CR 98/2

Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNEE 1998

Audience publique

tenue le mardi 3 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

YEAR 1998

Public sitting

held on Tuesday 3 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

Présents : M. Schwebel, président
M. Weeramantry, vice-président
MM. Oda
Bedjaoui
Guillaume
Ranjeva
Herczegh
Shi
Fleischhauer
Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek, juges
MM. Mbaye
Ajibola, juges *ad hoc*

M. Valencia-Ospina, greffier

Present:	President	Schwebel
	Vice-President	Weeramantry
	Judges	Oda
		Bedjaoui
		Guillaume
		Ranjeva
		Herczegh
		Shi
		Fleischhauer
		Koroma
		Vereshchetin
		Higgins
		Parra-Aranguren
		Kooijmans
		Rezek
	Judges *ad hoc*	Mbaye
		Ajibola
	Registrar	Valencia-Ospina

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The PRESIDENT: Please be seated. This morning we resume the argument of the Federal Republic of Nigeria and I call on Professor Brownlie.

Mr. BROWNLIE:

The Court cannot determine the tripoint in Lake Chad

Thank you Mr. President. This morning I shall complete my presentation by dealing with the fourth Preliminary Objection of Nigeria. This can be formulated as follows:

> "The Court should not in these proceedings determine the boundary in Lake Chad to the extent that the boundary constitutes or is constituted by the tripoint in the Lake."

The underpinnings of this objection have been indicated in Nigeria's written pleadings and it will suffice if I pick out certain of the key elements.

The observations of Cameroon (pp. 75-78) asserts that the jurisprudence of the Court sanctions the possibility of continuing a delimitation as far as the end-point of the boundary. The Judgment of the Chamber in the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)* is representative of this trend of thinking within the Court. The relevant passage is as follows:

> "The Chamber also considers that its jurisdiction is not restricted simply because the end-point of the frontier lies on the frontier of a third State not a party to the proceedings. The rights of the neighbouring State, Niger, are in any event safeguarded by the operation of Article 59 of the Statute of the Court, which provides that 'The decision of the Court has no binding force except between the parties and in respect of that particular case'."

The Chamber continues:

> "The Parties could at any time have concluded an agreement for the delimitation of their frontier, according to whatever perception they may have had of it, and an agreement of this kind, although legally binding upon them by virtue of the principle *pacta sunt servanda,* would not be opposable to Niger. A judicial decision, which 'is simply an alternative to the direct and friendly settlement' of the dispute between the Parties (*P.C.I.J., Series A, No. 22,* p. 13), merely substitutes for the solution stemming directly from their shared intention, the solution arrived at by a court under the mandate which they have given it. In both instances, the solution only has legal and binding effect as between the Parties which have accepted it, either directly or as a consequence of having accepted the court's jurisdiction to decide the case. Accordingly, on the supposition that the Chamber's judgment specifies a point which it finds to be the easternmost point of the frontier, there would be nothing to prevent Niger from claiming rights, vis-à-vis either of the Parties, to territories lying west of the point identified by the Chamber." *(I.C.J. Reports 1986,* pp. 577-578, para. 46.)

In my submission this trend in judicial opinion is not as decisive as Cameroon contends in these proceedings and further that it is certainly not decisive in the present case.

In the first place, there is considerable evidence of an ambivalence in the attitude of this Court and this is especially evident in the approach of the Court to the institution of intervention and to Article 62 of the Statute. It is well remembered how the Court, having refused to permit the intervention of Italy in the *Libya/Malta Continental Shelf* case, carefully avoided a delimitation which overlapped with Italian claims when the delimitation decision was taken (*I.C.J. Reports 1985*, p. 13 at pp. 24-28, paras. 20-23).

Mr. President, in my submission there is a compelling analogy in respect of the situation of Lake Chad but with a key difference. Within the public order system of Lake Chad, with its multilateral system of demarcation, the legal position of the four riparian States is *directly* implicated. In contrast, the deference of the Court in the *Libya/Malta* case was exclusively preservative. In 1985 the Court refers to: "The limits within which the Court, in order to preserve the rights of third States, will confine its decision in the present case" (*I.C.J. Reports 1985*, p. 26, para. 22). In any event, there has always been a respectable body of opinion within the Court to the effect that Article 59 may not provide sufficient protection for third States. In this connection, Mr. President, I would recall your expressions of concern in the *Italian Intervention* case itself:

> "9. It is no answer to say — as, in substance, the Court appears to say — that Italy's interest of a legal nature cannot be affected by the decision in the case because, by the terms of Article 59 of the Statute, 'The decision of the Court has no binding force except between the parties and in respect of that particular case'."

And you continued:

> "If that answer were good, then Article 62 would be pointless: there would never be a case to which Article 62 should or could apply, since, by reason of Article 59, a third State's legal interest never can be affected by a decision in a case. Article 59 cannot, by any canon of interpretation, be read so as to read Article 62 out of the Statute.
>
> 10. The Court endeavours to meet this evident conclusion by maintaining that its interpretation of Article 59 actually does not render Article 62 pointless, for the reason that, while, by the force of Article 59, the legal interest of a third State cannot be affected by a decision in a case to which it is not a party, such third State still has the choice afforded by the conjunction of Articles 62 and 59 either of seeking the procedural economy of means which the former affords or the legal immunity which the latter ensures. That is to say, the purpose of Article 62, in the logic of the Court, apparently is not to afford third States the facility of intervention in order to protect

> or promote an interest of a legal nature which may be affected by the decision in the case, since, by reason of Article 59, no decision of the Court can affect such legal interest of a third State. It is merely to allow the third State to save itself the burden of subsequent, direct litigation against the principal Parties — in the event that there is a jurisdictional basis for such litigation — by permitting it to intervene in their case, if the Court so decides. Such an analysis reduces Article 62 to an improbable procedural convenience which neither its terms nor its *travaux préparatoires* support. It is virtually tantamount to reading Article 62 out of the Statute."

And you concluded:

> "11. Moreover, it cannot be persuasively maintained that a judgment of the Court setting out the applied rules for the division of areas of continental shelf between two States will not even 'affect' the legal interests of a third State which lays claim to some of those same areas. To so maintain is to devalue the legal worth of the Court's judgments, to which all members of the international community shall give due weight as authoritative holdings of international law." *(Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, (I.C.J. Reports 1984*, pp. 134-135.)

Similar opinions were expressed in that case by Judge Sette-Camara (p. 87, para. 81), Judge Oda (pp. 104-105, para. 29), and Judge Jennings, as he then was (pp. 157-160, paras. 27-34).

In the light of these significant expressions of opinion it comes as no surprise to find a reflection of such views in the latest edition of Rosenne's authoritative work on the Court. The relevant passage has a particular resonance in relation to the present proceedings. Rosenne wrote:

> "As a result of the attempted interventions in the *Nuclear Test* cases the two *Continental Shelf* cases, and above all the non-party intervention of Nicaragua in the *Gulf of Fonseca* issue, the topic had become thoroughly aired in pleadings and oral argument, in judgments of the Court and Chamber, and in individual opinions of judges. A formidable body of judicial opinion had developed in favour of the view that a jurisdictional link of the accepted kind was not needed at least in cases where the State seeking to intervene was not asserting a claim against either of the litigating States, but at most wanted to protect its own rights, claims and interests against possible prejudice arising out of the principal proceedings. Nevertheless, for other reasons in these cases the Court, by finding that the State seeking to intervene did not possess an interest of a legal nature which might be affected by the decision in the case, never reached the point at which it would have to take a decision on this issue. The existence of this trend indicates, however, that the formal provision of Article 59 of the Statute, to the effect that 'The decision of the Court has no binding force except between the parties and in respect of that particular case', may not always be sufficient protection for third States, especially in disputes involving sovereignty or sovereign rights over portions of the earth's surface, in particular disputes relating to overlapping claims to maritime areas, and that situations exist in which something more definite may be required." (Rosenne, *The Law and Practice of the International Court, 1920-1996*, 3rd ed., 1997, pp. 1540-1541.)

That is the carefully considered view of Professor Rosenne.

These considerations apply both in relation to land territory and maritime boundary cases, and they are certainly no less applicable in my submission to the régime of co-riparians of a lake or inland sea such as Lake Chad.

The demarcation of boundaries in Lake Chad, and the determination of the related tripoints, is in principle opposable to all four riparian States, because what is involved is a multilateral and institutional public order system. The fixing of tripoints forms part of this system. And, given the nature and functions of the LCBC, all four States have an interest in the fixing of *both* tripoints. The tripoints in this case thus form part of a régime which is *sui generis* in legal terms. And for this reason alone, the standard authorities relating to the determination of tripoints are not relevant in this case.

The States parties to the Statute of the LCBC, other than Nigeria and Cameroon, are thus not "third parties" in relation to the tripoint. They have been, and continue to be, parties to the processes of boundary demarcation, resource management and dispute settlement, with respect to the Lake. For Chad and Niger these issues are not *res inter alios acta*, but part of the multilateral agenda deriving from the Convention and Statute.

For these reasons, the Court should not determine the boundary in Lake Chad *to the extent that the boundary constitutes or is determined by the tripoint in the Lake*. Whether the matter is considered as one going to the Court's jurisdiction (on the analogy of the principle in the *Monetary Gold* case, (*I.C.J. Reports 1954*, p. 32) as applied by the Court, most recently, in the case concerning *East Timor* (*I.C.J. Reports 1995*, p. 90), or as to the admissibility of the proceedings (on the analogy of cases such as the *Northern Cameroons* case (*I.C.J. Reports 1963*, p. 32), in my submission does not affect the result dictated by legal logic and the public interest. That completes my presentation this morning, Mr. President. I would ask you to give the floor to Sir Arthur Watts.

The PRESIDENT: Thank you Professor Brownlie. Sir Arthur please.

Sir Arthur WATTS:

There is no dispute concerning boundary delimitation from the tripoint in Lake Chad to the sea

Mr. President, Members of the Court, I should now like to address Nigeria's fifth and sixth Preliminary Objections.

These two objections are linked, in that they both concern consequences which Cameroon seeks to draw from a number of alleged incidents along the boundary: both concern facts — what happened (if anything), where, when, with what result, and so on. First — and this is the subject of the fifth Preliminary Objection — Cameroon says that these incidents show that the whole boundary is disputed by Nigeria: and then Cameroon says that they involve international responsibility on the part of Nigeria — a matter to be dealt with in Nigeria's sixth Preliminary Objection. In relation to matters covered by both Preliminary Objections, of course Nigeria fully reserves its position as regards legal or factual assertions made by Cameroon.

Nigeria's fifth Preliminary Objection is that there is no dispute concerning boundary delimitation as such from the tripoint in Lake Chad to the sea. The incidents alleged by Cameroon do not establish the existence of any such dispute. Let me begin with a preliminary point. Nigeria denies the existence of any dispute concerning "boundary delimitation *as such*". Nigeria acknowledges, of course, that there is a problem about title to the Bakassi Peninsula, and also about title to Darak and certain adjacent areas in Lake Chad; and the final outcome may affect the course of the boundary in those areas. But these are not boundary disputes "as such" — the disputes are over territory, and any effects upon the boundary are secondary, and consequential. There is therefore, Mr. President, no inconsistency between the formulation of Nigeria's fifth Preliminary Objection and Nigeria's acknowledgement that problems exist over title to Bakassi and to Darak and certain other areas.

In this context, Mr. President, Cameroon has misread and misrepresented Nigeria's fifth Preliminary Objection. Cameroon chose[1] to read it as a general denial by Nigeria that any dispute existed between the two States. But that is not so: Nigeria denies the existence of a dispute *concerning the delimitation of the boundary as such* in the area in question. As to Bakassi and Darak and adjacent areas, Nigeria accepts that there is a problem, which is being handled bilaterally

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[1]CO, paras. 5.01, 5.02.

and multilaterally as the case may be. This problem is not over the boundary line as such, but rather over the underlying question of title. Consequently most of the elaborate argument which Cameroon has constructed in its observations[2] about the Court's jurisprudence as to the meaning of a "dispute" is beside the point.

Even so, two aspects of that argument, and of the Court's jurisprudence, are relevant to Nigeria's fifth Preliminary Objection. One is the Court's insistence — repeated in the *Lockerbie* case as recently as last week[3] — on the existence of a dispute having to be manifest, or evaluated objectively. As I shall show, the objective record shows that no dispute exists as regards the course of the boundary line along its whole length: there are no opposing views of the Parties on that matter. Second, the Court has made clear, and Cameroon accepts[4], that an applicant cannot invent a dispute simply by claiming that one exists. However, as I shall also show, that is precisely what Cameroon is seeking to do in this case with regard to the whole course of the boundary line.

Mr. President, as the map at Tab 22 shows, the stretch of boundary between Lake Chad and Bakassi is long: it runs for some 1,000 miles, or about 1,680 km. In respect of that boundary the position can be put very starkly. There is *in fact* no dispute over this boundary line; there is *no difference between the Parties* as to the course of the boundary along that great distance; and Cameroon has produced *no evidence* that there is any such dispute.

Before a case may be brought to this Court there has to be a legal dispute between the Parties. And that legal dispute must have existed *at the time* the Application seeking to institute proceedings was filed: it is not enough for a State to create a dispute by the very act of filing its Application and making in it some assertion with which the other State is bound to disagree — were it otherwise *any* matter could be artificially turned into a "dispute".

Yet that is precisely what Cameroon has sought to do in this case. Before March 1994 there had been no suggestion from Cameroon that there was a dispute about this long stretch of boundary.

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[2]CO, paras. 5.03-5.09.

[3]Case concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Judgment of 27 February 1998*, para. 21.

[4]CO, para. 5.05.

There is no record of diplomatic correspondence, or bilateral discussions, putting the delimitation of this boundary in question. Indeed the record is quite the opposite, as Nigeria has shown[5] in its Preliminary Objection. As recently as August 1991 the Agreed Minutes — "Agreed", Mr. President — of a Joint Meeting of Experts on Boundary Matters recorded that "The two sides noted with satisfaction that the land border has been well defined and that there are no major problems at this level"[6]. Even in August 1993 — just seven months before Cameroon started these proceedings — the Agreed Minutes of a further meeting of that same body contained no reference to any dispute concerning delimitation of the land boundary[7].

Only in Cameroon's amended Application has this hitherto stable boundary has been called into question; only then did Cameroon assert that there was a dispute about its whole length, notwithstanding its earlier acknowledgements that there were no problems. It is Cameroon, not Nigeria, which is introducing an element of instability into the Parties' common boundary.

I repeat — the allegation that this whole boundary was in dispute was put forward only in Cameroon's amendment to its original Application. And that in itself is very telling. After making its original Application about Bakassi, in relation to which Nigeria accepts that there is a problem (which is being handled bilaterally), Cameroon, over two months later, added that the whole boundary was also in dispute. So, Mr. President, when submitting its Application which could have consequential effects for some 24 miles of boundary, Cameroon somehow forgot that there was apparently also a dispute over a further 1,000 miles of boundary, and so, as an afterthought, added it to the case. That alone suggests very strongly that Cameroon did not at the time believe there to have been any dispute over that additional length of boundary, and that that part of the alleged dispute is wholly unreal.

Cameroon, it should be recalled, had been preparing for some time to bring this case before this Court. On Cameroon's side there was no great haste. Had there been a genuine dispute over

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[5]NPO, para. 5.10-5.13.

[6]NPO, para. 5.11, and Ann. 82.

[7]NPO, 55.

that great length of boundary, it simply is not credible to suggest that Cameroon only remembered it later. The truth is, Mr. President, that there was and is no such dispute.

Cameroon says that it was driven to amend, and extend, its original Application by its receipt of the Note of 14 April 1994[8] from Nigeria asserting various rights in the area around Darak, in Lake Chad. Whatever effect that Note might have in justifying Cameroon in seeking to add to this litigation the situation in Lake Chad, there is absolutely nothing in it to justify calling into question the whole length of the boundary south of Lake Chad and as far down as Bakassi. No, Mr. President: that gratuitous addition was just "litigation by afterthought".

It is, of course, unsurprising that Cameroon has been unable to show any record of an existing dispute about the boundary as a whole, for the very simple reason that there is no difference between the Parties on this matter. Lest there be any doubt on this point, Mr. President, let me be clear. As regards the stretch of boundary between Bakassi in the South and Lake Chad in the North, Nigeria has not disputed, and does not now dispute, the course to be taken by that boundary. That established boundary is accepted in principle by Nigeria. And since Nigeria accepts the line of the boundary, and if — as we assume to be the case — Cameroon does so as well, there is and there can be no dispute between the two States about the line of the boundary as such.

Cameroon now argues in its observations that the dispute over title to Bakassi and the Darak area does not merely affect those particular areas of the common boundary, but has a more generalized effect[9]: Nigeria is said to be "attacking the entire legal structure on which the boundary delimitation between the two countries is based"[10] and "challenges the entire boundary delimitation"[11]. Mr. President, Cameroon is here faced with a serious difficulty. *At the time it lodged its Application*, or even its later amendment, Cameroon had no basis for alleging the

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[8]CM, Ann. 355.

[9]CO, para. 5.01, 5.05.

[10]CO, para. 5.13.

[11]CO, para. 5.14.

existence of a dispute along the whole length of the boundary, other than some wholly inadequate mention of alleged border incidents (to which I shall return in a moment). It is now constructing such an argument, but based only on implications which it seeks to see in what Nigeria has said *subsequently*: that cannot, Mr. President, establish the existence of a dispute *at the time the Application was lodged.* The fact is that Cameroon, when it started these proceedings, was inventing a dispute, and is now seeking, by invoking these later developments, to give belated substance to its invention. Just last week, this Court repeated that the critical time for questions of jurisdiction and admissibility is the date when an Application is filed[12].

And there is yet a further difficulty for Cameroon, in that even those later Nigerian statements do not set out the full measure of Nigeria's arguments: and there is no reason why Nigeria should do so at this preliminary stage. Cameroon, therefore, has to invent what it thinks the Nigerian arguments might turn out to be. In fact, Cameroon generally seems to confuse these Preliminary Objections with arguments which are more a matter of the merits of the case[13]. Nigeria is not prepared to be drawn down that path. This Preliminary Objection is that, *on the facts known at the time when Cameroon's Application was filed,* and even when it was amended two months later, and on the basis of what Cameroon said in its Application and later amendment, and, so far as permissible, its Memorial, there was in fact and in law no existing dispute as to the delimitation of the boundary between Lake Chad and Bakassi.

Let me return, Mr. President, to Cameroon's original argument. This was that various alleged border incidents showed that Nigeria did not accept the present boundary line.

Before looking more closely at the alleged incidents and the implications which they are said to have for Nigeria's acceptance of the boundary, it might help the Court if we look again at this 1,000-mile stretch of boundary. Tab 22 contains the map. Down at the bottom is Bakassi, just discernible. And running northwards as far as Lake Chad is the long stretch of boundary about which Cameroon at first forgot.

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[12]Case concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Judgment of 27 February,* paras. 37, 43.

[13]E.g. CO, paras. 5.18-5.20, 5.23.

Looking at the boundary as it is delineated on a map is one thing; looking at the terrain over which the boundary runs is another. The nature of the boundary terrain was described yesterday by the Agent for Nigeria. As a reminder let me put on the screen one of the maps shown yesterday — it is at Tab 4; and now one of the photographs in the Judges' folders, Tab 20, giving a typical illustration of the kind of terrain through which the boundary runs.

In that sort of countryside, Mr. President, one cannot have the kind of clearly demarcated boundary which is possible in other circumstances. Even so, there has been some partial demarcation of the boundary. Even before the 1914-1918 War the boundary between Nigeria and the German territory of Kamerun was demarcated from Yola down to the Akwayafe River by a series of boundary pillars, numbered 1 to 114 — this is shown on the map at Tab 15. The northern part of that stretch of boundary is not relevant to the present boundary between Nigeria and Cameroon, but southwards from boundary pillar 64 the pillars are still relevant. Those 51 pillars, from 64 to 114, cover some 190 miles of the boundary. There are also some other, relatively small, boundary sectors which were demarcated in earlier times and the boundary pillars of which are still relevant to today's boundary. But overall, Mr. President, it seems that something a little over 200 miles of the present boundary has been clearly demarcated by the erection of boundary pillars.

I should here add that this reference to boundary pillars may give a somewhat misleading impression of present-day certainty, even in the limited stretches where pillars were placed. "Misleading" because some pillars have over time fallen into decay, while others have apparently been removed or destroyed.

But for most of its length, that is some 800 miles, the boundary is, on the ground, a matter of established local repute. Along its length there are clusters of local settlements, on both sides of the boundary. For long stretches the boundary runs through areas where there is little or no human habitation; given the difficult terrain, this is not surprising.

Mr. President, let me illustrate the point I am making. Let me take the stretch of boundary between boundary pillar 64 and Mount Kombon (the map is at Tab 22). The boundary there is

delimited by the British Order in Council[14] which describes the boundary between what were then North and South Cameroons. The description is in quite broad terms. But what is important is how the general description in the Order fits the local terrain. On the screen now is a photograph of some of this terrain (Tab 20); look closely and near the centre you will see a man; he stands by a flowering bush; and that bush marks the boundary — the man knows it, the local villagers know it: that is the reality in this sort of landscape. Another photograph (also at Tab 20): again, this shows the terrain close to where the previous photograph was taken. A third photograph (again, it is Tab 20). It too is in the same area as the others: you see a group of huts in the centre of the photograph. Or perhaps it is really two groups of huts, for the boundary runs through the gap between them.

That, Mr. President, is the reality of by far the greater part of this boundary. The local communities are well aware of where the boundary runs. At times there have been localized uncertainties over the boundary, but these have been settled locally, between the communities on both sides of the boundary. That is the best way of resolving these local difficulties — between the communities which, through their own personal knowledge, know where the boundary runs, what boundary makes practical sense in the light of local circumstances, and what associated conditions need to be established.

Given the terrain, the location of settlements, and the generally undemarcated character of the boundary, it is, in fact, surprising how relatively seldom boundary transgressions have occurred. Given all the surrounding circumstances, the boundary has in reality been remarkably stable and incident-free.

Cameroon, however, asserts that border transgressions by Nigeria have been frequent. The inadequacy of Cameroon's information about these incidents is a matter which I will pursue further in the context of Nigeria's sixth Preliminary Objection. For the moment, and without prejudice to what will be said later, let me take those alleged incidents at face value.

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[14]Nigeria (Protectorate and Cameroons) Order in Council, 1946, Second Schedule: CM, Ann. 181.

First, I would remind the Court that in its amended Application — in paragraph 17 *(f)* — Cameroon offered only a vague assertion in support of its claim that the whole boundary was in dispute — just "repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries"[15]: and this assertion was *wholly* unsubstantiated — no place names, no dates, no details, nothing. From Cameroon's Application, with just that bare assertion, no implication whatsoever can be drawn as to Nigeria's attitude to the boundary.

Some details are, it is true, given in Cameroon's Memorial. First, we may put on one side those relating to Bakassi or to Darak and adjacent areas: they reflect the acknowledged problems over title, which are already being handled bilaterally or multilaterally as the case may be; those incidents are not relevant to the alleged boundary dispute along the 1,000 miles of boundary between Bakassi and Lake Chad. We then seem to be left with a mere five incidents cited in the Memorial, in apparent amplification of the wholly vague allegation in paragraph 17 *(f)* of the amended Application (I say "seem to", and "apparent", because Cameroon has been unclear and unspecific on the matter). One of those five happened *after* the filing of Cameroon's Application and later amendment, and so cannot be invoked as evidence of the existence of a dispute when the Application was filed; and in relation to another, concerning Kontcha, the record and the map, at Tab 11, shows — as the Agent for Nigeria has already noted — not that there was a boundary dispute, but the very opposite, for it shows that Nigeria accepted the boundary in that area and accepted that Kontcha was on Cameroon's side of it[16]. And so in the Memorial we are left, as the map at Tab 23 shows, with just *three* incidents between 1992 and 1994, over a 1,000-mile stretch of boundary, and told that this shows that Nigeria disputes the whole boundary! Without even looking at the nature of those incidents it is apparent that the implication which Cameroon seeks to draw from them as to the whole length of the 1,000-mile boundary is totally baseless.

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[15]Amended Application, para. 17 *(f)*.

[16]NPO, para. 5.7, and Ann. 79.

Mr. President, Nigeria is entitled to rest its argument there. Nigeria is called upon to respond to Cameroon's case as set out in its Application, as amended, and as — within limits — elaborated in its Memorial. Cameroon has utterly failed to establish in that exposition of its case that there was any dispute, either in terms or by implication, about the course of the whole length of the boundary between Bakassi and Lake Chad. For reasons to be developed in the context of the sixth Preliminary Objection, Nigeria submits that the substantial additional evidential material which Cameroon has, subsequently to the Memorial, put before the Court should be disregarded.

However, without prejudice to that submission, Nigeria has no wish to avoid discussing such later, and strictly out-of-time, allegations of incidents which Cameroon has presented. In its observations Cameroon has, some two years after it started with this case, collected these so-called incidents in its "Repertory of incidents on the boundary between Cameroon and Nigeria"[17]. And Cameroon there records about 47 separate incidents at 42 places in the general boundary area: but these do not include all of the incidents previously mentioned in Cameroon's Memorial, although they do include some — it is wholly unclear whether this new Repertory is meant to be a definitive list or not. In any event, 27 of those incidents appear to be part and parcel of the acknowledged problems about the Bakassi and Lake Chad areas; if we disregard them, we are left with about 20 incidents for the rest of the boundary.

The earliest of these newly alleged incidents — that at Mbillassi[18] — was as long ago as 1962. So, Mr. President, this means that Cameroon has now — out of time, but still has at last — come up with some 20 incidents going back over 35 years along a 1,000-mile stretch of largely undemarcated boundary running over some exceedingly difficult terrain. Far from showing that the whole boundary is in dispute, the figures rather show the contrary — that in the circumstances, the boundary has been remarkably stable and *un*disputed.

This conclusion is fully borne out if we look behind the simple figures, and consider the nature of the alleged incidents. The full facts about many of these incidents are unclear, but even

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[17]CO, Ann. 1.

[18]CO, Ann. 1, item No. 14.

so it is evident that the great majority, if not all, do not reflect any inter-State dispute as to the boundary at all. Thus, in one case Cameroon cites as a boundary incident the grazing of cattle by Nigerian herdsmen in Cameroonian territory[19]; this is wholly irrelevant to a claim that Nigeria disputes the boundary. And then there is an incident in the villages of Dadi and Baje[20]: the Cameroonian report is about the intrusion by Nigerian peasants into some border villages — nothing whatsoever to do with Nigeria as a State challenging the boundary. And then there is item 23 in the Repertory. What can one possibly make of this? It consists of two papers. The first, dated 22 January 1988, is solely about the wanderings of nomadic herdsmen — it too has absolutely nothing to do with showing that Nigeria disputes the boundary. The second paper, 7 years later (10 February 1995), is not only nearly a year *after* the date of Cameroon's Application, but is both incomplete, the second page is missing, and relates to something totally different.

Mr. President, so far as all this is relevant at all, it is very localized stuff, often the result of a lack of effective demarcation. Whatever incidents or problems may arise along the boundary, that is a very different matter from there being a problem over the boundary itself. In no way can petty localized incidents be seen as raising any issue of principle concerning the alignment of the boundary as a whole. Even taking a generous view of the extent of the boundary affected by these local incidents (say, ¼ of a mile of boundary for each "incident") they concern, even if all of them were relevant (which they are not), perhaps some 10 or a dozen miles of its length. That cannot be taken as representing doubt or dispute as to the whole length of that 1,000-mile boundary.

Nigeria would also point out, that local border trespasses have been as much a matter of, say, the Cameroonian gendarmerie crossing into Nigeria as anything happening in the other direction. Of course, Nigeria objects to such trespasses onto its territory; but Nigeria has not sought to inflate the significance of these minor local events by suggesting that Cameroon has thereby called the whole boundary into question.

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[19]CO, Ann. 1, item No. 14.

[20]CO, Ann. 1, item No. 33.

On the contrary, Nigeria has consistently taken the position that local transgressions, if they can be established, are best dealt with locally[21] through cross-border co-operation, so that local conditions can be assessed and taken into account. It must be a matter of considerable doubt whether this Court is an appropriate body to engage upon such localized matters by way of judicial enquiry, particularly when the Parties continue — as Nigeria at least does — to uphold the course of the boundary line as it has for many years been understood to run.

There may, of course be weaknesses in the demarcation of the boundary, but Cameroon agrees[22] with Nigeria that demarcation is not a task for the Court. And any deficiency in the joint machinery for supervising the boundary is similarly not a gap which it would be appropriate for the Court to fill. Nor indeed are these matters which are Nigeria's responsibility alone; they are as much Cameroon's responsibility as Nigeria's. Cameroon does not claim in its amended Application or in its Memorial that it has ever taken the initiative to restore or improve the state of boundary demarcation; and indeed, Nigeria's records show, rather, that the initiative has come from Nigeria, as in 1991 when it was Nigeria which proposed that a joint team of experts survey and demarcate the land boundary[23]. Cameroon has thus acquiesced in the present state of affairs regarding the demarcation of this boundary, and cannot escape its share of the responsibility for any of the consequences.

The boundary line as presently and for many years past established on the ground is not questioned by either Party. Despite Cameroon's assertion in its "afterthought" amendment that there is a dispute about the whole length of the boundary from Lake Chad to the sea, a dispute does not exist just because one Party says it does. There was, at the time of the lodging of Cameroon's amendment, no suggestion that there was a dispute about the whole length of the boundary. In fact, the Parties agreed in 1991 that there were no problems, and as late as 1993, when meeting to discuss boundary matters, no mention was made of any dispute. *At the critical time, namely when*

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[21]See NPO, para. 5.6.

[22]CO, para. 5.12.

[23]NPO, 54.

the Application was filed, or at latest when the amendment was lodged, there simply was no dispute between the Parties on this matter as is still the case.

For these reasons, Mr. President and Members of the Court, Nigeria invites the Court to uphold Nigeria's fifth Preliminary Objection, and declare that there is no dispute concerning the boundary as such from the tripoint in Lake Chad to the sea, and that that part of Cameroon's Application, as amended, should be dismissed.

There is no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions

Mr. President, let me now turn to Nigeria's sixth Preliminary Objection. It relates to another aspect of the various incidents which Cameroon alleges occurred. Cameroon contends that Nigeria bears international responsibility for them. Nigeria's sixth Preliminary Objection is that Cameroon has not provided adequate or reliable information which would enable Nigeria to respond to those assertions of international responsibility, or enable the Court to make a fair and effective judicial determination of the matter.

As a preliminary point, let me revert to the question of the existence, or otherwise, of a dispute between the Parties. Cameroon argues that Nigeria bears international responsibility for certain incidents, and then says that Nigeria denies any such responsibility; accordingly, says Cameroon, that shows that there is an international dispute between the two States[24].

But that misunderstands Nigeria's position. Nigeria is at this stage simply saying that it has not been told enough about the alleged incidents to be able to decide what its response should be. More importantly, the Court too has been left in ignorance of the facts: the Court is left without any judicial or manageable standards to apply in making a fair and effective judicial determination of the allegations of international responsibility raised by Cameroon. Further judicial pursuit of them would be futile.

Allegations that a State has incurred international responsibility should not be made lightly. Nigeria certainly does not treat them lightly — but, Mr. President, Nigeria does not know what the

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[24]CO, paras. 5.29, 5.30.

allegations really are. *That* is the problem. A person accused of wrongdoing is entitled to know in sufficient detail what the accusation against him is. Cameroon has signally failed to provide such information; and thereby, Cameroon has demonstrated that, for its part, that it is willing to treat lightly the serious matter of making allegations of internationally wrongful conduct on the part of a neighbouring State.

Nigeria and the Court are thus faced with a wholly inadequate basis on which to deal properly with Cameroon's allegations about border incidents. Mr. President, let me pose two questions: what does a State need to know before it can effectively respond to an allegation that it is internationally responsible for some violation of another State's territory? What does a court need to know if it is effectively to exercise its judicial functions in relation to such an allegation?

In the light of an extensive international jurisprudence, Nigeria submits that the respondent State, and the Court, need, as a minimum, to know four things — the essential facts about *what* is alleged to have occurred, *when* it is supposed to have taken place, precisely *where* it is supposed to have taken place (especially in relation to any relevant boundary), and *why* the Respondent is thought to bear international responsibility for the incident.

Cameroon simply does not meet those minimum requirements. Let me spell out for the Court what Cameroon's allegations amount to — first, in its original Application.

(i) This makes a generalized assertion, in relation to Bakassi and in the 3-month period from the end of 1993 to the date of the Application, of "an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities in the Bakassi Peninsula"[25]. No details of any kind are given.

(ii) Second, the Application goes on to say[26], again in relation to Bakassi but this time in relation to an unspecified period but apparently in the 1960s and 1970s, that "Nigeria . . . thus occasioned a large number of incidents"; and that after Nigeria's denial of the validity of the

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[25]Para. 2.

[26]Paras. 8 and 9.

Maroua Declaration "frontier incidents continued to occur in the disputed area". Again, no details of any kind are given.

(iii) Then[27], third, comes an incident for which at least has some, although sparse, details: "on 21 December 1993, Nigeria committed an aggression against Cameroon by invading the Cameroonian localities of Jabane and Diamond Island in the Bakassi Peninsula". So we have got a date this time, and two locations, but little more.

(iv) Then, fourth, Cameroon refers to Nigeria's conduct in "introducing armed troops on a massive scale into the disputed Bakassi Peninsula and conducting military activities there", apparently in the period since 1992[28]. Once again, this is wholly vague and generalized.

It is solely on the basis of "the actions described in the above account of the facts" that Cameroon alleges that Nigeria has incurred international responsibility, summarizing those allegations in ways which add nothing of substance or detail to what had been said before[29].

And *that*, Mr. President, is all the information Nigeria, and the Court, is provided with by Cameroon's Application. It is demonstrably inadequate. And quite apart from its inadequacy, I would note that, since Nigeria has no doubt as to its title to Bakassi, the very basis for these Cameroonian complaints about Nigerian activities in Bakassi is, of course, without substance.

Cameroon, by its Additional Application presented some ten weeks later, then sought to extend the scope of the dispute so as to cover the boundary from Lake Chad to the sea. And in relation to that long stretch, we are given the following information about alleged incidents.

(i) First, there was, apparently in some period before 1994 (but we are not told when), "initially a massive introduction of Nigerian nationals into the disputed area, followed by an introduction of Nigerian security forces"[30]. The "disputed area" seems to refer to locations in Lake Chad, but beyond that details are once again wholly lacking.

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[27]Para. 9.

[28]Para. 9.

[29]Paras. 13, 18, 19, 20 *(c)* and *(d)*.

[30]Para. 2.

(ii) Second, this general statement is supplemented by further statements which refer to the incursion into Cameroonian territory in Lake Chad of "certain Nigerian groups, mostly fishermen"[31], followed later by "the Nigerian security forces"[32]. Cameroon identifies Darak as a place where this sort of thing is said to have happened, and says that there are "some 20 or more places in Cameroon" which "the Nigerians are occupying"[33]. Again, Mr. President, Cameroon, despite some superficial appearance of being specific, is a long way from being specific enough for the purposes of the present litigation. Cameroon fails to make it clear whether the occupations to which it refers are by Nigerian forces or Nigerian civilians — several references to "Nigerian groups", "Nigerian nationals" and "the Nigerians" suggest the latter. Even the places in question are unclear: Cameroon glibly refers to "20 or more" — Mr. President, does not Cameroon know *precisely* how many places in what it says is *its* territory were affected? And even then, Cameroon can only name nine places, not 20.

(iii) Third, Cameroon goes on to mention "more particularly" four more places where the presence of "Nigerian nationals" has been observed[34]. So, again, this appears to involve only civilians; and in any event this statement is totally vague and imprecise, as is the relationship of the events at these locations to those referred to earlier: moreover, three of them seem to have been regarded as a mistake by Cameroon and were dropped from Cameroon's Memorial, while the fourth, which was mentioned in the Memorial, was the curious reference to Kontcha, which the Agent for Nigeria referred to yesterday.

(iv) Finally, Cameroon refers to "The prolonged presence, in the Cameroonian part of Lake Chad, of the security forces of the Federal Republic of Nigeria", and to "the illegal occupation of those parts of Cameroon's territory — including the part located in Lake Chad — by Nigerian

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[31]Para. 3.

[32]Para. 4.

[33]Para. 5.

[34]Para. 6.

nationals and military personnel"[35]. In addition to again confusing situations involving civilians with those said to involve military personnel, these references are wholly unspecific.

Apart from the third allegation, which as I pointed out involved only civilians, all of this relates only to the Darak area, where Nigeria has sovereignty (and which is in any event within the mandate of the Lake Chad Basin Commission). Therefore, Mr. President, as already noted in relation to the Bakassi incidents, those alleged Darak incidents can scarcely be treated as violations by Nigeria of Cameroon's territory.

But leaving that aside, it is solely on the basis of "the actions described in the above account of the facts" that Cameroon bases its assertion of Nigeria's international responsibility for its activity in the Lake Chad area[36]: the concluding paragraphs[37] summarize, without adding to, those earlier allegations. But *then*, Mr. President, we do get an addition. In a breathtaking sweep of the imagination, Cameroon adds[38] a reference to there having been "repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, with consequent grave and repeated incidents". No evidence is given: no dates, no details, not even a single specific allegation of Nigerian State activity is made to support this wild and far-reaching assertion.

If we pause there, Mr. President, it really is impossible to respond adequately to such vague, generalized, confused, unreliable and incomplete allegations. Succinctness is all very well, but Article 38, paragraph 2, of the Rules of Court also requires that the nature of the claim must be "specified precisely". There must be a minimum level of particularity about allegations made against a respondent State if justice is to be done, and Nigeria submits that Cameroon, in its Application and amended Application, has totally failed to meet that minimum.

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[35]Para. 7.

[36]Para. 11.

[37]Paras. 15, 16, 17 *(c)* and *(d)*.

[38]Para. 17 *(f)*.

Although the present proceedings have to be based on the terms of Cameroon's Application, Cameroon has some latitude in expanding, in its Memorial, upon its case as already presented in its Application. But the Memorial cannot create a new case. Yet Cameroon's Application and Additional Application made no claim as to Nigeria's international responsibility *in relation to acts occurring outside Bakassi and Lake Chad.* The original Application dealt only with Bakassi; and the request to the Court set out in paragraph 17 of the Additional Application, in referring to Nigeria's responsibility for various alleged internationally unlawful acts[39], referred back only to certain acts which involved Lake Chad, and in particular did *not* include a reference forward to the paragraph mentioning acts alleged to have occurred "all along the frontier", that is along the frontier *between* Lake Chad and Bakassi[40]. Bringing these wider questions of State responsibility into the case is an inadmissible attempt to enlarge, in a Memorial, the scope of a case as set out in the Application.

Moreover, Mr. President, even in relation to those questions of State responsibility which may properly be expanded upon in the Memorial, Cameroon's Memorial is little better than the original Application. It is still replete with imprecise and unsubstantiated assertions of unlawful conduct by Nigeria.

Nigeria has already referred in some detail to the deficiencies of Cameroon's Memorial in this respect[41]. In Nigeria's Preliminary Objections 12 alleged incidents were examined — two said to be in Bakassi[42], five at sea in the waters off Bakassi[43], and five along the stretch of boundary between Bakassi and Lake Chad[44]. The inadequacies of these incidents included Cameroon's quite ludicrous citation as part of its own case of an incident which had involved the death of five

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[39]See subparas. 17 *(e)* and *(e')*.

[40]Subparas. 17 *(e)* and *(e')* referred back only to subparas. 17 *(a)-(d)*, and did not refer to the next following subparagraph, 17 *(f)*.

[41]NPO, paras. 6.10-6.13.

[42]NPO, para. 6.10.

[43]NPO, para. 6.11.

[44]NPO, para. 6.12.

Nigerians and for which *Cameroon* had apologized and paid compensation[45]; the lack of facts in support of the five alleged incidents at sea, which were not even followed by diplomatic protests by Cameroon[46]; and the fact that of the five incidents cited to show the boundary between Lake Chad and Bakassi to be in dispute, one of them occurred *after* the filing of the Application and the later amendment to it, and the other four — quite apart from their inadmissibility as regards international responsibility at all — were referred to in wholly inadequate detail to serve as a basis for a decision as to international responsibility[47].

Mr. President, Cameroon has repeatedly said[48] that there are so many border incidents for which Nigeria is to blame that Cameroon cannot possibly give an exhaustive list of them. Mr. President, this is a court of law, not a political rally. Allegations of international responsibility cannot be dealt with — either by Nigeria or by the Court — on the sweeping and insubstantial basis advanced by Cameroon. If Cameroon is to invoke the international responsibility of Nigeria, Cameroon takes upon itself also the obligation to identify the circumstances with the necessary precision. If there really are so many incidents to choose from, it is striking that Cameroon has mentioned so few in its Application and Memorial, and has only given the most inadequate information about even those few.

Cameroon's way of proceeding is this. We get some vague allegations in the Application, some more in the subsequent amendment of it, a few more in the Memorial, and then a few more in the observations, where we are promised that "More examples can be given if necessary when the Court proceeds to the merits"[49]. Mr. President, I have previously referred to Cameroon's amended Application as "litigation by afterthought"; in this present context Cameroon is conducting

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[45]NPO, para. 6.10.

[46]NPO, para. 6.11.

[47]NPO, para. 6.12.

[48]E.g. CO, para. 6.04.

[49]CO, para. 6.04.

"litigation by accretion". That *cannot* be a permissible way in which to pursue serious allegations of international responsibility.

So much, then, for this aspect of Cameroon's case as deployed in its Application (as amended) and its Memorial. The case there set out is manifestly inadequate as a basis for further judicial consideration of questions of State responsibility. Nothing said in Cameroon's subsequent observations can make good that inadequacy.

Here it is necessary to develop a point which I touched on earlier in relation to the fifth Preliminary Objection. Central importance has to be given to the terms of the Application[50]; and while Nigeria acknowledges that a State has some latitude in expanding later upon what it has said in its Application, in particular in its Memorial, it is in essential respects restricted to the case it has presented in its Application[51]. Nothing in this Court's decision in *Phosphates in Morocco*, cited by Cameroon[52], conflicts with this approach: there the Court was concerned with identifying the nature of a State's claim not in relation to any possible answer to be given to that claim as a matter of substance, but solely in relation to the question whether it arose before the date on which the relevant Optional Clause Declarations of France and Italy took effect. Similarly, the citations from the work of Professor Abi-Saab are concerned with correcting formal imperfections or deficiencies in an Application. More to the point is the Court's decision last week in the *Lockerbie* case, where the Court emphasized again the importance, for purposes of jurisdiction and admissibility[53], of the date on which an Application was filed.

In accordance with Article 79 of the Rules of Court, it is after the submission of the applicant State's Memorial that the respondent State has to decide whether the circumstances call for the making of Preliminary Objections. It can only do so, accordingly, on the basis of the record as it

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[50]NPO, paras. 6.6-6.9.

[51]NPO, para. 6.9.

[52]CO, para. 6.08.

[53]Case concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Judgment of 27 February 1998*, paras. 37, 43.

stands at that time: that is, the Application and the Applicant's Memorial. The Applicant can, of course, comment in its observations on the arguments put forward in the respondent State's Preliminary Objections. But a distinction has to be drawn between properly commenting on Objections, and, on the other hand, substantially adding to the case which has to be answered by the respondent State. Just as the Memorial cannot enlarge the scope of the dispute as specified in the Application (although it can amplify the case there set out), even more so is it improper for a State's observations to seek to enlarge the substantive scope of the dispute yet further by bringing forward new circumstances not apparent from the Application and Memorial. This, however, is what Cameroon, by introducing in its observations yet further alleged incidents for which Nigeria is said to be responsible, has done: Cameroon has sought substantially to add to the case set out in its Application as amended, and as elaborated in its Memorial. Those additions should therefore be disregarded.

When instituting these proceedings, Cameroon knew what was required of it — primarily, in accordance with the Rules, to "specify the precise nature of the claim, together with a succinct statement of the facts"[54]. I draw attention to the words "specify" and "precise": the very opposite, Mr. President, of vagueness and imprecision. And "succinct", equally, does not permit generality and lack of detail: it simply connotes brevity and clarity. Cameroon's Application should have contained an adequately informative statement: it did not — it was just vague, generalized and incomplete.

One must also recall that at those initial stages in the proceedings the Applicant is in full control of its own timetable — *it* decides whether it thinks it is in possession of sufficient facts to support a case to put before the Court, *it* decides whether it needs more time to gather better facts, *it* decides on the timing of the submission of the Application, presumably when it is fully ready, and if that is not enough, *it* then has the further time in which to flesh out in its Memorial the case advanced in the Application: Cameroon is indeed the master of the formulation of its own case.

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[54]Rules of Court, Art. 38.2.

The respondent State's position is different: it must have a firm basis on which to base the decisions which, under the Rules, it has to take by a particular time, and it is only right that that firm base should be the state of the record as it stands at that time. And this means, Mr. President, that additional evidential material put before the Court in Cameroon's observations should not affect the Court's decision on Nigeria's sixth Preliminary Objection.

Nevertheless, without prejudice to that argument, some comment on the material contained in Cameroon's observations may help the Court to see it in a fair perspective. Cameroon, as I noted a while ago, has listed this material in the "Repertory of Incidents" submitted with its observations[55]. The first point to make about it is that the relationship between incidents referred to in that Repertory and those previously referred to, however vaguely, in Cameroon's Applications and Memorial is far from clear; some incidents seem clearly to be repetitions, others are clearly new, yet others could be one or could be the other; yet other incidents which were referred to in the Application or Memorial are now not included in the Repertory — presumably they have now been dropped altogether. In short, is the Repertory complete, or not? If only Cameroon had given proper details we might be better able to know.

However, Mr. President, despite the confusion, let us look at the contents of this document. One would perhaps think that, in an allegedly supporting evidential document submitted by a party some two years after it had filed its application, that party would produce something worthwhile. And if one thought that, Mr. President, one would be seriously disappointed. Virtually all the items in the Repertory are seriously deficient in the information they give. In relation to Nigeria's fifth Preliminary Objection I have already noted some irrelevant entries in it: let me now look at a few more.

Take, for example, item 24: it is a brief report half a page long, about a family land dispute, which was all sorted out at the local level. Or take item 13: it is about three Nigerian hunters who entered a Cameroonian village and fired some shots — what on earth has that to do with any possible Nigerian State responsibility? The same can be said of item 18, about some Nigerian cattle

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[55]CO, Ann. 1.

thieves. And then there is item 10: that involved two Cameroonian gendarmes pursuing a Nigerian cyclist *and straying across the frontier into Nigeria*! And this, Mr. President, is evidence of *Nigerian* international responsibility? Cameroon, Mr. President, cannot be serious. The fact is that this volume, apart from being submitted too late, falls far short of acceptable standards of credibility or probative value.

Finally, I need to revert to a point which I put before the Court a little while ago. And this is the distinction to be made between two different situations. On the one hand, there may be incursions by a State's authorities into another State across a boundary which is in principle accepted and which is clear on the ground.

On the other hand, acts by a State's authorities in territory which is under its own sovereignty are lawful. And Nigeria obviously bears no international responsibility for violating Cameroon's territorial sovereignty in respect of its presence in areas which are in law part of Nigeria. There may, as in Bakassi, be a problem about sovereignty; but Cameroon having put in issue the boundary in certain areas, it is then inappropriate for Cameroon at the same time to raise questions of international responsibility said to arise from incursions across a boundary which, *ex hypothesi*, it regards as in issue. If boundary and territorial disputes are to be turned simultaneously into State responsibility cases, the disputes will be aggravated, not resolved. Both sides may feel justified in prematurely advancing responsibility claims against the other, and the work of demarcation commissions could turn into exercises in accountancy, assessing the consequences of prior transgressions across the boundary which is only now being settled by them.

There is another aspect to this which I might venture to draw to the Court's attention. If pleadings in boundary dispute cases are to be loaded also with ancillary issues of State responsibility, the Court's handling of such cases would clearly be greatly complicated — and probably unnecessarily so, since the Court's findings on the boundary question will either determine that some particular alleged "incursions across the boundary" were in truth not an incursion at all, or it will lead the parties to negotiate a settlement of the matter in the light of the Court's decision on the boundary: indeed, Mr. President, the Court might at times find it appropriate to sever the State responsibility issues raised by Cameroon from the principal boundary issue before the Court,

and to invite the Parties to negotiate a settlement of the responsibility issues in the light of whatever decision the Court might reach on issues that affect the boundary. Considerations of effective "case management", if I may use such a term, suggest that the whole range of pleadings and evidence about every alleged border transgression should not have to be deployed by the Parties, and studied by the Court, until it is clear to what extent, if at all, there is still any real legal dispute about some particular alleged transgression.

Overall Nigeria is in these proceedings faced with wholly inadequate and unreliable information about alleged incidents for which Nigeria is said to be internationally responsible. The lack of particularity similarly, in Nigeria's submission, precludes the Court from carrying out an effective judicial examination of the issues of State responsibility and reparation raised by Cameroon, and from making a judicial determination of those issues.

For these reasons, Mr. President, Nigeria submits that the Court should dismiss as inadmissible the issues of State responsibility and reparation raised by Cameroon in the context of the various incidents alleged to have taken place.

Mr. President, Members of the Court, that concludes my statement in respect of Nigeria's sixth Preliminary Objection. May I now invite you, at a time of your choosing, to call upon Professor James Crawford, SC, to address the Court on Nigeria's seventh and eighth Preliminary Objections.

Thank you, Mr. President.

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

The Court adjourned from 11.15 to 11.35 a.m.

The PRESIDENT: Please be seated. Professor Crawford.

Mr. CRAWFORD:

The Jurisdiction of the Court in Relation to the Maritime Boundary

Thank you, Sir. Mr. President, Members of the Court.

1. I am charged with presenting Nigeria's seventh and eighth Preliminary Objections, which relate specifically to the maritime boundary. These objections may be characterized as going either to your jurisdiction over, or to the admissibility of, Cameroon's unilateral application for the delimitation of the maritime zones of the Parties. However they are characterized, they are clearly preliminary issues. If either of these distinct objections is upheld, the consequence will be that Cameroon's claim is to that extent excluded.

2. It should be noted that these Preliminary Objections are independent of those made with respect to the case as a whole, and the land boundary, objections which have been dealt with by my colleagues. The considerations that apply to the issue of the Court's jurisdiction over the land boundary are different from those that apply to the maritime boundary. It is my function now to outline the latter.

A. The Geographical Setting

3. (Tab 1) Before doing so, let me first illustrate the rather dramatic geographical setting offshore the two countries. The Gulf of Guinea is a large concave gulf, about 590,000 square miles in area. It is the ninth largest sea in the world, larger than the Barents Sea, the Sea of Japan or the North Sea. (Tab 9) But within the larger Gulf of Guinea there is a smaller area just where the coast of Africa changes from a predominantly north-south to a more westerly direction, within the Bight of Bonny, also known as the Bight of Biafra. Within this smaller area you can see the four gulf States that figure for the purposes of the present case, Nigeria, Cameroon, Equatorial Guinea and Sao Tome and Principe. Looking at this area, which is the immediate area offshore the Bakassi Peninsula, the position of Equatorial Guinea is obviously crucial. The island of Bioko, formerly known as Fernando Póo, is over 2,000 square kilometres in area, and has a population of about 90,000 people, which is about 20 per cent of the total population of Equatorial Guinea. It contains the national capital, Malabo, as well as the country's highest mountain. It is no mere offshore dependency of the mainland; one might as well say that Rio Muni, which is the mainland portion of Equatorial Guinea, is a dependency of Bioko. Bioko is 40 nautical miles from the nearest point

on the Bakassi Peninsula. It is 19.28 nautical miles from Cameroon, in other words, less than twice the distance of a 12-mile territorial sea.

4. Now the significance of this situation to the maritime delimitation of the inner part of the Gulf is unmistakeable. From the Cameroon coast one can hardly progress beyond the 12-mile territorial sea before the influence of Equatorial Guinea, of Bioko begins to be felt. One can certainly not delimit the maritime zones of Nigeria and Cameroon in the Bight of Biafra, as Cameroon would have this Court do, without first determining not just the tripoint, but the extent of the equitable interests, of the three States.

5. This elemental fact, this fact of the central position of Equatorial Guinea, can equally be seen from the maritime boundary claimed in Cameroon's Memorial, which you can now see on the screen. (Tab 24) I need to note three things about Cameroon's claim line. The first thing is that it was a first! Because the very first time Nigeria saw that line, or indeed any Cameroon continental shelf or EEZ claim line, was when it received the Cameroon Memorial. The second thing is that, evidently enough, Cameroon's claim-line is depicted in a rather approximate fashion, and on a rather approximate map. Our cartographer has transposed the line, as best as he could, on to a clearer and less approximate map, which you can now see on the screen. (Tab 25) And the third thing is that Cameroon's claim-line, beyond Point G of the Maroua Declaration, is drawn well to the west of any equidistance line that might conceivably be drawn simply between the territories of Nigeria and Cameroon. It would not matter which basepoint on the coast was used, whether it is to the east or west of the Bakassi Peninsula. Whichever basepoint were to be used, the Cameroon claim-line is then placed far to the west of a simple equidistance line between Nigeria and Cameroon. This is obvious. (Tab 26) It can be seen from looking at the Cameroon claim-line on a map from which Bioko has been temporarily removed. The Cameroon claim-line so drawn is obviously untenable on a bilateral basis. The only reason for drawing the line the way it is, is because of Equatorial Guinea. Despite its protestations that this is a merely bilateral boundary, Cameroon finds it necessary to make a claim in relation to areas which are much closer to Nigeria and to Equatorial Guinea than they are to Cameroon. And the reason is, obviously, Equatorial Guinea. Unlike Cameroon, this Court cannot treat Equatorial Guinea as if it did not exist.

B. The Diplomatic Background

6. Mr. President, Members of the Court, so much for the geographical background. I turn to the diplomatic background.

7. Now as Cameroon demonstrates in its pleadings, there was considerable discussion between the Parties as to their inshore boundary, in the period between 1971 and 1975. That discussion took place on the basis that all the areas under discussion were classified by both Parties as territorial sea. Both Parties then claimed a territorial sea of 18 miles. That was increased by Cameroon to 50 miles in 1974. Nigeria for a time also extended its territorial sea, to 30 miles. (Tab 27) The Court can observe on the map which is on the screen at present that the radius of those 18-mile territorial sea claims goes clearly beyond Point G; *a fortiori* a 30- or 50-mile radius would do so. This is conceded by Cameroon, which says in its Memorial that the Maroua Declaration *"concerne essentiellement les eaux territoriales"* (CM, para. 5.66). But beyond Point G, there was and has been no discussion, no negotiation whatever.

8. Of course the Parties were aware that such discussions would have to be held. They were occasionally referred to in communiqués or in other statements, as something which should happen sooner or later. But such references are no substitute for actual discussions, for actual negotiation, exchange of positions, exchange of information about positions, let alone of attempts to reach agreement. They hardly rose to the level of talks about talks.

9. And the reason for this is clear. No sooner do the Parties contemplate the need for delimitation of areas beyond their territorial sea than they have to confront:

- first, their disagreement over the status of the Maroua Declaration,
- secondly, their dispute over the Bakassi Peninsula, and
- thirdly, wherever the boundary lies between them along the coast, the obvious impact of Equatorial Guinea, especially for Cameroon, and the evident need to involve that State in any discussions.

10. The Parties' awareness of the legal distinction between territorial sea and continental shelf delimitation, and of the need to involve Equatorial Guinea, goes back a long way. For example, at the Nigeria-Cameroon Joint Boundary Commission meeting held in June 1971, the parties agreed:

"that since the Continental Shelves of Nigeria, Cameroon and Equatorial Guinea would appear to have a common area the attention of the Heads of State of Cameroon and of Nigeria should be drawn to this fact so that appropriate action could be taken". (Ann. NPO, 21, p. 241.)

11. Difficulties then arose with respect to the inshore boundary, to which all the attention turned. Thus there was no reference to the continental shelf boundary in the joint declarations and communiqués in the period to 1975. The Cameroon Memorial refers only to meetings held in the years 1971 to 1975, in other words, to the period leading up to the Maroua Declaration which on Cameroon's own admission essentially concerned only territorial waters. But it is instructive briefly to review the bilateral exchanges, such as they have been, in more recent years. (Tab 28)

- The matter was raised by Nigeria at the inaugural session of the bilateral Joint Commission in August 1987, when Nigeria "proposed co-operation by the two countries in having a properly delineated boundary", and Cameroon gave a non-committal response (Ann. NPO 51; NPO, Anns., Vol. II, p. 388).
- At the Joint Expert Meeting in Yaoundé in August 1991, Cameroon's focus was on the validity of the Maroua Declaration; after an exchange of views on the land boundary, the Nigerian side proposed the establishment of a Gulf of Guinea Commission, with a view to *"la valorisation, l'harmonisation et la mise en commun des resources de la zone par les differents pays en vue de minimiser les risques de conflits"*. The Cameroon side was receptive, suggesting that Nigeria should raise the matter with the other governments concerned with a view to holding the first meeting in Yaoundé in December 1991 (Ann. NPO 52; NPO, Anns., Vol. II, pp. 410-411). Again there was not the slightest discussion at the bilateral level of the substance of any maritime boundary beyond Point G.
- At a ministerial meeting held at the same time, that is to say, in August 1991, Cameroon formally agreed to the establishment of the Gulf of Guinea Commission and agreed to hold an initial expert meeting to draft its basic instrument (Ann. NPO 53; NPO, Anns., Vol. II, p. 418).
- Then, at a Joint Expert Meeting held in Abuja in December 1991, again the focus was almost entirely on the validity of the Maroua Declaration. The Nigerian side asserted that

"little or no work had been jointly undertaken by both countries in that [that is to say, the maritime] sector", and this statement was contradicted by Cameroon *only* by reference to the negotiations leading to the Maroua Declaration (Ann. NPO 54; NPO, Anns., Vol. II, pp. 428-429). In other words, the Cameroon side did not deny that "little or no work" had been done on the maritime sector beyond Point G. It did not attempt to deny that fact.

- At the Joint Meeting on Boundary Matters held in Yaoundé in August 1993, Nigeria again raised the issue of the Gulf of Guinea Commission. Cameroon reaffirmed its agreement in principle to the proposal, and emphasized "the need to approach the other prospective member States, particularly Equatorial Guinea and Gabon". Their attitude had hitherto been reserved (Ann. NPO 85, NPO, Anns., Vol. III, p. 842). A further quotation from Cameroon: "It further added that the two delegations should arrange to meet with Equatorial Guinea with a view to determining the tripoint between the three countries" *(ibid.)*. The Minutes of the Meeting record that "The two Parties then agreed that a tripartite meeting should be convened to examine the issue of the determination of the tripoint" (Ann. NPO 55, NPO, Anns., Vol. II, p. 458, and see the Joint Communiqué, *ibid.*, p. 465).
- At the Second Session of the Joint Commission of Co-operation in Abuja in November 1993, Cameroon stated that it was ready to host the proposed meeting of the Gulf of Guinea Commission, involving Equatorial Guinea, in order to determine the tripoint. That meeting was to be convened by Cameroon before the end of March 1994. (See NPO, Ex 4.)

12. This was the situation when Cameroon lodged its first Application to this Court, on 28 March 1994. That Application concerned not only Bakassi but "the maritime boundary up to the limit of the maritime zones which international law places under their respective jurisdictions". I repeat, the position at the time of the first Application was as follows. First, no substantive discussions had been held between the Parties as to the delimitation of any maritime boundary beyond Point G. Second, it had been agreed that such discussions should be held. Third, an initial requirement was to involve Equatorial Guinea, either in direct trilateral talks or through the Gulf

of Guinea Commission. Four, Cameroon had agreed to convene an initial meeting of that Commission by the end of March 1994, something it has never done, then or since. And fifth, since 1975, every discussion on a bilateral level of the maritime boundary has been dominated by the controversy over the Maroua Declaration (see e.g. NPO, 82 at p. 820). In effect it has concerned the delimitation of inshore waters.

C. The State of the Parties' Maritime Claims

13. Mr. President, Members of the Court, I have to refer at this stage to one further matter (Tab 29), which is the current state of the maritime boundary claims of the Parties. As I have mentioned, Cameroon claims a 50-mile territorial sea. You can see now on the screen the effect of that claim, in terms of a line drawn 50 miles from the coast of Cameroon. Two things are clear. One, the 50-mile territorial sea cannot stand against Equatorial Guinea. And two, the 50-mile limit bears no relation to Cameroon's current claim-line in these proceedings, no relation whatever. But Cameroon's 50-mile territorial sea claim calls for several further observations.

14. The first such observation is this. Cameroon started this case, without notice or prior negotiation. It claimed the delimitation, *inter alia*, of the exclusive economic zone, but it does not have an exclusive economic zone. It has made no claim to such a zone. You can see on the screen the current state of Cameroon's maritime claims as publicly known. The table is taken from the 1998 edition of the *Annual Summary of Admiralty Notices to Mariners* — you will find it in Tab 30 of your bundle. As you can see, Cameroon claims a 50-mile territorial sea and nothing else. True, Article 77, paragraph 3, of the Law of the Sea Convention, to which both States are parties, confirms that "The rights of the coastal State over the continental shelf do not depend on . . . any express proclamation". So Cameroon as a coastal State has a continental shelf. But there is no equivalent provision in the Convention with respect to the exclusive economic zone. Such a zone has to be claimed, and Cameroon has not claimed it. It is asking the Court to delimit what is in law a non-existent zone.

15. Now no doubt Cameroon will say: "We can easily remedy that deficiency. We can immediately claim an exclusive economic zone". Perhaps they will do it on Thursday, Mr

President, Members of the Court? But this is no formality; that would be a new substantive claim. As the Court has rather recently had occasion to stress, "the critical date for determining the admissibility of an application is the date on which it was filed" (case concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment of 27 February 1998*, paras. 42-43; *ibid. (Libyan Arab Jamahiriya v United Kingdom)*, paras. 43-44, with reference to earlier authorities). But this brings me to my second point, which is that Cameroon, despite being the Applicant in this case, has made no effort to bring its maritime legislation into line either with its current delimitation claim against Nigeria, or with the rules of international law. There is a saying that one who seeks equity must behave equitably, but there is no sign of this from Cameroon. Despite its "Equitable delimitation", it has made no attempt to comply with its treaty obligations under the 1982 Convention. I am pleased to say that Nigeria, although it is in the position of a Respondent in this case, has put its house in order. You will see on the screen, and you will find in your folders, the Territorial Waters (Amendment) Decree of 1998, signed by the Head of State of Nigeria on 1 January of this year. The Decree establishes a 12-mile territorial sea; the Head of State evidently works on 1 January. Nigeria, of course, has long claimed a 200-mile exclusive economic zone. You will find that Decree in Tab 31 of your folders.

16. This discrepancy between the Parties' conduct is relevant to the issue of delimitation, as I will show. How can Cameroon say that it has made a good faith attempt to negotiate a maritime zone which does not exist, which it does not even claim? But quite apart from that, the Court may well feel there is an issue of propriety here. Is it appropriate for the Court in its first case between parties to the Law of the Sea Convention to delimit a maritime zone at the instance of a State which is manifestly in breach of that Convention? Is the Court to delimit a 50-mile territorial sea? Surely not.

D. Preliminary Objection 7: The Claim to Delimit the Maritime Boundary is Inadmissible at this Stage

17. Mr. President, Members of the Court, it is against this background that we must consider Nigeria's seventh and eighth Preliminary Objections. Let me deal first with the seventh Preliminary Objection, which is that the claim to delimit the maritime boundary is inadmissible at this stage. Now this Objection is put in two distinct ways, which I have to deal with separately. The first relates to the maritime boundary as a whole, the second to that part of it which is beyond Point G.

(1) ***The maritime boundary as a whole***

18. As to the maritime boundary as a whole, it is evident that this depends on the land boundary. The land boundary in the area of the Bakassi Peninsula is, Cameroon accepts, in dispute in this case. One cannot begin to delimit maritime zones until the basepoint from which they are to be drawn has been determined.

19. To this Cameroon responds (CO, para. 7.10) that a party could simply assert any land boundary claim whatever, no matter how implausible that claim, as a smokescreen to prevent the Court from determining maritime boundaries. But at the same time Cameroon accepts that there is a real dispute over the land boundary in the area of the Bakassi Peninsula (CO, para. 7.05). So this hypothetical problem it poses for the Court does not need to be dealt with. One need only observe that there is no question here of a merely colourable claim, a mere diversion from the maritime boundary — a claim unrelated to the actual positions taken by the parties, including their actual positions on the ground. The Court will have no difficulty in disposing of such colourable claims, if and when they are made.

20. Of course the parties to a special agreement might specifically accept that the two distinct operations of land and maritime delimitation were to be combined, implying thereby that they would address the maritime issues on the assumption that their opponent's territorial claim might be upheld. But the present case was not brought by special agreement. It was brought by a sudden unannounced unilateral application under the Optional Clause. Nigeria certainly never agreed that it would address the maritime boundary issue before the Court on the basis that its claim to Bakassi was without merit. And Cameroon has certainly not addressed the maritime boundary in the alternative, on the basis of Nigeria's claim.

21. The difficulty can be seen very clearly from Cameroon's observations. On the one hand it denies that there is any issue of the Court being called on to act non-judicially — that is to say, on the basis of a presumption that one party's case is correct (CO, para. 7.12). On the other hand it argues that this aspect of the seventh Preliminary Objection should be rejected because, in its opinion, "the land and maritime boundaries have already been drawn" (CO, para. 7.20). The Court exists, it seems, only to confirm the opinion of Cameroon (CO, para. 7.20). Yet this raises no issue of judicial propriety, so far as Cameroon is concerned (CO, para. 7.12).

22. Mr. President, Members of the Court, surely this much is clear. The situation presented by the conjunction of an admittedly controverted land boundary, as well as an adjacent undetermined maritime boundary, raises a serious *preliminary* question of method. Cameroon suggests that it is not a preliminary question but a question for the merits. All the support it can find is in passages from two decisions of the Court, in the *Nottebohm* and *Nuclear Tests* cases (CO, para. 7.23). But these passages relate to the Court's undoubted discretion to select, from among the legal arguments which have been made at a particular phase of the case, those arguments it will actually deal with in order to dispose of that case. This has nothing to do with the present issue. On the contrary, if the Court has the power to determine what is the true object and purpose of Cameroons' claim, as it said in the *Nuclear Tests* cases (*I.C.J. Reports 1974,* p. 253 at p. 263, para. 30), it must surely conclude that the true object and purpose of Cameroon's claim is the determination of the land boundary, and especially sovereignty over the Bakassi Peninsula, and consequentially, the maritime boundary offshore the Bakassi Peninsula. No one could possibly say that this was really a maritime boundary case and that the Bakassi dispute is a smokescreen.

23. Cameroon parodies Nigeria's argument, suggesting that Nigeria aims "at totally isolating the maritime and terrestrial questions" (CO, para. 7.22). On the contrary, Nigeria argues that the two are related in the following rather simple way. The maritime question is dependent upon the resolution of the terrestrial, and not vice versa. The maritime question, logically and legally, is a subsequent question. That does not make it "totally isolated"; international law does not know of a "totally isolated" maritime boundary claim. In law, all maritime boundaries are appurtenant to land territory.

24. All this suggests, at the very least, a postponement of the maritime phase of the case until after the land boundary issues have been dealt with. This may be a question of method, as Cameroon accepts (CO, para. 7.16). But, to repeat, it is a *preliminary* question of method.

(2) *The maritime boundary beyond Point G and the absence of any substantive negotiations*

25. I turn to the second part of Preliminary Objection 7, which relates to the maritime boundary beyond Point G. The position here is, again, quite simple. International law requires that in the first instance the parties should seek to establish their maritime boundary by agreement. But there has been no substantive discussion between the parties with a view to reaching such an agreement. In Nigeria's view, the Court cannot properly be seised by the unilateral application of one State in relation to the delimitation of an EEZ or continental shelf boundary, if that State has made no attempt to reach agreement with the respondent State over that boundary. Any such unilateral application is inadmissible.

26. The applicable rule in this respect is laid down by Articles 74 and 83 of the 1982 Convention, to which, as I have said, both Nigeria and Cameroon are parties. Article 74 applies to the EEZ. Article 83 applies to the continental shelf. The two provisions are in essentially the same terms. (Tab 32) Under common paragraph (1), delimitation is to be effected "by agreement on the basis of international law in order to achieve an equitable solution". Under common paragraph (2): "If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV". Common paragraph (3) deals with the situation "pending agreement as provided for in paragraph 1", and without prejudice to "the final agreement". Such arrangements are without prejudice to the final delimitation. And common paragraph (4) deals with the situation "where there is an agreement in force between the States concerned"; not surprisingly, such an agreement is governing. The word "agreement" appears in every paragraph of each Article, and a total of 12 times altogether.

27. This evident emphasis upon agreement is fully reflected in the Court's jurisprudence, as demonstrated in the citations in Nigeria's Preliminary Objections (paras. 7.18-7.25). As Cameroon has made no attempt in its observations to discuss these authorities, I will not go through them

again here. It is sufficient to cite the following passage from the *Gulf of Maine* case, where the Chamber stated as the first and "primary" principle of delimitation:

> "delimitation *must* be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result. Where, however, such an agreement cannot be achieved, delimitation should be effected by recourse to a third party possessing the necessary competence." *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 299, para. 112, (emphasis added). Cf. *ibid.*, at p. 311, para. 154, ("primary rule").

In similar vein the full Court in the *Libya/Malta* referred "primarily to the duty of Parties to seek first a delimitation by agreement, which is also to seek an equitable result." (Case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta),Judgment, I.C.J. Reports 1985*, p. 39, para. 46.) In the words of Prosper Weil, "No one would think of challenging the proposition that the Parties may not make a unilateral delimitation and are bound, in the first instance, to seek delimitation through agreement." (*The Law of Maritime Delimitation — Reflections* (Grotius, Cambridge, 1989) p. 110; in French, *Perspectives du Droit de la Délimitation Maritime* (Pédone, Paris, 1988) p. 119). At least, no one would think of doing so, before Cameroon actually did it.

28. Thus the applicable treaty provision, no less than the rule of general international law consistently referred to by this Court, refers issues of delimitation primarily to the Parties, and only secondarily, after attempts to reach agreement have failed, to third party settlement. States may not bring maritime boundary issues to Court preemptively, in order to prevent disputes arising. The question of the maritime boundary must first have been substantively discussed. But I have already shown that there have been no substantive discussions between the Parties as to the maritime boundary seawards of Point G. As to the exclusive economic zone there could not have been, because that zone on the Cameroon side does not yet exist. It follows that attempts to delimit that boundary by third party adjudication are inadmissible *at this stage*.

29. Faced with this argument, Cameroon says that conducting negotiations "is not a necessary prerequisite to the admissibility of an application" to this Court (CO, para. 7.27). Devoted as it purports to be to the law of treaties and to the decisions of this Court, Cameroon seeks to dismiss both in a single embarrassed sentence. According to it, apparently, Articles 76 and 83, paragraph 2, are to be reformulated so as exclude any reference to agreement. Even if no attempt has been made

to reach agreement, a State may resort unilaterally to the Court. That is not what the articles say, not what the Court has many times said.

30. Alternatively, Cameroon argues that the Parties have "sufficiently negotiated with a view to achieving delimitation of their respective maritime areas" (CO, p. 106). Indeed this is its main argument. It seeks to support that argument in three ways.

(1) In the first place, Cameroon says (CO, para. 7.31) that the Parties have always intended to negotiate their entire maritime boundary, and not to stop at Point G. But whatever their intentions may have been, the Parties have not discussed any point whatever beyond Point G. All the earlier negotiations related to the inshore boundary. All the negotiations, such as they have been, since 1975, have equally related to that part of the boundary. Cameroon cites not one document since 1975, whether a bilateral communiqué or an internal document, which indicates that the areas beyond Point G have been discussed. It cites no such document in its Memorial, as Nigeria pointed out in the Preliminary Objections (NPO, para. 7.12). It cited no such document in its Observations (see CO, paras. 7.39-7.40). It can be inferred that no such document exists.

(2) In the second place, Cameroon says (CO, para. 7.33) that the Maroua Declaration did not stop at territorial waters, but extended to the continental shelf, if not the EEZ. Indeed this is, for Cameroon, the "best illustration" of the point (*ibid.*). Mr. President, Members of the Court, it may be its best illustration but it is a pretty poor illustration nonetheless. For whatever the position may have been objectively, both the Parties at the time classified the areas in question as territorial sea. Cameroon still does, as I have mentioned. And yet this classification, contrary to positive law, is ignored by Cameroon. Cameroon was more candid in its Memorial, when it accepted that the Maroua Declaration *"concerne essentiellement les eaux territoriales"* (CM, para 5.66). So far as the Parties were concerned that was true at the time. And since the question is whether they have engaged in any discussions directed at the delimitation of the

continental shelf or the EEZ, their own shared attitude is critical. So far as they were concerned, by 1975 or 1978, they had not done so. And they have not done so since.

(3) In the third and last place, Cameroon asserts that "any further negotiation is now pointless" (CO, p. 107). I pass over the term "further negotiation", which conceals the fact that there has been no negotiation at all beyond Point G. Now it may be accepted that if Cameroon was now to call for negotiations on delimitation beyond Point G, Nigeria would be bound to reply that it is necessary first to reach agreement on the land boundary. But negotiations on a land boundary are not the same thing as negotiations on an EEZ or continental shelf boundary, and the attempts to reach agreement which are required by Article 76, paragraph 2 and Article 83, paragraph 2, of the 1982 Convention are quite different from any agreement on land boundaries. I have discussed that point already. Nigeria would also, no doubt, say that the Parties have agreed that any discussions of the offshore boundary must involve Equatorial Guinea, in order to determine the tripoint. They so agreed in August and November 1993. But as we have also seen, the involvement of Equatorial Guinea was required as a practical reality. The offshore areas of the three States are so intertwined that they all need to be involved in the negotiations. But it cannot excuse Cameroon from not negotiating with Nigeria that it has not negotiated with Nigeria *and* Equatorial Guinea over an area which affects all three States. Cameroon cannot argue that because it is practically required to negotiate with two States therefore it cannot be required to negotiate with any. Cameroon has not disclosed to the Court the state of its negotiations with Equatorial Guinea. It cannot justify its failure to comply with Articles 76 and 83 of the 1982 Convention *vis-à-vis* Nigeria by reference to negotiations, or the failure to negotiate, with a third State. Moreover trilateral negotiations would

be far from pointless, as the Parties have expressly agreed. So Cameroon's third argument fails as well.

31. Mr. President, Members of the Court, for these reasons Cameroon's unilateral claim for the delimitation of the maritime areas, and in particular those beyond Point G, is inadmissible. And there are good reasons not to regret that situation. The maritime boundary situation beyond territorial waters in the Bight of Biafra is a very special one. It is not to be resolved on a piecemeal basis, on the basis of unannounced unilateral applications from just one of the States involved.

E. Preliminary Objection 8: This Boundary Delimitation Directly Involves the Rights of Third States

32. I turn now to Nigeria's eighth Preliminary Objection. This raises a distinct issue, one which arises not from the general law of maritime delimitation but from the special geographical situation which faces the Parties, and the Court. It is thus logically and legally a sufficient basis for the dismissal of the claim to offshore maritime delimitation in its own right.

33. Nigeria's eighth Preliminary Objection is that the Court cannot determine the offshore maritime boundary of the two States on a bilateral basis in the absence of Equatorial Guinea, an intimately involved third State. (Tab 24) In order to understand this Objection, it is necessary to look to Cameroon's claim. You can see on the screen its claim-line, as set out on the map contained in its Memorial and headed *"La Délimitation Équitable"* (CM, p. 556). For the sake of clarity let me use our transposition of the line. (Tab 25) You will see that the Cameroon's claim-line runs from Point G directly westwards to Point H, then in a south-westerly direction through Points I, J and K and out into the direction of the South Atlantic.

34. Now it is important to note that in putting forward this claim-line, Cameroon is not acting as a sort of collection agent for Equatorial Guinea and Sao Tome and Principe. It has produced no power of attorney entitling it to act on behalf of the other two States. It is acting entirely on its own behalf. Cameroon claims to be entitled to a strip of territorial sea and continental shelf to the east and south of the line G through K and beyond. The areas immediately to the east and south of that line are in its view continuously part of the maritime territory of Cameroon. And the Court is called on so to decide. This appears explicitly from Cameroon's submissions (CM, para. 9.1 *(c)*),

and from the text of its Memorial (CM, p. 555, para. 5.127,). In short, Cameroon claims a strip of maritime territory bordered by that line. It does not say how wide the strip should be but obviously it must have some significant width, otherwise it could not be exploited. Perhaps in the next round Cameroon will tell us how wide it should be.

35. Now, Mr. President, Members of the Court, you can see the implications of the Cameroon claim-line from the series of maps in your folders which show the distances of points H, I, J and K from the various Gulf States as well as from the Bakassi Peninsula itself. Let me take you through them.

- (Tab 33) First of all, *Point H.* This is less than 26 miles from Nigeria, more than 34 miles from Bakassi, 41 miles from Equatorial Guinea, 50 miles from Cameroon proper. As to Point H, the position of Equatorial Guinea, as compared with Cameroon, would prima facie be excluded if and only if Bakassi were held to belong to Cameroon. But the Court as a judicial body cannot assume a jurisdiction over the maritime boundary which it could only exercise, if it had *already* decided to reject the legal position of one of the two Parties in the case before it. That would be to show obvious prejudgment. So *even as to Point H*, the admissibility of Cameroon's claim is highly questionable. (I say nothing, of course, about the merits of that claim.)
- (Tab 34) But, Mr. President, the plot thickens. Look at *Point I.* This is about 44 miles from Nigeria, more than 52 miles from Bakassi, 34 miles from Equatorial Guinea, 62 miles from Cameroon proper. As to Point I, Cameroon might be slightly more generous to Nigeria than it is with Point H, because Point I is closer to Equatorial Guinea than it is to Nigeria. But the generosity is not at Cameroon's expense! Having taken around Point H areas relatively clearly appurtenant to Nigeria, Cameroon compensates Nigeria with areas to the west of Point I arguably appurtenant to Equatorial Guinea.
- (Tab 35) Now to *Point J.* This is about 79 miles from Nigeria, 67 miles from Equatorial Guinea, more than 115 miles from Bakassi, and 118 miles from Cameroon proper. But now there is a new player in the game, Sao Tome and Principe. Point J is 80 miles from Principe. In other words, Point J is much closer to Nigeria, Equatorial Guinea and

Principe than it is to Cameroon. It is obvious that Nigeria and Sao Tome and Principe could not purport to decide on maritime claims to Point J in the absence of Equatorial Guinea. How on earth can Cameroon require the Court to do so, as between itself and Nigeria? Cameroon which is respectively 37, 50 and 38 miles further away from Point J than these other three States.

- (Tab 36) Mr. President, Members of the Court, let me complete the demonstration quickly. Look at *Point K*. It is about 100 miles from Nigeria, 103 miles from Equatorial Guinea, only 66 miles from Principe and around 150 miles from Cameroon. I should say that these mileages may be slightly approximate because of the approximate character of the original Cameroon map.

36. And not merely are Equatorial Guinea and Sao Tome and Principe not parties to this case. The Court has no information as to their attitudes to Cameroon's extraordinary maritime claims to offshore areas prima facie appertaining to them. (Tab 24) The Court will recall the attempted Italian intervention in the *Libya/Malta* case. There the third State, Italy, sought to intervene to express an interest in the affected areas. Equatorial Guinea's interest in the areas here is much greater even than Italy's was in *Libya/Malta*. On the basis of that decision, imagine the areas the Court would have to exclude from the delimitation in order to avoid impinging on any areas potentially appertaining to the intervening State. But is the jurisdictional position of the Court any better because the Court has no such intervention, has no information about the claims of the third State? How could it be?

37. It should be stressed that there is no question here of declaring a *non liquet*, as Cameroon pretends (CO, para. 8.03; also para. 8.25). The question is simply of the Court not directly prejudicing or prejudging the rights of third States by a delimitation that necessarily calls those rights in issue. Nor is it a question, directly at least, of the Court being called on to apply the *Monetary Gold* principle, although the policies that underlie that decision are certainly engaged. Whatever the position with respect to land boundaries, and tripoints on land or lacustrine territory — a matter which has been discussed by my colleague Professor Brownlie — the position

of maritime boundaries is different. That distinction was expressly made by the Chamber in the *Burkina Faso/Mali* case. In that case the Chamber said:

> "a court dealing with a request for the delimitation of a continental shelf must decline, even if so authorized by the disputant parties, to rule upon rights relating to areas in which third States have such claims as may contradict the legal considerations — especially in regard to equitable principles — which would have formed the basis of its decision" (*I.C.J. Reports 1986,* p. 578, para. 47).

38. Can it possibly be doubted that this is the case here? Can it possibly be doubted that Equatorial Guinea has claims which "may contradict the legal considerations, especially with regard to equitable principles", which would form the basis of any decision of the Court as between Cameroon and Nigeria? (Tab 24) One has only to look at Cameroon's "claim-line" as portrayed for the first time in its Memorial (CM, p. 556). Cameroon's claim calls on the Court to say that the equities require Equatorial Guinea to be deprived of significant areas of continental shelf and EEZ which are closer to it than Cameroon. I remind the Court that the line from Points H to I on this map represents a delimitation between Nigeria and Cameroon. We discover, surprisingly, there is no tripoint. Thus points to the east of that line are claimed to appertain continuously to Cameroon. But from Point G to Point K most of those points, something between 80 and 90 per cent of them, are closer to Equatorial Guinea and Sao Tome and Principe than they are to Bakassi or Cameroon, somewhere between 80 and 90 per cent of the points. They are therefore areas to which Equatorial Guinea or Sao Tome and Principe or both of them have perfectly legitimate claims. The whole of the situation here hinges around Equatorial Guinea, and Cameroon's map, "The Equitable Delimitation" portrays that reality only too clearly. *The* equitable delimitation. *The* basis for the line from Point G through Point H to Point I and beyond. For Cameroon to claim that the Court can decide this case without any regard to the implications of its decision for third States is totally unrealistic. And this claim is belied by Cameroon's own reasoning in its Memorial, by its own account of how, where and why the Court should draw the line (CM, paras. 5.107-5.128). By its own map.

39. Moreover not merely is this true in fact. The two Parties have agreed that it is true. I have referred to this already, and need only quote the relevant passage from the Joint Communiqué of the meeting held in Yaoundé in August 1993, which reads as follows (Tab 37):

> "After underscoring that the determination of the triple point is essential to the delineation of the maritime borders between Nigeria, Equatorial Guinea and Cameroon, the two Parties agreed that a tripartite meeting should be convened to examine the issue of the determination of the triple point and the Gulf of Guinea Commission project." (Ann. NPO 55, NPO, Anns., Vol. II, p. 865.)

I repeat, "the determination of the triple point is *essential*". Yet it is now said that the Court can decide the full extent of Cameroon's maritime entitlement, without any adverse implications for Equatorial Guinea or for that matter Sao Tome and Principe. This is obviously untrue.

40. In its observations, nonetheless, Cameroon seeks to reply to this objection in a number of ways (CO, paras. 8.05-8.33). I could count seven of them, and *faute de mieux* I will deal with them in numerical order.

41. *First*, Cameroon refers to the line of cases enunciating the *Monetary Gold* principle, arguing that the legal interests of third States do not constitute the subject-matter of the decision the Court is asked to reach in a bilateral delimitation (CO, para. 8.06). In general that may be true in maritime delimitation cases, even in those in which the Court is asked to draw a line, as distinct merely from laying down the applicable principles. But this is a very special situation, quite unlike any the Court has previously had to face. It is a situation of almost complete overlap between the offshore claims of the applicant State and a third State. As to the substantial areas claimed by Cameroon which are closer to Equatorial Guinea than they are to Cameroon, the subject-matter of the present case does precisely concern the legal interests of a third State.

42. *Secondly*, Cameroon repeats, and repeats, that it is only asking for the determination of the boundary as between Nigeria and Cameroon (CM, para. 8.05, para. 8.07 (twice), para. 8.12, para. 8.23). The point is self-evident. The Court has no competence to do anything else. But what it cannot do in form, it must not do in substance either, and certainly not in the specific context of maritime delimitation. It cannot attribute by a judgment having the force of *res judicata* as between Nigeria and Cameroon an area which on the face of it is a matter of primary concern to Nigeria and Equatorial Guinea. Any such judgment will of course not be binding on Equatorial Guinea, which will be entitled to insist on its legal interests in the areas concerned against both Nigeria and Cameroon. Assume that Equatorial Guinea decided to bring a case of maritime delimitation vis-à-vis Cameroon before this Court. In such a case, there would be only two possibilities. Either

the Court's view of the equities would be exactly the same, in which case everyone would see that the earlier judgment did in truth dispose of "the legal considerations — especially in regard to equitable principles" affecting Equatorial Guinea. Or it would be different, in which case the earlier judgment would be discredited.

43. *Thirdly*, Cameroon seeks to demonstrate by a brief analysis of the earlier cases that the Court has always drawn a maritime boundary between two States when it had jurisdiction to do so, even if that line had implications for a third State (CO, paras. 8.13-8.24). As it accepts, the relevant cases are only two, *Tunisia/Libya* and *Libya/Malta*. Both were special agreement cases, not brought under the Optional Clause. That itself is significant, because when two States specifically agree that a particular area is to be delimited, they cannot subsequently complain if the Court fulfils the specific mandate they have given it. But nonetheless it is worthwhile discussing the two cases briefly.

44. The line indicated by the Court in *Tunisia/Libya* can be seen on the screen now (Tab 38). It will be obvious that the Court was careful to preserve the position of Malta in relation to that line. It did not indicate the tripoint, and it took account of the approximate areas appertaining to Tunisia and Libya only with a view to testing the result, in general terms, under the criterion of proportionality (*I.C.J. Reports 1982*, p. 91, para. 130). It noted "How far the delimitation line will extend north-eastwards will, of course, depend on the delimitations ultimately agreed with third States on the other side of the Pelagian Sea" *(ibid.)*. This was a wholly different situation from that which confronts the Court here, and one far less extreme. In the present case, Cameroon asks the Court effectively to ignore the offshore State, Equatorial Guinea, and to attribute to Cameroon areas which are much closer to Equatorial Guinea than they are to Cameroon. The contrast between Cameroon's neglect for the position of the offshore third State and the Court's concern to protect the position of Malta in *Tunisia/Libya* case is obvious.

45. That concern was even more obvious in *Libya/Malta*. Although the Court refused Italy's request to intervene, it took full account of the possibility of the legal interests of third States being affected, and thus only dealt with a part of the area in question. The Court confined itself to the

area which was free of the claims of Italy, and it did so against the urgings of both Libya and Malta. And the Court noted:

> "It is true that the Parties have in effect invited the Court . . . not to limit its judgment to the area in which theirs are the sole competing claims; but the Court does not regard itself as free to do so, in view of the interest of Italy in the proceedings." (*I.C.J. Reports 1985*, p. 25.)

Accordingly the Court confined the area within which it had jurisdiction as between Libya and Malta to the area you now see shaded on the screen (Tab 39). It should be stressed that the Court treated this exclusion not as a prudential matter but as one that went to its jurisdiction to decide. As it said:

> "A decision limited in this way . . . signifies simply that *the Court has not been endowed with jurisdiction to determine* what principles and rules govern delimitations with third States, or whether the claims of the Parties outside that area prevail over the claims of those third States in the region." (*Ibid.*, at p. 26, para. 21 (emphasis added).)

That was a decision by the full Court, by 14 votes to 3. On the point of the geographical restriction of the area within jurisdiction, the majority was larger still.

46. In its observations, Cameroon makes a number of points about this decision. It says that the decision to refuse the Italian request to intervene was "a result which would hardly be credible today, following the successful Nicaraguan intervention in the *El Salvador/Honduras* case" (CO, para. 8.17). Well, that remains to be seen. Nicaragua's request to intervene was granted only to a rather limited extent. But the more fundamental point is this, the Court's jurisdiction over a dispute cannot be increased or extended by an intervention under Article 62, under which the intervener does not become a party properly so-called. The jurisdiction either exists *inter partes* or it does not. Non-party intervention may give the Court more information, but it cannot give it more jurisdiction, more power. And anyway, there is no indication, no indication whatever, of any intervention on the part of a third State.

47. This leads to a further argument made by Cameroon against the *Libya/Malta* Judgment. It says that "the Court did not find that it lacked jurisdiction" (CO, para. 8.17). This is, with respect, simply wrong. The Court said expressly, that it lacked jurisdiction as to the areas where delimitation impinged on the legal rights or interests of third States. I have cited the passage already (*I.C.J. Reports 1985*, p. 26, para. 21). To recall, the Court said "it had not been endowed

with jurisdiction to determine what principles and rules govern delimitations with third States". (Tab 25) And it must be stressed that as compared with the situation in *Libya/Malta*, the geographical situation here presents an even more "exceptional difficulty" — this time I am using Cameroon's own language, "exceptional difficulty" (CO, para. 8.17). Indeed, Cameroon itself admits that it is more difficult *"a fortiori"* (CO, para. 8.26). Within a short distance after Point G, one is in waters to which Equatorial Guinea has legal interests, and may have a valid claim. In its Memorial, Cameroon was remarkably clear about this, although a fit of coyness has come across it for the purposes of the Preliminary Objection. But listen to what it said in its Memorial:

> "The line must also take account of the presence of the large island of Bioko, not in order to establish the rights of Cameroon as compared to those of Equatorial Guinea . . . but rather in order to reflect the existence of that large island as a geographical fact, operating to the detriment of Cameroon in an area which should be equitably divided among all the States of the region . . . [A] situation like the one prevailing in the present case requires *a collective balancing of the equities, advantages and disadvantages among the different States along the shores of the Bight of Biafra.*" (CM, para. 5.114 (emphasis added).)

Now this passage might be objected to as being redolent of an attempt to correct geography, an attempt the Court has repeatedly disavowed. But that is not the issue at this phase. For Cameroon in this passage acknowledges the truth of the situation, which requires a "collective balancing", not a bilateral one, and certainly not a bilateral one with Nigeria. And this is where the absence of any collective, or for that matter bilateral, discussions of the boundary, despite Cameroon's earlier agreement that such negotiation was "essential", is particularly telling.

48. In this context it should be stressed that the principal reason Cameroon is shelf-locked is not Nigeria's adjacent coast but Equatorial Guinea's opposite one. Cameroon cannot seek to evade that difficulty by bringing, unannounced and without prior negotiations, a case against Nigeria.

49. Then, Cameroon argues that if the Court cannot decide this case its role in maritime delimitation will decline (CO, para. 8.22). But that completely fails to acknowledge the extreme and special circumstances of the present case, made even more extreme and special by the fact that Cameroon brought the case without prior negotiations as to the offshore boundary and contrary to the agreement previously reached that the Parties would involve the obviously affected third State.

The implications for the Court's general role in maritime delimitation are negligible. But in any event, the Court has to do justice according to international law, including its own previous decisions as to the extent of its jurisdiction *inter partes*. That is what will create and sustain the faith of governments in its role.

50. Then, Cameroon points out that the line it proposes takes full account of the rights and interests of Equatorial Guinea and even of Sao Tome and Principe (CM, paras. 5.120-5.126, 5.135). (Tab 24) Well, in the light of the maps I have shown earlier that is simply not true. But whether or not it is true, it cannot improve the situation. The Court does not have jurisdiction over the rights of third States just because the Applicant proposes to treat those third States generously! Just as soon as the rights and interests of those States are directly in issue, the Court cannot exercise its functions. The point can be seen by considering what Nigeria would have to do in order to respond to the line presented by Cameroon and entitled "*The* Equitable Delimitation", which you can now see. Nigeria would have to argue the equities of the situation not only as against Cameroon but in effect as against the other States as well. The Court cannot listen to such an argument, let alone decide it. Cameroon's claim is hopelessly inadmissible.

51. Then Cameroon argues that the Nigerian position is not preliminary (CO, para. 8.28). Mr. President, Members of the Court, if it goes to jurisdiction it is preliminary. And as I have shown, it goes to jurisdiction. The reason it was dealt with only at the merits stage of *Libya/Malta* was that the parties to the Special Agreement were understandably urging the Court to ignore the interests of the third State in a case where they had both agreed to jurisdiction and where there was no preliminary phase.

52. Then, and the Court will be pleased to hear, finally, Cameroon says that States often carry out by bilateral agreements delimitations potentially affecting third States, which can rely on the non-opposability of such delimitations (CO, paras. 8.29-8.32). But that has nothing to do with the present case, which involves a clear judicial determination of "the legal considerations — especially in regard to equitable principles" affecting third States. In the rough and tumble of international negotiations two States may perhaps seek to impinge on the position of a third State and try to get that State to recognize or acquiesce in their agreement. The Court is in a different position, as it

made clear both in *Libya/Malta* and in *Burkina Faso/Mali*. It is held to the standards of judicial jurisdiction.

F. Conclusion

53. Mr. President, Members of this Court, for all these reasons Nigeria submits that the Application of Cameroon, so far as it relates to the maritime boundary, should be dismissed. Such a dismissal would, of course, be without prejudice to the rights of either Party to commence independent proceedings relating to the maritime boundary, if and when the legal preconditions for bringing such proceedings have been met. But at present they have not been, and Nigeria invites the Court to draw the necessary conclusions.

Mr. President, Members of the Court, that concludes the argument on behalf of the Republic of Nigeria in this first oral phase. Thank you for your patient attention.

The PRESIDENT: Thank you very much, Professor Crawford. The Court will adjourn and meet again on Thursday at 10 o'clock to hear the argument of Cameroon.

The Court rose at 12.40 p.m.