointment of Bulamas, general and local administration, health services, education, collection of taxes, holding of elections, conducting census, proof of the affiliation of the local inhabitants to Nigeria and aid to inhabitants for agricultural purposes were all heavily pleaded and presented. Nigeria claims to have carried on these activities continuously in all these villages, undisturbed and uninterrupted by Cameroon over the years. Cameroon recognizes these facts. Cameroon persistently referred to a "long list" of documents presented by Nigeria. At a juncture counsel for Cameroon stated during the oral proceedings:

"Nigeria has presented you with a very long list of its alleged effectivites. Many of them do not qualify as proper effectivites, for the reasons I have already outlined and for others I shall mention shortly. Still, superficially, it is a long list. Cameroon's is shorter. Deliberately so, however." (CR 2002/4 (Mendelson), p. 45, para. 23; emphasis added.)

57. In Cameroon's presentation of its own effectivites, it claims that Nigeria occupies 18 Cameroonian villages. Most of the claims and activities of Cameroon date from about 1983-1987. Cameroon has visited only 12 of these villages between 1982 and 1990. It claims to have carried out a census in 1983 in 14 villages including Sagir, which it admits belongs to Nigeria. Cameroon claims to have collected taxes from eight villages between 1983 and 1993. It also claims to have designated chiefs in 12 villages. Although Cameroon did not claim to have held elections in any of the villages, nevertheless it claims to have installed polling stations in six villages, conducted election tours in four villages and given notice of elections in seven villages. Cameroon further claims to have been in control [p560] of markets, thereby banning illegal trading in four villages, and distributed provisions to nine villages in 1985. Cameroon intervened through its gendarmeries between 1984 and 1986 in three criminal cases in three villages, and in 1982 organized cultural and folk activities in four villages. However, Cameroon concedes that six of these

villages are actually within Nigerian territory; these are: Koloram, Sabon Tumbu, Jribril-laram, Doron Mallam, Kirta Wulgo and Sagaya.

58. From the above report it can be seen that Cameroon's effectivites are admittedly very scanty, few, vague, mostly unsubstantiated and restricted to a limited period and cannot be compared with the overwhelming evidence of effectivites presented by Nigeria before the Court. As Cameroon pointed out, Nigeria's claim to the 33 villages and the justification for such a claim based on effectivite is all contained in Nigeria's pleadings. Nigeria's effectivites and historical consolidation in Lake Chad are sufficiently significant to be accorded recognition. But the Court unfortunately rejects all these claims.

59. It will be necessary in this opinion to dwell on another angle concerning the issue of title which Cameroon is relying on. Counsel for Cameroon added at the oral proceedings:

"For the legal reasons I have already put before you Cameroon, as the party with the title, needs to prove very little (if anything) by way of corroboration of its title. So it has deliberately refrained from playing Nigeria's game, considering it quite inappropriate to go down the path of amassing one example after another." (CR 2002/4 (Mendelson), p. 45, para. 23.)

I wish to refer to yet another admission by Cameroon with regard to the overwhelming evidence of effectivite presented by Nigeria before the Court, where counsel for Cameroon stated:

"So it will not do for Nigeria to pile up instance after instance of alleged effectivites in one pan of the scales, so to speak, and then point out that Cameroon has cited fewer. The law requires this Court to tilt the scales of justice in favour of the title-holder, and it will require a great deal to displace that title." (Ibid., p. 39, para. 11.)

Here again Cameroon can be faulted with regard to its so-called "legal title" and its claim as "title-holder". In the first case, it must be clear that the effectivites of Nigeria in the Lake Chad basin is not meant to displace the conventional title. Effectivite as presented by Nigeria in this case will only vary or adjust the conventional title boundary. It will not tilt the scale of justice one way or the other, but merely recognizes the fact that by the acts of the Parties through their conduct and practice they have [p561] "recognized"' the necessary adjustments in an otherwise inaccurate conventional title boundary.

60. It is true that in this area of Lake Chad (as well as in the Bakassi Peninsula), Cameroon has fewer evidence of effectivite. This presumably is because they have never occupied these areas which Nigeria has proved to be under its occupation all along. However, and quite erroneously, Cameroon is relying on what it terms "legal title" by referring to itself as "title-holder".

61. Again, Cameroon gives the impression of being a title-holder, which it has repeated many times. Cameroon has referred to all those relevant instruments as the exclusive deciding factor in this case. Nigeria equally presents its case in a similar manner to that of Cameroon. Nigeria accepts in principle that all those instruments are relevant to the determination of the delimitation and demarcation of the Lake Chad basin, but, in addition, Nigeria says that this boundary described by inaccurate maps and incomplete or defective instruments must be interpreted in order to give an effective and legal boundary delimitation. Furthermore, Nigeria contends that other principles of delimitation must be taken into consideration as decided by the Chamber of this Court in the Frontier Dispute (Burkina FasolRepublic of Mali) case. Hence, Nigeria is saying that historical consolidation and effectivite are all relevant factors that are to be taken into consideration

in the interpretation of the delimitation of the Lake Chad Basin. Contrary to the decision of the Court, this effectivite will serve a corrective or amending role in this case by modification, adjustment and variation as the case may be in all the relevant places.

62. In other words, the position of Nigeria could simply be perceived thus: that despite the endorsement of all the relevant instruments and declarations in the early part of the twentieth century, movement of people within and around the Lake Chad area has never been static. In the absence of any conclusive and proper delimitation and demarcation in these places, settlements have been recognized by both Parties and this must be read into these instruments, if the same have to be interpreted in the year 2002, a period of well over 80 years. The Court must recognize the status quo ante in order to do justice and steer a path of peace and stability of relations in the region.

The Bakassi Peninsula

63. As regards the Bakassi Peninsula (including the land boundary), the Court relies on

— the two agreements between Great Britain and Germany dated (11 March 1913 and 12 April 1913 respectively); [p562]
— the 1946 Order in Council;
— the Yaounde Declaration of 14 August 1970;
— the Kano Agreement of September 1974;
— the Maroua Declaration of June 1975;
— the Yaounde II Declaration of 4 April 1987;
— the League of Nations Mandate Agreements; and
— the United Nations Trusteeship Agreements.

64. In its Judgment, particularly in paragraph 325 HI (A), (B) and (C), the Court fails to take into consideration the situation on the ground in the Bakassi Peninsula, despite the fact that no one is left in doubt that at the moment this territory, and indeed since independence, is occupied and firmly in possession of Nigeria and inhabited by Nigerian people; hence my reason for voting against the decision of the Court. This is an artificial decision that fails blatantly to take into consideration, contrary to all the accepted principles of international law and practice, that effec-tives must invariably be given consideration in a matter of this nature. Furthermore, the Court fails to take into account the submission of Nigeria based on historical consolidation, which the Court now refers to as mere theory. It is my strong view that, if the principle of historical con-solidation is a theory, it is one that the Court, over the years in its judgments (as will be shown later), has given its approval and support. The decision of the Court, in my view, is rather a political decision than a legal one.

65. Both Cameroon and Nigeria present very strong arguments over their respective claims to the Bakassi Peninsula and both urge the Court to "adjudge and declare" that sovereignty over the Bakassi Peninsula belongs to it. In its Application instituting the proceedings (para. 20 (a)), Cameroon asks the Court "to adjudge and declare: that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon". In its pleadings, Nigeria requests the Court "as to the Bakassi Peninsula ... to adjudge and declare that sovereignty over the Peninsula ... is vested in the Republic of Nigeria" (Counter-Memorial of Nigeria, Vol. Ill, Submissions, p. 834).

66. Cameroon's case virtually stands on one leg, which it strongly presented, to the effect that what governs this claim is no other legal instrument than the Agreement of 11 March 1913 concluded between Great Britain and Germany. It considers the other leg of its

argument, which is uti possidetis juris and effectivite, to be secondary and supportive of its main claim. Cameroon bases its view on what it perceives as the position of international law in relation to treaties, relying very heavily on the Judgment of the Chamber of the Court in the case of the Frontier Dispute (Burkina FasolRepublic of Mali), particularly its paragraph 63 [p563] (I.C.J. Reports 1986, p. 586). Cameroon strongly contends that once it can lay claim to a legal title, then as title-holder, the Bakassi Peninsula is part of its territory. In particular, it relies mainly on Articles XVIII-XXII of the Agreement of 11 March 1913. Quite obviously, Cameroon's case is not strong on effectivites (which will be examined later), and hence it stands or falls mainly on its claim to legal title, which the Court, in my view, upholds, quite erroneously.

67. Nigeria rests its own case on four legs: first, it claims original title evidenced by the Treaty of 1884 between Great Britain and the Kings and Chiefs of Old Calabar; second, it relies very heavily on effectivites, which it overwhelmingly substantiates; third, it claims the long and un-interrupted occupation and administration of the Bakassi Peninsula, as indicating the pattern of "conduct and practice" of the Parties involving historical consolidation; and, fourth, Nigeria also claims title to the peninsula based on the acquiescence by Cameroon over many years.

68. The case presented by Cameroon to the Court is that the Agreement of 11 March 1913 between Great Britain and Germany is not only significant but that it is the Agreement that determined the boundary of the Bakassi Peninsula, ceding it to Germany. As far as Cameroon is concerned, it is the 1913 Agreement that ultimately determines the boundary although, according to Cameroon, there were a series of agreements before that date locating the boundary at the mouth of the Rio del Rey. These agreements are dated 29 April 1885, 27 July 1886, 1 July 1890 and 15 November 1893. Cameroon states further that the Agreement of 16 April 1901 is of considerable significance because it was the first time that the boundary was located on the Akwayafe River, thus placing the Bakassi Peninsula within German territory. Nigeria disagrees with this view and strongly denies that the 1901 Agreement ever changed the boundary from the Rio del Rey to the mouth of the Akwayafe. What counsel for Nigeria said during the oral proceedings about the 1901 Agreement is that:

"Far from these propositions being accepted 'without hesitation', they call for the utmost hesitation. As a fact, the two Governments did not reach agreement on those matters. And in law, no mere proposals or reports, no agreements which have not entered into force, can be held to constitute an acknowledgment of, or agreement to, whatever it is that is being proposed. What the local officials in Nigeria and Cameroon may have agreed was, when referred back to these capitals, not approved by their Governments." (CR 2002/8 (Watts), p. 53, para. 62.)

69. It appears to me that Nigeria is right on this point, because, according to Cameroon's pleadings regarding the Protocol of the [p564] Southern Nigeria-Cameroon Boundary Commission signed in April 1906, which was signed by Captain Woodroffe, the then British Commissioner and Captain Herrmann, the then German Commissioner, reference was made to the "abortive Moor-Puttkamer Agreement of 16 April 1901" (Memorial of Cameroon, Vol. I, pp. 69-70, para. 2.52).

70. It seems to me that, prima facie, both Parties recognize the significance of the Agreement of 11 March 1913. However, whereas Cameroon asserts that all 30 Articles should be given their full effect, Nigeria is asking the Court not to give any legal effect to Articles XVIII-XXII pertaining to the Bakassi Peninsula.

71. The reason why Nigeria is asking the Court not to enforce the provisions of Articles

XVIII-XXII of the Agreement of 1913, is that it holds an original title, which it considers to be earlier in time and, for that matter, superior to the conventional title claimed by Cameroon on this part of the boundary. Prior est tempore, prior est jure. On the other hand, if the Court upholds the view of Cameroon regarding the effect of these Articles, as it does, then its effect would be that the Agreement of 1913 concerning the boundary along the Bakassi Peninsula is binding between Great Britain and Germany. However, the view of Nigeria is that whatever is the effect of those Articles, it cannot bind the Kings and Chiefs of Old Calabar and for that matter Nigeria, after independence.

72. Cameroon stated that Nigeria cannot pick and choose, and that if the Agreement is valid and binding, it must be so as a whole, and not truncated. Cameroon went further to state that the argument of Nigeria with regard to the five Articles in the 1913 Agreement cannot hold, because of the effect of the provisions of Articles 44, 60 and 62, paragraph 2 (a), of the 1969 Vienna Convention on the Law of Treaties. Although the Court declines to deal with this issue, in my opinion I consider it important that all these Articles be examined and interpreted in relation to the 1913 Agreement. But before this exercise can be undertaken, I must refer briefly to the claim of Nigeria as regards its original title based on the Treaty of 10 September 1884 between the Kings and Chiefs of Old Calabar and Great Britain. The stand of Nigeria is that Great Britain, having signed a treaty of protection with the Kings and Chiefs of Old Calabar in 1884, was incapable of ceding the Bakassi Peninsula to Germany in 1913. Nigeria argues that Great Britain had neither the right nor the capacity to do so, that such transfer was invalid, null and void and that Great Britain was obviously in breach of its obligations to the Kings, Chiefs and people of Old Calabar which were merely to "protect" them, and not to alienate their land. Nemo dat quod non habet.

Severability of Articles XVIII-XXII of the 1913 Agreement

73. Article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties should be treated first. This paragraph reads: "A fundamental change of circumstance may not be invoked as a ground for terminating or withdrawing from a treaty." In my view, this provision is not appli-[p565]cable to the request of Nigeria that these five Articles in the 1913 Agreement ought to be expunged. Nigeria is not asking for the withdrawal or termination of the Treaty. In fact, Nigeria's position regarding the 1913 Treaty can be divided into three.

74. First, Nigeria observes that there are certain anomalies, inaccuracies or defects in the Agreement that need to be "cured" by the Court through interpretation, but Nigeria does not say that these provisions, if considered relevant in another segment, may be rendered unenforceable or terminated.

75. Second, there is the sector of the boundary from Pillar 64 to Pillar 114, which both Nigeria and Cameroon accept as valid and which neither calls for withdrawal nor termination. However, Nigeria contends that the inherent defects in the five Articles in question render them un-enforceable. Article 62, paragraph 1(a), refers to "fundamental change". This is not a case of fundamental change, but one of "fundamental defect" that cannot be cured because Great Britain was not only in breach of its obligations to the Kings and Chiefs of Old Calabar but also incapable of contracting any agreement of this nature, especially where the agreement negates its obligations under the 1884 Treaty.

76. Third, this act of Great Britain also translated into an act that it had no mandate to perform: res inter alios acta alteri nocere non debet.

77. Article 44 of the Vienna Convention needs also to be examined thoroughly in view of the opposing positions of the Parties. Its relevant part reads:

"1. A right of a party, provided for in a treaty arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the Parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(a) The said clauses are separable from the remainder of the treaty with regard to their application;

(b) It appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or Parties to be bound by the treaty as a whole; and [p566]

(c) Continued performance of the remainder of the treaty would not be unjust."

78. Because the Article refers to treaties arising under Article 56, it means that it is only relevant to treaties without denunciation, withdrawal or termination provision, as is the case in the Agreement in question. Therefore there is no doubt that this Article is very pertinent. Paragraph 1 of the Article deals with circumstances of denouncing, withdrawing or suspending the whole treaty. Since both Parties have expressed their position that the Agreement is applicable, at least in part, then this paragraph is inapplicable to the 1913 Agreement.

79. Therefore, the relevant paragraphs are paragraphs 2 and 3, because they deal with the conditions of separability. Although paragraph 2 mentions Article 60, this Article is also not relevant because it deals with cases of breaches, which is not the matter in this case. However, there are three conditions that could allow for separability.

80. The first condition pertains to cases where the clauses are separable. It is clear in the present case that the clauses we are dealing with in Articles XVIII-XXII, pertaining to the Bakassi Peninsula, are separable. The Articles dealing with Bakassi Peninsula are separate and independent in this sector, which has been so treated by Cameroon and Nigeria. Indeed, the Peninsula was the only independent sector filed in the first Application that relates to the Agreement of 11 March 1913.

81. The second condition is that acceptance of those clauses was not an "essential" basis of the consent of the other party. This cannot be because the Agreement determines a long stretch of the boundary between the European Powers. Although the negotiation resulting in the determi-nation of this sector of the boundary took many years to conclude, because the Parties were undecided as to whether the boundary should be located east of the Rio del Rey or on the Akwayafe, the problem is one of location and there is nothing "essential" about the sector.

82. The third condition is that the continued performance of the remainder of the Agreement would not be unjust. Here the provision of the paragraph 3 (c) is unclear and to some extent vague. The question is, to whom would it be unjust? Is it to one of the Parties; or both Parties? The subparagraph ought to have been drafted in a more specific and elegant manner. However, whichever way we look at it, it may be sufficient to consider the use of the word unjust as referring to any of the two Parties. Here it is absolutely clear that

invoking the provision of the five Articles would be unfair to Nigeria because it claims original title, and having regard to the fact that Great Britain could not give away the territory that it did not own and which it did not possess as a colony, either through conquest or treaty. Concluding this view, I see no reason what-[p567]soever why Articles XVIII-XXII should not be separated from the remainder of the Articles which both Nigeria and Cameroon agree are generally enforceable and can be invoked to determine the remainder of the boundary in this sector.

83. The Court in its conclusions refuses to consider the arguments advanced by the Parties as to the severability (or non-severability) of some of the treaty provisions (para. 217 of the Judgment), i.e., whether Articles XVIII-XXII are severable or not from the remainder of the 1913 Agreement. This is an agreement with 30 Articles, of which Nigeria is urging the Court to separate these five Articles. As earlier stated, separating these Articles will not in any way prevent the remainder of the provisions from being implemented by way of delimitation of the boundary.

84. The remaining provisions of the Agreement are untouched by those expunged, since they are provisions standing on their own and their application and implementation are not dependent on the five Articles, thus, the remainder of the Articles can remain in force and binding on the Parties where necessary.

The 1884 Treaty

85. On 11 March 1913, Great Britain concluded an agreement with Germany apparently recognizing Germany's sovereignty over the Bakassi Peninsula. In my view, Great Britain had no authority to conclude such an agreement with either Germany or any other State after it had entered into a binding international treaty about 29 years before then, with the Kings and Chiefs of Old Calabar. As a matter of fact and law Great Britain was under an obligation not to enter into such an agreement with Germany; and such an act was a breach of agreement to which Great Britain was actionably liable in international law.

86. Firstly, the Bakassi Peninsula is part of the territory of the Efik and Efut peoples of the Old Calabar, having settled first in Creek Town and Duke Town, then extending to the entire Bakassi Peninsula.

87. Secondly, over the years, particularly after 1884, the British adopted extensive trading links with the Kings and Chiefs of Old Calabar. Counsel for Nigeria stated at the hearings that:

"The political and legal personality of the Kings and Chiefs of Old Calabar were recognised in the treaty making of the British Crown. Thus, in the period 1823-1884 no fewer than seventeen treaties were made between the British Government and the Kings and Chiefs of Old Calabar." (Counter-Memorial of Nigeria, Vol. I, p. 71, para. 5.11; emphasis added.)

Thus, Great Britain in 1884 entered into a treaty of protection only with the Kings and Chiefs of Old Calabar.

88. Thirdly, Great Britain thus recognized the territory of the Kings [p568] and Chiefs of Old Calabar including the Bakassi Peninsula as its protectorate but not as its colony, and dealt with the City States of Old Calabar as such de facto and de jure from 1884 till the time of independence of Nigeria in 1960. Great Britain throughout this period (and even after 1913) referred to the territory of the City States of Old Calabar as "Protectorate".

89. Fourthly, Great Britain (in many treaties with the Kings and Chiefs of Old Calabar and other European Powers such as Germany) recognized and treated the City States of Old Calabar including the peninsula of Bakassi as its area of influence only, which was indicatively and factually one of its African markets for commerce.

90. Fifthly, Great Britain at no time acquired sovereignty over the territory of the Kings, Chiefs and people of Old Calabar other than the obligation of protection. If the 1913 Agreement is considered valid and binding, a fortiori the prior Treaty of 1884 should be equally valid and binding — pacta sunt servanda.

91. Sixthly, the territory of the Kings and Chiefs of Old Calabar, which includes the Bakassi Peninsula, is not terra nullius and Great Britain had no mandate or authority at any time to transfer to Germany the territory of the City States of Old Calabar, thus the principle nemo dat quod non habet.

92. Seventhly, the 1884 Treaty, being a public international treaty, is deemed to be within the knowledge of Germany. Hence, Germany could not claim ignorance of the Treaty of Protection between Great Britain and the Kings and Chiefs of Old Calabar. Thus it is clear that Germany and for that matter Cameroon could not claim sovereignty over the Bakassi Peninsula.

93. The Court agrees with Cameroon in that it does not accept the submission of Nigeria that the City States of Old Calabar have international legal personality. As far as Cameroon is concerned, this is a myth or a kind of mirage. It argues that the City States of Old Calabar cannot claim any international legal entity separate from the State of Nigeria. During the oral proceedings counsel for Nigeria argued about the City States of Old Calabar thus: "These City States were the holders of an original historic title over the cities and their dependencies, and the Bakassi Peninsula was for long a dependency of Old Calabar." (Counter-Memorial of Nigeria, Vol. I, p. 67 para. 5.2.)

94. Although Cameroon accepts that "[wjithout doubt, Efik trading took place over a vast area of what is now south-eastern Nigeria and western Cameroon" (Reply of Cameroon, Vol. I, p. 247, para. 5.24), yet it asserts that there were other ethnic groups in that area of the Bakassi Peninsula, which at that time showed a "complex pattern of human settlement" {ibid., Vol. I, p. 247, para. 5.24). [p569]

95. In deciding whether the City States of Old Calabar is an international legal entity, one should look to the nature of the Treaty entered into between Great Britain and the Kings and Chiefs of Old Calabar in 1884. In the first place, this is not the first treaty of this kind signed by the Kings and Chiefs. As I have already mentioned, Great Britain signed altogether 17 treaties of this kind with the Kings and Chiefs of Old Calabar. Secondly, Great Britain referred to it not as a mere agreement, a declaration or exchange of Notes, but as a treaty — "Treaty with the Kings and Chiefs of Old Calabar, September 10, 1884" (Counter-Memorial of Nigeria, Vol. IV, Ann. 23, p. 109). How then could Great Britain sign a document, and call it a treaty if it were not so? It would have been described as an "ordinance" had it been a document involving a colony of Great Britain. There is therefore no doubt that the City States of Old Calabar have international legal personality.

96. Cameroon's contention regarding the territorial extent of the City States of Old Calabar is that Nigeria did not present a clear-cut picture, or the extent of the territory. In effect, this is how Cameroon puts it in its pleadings:

"As regards the territorial questions, Nigeria wants to have it both ways. On the one hand, it states in its Counter-Memorial that Bakassi was situated 'within the domains of the Kings and Chiefs of Old Calabar' and, on the other, that 'the Efut country about the Rio del Rey"

was covered by the declaration of the 'Kings and Chiefs of Efut' . . . Incidentally, it also maintains that the 1888 Treaty covered not only the region around Rio del Rey but also 'territory even further to the East' ... It is regrettable that Nigeria has refrained from specifying the dividing line between the territory falling under the authority of 'Old Calabar' in accordance with its claim, and the territory belonging to Efut, and therefore pertaining to the Schedule to the Treaty as it interprets it." (Reply of Cameroon, Vol. I, p. 253, para. 5.45.)

In addition, Cameroon contends that Nigeria is not forthcoming about the nature and authority of Old Calabar and its title to the Bakassi Peninsula (ibid., Vol. I, p. 254, para. 5.48). Further, it refers to the 1884 Treaty of Protection, which does not specifically mention the Bakassi Peninsula.

97. In my view, answers to all these queries are contained in the pleadings, particularly those filed by Nigeria. First, Nigeria referred to the works of many authors and what was said about the link of the City States of Old Calabar to the Bakassi Peninsula and the surrounding area. In this regard reference was made to the pre-colonial era in Bakassi. Mention was made of the establishment of these City States like Duke Town, Creek Town and Old Town (Obutong). A very vivid description [p570] of the federation of these City States was given by Dr. Kannan K. Nair thus:

"The political system of Calabar might be thought of as a federation or conglomeration of loosely-knit towns. Each town was a political unit with a territorial basis, its head having jurisdiction over his own town or house and representing the founding ancestors of his particular family. Each maintained its own administration and had the right to enforce sanction[s] on others. Both these factors point to the fact that each of the towns was recognized to be politically equivalent. The relations between the major towns — Duke Town, Creek Town and Old Town — were in the order of inter-town dealings. Thus, they were in their political relations similar to European nation states in the eighteenth and nineteenth centuries. Political power was ultimately resident in the segments rather than in a central government. (Politics and Society in South Eastern Nigeria 1841-1906, 1972, pp. 2-3)." (Counter-Memorial of Nigeria, Vol. I, p. 67, para. 5.1.)

Nigeria also refers to some historical link of the Kings and Chiefs of Old Calabar with the entire area of Bakassi as recorded in some of the books (already put in evidence) of authors like Captain J. B. Walker and E. O. Efiong-Fuller.

98. Further relevant evidence are the maps presented by Nigeria, which are annexed to its Counter-Memorial, particularly maps 13-22 in the Atlas. A careful study of map 13 shows that Old Calabar (otherwise called Cross River) covers the area where the Efiks and the Efuts had settled even before 1888. It clearly shows that their area of authority extends as far as the Rio del Rey, while indicating the boundary between Old Calabar and the German area of influence. The definition of the area under German influence was described by the independent Kings and Chiefs in the Agreement between Kings Akwa and Bell and Woermann and Jantzen & Thormahlen as follows,

"the Country called Cameroons situated on the Cameroons River, between the River Bimba on the North side, the River Qua-Qua on the South side and up to 4° 10' North lat. Hence, the extent of the area covered by 'Old Calabar' goes as far as the territory to the west of the area claimed by Kings Akwa and Bell. In other words, the entire area of Bakassi Peninsula is within the territorial domain of the City States of Old Calabar. This is illustrated in the map 'Old Calabar River'." (Ibid., Atlas Map No. 27.)

99. Here I must stress the evidential value of these maps. Many of them date back to the

seventeenth century and indicate clearly the extent of the territory of the Old Calabar people. In fact, the 1888 map of H. H. Johnson, then the Vice-Consul of Oil Rivers, of the Niger Delta,
[p571] indicates quite clearly that Old Calabar and the territory covered by the Efut people went beyond the Rio del Rey and far to the east of that estuary. It is fascinating to see these maps, many of which date from a period between 1662 and 1888 (i.e., 1662, 1750-1772, 1729, 1794, 1822, 1871, 1879 and 1888), distinctly depicting the territory occupied by the Efiks and Efuts and locating many of the important towns already mentioned. Map 18 of the Atlas Map of Nigeria's Counter-Memorial, prepared by H. H. Moll, indicates very clearly that it was the Rio del Rey that separates the territory of what he called "Kings City Callebar and Old Callebar" from "Afany Villages Old Camerones". During the oral proceedings it was argued by counsel for Nigeria (and undenied by Cameroon) that when the then British Consul, Mr. Hewett, was reporting about the 1884 Treaty to the British Foreign Secretary he said: "The Chiefs of Tom Shot country, of Efut, the Country about the Rio del Rey and of Indombi, the country about the River Rumby, made declarations that they were subject to Old Calabar." (CR 2002/8 (Watts), p. 45, para. 31.)

100. This is a statement emanating from the proper source, i.e., the person who directly signed the 1884 Treaty with the Kings and Chiefs of Old Calabar. The extent of the territory of the City States of Old Calabar is thus clear and definite to the extent that it runs to the mouth of the Rio del Rey. Equally there is later evidence in 1890 by the then British Consul, Johnston, that:

"The trade and rule of the Old Calabar Chiefs extended, in 1887, considerably further to the east than the Ndian River . . . The left or eastern bank of the Akwayafe and the land between that river and the Ndian is under the rule of Asibon or Archibong Edem III, a big Chief of Old Calabar . . ." (Ibid., p. 41, para. 13.)

Johnston concluded that the Old Calabar had withdrawn from the lands east of Ndian. Counsel for Nigeria stated that:

"So Johnston's report was, in effect, that while the territory beyond the Ndian might only arguably be Old Calabar's, territory to the west belonged 'undoubtedly' to Old Calabar. Bakassi, and the Rio del Rey, are demonstrably to the west of the Ndian: Bakassi, Mr. President and Members of the Court, was part of Old Calabar's heartlands." (Ibid., p. 41, para. 13.)

101. The view of Cameroon is that Nigeria's claim in terms of the extent of the territories of the Kings and Chiefs of Old Calabar is not clear, but Cameroon agrees with Nigeria that three separate groups of Kings and Chiefs of Old Calabar signed the Treaty of 10 September 1884. This is highlighted in the Treaty itself (Counter-Memorial of Nigeria, Vol. IV, Ann. 23).

102. Although Cameroon stated that the Bakassi Peninsula was not [p572] specifically mentioned in the Treaty, it referred to the three Declarations of the Kings and Chiefs of Old Calabar that appended their signature to the Treaty. These are the Kings and Chiefs of Tom Shot, Efut and Idombi. Furthermore, Mr. E. H. Hewett, the then British Consul, who signed the Treaty of 1884 with the Kings and Chiefs of Old Calabar, attested to the fact that "[t]he Chiefs of Tom Shot country, of Efut, the country about the Rio del Rey, and of Idombi, the country about the River Rumby, made declarations that they were subject to Old Calabar" (Counter-Memorial of Nigeria, Vol. I, p. 94, para. 6.33).

103. In addition, the letter of Mr. Johnston, who took over as Consul from Mr. Hewett, was more revealing and quite explanatory. His letter of 23 October 1890 to the Foreign Office

revealed that the extent of the rule of the Old Calabar Chiefs went as far as the base of the Cameroons and beyond the Akwayafe River. The trade and rule of the Kings and Chiefs of Old Calabar extended to the east of the Ndian River until Mr. Johnston advised the Chiefs to limit their claim to the Ndian River. Upon further advice, the Chiefs withdrew their claim for damages against the German Government for the destruction of their settlements, and it was obvious that they would not be prepared to yield over more territory in favour of the Germans.

104. The Kings and Chiefs of Old Calabar exercised control over their people through cultural, social and economic links. Many of the Kings and Chiefs were traders, and were served by many of their subjects. Cohesive control was ensured through the Ekpe Shrine. The main activity of the Kings and Chiefs was to secure the effective administration of justice, develop resources for their territories and ensure peace and security in their domains, with the co-operation and assistance of their people, and in partnership with the British Government.

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105. As regards the territorial claim to the Bakassi Peninsula, it is the Treaty of 1884 that Nigeria relies upon essentially and preponderantly. It is the view of Nigeria that this Treaty, which is valid and binding, has the legal binding force and effect to render the provisions of the five Articles (i.e., Arts. XVIII-XXII) in the 1913 Agreement between Great Britain and Germany invalid and unenforceable against Nigeria. In other words, with the 1884 Treaty remaining valid until the time of independence, the five Articles mentioned above are not opposable to Nigeria. The Treaty of 1884 clearly confirms the Bakassi Peninsula as the territory of the Kings and Chiefs of Old Calabar, and at no time was it alienated to Great Britain or any other colonial Power.

106. The Court, in its Judgment, does not agree with Nigeria's claim [p573] based on the Treaty between the Kings and Chiefs of Old Calabar and Great Britain of 10 September 1884, historical consolidation or effectivite.

107. Of all these instruments relied on by the Court, the earliest and perhaps the most important is the Anglo-German Agreement of 11 March 1913 and, in particular, its Articles XVIII-XXII that spell out the boundary within the Bakassi Peninsula. This is what Cameroon considers as its legal title. As against this claim, Nigeria pivots its claim partly on the Treaty of 10 September 1884 as an indication of its own original title, because it is this Treaty that demonstrates that the sovereign rights of the Kings and Chiefs of Old Calabar as an independent legal entity recog-nized under international law is indisputable.

108. In the Advisory Opinion on Western Sahara the Court explained that:

"such agreements [such as this 1884 Treaty] with local rulers, whether or not considered as an actual 'cession' of the territory, were regarded as derivative roots of title, and not original titles obtained by occupation of terrae nullius" (I.C.J. Reports 1975, p. 39, para. 80; emphasis added).

This point on the international legal status of local rulers was amplified by Malcolm N. Shaw in his book Title to Territory in Africa, International Legal Issues thus:

"it has been seen that practice demonstrates that the European colonisation of Africa was achieved in law not by virtue of the occupation of a terra nullius but by cession from local rulers. This means that such rulers were accepted as being capable in international law not only of holding title to territory, but of transferring it to other Parties." (P. 45.)

109. Although neither the Treaty of 1884 nor the Consular Reports suggest that it was concluded between two sovereign States, it can also be said that the Treaty or the Consular Report suggest nothing to the contrary. In fact, it appears to me that reference to the agreement as a treaty brings it into the international instruments realm. However, whatever may be considered as vitiating the Treaty of 1884 between Great Britain and the Kings and Chiefs of Old Calabar (and, in my view, there is none), would equally apply to the derivative root of title of Germany which it entered into with the local rulers of Cameroon also in 1884.

110. In view of the jurisprudence of the Court cited above, one important aspect which escapes the consideration of the Court in determining the nature, terms and validity of the 1884 Treaty is to compare it with what was contemporaneously happening in Cameroon around the same
[p574]time. In fact, the Court ought to trace the derivative root of title of Germany or what entitles it to enter into the 1913 Agreements with Great Britain. In other words, the Court is bound to ask what sovereign rights Germany had over the Cameroonian territory. Both Nigeria and Cameroon exhibit the relevant documents in their pleadings.

111. The claim to title by Germany emanates from at least four treaties involving the Kings, Chiefs and the rulers of Cameroon. They are:

— The Agreement with the Chiefs of Bimbia of 11 July 1884 (Counter-Memorial of Nigeria, Vol. IV, Ann. 17, p. 79);
— The German Proclamation of Protectorates on the West Coast of Africa of 12 July 1884 (ibid., Ann. 18, p. 83);
— The Agreement between Kings Akwa and Bell and Woermann and Jantzen & Thormahlen of 12 July 1884 (ibid., Ann. 19, p. 87); and
— The Agreement between Woermann and Jantzen & Thormahlen and Dr. Nachtigal, Consul-General and Imperial Commissioner for the Coast of West Africa of 13 July 1884 (ibid., Ann. 20, p. 93).

112. These Treaties or Agreements including the Proclamation are important to the issue of title in this case. In the first place these Agreements trace the link between the rulers of Cameroon with German traders with whom they first entered into agreement to surrender sovereignty over their territory for consideration called "dash". These traders (Woermann, Jantzen, Thormahlen of Hamburg and Ed. Schmidt and Captain Johann) in turn passed their territorial title to Dr. Nachtigal, the then Consul-General and Imperial Commissioner for the Coast of West Africa. Hence, through this process Germany was able to proclaim Cameroon as its protectorate.

113. From the explanations given as regards these documents, certain indisputable facts now evolve. Contrary to the decision of the Court, the German Proclamation of 12 July 1884 did not mention a phrase like "colonial protectorate". The heading of the Proclamation reads "German Protectorate Togo Lands Cameroons, No. 212. — NOTES on German Protectorates on the West Coast of Africa". Some parts of this Proclamation of 12 July 1884 need to be quoted for emphasis:

"Cameroons. Togoland. Slave Coast, &c.
On the 12 July, 1884, a German Protectorate was proclaimed over the whole of the Cameroons District, and on the 15th October of the same year, the following official communication was made by the German Government to the principal Powers of Europe and to the United States Government, notifying the exact extent of territory on [p575] the West and South-West Coasts of Africa which had been placed under the protection of the

German Empire;—
Baron von Plessen to Earl Granville.
German Embassy, 15th October, 1884.

(Translation)

The Government of His Majesty the Emperor, with a view to insure more effectually German commercial interests on the West Coast of Africa, has taken certain districts of this coast under its protection. This has been effected in virtue of Treaties which have been in part concluded by Dr. Nachtigal, the Consul-General dispatched to West Africa, with independent Chiefs, and partly in virtue of applications for protection made by Imperial subjects, who have acquired certain tracts by covenants with independent Chiefs." (Counter-Memorial of Nigeria, Vol. IV, Ann. 18, p. 83; emphasis added.)

114. Consequently, having regard to the content of the Proclamation referred to above, and within the intertemporal law of the period, it is clear that the derivative root of title claimable by Germany is in virtue of treaties which Dr. Nachtigal, the then German Consul-General entered into with "independent Chiefs" of Cameroon and partly in virtue of applications made on behalf of imperial subjects who have acquired certain tracts by covenants with independent Chiefs. It can therefore be clearly emphasized that the German derivative root of title emanated from its treaty with the Kings and Chiefs and the transfer of sovereignty by German subjects, the terms and conditions of which include consideration of quid pro quo on the basis of "dash" for territorial transfer to the Government of Germany. Germany was therefore in a position to say that these instruments enabled it to enter into the 1913 Agreement with Great Britain, as its derivative root of title.

115. What then is the derivative root of title of Great Britain? Great Britain cannot claim that its derivative root of title is based on the mere Treaty of Protection entered into with the Kings and Chiefs of Old Calabar. The Treaty did not transfer sovereignty from the Kings and Chiefs of Old Calabar to Great Britain. It is clearly a treaty of protection and no more. Contrary to Great Britain's intention about Lagos as a colony, it was not prepared to acquire any colony in the Old Calabar, and this I will refer to again later in my opinion. It can therefore be said that since there was no intention either by Kings, Chiefs and people of Old Calabar to transfer territorial sovereignty to Great Britain, sovereignty over the Old Calabar including Bakassi remained with the rulers and people of Old Calabar.

116. The issue now is what is the legal effect and legal significance of this Treaty of 1884 between Great Britain and the Kings and Chiefs of Old Calabar? First to be considered is whether this instrument is a treaty [p576] properly so called. Unhesitatingly, my view is that it is a valid and binding international treaty, according to its form and text.

117. Before examining the Treaty itself, it must be borne in mind that each treaty, like any given case, must be interpreted according to its terms and conditions. In the Advisory Opinion of the Permanent Court of International Justice in the case of Nationality Decrees Issued in Tunis and Morocco, the Court observed:

"The extent of the powers of a protecting State in the territory of a protected State depends, first, upon the Treaties between the protecting State and the protected State establishing the Protectorate . . . In spite of common features possessed by Protectorates under international law, they have individual legal characteristics resulting from the special conditions under which they were created, and the stage of their development." (Advisory Opinion, 1923, P.C.I.J., Series B, No. 4, p. 27.)

Intrinsically, the instrument is described as a treaty in its title as "Treaty with Kings and Chiefs of Old Calabar, September 10, 1884" (Counter-Memorial of Nigeria, Vol. IV, Ann. 23, p. 107). Again in its provision on its operative date, the instrument starts: "This Treaty shall come into operation . . ." (Ibid., Vol. IV, Ann. 23, p. Ill; emphasis added.)

118. In the Treaty, there is clear evidence that it was based on an understanding of quid pro quo. While Great Britain agreed to protect the City States of Old Calabar, the Kings and Chiefs in turn agreed to protect British merchant ships "wrecked within the Old Calabar territories, the Kings and Chiefs will give them all the assistance in their power, will secure them from plunder . . ." (ibid., Vol. IV, Ann. 23, p. 155; emphasis added).

119. The legal force and legal significance of the Treaty of 10 September 1884 is therefore as follows:

(a) the Treaty was valid and binding between Great Britain and the Kings and Chiefs of Old Calabar —pacta sunt servanda;

(b) the territorial extent of the land of the Kings and Chiefs of Old Calabar as City States of Old Calabar was well known and clearly defined by descriptions and map illustrations attached to the Nigerian Counter-Memorial and Rejoinder;

(c) having signed this Agreement with the Kings and Chiefs of Old Calabar, Great Britain was under obligation to protect Old Calabar territories and did not acquire sovereignty over the territories of the Kings and Chiefs of Old Calabar;

(d) for Great Britain to enter into an agreement in 1913 with Germany amounted to a serious breach of its international obligation against [p577] the territorial rights of the Kings and Chiefs of Old Calabar;

(e) Great Britain could not give away what did not belong to it. The Island of Palmas case is an illustrative example. Just as the United States had no sovereignty over the Island of Palmas, ceded to it by Spain, so it is that Germany could not claim any conventional title over the Bakassi Peninsula. Max Huber, in the Arbitration Award states: "It is evident that Spain could not transfer more rights than she herself possessed." (United Nations, Reports of International Arbitral Awards (RIAA), Vol. II, p. 842.) Huber further adds that: "It is evident that whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers" (ibid.) ;

(f) as already indicated, there is no doubt that the Kings and Chiefs of Old Calabar have legal personality in international law.

120. The Western Sahara Advisory Opinion of 1975 is a glaring example on this issue. The international personality was clearly demonstrated over the territories of the Kings and Chiefs of Old Calabar when they rejected certain provisions in the draft Treaty of 1884, particularly Article VI which guarantees free trade in every part of their territory. Thus, the 1913 Agreement did not deprive the Kings and Chiefs of Old Calabar of sovereignty over their territory and the right to this sovereignty continued till the time of Nigeria's independence in 1960. It is highly undesirable to create any distinction between the situation in the Western Sahara case (I.C.J. Reports 1975) and the present case, simply because one is in north Africa and the other in sub-Saharan Africa.

121. Consequently, and to the extent that the 1913 Agreement ceded Bakassi Peninsula to Germany, Nigeria argued in its pleadings that this:

"would be against the nature and terms of Great Britain's 1884 Treaty of Protection with Old Calabar, against the interests of the inhabitants, against the financial interests of the title holders of Old Calabar who should have been compensated, against the recognised westward limit of the German Protectorate, against earlier undertakings by Germany to respect the Rio del Rey as the boundary and to make no acquisitions to the west of it, and against Germany's acknowledgement and understanding that the Treaty was not concerned with the acquisition or cession of territory" (Counter-Memorial of Nigeria, Vol. 1, p. 170, para. 8.52).

122. While Cameroon contends that the difference between a protectorate, protected State or colony is rather blurred, and that either is [p578] tantamount to a colony in effect, Nigeria strongly disagrees with this view and gave many reasons. On the part of Cameroon, the misunderstanding in the use of the words protectorate or protected States or colony is quite understandable. The Agreement between the Kings of Akwa and Bell on the one hand and Woermann and others on the other hand, dated 12 July 1884, although referred to as an Agreement for Protection was in fact a surrender of sovereignty which in effect means that Cameroon from that date became a colony of Germany. The same is true of the other Agreement with the Chief of Bimbia of 11 July 1884. But this muddled concept is alien to the British system of administration.

123. In 1883 (a year before the 1884 Treaty) Sir Edward Hertslet, the then librarian of the British Foreign Office and an expert in international law, defined a protectorate thus:

"A Protectorate implies an obligation on the part of a powerful State to protect and defend a weaker State against its enemies, in all, or specified eventualities . . . The usual form of establishing a Protectorate is by the conclusion of a treaty, either between the more powerful State which has undertaken to defend or protect the weaker one, and the weaker state itself, or between the protecting Power and other Powers, relating to such protection .. ." (Counter-Memorial of Nigeria, Vol. I, p. 102, para. 6.46.)

124. In fact at this period, the 1880s, the foreign policy of Great Britain was not to create or acquire more colonies but rather to enter into treaties of protection:

"Lord Granville [Secretary of State for Foreign Affairs] will remember that it was recommended by the Committee of the Cabinet which considered the question that there should be no attempt at present to create a new British Colony or Settlement, with all the necessarily expensive machinery of government, but that the districts to be taken over should continue for the present under such control and supervision as the Consul for the Bights of Benin and Biafra can exercise by means of visits paid frequently as circumstances may permit . . ." (Ibid., Vol. I, p. 103, para. 6.48.)

125. One of the English Judges in 1910 defined "Protectorate" thus: "The protected country remains in regard to the protecting State a foreign country . . ." (Ibid., Vol. I, p. 122, para. 6.81.)

126. Thus, protectorates are neither colonial protectorates nor colonies. Protectorates are to all intent and purposes international legal personalities and remain independent States and they are not "colonial protectorates" of the protecting Powers. Therefore, after the Treaty of 1884, the City States of Old Calabar and their territories were simply protec-[p579] torates of Great Britain. Before and after 1913 these City States of Old Calabar remained independent protectorates. There is nothing from the actions and instruments during this period which could describe the Old Calabar including Bakassi and other areas being

claimed by the Kings and Chiefs, as a colony of Great Britain, nor is there anything in the Treaty indicating that Old Calabar, including Bakassi, acquired the status of a colonial protectorate. Even Great Britain did not describe the territory as such and this cannot be done by any inference. In line with the provision of Article 31 of the 1969 Vienna Convention on the Law of Treaties and having regard to customary international law, the ordinary meaning to be given to the word "protectorate" is protectorate and not colonial protectorate. Great Britain at no time possessed territorial control or sovereignty over them. As far as Great Britain was concerned they were foreign countries and they were so treated by the British Foreign Office. Great Britain was therefore under a strict legal obligation to protect the rights of the Kings and Chiefs of Old Calabar in international law and not to transfer their territorial sovereignty to another State without their knowledge and consent.

Historical Consolidation and Effectivites in Bakassi

127. Historical consolidation is Nigeria's strong point in its claim to the territory of the Bakassi Peninsula. This claim is based on the original title of the Kings and Chiefs of Old Calabar that has existed for a long time and as evidenced by the Treaty of 1884 with Great Britain. The Bakassi Peninsula has over the years been in physical possession and occupation of the Kings and Chiefs of Old Calabar since they settled there in the seventeenth century. They were in peaceful occupation throughout that period till 1884 and up until the time of the Agreement between Great Britain and Germany in 1913. This right of sovereignty over all these territories coupled with possession continued during the period of the Mandate of the League of Nations as well as the period of Trusteeship till the time of independence. Nothing therefore affected their territorial rights and occupation of the same, even after the Agreement of 1913. The Kings and Chiefs of Old Calabar were not parties to the 1913 Agreement nor were they consulted.
The constant questions which counsel for Nigeria asked throughout the oral proceedings and which the Court fails to address or answer in its Judgment are: who gave Great Britain the right to give away Bakassi? And when? And how?

128. Whatever may be the legal status of the 1913 Agreement, it has no binding force over and above the original title, or the basic possessory [p580] rights of the Kings and Chiefs of Old Calabar, and thus they are not affected by it.

129. Cameroon raises a number of objections to Nigeria's claim to historical title. These objections centred on the issues of effectivites, stability of frontier and acquiescence. However, these objections cannot defeat the claim to historical title by Nigeria.

130. Nigeria has four bases of claim to original title which are as follows:

(a) long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar which title vested in Nigeria at the time of Independence in 1960;
(b) effective administration by Nigeria, acting as sovereign, and an absence of protest;
(c) manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula;
(d) recognition of Nigerian sovereignty by Cameroon (Counter-Memorial of Nigeria, Vol. I, p. 211, para. 10.2).

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131. Since the original title of the City States of Old Calabar rests with the Kings, Chiefs and people of Calabar with all the rights over their territories, this remained so until the

time of independence of Nigeria on 1 October 1960.

132. It must be borne in mind at all times that a legal title boundary can be shifted, modified or adjusted to give room for the practice and conduct of the inhabitants on the ground along such a boundary in accordance with Article 31, paragraph 3, of the 1969 Vienna Convention on the Law of Treaties.

133. Furthermore, Nigeria claims that by virtue of its original title based on its historical consolidation, its rights to the Bakassi Peninsula survive to the time of the 1913 Agreement and beyond. It claims that:

(a) in and before 1913 the Kings and Chiefs of Old Calabar possessed sovereignty over the Bakassi Peninsula; and
(b) the Anglo-German Agreement of 11 March 1913, in so far as it purported to transfer to Germany a territorial title which Great Britain did not possess and which it had no power or authority to transfer, did not transfer territorial sovereignty over Bakassi to Germany. The status quo ante was undisturbed, and title accordingly remained [p581] vested in the Kings and Chiefs of Old Calabar (Counter-Memorial of Nigeria, Vol. I, p. 203, para. 9.73).

134. The Court denies Nigeria's claim to the Bakassi Peninsula based on its argument of historic consolidation (para. 220 of the Judgment). The claim of Nigeria based on historical consolidation is not its invention and it is far from being a mere theory. Jurisprudentially, historical con-solidation evolves from one of the early cases of the Court. In the Fisheries (United Kingdom v. Norway) case of 1951 the Court decided that against all other States, Norway had title to the territorial sea that she delimited by a system of straight baselines since 1869. The evolution of this principle is fundamentally based on toleration. For many years many States, including the United Kingdom, have come to recognize the "title" to this territorial sea as claimed by Norway. In the presentation of its submission, Norway referred to an "historic title" by saying that history was invoked together with other factors to justify her exceptional rights to this particular area of the sea. The United Kingdom raised certain contradictions and uncertainties discovered in the general Norwegian practice. The Court considered that too much importance or emphasis need not be attached to these contradictions. The Court therefore decided:

"In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose.
……
The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact. For a period of more than sixty years the United Kingdom Government itself in no way contested it." (I.C.J. Reports 1951, p. 138.)

The case that follows in the footsteps of the Fisheries case is the Minquiers and Ecrehos case of 1953, where the Court observed that:

"Both Parties contend that they have respectively an ancient or original title to the Ecrehos and the Minquiers, and that their title has always been maintained and was never lost. The present case does not therefore present the characteristics of a dispute concerning the acquisition of sovereignty over terra nullius." (I.C.J. Reports 1953, p. 53.)

The Court then went on to decide that: "What is of decisive importance, in the opinion of the Court, is not indirect presumptions deduced from [p582] events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers

groups." (I.C.J. Reports 1953, p. 57.)

135. This principle has evolved over the years, side by side with effec-tivites, that a territory that is not terra nullius, occupied by inhabitants, over many years with open claim of territorial sovereignty over the territory, undisturbed, uninterrupted and without any hindrance whatsoever, becomes a matter of recognition under international law in the name of historical consolidation. A long list of distinguished jurists and writers on international law including Charles De Visscher, Sir Robert Jennings and Professor George Schwarzenberger have lent their support to this principle.

136. Apart from the case of Minquiers and Ecrehos and the subsequent case of the Western Sahara Advisory Opinion, the Judgment of the Chamber in the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) also supported this principle thus: "In the first place, it should not be overlooked that Spanish colonial divisions in Spanish America did not individually have any 'original' or 'historic' titles, as those concepts are understood in international law." (I.C.J. Reports 1992, p. 565, para. 345.) The Judgment went on to state:

"Where the relevant administrative boundary was ill-defined or its position disputed, in the view of the Chamber the behaviour of the two newly independent States in the years following independence may well serve as a guide to where the boundary was, either in their shared view, or in the view acted on by one and acquiesced in by the other . . . This aspect of the matter is of particular importance in relation to the status of the islands, by reason of their history." (Ibid.)

137. Whilst referring to cases, reference should also be made to the development of this principle even when it conflicts with conventional or legal title, since the Court takes the view that invocation of the doctrine of consolidation of historic titles cannot vest title to Bakassi in Nigeria, "where its 'occupation' of the peninsula is adverse to Cameroon's prior treaty title" (para. 220 of the Judgment). The case in view is the Frontier Dispute (Burkina FasolRepublic of Mali) case. Much reliance has been placed on this case by Cameroon, particularly paragraph 63 thereof, which incidentally has been cited in the Land, Island and Maritime Frontier Dispute (El Salvador!Honduras: Nicaragua intervening) case in 1992. The clear indication in the present case is that while giving due recognition to legal title, the City States of Old Calabar's effectivites on the ground, the toponomy of Bakassi, the administration of Bakassi as part of Nigeria in the period 1913-1960, exercise of authority by traditional rulers, acts of administration by Nigeria after independence in 1960 [p583] involving effectivites and peaceful administration, maintenance of public order and investigation of crimes, granting of oil exploration rights, public health, public education, participation in parliamentary elections, collection of custom duties, use of Nigerian passports by residents of the Bakassi Peninsula, and even evidence of Nigerian internal State rivalry over Bakassi, give the original title of Nigeria a preference. All these are catalogued and documented with a compendium of annexes as "fulfilment materials" to demonstrate beyond doubt the claim of Nigeria over Bakassi by historical consolidation. Cameroon did not deny most of these claims by Nigeria but all that it relies on is the conventional title based on the Agreement of 11 May 1913, which the Court accepts.

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138. What was the relevance of German effectivites after 1913? For Germany to have set up effective administration in the Bakassi Peninsula between 11 March 1913 and August 1914, when World War I broke out, would have been, at least, of tacit significance because it would clearly indicate Germany's occupation of the territories claimed by the Kings and Chiefs of Old Calabar. In addition, it would have tested the ground as to whether such

occupation would be accepted by the Kings, Chiefs and people of Old Calabar in the Bakassi Peninsula. This in turn would have served as a manifestation of Germany's claim of sovereignty. Presumably, that would have created an incident or even a revolt. For example in 1913, the same year in which the Agreement was concluded, the Kings and Chiefs of Old Calabar protested vigorously, both in Calabar and in London, against an apparent proposal by the British Government to amend the land tenure system which was then applicable in that area. The protest was so pronounced that it was debated in the British Parliament at that time, and the British Government denied entertaining such a proposal. Cameroon did not deny the fact that there was no effectivites on the ground by Germany between 1913 and 1914. After the war, there was still no evidence of effectivites, even when Britain, France and Belgium occupied the then German colonies and protectorates. Much of Cameroon's response to Nigeria's position on this point has nothing to do with effectivite. Instead, Cameroon contents itself with dealing with the non-ratification of the 1913 Agreement, both nationally and internationally.

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139. The League of Nations came into existence after World War I, and as a result, the southern part of Cameroon was placed under the administration of Great Britain, based on a mandate agreement. After World War II, in 1945, Southern Cameroon came under the Trusteeship of Great Britain. France was entrusted with the administration of Cameroon during the Mandate and Trusteeship period. Cameroon's argument is that the situation of the administered territories changed during the Mandate and Trusteeship period, because Great Britain and France were under strict directives of the League of Nations (after 1919) and United Nations (after 1946) to adhere to the agreements entered into, concerning both the northern and southern Cameroons.

140. Cameroon contends that these administered territories were defined by the 1919 and 1931 instruments, and that the Administering Powers were unable to alter the boundaries without the consent of the League of Nations and subsequently the United Nations, who through their appointed committees constantly monitored the administration of the territories as assigned to the Administering Powers. Thus, Cameroon argues that these acts confirm the boundaries as already recognized.

141. Nigeria does not deny some of these historical facts. The point made by Nigeria in substance is that all this did not affect the territorial rights of the Kings and Chiefs of Old Calabar, and neither did it affect the rights of the Republic of Nigeria later in 1960. Much of the activities of the Council and the United Nations Fourth Committee did not go beyond the presentation of proposals, discussion about the possibility of delimitation and demarcation and obtaining reports about the administration of these territories (CR 2002/4 (Ntamark), p. 21, para. 13). However, counsel for Cameroon explained that,

"on a number of occasions, the Committee concerned itself with proposals of a relatively minor nature to adjust the line so as to respect ethnic groupings. Of course, one cannot exaggerate the efforts made and all took place within the possibility reserved in the mandate instruments for minor modifications." (Ibid., p. 20, para. 10.)

Could these adjustments and modifications "so as to respect ethnic groupings" relate to the Bakassi Peninsula?
142. It is remarkable, that both the instruments of the Mandate and Trusteeship touched on the need for adjustments and modifications to the boundary "in the interest of the inhabitants" (Counter-Memorial of Nigeria, Vol. V, Anns. 51 and 56). Coincidentally, this need for adjustments and modifications was mentioned in Articles I of both the Mandate and the Trusteeship instruments. Did they have the problem [p585] of the Bakassi Peninsula in mind? As mentioned earlier, the Court, in its Judgment, fails to give effect to

these concerns, which still subsist till today, unresolved.

143. The consistent view of Nigeria, as expressed in its pleadings, is that at all times, during the period of the Mandate and Trusteeship, the Bakassi Peninsula remained the territory of the Kings, Chiefs and people of Old Calabar and after 1960 it became part of Nigeria till this day:

"In fact, the overall pattern of Nigerian and British official conduct in relation to the Bakassi Peninsula has been remarkably consistent for over a century. Whether as originally part of the domains of the Kings and Chiefs of Old Calabar, or subsequently as part of their domains but subject to rights of Great Britain under the Protectorate Treaty of 1884, or during the Mandate and Trusteeship periods up to the time of independence in 1960, Bakassi has consistently been administered from Nigeria and as part of the Nigerian political entity." (Reply of Nigeria, Vol. I, p. 66, para. 2.27; emphasis added.)

144. Nigeria further argues that while there may be differences in principle between Mandate and Trusteeship on the one hand, and administration and protectorate on the other, there is no difference as such on the ground and in practice. In effect these changes have no effect on Nigeria's claim to historical title or effectivite. Nigeria explains this position thus:

"In the event, after World War I the whole of the mandated territory of the British Cameroons came to be administered as part of the Nigeria Protectorate, so that the distinction between mandated and protectorate territory, while acknowledged in principle, had virtually no practical significance for the people of Bakassi and Calabar. There was no practical day-to-day need for the British of local administration to distinguish between what might have been former German territory and what was British protected Nigerian territory." (Counter-Memorial of Nigeria, Vol. I, p. 182, para. 9.11.)

Moreover, "[t]here was in any event no question of non-British rule, and no question of putting an end to the traditional authority of the Kings and Chiefs of Old Calabar" (ibid., Vol. I, p. 182, para. 9.12) and "[effective authority continued to be exercised by the traditional source of power and authority in the Peninsula, namely by the Kings and Chiefs of Old Calabar" (ibid.).

145. In my view, and contrary to the Court's decision, the argument of Nigeria, which in effect is based on its historical consolidation and effec-[p586]tivites, is sound, having regard to all the comments I have made earlier. Counsel for Nigeria at the hearings summarized its arguments thus:

"Britain itself, of course, as a party to the 1913 Treaty, was likely to act on the assumption that that Treaty had determined the boundary between the Protectorate and what was to be the British Cameroons. But assumption, or belief, is not a basis for legal title; no amount of British believing that Bakassi was in British Cameroons would be enough to make it so in law; no amount of mistaken belief could retrospectively make good Great Britain's lack of authority to give away Bakassi; no amount of mistaken belief could give Britain a power which the Treaty of Protection had clearly not given it. All Britain's actions in the Mandate and Trusteeship periods which assumed the alienation of Bakassi from the Protectorate or which might be construed as having that result were tainted in that way. This applies whether they were acts of bureaucracy, or of local administration, or of government, or of legislation (such as the Governor's Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954 . . . For at all these times, one has still to answer the crucial question: Who conferred on Great Britain the authority to give away Bakassi? And when? And how?" (CR 2002/8 (Watts), p. 64, para. 109.)

The Question of Legal Title

146. The issue of title looms very large in this case as both Parties claim one form of title or the other. Reference has been made to it with different descriptions, i.e., legal title, original title, conventional title and historical title. In its presentation Cameroon claims sovereignty to the Bakassi Peninsula, alleging that its right to sovereignty with regard to the territory is its legal title derived, inter alia, from the Agreement of 11 March 1913 between Great Britain and Germany. On its part, Nigeria claims to hold original or historical title, partly evidenced by the Treaty of 10 September 1884 between the Kings and Chiefs of Old Calabar and Great Britain. The question here is that of the meaning of title in the context of this case and in international law. Cameroon tries to persuade the Court to hold that the only meaning attributable to the word is a con-ventional or legal title. The Court agrees with this. It appears to me that "title" bears a broader meaning than that and ought to be interpreted not necessarily or solely as documentary title but as the rights that a party holds in relation to a territory. This, to my mind, includes not only legal title but also possessory title.

147. In the case concerning the Land, Island and Maritime Frontier [p587] Dispute (El Salvador I'Honduras: Nicaragua intervening) the Chamber of the Court examined this issue of the meaning of title and defined it thus:

"The term 'title' has in fact been used at times in these proceedings in such a way as to leave unclear which of several possible meanings is to be attached to it; some basic distinctions may therefore perhaps be usefully stated. As the Chamber in the Frontier Dispute case observed, the word 'title' is generally not limited to documentary evidence alone, but comprehends 'both any evidence which may establish the existence of a right, and the actual source of that right' (I.C.J. Reports 1986, p. 564, para. 18)." (I.C.J. Reports 1992, p. 388, para. 45; emphasis added.)

148. Furthermore in the same Frontier Dispute (Burkina FasolRepub-lic of Mali) case, the Court elaborated on the use of the words legal title and effectivite thus:

"The Chamber also feels obliged to dispel a misunderstanding which might arise from this distinction between 'delimitation disputes' and 'disputes as to attribution of territory'. One of the effects of this distinction is to contrast 'legal titles' and 'effectivites". In this context, the term 'legal title' appears to denote documentary evidence alone. It is hardly necessary to recall that this is not the only accepted meaning of the word 'title'. Indeed, the Parties have used this word in different senses." (/. C.J. Reports 1986, p. 564, para. 18; emphasis added.)

149. In effect, it appears that the term "title" or even "legal title" should be given its broad and liberal meaning to include not only the strict documentary evidence, but also other evidence that could establish the legal rights of the Parties.

150. The Court, whilst giving Judgment in favour of Cameroon, based on its so-called legal title, dismisses the claim of Nigeria based on effectivites as effectivites contra legem, despite the long occupation and administration of the territory by Nigeria. In so deciding, the Court bases its decision on its jurisprudence in the Frontier Dispute (Burkina Fasol Republic of Mali) case. Once again, and with due deference, it is my strong view that the Court failed to apply the full ratio decidendi of that case, the relevant part of which is in paragraph 63, which pronounces that:

"The role played in this case by such effectivites is complex, and the Chamber will have to

weigh carefully the legal force of these in each particular instance. It must however state forthwith, in general terms, what legal relationship exists between such acts and the titles on which the implementation of the principle of uti possidetis is grounded. For this purpose, a distinction must be drawn among several eventualities. Where the act corresponds exactly to law, where [p588]effective administration is additional to the uti possidetis juris, the only role of effectivite is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the effectivite does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The effectivites can then play an essential role in showing how the title is interpreted in practice." (I.C.J. Reports 1986, pp. 586-587, para. 63; emphasis added.)

151. The relevant paragraph quoted above spells out the relationship between effectivite and legal title. The Court, whilst basing its decision on this particular paragraph of its jurisprudence, ought to explain and apply its text fully. The Court cannot apply one part of it and exclude the other. This was the grave omission made by Cameroon whilst interpreting the paragraph in the Frontier Dispute (Burkina FasolRepublic of Mali) case. Cameroon argues through its counsel, Professor Maurice Mendelson, in a peculiar way thus:

"The reason for my discomfort is to be found in the Chamber's lapidary explanation of the role of effectivites in the case of the Frontier Dispute (Burkina Fasol Republic of Mali), the pertinent part of which, as you know, begins as follows: 'Where the act corresponds exactly to law, where effective administration is additional to the uti possidetis juris, the only role of effectivite is to confirm the exercise of the right derived from a legal title.' Pausing there, this is precisely Cameroon's situation: having a good title, any evidence of effectivites that it adduces are merely confirmatory. In our submission, on the other hand, Nigeria falls squarely within the second sentence: 'Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title.' That being so, logically, there is little more to be said. Hence my mild embarrassment at addressing you on this subject." (CR 2002/4 (Mendelson), p. 35, para. 1.)

152. Obviously, the learned counsel for Cameroon has chosen to comment on the first part of this paragraph leaving the subsequent paragraphs unexplained. However, the subsequent paragraphs clarify the position of effectivite:

"In the event that the effectivite does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are [p589] cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The effectivites can then play an essential role in showing how the title is interpreted in practice." (I.C.J. Reports 1986, p. 587, para. 63; emphasis added.)

153. Was the Court misled? There is no doubt that according to paragraph 63 preference ought to be given to the "holder of the title". But with due deference, this does not mean that the holder of the title is absolutely entitled to sovereignty over the territory. All it indicates is that it should have preference, but this preference is not absolute. It leaves an equally legal right which the Court must grant to the party with effectivites. As explained in the final part of the above paragraph, "fijn the event that the effectivite does not co-exist with any legal title, it must invariably be taken into consideration". That is the

consideration that the Court must invariably give to effectivites in this regard. On a careful examination of the situation in the Bakassi Peninsula, the Court cannot rely on this authority to decide that the claim of a title-holder is exclusive and absolute.. The Court must take cognizance of the fact that Nigerians have settled in Bakassi from time immemorial, that they owe allegiance to their Kings and Chiefs, and that they have settled administration and other civil activities as Nigerians there.

154. The Court, in paragraph 222 of its Judgment, enumerates Nigeria's territorial activities and acts of public and social administration in Bakassi. Mention is made of activities dating back to 1959, that is, before Nigeria obtained its independence. The Court also accepts that Nigeria confirms many of these activities in Bakassi with supporting evidence and "in considerable detail" (para. 222 of the Judgment). The Court also agrees with Nigeria that "[n]or is there any reason to doubt the Efik and Effiat toponomy of the settlements, or their relationships with Nigeria" (para. 221). Furthermore, the Court accepts as true the fact that the provision of "education in the Bakassi settlements appear to be largely Nigerian" (para. 222). It is for all these reasons that the Court ought to find in favour of Nigeria based on historical consolidation and effectivites.

Maritime Delimitation

155. Cameroon claims that the maritime boundary should start from the mouth of the Akwayafe, in reliance on its claim of a conventional title, based on the Agreement of 11 March 1913 coupled with map TSGS 2240 annexed thereto. On the other hand, Nigeria argues that the delimitation should start from the mouth of the Rio del Rey, based [p590] on its historical consolidation. Having carefully weighed the arguments of both Parties, my view runs contrary to the decision of the Court: the maritime delimitation should start from the mouth of the Rio del Rey, hence I voted against the decision of the Court in paragraph 325 IV (B) of the Judgment.

156. Then there is the dispute as to whether any maritime delimitation has already been carried out by the Parties.

157. The maritime boundary can be divided into two sectors: the first, the delimitation up to point "G" and the second, after point "G" which, according to the Parties, remains undelimited. The Agreements to which the Court attributes the delimitation are: the Anglo-German Agreement of 11 March 1913; the Cameroon-Nigeria Agreement of 4 April 1971, comprising the Yaounde II Declaration and the appended British Admiralty Chart 3433; and the Cameroon-Nigeria Agreement of 11 June 1975 (the Maroua Declaration).

158. Cameroon claims that the adopted line was a "compromise line" that arose out of the work of the Joint Commission set up to do the same. Therefore, Cameroon argues that the first segment of the maritime boundary from the mouth of the Akwayafe to point 12 was fixed on the basis of a compromise line.

159. Nigeria expresses its position very clearly — with which I agree — that it is not bound by these Declarations. The language of the Yaounde II meeting made it explicit that the meeting formed part of ongoing sessions of meetings on the maritime boundary, subject to further discus-sions at the subsequent meetings. This intention is confirmed by the text of the contemporaneous Joint Communique, and by the internal Nigerian Brief on the then forthcoming meeting of 20 May 1975. Nigeria's position after the Yaounde II meeting was further elucidated in the letter of 23 August 1974 from General Gowon of Nigeria to President Ahidjo of Cameroon.

The Maroua Declaration

160. Cameroon claims that the Declaration of Maroua is one of three international legal instruments that delimit the course of the first sector of the maritime boundary. Cameroon argues that the prolongation of the maritime boundary southwards from point 12 to point G was agreed when the two Heads of State "reached full agreement on the exact course of the maritime boundary".

161. Cameroon further explains that the explicit objective of the Agreement was to extend the delimitation of the maritime boundary line between the two countries, from point 12 to point G as evidenced in the Joint Communique, signed by the two Heads of State (CR 2002/6 (Tomu-schat), p. 18, para. 1). In reply, Nigeria's primary contention is that it is not bound by the Maroua Declaration. The Declaration, along with preceding negotiations at the time formed part of ongoing sessions of meet [p591] ings on the maritime boundary, subject to further discussions at subsequent meetings.

162. For the Declarations to have become binding, the Military Administration Legislation of 1966 and 1967 required the publication of any decree made by the Military Council, in the Federal Gazette. This was not the case in this instance. Under the 1963 Constitution in force at the time, General Gowon did not have the power to commit his Government without the approval of the Supreme Military Council, which constituted the executive authority and Government of Nigeria. Thus, Nigeria concludes, the President of Cameroon is deemed to be aware of the constraints under which General Gowon was exercising his authority. Nigeria cites the letter sent by General Gowon to President Ahidjo on 23 August 1974 (Reply of Nigeria, Vol. IV, Ann. 2).

"In paragraph three of the letter, General Gowon informed President Ahidjo:

'You will recall, Mr. President, that the important question of demarcating the borders between our two countries was discussed at length during our meeting in Garoua. I still believe that the function of the joint commission of experts established to delineate the international boundary between our two countries, was to make recommendations on the basis of their technical examination of the situation, for consideration by our two Governments. As a technical commission, their views and recommendations must be subject to the agreement of the two Governments which appointed them in the first place. You will also recall that I explained in Garoua that the proposals of the experts based on the documents they prepared on the 4th April, 1971, were not acceptable to the Nigerian Government. It has always been my belief that we can both, together re-examine the situation and reach an appropriate and acceptable decision on the matter.' " (CR 2002/9 (Brownlie), pp. 37-38, para. 104.)

Nigeria asserts that in the above correspondence, General Gowon was emphazising to President Ahidjo that:

"(i) the question of boundary demarcation between Nigeria and Cameroon is an 'important question';
(ii) the function of the commission of experts was to make recommendations for the consideration of the two Governments;
(iii) the proposals of the experts based on the documents they prepared on 4 April 1971 were not acceptable to the Nigerian Government;
(iv) that both Governments must re-examine the situation and reach an appropriate agreement on the matter; and
(v) that the arrangements which might be agreed between them were [p592] subject to the subsequent and separate approval of the 'Nigerian Government'." (CR 2002/9, (Brownlie), p. 38, para. 105.)

163. Thus, in light of previous dealings with Nigeria, President Ahidjo should have realized that General Gowon alone could not bind Nigeria in what would amount to a disposition of its territory, inhabited by its people. Executive acts were to be carried out by the Supreme Military Council or be subject to its approval. From the foregoing it is clear that the two Heads of State were left in no doubt as to the non-binding force of the Maroua Declaration.

164. Cameroon makes its stance on the above by referring to Article 46 of the Vienna Convention on the Law of Treaties, paragraph 1 of which reads:

"A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance."

And paragraph 2 which states : "A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith." The argument of the Parties here turns to the distinction between Cameroon's interpretation and Nigeria's interpretation of the above Article.

165. Cameroon argues that the consent to the Declaration as expressed by General Gowon did not require the formal advice of anybody, including the Supreme Military Council. However, Cameroon states that, even if General Gowon were constitutionally restrained, his action of signing the Declaration of Maroua on Nigeria's behalf did not amount to a "manifest" violation of Nigeria's internal law regarding the competence to conclude treaties.

166. This is where the decision of the Court can be faulted. In 1967, the Executive Power of the Federal Government of Nigeria was vested in the Supreme Military Council. At that time, Gowon had taken over as Head of the Federal Military Government in Nigeria. In 1975, when the Maroua Declaration was signed, there were three military bodies set up, viz. : the National Council of States, involving the collective administration of the states as represented by the Governors; the Federal Executive Council; and, most importantly, the Supreme Military Council, which was then vested with the Executive Power of the country in accordance with the Federal Constitution as amended.

167. The Supreme Military Council was the ultimate executive body vested with the power to ratify any agreement made by the Head of State. The Maroua Declaration was not ratified by this Council. Hence the [p593] Declaration had no binding force on Nigeria, contrary to the decision of the Court.

168. Thus, by virtue of Article 46 of the Vienna Convention on the Law of Treaties, internationally, the Maroua Declaration is not opposable and therefore not enforceable against Nigeria.

169. As regards the matter of delimitation of the maritime boundary, beyond point "G", Nigeria argues that there had been no negotiations between the Parties on this sector and that the first time it had notice of Cameroon's claim lines was when it received Cameroon's Memorial. Cameroon did not deny this fact.

170. Nigeria claims that, as far as the dispute over the maritime boundary on the areas around point G, and indeed to the areas of overlapping licences, the requirement that the Parties must negotiate under Articles 83 (1) and 74 (1) of the Convention on the Law of the Sea of 1982, has been satisfied; however, not beyond these areas.

171. Hence, as far as the area beyond point G, Nigeria maintains its position that the requirements of Articles 83 (1) and 74 (1) of the 1982 United Nations Convention on the Law of the Sea have not been fulfilled.

172. One of the preliminary objections made by Nigeria on jurisdiction and admissibility was that the Court had no jurisdiction to entertain the request of Cameroon for maritime delimitation beyond point "G". In my dissenting opinion to the Court's Judgment at that stage, I expressed the view that, since negotiation is a prerequisite under Articles 83 (1) and 74 (1) of the 1982 Convention on the Law of the Sea, the Court has no jurisdiction to entertain Cameroon's Application on this claim. However, the Court has assumed jurisdiction. I have reservations, because of the possibility of affecting the rights of Equatorial Guinea and Sao Tome and Principe. Nevertheless, because the Court is now seised of the matter, and regardless of the dispute between the Parties as to whether there has been negotiations or not, I consider the Court's decision to effect delimitation in the area beyond point "G" to be just and valid, hence I voted in favour of the Court's decision.

State Responsibility

173. Although I voted in favour of the Court's decision rejecting the claim of Cameroon on State responsibility against Nigeria, and rejecting a similar application by way of a counter-claim by Nigeria against Cameroon (paragraph 325 V (D) and (E)), I wish to express my reasons for doing so in this part of my opinion. [p594]

174. The first reason is that the claim of Cameroon is unprecedentedly excessive and indeed unique. I do not know of any case (other than the present case) which has taken over eight years, with so many claims presented at the same time to the Court. I am aware of exclusive land boundary claims by States; and I am also aware of exclusive maritime delimitation claims by States. Cases of maritime boundary cum land boundary claims are very few. However, I have not heard of an application involving a land boundary claim, a maritime delimitation claim, and a State responsibility claim, all presented at the same time. Little wonder that the case took a marathon hearing time of five weeks.

175. The second reason is that this case involves neighbouring States. Geography and history compel their eternal co-existence. The Court was not created to consciously or unconsciously create eternal disharmony between brother States. A claim of this nature can only engender bad blood between the States, and the Court should not lend its support to any decision that would create such eternal acrimony. The Court, as I have said earlier, is duty bound to ensure that "[a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered" (Art. 2, para. 3, of the United Nations Charter; emphasis added). The paramount and fundamental objective of the Court, over and above all other considerations, is to ensure that litigants or disputants are satisfied at the end of the day that justice has been done, that the Court has been fair and impartial, and that parties can still live together in peace and security.

176. I am persuaded by the words of wisdom expressed by counsel for Nigeria when he observed:

"Counsel sought also to show that it was perfectly normal for questions of State responsibility and territorial title to be joined. But this is not so in practice, nor is it appropriate. As the Court will know, there have been many cases in which territorial disputes have affected populated areas which one side or the other has administered and controlled — several such cases have indeed been considered by the Court. Yet Cameroon

cited no case in which a territorial dispute has been resolved in favour of one State, and in which the losing State was then held internationally responsible for its acts of civil administration or maintenance of public order in areas in which, as a result of the decision on the territorial dispute, it was found to have had no right . . . Any other approach would turn every territorial dispute into a State responsibility case, sometimes of enormous magnitude." (CR 2002/20 (Watts), p. 26, paras. 9 and 10.)

177. Another reason for my decision touches on what may be termed [p595] ratione tempore. The case between Cameroon and Nigeria was "brought" too late. If the Court were seised of such a complex and time-consuming case, as the present one, in the 1970s, and particularly in 1976 when there was less to do with few cases on its docket, then perhaps more time would have been devoted to such an unnecessarily lengthy claim, which ought to have been settled between the Parties themselves. However, at this time, the docket of the Court is full and time has to be rationed. To buttress this point, Cameroon has indicated that this is not the end. In its further claim, Cameroon requests the Court to adjudge on compensation thus:

"The Republic of Cameroon further has the honour to request the Court to permit it to present an assessment of the amount of compensation due to it as reparation for the damage it has suffered as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria, at a subsequent state of the proceedings." (Memorial of Cameroon, Vol. I, p. 671, para. 9.2.)

178. Perhaps in effect, the Court may not see an end to this case even after Judgment. The Court, may still have to decide on the assessment of the amount of compensation as reparation for the damage claimed. Nigeria also requested in its submissions that:

"Cameroon bears responsibility to Nigeria in respect of each of those claims, the amount of reparation due therefor, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment." (Reply of Nigeria, Vol. Ill, p. 766.)

Here again, were the Court to decide in favour of Nigeria, and were compensation not be paid to Nigeria within six months, then Nigeria might file another application for reparation against Cameroon, and who could tell how long this would take.

179. In effect, any decision of the Court in favour of either Cameroon or Nigeria, or both, would only prolong this case and continue to spread a feeling of disaffection between the Parties. The aim of the Court must be to discourage endless litigation. The Court, in its wisdom and consid-erable experience on boundary matters, has made valuable observations during the preliminary objection on jurisdiction and admissibility phase of this case, that even when a boundary has been definitively delimited and demarcated, misunderstandings are bound to ensue from time to time. In most cases, these misunderstandings are mistakes as to location, misunderstandings as to boundary lines and pillars, or uncertainties as to their locations, which have nothing to do with any deliberate acts involving State responsibility. [p596]

180. There is such an example in the present case: a location called Mberogo/Mbelogo. Cameroon is claiming Mbelogo; Nigeria is also claiming Mberogo. There are alleged incidents involving State responsibility in this location as well. Cameroon claims two incidents in Mbelogo, one involving a Nigerian census taker on 26 January 1994 and the other involving two Nigerian Immigration Officers on 26 September. In Nigeria's counter-claim it also reports the incident involving the Nigerian census taker, but this time in Mberogo. Now the question is, are there two locations, one called Mberogo and the other Mbelogo? Or are they one and the same place?

181. Examples like this can be multiplied, i.e., where inhabitants or officials of the Government have acted under a mistaken belief that a location belongs to its State (either Cameroon or Nigeria).

182. The Court, even before entertaining the present case on its merits, pronounced on this problem as follows:

"The occurrence of boundary incidents certainly has to be taken into account in this context. However, not every boundary incident implies a challenge to the boundary. Also, certain of the incidents referred to by Cameroon took place in areas which are difficult to reach and where the boundary demarcation may have been absent or imprecise. And not every incursion or incident alleged by Cameroon is necessarily attributable to persons for whose behaviour Nigeria's responsibility might be engaged. Even taken together with the existing boundary disputes, the incidents and incursions reported by Cameroon do not establish by themselves the existence of a dispute concerning all of the boundary between Cameroon and Nigeria." {I.C.J. Reports 1998, p. 315, para. 90; emphasis added.)

183. As regards Cameroon's application on State responsibility, it appears to me that it is labouring under a pre-emptive but erroneous notion that, once it can establish or assume subjectively that a legal title exists in a frontier matter, it automatically involves State responsibility. In other words, the claim of Cameroon on State responsibility is rather anticipatory. Cameroon believes that its position with regard to the conventional title is unassailable, and in anticipation of a judgment in its favour, goes further to ask for claims based on a judicial benefit that has not accrued to it.

184. Cameroon, reflecting on the pronouncement of the Court, had somehow reformulated its position based on the Judgment of the Court of 1998 on preliminary objections, which states:

"All of these disputes concern the boundary between Cameroon and Nigeria. However, given the great length of that boundary, which runs over more than 1,600 km from Lake Chad to the sea, it cannot be said that these disputes in themselves concern so large a [p597] portion of the boundary that they would necessarily constitute a dispute concerning the whole of the boundary.

Further, the Court notes that, with regard to the whole of the boundary, there is no explicit challenge from Nigeria. However, a disagreement on a point of law or fact, a conflict of legal views or interests, or the positive opposition of the claim of one party by the other need not necessarily be stated expressis verbis. In the determination of the existence of a dispute, as in other matters, the position or the attitude of a party can be established by inference, whatever the professed view of that party. In this respect the Court does not find persuasive the argument of Cameroon that the challenge by Nigeria to the validity of the existing titles to Bakassi, Darak and Tipsan, necessarily calls into question the validity as such of the instruments on which the course of the entire boundary from the tripoint in Lake Chad to the sea is based, and therefore proves the existence of a dispute concerning the whole of the boundary." (/. C.J. Reports 1998, p. 315, paras. 88-89.)

185. Cameroon, in some part of its pleadings, positively responds to its misconception of invoking State responsibility in a matter of this nature. In its Reply, Cameroon referred to a part of the Judgment given at the preliminary objection phase, and stated further that it was no longer contesting these two points.

186. Nigeria has stated over and over again that a difference between States as to the

proper application of a principle, or even a rule of international law, does not by itself give rise to any international responsibility for either of them.

187. Eventually, in its Reply, Cameroon acknowledged, accepted and admitted this basic principle which should have compelled Cameroon to withdraw its claim based on State responsibility. Presumably, it was then too late for Cameroon to do so. Cameroon also acknowledged that Nigeria had stated this point on at least five occasions. The following was Cameroon's admission on this point:

"Cameroon acknowledges, as stated by Nigeria on at least five occasions, that in itself 'a difference between States as to the proper application of a principle or even a rule, of international law, does not give rise to any international responsibility for either of them'. . . It is therefore prepared to admit that the wording of paragraph (d) of the submissions in its Memorial, reproduced above, may lead to confusion on this point if taken out of context as the Respondent does: it is not the mere fact that Nigeria 'is disputing' the boundary which engages its responsibility, it is the methods it has used, and continues to use, to conduct the dispute. In order to eliminate all ambiguity, Cameroon has made this clear in the submissions in the present Reply . . ." (Reply of Cameroon, Vol. I, p. 489, para. 11.13.) [p598]

188. However, Cameroon has modified its position many times to correct some of its misgivings and misconceptions. For example, it started by stating that Nigeria is liable for the various incidents, jointly and severally. Cameroon had reneged from this standpoint and decided that the whole of the incidents should be considered together. Furthermore, it reformulated its submission as a result of all these points, stating in its final submission that:

"in attempting to modify unilaterally and by force the courses of the boundary defined above under (a) and (c), the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris) and its legal commitments concerning land and maritime delimitation" (Reply of Cameroon, Vol. I, p. 592, para. 13.1(d)).

However, what Cameroon should have done was to withdraw this claim entirely.

189. At this stage, it may be necessary for me to descend into the arena of conflicting facts. It is a cardinal principle of legal procedure that whoever asserts must prove. A claim is not sustainable stricto sensus unless and until it can be established and proved. Cameroon, alleging State responsibility, must prove those incidents alleged against Nigeria. However, before going into that, the picture that the disputed areas, particularly the Bakassi Peninsula and Lake Chad, presents to me, is that they are inhabited by Nigerians who have been living there for a long time, mostly before independence and some after independence. In my view, this fact is indisputable. Subsequently, Cameroon, relying on conventional title, has tried to claim those areas. The problem started when Cameroon attempted to dislodge the Nigerians and replace them with Cameroonians.

190. One may visualize this situation from what happened in 19721973, when Cameroon started to change the names of places in the Bakassi Peninsula. Cameroon does not deny this.

191. Where people are already settled in any given place, an incursion comes as a surprise attack. It is the attacker who invariably has the upper hand because the settlers are overwhelmed by such a surprise. Nigeria supports this view with an overall figure of casualties resulting from these incidents:

"(a) Attributed to Cameroon in the Nigerian documents: 30 killed (of whom 27 were civilians); 117 wounded (of whom 106 were civilians); eight houses and four boats destroyed or damaged, together with a substantial amount of other damage.

(b) Attributed to Nigeria in the Cameroon documents: three killed, 13 wounded (all military). Thus there were small numbers of military casualties on both sides; fewer dead on each side in [p599]fact than in the incident of May 1981. But there were substantial civilian casualties on the Nigerian side. And there is no evidence whatever of Nigerian troops killing or wounding their own people." (CR 2002/20 (Crawford), p. 37, para. 10; emphasis added.)

192. Perhaps this overall figure demonstrates two points: on the one hand, if the places where the incidents occurred were inhabited by Cam-eroonians, then at least some Cameroonians (civilians) would have been killed. In this report not a single Cameroonian (civilian) was killed. It shows that the inhabitants of those places are not Cameroonians. On the other hand, more Nigerian civilians were killed because they were the inhabitants.

193. What was the reaction of Cameroon to this report and the incidents? Cameroon's response was to offer some words of apology. Cameroon reacted to the matter of the dead civilians thus:

"In the part of his speech, in the eight minutes devoted to counterclaims this week, Professor Tomuschat did not comment on those figures. All he said was that 'il peut y avoir eu des victimes civiles, ce que le Cameroun regrette profondément'. Faced with a balance of casualties such as that I have given, for counsel to say '//peut y avoir eu des victimes civiles' is not very helpful. To be told belatedly that Cameroon 'profoundly regrets' does little to mitigate the damage caused, and still being caused, by Cameroon. For it is not the case that there 'may have been' victims : 'il peut y avoir eu des victimes civiles'. There were such victims. There continue to be civilian victims. If there had been none, Cameroon would have been the first to tell you." (Ibid., pp. 37-38, para. 11; emphasis added.)

In view of all this destruction of Nigerian lives and property, it is incredible that Nigeria is still being accused of State responsibility. What Cameroon was in effect saying is: I am sorry for killing your people but you must still pay me for killing them.

194. Reverting to the issue of the burden of proof, after all the pleadings (oral and written), of Cameroon, it has neither established nor proved a case of State responsibility against Nigeria. Most of the allegations are mere allegations of acts not involving State responsibility against Nigeria. The presence of civilians and even of soldiers in any of the locations where these disputes occurred, proved nothing. Cameroon's allegation of the very serious offence of State responsibility must be proved beyond reasonable doubt. This proof is missing.

195. The evidence presented is very scanty, and, in some cases, incon-[p600] sistent, inaccurate and uncertain. Most of the allegations are not supported by any documentary evidence and are time-barred and consequently acquiesced to by Cameroon, and many are only vaguely described.

196. Many of the reports concerning these allegations are contradictory, unsubstantiated and lack probative value; some are misleading and incorrectly translated; some are incomplete; and many are unprotested and appears to be afterthoughts.

197. Many of the documents in support of the incidents are mere internal memos; some of

the incidents are undated and no time is specified; many of the incidents have nothing to do with the State of Nigeria as such, but are incidents involving civilians, without the knowledge and consent of the Government of Nigeria. Therefore, these are acts not involving State responsibility attributable to Nigeria.

198. In many of these incidents Cameroon did not protest to Nigeria. In one of the reports of the incidents, it seems the report has been imagined, because, for example, the incident at Akwayafe was alleged by Cameroon to have taken place in April 1993 and was reported on 23 March 1993 in the message of the Governor of South-West. There is another predated incident at Kofia. Here again the report precedes the incident. Another clear example of the unreliability of evidence presented by Cameroon related to the incident in Mberogo. Cameroon claims that the incident occurred on 26 January 1994, yet it was reported in a message of the Bab-Prefect of Force Awa dated 21 January 1994. This is another example of a predated incident. This is curious, if not ridiculous.

199. In some of the reports it was clearly stated that the incidents involved Nigerian citizens but not the Nigerian Government. Cameroon even considers clashes between citizens and citizens as incidents: private land disputes are considered incidents; squabbles of fishermen and farmers are considered to be acts involving Nigeria's State responsibility: otherwise what would land disputes between Nigerians in Nubi Local Government and the traditional Chief of Barha, or the case of the Nigerian poachers, have to do with State responsibility? In addition, some of the incidents relate purely to clashes between the Nigerian and Cameroonian inhabitants over the location of the boundary. Some reports, such as the one on the Lenelowa incident predates the incident as far back as two years before the incident occurred. In some of these incidents, there are cases of Cameroonians clashing with Cameroonians on Nigerian territory, yet Cameroon reported them as incidents invoking Nigerian State responsibility. To sum up, reading through the list of incidents catalogued by Cameroon, one is inclined to believe that the issue of State responsibility is being trivialized. [p601]

200. Cameroon in fact admits carrying out acts involving State responsibility against Nigeria. Examples are the incidents in Mberogo and Tosso, which are shown in the Atlas maps presented by Nigeria.

201. In conclusion, the claim of Cameroon as regards State responsibility against Nigeria is, in my view, part and parcel of its litigation strategy to fortify its claim based on conventional title over the Bakassi Peninsula and Lake Chad.

202. It is for the reasons enumerated above that I support the decision of the Court that the claim of Cameroon be dismissed along with the counterclaim of Nigeria. This decision is desirable in order to promote and encourage peace, harmony and good neighbourliness between the Parties.

Conclusion

203. To conclude my dissenting opinion, I am of the view that the Court ought not to dismiss the claim of Nigeria based on effectivite. There is no doubt that for a considerable length of time, there have been Nigerians living in the area of the Bakassi Peninsula and in some parts of Lake Chad. The Court accepts the fact that Nigeria has administrative and social establishments in these areas. History lends credence to the fact that the Kings and Chiefs of Old Calabar have been exercising territorial rights over the Bakassi Peninsula since the seventeenth century.

204. Similarly the Court should not have rejected Nigeria's claim based on historical

consolidation. Nigeria presents overwhelming evidence in support of this claim. Jurisprudentially, there are a series of the Court's decisions based on historical consolidation. I have referred to these already in this opinion.

205. In my view, nothing vitiates the evidential value of the Treaty of 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar. This Treaty, being an international instrument, makes it clear that at no time was Great Britain conferred with the territorial sovereignty over the Bakassi Peninsula. Great Britain acted in breach of its obligations when it entered into the Agreement of 11 March 1913 with Germany, which purportedly transferred Bakassi to Cameroon.

206. Furthermore, as regards the Anglo-German Agreement of 11 March 1913, the Court ought to have preliminarily rejected it as invalid, because the Agreement is inconsistent with the concern of the Great Powers not to transfer "native populations from one administration to another without their consent and even without having informed them or consulted them" (Counter-Memorial of Nigeria, Vol. 1, paras. 8.50-8.51). This Agreement is contrary to the General Act of the Berlin Conference and in particular its Article 6. The European Powers were enjoined "to watch out over the preservation of the native tribes and not to take over or effect transfer of their territory".

207. In addition, I am also of the view that the Anglo-German Agree-[p602]ment had lapsed as a result of World War I. It was for Great Britain to revive the Agreement, which it did not do. Thus, the Agreement was abrogated by virtue of Article 289, and Cameroon could not have suc-ceeded to an agreement that was already spent.

208. The Anglo-German Agreement was not approved by the German Parliament as regards the Bakassi Peninsula. Contrary to the Court's decision, this Agreement ought to remain invalid.

209. The claim of Cameroon to the Bakassi Peninsula based on the Anglo-German Agreement is defective for the foregoing reasons and ought not to have been relied upon by the Court.

210. However, because the Court relies on it substantially and regards the instrument as conferring legal title on Cameroon, the Court is bound to relate Nigeria's effectivites with Cameroon's legal title. Unfortunately, the Court has been persuaded by the one-sided argument of Cameroon as to the text and meaning of paragraph 63 of the Judgment in the Frontier Dispute (Burkina Faso/Republic of Mali) case, because Cameroon based its arguments and justification of having legal title solely on the sentence "[w]here the act corresponds exactly to law, where effective administration is additional to the uti possidetis juris, the only role of effectivite is to confirm the exercise of the right derived from a legal title" (/. C.J. Reports 1986, pp. 586-587).

211. However, in Cameroon's interpretation of this same paragraph 63, it points to a situation which it considers similar to Nigeria's position: "Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title." (Ibid, p. 587.) However, what Cameroon omitted, perhaps purposefully, to explain to the Court are the subsequent sentences of the same paragraph 63, stating that:

"In the event that the effectivite does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The effectivites can then play an essential role in showing how the title is interpreted in practice." (Ibid, p. 587; emphasis

added.)

Unfortunately the Court itself fails to give serious consideration to this vital part of the text of its previous Judgment.

212. Finally, perhaps, the decision of the Court would have been otherwise had consideration been given to these three sentences, which Cameroon failed to argue and which were not considered by the Court.

(Signed) Bola Ajibola.

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