Non-Corrigé
Uncorrected

CR 2002/4

Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le jeudi 21 février 2002, à 10 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président,

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

COMPTE RENDU

YEAR 2002

Public sitting

held on Thursday 21 February 2002, at 10 a.m., at the Peace Palace,

President Guillaume presiding,

in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)

VERBATIM RECORD

Présents : M. Guillaume, président
M. Shi, vice-président
MM. Ranjeva
Herczegh
Fleischhauer
Koroma
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buergenthal
Elaraby, juges
MM. Mbaye
Ajibola, juges *ad hoc*

M. Couvreur, greffier

Present:	President	Guillaume
	Vice-President	Shi
	Judges	Ranjeva
		Herczegh
		Fleischhauer
		Koroma
		Higgins
		Parra-Aranguren
		Kooijmans
		Rezek
		Al-Khasawneh
		Buergenthal
		Elaraby
	Judges *ad hoc*	Mbaye
		Ajibola
	Registrar	Couvreur

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comme agent;

M. Maurice Kamto, doyen de la faculté des sciences juridiques et politiques de l'Université de Yaoundé II, membre de la Commission du droit international, avocat au barreau de Paris,

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M. Christian Tomuschat, professeur à l'Université Humbold de Berlin, ancien membre et ancien président de la Commission du droit international,

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S. Exc. M. Biloa Tang, ambassadeur du Cameroun en France,

S. Exc. M. Martin Belinga Eboutou, ambassadeur, représentant permanent du Cameroun auprès de l'Organisation des Nations Unies à New York,

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S. Exc. M. Cristóbal Mañana Ela Nchama, ministre des mines et de l'énergie, vice–président de la commission nationale des frontières,

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Le PRÉSIDENT : Veuillez vous asseoir. La séance est ouverte et je donne la parole pour la République du Cameroun à M. le professeur Ntamark.

Mr. NTAMARK:

I. THE LAND BOUNDARY

7. Bakassi

(b) ***The colonial administration — its legal significance***

(ii) The mandate and trusteeship period (first part)

1. Mr. President, Members of the Court, we would like in this pleading to show how the law and practice of the mandate and trusteeship systems confirm Cameroon's position on its boundaries in general and that in particular Bakassi fell within the territorial domain of the British Cameroons as constituted during this period, thus establishing the territorial framework for the application of the principle of *uti possidetis* upon independence. I will provide a general introduction to and framework for the matter under discussion and Professor Shaw will follow me with some further comments.

2. We will seek to demonstrate the following points. First, the international community through international agreements and practice affirmed the existing conventional boundaries and established the international boundary as between the French and British Cameroons. Secondly, this was monitored by an international supervisory régime, which paid particular attention to territorial issues. Thirdly, and this is something that Professor Shaw will address, there was no doubt and no disagreement as to which régime governed Bakassi, nor as to the placement of the boundary line. The Bakassi Peninsula formed part of the mandated and trusteeship territory of the British Cameroons and was so internationally recognized and supervised. Equally clearly, Bakassi did not fall within Nigeria in any sovereign sense at all. It is indeed telling that Nigeria simply has not addressed the critical practice of this period at all in any serious fashion.

3. Although our primary focus at this stage of the proceedings is upon Bakassi, it will be necessary to enter into a more general discussion of the Cameroons territories, particularly Southern Cameroons.

1. The confirmation of the territorial framework by the relevant international instruments

4. Following the First World War, it was decided that the German colony of Kamerun should be administered in partitioned form by Britain and France under the framework of League of Nations mandate arrangements. The mandate system, as indeed the trusteeship system which succeeded it, was predicated upon a division of functions as between the administering power and the League of Nations, and later the United Nations. It was axiomatic in this structure that the administering power did not have the power unilaterally to dispose of such territory. In creating the mandate system, the intention was to establish a recognized international status (the *International Status of South West Africa* case, *I.C.J. Reports 1950*, p. 132), which necessarily involved recognition of the international status of its boundaries. As the Court noted in the *Libya/Chad* case (*I.C.J. Reports 1994*, p. 26) "to 'define' a territory is to define its frontiers".

5. In establishing the boundaries of the Cameroons, the League adopted the line set out in the Milner-Simon Declaration of 1919. This was reflected in Article 1 of the mandate agreements, with Britain and France respectively, so that all of former German Kamerun that lay to the west of this line fell to Britain and the area east of this line fell to France. This incorporation of the Milner-Simon Declaration into a second international agreement gave to the line itself the status of a boundary explicitly recognized by the foremost international body of the period. An objective territorial régime was thus established. The 1919 line was described in greater detail in the 1930 Thomson-Marchand Declaration affirmed in the Exchange of Notes of January 1931.

6. Accordingly, and with the exception of limited modifications authorized by Article 1 of the mandate agreements (specifically in relation to the interests of the inhabitants or due to inaccuracies in the Moisel map), the boundary line laid down in the agreements could only be modified by the parties concerned with the express approval of the Council of the League of Nations. This did not happen. This territorial definition was repeated in the trusteeship agreements which succeeded the mandates system after the Second World War without hiatus by virtue of the resolution adopted by the Assembly of the League of Nations on 18 April 1946 (LN doc. A.33, 1946, pp. 5-6).

7. Articles 79 and 85 of the United Nations Charter provided essentially that any alteration or amendment to trusteeship agreements had to be agreed upon by the States directly concerned and

approved by the General Assembly. This clearly covered the definition of the territory in question so that States administering territories under a trusteeship arrangement were totally incapable in law of unilaterally altering the boundaries of that territory. Such boundaries benefited from a double confirmation. On the one hand they were defined in international treaties laying down objective boundary régimes and, on the other, they were expressly recognized by the United Nations. Article 1 of the Trusteeship Agreements for the British and French Cameroons respectively repeated the territorial provision contained in Article 1 of the two mandate agreements, with the difference that the trusteeship agreement with the United Kingdom added to the 1919 Declaration a reference to the 1931 Exchange of Notes.

2. The confirmatory practice of the supervisory organs

8. In addition, the practice of the supervisory organs of the League of Nations and of the United Nations supported and confirmed the territorial delimitation established by the mandate and trust agreements. The Permanent Mandates Commission, established by the League, and the Trusteeship Council, established by the United Nations, took considerable notice of what was happening in the mandated and trust territories in question. This was markedly so where issues relating both to the constitutional status of the territory and to the boundary delimitation of the territory were involved. Accordingly, this practice is undeniably confirmatory of the conventional title as already recognized by the relevant mandate and trust agreements themselves.

9. Practice clearly shows that any possibility of a modification of the accepted boundaries would be rigorously analysed and the fundamental rule that no changes could take place without the approval of the League was noticeably upheld. Indeed, one of the recurring themes throughout the mandate and trust period was the serious attention given to the possibility of minor rectifications of the Franco-British line of 1919 as clarified in the Thomson-Marchand Declaration. In such manner was the territorial integrity of the mandated areas preserved in practice.

10. For example, on a number of occasions, the Commission concerned itself with proposals of a relatively minor nature to adjust the line so as to respect ethnic groupings. Of course, one cannot exaggerate the efforts made and all took place within the possibility reserved in the mandate instruments for minor modifications. Nevertheless, it is striking how from time to time questions

as to tribes divided across borders were raised. For instance, there were discussions over a number of years concerning the history of the Kentu, commencing in 1928 (Memorial of Cameroon, Ann. 150) and continuing in 1933 (Memorial of Cameroon, Ann. 164) and not concluding until 1937, at which time the Commission noted that it "would be glad to receive an assurance that despite the use of the word 'transfer', this operation has not resulted in any change in the status of the district or of its inhabitants" (Memorial of Cameroon, Ann. 171).

11. As this discussion emphasizes, the Commission concerned itself consistently with what were in effect relatively minor questions as to the position of the boundary lines and the possibility of slight adjustments in order to reunite divided tribes. We look in vain for any discussion concerning the peoples of the Bakassi Peninsula, or as Nigeria would have us believe, the people belonging to the Calabar entity split as it were by the line maintained by the United Kingdom. The system operated by the Mandates Commission was geared to the welfare of peoples within a clear territorial framework. It would have been interested in the Bakassi situation, had it been as claimed by Nigeria. The Commission was determined not to let pass any attempt, real or perceived, at modifying the boundaries of the mandated territories, however inconsequential. The fact that the territorial régime was a matter of deep and continuing interest for the League cannot be denied.

12. The same situation applied to the Trusteeship Council, the relevant supervisory organ, and to the United Nations Fourth Committee, which possessed a competence in such areas. Indeed, from its very first working session, the Fourth Committee demonstrated its interest in the territorial definition of the Cameroons trusteeship agreements. To this interest, the British representative replied that any modification of the boundary would obviously be brought before the Trusteeship Council (Memorial of Cameroon, Ann. 183, p. 109), thus maintaining the consistent approach of the United Kingdom authorities that the territorial definition of the Cameroons was a matter of continuing international concern.

13. The reports produced to the Council explicitly referred to the definition of the relevant boundaries. These invariably reproduced the terms of Article 1 of the trust agreements and discussed efforts at demarcation. In other words, the boundary issue was constantly and consistently before the Trusteeship Council and often the subject of question and discussion.

14. The boundary between the British Cameroons and Nigeria was alluded to on occasion, particularly with regard to revenue and immigration issues. For example, in discussions in 1954 at the Trusteeship Council, it was noted that the administering power was giving serious consideration to whether it should restrict immigration into the trust territory, particularly from Nigeria (Memorial of Cameroon, Ann. 200); a matter of particular concern, it may be said, with regard to Bakassi.

15. Thus we may say at this stage the following. First, the territories under British and French administration were territorially defined, partly by confirmation of the pre-existing boundaries of the German Kamerun in so far as relevant to the new, divided Cameroons and partly by express incorporation of the 1919 line as between the British and French administered territories. Secondly, the agreements in question incorporated territorial guarantees, in that the administering powers were unable to alter the boundaries without the consent of the necessary international body, and were obliged to carry out their functions in accordance with the terms of the international mandate and trusteeship mechanisms. And thirdly, that the supervisory organs of the League and the United Nations consistently monitored the implementation of the mandate and trust agreements, not least with regard to the maintenance of the territorial integrity.

Thank you for your attention, Mr. President, and I would ask you to call upon Professor Shaw to continue this presentation.

The PRESIDENT: Thank you very much, Professor Ntamark. I give the floor to Professor Malcom Shaw.

Mr. SHAW: Merci bien, Monsieur le Président.

I. THE LAND BOUNDARY

7. Bakassi

(b) ***The colonial administration — its legal significance***

(ii) The mandate and trusteeship period (second part)

1. Mr. President, Members of the Court, we have seen how the mandate and trust agreements confirmed the international status of the territories concerned and how this was reinforced by the establishment and practice of the international supervisory organs. In particular, and this needs

emphasizing right at the start, both mandate and trusteeship systems operated on the clear basis that the administering powers were unable in law to alter unilaterally the status and territorial configuration of the areas consigned to them. I will now turn to look in a little more detail at some of the special arrangements as they concerned the territorial issues and as they are relevant for our purposes.

1. Special administrative arrangements agreed within the recognized territorial framework

2. Nigeria focuses its argument upon *effectivités*. The relationship of such practice to conventional title has been discussed by the Court in the *Burkina Faso/Republic of Mali* case (*I.C.J. Reports 1986*, pp. 586-587). Where *effectivités* correspond to title, such practice is confirmatory only. Practice contrary to the conventional title gives way to the latter and cannot overrule it. *A fortiori*, practice that was recognized at the relevant time as not challenging the conventional title cannot subsequently be used in such a fashion. But, that is precisely the approach taken by Nigeria. In brief terms, Nigeria seeks to turn certain British administrative arrangements, expressly permitted under the mandate and trust agreements, and specifically stated as not affecting the question of territorial status, into affirmations of a territorial claim that contradicts the conventional title. In so far as Bakassi is concerned, the essential claim is that its sovereignty flows from sovereign acts in the peninsula, including acts performed by the United Kingdom during the mandate and trust periods. Nigeria has sought to bypass completely the international constitutional régime which protected the territorial integrity of mandated and trust territories. It attempts to create the impression that the fact that Bakassi was administered together with regions of Nigeria during the mandate and trusteeship periods must be taken as evidence of its title to the peninsula (see, e.g., Counter-Memorial of Nigeria, pp. 184-186, 197, 199, 206). No need to consider the legal structure and requirements of the mandate and trust systems, of course.

3. Nigeria notes, for example, that: "during the Mandate and Trusteeship periods up to the time of independence in 1960, Bakassi has consistently been administered from Nigeria" — so far, so good — but Nigeria adds: "and as part of the Nigerian political entity" (Rejoinder of Nigeria, p. 66). Oh no, Mr. President; *absolument pas*. Bakassi, as we shall see, was legitimately

administered together with the neighbouring Nigerian region, but never as "part of the Nigerian political entity", for this suggests an arrangement incorporating title or sovereignty. It is another example of Nigeria's slippery argumentation.

4. We need to consider carefully the legal situation. Article 22 of the Covenant of the League of Nations provided that in the case of class "B" mandates, such as the Cameroons, Togo and Tanganyika, the mandatory powers were able to administer the territory in question as an integral part of adjoining territories. Such arrangements did not, however, affect the international status of the territories or the boundaries as established. What they did seek to do was to enable a more efficient exercise of bureaucratic control as requested by the relevant administering power. Such arrangements were accomplished pursuant to express authorizations contained in the mandate and trust agreements.

5. Article 9 of the two Mandate Agreements respectively expressly permitted the administering power to: "constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this Mandate". Thus, the power to establish the administration of the British Cameroons from the neighbouring Colony and Protectorate of Nigeria was both derived from and expressly limited by the Mandate Agreement itself. That this was clearly understood by the British Government can be seen from the letter dated 14 November 1922 to the Governor of Nigeria. Article 9 of the Mandate Agreement is quoted verbatim and the suggestion is made that the two northern areas of the British Cameroons should be administered from the Northern Provinces of Nigeria. But it is specifically declared (in paragraph 5 of this letter) that: "of course they would remain subject to the restrictions imposed by the terms of the Mandate" (Memorial of Cameroon, Ann. 129).

6. British legislation itself supports this approach. The British Cameroons Order in Council of 1923 established that the Northern and Southern Cameroons would be administered "as if they formed part of" respectively the Northern and Southern Provinces of Nigeria (Memorial of Cameroon, Ann. 130). To make this clear position even more obvious, the British Report on the Cameroons for 1924, emphasized that:

> "while the mandated area is administered in accordance with Article 9 of the Mandate, *as though it formed an integral part* [this phrase was indeed underlined in the original text] of Nigeria, this administrative arrangement implies neither fusion nor incorporation. The position is, therefore, in strict accord with the letter and the spirit of the Mandate" (Memorial of Cameroon, Ann. 137: see also the Report for 1925, for example, Memorial of Cameroon, Ann. 144).

7. The position is thus crystal clear. The mandate arrangements for the British and French Cameroons permitted the mandatory powers to administer the territories as integral parts of adjacent possessions, provided that the measures adopted to that end did not infringe the terms of the mandate agreement. It was, in fact, only the British that utilized Article 9, but in so doing the legislative authorization for this expressly acknowledged that such joint administration could not affect the status of the mandated territory so joined. The Order in Council did not provide for the joint administration of the two parts of the British Cameroons "as part of" the two respective provinces of Nigeria. No. Not at all. The telling phrase used was that the territories would be administered "as if they formed part of" the Nigerian provinces. This is a crucial difference and it is upon this difference that Nigeria's claim simply falls apart.

8. As the mandate system gave way after the Second World War to the trusteeship system, so precisely the same situation was replicated. The relevant organs of the United Nations were scrupulous in seeking to ensure that while they understood the reasons for the administration of the British Cameroons together with the particular regions of Nigeria, such joint administration could not and did not affect the status at all of the British Cameroons as a trust territory. That trust territory did not become part of Nigeria and did not by any subtle process of bureaucratic convenience alter its international juridical character as a trust territory. Such a process would have rendered the very concept of a trust territory hollow indeed.

9. Article 5 *(a)* of the Trusteeship Agreement (Memorial of Cameroon, Ann. 182) permitted joint administration of the trust territory with neighbouring areas and in its annual reports to the United Nations Trusteeship Council, the British Government regularly referred to the constitutional status of the territory. In 1951, for example, the British representative explicitly declared that: "the Administering Authority had repeatedly stated that it would preserve the Trust Territory of the Cameroons as a separate entity in accordance with the terms of the Trusteeship Agreement" and that:

> "while the Administering Authority wished to bring about a gradual evolution of the Territory's people towards self-government in collaboration with their Nigerian neighbours, the measure [and here, Mr. President, we were talking about the entry into force of the new Nigerian Constitution in 1950] in no way altered the Trust Territory's status".

This was reinforced by the opinion of the Council itself which called upon the administering power to "take special precautions to ensure that the interests of the Trust Territory are not prejudiced nor submerged by those of Nigeria" (Memorial of Cameroon, Ann. 198).

10. During the trusteeship years, the nature of the institutional links between the territories of the British Cameroons and the neighbouring regions of Nigeria underwent a variety of modifications. In each case, these were reported to the Trusteeship Council, which was particularly concerned to ensure that no form of institutional drift might occur which would prejudice implicitly if not explicitly the international status of the trust territories. This applied to the Cameroons/Nigeria arrangements no less than any other similar arrangement.

11. Indeed, it is fair to say that Britain took some care to explain the nature of its administrative arrangements with regard to the trust territory and the consistency of such arrangements with international obligations. The Council itself regularly discussed the reports made and the answers provided to questions asked. Practice shows quite clearly that it was both well aware of the nature of the administrative arrangements concerning the British Cameroons and approved them in its capacity as supervising organ of trust territories in general. For example, Trusteeship Council resolution 293 (VII) concluded as to British Cameroons that: "the existing arrangements are not disadvantageous to the Territory, but that they deserve nevertheless the constant attention of the Council".

12. To summarize: the law and practice of the League of Nations and United Nations organs demonstrates absolutely clearly that while joint administrative arrangements and associations with neighbouring territories were permitted under the terms of the mandate and trust agreements, such arrangements had to be consistent with and had to respect the particular international status of the mandated and trust territories. In no circumstances could the actual practice of joint administration be understood to constitute or lead to a change in such status. Accordingly, the fact that the parts of the British Cameroons were administered together with the neighbouring parts of Nigeria could not possibly mean that those territories lost their separate international status and merged simply

and by stealth into Nigeria. Not only did the terms of the international mandate and trust agreements specifically exclude this, but the practice and approach of the international supervisory organs was intended precisely to avoid any such possibility. Any suggestion therefore that Nigeria can find any support at all for its thesis that British *effectivités* underpin its claim to sovereignty over Bakassi since the Southern Cameroons was administered together with the neighbouring region of Nigeria is pure mischievous fantasy.

2. The Southern Cameroons included Bakassi

13. I turn now to make some brief but specific comments with regard to the Bakassi Peninsula itself. There was never any doubt in the minds of the British authorities that Bakassi formed part of the mandated and then trusteeship territory of the Cameroons since it had, of course, formed part of German Kamerun pursuant to the 1913 treaty. Bakassi was an integral part of the area of the British Cameroons termed Southern Cameroons. Nigeria itself in its Counter-Memorial acknowledges that British officials accepted that Bakassi was part of the mandated territory, but seeks rather lamely to blame this on simple error by the officials in question (Counter-Memorial of Nigeria, p. 185). It is perhaps a mistake, Mr. President, to assume too readily that government officials are always wrong.

14. The British view that the Cameroons included Bakassi can be evidenced by the full report presented by Mr. F. B. Carr, an acting divisional officer, in 1922 on "The Fish Towns in the Rio-Del-Rey Area", a report that my colleague Professor Tomuschat referred to yesterday in a different context. Bakassi was often termed "Fish Towns" during the inter-war period. This report states unequivocally that:

> "The district is bounded on the north by the Issangali and Archibong peoples, on the north west by the Akwa Jafe which forms the boundary between the Calabar Province and the Cameroons. The southern boundary is formed by the Bight of Biafra and the open sea." (Reply of Cameroon, Ann. 3, para. 6; Counter-Memorial of Nigeria, Vol. VI, Ann. 114.)

15. During the inter-war years in particular, there were moves on a local level to move the administration of Bakassi from Victoria to Calabar. Nigeria tries to make something of this, but in fact much of the material simply emphasizes that Bakassi was not administered at a local level from across the international line. In 1932, District Officer Riley took up this campaign, as Nigeria

details in its Counter-Memorial (pp. 189 *et seq.*). He complained of the difficulty of administering Bakassi from Victoria, further to the east and suggested moving the administration. But what is crucial for our purposes is that the note clearly states that:

> "I am aware however that difficulties arise when dealing with the transfer of an area from the mandated territory: could not Fishtowns remain in the Cameroons Province (an earlier term for Southern Cameroons, Mr. President) but be administered from Calabar or Eket?" (*Ibid.*, p. 190.)

In other words, it was clearly accepted that Bakassi was part of the mandated territory of Southern Cameroons.

16. I provide one additional example. On 27 July 1936, the Acting Secretary of the Southern Provinces wrote a letter to the Governor of the Nigeria Protectorate in Lagos. The letter commenced: "I am directed by the Acting Chief Commissioner to inform you of the unsatisfactory position regarding the administration of the area known as the Fish Towns in the Victoria Division of the Cameroons under British Mandate . . .". Rather a clear assertion of status, one would have thought. Paragraph 7 of this letter posed the following question: "whether in principle the transfer of the Fish Town area to the Calabar Province for administrative purposes, during the continuance of the mandate, would be acceptable to Government . . ." (Counter-Memorial of Nigeria, Vol. VII, Ann. 132). This received the following reply from the authorities dated 16 September 1936 — this letter may be found in the judges' folder as document 45 (document 45/7):

> "I am directed by the Governor to inform you that there are certain objections to the transfer of a portion of mandated territory on the coast to a Province of Nigeria . . . Apart from minor legislative difficulties and the complications which would invariably arise from smuggling operations in the Fish-Town area, there is the possibility of the action being misconstrued at Geneva and the suggestion of some ulterior motive put forward." (Counter-Memorial of Nigeria, Vol. VII, Ann. 133.)

17. This exchange is important in revealing two things. First, there was no doubt in the minds of either the responsible officials in the area or in that of the Governor of the Nigeria Protectorate that Bakassi was part of the mandated territory of the British Cameroons. No question that it might be part of Nigeria, no question that it might be outside of the mandate arrangements. Secondly, there was some sensitivity at the highest level to the fact that the Permanent Mandates Commission in Geneva might interpret the suggested action, even though it was nothing more than an administrative arrangement well within the competence of the mandatory power, as an attempt

to annex Bakassi to Nigeria. Even the possibility that this might, incorrectly, be thought, appeared sufficient to prevent the suggested change. My colleague, Professor Mendelson, will address the Court further on other aspects of this correspondence.

18. British practice during the trust period similarly demonstrated the understanding that Bakassi was part of Southern Cameroons. The Nigeria (Constitution) Order of 1954 (Memorial of Cameroon, Ann. 201) is particularly critical here since it defined the Northern and Southern Cameroons, a definition that was incorporated in the Northern Cameroons (Administration) (Memorial of Cameroon, Ann. 222) and Southern Cameroons (Constitution) Orders of 1960 establishing new constitutional arrangements during the process to independence (Memorial of Cameroon, Ann. 223). The 1954 Order defined the eastern boundary of the Eastern Region of Nigeria, which became the international frontier between Cameroon and Nigeria after the incorporation of the Southern Cameroons into the Republic of Cameroon, as follows: "from the sea the boundary follows the navigable channel of the River Akpa-Yafe, thence follows the thalweg of the aforesaid River Akpa-Yafe . . .".

19. The recognition that Bakassi fell within the mandated and trust territory of the British Cameroons is also evidenced by examining the relevant maps. I need say no more at this stage than that Bakassi is consistently placed within the British Cameroons throughout this crucial period (see for example, Memorial of Cameroon, map No. 7 and Memorial of Cameroon, Ann. 383, maps Nos. 36, 38, 41, 43, 45, and 46). Some examples of these maps, Mr. President, may be found in the judges' folder at documents Nos. 46 to 49, but Professor Cot will address the Court separately on maps.

20. The conclusion is clear and incontrovertible. The conventional boundaries of Cameroon are confirmed. First, those boundaries that had their origin in the 1919 Declaration were concretized by incorporation into the relevant mandate and trust agreements. Second, the practice of the administering powers attested to such boundaries. Third, the practice of the international supervisory organs confirmed such boundaries. Fourth, there was never any doubt in the minds of either the British mandatory or trust authorities nor in those of the supervising organs of the League and the United Nations that Bakassi formed part of the British Cameroons.

(c) ***The process of accession to independence***

Introduction

1. Mr. President, Members of the Court, I turn now to consider the process whereby the British Cameroons exercised self-determination and became independent as two units. It matters because this process was undertaken through international supervision and was formally accepted internationally; because it reinforces all that has been said thus far about confirmation of Cameroon's conventional title: because it constitutes clear proof that Bakassi belongs to Cameroon. What is particularly interesting is that such a critical international process is hardly considered in Nigeria's pleading. One finds only the merest of passing statements, ignoring the critical issues involved, of course (see Preliminary Objection of Nigeria, Vol. 1, p. 10, para. 15 and Rejoinder of Nigeria, Vol. 1, p. 135, para. 3.181). While brevity of expression is a virtue, brevity to the point of invisibility does raise eyebrows.

1. The modalities for the termination of trusteeships

2. Since neither the United Nations Charter nor the specific trusteeship agreements contained express provisions concerning termination of trusteeship status, it followed that the hand over of power could only be accomplished by those to whom power has been entrusted, that is by the joint action of the administering power and the General Assembly. This is indeed what happened in all cases; a form of combined decision-making by the trust power and the General Assembly that endowed the process with a particularly effective form of international recognition and legitimacy.

2. The termination of the Cameroons trusteeships

3. The ending of the trusteeship over the French Cameroons was achieved without particular difficulty and requires no further comment. However, the situation with regard to the British Cameroons was less straightforward in view of division of the territory into two parts, administered together with the neighbouring regions of Nigeria. The question of the disposition of the British Cameroons thus became critical once the decision had been announced in 1958 that Nigeria would be granted independence on 1 October 1960. Accordingly in 1959 the General Assembly called for the holding of separate plebiscites in the Northern and Southern Cameroons under United Nations supervision (resolution 1359 (XIII)). A plebiscite was

held in Northern Cameroons in 1959 and showed a majority for deferring a decision until a later date. The United Nations Plebiscite Commissioner reported that this operation had been conducted efficiently and impartially (Memorial of Cameroon, Ann. 217, p. 33). The General Assembly then recommended that a second plebiscite be held, asking whether the voters wished to join the independent Federation of Nigeria or the independent Republic of Cameroon (resolution 1473 (XIV)); and this plebiscite took place on 11 and 12 February 1961.

4. The process with regard to Southern Cameroons was the subject of a memorandum by the United Nations Secretary-General in 1959 ("The Future of the Trust Territory of the Cameroons under United Kingdom Administration: Organisation of the Plebiscite in the Southern Part of the Territory", 5 Oct. 1959, A/C.4/418; Memorial of Cameroon, Ann. 216). This carefully surveyed the concerns of the population of the Southern Cameroons. These included issues such as the actual questions to be put in the proposed plebiscite and the question of the electoral register and the qualifications of voters. A variety of concerns are recorded, but no petitioner, no representative, no State, no one raised the issue of the existing boundaries of Southern Cameroons. They were clearly not in doubt.

3. The territorial definition of the Southern Cameroons

5. Following the first plebiscite in the Northern Cameroons, in November 1959, a process of separation between Nigeria and the territories of the British Cameroons was set in motion. This was intended to deal with the impending independence of Nigeria and to assist in the carrying out of the second plebiscite in the north and the first plebiscite in the south. This process involved not only administrative and constitutional changes (see the Northern Cameroons (Administration) and the Southern Cameroons (Constitution) Orders of 1960, Memorial of Cameroon, Anns. 222 and 223), but also included a clear territorial definition of the borders between Nigeria and the Cameroons.

6. As we have seen, the Northern and Southern Cameroons were described in terms of a reference to the Nigeria (Constitution) Order in Council 1954, which in turn referred generally to the territorial definition contained in the trusteeship agreement. Paragraph 4 of the Second Schedule to the Order defining Southern Cameroons in its turn referred back to the Northern

Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation 1954, which had come into force the day before (Memorial of Cameroon, Ann. 202). The western boundary of the Southern Cameroons, which became the Cameroon-Nigeria international boundary after the incorporation of that territory into Cameroon, is, as we have seen, defined in terms of the "navigable channel of the River Akpa-Yafe", that is the boundary as affirmed by Cameroon and as challenged now by Nigeria. This was further reinforced by the terms of the Plebiscite Order of 1960 (Memorial of Cameroon, Ann. 221), which came into force on the date of Nigeria's independence. This provided for the holding of the plebiscite in the territory and divided the area into 26 plebiscite districts.

7. Thus, powerful evidence existed as to the relevant boundaries in the period immediately preceding the holding of the plebiscites. The important point to emphasize at this juncture is that the administering authority put into effect legislation which reaffirmed the boundaries in question a short time before the holding of the United Nations supervised plebiscite. The United Nations authorities were not only aware of what was happening, but as we will see, the United Nations supervised plebiscite process expressly relied upon the voting districts established in the 1960 Plebiscites Order.

4. The plebiscite

8. On 1 October 1960, Nigeria became independent and the three 1960 Orders came into effect establishing a constitution for the Southern Cameroons, providing for the administration of the Northern Cameroons as a separate entity and laying the groundwork for the holding of the plebiscites. The plebiscites were held on 11 and 12 February 1961 in the territories. A clear majority in the north voted to join Nigeria and a clear majority voted in the south to join Cameroon.

9. In his report to the Trusteeship Council of 3 April 1961, the United Nations Plebiscite Commissioner approved the process (United Nations doc. T/1556; partially extracted in Memorial of Cameroon, Ann. 224). The General Assembly adopted resolution 1608 (XV) on 21 April 1961 endorsing the results of the plebiscites, and concluding that the peoples of the two parts of the trust territory had freely and secretly expressed their wishes with regard to their respective futures in accordance with the relevant General Assembly resolutions (resolution 1352 (XIV) and

1473 (XIV)). The immediate implementation of the plebiscites was called for. The effect of this resolution — resolution 1608 — has already been discussed by the Court. In the *Northern Cameroons* case, the Court noted that: "there was no doubt — and indeed no controversy — that the resolution had definitive legal effect" (*I.C.J. Reports 1963*, p. 32), a determination that was reaffirmed in the case concerning *Certain Phosphate Lands in Nauru (Nauru* v. *Australia) (Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 251). Such "definitive legal effect" related not only to the constitutional status of the Northern and Southern Cameroons, but also to their territorial definition. The plebiscite and thus the appropriate decision-making process took place within an accepted and unchallenged territorial framework.

10. The point can be further confirmed as follows. The process of arranging and holding the plebiscite meant that the areas that fell within the Northern and Southern Cameroons had to be ascertained. Voting districts were established and are carefully described in the Report of the United Nations Plebiscite Commissioner of 3 April 1961 and the Court will find relevant pages of this Report in the judges' folder — this is document No. 50. The voting districts in question were in fact precisely the same as those established in the 1960 Plebiscites Order, which indeed in turn reflected earlier constituencies. There were 26 districts in all [projection No. 1]. The map appended to the Report of the Commissioner, which can now be seen behind me, and a copy of which is also contained in the judges' folder as document No. 51, described the voting arrangements. This map was also projected in my pleading on Monday morning. May I this time, project an enlargement of the notation at the very end of the map — it can't really be seen on this map — demonstrating that it is of United Nations provenance and indeed Map No. 1199 Rev 1 United Nations of March 1961 [end projection No. 1 — projection No. 2/document No. 48/7]. I hope that's just a little bit clearer, Mr. President. The important thing of course, I wish to emphasize, is that the map is of United Nations provenance, the map attached to the report of the United Nations Plebiscite Commissioner [end projection No. 2 — return to projection No. 1].

11. Further, the Registration Officers divided the plebiscite districts into registration areas and 294 of these were established in all, with a total of over 4,500 staff being involved in the plebiscite supervision process (United Nations doc. T/1556, 3 April 1961). The plebiscite was conducted by the Plebiscite Administrator working to the direction of the Plebiscite Commissioner.

A series of observation posts were established in each plebiscite district and an observer placed in each such post. Our interest centres on the Victoria district in the south-east corner of Cameroon. This was divided into Victoria North East; Victoria North West; Victoria South East and Victoria South West. From the map enclosed in the Commissioner's Report, and still projected behind me, it is immediately clear that the Victoria South West plebiscite district included the Bakassi Peninsula. This district, it is provided, consisted of seven registration areas. This is a striking affirmation that the peninsula was recognized by the United Nations as constituting part of Southern Cameroons at the critical time pending its disposition under international supervision.

12. The Report of the Plebiscite Commissioner — the relevant pages are in document No. 50 — reveals that the final register of voters for the plebiscite process included 6,813 for Victoria South West. The result of the plebiscite is shown in South West Victoria and we can see from the report that 2,552 people voted to join Nigeria and 3,756 people voted to join Cameroon. And, if I can repeat, this United Nations map accompanying the report — actually annexed to the report — clearly reveals that Bakassi fell within the Victoria South West plebiscite district.

13. The plebiscite process was endorsed by the United Nations Plebiscite Commissioner and by the General Assembly. No protests were made by any State as to the territorial definition of the territories of Northern and Southern Cameroons. It is abundantly clear that the plebiscite process was carefully organized and supervised. It is equally clear that Bakassi fell within the plebiscite territory. Nigeria did not claim at the time of the plebiscites or in the periods immediately preceding or succeeding these plebiscites that the territorial composition of the plebiscite districts was flawed in that they included Nigerian territory.

14. Mr. President, Members of the Court, this is how the trust territory of the British Cameroons came to independence. By virtue of United Nations supervised plebiscites and within clearly published and accepted boundaries and in the light of the transparent activities of the administering power, the Northern and Southern Cameroons voted respectively to join the independent Nigeria and the independent Cameroon. The process was open and international and uncontested. What is above all beyond question is the territorial framework within which the independence process took place. Territorial titles established in part by the 1913 Treaty and in

part by the 1919 Declaration incorporated in the Mandate and Trust Agreements were confirmed by the process of coming to independence.

I thank the Court for its attention and would ask you, Mr. President, to be so kind as to call next Professor Mendelson.

The PRESIDENT: Thank you very much, Professor Malcolm Shaw. I now give the floor to Professor Maurice Mendelson.

Mr. MENDELSON: Thank you, Mr. President.

I. THE LAND BOUNDARY

7. Bakassi

(d) *Cameroon's effective administration of Bakassi and the impact of Nigeria's alleged* effectivités

1. Introduction

1. Mr. President, Members of the Court, it is a great personal honour for me to appear before you. But as I rise to address you, for the first time, on the Cameroonian and alleged Nigerian *effectivités*, it is, I must confess, with a slight feeling of discomfort. The reason for my discomfort is to be found in the Chamber's lapidary explanation of the role of *effectivités* in the case of the *Frontier Dispute (Burkina Faso/Republic of Mali)*, the pertinent part of which, as you know, begins as follows[1]: "Where the act corresponds exactly to law, where effective administration is additional to the *uti possidetis juris*, the only role of *effectivité* is to confirm the exercise of the right derived from a legal title." Pausing there, this is precisely Cameroon's situation: having a good title, any evidence of *effectivités* that it adduces are merely confirmatory. In our submission, on the other hand, Nigeria falls squarely within the second sentence: "Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title." That being so, logically, there is little more to be said. Hence my mild embarrassment at addressing you on this subject.

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[1] *I.C.J. Reports 1986*, pp. 554, 586-587.

2. Nevertheless, in its Rejoinder, Nigeria has persisted in ignoring the very real legal objections which Cameroon has made to its approach, and has insisted on piling up examples of its alleged *effectivités* in order to bolster its spurious claim to sovereignty over the Bakassi Peninsula by means of its so-called "historic consolidation of title". I shall therefore submit to you that the legal framework within which Nigeria seeks to situate its *effectivités* (and those of Cameroon) is tendentious and misleading; and further, that the facts relied upon by Nigeria do not have the significance which it seeks to attach to them. The reliability of at least some of the evidence adduced by Nigeria is also open to question, but it is unnecessary to go into that further now, even if time allowed. For it is our case that much of that evidence — even if valid — when properly analysed, supports Cameroon's case, not Nigeria's; and furthermore, that the remaining Nigerian alleged *effectivités* are insufficient to give it sovereignty. We also say that, on the other hand, Cameroon's own exercises of sovereign authority corroborate, if corroboration is needed, a title firmly based on treaties and other instruments, recognized by the entire organized international community and, not least, by Nigeria itself; and, we further submit that these Cameroonian *effectivités* are more than sufficient to counter our opponents' claim that Cameroon acquiesced in the exercise of sovereign authority by Nigeria. I shall not repeat the evidence of Cameroonian *effectivités* in exhaustive detail in the limited time I have: many instances are found in the Memorial[2], and especially in the Reply[3].

3. But before I turn to the facts, I should like, as I said, to make some brief submissions on the misleading legal framework within which Nigeria has sought to locate the question of *effectivités.*

2. The misleading legal framework of Nigeria's claims on *effectivités*

4. Mr. President, the concept of "historic consolidation of title" plays a number of different roles in international law and, in the way that Nigeria has deployed it, wallpapers over a number of serious cracks. No doubt the concept can be useful in certain contexts, such as where it is not clear which of two competing States had the original title. It may even be of some use as a sort of

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[2]Vol. I, pp. 486-496, paras. 4.420-4.456.

[3]In particular, Vol. I, pp. 307-312, paras. 5.215-5.237.

shorthand term describing a number of different rules about, for example, modes of acquisition. But there are circumstances where good old-fashioned concepts like occupation (in the civil law sense of *occupatio* — original acquisition) and prescription are perhaps more illuminating. In particular, the distinction between them helps to clarify that determining who has title is *not* simply a matter of counting the acts of sovereignty on each side, and adjudicating title to one with the largest pile. The authorities and the State practice are clear: the quantity and quality of *effectivités* needed to displace an existing title are far greater than is required by a State which already holds a title by virtue of cession, State succession, or (though it is irrelevant in the present case), occupation of *terra nullius.*

5. Nigeria evidently thinks that the concept of historic consolidation of title suits it quite well because it enables it to blur over that important distinction, and also to blur over three analytically separate elements in its claim to sovereignty over the Bakassi Peninsula.

6. The first element in its claim is the continuing consolidation by Nigeria of the alleged title of the Kings and Chiefs of Old Calabar[4]. There is, of course, a fatal flaw in that reasoning. For even if there ever was a time when this alleged entity wielded sovereign authority over Bakassi — which Cameroon denies on various grounds already explained by my colleagues — and even if — which Cameroon also denies — this alleged authority had continued during the period when the British were consolidating their own power in their colony and protectorate in Nigeria — even if all of this were true (which it is not), there was a complete hiatus when the Mandate was conferred. For, as my colleagues have shown very clearly, the British Crown did not rule in Bakassi as the agent of these "Kings and Chiefs", nor even as a sovereign in its own right. Rather, Great Britain administered the British Cameroons under a League of Nations mandate. So the chain was broken and there ceased to be any title to consolidate. The title of the "Kings and Chiefs of Old Calabar" could no longer exist and so could not be consolidated.

7. The second basis of Nigeria's claim of historic consolidation blurs into the first. This basis is that there was an effective and uncontested exercise of sovereignty over Bakassi by the United Kingdom itself, as the ruler of Nigeria — not as the continuation of the "Kings and Chiefs",

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[4]Rejoinder, Vol. I, p. 91, para. 3.54.

but as the ruler of Nigeria — and that Nigeria is the successor to that title. I shall touch on this very briefly in my analysis of the facts, but it is quite clear, as my learned friends Professors Ntamark and Shaw have already submitted to you, that the British administered the peninsula as a territory legally distinct from Nigeria — as indeed they were obliged to do. The fact that the administering authority of Southern Cameroons, including Bakassi, was at the same time the ruler in Nigeria was, from a legal point of view, entirely coincidental. That the United Kingdom was permitted, for the sake of its administrative convenience, to conduct some of that administration from eastern Nigeria is irrelevant. If it had chosen to administer Bakassi from Accra, that would not have made the peninsula part of Ghana. The Court will recall, from its recent *Qatar/Bahrain* case, that for a long time British jurisdiction in and over the Arabian Gulf States was exercised by the British Political Resident in Bushire, which is in Persia. Did that make the Gulf sheikhdoms part of Persia? So this head of the historic consolidation claim, this reliance on the effective exercise of State authority by the United Kingdom from areas of Nigeria during the time of the mandate and the trusteeship is fatally flawed, also.

8. Indeed, we can, and must logically, go further. Because Great Britain's authority over Bakassi under the mandate and trusteeship was legally distinct from its authority over Nigeria, it follows inevitably that all of the acts of effective administration performed by the British over Bakassi, so far from strengthening Nigeria's title, actually weaken it — fatally — and, instead, fully confirm Cameroon's title. For the administration was not carried out on behalf of Nigeria, nor on behalf of some "acephalous" (and we say, body-less too) group of local sovereigns within it, but under a quite different title. The United Kingdom was acting as the mandatory power under Article 22 (1) of the League Covenant, that is to say, on behalf of the international community and of the inhabitants of Southern Cameroons, including Bakassi. And it is precisely to this title that the Republic of Cameroon has succeeded. Cameroon is therefore, logically and inevitably in my submission, entitled to treat all of the *effectivités* of its British predecessor in title as its own, and conversely Nigeria cannot rely upon them at all.

9. The third use, Mr. President, made by Nigeria of the concept of historic consolidation of title is rather *sotto voce*, but the Rejoinder goes on to say that Nigeria invokes the concept: "To provide, if this were to prove legally necessary, an independent source of title based upon the

process of peaceful possession, acquiescence, and historical consolidation in the period since Independence."[5] The dreaded word which Nigeria is shrinking from using here is prescription. Perhaps it shrinks from it for reasons of what we might consider "political correctness", because it knows that prescription is a process by which one State gains title by possessing what was originally, by definition, the territory of another State. But probably its reticence is more pragmatic, and is due to its realization that, for prescription to occur, the adverse possessor needs to pass a number of stringent tests which Nigeria cannot hope to satisfy.

10. For the moment, we can summarize these tests in this way. The acts of the State which does not hold the title must be carried out in a sovereign capacity, under a claim of right, openly, peacefully, without protest or competing activity by the existing sovereign, and for a sufficiently long time. So far as this time element is concerned, how much time needs to have elapsed depends on circumstances, such as the remoteness of the region and the intensity of activity. According to some authors, it is also necessary that there should have been acquiescence by the existing sovereign; and certainly protest will prevent prescription occurring. I think I need cite no authority in support of these propositions to this Court, for they are elementary. I shall return in due course to the application of these criteria to the facts of the present case. Suffice it to say, for the moment, that they eliminate a very large number of items from Nigeria's list of *effectivités*.

11. Mr. President, there is one further advantage which Nigeria apparently hopes to gain from the use of the concept of "historic consolidation of title", and that is to circumvent the problem of what we might call the "legal burden". For in a case of prescription, if there is a conflict of *effectivités*, "preference should be given to the holder of the title", as the Chamber succinctly put it in the *Burkina Faso/Republic of Mali* case. This encapsulates what has always been the rule in international law. So it will not do for Nigeria to pile up instance after instance of alleged *effectivités* in one pan of the scales, so to speak, and then point out that Cameroon has cited fewer. The law requires this Court to tilt the scales of justice in favour of the title-holder, and it will require a great deal to displace that title[6]. For otherwise, there would be no pre-eminence given to sovereignty, and anyone could acquire title merely by "creating facts" on the ground.

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[5]Vol. I, p. 91, para. 3.54.

[6]See, for example, the *Sovereignty over Certain Frontier Lands* case (*I.C.J. Reports 1959*, p. 209).

Mr. President, I have come to a break in my presentation. I do not know whether this is a convenient moment for the Court to rise?

The PRESIDENT: If it is a convenient moment for you, it is a convenient moment for the Court. L'audience sera suspendue pour une dizaine de minutes. Je vous remercie.

L'audience est suspendue de 11 h 15 à 11 h 25.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise et je donne à nouveau la parole au professeur Mendelson.

Mr. MENDELSON: Merci, Monsieur le président.

3. The facts

12. Mr. President, Members of the Court, I now turn to the facts. With your permission, I shall not deal in completely separate sections with the Cameroonian *effectivités* on the one hand, and the alleged Nigerian *effectivités* on the other. Although, as I have just explained, juridically they have different qualities, depending on who had title at the relevant time, in terms of subject-matter and chronology they are often more conveniently dealt with together — though, for convenience of exposition, I shall not adhere rigidly to this scheme. I should add that, both for the reasons I have just outlined, and also for reasons of time, it is simply not possible for me to deal with anything like all of the individual acts, or even classes of acts, of sovereignty relied upon by the two sides. I shall simply concentrate on some important points.

(a) *The German* effectivités

13. Logically, one should begin with the German *effectivités*, since Germany was the grandfather in title, so to speak, of Cameroon. However, it was shown to you yesterday, in Professor Tomuschat's pleading, that, contrary to Nigeria's assertions, Germany did in fact exercise sovereign authority over the Bakassi Peninsula during the short period in which it was able to remain there, and there is no need for me to repeat what he said. You will recall that he cited British documents from the Nigerian bundle which proved that Germany had indeed exercised sovereignty and performed acts of administration in the peninsula. Rather than speculate, as

Nigeria did, on the possible reasons for the alleged absence of Germany from the peninsula[7] — which it did in its Counter-Memorial, for example — Nigeria might perhaps have more profitably sought the truth in the documents which it itself annexed to the written pleadings, albeit for a quite different reason.

14. I mention this because it is by no means an isolated example. Nigeria has presented the Court with a huge mass of documentation in support of its case on "historic consolidation of title". But if one works one's way through what is sometimes a rather tedious mass of, for example, 80-year-old bureaucratic correspondence, one not infrequently finds that, far from proving the assertion which Nigeria seeks to make, these documents, when carefully analysed, prove the opposite. I shall draw attention to some examples shortly. Sometimes, again, a document which Nigeria has annexed for one purpose actually supports Cameroon's contentions on a quite different matter. An example is the document cited yesterday by Professor Tomuschat, namely Acting Divisional Officer Carr's Assessment Report on the Fish Towns of February 1922[8]. Deposited by Nigeria in support of a far-fetched argument based on the ethnic origins of some of those who fished in Bakassi waters, it in fact furnishes us with the evidence of previous German *effectivités*. Section II of the same report, incidentally (i.e., Carr's report of 1922), also shows us that there was no royal or chiefly organization in Bakassi at that time, 1922 — it expressly says so. So if the mythic "Kings and Chiefs of Old Calabar" ever did exercise authority there in a manner which had any significance from the point of view of international law — an assertion which Cameroon denies — certainly they had vanished from the story by 1922, and probably long before, contrary to what Nigeria expressly asserts[9].

(b) ***British administration, 1922-1961***

15. Following the expulsion of Germany, the United Kingdom soon imposed its own authority, in its capacity as the League's mandatory. My friends Professors Ntamark and Shaw have already addressed you on the history of the mandate and trusteeship, and on the events surrounding the plebiscite, on several occasions for different purposes and I shall not try your

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[7]Counter-Memorial of Nigeria, Vol. I, pp. 177-180, paras. 9.2-9.3.

[8]Counter-Memorial of Nigeria, Vol. VI, Ann. 114, p. 975.

[9]For example, Counter-Memorial of Nigeria, Vol. I, p. 182, para. 9.12.

patience by going over the same ground yet again. I would simply point out that some of the documents that they have referred to illustrate once again the unfortunate propensity of Nigeria to deposit documents which it confidently alleges support an assertion, when in fact they prove the opposite. Mr. President, Members of the Court, a great swathe of documents has been presented to you in order to persuade you that Bakassi was ruled as part of the Nigerian protectorate or colony and that this reflected social and ethnic ties and that, somehow, all of this is significant[10]. But it has already been shown to you a few minutes ago by my colleagues, that although some junior officers may have wanted to move the administration of Bakassi to Calabar for the sake of convenience, their superiors resisted, being well aware of the legal differences between the two territories and being nervous of reactions in Geneva.

16. There is no need for me to repeat that demonstration. But before we leave these same Nigerian Annexes, there are two other features to which I should like briefly to draw to your attention.

17. First, the correspondence relied upon by Nigeria records a debate, you will recall, between various British officials as to whether Victoria in the Southern Cameroons was a better place to rule Bakassi from than Calabar (or indeed Eket) in Nigeria. But whereas Cameroonian territory could, under the mandate, be lawfully administered either from the Cameroons or from Nigeria, as you well know, depending on convenience, Nigerian territory — I repeat, Nigerian territory — could only be administered from Nigeria. (I am not talking about international law, I am talking about British colonial law and practice.) Nigerian territory could only be administered from Nigeria. If that is the case, how come that British officials are solemnly sitting there discussing whether to rule this alleged piece of British territory from Victoria, which was plainly in the Southern Cameroons. It simply does not make sense. So once again the Nigerian evidence, so far from supporting its case, actually proves the opposite, as well as, incidentally, helping to refute Nigeria's extraordinary assertion that "those officials who believed that at least in theory Bakassi was part of the Mandated Territory were simply mistaken"[11].

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[10]Counter-Memorial of Nigeria, Vol. VI, Anns. 114-133, p. 975; Vol. VII, p. 1105.

[11]Counter-Memorial of Nigeria, para. 9.19, Vol. I, p. 185.

18. There is a second interesting feature in this block of correspondence because as well as the question of where Bakassi was to be administered from, there was the age-old, the perennial problem of collecting taxes from Bakassi fishermen, who were not over-anxious to pay taxes — not surprisingly, you may think. A typical example from this correspondence is a report of 25 March 1935 by the District Officer for the Victoria Division in Southern Cameroons, which Nigeria has tendered[12], and which Professor Tomuschat also referred to yesterday in order to corroborate what he said about Germany collecting taxes. Of course, the document is mainly concerned, as are most of this group, with the collection of taxes by the British authorities after Germany had left the scene. May I draw the Court's attention to paragraph 4 of this Annex, which is Annex No. 125 to the Nigerian Counter-Memorial and which perhaps presents the issue rather more succinctly than do the other documents in this group — though they all support what I am about to say. First, some fishermen were avoiding paying tax altogether, so the authorities mounted what they called "tax raids" to prevent the fishermen from hiding when the time came for them to pay their taxes. The problem was complicated by the fact that many of the Bakassi fishermen had a main residence in Calabar and were already paying tax in Calabar. The British authorities felt that it would be unfair to make these people pay tax in two places, in Calabar and Bakassi. However, they showed no disposition to allow Calabar fishermen simply to pay tax in Calabar, and nothing in Bakassi, nothing in the Southern Cameroons. Mr. Bridges therefore says in paragraph 4:

> "[A]bout 120 men are paying 4 shillings to Calabar and 3 shillings to Victoria [which is of course in the Southern Cameroons]. About 140 to 145 are paying (or should be!) [his words] 3 shillings tax to Victoria and about 120 or more are paying nothing and just run away. It may be stated as a general rule that the regular Fishtown dwellers probably pay their Calabar and Victoria taxes in full."

So what we have here is the clearest possible evidence, fully corroborated by many of the other documents in this group submitted by Nigeria, of the levying of taxation in Bakassi by the British authorities of Southern Cameroons, very much separately from the Nigerian tax system. And what is more, taxing even Calabar citizens, though other correspondence in this series shows that they were given the benefit of a sort of double taxation arrangement between the authorities in Nigeria

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[12]Counter-Memorial of Nigeria, Ann. 125, Vol. VII, p. 1063.

on the one hand, and Southern Cameroons on the other. But the documents clearly show that there was no propensity for the authorities in Southern Cameroons to forego their taxes in Bakassi. The documents also show that at various times the Southern Cameroons rate was different from the Calabar rate — as indeed was the case in the particular letter from which I have just quoted: 4 shillings in Calabar, 3 shillings on Victoria. None of this would have made sense if Bakassi were part of the same sovereignty as Calabar. So once again, documents adduced by Nigeria in support of a far-fetched argument based on ethnic ties and of its manifestly incorrect assertion that British officials administered Bakassi in right of Nigeria, turn out to provide us with good evidence of the exercise of sovereign power, the power of taxation, by Cameroon's predecessor in title, and also of the sharpest possible distinction being made in Bakassi between the tax territory of Southern Cameroons on the one hand, and that of neighbouring Calabar on the other.

19. As well as its misplaced reliance on British administration, Nigeria strongly emphasizes the ethnic origins and tribal affinities of many of the inhabitants, especially the fishermen, on the peninsula. My friend Professor Bipoun Woum has already addressed the Court on the irrelevance of ethnic ties and nationality; but perhaps I might be permitted to add a very brief observation, from the perspective of a non-African, in the context of both pre- and post-independence *effectivités.*

20. Mr. President, Members of the Court, one of the first things that strikes a visitor to Cameroon is the very large number of Nigerians who live there, even in parts of Cameroon which are far removed from the Nigerian frontier and whose sovereignty has never been contested by Nigeria. This is very much the case for example in Bamenda, the capital of the North West Province, far from the boundary. And I do not mean Nigerian citizens with merely ethnic links to Nigeria (though Nigeria's pleadings often fail to make this elementary distinction). I mean that these people whom you see in Bamenda are actual Nigerian citizens, who are either permanently settled in Cameroon or — in many cases — come and go between the two countries. Poor people are often more hospitable than rich ones, and there is a long and honourable tradition in Cameroon of allowing Nigerians and people from other neighbouring African countries to come and live there and try to make a living. But this does not mean that the Nigerian fishermen carried Nigeria's sovereign authority with them in their canoes, any more than do the large number of "guest

workers" in cities in Europe, North America and elsewhere. And this so, even if they form a majority of the population. This proposition that the mere fact that people of one nationality live in another does not turn that territory into part of the country from which they come rings particularly true in the light of the Court's ruling in the *El Salvador/Honduras* case that "*effectivités*, where relevant, have to be assessed in terms of actual events, not their social origins"[13]. So Nigeria is not able to build a plausible case on the fact that such people have lived on the Bakassi Peninsula, that they held Nigerian passports, that they seasonally commuted, as it were, between Calabar and Bakassi and paid taxes in both places and that they had links of allegiance to a variety of tribal groups outside Cameroon.

21. In this connection, Nigeria also seems to have overlooked the significance of Article XXVI of the Anglo-German Agreement of 11 March 1913 — an article which it has not sought to repudiate. Article XXVI provides as follows: "XXVI. The fishing rights of the native population of the Bakasi *[sic]* Peninsula in the estuary of the Cross River shall remain as heretofore." Accordingly, even after the Bakassi Peninsula was transferred from Great Britain to Germany, the inhabitants on the Nigerian side were entitled to continue to come and fish (and vice versa). This radically undermines the probative effect of the evidence on which Nigeria relies so heavily.

22. I come finally to the post-independence period.

(c) ***The post-independence period***

23. Mr. President, Members of the Court, Nigeria has presented you with a very long list of its alleged *effectivités.* Many of them do not qualify as proper *effectivités,* for reasons I have already outlined and for others which I shall mention shortly. Still, superficially, it is a long list. Cameroon's is shorter. Deliberately so, however. For the legal reasons I have already put before you Cameroon, as the party with the title, needs to prove very little (if anything) by way of corroboration of its title. So it has deliberately refrained from playing Nigeria's game, considering it quite inappropriate to go down the path of amassing one example after another. Furthermore, when one is at home in one's own territory, one does not make a point of piling up evidence of the

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[13] *I.C.J. Reports 1992*, p. 396, para. 58.

obvious. From the time of the plebiscite and for a considerable period thereafter, the conduct of Nigeria gave Cameroon no reason to suspect that it had designs on Bakassi, or that it claimed Bakassi. On the contrary, Nigeria's statements at the time of the plebiscite, its conduct in signing the Yaoundé and Maroua Agreements in the 1970s, and many other instances, such as the consular visits which I shall refer to tomorrow, led Cameroon to believe that there was not only no dispute as to its sovereignty over Bakassi, but not even the smallest question mark. And so why amass evidence. And it must not be forgotten either that, with all the problems which beset the young State in the decade or so following independence, it is perhaps not surprising if a relatively remote and inaccessible part of its territory did not receive the same attention as, say, Douala.

24. Mr. President, there is nevertheless a very significant type of Cameroonian activity which began very soon after independence, namely the granting of permits for hydrocarbon exploration and exploitation over the peninsula itself and offshore. It is common ground between the Parties that numerous such licences have been granted by Cameroon. Indeed, several of the handsome maps produced by Nigeria in support of its maritime claims demonstrate this. I refer, in the first instance, to the series of maps purporting to show the licensing history, which form Chapter 10 of the Rejoinder[14]. Whilst Cameroon has serious questions about these maps in other respects, you will note that they show consistent licensing by Cameroon over the peninsula and its offshore waters from *1963 onwards*, and virtually no overlapping concessions by Nigeria over the peninsula itself or its immediate offshore up to the terminal date of these illustrations, which is 1999. And on Figure 13.6, facing page 514 of Volume II of the Rejoinder you will see what, according to Nigeria itself, are the actual Cameroonian wells drilled, starting in 1967. This figure is now being projected [start projection], and you will also find a copy in your folders as item 53 7 *(d)*. This very plainly shows numerous Cameroonian oilfields — the ones marked in red — both in the waters to the west of Bakassi, to the south, and above all to the south-west. Essentially, it is Nigeria's case regarding maritime delimitation that the sinking of these wells by the two parties was uncontested, and they argue that a line between them should constitute the maritime boundary, if the Court holds that Bakassi belongs to Cameroon. That question of

[14]Vol. II, pp. 459 ff.

maritime delimitation will be dealt with by my friend Professor Kamto tomorrow, and the connected question of the offshore wells and concessions. But for present purposes, i.e., sovereignty over the Bakassi Peninsula, the point is that these wells were drilled under the authority of Cameroon, quite openly, and Nigeria by its own admission did not protest. It would make no sense for it to have failed to protest if Bakassi belonged to Nigeria, and its counsel's valiant attempts to argue to the contrary are, if I may respectfully say so, highly unconvincing [end projection].

25. If we now turn from the oil licences which continued from 1963 onwards, Nigeria seeks to argue that the other activities of Cameroon in Bakassi can be broken down into three stages, which it identifies as: 1960 to 1972, 1973 to 29 March 1994 (the date of the Cameroonian Application), and thirdly, the subsequent period[15]. Cameroon, incidentally, as we will see, does not accept this self-serving classification.

26. It will be convenient, for purposes of my explaining why we do not accept it, to begin with the last period, the period after the deposit of the Application. Nigeria characterizes this as a period starting with the deposit of Cameroon's Application. In fact the critical date should be, at the latest, the date of the invasion of Bakassi in December 1993 to January 1994 — that should be the latest critical date. But, as a matter of fact, from the beginning of the 1990s we see an intensification of Nigerian attempts to assert sovereignty over Jabane and elsewhere, with the obvious intention of building a record of *effectivités*. What had largely amounted to mainly verbal assertions of authority now found expression in concerted action coupled with a campaign to win over the loyalties of the resident ethnic Nigerian population. Attempts to raise the Nigerian flag in 1990 and 1991[16]; a sudden influx of Nigerians into Jabane; measures by Nigeria to sponsor schools and health facilities[17]; the appearance of signs claiming the town as part of Nigeria in January 1993[18]; the construction of military installations following the invasion; and preventing Cameroonian authorities from administering the area, all point to a concerted attempt by the

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[15]Counter-Memorial of Nigeria, Vol. I, pp. 267-280, paras. 10.154-10.186.

[16]Vol. VII, Anns. MC 362-363, pp. 2909 and 2915.

[17]Counter-Memorial of Nigeria, para. 10.100.

[18]Memorial of Cameroon, Vol. VII, Ann. 325, p. 2709.

Nigerian Government to build title to Jabane — and hence to Bakassi — by creating facts on the ground. So any Nigerian activities from about April 1990, when Nigerian forces disembarked several times at Jabane and replaced the Cameroon flag with their own, should be treated as taking place within a suspect period.

27. By not listing post-Application *effectivités* in that part of its pleading which divides the post-independence practice into separate periods, Nigeria appears to accept that it cannot rely on post-Application *effectivités*, which certainly ought to be the case. However, in other parts of its Rejoinder it does invoke practice much later than the date of the Application. For instance, under the heading "The exercise of military jurisdiction", it refers to an arrest of smugglers in 1999, two arrests of unlicensed fishing boats in 2000, and the rescue of passengers from a vessel which foundered (hardly an *effectivité* anyway) in 2000[19]. Here, as so often in these proceedings, Nigeria seems to be trying to have its cake and eat it.

28. *A propos* of military activity and the like, when in its pleadings Nigeria refers to Cameroonian military activity on Bakassi in the decades preceding the Nigerian invasion, it describes this Cameroonian activity as harassment, or worse. Mr. President, each side can abuse the other, but for Cameroon this was the regular exercise, when needed, of State authority in its own territory.

29. Having established the temporal finishing line, we can now go back in time to consider the remaining years, which began, according to our opponents, with the independence of the two States. Nigeria, I remind you, seeks to divide this earlier period into two parts, the first of which is 1960 to 1972, which it characterizes as a period where there is evidence of Cameroonian acquiescence in Nigerian rule. So far as concerns the second period, which according to it runs from 1973 to the date of the Application in 1994, it says: "From 1973 onwards the evidence suggests that the Government of Cameroon had decided to seek to change the Nigerian character of the Bakassi region and to attempt to create evidence of a certain level of Cameroonian presence in the region."[20] Mr. President, one can certainly admire the audacity of our opponents in making such an assertion, which is the exact opposite of what is manifestly the case.

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[19]Rejoinder of Nigeria, Vol. I, pp. 117-118, para. 3.130.

[20]Counter-Memorial of Nigeria, Vol. I, p. x, para. 10.162.

30. The fact is that Cameroon has consistently exercised its sovereignty from the very first. I have already mentioned the granting of oil concessions from the early 1960s. A substantial number of other examples are given in Cameroon's pleadings[21]. They include the collection of taxes; the organization of electoral districts; the nomination of sub-prefects and other officials; the preparation of economic reports and regional development plans; the opening of schools and the provision of agricultural training; proposals and counter-proposals in 1971 to move the headquarters of Jabane district due to the risk of flooding[22], and police actions of various kinds. Other examples of Cameroonian *effectivités* can be found again in Nigeria's own pleadings[23]. One instance concerns the seizure of three Nigerian soldiers and a flying-boat at Jabane in 1968[24]. Nigeria may, of course, complain that this constituted a violation of what, rather later, very belatedly, it came to consider as its territorial sovereignty; but that is precisely what is in issue. For Cameroon, it was simply vigorously exercising its sovereign authority and protecting its territorial integrity.

31. In view of the limited time available, I shall refer to just one more piece of Cameroonian evidence, which is the "Village Dictionary of Ndian Division", published by the French *Office de la Recherche Scientifique et Technique Outre-Mer* (ORSTOM) in June 1973. This is Annex 244 to the Memorial[25]. Although entitled the "Village Dictionary", it is in fact more than a dictionary, because it gives details of local organization, census figures and so on. Several places in Bakassi are listed for instance on page 11. It says on page 5 — on page 3 in the French version because it is bilingual — that the territorial extent of Ndian Division had been fixed in 1968, and refers to specific decrees defining subdivisions dating back as far as 1965, 1969 and 1973. In its Counter-Memorial, Nigeria says of this report "it does not appear to have authoritative status"[26]. With respect, the point is a very unimpressive one: the report states on its face at page 4 (page 2 in the French version), that it was produced with the co-operation of Cameroonian authorities, and it

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[21]Memorial of Cameroon, Vol. I, pp. 490-495, paras. 4.430-4.454; Reply of Cameroon, Vol. I, pp. 307-311, paras. 5.218-5.233, and accompanying Annexes.

[22]Reply of Cameroon, Vol. IV, Ann. 28, p. 395.

[23]Cf. Counter-Memorial of Nigeria, Vol. I, pp. 267-269, paras. 10.157-10.161.

[24]Counter-Memorial of Nigeria, Vol. VIII, Ann. 206, p. 1673.

[25]Vol. V, pp. 1987-2006.

[26]Para. 10.135.

emanates from a highly respected research body of the French Republic, as can be seen from the transmittal sheet following the report[27]. This is just one of several pieces of evidence tendered as to the exercise of authority by Cameroon in the first decade of its existence, and beyond.

32. Tomorrow, I shall have the occasion to make submissions to you about a number of visits by Nigerian consular and diplomatic personnel to the peninsula. As well as constituting clear evidence of Nigeria's acceptance of Cameroonian sovereignty over Bakassi, they also provide strong corroboration of the fact that it was Cameroon which was "at home" — *"chez soi"* — on the peninsula, and not Nigeria.

33. There were occasional Nigerian protests. But they were about what it considered to be the severity of Cameroon's conduct — for example, in arresting the three soldiers at Jabane and seizing their flying-boat; or about perceived harshness towards the "Nigerian" inhabitants of some Bakassi villages on occasion. Until a late stage though, Nigeria did not seriously protest against the very presence of Cameroon on Bakassi.

34. But Cameroon, for its part, did protest against Nigerian conduct when it considered it to infringe its sovereignty. A typical example dates from 1969, and is to be found in Annex 148 to the Counter-Memorial[28]. These protests tend to be couched in terms of appeals to good-neighbourliness, but they are nevertheless protests.

35. My remaining time does not permit a detailed examination of alleged Nigerian *effectivités* in the post-independence period. But many of them do not count towards establishing a prescriptive title, which, I repeat, is the only form of "historic consolidation of title" which even remotely begins to be arguable in this case on Nigeria's behalf. For if we apply the criteria for prescription which I briefly outlined earlier, and relate them in rather more detail to the evidence adduced by Nigeria, the following observations can be made. First, possession has to be peaceful: hence all of Nigeria's acts since it invaded Bakassi, indeed all of its forcible acts even before the full-blown invasion, do not count. This also applies to exercises of civil authority taking place under the aegis of military occupation and the like. Secondly, they have to be sovereign acts. For

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[27]P. 2005.

[28]Vol. VII, p. 1209. A copy of the original letter is at pp. 1212-1213. See also Vol. V, Anns. RC 62, p. 623, and Vol. VII, MC 325, p. 2709 for other examples.

instance, the provision of schools or hospitals on Bakassi by private bodies based in Nigeria, such as churches, do not count. Thirdly, acts which are not clearly attributable to a claim of right over the territory do not count. For example, issuing passports to Nigerians in Bakassi does not count, any more than the issue of a passport to a British citizen by the British Consul in The Hague, say, could be treated as a British *effectivité* in the Netherlands. Fourthly, Nigeria cannot count acts carried out with the permission of the territorial sovereign, which was indeed the case with the provision of passports by Nigerian consular officials, for example. Fifthly, acts which are not open do not count either. On a peninsula where there are very many Nigerian citizens or people with ethnic or similar ties to Nigeria, it is not inconceivable that some acts may have been carried out without Cameroon's knowledge. Lest there be any misunderstanding, let me emphasize that I am not saying that a State which should have known what was happening on its territory can simply rely on its lack of knowledge. What I am submitting is that, if in the circumstances of this particular case something was done in that area, remote from the main centres of Cameroon, which Cameroon could not reasonably have been expected to know about, this would not count as an *effectivité*.

36. Applying the foregoing five criteria will eliminate a very large number of Nigeria's alleged *effectivités*. It may be, of course, that some others do not fall foul of these tests. But there are still other hurdles for Nigeria to surmount. For, sixthly, protest will also preclude prescription — and there were protests by Cameroon, as we have seen. Protest rules out the possibility of acquiescence, and in any case there is no evidence of tacit acquiescence on the part of Cameroon. Seventhly, prescription does not "run" when the title-holder is itself exercising sovereign authority in the territory in question — which, as I have shown, was indeed the case for Cameroon. And eighthly, the adverse possession has to take place over a sufficiently long time. How much time will depend on the circumstances; but in the circumstances of this case, a mere three decades between independence and the Nigerian decision to take over Bakassi in the early 1990s is far too short, especially when Cameroon was not sitting idly by but, as I have said, exercising its own sovereignty, not to mention protesting against Nigerian infringements of it.

37. As a matter of fact, Mr. President, if one were to try and add up all of the *effectivités*, on one side and the other, it would actually be Cameroon which would come out ahead,

notwithstanding the very long list submitted by Nigeria. For, I must remind the Court, as I have submitted already, Cameroon is entitled to rely, not only on its own post-independence acts, but on all — all — of the acts of sovereign authority performed by the United Kingdom in right of Cameroon over the nearly four decades of the mandate and the trusteeship, not to mention those of the United Kingdom's predecessor in title, Germany. But as a matter of principle, for Cameroon to demonstrate that it has, as it were, more *effectivités*, is supererogatory, because the rules of the law concerning prescription, together with the very weighty principle of *uti possidetis* and, finally, the probably even weightier principle that title to territory cannot be changed by acts of unlawful force all lead to the same conclusion, that Cameroon has a better title.

4. Conclusion

39. By way of concluding my submissions on the *effectivités*, Mr. President and Members of the Court, I should like to make a general observation about the picture which emerges from an examination of the law relating to *effectivités* and the facts of this case. It may be that Nigeria can prove that it has performed some acts of administration in Bakassi — taking a census, for example. This of course does not prove that Cameroon did not do the same thing — and indeed, to take that particular example, I have already mentioned evidence of Cameroonian censuses. But that does not mean that the censuses of the two States, or other acts of administration, cancel each other out. For if the Kings and Chiefs of Old Calabar never had sovereignty over Bakassi, or if the British, by their colonization of Nigeria, extinguished any international legal personality which the Kings and Chiefs allegedly might once have claimed, or if Germany extinguished the Kings' and Chiefs' title by conquest, or if Germany acquired sovereignty over Bakassi by the London Agreement of March 1913, or if the League mandate and the United Nations trusteeship gave the British administering authorities power over Bakassi in right of Southern Cameroon (rather than in right of Nigeria), or if the acts of British administration of the Peninsula during the approximately 40 years in question did constitute effective control in right of Southern Cameroons; or if the plebiscite and the process accompanying it confirmed Cameroonian title; or if the numerous acts of recognition and acquiescence by Nigeria are opposable to it — if any of these is the case (not if all are the case, but if any one of these is the case) — then the two sets of *effectivités* are not on a par with each other.

On that hypothesis Cameroon is the sovereign and Nigeria is the interloper. In Cameroon's submission, it would take far more in the way of peaceful Nigerian activities in Bakassi performed *à titre de souverain* than Nigeria can prove, and far more acquiescence on the part of Cameroon than Nigeria can demonstrate, over a significantly longer period, for title to change hands. The burden of proof is on Nigeria, and we submit that it has come nowhere near to discharging it.

40. Monsieur le président, Madame et Messieurs de la Cour, je vous remercie de votre attention à une plaidoirie qui, je le regrette, était plus longue qu'elle aurait pu l'être si le Nigéria n'avait pas essayé de bouleverser les règles de droit sur les effectivités et d'embrouiller les faits.

41. Monsieur le président, je vous serais reconnaissant de bien vouloir passer la parole à mon collègue et ami, le professeur Jean-Pierre Cot.

The PRESIDENT: Thank you very much, Professor Mendelson. Je donne maintenant la parole au professeur Jean-Pierre Cot.

M. COT :

I. LA FRONTIÈRE TERRESTRE

7. Bakassi

e) *La confirmation cartographique*

1. Prologue. Quelle valeur probante attribuer à l'absence de cartes ?

Monsieur le président, Madame et Messieurs de la Cour, il me revient de traiter de la confirmation cartographique du titre du Cameroun sur Bakassi. Mais auparavant je voudrais poser, en guise de prologue, une question : quelle valeur probante attribuer à l'absence de cartes ?

1. La jurisprudence internationale est en effet abondante, bien établie en ce qui concerne la valeur probante des cartes dans le procès international.

2. Mais, à ma connaissance, il n'existe pas de jurisprudence sur l'absence de cartes. Que se passe-t-il lorsqu'une partie ne produit pas une seule carte à l'appui de la frontière revendiquée et alors que l'autre partie en produit un nombre raisonnable ? Quelle conséquence tirer de cette désertion cartographique du prétoire ? Est-ce un aveu ? Est-ce un signe de faiblesse ? Il vous appartiendra d'apprécier cette situation singulière, aussi bien dans le secteur du lac Tchad que dans celui de la péninsule de Bakassi.

3. Le Nigéria produit un somptueux matériau cartographique, notamment dans ses deux atlas, l'un en deux cent volumes, en voici un, annexé à son contre-mémoire (quatre-vingts cartes) l'autre un peu plus mince mais plus abondant quant au nombre de reproductions (une bonne centaine), annexé à sa duplique. Mais ces cartes sont singulières, s'agissant d'illustrer les thèses d'une partie dans un différend frontalier. Et elles sont en effet singulières, on y trouve des croquis bien faits, des fonds de carte avec des surimpressions, des photographies par satellite, mais pas une seule carte indiquant la frontière revendiquée par le Nigéria dans le lac Tchad, nous l'avons constaté l'autre jour, ou dans la péninsule de Bakassi.

4. Certes, il y a quelques cartes dans ces atlas portant un tracé frontalier. Mais elles datent d'avant 1913 ou 1919, c'est-à-dire d'avant les instruments établissant la frontière conventionnelle.

5. Quant aux cartes annexées aux traités, il faut aller les dénicher dans l'impressionnant magma de volumes du contre-mémoire du Nigéria, où elles sont enfouies dans le volume V[29].

6. Deux beaux atlas sans une seule carte, convenons-en, c'est une prouesse. Le Nigéria précise au demeurant, je cite la duplique : *«The Government of Nigeria does not intend to trouble the Court with a collection of judicial assessments of map evidence»*. C'est ce qu'on appelle en bon français une litote, un euphémisme, un *«understatement»*, si je ne me trompe.

7. Le Cameroun, Monsieur le président, produit des cartes dans ses écritures. Des cartes d'origine diverse et de valeur inégale, sans doute. Le Nigéria souligne que nombre de ces cartes sont dressées à une échelle trop petite pour être significatives. Mais l'échelle est question de proportion. Tout dépend du détail qu'il s'agit d'individualiser. Une échelle suffisante pour individualiser la frontière de l'Akwayafé ne conviendra pas pour choisir entre les deux bras de l'Ebeji.

8. Pour m'en tenir aux écritures camerounaises, y compris les annexes cartographiques comprises dans le livre VII de notre mémoire et le livre II de notre réplique, j'ai compté, sauf erreur :

— trente-neuf cartes indiquant la frontière que nous revendiquons dans le lac Tchad[30];

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[29] Contre-mémoire du Nigéria, vol. V, annexes CMN 46, 47, 40 et 54. La carte n° 50 de l'atlas annexé au contre-mémoire ne donne qu'un détail de la carte Moisel.

— cinquante-huit cartes indiquant la frontière que nous revendiquons dans le secteur de Bakassi[31]. Certaines de ces cartes ont été produites à deux ou trois reprises et peuvent se recouper ; il ne s'agit pas ici de vous donner une addition mais de vous livrer une impression.

9. Nous avons même produit deux cartes indiquant la frontière revendiquée par le Nigéria dans le secteur de Bakassi[32], cartes que le Nigéria n'a pas cru bon de produire, car elles sont en effet embarrassantes pour lui, comme nous le verrons.

10. Monsieur le président, je ne cherche pas dans cette affaire à établir une statistique sans grand intérêt. J'ajoute que nous aurions pu multiplier ces exemples : prenez n'importe quel bon atlas dans la bibliothèque du Palais de la Paix; vous y noterez les deux délimitations caractéristiques au nord de la frontière de la ligne brisée dans le lac Tchad et au sud de la frontière de l'Akwayafé.

11. Mais je me dois d'emblée de souligner ce déséquilibre dans les moyens de preuve cartographique avancés par les deux Parties. Le Nigéria n'a pas cherché à discuter les cartes produites par le Cameroun. Il a choisi d'ignorer le problème, de fuir les débats. Je vous demande d'en prendre acte.

12. Nous sommes dans une situation inverse de celle naguère examinée par votre Chambre dans l'affaire du *Différend frontalier (Burkina Faso/République du Mali)*. A l'époque, la Chambre, constatant qu'elle était en présence d'une masse considérable de cartes, croquis et dessins avancés par les deux Parties, ajoutait qu'«aucun tracé frontalier indiscutable ne peut être dégagé de cet important matériau cartographique»[33]. Elle était comme submergée. Ici, le matériau est appréciable — celui que nous avançons —, la frontière indiscutable, comme je vais essayer de vous en convaincre, pour le secteur de Bakassi.

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[30] Mémoire, livre I, cartes M5, M6, M7, M8, M12, M15, M 16, croquis n° 5; mémoire, livre VII (annexe cartographique), cartes M 32a, 35, 42, 43, 45, 46, 47, 48, 51, 54, 55, 56, 58, 59, 61, 67, 71, 73c, 74, 75, 78, 79, 82, 83, 85, 88, 89, 91, 92, 93a; réplique, livre I, carte R1.

[31] Mémoire, livre I, cartes M5, M6, M7, M8, M9, M11, M12, M13, M14, M15, M17, M19, M20, M21, M22, M23, M24; mémoire, livre VI (annexes cartographique), cartes M 26b), 29b), 31, 32e), 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 50a) à f), 51, 52, 55, 57, 58, 59, 60, 61, 67, 71, 73a), 75, 79, 80, 81, 83, 85, 86, 87, 88, 91; réplique, vol. I, cartes R19, R29; réplique, vol. II (atlas), feuilles 27 et 28.

[32] Carte M 18a et M 18b; mémoire, livre I, p. 305; livre VII, M 93a et 93b.

[33] *C.I.J. Recueil 1986*, p. 584, par. 58.

2. Les cartes de la péninsule de Bakassi : généralités

13. Monsieur le président, rassurez-vous, je n'ai pas l'intention de présenter à la Cour l'ensemble des cinquante-huit cartes produites par le Cameroun et confirmant son titre territorial sur la péninsule de Bakassi[34]. Je me contenterai de commenter certaines des plus significatives d'entre elles et de vous renvoyer à nos écritures pour les autres (les références seront en note de bas de page du compte rendu bien entendu). Mais je me dois d'abord de relever certaines critiques faites par le Nigéria à nos productions dans sa duplique.

14. Je précise que nous n'entendons pas faire dire n'importe quoi aux cartes et que nous situons nos remarques dans le fil de la jurisprudence balisée en particulier par les arrêts *Burkina Faso/République du Mali* et *Kasikili/Sedudu*[35]. Je constate que les cinquante-huit cartes que nous avons produites situent *toutes* Bakassi en territoire camerounais. Comme l'a noté le tribunal arbitral dans l'affaire du *Canal de Beagle* :

> *«Where there is a definite preponderance on one side, particularly if it is a very marked preponderance and while of course every map must be assessed on its own merits, the cumulative impact of a large number of maps, relevant for the particular case that tell the same story, especially when some of them emanate from the opposite party or from third countries, cannot but be considerable either as indications of general, or at least widespread repute or belief, or else as confirmatory of conclusions reached, as in the present case, independently of maps.»*

15. Le Nigéria considère curieusement que les cartes antérieures à l'indépendance du pays, en 1960, ne sont pas pertinentes[36]. C'est évidemment tenter de rayer d'un trait de plume le principe *uti possidetis* en empêchant une partie de produire un des éléments de preuve du titre territorial hérité de l'indépendance.

16. Le Nigéria note de surcroît que nombre de nos cartes se répètent, sont copiées l'une sur l'autre. C'est exact pour certaines d'entre elles. Mais cet élément de répétition est en même temps un élément de notoriété. Il rend d'autant plus inexcusable l'absence prolongée de protestation du Nigéria face à l'utilisation très générale, de par le monde, de cartes nombreuses indiquant la frontière de l'Akwayafé. Ajoutons, Monsieur le président, que certaines de ces cartes, à usage professionnel, reflètent une pratique sur le terrain [projeter carte, cote n° 54]. Ainsi, par exemple,

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[34] Duplique du Nigéria, vol. I, p. 185, par. 3.328.

[35] *C.I.J. Recueil 1986*, p. 584, par. 58; *C.I.J. Recueil 1999*, par. 84.

[36] Duplique du Nigéria, vol. I, p. 185, par. 3.327-3.328.

la carte que vous trouverez sous la cote 54 dans votre dossier de plaidoiries, cette carte géologique qui date de 1964, qui établit que les ingénieurs du Nigéria ne considéraient pas la structure géologique de la péninsule de Bakassi comme les concernant. Ainsi encore la carte des réserves forestières de 1966 exclut Bakassi du patrimoine forestier nigérian [projeter carte, cote n° 55]. La voici, c'est la carte 55, Monsieur le président, du dossier des juges.

17. La carte marine, que vous trouverez dans votre dossier sous la cote n° 56, intitulée «Approaches to Cross River», est une carte qui décrit la frontière dans le chenal de l'Akwayafé. Je note au demeurant que l'Organisation maritime internationale, en accord avec l'Organisation hydrographique internationale, a confié au Service hydrographique et océanographique de la marine française, le SHOM, dont le siège est à Brest, la responsabilité de la coordination internationale de la zone II de l'océan mondial. Ce service mondial d'avertissement indique à la date d'aujourd'hui la frontière de l'Akwayafé comme frontière internationale entre le Nigéria et le Cameroun. Les cartes maritimes internationales sont donc établies en conséquence.

3. Les cartes annexées à un instrument international

18. La Cour accordera l'attention qu'elles méritent à ces cartes officielles qui sont annexées à un instrument. Max Huber notait déjà dans l'affaire de l'*Ile de Palmas* : "*Above all, then, official or semi-official maps ... would be of special interest in cases where they do not assert the sovereignty of the country of which the government has caused them to be issued.*" (*RSA*, vol. II, p. 853.) Et, dans son arrêt de 1986, la Chambre de la Cour, dans l'affaire *Burkina Faso/République du Mali*, a noté que ces cartes peuvent acquérir l'autorité d'un «document auquel le droit international confère une valeur intrinsèque aux fins de l'établissement de droits territoriaux»[37]. Il en est ainsi pour trois cartes dans le secteur de Bakassi.

19. La carte TSGS 2240, feuille n° 2, dressée en 1905-1906 par le capitaine Woodroffe (nous l'avons déjà projetée l'autre jour) pour la Grande-Bretagne et par le capitaine Hermann pour l'Allemagne, est annexée au traité du 11 mars 1913 [projeter carte, cote n° 57]. Le professeur Simma a déjà commenté cette carte, qui est signée par les deux parties, et à laquelle le traité fait explicitement référence dans ses articles 18 et 30.

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[37] *C.I.J. Recueil 1986*, p. 582, par. 54.

20. La carte annexée à la déclaration Milner-Simon du 10 juillet 1919 [projeter carte, cote n° 59] — c'est donc la carte Moisel que j'ai retirée du contre-mémoire du Nigéria; d'ailleurs je remercie la Partie nigériane pour cette assistance à ma plaidoirie (vol. V, feuille G-1 Bueia) — a sans doute pour objet principal de déterminer la frontière entre les deux mandats, britannique et français. Elle ne concerne pas directement Bakassi, mais, accessoirement, elle définit le territoire confié respectivement à chaque puissance. Et vous voyez ici, avec cette carte G-1, le petit point rouge — que la carte G-1 Bueia de Moisel, telle qu'elle a été authentifiée par les négociateurs de 1919 — place très nettement la péninsule de Bakassi au Cameroun britannique et non au Nigéria. Telle était sans doute la conviction des négociateurs à la conférence de la paix en 1919.

21. Postérieurement à l'indépendance, la carte 3433 (dont nous entendrons parler plus longuement à propos de la frontière maritime) [projeter carte, cote n° 60] a été annexée à deux instruments internationaux, la déclaration de Yaoundé II du 4 avril 1971 et la déclaration de Maroua du 1er juin 1975. Elle est signée par les deux chefs d'Etat : le président Ahidjo pour le Cameroun, le général Gowon pour le Nigéria. Elle est même signée deux fois [projeter carte, cote n° 61] : une première fois à Yaoundé pour déterminer le tracé jusqu'à la limite des 3 milles; une seconde fois à Maroua pour prolonger le tracé jusqu'à la limite, jusqu'au point G [projeter carte, cote n° 62]. C'est là une singularité unique à ma connaissance que la signature par deux fois, à deux moments successifs, d'une carte annexée, d'un instrument unique à deux instrumenta différents : la déclaration de Yaoundé II et la déclaration de Maroua. C'est une curiosité du droit international qui mérite notre attention sans doute. Cette carte constitue, c'est plus important, la reconnaissance solennelle et répétée par les deux Parties, représentées au plus haut niveau, de la frontière de l'Akwayafé, deux lustres après l'indépendance.

4. Les cartes utilisées dans le cadre du mandat et de la tutelle

22. Les cartes transmises par la puissance administrante, en l'espèce la Grande-Bretagne, dans le cadre du mandat et de la tutelle, présentent un intérêt particulier car elles reflètent la vision qu'a la puissance administrante de l'assiette territoriale du mandat puis de la tutelle et elle est destinée, le cas échéant, à provoquer la réaction de l'organisation internationale, SdN ou ONU, qui exerce la surveillance du mandat ou de la tutelle. Et les professeurs Shaw et Ntamark vous ont

expliqué avec quelle vigilance la commission des mandats, puis le conseil de tutelle vérifiaient le respect de l'assiette territoriale du mandat et suivaient les problèmes frontaliers et, le cas échéant, les rectifications de frontières proposées par les puissances administrantes. Or, toutes les cartes transmises par le Royaume-Uni, que ce soit à la SdN ou à l'ONU, situent Bakassi dans le périmètre du territoire sous mandat. J'ai inclus dans le dossier des juges, une des premières cartes que nous avons trouvées, produite par le *Survey Department* du Nigéria en 1926 que vous trouverez sous la cote 63. Et voici une carte transmise au conseil de tutelle en 1949; je n'en ai gardé que la partie méridionale. Elle est intéressante parce qu'elle indique bien les *fish-towns*, ces *fish-towns* que mon collègue Malcom Shaw citait tout à l'heure dans sa plaidoirie, les *fish-towns* de Bakassi, du côté camerounais de la frontière (il n'y a aucun doute à cet égard) [projeter carte, cote n° 64]. Vous voyez l'indication *fish-towns* et la frontière qui suit très clairement l'Akwayafé. Je prie aussi la Cour de se reporter aux cartes M 41, M 45, M 46 et M 47 que nous avons incluses dans notre mémoire et qui vont dans le même sens. Je le répète : toutes les cartes transmises à l'autorité de tutelle, au conseil de tutelle ou auparavant à la commission des mandats, indiquaient bien Bakassi en territoire sous mandat ou sous tutelle.

5. Les cartes établies par des tiers

23. Les cartes établies par des tiers n'ont pas un caractère officiel en principe. Elles reflètent cependant la notoriété internationale de la situation. Elles bénéficient aussi d'une présomption de neutralité, étant établies par des services cartographies de puissances qui n'ont pas d'intérêt direct dans le différend.

24. Il en est ainsi des cartes d'IGN France, dont la qualité a été reconnue par la Chambre de la Cour dans l'affaire du *Différend frontalier (Burkina Faso/République du Mali)*[38]. Au demeurant, les Etats riverains du lac Tchad, dont les deux Parties, le Nigéria et le Cameroun, n'ont pas hésité à confier à cet organisme, à l'impartialité reconnue, le soin de procéder aux opérations de démarcation dans le secteur. Or toutes les cartes de l'IGN — vous en trouverez une d'avant la seconde guerre mondiale dans le dossier des juges, cote n° 65 —, situent Bakassi dans le territoire sous mandat ou sous tutelle britannique et, depuis les indépendances, au Cameroun. Voici une

[38] *C.I.J. Recueil 1986*, p. 585-586, par. 61-62.

carte récente d'IGN France qui est fort claire et que vous trouverez d'ailleurs sous la cote n° 66 dans le dossier des juges. C'est une carte où l'on voit clairement que Bakassi est situé du côté camerounais de la frontière de l'Akwayafé puisque Bakassi est indiqué en couleurs camerounaises dans cette carte, le Nigéria étant indiqué en blanc [projeter carte].

25. La carte publiée par le *Geographer*, l'organisme officiel du département d'Etat que voici maintenant, est tout aussi nette [projeter carte, cote n° 67]. Ce qui est au moins aussi intéressant, c'est le commentaire inscrit au bas de la carte que vous voyez mal mais que je vais vous lire et qui précise bien que la frontière *«follows the thalweg of the Akpa-Yafe to a line between Bakasi Point and King Point on the Bight of Biafra»*. C'est donc une carte qui précise les différents piliers frontières établis sur la frontière anglo-allemande et qui ensuite indique clairement non seulement l'Akwayafé mais le point d'arrivée de la frontière entre King Point et Bakassi Point *on the Bight of Biafra.*

6. Les cartes britanniques de la période du mandat et de la tutelle, puis aux cartes nigérianes depuis l'indépendance

26. Je n'insiste pas en effet sur les cartes éditées soit par la France du temps du mandat, soit par la Partie camerounaise depuis l'indépendance camerounaise. Ces cartes étant par définition, des cartes qui émanent d'une des Parties au procès. Je note simplement en passant que toutes ces cartes indiquent que Bakassi est du côté camerounais de la frontière[39]. Le cas des cartes britanniques de la période du mandat et de la tutelle, puis des cartes nigérianes depuis l'indépendance, me paraît plus intéressant. Produites par une des Parties au litige ou sa devancière, elles lui sont en effet opposables en vertu de la jurisprudence que j'ai rappelée à la Cour mardi matin en traitant du rôle des cartes dans le secteur du lac Tchad[40]. Elles peuvent constituer une «admission against interest» si elles contredisent la position présente de la Partie en litige. Comme l'a noté le *Judicial Committee of the Privy Council* en 1927, dans l'affaire de la *Frontière du Labrador* :

> *«The fact that through a long series of years and until the present dispute arose, all the maps issued in Canada either supported or were consistent with the claim now put forward by Newfoundland is of some value as showing the construction put upon*

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[39] Voir notamment les cartes M 8, M 11, M 78, M 80.

[40] CR 2002/ , p. 36, par. 64.

the Orders in Council and statutes by persons of authority and by the general public in the Dominion.»

27. Jusqu'au début des années quatre-vingt-dix, *toutes* les cartes, je dis bien toutes les cartes, publiées par le Royaume-Uni, puis après l'indépendance publiées par le Nigéria, toutes les cartes reconnaissent que Bakassi est au Cameroun. Voici par exemple une carte nigériane de 1963 : la feuille «Calabar» de la carte au 1/250 000e [projeter carte, cote n° 68], (carte nigériane d'après l'indépendance). Toutes les autres cartes britanniques ou nigérianes datant d'avant 1990 que nous avons trouvées indiquent la même frontière[41]. Je ne les énumère pas, vous en trouverez la liste en note du compte rendu.

28. Depuis 1990, il est vrai, il y a quelques exceptions, pas beaucoup — deux. Le changement de position du Nigéria semble en effet dater cartographiquement de 1990. C'est la carte «Administrative Map of Nigeria», dixième édition, de 1991, qui indique pour la première fois la nouvelle frontière revendiquée par le Nigéria [projeter carte, cote n° 69]. Vous voyez la frontière qui, tout d'un coup, décroche pour rejoindre le Rio del Rey en bas et donc laisser Bakassi au Nigéria. Cette carte est indiquée «*tenth edition*», dixième édition de la carte administrative. Elle est bonne pour le Nigéria celle-là, elle serait bonne si nous n'avions pas retrouvé la troisième carte administrative, troisième édition, datée de 1956[42]; la quatrième édition, datée de 1960[43]; la septième, datée de 1972[44] [projeter carte, cote n° 70]. Et vous voyez, vous pouvez indiquer la frontière. Ces éditions antérieures situent toutes Bakassi en territoire camerounais. Il en est de même, seconde exception, pour la carte «Map of Nigeria. Thirty States» [projeter carte, cote n° 71], nous voyons la frontière qui décroche, qui donne Bakassi au Nigéria, c'est la troisième édition qui date du début des années quatre-vingt-dix, elle n'est pas précisément indiquée mais elle date sans doute de là et elle situe Bakassi en territoire nigérian. Malheureusement pour la Partie nigériane, la seconde édition des années quatre-vingt, intitulée elle «Map of Nigeria. Twenty One States», c'était avant la réforme administrative, elle situe Bakassi en territoire camerounais. C'est le même coup, si je puis dire. Ces cartes, à priori favorables au Nigéria, vous le voyez bien,

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[41] Voir les cartes M 7, M 9, M 13, M 17, M 24, M 31, M 32, M 34, M 35, M 36, M 37, M 38, M 39, M 40, M 41, M 42, M 43, M 45, M 46, M 47, M 51, M 53, M 55, M 57, M 59, M 60, M 61, M 67, M 74, M 75, M 79, M 81, M 86.

[42] Mémoire du Cameroun, Livre I, carte M 19.

[43] *Ibid.*, carte M 20.

[44] *Ibid.*, carte M 21.

deviennent un élément à charge contre le Nigéria aujourd'hui, car elles enregistrent et datent le revirement de position du Nigéria. Et l'on se souviendra sans doute que pareil revirement avait été constaté dans l'affaire de *Palmas* où l'on avait pu constater aussi qu'une série de cartes s'était interrompue à un moment pour être remplacée par une autre description de la ligne frontière.

29. Ces cartes qui indiquent Bakassi au Nigéria relèvent de ce que la Cour, dans l'affaire des *Minquiers et des Ecréhous* a appelé «les mesures qui auraient été prises en vue d'améliorer la position en droit de la partie intéressée»[45]. Elles ne peuvent donc pas être retenues au profit du Nigéria, elles auraient plutôt tendance à l'accabler mais je n'insiste pas.

30. Ce que je veux en revanche souligner c'est que le Nigéria s'est bien gardé de répondre, depuis huit années et au terme d'une procédure écrite longue, prolixe devant vous, à ces faits avancés par le Cameroun dès son mémoire, de 1995. Il n'a jamais tenté de s'expliquer sur ce revirement de position. Son mutisme en dit sans doute long sur l'embarras de nos collègues de l'autre côté de la barre. Nous attendons avec curiosité les explications que le Nigéria ne manquera pas de fournir à la Cour dans les jours à venir. Cet ensemble de cartes, Monsieur le président, vient conforter l'analyse résultant du texte de l'accord du 11 mars 1913, ainsi que les décisions et attitudes prises par les autorités responsables du mandat et de la tutelle et de la conduite subséquente des parties. Comme l'a fait observer la Cour permanente dans l'affaire de *Jaworzina* :

> «Il est vrai que les cartes et leur légende n'ont pas une force probante indépendante vis-à-vis des textes des traités et des décisions. Mais dans le cas présent, elles confirment de manière singulièrement convaincante les conclusions tirées des documents et de leur analyse juridique.» (*C.P.J.I. série B n° 8*, p. 33.)

Et elle ne trouve certainement aucune contradiction dans aucun texte dans la présente affaire Monsieur le président. Nous ne disons pas autre chose.

31. Enfin, je dois souligner, ou revenir plutôt dessus, revenir sur l'étrange silence des autorités du Nigéria par rapport à cette abondante production cartographique de toute origine. Le Cameroun et, avant lui, la France, les Etats tiers, les organisations internationales ont depuis tout temps, avec constance et publiquement situé la péninsule de Bakassi en territoire sous mandat britannique, puis en territoire camerounais. Pendant près de quatre-vingts ans, le Royaume-Uni, puissance administrante, puis le Nigéria, puissance indépendante, n'ont pas cru bon de protester

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[45] *C.I.J. Recueil 1953*, p. 59-60.

contre ces cartes. Mieux, ils ont concouru à ce consensus en produisant leurs cartes, donnant la même indication quant à la souveraineté territoriale de Bakassi, le Cameroun.

32. La France, puis le Cameroun, étaient en droit de faire confiance à la représentation cartographique de la péninsule de Bakassi par le Royaume-Uni, puis le Nigéria. Cette représentation situait de manière répétée Bakassi au Cameroun sous mandat britannique, puis dans la République du Cameroun. Le Nigéria est mal venu, aujourd'hui, de contester cette souveraineté camerounaise.

Monsieur le président, Madame et Messieurs de la Cour, je vous remercie de votre attention. Demain matin, ce sera le professeur Maurice Mendelson qui présentera nos vues sur la reconnaissance de la souveraineté camerounaise sur Bakassi si vous le voulez bien.

Le PRESIDENT : Je vous remercie Monsieur le professeur, ceci met un terme à la séance de ce matin. La Cour reprendra ses audiences demain matin à 10 heures. La séance est levée.

L'audience est levée à 13 heures.