Cour internationale de Justice

LA HAYE

ANNEE 1998

Audience publique

tenue le lundi 2 mars 1998, à 10 heures, au Palais de la Paix,

sous la présidence de M. Schwebel, président

en l'affaire de la Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria)

Exceptions préliminaires

COMPTE RENDU

Présents : M. Schwebel, président

M. Weeramantry, vice-président

MM. Oda
Bedjaoui
Guillaume
Ranjeva
Herczegh
Shi
Fleischhauer

International Court of Justice

THE HAGUE

YEAR 1998

Public sitting

held on Monday 2 March 1998, at 10 a.m., at the Peace Palace,

President Schwebel presiding

in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)

Preliminary Objections

VERBATIM RECORD

Present: President Schwebel

Vice-President Weeramantry

Judges
Oda
Bedjaoui
Guillaume
Ranjeva
Herczegh
Shi

Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek,
juges

MM. Mbaye
Ajibola,
juges *ad hoc*

M. Valencia-Ospina, greffier

Fleischhauer
Koroma
Vereshchetin
Higgins
Parra-Aranguren
Kooijmans
Rezek

Judges *ad hoc*
Mbaye
Ajibola

Registrar, Mr. Valencia-Ospina

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M. Maurice Kamto, professeur à l'Université de Yaoundé II, avocat au barreau de Paris,

M. Peter Ntamark, doyen, professeur de droit à la faculté de droit et de science politique de l'Université de Yaoundé II, avocat, membre de l'Inner Temple,

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Mrs. Coralie Ayad, D. J. Freeman of the City of London

as secretary.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today, pursuant to Article 79, paragraph 4, of the Rules of Court, to hear the oral statements of the Parties on the Preliminary Objections raised by the Respondent in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria).*

Since the Court does not include upon the Bench a judge of the nationality of either of the Parties, both Parties

have availed themselves of the right under Article 31, paragraph 2, of the Statute to proceed to the choice of a judge *ad hoc*; Judge Kéba Mbaye, chosen by Cameroon, and Judge Bola Ajibola, chosen by Nigeria, were both installed as Judges *ad hoc* in 1996, during the phase of this case devoted to the request for the indication of provisional measures.

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* *

The proceedings were brought on 29 March 1994 by the filing in the Registry of the Court of an Application by the Government of the Republic of Cameroon against the Federal Republic of Nigeria. In that Application, the Government of Cameroon refers, as a basis for the Court's jurisdiction, to the declarations made by the two States under Article 36, paragraph 2, of the Statute. It indicates that

"the dispute relates essentially to the question of sovereignty over the Bakassi Peninsula . . . the Republic of Cameroon's title to which is contested by the Federal Republic of Nigeria";

that

> "since the end of 1993, this contestation has taken the form of an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities in the Bakassi Peninsula",

and that

> "this has resulted in great prejudice to the Republic of Cameroon, for which the Court is respectfully requested to order reparation".

Cameroon further asserts, 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";

it consequently requests 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".

I shall now ask the Registrar to read out the decision requested of the Court, as formulated in paragraph 20 of the Application of Cameroon.

The REGISTRAR:

> "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 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."

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The PRESIDENT: On 6 June 1994, the Republic of Cameroon filed in the Registry of the Court an Additional Application, "for the purpose of extending the subject of the dispute" to another dispute, described in that Additional Application as

"relat[ing] essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad . . . the Republic of Cameroon's title to which is contested by the Federal Republic of Nigeria".

The Government of Cameroon indicated that

"That contestation . . . took the form of a massive introduction of Nigerian nationals into the disputed area, followed by an introduction of Nigerian security forces, effected prior to the official statement of its claim by the Government of the Federal Republic of Nigeria quite recently, for the first time."

In its Additional Application, Cameroon likewise requested the Court 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".

I will now ask the Registrar to read out the decision that the Court is asked to hand down, as formulated in paragraph 17 of the Additional Application of Cameroon.

The REGISTRAR:

"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)* 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 the 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."

The PRESIDENT: In the course of a meeting that the President of the Court held with the representatives of the Parties on 14 June 1994, the Agent of the Republic of Cameroon explained that his Government had not intended to file a distinct Application, but that the Additional Application was rather conceived as an amendment to the initial Application; the Agent of the Federal Republic of Nigeria, for his part, declared that his Government saw no objection 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.

By an Order dated 16 June 1994, the Court indicated that it had no objection to such a procedure, and fixed 16 March 1995 and 18 December 1995 as the time-limits for the filing of the Memorial of the Republic of Cameroon and the Counter-Memorial of the Federal Republic of Nigeria, respectively. Cameroon filed its Memorial within the time-limit thus fixed. On 13 December 1995, within the time-limit for the filing of its Counter-Memorial, Nigeria raised certain preliminary objections to the jurisdiction of the Court and the admissibility of the claims of Cameroon.

Having received the Agents of the Parties on 10 January 1996, the President of the Court, by an Order of the same day, noted that, by virtue of Article 79, paragraph 3, of the Rules of Court the proceedings on the merits were suspended, and 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, in accordance with that same provision. Within the time-limit thus fixed, Cameroon presented such a statement, in which it requested the Court to reject the Preliminary Objections and proceed to the merits at the earliest possible time.

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By a letter of 10 February 1996, received in the Registry on 12 February, the Agent of Cameroon, referring to armed incidents which had taken place in the Bakassi Peninsula since 3 February 1996, communicated to the Court a request for the indication of provisional measures in accordance with Article 41 of the Statute of the Court. The measures requested were the withdrawal of the armed forces of the Parties to the positions they occupied prior to 3 February 1996, the abstention by the Parties from all military action along the entire boundary until the Court's judgment was given, and the abstention from any act or action which might hamper the gathering of evidence.

By an Order dated 15 March 1996, the Court indicated certain provisional measures, pending a decision in the proceedings.

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Both Parties have submitted new documents since the closure of the written proceedings on Preliminary Objections.

Nigeria presented certain new documents under cover of a letter dated 2 February 1998; their production was not opposed by Cameroon. They are therefore admitted pursuant to Article 56, paragraph 1, of the Rules of Court.

Cameroon sought to introduce certain new documents, under cover of letters dated 9 April 1997 and 11 February 1998 respectively. Having regard to the views expressed by the Parties and to the provisions of Article 56 of the Rules of Court, the Court has decided to admit these documents.

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It now falls to the Court to hear the Parties on the questions relating to its jurisdiction and the admissibility of the Application. The Court will first hear the Federal Republic of Nigeria, the Respondent on the merits and the State which has raised Preliminary Objections.

Before giving the floor to the distinguished Agent of Nigeria, I must announce that, having ascertained the views of the Parties, the Court has decided, in accordance with Article 53, paragraph 2, of the Rules of Court, that the Preliminary Objections of Nigeria, and the observations and submissions of Cameroon on them, will be made accessible to the public, together with their respective documentary annexes, as from the opening of today's hearings.

I now give the floor to His Excellency Mr. Abdullahi Ibrahim, Agent of the Federal Republic of Nigeria.

Mr. IBRAHIM: Mr. President, distinguished Members of the Court.

1. I am greatly honoured by this opportunity to address the Court for the first time. You will recall that this matter has already been the subject of a request for interim measures in 1996. On that occasion the opening speech for Nigeria was made by our then Agent, Chief Michael Agbamuche SAN, who was my distinguished predecessor as Attorney-General of the Federation and Minister of Justice. It falls to me, as his successor, to make this opening speech.

2. I shall be assisted in presenting Nigeria's Preliminary Objections by the distinguished gentlemen who addressed the Court at the interim measures hearings, namely by my Co-Agent, Chief Richard Akinjide SAN and three distinguished public international lawyers well known to the Court, Professor Ian Brownlie Q.C., Sir

3. I will start with a brief introduction to the geography of the boundary. I shall then explain the importance my country attaches to the issues. Finally I shall comment briefly on the political background and the spirit in which these proceedings ought to be conducted.

4. First, the geography. Mr. President, the boundary which Cameroon seeks to bring before the Court is a long and varied one. The locations of which I am speaking will be pointed out on the maps projected for the assistance of the Court. I must for the record make the point that all our maps are provided for illustrative purposes only and without prejudice to any legal contention that Nigeria may wish to make in these or any other proceedings. Copies of all the maps can be found in the Judges' folders. Mr. President, each folder has an index at the front. The index and the contents of the folders broadly follow the order in which we will be referring to the maps in the course of our speeches. Whenever appropriate we will, however, indicate the Tab number in the Judges' folders, for the convenience of the Court and for the record. The folders also contain some photographs to show the sort of terrain we will be talking about.

5. The map behind me, which is Tab 3, shows the topography of west Africa. You will notice, Mr. President, that the mountains on the Cameroonian border bear comparison with the Atlas Mountains on the Atlantic coast. The next map is at Tab 4 in the folders. This is a topographical map of the boundary area itself. The boundary is some 1,680 km long: a complex mixture of the coastal, the mangrove, the riverine, the rain forest, the mountain, the guinea, the Sudan Savannah, the Sahel, the lacustrine and the desert.

6. In the far south is the Bakassi Peninsula. This map is at Tab 5. Bakassi is mainly mangrove swamp. It is virtually inaccessible except by boat up a complex network of creeks and sandbars. Bakassi belongs to Nigeria, and there are Nigerian settlements in Bakassi at Abana, East Atabong, West Atabong, Boro Camp, Archibong Town, and many other places. The estimated total population of the peninsula is over 100,000. These people, Mr. President, are Nigerians.

7. North of Bakassi, the territory is rain forest, hot, humid, and very difficult of access. The border areas are extremely remote. There are very few roads, and such tracks as exist tend to be extremely rugged. Still further north, the border runs through highlands, mountains and plateaux, very remote from major population centres. Here too, access by the few roads tends to be very difficult.

8. In Borno State, Mr. President, the Sahel has in recent decades slowly been extending southwards. As one travels north towards Lake Chad, the land is increasingly arid and flat. The Lake itself has never been easy to map. Even in normal times, the surface covered by lakewater fluctuates greatly in size, with the rainfall and the seasons. Moreover, as a result of prolonged drought in recent decades, the surface area has suffered a drastic long-term reduction. The map you are looking at now is at Tab 6. It is taken from the *Times Atlas of the World* from the 1950s. Forty years later, a French tourist map — this is at Tab 7 — shows far less water in the Lake.

9. Nigeria's waterside settlements are remote: to reach them involves a difficult and dusty journey. A bumpy track takes you across what was once the lake bed. It takes many hours.

10. Mr. President, distinguished Members of the Court, we believe that the only land areas about which there are any real problems between Cameroon and ourselves are, first, the Bakassi Peninsula, and second, certain islands in the general area of Darak in Lake Chad, which for convenience I shall call "the Darak area". The position of Darak itself is now being indicated: this map is at Tab 8.

11. Mr. President, I would now like to mention two of the main reasons why the questions we are here to talk about are so important to Nigeria.

11.1First, there are many tens of thousands of Nigerian citizens living in Bakassi. Their personal security has for several years been at real risk. They have not just been harassed. Quite a number have been killed. This is very serious. Our Cameroonian friends do not have an equivalent concern. Of course they want Bakassi, but there are few Cameroonian civilians there and Cameroon has not to date claimed that any have been killed, either there or in the Darak area.

11.2Second, Cameroon hopes to take Bakassi from us and to use it to enlarge its territorial sea further and gain

a much larger maritime zone in the Gulf of Guinea than would result from negotiation between the group of States concerned. This map is at Tab 9. As Professor Crawford will explain, Nigeria is entitled to expect that discussions about the maritime boundary should precede legal proceedings [See Article 74 of the United Nations Convention on the Law of the Sea, to which both Nigeria and Cameroon are parties.] . There have been no discussions as to the boundary beyond the territorial sea, as will be explained later.

12. I should now like to comment on the political background to this case. The Preamble to Cameroon's first Constitution, in February 1960, expressed the new State's aspiration to reunite with Cameroonians inhabiting territories beyond the national borders ["[le peuple camerounais] . . . proclame sa volonté de tout mettre en oeuvre pour répondre aux aspirations des Camerounais habitant les térritoires sé parés de la mère patrie, afin de leur permettre de rentrer dans la Communauté nationale et de vivre fraternellement dans un Cameroun uni".] . This aspiration was partially realized the following year when, following a plebiscite under the auspices of the United Nations, the "Southern Cameroons", previously under British trusteeship, were united with the new Cameroon Republic. But in that same year, 1961, "Northern Cameroons", which had likewise been administered by the British as a United Nations trust territory, opted, in a similar plebiscite, to join Nigeria. Cameroon was badly disappointed and brought its grievances to this Court in the case concerning the *Northern Cameroons* [Judgment, I.C.J. Reports 1963 .] , but the Court declined to intervene. Cameroon took the whole thing very hard. President Ahidjo went so far as to declare an annual day of national mourning.

13. Three decades later, in 1994, Cameroon suddenly came back to this Court. Once again, it did so in order to express a grievance, once again about territories which do not belong to Cameroon and never have belonged to Cameroon. I wonder whether we would be here today were it not for Cameroon's unsatisfied grievances of the early 1960s? In any event, the present Cameroonian Applications, like the case of 1963, are misconceived challenges to long-standing political and legal realities. In marked contrast, Nigeria has never had expansionist or territorial ambitions. We made this clear from the moment of Independence in 1960, when we adopted an explicit policy of good neighbourliness in our external relations. Our first Prime Minister, Sir Abubakar Tafawa Balewa, gave expression to this policy when he said this: *"Nigeria would never impose itself upon any other country and shall treat every African territory, big or small, as our equal."*

14. Mr. President, distinguished Members of the Court, the two areas about which I acknowledge that there are problems, Bakassi and the Darak area, although they are remote, are administered by Nigeria and are quite densely populated by Nigerians. Cameroon contends that there is a dispute along the entire length of the boundary, but we will have little difficulty in showing that this claim is only a tactical contrivance. No such a dispute exists.

15. I have said that there is a problem about Bakassi. But the Court should not think that it has long soured relations. Both before and after Independence in 1960, Bakassi was always considered part of Nigeria and administered as such. Cameroon showed little interest in it. Neither they nor we saw Bakassi as any kind of impediment to good relations. Uninterrupted diplomatic representation has been maintained since Independence. There has also been extensive co-operation, both bilaterally and in a regional context, in such fields as telecommunications, cross-border travel requirements, air services, police, judicial, economic, scientific and technical matters.

16. Mr. President, I had a particular reason to dwell a little on the history of our bilateral relations. Cameroon explains its Applications to the Court by two crucial assertions about the political background. These assertions are not merely incorrect, Mr. President, — they are wholly implausible. I must refute them, because Cameroon may contend that they are somehow material to the decision of the Court has to take at these hearings.

17. The first of these assertions is this. Cameroon claims in its Memorial [Paras. 1.02, 1.03, 1.07, 1.08, 1.09.] that since the mid-1960s relations between our two countries have been poisoned by border incidents all along the boundary, including armed clashes.

18. Mr. President, although perceptions of bilateral relations are in some respects a subjective matter, that assertion is simply incredible. The remainder of the Memorial unintentionally proves this. The text refers repeatedly to discussions, joint commissions, negotiations, agreements and concessions. It demonstrates that neither Government was prepared to allow the Bakassi issue, or indeed any other issue, to do lasting damage to the friendly relationship. As for the Darak area, it was simply not an issue, and Cameroon is unable to suggest otherwise.

19. Throughout the period since Independence, Nigeria has been a good neighbour to all adjoining States, including Cameroon. It has also been an active and responsible Member of the United Nations, the Organization of African Unity, the Economic Community of West African States, and many other bodies. The international community has recognized this. Nigeria has taken part in peacekeeping operations in no less than 18 countries around the world. These are listed under Tab 10 in the Judges' folders.

20. In the teeth of the facts, the Cameroonian Memorial claims [See CM, paras. 1.07 to 1.09.] that there have been boundary incidents all along the common border of the two States practically since Independence in 1960. Cameroon filed, along with its observations, a repertory of alleged border incidents. Sir Arthur Watts will deal with this subject later. Let me just say now, Mr. President, that for the most part the matters Cameroon relies on in its "repertory" are trivial local issues of the kind encountered on so many African boundaries. They have not given rise to any State-to-State friction whatsoever. Nor have they in any way put in issue the boundary as a whole.

21. Cameroon was perhaps conscious of that. At any rate it tried to bolster its very thin argument by pointing to alleged Nigerian military "incursions" into the Bakassi Peninsula on 16 May 1981. Cameroon claimed that a Nigerian patrol opened fire on a Cameroonian vessel, and that Nigeria tried to exploit the deaths of five Nigerian soldiers to shift the blame onto Cameroon. Mr. President, the incident in question did indeed involve the killing of *Nigerians*, not Cameroonians. A week later, the President of Nigeria responded to a letter from the Cameroonian President by demanding an unqualified Cameroonian apology, that the killers be brought to justice, and that full reparation be made to the families of the dead Nigerians. The record before the Court proves that Cameroon made a full apology to Nigeria and paid compensation to the victims' families [See paras. 34 to 39 and Exhibits NPO, 1, 2 and 3.] . Mr. President, I do invite our Cameroonian friends to explain to the Court why no mention was made of these essential facts when they alluded to the incident at some length in their Memorial. I should like to hear an explanation.

22. In any event the record — submitted by Cameroon itself — clearly shows that, in the period after 1981, as before, bilateral relations remained generally cordial and co-operative — until, that is, Cameroon created serious tensions in the last few years.

23. The second crucial Cameroonian assertion is that they suddenly "realized" in mid-1994 that Nigeria was systematically [CM, para. 1.10.] challenging the entire boundary between the two States.

24. The purpose of Cameroon's first Application, filed in March 1994, was to seek a ruling that Bakassi belongs to Cameroon, and a related ruling as to the position of the maritime boundary. Three months later, Cameroon filed a second Application, in which it now claimed there was a dispute of far wider scope, encompassing the entire land boundary between the two States. In an attempt to justify this wholly untenable assertion, Cameroon charged my country with aggressive intentions.

25. Mr. President, distinguished Members of the Court, Nigeria feels a most lively sense of indignation at the injustice of that charge. Fortunately it can easily be refuted. Cameroon's Memorial in March 1995 encapsulated the charge in four points [See CM, Sect. 1.] . I should like briefly to deal with them.

25.1First, Cameroon claimed [CM, Sect. 1, especially para. 1.02.] that Nigerian troops "flagrantly violated" Cameroon's territorial integrity in Bakassi, in a series of grave border incidents in 1993 and 1994, culminating in Nigeria's alleged "invasion" of part of the peninsula in mid-February 1994.

25.2Second, the Memorial alleged [At para. 1.09.] that Nigeria had carried out a "civil" occupation of Kontcha, which is being pointed out now. This map is at Tab 11.

25.3Third, the Memorial alleged [Also at para. 1.09.] that Nigeria had carried out a military occupation of the Darak area in Lake Chad.

25.4Fourth, the Memorial claimed that a Nigerian diplomatic Note of 14 April 1994, affirming our historic claim to Darak [CM, Ann. MC 355.] , caused Cameroon suddenly to "realize" that this, in conjunction with the Nigerian position on Bakassi, amounted to a systematic Nigerian plan to challenge the entire boundary between the two States, 1,680 km long, from Lake Chad to the sea.

26. Mr. President, distinguished Members of the Court, there was and is no conceivable basis for Cameroon to come to such a so-called "realization". A very simple analysis of their four points makes this obvious.

27. As to the first point, Nigeria entirely rejects Cameroon's version of events in Bakassi. Cameroon cannot be permitted to treat the presence in Bakassi of Nigerian populations and administration, going back uninterruptedly to pre-colonial times, as if it were some act of aggression. In any event, there is obviously no reason for Cameroon to say that the entire boundary is in issue.

28. The second point is a claim in paragraph 1.09 of the Memorial that Nigeria carried out a "civil occupation" of Kontcha, echoing a Cameroonian protest note of 11 April 1994 referring to "Nigerians illegally occupying Kontcha" [CM, Ann. MC 355.] . But much later in the Memorial [At paras 6.90 et seq .] , and also in the observations [Vol. II — Repertory — App. 20.] , Cameroon backs away from this, alleging that Nigeria had occupied Cameroonian territory at Typsan, *near* Kontcha.

29. Nigeria has never either occupied or laid claim to Kontcha, and we made this clear to Cameroon in our diplomatic Note of 14 April 994 [CM, App. MC, 355.] .

30. As for Typsan, the village is in Nigeria. It was founded, after the 1961 plebiscite, on the west bank of the River Typsan. The river forms the boundary. Kontcha is 2 or 3 km east of the river [See satellite photograph in Judges' Folders at Tab [13].] . You will now see on the screen, Mr. President, a satellite photograph — Tab 12 in the folders — clearly demonstrating the relationship of Typsan, the River Typsan, and Kontcha. It also shows, incidentally, the difficult local terrain. You can see that Typsan is west of the river, in Nigerian territory.

31. Until 1995 [The claim seems first to have been made in the Memorial itself, at paras. 6.90 et seq .] , Cameroon had never claimed Typsan. Cameroon first raised the spurious claim about an occupation of Kontcha, with timing which does not look accidental, in its letter of 11 April 1994 [CM, Ann. MC, 355.] , in other words between the dates of its first and second Applications in the present proceedings. Until 1994 there was, so far as I have been able to ascertain, no protest or correspondence about an alleged Nigerian occupation either of Kontcha or of Typsan. In short, Nigeria has never claimed Kontcha. Until 1995, Cameroon had never claimed Typsan.

32. The third point relates to the alleged Nigerian military occupation of Darak. But Nigeria's position in relation to the Darak area, as stated in the diplomatic Note of 14 April 1994 [CM, Ann. MC, 355.] , did not come to Cameroon as news. For years, Cameroon, like other member States of the Lake Chad Basin Commission, had been involved in joint patrolling in the Lake. Cameroon was fully aware, for many years, that Nigeria had settlements at Darak and certain other outcrops of dry land in the Lake, populated by Nigerians and administered by Nigeria. Cameroon's own evidence makes it impossible for her to deny this [See, for example, CM, Anns. MC 282 and MC 283.] .

33. Fourth, Cameroon points to the Nigerian Note of 14 April 1994. However it is obvious that the Note was completely peaceable in tone and cannot have come as any surprise to Cameroon.

34. Consequently, Mr. President, distinguished Members of the Court, all four reasons that Cameroon gives for its sudden so-called "realization" that Nigeria was systematically disputing the entire border are bad: not just bad but very obviously bad. Whatever tactical advantage Cameroon might seek to gain from the allegation, it ought, quite simply, never to have been made.

35. I would like now to say a few words about the perspective in which these proceedings should be seen and conducted.

36. Having filed her second Application, and then the Memorial, Cameroon sought to substantiate the fiction of a border systematically challenged by Nigeria. She did this by a succession of provocations which my Government can only deplore. The pattern of events from 1994 onwards shows Cameroon trying to raise the temperature in the hope of discomfiting a neighbour which had been taken by surprise. I have no alternative but to express to the Court the dismay of my Government at this. I will do this as briefly as I can, but I have, with great regret, to allude to certain matters, in particular to the use by Cameroon of violent methods.

37. Cameroon on 25 July 1995 sent troops into West Atabong, in Bakassi. This map is at Tab 5. The

Cameroonian troops opened fire on a civilian vessel, killed a number of Nigerian civilians, beat up others, and confiscated motor-boats and fishing nets.

38. A few weeks later, in August 1995, the Cameroonians attacked Nigerian positions in Archibong Town, in the north of Bakassi. This attack killed one Nigerian and wounded another. One Cameroonian was also killed.

39. On 3 February 1996, Cameroon made another unprovoked attack in Bakassi. It was market day at West Atabong. The inhabitants were going about their ordinary business. Suddenly they were subjected to a surprise bombardment. I need hardly express to you, Mr. President, the seriousness of bombarding a civilian population concentrated together to attend a market. The bombardment was no casual matter. It was sustained for nearly seven hours. It was followed by an attack, which our garrison was nevertheless able to repulse. The whole operation was obviously carefully planned and co-ordinated as a Cameroonian amphibious operation, conducted through the creeks of the peninsula.

40. The distinguished Members of the Court will recall that at the interim measures hearings, in March 1996, Cameroon maintained the opposite, saying that Nigerian forces had attacked the Cameroonians. But their contentions lacked all credibility. Ten Nigerian civilians were killed and 20 more wounded — 30 Nigerian civilian casualties, ***six times*** our military casualties (which were two soldiers killed and three wounded). By contrast, on Cameroon's own evidence it suffered only two casualties and one missing, and it is revealing that all of them were military. These figures have never been challenged by Cameroon, not even in its so-called Memorandum on Procedure. We suffered heavy civilian casualties precisely because we were taken by surprise. And subsequently there were to be further attacks, such as on the night of 16 February 1996.

41. Cameroon's concerted campaign on the Bakassi issue included a request to this Court for interim measures. The process continued with their so-called Memorandum on Procedure. That document, Mr. President, is in reality simply a new and elaborate pleading which is not permitted by the Statute of the Court, and I trust that the Court will therefore disregard it.

42. The overall pattern of events since the first Application has therefore been, Mr. President, that Cameroon consistently seeks to raise the temperature in a variety of ways, including not only the matters I have already referred to, but also a series of strident diplomatic notes, the latest a week ago. Nigeria, for her part, seeks pacification, sends formal protest notes only when it considers they serve some useful purpose, and generally reserves its rights. This is a dignified course, and we believe it to be the appropriate one in the circumstances.

43. Mr. President, distinguished Members of the Court, at the end of the day Nigerians and Cameroonians are brothers. I can tell you with complete sincerity that despite Cameroon's conduct since 1994, Nigeria remains amicably disposed to her. Nigerians constitute some 2.5 millions in the total Cameroonian population of about 13 or 14 million. They contribute in all kinds of ways to the life of Cameroon. And large numbers of Cameroonians are happily resident in Nigeria, contributing to the life of our country.

44. Mr. President, distinguished Members of the Court, both we and Cameroon should recognize our mutual interest in stable boundaries. But these matter to my country even more than they matter to Cameroon. If ultimately Cameroon were to succeed in her claim to Bakassi or to the Darak area, many tens of thousands of Nigerians, people who have always been Nigerians and have been governed from Nigeria, could suddenly find their persons and property transferred to another State with a different system and political traditions. Those Nigerians could be evicted from their lands and/or deprived of their livelihoods. We would hope that Cameroon would behave well, but we have good reasons for disquiet. By contrast, Cameroon's citizens do not face a comparable danger at all. I say this because both sides know that few Cameroonians live in either Bakassi or the Darak area.

45. It goes almost without saying that the real issues the Court has to decide at these hearings of our Preliminary Objections are issues of law. Propaganda, whether from one side or the other, will not assist the deliberations of the Court. By all means let Cameroon argue its case on our Preliminary Objections with all vigour. But let these proceedings be conducted in a spirit of respect, respect for the Court and also mutual respect between fraternal States.

46. Mr. President, that completes my opening presentation of the Nigerian Preliminary Objections. I would ask you to call upon Sir Arthur Watts.

The PRESIDENT: Thank you very much Attorney-General. I now call upon Sir Arthur Watts.

SIR ARTHUR WATTS: Mr. President, and Members of the Court, I have the honour to present Nigeria's First Preliminary Objection, which is that the Court has no jurisdiction to entertain the Application lodged by Cameroon.

The essential facts are simple. Nigeria accepted the Court's jurisdiction under Article 36, paragraph 2 of the Statute as far back as 1965. Cameroon only did so on 3 March 1994. Cameroon then lodged its Application with the Court just some three weeks later, on 29 March 1994. Nigeria knew nothing of Cameroon's Declaration under Article 36, paragraph 2, until it was informed by the Registrar of the lodging of Cameroon's Application.

Given this chronology, Nigeria submits that the requirements of Article 36, paragraph 2, read with Nigeria's own Declaration, have not been satisfied. Cameroon, in lodging its Application on 29 March, acted prematurely and so failed to satisfy the requirement of reciprocity as a condition to be met before the jurisdiction of the Court can be invoked against Nigeria.

I. Mr. President, let me first remind the Court of *Cameroon's conduct* in bringing this case to the Court. In particular we need to look closely at Cameroon's conduct in early 1994.

The making of a Declaration under the so-called Optional Clause is not a matter decided upon by Governments overnight; even less so is the preparation of an application instituting proceedings. Both take lengthy, careful preparation. We can safely assume that Cameroon, in making its Optional Clause Declaration and lodging its Application in March 1994, will have been actively preparing for these steps at least since January 1994.

Now, Cameroon was not short of opportunities for informing Nigeria of developments affecting their mutual relations. At all relevant times Nigeria and Cameroon had diplomatic relations with each other. They had well-established standing processes of co-operation, bilateral as well as multilateral. There were also numerous *ad hoc* occasions, at senior, official and local levels, for the discussion of matters of common interest. Let me just list some meetings at senior levels in the first quarter of 1994 — that is, the period at the end of which Cameroon invoked the jurisdiction of this Court. On 13 January there was a meeting in Abuja between General Sani Abacha and the Foreign Minister of Cameroon [NPO, 56, p. 469.] , on 24 January there was a meeting in Buea between the Nigerian Ambassador and the Foreign Minister of Cameroon, the Foreign Ministers of the two States met at Buea on 10 February [NPO, 60, p. 485.] , and on 9 March the two Foreign Ministers met again, this time in Yaoundé. In addition during that period there was an exchange of correspondence between the two Heads of States (in February) [NPO, 60, p. 485; reply of 19 February 1994.] . I must also mention the Summit meeting of the Lake Chad Basin Commission, which took place in Abuja from 21 to 23 March 1994 [NPO, 77.] : General Abacha was there, but at the last minute President Biya did not turn up and Cameroon was instead only represented at ministerial level. And a week later Cameroon filed its Application before this Court.

> — Did Cameroon use any of those opportunities to mention that it was actively preparing to accept the Court's jurisdiction? No, Mr. President, Cameroon did not.
>
> — Did Cameroon use any of those occasions to mention that it was actively preparing to institute proceedings against Nigeria? No, Mr. President, Cameroon did not.
>
> — Even after 3 March 1994, when it accepted the Court's jurisdiction under the Optional Clause, did Cameroon inform Nigeria of that fact? No, Mr. President, Cameroon did not — not even at the Summit meeting just a week before Cameroon lodged its Application.

And as important as what Cameroon did not do is what Cameroon did do. During those months preceding its

recourse to the Court Cameroon carried on discussions with Nigeria with no suggestion that it was about to take such a significant step as the institution of proceedings before the Court.

And this was not just a matter of omission, it involved positive conduct to mislead Nigeria. During that period, Cameroon contrived to show its satisfaction with bilateral channels: at his meeting on 13 January with General Sani Abacha, the Cameroon Foreign Minister had proposed "the setting up of a joint fact-finding committee to address the border question in all its entirety" [NPO, para. 21.] ; and President Biya, as late as 19 February 1994, was even exhorting President Abacha "to *persevere* in the *intensification* of the efforts at negotiation which are already under way" [CM, 337: emphasis added.] . Cameroon clearly set out to mislead Nigeria.

Yet, Mr. President, "the Court has emphasized the need in international relations for respect for good faith and confidence in particularly unambiguous terms" [I.C.J. Reports 1984 , at p. 418: see passage quoted in n. 8, below.] . There is no need for me to labour the importance of good faith, but there are two aspects which I would draw to the attention of the Court.

The first is that, although the importance of good faith is nowadays taken for granted, it was not until relatively recently that the Court itself saw fit to refer to it in terms.

Secondly, these considerations of good faith are particularly important in relation to the establishment of this Court's jurisdiction under the Optional Clause. The Court itself has said so [Military and Paramilitary Activities in and against Nicaragua, I.C.J. Reports 1984 , at p. 418. See also NPO, para. 1.18. The passage referred to reads: "In the establishment of this network of engagements, which constitutes the Optional Clause system, the principle of good faith plays an important role; the Court has emphasized the need in international relations for respect for good faith and confidence in particularly unambiguous terms".] : good faith must be respected, and confidence in international relations enhanced. The Court has accepted that the "requirements of good faith" apply to the termination of Declarations [Military and Paramilitary Activities in and against Nicaragua, I.C.J. Reports 1984 , at p. 420, para. 63.] . They surely apply equally to their making and implementation. States are entitled to expect that other States making Declarations will conduct themselves accordingly.

Instead, Cameroon was actively lulling Nigeria into a false sense of security while at the very same time undermining the on-going dialogue by surreptitiously preparing to come before this Court. Nigeria in good faith relied on Cameroon's representations. And then Nigeria's legitimate expectations were shattered by Cameroon's sudden preference for third party settlement, contrary to all that Cameroon had hitherto led Nigeria to believe about the value of bilateral machinery.

"Respect for good faith and confidence" in international relations cannot be satisfied in such circumstances. Cameroon sought all along to conceal and misrepresent what it was about, and then sought to found the jurisdiction of this Court on the results of that misrepresentation. Mr. President, proper respect for the judicial process of this Court excludes the establishment of jurisdiction by stealth.

And what is Cameroon's answer to all this? Cameroon, I note, does not seek to deny that there were meetings at which it could have informed Nigeria of what was afoot; nor does Cameroon deny that it took no steps at any of those meetings to inform Nigeria. So, in effect, Cameroon admits misleading Nigeria.

Cameroon also argues [CO, para. 1.46.] that Nigeria must have known that the peaceful means at Cameroon's disposal to settle the Bakassi dispute included the option of coming to this Court. But, Mr. President, that would only be right once Nigeria knew of Cameroon's Optional Clause Declaration: until then, so far as Nigeria knew the ICJ option was *not* one of the means at Cameroon's disposal. And hence Nigeria's surprise when the truth emerged.

Cameroon also seeks to show that Nigeria already knew what Cameroon had in mind. And thus, says Cameroon, in February 1994 President Biya included possible "recourse to a judicial body" in a message to General Abacha [CO, para. 1.93; CM, 337.] . But the whole emphasis of the message was not on litigation but on negotiation — President Biya was calling for Nigeria to "persevere" in the "intensification" of current negotiations. Moreover, a vague reference to recourse to "a judicial body" scarcely indicated that Cameroon had this Court in mind, especially at a time when Cameroon had not accepted the Court's jurisdiction. And then we have a radio report from Libreville, capital of the neighbouring State of Gabon, which is put forward as an official notification by Cameroon! [CO, para. 1.94; CO, 11.] Then we have another press report, of remarks

made by the Nigerian Foreign Minister about an apparent Cameroon decision to take the matter to the Security Council and to this Court [CO, para. 1.95; CM, 340.] : but again, Mr. President, what weight attaches to remarks of this kind, at a time — and we are still in February 1994 — when even Cameroon acknowledges that it could not have referred the case to this Court? No wonder the Foreign Minister was baffled at what appeared to be so marked a departure from Cameroon's previous commitment to negotiation and dialogue. Next we have a letter sent by the Nigerian Foreign Minister to the President of the Security Council on 4 March 1994 referring to Cameroon "instituting proceedings" before the ICJ [CO, para. 1.96; CM, 344.] — but as we know, at that time no such proceedings had been instituted, so little weight can attach to this reference. And then there is the OAU meeting on 11 March 1994, of which Cameroon curiously says that it shows that "all the African officials" knew of Cameroon's reference of the case to the ICJ [CO, 1.97-98; CM, 349.] ; but, Mr. President, the most senior of those officials — the Secretary-General of the OAU himself — is admitted not to have been aware of the so-called fact [The admission is recorded in the internal Cameroonian report of the meeting: ibid. , at p. 2848.] , and, in truth, at that time there was no Cameroon case before the Court of which anyone could have been aware!

Mr. President, this is all such a muddled record of miscellaneous events that no serious conclusions can be drawn from it. By having to rely on it, Cameroon draws attention to its determination to avoid being open about what it was doing: transparency was the last thing that Cameroon wanted.

For the rest, Cameroon puts forward a miscellany of radio and newspaper reports. But Cameroon could have told Nigeria directly about what Cameroon was up to: why rely on such indirect ways of conveying important State information? States are not expected to react to media reports as if they are formal communications of some other State's position. Diplomacy by journalism is an unreliable channel.

II. Let me now turn to the question of *Reciprocity*. On this, Nigeria's submissions are simple. First, Nigeria's Declaration under Article 36 was expressly subject to reciprocity; and second, in the circumstances of Cameroon's Application, there was no reciprocity sufficient to satisfy the condition imposed by Nigeria's Declaration.

Mr. President, much learned writing on this subject, and if I dare say it, even some Judgments of this Court, do not distinguish consistently between several senses in which the idea of reciprocity is relevant to the operation of the Optional Clause system. At least six can be discerned. There is, first, the general principle of reciprocity which underlies the whole system, based on its consensual and contractual nature. And second, there is reciprocity in the specific sense of Article 36, paragraph 3, of the Statute. Then, third, there is reciprocity in the sense of the acceptance by the parties of the same obligation under Article 36, paragraph 2; but a source of confusion is that Article 36, paragraph 2, does not in terms refer to "reciprocity", and nor indeed does it establish real reciprocity — rather, it lays down a requirement which may, perhaps, be better characterized as "co-incidence": State A and State B must both have accepted the Court's jurisdiction to the same substantive extent. Fourth, and as a consequence, there is reciprocity in the sense of each party being entitled to invoke reservations made by the other. Fifth, reciprocity may be a specified condition expressly imposed by States in their reservations. And sixth, possibly overlapping with others, there is reciprocity in the sense of full mutual identity of positions between the States concerned.

Now against this background, let me look at Nigeria's Declaration. It accepted the Court's jurisdiction as compulsory "in relation to any other State accepting the same obligation". In saying that it was simply repeating the "co-incidence" terms of the Statute. But Nigeria's Declaration added the words, "and that is to say, on the sole condition of reciprocity". And that addition is crucial. It added considerations of mutuality. It requires not only that States A and B have accepted the Court's jurisdiction to the same extent, but *also* that they are each equally able to invoke their respective Declarations — in effect, that they are both equally able to make use of the opportunity afforded by their parallel Declarations, and are both equally at risk of proceedings being instituted against them. But such equality of risk was absent in the present case. By virtue of its long-standing acceptance of the Optional Clause, Nigeria was at risk of being brought to this Court as respondent: but Cameroon was under no real equivalent risk, at least until Cameroon came out into the open by submitting its Application in this case. By the terms of its Declaration, Nigeria made it clear that it was not just accepting the Court's jurisdiction on the basis of "co-incidence" under the terms of Article 36, paragraph 2, but that it also required there to be proper, full "reciprocity".

The fact that Nigeria's Declaration *added* the reference to reciprocity cannot, Mr. President, be disregarded. If words are used, the assumption must be that they are intended to have a purpose and a meaning justifying their use. In the *Cayuga Indians Claims* case the position was expressed in these terms:

> "Nothing is better settled, as a canon of interpretation in all systems of law, than that a clause must be so interpreted as to give it a meaning rather than so as to deprive it of meaning." [UNRIAA , Vol. VI, pp. 173, 184.]

And this Court, Mr. President, in the *Maritime Safety Committee* case, similarly rejected a suggested interpretation of a treaty provision on the ground that "the effect . . . would be to render superfluous" the passage in question [I.C.J. Reports 1960 , at p. 160.] .

Cameroon suggests [CO, para 1.81.] that the additional reference to reciprocity serves only to restate what is contained in the preceding phrase [CO, para 1.81.] . That, however, is to contend that, in a formal instrument such as an Optional Clause Declaration, words used have no substantive effect, are mere surplussage, and could be omitted without affecting the Declaration's meaning. That contention only has to be stated for it to be seen to be wrong. Those additional words clearly have some meaning and effect — and it is the supplementing of the "co-incidence" required by Article 36, paragraph 2, by the element of mutuality inherent in the concept of "reciprocity".

We are, of course, here concerned with a unilateral instrument, Nigeria's Optional Clause Declaration. This Court has already noted that such Declarations must not be interpreted in such a way as to exceed the intention of the States making them [NPO, paras. 1.20 - 1.22. The references were to passages from the Judgment in Phosphates in Morocco , P.C.I.J., Series A/B No. 74 (1938) , at pp. 23, 24.] . And this approach is in line with the widely accepted principle of treaty interpretation, *in dubio mitius*.

Cameroon seeks to argue that the meaning which Nigeria attributes to the use of the term "reciprocity" is in some way unusual and unprecedented. Yet words are to be given their ordinary meanings in their context. The Shorter Oxford Dictionary [3rd ed. (revised) 1956.] gives a meaning of "a state or relationship in which there is mutual action, influence, giving and taking, correspondence, etc., between two parties or things". Mr. President, on the ordinary meaning of the words used there cannot be mutual action, there can be no correspondence of positions, no true reciprocity, if one of the parties is, through no fault of its own and indeed because of the conduct of the other party, wholly unable to play its equivalent part in that action.

Cameroon has drawn attention [CO, para 1.82.] to the Court's jurisprudence regarding the meaning of reciprocity. Mr. President, I would offer just four comments. First, the facts of the five cases cited by Cameroon are very different from those of the present case. Second, the disfavour with which the Court viewed "new interpretations" in the *Nottebohm* case [Nottebohm, Preliminary Objection , I.C.J. Reports 1953 , at pp. 120-121.] arose on the very distinctive character of the Guatemalan argument then under consideration, and is difficult to elevate into a general principle — after all, all arguments are "new" when they are first advanced, and in any event when would Nigeria have had a previous occasion for saying what "reciprocity" meant in its Declaration? Third, in the other four cases cited by Cameroon [Anglo-Iranian Oil Company , I.C.J. Reports 1952 , p. 93; Certain Norwegian Loans , I.C.J. Reports 1957 , p. 9; Interhandel , ICJ Rep. 1959, p. 6; and Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) , I.C.J. Reports 1984 , p. 392.] , the Court was not addressing the question of mutuality now raised by Nigeria, since they all involved Declarations the terms of which were fully known to the parties at all relevant times. And fourth, the Court acknowledged in the *Anglo-Iranian Oil Company* case that it "must seek the interpretation which is in harmony with a natural and reasonable way of reading the text, having due regard to the intention of the Government . . . at the time when it accepted the compulsory jurisdiction of the Court" [Anglo-Iranian Oil Company , I.C.J. Reports 1952 , at p. 104.] . For the reasons Nigeria has given, Nigeria's emphasis on the need for reciprocity, and its understanding of the meaning of that term, *are* a natural and reasonable way of reading the text of Nigeria's own Declaration, consistent with the dictionary meaning of that term: nothing in the historic circumstances of 1965 casts doubt on that meaning — rather, the historic circumstances support the meaning Nigeria gives to "reciprocity", for with that meaning Nigeria (like several other States) mitigated the effects of the Court's earlier decision in the *Right of Passage* case.

Here I would recall that the Court has consistently had regard to substance rather than to form [See Mavromatis Palestine Concessions, P.C.I.J., Series A, No. 2 (1924), at p. 34. This formulation was adopted by the Court in

Northern Cameroons, I.C.J. Reports 1963 , at p. 28. See also NPO, para 1.13.] . The Court's approach has been consistent [E.g. in relation to the requirements of the nationality of claims rules, in Reparations for Injuries suffered in the service of the United Nations, I.C.J. Reports 1949 , p. 174, and Nottebohm, I.C.J. Reports 1955 , p. 4 (on both of which cases see, in this connection, Watts, in Fifty Years of the International Court of Justice (ed. Lowe and Fitzmaurice, 1996, at pp. 426 - 431); and also in relation to the requirements for an "agreement", in Aegean Sea Continental Shelf, I.C.J .Reports 1979 , p. 3, at p. 39, and Qatar v. Bahrain, I.C.J. Reports 1994 , pp. 120 - 122.] : at the international level it is substance, not form, which matters.

This applies to "reciprocity". It is not a term to be understood in the abstract: the Court said so in the *Right of Passage* case [I.C.J. Reports 1957 , at p. 145.] . It has to be given meaning in the light of its context and the principle of good faith, and in the light of the circumstances in which it falls to be applied. And it has to be understood as a matter of substance, not just of form. The Court itself stated that the "notion of reciprocity is concerned with the scope *and substance* of the commitments entered into" [Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), I.C.J. Reports 1984 , at p. 419, para 62; emphasis added.] .

In the present context, the substance of the concept requires not just that State A and State B have made Declarations under Article 36 which cover the same ground: *that* is "co-incidence" rather than reciprocity. Rather it requires mutuality in the positions of States A and B, so that each is in the same position vis-à-vis the other as that other is in relation to itself, and that substantive reciprocity did not exist when Cameroon submitted its original Application. Cameroon instituted proceedings against Nigeria at a time when Nigeria was in ignorance of any possibility of instituting proceedings against Cameroon. That ignorance, Mr President, was no fault of Nigeria's; the resulting lack of reciprocity was the direct and intended result of Cameroon's stealthy behaviour.

For completeness, Mr. President, let me touch briefly on one more point. Nigeria did, of course, know of Cameroon's Declaration at the time when Cameroon submitted its amending Application in June 1994. But that does not mean that that later document can be allowed to stand. Cameroon's request to the Court was in terms of the new Application being an amendment of the initial Application, not the other way round. If the primary Application is an inadequate basis for a case before the Court, then its later dependent Application can be in no better position [See NPO, para. 1.27.] . At the meeting with the President of the Court on 14 June 1994 Nigeria accepted that the two Applications could be treated together on the basis of "the Additional Application being treated as an *amendment to the initial Application*", and that was part of the procedure which the Court accepted in its Order of 16 June" [I.C.J. Reports 1994, p. 106 ; emphasis added.] . Moreover, Nigeria did not acquiesce in Cameroon's manner and timing of filing its original Application: Nigeria's counsel at that meeting reserved the right to comment later on the element of surprise in Cameroon's Application.

III. Mr. President, Cameroon has also sought to build *upon the Court's finding, in the interim measures phase that it had prima facie jurisdiction*.

But, it is clear that a finding of prima facie jurisdiction is both provisional and without prejudice to whatever decision the Court might ultimately come to on the question of jurisdiction. In the present case the Court repeated its well-established position. It left the final determination of the question of jurisdiction for later consideration — in effect, at the stage which has now been reached. Nothing more can be read into the Court's Order on Interim Measures than that.

IV. Let me now turn to *Nigeria's non-acceptance of the Court's jurisdiction in this case*. Cameroon has suggested that Nigeria, by referring on various occasions to proceedings before this Court being pending, has accepted the Court's jurisdiction, and can no longer deny it. This wholly distorts the purport and effect of Nigeria's action.

Cameroon seeks to argue [CO, para. 54.] that Nigeria did not, before filing its Preliminary Objections, challenge the jurisdiction of the Court or the admissibility of the Application. Of course not, Mr. President: the time for such challenge is laid down in Article 79 of the Rules. That was the time when Nigeria duly did so, and

before submitting its Preliminary Objections Nigeria in no way accepted the Court's jurisdiction for this case.

After the submission of its Preliminary Objections, Nigeria's objections to the Court's jurisdiction were on the record. Of course, Mr. President, proceedings before the Court were indeed pending: that was — still is — a fact. To refer to them as "pending" simply acknowledges that fact.

References to the proceedings being pending are, of course, to the proceedings as they stand, with all their incidental elements — which include the fact that Nigeria has lodged Preliminary Objections both to the scope of the dispute and indeed to the Court's jurisdiction over Cameroon's Application as a whole. The Parties are free, to raise all manner of arguments — including jurisdictional arguments. All these issues being properly before the Court, the whole matter should be left to the Court to determine: it is *sub judice* and saying so cannot be taken to mean that a party thereby implicitly waives positions which it has taken or might take during the course of those proceedings.

As for Cameroon's suggestion that the letter of 16 February 1996 from the Agent of Nigeria was an acceptance of the Court's jurisdiction, this is a misreading of the letter (written, I would note, *after* Nigeria's Preliminary Objections had been submitted). What had happened was that Cameroon had put certain tendentious material before the Court. Nigeria felt it necessary to present a more balanced picture, and to point out that, far from it being appropriate for Nigeria to be called upon to mend its ways, as Cameroon was suggesting, the situation was really the other way round and it should rather be Cameroon which should be called to order. An argument which interprets such a rhetorical device as a request for interim measures or an acceptance of the Court's jurisdiction does not stand up even to the most cursory scrutiny.

In all of this Cameroon has sought to show that Nigeria has by implication accepted that the Court has jurisdiction over the whole dispute as submitted by Cameroon. For the reasons I have given, this cannot be so. But there is also a more general consideration. Cameroon is seeking to establish some *implications* from Nigeria's conduct. Implications, however, must be compellingly established, particularly in relation to so important a matter as the jurisdiction of this Court, and where they would run counter to positions formally and fully — and previously — presented in writing in Nigeria's Preliminary Objections. Cameroon has come nowhere near satisfying the burden thus placed upon it.

Mr. President, I have come to the final section of my statement; I have about another 15 minutes to run; I am happy to continue to run but if you would find it more

convenient to adjourn for a few minutes, this might be a convenient moment to do so.

The PRESIDENT: Thank you so much. I think you can run on for 15 minutes.

Sir Arthur WATTS: Thank you very much.

V. Finally then, Mr. President, let me say something about the *Right of Passage* case [I.C.J. Reports 1957 , p. 125.] , decided over 40 years ago. Nigeria contends that that decision is not of compelling weight in the modern circumstances of this present case.

The Court's decision in that case clearly has no direct compelling effect in the present proceedings. This follows from Article 59 of the Statute. There are Mr. President, certain differences between the circumstances of our present case and those of the case before this Court 41 years ago.

I have already noted the emergence, since 1957, of clear statements by the Court about the central role which considerations of good faith must play in international relations, particularly when the question at issue involves the jurisdiction of this Court. An eminent writer, well placed to comment on the practice of this Court, has said that during the years 1960-1989

> "the concept of good faith, which had previously only been referred to by individual judges and not employed by the Court in its decisions, developed into a notable element in the judicial armoury" [Thirlway, "The Law and Procedure of the International Court of Justice 1960-1989", British Yearbook of International Law , Vol. 60 (1989), at p. 7.] .

The law in this area is vastly more developed now than it was when the Court had to consider the *Right of Passage* case, even to the extent that the obligation to act in good faith probably now has the status of *jus cogens* — a concept virtually unknown 40 years ago. It was not until 1970 that the General Assembly adopted the so-called "Friendly Relations Declaration" [General Assembly Res. 2625(XXV)(1970).] , the seventh Principle of which elaborated upon the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter (which includes, of course, the Statute). They include in particular the obligation to conform to and not to endanger principles of justice. A decade later the 1969 Vienna Convention on the Law of Treaties entered into force — a fact of particular relevance in view of Cameroon's insistence that Optional Clause declarations are to be treated as treaties or agreements [CO, para. 1.68 ff.] : and this has the inevitable consequence that Cameroon's Declaration attracts the operation of Article 26 of that Convention requiring that every treaty must be performed by the parties in good faith.

If we look at the arguments considered in the *Right of Passage* case it is notable, although perhaps not surprising given the way the law has developed, that while India did refer to considerations of good faith, it did not do so in any detail; more importantly, Mr. President, the Court, in this context, made no reference whatsoever to "good faith". The whole topic was treated in a way which today could be considered perfunctory. As to reciprocity, both India and the Court did refer to it, but not in great detail, and, in particular, India did not put before the Court, nor did the Court address, the kind of argument on this subject which Nigeria is now advancing.

One other point of difference between that 1957 case and the present case may be noted. Both India's and Portugal's Declarations were in terms stated to have immediate effect: Portugal's was stated to take effect "at the moment it is deposited with the Secretary-General of the United Nations" and India's was effective "from today's date" — a fact to which the Court attached weight [At p. 146.] . In the present case neither Cameroon nor Nigeria included any such express instantaneous provision in their Declarations.

Nor Mr. President is instantaneous applicability to be read into the reference in Article 36, paragraph 2, of the Statute to declarations recognizing the Court's jurisdiction *"ipso facto"*. In their context those words form part of a phrase which in full reads *"ipso facto* and without special agreement"; they emphasize the distinction between the Optional Clause system and the system of special agreements dealt with in paragraph 1.

Cameroon has also referred to the case concerning the *Arbitral Award of 31 July 1989* [I.C.J. Reports 1991 , p. 53; CO, para. 1.40.] , and noted that Senegal did not contest the Court's jurisdiction, even though it too had been faced with an Application by Guinea-Bissau filed only just over two weeks after Guinea-Bissau had made an Optional Clause declaration. Mr. President, it is not for Nigeria to speculate why Senegal chose not to raise the kind of point which Nigeria is now raising. That omission cannot prejudice Nigeria's position in this instant case.

Mr. President, the haste with which Cameroon filed its Application has in a real sense affected Nigeria's position adversely [Cf. Right of Passage, I.C.J. Reports 1957, p. 147.] . Cameroon's conduct has clearly prejudiced Nigeria's position as a Respondent before this Court. It has equally prejudiced Nigeria's enjoyment of its right that other States, including Cameroon, should behave towards it in good faith. Cameroon has been wholly unmindful of the rights of Nigeria as a fellow-member of the regional and international community, and misled Nigeria into acting in ways which, had it known the true facts, it might have wished to avoid. Cameroon has undermined Nigeria's right to rely on bilateral channels of dispute settlement, and the flexibility and freedom which goes with bilateral machinery, allowing settlements to be tailor-made to local conditions. All this has had significant adverse material consequences for Nigeria: the resources which Nigeria has had to devote to these proceedings, and the harassment which Nigeria has suffered from Cameroon on the international plane, have, for example, had a clear, and substantial, political and material dimension.

Mr. President in it's 1957 decision, the Court took the view that when a State deposits its Optional Clause Declaration with the Secretary-General, the necessary contractual relation between that State and other declarant States, and thus the jurisdiction of the Court, are established without more ado: that is as the Court

said, "the very day on which the consensualbond . . . comes into being between the States concerned" [At p. 146.] . The Court did not regard the requirement of the Statute, for the Secretary-General to transmit copies of the Declaration to all parties to the Statute, as relevant to the legal effect of declarations.

Mr. President, there are with respect some difficulties with applying this analysis to the circumstances of the present case. Although the individual declaration is a unilateral act of the State making it, the Court has accepted that its legal effect within the Optional Clause system is essentially one to be analysed in terms of contractual relations and consensual bonds. Nigeria respectfully agrees. However, consensual, contractual relations require a meeting of minds. Given the significance which Nigeria attaches to the requirement of reciprocity in its Declaration, how can the necessary meeting of minds exist between two parties one of whom is kept in ignorance of the other's position?

It might be argued that it is not by knowledge of the Declaration that the consensual bond is established, but rather by virtue of the two States being parties to the Statute which itself establishes their agreement to an Optional Clause system incorporating the instantaneous and automatic effect of declarations. But nothing in Article 36 in terms requires that instantaneous effect be given to declarations. In any event, the Optional Clause system itself incorporates such limitations as are imposed by declarant States on the scope of their declarations: those limitations *are part* of the consensual system established by the Statute. In Nigeria's case, Nigeria's commitment under the Statute is a commitment incorporating a condition of substantive reciprocity: so even within the limits of the Optional Clause system itself, no contractual relationship can be established unless that condition is satisfied.

Then, Mr. President, there is the role of the Secretary-General under Article 36, paragraph 4, of the Statute. The United Nations Charter, and the Statute, are not constructed on the basis that provisions are intended to be of no substantive effect, and of only bureaucratic importance. There is room for the view that Article 36, by providing for the transmission by the Secretary-General of copies to all parties to the Statute, was intended to have a substantive place in the general economy of the system established by that Article, thereby meeting the need for transparency in the system in a society governed by the rule of law. And this would be entirely consistent with the consensual and contractual principles which underlie the Optional Clause system. The States concerned in effect exchange their declarations — not directly but rather (for obvious reasons of convenience) through the Secretary-General, who is under an express obligation to communicate them to other States: he has in this context functions which are akin to those of a depositary.

But here it is relevant to note a further development in international law since 1957. Article 78 *(c)* of the 1969 Vienna Convention on the Law of Treaties now provides a general rule that where a State makes a treaty-related communication to a depositary for transmission to other States, those other States are only to be considered to have received it when they have been informed of it by the depositary acting in fulfilment of its obligation to inform other States of such communications. And if, as Cameroon itself maintains [CO, para. 1.68 ff.] , Optional Clause declarations are to be treated as treaties, then Cameroon's declaration, is subject to that provision.

The Court noted, in 1957, that the declarant State "is not concerned with the duty of the Secretary-General or the manner of its fulfilment" [Right of Passage, I.C.J. Reports 1957 , at p. 146.] : it is indeed not directly involved in that process, otherwise than by starting it off. But, Mr. President, States *are* very directly concerned with the consequences of that process: they depend on it for the necessary information about the operation of the Optional Clause system, and they are penalized if the system does not work in the way intended.

The Court was of the view that to prevent a declarant State from relying on its Declaration until it had been communicated to other States would "introduce an element of uncertainty into the operation of the Optional Clause system" [At p. 147.] . But, Mr. President, the Court acknowledged at the same time that in this general context "some element of uncertainty" was "inherent in the operation of the system of the Optional Clause" [At p. 143.] . And the regularity of the lodging of preliminary objections shows that the system has never been automatic and certain. And this may also be asked, who is intended to benefit from this search for certainty? — the applicant? The respondent? Or the legal system as a whole? And is one to benefit at the expense of the others? A system which operated on the basis of, say, the date when the Secretary-General, by a Note circulated to all Missions in New York, notified parties to the Statute of the making of Optional Clause declarations would be no less certain — the practical results would, of course, be different, but it would be just as certain. Even a system based on the lapse of a "reasonable time" for its proper operation, while admittedly not precise, is no

more uncertain than any other rule constructed on the basis of an adjective such as "equitable", "necessary", "reasonable", and so on: many rules of international law are of that kind. No State conducting itself with the transparency which ought to characterize its conduct in the face of this Court has anything to fear from the use of such common qualifications. And the Court has already indicated that it may be appropriate to allow a "reasonable period" before the withdrawal of a declaration can take effect [Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), I.C.J. Reports 1984 , at p. 420, para. 63.] : there would be no greater uncertainty in adopting the same test for when a declaration may be invoked.

Cameroon has contended [CO, paras. 1.67 - 1.77.] that Nigeria's argument that a declaration under Article 36, paragraph 2, does not enter into force on the date it is made is contrary to Article 102 of the Charter. But, Mr. President, that yet again misrepresents Nigeria's argument, which was not about Cameroon's Declaration at all. Nigeria's point is quite different. It is that in the circumstances of this case, and whatever might have been the position in other circumstances or in relation to other States, Cameroon's *Application* — not the Declaration itself — was, for the reasons which have been explained, ineffective *as against Nigeria* to found the jurisdiction of this Court.

Mr. President, as I said, the *Right of Passage* case is not binding on the Parties now before the Court. Once we are beyond that point, the fact of the matter is that it is open to the Court not to apply rigidly in a new case the conclusions and reasoning which it adopted in a much earlier case. In appropriate circumstances, particularly where the interests of justice and developments in the law require, and if necessary clothed in the language of "distinguishing", it is a course which the Court has already taken in some instances, at least "In the sense of a modification of the rigidity of previous holdings" [Shahabuddeen, Precedent in the World Court (1996), at p. 150.] . Thus, Mr. President, in the *Peace Treaties* case [I.C.J. Reports 1950 , p. 221.] the Court distanced itself from the strict rule which had been laid down in the *Eastern Carelia* case [P.C.I.J., Series B, No. 5 , (1923).] regarding the giving of advisory opinions in circumstances which might overlap with the merits of a contentious dispute; in the *Barcelona Traction* [I.C.J. Reports 1970 , p. 3.] case the Court declined to follow the reasoning which, in the *Nottebohm* [I.C.J. Reports 1955 , p. 12.] case, had led it to require that, for purposes of diplomatic protection, there had to exist not only a formal link of nationality but also a genuine link between the protecting State and the person sought to be protected; and it is difficult to construe the Court's more recent decisions as to the role of equity in relation to maritime delimitations as other than a departure from the position it had previously adopted in that context [See North Sea Continental Shelf, I.C.J. Reports 1969 , p. 3; Continental Shelf (Tunisia/Libyan Arab Jamahiriya), ICJ Reports 1982 , p. 18; Delimitation of the Boundary in the Gulf of Maine Area, I.C.J. Reports 1984 , p. 246 ; Continental Shelf (Libyan Arab Jamahiriya/Malta, I.C.J. Reports 1985 , p. 13; and Maritime Delimitation in the Area between Greenland and Jan Mayen, I.C.J. Reports 1993 , p. 38.] .

The question is thus whether this present case is one of those in which it would be appropriate for the Court to look again at certain aspects of its earlier decision. Nigeria submits that this is such a case. After 40 years the inevitably different circumstances of the two cases, the strengthening of the obligation to act in good faith, the deployment before this Court of arguments not advanced 40 years ago, the development of new rules of law in relevant areas (such as the obligations resting upon depositaries), and differences in the terms of the States' Optional Clause Declarations — all this justifies the Court in not necessarily following slavishly the route it took in 1957.

Nigeria is not alone in taking this view. Professor Shabtai Rosenne — the most eminent authority on the law and practice of this Court — has raised the question whether the decision in *Right of Passage* should now be reconsidered. In his view certain recent practices adopted by States, which had had not altogether desirable results, raised

> "serious doubts about the continued unchecked application of the doctrine accepted by the Court in the *Right of Passage* case . . . The question can be asked whether what has occurred since the *Right of Passage* case does not justify a reconsideration of the doctrine of that case should an opportunity to do so present itself." [Rosenne, An International Law Miscellany (1993), at p. 92. See also the same writer's The Law and Procedure of the International Court of Justice 1920-1996 (1997), pp. 753 - 759.]

He went on to express the hope that some way would be found to protect States which have accepted the jurisdiction under Article 36, paragraph 2, from the surprise deposit of a declaration at the United Nations

before the respondent can be aware that a declaration has been deposited.

It is Nigeria's submission that the opportunity to reconsider the doctrine adumbrated in *Right of Passage* over 40 years ago does now present itself, and that, for the reasons which Nigeria has given in its first Preliminary Objection and elaborated in these oral hearings, it is appropriate for the Court to uphold the first Preliminary Objection and declare itself to be without jurisdiction to entertain the Application, and the later amending Application, submitted by Cameroon.

Conclusion

Mr. President, Members of the Court, should the Court uphold Nigeria's first Preliminary Objection, it follows that the whole Application submitted by Cameroon would be dismissed, and that none of the other Nigerian Preliminary Objections would need to be considered. However, Nigeria will, with the permission of the Court, and without prejudice to its first Preliminary Objection, now address its other Preliminary Objections.

Accordingly, Mr. President, at a time of your convenience, I invite you to call upon Chief Richard Akinjide, SAN, to address the Court on Nigeria's second Preliminary Objection.

Thank you, Mr. President.

The PRESIDENT: Thank you, Sir Arthur. The Court will now adjourn for 15 minutes.

The Court adjourned from 11.40 to 11.55 a.m.

The PRESIDENT: Please be seated. I now call on Chief Richard Akinjide.

Mr. AKINJIDE:

1. Mr. President, distinguished Members of the Court. I have the honour once again to be addressing you.

2. I am here today to address you on Nigeria's second Preliminary Objection which is entitled:

> "The duty of the parties to settle all boundary questions by means of existing bilateral machinery."

3. The bases of that duty, Mr. President, are set out thus in Nigeria's written statement of its Preliminary Objections:

> "For a period of at least 24 years prior to the lodging of the Application the Parties have in their regular dealings accepted a duty to settle all boundary questions by means of the existing bilateral machinery. In the submission of the Government of Nigeria this course of joint conduct constitutes an implied agreement to resort exclusively to the existing bilateral machinery and not to invoke the jurisdiction of the Court."

4. In respect of Lake Chad, Nigeria asserts that boundary problems come within the exclusive competence of the Lake Chad Basin Commission. Professor Ian Brownlie will address you, Mr. President, on that topic when dealing with Nigeria's third Preliminary Objection. That is a *multilateral* topic involving other States — I shall, Mr. President, address you on the *bilateral* machinery which operates between the Parties under the headings

now shown on the screen.

5. Whether or not Article 33, paragraph 1, of the United Nations Charter is strictly applicable to the matter now before the Court, it is a convenient starting point. It states that the parties to certain kinds of dispute

> "shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".

6. This usefully sets out the different traditional mechanisms; moreover, it expressly incorporates the principle of freedom of choice. It ranges from the extreme of politicization — negotiation — to the extreme of de-politicization — to a judicial settlement:

As Rosenne says:

> "[The] political decision [concerning] . . . the technique by which the dispute is resolved is based upon the voluntary renunciation by the disputants, in the interests of a settlement, of their right to solve the dispute directly, in favour of binding third party judicial settlement, coupled with the requirement that the solution shall be based on articulated legal grounds exclusively." [Rosenne: The Law and Practice of the International Court 1920-1996 (1997) at p. 6.]

and then he went on:

> "The decision of what means to employ, especially if . . . direct settlement through negotiation is abortive, is naturally the consequence of the usual processes of political and diplomatic decision making." [Ibid. at p. 14.]

7. Mr. President, I should stress here that there has been no voluntary renunciation by Nigeria of her right to resolve any dispute directly. Cameroon has jumped from one end of the spectrum to the other. At a stroke she has sought to remove Nigeria's freedom of choice. Nigeria acted in good faith in pursuing the political route to dispute settlement by the use of bilateral negotiations. It is Nigeria's contention that Cameroon was under a duty to persevere with the bilateral machinery until the Parties agreed another course.

8. Nigeria has relied upon the bilateral machinery to its detriment. The detriment arises in two ways.

9. Firstly, bilateral machinery is flexible machinery. It enables the parties to resolve differences in an almost infinite variety of different ways. This is particularly so in situations where border disputes are highly localized. Once the parties are before a tribunal many of the previously existing possibilities disappear. The options open to this honourable Court, for example, are limited. It can order a line to be drawn, it can order compensation to be paid or it can order the parties to go away and carry out a joint demarcation exercise. This last course, is precisely the one we have been trying to pursue over the years. Thus, one aspect of the detriment to Nigeria, Mr. President, lies in the loss of control over the means to be deployed in regard to delimitation.

10. The second aspect of detriment lies in Nigeria's having believed that the bilateral machinery was still in place. This meant that Nigeria did not give any consideration to the possibility of alternative means of dispute resolution. Not only that, but Cameroon, by its unilateral action, effectively prevented Nigeria from being able to give such consideration to alternative means.

11. It is thus also Nigeria's submission, Mr. President, that Cameroon is estopped from invoking the jurisdiction of the Court, Nigeria having relied on Cameroon's conduct to Nigeria's detriment.

12. The truth is that, in respect of our common boundary, Cameroon very seriously overstates its case. If you look at the great majority of the border, any problems that there are can be, and normally are, settled by sensible negotiations between the parties at an appropriate level, which often means village level. At the same time, however, both States have recognized the need for a formalized structure within which bilateral negotiations can take place at an appropriate diplomatic level. Nigeria submits that it is the duty of the Parties to utilize that existing bilateral machinery before resorting to other means of resolution.

13. Mr. President, I would now like to take the Court through the operation of the bilateral machinery between the years 1965 and 1994, as set out in Nigeria's second Preliminary Objection. In so doing, I shall comment briefly on some of the Cameroon observations.

14. The first meeting referred to [NPO, 10, 11.] is the one which took place in June 1965 at which a local problem in the districts of Danare in Nigeria and Boudam in Cameroon was discussed; this is shown on Tab 13. The meeting, although it dealt with a fairly localized problem, was attended by high level officials from both sides. It was not merely a meeting of local officials. The outcome of the meeting was a decision to carry out a demarcation exercise over a rather long stretch of boundary than the 2½ miles covered by the area between the two villages. The longer stretch is indicated on the map, as it will be seen in Tab 14 now being shown. It lies between Obokum and Bashu, which is a distance of some 20 miles. If this exercise had been carried out, it would have had the effect of re-establishing the boundary from boundary pillar 105 to boundary pillar 114 as it will be seen on Tab 15.

15. This joint meeting on Danare and Boudam is generally regarded by both Cameroon and ourselves as being the first post-independence use of formal bilateral machinery to resolve our boundary issues. Unfortunately, the work contemplated at that initial meeting was never fully carried out owing to the intervention of the Biafran War.

16. Before moving on to deal with the continuing history of the joint boundary commissions, I would like briefly to commend to the Court the passages of the Minutes of the 9 June 1965meeting [NPO, 11, pp. 89 - 91.] in which the spokesmen for each of the two villages explain the problems which they have been experiencing. The confusion which had arisen was such that people were burning down their own huts. The people on both sides are related by blood. Their concerns were with the right to grow crops in certain fields, strip bark from certain trees, and where to fish. Such issues in limited locations are, for the most part, the stuff of local meetings, Mr. President. That is why one finds that there is a history of local meetings running in parallel with the Joint Boundary Commission meetings. Affected parties endeavour to resolve their differences harmoniously by meeting at a local government level. Such meetings do not involve the full panoply of national boundary commissions but they nevertheless have a valuable role to play in bilateral dispute resolution.

17. However, the need for resuming the Joint Boundary Commission meetings was emphasized by the actions of the Cameroon Government in the late 1960s. These actions challenged Nigeria's rights and those of its citizens in the Cross River and Bakassi area. Some Nigerians died and others were detained by the Cameroonian authorities. One can see references to these events at the first meeting of the reconvened Commission.

18. This meeting took place at Yaoundé in Cameroon between 12 and 14 August 1970 [NPO, 13.] . It concentrated on peace in the Cross River area, the offshore boundary and the Bakassi situation.

19. There was also, as is apparent from the agenda set out by Nigeria at paragraph 2.8 in the Preliminary Objection, a recognition of the need to demarcate, I stress, Mr. President, demarcate, the land boundary from Lake Chad to the sea.

20. It is misleading and mischievous of Cameroon in its observations [CO, para. 2.09.] to talk of Nigeria's delegation at this meeting not having power to take decisions. The whole point of the meeting was to set up an agenda for demarcation and to get the experts on both sides working together on the tasks that needed addressing. Such matters were well within the scope of the authority of the Nigerian delegation. The recommendations made to the respective Governments by the delegations are set out in Nigerian Preliminary Objection No. 14.

21. The August meeting at Yaoundé was followed by a meeting in October 1970 in Lagos of the Joint Nigeria/Cameroon Technical Committee.

22. As the Minutes [NPO, 15.] show, this was a lengthy meeting of the experts on both sides charged with the task of taking the Yaoundé Agenda forward. The Minutes indicate that the discussions were wide ranging, and they dealt with both land and maritime boundary issues. A lot of detail concerning both was discussed.

23. Cameroon, in its observations [CO, paras. 2.14 - 2.16.] , tries to make capital of a passing reference by one

of its representatives to the possibility of arbitration. An examination of the Minutes indicates that this was a comment made, no doubt in the heat of the moment, when there was a degree of frustration between the Parties over a particular issue. It is, however, interesting to note that Cameroon's representative went on to say "It would be politically embarrassing . . . to hear that Nigeria and Cameroon had met and could not agree on a matter of this nature and had to refer to arbitration." [NPO, 15, p. 155.]

24. This reads to me more like an endorsement by Cameroon of the bilateral machinery.

25. I would also like to mention in passing, Mr. President, that if one looks at an earlier passage in the Minutes [NPO, 15, p. 131.] the Nigerian delegation was making the obvious point at an early stage that it was necessary to decide the onshore boundary line before moving on to the offshore boundary.

26. Following the meeting of experts in October 1970, the Joint Boundary Commission was reconvened in Cameroon at Yaoundé between 26 March and 4 April 1971 [NPO, 17.] .

27. This meeting, again, marked a continuation of the deliberations which had taken place in Lagos in October the previous year. It demonstrated, Mr. President, yet again, the Parties' commitment to the joint approach. They agreed to meet again in a month's time.

28. That meeting of the Joint Boundary Commission in the event took place in June 1971 in Lagos. Its purpose was to continue with maritime boundary delimitation. Again, it is interesting to note in passing that the question of possible involvement by Equatorial Guinea was raised as a concern on both sides [NPO, 20, p. 227.] .

29. The Parties agreed upon certain recommendations to be made to their respective Governments [NPO, 21, p. 241.] . Negotiation of a draft treaty was discussed, but it was agreed to defer its consideration until delineation of the whole maritime boundary was completed [NPO, 21, p. 241.] . Again, one has here a clear indication of the commitment of both Parties to this process, leading, it was hoped, to production of a formal treaty between Nigeria and Cameroon.

30. In April 1971 the Heads of State had agreed to set up a permanent Consultative Committee consisting of representatives from both nations. This body was to consider a wide range of issues, not confined to the boundary. Its first meeting was held on 4 or 5 May 1970 at Yaoundé.

31. The meeting was held at Foreign Minister level, and it was at this meeting that Nigeria informed Cameroon that it was unable to accept the June 1971 Lagos Declaration concerning the Maritime Boundary. It will be recalled that that Declaration had been signed by the respective experts and that it was subject to government approval [NPO, 22: p. 254.] .

32. Following that rejection, there were further meetings between the Heads of State at Garoua in Cameroon in August 1972 [NPO, 23.] , Kano in Nigeria in September 1974 and Maroua, in Cameroon, in June 1975 [NPO, 24.] .

33. The first two of these meetings were not specifically on the subject of boundaries. The Maroua meeting produced the Declaration which purported to fix the maritime boundary to the west of Bakassi. As Cameroon is well aware, that Declaration is not accepted as binding by Nigeria lacking, as it did, full government approval.

34. Whilst not formally part of the standing bilateral machinery, the Heads of State meetings do demonstrate commitment by both sides to bilateral solutions. Unfortunately, the aftermath of Maroua, with the overthrow of General Gowon, who signed the Declaration, led to a temporary break in the bilateral process. Nevertheless, the Parties clearly remained committed to it. During 1977 and 1978 various diplomatic exchanges took place, with a view to setting up a further meeting of the Permanent Consultative Committee or, as it is sometimes called, the Joint Commission.

35. This was eventually achieved at Jos in Nigeria in November 1978 and, as the Joint Communiqué shows [NPO, para. 2.16.] , the Parties were indeed keen to continue their programme of joint meetings. This did not happen very quickly, in part because of the continuing tensions between the two countries. These culminated in the incident of May 1981 to which I will refer again shortly.

36. However, in January 1982 the Heads of State agreed to resuscitate the Joint Boundary Commission [NPO, 26.] .

37. Cameroon itself had been urging a resumption of the bilateral machinery in June 1980 and various attempts were made after the 1982 meeting to set the machinery in motion once more. Once again, however, Mr. President, various changes had taken place on the Nigerian political scene and it was only possible to reconvene in August 1987 [NPO, 51.] .

38. Initially, the two States agreed to go down the "Joint Commission" route, holding discussions on a wide variety of issues of mutual concern, not confined to the boundary.

39. In August 1991, however, the Joint Meetings of the Experts on Boundary Matters resumed in Yaoundé [NPO, 52.] .

40. The Joint Communiqué adopted by the Ministers of External Relations following this meeting stated that

> "the two sides noted with satisfaction the commitment of the two Presidents to maintain more regular consultations with a view to solving any eventual disputes between the two countries amicably for mutual satisfaction" [NPO, para. 2.20.] .

41. Cameroon [CO, para. 2.35.] argues that Nigeria has misunderstood one aspect of this resumption. Cameroon is referring to the fact that each side had passed legislation setting up national boundary commissions. As part of the instruments setting up these commissions, there were references to the national commissions dealing with international boundary matters. In Nigeria's submission, this does no more than to formalize by internal legislation the status of the national bodies on each side taking part in the continuing bilateral process.

42. Following the August 1991 meeting in Yaoundé, a meeting took place in December 1991 in Abuja. This constituted the Second Session of the Joint Experts and, Mr. President again, the strength of commitment on both sides to bilateral processes is evident from the Minutes [NPO, para. 2.21.] .

43. In August 1993, at Yaoundé the Third Session of the Joint Meeting of Experts was held, headed by the Foreign Ministers of the two States.

44. By now, the Joint Meetings of the Experts on Boundary Matters were running in tandem with the meetings of the Nigeria-Cameroon Joint Commission, which met for its second session in Abuja early in November 1993. As before, the Joint Commission had a wider brief than boundaries alone. For example the matter of water releases from the Lagdo Dam was raised [NPO, para. 2.23.] . This is an issue which affects many thousands of Nigerians in the vicinity of Yola (midway up Nigeria on the eastern side — as seen on Tab 15). The problem centres around releases of water from a dam on the Cameroonian side onto the flood plain of the Benue River which flows through Yola.

45. The meeting of the Joint Commission in Abuja in November 1993 [NPO, 4.] brings us to within four months of Cameroon's Application to this Court. For nearly 30 years there had been almost continuous operation of the bilateral machinery, interrupted only by the Biafran conflict and periods of political uncertainty in Nigeria. The slide as to be seen in Tab 16 shows the three main components of the machinery and the dates from which they operated. In Nigeria's submission this shows a course of conduct which amounts to a binding commitment on both sides.

46. Although no further meetings of the Joint Commission took place after the November 1993 meeting, it is clear from the record that Cameroon was still acting on the basis that the bilateral machinery was in place and continuing to function. As the relevant correspondence [NPO, Anns. 56 to 59.] shows, it had been agreed in principle, in January 1994, that a Joint Commission should meet in February in Buea in Cameroon in order to visit the border areas in the south. Nigeria's Foreign Minister, Ambassador Baba Gana Kingibe, visited Buea to deliver a goodwill message from General Sani Abacha. This was followed up by a letter from General Abacha to the President of Cameroon, Mr. Paul Biya, on 14 February 1994 [NPO, 60.] in which further negotiations were proposed. I shall refer in a moment, Mr. President, to the extent in which these exchanges took place.

47. None of this activity, however, gave Nigeria the slightest inkling that Cameroon was about to toss the bilateral machinery to one side without notice and refer matters directly to this honourable Court.

48. In seeking to justify its recent actions, Cameroon makes various assertions in its observations which are designed to make the Court think that Nigeria itself did not believe in the exclusivity of the bilateral process. I have referred already to the supposed reference to notice of arbitration given as far back as 1970. The other method used by Cameroon in its observations is to pretend that Nigeria has, at different times, itself demonstrated a willingness to refer matters to bodies outside the bilateral machinery. One occasion used by Cameroon is the incident of 16 May 1981. Nigeria did not in its second Preliminary Objection refer to that incident — that had already been highlighted in the introduction to the Preliminary Objections. [Preliminary Objections, pp. 18 - 20, paras. 34 - 37.]

49. Cameroon, in its observations [CO, paras. 2.27 et seq.] seeks to use this incident to demonstrate Nigeria's willingness to involve third parties in the boundary delimitation process, contrary to the submissions being made by Nigeria in the second Preliminary Objection.

50. In so doing, as the Honourable Attorney-General pointed out in his speech a few minutes ago, Cameroon distorts the nature of the incident and the purpose of referral to third parties, such as the OAU and the United Nations.

51. Cameroon also tries to claim that Nigeria's conduct and actions in the months prior to Cameroon's reference to the Court on 29 March 1994 demonstrated that Nigeria had itself acted "in contradiction to what it now gives the status of a binding commitment" [CO, para. 2.43.] . The facts, Mr. President, are somewhat different from the version of events given by Cameroon in its observations [CO, paras. 2.39 - 2.44.] : indeed they further demonstrate the strength of Nigeria's commitment to the bilateral process.

52. Nigeria did not mount military incursions into Cameroon in December 1993 and February 1994 as Cameroon alleges [CO, para. 2.39.] . Nigeria did deploy troops in the Bakassi fishing villages of Abana and Atabong as to be seen on the map on 31 December 1993. The purpose of the deployment was to arrest a violent internal clash between elements of Nigeria's Akwa Ibom State and Cross River State (Ibibio and Efik fishermen), both of whom lay claim to the fishing villages which they have inhabited for over 500 years.

53. It is not unusual in Nigeria to have to send troops to trouble spots in order to avert clashes between local communities. There are over 250 tribes comprising Nigeria's population of 120,000,000.

54. Unfortunately however, because of the sensitivity of this area, Cameroon expressed concern over the Nigerian troop movements. Nigeria's Head of State and Commander-in-Chief, General Sani Abacha, immediately despatched his Minister of Foreign Affairs to Yaoundé in order to explain the reason for the Nigerian troop movements. President Paul Biya reciprocated the gesture with a message for General Abacha. Both leaders pledged to resolve the issues peacefully.

55. Whilst this dialogue was proceeding between the Heads of State, Cameroon moved soldiers into positions on Bakassi and launched attacks on Nigerian troops, firstly on 14 February and then again on 18 and 19 February 1994. In the face of this provocation, the Nigerian troops defended themselves but were ordered to cease fire as soon as the attacks on them stopped.

56. General Abacha was extremely disturbed by this development and, once again Mr. President, despatched an envoy to President Biya inviting him to Nigeria for talks over the disputed peninsula.

57. On 23 February 1994, the Cameroon Vice-Prime Minister brought a special message from President Biya to General Abacha with the assurance of his commitment to a peaceful resolution of the problem and acceptance of the invitation to visit Nigeria for the talks. It was President Biya himself who suggested Maiduguri in north-eastern Nigeria as the venue for the talks.

58. Whilst arrangements were being made at a meeting of the Foreign Ministers in Cameroon on 9 March 1994 for the Maiduguri Summit, Cameroon took various steps which had the effect of internationalizing the issue and frustrating the Summit. These steps included calling for a discussion by the United Nations Security Council, bringing the matter to the attention of the Chairman of the OAU and initiating these proceedings. None of these

actions was referred to at that meeting by Mr. Oyono, the Cameroon Minister of External Relations.

59. Thus whilst on the one hand Cameroon was assuring Nigeria of its desire to find a solution to the problem through dialogue in the context of the bilateral machinery, on the other hand it had embarked upon an international diplomatic crusade to drum up support for Cameroon's position.

60. As it is mentioned in Preliminary Objection 3 [NPO, p. 71, para. 3.11 (15).] , a summit of the Lake Chad Basin Commission was held in Abuja on 21 to 23 March 1994. At that Summit, Nigeria's Head of State, General Sani Abacha and the Presidents of Chad, Niger and the Central African Republic all reaffirmed their belief in bilateral fora and although President Paul Biya failed to turn up for the LCBC Summit on the grounds of pressing State matters his representative, his Minister of Planning, joined in that reaffirmation.

61. As we now know, Cameroon was within one week of filing its Application in this Court.

62. However, attempts at bilateral settlement did not end with the filing of the Application. On 13 June 1994 a tripartite meeting took place during the OAU Summit in Tunis between General Abacha, President Paul Biya and President Eyedema of Togo. At this meeting, both General Abacha and President Biya agreed to meet in Kara, Togo in July 1994. They agreed to set up another Joint Commission under the auspices of President Eyedema to seek a peaceful solution. While that tripartite meeting was going on, Cameroon was busy filing its Additional Application to the Court which purported to bring the entire boundary before the Court.

63. Despite this action by Cameroon, the Foreign Ministers of Nigeria and Cameroon met in Kara, Togo on 4 to 6 July 1994. The purpose of that meeting, Mr. President, was to prepare the way for a Summit of the two Heads of State. Nigeria was appealing to all leaders of the sub-region, particularly those who had influence and leverage on Cameroon, to support the Kara initiative for bilateral resolution of the dispute in accordance with Article 33, paragraph 1, of the United Nations Charter.

64. On 19 July 1994, however, President Paul Biya stated that he would not attend the Kara Summit unless Nigeria withdrew its troops from the Bakassi Peninsula.

65. Naturally, Nigeria was not prepared to evacuate Nigerian territory, so Cameroon then abandoned, for the time being, Mr. President, attempts at bilateral resolution, saying that the matter must await the outcome of these proceedings.

66. Shortly after Nigeria filed its Preliminary Objections on 15 December 1995, there was a further outbreak of fighting on Bakassi resulting from renewed Cameroon aggression. This took place on 3 February 1996, and on 12 February 1996 Cameroon lodged its Request for Interim Measures.

67. Concerned about the renewal of hostilities, President Eyedema invited the Foreign Ministers of both countries for further talks. They met on 16 and 17 February 1996 in Kara and issued a Joint Communiqué which called for a cease-fire.

68. Despite the Kara communiqué, Cameroon resumed its attack on Nigerian positions on 17, 18 and 19 February 1996.

69. On 15 March 1996, the Court issued its Order on the request for interim measures. One of the Court's rulings was that both sides should observe the Kara agreement of 17 February 1996. The parties were also urged to lend every assistance to a United Nations fact finding mission.

70. On 21, 22 and 23 April 1996, Cameroon launched fresh attacks against Nigeria's positions on Bakassi. Heavy casualties resulted on both sides. Combined shuttle diplomacy followed involving the United Nations Special Envoy and the Special Envoy of President Eyedema of Togo. They proposed a further Summit in Kara between General Abacha and President Biya. This Summit was due to take place in Kara on Thursday 20 June 1996. On 18 and 19 June officials from both countries were to have met to prepare for the arrival of the Heads of State. An advance party of the Nigerian Delegation arrived over the weekend in Kara, only to be told, Mr. President, that Cameroon had indicated at the last minute that President Biya would be unable to attend.

71. President Eyedema of Togo has not relaxed his attempts to bring the two sides together. In August 1997, the

Ministry of Foreign Affairs and Co-operation of the Togolese Republic wrote to the Foreign Ministries of Nigeria and Cameroon suggesting a Summit Meeting on 5 September. A draft Joint Declaration of the two Heads of State was submitted by the United Nations Under-Secretary for Political Affairs for consideration by the parties.

72. On 2 September 1997, President Paul Biya wrote to President Eyedema expressing his regret that he would be unable to leave the country for the proposed meeting "in view of the forthcoming Presidential election".

73. This was the fourth time that Cameroon had, at the last minute, pulled out of high level bilateral talks.

74. In Nigeria's submission, this continuing history of attempts at bilateral negotiation showed a continuing commitment to the bilateral machinery. Nigeria has not asked third parties to adjudicate on the dispute: the role of third parties such as President Eyedema has been to try to bring pressure to bear on both sides to attend further bilateral meetings. This does not contradict Nigeria's stance in this Preliminary Objection.

75. Mr. President, two areas of particular concern dominate these proceedings, Bakassi and, using the shorthand for the islands and settlements in Lake Chad, Darak. They are not the entire border, indeed they are only a tiny proportion of it — less than 5 per cent. It is Nigeria's submission in this second Preliminary Objection that a bilateral machinery, which has hitherto been an exclusive machinery, should still have been utilized even in respect of Bakassi.

76. It is further Nigeria's position that if and to the extent that bilateral discussion leaves a dispute which cannot be resolved by means of formal mechanisms, the parties are under a duty to endeavour in good faith to find a mutually acceptable way of resolving the dispute in the context of the bilateral mechanisms. This duty arises before either party can take any steps to refer the dispute to third party resolution. Further, Mr. President, Nigeria submits that until such a mutually acceptable way has been agreed, each side is under a duty to refrain from attempting to take the matter to third party resolution.

77. Instead of accepting this duty, and the obligations which come with it, Cameroon, unless it has changed its views since writing its Observations, unilaterally decries the bilateral machinery, claims that it is non-exclusive and hands the whole matter over to the Court.

78. Mr. President, unless and until one of the parties to bilateral negotiation evinces to the other an intention to depart from bilateral dialogue, and that other party concurs in that departure, it is Nigeria's submission that the parties remain duty-bound to persevere with the bilateral machinery. There is an implied agreement, Mr. President, exclusively to use the bilateral machinery, and, until that agreement is terminated, both parties are estopped from invoking the jurisdiction of the Court.

79. Finally, Mr. President, it should not be forgotten that, for the entire period during which the bilateral meetings were taking place, Cameroon was not a party to the optional jurisdiction of the Court. The bilateral mechanism was thus not only the *preferred* method for the parties, it was the *only* mechanism.

80. Agreement lies at the heart of the Court's jurisdiction. In a situation where the bilateral machinery is not exhausted the Court should not, in Nigeria's submission, accept jurisdiction or should declare the dispute inadmissible on the ground that a condition precedent for seisin has not been met.

81. Mr. President and distinguished members of the Court, I invite you to call upon Professor Ian Brownlie Q.C. to address the Court on the Nigerian third Preliminary Objection. Thank you, Mr. President.

The PRESIDENT: Thank you, Chief Akinjide. I now call on Professor Brownlie.

Mr. BROWNLIE: Mr. President, distinguished Members of the Court.

It is my role to approach the third and fourth Preliminary Objections of Nigeria.

As you will have observed, there has been a very mild slippage in the schedule this morning. I think I can guarantee to finish my treatment of the third Preliminary Objection by 13.10. I would respectfully encourage the Court to share my preference for dealing with the fourth Preliminary Objection after breakfast tomorrow rather than before lunch today.

The third preliminary objection appears in the written pleading of Nigeria in this form:

> "Without prejudice to the Second Preliminary Objection, the settlement of boundary disputes within the Lake Chad region is subject to the exclusive competence of the Lake Chad Basin Commission (LCBC), established in 1964 pursuant to the Convention and Statute Relating to the Development of the Chad Basin (NPO 9). In this context the procedures of settlement within the Commission are obligatory for the Parties. The operation of the dispute settlement procedures of the LCBC involved the necessary implication, for the relations of Nigeria and Cameroon *inter se,* that the jurisdiction of the Court by virtue of Article 36.2, would not be invoked in relation to matters within the exclusive competence of the Commission."

At this stage, the objection is confirmed subject to an elaboration. On behalf of Nigeria it is submitted that, even if the Court considers that the powers of the LCBC do not preclude the exercise of its jurisdiction, in the alternative the Court should, as a matter of judicial propriety, limit the exercise of its judicial function in the present case.

There is here an analogy with the case concerning the *Northern Cameroons* (*I.C.J. Report, 1963*, p. 15). In that case the valid termination of the Trusteeship Agreement by a resolution of the General Assembly placed clear limits upon the judicial function of the Court. As the Court observed at page 33 of the Judgment: "The decisions of the General Assembly would not be reversed by the judgment of the Court."

The analogy arises if the following hypothesis is considered. Supposing the LCBC had completed its decision-making and the Heads of State had approved the outcome, would the member States be at liberty to re-open the particular issue before the Court. The LCBC is not, of course, in exactly the same position as the organs of the United Nations in the *Northern Cameroons* case, but the rationale involving restraint upon exercise of the judicial function is in my submission equally applicable.

No doubt it will be pointed out by our distinguished opponents that in the present case the procedure of settlements within the LCBC has not been completed. But surely this wholly adventitious element should not affect the limits of the judicial function.

Mr. President, it may be useful if I remind the Court of the relevant parts of the Cameroon Application. No reference to Lake Chad appears in the original Application filed on 29 March 1994. Issues relating to Lake Chad were raised in Cameroon's Additional Application of June 1994. In that document the requests to the Court include the following:

> "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." (International Court of Justice, Application Instituting Proceedings filed in the Registry of the Court on 29 March 1994, p.85).

Mr. President, in face of the various factual and legal assertions contained in the Additional Application, Nigeria reserves its position generally.

For present purposes, it is necessary to establish only the procedural parameters of the agenda of the LCBC.

The documentation available — and it is very full — shows that these parameters are as follows:

First: no boundary demarcation had been undertaken within Lake Chad prior to the issues being placed on the agenda of the LCBC.

Secondly: the LCBC has placed the following issues of demarcation upon its agenda:

(a) the putative location of the two tripoints (Nigeria/Chad/Niger and Nigeria/Chad/Cameroon) (indicated on Graphic Tab 17); and

(b) the thalweg of the mouths of the Rivers Komadougou-Yobe, Chari and El-Beid (indicated on Graphic Tab 18).

I would emphasize that these graphics are for illustrative purposes only.

Thirdly: that these items remain on the agenda of the Commission.

Cameroon has asserted that at Lagos in July 1983 the national delegations agreed on the identification of the Nigeria/Chad/Cameroon tripoint: I refer to the *Observations on Nigeria's Preliminary Objections*, p. 102, para. 3.09. Cameroon relies upon an internal document (MC, Ann. 267) which reveals that what was identified was simply the fact that the two tri-points in the Lake were important datum points for the purposes of demarcation.

In the result the ample documentary record establishes that the issues on the Commission's agenda are concerned exclusively with demarcation.

Mr. President, I must now turn to an examination of the general character and functions of the LCBC.

The primary purpose of the Convention is the development of the resources of the Basin for economic purposes, including the optimum utilization of its water resources. The instrument for attaining this purpose is the LCBC, the Statute of which is annexed to the Convention and forms an integral part thereof (Article 2 of the Convention) (NPO, 9).

The functions of the LCBC are defined in Article IX of the Statute as follows:

> "The Commission shall have the following functions, *inter alia*:
>
> *(a)* to prepare 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;
>
> *(b)* to collect, evaluate and disseminate information on proposals made by Member States and to recommend plans for common projects and joint research programmes in the Chad Basin;
>
> *(c)* to follow the progress of the execution of surveys and works in the Chad Basin as envisaged in the present Convention, and to keep the member States informed at least once a year thereon, through systematic and periodic reports which each State shall submit to it;

(d) to draw up common Rules regarding navigation and transport;

(e) to draw up Staff Regulations and to ensure their application;

(f) to examine complaints and to promote the settlement of disputes and the resolution of differences;

(g) generally, to supervise the implementation of the provisions of the present Statute and the Convention to which it is annexed."

Whilst the text does not refer to boundary questions as such, there can be no doubt that the functions overall constitute a comprehensive public order system in the Chad Basin. Moreover, sub-paragraph *(g)* provides expressly for dispute resolution. It is, of course, obvious that the persistence of boundary problems would inevitably place obstacles in the way of the development of the resources of the Basin.

The role and status of the Commission are to be understood within the framework of the world of regional organizations. The preamble of the Convention and Statute Relating to the Development of the Chad Basin refers to the Charter of the United Nations and to the Charter of the Organization of African Unity. In its *consideranda* the Convention includes:

"*Considering* that Member States of the Organisation of African Unity have resolved to coordinate and intensify their co-operation and efforts to achieve a better life for the people of Africa."

And in this connection Article 52 of the United Nations Charter is surely relevant. Its provisions (in material part) are as follows:

"1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference to the Security Council."

And so it is the submission of Nigeria that the Commission has an exclusive power in relation to issues of security and public order in the region of Lake Chad and that these issues appropriately encompass the business of boundary demarcation.

However, the nature of this exclusiveness calls for clarification. The exclusiveness is vis-à-vis other procedures of settlement and not vis-à vis the member States. Thus it is clear from the Statute of the Commission and from the practice of the member States that recommendations of the Commission are subject to approval of the member States.

And in this context decisions taken by meetings of Heads of State and Government are subject to appropriate procedures of internal approval.

In any assessment of the exclusive powers of the LCBC, the practice of the Commission and of its member States constitute a primary source. This practice provides ample evidence of the way in which boundary questions were consistently regarded as intimately related to the issue of security within the region of Lake Chad. And it was security which was the necessary premise of the stable development of the resources of the

Chad Basin in accordance with the provisions of Article 1 of the Statute.

In 1983 disturbances in the region of Lake Chad gave rise to the convening of an extraordinary session of the Lake Chad Basin Commission in Lagos, from 21 to 23 July. In his statement, Alhaji Bukar Shaib, the Chairman of the Commission, explained the position. In his words:

> "On this occasion, our meeting has been prompted by the recent events along the border between Nigeria and Chad in the Lake area of the basin. This matter has been the subject of bi-lateral negotiations between the two Member States which, happily, have succeeded in restoring normalcy and a return to the situation existing before the incidents occurred. However, in order to find a lasting solution to the perennial problem often caused by long and undefined borders between neighbouring states no matter how friendly their relationship, and in this particular case, on the very Lake itself where the borders of our four States converge, both Nigeria and Chad rightly agreed that the Lake Chad Basin Commission should be the proper forum for discussing all the important ramifications of the problem and the modalities of effecting the necessary solutions once and for all not only between them but between all the four Member States. We all know that undefined borders are abnormal situations which should not be allowed to continue to exist for too long as they create irritating incidents which sour the relationships between states and sometimes, if not quickly remedied, could lead to disastrous consequences and even war. (NPO, 88, pp. 859-860.)

In the Report of the extraordinary session the same speech was summarized in very similar terms:

> "In his opening address the Honourable Minister seized the opportunity in welcoming his fellow Commissioners once again to Nigeria this year. He explained that the recent events along the border between Nigeria and Chad in the Lake area made the convening of an urgent extraordinary meeting necessary, even though normalcy had already been restored in the area through the bi-lateral negotiations between the two sister states. Nevertheless, it was felt that in order to find a lasting solution to the border problems, measures should be taken to discuss the various aspects and modalities for effecting the necessary solution to the problem between all the four Member States of the Commission. For that reason, it was rightly decided that the Commission itself should be the proper forum for discussing the problem in order to give the necessary political mandate and guidelines to the national experts for obtaining the necessary data and establishing the common framework within which the general security of the Basin area can be sustained and jointly guaranteed by all Member States." (NPO, 88, p. 862.)

The meeting decided to establish two sub-committees, one for the delimitation of the borders and the other for security matters. The Report indicates the nature of the agenda in the following passages:

> "After the recess, the meeting of experts began, with Mr. N. O. Popoola, the Permanent Secretary of the Ministry of Water Resources as Chairman. As the two matters to be discussed were so closely interrelated, it was decided that both sub-committees should meet together in the Conference Hall and discuss first the border delimitation problems and later the security matters. On the proposal of the Chairman and with the concurrence of the Delegations present the following agenda were adopted for the two Committees.
>
> *Agenda for the Committee on Demarcation*
>
> 1. Possible exchange of information and documents on the boundaries.
>
> 2. Boundaries Committee programme and work methodology.
>
> 3. Joint Demarcation Team.
>
> *Agenda for the Committee on Security*
>
> 1. Measures for ensuring the effectiveness of the joint Border Patrols.

2. Complete Demilitarization of the Lake by the member States.

3. Measures to ensure the non-violation of Agreements

4. Security of the Boundary Demarcation Team." (NPO 88, p. 864.)

The modalities of implementation of the decisions taken at Lagos were discussed at the twenty-eighth, twenty-ninth and thirtieth sessions of the LCBC in 1984 and 1985 (see the extracts from the Minutes of the Thirtieth Session, 22-25 April 1985, pp. 83-97 and Ann. A (NPO, 61)). Progress had been slow, in part, because of problems relating to funding.

In 1985 the Fifth Conference of the Heads of State of the LCBC was held. The Minutes of the Fifth Conference of Heads of State include, as Annex B, the Report of the Current Chairman, Dr. Alhaji Bukar Shaib (NPO, 62, p. 531).

Under the rubric "Border Demarcation and Security on Lake Chad", this Report provides the following helpful assessment:

32. Following the border incidents between Nigeria and Chad on the Lake Chad in April 1983 and the Protocol Agreement between the two countries in July the same year, the Commission was called in as the forum through which to effect a permanent settlement of the border problems in the area. Consequently, an extraordinary session of the Commission, which was held in Lagos from 21 to 23 July 1983 set up two Sub-Commissions: one on border demarcation and the other on security on Lake Chad.

33. From 12 to 16 November 1984, the experts on border demarcation and security on Lake Chad from the four member States met in Lagos and agreed on the basic legal documents for future work.

34. The Sub-Commission on border demarcation has drawn up the technical specifications for the border demarcation, aerial photography and field mapping that need to be carried out. In view of the fact that the Commission cannot fund the field work, donor agencies have been contacted. But no positive response has been received so far.

35. On security, the experts defined the objectives, composition, logistics, discipline and bases of the mixed patrol teams established by the extraordinary session. However, after two meetings, in January and February 1985 in Maiduguri and Maroua respectively, the experts have not been able to agree on the definition of the patrol zone over which the mixed patrol teams would operate within each country. The experts have been directed by the 30th Session to meet again to resolve this issue." (Minutes, 29 April 1985, p. 9 (NPO, 62, p. 539).)

The speech of the Chairman, which describes the LCBC as "the forum through which to effect a permanent settlement of the border problems in the area", forms part of the Minutes which were formally adopted by the Sixth Conference of Heads of State on 28 October 1987 (Minutes, NPO, 67, p. 597).

In the Final Communiqué of the Conference:

> "The Heads of State noted with satisfaction the measures being taken by the Commission to find permanent solutions to the issues of border demarcation and security on Lake Chad, and to this effect instructed the Commission to intensify its efforts" (NPO, 62, p. 543).

The decisions taken in 1987 by the Sixth Conference of Heads of State included the decision on "border demarcation", as follows:

> "— that member States have agreed to finance the cost of the demarcation exercise which amounts to 312,084,000 F.CFA.
>
> — that the amount would be shared equally among the four member States.

— that a special bank account be opened for this purpose.

— that work should start in March 1988." (NPO, 67, p. 611.)

Further consideration of the technical and financial modalities took place in the Commission in 1988 and 1989 (1) Minutes of the Thirty-fifth Session, 15-16 January 1988, *passim* (NPO, 68); (2) Minutes of the Special Session of the Lake Chad Basin Commission, 1-2 August 1988, (NPO, 69 pp. 650-652 and NPO, 98 pp. 974, 975, 976-979); (3) Minutes of the Thirty-Sixth Session, 30 November-1 December 1988, (NPO,70 pp. 656-657, 658-664 and NPO, 100, pp. 990, 992; (4) Minutes of the Thirty-seventh Session, 23-24 May 1989, *passim* (NPO, 71); (5) Minutes of the Thirty-eighth Session, 26-30 November 1989, (NPO, 72 pp. 676-677, 678-689,and NPO, 103, pp. 1006-1008, 1010)).

The technical operation of demarcation was carried out by IGN France International in the period 1988 to 1990. The results were reported to the Seventh Conference of the Heads of State in 1990 (NPO, 73). The IGN Report appears in the Application of Cameroon, page 121; and the Memorial, MC Annex No. 292.

Further meetings of the Commission examined outstanding issues of demarcation and security in the years 1990, 1992 and 1993 (1) Minutes of the Thirty-ninth Session, 20-21 November 1990, *passim* (NPO, 74); (2) Minutes of the Fortieth Session, 15 January 1992, Annex D (NPO, 75, p. 717 and NPO, 104, pp. 1016-1019); (3) Minutes of the Forty-first Session, 6 April 1993, pp. 2, 11-13 Annex F (NPO, 76, pp. 724-777 and NPO, 105, pp. 1024, 1025, 1026); (4) Minutes of the Forty-second Session, 29-30 November 1993, (NPO,106, pp. 1032-1033, 1034).

The close connection between security and demarcation is acknowledged yet again in the Commission at the Thirty-ninth Session in 1990. In Annex K of the Minutes, the Sub-Commission on Boundary Demarcation and Security reported on the future of the plan for joint patrol teams. The Report states: "Since the fundamental issue which is the boundary demarcation is not resolved, the delegations deemed it untimely to discuss the future of the Joint Patrol Teams" (NPO, 74, p. 708).

The Minutes of the Forty-first session of the Commission contain the decision to present the documents "relating to the border demarcation exercise" to the Heads of State and Government of the Member States "for a final decision" (NPO,76, p. 727, para. 90).

The Minutes of the Eighth Summit of the Heads of State and Government (in 1994) record Decision No. 5 concerning "Border demarcation and security in the Lake Chad area".

"Faithful to the principles and objectives of the OAU and the United Nations Charter;

Conscious of the traditional bonds uniting the riparian people of the Lake Chad;

Firmly determined to strengthen and guarantee peace and security in the sub-region;

Considering that the physical work on border demarcation has been fully completed and the technical document signed by the national experts and the Executive Secretariat;

Considering the concern of the LCBC to ensure the social and economic development of the population living in the conventional basin;

Considering the growing insecurity situation in the Lake Chad conventional basin area;

Considering the strong will of member States to resolve this persistent problem of insecurity in the sub-region;

The Heads of State decided:

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;

B. Security

— to immediately set up a joint security force with clear mandate as well as political and logistic support;

— that the force should have a structure of leadership that is rotational with defined mode of contribution of human and material resources;

- that Nigeria should provide the venue for experts meeting to work out the details of the nature, material and equipment required, funding, size and appropriate locations of the units." (NPO, 77, p. 733 at p. 747.)

Mr. President, in our submission the legal effect of this Decision is problematical and the Government of Nigeria reserves its position on the finality of the Decision.

During the Ninth Summit on 30 to 31 October 1996 the Heads of State and Governments adopted the following (Decision No. 2):

"*Country Reports on the Adoption and Signing*

of Document on Boundary Demarcation

Considering the item on adoption of the document on boundary demarcation;

Noting the sensitivity of the issue in view of recent developments;

Considering the necessity for peace and tranquility in the sub-region;

Noting the absence of the Heads of State of Cameroon and Nigeria,

The Heads of State decided:

— to defer discussions on the issue.

— to mandate the President of the Summit to intervene either through consultations or meeting with the two Heads of State of Cameroon and Nigeria to find an amicable solution to the problem in the spirit of African brotherhood." (NPO, 108, pp. 1071-1072.) (Cameroon New Documents, No. 2, p. 9.)

This decision in 1996 is one of direct relevance to the issue in front of the Court. It is clear that Chad and Niger, the two member States attending the Conference, did not consider it either necessary or appropriate to remove

the question of demarcation from the agenda. This lack of deference is significant, occurring as it did two and a half years after the filing of the Application by Cameroon. It may be recalled that the Summit of 1994 took place on 21 to 23 March 1994, a few days prior to the filing of the Application.

This decision of 1996 is consistent with the practice of the member States ever since the issue of demarcation presented itself in 1983. The exclusiveness of the powers of the LCBC and the regular summits is the constant premiss on which the conduct of the member States has been based. This is the pattern from which Cameroon has sought to depart.

For most of the relevant period, it was only Nigeria which was a party to the Optional Clause.

And it is against this background that Cameroon has diverged from the institutional and regional pattern.

The relationship established by the conduct of the Parties in the period from 1983 to 1994 also estops Cameroon from resorting to other machinery. By her conduct Cameroon had clearly and consistently evinced acceptance of the régime of exclusive recourse to the LCBC.

The relevant principles were laid down by the Judgment of the Court in the *North Sea Continental Shelf* cases. In the words of the Court:

> "Having regard to these considerations of principle, it appears to the Court that only the existence of a situation of estoppel could suffice to lend substance to this contention, — that is to say if the Federal Republic were now precluded from denying the applicability of the conventional régime, by reason of past conduct, declarations, etc., which not only clearly and consistently evinced acceptance of that régime, but also had caused Denmark or the Netherlands, in reliance on such conduct, detrimentally to change position or suffer some prejudice. Of this there is no evidence whatever in the present case." (*I.C.J. Reports, 1969*, p. 26, para. 30.)

In the *North Sea* cases it had been argued that Germany had adopted the system contained in Article 6 of the Continental Shelf Convention. In the present case a regional institution is involved and this body has been seised of the precise question for a period of more than 14 years.

In the circumstances Nigeria has suffered prejudice as a consequence of the conduct of Cameroon and thus, in particular:

> (1) Nigeria has lost the important political opportunity to utilize a flexible system which was based upon joint consultation and agreement; and
>
> (2) as a result of the filing of the Application, the work of the LCBC has been substantially impaired.

Mr. President, it remains for me to deal with certain ancillary matters.

The first of these is the argument formulated by Cameroon in its observations, based upon the *Nicaragua* case and Article 103 of the United Nations Charter. I shall quote the text of the Cameroonian observations:

> "Even if the LCBC were recognised either as a regional arrangement or as a regional agency within the meaning of the Charter, that would not mean that it had an exclusive jurisdiction precluding recourse to the jurisdiction of the Court. In the case concerning *Military and Paramilitary Activities in and against Nicaragua,* the Court had occasion to clarify this matter as the regional agreement in question, the Contadora process, conformed much more closely than the LCBC to the criteria of Article 52."

The Cameroonian observations then quote from the 1984 decision of the Court:

> "The Court does not consider that the Contadora process, whatever its merits, can properly be regarded as a 'regional arrangement' for the purposes of Chapter VIII of the Charter of the United

> Nations. Furthermore, it is also important always to bear in mind that all regional, bilateral and even multilateral, arrangements that the Parties to this case may have made, touching on the issue of settlement of disputes or the jurisdiction of the International Court of Justice, must be made always subject to the provisions of Article 103 of the Charter which reads as follows:
>
> 'In the event of conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail' *(I.C.J. Reports 1984*, p. 440)." (Observations, p. 72, para. 3.32.)

If I may take the Article 103 point first. The Court is, of course, very familiar with arguments based upon Article 103. In my submission the ultimate problem is always that such arguments may be question-begging. The issue can only be stated in terms of priority or compatibility once the content of the particular legal relationship has been defined. And after all, the Charter positively encourages resort to regional agencies for the settlement of local disputes.

In any case, the Article 103 argument cannot rule out the consideration of the need for judicial restraint on grounds of judicial propriety.

The second point raised in the observations of Cameroon involves the assertion of a parallel with the Contadora process referred to in the *Nicaragua* case. In our submission the Contadora process is significantly different in character to the function of the LCBC. Contadora involved only a negotiating process and it is to be doubted whether Contadora was intended to address the precise legal issues raised by Nicaragua's Application, either in its original or in its amended form.

Moreover, the parallel is flawed in other respects. The issue of demarcation has been expressly undertaken by the LCBC and had been on its agenda for 11 years when Cameroon filed its Application.

And there is one other ancillary issue. There are certain islands in Lake Chad which are claimed by Nigeria and which, in the event that the demarcation is finalized, may form enclaves within the territory of Cameroon. In respect of this question, Nigeria must, of course, on a contingency basis, reserve its rights.

Mr. President, I thank the Court for its patience at this late hour. Thank you.

The PRESIDENT: Thank you, Professor Brownlie. The Court will now adjourn and meet again tomorrow morning at 10 a.m.

The Court rose at 1.10 p.m.