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012

Le PRESIDENT : Veuillez-vous asseoir. Je donne maintenant la parole à l'agent distingué du Cameroun.

Mr. ESSO:

1. Thank you, Mr. President. We thank you for giving us the floor again to introduce the second round of Cameroon's oral argument on the Preliminary Objections raised by Nigeria.

2. Mr. President, Members of the Court, for Cameroon, it is still just a matter of preliminaries. However, we cannot refrain from noting the statement made before the Court by Nigeria on 2 March 1998 (CR 98/1, p. 28 original or French translation p. 19, para. 44).

> "If ultimately Cameroon were to succeed in her claim to Bakassi or to the Darak area, many tens of thousands of Nigerians, people who have always been Nigerians and been governed *from Nigeria*, could suddenly find their persons and property transferred to another State with a different system and political traditions" (emphasis added).

3. Mr. President, in this quotation we note a very important fact, whence the question: where are the Nigerians governed from Nigeria: in Nigerian territory, or in foreign territory? These are indeed "people who have always been Nigerians and have been governed from Nigeria". In reality, this is an admission by Nigeria. Even if these are Nigerian implantations, one thing is certain, and it stems from this admission: Bakassi Peninsula and Darak are not in Nigerian territory. However, there are Nigerians there when Nigeria declares to be "governed from Nigeria"! Hence, if Bakassi and Darak are not in Nigerian territory, they are Cameroonian.

4. However, this admission is accompanied by a warning, or might I even say a threat? Nigeria announces "if ultimately Cameroon were to succeed . . . we would hope that Cameroon would behave well, but we have good reasons for disquiet" (CR 98/1, p. 19). This is most curious, Mr. President.

5. For the Court's information, we would point out that three million Nigerians live peacefully in Cameroon, at Yaoundé, Douala, Kumba, Bamenda, Maroua, Garoua, Ngaoundéré for example, and in other localities.

013

6. Should we fear, that one day, Nigeria may take this as a pretext for behaving in the same way there as it is doing in Bakassi, in Darak and over the entire length of the frontier? Experience leads us to believe that this matter is not just academic.

7. Can the international community allow Nigeria to assume the right to proclaim, here, in these august surroundings, a species of anachronistic protectorate over Cameroon on the ground that Nigerians live there?

8. By making this statement to the Court, is Nigeria not seeking to obtain the moral endorsement of the distinguished Court for its numerous excesses?

9. The Court will decide.

10. Be this as it may, Mr. President, Members of the Court, in this last round of oral argument, Cameroon wishes to clarify the issues in the case submitted to you.

11. Mr. President, let us make no mistake about which age we are living in.

— At the close of the twentieth century, there is no pretext which authorizes, no ambition which legitimizes territorial conquest.

— On the threshold of the twenty-first century, one does not negotiate, one does not engage in bilateralism, weapons in hand.

12. Mr. President, let us make no mistake about the dispute at issue. History has bequeathed frontiers to us. Our Heads of State and Heads of Government have accepted them. To take issue with those frontiers is to seek to rewrite the history of an entire continent. It is a little late for this in our view.

13. The frontier provides us with an opportunity to take stock. For accepting our past, painful as this may be. We recall that some Cameroonians became Nigerians in 1961.

14. The frontier is one stage on the road towards a broader reality. It helps to reconcile us to our future. This is part of the whole problem of national unity in our States. For us Africans, a frontier does not erase the certainty of belonging to a regional entity. The frontier is a factor of solidarity. *A family does not have to live separately just because its home has a number of separate*

rooms. So let us, for pity's sake, respect this frontier, regardless of how things may look at the moment, regardless of how talented our lawyers may be.

15. Without frontiers, no States. Without States, no international law. Without international law, no International Court of Justice. Without frontiers, what would we be doing here?

16. Mr. President, let us make no mistake about who our opponent is. On the ground, Cameroon has a duty to preserve the integrity of its territory. This is not an act of hostility against Nigeria. If Cameroon has filed an application before the International Court of Justice, this is not an act of enmity either. On the contrary, it is a means, and the only means, certainly, which remains to us, but a friendly and brotherly means, of enabling our two countries, calmly, peacefully and definitively, to settle the dispute between them.

17. Mr. President, let us make no mistake about which Court this is and, above all, let us make no mistake over what proceedings these are. Let us not confuse the Lake Chad Basin Commission, which, moreover, does excellent technical work, but has no legal jurisdiction, with the principal judicial organ of the United Nations, that august institution, the only one in the world, whose universality renders all consenting States subject to its justice.

18. The International Court of Justice is an artisan of peace; this is Cameroon's deep conviction. Members of the Court, Cameroon places its entire trust in you.

19. Mr. President, buffeted by the wind which, sometimes violent, shakes our fragile democracies, some States, rightly or wrongly, cast doubt on the agreements which govern our history, denying the conventions which we have been adopting since independence.

20. Let us beware: we have heard and can unreservedly reiterate — I quote from memory — that "those who follow the wind will share the fate of the dead leaves".

21. May respect for our undertakings, respect for international law, respect for the wise decisions rendered by your distinguished Court preserve us from this.

22. It is time for all African nations, Mr. President, to behave as subjects of international law.

015

23. Mr. President, may I now ask you to give the floor to Sir Ian Sinclair, who will present Cameroon's reply to the first and second Preliminary Objections.

Thank you.

Le PRESIDENT : Merci, Monsieur Esso. Je donne maintenant la parole à sir Ian Sinclair.

Sir Ian SINCLAIR : Monsieur le président, Madame et Messieurs de la Cour.

1. C'est, comme toujours, un honneur pour moi que de prendre la parole devant vous au nom de la République du Cameroun en cette affaire navrante, qui a donné lieu, comme notre agent l'a indiqué, à des accrochages armés et a accru la tension entre les deux Etats voisins du Nigéria et du Cameroun.

2. Cette journée marque la fin des plaidoiries devant la Cour sur les exceptions préliminaires concernant la compétence de la Cour et la recevabilité de certaines des demandes du Cameroun dans la présente instance. C'est à ce point que nous vous confions, Monsieur le président, Madame et Messieurs de la Cour, la tâche difficile et délicate de statuer sur les arguments et conclusions des deux Parties en cette phase de la procédure. Le Cameroun le fait avec la ferme conviction que la Cour rejettera une à une et en totalité les exceptions préliminaires soulevées par le Nigéria dans sa pièce écrite du 12 décembre 1995, qu'elle se déclarera compétente pour statuer sur toutes les questions soulevées dans la requête du Cameroun du 29 mars 1994, telle qu'elle a été complétée par la requête additionnelle du 16 juin 1994, et qu'elle déclarera recevables les demandes du Cameroun ainsi complétées et réunies.

3. J'ai pour tâche, ce matin, de répondre aux arguments développés lundi par les conseils du Nigéria à propos des première et deuxième exceptions préliminaires soulevées par le Nigéria. Je m'arrêterai d'abord sur la première exception préliminaire. Ici ma tâche a été simplifiée par les réponses complètes données par mes collègues et amis MM. Simma et Ntamark le 5 mars (CR 98/3, p. 33-52) sur les points développés par nos adversaires — en particulier par mon éminent ami sir Arthur le 2 mars (CR 98/1, p. 28-48). Ainsi se trouve établie l'absence de toute substance

réelle dans les diverses plaintes formulées par le Nigéria à propos de la façon dont le Cameroun a procédé en faisant une déclaration inconditionnelle d'acceptation du système de la clause facultative le 3 mars 1994 et en déposant sa requête initiale introduisant l'instance actuelle contre le Nigéria près de quatre semaines plus tard le 29 mars 1994. J'ai donc l'intention de faire porter mes observations, autant que possible, sur les arguments nouveaux ou modifiés relatifs à la première exception préliminaire, que nos adversaires ont développés lundi cette semaine.

016

A. Conditions à remplir pour qu'un Etat puisse invoquer le système de la clause facultative comme fondement de la compétence de la Cour dans une affaire concrète

4. Au risque d'énoncer une évidence, je me dois de souligner que, pour un Etat qui n'est pas partie au système de la clause facultative, comme c'était le cas du Cameroun jusqu'au 3 mars 1994, il y a deux démarches distinctes à effectuer avant qu'il ne puisse fonder la compétence de la Cour dans une affaire concrète contre un autre Etat partie à ce système. En premier lieu, il doit déposer sa déclaration d'acceptation de la clause facultative auprès du Secrétaire général de l'ONU en vertu du paragraphe 4 de l'article 36 du Statut. Le Cameroun l'a fait le 3 mars 1994. En second lieu, il doit invoquer la juridiction de la Cour sur la base de la coïncidence entre sa déclaration d'acceptation du Cameroun et celle de l'Etat défendeur éventuel (en l'espèce le Nigéria) dans la perspective du dépôt d'une requête contre cet Etat. Comme M. Rosenne le dit à juste titre :

> «Le fait de déposer la déclaration devient ainsi le point de départ pour déterminer si le différend concret relève de la juridiction mutuellement acceptée à la date de l'introduction de l'instance» (Rosenne, *The Law and Practice of the International Court, 1920-1996*, vol. II, p. 740).

La requête du Cameroun a été déposée le 29 mars 1994, près de quatre semaines après le dépôt par le Cameroun, de sa déclaration inconditionnelle d'acceptation de la clause facultative. Le Nigéria affirme maintenant que ce ne sont pas là les seules conditions à remplir avant qu'un Etat puisse invoquer le système de la clause facultative contre un autre Etat partie à ce système dans une affaire concrète. En particulier, le Nigéria déclare avec insistance qu'en raison de l'effet de la condition de réciprocité incluse dans la déclaration nigériane d'acceptation de la clause facultative, la déclaration d'acceptation du Cameroun devait être transmise au Nigéria dans un délai raisonnable

à partir de son dépôt auprès du Secrétaire général de l'ONU avant que le Cameroun ne puisse l'invoquer dans une procédure engagée contre le Nigéria.

017

5. Bien entendu le Nigéria se rend pleinement compte que cet argument est tout à fait incompatible avec la jurisprudence établie de la Cour, en particulier celle de l'affaire du *Droit de passage*, que j'aborderai dans un moment. Elle est aussi certainement contraire à toute interprétation reconnue de la condition de réciprocité; et j'aurai l'occasion, plus tard dans ma plaidoirie, d'examiner le sens de la condition de réciprocité incluse dans la déclaration nigériane d'acceptation.

6. Monsieur le président, Madame et Messieurs de la Cour, avant de quitter ce sujet des conditions qui doivent être réunies pour qu'un Etat puisse invoquer le régime de la clause facultative, je devrais peut-être répondre à un argument présenté par le conseil du Nigéria au cours du premier tour de plaidoiries et repris au second tour par sir Arthur (CR 98/5, p. 24-25). Il s'agit de l'argument fondé sur l'article 78, alinéa c), de la convention de Vienne sur le droit des traités, qui énonce désormais une règle générale selon laquelle quand un Etat fait une déclaration concernant un traité à un dépositaire pour qu'il la communique à d'autres Etats, elle est considérée comme n'ayant été reçue par ces autres Etats qu'à partir du moment où ils en ont été informés par le dépositaire agissant dans l'exécution de son obligation. Il est bien clair, cependant, que cette disposition ne visait ni ne devait concerner les déclarations de clause facultative qui, comme le Cameroun n'a dû le répéter que trop souvent, ne sont pas des traités au sens de la convention de Vienne. En tout état de cause, il est évident que l'arrêt du *Droit de passage* a pour effet de créer une règle distincte qui s'applique aux déclarations de clause facultative en raison de leur nature particulière dans le système de la juridiction obligatoire. Les passages de l'arrêt que la Cour a rendu dans l'affaire du *Droit de passage* que citait M. Simma au paragraphe 20 de sa plaidoirie du premier tour (CR 98/3, p. 38) le confirment; et il n'était manifestement pas dans les intentions des rédacteurs de la convention de Vienne sur le droit des traités d'aller à l'encontre de la jurisprudence établie de la Cour en la matière.

7. Ce que le Nigéria semble viser — et cela ressort du passage final de l'argument avancé par le conseil du Nigéria lundi dernier (CR 98/5, p. 27) — c'est à estomper la distinction qui existe entre les paragraphes 1 et 2 de l'article 36 du Statut. Le Cameroun ne conteste pas que la juridiction de la Cour se fonde sur le consentement des Parties à lui soumettre l'affaire dont il s'agit. Mais le consentement peut se donner soit par la négociation d'un compromis, soit par l'application d'une disposition d'un traité en vigueur qui prévoit le renvoi de certains types donnés de différends devant la Cour. Et tel est visiblement l'objet et le but du paragraphe premier de l'article 36. Le paragraphe 2 de cet article, qui couvre le régime de la clause facultative, a un but tout différent. Il prévoit que les Etats acceptent *d'avance*, je dis bien *d'avance*, la juridiction de la Cour, par l'application du régime. Or M. Simma a expliqué très clairement le fonctionnement du régime dans sa plaidoirie du premier tour (CR 98/3, p. 42-43). Estomper la distinction entre les deux démarches reviendrait à saper le fonctionnement spécifique du régime de la clause facultative. Cela tendrait à transformer ce régime en une variante de celui du compromis que couvre le paragraphe premier de l'article 36. Certes, telle n'est peut-être pas l'intention du Nigéria; mais c'est certainement une conséquence probable de ce qu'il semble chercher à obtenir.

018

B. L'élément temps dans la jurisprudence du *Droit de passage*

8. Le Nigéria ne conteste pas, et d'ailleurs il ne le pourrait pas, que sa première exception préliminaire est pour ainsi dire identique à la deuxième exception préliminaire soulevée par l'Inde dans l'affaire du *Droit de passage*, et que la Cour a rejetée en termes catégoriques. Permettez-moi de vous rappeler encore ce que disait la Cour dans son arrêt du 26 novembre 1957 :

> «Elle estime que, par le dépôt de sa déclaration d'acceptation entre les mains du Secrétaire général, l'Etat acceptant devient Partie au système de la disposition facultative à l'égard de tous autres Etats déclarants, avec tous les droits et obligations qui découlent de l'article 36.» *C.I.J. Recueil 1957,* p. 146.

Et elle poursuivait :

> «[T]out Etat faisant une déclaration d'acceptation doit être censé tenir compte du fait qu'en vertu du Statut il peut se trouver à tout moment tenu des obligations découlant de la disposition facultative vis-à-vis d'un nouveau signataire, par suite du dépôt de la déclaration d'acceptation de ce dernier.» *(Ibid.)*

La Cour a même indiqué qu'un Etat qui accepte la compétence de la Cour

> «doit prévoir qu'une requête puisse être introduite contre lui devant la Cour par un nouvel Etat déclarant le jour même où ce dernier dépose une déclaration d'acceptation entre les mains du Secrétaire général». *(Ibid.)*

Et la Cour a précisé : c'est en effet ce jour-là que le lien consensuel qui constitue la base de la disposition facultative prend naissance entre les Etats intéressés. En outre, la Cour n'a pas besoin qu'on lui rappelle la distinction qu'elle a établie dans l'affaire du *Droit de passage* entre l'obligation qui incombe à l'Etat déclarant de déposer sa déclaration d'acceptation et l'obligation incombant au Secrétaire général des Nations Unies de transmettre une copie de la déclaration aux autres Etats parties au Statut. L'Inde avait soutenu que l'article 36 du Statut prescrivait non seulement le dépôt de la déclaration d'acceptation entre les mains du Secrétaire général, mais aussi la communication par celui-ci d'une copie de la déclaration aux parties au Statut. La Cour a fermement rejeté cet argument :

019

> «c'est la première de ces prescriptions qui seule concerne l'Etat déclarant. Ce dernier n'a à s'occuper ni du devoir du Secrétaire général ni de la manière dont ce devoir est rempli. L'effet juridique de la déclaration ne dépend pas de l'action ou de l'inaction ultérieure du Secrétaire général.» *(Ibid.)*

Détermination claire et indiscutable de la date de prise d'effet d'une déclaration d'acceptation de la clause facultative

9. Que la Cour veuille bien m'excuser de lui rappeler ce qu'elle sait certainement. Mais je me sens tenu de le faire principalement parce que nos contradicteurs se sont délibérément abstenus de vous rappeler votre propre jurisprudence constante en la matière. Jurisprudence qui sert un dessein très précis, celui de garantir la certitude et la sécurité juridiques. La Cour l'explique très clairement dans l'arrêt qu'elle a rendu dans l'affaire du *Droit de passage* :

> «[L']article 36 n'énonce aucune exigence supplémentaire, par exemple celle que la communication du Secrétaire général ait été reçue par les Parties au Statut, ou qu'un intervalle doit s'écouler après le dépôt de la déclaration, avant que celle-ci ne puisse prendre effet. Toute condition de ce genre introduirait un élément d'incertitude dans le jeu du système de la disposition facultative. La Cour ne peut introduire dans la disposition facultative aucune condition de ce genre.» (*C.I.J. Recueil 1957,* p. 147.)

C'est ce principe, qui est au cœur même de la mise en œuvre effective du système de la clause facultative, que le Nigéria conteste maintenant. C'est un principe qui permet de déterminer une date claire et indiscuttable pour la prise d'effet d'une déclaration d'acceptation de la clause facultative.

Y-a-t-il de bonnes raisons de reconsidérer (plutôt que d'appliquer) cet élément de la jurisprudence de l'affaire du *Droit de passage* ?

10. Je pose cette question parce que nos contradicteurs font grand cas de la prétendue rigidité de cet élément de la motivation de l'arrêt relatif au *Droit de passage* et tentent de développer des arguments invitant la Cour à réexaminer (et, peut-on le supposer, à désavouer) le principe clair et impératif que cet arrêt énonce. Je vous prie instamment, Monsieur le président, Madame et Messieurs de la Cour, de ne pas vous laisser leurrer par cet appel qui vous est adressé. La jurisprudence qu'on vous demande de renverser est une jurisprudence établie depuis plus de quarante ans. Les Etats parties au système de la clause facultative ont donc eu toutes les occasions possibles de se protéger contre les requêtes prétendument introduites «par surprise» par de nouvelles parties au système. Certains Etats ont cherché à se protéger en insérant une nouvelle réserve dans leur déclaration d'acceptation de la clause facultative. Le Gouvernement du Royaume-Uni a été, je crois, le premier à le faire en 1957 lorsqu'il a introduit dans sa déclaration d'acceptation une nouvelle réserve visant les différends

020

> «à l'égard desquels toute autre partie en cause a accepté la juridiction obligatoire de la Cour ... uniquement en ce qui concerne lesdits différends ou aux fins de ceux-ci, ou lorsque l'acceptation de la juridiction obligatoire de la Cour au nom d'une autre partie au différend a été déposée ou ratifiée moins de douze mois avant la date du dépôt de la requête par laquelle la Cour est saisie du différend».

11. C'est sur le second élément de cette nouvelle réserve, Monsieur le président, que je souhaite attirer l'attention de la Cour. Le premier élément, je le reconnais volontiers, pourrait donner lieu à des difficultés de preuve quant aux intentions de l'Etat déclarant, mais le deuxième élément, lui, est objectif car il exige uniquement la preuve de la date du dépôt de la requête et de la date du dépôt par l'Etat demandeur de sa déclaration d'acceptation de la clause facultative. Ce

sont là des données totalement objectives. Donc, si le Nigéria avait réellement et sincèrement voulu se protéger contre les requêtes prétendument introduites «par surprise», pourquoi n'a-t-il pas ajouté de réserve temporelle de ce genre dans sa déclaration d'acceptation du système de la clause facultative ? C'est après tout ce qu'avait fait le Royaume-Uni (l'ex-puissance coloniale au Nigéria). Il se peut évidemment que le Nigéria ait eu quelque scrupule, dans les premiers temps de la décolonisation, à suivre les traces de l'ex-puissance coloniale, ce qui aurait été compréhensible. Mais cela n'explique pas pourquoi le Nigéria n'a pas pris cette précaution ultérieurement. Après tout, d'autres Etats se sont protégés de la même façon bien que le libellé exact de leur réserve puisse être légèrement différent de celui retenu dans la réserve du Royaume-Uni. Si la Bulgarie, Chypre, la Hongrie, l'Inde, Israël, Malte, Maurice, la Nouvelle-Zélande, les Philippines, la Pologne, la Somalie et l'Espagne peuvent donc trouver le moyen de se protéger contre ce qu'ils estiment être des requêtes introduites «par surprise» par des Etats faisant une première déclaration d'acceptation de la clause facultative, pourquoi ne serait-ce pas le cas du Nigéria ? Et je répète la question, pourquoi ne serait-ce pas le cas du Nigéria ?

021

12. J'attire l'attention sur ce point uniquement parce que je désire que la Cour soit consciente (et je suis certain qu'elle l'est déjà) que sa jurisprudence de l'affaire du *Droit de passage* permet encore aux Etats parties au système de la clause facultative de prendre des mesures pour se protéger contre ce qu'ils estiment être des requêtes introduites «par surprise» par les nouveaux venus se joignant au système.

C. La condition de réciprocité dans une déclaration d'acceptation de la clause facultative

13. Lors du deuxième tour de plaidoiries le 9 mars, sir Arthur a fourni au moins un semblant de réponse — aussi peu convaincante qu'elle soit — à la question que je posais pour la forme. Après avoir décrit l'effet de la limitation temporelle introduite par le Royaume-Uni dans sa déclaration d'acceptation de la clause facultative en 1957 dans le contexte de l'arrêt relatif au *Droit de passage*, sir Arthur fait ensuite ce que je qualifierais de bond dans l'inconnu, car il soutient que la déclaration d'acceptation du Nigéria, du fait de la condition de réciprocité qu'elle impose, a un

effet pratique qui équivaut au «délai», ou comme je préfère l'appeler, à la limitation temporelle introduite en 1957 dans la déclaration d'acceptation du Royaume-Uni. Pour autant que je puisse en juger, aucun autre argument n'est avancé à l'appui de cette thèse quelque peu insolite.

14. Ceci m'amène, Monsieur le président, Madame et Messieurs de la Cour, à l'idée que le Nigéria se fait du sens du terme «réciprocité» figurant dans sa déclaration relative à la clause facultative. En analysant l'argument que le conseil du Nigéria a avancé au second tour des plaidoiries, je me suis aperçu de la nécessité d'évoquer l'autorité de Humpty Dumpty à l'égard de l'étrange raisonnement présenté au nom du Nigéria. Pour les Membres de la Cour qui peuvent ne pas bien connaître l'ouvrage classique anglais pour enfants *Alice through the Looking Glass* (*De l'autre côté du miroir*), écrit par Lewis Carroll au milieu du XIXe siècle, je dirai que Humpty Dumpty est un philosophe qui s'exprime fort bien et qui apparaît dans le livre déguisé en œuf. Quand Alice l'interroge sur la signification d'un mot qu'il a utilisé dans une conversation avec elle, il prend la chose de haut et répond en substance (je cite de mémoire car je ne dispose pas ici des ouvrages de Lewis Carroll) : «Lorsque j'utilise un mot, il a le sens que j'entends lui donner.» Cette remarque est si proche de l'interprétation que nos adversaires cherchent à donner de la notion de réciprocité que je ne peux m'empêcher de vous en faire part. Pour le Nigéria, «réciprocité» est «un mot à tout faire» susceptible de prendre le sens que le Nigéria entend lui attribuer. Mais, pour amusant qu'il puisse être, l'ingénieux argument du Nigéria ne tient tout simplement pas compte de la signification généralement reconnue de la notion de réciprocité dans le système de la clause facultative. Dans sa plus récente publication, Rosenne affirme que :

022

> «Reste à savoir comment la réciprocité se manifeste dans le système de la compétence obligatoire. Cette analyse doit se faire à partir du trait caractéristique du système découlant du paragraphe 2 de l'article 36 — selon lequel l'acceptation est un acte unilatéral de chaque Etat, le produit d'une formulation unilatérale. Quelle que puisse avoir été l'intention des premiers rédacteurs du Statut en 1920, les différentes déclarations ne coïncident pas dans la pratique. Cela étant, il est manifestement nécessaire de trouver leur dénominateur commun, ce dénominateur étant la définition commune de la portée de la compétence dans chaque cas concret. *La fonction de la réciprocité est de jouer un tel rôle.*» (Rosenne, *op. cit.*, vol. II, p. 762.)

15. Sans vouloir manquer de respect au conseil du Nigéria, je suis persuadé, Monsieur le président, que Humpty Dumpty est la seule autorité susceptible d'être invoquée à l'appui de l'interprétation unilatérale qu'il essaie de donner de l'expression «sous la seule condition de réciprocité» figurant dans la déclaration d'acceptation du Nigéria.

16. Selon le Cameroun, il convient de donner à cette expression un sens objectif plutôt que celui, avancé par le Nigéria, «d'une entière identité des positions entre les Etats intéressés» (CR 98/1, p. 26). M. Simma a indiqué, dans son premier tour de plaidoiries, le sens objectif de cette expression, qui correspond à celui que la majorité écrasante des commentateurs attribue à cette notion (CR 98/3, p. 36-39). Si les Etats qui ont déposé des déclarations d'acceptation conformément au paragraphe 2 de l'article 36 du Statut avant l'arrêt rendu par la Cour dans l'affaire du *Droit de passage* avaient pensé pouvoir se prévenir contre des requêtes «surprise» en formulant simplement une «condition de réciprocité» dans leurs déclarations unilatérales, ils l'auraient certainement fait. Ils ont en revanche formulé une réserve particulière dans le temps à l'effet qu'un Etat faisant une déclaration d'acceptation ultérieure ne saurait introduire une instance contre eux devant la Cour avant l'expiration d'un certain délai. Pour la troisième et dernière fois je demande : pourquoi le Nigéria n'a-t-il pas fait de même ?

D. Transparence et bonne foi

023

17. Le conseil du Nigéria prétend toujours que le Cameroun aurait, par son comportement, amené le Nigéria à penser que le Cameroun n'invoquerait pas, et ne saurait certainement pas invoquer, la compétence de la Cour à l'égard de son différend de frontière avec le Nigéria. Je suggérerais au Nigéria, qu'au lieu de condamner le Cameroun pour son manque de transparence et pour ne pas avoir agi de bonne foi, il examine d'abord son propre comportement. Où y a-t-il transparence ou bonne foi de sa part lorsqu'il n'invoque même pas un seul instrument international à l'appui du titre qu'il revendique sur la presqu'île de Bakassi (et qui sait jusqu'où cette revendication de titre peut aller au-delà de la presqu'île) ainsi que sur la zone de Darak ?

18. Sir Arthur peut dire innocemment : «mais le Nigéria n'a rien dit sur ses possibles arguments futurs; il n'entend pas se laisser entraîner dans des arguments prématurés quant au fond» (CR 98/5, p. 33). Le Nigéria se retient à peine, en l'occurrence, d'accuser le Cameroun de manque de transparence et de bonne foi pour ne pas l'avoir prévenu de son intention d'accepter la compétence obligatoire de la Cour conformément au paragraphe 2 de l'article 36 du Statut. Mais le Cameroun n'avait absolument pas besoin de le faire. Bien entendu, la lettre que le ministre des affaires étrangères du Nigéria a adressée le 4 mars 1994 au Secrétariat général de l'ONU, affirmant sa surprise de noter que le Gouvernement du Cameroun avait décidé d'internationaliser le problème en le portant devant la Cour internationale de Justice, est très significative. Cette lettre montre à n'en pas douter que le Nigéria savait tout au moins que quelque chose se préparait, même si nos adversaires n'ont pas pu alors faire clairement la différence entre le dépôt d'une déclaration d'acceptation de la clause facultative et le dépôt d'une requête introductive d'instance.

E. Acquiescement du Nigéria à l'exercice par la Cour de sa compétence dans la présente instance

19. Monsieur le président, Madame et Messieurs de la Cour, j'aborde maintenant le dernier volet de mon argument. Par son comportement depuis quelques années, le Nigéria a manifesté qu'il acquiescait à l'exercice par la Cour de sa compétence en la présente affaire. Je n'avance pas cet argument à la légère, car je connais parfaitement les conditions rigoureuses dont la Cour exige qu'elles soient satisfaites pour conclure qu'il y a acquiescement et/ou *estoppel*. Entre parenthèses, la Cour notera combien les arguments fondés sur l'*estoppel* avancé par le Nigéria lors des audiences en cours étaient peu sérieux et peu convaincants.

024

20. Sir Arthur s'est peut-être amusé lundi matin lorsqu'il a critiqué l'usage que faisait M. Ntamark de certains documents qu'il a cités. Mais son indignation artificielle et forcée ne visait qu'à occulter ce qu'il n'a pas dit.

21. Ce que nos adversaires n'ont pas dit, Monsieur le président, est encore plus éclairant que ce qu'ils ont dit. Par exemple, sir Arthur tente de répondre à l'argument concernant l'acquiescement

du Nigéria en invoquant le contenu de la lettre adressée au Secrétaire général de l'ONU par le général Abacha le 27 mai 1996. On trouvera cette lettre sous la cote D du dossier établi par le Cameroun pour les juges. Mais une fois encore, écoutez les silences. Sir Arthur a passé un certain temps à essayer de démontrer que la référence à une attitude de nature «à compromettre les procédures engagées devant la Cour» visait les procédures qui découlent de la présentation des exceptions préliminaires (CR 98/5, p. 24).

22. Mais, Monsieur le président, Madame et Messieurs de la Cour, M. Ntamark a déjà concédé cela, quoique peut-être avec réticence (CR 98/3, p. 52). Ce à quoi sir Arthur n'a manifestement pas répondu — un de ses silences les plus significatifs — c'est l'argument avancé par M. Ntamark au sujet de l'espoir exprimé par le général Abacha qu'aucune des Parties au différend ne se servirait des résultats d'une éventuelle mission d'enquête de l'ONU comme «éléments de preuve en justice». De cette référence à l'utilisation éventuelle d'«éléments de preuve en justice» par l'une ou l'autre Partie, on ne peut que conclure que le Nigéria en était venu à admettre qu'il allait et devait plaider l'affaire au fond (c'est alors bien sûr que les «éléments de preuve en justice» sont pertinents), nonobstant les exceptions préliminaires qu'il avait présentées quelque six mois auparavant. On ne peut donner nulle autre explication de cette déclaration extrêmement significative, et le Nigéria n'en a donné aucune à la Cour.

23. Pour toutes ces raisons, et pour toutes les autres raisons déjà exposées dans les observations écrites du Cameroun et dans ses plaidoiries sur les exceptions préliminaires du Nigéria, le Cameroun demande à la Cour de rejeter la première exception préliminaire du Nigéria.

025

24. J'aborderai maintenant la deuxième exception préliminaire du Nigéria, et je serai relativement bref.

25. Monsieur le président, Madame et Messieurs de la Cour, le conseil du Nigéria a montré lundi qu'il n'avait vraiment pas compris le sens de nos observations de jeudi dernier. Le Cameroun ne nie pas que des négociations bilatérales aient eu lieu à divers moments dans le cadre d'une variété de comités et de commissions diversement composés. Le Cameroun ne nie pas que les

négociations bilatérales demeurent une possibilité actuellement et pour l'avenir. Le Cameroun ne nie pas que les négociations bilatérales sont souvent le meilleur moyen de régler les différends entre Etats.

26. Mais la deuxième exception préliminaire du Nigéria repose sur l'argument selon lequel les Parties avaient d'une manière ou d'une autre décidé, ou s'étaient comportées de telle manière, que *seuls* «les mécanismes bilatéraux existants» leur étaient permis. Tous les autres modes de règlement du différend étaient exclus. Comme le Cameroun l'a déclaré jeudi dernier, «c'est bien la question de l'exclusivité du recours aux processus bilatéraux et non leur accessibilité générale qui est en cause ici» (CR 98/3, p. 56, par. 18). Le Nigéria n'a absolument pas réussi, tant dans ses écritures que lors des deux tours de plaidoiries, à démontrer l'existence d'un accord quelconque, exprès ou tacite, qui pourrait être interprété comme imposant cette exclusivité.

27. Lorsqu'un Etat essaie depuis deux décennies ou plus de régler ses différends frontaliers avec son puissant voisin et que ce dernier répudie les accords qui ont pu être conclus avec beaucoup de difficultés, est-il surprenant que le premier essaie d'emprunter la voie du règlement par une tierce partie ? Que l'autre Etat soit ou non indisposé par une telle démarche n'est pas pertinent aux fins de la présente affaire, l'important est que cette démarche n'est pas interdite. Les arguments du Nigéria concernant l'*estoppel* et le manquement à la bonne foi n'ont tout simplement pas, excepté une fois ou deux, été mentionnés lundi. En outre, ils manquent de crédibilité. De même, le conseil du Nigéria n'a pas tenté de réfuter les arguments du Cameroun concernant l'invocation par le Nigéria lui-même de procédures de règlement par tierce partie. La deuxième exception préliminaire du Nigéria est en conséquence mal fondée tant en droit qu'en fait. Elle devrait être rejetée.

Monsieur le président, ainsi s'achève ma plaidoirie en ce qui concerne les première et deuxième exceptions préliminaires du Nigéria. Je vous serais obligé de bien vouloir donner la parole à M. Kamto.

Le PRESIDENT : Merci sir Ian. Je donne maintenant la parole à M. Kamto.

026

Mr. KAMTO: Thank you, Mr. President.

1. Mr. President, Members of the Court, Nigeria has dealt with its third and fourth Preliminary Objections together, considering the fourth to be "ancillary to the third" (*"accessoire de la troisième"*, Brownlie, CR 98/5, p. 30). Cameroon can live with this presentation making it quite clear that there was no case for separate existence.

2. I shall reply to Nigeria's statement on those two objections with observations on the following four points in turn:

— firstly, the Lake Chad Basin Commission is not a regional agency within the meaning of Article 52 of the Charter of the United Nations;

— secondly, the LCBC is neither an international court nor even an international quasi-court;

— thirdly, Nigeria maintains confusion between delimitation and demarcation of the boundaries in Lake Chad in order to exclude the jurisdiction of the Court;

— fourthly, the jurisprudence of the Court regarding its jurisdiction or the admissibility of an application when the legal interests of a third State might be affected bears out Cameroon's thesis.

I. The LCBC is not a regional agency within the meaning of Article 52 of the Charter of the United Nations

3. Members of the Court, Professor Brownlie said last Monday that Cameroon had not denied that the LCBC was an *"organisation régionale"* (CR 98/5, p. 32) since it *"s'occupe de questions de sécurité et de délimitation de frontières"* (CR 98/5, p. 32).

4. I should like to remind the Court that the objectives and purposes of the LCBC, as established in the preamble to the 1964 Convention and in Chapter 1 of the Statute annexed thereto, are co-operation for management of the water resources of the Lake and the integrated development of the conventional Basin (Annex OC, 10).

027

5. The question that naturally arises is why the LCBC should have concerned itself with matters of security and demarcation. The answer is plain, Mr. President: because it could not

engage in the statutory tasks I have just recalled if the region did not enjoy peace and security based on boundaries that were secure because they had been clearly defined, and stable because they had been demarcated on the ground.

6. Mr. President, one only has to re-read the records of the recent sessions of that organization to arrive at this conclusion. For it will be seen that while the LCBC addresses these matters of security and boundary demarcation, it always devotes the bulk of its work to the traditional subjects of co-operation between member States for the sake of development and to environmental issues in the Basin, particularly the major problem of the drying up of the Lake, which was no doubt what prompted the admission to the LCBC of the Central African Republic. Professor Brownlie plays on the ambiguity of the word "security" to give the impression that the LCBC is engaged in international security when it is simply a matter of internal security in the sense of "law and order", a mere policing function.

7. Members of the Court, the LCBC is not a collective security agency; nor is it an agency for delimiting or demarcating boundaries. That is not its function. It is not intended — and I cite Article 52, paragraph 1, of the United Nations Charter — for "dealing with . . . matters relating to the maintenance of international peace and security". Its action in that field is confined to the formation of mixed patrols for the purpose of curbing the phenomenon of cross-border banditry that was rife in the Lake Chad region (the culprits being popularly referred to in Cameroon as *"coupeurs de route"*).

II. The LCBC is neither a court nor even a quasi-court

8. Members of the Court, Professor Brownlie said last Monday that *"la Cour ne saurait revoir la décision d'un autre tribunal ou déterminer la compétence de la compétence d'un autre organe judiciaire ou décisionnel"* (CR 98/5, p. 37). And he went on to say: *"Selon moi, la CBLT est habilitée à agir et agit actuellement en tant qu'organe de règlement par une tierce partie"*.

028

9. Assuredly, Mr. President, Nigeria has a taste for adventure. But juridical adventure cannot be any more paying than military adventure. Mr. President, there can be no claiming that the

LCBC is responsible for the judicial settlement of disputes. For the LCBC has never settled and does not settle disputes relating to boundary delimitation or even demarcation. Article IX *(g)* of the Statute only empowers it (as Professor Cot recalled on 6 March last) to "promote the settlement of disputes" and not to determine them in a binding and final manner after adversarial judicial proceedings. And Nigeria would be hard put to it to cite a single case dealt with by that organization.

10. I shall not be wanting in respect towards Professor Brownlie, as the eminent international lawyer that he is, by saying that he fails to distinguish between the commissions of arbitration that abounded in the 19th and early 20th centuries and the technical intergovernmental organization that the LCBC is. In their composition and powers, those commissions were veritable international courts. They were, with the monarchs of the time, the authors of the first arbitral awards. The same goes for the commissions instituted under the peace treaties after 1945. So they had nothing in common with an agency like the Lake Chad Basin Commission.

11. Actually I just think that our very distinguished colleague read somewhat hurriedly the passages cited from Sir Gerald Fitzmaurice's work. I recall in this connection that in the *Peace Treaties* case, the issue was "whether the parties to this dispute were under an obligation to refer these disputes to Commissions of Arbitration provided for under Treaties" (*ibid.*, p. 467). Such commissions of arbitration are in no way comparable to the intergovernmental commission, the technical intergovernmental organization that the LCBC is.

029

12. Mr. President, once it is thus demonstrated that the LCBC is not a court or even a quasi-court, such arguments as those drawn from Shabtai Rosenne's work, that the United Nations Charter does not confer any jurisdictional pre-eminence on the Court, or from Article 95 of the Charter (CR 98/5, p. 38), are without relevance to the present case since they seek to place on a par two radically different institutions. One cannot, Mr. President and Members of the Court, accuse your Court, as Nigerian counsel has done, of seeking to exercise "an appellate jurisdiction" *(ibid.)* where no original jurisdiction exists.

III. Nigeria is maintaining confusion between boundary delimitation and demarcation in Lake Chad in order to exclude the jurisdiction of the Court

13. Mr. President, Members of the Court, according to Nigerian counsel,

> *"[L]a Cour ne serait nullement habilitée à revoir la décision finale de la CBLT en matière de démarcation du lac Tchad, et il s'ensuit donc que la Cour n'est pas habilitée à intervenir alors que la procédure de démarcation est toujours en cours."* (CR 98/5, p. 31.)

14. A little further on, he suddenly relies on the jurisdiction of the LCBC in regard to delimitation (CR 98/5, p. 32), stating that *"la question de la démarcation est sujette à controverse et ne revêt pas, en l'occurrence, une importance juridique et politique moindre que celle que revêt une délimitation"* (CR 98/5, p. 35).

15. Cameroon has never disputed and is not now disputing the jurisdiction of the LCBC in regard to demarcation work on the ground. Mr. President, that work was physically completed in 1990, the Report of the Marking-Out having been signed by the national experts of all the member countries on 14 February 1990 and approved by the LCBC commissions, and subsequently by the Heads of State at the Abuja Summit in 1994.

16. The delimitation issue is quite different. Members of the Court, this issue concerns in the event the conventional line definitively established by the Milner/Simon Agreement of 1919 amplified by the Thomson/Marchand Agreement of 1929-1930, and definitively confirmed by the Franco-British exchange of letters of 9 January 1931. The dispute between Cameroon and Nigeria in the Lake Chad area and over the entire boundary of the tripoint in the area as far as Mount Kombon is related to just that, to the extent that Nigeria itself acknowledges the existence of a dispute over Darak and that the same treaty instruments determine the common frontier from the northern zone of Lake Chad to the southern zone of Mount Kombon.

030

17. But, Mr. President, this dispute has never been referred to the LCBC. I showed just now why and since when it has engaged in the demarcation process after previously securing the consent of all the member countries as to the legal instruments delimiting the boundary. Now if the LCBC assumed the task of demarcating the boundaries in the Lake Chad area, there can be no inferring

that it enjoys jurisdiction, which is in any case exclusive, in regard to delimitation and, more specifically, the settlement of delimitation disputes.

18. Members of the Court, the day before yesterday counsel for Nigeria dwelt on Decision No. 2 of the Ninth Summit of Heads of State of the LCBC in 1996 and observed that Cameroon had remained silent on the point. The text of that decision, which he cited (CR 98/5, p. 33), shows that it in fact comprises two decisions: first, the decision to defer discussion of the country reports on the adoption and signing of the boundary demarcation document; and second, the decision to mandate the President of the Summit to intervene through either consultations or meeting with the Heads of State of Cameroon and Nigeria, to find an amicable solution to the problem in the spirit of African brotherhood.

19. But what exactly was the problem? It was neither one of demarcation nor still less one of delimitation, but, says Decision No. 2, *"le point sur la ratification du document de la démarcation des frontières"*. The problem that prompted the LCBC to designate or to commit the President of the Summit as intermediary in the conflict between Cameroon and Nigeria was not a problem of demarcation or even a problem of delimitation. But, says Decision No. 2 advanced by Nigeria, *"le point sur la ratification du document de la démarcation des frontières"*. And the Summit decided on that intermediary role for three reasons: *"l'aspect sensible de cette question eu égard aux événements récents"*; *"les expériences de paix et de tranquillité dans la sous-région"*; and *"l'absence des chefs d'Etat du Cameroun et du Nigéria"*.

031

20. Nowhere then is reference made to the boundary dispute between Cameroon and Nigeria, nor even is there the bare mention of any demarcation conflict whatsoever, but of problems concerning adoption of the related documents. And if there is a problem in this respect, it is because Nigeria, which would like to portray itself as a model of compliance of the conduct of a State with its international commitments — for having voted a law made for the occasion in January 1998, namely just for the requirements of the present proceedings, as is self-evident — has still not ratified the demarcation document, let alone deposited its instruments of ratification with

the LCBC. I would point out that the Heads of State of that organization — including, of course, the Nigerian Head of State — undertook to do so at the 1994 Abuja Summit. Cameroon, for its part, ratified the document in 1995 and fulfilled the formalities of depositing its instruments of ratification with the LCBC in 1997.

21. There can consequently be no question, without seeking to abuse the Court, of concluding from that intermediary role decided on at the 1996 LCBC Summit that that organization is the sole forum for settling the boundary dispute between Cameroon and Nigeria in the Lake Chad region.

IV. The jurisprudence of the Court regarding its jurisdiction or the admissibility of an application when the legal interests of a third State may be affected bears out the thesis of Cameroon

22. Mr. President, in his pleadings the day before yesterday counsel for Nigeria reverted to the *Continental Shelf (Libya/Malta)* case to exhort the Court to display "judicial restraint" in this case.

23. Yet he did not see fit to respond to the objections raised on this point by my friend Jean-Pierre Cot. I shall therefore remind you that, in a case concerning the delimitation of continental shelves, application of the "equitable principles" rule may involve allowance for the rights of third States as a "relevant circumstance". But delimitation in Lake Chad offers no resemblance to that very special procedure since it is a matter of interpreting and giving effect to old and confirmed treaty agreements, and not of applying "equitable principles" *with a view* to reaching an agreement.

032

24. In any event, "judicial restraint" is exercised where appropriate in the merits phase of the case, on the basis of painstaking examination of the claims of the parties and any counter-claims advanced by third States in the proceedings.

25. But, Mr. President, my distinguished colleague Ian Brownlie has for the first time, last Monday, developed another analogy, this time with the *Monetary Gold* jurisprudence.

26. In that case, as in that of *East Timor* decided some 40 years later, the Court declined to exercise its jurisdiction on account of the absence of a third State on the ground that that country's

"legal interests would not only be affected by a decision, but would form the very subject-matter of the decision" (*I.C.J. Reports 1954*, p. 32).

27. Mr. President, can it be seriously maintained that, by recognizing the treaty-related delimitation on the lacustrine boundary between Cameroon and Nigeria as far as its end-point, the Court would make a decision the "very subject-matter" of which would be constituted by the interests of Chad? And still more by the interests of Niger?

28. In the *Monetary Gold* case, the determination of Albania's responsibility was a prerequisite for an answer to the question raised by the Court. In the *East Timor* case, it was Indonesia's responsibility that the Court was previously obliged to put in issue in weighing the soundness of the Application of Portugal. In both cases, the settling of a prior dispute relating to the responsibility of a State that had not accepted the Court's jurisdiction was inevitable.

29. These precedents are by no means comparable to a delimitation between two States that continues, incidentally, up to a point that at the same time constitutes the frontier with a third State. As amply shown by other precedents in which the objection was dismissed, application of the *Monetary Gold* jurisprudence is infinitely more demanding (reference would be possible here to the case concerning *Military and Paramilitary Activities in and against Nicaragua, I.C.J. Reports 1984;* and, above all, to the case concerning *Certain Phosphate Lands in Nauru, I.C.J. Reports 1992*).

30. Assuredly, Mr. President, the simplest course is still to refer to the precedents that are of direct relevance to our case, namely:

033

— the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)* (*I.C.J. Reports 1986*, p. 577, para. 46), in which the Chamber asserts its jurisdiction for a frontier delimitation as far as its end-point;

— the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* (*I.C.J. Reports 1992*, pp. 401-402, para. 68), in which the Chamber exercises its jurisdiction as far as the frontier with Guatemala without any form of "judicial restraint", Guatemala having, like Chad in our case, accepted the treaty instrument cited;

— the case concerning the *Territorial Dispute (Libya/Chad)* (*I.C.J. Reports 1994*, p. 33, para. 63), in which the Court proceeded in a similar manner.

31. The existence of a multilateral negotiating process in the framework of the LCBC does nothing to alter the relevance of this jurisprudence; quite the opposite. We saw in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, that the existence of the Contadora process had not prevented the Court from ruling on all aspects of the case, including those which, according to the United States, affected the interests of third States such as El Salvador and Honduras.

32. Mr. President, Members of the Court, as you have observed, nothing remains of the legal artifices erected by Nigeria under its third and fourth Preliminary Objections. There is no further room for doubt:

— the LCBC is not a regional agency within the meaning of Article 52 of the Charter;

— the LCBC is not a court or even a quasi-court;

— the confusion maintained by Nigeria between the demarcation that the LCBC reportedly undertook in Lake Chad and the delimitation that the Court could undertake in the present case has not enabled Nigeria to demonstrate the inadmissibility of the Application on that ground;

— the trends in the jurisprudence of your Court bear out all points of the theses of Cameroon on this matter.

33. For these reasons, Cameroon maintains its first-round submissions and requests the Court to dismiss the third and fourth Preliminary Objections of Nigeria.

I thank you, Members of the Court, and would ask you, Mr. President, kindly to give the floor to my friend, Professor Alain Pellet.

Le PRESIDENT : Je vous remercie Monsieur Kamto. J'ai sur ma liste le nom de M. Bipoun Woum. Est-ce à lui de prendre la parole ou est-ce le tour de M. Pellet ? Monsieur Pellet souhaitez-vous commencer ? Je crois savoir que vous avez un long exposé à

prononcer avant la suspension de l'audience, mais je vous laisse le choix du moment pour interrompre votre plaidoirie.

Mr. PELLET: Mr. President, Members of the Court, I have the pleasure and the honour to appear before you again, in the first place to reply, on behalf of Cameroon, to the arguments put forward last Monday by Nigeria, through Sir Arthur Watts, in regard to its fifth Preliminary Objection.

This objection states that: *"il n'existe pas de différend concernant la délimitation de la frontière* en tant que telle *sur toute sa longueur entre le tripoint du lac Tchad et la mer"* (CR 98/5, p. 65; emphasis added). So Nigeria is saying that there is no dispute in respect of the boundary delimitation as such *("en tant que telle")* within Lake Chad "subject to the question of title to Darak and adjacent islands inhabited by Nigerians"; no dispute either, again as regards the "boundary delimitation *as such*" *("en tant que telle")*, from the tripoint in Lake Chad to Mount Kombon, nor from Mount Kombon to pillar 64 on the Gamana, nor from that pillar to the sea. But *all this* "without prejudice to the title of Nigeria over the Bakassi Peninsula . . .".

The following is therefore the situation according to our opponents: they assert that there is no dispute regarding the boundary line, but

1. they do not tell us, they do not tell the Court, what that line is;

2. they qualify that statement by asserting that it does not concern the delimitation *as such* *("en tant que telle")*;

3. they further qualify it by indicating that the agreement between the Parties on this point exists only *"in principle" ("en principe")* (cf. A. Watts, CR 98/2, p. 19); and

4. finally, they deprive it of any substance by stating that this alleged agreement is subject to *"la question du titre sur Barak et les îles avoisinantes habitées par des Nigérians"* and that it is without prejudice to *"la question du titre du Nigéria sur la presqu'île de Bakassi"*.

035

I. Nigeria is questioning the entire boundary

If we are pleading by accretion, *"à coups d'ajouts"* (A. Watts, CR 98/2, p. 19; CR 98/5, p. 47), our colleagues on the other side of the Bar have a marked tendency to plead by erosion . . . The problem is that, by dint of qualifying the alleged agreement, said to exist "in principle" between the Parties on the delimitation of the boundary "as such", very little of it is left.

(1) Nigeria has not yet specified the delimitation of the line on which it states it agrees

First point, the initial proposition: there is no dispute between the Parties on the boundary delimitation "as such". Very well, Mr. President! But we on this side of the Bar would certainly have liked to know what the line is on which the Parties agree "in principle". We shall know it perhaps when Nigeria replies to the question put by Judge Guillaume last Friday (CR 98/4, pp. 62-63); for the moment, however, our curiosity remains undiminished since, as it is of course entitled to do, Nigeria has postponed to a later date the task of replying to it (Agent, CR 98/5, p. 63).

As far as Cameroon is concerned, things at least are clear: the land boundary between the two countries is the one described precisely on page 669 of the Memorial (reproduced at Tab G of the Judges' folder) where the precise geographical co-ordinates of this boundary are indicated in accordance with the instruments which establish it, in essence the Franco-British Declaration of 1919, as specified in the Thomson/Marchand Declaration of 1929/1930, itself confirmed by the Exchange of Notes of 9 January 1931, the British Order in Council of 1946 and the Anglo-German Agreements of 1913.

I am well aware, Mr. President, that Sir Arthur Watts prefers us not to "speculate" on what the Nigerian arguments "might be" (CR 98/2, p. 20 and CR 98/5, pp. 41 and 46); however, since he is playing hide-and-seek with us about the delimitation as seen by Nigeria, it is incumbent on me to put forward one or two suggestions.

Let us take the one closest to what might appear to confirm the existence of an agreement between the Parties, however implausible this suggestion may be, and accept that Nigeria, in reply

0.36

to the question from Judge Guillaume, is saying in substance: "We fully agree, the boundary follows the line described on page 669 of the Cameroonian Memorial." Let us also accept that Nigeria is no longer saying: "We agree *in principle*", "on the delimitation at the boundary *as such*" *("en tant que telle")*; it is saying: "We agree. Full stop". Unfortunately this would not be a "full stop", for in its following submission, in subparagraph *(b)* on this page 669 of its Memorial, Cameroon draws the inevitable conclusions which flow from the preceding submission, and calls on the Court to adjudge and declare:

> "That notably, *therefore*, sovereignty over the Peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian." (Emphasis added.)

Mr. President, these two submissions are inseparable. It is, as my colleague and friend Christian Tomuschat demonstrated last week (CR 98/4, pp. 22-23 and 26-27) the *very same* instruments which delimit the boundary in the Lake Chad area and as far as Mount Kombon on the one hand, and from pillar 64 to the sea, therefore including the Bakassi Peninsula, on the other. Either these instruments represent valid legal titles — and in this case there is no boundary problem, anywhere; or else Nigeria challenges them, and in this case the entire boundary is definitely called into question — except, perhaps, the 210-km section delimited by the British Order in Council of 2 August 1946 between Mount Kombon and pillar 64. I shall come back to this.

2. The northern section of the boundary, from Lake Chad to Mount Kombon

Let us dwell for a moment on the sketch displayed behind me, which is at Tab B in the Judges' folder.

Let us look first at the northern section of the boundary, the section which runs from Lake Chad to Mount Kombon. It is delimited by paragraphs 1 to 60 of the Thomson/Marchand Declaration, which spells out the Franco-British Declaration of 10 July 1919.

The point of departure is represented by the old junction of the British, French and German boundaries and is situated according to paragraph 1 of the Declaration "in Lake Chad 13° 05' latitude north and approximately 14° 05' longitude east of Greenwich"; it corresponds, on

the sketch, to *"borne II"* (pillar II). Thence, the boundary is determined — as stated in paragraph 2 — "on a straight line as far as the mouth of the Ebeji" — namely, on the sketch, as far as *"borne V"* (pillar V). Darak, as is perfectly clear, is situated very much on the hither side of the boundary, approximately 35 km away in Cameroonian territory.

037

Yet this is challenged by Nigeria: it says — and perhaps will say so again between now and 25 March — that it agrees with the boundary line resulting from the 1931 Agreement; but, to repeat Sir Arthur's words, *"Bien entendu, le Nigéria reconnaît qu'il se pose un problème à propos du titre . . . à Darak et à certaines zones adjacentes du lac Tchad"* (CR 98/2, p. 16) and again *"[e]n ce qui concerne . . . Darak, le Nigéria accepte qu'il y a un problème" (ibid.)* — a problem, Sir Arthur? That is rather a modest word to designate what, in this Court, is quite simply called a dispute.

But if there is a dispute about Darak, it is precisely because Nigeria challenges the validity of the treaty titles on which Cameroon relies and which in no way confine themselves to establishing the boundary line in Lake Chad; as I have just said, they establish it as far as Mount Kombon, namely over 1,070 km. And it is these very 1,070 km which Nigeria is questioning by asserting its territorial sovereignty over Darak.

All the more so, whatever our opponents say, because if Darak is the most flagrant, the most glaring example of the 1919-1931 boundary being questioned, it is far from an isolated one: Nigerian police and soldiers are operating in conquered territory at several points on this portion of the boundary: at Djibrili, Zanga and Assigassa (OC 1, App. 8, pp. 41-44) and at Ouro-Garga (OC 1, App. 16, pp. 85-86); and its military aircraft have no hesitation in overflying places which are so assuredly Cameroonian as Dourbeye (OC 1, App. 12, pp. 61-62) or Kontcha (OC 1, App. 20, pp. 109-111).

On Monday morning, Sir Arthur Watts besought us to say no more about *"cet absurde prétendu 'incident'"* of Typsan (CR 98/5, p. 42). On the contrary, let us do so: Mr. President, Cameroon is categorical, Typsan is situated in Cameroonian territory, by virtue of paragraph 41 of

the Thomson/Marchand Declaration, the text of which Nigeria has overprinted on the satellite photograph at Tab 45 of its folder; we in turn have placed this document at Tab H of our own folder, with two little additions, and I take the liberty, Members of the Court, to invite you to look once more at this document.

038

You will see there three names: two are of places — Kontcha and Typsan —, one is of a river — the *"rivière Typsan"*. This river passes to the east ("to the left") of the village of the same name. So here is Sir Arthur triumphant: *"[L]es mots directement pertinents sont soulignés [. . .] Ces mots montrent que la frontière descend jusqu'à un point situé* juste au nord *du village actuel de Typsan,* et de là *suit le cours de la rivière Typsa[n]"* and *"Typsan est tout aussi clairement du coté Nigérian de la rivière"* (*ibid.*, emphasis added).

My eminent opponent reads too fast, Mr. President. Paragraph 41 of the Thomson/Marchand Declaration says nothing about a point "just north" of Typsan (*"juste au nord [de] Typsan"*); it says — and I will read it in French (you have it before you in English): "Thence [. . .] to a point on the Maio Tipsa[n][. . .] 2 kilometres to the *south-west* [not to the north, Mr. President, to the south-west!] of the point at which the road crosses said Maio Tipsa[n]". Look carefully, Members of the Court, at the Nigerian map: it shows the road, marked by an arrow; the road appears as a faint white line running from Kontcha, passing through Typsan and continuing westwards.

The intersection of this road with the boundary from the north, which is the prolongation of the line parallel to the Baré Fort-Lamy track mentioned in paragraph 40 of the 1931 Declaration, is marked A on the map. The boundary meets the Mayo Typsan "2 kilometres to the south-west", namely at point B. And this is very clear, Mr. President, even if painful to Sir Arthur, the village of Typsan is definitely Cameroonian — unless, here again, Nigeria questions the line resulting from the Thomson/Marchand Declaration; which it does. In any event, and this is the only thing which matters at the present stage, clearly there is also a dispute between the Parties concerning the Typsan section.

A dispute over Darak, a dispute over Typsan, (no dispute over Yang as far as this section goes), a dispute over the other places which I mentioned earlier on . . . A dispute, Members of the Court, over the whole of the joint boundary established by the 1919 and 1931 Agreements, which the Nigerian Party is questioning expressly in the Lake Chad area. This long portion of the boundary is shown by a hatched line on the map displayed at the moment, which is also in the Judges' folder at Tab I.

039

Mr. President, I am in your hands but this is perhaps a good moment to suspend.

Le PRESIDENT : Merci, Professeur Pellet. L'audience est suspendue pour 15 minutes.

The Court adjourned from 11.25 to 11.40 a.m.

Le PRESIDENT : Veuillez vous asseoir. Professeur Pellet, ayez l'amabilité de reprendre votre plaidoirie.

Mr. PELLET: Merci bien, Monsieur le Président. Mr. President, before the break, we were speaking of the northern section of the boundary and I think I showed that it was being challenged by Nigeria.

3. The southern section of the boundary, from pillar 64 to the sea

Well, things appear no better as regards the southern portion of the boundary, which in this case is shown by a dotted line on the same map.

Those dots reproduce the delimitation resulting from the Anglo-German Agreement of 11 March 1913, which delimited the whole of this stretch from pillar 64 to the sea. It is partly spelt out in another agreement, signed at Obokum on 12 April 1913.

At this stage, we can rely on the Agreement of 11 March: it is this which delimits the entire boundary from pillar 64 to the sea, or, more precisely, to the point at which "the centre of the navigable channel of the Akwayafé River" meets "a line joining Sandy Point and Tom Shot Point", and even to the limit of the territorial waters, at that time 3 miles (Art. 21).

040

As shown in the panel at the top left of the map now on the screen (which is at Tab B in the Judges' folder), the Akwayafé is to the west of the Bakassi Peninsula, and that suffices to establish that the Agreement of 11 March 1913 clearly awards that peninsula to Cameroon.

This does not, however, Mr. President, prevent Nigeria from challenging that title and believing itself, I quote Sir Arthur again, to have *"un droit légitime sur la presqu'île de Bakassi"* (CR 98/5, p. 46). My opponent, decidedly reticent, does not say what title, and in truth it matters little at this stage: what is certain is that he does not base it on the Anglo-German Agreement of 11 March 1913 — highly irritating, because this is the only title which, in the view of Cameroon, establishes the boundary from the sea to pillar 64; there is none other. Moreover, Nigeria does not appear to see any other, because yet again it feels that it is virtually at home everywhere, as demonstrated once more by the map of incidents, as examples of which I cite those at Lebo (OC 1, App. 28, p. 140) or at Mbelego (OC 1, App. 29, pp. 146-147).

At all events, Mr. President, the fact is that another section, this time 400 km long, from pillar 64 to the sea, is being challenged by Nigeria. Added to the section from Lake Chad to Mount Kombon, that makes a total of 1,470 km nevertheless — which out of a total of 1,680 is far from negligible.

4. The intermediate section of the boundary, from Mount Kombon to pillar 64

It is true that 210 km remain, from Mount Kombon to pillar 64, about which Nigeria has sought to reassure us (cf. CR 98/2, pp. 21-22; CR 98/5, pp. 44 and 65). Unfortunately we are not at all reassured! And I fear that we shall not be reassured either even though Nigeria, in reply to the question put by Judge Guillaume, were to tell us that it does not challenge this line, which results from the British Order in Council of 2 August 1946; even though it does not accompany this assurance by "buts" which totally nullify the agreement which it says it accords to the other two sections of the boundary.

First of all, both ends of this section are put under great stress by Nigeria's challenge to the boundary titles represented by the 1931 and 1913 Agreements.

Here again, Nigeria behaves as though it had sovereignty over the territory which the 1946 Order awards to Cameroon. I will give three examples alone:

— on 14 September 1985, at Atta — this is No. 22 on the map — two armed Nigerian policemen were arrested in Cameroonian territory (OC 1, App. 22, pp. 117-118);

— on 6 July 1992, this time it was four Cameroonians who were arrested at Mandur-Yang, in the region of Nwa, by other Nigerian policemen (corresponding on the map to No. 24 (OC 1, App. 24, pp. 123-124));

— and then there is the incident of 26 June 1997, the one which took place at Yang — I am coming to that, let our opponents rest assured — the incident about which Sir Arthur Watts created a little stir the day before yesterday.

I am sure you will remember this, Members of the Court, it was what, a little briefly perhaps, Mr. Tomuschat had described as "a further incursion by Nigerian policemen in seven vehicles" (CR 98/4, p. 25). But why briefly, Mr. President? For a very simple reason: we relied on the reports from the spot which placed greater emphasis on the policemen on board the vehicles than on Mrs. Omiyi or even on Mr. Timothy Daniel — with all due respect for their repute: policemen are representatives of the State and it is perfectly natural that the Cameroonian officials should have focused attention on their undue presence in Cameroonian territory. For this took place in Cameroon.

Mr. President, in this case what is striking is that Nigeria did not even see fit to notify the Cameroonian authorities of the despatch of its team of lawyers to an area which we consider as being under the sovereignty of Cameroon. Nigeria thus confirms what, unfortunately, we know all too well, namely that it regards itself as being at home in Yang.

This is confirmed by another incident, on which counsel for Nigeria set great store (CR 98/5, pp. 43-44): the incident of 24 April 1997. What happened? I recall that it involved a high-level delegation comprising a prefect, a subprefect, gendarmes and ranking military personnel. I quote the exact words used by Sir Arthur: *"A une certaine distance de Yang, la police nigériane a stoppé*

042 *la délégation camerounaise et lui a demandé de retourner à Yang"* (*ibid.*, p. 44); according to the report by the Prefect of North-West Province on which my opponent said he relied, the armed Nigerian policemen insisted that the convoy should return to the market at Yang where, according to them, the frontier was situated (Doc. 3 accompanying the letter of the Agent of Cameroon dated 11 February 1998). Wisely, the prefect wished to avoid a confrontation and decided to await the Nigerian delegation on the spot; it arrived there two hours later.

Yet, Mr. President, is not all this extraordinary? Is it not unbelievable that a high-level Cameroonian delegation should be given an order, in Cameroonian territory, to turn back? Is it not surprising, to say the least, that, for its part, a Nigerian delegation of comparable composition should, on the contrary, visibly regard itself as being at home there? This is confirmed, moreover, by the fact that, from the beginning of this story, the Nigerian policemen had asserted that the boundary was at Yang, despite the wording of the Second Schedule (concerning Section 6) to the Order in Council of 1946 (which places the boundary on the "unnamed stream" nowadays called Makwe).

This is not "accretion", Mr. President, it is subtraction — a subtraction which reduces the thing to nought: Nigeria certainly challenges the entire boundary; no section finds favour in its eyes: neither the section from Lake Chad to Mount Kombon; nor the section from Mount Kombon to pillar 64, nor, of course, the section from the latter to the sea, including the Bakassi Peninsula. Nigeria is not merely claiming the area of Darak or Bakassi; it also seeks to appropriate Typsan; it behaves like a territorial sovereign at Yang, at Djibrili, at Ouro-Garga, at Atta, at Mbelego . . .

II. The existence of a dispute along the entire boundary is undeniable

I am well aware that Nigeria has told us that it accepted the boundary "in principle" (A. Watts, CR 98/2, p. 19); but this "principle" is accompanied by really too many exceptions to constitute the rule . . .

1. The dispute exists despite Nigeria's disclaimers

What is more, the express provisos reproduced in the Nigerian submissions, which I cited just now, they alone suffice to preclude you, Members of the Court, from upholding this fifth Preliminary Objection. The Respondent expressly acknowledges that its claim is without prejudice to *"la question du titre du Nigéria sur la presqu'île de Bakassi"* — it therefore challenges the southern part of the boundary, but up to where? Akwa? Isanguele? Why not Mundemba? Nigeria gives notice too that this absence of a dispute is subject to *"la question du titre sur Darak et les îles avoisinantes habitées par des Nigérians"*; what portion of Cameroonian territory does this claim cover? Does it include Tchika? Kamouna? Gore Kendl? There are Nigerians at Ngouma and Makari as well . . . How and where do we stop?

043

I of course am well aware that *"l'existence"* — I quote Sir Arthur — *"l'existence d'un différend"* has to be *"objectivement appréciée"*; Sir Arthur says so (CR 98/2, p. 17) and I confess that he convinces me more on this point than when he makes south-west become north . . . However, without wishing in any way to detract from his merits, it must be confessed that in this particular case he persuades me all the more easily by confining himself to paraphrasing a well-established jurisprudence of the Court (cf. Advisory Opinion of 30 March 1950 (*Interpretation of Peace Treaties, I.C.J. Reports 1950*, p. 74) or the Judgment of 27 February 1998 (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, Preliminary Objections, Libya* v. *United States*, para. 21, *Libya* v. *United Kingdom*, para. 22)).

But if the fact "whether there exists an international dispute is a matter for objective determination" (*ibid.*), it stands to reason that neither can a Party simply assert that no dispute exists for the dispute to go away. Cameroon has, I believe, shown that unfortunately Nigeria's flabby disclaimers have not barred the existence of a dispute throughout the boundary which separates it from its neighbour for 1,680 km and beyond, at sea.

2. The existence of the dispute had been determined at the time when the Cameroonian Application was filed

Sir Arthur made a final attempt to convince you otherwise. I quote: *"le différend, s'il y en a un, doit avoir existé en 1994, et aucune évolution ultérieure ne peut modifer la nécessité que les événements aient été cristallisés à cette époque-là"* (CR 98/5, p. 45; see also CR 98/2, pp. 26-27); and again: *"mais il fallait qu'il y ait un différend réel à ce moment-là"* [in 1994, when the

044

Application was filed] *"Et il n'y en avait pas."* (CR 98/5, p. 46.) But of course there was, Mr. President, there was a dispute in 1994; and of course it has not gone away either, solely by virtue of what my opponent and friend, with however much talent, has said.

In reality, what distresses Sir Arthur is not the absence of a dispute in 1994 — he is well aware that it existed — but the fact that Cameroon determines its existence by relying *inter alia* on incidents subsequent to the filing of the Application. But these are quite different things, Mr. President! No one doubts that the dispute must have arisen and be in existence at the time when the Application is made. But it would be absurd to maintain that this should bar the applicant State from determining the existence of the dispute with the aid of evidence which emerged subsequently, where that evidence does no more than confirm its existence; that would be totally artificial. And it would oblige an applicant to bring successive applications whenever a fresh dispute arose between the parties, even where that dispute had its origin in one and the same initial disagreement on a point of law or of fact or in one and the same conflict of legal views (cf. Judgments of 26 November 1984 *(Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 428, para. 83) and 11 July 1996 (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, I.C.J. Reports 1996*, para. 26)).

For these well-known incidents, are not, at least for the purposes of the fifth Preliminary Objection — my colleague Professor Bipoun Woum will tell you, in a moment, what this means in regard to the sixth —, these incidents are not the subject of the dispute; they are *the*

manifestation of it. They do not crystallize the dispute — which has to do with the questioning by Nigeria of the instruments establishing the boundary, through its occupations in Bakassi, at Darak, at Typsan, etc., —, they consolidate the dispute. They confirm that Nigeria attributes no legal force to the instruments which delimit the boundary.

I wish to be precise on this point:

(1) the incidents do not constitute the principal legal argument of Cameroon on the fifth Preliminary Objection, even though Sir Arthur placed virtually the entire emphasis on them last Monday, thereby hoping, undoubtedly, to divert attention from the essence of the matter: the questioning by Nigeria of the *titles* on which the delimitation of the entire boundary rests;

045

(2) consequently, the incidents have only *confirmatory* force, but strikingly so;

(3) this confirmation stems from *all* the incidents which demonstrate that Nigeria pays scant heed to the line established in 1913, 1919-1931 and 1946, regardless of the date on which they took place, and

(4) these incidents are what might be called "incidents of sovereignty" — in the sense that they involve civil or military agents of the Nigerian State — or, I would say, "purely local incidents" caused by Nigerian private citizens.

Today I have only spoken of the former, but Cameroon firmly maintains that the latter are relevant as well: they give the lie to the assertions hammered out by Sir Arthur to the effect that *"[s]ur le terrain . . . la frontière est une question de réputation locale établie"* (CR 98/2, p. 21) and again *"[l]es communautés locales savent bien où la frontière passe"* — this latter comment was accompanied, you will recall, by the photograph of the man standing by a flowering bush (CR 98/2, p. 22). The least that can be said is that these repeated and continual incidents scattered along the whole length of the boundary do not confirm these optimistic remarks and do not show that the people on the ground know where the boundary is!

Obviously, though, since Nigeria challenges the boundary and the treaties establishing it, since its military, its policemen, its customs officers behave throughout the Cameroonian border

area — and often far inside the country — as if they were at home, the local inhabitants cannot be expected to respect the boundary.

I have finished, Mr. President — and I am aware of having argued . . . the merits, even if I have confined myself rigorously to replying to the arguments put forward by Sir Arthur on behalf of Nigeria. Is this not, Mr. President, ultimately, the best proof of the ill-founded nature of this fifth Preliminary Objection?

Cameroon therefore requests you, Members of the Court, to reject it, failing which the dispute before you — which concerns the entire boundary — cannot be settled.

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Mr. President, may I ask you to be kind enough to give the floor, this time, to Professor Bipoun Woum. Thank you, Mr. President.

Le PRESIDENT : Merci beaucoup, professeur Pellet. Je donne maintenant la parole au professeur Bipoun Woum.

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

1. Mr. President, Members of the Court, I take the floor again this morning to deal with the sixth Preliminary Objection maintained by Nigeria at the end of the second round of its oral argument. The Nigerian argument is presented as follows: with respect to the allegations relating to the responsibility Nigeria bears, Cameroon has not provided adequate or reliable information (CR 98/5, pp. 46-49).

2. Let me first observe that counsel of Nigeria have developed this argument during these oral arguments, in order, it would appear, to sow the greatest possible confusion in people's minds.

3. Among other things, the confusion on Nigeria's part stems from its counsel's aptitude for contradicting one another. For example, we hear one eminent counsel soundly rebuking Cameroon, which he criticizes for believing and firmly stating that Bakassi does not belong to Nigeria; this has no place here, we are told, but pertains to the merits. Really! But Cameroon has an excuse: it was replying to that counsel who, during the first round of oral argument, stated that Nigeria "has

sovereignty" in the Darak area (CR 98/2, p. 31), and also that: "since Nigeria has no doubt as to its title to Bakassi, the very basis for these Cameroonian complaints about Nigerian activities in Bakassi is, of course, without substance" (CR 98/2, p. 29).

4. Mr. President, this presages the lack of solidity of what Nigeria calls its "demonstration", according to which none of the procedural documents produced by Cameroon makes it possible "to make a fair and effective judicial determination of the matter" (CR 98/5, p. 46).

5. I shall very briefly expound three arguments to show that there is no basis whatever for Nigeria's sixth Preliminary Objection.

047

I. In fact, the Nigerian objection relates to the evidence

6. To begin with, the entire "demonstration" of Nigerian counsel in reality seeks to show the inadequacy of the evidence which might establish the facts which, according to Cameroon, incur Nigeria's responsibility. Nigeria denies it (CR 98/5, p. 49). However, a close terminological analysis of the statements by its counsel bears this out.

7. In his first oral argument, Sir Arthur refers on four occasions to the idea of evidence for the facts alleged (CR 98/2, pp. 31, 36, 36, 37). To quote his very words: "No evidence is given (CR 98/2, p. 31); "additional evidential material" (CR 98/2, p. 36); "supporting evidential document" (CR 98/2, p. 36). Mr. President, you will find the references in the document concerned. In particular, it will be noted that, at the end of his oral argument, he concluded his exposition by asking: "And this, Mr. President, is evidence of Nigerian international responsibility?" (CR 98/2, p. 37). Last week, the question was therefore indeed one of a lack of evidence.

8. However last Monday, Mr. President, the same counsel carefully avoided calling for evidence so explicitly, confining himself to denouncing a lack of "adequate and reliable" information. So the argument has changed. But only in appearance for, Mr. President, Members of the Court, what is adequate and reliable information but information which has come to light and been proved?

9. Our opponent has said that, according to him, the problem apparently stems from the unidentifiable nature of the facts presented by the Application (CR 98/5, p. 49). What does this mean?

10. In his first oral argument, Sir Arthur Watts stated that his requirements for a proper *identification* of the facts would be met provided, in the case of each of them, what occurred, when it occurred, where it occurred and who bears responsibility is known (CR 98/2, p. 28). These are not his words, but I think this is an accurate summary of his thinking.

11. Then Sir Arthur set out to verify whether the facts presented in Cameroon's Application meet this requirement of identification. I am not going to go over all this again but, among other things, he quoted a passage from Cameroon's Application, according to which:

048

> "it was in this context that, on 21 December 1993, Nigeria committed an aggression against Cameroon by invading the Cameroonian localities of Jabane and Diamond Island in the Bakassi Peninsula . . . By introducing armed troops on a massive scale into the disputed peninsula and conducting military activities there, the Federal Republic of Nigeria intends to recover an alleged 'historical sovereignty' over this portion of Cameroonian territory which it immediately proclaimed to be incorporated into the Nigerian Federated States of Akwa Ibom and Cross River" (Application of Cameroon, para. 9).

12. Mr. President, here we have indications regarding what occurred: it was the invasion of villages; the date: it was 21 December 1993; the places: these were Jabane and Diamond Island; and who bore responsibility: it was the armed Nigerian troops.

In other words, it is perfectly "identifiable", using Nigeria's own criteria. However, Sir Arthur is not content! (CR 98/2, p. 29). But why? He does not say in so many words, but we can guess: because he does not have any evidence.

13. The question whether one fact or another is proved pertains to the merits. Now is clearly not the time to deal with such matters. So Nigeria's persistence in trying to convince the Court of the relevance, at this stage, of its analyses aimed at identifying incidents which are "totally without any standing whatsoever as a basis of allegations of international responsibility" (CR 98/5, p. 49) is difficult to understand. Mr. President, the certainties of our colleagues in the opposing Party,

eminent though they are, do not necessarily have to be accepted by anybody, and above all not by the Court.

14. This intentionally muddled approach casts further light on Nigeria's true objective, which is to prevent the Court from intervening in this case in any way whatever. In fact, from the standpoint of the normal development of legal proceedings, a respondent is not entitled to make any evaluation whatever, *in limine litis*, of the facts supporting the act instituting proceedings, in order, on the basis of such an evaluation, to conclude that such an act is inadmissible. Because if the court seised concurred with the Respondent, the Court itself would no longer have any raison d'être.

II. Cameroon's Application meets the requirements of Article 38 of the Rules of Court

15. Secondly, Mr. President, Cameroon is accused of not saying enough about the facts it alleges, of presenting "incomplete allegations" (CR 98/2, p. 31) or of being too "economical with the facts" (CR 98/5, p. 48) which would make them inadmissible at this stage, in view of the requirements of Article 38 of the Rules of Court. What is the relevance, in law, of such an argument?

049

16. First of all, I would point out that the case concerning the *Prince von Pless Administration (Preliminary Objection)* (*Order of 4 February 1933, P.C.I.J., Series A/B, No. 52*, p. 11), although already quoted by our opponents (CR 98/5, p. 48), does not bear this argument out. In that case, the Application by the German Government was criticized by Poland for inadequately determining the subject of the dispute (*ibid.*, pp. 13-14). The Court will note that a list of the disputed facts in the Application introducing proceedings was, at one point, "not exhaustive", and therefore incomplete; and it indicated that, at another point: "no specific act is indicated as constituting a violation" (*ibid.*, p. 14). However, the Permanent Court did not agree to find the Application inadmissible *in limine litis*. It considered that the problem raised by Poland was *"inextricably bound up with the facts adduced by the Applicant"* and could not be decided *"on the*

basis of a full knowledge of these facts, such as can only be obtained from the proceedings on the merits" (ibid.).

17. I would then observe (as did Professor Kamto last week, cf. CR 98/4, p. 35) that this Court too has not been receptive in the past to criticisms relating to the lack of precision of applications. In the case concerning the *Northern Cameroons* (*I.C.J. Reports 1963*, p. 15) for instance, it considered that "the Applicant has sufficiently complied with the provisions of Article 32 (2) of the Rules" — this is the present Article 38 — (*ibid.*, p. 28), whereas the Respondent, like Nigeria last Monday, criticized the total lack of precision of the allegations in the Cameroonian Application (*I.C.J. Pleadings, Northern Cameroons,* p. 66, quoted by G. Guyomar, *Commentaire du Règlement de la Cour internationale de Justice*, Paris, A. Pedone, 1983, p. 242).

III. The non-compliance of an application with the requirements of Article 38 cannot, in any event, entail its inadmissibility

18. Thirdly, Mr. President, Members of the Court, Article 38 of the Rules aims to ensure the normal, satisfactory functioning of the proceedings, and not to interrupt them in an untimely fashion. By requiring that such an application specify "as far as possible" various information, including a "succinct statement of the facts and grounds on which the claim is based", this Article merely seeks to guarantee the conditions for the good administration of justice. It does not lay down conditions for the admissibility of applications.

050

19. The *travaux préparatoires* of this provision are perfectly clear on this point.

20. This matter was explicitly dealt with, and Geneviève Guyomar explains that, "since Article 40 of the Statute requires that the subject of the dispute and the parties concerned should be indicated, its indications could be regarded as mandatory. The *others were only required of the parties to the Court because they were extremely useful for it, but this request was merely a recommendation" [Translation by the Registry]* (*Commentaire du Règlement de la Cour internationale de justice,* Paris, A. Pedone, 1983, p. 235; emphasis added).

21. It will be noted that it was to denote that this was purely an exhortation that it was decided to add the formula "as far as possible" in Article 38, before the list of information ideally to be included in the Application was indicated (*ibid.*, p. 236).

22. In this context, the possible consequences of a failure to comply with Article 38 of the Rules of Court should rather be sought in the terms of Article 62:

> "The Court may *at any time* call upon the parties to produce such evidence or to give such explanations as the Court may consider to be necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose." (Emphasis added.)

23. Moreover, this provision is echoed in Article 49 of the Statute, which permits the Court "even before the hearing begins, [to] call upon the agents to produce any document or to supply any explanations . . .".

24. The relevant texts therefore clearly indicate the solution for any problem relating to the production of evidence. This type of problem must be settled in a constructive and co-operative manner, not through the artificial creation of problems of admissibility.

051

25. The practice of the Court provides ample confirmation of this. Never has an application been declared inadmissible on the basis of Article 38 of the Rules of Court. As I pointed out a few moments ago, the objection was, on the contrary, expressly set aside by this Court in 1963, and by its predecessor in 1933.

26. In most cases, the formal problems of the administration of the facts have ultimately been settled by co-operation. And it is remarkable to note that this also applies in relation to Article 40 of the Statute which, however, was originally perceived as covering requirements which, if not complied with, could entail inadmissibility.

27. The case concerning *Rights of Nationals of the United States of America in Morocco (I.C.J. Reports 1952*, p. 176) is particularly instructive in this respect. The United States raised an objection to admissibility based on a combination of Article 40 of the Statute and Article 32 (which was to become Article 38) of the Rules of Court, on the ground that it was impossible to determine whether, as Applicant, France was acting on its own behalf, on behalf of Morocco, or in both

capacities at once. However, the Court was at pains not to declare the Application inadmissible, but merely put this question to the Applicant. Once this point had been clarified, the objection was simply withdrawn by the Respondent (Guyomar, *op. cit.*, pp. 233-234).

28. Mr. President, the indications provided by Cameroon in its Application fully comply with the provisions of the Statute and Rules of Court, inasmuch as they facilitate the continuation of the proceedings. A discussion on the various points, of fact or of law, which form the subject of the dispute is not only possible, but has actually already started. You will have had occasion to note this on hearing the exchanges of view between the opposing Parties in this case. You will certainly have noticed that, where the sixth Preliminary Objection is concerned, as well as the fifth, a substantial part of the discussions turned on the materiality of the facts, the content of which is found in Cameroon's Application.

29. If the Court, utilizing the powers conferred upon it by its Statute and Rules, requires any additional information, Cameroon will willingly oblige.

052

30. If Nigeria considers — wrongly in Cameroon's view — that the factual elements referred to by the Applicant are inadequate to incur its responsibility (CR 98/5, p. 48), it is perfectly free to demonstrate this in its Counter-Memorial.

31. The Court will decide. But this has absolutely nothing whatever to do with the formal problems which may arise when proceedings are instituted, which problems are governed by Article 38. This question pertains to the merits of the case, and will have to be settled on the basis of the rules and principles applicable with respect to evidence.

32. For all these reasons, Mr. President, Members of the Court, Cameroon requests the Court to set aside Nigeria's sixth Preliminary Objection.

33. May I now, Mr. President, ask you to give the floor once again to Professor Alain Pellet, who will be giving you Cameroon's final views on the seventh and eighth Preliminary Objections.

Thank you, Mr. President.

Le PRESIDENT : Merci beaucoup. Monsieur le professeur Pellet.

Mr. PELLET: Mr. President, Members of the Court, I stand before you again in order to say a few words on the seventh and eighth Preliminary Objections raised by Nigeria.

Mr. President, not being an adept of art for art's sake — or fact for fact's sake — I shall not do as Mr. Crawford did (CR 98/5, pp. 51-56) and separate the factual context from discussion of the law; with your permission, Mr. President, I shall go straight to the seventh objection and discuss the facts wherever they appear to me to be relevant.

Seventh Preliminary Objection

This objection is twofold.

First, it consists in saying "no determination of a maritime boundary is possible prior to determination of title in respect of the Bakassi Peninsula" (Agent, CR 98/5, p. 66). I do not really see what I could say that is new, except that Cameroon thinks that if this submission is taken for what it is, namely a logical proposition, Cameroon agrees entirely. Quite simply, it is a pure consideration of common sense, not a preliminary objection. And Mr. Crawford himself, moreover, furnished proof of this by stating that the Parties might have agreed to submit, by way of a Special Agreement, the same requests as Cameroon. Mr. President, I have some difficulty in understanding why the Court would not have jurisdiction to adjudicate — in whichever order it saw fit — on the requests submitted by Cameroon, when it would have had jurisdiction had the Parties agreed ("unless the Parties have expressly so agreed") (CR 98/5, p. 56).

053

Second, the Nigerian Party requests the Court to declare the Application 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'" (CR 98/5, p. 66).

If it please you, Mr. President, I shall focus on what appears to me to concern the very heart of the question which divides the Parties on this point, the obligation to negotiate.

I shall start with the finding made by the Court in 1969, a finding which appears to me still valid: the obligation which States have to negotiate in matters of maritime delimitation "merely constitutes a special application of a principle which underlies all international relations . . ."

(*I.C.J. Reports 1969*, p. 47) and it is perfectly legitimate to refer to this extremely general principle of international law in order to define its scope under Articles 74 and 83 of the 1982 Convention.

Having made this preliminary point, the question then arises how far this obligation extends, and how it dovetails with the right of States which are party to the optional clause system to request the Court to settle disputes between them "on the basis of international law" — which is also what Nigeria requests. I shall not repeat at length what my colleague Mr. Bipoun Woum said before you with such talent, Members of the Court, and what Mr. Crawford did not truly contradict. I shall merely summarize it in four propositions:

054

1. The obligation to negotiate under Articles 74 and 83 is a substantive rule — I believe that I can agree with Mr. Crawford on this point (CR 98/5, p. 57); I do sometimes agree with him! — a substantive rule then, not a rule of admissibility or of jurisdiction before the Court; and this has two consequences:

— on the one hand, the question as to whether this rule has been observed in the present case is a question of substance which can only be considered along with the merits of the dispute; in the next phase; and,

— on the other, the jurisdiction of the Court is governed by the rules of jurisdiction laid down in its Statute and it is in the light of these rules that the Preliminary Objections raised before the Court must be evaluated.

2. In accordance with these rules (in the Statute of the Court), implemented by the settled jurisdiction of the Court, the exhaustion of prior negotiations is not a condition of admissibility of applications (cf. Judgments of 19 December 1978 (*Aegean Sea Continental Shelf, I.C.J. Reports 1978*, p. 12) and of 26 November 1984 (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction of the Court and Admissibility of the Application, I.C.J. Reports 1984*, p. 440)).

3. As the Permanent Court held, and as quoted in the Judgment of 1969 (*I.C.J. Reports 1969*, p. 47), judicial settlement "is simply an alternative to the direct and friendly settlement [. . .]

between the parties" (Order of 19 August 1929, *Free Zones of Upper Savoy and the District of Gex, Series A, No. 22*, p. 13); "an alternative to friendly settlement", i.e. an indirect means of settling the problem between the States concerned, based on their consent.

4. In any event, Articles 74 and 83 do not impose what the late Paul Reuter called an "obligation to negotiate comprising a blocking mechanism", i.e., an obligation which lapses only on conclusion of the agreement, and Paul Reuter emphasized the "exceptional nature" of such obligations to negotiate comprising a blocking mechanism (*De l'obligation de négocier, Mélanges Morelli, Comunicazioni e Studi,* Vol. 14, 1975, p. 730 and 729); it is a relative obligation which only applies to States if "negotiations are meaningful" (*I.C.J. Reports 1969,* p. 47, or Judgments of 27 February 1998, cases concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America)* para. 20 and *(Libyan Arab Jamahiriya* v. *United Kingdom)*, paras. 20 and 21).

055

Was this so in this case, Mr. President?

Certainly not — and this brings us back to the facts. And first of all one *fact* which Mr. Crawford majestically disregards, but which is nonetheless an essential fact: on 21 December 1993 Nigeria invaded the Bakassi Peninsula. Since that date any negotiation on the maritime delimitation has become impossible — not so much, in any event not only, because no one negotiates under duress, but also because from that moment onwards Nigeria showed that it was challenging *the entire land and maritime frontier:* it took 30 years *not* to achieve a full agreement on delimitation; if you allow me to express it in somewhat trivial terms, Mr. President, we "received at least the same sentence again", back to square one, with no chance of achieving a result in the foreseeable future since, as Nigeria aptly remarks in its (false) Preliminary Objection No. 7.1, its "non-Preliminary Objection" if you prefer, no determination of a maritime boundary is possible prior to the determination of its starting point on the coast.

I do not believe that a long speech is necessary in order to show that negotiations of any sort had become pointless and were no longer meaningful.

I believe that this suffices amply to exclude the legal necessity for negotiation and even the possibility of negotiation. It also renders more or less moot the question as to whether negotiations had taken place, although they could not have gone beyond Point G, the last point of *agreement* between the Parties; however, as Mr. Bipoun Woum showed, this last point of agreement between the Parties was in no way the last point on which their *discussions* had focused. Since Nigeria merely asserted the contrary without taking the trouble to discuss my colleague's argument, allow me, Members of the Court, respectfully to refer the Court to it: this argument is found on pages 42 to 52 of the verbatim record of the hearings of last Friday (CR 98/4). However, I repeat, *the* essential fact is and remains that, from December 1993 onwards, quite simply no negotiation of any sort could be envisaged.

056

And there is more: having challenged the Maroua Declaration of 1975 for 20 years, since the Jos meeting of November 1978 (MC, Book VI, Ann. 253, p. 2116), in raising its seventh Preliminary Objection Nigeria implicitly but necessarily acknowledges its legal relevance, at least for the purposes of the present objections. In any event here is a further zone on which there is a dispute: it is the zone from the coast to Point G; on this at least the Parties agree. This dispute, here again, arises from Nigeria's challenge to a fully valid legal agreement, the Maroua Declaration, an agreement which, I reiterate, was concluded in the framework of a comprehensive negotiation covering the entire maritime frontier.

One last word on the subject, if you please, Mr. President, concerning "Fact No. 2" affirmed by Mr. Crawford at the beginning of his statement last Monday concerning the effect of ratification by Cameroon of the Montego Bay Convention (CR 98/5, pp. 52-55).

Although I am not Cameroonian, Mr. President, except in my heart, I feel quite comfortable talking about this since Article 45 of the Constitution of Cameroon purely and simply reproduces Article 55 of the French Constitution of 1958. It is monistic in inspiration, meaning — as both

Mr. Bipoun Woum (CR 98/4, p. 47) and Mr. Keith Highet (*ibid.,* p. 55) explained so well — that treaties are integrated into the domestic order by the mere fact of their ratification, no additional formality (in particular the adoption of a law) being required, and that they then have in that domestic order "a higher authority than laws" by the mere fact of their ratification. As for reciprocity, it is secured from the moment that the other contracting parties accept the same obligations, as the French *Conseil Constitutionnel* has repeatedly stated (cf. *Conseil Constitutionnel,* Decision of 9 April 1992, *Traité sur l'Union européenne, Recueil,* p. 55, rather than its Decision of 15 January 1975, *Abortion Law, Recueil,* p. 19, quoted by Mr. Crawford, CR 98/5, note 6, p. 54).

This being so, I must say that, apart from the whiff of exoticism which this visibly holds for him, I have difficulty in understanding Mr. Crawford's relentless assault against poor old Article 45 of the Cameroonian Constitution, an article which appears extremely classic to me as it would to a Belgian or Dutch jurist. Above all I have difficulty in understanding why our learned opponent labours so hard — and I am sorry to say not very convincingly — to determine the scope of the ratification of the Montego Bay Convention *in the Cameroonian domestic order.* Members of the Court, what matters before the Court is not what happens in Cameroon nor moreover what happens in Nigeria, what matters is the effect of the ratification *in the international order.* There, there are no longer Cameroonians, Nigerians, Australians or Frenchmen, there are quite simply internationalists. Their "constitution" is treaty law, and first and foremost the "rule of rules", "every treaty in force is binding upon the parties to it and must be performed by them in good faith" (Article 26 of the Vienna Convention of 1969). *Pacta sunt servanda.* Because it has ratified the Convention Cameroon is obliged, in relations with Nigeria, to observe the Convention on the Law of the Sea; for its part, it may also demand that the Convention be observed.

057

In practical terms this means that it may claim a territorial sea of 12 nautical miles at the most; it cannot impose more. Even more specifically, this has no practical importance whatsoever since the maritime frontier is delimited as far as Point G which, in any event, is sited about 17 nautical miles away from the coast, i.e., beyond this maximum limit.

As for the exclusive economic zone (J. Crawford, CR 98/5, pp. 54-55), I must say, Mr. President, that I cannot take a passionate interest in this "nice legal problem" either, and that matters appear to me much more simple than has so far been said: Cameroon requests the Court to determine "the boundary of the maritime zones appertaining respectively [to it] and to the Federal Republic of Nigeria" (cf. MC, p. 670). It is quite clear that this falls within the jurisdiction of the Court. Once the Court has determined that boundary, Cameroon will be able to, as well as it can today and in the full light of the facts, decide formally to implement — or not to implement — the legal régime provided for under Part V of the Convention. This does not have any bearing on the task before the Court and in any event the manner of carrying out this task relates to the merits of the case.

For these reasons, Mr. President, Members of the Court, Cameroon requests you to reject Nigeria's seventh Preliminary Objection.

058

Eighth Preliminary Objection

I come now, Mr. President, to the eighth and last objection. Curiously, the way in which the Agent of Nigeria worded this on Monday differs from the wording found in the Preliminary Objections. It is both more complex and less clear. Combining both wordings, I understand it to mean that, according to Nigeria, "[t]he question of maritime delimitation necessarily involves the rights and interests of third States and is inadmissible" — that is the wording found in the objections (p. 140), and that Nigeria invites the Court in its final submissions (CR 98/5, p. 66) to see it as both an objection to jurisdiction and an objection to admissibility.

Truth to tell, I have no intention, Mr. President, of holding forth on the subject of this distinction: Cameroon, for its part, sees it as neither an issue of inadmissibility nor an objection to jurisdiction but quite simply as a question relating to the merits — a question which in any event certainly does not have "an exclusively preliminary character" within the meaning of Article 79, paragraph 7, of the Rules of Court.

However, before coming both to the point and to the merits (sometimes the language of Shakespeare allows us more nuances than does that of Corneille) allow me, Mr. President, to point out — amicably but with some surprise nevertheless — that our opponents appear to have had a few problems with their reading over the weekend: after Sir Arthur Watts who read the word "north" at the point where the document which he himself produced says "south-west", here we have Mr. Crawford who considers that "the most remarkable aspect of [my excellent friend Keith Highet's presentation] was his failure to use two words, the word 'Equatorial' and the word 'Guinea'" (CR 98/5, pp. 60-61), words which Mr. Highet nevertheless used at least twice (in paragraphs 11 and 16 of his statement — CR 98/5, pp. 57 and 58), whilst attributing to Mr. Highet the expression "Guinea-Bissau" which he never in fact used!

Naturally this is not a serious matter, Mr. President, but nonetheless it creates a climate, an atmosphere in which Nigeria takes on the handsome role of the defender of third States and leaves Cameroon to play the part of sacred egoism, indifferent to the interests of its neighbours . . .

059

In this connection, Members of the Court, I shall please my opponent James Crawford who complained last Monday that we made no comment on his maps (CR 98/5, p. 59). Behind me you can see the map found under Tab 49 in the Nigerian folder (and which is also found under letter J in our folder).

Apart from the five riparian States of the Gulf of Guinea, there are two elements on this map:

— On the one hand, Nigeria has shown on the map, albeit bending it somewhat, the line drawn on the diagram shown on page 556 of the Cameroon Memorial and described under *(c)* of our submissions on the merits as indicating "the direction which [. . .] meets the requirement for an equitable solution" (MC, p. 670), it being clearly understood that it is for the Court, as explicitly stated both in Cameroon's Application and in its Memorial, to determine "the outer limit of the maritime zones which international law places under the respective jurisdictions of the two Parties" (cf. Application, para. 20 *(f)* and MC, p. 670);

— On the other hand, Nigeria has placed on this map a point, called "tripoint", more or less to the south of Point G.

Mr. President, I admit that this map is very interesting.

First because it shows the point which Professor Crawford did not hesitate to call "the tripoint" at least six times in a row (CR 98/5, p. 55, four times; pp. 60 and 61). How did it come to be placed there? Our opponent did not tell us. Very probably, Nigeria based it on the criterion of equidistance.

However, and this is my second point, equidistance is not the focal principle, truly not even the focal principle of the delimitation of maritime zones beyond territorial seas, the cardinal rule of which, as enshrined in the jurisprudence of the Court and as recalled in Article 74 and 83 of the Montego Bay Convention, is that the solution adopted must be equitable. However, I mention it in passing, everybody knows that there is nothing less equitable than equidistance for countries which are at a geographical disadvantage.

Despite this, and this is my third comment, what James Crawford calls "the geographical or cartographical tripoint" (CR 98/5, p. 55) is sited well beyond Point G; not 1 m beyond, not 100 m beyond, as he generously conceded, not even a "very short distance from Point G" (CR 98/5, p. 60) but about 25 km away; far enough away so that, even under the hypothesis in which Nigeria seeks to trap you, Members of the Court, in preparation for proceedings on the merits, a hypothesis which Cameroon for its part cannot accept in any shape or form — even within the straitjacket of this hypothesis I cannot see anything which might justify a decision by the Court of inadmissibility or lack of jurisdiction. It is in the merits phase that it will be the task of the Court to safeguard the rights of third parties, as is customary. Yet why should the Court, in so doing, neglect the rights of a State which has placed its trust in the Court; of two States which have placed their trust in the Court by accepting the system of the Optional Clause?

060

Fourth point, Mr. President, let us look again at the map if you will. Just long enough to ask one question: of the two elements shown on the map, which more clearly safeguards the rights of third parties? "The" tripoint imagined by Nigeria? Or the line indicating an equitable direction, the line proposed by Cameroon, the line whose course is explained on pages 548 to 558 of its Memorial?

I ask the question; the reply is quite clear. However I shall refrain from going any further for, once again I confess, I have argued on the merits, I have argued only on the merits. Once again, however, I request your absolution, Members of the Court: since all that I have done is to follow in the footsteps of Mr. Crawford.

Once again this shows that the eighth objection has nothing preliminary about it; in any event, that it is certainly not exclusively preliminary and that it would be totally unfair to reject it *in limine litis*, without paying close heed to what both Parties have to say on that subject and, I almost said, without giving third States who wish to do so the possibility of intervening if need be.

For these reasons, Cameroon requests you, Mr. President, Members of the Court, to reject the eighth Preliminary Objection or, alternatively, to find that it does not possess an exclusively preliminary character.

I thank you cordially for your patient attention and request you, Mr. President, to give the floor to Mr. Douala Moutomé, Co-Agent of Cameroon.

061

Le PRESIDENT : Je vous remercie beaucoup. Je donne la parole à M. Moutomé.

Mr. MOUTOMÉ:

1. Thank you, Mr. President, Members of the Court. As Cameroon completes this second round of oral arguments on the Preliminary Objections raised by Nigeria, I would like to stand back and set this phase of proceedings in a fresh context, before Mr. Laurent Esso, Agent of Cameroon, takes the floor once again to present our final submissions to the Court.

2. Cameroon naturally places its trust in international justice and consequently in the International Court of Justice. Yet it is a long, long haul, Mr. President.

3. When we filed our application four years ago, we did not think that we would still be debating the Preliminary Objections today. It is as if attempts were being made to exhaust us, putting such delays to good use in order to establish a *fait accompli.*

4. Faced with this policy of *fait accompli*, we found ourselves obliged to request the Court to indicate provisional measures to put an end to the situation thus created. The Court ordered those measures two years ago. There has been no sign of execution on the ground on the part of Nigeria.

5. The proceedings on Preliminary Objections, which bring us before the Court today, appear to us superfluous. Just when we expected to discover, in a memorial on the merits, Nigeria's counter-arguments, we found ourselves confronted with eight Preliminary Objections. No less!

6. No doubt Nigeria is strictly speaking within its rights to raise objections. Nevertheless we believe that there is a degree of misuse of this right. I do not intend at this point formally to raise the misuse of rights. However, since Corneille was quoted on Monday, perhaps you will allow me to refer the Court to Racine and his play *The Litigants*: "Her Snootiness the Countess of Orbêche, etc.".

Mr. President, this is what we in our country would call pettifoggery. And yes, Nigeria would do well to understand our feelings faced with the blocked situation which it has created.

062

7. On closer examination, however, I see only one objection which is truly preliminary: namely the first. I shall come back to it. All the others concern the merits or serve as an excuse for arguing the merits of the case.

8. Nonetheless, I take my hat off at this point to the imagination shown by our opponents. They have beefed up their objections with surprising innovations, astounding inventions. Thus we learnt that our traditional, quite modest joint commissions had become exclusive, rigid frameworks

for settling disputes. Were the Court to follow Nigeria's reasoning on this point, this traditional instrument promoting good neighbourliness would be thrown into disarray, Mr. President.

9. Moreover, the obligation to negotiate in respect of the maritime delimitations came as a surprise to us, as it no doubt did to the Court.

10. As for the so-called system of public order imposed in the framework of the LCBC, it marks a veritable revolution in international law: the coming into being of a regional public order with complicated legal ramifications, ramifications which the framers of the Convention and of the Statute certainly did not suspect.

11. What I see above all in the Nigerian Preliminary Objections is the opportunity created by our opponents to submit arguments on the merits. They have produced a quantity of beautiful maps, spectacular diagrams and superb photos. For the purpose of submitting arguments on the merits, quite obviously. They have done cartography, topography, photography. That was not preliminary reasoning alone. It was done in order to have an effect on the merits, with the help of modern printing technology.

12. Our opponents relied at length on the presence of third States concerned by the decision of the Court, whether members of the LCBC, particularly Niger and Chad, which are concerned by the tripoints sited in the lake, or Equatorial Guinea and Sao Tomé and Principe, which are affected by the maritime delimitation.

13. In the past the Court has often evoked the problem of third States in territorial delimitations. However it is, I almost said it is by definition, an issue relating to the merits.

063

Without discussing the merits, the Court cannot define precisely the scope of the rights of third parties, or the extent to which they will be affected.

The Court has always considered and settled such questions, questions whose difficulty Cameroon does not underrate, at the time of its decision on the merits.

14. Yet another question relating to the merits: the existence of a territorial dispute along the entire land border. Nigeria has attempted to minimize the seriousness of the incidents which have occurred along this frontier. Cameroon, for its part, holds that by their number, frequency and consequences, such incidents reveal the scale and depth of the territorial dispute. How is it possible to verify this without arguing the case on the merits, Mr. President?

15. Lastly, Nigeria demands, against all the rules, evidence as to the facts likely to establish its responsibility, when these facts have been set forth in conformity with the requirements of the Rules of Court. It takes some temerity to claim that there is no issue of responsibility in Bakassi! The Court itself noted the seriousness of the incidents, which have involved fatalities in that zone since December 1993. The same can be said of the problems at Darak, where our opponents do not deny that there is a dispute between the two countries. Nigeria has attempted to ridicule our assertions, whereas it is a matter of the security of the local population and of peace in the sub-region.

16. This set of preliminary objections appears to us to have an artificial, unjustified aspect. We wish to submit our arguments on the merits, Mr. President, as much as is necessary. Was it also necessary to mobilize your distinguished Court for such fragile arguments?

17. As for the first Preliminary Objection, it is undeniably preliminary. That is true. It seeks to overturn jurisprudence which has been established on a sound footing for 40 years. Cameroon is confident that the Court will not uphold the objection. Was it however necessary, for that single, weak argument which it supports, to mobilize your distinguished Court and paralyse the progress of properly instituted proceedings?

18. Mr. President, Members of the Court, Cameroon is eager, as I am eager, to reach the merits phase, in order to settle the dispute between itself and Nigeria peacefully and at the earliest. It fears the long delays imposed by its opponent. The passage of time does not favour the serene

064

administration of justice. Additional delays consolidate situations which we hold to be manifestly unlawful and which the Court will judge to be so.

19. Therefore we request the Court to reject these objections and to proceed to the merits of the case without delay: in the interest of the groups of population concerned; in the interest of regional peace and security; in the interest of justice, justice which is in danger of being flouted by the unjustified delays imposed.

20. Thank you for your attention, Mr. President, Members of the Court. The Agent of Cameroon is at your disposal to take the floor whenever you see fit.

Le PRESIDENT : Je vous remercie, Me Moutomé. L'agent du Cameroun, M. Esso, ministre de la justice, peut conclure.

Mr. ESSO: Thank you, Mr. President, for giving me the floor again.

Mr. President, Members of the Court,

1. At the close of these ten days of hearings, allow me, before I read Cameroon's final submissions, to present to you, in my own name and on behalf of the delegation it is my honour to lead, our heartfelt thanks for the patience and goodwill you have displayed throughout these debates.

2. Having said this, I should also like, Mr. President, to extend cordial greetings to those who, though our opponents of today, are for ever our brothers, friends and neighbours. I should like to tell them, and through them repeat to the fraternal and friendly neighbouring people, the friend and neighbour that is Nigeria, that Cameroon aspires only to peace and the preservation of its territorial integrity. Cameroon wishes to strengthen its relations of neighbourliness, friendship, fraternity and mutual respect that it maintains both with Nigeria and with all its other neighbours. It is the sole purpose of the proceedings we have instituted before the International Court of Justice.

3. Mr. President, in thanking the Court we should also like to thank its Registry for its unfailing efficacy and helpfulness.

065

4. We further pay tribute to the high degree of professionalism of the translators and interpreters.

5. Please also allow me, Mr. President, publicly to voice our gratitude to each of our eminent counsel who have agreed to assist us in presenting our case and, more generally, to all members of the delegation of Cameroon.

Mr. President, Members of the Court,

1. The question put by the Court to both Parties on 6 March 1998 will be the subject of a written reply from Cameroon within the prescribed time-limit.

2. Mr. President, Members of the Court, in accordance with the provisions of Article 60, paragraph 2, of the Rules of Court, I shall now read out the final submissions of the Republic of Cameroon concerning this phase of the case:

> "For the reasons developed in the written pleadings and in the oral proceedings, the Republic of Cameroon requests the International Court of Justice:
>
> *(a)* To dismiss the Preliminary Objections raised by the Federal Republic of Nigeria;
>
> *(b)* Quite subsidiarily, to join to the merits, as appropriate, such of those objections as it may deem to be of an exclusively preliminary nature; to join to the merits, as appropriate, such of those objections as it may not deem to be of an exclusively preliminary nature;
>
> *(c)* To adjudge and declare: that it has jurisdiction to decide on the Application filed by Cameroon on 29 March 1994 as supplemented by the Additional Application of 16 June 1994; and that the Application, thus consolidated, is admissible;
>
> *(d)* Having due regard to the particular nature of the case, to fix time-limits for the further proceedings which will permit examination of the merits of the dispute at the earliest possible time."

Mr. President, Members of the Court, I thank you very much for your attention.

Le PRESIDENT : Je vous remercie, Monsieur Esso. Nous arrivons ainsi au terme de cette série d'audiences. Je voudrais, au nom de la Cour, remercier vivement les agents, conseils et

066

avocats des Parties pour les excellents arguments qu'ils ont présentés et la courtoisie dont ils ont constamment fait preuve.

Conformément à la pratique habituelle, je voudrais demander aux agents de rester à la disposition de la Cour pour toutes informations supplémentaires dont elle pourrait avoir besoin et, sous cette réserve, je déclare maintenant close la procédure orale sur les exceptions préliminaires dans l'affaire de la *Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria).*

La Cour va maintenant se retirer pour délibérer. Les agents seront notifiés en temps voulu de la date à laquelle la Cour rendra son arrêt.

La Cour n'ayant pas d'autre question à examiner aujourd'hui, l'audience est levée.

L'audience est levée à 13 heures.