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The PRESIDENT: Veuillez vous asseoir. Professeur Cot, veuillez poursuivre.

Mr. COT: Mr. President, Members of the Court, you will recall that in speaking yesterday morning on Nigeria's third Preliminary Objection, I showed that our opponents, for all their talent, had not succeeded in transforming a short subparagraph IX *(g)* of the Statute of the Lake Chad Basin Commission into an impressive process for the binding and exclusive settlement of disputes. It remains for me to consider an argument put forward by Mr. Brownlie on an alternative basis. I have some doubts, moreover, on the soundness of the principal argument.

III. The Court has the duty to determine the territorial dispute in the Lake Chad region

35. In the alternative, said Mr. Brownlie, addressing the Court, and I summarize his words: if the Court does not find that the LCBC has exclusive jurisdiction, it should at least show the "judicial restraint" which it applied in the *Northern Cameroons* case.

36. Mr. President, I have re-read the Judgment of 2 December 1963 closely. I found no analogy with the present case, apart from the presence of Cameroon. In the *Northern Cameroons* case the Court held that it could not decide the case, because its Judgment: "must have some practical consequence in the sense that it can affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations" (*I.C.J. Reports 1963,* p. 34).

37. Yet in the present case it is indeed a matter of protecting existing, legally valid rights, rights guaranteed under treaties, it is a matter of taking decisions relating to existing legal situations which should continue to exist; lastly, if need be, it is a matter of holding Nigeria responsible.

38. Apart from very unusual hypotheses, and the *Northern Cameroons* case was unusual, the Court is at pains not to rely upon the concept of "judicial propriety" without having serious grounds to do so. As Sir Gerald Fitzmaurice recalled in the same case:

> "it is in a general way evident that courts exist in order to go into and decide the cases they are both duly seised of, and have jurisdiction to entertain, without picking and choosing which they will pronounce upon, and which not" (*ibid.,* p. 101).

39. I would add that the Court's decision would in no way hinder the work of demarcation undertaken by the LCBC. On the contrary, in recording, irrefutably, the delimitation of the frontier the Court would confirm the framework within which the LCBC works and would thus illustrate the complementarity of the intervention of the two institutions.

40. All in all, the Court has no reason not to give a ruling on the delimitation in the Lake Chad area. Cameroon even believes, respectfully, that it is the Court's duty to do so.

41. Mr. President, Members of the Court, in the final analysis, Nigeria's third Preliminary Objection does not present much of a legal difficulty, as the Court will well understand. Basically, it is a matter of applying the elementary principles of international law: the principle of the complementarity of the means of settling disputes peacefully and the principle of the jurisdiction of the Court to decide a legal dispute given the consent of the parties involved.

42. Cameroon would willingly have avoided recalling these elementary principles and has been obliged to do so by it opponents. We respectfully request the Court to dismiss this objection which has no foundation whatsoever in fact or in law.

Mr. President, Members of the Court, I come now to Nigeria's fourth Preliminary Objection.

Fourth Preliminary Objection:

The Court cannot determine the boundary in Lake Chad owing to the existence of a tripoint

1. According to this fourth Preliminary Objection: "The Court should not in these proceedings determine the boundary in Lake Chad to the extent that that boundary constitutes or is constituted by the tripoint in the Lake" (NPO, 4.12).

2. I would point out straightaway that the Republic of Cameroon does not request the Court to "determine the tripoint in Lake Chad", contrary to our opponents' assertion, but to adjudge and declare that the boundary follows the astronomical co-ordinates specified in our submissions. In other words, we are not requesting the Court to recognize the boundary of Cameroon as far as a tripoint, but as far as a point determined by the treaty instruments in force. We are not requesting

you to "determine that tripoint" in a manner authoritatively binding on the third State, which is Chad.

I. The consistent jurisprudence of the Court permits it to delimit a treaty frontier which may concern a third State

3. Your consistent jurisprudence permits you to delimit a treaty boundary which may concern a third State. You have never refused to rule on a delimitation because a tripoint existed. In the *Frontier Dispute (Burkina Faso/Mali)* case, the Chamber considered 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." (*I.C.J. Reports 1986,* p. 577, para. 46).

4. You have confirmed this jurisprudence in the treaty delimitation cases which have been referred to the Court: the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) I.C.J. Reports 1992,* pp. 401-402, para. 68); the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, case (*I.C.J. Reports 1994,* p. 33, para. 63). And it is this situation of treaty delimitation we now face.

II. Lake Chad has in fact been the subject of a treaty delimitation

5. This delimitation results from the superimposition of successive treaty agreements concluded between colonial Powers at the end of the nineteenth and beginning of the twentieth centuries. You will find a precise list of them in our pleadings.

6. The Milner-Simon Declaration of 10 July 1919 establishes the present boundary. The co-ordinates of the tripoint, to which reference is expressly made, are thus settled. The boundary modification concerns the bipoint on the southern shore of Lake Chad, moved eastwards by reason of the establishment of separate mandates in favour of France and Great Britain over the two portions of the Cameroons. The Thompson-Marchand Agreement of 9 January 1930 makes no change at all in the definitive lake boundary, which is the subject of a marking-out operation within the framework of the LCBC, as we saw yesterday morning.

7. As you will note, this group of treaties that have enabled the boundary in Lake Chad to be delimited by conventional means does not bear principally on the lake boundary, but on a much more extensive section of boundary, mainly on land. The reason why I make this observation is to emphasize that, in the minds of the draftsmen of these various agreements, there was no reason to deal in a special way with the lake boundary and apply a different régime to it than to the land boundary.

8. Throughout these procedures the parties to the agreements mentioned, as well as the League of Nations and the United Nations (may I say, as Maurice Kamto did yesterday, that the international boundaries of Cameroon pay scant heed to the League of Nations and the United Nations), the parties, as I say, at no time doubted the existence, the need and the lawfulness of a treaty delimitation in Lake Chad. Having been established definitively in 1919, and completed in 1931, this delimitation has not been called into question since. It was not until the Nigerian claim to Darak of 14 April 1994 (MC, Ann. 356) that the first challenge emerged to the lake boundary determined by the treaties.

III. The pertinent treaties apply to lacustrine spaces

9. Lacustrine spaces, Mr. President, Members of the Court, have no claim to be exempt from your jurisprudence on the tripoint, above all when they have been the subject of a treaty delimitation. We thought this point was taken for granted. One or two allusions in the Nigerian pleadings, one or two perceptible hesitations in the statements of its eminent counsel, induce us to explain our position on this issue.

10. It is true that no reason exists to establish different régimes for a delimitation operation according to whatever environment is involved, as the arbitral tribunal stated some while back in the *Guinea-Bissau/Senegal* case (cf. *Delimitation of the Maritime Boundary Guinea-Bissau/Senegal, RGDIP,* 1990, p. 253, para. 63). For my part, however, I tend to believe like Mr. Crawford that "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." (CR 98/2, p. 39, para. 2). The

geographical situation and accordingly the legal logic applicable, in particular to the situation of third States in regard to the delimitation, are fundamentally different (cf. in this respect *Frontier Dispute (Burkina Faso/Mali), I.C.J. Reports 1986*, p. 578, para. 47). I believe too that, starting from a correct premise, Mr. Crawford reaches a mistaken conclusion. But our argument to that effect will be reserved for the proceedings on the merits, as my colleague Keith Highet will explain to you.

11. By and large scholarly opinion concurs in assimilating lake boundaries and land boundaries. Above all it is unanimous in recognizing and endorsing the practice of the treaty delimitation of lacustrine spaces: Colombos (*International Law of the Sea*, 4th ed., 1959, p. 164); *Oppenheim's International Law* (Jennings and Watts, Vol. I, Parts 2 to 4, 9th ed., 1992, p. 590); Hyde (*International Law*, Vol. I, 2nd ed., 1947, p. 483); Pondaven (*Les Lacs-frontière*, Paris, Pedone, 1972, pp. 59 and 70). Recourse to the median line or to principles of equity is envisaged only where there is no treaty system.

12. Moreover, the recent changes in Lake Chad throw serious doubts on the analogy which Nigeria draws between lacustrine spaces and maritime spaces. (In using the expression "Lake Chad", incidentally, I am being a little imprecise, and please forgive me; generally speaking our opponents, more accurately, use the expression "Lake Chad area" to show that, even in the section covered by the jurisdiction of the LCBC, the boundary is of a mixed kind, part land, part lake). Be that as it may, the drying-up of the lake has made the comparison with maritime spaces laughable. In the dry season Nigeria is no longer even a riparian of Lake Chad, as the Agent of Nigeria has shown quite forcefully with the aid of a recent Michelin map, you will recall. According to that map, in the dry season Nigeria is some 20 km from the shores of Lake Chad. The problems posed by the management of Lake Chad have nothing to do with the delimitation of the territorial sea or the exploitation of the continental shelf. I would observe that the LCBC marking-out operations posed no major problem other than the confusion between a boundary beacon and a telegraph pole, a problem which does not especially lend weight to the analogy

between Lake Chad and maritime spaces. The parties to the successive delimitation agreements took due account, moreover, of the particular nature of Lake Chad, of its considerable fluctuations in level and therefore in its "shores", by opting for a delimitation by astronomical co-ordinates rather than by reference to a "median line" which may vary at the whim of hydrological changes (Pondaven, *op. cit.*, p. 107).

13. Clearly, therefore, what we have here is a treaty delimitation by mutual agreement. Accordingly, whatever the status of the territory concerned — land, river, lake or maritime — the international agreement is binding on the parties. *Pacta sunt servanda.*

IV. The analogy with the *Libya/Malta* case bears no scrutiny

14. Mr. President, Members of the Court, counsel for Nigeria has placed great reliance on the *Libya/Malta* Judgment (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment*, pp. 13 *et seq.*) in order to dispute the application of your traditional jurisprudence on the tripoint to the present case and in order to seek yet another reversal of it. I for my part will not pronounce on the safeguarding of rights of third parties in maritime spaces and on the suggestion made by our opponents that there should be a different trend, a change of direction in the Court's jurisprudence, since that is not the purpose of our discussion. And I see one or two fundamental objections to applying such arguments to the delimitation of the boundary in the Lake Chad area.

(a) *The distinction between maritime spaces and land or lacustrine spaces*

15. The first fundamental objection: it has to do with the distinction between maritime spaces on the one hand, and land and lacustrine spaces on the other. As the Chamber of the Court put it in the *Frontier Dispute* case:

> "The legal considerations which have to be taken into account in determining the location of the land [and I would add lacustrine] boundary between parties are in no way dependent on the position of the boundary between the territory of either of those parties and the territory of a third State." (*I.C.J. Reports 1986*, p. 578, para. 47.)

16. The situation in the Lake Chad area is indeed fundamentally different from that in the *Libya/Malta* case. From the geographical point of view there is no high sea, no contiguous space

not subject to any territorial sovereignty. I would observe in passing that moreover, in *Libya/Malta*, the issue was in no way that of a tripoint. The situation differs legally too, the rules of delimitation are different, the recourse to considerations of equity — even more marked where a continental shelf is concerned, as in the *Libya/Malta* case — is inconceivable in regard to a land or lacustrine dispute except in very particular circumstances and to a very limited extent. I would add, and remind you, that in the case of a conventional delimitation by treaty there is no question of this.

(b) ***The distinction between treaty settlement and non-treaty situation***

17. In the *Libya/Malta* case, no treaty delimited the spaces disputed between the three States concerned. The dispute therefore bore not merely on the line of delimitation, but also, and perhaps to a greater extent, on the principles of delimitation themselves.

18. Once a boundary is defined by a group of treaties, as in the present case, any dispute relates to the validity, to the interpretation of the treaties concerned. The Statute of the Court, incidentally, recognizes the specificity of this situation in the provision in Article 63, which automatically makes intervention available to States parties to the conventions in question, thus offering them an additional safeguard for asserting their rights.

(c) ***Difference according to whether the third State has put forward its views or not***

19. The third objection is that, in the *Libya/Malta* case, the third State had made its claims known. Italy had requested, unsuccessfully, to intervene. It had acquainted the Court with its views on the delimitation envisaged. And the Court had taken due account of that position in the following terms of its Judgment:

> "The Court, having been informed of Italy's claims, and having refused to permit that State to protect its interests through the procedure of intervention . . . ensures Italy the protection it sought . . . The Court . . . will confine itself to areas where no claims by a third State exist." (*I.C.J. Reports 1985*, p. 26, paras. 21 and 22.)

20. Now in the present case, Mr. President, in no way did Chad, a third State, challenge the territorial delimitation on the basis of which the demarcation was undertaken by the LCBC. The

representatives of Chad took part in the demarcation operations. President Déby, the President of the Ninth Summit of the LCBC, had occasion moreover to say the following in his opening address:

> "all our States should ratify the Treaty on the Demarcation of Boundaries in the Conventional Basin. By so doing, we would be able to attend, more positively, to the other numerous issues that require our attention." (NPO, Ann. 108, p. 1078.)

21. So let me be understood correctly. Cameroon does not intend to make the Republic of Chad say more than Chad itself has said. Cameroon is not entrusted with defending the interests of Chad and has no mandate to do so (*Territorial Dispute, I.C.J. Reports 1986*, p. 579, para. 48). It seems to me, though, that the absence of any challenge by the State concerned to the delimitation and the demarcation is a fact, a fact which the Court must take into account. At the very least, there is no reason to think that Chad is hostile to the principle of a decision by the Court in the territorial dispute between Cameroon and Nigeria. The Court's determination cannot affect Chad's rights under Article 59 of the Statute. As to its right of intervention under Article 63, that remains intact. In the instant case, these provisions, it seems to us, safeguard the rights of the third State. In conclusion, Mr. President, Members of the Court, let us come back to the LCBC, the Lake Chad Basin Commission, for one or two closing remarks.

V. The existence of the LCBC does not justify a departure from the general principles of the law of nations in regard to territorial delimitation

22. As reformulated on Tuesday by Mr. Brownlie, the fourth Preliminary Objection appears as a logical sequel and ancillary to the third Objection. In essence, Nigeria considers that the Court cannot deal with the tripoint, the reason being the exclusivity of the jurisdiction accorded by the Parties to the Lake Chad Basin Commission in the matter of dispute settlement.

23. You will recall the point of departure in the reasoning of Professor Brownlie. That little subparagraph *(g)* of Article IX of the Statute of the LCBC. In the meantime, that little subparagraph expanded, it swelled up, and the LCBC with it. This modest, technical and valuable organization of technical co-operation now finds itself promoted to the rank of — and I quote my eminent colleague — a "multilateral and institutional public order system", no less. Really! Its

existence entails the application of a *sui generis* legal régime of quite remarkable characteristics, pushing far ahead with legal integration, if we are to believe Professor Brownlie. We learn that the member States are all parties to all the territorial delimitations in the area. Thus the four riparian States are not third States in respect of the delimitation of the *two* tripoints. The settlement of the territorial dispute between Cameroon and Nigeria cannot in those circumstances be *res inter alios acta* for Chad and Niger, which are said to have a direct legal interest in it (CR 98/2, p. 15). How have these various legal relationships of a public order nature appeared? Mr. Brownlie has not explained that to us. Yet I have tried all the same to understand, and I do not believe I distort our colleague's thinking too much by pointing out that in his analysis, the LCBC entails something like a suspension of the sovereignty of the member States and something like a replacement of that sovereignty by a kind of condominium. In a way, we have an antarctic régime, obviously without the pack ice, the penguins or rather the razorbills, and the polar bears too, bearing in mind the climate which prevails in the Sahel.

24. This is stretching the little sentence in Article 9 *(g)* beyond all reason to the point of an amiable legal eccentricity. I shall not revert, Mr. President, Members of the Court, to the argument I expounded yesterday in connection with the third Preliminary Objection. The legal, administrative and technical framework set up by the Statute of the LCBC in no way justifies a departure from your jurisprudence on the tripoint.

25. For all these reasons, the Republic of Cameroon requests the Court to reject the fourth Preliminary Objection of Nigeria. Mr. President, I would now request you to give the floor to my colleague, Professor Tomuschat, to expound the positions of the Court on the fifth Preliminary Objection.

The PRESIDENT: Je vous remercie, Professeur Cot. Je donne la parole au Professor Tomuschat.

Mr. TOMUSCHAT:

Fifth Preliminary Objection

There is no dispute between the two countries with regard to the course of the frontier

Mr. President, Members of the Court, it is a great honour for me to address the Court for the first time. My task is to deal with the fifth Preliminary Objection raised by Nigeria.

I. The Bakassi Peninsula and Darak

1. It is with great astonishment that we read in the Respondent's Preliminary Objections the title of Chapter 5, which plainly states: "There is no dispute concerning boundary delimitation from the tripoint in Lake Chad to the sea" (NPO, p. 85). Clearly, that assertion stood — and stands — in flagrant contradiction with the actual facts. Nigeria has now drawn certain conclusions from the gap between its legal arguments and its actual conduct. It now admits that there is indeed a dispute between the two countries regarding the frontier regions of Bakassi and Darak (A. Ibrahim, CR 98/1, pp. 18-21; R. Akinjide, CR 98/1, p. 62), although the contention that there is no dispute concerning the delimitation of the frontier from Lake Chad to the sea was repeated formally and mechanically during Tuesday's hearings (A. Watts, CR 98/2, p. 15).

2. In fact, it would be astounding to claim the opposite. The Court has had occasion to deal with the situation resulting from Nigeria's military attack against the Bakassi Peninsula, and it has granted Cameroon's request for the indication of provisional measures (Order of 15 March 1996, *I.C.J. Reports 1996,* p. 13). Once armed force has been used, the existence of a dispute is no longer a legal construction which must be established at length. It is an obvious reality. Armed conflict is the ultimate manifestation of a dispute between two parties.

3. There is therefore no need to delve any deeper into the debate as to whether or not there is a dispute concerning Bakassi and Darak. According to the legal instruments governing sovereignty in these two regions, it is Cameroon which has territorial sovereignty. Despite this attribution, Nigeria claims the Bakassi Peninsula and Darak for itself. Consequently, there is no doubt that there is a dispute within the meaning of Article 36 of the Statute of the Court.

II. The other sectors of the frontier

4. There is more, however. The dispute between the two countries is in no way limited to Darak and the Bakassi Peninsula. Contrary to Nigeria's contention in its Chapter 5, a contention echoed at the hearings of Monday and Tuesday (A. Ibrahim, CR 98/1, p. 21; A. Watts, CR 98/2, pp. 15-16), it is the entire length of the frontier, from the north in Lake Chad to the southernmost point of the land frontier and even beyond that in the maritime zones to which a coastal State has title, it is the entire length of the frontier which is the subject-matter of the dispute before the Court. Why? The Respondent would have us believe that of the rest of the border — i.e., with the exception of Bakassi and Darak — is a stable, undisputed frontier. Yet this is not so. First, Nigeria has challenged the entire legal structure on which the frontier between the two countries is based. Second, this theoretical challenge has gone hand in hand with many concrete facts. In many places, Nigeria has *de facto* failed to respect the frontier.

(a) ***The challenge to the legal structure determining the frontier***

5. Sir Arthur Watts attempted to paint a picture of an almost idyllic situation along the border away from Bakassi and Darak by speaking of a "remarkably stable and undisputed" boundary (CR 98/2, p. 24). He asserted that Nigeria does not challenge the existing frontier. However, we must take a close look, a very close, look, at the way in which he qualified his words. First, it is said that the frontier "is accepted in principle by Nigeria". "In principle" means that Nigeria indeed reserves the option of derogating from this should it see fit to do so. The meaning of such a reservation becomes apparent when we note that the recognition is restricted to the frontier understood as any old line without its legal basis. From that point of view, it is remarkable that nowhere in the Nigerian arguments do we find any reference to the legal instruments which govern the course of major stretches of the frontier from north to south, instruments which determine the status of both Darak and the Bakassi Peninsula. This amounts to emptying the so-called recognition of any meaning. Any party which accepts in the abstract a line whose origin it fails to specify thereby reserves for itself almost unfettered discretion to fix that line as it sees fit. On the other

hand, we cannot fail to note that, with regard to the east-west frontier from Mount Kombong to beacon 64, explicit reference is made to the British Order in Council of 1946 (A. Watts, CR 98/2, p. 22).

6. The attempt to draw a distinction between a territorial dispute and a dispute concerning "boundary delimitation as such" is just as unacceptable. Issues of title and issues of delimitation of the frontier cannot be separated. In so far as an international treaty defines the frontier between two countries, it also confers territorial title (see Judgment of the Court of 22 December 1986, *Frontier Dispute*, (*I.C.J. Reports 1986,* p. 554, paras. 17-18)). On the other hand, any party which attempts to evade the legal effects of an international treaty concluded for the purpose of delimiting a frontier by challenging its legal relevance initiates a territorial dispute which affects the said treaty in its entirety. Consequently, if Nigeria would have us believe that the 1913 Convention between the United Kingdom and Germany does not determine the course of the frontier in the Bakassi region, this necessarily implies that the treaty "as such" has lost any legal force. This also applies to the Northern part of the frontier. Any party which states that the 1931 Agreement between France and the United Kingdom must be set aside with regard to the Darak region also states that this treaty is no longer valid.

(b) ***The incidents***

7. As for the incidents, we refer the Court first to the maps reproduced on pages 565 and 566 of the Cameroonian Memorial of 16 March 1995, which show exactly where these incidents took place. As for the most recent events, a very serious source of concern for Cameroon, we shall give a brief summary:

Lake Chad zone

Darak: repeated forays by Nigerian troops and police, backed by the administrative and political authorities (see OC, Ann. 1, No. 1, Anns. MC/P. 7, 8, 30, 37 and 61); an increase in the numbers of military personnel in the base unlawfully set up in Darak, (see Anns. MC/P 63);

Faransa: Repeated forays by Nigerian troops into the Cameroonian island of Faransa, where on several occasions, they replaced the Cameroonian flag by the Nigerian one (see OC, Ann. 1, No. 3);

Hilé Halifa: Incursions by Nigerian armed forces which hoisted the Nigerian flag in the place of the Cameroonian one in the villages of Tchika, Bargaram and Naga, (see OC, Ann. 1, No. 2); ban imposed by Nigerian troops on the Cameroonian population forbidding them from going beyond a limit arbitrarily determined by the troops (see MC Ann., p. 48); recently, in June 1997, occupation by Nigerian troops of the villages of Terbu and Karena near Naga;

Kofia: Claim laid publicly by the Nigerian authorities to the villages of Kofia, Kumbelo, Bularam, Kinsayaku, and Wakeme, backed up by incursions by the police, (see OC, Ann. 1, No. 4);

Adamaoua Province

Typsan: Creation of a Nigerian village and of an emigration-immigration post by the Nigerian authorities on the banks of the Typsan river, in Cameroonian territory approximately 6.5 km from the Cameroon/Nigeria frontier, 3 km from the town of Kontcha and therefore in no way on the Nigerian side of the frontier, contrary to what the Agent of Nigeria said (CR 98/1, p. 25), (see OC, Ann. 1, No. 20). The Nigerians are acting there as if they were masters of the village, building social facilities — a dispensary, a school, (see MC, pp. 2, 3, 9,13, 16, 36, 44).

North-West Province

Yang: In February 1997, approximately 500 Nigerian soldiers invaded the Yang region. On 13 March 1997 they destroyed the Cameroonian locality of Yang. On 24 April 1997, the Prefect of the Division of Donga Mantung was arrested half way between the (razed) village of Yang and Makwe, the river which forms the international frontier between Cameroon and Nigeria. Armed Nigerian police claimed that the border was at Yang. There was a further incursion by Nigerian policemen in seven vehicles, on 26 June 1997.

South-West Province

Akwaya: On 23 March 1993, the region was overflown by an aircraft instructed to draw up a geographical map which might serve as a basis for territorial claims (see OC, Ann. 1, No. 30). Recently, frontier beacon 103 was destroyed and a logging zone was opened in a protected forest.

8. Within the limited space of our statement, it is impossible to mention all the other incidents documented in Cameroon's observations on Nigeria's Preliminary Objections and in Cameroon's Memorandum on Procedure, from which it is also apparent that in no way does Nigeria feel itself obliged to respect the frontier which separates two sovereign entities. We are quite prepared to acknowledge that a small number of the reported incidents involved individuals alone, and had nothing to do with the Nigerian authorities. Nonetheless, this type of incident shows at least one thing, namely that there is substantial insecurity in respect of the existence of the frontier and the ensuing legal effects. Taken as a whole, all the incidents only serve to illustrate the calling into question by Nigeria of the relevant legal treaty instruments. In consequence, there can be no cut-off date excluding recent events since it is an ever-changing, overall situation. By its steadfast attitude, Nigeria confirms its equally steadfast rejection of the established frontier.

9. The Respondent noted a passage, an important passage it is true, of the minutes of a joint meeting of Cameroonian and Nigerian experts, held in Yaoundé in late August 1991, in which the two sides "noted with satisfaction that the border [i.e., the land border] has been well defined and that there are no major problems at this level". For the Respondent, this passage utterly contradicts the Cameroonian fears expressed in the present proceedings. Alas, the situation has changed profoundly since Nigeria's armed attack against Cameroon in the Bakassi region. Everything which until then might have been considered a minor incident, secondary and negligible in the context of a policy of good relations with a powerful neighbour having an infinitely greater economic and military potential, took on quite another meaning once Nigeria had wrested a good part of the Bakassi Peninsula from Cameroon by force. As Cameroon amply described in its Memorial, such recourse to military force has occurred mainly since the month of December 1993. Since that time,

all relations between the two countries have taken on a different aspect, Cameroon being exposed to a flagrant challenge to its territorial integrity. Minutes dating from 1991 cannot therefore prove the absence of any dispute between the two parties.

III. The Nigerian argument: might is right

10. It is indeed true that Nigeria does not explicitly challenge the entire frontier line. However the logic inherent in its legal reasoning shows that it reckons it has a free hand, that it believes that it may act as it sees fit as soon as a morsel of Cameroonian territory appears useful for its purposes. Once again it must be said, that Nigeria did not fully develop its legal reasoning in its written statement and that it has also refrained from doing so in its oral statements. Nevertheless, its written statement contains at least the germ of a line of argument.

11. As for Darak, the Respondent refers (point 5.7) to a note of the Nigerian Government (NPO, 79) in which it is stated, categorically but without a shred of proof, that Darak "has always been part and parcel of Wulgo District of Ngala Local Government area of Borno State of Nigeria and [which] has since time immemorial been administered as such".

Nonetheless, it is patently obvious that according to all the geographical maps showing the location of different villages, Darak is situated on the Cameroonian side, to the east of the frontier line which was defined by the various relevant instruments binding the two countries. If now, with no mention of that quite complex but nonetheless extremely clear legal structure, Nigeria simply bases itself on certain facts, with no mention of the applicable treaties, in so doing it calls into question all the legal bases of the frontier separating the two countries. What it affirms may be reduced to a rule under which an *effectivité* prevails absolutely over any other legal title. In short, Nigeria reckons that to have is to hold.

12. The Nigerian arguments concerning the Bakassi Peninsula are even more characteristic. Under the Anglo-German Convention of 11 March 1913, the entire peninsula formed part of the territory of the German colony of *Kamerun* (see Cameroon Memorial of 16 March 1995, points 4.392 ff.). This follows from the very wording of the Convention (Arts. 18-20). No material

change has occurred to date. From this, it can only be found that the frontier is still the boundary which was drawn in 1913. Nigeria however does not draw this conclusion. In point 17 of the Preliminary Objections, it is alleged that 90 per cent of the population of the Bakassi Peninsula is made up of members of the Efik and Efut tribes which, so Nigeria claims, are Nigerian tribes (NPO, p. 11). Moreover, Nigeria states that before the arrival of the German colonial Power, treaties of protectorate had been concluded between the local chiefs of these tribes and the British Crown. Similar remarks were made by the Agent of Nigeria, who contended that the Bakassi Peninsula and Darak are densely populated by Nigerians (CR 98/1, pp. 8-19, 21, 28).

13. Here again we do not want to delve into the historical aspects of the subject. What is important is that once again Nigeria is majestically disregarding the relevant legal instrument, the Anglo-German Convention of 1913, a convention which to date has been considered the decisive parameter for the delimitation of the frontier. Nigeria lets it be clearly understood that in its eyes the Convention has lost any legal effect.

14. There can therefore be no doubt that Nigeria calls into question the legal structure on which the present frontier is based. Cameroon has no option but to find that the frontier is in danger along its entire length. The 1913 Convention governs the course of the frontier from the sea to beacon 64, whilst the Anglo-French Agreement of 1931 and its related instruments determine the frontier between Mount Kombong and Lake Chad. The whole of this treaty régime is now called into question by Nigeria. The only part which remains outside the legal dispute is the stretch between Mount Kombong and beacon 64, which was fixed by a British Order in Council of 1946. Yet even this stretch has in fact been subject to many incidents. This deplorable situation unfortunately has an inherent logic. For if, in Nigeria's opinion, might is right or immediately becomes right, the events which occurred at Darak or in the Bakassi Peninsula may be repeated tomorrow in any other part of the frontier region.

Cameroon's very existence is called into question

15. For Cameroon, the danger lurking in such a casual approach is unfortunately not theoretical. As Nigeria's neighbour, with a frontier of over 1,680 km with Nigeria, it finds itself threatened in its very existence, since territory is the foundation of the State alongside its population. Not recognizing the existing *de jure* frontiers therefore amounts to calling into question the State of Cameroon itself. Were it possible for frontiers which have been well defined in legal terms and consolidated in practice to be rejected as Nigeria is now attempting to do, the consequences would be disastrous not only for Cameroon, but for Africa as a whole. That was precisely the reason why the African Heads of State, meeting in the Organization of African Unity, agreed in 1964 to consider the frontiers inherited from colonial times to be inviolable. It is quite clear that Nigeria, in the arguments it sets forth, repudiates this important decision, one of the keystones of international law in Africa. It is therefore patently obvious that there is a genuine, concrete dispute.

16. It is also apparent from the arguments which have just been set forth that the dispute between Cameroon and Nigeria is not merely a matter of certain issues of demarcation. The background to all the border incidents is the licence Nigeria gives itself to accept or reject, as it sees fit, the frontier line legally fixed in the relevant instruments. Only a clear, unequivocal finding by the Court is likely to re-establish the legal order which has been severely disturbed by Nigeria. Even formal assurances given by a Nigerian authority would not be enough to clarify the situation and render the dispute moot. All too often in the past Nigeria has made promises which have not been kept. At this stage, the Court alone is able to dispel the doubts, to say the least, which Nigeria has aroused by its many attacks in the frontier zone. For Cameroon, it is vital finally to obtain full, unchallenged legal security. The carefully considered words of Sir Arthur Watts (CR 98/2, p. 19) cannot guarantee this security.

V. The maritime frontiers

17. What is true of the land frontier also holds true for the various parts of the maritime frontier between the two countries. In disputing that the Bakassi Peninsula belongs to Cameroon, Nigeria seeks to move the starting-point of the maritime delimitation eastwards, thus considerably reducing the maritime sector which Cameroon may claim. For over a quarter of a century now, Cameroon has endeavoured to reach agreement with Nigeria in order to achieve a delimitation. With the Maroua Declaration of 1 June 1975 it seemed that the end was in sight. Alas! As the Court is aware, and as my colleague Malcolm Shaw recalled, Nigeria has never kept its promises. Even the Maroua Declaration, which had been signed by the then Heads of the two States, fell victim to this policy of obstruction. Because of this, Cameroon finds itself prevented from exercising its legitimate rights in the Gulf of Guinea.

VI. Existence of a genuine, concrete dispute

18. Considering the scale of the challenge by Nigeria to the existing frontier, it goes without saying that there is a fundamental disagreement between Cameroon and Nigeria, a disagreement which has nothing artificial or theoretical about it. In respect of the Bakassi Peninsula and Darak, there are two diametrically opposite contentions. Cameroon relies on well-defined, specific legal instruments, whereas Nigeria, for reasons whose alleged legal foundation has not yet been presented, believes that these two parcels of Cameroonian territory come under Nigerian sovereignty. Nevertheless, as we have shown, the dispute is not limited to these two zones. The argument implicitly defended by Nigeria consists in saying that the legal instruments governing the territorial delimitation between the two countries have lapsed, that they have been overtaken by elements of fact, above all the occupation by Nigerian forces. Even if this argument appears bereft of legal foundation, it cannot be disregarded. It provides sufficient grounds for concluding that there is a dispute obeying all the criteria laid down in Article 36, paragraph 2, of the Statute of the Court, criteria which were recently recalled by the Court in its Judgment of 11 July 1996 in the case

concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia)* (paras. 29-33).

19. Cameroon finds that any disparities between the situation in law and in fact must be corrected by adapting the facts to the law, whereas, in the light of what may be gleaned from the Preliminary Objections, Nigeria's opinion is that the law must bow down in the face of the facts, including facts which Nigeria itself has called into being by acts of force. Therefore the divergence of views is real, there is nothing artificial about it. The two Parties take opposite views on a point of principle, a point on which an adequate response may be given only by the International Court.

20. It may almost become wearisome to reiterate yet again: Cameroon is not championing an abstract, distant interest, it is defending itself against acts of usurpation by a powerful neighbour, a neighbour which, at potentially least, threatens its very existence. There is no doubt that it has a very concrete legal interest in seeing the dispute settled once and for all. Therefore it is totally incorrect to insinuate that Cameroon is endeavouring to invent a dispute which does not actually exist.

VII. Conclusions

21. In conclusion, Cameroon's arguments may be summed up as follows:

— as Nigeria explicitly recognizes, there is a dispute between the two Parties in respect of the Bakassi Peninsula and Darak:

— however the dispute is in no way limited to these two border zones. In claiming the Bakassi Peninsula and Darak, and in causing serious incidents in a series of places along the border, Nigeria has called into question the whole set of legal instruments which define the frontier. It is therefore the entire frontier between the two countries which is at stake, a fact confirmed by the many border incidents which would be inconceivable were there not a tacit tolerance, to say the least, on the part of the Nigerian authorities;

— moreover I would point out that Nigeria bears responsibility for these incidents, which call for reparation. This is also an important element of the current dispute and of Cameroon's submissions.

Members of the Court, thank you. Mr. President, may I ask you to give the floor to my colleague Mr. Kamto?

Le PRESIDENT : Je vous remercie, Professeur Tomuschat. Je donne la parole au Professeur Kamto.

Mr. KAMTO: Mr. President, Members of the Court:

1. The Federal Republic of Nigeria claims in its sixth Preliminary Objection that: "Aucun élément ne permet de décider judiciairement que la responsabilité internationale du Nigéria est engagée à raison de prétendues incursions" (CR 98/2, p. 27).

2. This sixth Preliminary Objection of Nigeria is extremely confused as to its nature.

For Nigeria is attempting to construct around Articles 38 and 79 of the Rules of Court an impossible theory of inadmissibility of an application relying upon insufficiency of the facts produced therein but subsequently developed in the Memorial. This is not a legal construction, Mr. President; it is pure intellectual speculation in regard both to the relevant texts governing proceedings before the Court and to practice before it.

I. There are no new elements in the Memorial of Cameroon which do not come in support of its Application

3. For Nigeria, even a State enjoys a certain

> "latitude in expanding later upon what it has said in its Application, and in particular in doing so in its Memorial, it is in essential respects restricted to the case it has presented in its Application. Had Cameroon chosen, in its Memorial, to give full details of incursions and incidents initially identified in the Application, that might have constituted an acceptable amplification of the Application" (NPO, para. 6.9, pp. 101-102).

4. But where has Cameroon produced or subsequently developed in its Memorial or pleadings facts that do not come in support of what was said in its Application or do not concern "the case

it has presented in its Application"? Nowhere has Cameroon modified the object of the dispute as formulated in its completed Application, and at no time, either in its written arguments or in its oral pleadings, has it sought to modify its scope.

5. We might have expected, Mr. President, that the new elements denounced by Nigeria would be those contained in the Additional Application of Cameroon filed in the Registry of the Court on 6 June 1994, complementing its Application instituting proceedings. But Nigeria would not have been justified in making such a claim after having stated, through its Agent before the Court, at the meeting held on 14 June 1994 between the President of the Court and the representatives of the Parties, that it "had no objection to the Additional Application being treated as an amendment to the initial Application, so that the Court could deal with the whole as one case" (*I.C.J. Reports 1994, Order of 16 June 1994*, p. 106).

6. Nigeria gives a very personal interpretation of Articles 38 and 79 of the Rules of Court. For it claims that inasmuch as Article 79 of the Rules of Court speaks of objection "à la recevabilité *de la requête*", the amendment to the initial Application cannot conceivably be concerned, and that "[t]he sense of the requirement imposed by Article 38 is that enough detail must be provided by the applicant State to enable the respondent State to know from the terms of the Application enough about the charges made against it for it to determine its response" (NPO, paras. 6.7 and 6.8, p. 101). Yet neither Article 38, paragraph 2, nor even less Article 79 of the Rules of Court imprisons the applicant State, as Nigeria attempts to do, in this absolutist conception of the Application instituting proceedings which should, if our opponents are to be believed, achieve a sort of factual completeness from the outset.

7. To tell the truth, our opponents would have done well to read attentively both our Application and our Memorial of 16 March 1995. For Cameroon clearly states in its Application that it reserves for itself "the right to complement, amend or modify the present Application in the course of the proceedings . . ." (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*, Application instituting proceedings, p. 15, para. 20); and the reason it

reserves this right for itself is that nothing in the Statute and Rules of Court prohibits it from so proceeding. On the contrary, the practice of the Court permits it so to proceed (see, for example, the Application of Nicaragua in the *Military and Paramilitary Activities* case). In its Memorial of 16 March 1995, Cameroon specifies that it made the choice at the stage of its first Memorial to offer only "a few significant examples that will nevertheless enlighten the Court as to their permanence and gravity" (MC, p. 574, para. 6.50). It thereby indicated that more such examples could be provided if necessary, and the "repertory of incidents" supplied as Annex 1 to its observations on the Preliminary Objections raised by Nigeria amply proves that it is not short of compelling factual evidence.

8. Mr. President, Members of the Court, the internationally wrongful acts which may serve as a basis for the international responsibility of a State are one thing; evidence of such responsibility is quite another. The former provide a basis for admissibility of the Application and may therefore be debated in the Preliminary Objections phase. As to evidence, it appertains to the merits. Yet in undertaking a count and then a classification of the acts reported by Cameroon, the counsel of Nigeria engaged last Tuesday in a debate on the validity of the evidence supplied by Cameroon, something that does not appertain to the Preliminary Objections in the sense in which the term is understood by this Court.

9. True, Nigeria is free to dispute the evidence produced by Cameroon. But it can only do so in the merits phase. As Shabtai Rosenne writes in the latest edition of his reference work on the law and practice of the Court:

> "it is probable that when the facts and arguments in support of the objection are substantially the same as the facts and arguments on which the merits of the case depend, or when to decide the objection would require a decision on what, in the concrete case, are substantive aspects of the merits, the plea is not an objection but a defence to the merit" (S. Rosenne, *The Law and Practice of the International Court 1920-1996,* 3rd ed., Nijhoff, The Hague, 1997, Vol. II, p. 915).

10. Mr. President, the objection cannot therefore be raised against Cameroon at this stage of the Preliminary Objections of any insufficiency of evidence, or even less its irrelevance. The Court

was unambiguous on this point in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Jurisdiction and Admissibility)*:

> "Ultimately . . . it is the litigant seeking to establish a fact who bears the burden of proving it; and in cases where evidence may not be forthcoming, a submission may in the judgment be rejected as unproved, but is not to be ruled out as inadmissible *in limine* on the basis of an anticipated lack of proof" (*I.C.J. Reports 1984,* p. 437, para. 101).

II. The statement of facts in an Application instituting proceedings must be succinct

11. Mr. President, Members of the Court, Nigeria also denounces what it claims to be an insufficiency of detailed developments of the facts in the Application of Cameroon. This denunciation is substantiated neither in the rules of procedure of the Court nor of course in its jurisprudence.

12. Article 38, paragraph 2, of the Rules of Court, which lays down the modalities of an account of the facts in an application instituting proceedings, provides that the statement of the facts must be succinct. The purpose of this eminently explicit provision is to distinguish an application instituting proceedings which is intended to introduce — I insist on the verb introduce — legal issues and the facts of the case, from the Memorial where those issues and those facts will subsequently be set out in detail and argued. One cannot be substituted for the other. This is how the intention of the Permanent Court of International Justice must be understood when it stated in the *Phosphates in Morocco* case "that the explanations furnished in the course of the written and oral proceedings enable it to form a sufficiently clear idea of the nature of the claim . . ." (*P.C.I.J., Series A/B, No. 74*, p. 21).

13. Furthermore, in accordance with well established case-law dating back to the Permanent Court of International Justice *(Société commerciale de Belgique, P.C.I.J., Series A/B, No. 78,* p. 173), the Court takes "a broad view" of the provisions of its Rules regarding the form of the application. Thus, in its Judgment of 2 December 1963 in the *Northern Cameroons* case

> "[t]he Court agrees with the view expressed by the Permanent Court in the *Mavrommatis Palestine Concessions* case (*P.C.I.J., Series A, No. 2* , p. 34):

> 'The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law.'" (*Northern Cameroons, Preliminary Objections, I.C.J. Reports, 1963*, p. 28).

14. Further on as well, as something also very important, the Court adds:

> "The Court notes that whilst under Article 40 of its Statute the subject of a dispute brought before the Court *shall be* indicated, Article 32 (2) of the Rules of Court [present Article 38, paragraph 2] requires the Applicant 'as far as possible' to do certain things. These words apply not only to specifying the provision on which the Applicant founds the jurisdiction of the Court, but also to stating the precise nature of the claim and giving a succinct statement of the facts and grounds on which the claim is based." (*I.C.J. Reports 1963*, p. 28.)

15. In that case the Court concluded that the Applicant had "sufficiently complied" *(ibid.)* with the relevant provisions of the Rules. The present case is no different in this respect, whether one considers the Application instituting proceedings of 29 March 1994 or the Additional Application of 6 June 1994.

16. Assuredly, Mr. President, the applicant State cannot be required to present an exhaustive account of all the elements of the dispute in its Application instituting proceedings. Professor Abi-Saab very aptly notes that

> "the Parties are permitted to remedy the formal imperfections of their pleadings under consideration, for example to complete, in the submissions or in any other pleading, the particulars required for the act instituting proceedings" (*Les Exceptions préliminaires dans la procédure de la Cour Internationale de Justice*, Paris, A. Pedone, 1967, p. 104). *[Translation by the Registry.]*

The reference here to "formal imperfections" should not be understood in the sense in which our opponents understood it last time, saying that it concerned mere corrections of detail. It is indeed in the sense in which the Court already understands it, echoed here by Professor Abi-Saab, that of completing, as necessary, the submissions and any pleadings.

17. It cannot be otherwise, both in the interests of the Parties and for the sake of sound administration of international justice. Given the complexity of international disputes and the difficulty sometimes to be encountered in gathering all factual data and evidence, one could not require an applicant to produce at the outset, in the application instituting proceedings, all the facts

and in full detail, without thereby creating senseless and needless blockages in the contentious proceedings before the Court.

18. To be sure, Mr. President, as the Permanent Court of International Justice stated in its Judgment in the *Société commerciale de Belgique* case,

> "the Court cannot, in principle, allow a dispute brought before it by application to be transformed by amendments in the submissions into another kind of dispute which is different in character" (*P.C.I.J., Series A/B, No. 78,* p. 173).

19. This position was echoed by this Court in the *Interhandel* case (*I.C.J. Reports 1959,* p. 21). But that affirmation in no way applies to the present case.

20. A reading in good faith of the Memorial submitted by Cameroon does not anywhere reveal developments or new arguments of such a kind as to change the substance or character of the dispute, or even such as might lend it new aspects not contemplated in the Application instituting proceedings.

21. When Nigeria claims on page 105, paragraph 6.12, of its Preliminary Objections that "the Memorial can, at best, only fill out the details of matter which have been identified with sufficient particularity in the Application", and adds that "Nigeria thus rejects, as in principle improper, any purported amplification of those alleged incursions in the Memorial", what we have there is not just an opinion devoid of the slightest legal basis but also contradictory assertions. For if the Application must, as Nigeria claims, give information "with sufficient particularity in the Application", it is hard to see what the use would be of their subsequent amplification in the Memorial". Such a line of reasoning should logically lead to the conclusion that the Memorial is quite superfluous in contentious proceedings before the Court.

22. This is an original approach to the contentious proceedings before this Court which might help to shorten the proceedings — alas unreasonably, it seems to me — at a time when the General List of the Court is beginning to get cluttered while, at the same time, its financial resources seem to be shrinking; but it would certainly not serve the cause of sound administration of justice.

23. To tell the truth, Nigeria seems to lose sight in this curtailed conception of contentious proceedings before the Court that what we have is a *trial* in which the Parties, at all phases of the proceedings exchange arguments and present the Court, on an *adversarial* basis, with evidence.

24. In any event I should like to emphasize, Mr. President, that both Cameroon's Application and its Memorial are presented in accordance with the model generally accepted by the Court, and it suffices to refer to various pleadings produced in some recent cases to be sure of this. The date of the filing of the Application as a cut-off date for taking account of factual evidence in support of the Application cannot be understood as making it quite impossible for the Applicant subsequently to illustrate his legal arguments with other facts previous to the cut-off date but not presented in the Application. It simply indicates that at the time of institution of the proceedings, the Application must comprise at least one factual element enabling the Court to find that a dispute exists between the Parties. Now even if we were in the present case to confine that factual element to the Nigerian invasion of December 1993 to February 1994, is there not there, Mr. President, Members of the Court, a sufficient basis for asserting Nigeria's international responsibility? Let our opponents then reread Cameroon's Application instituting proceedings — that of 29 March 1994 — and they will find an explicit reference to that event.

III. Nigeria is developing an erroneous "theory" regarding the international responsibility of a State

25. Mr. President, Members of the Court, last Tuesday Nigeria developed a very curious two-planed construction in the matter of international responsibility of the State.

26. On the first plane, it asserts:

> "Il peut y avoir, comme à Bakassi, un problème de souveraineté, mais le Cameroun, ayant mis la frontière en cause dans certaines zones, ne saurait en même temps soulever des questions de responsabilité internationale qu'il attribue à des incursions à travers une frontière qu'il considère, par hypothèse, comme contestée" (CR 98/2, p. 37).

27. In other words, Cameroon cannot claim the responsibility of Nigeria on account of the invasion and the attempt by its troops to annex Bakassi, simply because the boundary of the

peninsula is in issue. Yet it is not because Nigeria questions the common boundary in this area that Cameroon cannot claim to be at home in Bakassi. And since it is at home in Bakassi, the internationally wrongful acts perpetrated by Nigeria in the peninsula naturally involve that country's responsibility. Only should Nigeria manage to convince the Court that Bakassi is part of its territory would its international responsibility not be involved. But it will not be able to do this, and it knows it will not, because all the legal titles irrefutably establish the "Cameroonity" of Bakassi.

28. On the second plane of this original construction, counsel of Nigeria states:

> "Si les plaidoiries dans les affaires de différends frontaliers doivent aussi être encombrées de questions subsidiaires de responsabilité d'Etat, le traitement de telles affaires par la Cour s'en trouvera évidemment rendu plus compliqué" *(ibid.)*.

29. So, for Nigeria, complication or complexity would constitute a cause of exoneration from a State's international responsibility. This is new and, to say the least, strange! For there is no trace to be found of such a "theory" either in the draft of the International Law Commission on State Responsibility or in even the most adventurous legal opinion. And if the Court were only to agree to handle uncomplicated cases, States might entertain legitimate doubts about its utility. I would be almost inclined to say that it is because a matter is complicated or complex that the Court must be asked to decide. It is indeed because only a tribunal, yours as it happens, can decide on this issue of responsibility that Cameroon upholds the jurisdiction of this Court in the case and hence the inadmissibility of the seventh Preliminary Objection raised by Nigeria.

Mr. President, I thank the Court for its kind attention and would ask you to give the floor to Mr. Michel Aurillac.

Le PRESIDENT : Merci, Monsieur Kamto. La Cour va maintenant suspendre sa séance pendant 15 minutes avant de reprendre l'audience.

The Court adjourned from 11.20 to 11.35 a.m.

Le PRESIDENT : Veuillez vous asseoir. Je donne maintenant la parole à M. Aurillac.

Mr. AURILLAC: Mr. President, Members of the Court, it is a great honour for me to be taking the floor for the first time before this Court.

I. Nigeria is attempting to draw Cameroon into the merits of the case, which do not fall within the domain of the Preliminary Objection

1. My purpose will be modest yet precise. Without entering into the substantive debate into which Nigeria is seeking to draw us prematurely, I should like, purely by way of illustration and without claiming to be exhaustive, to demonstrate that, in the legal and jurisprudential framework clearly defined by Professor Maurice Kamto, Cameroon has fully met the obligations provided for in Article 38, paragraph 2, of the Rules of Court regarding a statement of the facts underlying the Application.

2. The aim in short is to demonstrate that our allegations are neither vague nor imprecise. It will of course be possible to oppose them in the debate on the merits, but the fact that they are set forth clearly and precisely at this stage removes any justification for the Preliminary Objection.

3. It will indeed be for the Court to decide in a sovereign manner on the various aspects of the dispute relied on by the Applicant and on the appropriate reparation when it adjudicates upon the merits. It just needs to check, at the present stage of the proceedings, that the Application meets the terms of Article 38, paragraph 2, without having, as Nigeria curiously claims, to obtain the consent of the Respondent on the points to be ruled on.

4. To ward off the incidents to which reference has been made, counsel of Nigeria said on Tuesday: "Il est réellement impossible de répondre de façon satisfaisante à de pareilles allégations vagues, générales, ambiguës, peu dignes de foi et incomplètes" (CR 98/2, p. 31).

5. Nigeria is in fact seeking, as it has always sought from the outset, to carry the debate over to the realm of the merits, relying on factual arguments which did not have their place in Cameroon's Application but have naturally been developed in the Memorial, and will further be developed in the debate on the merits, after you have ruled on the preliminary objections.

If it were otherwise, the concept of preliminary objection would become quite meaningless.

6. These observations having being made, the Court will readily dispense with the unilateral way in which Nigeria seeks to choose among the facts set forth by Cameroon in its Application and its Memorial in order to demonstrate its claim that, all in all, in 28 years, there have been only three incidents between Lake Chad and the Bakassi Peninsula.

This is not in keeping with the truth, but the truth will emerge in the debate on the merits of the case.

7. You will likewise, Mr. President, Members of the Court, recognize the irrelevance of the Nigerian line of argument denying any responsibility in the Bakassi and Darak incidents, on the grounds that what was involved was Nigerian territory, sovereignty over which is disputed by Cameroon, and not a boundary problem. The incidents presented by Cameroon are clearly stated and specified. They concern a great many points all along the boundary. As the proceedings now stand, the Court has to give them consideration. At the risk of being repetitive, I shall say once more that all the rest belongs to the debate on the merits while, paradoxically, by making a pretence of introducing such substantive debate at the preliminary objections stage, Nigeria delays this debate and seeks to avoid it as though in short it feared the Court or lacked self-confidence.

II. Cameroon, in its Application and its Memorial, has presented a list, accurate and detailed although concisely formulated, of the boundary violations from Lake Chad to Bakassi

8. In the view of the Republic of Cameroon, the Application instituting proceedings filed in the Registry of the Court on 29 March 1994 and the Application Additional to the Application instituting proceedings, both of which are treated at due length in the Memorial dated 16 March 1995, present a list — along the whole of the 1,680 km, or 1,000 miles depending on one's viewpoint, of common frontiers with Nigeria — setting out frontier incidents ascribed to Nigeria, which are adequately described and identified to satisfy in full the requirements of the provisions of Article 38, paragraph 2.

9. These incidents consist of incursions, often followed by occupations of the territory concerned, either by armed forces or the Nigerian administration, or by Nigerian civilians

subsequently supported by the armed forces and the administration of their country which have intervened and established themselves in Cameroonian territory.

10. Confining myself to the acts denounced in the Application instituting proceedings, the Additional Application and the Memorial — these alone are justiciable for inadmissibility, if any — Cameroon has drawn attention to incursions and occupations, accompanied by bloody incidents which have caused human deaths along the frontier, in the north, the centre and the south-west, as well as in the Bakassi Peninsula. This account of events is systematically backed up by documents exhibited in annexes to the Memorial.

11. In the opinion of Sir Arthur Watts, the Memorial of Cameroon *"ne représente guère un progrès par rapport à la requête initiale. Il abonde lui aussi en affirmations reprochant au Nigéria de s'être livré à des actes illicites"* (CR 98/2, p. 32). A few examples will suffice to persuade the Court otherwise. They are of a kind to establish the responsibility of Nigeria for the consequences of incidents which Professor Tomuschat has already described in substance.

12. First in the north. Cameroon stated in its Additional Application that the occupation of Darak, the first gendarmerie post, located 30 km inside Cameroon in the *arrondissement* of Hile-Alifa — an occupation which began in 1987 — was followed by the occupation of a number of places in Cameroon, all situated in the *département* of Logone-et-Chari, in Far North Province (Additional Application, p. 2, para. 5). The Memorial of 16 March 1995 returns in detail to these events. It not only specifies the date of the beginning of the military and administrative occupation, 2 May 1987 (MC, p. 587, para. 6.82), but also a list of villages invaded and the precise identity of the Nigerian troops involved — in this event the 21st Armoured Battalion from Maiduguri (MC, p. 589, para. 6.84).

13. This illegal and massive Nigerian presence spread to the entire central and southern area of the frontier. As the Rules of Court invite it to do, in its Additional Application Cameroon has briefly described facts of this nature which have occurred in various frontier areas. Among other places it cited Kontcha, situated in the *département* of Faro et Deo (Adamaoua Province), of which

the village of Typsan is a dependency (Additional Application, p. 2, para. 6). In its Memorial Cameroon makes specific reference to the occupation of Typsan. It states that it was informed at the beginning of the month of March 1984 of the establishment of a frontier control post by the Nigerian army "6.5 km inside Cameroonian territory in the Typsan locality of the village of Kontcha", in the words of the Governor of Adamaoua Province (MC, p. 591, para. 6.94).

On 12 April 1994 the Minister of External Relations of Cameroon, in a note of protest addressed to Nigeria (MC, p. 591-592, para. 6.95), denounced this fresh encroachment on Cameroon's territorial sovereignty, an encroachment which was all the more demonstrative of Nigeria's strategy for *"le caractére accidenté du relief local"* where the attack took place, as Mr. Ibrahim mentioned on Monday (CR 98/1, p. 25, para. 30). I do not ignore the fact that our opponents, as was stated a little while ago, place Typsan in Nigeria (CR 98/1, p. 24, paras. 28-31; CR 98/2, p. 23); this is one among many other elements in the dispute which the Court will have to resolve when it comes to examine the merits.

14. It is of course in the extreme south-west, in the Bakassi Peninsula, that the most numerous and most frequent frontier violations have taken place. The proliferation of incidents provoked by Nigeria is such, Mr. President, Members of the Court, that any claim to be exhaustive at the initial stage of the Application would have been quite presumptuous. A procedure of that kind would, moreover, have conflicted with the "concise" character of the statement of the facts.

15. Cameroon has nevertheless indicated precisely in its Application the period at which the frontier incidents scattered over the Bakassi area took a much more serious turn (Application of Cameroon, pp. 6 and 8, para. 9). The invasion of Jabane and Diamond Island by Nigerian troops from 21 December 1993 onwards does in fact mark the beginning of an escalation in the violence, an escalation which caused substantial damage and loss to Cameroon. They emerge unequivocally in the detailed chronology of events given in the Memorial (MC, pp. 570-571, para. 6.28-6.34 and pp. 600-601, para. 6.121), which supplements the information set out in the Application and

specifies the diplomatic action which the Cameroonian authorities took as a result of the Nigerian incursion.

16. Once again, Mr. President, these examples are far from being exhaustive and could easily be multiplied. They stem exclusively from the Application and the Memorial, to which the Court will certainly refer. I am careful to remember that a fuller list of 42 incidents was presented later in support of the observations of the Republic of Cameroon on the Preliminary Objections of Nigeria, with a map showing all these incidents. I merely mention them for the fuller guidance of the Court, although it is unnecessary to point them out in order to show that Cameroon has adequately set forth the facts which support its Application. Nigeria's forcefully expressed need to see an exposition of the facts and evidence appears to be amply satisfied by the documents presented by Cameroon *in limine litis*, in the Application, and developed in the Memorial, as is natural in any lawsuit.

17. On Tuesday morning, counsel for Nigeria asked the following question: *"le répertoire est-il complet ou non?"* (CR 98/2, p. 36). The reply to this question is definitely in the negative, since it is Cameroon's duty to provide the Court with all the evidence that supports its claims and to assist the Court in the appreciation of the merits of its submissions. This evidence has been put together by Cameroon since the filing of the Application. And Cameroon continues to assemble the evidence since, alas, the incidents continue despite the Order indicating provisional measures.

18. It scarcely needs to be said, Mr. President, that in no way is Cameroon claiming that the international responsibility of Nigeria should be examined at this stage of the proceedings. That responsibility, which is not only related to the incursions by the Nigerian armed forces into Cameroonian territory and to the resulting encroachments on sovereignty, but based on the totality of Nigeria's violations of its international obligations, is a matter for the merits. And it is at the merits stage that Cameroon, which has demonstrated in its Memorial of 16 March 1995 the extent of the obligations violated by the Respondent (MC, Chap. 6), intends to argue that aspect of its claim by spelling out the nature and extent of the damage resulting from those violations.

III. Cameroon submits that the Preliminary Objection should be rejected

19. **Conclusion**

In conclusion, Mr. President, Members of the Court, Cameroon's arguments may be summed up as follows:

(1) in line with the Court's normal practice, Cameroon clearly stated in its Memorial that the facts upon which it relied in order to establish the responsibility of Nigeria were mentioned solely for the purposes of illustration and that, if necessary, it could produce others in the merits phase;

(2) the manner of setting forth the facts in an application instituting proceedings is governed by Article 38, paragraph 2, of the Rules of Court, which provides that the statement of the facts shall be succinct;

(3) in the course of proceedings, the Parties may provide additional or further details regarding the facts in their written pleadings since the Application cannot replace the Memorial in this respect;

(4) the issue of proof of the international responsibility incurred by a State is a matter for the merits phase and may not therefore be considered in the preliminary objections phase.

For this reason, Mr. President, Members of the Court, Cameroon respectfully requests the Court to reject the sixth Preliminary Objection raised by Nigeria.

May I ask you, Mr. President, to give the floor to Mr. Bipoun Woum for the seventh Preliminary Objection?

Le PRESIDENT : Merci Monsieur Aurillac. Je donne la parole à M. Bipoun Woum.

Mr. BIPOUN WOUM: Thank you, Mr. President.

1. At this moment when it falls to me to take the floor for the first time before your illustrious Court to defend the cause of my country, allow me, if you will, Mr. President, Members of the Court, to share with you the simultaneous feelings I have of pride that such an honour should

have fallen to me today (is it not the dream of all internationalists?), and also of confident serenity, so firm is Cameroon's conviction that, in this case, right is on its side. Mr. President, it is my task to present to you the observations of Cameroon on the seventh Preliminary Objection raised by Nigeria.

A. Objection 7.2

2. I shall first endeavour to reply to the second part of this objection. By it, Nigeria claims to demonstrate that an obligation to negotiate exists prior to any seisin of the International Court of Justice with a view to a maritime delimitation. Cameroon allegedly did not respect it, thereby rendering its submissions on maritime delimitation beyond Point G inadmissible.

3. In its written observations, Cameroon has sought to demonstrate that there were indeed prior negotiations (OC, pp. 163-170). The reason for this is that the Court could reject the Nigerian objection on this basis alone. That would be an "economic" step, which would not be without precedent, since it was a course also followed in the case concerning *Right of Passage over Indian Territory (Preliminary Objections)* (*I.C.J. Reports 1957*, p. 125). In that case, India had put more or less the same argument as Nigeria. To set it aside, the Court placed itself solely on the level of the facts, holding that, at all events, negotiations had been concluded on the matter.

4. Mr. President, Cameroon considers that, in this case too, the Court could confine itself to a consideration of the facts in order to set aside the Preliminary Objection: fruitless protracted negotiations did take place, no doubt about it, and it would be absurd to reproach Cameroon, on whatever basis, with not having engaged in them.

I. However, I shall start by showing that the obligation relied upon by Nigeria does not exist, since Mr. Crawford reverted to it at some length (CR 98/2, pp. 48-50, paras. 25-29) at the beginning of the week, first reproaching Cameroon with not having replied to Nigeria's written arguments.

5. Before replying to the arguments he reiterated on that occasion, I will give him satisfaction on this point.

6. In their written pleadings, our opponents refer to the Convention on the Continental Shelf of 29 April 1958 (NPO, p. 121, para. 7.18). Regarding *States for which a delimitation is necessary*, its Article 6 states that "the boundary of the continental shelf appertaining to such States shall be determined by agreement between them".

7. A reading of this Article must take account of the fact that the 1958 Convention constitutes the conclusion and synthesis of the ideas expressed up to that point on the legal régime of the continental shelf, particularly the idea that delimitation must form the object of an agreement. But as the Court pointed out in the case concerning the *North Sea Continental Shelf*, this legal régime itself is based on "very general precepts of justice and *good faith*", (*I.C.J. Reports 1969*, paras. 46 and 85; emphasis added).

8. The difficulty as regards delimitation, the impasse I might even say, arises precisely when one of the parties is manifestly in bad faith: in that case, negotiation is no longer a possible avenue. For only when all the parties present are in *good faith* can there be any valid intent — to borrow the formula of the Permanent Court of International Justice in the case concerning the *Advisory Opinion on Railway Traffic between Lithuania and Poland, in 1931* — "to enter into negotiations . . . to pursue them as far as possible, with a view to concluding agreements" *(Railway Traffic between Lithuania and Poland, Advisory Opinion, P.C.I.J., Series A/B, No. 42, 1931, p. 116)*.

When these conditions have not been satisfied, it is clearly necessary for the parties to turn towards the Court.

It is thus fortunate that Article 6 of the 1958 Convention on the Continental Shelf does not, contrary to what Nigeria holds to be the case, lay down the principle that prior negotiations determine the admissibility of the seisin of the Court.

9. Let us now turn to the case concerning the *North Sea Continental Shelf*, already referred to, from which the Nigerian *written* pleadings focused principally on an extract from the reply given by the Court to the question put to it: "*(a)* the parties are under an obligation to enter into

negotiations with a view to arriving at an agreement" (case concerning the *North Sea Continental Shelf, I.C.J. Reports, 1969,* p. 47; see NPO, pp. 122-123, para. 7.20).

10. Naturally, Nigeria carefully omits to refer to other passages in the same Judgment, in which the Court states, for example, that what is entailed in the case at issue is an obligation to negotiate "which the Parties assumed by Article 1, paragraph 2, of the Special Agreements" under which the Court had been seised (*I.C.J. Reports 1969,* p. 47, para. 86); or when the Court finds that "in the present case, it needs to be observed that . . . the negotiations carried on in 1965 and 1966 . . . failed of their purpose" (*ibid.*, para. 87), which negotiations, moreover, merely constitute "one of the methods for the peaceful settlement of international disputes" (*ibid.,* para. 86).

11. In reality, Mr. President, States do not feel themselves obliged to resort to delimitation by agreement unless, by mutual consent, they have given a prior undertaking to do so according to the rules indicated by the Court; in that case, they can only do so by negotiation. This case apart, negotiation constitutes neither an exclusive means, nor a compulsory means of delimitation, and it may or may not co-exist with the legal proceedings.

12. Mr. Crawford reverts at considerable length (CR 98/2, pp. 48-52, paras. 26, 28-30) to Articles 74 and 83 of the Convention on the Law of the Sea, relating respectively to the delimitation of the exclusive economic zone and the delimitation of the continental shelf area.

13. Where the exclusive economic zone is concerned, our opponent spends considerable time seeking to ascribe significance to what, for international law, is no more than a series of "facts" (case concerning *Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926 , P.C.I.J., Series A, No. 7*), namely internal proclamations and regulations in Cameroon and Nigeria (CR 98/2, pp. 44-45, paras. 15-16). This is even less understandable when one considers that Cameroon's official position is perfectly clear and well known, since it signed and ratified the Montego Bay Convention. Now, Article 45 of Cameroon's Constitution enshrines the principle that international treaties or agreements have greater authority than laws. Consequently, its rights and

obligations with respect to its maritime area are the exclusive province of the 1982 Convention. It is obvious that no internal proclamation has any relevance from this standpoint.

14. But it is rather because Articles 73 and 84 — surprisingly, Professor Crawford quotes Article 76 (CR 98/2, p. 49, para. 29, p. 51, para. 30) — stipulate that the delimitation "is to be effected by agreement on the basis of international law . . ." that Mr. Crawford dwells upon it.

15. However, Mr. President, it is clear that, by this formula, the international community simply sought to banish all unilateral delimitation by a State. As Judge Oda pointed out in his dissenting opinion appended to the Judgment of 24 February 1982 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Article 83 indicates "that any unilateral claim for . . . delimitation . . . would not be regarded as valid under international law" (*I.C.J. Reports 1982,* p. 246, para. 144). This is also what the Chamber of the Court reaffirmed in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area*: "No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States" (*I.C.J. Reports 1984,* p. 299, para. 112). This is also, apparently, the intimate conviction of Professor Crawford, who cannot refrain from quoting Professor Prosper Weil, when he says that the rule resides above all in the prohibition of unilateral delimitation (CR 98/2, p. 49, para. 27).

16. Hence, if there is an obligation resulting from these texts, it is a negative one, as it were: it is the prohibition of any unilateral delimitation; this obligation is accompanied by a sanction: non-opposability to other States.

17. In this context, it is impossible to see in what a claimed obligation to negotiate would consist, which would be imposed on two States, one of which no longer has any expectations of the other owing to its irreducible *bad faith.* It is even harder to see what the sanction on such an obligation would be.

18. For Nigeria, the sanction would be a prohibition on bringing the matter before the Court (CR 98/2, pp. 44-49, paras. 25 and 28). To convince itself of this, it takes paragraph 2 of

Articles 74 and 83 of the 1982 Convention as basis: "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", which, among other things, provides for a legal settlement.

It also bases itself on an extract from the Judgment of the Chamber of the Court in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, according to which the

> "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 agreement cannot be achieved, delimitation should be effected by recourse to a third party possessing the necessary competence" (*I.C.J. Reports 1984,* p. 299, para. 112).

19. However, Mr. President, these texts do not lay down a prohibition on bringing the matter before a third party, but, quite the contrary, they make it an obligation to do so. In the 1982 Convention, paragraph 2 of Articles 74 and 83 does indeed state: "States shall have recourse" to a third party; it is an imperative. In the 1984 Judgment, the Chamber does indeed state that the delimitation "should be effected" by recourse to a third party; this is also an imperative. How, therefore, could Cameroon have violated those requirements by seising your Court?

20. Mr. President, there is no trace in the international maritime delimitation law of an alleged prohibition on unilaterally seising the Court in the absence of prior negotiations. So long as the rule prohibiting any maritime delimitation is safe, any legal remedy leading to a maritime delimitation is perfectly in order in international law. In this case, however, there is no loftier legal remedy than the one which leads to the International Court of Justice. The quarrel which Nigeria has seen fit to pick with Cameroon on this point is thus devoid of legal substance.

II. It is also, and this will be my second point, devoid of all relevance to the facts.

21. Members of the Court, even if the obligation which our eminent colleagues in the opposing Party rely upon existed, it would in any case not justify Nigeria's submissions. The reason for this is very simple: there were indeed numerous attempts — genuine ones by my country — to reach an agreement on the maritime boundary up to 1978.

22. During the oral arguments, Professor Crawford claimed the contrary, namely, that in the period prior to 1975, there had been neither discussion nor negotiation between the two Parties on the boundary beyond Point G (CR 98/2, p. 41, para. 7, *in fine*; p. 42, para. 11; p. 43, para. 12; p. 50, para. 30).

23. He stresses the absence of negotiations with respect to the continental shelf, on two occasions quoting an extract from the Memorial, according to which the Maroua Declaration *"concerne essentiellement les eaux territoriales"* (essentially concerns territorial waters) (CR 98/2, p. 41, para. 7, p. 50, para. 30). Mr. President, Professor Crawford sometimes quotes the observations of Cameroon in English (CR 98/2, p. 51, para. 30). Does he have a problem with the language of Corneille? In any case, the French word "essentiellement", is not synonymous, contrary to what he believes, with the term "exclusively".

24. At all events, Professor Crawford's argument does not correspond to the reality, as another counsel of Nigeria admits moreover.

25. I know, Mr. President, that Professor Crawford is careful to introduce his oral comments by indicating that his arguments should be considered "independently" of those put forward by his colleagues (CR 98/2, p. 39). But facts are facts and they clearly cannot vary from one oral argument to another, with all due respect to my opponent.

26. Chief Akinjide himself asserted that, during the long negotiations covering the period 1960 to 1994, the parties did indeed deal with problems relating to the maritime boundary as a whole. This was notably the case, still according to this counsel — and the documents attached to the Memorial of Cameroon confirm it — during the meeting of the experts of the Joint Boundary Commission held at Yaoundé from 26 March to 4 April 1971, and the meeting of the same Commission held in Lagos from 14 to 21 June 1971 (see CR 98/1, pp. 53-54, paras. 26, 28 and 29 and MC, Anns. 242 and 243).

27. Furthermore, the press release marking the end of the meeting from 14 to 21 June 1971, expressly recommended that "the boundary line be delineated at a later date, on the continental shelf

in accordance with the Geneva Convention on the Continental Shelf" (MC, Ann. 243, p. 1982 of the Minutes). To get so far, there must clearly have been discussions! And those discussions continued until 1978.

28. In order to work on the maritime boundary as a whole, which was their task, the negotiators clearly proceeded in stages, gradually moving seaward. Two agreements endorsed the results as far as the point called "Point G", which is nothing other than the furthest point seaward on which agreement has been reached.

29. Contrary to what my opponent thinks (CR 98/2, p. 50, para. 30), Point G is not the last point on which there was negotiation; it is the last point on which there was agreement.

30. It is clear, therefore, that these negotiations fell within the context of the express intention of the Parties to reach an agreement on all the maritime boundary. My opponent does not dispute this either (CR 98/2, p. 50, para. 30), but appears not to attach any importance to it. However, Mr. President, it is a vital element: notwithstanding a common intention expressed almost 30 years ago now to delimit their maritime boundary, part of it still remains undetermined today. Cameroon and Nigeria did not therefore reach agreement within the reasonable period of time provided for in paragraph 2 of Articles 74 and 83 of the 1982 Convention, and it is quite clear that "such an agreement cannot be achieved", to borrow the terms of the Chamber of the Court in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area.*

Therefore the Court can obviously be seised.

31. It is true that Mr. Crawford adopts a different perspective: he considers that, regardless of the intentions of the Parties, they did not discuss any point whatever beyond Point G. It is this which is supposed to prevent Cameroon from seising the Court (CR 98/2, p. 49, para. 28). If one understands this argument properly, any State would therefore be prohibited from turning to the Court with a view to a delimitation, in the absence of precise discussions on each portion of that delimitation.

32. But this alleged rule cannot be part of positive law. It would imply that a State could deny its neighbour any access to a maritime boundary simply by refusing to discuss the matter, or by making such discussion pointless. That would be completely absurd and would result in a denial of justice.

33. In the event, Mr. Crawford forgets to say why there were no precise discussions on the portions of maritime boundary beyond Point G. Point G had been fixed by the Maroua Declaration on 1 June 1975. A negotiation meeting to extend the course of the boundary was held in 1978. But at Jos in 1978, the Nigerian delegation, as a prerequisite of the resumption of proceedings, laid down the rejection of the Maroua Declaration. My opponent, however, goes further. It seems that, for him, it is not the Statute of the Maroua Declaration which is blocking the negotiations, but the dispute over Bakassi Peninsula. Let us simply observe that, in both cases, it is not Cameroon which is the origin of these alleged obstacles, but Nigeria. It is Nigeria which has brutally cast doubt on the Maroua Declaration. It is Nigeria which, subsequently, moved its claims northwards in order to call the boundary into question at the level of Bakassi Peninsula.

34. It is indeed Nigeria's attitude which blocked the negotiations beyond Point G. Today, it cannot reproach Cameroon with not having sufficiently negotiated before referring the matter to the Court for, as the Court pointed out in the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* last year:

> "one Party cannot avail himself of the fact that the other has not fulfilled some obligation . . . if the former Party has, by some illegal act, prevented the latter from fulfilling the obligation in question . . ." (Judgment of 25 September 1997, para. 110; *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9,* p. 31).

35. Mr. President, Professor Crawford displays talent when he dons a magician's costume to make a map disappear (CR 98/2, p. 40, para. 3) and to make Equatorial Guinea appear in his argument (CR 98/2, p. 51, para. 30). In so doing, he seeks to make this an obstacle to the very idea of negotiations with Nigeria on maritime delimitation (CR 98/2, p. 51, para. 30). But the reality is that Equatorial Guinea has never been an obstacle in this respect, either since 1993 or before.

As early as June 1971, the negotiators of the Joint Boundary Commission meeting in Lagos had decided "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 Nigeria should be drawn to this fact". This did not prevent them from embarking on discussions, as they never considered the presence of Equatorial Guinea to be a condition for doing so.

B. Objection 7.1

36. Mr. President, I now come to the first part of the seventh Objection. Its purpose is to convince the Court to postpone its consideration of maritime delimitation to a later date (CR 98/2, p. 48, para. 24). Nigeria considers that, before devoting itself to this task, the Court should have settled the matter of the land boundary (CR 98/2, pp. 46-48, paras. 18-24).

37. Of course, it is permissible to consider one course of action more logical than another with a view to settling the dispute. But that is merely a problem of method, as Professor Crawford allows on two occasions (CR 98/2, p. 47, para. 22; p. 48, para. 24). On this point Cameroon notes, moreover, that there is complete convergence of views between the two Parties. But Mr. Crawford stresses that what is entailed is a "preliminary question of methods" *(ibid.)*. This is no discovery. It is clear that the Court ought to determine its method before replying to the questions which have been put to it.

39. Cameroon has suggested an approach which should console Nigeria: first the land, then the sea as far as Point G and then the sea beyond Point G. This is a simple suggestion, as it seems logical: the land dominates the sea. But it is patently for the Court to decide in which order it wishes to deal with the questions raised and it will do so at the stage of the merits after the Parties have presented their oral arguments, when it will have to focus on settling the dispute. This may well be "preliminary"; but not in the sense in which an objection before the Court might be preliminary; quite simply in the sense that the Court, *when coming to examine the question in the merits,* will have to settle it *first*.

40. Mr. President, Members of the Court, I am going to draw this oral argument to a conclusion by saying:

— first, that Nigeria does not provide any proof of the existence of an obligation to negotiate which would determine the possibility for States to seise the Court with a view to a maritime delimitation;

— second, that at any event, Cameroon negotiated with Nigeria on the maritime delimitation, and did not file its Application before the Court until it had exhausted all reasonable possibilities for a direct and amicable settlement of the problem;

— third and last, that the Court has jurisdiction to consider the submissions of the Republic of Cameroon regarding the delimitation of the maritime boundary as well as its land boundary with Nigeria, even if the order in which it aims to consider them is a problem of method which it will have to decide when considering the merits of the case.

41. For all these reasons, Mr. President, Cameroon requests you to reject wholesale the seventh objection raised by Nigeria.

May I now, Mr. President, ask you to call upon my colleague Mr. Keith Highet, who is going to expound Cameroon's observations on the eighth Preliminary Objection. Thank you.

Le PRESIDENT : Merci beaucoup. Je donne maintenant la parole à M. Highet.

M. HIGHET : Monsieur le président, Madame et Messieurs de la Cour, c'est à la fois un honneur et un plaisir de me présenter devant vous au nom de la République du Cameroun. Ma tâche aujourd'hui est de répondre à la huitième exception préliminaire du Nigéria. J'examinerai cinq points, qui sont énumérés dans le plan qui figure dans votre dossier. En premier lieu, je vais dissiper quelques petits malentendus qu'ont pu créer certains arguments développés par le Nigéria mardi, et la première partie de ma plaidoirie sera donc consacrée à ces divers points.

1. Les divers points soulevés par le Nigéria lors de sa plaidoirie

1. Le premier point concerne les nombreux diagrammes que le conseil du Nigéria a présentés à l'écran et fait figurer dans le dossier remis aux juges. La plupart d'entre eux absorbent — c'est commode — la péninsule de Bakassi : elle est coloriée en vert, pour le Nigéria[1].

2. Il suffit de jeter un coup d'oeil au diagramme simple illustrant la position du «point G» (cote 27 dans le dossier remis aux juges par le Nigéria) pour que vienne à l'esprit la question parfois posée comme devinette aux enfants : «Qu'est-ce qui cloche dans cette image ?» Le point G est situé à l'écart à l'ouest, isolé, distant — et comme si le Nigéria ne l'avait jamais accepté. Ceci *doit* illustrer de manière concise combien est étroite la relation entre la position du Nigéria en ce qui concerne la déclaration de Maroua et sa position en ce qui concerne la souveraineté sur la presqu'île de Bakassi.

3. Le Cameroun ne veut pas néanmoins tomber dans le piège qui voudrait lui faire aborder le fond — je souligne le mot «fond» — de l'affaire, même si le conseil du Nigéria s'amuse de notre titre «La Délimitation Equitable»[2]. Monsieur le président, j'ai bien entendu fait figurer dans mon texte des renvois aux procès-verbaux. La Cour n'a cependant pas pu ne pas remarquer combien la démonstration du conseil du Nigéria était difficile à distinguer des arguments très similaires que la Cour a écoutés à de nombreuses reprises par le passé dans des affaires de délimitation maritime. Les mêmes types de cartes lui ont alors été présentés, les mêmes types d'arguments ont alors été formulés, le conseil a souligné le même type de mesures et on a parfois entendu, en ces occasions, des conclusions analogues. Le fait est que tous ces types de démonstration touchent le fond de l'affaire, et ne doivent être examinés par la Cour qu'avec le fond.

4. Mon second point, Monsieur le président, concerne la prétendue «mer territoriale de 50 milles»[3]. Il s'agit certes d'un argument spécieux, formulé «pour la forme» — bien que le conseil

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[1]Cotes 22, 23, 25, 26, 27, 27, 29, 33, 34, 35 et 36.

[2]CR. 98/2, 3 mars 1998, p. 45, par. 15; p. 55, par. 38 et p. 60, par. 50.

[3]CR. 98/2, 3 mars 1998, par. 7,p. 41, et par. 13, p. 44.

ait beaucoup insisté sur ce point. S'appuyant sur un avis de l'*Hydrographic Office* du bureau Royaume-Uni qui indique que le Cameroun revendique toujours une mer territoriale de 50 milles marins (cote 30 du dossier remis aux juges par le Nigéria), le conseil du Nigéria en conclut de manière radicale que le Cameroun «viole manifestement ...[la] convention [sur le droit de la mer].»[4]

5. Toutefois, ce que le conseil du Nigéria ne savait manifestement pas est que, du fait de la primauté de la constitution camerounaise, la mer territoriale de 50 milles a depuis plusieurs années été ramenée à 12 milles. Cette réduction a pris effet de plein droit lorsque la Convention sur le droit de la mer est entrée en vigueur. Nous avons parfois tendance, en tant que juristes de common law, à aborder ces problèmes d'un point de vue dualiste. Le système camerounais, un système de droit civil, est purement moniste. L'article 45 de la constitution camerounaise, reproduite à la cote F, dispose : «Les traités ou accords internationaux régulièrement approuvés ou ratifiés ont, dès leur publication, une autorité supérieure à celle des lois ...»

6. Le Cameroun n'avait donc nul besoin de réformer sa législation : cela allait de soi. C'est pourquoi la mer territoriale du Cameroun ne peut être large de 50 milles marins. Sa largeur est aujourd'hui limitée à la largeur maximale, 12 milles marins, prévue à l'article 3 de la convention sur le droit de la mer. C'est donc à tort que le Nigéria affirme, sur cette base ou sur toute autre, que le Cameroun «viole» ses obligations conventionnelles.

7. Le troisième point préliminaire concerne la «zone économique exclusive non existante.»[5] L'argument du Nigéria est que le Cameroun n'a pas encore revendiqué de zone économique exclusive large de 200 milles marins, et donc qu'il n'en a pas. En outre, le Cameroun aurait agi inéquitablement et de mauvaise foi.[6] Nous avons même été invités à revendiquer une telle zone

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[4]CR. 98/2, 3 mars 1998, par. 16, p. 45.

[5]CR 98/2, 3 mars 1998,par. 14-15, p. 44-45.

[6]CR 98/2, 3 mars 1998, par. 15-16, p. 45-46.

devant la Cour[7] — bien qu'on nous ait aussi rappelé que «ce serait une nouvelle demande au fond»[8], sans aucun doute encore un piège à éviter.

8. Il n'est cependant pas nécessaire que le Cameroun ait «revendiqué» une telle zone aux fins de la présente affaire, pour la raison suivante. Le Cameroun est titulaire de la *juridiction* sur la zone économique exclusive située au large de ses côtes, *qu'il l'ait ou non* proclamée. Cela ressort clairement des articles 55 à 57 de la convention sur le droit de la mer de 1982 — et en particulier du paragraphe 1, alinéa b) de son article 56, aux termes duquel : «dans la zone économique exclusive, *l'Etat côtier a ... juridiction...*» (Les italiques sont de moi).

9. Cela s'accorde tout à fait avec la demande présentée à la Cour par le paragraphe 20, alinéa *f)* de la requête du Cameroun, où le Cameroun prie la Cour de :

> «procéder au prolongement du tracé de sa frontière maritime avec la République fédérale du Nigéria jusqu'à la limite des zones maritimes que le droit international place sous leur juridiction respective».

Monsieur le président, la seule chose nécessaire est le droit à la zone économique exclusive et cela, nul ne le conteste. C'est aussi un lieu commun qu'en l'absence d'autres considérations les limites du plateau continental et celles de la zone économique exclusive suivent le même tracé. Certes le «tracé de sa frontière maritime» donnerait au Cameroun exactement le même résultat pour le plateau et la zone. En revanche, ce que tout cela ne fait *pas*, c'est de justifier une plainte malveillante selon laquelle le Cameroun revendique en quelque sorte une zone inexistante, ou commet de quelque façon une «violation» manifeste de la convention sur le droit de la mer[9].

2. La position du Nigéria est incorrecte en droit

10. Je passe maintenant à la deuxième partie de mes observations. Très simplement, la position du Nigéria n'est pas valable en droit. Le Nigéria dit que cette «question de la délimitation maritime

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[7]CR 98/2, 3 mars 1998, par. 15, p. 44-45.

[8]*Ibid.*

[9]CR 98/2, 3 mars 1998, par. 15-16, p. 44-45.

met nécessairement en cause les droits et les intérêts d'Etats tiers et la demande à ce sujet est irrecevable»[10]. Cependant les délimitations maritimes dans des zones encombrées ont toujours été réglées sans difficulté et, à coup sûr, sans porter préjudice aux droits des Etats tiers. Les observations du Cameroun contiennent une discussion exhaustive des affaires qui font autorité, ainsi que de la pratique tout à fait dominante des Etats en ce domaine[11].

11. Or le Nigéria interprète mal ces sources[12]. Par exemple, dans l'affaire *Libye/Malte*, la question consistait effectivement à savoir si la Libye et Malte auraient pu conférer à la Cour la compétence nécessaire pour déterminer une délimitation avec l'Italie. Bien entendu elles ne l'auraient pas pu. Cependant, cela ne saurait guère indiquer que la Cour doive rechercher *à titre préliminaire* dans quelle mesure la décision qu'elle rendra entre le Nigéria et le Cameroun pourrait avoir une incidence sur les droits, par exemple, de la Guinée équatoriale. Le Cameroun ne soutient pas que la Cour n'aura pas à examiner ce point : à l'évidence elle devra le faire. Elle ne peut pourtant pas résoudre cette question *maintenant*.

12. Le Nigéria a cité aussi la décision de la Chambre en l'affaire *Burkina Faso/Mali*[13]. Au paragraphe 47 la Chambre a déclaré que le juge saisi «doit se garder de statuer ... sur des droits afférents à des zones où s'expriment des prétentions d'Etats tiers, prétentions qui risquent de fausser les considérations de droit ... ayant servi de base à sa décision»[14]. Cependant, comment le juge saisi peut-il décider quelles *sont* ces zones et quelles *sont* ces prétentions ? Il s'agit là, par excellence, d'une question qui relève du *fond* d'un différend.

13. Nous avons aussi signalé dans nos observations que la pratique des Etats se caractérise par le souci du respect des intérêts des Etats tiers. La moitié des délimitations auxquelles il a été

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[10]EPN, par. 8.17, p. 140.

[11]*Plateau continental (Tunisie/Jamahiriya arabe libyenne), C.I.J. Recueil 1982,* p. 18 et *Plateau continental (Jamahiriya arabe libyenne/Malte), C.I.J. Recueil 1985,* p. 13.

[12]CR 98/2, 3 mars 1998, par. 45, p. 58.

[13]CR 98/2, 3 mars 1998, par. 37, p. 55.

[14]*Ibid.*

procédé dans le monde n'auraient peut-être pas pu être réalisées s'il avait été interdit à deux Etats de se mettre d'accord sur une frontière maritime entre eux du fait de la présence à proximité d'un Etat tiers. Et, comme nous l'avons démontré, la solution reconnue est de déclarer de façon expresse — ainsi que par effet de la loi — que la délimitation est faite «sans préjudice» des droits des Etats tiers.

14. Aussi ne suffit-il pas — ainsi que l'a fait le conseil du Nigéria — de rejeter cette solution du revers de la main comme s'il s'agissait simplement d'un subterfuge ou d'une manœuvre dans «le tumulte des négociations internationales»[15]. Ceux qui ont été chargés de procéder à des délimitations dans des situations complexes ne seraient guère d'accord pour reconnaître qu'ils n'ont pas eu en fait le souci particulier de faire précisément le *contraire*. L'affirmation du Nigéria pêche par son manque flagrant de logique car il ne semble guère y avoir de «tumulte» possible vis-à-vis d'Etats qui *ne* participent *pas* aux négociations — et c'est d'eux que se soucie apparemment le conseil du Nigéria.

3. La position du Nigéria est contraire à la logique

15. Selon l'analyse développée par le Nigéria, il serait malvenu et inadmissible pour la Cour de même *entreprendre* une délimitation de la frontière maritime entre le Cameroun et le Nigéria. C'est le seul sens que l'on puisse donner à une exception générale d'irrecevabilité. Il n'est toutefois pas possible de conclure à l'«irrecevabilité» de la demande en délimitation du Cameroun sans pouvoir démontrer que cette demande est irrecevable quant à *la totalité de la distance sur laquelle doit s'opérer la délimitation*. La délimitation commencerait donc à un millimètre au sud-est du «point G». Il s'agit là d'un nouvel avatar du paradoxe d'Achille et de la tortue, de Zénon, le Cameroun se trouvant dans la situation d'Achille, c'est-à-dire n'étant jamais en mesure de convaincre la Cour de la recevabilité éventuelle de sa demande à l'égard de n'importe quelle partie de la ligne de délimitation.

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[15]CR 98/2, du 3 mars 1998, p. 60, par. 52.

16. L'exception du Nigéria tient de ce paradoxe. Le conseil du Nigéria a déclaré que «*[p]eu après le point G* on se trouve dans des eaux à l'égard desquelles la Guinée équatoriale a des intérêts juridiques et peut faire valablement valoir des droits»[16]. Que veut-on dire par «peu après le point G» ? S'agit-il d'un mille marin ? D'une dizaine de milles marins ? D'une trentaine de milles marins ? Comment la Cour pourra-t-elle trancher cette question sans toucher au fond, sans se livrer à une analyse du fond ?

17. La manière dont le Nigéria a formulé sa huitième exception soulève donc un paradoxe sur le plan de la logique. Le Nigéria ne saurait sérieusement conclure à l'irrecevabilité de la demande du Cameroun à une fraction d'un mille marin au sud-ouest du «point G». Si la Cour peut procéder à une délimitation de la frontière maritime sur une distance donnée à partir du *point G* vers la mer, la requête du Cameroun ne saurait dès lors être *irrecevable* et la huitième exception préliminaire du Nigéria doit être rejetée.

18. Il a aussi été beaucoup question mardi d'intervention[17]. Il y a toutefois une question que le Nigéria n'a pas abordée : si un autre Etat cherchait à intervenir à ce stade de l'instance —`que ce soit aujourd'hui ou il y a six mois —, est-ce que cette intervention serait autorisée ? L'issue de loin la plus probable semblerait être qu'un tel requérant subirait à ce stade le sort qu'a connu El Salvador lors de la phase sur les exceptions préliminaires dans l'affaire du *Nicaragua*[18]. Et il s'agit là encore d'un autre paradoxe : si le Nigéria a raison, le Cameroun ne pourra jamais l'emporter car on n'atteindra jamais la phase du fond, au cours de laquelle pourrait être accueillie une requête à fin d'intervention d'un Etat voisin. Travail de Sisyphe donc.

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[16]CR 98/2, du 3 mars 1998, p. 59, par. 47; les italiques sont de nous.

[17]CR 98/2, du 3 mars 1998, p. 54-55, par. 36-38.

[18]*Affaire relative aux activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique), compétence et recevabilité, arrêt, C.I.J. Recueil 1984*, p. 392.

4. La position du Nigéria tendrait à créer un effet de blocage en matière de délimitation

19. En quatrième lieu, je tiens à faire ressortir que la position du Nigéria tendrait à créer un effet de blocage en matière de délimitation et reviendrait à paralyser la Cour à l'égard des futures délimitations. On peut en effet raisonnablement s'attendre à des situations complexes (comme l'est la présente affaire) où les parties intéressées ne seront pas parvenues à se mettre d'accord. Beaucoup, sinon la plupart, des affaires futures mettront nécessairement en cause les intérêts accessoires d'Etats tiers. La proposition sous-tendant la huitième objection préliminaire du Nigéria empêcherait les tribunaux de passer à l'examen quant au fond de telles affaires, alors que c'est à la phase concernant le fond qu'un tribunal peut examiner et adopter des mesures de sauvegarde appropriées.

20. On dissuaderait ainsi les Etats d'essayer de conclure des accords bilatéraux en matière de délimitation maritime en posant une condition impossible à satisfaire : si *tous* les Etats affectés, même de manière infime, devaient être toujours parties à *toutes* les affaires de délimitation, *toutes* les parties potentielles devraient alors toujours acquiescer à *toutes* les délimitations entre Etats. Le simple bon sens écarte certainement une telle extrémité. Cela est sans doute particulièrement important aujourd'hui puisqu'on peut supposer que la plupart des espaces maritimes devant encore faire l'objet d'une délimitation sont les plus complexes et intéressent plus de deux Etats.

5. La huitième exception du Nigéria n'a pas un caractère préliminaire

21. Il apparaît maintenant clairement que la huitième exception ne saurait avoir un tel «caractère» — ni à fortiori un «caractère exclusivement préliminaire». Je me réfère naturellement ici à la formulation du paragraphe 7 de l'article 79 du Règlement de la Cour. La huitième exception est essentiellement une question de fond. Il faut faire appel, nous l'espérons, tant au droit qu'au bon sens pour résoudre ce dilemme apparent. Si des espaces maritimes encombrés soulèvent des problèmes, ces problèmes doivent être naturellement traités au moment voulu et de la manière appropriée par la Cour — ou par un tribunal ou par les parties elles-mêmes dans des négociations bilatérales, comme le montre amplement la pratique des Etats.

22. Il convient de noter que mardi, à la fin de la présentation de son argumentation, le conseil du Nigéria a déclaré : «Monsieur le président, Madame et Messieurs de la Cour, si elle intéresse la compétence, cette position [du Nigéria] a bien un caractère préliminaire»[19], ce qui est fallacieux. Une question ne saurait en effet avoir un caractère *préliminaire* du simple fait qu'elle «*intéresse*» la compétence. S'il en était ainsi, l'affaire ne présenterait aucune difficulté, et la Cour n'aurait jamais eu à adopter une disposition concernant le «caractère exclusivement préliminaire» d'une objection préliminaire.

23. Cette logique défectueuse est analogue à celle qui entache l'affirmation du Nigéria selon laquelle le Cameroun présumerait trop de choses dans la présente affaire : «... la Cour, en tant qu'organe judiciaire, ne saurait assurer sa compétence sur une frontière maritime, compétence qu'elle seule peut exercer, *si elle avait auparavant décidé de rejeter* la position juridique d'une des deux Parties à l'affaire dont elle est saisie»[20]. Cela sous-tend une partie de l'argumentation du Nigéria concernant sa septième exception préliminaire, dans laquelle le conseil de ce pays a affirmé qu'il se pose «une question de méthode préliminaire sérieuse»[21] — je répète «une question préliminaire sérieuse» — et suggère que «à tout le moins ... l'aspect maritime de l'affaire ne doit être examiné qu'après que les questions concernant la frontière terrestre l'auront été»[22]. Mon ami, M. Bipoun Woum, a mentionné certains des aspects de ce problème, qui fait ressortir une division artificielle entre les différentes phases de la présente affaire. Mais il importe de bien comprendre qu'une telle division rigide de l'affaire en différentes portions formelles a un caractère artificiel et superflu.

24. La Cour est parfaitement capable d'aborder les problèmes dans leur ordre logique et approprié sans avoir à déclarer qu'une partie d'une affaire est «irrecevable» simplement parce que,

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[19]CR 98/2, 3 mars 1998, p. 60, par. 51; les italiques sont de nous.

[20]Ibid., p. 51, par. 35, première astérisque; les italiques sont de nous.

[21]Ibid., p. 44, par. 22.

[22]Ibid., p. 45, par. 24.

logiquement, une décision doit d'abord être prise sur une autre partie — l'affaire *Qatar/Bahreïn*, actuellement en instance devant la Cour, comporte précisément ce type de double examen.

25. Pourtant, dans un accès similaire d'illogisme, le conseil du Nigéria a avancé que la seule raison pour laquelle ces questions «n'ont été traitées qu'au stade du fond dans l'affaire *Libye/Malte*» était qu'il ne pouvait y avoir de «phase préliminaire» dans cette affaire, qui avait été soumise à la Cour par voie de compromis entre les deux Etats[23]. Mais le simple fait que ces questions aient été *traitées* au stade du fond dans l'affaire *Libye/Malte* — ou d'ailleurs au stade du fond dans celle de *Tunisie/Libye* — ne peut signifier qu'elles devraient l'être *dans une phase «préliminaire»* en cette instance-ci, introduite par requête. Elles devraient de nouveau être traitées *au stade du fond*, ce qui signifie que l'exception du Nigéria devrait encore être rejetée. La Cour peut veiller au stade du fond à ce que justice soit faite et à ce qu'aucun Etat tiers ne soit lésé. Mais la question ne saurait être écartée d'emblée, avant d'avoir été examinée sur le fond, sans injustice à l'égard du Cameroun aujourd'hui.

26. D'ailleurs, si soit *Tunisie/Libye*, soit *Libye/Malte* avait été soumise à la Cour par voie de requête et si l'un des défendeurs — quel qu'il soit — avait alors soulevé l'équivalent de la huitième exception préliminaire du Nigéria — peut-on douter que la Cour, en 1981 ou en 1984, *ne l'aurait pas* réservée pour la phase du fond et qu'elle aurait traité les questions que cela soulevait plus tard, et serait probablement parvenue au même résultat que celui de 1982 et de 1985 ?

27. Monsieur le président, la délimitation demandée ici est peut-être difficile à réaliser — mais irrecevable à priori, non, elle ne l'est pas. Si le Nigéria devait dire qu'il ne peut y avoir de délimitation du tout, en droit, parce qu'il serait impossible d'aller ne fût-ce que d'un mètre au sud-ouest du point G — si le Nigéria devait par hypothèse prendre une position aussi extrême — même alors la Cour devrait examiner cette thèse. La Cour se pencherait même alors sur le fond de l'affaire, exactement de la même manière que lorsqu'elle compare les différentes cartes et lignes

[23]CR 98/2, 3 mars 1998, p. 60, par. 51.

que le conseil a projetées à l'écran mardi. Si ce n'était pas là un examen portant sur le fond, on voit mal ce que cela pouvait être d'autre.

28. La réponse à la huitième exception est donc double. Premièrement : les droits des Etats voisins seront toujours entièrement protégés par toute décision que la Cour serait invitée à rendre. Deuxièmement : cette opération dépendra inévitablement d'un examen des faits et des circonstances de l'espèce. Et s'il en est ainsi, alors a fortiori cette opération ne peut jamais, jamais, revêtir un caractère exclusivement préliminaire. Cette argumentation me rappelle la «pièce dans la pièce» de l'acte II de *Hamlet*[24]. La procédure relative à la huitième exception est une affaire de délimitation dans une affaire de délimitation. Et cela ne devrait pas être le cas.

29. Pour ces motifs, Monsieur le président, Madame et Messieurs de la Cour, le Cameroun vous prie de rejeter la huitième exception préliminaire et de refuser en fait de déclarer un *non liquet*. La Cour devrait aborder la question de la délimitation maritime entre le Cameroun et le Nigéria de la manière normale, elle devrait examiner la situation de fond qui se présente dans la zone concernée par la délimitation, et elle devrait ensuite aller aussi loin qu'elle le juge approprié.

30. J'en ai terminé des plaidoiries de la République du Cameroun pour ce premier tour de plaidoiries. Monsieur le président, Madame et Messieurs de la Cour, je vous remercie de votre attention.

Le PRESIDENT : Merci, M. Highet. M. Guillaume a une question à laquelle les parties sont invitées à répondre pendant le second tour la semaine prochaine, ou en tout cas d'ici le 25 mars.

Judge GUILLAUME: Mr. President, my question relates to the fifth Preliminary Objection raised by Nigeria. Any reply by either of the Parties will nonetheless be welcome. The question is as follows:

> "Nigeria tells the Court that there is no dispute as regards the land boundary between the two States (subject to the existing problems in Bakassi Peninsula and the Darak region)".

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[24] *Hamlet*, acte II, scène 2.

"Does this signify that, these two sectors apart, there is agreement between Nigeria and Cameroon on the geographical co-ordinates of this boundary as they result from the texts relied upon by Cameroon in its Application and its Memorial?"

Le PRESIDENT : Je vous remercie. Le second tour de plaidoiries commencera lundi matin à 10 heures. L'audience est levée.

L'audience est levée à 12 h 55.