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ANNEE 1998

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tenue le lundi 9 mars 1998, à 10 heures, au Palais de la Paix,

sous la présidence de M. Schwebel, président

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

Exceptions préliminaires

COMPTE RENDU

YEAR 1998

Public sitting

held on Monday 9 March 1998, at 10 a.m., at the Peace Palace,

President Schwebel presiding

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

Preliminary Objections

VERBATIM RECORD

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

M. Valencia-Ospina, greffier

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

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The PRESIDENT: Please be seated. Today we begin the second round of hearings and I should like first of all to call upon the Agent of Nigeria.

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

1. In this second round of speeches I will begin by dealing with some relatively general matters that do not fall under any particular heading of Nigeria's Preliminary Objections. Counsel will then deal with further points specifically directed to individual objections.

2. In my opening speech on behalf of the Federal Republic of Nigeria, I invited our opponents to conduct these hearings in a spirit of respect for the Court and mutual respect between fraternal States[1]. Nigeria got its answer on Thursday and Friday last, when Cameroon presented a mass of prejudicial material which our opponents must know is irrelevant to these hearings. There is a great deal of it. Given the time available, it would clearly be impossible for Nigeria to deal with it all, Mr. President, and in any event it would be inappropriate to do so, because we are confident that the Court will not permit itself to be influenced by such material. However, and for the record, Nigeria reserves its position and rights on all allegations of fact and law that Cameroon has seen fit to make.

3. Nigeria is entitled to adduce evidence in support of its Preliminary Objections, and it has done so. Cameroon has responded, in a rather contradictory manner, in three main ways. All of them are attempts to distract attention from the real issues, namely the content of Nigeria's Preliminary Objections and the evidence Nigeria has adduced in support of them.

4. First, Cameroon suggests that Nigeria's Preliminary Objections embody material which relates to a putative merits phase rather than to preliminary objections[2]. This is simply not true.

5. And it is not at all clear that our opponents really believe it either. For, and this is Cameroon's second approach to the question, Cameroon also says, contradictorily, that Nigeria has concealed its position on the merits[3]. This is not so. Nigeria's position has been clearly stated.

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[1]CR 98/1, p. 28, para. 45.

[2]CR 98/3, p. 31, para. 33.

[3]CR 98/4, pp. 26 *et seq.*, paras. 10 *et seq.*

6. The third Cameroonian position, which contradicts both the others, is to pretend that Nigeria's theory of the boundary must be an aggressive and destabilizing one. Cameroon provides a self-serving interpretation of the views it attributes to Nigeria, indicating, with no justification, that Nigeria's legal theories as to the boundary necessarily challenge the legal architecture of the entire border[4]. Mr. President, it ought to be possible for one State to perceive that its neighbour holds a different legal theory about the boundary without making spurious charges that the latter State is challenging the entire boundary, let alone the claim, which Cameroon has indeed made[5], that Nigeria is imperilling the very existence of Cameroon and the peace and stability of the African continent.

7. Mr. President, before these hearings began, it was apparent that Cameroon thought it could strengthen its case on Bakassi by pretending that Nigeria is trying to destabilize the entire Cameroonian State through aggression all along the boundary. No evidence worthy of the name is deployed in support of this fiction, for which, as Cameroon well knows, Nigeria could have no conceivable motive.

8. The pretence continued on Thursday and Friday of last week. And in so far as new allegations are now levelled at Nigeria for the first time, they are for the most part doubly irrelevant, given that the Court must examine the issues of jurisdiction and admissibility as at the date of the Applications themselves. The alleged attack at Sangre on 24 February 1998[6] is just one example of such an allegation.

9. Mr. President, Nigeria has acknowledged that there are problems in the Darak area and in Bakassi, but there are no real problems elsewhere. Cameroon knows this very well. It says that there are disputes all along the border. But, in relation to such matters, Nigeria contends that an item which a State wishes to call a dispute does not constitute a dispute unless certain criteria are satisfied. In this case they are not. In essence, Cameroon has consistently failed to articulate the

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[4]See footnote 3.

[5]CR 98/3, p. 20, para. 35, and CR 98/4, p. 28, para. 15.

[6]CR 98/3, p. 14, para. 20.

existence of any dispute as to the delimitation of the boundary, by involving such matters as overflights, miscellaneous incidents such as "police vehicles" and the like.

10. The mere assertion "There is a dispute" is simply not enough. Nigeria believes that Cameroon understands this perfectly well. It says as much in paragraph 5.05 of its observations, but fails to follow the logic of its words. Sir Arthur Watts will develop this subject further, by reference to the alleged incidents said by Cameroon to have occurred all along the border. I will not anticipate what he is going to say. But Cameroon's willingness to assert facts unsupported by any credible evidence and present them as if they were evidence goes well beyond its repertory of so-called incidents. In pursuing this course, Cameroon undermines its own credibility.

11. Mr. President, distinguished Members of the Court, thank you for your attention. I would ask you to call upon Sir Arthur Watts.

Mr. PRESIDENT: Thank you very much Mr. Ibrahim, I call now on Sir Arthur.

Sir Arthur WATTS:

The Court has no jurisdiction to entertain Cameroon's Application

Mr. President, Members of the Court, I have the honour to present Nigeria's reply on its first Preliminary Objection, in the light of the comments made by Cameroon on 5 and 6 March.

Let me restate, in very summary form, three essential elements in Nigeria's argument:

— first, Nigeria was deliberately kept unaware of Cameroon's real intentions about referring this dispute to this Court;

— second, within the framework of the Optional Clause system, Cameroon's submission of an Application on 29 March 1994 did not comply with the requirements of Article 36 of the Statute of the Court, read with Nigeria's own Declaration accepting the Court's jurisdiction under that Article; and

— third, the *Right of Passage* case is not a compelling precedent for the Court to follow in all respects, given the circumstances of the present case, and legal developments in the 40 years since that case was decided.

Let me take each of those elements in turn.

I. Cameroon's conduct, and Nigeria's lack of knowledge

Nigeria has demonstrated that in the period when Cameroon was preparing to come to the Court, several high level meetings were held at which it would have been possible, and indeed appropriate, for Cameroon to have informed Nigeria of what it was doing[1]. Cameroon has not denied that those meetings took place; nor has Cameroon denied that it did not tell Nigeria anything at those meetings about Cameroon's intention to refer the Bakassi dispute to this Court.

The only point which Cameroon took in this context was that President Biya had alerted General Abacha to Cameroon's intentions, by way of a passage in his letter of 19 February 1994[2]. I dealt with that letter on 2 March[3]. But let me do so again. The relevant part of the text is now on the screen. It is at Tab 40 in the folders. As can be seen, President Biya was exhorting General Abacha to persevere with the negotiating efforts which were already under way — and not just to persevere with them, but even intensify them. And one of the objectives of that *on-going negotiating effort* was the finding of a solution through recourse to judicial channels — these were unspecified: they could for example include an agreed reference to arbitration, or the conclusion of a special agreement upon a reference to this Court. But certainly, at a time when Cameroon was in no position to start a case in this Court (and this is, I would recall, still February 1994), why should Nigeria be expected to understand this general reference to negotiate about — that is, reach bilateral agreement about — *inter alia* recourse to judicial proceedings, as an indication that unilateral recourse to this Court was what Cameroon had in mind? And if President Biya was so set on informing his Nigerian colleague, why not tell him directly? No, Mr. President, Cameroon was bent on concealment, not transparency.

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[1]CR 98/1, pp. 29-30.

[2]CR 98/3, pp. 25-26 (Kamto) and 48-49 (Ntamark). The letter itself is at MC 337.

[3]CR 98/1, pp. 30-31, 32.

Then there is the OAU meeting on 11 March. I mentioned this on 2 March[4], this year, that is. Professor Ntamark also referred to it, on 5 March[5]. He said that it showed that the OAU Secretary-General said that Nigeria was aware that Cameroon had started proceedings before the Court. Mr. President, I would first note that this report, which was part of Cameroon's Memorial[6], was not an external, impartial record of the OAU meeting, but Cameroon's own internal report of it. There are three grounds for regarding Professor Ntamark's words as a travesty of the truth. First, the "fact" which the report is said to show that Nigeria was aware of, *could not* have been known to Nigeria (or anyone else), since on 11 March — the date of the meeting — Cameroon had not started proceedings. Second (and here I show Professor Ntamark's words on the screen — and they are at Tab 41 in the Judges' folders), Professor Ntamark's quotation shows, if it shows anything, not that Nigeria knew of Cameroon's proceedings, but that Nigeria did not! — "Nigeria did *not* seem to appreciate . . .". But by far the most serious point is the third, which reveals Cameroon's unbelievable attempt to mislead both Nigeria, and the Court. Professor Ntamark's words are still on the screen. Let me show you, beneath them, what the actual document he is relying on says — and the relevant part has been retyped, as the original was not terribly clear, but they are both on the screen. It clearly says, not that Nigeria was not aware of something, but that it was the Secretary-General of the OAU who was not aware of it (and that is precisely the point made by Nigeria on 2 March, in demonstrating the error in Cameroon's assertion that "all African officials" knew of Cameroon's initiation of proceedings)[7]. Such a grossly inaccurate distortion of a document before this Court is, Mr. President, regrettable: but apart from that, I would only observe that Cameroon cannot even be relied on to read *its own* reports properly.

Professor Ntamark also gave us a catalogue of media reports[8]. And as I said on 2 March[9],

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[4]CR 98/1, p. 33.

[5]CR 98/3, p. 50.

[6]MC 349, p. 71.

[7]CR 98/1, p. 33.

[8]CR 98/3, pp. 49-50.

diplomacy by journalism is an unreliable, unusual and inappropriate channel for the conduct of international business. Professor Ntamark even repeated in front of the Court the proposition that it should treat, as serious evidence that Cameroon had "officially announced" its intentions, a report from a radio station in a third State, Gabon. If there was such an "official announcement", where is it? Why is the text not included in the documents before the Court? Mr. President, two things are striking about all these miscellaneous media reports (apart, of course, from their unreliability, and unofficial character): first, Cameroon has not been able to refer to a single *official, Cameroon* pronouncement on this matter (so, on what were all these journalistic reports based — speculation? or must we add to "litigation by afterthought", and "litigation by accretion", the further concept of "litigation by inspired leak"?). The second point is this: why rely on all this media reporting at all? If Cameroon was happy for the media to know what was going on, and to broadcast the facts, why not make an official announcement, or tell Nigeria directly?

Because, Mr. President, Cameroon wished Nigeria to believe that all efforts should continue to be focused on the bilateral, negotiating channel. And that is evident from the Cameroon Foreign Minister's message delivered to General Abacha on 13 January, proposing a joint committee to look at the whole border question[10], and from the previously mentioned message from President Biya on 19 February — just two weeks before Cameroon deposited its Optional Clause Declaration — emphasizing the need to persevere and intensify on-going negotiations.

Cameroon has tried to show that all this talk of Nigeria's lack of knowledge about what Cameroon was doing was really beside the point, since there was no obligation upon Cameroon to have told Nigeria what it was doing[11]. So let me explain the relevance of this issue.

(i) First, Cameroon's failure to inform Nigeria, and indeed Cameroon's wilful misleading of Nigeria, *are* directly relevant to Cameroon's obligation to conduct itself in good faith — both in

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[9]CR 98/1, p. 33.

[10]CR 98/1, p. 30.

[11]CR 98/3, p. 36.

general, and, specifically, in relation to the jurisdiction of this Court under the Optional Clause[12] and, given that Optional Clause declarations are treated as treaties, in relation to the performance of those declarations, by virtue of the clear obligation now imposed in terms by Article 26 of the Vienna Convention on the Law of Treaties[13] — a Convention the significance of which, I notice, Cameroon avoided discussing.

(ii) Second, Nigeria's lack of knowledge, and particularly Cameroon's misleading of Nigeria as to the true position, are also directly relevant to the establishment of mutuality which forms part of Nigeria's Optional Clause Declaration. Without knowledge there can be no mutuality, no meeting of minds, no consensual relationship; and without that there can be no satisfaction of the condition of reciprocity incorporated in Nigeria's Declaration.

II. The Optional Clause

Let me now turn to the second essential element in Nigeria's position on this first Preliminary Objection, which concerns the operation of the Optional Clause system.

Professor Simma began with a plea not to destabilize the "fragile" Optional Clause system[14]. A system which has lasted for three quarters of a century, and has since 1990 attracted 13 new adherents, can hardly, Mr. President, be called "fragile"! And if anything is going to destabilize that system, it is more likely to be giving encouragement to sharp practice and lack of transparency in its operation.

Professor Simma also raised the question of what a "reasonable time" might be, in the context of only allowing a State to invoke its Declaration after the lapse of a reasonable time in which other States might learn of its deposit. This Court, Mr. President, pointed the way in the *Nicaragua* case[15]. There, in the context of determining what was reasonable notice for purposes of terminating

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[12]CR 98/1, p. 31.

[13]CR 98/1, p. 41.

[14]CR 98/3, p. 33.

[15]*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), I.C.J. Reports 1984.*

a declaration, the Court said that it did not need to decide what that period was, but only whether the date on which notice had been given in the instant case was too soon[16]. That is the approach which, Nigeria submits, would be appropriate for the Court to adopt in the present case, and conclude that, in the circumstances of this case, the delay of just over three weeks between the deposit of the Declaration and the filing of the Application did not allow a reasonable period to elapse. But in a sense this is an artificial question: if Cameroon needed to ensure that Nigeria had the necessary knowledge, Cameroon simply had to tell Nigeria.

Professor Simma also criticized the notion of "reasonableness" on the ground that it would vary with the circumstances. Yes it would — because circumstances vary: that is the essence of flexible adjectives like "reasonable" and "equitable" — they enable differing circumstances to be dealt with within the framework of the same rule so as to produce a just and acceptable end-result. But Professor Simma said that it would be "absurd" for Cameroon to have been expected to have made an assessment of the extent to which the United Nation's financial crisis might have caused delays in the communication of declarations to other States[17]. But why should not Cameroon — and other States — make *some* enquiries, Mr. President? — for example, into the pattern of the Secretary-General's communication of declarations at that time? Indeed, no enquiries were needed: Cameroon will have received such communications, like all other member States. And Cameroon must therefore have known that in the four years before it made its Declaration in March 1994 the standard delay for such communications varied between two and two-and-a-half months after the declaration was made. The Table at Tab 42 in the Judges' folders shows the details (and the Table is the result of enquiries Nigeria made last week from the United Nations Secretariat in New York); it also shows details for the years after Cameroon's Declaration was made: the general pattern of delay remained the same.

Now let me turn to Article 102 of the Charter. The Parties are of one mind on one thing — Optional Clause declarations are treated as if they were treaties, for the purposes of

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[16]At p. 420, para. 63.

[17]CR 98/3, p. 35.

Article 102; and they are therefore registered by the Secretary-General. At that stage they take legal effect: they are, so to speak, "in force". But from there on, the Parties differ. Cameroon says that this means that, once registered, the declarant State is entitled to invoke its declaration[18]. But with respect, that is not so. Registration under Article 102 does not confer a right to invoke a treaty; it merely removes the particular bar to invoking the treaty which Article 102, paragraph 2, imposes on an unregistered treaty. Removing that one bar, says nothing about any other reasons which might prevent a treaty — or declaration — being invoked. To give a simple example, assume that State A has lodged a declaration which says that it will not apply against any other State until 12 months after such other State has deposited its declaration; and now let us say that State B deposits its declaration with the Secretary-General. In those circumstances it is clear that even though State B's declaration may be registered forthwith, and may be legally in force, it does *not* give State B an instant right to invoke it against State A. State B must wait a year before it has the right to invoke its declaration against State A. And why is that, Mr. President? — it is because State A's declaration imposes that condition. *And the same is true with respect to Nigeria's Declaration.* Nigeria's Declaration imposes a condition of reciprocity, the practical effect of which is equivalent to the delay imposed by State A: Nigeria's Declaration says that State B cannot invoke its declaration against Nigeria until Nigeria's condition of true, mutual reciprocity is met. Cameroon's failure to appreciate the difference between a declaration taking legal effect, and the right to invoke it, makes its argument based on Article 102 of the Charter entirely misplaced.

At the heart of Nigeria's argument on the proper operation of the Optional Clause system is the condition of reciprocity included in Nigeria's Declaration.

Nigeria has submitted that reciprocity requires there to be a meeting of minds. And Professor Simma accepted this[19]. However, he saw that meeting of minds in the interaction of the two Declarations. But that, Mr. President, ignores the element of reciprocity, which *is part of Nigeria's Declaration — that* is an essential part of Nigeria's "mind", and only if that element is

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[18]CR 98/3, p. 38.

[19]CR 98/3, p. 43.

satisfied can the required meeting of minds exist, and the two Declarations be regarded as themselves constituting the necessary meeting of minds. No wonder that Cameroon showed no further disposition to discuss the various "consensual" arguments advanced by Nigeria[20].

Never mind, says Cameroon, there was still "perfect equality" between the Parties, since both had accepted the Optional Clause[21]. Not only does this wholly ignore the terms in which Nigeria had conditioned its acceptance, it also ignores the real world. Consider the position on 28 March 1994, the day before Cameroon lodged its Application. Both States knew that Nigeria had deposited a Declaration accepting the Optional Clause. Cameroon had also made a Declaration, and of course knew that it had done so: Nigeria did not know. Nigeria, because of its known Declaration, was at risk of having proceedings instituted against it; Cameroon as a matter of practical reality, faced no such risk. Cameroon knew that it was in principle in a position to institute proceedings against Nigeria at any time it chose; Nigeria had no equivalent knowledge as to its possibilities against Cameroon. And these last two differences in their positions was, of course, not just significant in relation to the institution of proceedings before this Court, but also affected the relative position of the Parties in their ordinary bilateral relations and negotiations, clearly working to the disadvantage of Nigeria. In no way, Mr. President, can the position of the Parties be described as "perfectly equal".

Cameroon argues that it met the condition of reciprocity stipulated in Article 36, paragraph 2, of the Statute. And if by that Cameroon means simply that Cameroon had made a Declaration under that Article, and so had Nigeria, then that advances matters not at all: it is clear that the "same obligation" commitment in Article 36, paragraph 2, (not, as noted on 2 March[22], "reciprocity" in terms) the "same obligation" commitment, requires a reading of that provision *together with* the two States' Declarations. Cameroon cannot be said to have met the "same obligation" commitment unless it also takes into account Nigeria's condition, in its Declaration, of reciprocity: that is to say

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[20]At CR 98/1, pp. 43-44.

[21]CR 98/3, p. 43.

[22]CR 98/1, p. 34.

that Cameroon can only meet the requirements of Article 36, paragraph 2, if Cameroon can show that the requirement of mutuality — the requirement of a "meeting of minds", which Professor Simma has accepted — has also been met.

Mr. President, I began the last half of that sentence with the words "that is to say". It clearly illustrates the error in Professor Simma's next point. This was that Nigeria's Declaration, by introducing the reference to reciprocity with the words "that is to say", added nothing[23]. But as I have shown, the more usual practice is to use "that is to say" as a phrase indicating an additional nuance, or gloss, or embellishment, or emphasis, or clarification being added to some preceding words. The additional words were far from mere surplusage: indeed, by introducing them with the words "that is to say", the speaker is flagging that they involve a qualification to the preceding passage. Taken together with the well-established legal principle that if words are used they are intended to have some meaning and effect, it is clear that the additional phrase introducing an express element of reciprocity cannot be dismissed as mere surplusage, of no effect. Those words were intended to have some effect additional to the repetition of words from Article 36, paragraph 2, of the Statute; and that additional effect is the emphasis on the need for reciprocity, giving that term its normal meaning. In that context, I must repeat that Nigeria gives to "reciprocity" its normal, dictionary meaning, not some special meaning, as Cameroon alleges: I notice with interest that Cameroon did not dissent from Nigeria's submission as to the correct, normal, dictionary meaning of "reciprocity"[24]: Cameroon did not even discuss the point.

Cameroon adds that, however, the jurisprudence of the Court shows that "reciprocity" is regularly given the meaning of "reciprocal invocation"[25]. Although Professor Simma suggested that my list of the various senses in which the concept of reciprocity was used in Article 36 only confused matters, that list nevertheless does illustrate the fact that the jurisprudence of the Court to which Professor Rosenne (who was cited by Cameroon) was referring was concerned only with

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[23]CR 98/3, p. 45.

[24]CR 98/1, p. 36.

[25]CR 98/3, p. 45.

one aspect of the concept — the fourth to which I referred, namely the extent to which one party may rely on the terms of the other party's declaration. The Court's views on the meaning of "reciprocity" *in that context* are not to be taken as governing all the other various contexts in which that concept might be employed.

The last of Cameroon's arguments on reciprocity which I need to address is that to accept Nigeria's meaning of reciprocity would mean that Nigeria would have the opportunity to reconsider its position in the light of new Declarations being submitted by other States. This, Cameroon says, would tear down a "cornerstone" of the whole system[26]; it was, it was said, "essential" that States cannot reconsider their positions. Mr. President, this is a surprising argument. I need only offer two comments. First, a dozen States have included in their declarations reservations allowing them a specific time period in which to reconsider their positions when faced with new declarations by other States: does Cameroon argue that all these States — Cyprus, Hungary, India, Mauritius, Spain, the United Kingdom, and so on — are they all upsetting the fundamental structure of the Optional Clause system? Are their declarations to be held improper — perhaps even invalid? The second comment is this. Cameroon upholds the merits of a system which allows for, and even encourages, the "surprise" institution of proceedings before this Court against unsuspecting States; Nigeria upholds a system which allows for a genuine consensual approach to the Optional Clause system. Nigeria submits that there can be no doubt that it is the latter which has the better claim to represent the "cornerstone" of the system.

As a final point on this aspect of my statement, let me address the argument that, despite Nigeria's Preliminary Objections, Nigeria has somehow already accepted the jurisdiction of the Court. This argument was dealt with by Nigeria on 2 March[27], when it was pointed out that references to proceedings before this Court being pending necessarily included the ancillary aspects of those proceedings, including such matters as preliminary objections. I notice that Cameroon did not refer to that treatment of that point at all; all that Cameroon did was to add yet another new

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[26]CR 98/3, p. 43.

[27]CR 98/1, p. 38-40.

reference[28], this time to General Abacha's letter of 27 May 1996[29] to the United Nations Secretary-General[30]. It is at Tab D in the Judges' folders submitted by Cameroon. Despite its lateness, Nigeria is entirely happy to comment on it. General Abacha was saying that the "subject-matter of the dispute is already before the ICJ", and he referred in the very next line to the need to avoid conduct "prejudicial to the on-going processes at the Court". Again, as with earlier documents of this kind, to refer to the fact that a matter is before the Court is to refer to it as it stands with all its incidental procedural attributes — particularly when the document comes long after Nigeria had lodged its Preliminary Objections, and the letter itself refers to the "on-going processes at the Court" — what are they, Mr. President, if not the processes which include and follow from the lodging of preliminary objections? General Abacha's letter, far from being an acceptance of the Court's jurisdiction, is an affirmation that the Preliminary Objections have to be dealt with.

III. The *Right of Passage* case

When it comes to the *Right of Passage* case, Cameroon noted that Article 36 imposed no requirement other than the deposit of a declaration with the Secretary-General[31]. But neither the *Temple* nor the *Nicaragua* cases relied on by Cameroon[32] as evidence of the Court's jurisdiction in support of this aspect of the *Right of Passage* case has more than oblique relevance — in neither case was the Court addressing arguments about the Secretary-General's quasi-depositary role under Article 36, paragraph 4. Moreover, treaty provisions are not to be looked at in isolation, but within the context of which they form part — and that includes in particular the other provisions of the same Article. So what about the significance of Article 36, paragraph 4, of the Statute[33]? And what

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[28]CR 98/3, p. 52.

[29]Cameroon referred to the letter as being dated 29 May: its correct date is 27 May.

[30]Submitted as Tab D in the Judges' folders presented by Cameroon on 5 March.

[31]CR 98/3, p. 38.

[32]CR 98/3, p. 39.

[33]See Nigeria's views at CR 98/1, p. 44.

about Article 78 *(c)* of the Vienna Convention on the Law of Treaties[34], which imposes obligations on depositaries and stipulates that communications from depositaries do not take effect until received by addressees; this must apply to Cameroon's Declaration, given that Cameroon accepts that its Declaration is to be treated as a treaty, and that the Convention entered into force before Cameroon lodged its Declaration and that Cameroon is a party to it. Cameroon has chosen to ignore both those questions.

Cameroon further noted that the Court said that other States must be ready for a same-day application of a declaration[35]. But, in Nigeria's submission, the possibility of "same-day" invocation of a declaration must, as a general proposition, be wrong. Like the example I gave a short while ago, if a State's declaration says that a new declaration cannot be invoked against it for 12 months, then a new State making a declaration is *not* entitled to invoke it on the same day, or indeed any day before the expiry of the 12 months. In other words, the possibility of same-day invocation is subject to the terms of existing declarations: the time when Cameroon could invoke its Declaration against Nigeria is inextricably and inevitably bound up with the terms of Nigeria's Declaration, and in particular its condition of reciprocity.

The point was also noted[36] that Nigeria had not withdrawn or modified its Declaration. But, why should Nigeria do so? Its Declaration was made some eight years after the *Right of Passage* case, and by including in its Declaration a specific condition of reciprocity Nigeria did enough to protect itself adequately from the effects of that decision. Nigeria was, in fact, being *less* drastic than some other States: they have tended to impose a specific time-limit of so many months, but Nigeria has been content to rely on a requirement of reciprocity, which could be satisfied in a much shorter period, once the necessary mutuality and meeting of minds had an opportunity to exist.

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[34]See Nigeria's views at CR 98/1, p. 44.

[35]CR 98/3, pp. 40-41.

[36]CR 98/3, p. 41.

Cameroon also touched briefly on the blossoming of the principle of good faith since 1957[37]. It was argued that the law on this was really nothing new, since good faith had always been a part of the operation of international law. Nigeria does not say that good faith is a new concept since 1957: only that it has emerged and developed since then into — as it has been said[38] — a "notable element in the judicial armoury". It is a fact that up to *and including* the *Right of Passage* case the Court itself had not referred to good faith. And against that background, the facts — namely the pleadings and Judgment in that case — show that good faith was touched on only lightly by India (and not at all by the Court), and fully justified the comment[39] that the way that aspect of the matter was dealt with in the case could only, *by today's standards*, be regarded as perfunctory. What is more if we are looking for factual differences in this area, I would draw attention to the fact that India made no argument that in that case Portuguese misrepresentations had misled India in the same way as Nigeria was misled in 1994.

The fact is that *Right of Passage* was a case of first impression, and has remained, for the 41 years since 1957 and until now, the only case to address the issues now raised.

Finally, Mr President, I must take up the reference by Professor Simma to the fact that in municipal law no one would think it any way strange for a party to institute proceedings without first informing the other party[40]. Parallels with municipal law are very dangerous: it is, in many fields, very different from international law. Perhaps in no area is this more true than in that of judicial jurisdiction. In municipal law, jurisdiction is truly compulsory; if a party feels badly treated by the other party, it nevertheless cannot avoid the general jurisdiction of the courts. But in international law, despite the reference in Article 36, paragraph 2, to the "compulsory" jurisdiction of this Court, it is trite law that jurisdiction is essentially voluntary, and always a matter of consent on the part of States. This Court has always borne this fundamentally important point

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[37]CR 98/3, p. 42.

[38]CR 98/1, p. 41.

[39]See CR 98/1, p. 41.

[40]CR 98/3, p. 36.

in mind. That is why it has been at pains not to interpret declarations expressing a State's consent to the Court's jurisdiction more widely than the State intended[41]. Precisely because international jurisdiction is a matter of consent, freely given, the imposition of that jurisdiction, by stealth, upon a State against the declared extent of its consent should be neither permitted nor encouraged. In Nigeria's case, its consent was expressly conditioned by the need for reciprocity, real reciprocity: without it, Nigeria's consent, as expressed in its Declaration, is lacking.

Mr. President, Members of the Court, that concludes Nigeria's reply on this first Preliminary Objection. Thank you for your patient attention. I invite you now to call upon Chief Richard Akinjide, SAN, to address the Court. Thank you, Mr. President.

The PRESIDENT: Thank you, Sir Arthur. I call now on Chief Akinjide.

Chief AKINJIDE:

The duty of the Parties to settle all boundary questions by means of existing bilateral machinery

Mr. President, distinguished Members of the Court, I have the honour to reply to Cameroon's response on Nigeria's second Preliminary Objection. My speech will be short. The Court has before it the history of the bilateral negotiations and it has heard what each side has had to say about that history. The bilateral machinery, in all its component parts, is still in existence and available at any time as far as Nigeria is concerned.

Professor Shaw said that bricks cannot be made with straw alone. Mr. President, I would like to remind the Court that the majority of our population live in houses built not of brick, but of straw. This does not make them any less satisfactory dwelling places and amongst the many the virtues of using straw are not only that it is an easily renewable material, it is also durable and flexible.

Professor Shaw seeks to diminish the status of the bilateral machinery by characterizing it as intermittent and diffuse. Based on this analysis, he questions whether any binding commitment can possibly be said to have arisen between the Parties as Nigeria maintains. He used the analogy of

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[41]CR 98/1, p. 35; NPO, paras 1.20-1.21.

his relationship with his local newsagent. He demonstrated that he has freedom of choice as to where he purchases his newspapers. Mr. President, we do not seek to deny *Professor Shaw* the freedom of choice which Cameroon seeks to deny *Nigeria* by its reference to the Court.

But we are not talking about a commercial relationship in this Court. We are talking about a relationship between neighbours. It is different in character and in kind from a commercial, contractual relationship. Neighbours have obligations to one another. They cannot simply walk away from each other, wherever they may choose to buy the *Daily Telegraph.* At a State level, governments have a responsibility to their peoples. One way in which that responsibility manifests itself is the maintenance of adequately defined boundaries.

Nigeria's land boundary with Cameroon is approximately the same distance as Land's End to John O'Groats in the United Kingdom or Calais to Nice in France. Imagine trying to demarcate a boundary the length of either of those two countries. Would you do it by asking the House of Lords or the *Cour de Cassation* to carry out the exercise or would you have a national boundary commission empowered to interview and make enquiries with the local populace? Mr. President, the answer is obvious, as it should be obvious to Cameroon in this case.

It is also, in Nigeria's submission, obvious that such bodies as the OAU and the United Nations would be equally ill-fitted to carry out the task which Cameroon is asking the Court to embark upon. That is why Nigeria has never approached third parties in relation to the boundary. *Nigeria* does not need to say that third parties are excluded from the process, *common sense* precludes them.

The point which seems to elude Cameroon is that, so far as the land boundary is concerned, we are talking about a demarcation exercise, *not* a delimitation exercise. If Nigeria talks in terms of there being a duty on the Parties to utilize bilateral machinery, it is in part because Nigeria sincerely believes that this is the only practical way forward in relation to the land boundary. We should not forget that in the 25 years of the League of Nations Mandate and 15 years of United Nations Trusteeship, no detailed demarcation exercise relevant to the present boundary was ever carried out. This was, Mr. President, despite the fact that there are repeated references to the

necessity for carrying out such an exercise contained in the annual reports both to the League of Nations and to the United Nations.

Yet Professor Shaw stated: "No bilateral machinery was created to deal with the totality of land and maritime boundary issues" (CR 98/3, p. 53, para. 3). That is a curious statement. The Joint Boundary Commission following its meeting in Yaoundé in August 1970 recommended to their respective governments that the delimitation of the boundaries between the two countries be carried out in three stages, the first of which was the maritime boundary and the second two of which involved the entirety of the land boundary[1].

That recommendation was clearly accepted by both sides because both the opening speeches at the next meeting held in Lagos in October 1970 confirm that they are following up the Yaoundé meeting.

Of course one would not expect every subsequent meeting of the Joint Boundary Commission, let alone those of the subsequent meetings of experts, to address the entire boundary at each meeting. What one would expect was what actually happened, namely that different sectors of the boundary were to be examined. The fact that the maritime boundary came to dominate the first years of the Commission's work was very much due to Cameroon's insistence. The shortcomings of that approach are apparent from Professor Crawford's argument on our Preliminary Objections No. 7.

To return to grass huts however. Professor Shaw did not deal at all with the loss to the Parties of the flexibility inherent in the bilateral work. Yet that flexibility is at the heart of the bilateral process. As Sir Gerald Fitzmaurice said:

> "Governments prefer to deal with disputes by political means rather than by submission to adjudication and fight shy of the commitment involved by going to law: they dislike the loss of control that is entailed over the future of the case, the outcome of which they can no longer influence politically once it is before a court of law"[2].

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[1]NPO 14, p. 119.

[2]Sir Gerald Fitzmaurice, "The Future of Public International Law" — *Institut de Droit International: Livre du Centenaire 1873 to 1973*, at p. 279.

As we have heard, Article 33 of the United Nations Charter lists negotiation, enquiry, mediation, conciliation, resort to regional agencies or arrangements, or other peaceful means of the parties' own choice as ways of solving disputes. The Parties here, Mr. President, chose the Joint Boundary Commission route. The other means mentioned are far from being exhausted. Article 33 also includes arbitration and judicial settlement. Nigeria continues to maintain that, for the job which needs to be done in relation to its boundary with Cameroon, judicial settlement is the least appropriate mechanism.

Professor Shaw may feel that Nigeria is clutching at straws but those straws can, in the right hands, be woven together to form lasting and, dare I say, quite impressive structures.

Cameroon's departure from the bilateral mechanism, without notice to Nigeria, was a breach of the principle of good faith. It was also an act which has caused and will cause great detriment to the prospects of a mutually satisfactory land boundary being demarcated. Nigeria asks that the Court upholds the second Preliminary Objection.

Mr. President, I would ask you now to call upon Professor Ian Brownlie, Q.C.

The PRESIDENT: Thank you, Chief Akijinde. Professor Brownlie, please.

Mr. BROWNLIE: Thank you Mr. President.

The exclusive competence of the Lake Chad Basin Commission

Mr. President, distinguished Members of the Court, in the second round it is my task to deal with the third and fourth Preliminary Objections of Nigeria. For the purposes of this round the fourth Preliminary Objection will be treated as ancillary to the third.

The necessary preface to the issues relating to the boundary within Lake Chad is the substantial legal entitlements and national interests which Nigeria has in the area of Lake Chad. As the distinguished Agent of Nigeria has pointed out in the first round, the peaceful status quo within Lake Chad includes the existence of a well-established population of Nigerians and others living in villages sited either on the bed of the Lake or in islands in the inundated areas.

My distinguished opponent, Professor Cot, has suggested that there are certain problems concerning the characterization of Lake Chad (CR 98/4, p. 16, para. 12) as a land area or as a maritime feature. For present purposes and at this stage, such suppositions have no relevance.

The major legal elements are in my submission as follows.

First: the issue of boundary demarcation was recognized in the practice of the Lake Chad Basin Commission as a part of a common framework within which the general security of the basin area would be sustained and jointly guaranteed by all member States.

Secondly: the procedure of demarcation on Lake Chad involves four States and is still on the agenda of the Lake Chad Basin Commission.

Thirdly: in the circumstances the fixing of the tripoints in Lake Chad, and the associated delimitation process, involves the legal interests not only of Nigeria and Cameroon but also Chad and Niger, two States who will not have consented to the exercise of jurisdiction by the Court if the Court decides that it does have jurisdiction in the proceedings which Cameroon seeks to bring before this Court.

Fourthly: in the circumstances in which the process of demarcation within the area of Lake Chad will take place, the Court should exercise a policy of judicial restraint of essentially the same character as that exercised in the *Libya-Malta Continental Shelf* case in respect of geographical areas claimed by Italy.

Fifthly: the Court would have no power to review the final decision of the LCBC in respect of demarcation within Lake Chad and it must follow that the Court has no power to intervene when the procedure of demarcation is still in the course of operation.

The General Character of the Lake Chad Basin Commission

The position of Nigeria is that the issues of demarcation have been within the competence of the LCBC since 1983. Whether or not it is necessary to describe this as an "exclusive" competence, the fact is that the LCBC and the four member States had clearly had the opinion that the issues were within the sphere of competence of the LCBC.

My distinguished opponent has not actually denied that the LCBC is a regional organization, although he seeks to reduce its significance by describing it as a "modest and useful organ of technical co-operation" (CR 98/4, p. 20, para. 23).

But Mr. President, this modest organ, this modest organization is concerned with matters of security and boundary delimitation, and modest organizations of technical co-operation are not usually concerned with such matters. Both the Cameroon Additional Application and the Cameroon Memorial give prominence to the procedures and documents of the LCBC. Moreover, the functioning of the LCBC was closely related to the regular summit meetings of the Heads of State of the Members. How can Professor Cot reconcile his position with the content of paragraphs 12 to 15 of the Additional Application, which are replete with references to the LCBC and its role in boundary-making?

The Powers of the LCBC in respect of Dispute Settlement

In my first round speech I set forth the extensive documentary evidence to the effect that since 1983 the LCBC has been concerned with the related problems of border demarcation and security (CR 98/1, pp. 67-72). The views of the member States are clear from the Final Communiqué of the Sixth Conference of Heads of State in 1985. There it is recorded that:

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

The documentary record clearly establishes that the question of boundary demarcation was within the competence of the LCBC. This was the view of the member States and there is a presumption, deriving from the principle of effectiveness, and from common sense, that such a competence would be exclusive.

The Practice of the Member States

Whilst counsel for Cameroon purported to examine the practice of the member States, he did not in fact carry out this exercise, but complained that I had made too many references to documents, without reading them all out (CR 98/3, p. 69, para. 27).

Counsel for Cameroon however omitted to examine the decisions adopted by the Heads of State at the Ninth Summit in 1996, two-and-a-half years after the filing of the Application. In particular he did not refer to Decision No. 2, which is at Tab 43 of the Judges' folder. If I may take the liberty of refreshing the Court's memory. The text is as follows:

"Country Reports on the Adoption and Signing of Document on Boundary Demarcation

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

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

— Considering the necessity for peace and tranquillity in the sub-region;

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

The Heads of State decided:

— to defer discussions on the issue.

— to mandate the President of the Summit to intervene either through consultations or meeting with the two Heads of State of Cameroon and Nigeria, to find an amicable solution to the problem in the spirit of African brotherhood." (NPO 108, pp. 1071-1072.)

Mr. President, this document establishes beyond doubt that Chad and Niger, two States not before the Court, regard the issue of boundary demarcation as a persisting part of the agenda of the LCBC. This is the evidence of the conduct of the Parties which Cameroon cannot explain away.

In relation to the Ninth Summit of the LCBC States there is no mutuality between Cameroon and Nigeria. The Court has heard the views of Nigeria but Cameroon has not commented on the decision taken. It is true my learned colleague, Professor Cot, did refer to one passage from the Minutes of the Ninth Summit, as follows:

"II. Consultations before the closed-door meeting:

5. In view of the absence of the President of Cameroon and the Head of State of Nigeria, the first Commissioners from those countries were invited by the Heads of State to a Pre-Summit discussion. There was a stalemate at the Ministerial level on the issue of inclusion of the item on ratification of the border demarcation document on the proposed Summit Agenda. While Cameroon insisted that it was necessary to include it on the ground that the ratification was a pre-condition for the establishment of a Joint Security Force, Nigeria, on the other hand, maintained that the issue was before the International Court of Justice hence it would be prejudicial to discuss the matter at all. The Nigerian Minister maintained that his delegation had no mandate to

discuss the issue but the Heads of State could decide, at their level, to include it. It was so decided that it should be on the agenda and they could handle it at their level.

6. Asked whether the two First Commissioners had written mandates to represent their Presidents, both said, No. The Heads of State unanimously decided that they could represent their Heads of State. In addition, the Prime Minister of Chad and all the other Commissioners were invited to assist the Summit." (NPO 108, p. 1062.)

Now, my colleague, Professor Cot, considers this passage to be a decisive blow (CR 98/3, pp. 69-70, paras. 27-32). In fact all that happened was that the Nigerian representative left the matter to the Heads of State. What the Nigerian representative did not do was to propose the removal of the item from the agenda of the LCBC.

In any event the Nigerian statement could not in any way detract from the effect of Decision No. 2 of the Heads of State according to which boundary demarcation remained on the agenda.

In the result, the issue of demarcation remained on the agenda of the LCBC during and after the Ninth Summit of 1996, in spite of the fact that Cameroon had filed its Application leading to the present proceedings. This was the effect of Decision No. 2 of the Ninth Summit, which represented the positions of Niger and Chad.

Professor Cot has not sought to challenge the legal status of this decision.

Demarcation in Lake Chad involves a Multilateral Process

In his speech on Friday last week Professor Cot stated that the line in Lake Chad was the subject of delimitation by agreement (CR 98/4, pp. 14-15), and he cited various treaties. However, my distinguished opponent neglected to draw the attention of the Court to two highly significant aspects of the matter.

First, the technical process of establishing the demarcation has been complex, to say the least. In particular, the fixing of the two tripoints involved an integrated process and not two independent processes.

Secondly, the entire procedure of demarcation was multilateral and involved the LCBC acting as an agency of the four States.

In brief, Mr. President, the significant feature was not whether a given point was a bipoint or tripoint, but the fact that the *procedure for establishing the point* involved four States.

The Court has to face the legal consequences of the fact that the decision requested in the Additional Application of Cameroon involves the legal interests of two States, Chad and Niger, who have not consented to the jurisdiction of the Court. The exposition of the "legal grounds upon which the Republic of Cameroon bases its case" provides unequivocal evidence that Cameroon relies upon various data derived from the procedures of the LCBC which remain to be finalized.

The fact that the process was not finalized within the Commission was accepted by Professor Cot last week. After referring to the decision of the Heads of State in 1994 to approve the technical report signed by the national experts in 1990, Professor Cot continued: "Ils estimèrent néanmoins qu'une ratification au niveau national était nécessaire." (CR 98/3, p. 69, para. 23.)

The Legal Consequences of the Decision Requested in Cameroon's Additional Application

What then, are the legal consequences of the decision requested in Cameroon's Additional Application which appears in the folder at Tab 44?

The issue of demarcation remains on the agenda of the LCBC as the Minutes of the Ninth Summit establish beyond doubt. The question of demarcation is controversial and in the circumstances it is no less significant, legally and politically, than delimitation.

And the institutional framework of the process of demarcation involves two States not presently before the Court. Moreover, in the context of Lake Chad, the actual legal interests of Chad and Niger are involved and not merely their participation in the procedure.

Certain possibilities can be laid aside. First of all, the issues are certainly not moot *(sans objet)* but remain on the agenda of the LCBC. Secondly, there is no suggestion that the affairs of the LCBC as such are non-justiciable. And thirdly, it is not suggested either by Nigeria or by Cameroon that Article 103 of the Charter can provide a solution.

This having been said, there remain three legal principles which should in my submission preclude the exercise of jurisdiction by the Court. These principles are independently operative and mutually compatible.

The first of these is the principle deriving from the *Monetary Gold* case (*I.C.J. Report 1954*, p. 19). In my submission, in the circumstances of Lake Chad, and given the legal issues as

presented in Cameroon's Additional Application, the legal interests of Chad and Niger in the area of Lake Chad "would not only be affected by a decision, but would form the very subject-matter of the decision" (*ibid.*, p. 32). And as the Court stated in *Monetary Gold*: "In such a case, the Statute cannot be regarded, by implication, as authorizing proceedings to be continued in the absence of Albania." *(Ibid.)*

And so in my submission, the decision requested by Cameroon in the present case would directly implicate the interests of Chad and Niger and the legal interests of these two States would form the very subject-matter of the decision of the Court in relation to Lake Chad.

And in the circumstances Article 59 would provide even less protection than usual.

I now come to the second of the three principles which in my submission should induce judicial restraint.

In the *Libya-Malta Continental Shelf* case the Court applied the principle that it should limit the area in which its power of delimitation operated by reference to the claims of a third State of which it had been informed. In the words of the Judgment:

> "The present decision must . . . be limited in geographical scope so as to leave the claims of Italy unaffected, that is to say that the decision of the Court must be confined to the area in which, as the Court has been informed by Italy, that State has no claims to continental shelf rights. 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, thus ensures Italy the protection it sought. A decision limited in this way does not signify either that the principles and rules applicable to the delimitation within this area are not applicable outside it, or that the claims of either Party to expanses of continental shelf outside that area have been found to be unjustified: it signifies simply that the Court has not been endowed with jurisdiction to determine what principles and rules govern delimitations with third States, or whether the claims of the Parties outside that area prevail over the claims of those third States in the region." (*I.C.J. Reports 1985*, p. 26, para. 21.)

Counsel for Cameroon sees objections to the application of this principle of restraint to land areas or lakes (CR 98/4, pp. 17-19, paras. 14-21). With all respect, none of these objections have any justification either in principle or in policy. It is difficult to see why the policy outlined by the Court should not apply to Lake Chad. Whilst there may be significant differences between the delimitation of land and maritime boundaries, the geographical differences between the two cases are not relevant to the policy of restraint.

The fact that coincidentally the Court had been informed of Italian claims by Italy herself in a previous proceeding should not in my submission make a difference, provided that the Court has reliable information as to the nature of the legal interests of Chad and Niger. And in the circumstances of this case it clearly does.

Moreover, in the *Monetary Gold* case the Court was clearly of the view that the relevant third State should not be penalized because it has not submitted a request to be permitted to intervene (see *I.C.J. Reports 1954*, p. 32).

It is, of course, true that in the *Libya/Malta* case the Court was to some extent influenced by the terms of the Special Agreement but there is no good reason for thinking that the principle of restraint would not have been justified in any case.

In the *Libya/Malta* case no third party settlement procedure was in place involving the third State. In the present situation there is and consequently the case for judicial restraint must be considerably enhanced.

This brings me to the third principle, which is last but by no means least. This is that the Court cannot either revise the decision of another tribunal or determine the *compétence de la compétence* of another judicial body or decision-making body.

In my submission the LCBC has the power to act and is currently acting as a third-party settlement procedure. In such circumstances the Court cannot, by acceding to the terms of the decision requested in the Cameroonian Application, determine the competence of a body which has a concurrent jurisdiction.

This principle has been formulated for example by Sir Gerald Fitzmaurice in his commentaries on the work of the Court (see *The Law and Procedure of the International Court of Justice*, Cambridge, 1986, Vol. II, pp. 457-488).

Fitzmaurice (at p. 467) points to the relevance in this connection of a passage in the Advisory Opinion in the *Peace Treaties* case (First Phase). After referring to the fact that the merits of the disputes concerned were not involved by the request for the advisory opinion, the Court in that case observed:

"Furthermore, the settlement of these disputes is entrusted solely to the Commissions provided for by the Peace Treaties. *Consequently it is for these Commissions to decide upon any objections . . . to their jurisdiction in respect of any of these disputes, and the present Opinion in no way prejudices the decisions that may be taken on those objections.* It follows that the legal position of the parties to these disputes cannot be in any way compromised by the answers that the Court may give to the Questions put to it." (*I.C.J. Reports 1950*, p. 72; emphasis added.)

Mr. President, as Dr. Rosenne has pointed out, the United Nations Charter does not "confer any jurisdictional pre-eminence on the Court" (*The Law and Practice of the International Court, 1920-1996*, Vol. II, 1997, p. 530).

And it is useful in this context to recall the terms of Article 95 of the Charter:

"Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

If the Court were to respond to the Additional Application it would be in breach of the principle of the autonomy of jurisdictional competence. The work of the LCBC is seen to be still proceeding, the Court would then prevent the LCBC from exercising its existing competence. If the work of the LCBC is seen to be completed, the Court would be exercising an appellate jurisdiction which it clearly does not have in respect of courts of arbitration or bodies with analogous functions.

The nature of the judicial activity envisaged by Cameroon is revealed by the observations of Professor Cot. In his words:

"39. J'ajoute que la décision de la Cour dans la présente affaire n'entraverait en aucune manière les travaux de démarcation engagés au sein de la CBLT. Au contraire, en constatant de manière incontestable la délimitation de la frontière, la Cour préciserait le cadre de ses travaux et illustrerait ainsi la complémentarité de l'intervention des deux institutions.

40. En somme, la Cour, n'a aucune raison de ne pas se prononcer sur la délimitation dans la région du lac Tchad. Le Cameroun pense même, respectueusement, qu'elle a le devoir de se prononcer." (CR 98/4, p. 13).

In my submission this constitutes a clear admission on the record of the role expected of the Court by Cameroon. The use of the concept of complementarity does not alter the substance of things.

Conclusion

Mr. President, there are the strongest possible indications of the need for judicial restraint in relation to the process demarcation in the Lake Chad area.

As I have indicated there are three independently operating principles, which are clearly applicable in the present circumstances, and which militate strongly in favour of a policy of judicial abstention.

Their application is supported both by important legal principles and also by an extensive documentary record, the relevance of which I explained in my first round speech.

Mr. President, I can now present Preliminary Objections 3 and 4.

Preliminary Objection Three

Without prejudice to the second Preliminary Objection, the settlement of boundary disputes within the Lake Chad region is subject to the exclusive competence of the Lake Chad Basin Commission (LCBC), established in 1964 pursuant to the Convention and Statute Relating to the Development of the Chad Basin. In this context the procedures of settlement within the Commission are obligatory for the Parties. The operation of the dispute settlement procedures of the LCBC involved the necessary implication, for the relations of Nigeria and Cameroon *inter se*, that the jurisdiction of the Court by virtue of Article 36, paragraph 2, would not be invoked in relation to matters within the exclusive competence of the Commission.

The substance of this Preliminary Objection is confirmed by the principle affirmed in the *Monetary Gold* case, by the policy of judicial restraint applied in favour of Italy in the *Libya/Malta Continental Shelf* case, and by the fundamental principle that the Court cannot determine the *compétence de la compétence* of another judicial or decision-making body.

This objection pertains both to jurisdiction and to admissibility.

Preliminary Objection Four

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

The legal bases of this objection are essentially similar to those of the third Preliminary Objection.

This objection also pertains both to jurisdiction and to admissibility.

I would thank the Court once more for its patience. Mr. President, I am in your hands. Perhaps you would care to call on my colleague, Sir Arthur Watts once more, after the coffee break?

The PRESIDENT: Thank you, Professor Brownlie. The Court will suspend for 15 minutes.

The Court adjourned from 11.30 to 11.45 a.m.

The PRESIDENT: Please be seated. I now call on Sir Arthur.

Sir Arthur WATTS:

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

Mr. President and Members of the Court, I shall now present Nigeria's reply on its fifth Preliminary Objection, and I shall follow straight on with the reply on the sixth Preliminary Objection.

Let me begin by recalling that, while Nigeria does not consider there to be any dispute about the boundary as such in the Bakassi and Darak areas, Nigeria acknowledges that there are problems about sovereignty in those areas and that there is a consequential effect upon the boundary there. Nigeria regards itself as having sovereignty in those areas. And accordingly, Nigeria's conduct in those areas is, in Nigeria's view, a manifestation of Nigeria's title over the territory in question, and is in no way evidence of a dispute as regards the boundary *per se*.

The only outstanding question affecting the boundary as such concerns, therefore, the rest of the two States' common boundary, namely the long, 1,000-mile stretch between Lake Chad and Bakassi. Nigeria maintains that at the time Cameroon lodged its Application, there was in fact, and in law, no dispute about that length of boundary.

Cameroon however says that Nigeria is challenging the whole legal architecture of the boundary[1]. What evidence of this was there when this Application, and its amendment, were lodged? None, Mr. President: and Cameroon has advanced none. It has sought, instead, to create evidence by relying on what it *thinks* Nigeria's arguments on the merits *might* be: as Professor Tomuschat admits, Cameroon has only what it believes to be "a taste of [Nigeria's] argument"[2]. But Nigeria has said nothing about its possible future arguments; and Nigeria is not to be drawn into premature argument on the merits. There is only speculation on Cameroon's part, and in any event the speculation comes *after* the institution of these proceedings — it cannot show that at the time they were instituted that there was a dispute.

Cameroon, Mr. President, must appreciate (as it so often fails to do) that these are hearings on *preliminary* objections. Before Cameroon can get to the merits, both Parties have to be got to the starting post. Getting them there depends on various *preliminary* considerations; and one of these is the prior existence of a dispute about the matter in hand. And that must be determined on the basis of the position as it stood, objectively determined, on the date when the Application was lodged — a proposition which the Court reinforced in its most recent Judgment, in the *Lockerbie* case[3].

Of course, Cameroon has not relied on the supposed intellectual architecture of Nigeria's possible case, and forgotten about the alleged "incidents" said to show that the whole length of the boundary is in dispute. On 3 March[4], Nigeria demonstrated that these alleged incidents were wholly inadequate to support Cameroon's view; Cameroon, however, has returned to the charge[5]. So let us look at what Cameroon now says.

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[1]CR 98/4, pp. 22-23.

[2]CR 98/4, p. 26 (unofficial translation).

[3]See CR 98/2, p. 20.

[4]CR 98/2, pp. 22-25.

[5]CR 98/4, pp. 24-25.

In relation to the 1,000-mile stretch of boundary, Professor Tomuschat referred to incidents in just three locations — just three, Mr. President. First, there is a repetition of the Kontcha-Typsan confusion. Although Nigeria has already twice referred to this[6], it seems that I must refer to it again. On the screen (and at Tab 45 in the Judges' folders) is a satellite photograph of the area, showing Typsan and Kontcha. At the bottom of the text is the relevant part of the 1931 Exchange of Notes about the boundary: the words directly in point are underlined: and I should just say that the word "Maio" simply means river, and Typsal even then had various spellings, and the river is now known as the Typsan. Those words show that the boundary comes down to a point just north of the present village of Typsan, and thence follows "the course of the River Typsa[n]". Nigeria accepts — I said it in general on 3 March[7], let me now say it in particular — Nigeria accepts that the river is the boundary line in the area; the river is clearly visible on the map; and Typsan is equally clearly on the Nigerian side of the river — just as Kontcha, equally clearly, is on the Cameroonian side of it. I hope, Mr. President, that we will hear no more of this absurd so-called "incident". But if Cameroon persists in the assertion that the village of Typsan is in Cameroon, Nigeria hopes that the Court will then note that it is clearly Cameroon, not Nigeria, which seeks to challenge the well-established boundary along the River Typsan.

Now, after that mistaken Typsan reference, we are given some "incidents" at Yang, last year. Its location is being pointed out on the map (Tab 8 in the Judges' folders). Those incidents are, of course, all too late to be of any relevance whatsoever to the alleged existence of a boundary dispute in 1994; and they are, equally, being brought to Nigeria's notice for the first time — despite being said to be a source of "very grave preoccupation"[8] to Cameroon, not one of them was, apparently, grave enough to have been the subject of any diplomatic complaint. Moreover, Mr. President, it would not be unreasonable, I hope, to take the number of deaths occurring during "incidents" as a measure of their gravity. Indeed, on 6 March, Maître Aurillac referred to "bloody incidents which

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[6]CR 98/1, pp. 24-25, and CR 98/2, p. 23.

[7]CR 98/2, p. 19.

[8]CR 98/4, p. 3, para. 7.

have caused the death of people all along the boundary"[9]. What facts are we given to support this assertion of Nigerian-caused carnage "all along the boundary"? None by Maître Aurillac. But if we look at the belated Repertory of Incidents, we find just three which involved deaths — items 7, 9 and 15. And two things are striking: more Nigerians were killed (five) than Cameroonians (three — or possibly four); and all the deaths were the result of actions by private persons — recorded by Cameroon as a poacher, cattle rustlers, brigands, and robbers.

Because the recent events have only just been brought forward, Nigeria cannot be expected to have a response to offer. However, it so happens that Nigeria can make a response to two of them. Let me take the last, on 26 June 1997 — an alleged incursion of Nigerian police in seven vehicles. By good fortune, several of those "policemen" are in Court today: perhaps they would be good enough to stand for a moment. Mr. President, this "incident" was in truth a site visit on that very date to that very area by members of the Nigerian legal team, instructing solicitors, accompanied by relevant Nigerian officials, and also a good number of curious onlookers. That is typical of the sort of "incident" which Cameroon invents in this context.

Then there is the "incident" said to have occurred at Yang. This is what Cameroon says about it:

> "On 24 April 1997 the Prefect of the Department of Donga Mantung was arrested midway between the village of Yang (destroyed) and the Makwe, the watercourse which is the international boundary between Cameroon and Nigeria."[10].

The first point to make, is that Yang was not destroyed, as Cameroon alleges: on their site visit instructing solicitors were able to see something of the village of Yang and there was indeed something to see, and no sign of its "destruction" which Cameroon refers to. Mr. President, nothing of the sort! But even more noteworthy, is the real story of that incident. You can now see on the screen (and at Tab 46 in the Judges' folders) a group of — of what? A group of officials: Nigerian *and Cameroonian* officials. And why are they together? They were meeting at Yang on 24 April 1997 — the date cited by Cameroon. They were meeting to have some negotiations; and

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[9]CR 98/4, pp. 40-41.

[10]CR 98/4, pp. 24-25.

they were meeting at Nigerian request. And what had happened? At some point away from Yang Nigerian police stopped the Cameroonian delegation and asked them to return to Yang. And there in due course the Nigerian delegation joined them, and the talks began. And that is it, Mr. President, no "arrest" at all; certainly nothing to call in question the whole boundary delimitation. I should add just one more thing. How does Nigeria know the above facts? Because, those facts are taken from Document 3 submitted by Cameroon itself to the Court a few weeks ago! If I might just add some more details, the two sides' delegations were substantial — 14 on the Nigerian side, and 16 on the Cameroonian. The meeting had been convened to discuss a wide range of local issues. And the communiqué agreed at the end of the meeting concluded that the "meeting which took place in a friendly and cordial atmosphere expressed profound appreciation and gratitude to the Governments of both countries for making it a huge success"[11]. *That* was the "incident" referred to. No "incident": just a foolish attempt to invent prejudice.

Finally, Cameroon says that there was an overflight of the boundary in March 1993, and "recently" the destruction of a boundary post and some frontier forest exploitation. These "recent" events are again obviously too late to be relevant (even if true, which Nigeria does not accept). And as to the overflight, it calls for three comments. First, it was only included in the Repertory of Incidents, and is therefore too late to be relied on[12]; second, it was followed by no diplomatic protest, but only a mild enquiry[13]; and third, if every overflight like this was to be treated as evidence that the boundary was disputed, there would hardly be an undisputed boundary in the world!

Cameroon does admit, Mr. President, that some of its "incidents" concerned" only private persons, to the exclusion of the Nigerian public authorities"[14]. Nigeria is duly grateful that Cameroon, after having had all the time it wanted at its disposal to prepare and present its case, has

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[11]Minutes of Reconciliation Meeting, 24 April 1997, at Yang, para. 4.

[12]CR 98/2, p. 24.

[13]See OC, 1, p. 345.

[14]CR 98/4, p. 5 (unofficial translation).

acknowledged even at this late stage that it included considerable irrelevancies in its dossier. Yet Cameroon seeks to argue that this at least shows that there is "marked insecurity" about the boundary[15], and that, in their totality, they "illustrate the Nigerian challenge to the relevant legal instruments"[16]. But Mr. President, what has to be shown is not "insecurity", but the existence of a *dispute*, in 1994; and how alleged events involving admittedly private persons can illustrate a challenge by the Nigerian State to the relevant agreements is beyond comprehension — at least some minimum reference to the problem of attributability might have been expected.

Then to go on from that and blithely say that there can be no closing date for events which show Nigeria's alleged attitude to the boundary, is to demonstrate how far Cameroon is trying to walk away from the issue which is here in question — was there, in fact, on 29 March 1994, or at latest on 6 June 1994, a dispute between the two States as to the boundary between Lake Chad and Bakassi? The situation may still be "evolving", as Cameroon puts it: time does indeed not stand still. But the dispute, if there was one, must have existed in 1994, and no amount of subsequent evolution can affect the need for events to have crystallized by then. But they had not, Mr. President: no such dispute existed at that time — or now.

Cameroon purports to see in Nigeria's conduct in relation to Bakassi and Darak evidence of legal challenge affecting the whole length of the boundary[17]. It makes Cameroon fear that events in those two areas "could be repeated in no matter what other part of the border region"[18]. Cameroon says it feels threatened (at least potentially)[19], and apocalyptic consequences are foreseen[20]. Nigeria must, however, again bring Cameroon back to the practical question now in issue: was there in 1994 an *existing* dispute about the 1,000-mile stretch of boundary — not a

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[15]CR 98/4, p. 25 (unofficial translation).

[16]*Ibid.*

[17]CR 98/4, pp. 26-28.

[18]CR 98/4, p. 28, para. 14 (unofficial translation).

[19]CR 98/4, pp. 28 (para. 15), and 30 (para. 20).

[20]CR 98/4, p. 28.

"fear", not a "potential threat", not a risk of "disastrous consequences for all Africa"[21], there must have been an actual dispute at that time. And there was not.

Finally, Mr. President, let me address Cameroon's assertion that Nigeria believes that facts make the law. This is simply not so. Nigeria believes itself to have good title to the Bakassi Peninsula and the Lake Chad areas where there are admitted problems between the two States. Because of that good title, Nigeria, of course, has engaged in the various kinds of behaviour which all States engage in their own territories: the facts *follow* Nigeria's belief in the law, they do not create the law. Cameroon may not yet know what Nigeria's full legal arguments are; but that does not mean that their existence can be ignored, or that they purport to create law out of the facts in the way in which Cameroon suggests is the case. But this is all a matter of speculation, and a question of merits, and have nothing to do with the present proceedings, which Nigeria must yet again emphasize are concerned only with certain preliminary issues. The fifth of those issues is that at the time Cameroon instituted these proceedings there was no dispute about the boundary as such, and nothing that Cameroon has said in these oral proceedings has established the contrary.

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

Mr. President, Members of the Court, let me now turn to Nigeria's reply on its sixth Preliminary Objection. That Objection, the Court will recall, is that Cameroon has not provided adequate or reliable information which would enable Nigeria to respond to the assertions of international responsibility said to arise from the various incidents cited by Cameroon, or to enable the Court to make a fair and effective judicial determination of the matter. In that situation, Mr. President, to combine questions of State responsibility with a dispute about territory would not only be somewhat unusual, but would also be to embark upon considerable complications in the handling and management of the litigation by the Parties and by the Court.

Nigeria has submitted that Cameroon has, in its Memorial, improperly sought to extend the "international responsibility" case which it originally put before the Court in its Application, as

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[21]CR 98/4, p. 28, para. 15 (unofficial translation).

amended. Cameroon denies this[22]. Nigeria's submission in this respect has two aspects. The first is that Cameroon, in its Application (as amended), made no claim as regards Nigeria's international responsibility for any events outside the Bakassi and Lake Chad areas which, by now, are regarded as distinct problems. The second is that Cameroon has repeatedly sought to extend the number and nature of "incidents" which it says give rise to international responsibility on the part of Nigeria. Let me take these two elements in turn.

Cameroon's original Application concerned only the Bakassi area. The claims of international responsibility in that Application accordingly related only to Bakassi. So, turning then to the amending Application, it is paragraph 17 in which Cameroon sets out what it is asking the Court to do. Paragraph 17 is now on the screen and is at Tab 44 in the Judges' folders. The Court will see, Mr. President, that the claim of international responsibility and reparations is advanced only in paragraphs 17 *(e)* and 17 *(e')*. And they refer *back* to earlier subparagraphs in that paragraph, and those earlier subparagraphs concern only events in Lake Chad. The reference to events said to have occurred "all along the frontier" appears in paragraph 17 *(f)*: there is *no* request made to the Court in that paragraph for a finding of international responsibility in respect of those events, nor is there in earlier paragraphs 17 *(e)* and *(e')* any reference *forward* to paragraph 17 *(f)*. It is abundantly clear, from the terms of Cameroon's own Application, as amended, that Cameroon did *not* make any claim as to Nigeria's international responsibility in respect of those events occurring between Bakassi and Lake Chad. Consequently it follows that for Cameroon now to be saying, in its Memorial and subsequently, that Nigeria does bear international responsibility for those events *is* an attempt to extend the scope of Cameroon's original Application as amended, and is to that extent inadmissible.

Turning then to the second aspect of this part of Nigeria's submission, there is very little to add to what was said in this connection on 3 March[23]. As there set out in some detail, Cameroon has consistently practised "litigation by accretion". Some events are referred to in the Application,

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[22]CR 98/4, p. 31, para. 4.

[23]CR 98/2, pp. 28-34.

some more in the amending Application, some more in the Memorial, some more in the observations, and so on — even, as already noted in relation to the fifth Preliminary Objection, some more only last week. It is not enough for Cameroon to think that they all come under the one heading of "international responsibility", therefore it is permissible to go on adding further events — without affecting the scope of the claim being advanced. International responsibility, Mr. President, has to be determined incident by incident. And Cameroon's assertion that "at no moment . . . has it sought to modify the scope of its Applications"[24] is demonstrably incorrect in this respect, as in the previous one: by perpetually seeking to add more incidents, Cameroon *is*, again, seeking to extend the case presented against Nigeria.

Mr. President, the primacy of the position as it stood at the time of, and as expressed in the Application, has been excepted by the Court most recently in the *Lockerbie* case. There was nothing new in that. It was clearly set out by the Permanent Court in 1933 in the case concerning the *Prince von Pless Administration*, and the Court said "under Article 40 of the Statute it is the Application which sets out the subject of the dispute and the case though it may elucidate the terms of the Application, must not go beyond the limits of the claim as set out therein". In the *Nauru* case in 1992 the Court while noting that a new claim had some links with the general context of the Application before the Court, decided that that was not enough, and said that for the claim to be held to have been as a matter of substance included in the original claim, it is not sufficient that there should be links between them of a general nature, an additional claim must have been implicit in the Application or must arise directly out of the question which is the subject-matter of that Application. In our present case the new matters were not only not implicit in the Application and did not arise directly out of it, but they were in terms not part of it.

However, Mr. President, Nigeria's principal concern is that Cameroon has been too economical with the facts to enable either Nigeria or the Court to take these matters of State responsibility any further. In this context, Cameroon seems to be labouring under a grave misapprehension — it appears to think that Nigeria is demanding that *full* details of all the various

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[24]CR 98/4, p. 31.

alleged events said to give rise to responsibility must be given in the Application. Not so at all, Mr. President: Nigeria has never said that. Nigeria's detailed exposition of the inadequate facts given by Cameroon was intentionally taken stage by stage, dealing with each stage separately and in detail[25]. Starting with the Application, moving on to its amendment, and then its Memorial, and then its observations even the "Repertory of Incidents", despite the unacceptable lateness of the disclosure of many of the events recorded in it, Nigeria demonstrated that both at each stage taken by itself, and cumulatively as a whole, those documents were wholly inadequate, and unreliable, as a basis for further judicial consideration by this Court. And Nigeria would remind the Court that while Cameroon could regard its Application as an initial statement of its case to be fleshed out later, its Memorial was the first of its pleadings on the merits: there can be no excuse for inadequacies of information in that pleading.

It is necessary to add that this is nothing to do with questions of proof: proof, as Cameroon accepts, is a matter for the merits[26]. Nor is it a question of foreseeing that evidence will be lacking at some later stage, which this Court accepted in the *Nicaragua* case was not a good enough reason for declaring an argument inadmissible *in limine litis*[27]. It is a question of identification, knowing enough *now* to have a reasonably clear idea of what the charges are against Nigeria, enough for the Court to be able to bring to bear appropriate judicial standards; it is a question of being able to rely on such alleged facts as are given, of knowing that there are allegations being advanced which can be taken seriously as potentially giving rise to international responsibility. Mr. President, I have lost count of the number of alleged "incidents" which have been identified by Nigeria in these oral proceedings as being totally — *totally* — without any standing whatsoever as a basis for allegations of international responsibility. *That* is the inadequacy of which Nigeria complains, and which in Nigeria's submission precludes these matters from being taken any further.

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[25]CR 98/2, pp. 28-33, 36-37.

[26]CR 98/4, p. 33.

[27]See CR 98/4, p. 34.

Cameroon dismisses as unsound Nigeria's reading of the Statute and Rules of Court. Nigeria emphasizes those texts, however, because they are the basis for all proceedings before this Court, and their importance was emphasized in the earlier cases to which I have just referred. Of course, it is easy to caricature Nigeria's position by suggesting that Nigeria claims that *all* factual details should be included in the Application, and then to show that such a claim is unfounded. But Nigeria has never claimed that. Nigeria submits that it is the application which starts off a case, and which determines its essential limits; but Nigeria also accepts that an applicant can amplify its application in its memorial, within certain limits — such as that, for example, the character and scope of the case is not changed. It is a misreading of Nigeria's position to argue, as did Professor Kamto[28], that Nigeria rejects the amplification in a memorial of incidents referred to in an application: in the passage from Nigeria's Preliminary Objection which he cited, Nigeria was only rejecting Cameroon's ability to give details about certain *previously totally unidentified events*. Nor is there any inconsistency in requiring an application to be sufficiently particularized, and acknowledging at the same time that a memorial may further elaborate on the application: it is simply to say that the first stage — the application — does not have to be fully detailed, but it does at least have to say enough to identify what the accusation against Nigeria is, and if it is, then the memorial can add further details.

Cameroon suggests that Nigeria has espoused a curious concept of State responsibility[29], but Cameroon's explanation of this curiosity would disappear if only Cameroon would remember that these present proceedings are concerned with preliminary objections, and not with the merits. As already explained in relation to the fifth Preliminary Objection, and was explained on 3 March[30], events in Bakassi and Lake Chad reflect different positions taken by the two States. It is simply no good Cameroon saying now that the Court could not possibly decide that Bakassi belongs to Nigeria, and that therefore Nigeria could not possibly justify its acts there as manifestations of its

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[28]CR 98/4, p. 36.

[29]CR 98/4, pp. 37-38.

[30]CR 98/2, p. 37.

sovereignty in the area[31]: that is all about the merits, and has no place here. What one *can* say, at this stage, is that if the Court were to get to the stage of deciding the question of title to that area, then the acts in that area of whichever State is held to have title over it *cannot* involve trespasses into the other State's territory. But it is important to note, Mr. President, that the converse is not necessarily true: it does not necessarily follow that if the title of one State is established, then all acts of the other in what is determined to be the first State's area are automatically to be regarded as illegal acts against its territorial sovereignty — one would, rather, have to consider those acts to see what possible justifications for them might exist.

The situation is in fact not at all straightforward. As Nigeria noted last week[32], if boundary and territorial disputes are to be turned simultaneously into State responsibility cases, the problems will be aggravated, not resolved. Moreover, not only will problems of substance be likely to be made worse, but also, if pleadings in boundary cases are to be loaded also with contingent issues of State responsibility, the Court's — and the parties' — handling of such cases would clearly be greatly complicated. The Court's ability in all the circumstances effectively to exercise its judicial function would, in Nigeria's submission, be severely prejudiced.

Mr. President, Members of the Court, that concludes Nigeria's reply on the fifth and sixth Preliminary Objections. I now invite you to call upon Professor James Crawford, S.C., to address the Court on Nigeria's seventh and eighth Preliminary Objections.

Thank you, Mr. President.

The PRESIDENT: Thank you so much, Sir Arthur. Professor Crawford.

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

A. The Factual Background

In dealing with Preliminary Objections 7 and 8, relating to the maritime boundary, let me begin with a number of issues of fact.

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[31]CR 98/4, pp. 37-38.

[32]CR 98/2, pp. 37-38.

Fact number 1. There is no record of any actual negotiations between the Parties with respect to the delimitation of their maritime zones beyond Point G. Last week I pointed out that no document recording such negotiations had been tendered (CR 98/2, p. 50). Mr. Bipoun Woum on Friday mentioned none. So the Court may proceed on the basis that no such document exists. There is no evidence whatever of any such substantive negotiations.

Fact number 2. Cameroon has not repealed its Law No. 74/16, of 5 December 1974, proclaiming a 50-mile territorial sea. Nor has it enacted a law proclaiming an exclusive economic zone. On Friday, counsel argued that these two things were to be considered as having been done, not by any legal act on the part of Cameroon, but by the combined operation of its Constitution and its ratification of the 1982 Law of the Sea Convention. Let me deal with the two zones in turn.

As to the territorial sea: I am accused of misrepresenting Cameroon's position. Section 45 of its Constitution, Mr. Highet said, did all the necessary work in lieu of the legislator (CR 98/4, p. 55; also CR 98/4, p. 47 (Mr. Bipoun Woum)). The British Admiralty Notice of 1998, which I cited last week, was simply in error.

— Well, that error is common. It is a *communis error*. It is a general error. The United Nations Division for Ocean Affairs and the Law of the Sea makes the error[1]. So does the Office of Ocean Affairs in the United States Department of State[2]. So do published texts dealing with maritime claims[3]. The Court will find the references in the transcript.

— And moreover this "common error" seems to reflect the position under Cameroon law. Mr. Highet purported to cite the text of the relevant constitutional provision, Article 45, but in doing so he missed out an important qualifying phrase (CR 98/4, p. 55). Mr. Bipoun Woum, for his part, paraphrazed the text, likewise avoiding the potentially

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[1]*The Law of the Sea. National Legislation on the Territorial Sea, the Right of Innocent Passage and the Contiguous Zone* (United Nations, NY 1995) p. 78.

[2]Department of State, Office of Ocean Affairs, Limits in the Seas N. 36 (7th revision), *National Claims to Maritime Jurisdiction* (Washington, 1995) p. 22.

[3]See e.g., J. A. Roach & R. W. Smith, *United States Responses to Excessive Maritime Claims* (Nijhoff, The Hague, 1996) pp. 154, 161.

difficult qualification (cr 98/4, p. 47). So let me make up for the deficiency. [SHOW ARTICLE 45] Article 45 reads, in full:

> "Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, [so far, Mr. Highest's quote, but with the addition of the words] *provided the other party implements the said treaty or agreement.*"

And the French text is, as one would expect of the language of Corneille, even clearer:

> "Les traités ou accords internationaux régulièrement approuvés ou ratifiés ont, dès leur publication, une autorité supérieure à celle des lois, *sous réserve pour chaque accord ou traité, de son application par l'autre partie.*"

The words I have emphasized were omitted by counsel for Cameroon, each selective in his own language. But it is clear from this reciprocity clause that there is no question of automatic unconstitutionality here. At best, the situation is one of reciprocal non-application of a law as between the States parties to a treaty which is inconsistent with that law, to the extent of the inconsistency and subject to a determination of the other State's compliance. As against non-parties to the 1982 Convention, such as the United States, Cameroon's 50-mile territorial sea still exists. It existed *erga omnes* at the time Cameroon lodged its first Application, because the 1982 Convention had not then entered into force[4]. What the position is now, as between Cameroon and other States parties to the 1982 Convention which do not claim more than 12 miles, is unclear, and apparently no Cameroon court has considered the issue. Does Cameroon assert a territorial sea against other such parties on a basis of reciprocity? That is to say, does it assert a 3-mile territorial sea against a State which claims 3 miles, a 6-mile territorial sea against a State which claims 6 miles, and so on? The matter is shrouded in obscurity; indeed it hardly makes sense to talk about reciprocal territorial seas. The rest of the world proceeds on the basis that each State makes a determinate claim to a territorial sea of a determinate breadth. And, as I have said, Cameroon's legislation still contains a law asserting a territorial sea of 50 miles in breadth. No other State to my knowledge has relied on the 1982 Convention to determine the breadth of its territorial sea, still less to repeal an earlier excessive claim by that State. Moreover States parties to the Law of the Sea Convention

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[4]The first Application was lodged on 29 March 1994. The 1982 Convention came into force on 16 November 1994.

maintain their own territorial sea legislation even if under their constitutions treaties have the force of law. It is no doubt for such reasons that the United States, for example, has repeatedly pressed Cameroon to pass "affirmative legislation" to repeal its 1974 Law. However, Cameroon has so far refused to do so, citing "political difficulties".

— I should note a further difficulty in the way of the "cherished error" which Mr. Highet and Mr. Bipoun Woum continued to make on Friday. I mean, the error that Article 45 of the Constitution creates a 12-mile territorial sea, overriding the 1974 Law. For Cameroon has never *had* a 12-mile territorial sea; in 1967 it jumped straight from 6 to 18 miles, before jumping again in 1974 to 50 miles, thereby, incidentally, confounding Zeno's paradox by going faster rather than slower as it went along[5]. Now the 1982 Convention allows, but it does not require, a 12-mile territorial sea. If the 1974 Law were unconstitutional, presumably Cameroon would have a 6-mile territorial sea, the legal *status quo ante*. But that Law is not unconstitutional, as I have shown, and as the French *Conseil Constitutionnel* has repeatedly held in relation to the analogous provision of the French Constitution[6].

— Mr. President, Members of the Court, perhaps one day Cameroon will recognize its error, perhaps Wednesday. But alas, it is usually the case that "Qui chérit son erreur ne la veut pas connaître"[7], if I may quote Corneille.

As to the exclusive economic zone: Mr. Highet asserted that all States parties to the Convention have such a zone whether they want it or not (CR 98/4, p. 56). This contradicts the practice, of course. Hitherto States have claimed specific zones, fisheries zones or EEZs, by specific legislation, and have not relied on the 1982 Convention. One crucial reason for this is that the provisions of the 1982 Convention are not self-executing. They require to be implemented by specific legislation. Under Article 57, the 200-mile breadth is a maximum, not a mandatory

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[5]The progression was: 6 n miles, Decree 62-DF-216, 25 June 1962; 18 n miles, Law No. 67/LF/25, 13 November 1967; 50 n miles, Law No. 74/16, 5 December 1974.

[6]See e.g. the *Conseil's* decision in the *Abortion Law* case, 15 January 1975, Rec CC 1975, p. 19; in English, *74 ILR 523.* The decision has been many times reaffirmed.

[7]Corneille, *Polyeucte*, acte III sc III.

breadth. And moreover a State which claims an EEZ assumes important duties, for example under Articles 61, 62, 71, 72 and 75 of the Convention. There is no legislative or other sign that Cameroon has assumed these duties, out to 200 miles or at all. Legislatively, all it has is a 50-mile territorial sea.

Mr. President, Members of the Court, I turn to *Fact number 3*. The Parties have made no attempt yet to define an agreed tripoint between the maritime zones of Nigeria, Cameroon and Equatorial Guinea. This is despite repeated calls by Nigeria for such negotiations. I referred to these in my speech last week (CR 98/2, pp. 42-43), but neither counsel for Cameroon chose to respond. Perhaps the reason why there have been no discussions is that, although Cameroon had previously agreed that it was essential to define the tripoint, it now says, for the very first time, that there is no tripoint at all between the three States. Instead there is a continuous band of Cameroonian maritime territory separating Nigeria and Equatorial Guinea all the way out into the Atlantic Ocean. Far from being essential to define the tripoint, Cameroon now says for the first time that it is unnecessary, indeed impossible.

Now to *Fact number 4*. This is, as I said last week, that more than 80 per cent of the points along Cameroon's claim-line beyond Point G are closer to Equatorial Guinea, or to Sao Tome and Principe, than they are to Bakassi or to Cameroon. This was another matter which counsel for Cameroon did not attempt to refute. Indeed they did not address our maps at all.

That brings me, finally, to *Fact number 5*. Mr. Highet complained about the colour of the Bakassi Peninsula on our maps (CR 98/4, p. 54). I can assure him that it is very green. And he cannot really complain that Nigeria, in the context of these proceedings, continues to rely on its publicly declared position about the Peninsula, in fact that position is at the base of any jurisdiction the Court may have between the Parties. [SHOW TRIPOINT] But on the assumption — *quod non* — that Bakassi were considered or held to belong to Cameroon, the Court may be interested to know roughly where the geographical or cartographical tripoint between the three States is. You can see it on the screen now, its about 28 nautical miles from the nearest points on the Bakassi Peninsula, the rest of Nigeria and Equatorial Guinea and the map is at Tab 48 in your bundles. This cartographical tripoint is also about 13 nautical miles south of Point G. [SHOW TRIPOINT

IN RELATION TO CLAIM LINE BEYOND POINT G] Its location bears no relationship to the Cameroonian claim line, which you can now see transposed on to the map.

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

Mr. President, Members of the Court, I turn then to Cameroon's response to the seventh Preliminary Objection.

(1) The Maritime Boundary as a Whole

First, as to the maritime boundary as a whole, there is very little to add. The Parties agree there is a serious problem of judicial method, where there are independent disputes about the location of the land boundary and the adjacent maritime boundary. Cameroon argues that the Court should decide on the issue of method *after* the Parties have completed their written consideration of the merits (CR 98/4, pp. 52-53, Mr. Bipoun Woum). To put it at its lowest, this is an inefficient way to proceed, and unless the Parties have expressly so agreed, Nigeria submits that — even in a case where there is jurisdiction to determine both the land and the maritime boundary, which is not so here for other reasons — but even in such a case considerations of efficiency and judicial propriety favour a severance of the two phases. That is what the parties agreed to do in the current arbitration between Eritrea and Yemen. But Nigeria has had no opportunity to agree; this case was brought without notice and without negotiation, whether as to the method of proceeding or anything else. Even if the Court were to uphold its jurisdiction over the sector out to Point G, Nigeria submits that the land and the maritime zones should be dealt with in separate phases.

(2) The Maritime Boundary beyond Point G

I turn then to the issue of the continental shelf beyond Point G.

First, let me recall Professor Cot's argument that there is a difference between the delimitation of land and maritime boundaries, and that the difference is of particular significance where there has been no attempt to delimit the boundary concerned by treaty, as is incontestably the case with the maritime boundary beyond Point G (CR 98/4, p. 17). I only wish Professor Cot had told his co-counsel of this distinction. For Mr. Bipoun Woum cited as his principal authorities on the

question of the duty to negotiate a maritime boundary, two eminently terrestrial cases (CR 98/4, pp. 45-46). The first was the *Right of Passage* case itself (*I.C.J. Reports 1957*, p. 125). But there was no issue of maritime delimitation in that case, which concerned enclaves on Indian territory. The second was *Railway Traffic between Lithuania and Poland, (1931, P.C.I.J., Series A/B, No. 42)*, a decision of the Permanent Court that, so far as the record shows, concerned a terrestrial rather than a maritime railway.

What Mr. Bipoun Woum could not bring himself to face, another cherished error he could not recognize, is that Articles 74, paragraph 1, and 83, paragraph 1, of the 1982 Convention establish a *substantive* rule of delimitation. That rule binds the parties as a matter of treaty law, but it is anyway the applicable rule of general international law as well. Article 83, paragraph 1, says that the delimitation of the continental shelf "shall", I say, "shall" be effected "by agreement on the basis of international law . . . in order to achieve an equitable solution". And this is the relevant substantive rule. It is only if no agreement can be reached within a reasonable time that Article 83, paragraph 2, refers the parties to the relevant *procedures* for the peaceful settlement of the dispute. Moreover this is nothing new. It was the rule proposed in the Truman Proclamation, endorsed by the Court in the seminal *North Sea Continental Shelf* cases, endorsed again by the Chamber in the *Gulf of Maine* case, and repeatedly referred to since[8]. It is not the same thing as saying that a maritime delimitation cannot be achieved unilaterally, though that is also true. It is a positive, not a negative rule; delimitation "shall be effected by agreement". When the 1982 Convention wants to formulate a negative rule it knows how to do so, for example in Article 57, which says that the EEZ "shall not extend beyond 200 nautical miles" from the baseline, or in Article 3, which gives States the right to establish a territorial sea, I say to establish a territorial sea, "up to a limit not exceeding 12 nautical miles". Article 83, paragraph 1, does not contain the word "not". Neither, if it is relevant, does Article 74, paragraph 1. Both Article 83, paragraph 2, and Article 74, paragraph 2, are also formulated in positive terms. The position is quite clear.

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[8]See NPO, paras. 7.18-7.25; CR 98/2, pp. 48-49.

Mr. Bipoun Woum asked what would be the sanction for violation of the obligation imposed by Article 83, paragraph 1 (CR 98/4, p. 48). He seemed to think that the only rules of international law are those rules which involve sanctions, in other words that the whole of international law involves the law of State responsibility. Mr. President, Members of the Court, fortunately this is not so. There are large areas of international law which concern to regulate the relations between States but which are not concerned with State responsibility, with issues of delict and damages. This is true for example of the law relating to territorial sovereignty. Whether State A or State B has sovereignty over particular territory has not hitherto been seen as part of the law of State responsibility; if it were, the settlement of boundary disputes would be enormously complicated, as Sir Arthur has pointed out. The same is true of the enormous number of procedural requirements assumed by States in modern international law: these are real requirements, real procedural obligations. Take, for example, Article 102 of the Charter. This requires registration of treaties; are States which do not register their treaties internationally responsible for the failure? No one has ever said so; the procedural obligation entails procedural consequences. So it is with the procedural obligation contained in Articles 74, paragraph 1, and 83, paragraph 1, of the 1982 Convention; a reasonable attempt to agree on maritime delimitation is expressly stated to be a precondition for peaceful settlement under Articles 74, paragraph 2, and 83, paragraph 2. And as I have shown, there has been no negotiation about the areas beyond Point G, no negotiation about the location of any agreed tripoint, let alone about the vast areas beyond the tripoint, title to which Cameroon now claims.

Mr. Bipoun Woum further argued that the need to reach an agreement was *"ni une voie exclusive, ni une voie obligatoire de délimitation, et elle peut ou non coexister avec la procédure judiciaire"* (CR 98/4, p. 47). No one has ever said it was exclusive, of course, and Article 83 does not say that. But Article 83, paragraph 1, does say it is obligatory *as a first step*, and the Court in the *North Sea* cases explained why. It may be that the obligation to negotiate the continental shelf is in the words of the Court in 1969 "a special application of a principle which underlies all international relations" (*I.C.J. Reports 1969*, at p. 47, para. 86), but it is precisely a *special* application, formulated specifically in the sources from the Truman Proclamation to the 1982

Convention and since. And the idea that open negotiations between two States can coexist with litigation between those same States is implausible and unrealistic. On the contrary, for one party to commence litigation, preemptively and without negotiation, is virtually certain to preclude any meaningful negotiations thereafter. The judicial procedure will take over; initial, perhaps extreme positions will become even more entrenched, and the process of delimitation will degenerate into a dash for the courthouse door.

Mr. Bipoun Woum argued that this position amounted to a prohibition against recourse to a third party *"en l'absence de discussions précises sur chaque portion de cette délimitation"* (CR 98/4, p. 51). But the record shows, beyond Point G, not merely that there have been no precise discussions on each portion of the delimitation; it shows there have been no discussions about any portion of it at all, and in particular about any portion of Cameroon's current claim-line, from the very instant of the tortoise's departure along the Cameroon claim-line in a direction due west of Point G. Not a word of discussion in the documents. Not the trace of a record. That is the simple fact. And it follows from that fact, Mr. President, Members of the Court, and from the clear language of Articles 74 and 83 of the Convention, that the Cameroonian claim to maritime zones beyond Point G is inadmissible.

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

I now turn to Nigeria's eighth Preliminary Objection, which concerns the impacts of Cameroon's maritime delimitation claim for third States, and in particular for Equatorial Guinea. I have already analysed the claim-line, entitled "The equitable delimitation", with its consequences for the areas prima facie appertaining to third States. No comments were made on Friday, either by Mr. Bipoun Woum or Mr. Highet, on the maps we showed. These can thus be taken to reflect, in a general way, the consequences of the Cameroon's claim. [SHOW MAP WITH TRIPOINT SUPERIMPOSED] Nor was it denied that Cameroon is seeking a strip of maritime territory to the south and east of the claim line, although we are still not told how wide it should be.

In this respect Mr. Highet's speech on Friday was as remarkable for its wealth of classical allusion, as it was for its lack of relevance to our problem. And perhaps the most remarkable aspect

of it was his failure to use two words, the word "Equatorial" and the word "Guinea". It is true he did once use the word Guinea, as a compound word along with "Bissau". Guinea-Bissau is a long way away. Perhaps Zeno's tortoise would get there eventually, but it would take a long time.

The position with Equatorial Guinea, Mr. Highet's forbidden phrase, is quite otherwise. Even the tortoise would reach the environs of Equatorial Guinea very quickly, not to mention Achilles. And the question is whether there is any basis in the Court's jurisprudence and practice for deciding on a bilateral delimitation in areas directly affecting Equatorial Guinea, areas around the limited zone between Point G and the tripoint. [SHOW TUNISIA-LIBYA MAP]

Mr. Highet's argument on this crucial point took two forms. First, he said there was an impossible logical contradiction. And then he said the logical contradiction could be resolved at the merits phase. Let me deal with the two arguments in turn.

First, the logical point. Lawyers who are in difficulty over the facts are fond of logical arguments. It is as if it helps to cover the fact that they have no clothes. Well, Mr. Highet's argument was based on Zeno's paradox of Achilles and the tortoise (CR 98/4, p. 58). The Court will no doubt recall that this is a mathematical paradox based on the proposition that the sum of the continued halving of any number will never reach that number. So for example, if the number is one, a half and a quarter and an eighth and a sixteenth and a thirty-second to infinity will never reach one — I have always wanted to be a mathematics teacher. Achilles will never, according to this paradox, reach his tortoise because he will have to go first half way, and then half the remaining distance, and so on to infinity. It is a charming paradox, and all we needed to know on Friday was its relevance to our problem. Because our problem is that, within a very short distance from Point G, we are in areas which very probably appertain to Equatorial Guinea, and which the Court cannot have jurisdiction to delimit in these proceedings. It was from that brute fact that Mr. Highet took refuge in his paradox. [SHOW CLAIM-LINE WITH TRIPOINT]

Now it may be accepted that this objection does not apply to the determination of Point G itself, assuming for the moment that all the other objections to the determination of the maritime boundary were overcome. It may also be accepted that it does not apply to the determination of Point G plus 1 m, or 100 m, areas still clearly much closer to either of the Parties on certain

assumptions than they are to any third State. But that does not justify Mr. Highet pursuing his tortoise doggedly to the end of Cameroon's claim-line or anywhere remotely close to it. The problem is quite different and it is revealed with perfect clarity in a key passage of Cameroon's Memorial which I cited last week, and which Mr. Highet completely failed to address. Cameroon then said, and I repeat, that "a situation like the one prevailing in the present case requires a collective balancing of the equities, advantages and disadvantages among the different States along the shores of the Bight of Biafra" (MC, para. 5.114). If that is true, it follows that Cameroon's claim-line is globally inadmissible. The one thing the Court cannot do in these proceedings is to engage in a collective balancing of the equities. For the Court to assume jurisdiction over this case would be to announce to the other States involved that the Court intends to engage in such a "collective balancing" exercise, whatever the attitudes of those States might be, whatever effect a delimitation might have on them. It would very likely force those States to intervene, something which the Court should not do and which it has repeatedly said it cannot do.

I stress, Mr. President, Members of the Court, that we are talking about the inadmissibility of Cameroon's claim as formulated in its Application and Memorial, a claim to the global delimitation of the waters beyond Point G out to 200 miles. *That claim* is inadmissible; it goes way beyond the Court's jurisdiction to determine as between Nigeria and Cameroon. And it is too late for Cameroon to withdraw that claim and to substitute a much more modest claim to the delimitation of the waters clearly pertaining to Nigeria and Cameroon and falling short of any version of the tripoint. Such a modest exercise, a sort of miniature version of what the Court did in *Tunisia/Libya*, a cameo performance offshore Bakassi or wherever, would be one thing. [SHOW CAMEROON'S OWN CLAIM-LINE] But what Cameroon seeks is something else again, a starring role for the Court in the whole of the Gulf of Guinea, in which, however, Nigeria and Cameroon would be two characters in search of the rest of the cast. The Court cannot compel the attendance of the key players in that performance, Equatorial Guinea and Sao Tome and Principe, and it should not embark on a production that would require their attendance, if it was to be undertaken at all.

That brings me to Mr. Highet's second argument, which is that all this pertains to the merits, or at least is not exclusively preliminary. According to Mr. Highet a claim to delimit a maritime

zone can never, ever be inadmissible; it will always pertain to the merits because it will always require a consideration of the merits as between the parties, and third States will never be affected because of Article 59 of the Statute and their status as third parties (CR 98/4, pp. 60-62). This shows the extremities to which Mr. Highet was driven in his search for an argument that would allow the Court to examine Cameroon's claim line to engage in the collective balancing exercise. It required him virtually to abolish the whole law of admissibility in relation to maritime claims.

It also required him to explain away the Court's approach in the *Libya/Malta* case. [SHOW LIBYA/MALTA MAP] For the Court there held that it had no jurisdiction, I repeat, no jurisdiction, to delimit maritime areas claimed by a third State. And it did so in a much less extreme geographical context than that of the Bight of Biafra. So what did Mr. Highet say about that case? Only that the Court dealt with the issue at the merits phase (CR 98/4, p. 61). He did not deny that, so far as areas claimed by Italy were concerned, the Court's *jurisdiction* was at issue. He simply said that the Court could protect third States (States whose names he could not bring himself to pronounce) at the merits. But this ignores the obvious point that the Court *cannot* deal with the merits in these overlapping areas. It is not a case of protecting; it involves abstaining. The Court should not, must not, agree to enter the arena when it is clear that, having done so, it must decline to perform the role in which the Applicant has cast it. And there is absolutely no reason why the Court should not take that decision now.

By way of illustration, let us assume that in *Libya/Malta*, the only areas that the Court had been asked to deal with were the areas claimed by Italy. Let us assume that the parties had already delimited by agreement the central area with which the Court actually dealt in its Judgment, and that they were asking the Court to deal with the areas disputed by Italy. Is there any doubt that the Court would have refused to do so, in the absence of Italy? [SHOW CAMEROON'S OWN CLAIM-LINE] And in a case such as the present where that objection is properly made, in accordance with the Statute and Rules, at a preliminary stage, why cannot it now be dealt with? Cameroon's claim line is hopelessly inadmissible, is *as such* beyond the Court's jurisdiction to decide in these proceedings, for the reasons I gave last week and which Mr. Highet barely attempted to refute. But, he said, let us deal with it anyway, let us argue about the whole of that line for the

next three years, let us deal with the interventions from the other two States, if and when they are made (Cameroon has not told us what its attitude would be to such interventions). And then let the Court decline to decide as, following *Libya/Malta*, it must, in the absence of the two affected States. That would be an exercise in futility. The law of admissibility exists precisely to enable the Court to avoid such exercises.

F. Conclusion

Mr. President, Members of the Court, for these reasons it is submitted that the issue of the delimitation of the maritime boundary is inadmissible at this stage, and in particular, that it is inadmissible as to the areas impinging on the potential claims of third States.

I would now ask, Mr. President, that you call on the distinguished Agent for Nigeria to conclude our presentation. Thank you, Members of the Court.

The PRESIDENT: Thank you, Professor Crawford. I call on the distinguished Agent of Nigeria, Minister Ibrahim.

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

Nigeria has done its best to present to the Court the arguments and evidence that are relevant to its examination of the Preliminary Objections, and to avoid being drawn into debates on other matters that are not relevant.

Judge Guillaume asked a question on Friday afternoon, and we will respond in writing within the time-limit then indicated.

Mr. President, distinguished Members of the Court, for the reasons that have been stated either in writing or orally, Nigeria submits:

First Preliminary Objection

1.1. that Cameroon, by lodging the Application on 29 March 1994, violated its obligations to act in good faith, acted in abuse of the system established by Article 36, paragraph 2, of the Statute, and disregarded the requirement of reciprocity established by Article 36, paragraph 2, of the Statute and the terms of Nigeria's Declaration of 3 September 1965;

1.2. that consequently the conditions necessary to entitle Cameroon to invoke its Declaration under Article 36, paragraph 2, as a basis for the Court's jurisdiction did not exist when the Application was lodged;

1.3. that accordingly, the Court is without jurisdiction to entertain the Application;

Second Preliminary Objection

2.1. that for a period of at least 24 years prior to the filing of the Application, the Parties have in their regular dealings accepted a duty to settle all boundary questions through the existing bilateral machinery;

2.1.1. that this course of joint conduct constitutes an implied agreement to resort exclusively to the existing bilateral machinery and not to invoke the jurisdiction of the Court;

2.1.2. that *in the alternative*, in the circumstances the Republic of Cameroon is estopped from invoking the jurisdiction of the Court;

Third Preliminary Objection

3.1. that without prejudice to the second Preliminary Objection, the settlement of boundary disputes within the Lake Chad region is subject to the exclusive competence of the Lake Chad Basin Commission, and in this context the procedures of settlement within the Lake Chad Basin Commission are obligatory for the Parties;

3.2. that the operation of the dispute settlement procedures of the Lake Chad Basin Commission involved the necessary implication, for the relations of Nigeria and Cameroon *inter se*, that the jurisdiction of the Court by virtue of Article 36, paragraph 2, would not be invoked in relation to matters within the exclusive competence of the Commission;

Fourth Preliminary Objection

4.1. that 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;

Fifth Preliminary Objection

5.1. that, without prejudice to the title of Nigeria over the Bakassi Peninsula, there is no dispute concerning boundary delimitation as such throughout the whole length of the boundary from the tripoint in Lake Chad to the sea, and in particular:

(a) there is no dispute in respect of the boundary delimitation as such within Lake Chad, subject to the question of title to Darak and adjacent islands inhabited by Nigerians;

(b) there is no dispute relating to the boundary delimitation as such from the tripoint in Lake Chad to Mount Kombon;

(c) there is no dispute relating to the boundary delimitation as such between boundary pillar 64 on the Gamana River and Mount Kombon; and

(d) there is no dispute relating to the boundary delimitation as such between pillar 64 on the Gamana River and the sea;

Sixth Preliminary Objection

6.1. that the Application (and so far as permissible, subsequent pleadings) filed by Cameroon does not meet the required standard of adequacy as to the facts on which it is based, including the dates, circumstances and precise locations of the alleged incursions and incidents by Nigerian State organs;

6.2. that those deficiencies make it impossible

(a) for Nigeria to have the knowledge to which it is entitled of the circumstances which are said by Cameroon to result in Nigeria's international responsibility and consequential obligation to make reparation; and

(b) for the Court to carry out a fair and effective judicial examination of, or make a judicial determination on, the issues of State responsibility and reparation raised by Cameroon;

6.3. that accordingly all the issues of State responsibility and reparation raised by Cameroon in this context should be declared inadmissible;

6.4. that, without prejudice to the foregoing, any allegations by Cameroon as to State responsibility or reparation on the part of Nigeria in respect of matters referred to in paragraph 17 *(f)* of Cameroon's amending Application of 6 June 1994 are inadmissible;

Seventh Preliminary Objection

7.1. that there is no legal dispute concerning delimitation of the maritime boundary between the two Parties which is at the present time appropriate for resolution by the Court, for the following reasons:

(1) no determination of a maritime boundary is possible prior to the determination of title in respect of the Bakassi Peninsula;

(2) in any event, the issues of maritime delimitation are inadmissible in the absence of sufficient action by the Parties, on a footing of equality, to effect a delimitation "by agreement on the basis of international law";

Eighth Preliminary Objection

8.1. that the question of maritime delimitation necessarily involves the rights and interests of third States and is inadmissible beyond Point G.

Accordingly, Nigeria formally requests the Court to adjudge and declare that:

(1) it lacks jurisdiction over the claims brought against the Federal Republic of Nigeria by the Republic of Cameroon; and/or

(2) the claims brought against the Federal Republic of Nigeria by the Republic of Cameroon are inadmissible to the extent specified in the Preliminary Objections.

Mr. President, that completes Nigeria's presentation of its Preliminary Objections. We thank the Court for its attention and courtesy.

The PRESIDENT: Thank you very much. That concludes Nigeria's presentation. The Court will adjourn and meet on Wednesday for the reply of Cameroon. The Court is adjourned.

The Court rose at 1 p.m.