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Mardi 26 février 2002 à 10 heures

Tuesday 26 February 2002 at 10 a.m.

018 The PRESIDENT: Please be seated. The sitting is open and I shall now give the floor to Dean Maurice Kamto, speaking on behalf of the Republic of Cameroon.

Mr. KAMTO:

II. THE MARITIME BOUNDARY

10. The second maritime sector (beyond point G)

(d) ***Confirmation of the equitableness of the delimitation put forward by Cameroon***

Conclusion concerning the maritime portion

1. Mr. President, Members of the Court, I said yesterday that this morning I would address two points of Nigeria's case, concerning Cameroon's incorrect use of proportionality and its disregard of the oil practice beyond point G. It seemed to me that, first, the other Party discusses proportionality in connection with confirming the equitableness of the proposed delimitation, which cannot be done until the line of delimitation has been constructed. Second, as far it is concerned, the oil concession practice must be discussed in relation to the line produced by the Treaty of 23 September 2000, advocated by Nigeria, which results in the total exclusion of Cameroon's rights south of point G.

2. I would first like to establish that this oil concession practice is disputed and to rebut the legal conclusions that Nigeria would draw from it. I shall then show that *ex post* consideration of the line put forward by Cameroon confirms that it is indeed the most equitable one possible, a quality certainly lacking in the line advocated by Nigeria, to the extent that we know what that line is.

I. The oil concession practice and the maritime boundary claimed by Nigeria

(a) Disregard of the practice in granting oil concessions

3. Mr. President, Nigeria opposes the oil concession practice to the delimitation proposed by Cameroon. According to the other Party, "[t]he oil practice is long established and substantial"[1], 019

[1]Rejoinder of Nigeria, p. 513.

and "[t]he Court has never asserted or exercised the power to transfer existing installations to another State"[2].

4. In this respect Nigeria relies primarily on the Court's Judgment of 24 February 1982 in the *Tunisia/Libya* case, from which it quotes long excerpts in its Counter-Memorial[3] and to which it returns in its Rejoinder[4], in order to counter Cameroon's arguments on this subject. It claims that "it was precisely by their practice in granting oil concessions that Tunisia and Libya adopted the pre-independence *de facto* line".

5. In reality, in that case the Court considered the *de facto* line inherited by Tunisia and Libya from the administering Powers to be an "indicium"[5] which it used only, and I quote the Court, "in defining the angulation of the initial line from the outer limit of territorial waters", without accepting "as equitable its effects further out to sea"[6]. Moreover, in its Judgment of 10 December 1985, *Application for Revision and Interpretation of the Judgment of 24 February 1982*, the Court confirmed the limited significance of the fact that this *de facto* line was taken into account by considering it to be "the starting point" for the delimitation[7].

6. Furthermore, Nigeria endeavours in vain to counter the support Cameroon draws from various judgments and arbitral awards concerning the weight to be given to oil concessions in maritime delimitation. Thus, it accuses Cameroon of having cited the Judgment of the Chamber of the Court in the *Gulf of Maine* case out of context[8] and claims that the case was really about fisheries[9]. However, it quotes the passage from the Judgment cited by Cameroon, stating:

> "the respective scale of activities connected with fishing — or navigation, defence or, for that matter, petroleum exploration and exploitation — cannot be taken into account as a relevant circumstance or, if the term is preferred, as an equitable criterion to be applied in determining the delimitation line"[10].

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[2] *Ibid.*, p. 515.

[3] Counter-Memorial of Nigeria, Vol. II, pp. 582-583, paras. 21.25-21.26.

[4] Pp. 515-516, paras. 13-23.

[5] *I.C.J. Reports 1982*, p. 84, para. 118.

[6] *Ibid.*, p. 87, para. 125.

[7] *I.C.J. Reports 1985*, p. 213, para. 38.

[8] Rejoinder of Nigeria, p. 516, para. 13.25.

[9] *Ibid.*, p. 517.

[10] *I.C.J. Reports 1984*, p. 342, para. 237.

7. Mr. President, there is no need to interpret or explain something which is clear. Not only is the above-quoted passage not taken out of context, but it speaks for itself. The Court expressly referred to "petroleum exploration and exploitation" and then, every bit as explicitly, ruled it out as a relevant circumstance, whether or not that is to Nigeria's liking, and Cameroon does not see why Nigeria would have that Judgment say something that it does not. When Nigeria asserts that the arguments pertaining to oil practice "were treated as relevant in principle"[11] — a phrase of which it is particularly fond — it is attempting to rewrite the Court's Judgment — and it does a lot of "rewriting"! And that is unacceptable.

8. As for the Award rendered in the *Yemen/Eritrea* case, Nigeria quotes all of paragraph 132 and lays emphasis, in the commentary following the quotation, on the fact that the Tribunal expressly took account of the oil practice as a relevant factor in determining the course of the median line. However, it is clear from a careful reading of the Award that the Tribunal says that it examined the oil practice in the sovereignty phase of the case[12] and found that the offshore oil contracts concluded both by Yemen and by Eritrea and Ethiopia "lend a measure of support" to a median line between the opposite coasts of Yemen and Eritrea, drawn without regard to the islands and determining the areas under the respective jurisdiction of the two parties. The Tribunal did not base its judgment in that case on the oil practice; the practice served solely to support the course chosen by the Tribunal in the light of the geographical situation of the coasts of the parties to the dispute. Furthermore, the median line determined was merely an approximation, the first step in a two-step process of delimitation, the second being the adjustment or correction of the equidistance line (in that case, it was a matter of a median line between the maritime areas of two opposite States). Indeed, the Tribunal then proceeded in accordance with the settled case law practice, requiring that special or relevant geographical circumstances, notably islands, be taken into account. The Tribunal immediately added in that same paragraph 132 of its Award:

> "In the present stage the Tribunal has to determine a boundary not merely for the purposes of petroleum concessions and agreements, but a single boundary for all

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[11]Rejoinder of Nigeria, Vol. II, p. 517, para. 13.25.

[12]Award of 19 December 1999, para. 438.

purposes. For such a boundary, the presence of islands requires careful consideration of their possible effect upon the boundary line."[13]

9. Once again, Mr. President, it appears perfectly clear to us: in drawing the maritime boundary between Yemen and Eritrea, the Tribunal did not in any way rely on the oil concessions.

10. As in the case of the first sector of the maritime boundary, up to point G, Nigeria repeats *ad nauseam*, "Cameroon has never made the slightest claim"[14] in respect of licences issued by Nigeria. Thus, the other Party would seek to take advantage of the oilfield confusion which it has contributed to creating to the south of point G. It seeks to infer from Cameroon's silence acquiescence to Nigeria's presence on Cameroon's continental shelf and therefore to lend credence to the notion that Cameroon has renounced its legitimate rights in the area.

11. I wish to point out, Mr. President, that all of the Nigerian oil concessions in this area are of recent date, even though Nigeria implies the opposite in speaking of "long established" practice. Nigeria would have great difficulty in showing you any pre-1990 concessions in that area. The three major blocks OPL 224, OML 102 and OPL 223 covering the area through which the equitable line passes were defined on 21 September 1990, 1 July 1991 and 23 April 1993, respectively, even if Nigeria contends that they were defined before then[15]. In any case, it absolutely cannot be presumed that Cameroon, even by remaining silent, waived its rights as a result of its refusal to contribute to the oilfield confusion in the Gulf of Guinea. Nor can it be criticized for having placed its faith in judicial settlement by choosing to refrain from all operations which could either place the Court before a fait accompli or impede the implementation of the judgment to be handed down on the merits in the case, especially since Nigeria acted by stealth and, for the most part, after the case had already been referred to you, Members of the Court, or, at the very least, at a time when it was in the midst of negotiations with Cameroon.

12. Cameroon could never have imagined it possible that, while it was engaged in discussions with Nigeria on questions concerning the delimitation of the boundary, including the maritime boundary, between the two countries, Nigeria was granting oil concessions in the main area to be delimited. I shall point out that, even before the Court was seised, bilateral discussions

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[13] *Ibid.*

[14] Rejoinder of Nigeria, p. 519, para. 13.28.

[15] Rejoinder of Nigeria, table, p. 512.

on boundary questions had intensified in the early 1990s, notably with the meetings in Abuja in December 1991 and Yaoundé in August 1993.

13. What is more, Nigeria breached its undertaking to inform Cameroon of its oil operations beyond point G. That undertaking is clearly seen when the two meetings I have just mentioned are examined in conjunction. The minutes of the "Joint Meeting of Nigerian and Cameroonian Experts on Boundary Problems" adopted at the Abuja session held from 15 to 19 December 1991 include the following passage: "Both sides agreed to continue to exploit their trans-border resources, but taking care to inform the other side of any action that may likely cause nuisance."[16]

14. This is a general position, applicable to all cross-border resources, bar none, whether in areas landward or seaward of point G. To determine the precise geographical scope of this undertaking, the passage from the minutes of the 1991 meeting must be read in conjunction with another passage, found in both the minutes[17] and the joint communiqué[18] of the Nigeria-Cameroon Joint Meeting held in August 1993 in Yaoundé:

> "Concerning exploitation of hydro-carbon resources south of Point G, the two delegations confirmed the spirit and the letter of the provisions of the minutes signed in Abuja between the two delegations on 19 December 1991, in particular, the freedom of each country to develop its resources along the border."[19]

15. I wish to draw the Court's attention to the fact that, while the Abuja meeting in 1991 was a meeting of experts, the two countries' delegations to the joint meeting in Yaoundé in 1993 were higher in level because they were led on the Nigerian side by the Secretary of Foreign Affairs, Chairman of the Technical Committee of the International Boundary Commission, accompanied by Nigeria's Ambassador to Cameroon, and on the Cameroonian side by the Vice-Prime Minister in charge of Town Planning and Housing, assisted by the Minister Delegate to the Ministry of External Relations.

16. I shall not embark on a lengthy discussion of the legal nature of the minutes and joint communiqués from which I have just quoted excerpts, in which language such as "the Parties agreed . . ." is to be found. The Court will be able to assess that in the light of its Judgment of

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[16]Ann. MC 313. [English text in preliminary objections of Nigeria, Ann. NPO 54.]

[17]*Ibid.*

[18]*Ibid.*

[19]*Ibid.*

1 July 1994 in the *Qatar* v. *Bahrain* case[20], referred to yesterday morning by Professor Tomuschat[21].

17. Mr. President, if I lay stress on the undertaking to inform which was given in Abuja and confirmed in Yaoundé, it is because that is a vital element explaining Cameroon's silence concerning Nigeria's oil operations south of point G; Cameroon honoured it in letter and in spirit, unlike Nigeria. Indeed, when Cameroon decided to begin work on the Betika West well, situated on the maritime boundary with Nigeria, slightly above point G, the Cameroonian Head of State, President Paul Biya, sent a special envoy to his Nigerian counterpart, General Ibrahim Badamissi Babangida, in May 1993 to inform Nigeria of that decision. But Nigeria did not react to that information. The Cameroonian delegation drew the Nigerian delegation's attention to this matter at the Yaoundé meeting[22]. Not once did Nigeria take any similar action to inform Cameroon of its substantial oil operations beyond point G.

18. Nigeria's breach of its obligation to inform Cameroon creates a peculiar situation. Assuming that Cameroon was under an obligation to protest — which in itself is doubtful, if only because one cannot be required to exercise round-the-clock surveillance, particularly since the present case has been before the Court — but, once again, even assuming that there was such an obligation in the abstract, it must be interpreted taking into account the context which I have just described: Nigeria had undertaken to inform Cameroon and it did not comply with that obligation. In these circumstances, silence can no longer be tantamount to acquiescence. As Judge Ago pointed out in his separate opinion appended to the Judgment in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case, acquiescence is "consent evinced by inaction"[23]. It manifests itself, as MacGibbon so well expresses it, by "silence or absence of protest in circumstances which generally call for the positive reaction signifying an objection"[24]. But silence can have this legal consequence only in the usual situation where the party entitled to protest should have kept itself informed of the position. That is not the case here: Cameroon and Nigeria

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[20] *I.C.J. Reports 1994*, p. 112 and pp. 121-122, paras. 26 and 27.

[21] CR 2002/6, p. 25.

[22] *Ibid.*

[23] See *I.C.J. Reports 1982*, p. 97, para. 4.

[24] In "The Scope of Acquiescence in International Law", *BYBIL*, XXXI, 1954, p. 143.

had undertaken, on the basis of reciprocity, to keep each other mutually informed of their cross-border oil operations. Nigeria did not honour this undertaking to Cameroon. This breach by the other Party of its undertaking destroys the argument based on Cameroon's failure to protest against Nigeria's oil operations in the area in question. By the same token, those operations became clandestine ones. To seek to derive legal benefit from this situation, as Nigeria does, is to seek to take advantage of one's own wrongdoing: *"nemo auditur turpitudinem allegans"*.

19. As the Court declared in its 1969 Judgment in the *North Sea Continental Shelf* cases, the coastal State has "an original, natural, and exclusive (in short, a vested) right to the continental shelf off its shores"[25]. According to the Court, this was "the chief doctrine" of the Truman Proclamation and the Court found that the Proclamation "must be considered as having propounded the rules of law in this field"[26]. Members of the Court, as you know, this notion that the coastal State has a natural right to the continental shelf adjacent to its coast was subsequently given expression in Article 2 of the 1958 Geneva Convention on the Continental Shelf. The Court firmly stated in the same Judgment that a State has an "inherent right" to its continental shelf, specifying: "[f]urthermore, the right does not depend on its being exercised"[27]. This concept was taken up and codified in the United Nations Convention on the Law of the Sea. Paragraphs 2 and 3 of Article 77, which is devoted to the rights of the coastal State over its continental shelf, are worded in definitive terms in this respect. Paragraph 2 provides:

> "The rights referred to in paragraph 1 [i.e., 'the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources'] are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State."

20. Paragraph 3, which repeats verbatim the provisions of paragraph 3 of the 1958 Geneva Convention, goes even further in "locking in" the coastal State's rights over its continental shelf. That paragraph makes the continental shelf totally inaccessible to any other State and, without the slightest ambiguity, rules out the possibility that a title can be based on effective occupation. It

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[25] *I.C.J. Reports 1969*, p. 33, para. 47.

[26] *Ibid.*, p. 47, para. 86.

[27] *I.C.J. Reports 1969*, p. 22, para. 19.

provides: "The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation."

21. In other words, these rights do not need to be proved; they do not need to be claimed. The coastal State holds them merely by virtue of being a coastal State; they are its and its alone. And if someone other than that State wishes to operate on its continental shelf, that person must obtain its consent, and not just in any form — not tacit or implicit consent; it must be express consent. A coastal State's abandonment of its rights over its continental shelf therefore cannot be presumed, and another State cannot seize those rights on the basis of some notion of acquisitive prescription, which clearly does not exist in the law of the sea. Nigeria will therefore have to offer you proof that Cameroon has expressly consented to its conduct of operations for the exploration and exploitation of natural resources on its continental shelf. Obviously, it is unable to do so!

22. Neither randomly defined blocks, nor improperly granted oil concessions, nor the amount of investment allegedly made by Nigeria or third States can defeat Cameroon's rights over its continental shelf. Nigeria cannot seek to determine unilaterally an oil concession line in defiance of conventional law. In his opinion appended to the Judgment rendered in the case concerning *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judge Gros considered that, inasmuch as the Libyan concession line was not opposable to Tunisia, "the Court rightly declares that a line of concessions is a non-opposable unilateral act". And he added:

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> "no unilateral act for the delimitation of the continental shelf on the part of an interested State is opposable to another interested State — that is an axiom of international relations, and to assert the opposite would destroy the very basis of the theory of the continental shelf according to which it is to be delimited by agreement between the parties or by way of adjudication"[28].

In the same vein, Judge Evensen asked "to what extent economic considerations should lead to the acceptance of *faits accomplis*". And, wondering whether the dividing line should be drawn in such a way as to preserve concessions unilaterally granted by one of the parties to the detriment of the other, he responded: "Such an approach would possibly be contrary to international law as well as to equity."[29]

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[28] *I.C.J. Reports 1982*, p. 155, para. 22.

[29] *Ibid.*, p. 318.

23. From the factual perspective, Nigeria maintains that Cameroon, in declaring its willingness to "review" the oil rights and concessions which the two Parties have granted in the maritime zone in dispute[30], fails to face up to the implications of its own case and states that, if the Court were to uphold Cameroon's claims, "there would be no question of negotiating . . . Nigeria would be excluded"[31].

24. Members of the Court, that is indeed a curious reaction to Cameroon's openness, and this moreover from a country which unceasingly proclaims its willingness to delimit the boundary by way of negotiation. It is clear to see: there is nothing to be negotiated as far as Nigeria is concerned, unless the outcome of the negotiations is fixed in advance by it and is bound to favour its interests alone.

(b) ***Criticism of the boundary claimed by Nigeria***

25. Members of the Court, in respect of the boundary claimed by Nigeria, a glance at sketch-maps 13.2, 13.4, 13.8 and 13.9 of Nigeria's Rejoinder, whose document numbers I shall give in a moment when I comment on those sketch-maps, clearly shows how the mechanical application of the pure equidistance principle can lead to a result which is not only inequitable but also quite simply absurd.

027 26. Sketch-map 13.2, appearing in the judges' folder as document No. 106, shows that the line from I to X, shown by a dark line on the sketch-map, resulting from the Treaty of 23 September 2000 between Nigeria and the intervening State, is a negotiated line which abandons the equidistance principle to the benefit of Nigeria. This sketch-map creates a false impression of mystery concerning Cameroon's rights north of Bioko because it shows nothing of the maritime boundary between Cameroon and Nigeria between the endpoint of the "Oil practice line", and of the line drawn in the Rio del Rey, and point I, i.e., the starting point of the line in question, which is shown in a very dark colour — the starting point of the line adopted by agreement with the intervening State. Nigeria will no doubt explain that the missing segment has not been drawn pending the determination of a tripoint, which it claims without indicating where it should be.

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[30]Reply of Cameroon, p. 425, para. 9.105.

[31]Rejoinder of Nigeria, p. 519, para. 13.28.

Professor Pellet explained yesterday why the Court could not, in any event, fix a tripoint in the present proceedings, assuming that such a point existed, which it does not.

27. Sketch-map 13.4, appearing in the judges' folder as document No. 107, confirms this course and ends the false mystery. By placing the starting point of the maritime boundary between Cameroon and Nigeria in the Rio del Rey, it reduces Cameroon's maritime areas to the north-east of the island of Bioko to almost nothing, regardless of the delimitation method adopted and the course followed. It is unnecessary to return here to the unreasonableness of the course of this line or to insist on the unlikelihood of the existence of a "sand island", which imparts such novelty to it. Let us leave this "substantial island", visible even at low tide only to undersea divers, where it is: in the land of make-believe.

28. Sketch-map 13.8, appearing in the judges' folder as document No. 108 and showing the return to an "Oil practice line" beginning at the mouth of the Akwayafe and ending at the median line (shown as a broken line) drawn on the basis of Equatorial Guinea's claims, shows that at all events Cameroon's maritime areas in this zone are limited to a tiny triangle to the north-east of Bioko.

29. Sketch-map 13.9, appearing in the judges' folder as document No. 109 and placing the boundary between Cameroon and Nigeria once again in the Rio del Rey, merely accentuates this radical amputation effect, depriving Cameroon of any projection whatsoever of its coast to the north-east of Bioko, and hence of any EEZ or any continental shelf in this area. This, Mr. President, is not a matter of delimitation; it is concerted exclusion. Cameroon's legitimate right to the projection of its coastal front is quite simply denied.

30. This aggressive delimitation, which seems to amount to a delimitation by elimination, is of practical interest in only one way: it shows by vivid contrast that the delimitation proposed by Cameroon is equitable because reasonable.

II. Confirmation of the equitableness of the delimitation proposed by Cameroon

31. I shall now turn to confirming that the delimitation proposed by Cameroon is equitable. At the outset, it is necessary to dispose of Nigeria's argument that Cameroon is using the criterion of proportionality both "as the method of delimitation and as the method of confirming the

delimitation so produced"[32]. Nigeria finds Cameroon's arguments on this point to be "a remarkably circular form of 'checking' or 'confirmation'"[33].

32. The observation is correct but no consequence results from it from the legal or technical standpoint for the construction of the line. The use of coastal segments in maritime delimitation is a well-known phenomenon. While it is true that this method is sometimes used solely for purposes of checking the result of the delimitation, as occurred in the cases concerning the *North Sea Continental Shelf*[34] and in the *Yemen/Eritrea* arbitration case[35], it would be decidedly incorrect to claim that it has never been used for any purpose other than this. In the *Gulf of Maine* case[36] for example, a certain coastline length was used in constructing the line. An equidistance line was drawn for the second sector of the line and then corrected to take into account the disparity in the length of the coasts. In that case, proportionality did not serve to check the result of the course but was used in constructing the line itself. The same was true in the *Libyan Arab Jamahiriya/Malta* case[37]. In other words, proportionality is not a tool used exclusively after the fact; it does not serve
0 2 9 solely to check the equitableness of the line. It can be used from the start in constructing the line.

33. It must be said, Mr. President, that even when proportionality is used to test the equitableness of the result achieved, it is implicitly present in constructing the line, because the line can only pass the test of proportionality if the initial method incorporates proportionality in one way or another. And the test of proportionality generally applied in the cases cited above is aimed at checking the proportionality of the maritime areas awarded to each of the parties to the case, rather than relating, as in the present case, to the length of the coastal segments taken into account in constructing the line.

34. Mr. President, regardless of the method used, a delimitation must lead to an equitable solution. It was clearly not at random that in the *Qatar* v. *Bahrain* case, which produced your most recent decision on maritime delimitation matters, your Court examined "whether there are

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[32]Rejoinder of Nigeria, pp. 494-495, para. 12.27.

[33]*Ibid.*, p. 494, para. 12.27.

[34]*I.C.J. Reports 1969*, p. 3.

[35]See the Award of 17 December 1999, para. 165.

[36]*I.C.J. Reports 1984*, p. 246.

[37]*I.C.J. Reports 1985*, p. 13.

circumstances which might make it necessary to adjust the equidistance line in order to achieve an *equitable result* [emphasis added]" and that it concluded that "[i]n the circumstances of the case *considerations of equity* [emphasis added] require that Fasht al Jarim should have no effect in determining the boundary line in the northern sector". It is in the light of this fundamental principle requiring an equitable result that Cameroon wishes to discuss the result it has reached in constructing its proposed line.

35. Discussions concerning whether or not the result of the proposed delimitation is equitable can in this connection relate only to the second sector, beginning at point G, since the first sector, from the mouth of the Akwayafe to point G, has been delimited by agreement. As Cameroon has pointed out on several occasions, the delimitation of the first sector of the maritime boundary deviates in many respects, and to the detriment of Cameroon, from the positive law of the sea, in that, in a delimitation relating for the most part to the territorial sea, the equidistance line was not respected even though there is in the sector in question no special circumstance of the type which your Court takes into consideration in adjusting equidistance. But Cameroon accepted and still accepts today the disadvantage resulting to it from this course, since this was a delimitation by agreement. It honours its commitments, whatever they may be.

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36. [Projection.] Sketch-map No. 10.9, produced by Nigeria in its Rejoinder and showing the various courses, provides a particularly striking overview. [This sketch-map, to which Cameroon has added colours — and nothing else — in order to make the configurations easier to see, appears as document No. 105 in the judges' folders.] It is clear that the projection of Cameroon's coastal front along some 351 km of coastline, as compared with the projection of Nigeria's relevant coast, i.e., 256 km, is virtually nil. And I shall refrain from comparing these figures with the projection of the coast of Equatorial Guinea, which, as has been said and said again, is not a party to the proceedings. The result here of the pure equidistance method is blindingly apparent inequity.

37. In the maritime boundary sector seawards from point G, Cameroon's proposed line is divided into four segments [projection], as shown by map R 23 in Cameroon's Reply, which was shown yesterday and appears as document No. 95 in the judges' folder. A simple review of the proportionality ratios between the respective portions of the Cameroonian coast and the Nigerian

coast taken into account in constructing each of the segments confirms the equity of the method used and, in consequence, of the result obtained.

38. The first segment, G-H — a very short one because these two points are nearly coincident — does not call for any specific test because it simply corresponds, as Professor Mendelson pointed out yesterday, to a return to equidistance, which had been abandoned in the successive agreed delimitations, in a sector in which, as I said, there are no special circumstances.

39. In segment H-I, the proportionality ratio between the relevant portions of the respective coasts of Cameroon and Nigeria is approximately 1 to 2.3. This ratio would have been much more disproportionate if Cameroon had taken account of the segment of the line crossing Bioko and, *a fortiori*, the entire length of that island's coast. For example, taking into account just the width alone of Bioko would have resulted, to Cameroon's advantage, in moving point I to point I_2, not shown, some 16.3 km to the north-west along the Bonny-Campo line.

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40. For segment I-J, the proportionality ratio is 1 to 1.25 and it is also 1 to 1.25 for segment J-K.

41. The segment from J to K merely indicates a direction without identifying a defined endpoint. The point L or L' added by Nigeria has never been indicated by Cameroon, as I pointed out yesterday.

42. It can be seen from these proportionality ratios that there has been little adjustment of the equidistance line along certain segments, at least until the last part of segment H-I. From there, the course veers westwards to take better account of the general configuration of the coasts and the existence of Equatorial Guinea's island of Bioko. Mr. President, it would not be possible to draw a more reasonable maritime boundary between States with adjacent coasts in an area characterized by an important circumstance, the island of Bioko in this case. One look at the map showing the equitable line proposed by Cameroon is enough to make us bow to the facts [projection: sketch-map No. 90 in the judges' folder]: on the basis of this line, Mr. President, Nigeria obtains the most it can hope for on the eastern flank of its maritime boundary with Cameroon, while Cameroon remains completely in the dark concerning the maritime area it will be able to obtain in the same zone, as that depends on the outcome of negotiations with Equatorial Guinea.

III. Conclusions on the maritime part

43. Mr. President, Members of the Court, as it prepares to close its presentation on the maritime boundary in this first round of oral argument, Cameroon would like to draw your attention to four crucial points.

44. First, Cameroon has explained why your Court can and should delimit as fully as possible its maritime boundary with Nigeria; to refrain from delimiting beyond point G would not only leave burning the flame of a major source of conflict between the two Parties, and more generally in the Gulf of Guinea, but above all would be implicitly to uphold, at the same time, the maritime division made in utter disregard of Cameroon's rights. Cameroon fears that, should the Court fail to decide the definitive delimitation, or in any case as complete a delimitation as possible, of the maritime boundary beyond point G, further litigation would become probable. But

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if Cameroon were to take the initiative in that litigation, it would be virtually impossible to submit it to you. Nigeria amended its declaration of acceptance of the optional clause concerning the Court's compulsory jurisdiction immediately after your Judgment of 11 June 1998 on the preliminary objections, attaching to it numerous reservations which make it virtually impossible from now on to bring proceedings against it before this Court. That is why Cameroon cannot overstate its hope that, all things considered, the Court will definitively settle the dispute of which it is seised.

45. Second, the fact that one of the Parties has conducted oil operations in the disputed area, while the other has refrained from doing so pending your judgment, cannot preclude the Court from proceeding to delimit the maritime boundary, as Cameroon is respectfully requesting it to do. In truth, in respect of an undelimited area, the pell-mell granting of oil concessions by one of the States concerned cannot be a relevant fact for purposes of the delimitation; it is a *fait accompli*, not a *fait juridique* [legal fact]. Uncertain of the situation, Cameroon refrained from acting, hoping that the situation would be clarified through negotiation, while Nigeria embarked on significant oil operations in a zone where the respective rights of the States obviously overlapped: hence, the recently created oil concession overlaps to be found in the zone, a situation which Nigeria attempts to remedy in its fashion by entering into bilateral treaties with other concerned States in the area, without any concern whatsoever for Cameroon's legitimate rights and interests.

46. This situation cannot but show even more clearly the wisdom of the reference of this dispute to the Court, and the need for the Court to clarify matters by settling the dispute.

47. Third, Nigeria does not put forward any specific boundary line up to point G: not because it does not seek one, but rather because it is not exactly sure which foot to dance on. But, in putting both feet forward at once, it entangles its legs: to convince the Court that the delimitation based on the Yaoundé II and Maroua Agreements is invalid, it maintains the thesis of an unrealistic *de facto* maritime boundary beginning at the mouth of the Akwayafe and following an alleged oil concession line: this is the "Oil Practice Line" (see fig. 13.8 appearing after p. 522 of
0 3 3 its Rejoinder); and at the same time, to convince you that Bakassi is Nigerian, it situates the maritime boundary in the Rio del Rey (see fig. 13.09 following p. 524 of its Rejoinder).

48. Fourth, Equatorial Guinea's intervention, which was in a sense desired by your Court, as can be seen from paragraph 116 of its Judgment of 11 June 1998 on the preliminary objections[38], cannot preclude the Court from delimiting the boundary between Cameroon and Nigeria. Quite to the contrary, that intervention has the major advantage of enabling the Court, thus being fully informed, to rule with full knowledge on all of the Republic of Cameroon's submissions to it and to carry out a complete, definitive delimitation of the maritime boundary with Nigeria taking due account of the legal interest of the intervening State.

49. Members of the Court, Cameroon, I shall repeat, does not know of any mathematically precise technique in matters of maritime delimitation and it would not have you believe that, if there were such a method, it would have applied it in the present case in order to achieve a perfect result above all reproach. A scientifically perfect method applicable *ne varietur* to all cases would even contravene the equitable result principle which governs the entire law of maritime delimitation. Cameroon endeavoured, modestly but rigorously, to construct a line which it believes the most equitable possible under the rules and techniques of the law of the sea. It has no other pretension.

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[38] *I.C.J. Reports 1998*, p. 324.

50. Mr. President, Members of the Court, while Nigeria, at least as to part of the boundary, does not know which line to choose, Cameroon does propose a clear line, which has not changed since the initiation of this case, even if its co-ordinates had to be adjusted.

51. This line follows a course from:

— the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe to "point 12", corresponding to the "compromise line" entered on British Admiralty Chart No. 3433 by the Heads of State of the two countries on 4 April 1971 in connection with the Yaoundé II Agreement, and, from that "point 12" to "point G", following the course established by the Maroua Agreement on 1 June 1975;

034 — from point G, that line then swings away from G to H with co-ordinates 92° 21' 16'' E and 4° 17' 00'' N, and extends through points I (7° 55' 40'' E and 3° 46' 00'' N), J (7° 12' 08'' E and 3° 12' 35'' N) and K (6° 45' 22'' E and 3° 01' 05'' N), represented on the sketch-map R 21 on page 407 of Cameroon's Reply (document No. 90 in the judges' folder) and which meets the requirement for an equitable solution, up to the outer limit of the maritime zones which international law places under the respective jurisdictions of the two Parties.

52. I thank you for your kind attention and ask that you please give the floor to Professor Olivier Corten so that he can introduce Cameroon's oral arguments on the question of Nigeria's responsibility. Thank you.

The PRESIDENT: Thank you, Dean Kamto. I now give the floor to Professor Olivier Corten.

Mr. CORTEN:

III. RESPONSIBILITY

11. Nigeria's responsibility

***(a)* The scope of Cameroon's Application**

***(b)* The circumstances precluding wrongfulness relied on by Nigeria**

1. Mr. President, Members of the Court, allow me first of all to say what a great honour it is for me to appear once more before the highest world court.

2. It falls to me today to address the final aspect of this first round of pleadings by Cameroon, which concerns the international responsibility incurred by Nigeria for its invasion and

subsequent occupation of several areas of Cameroonian territory. Even if it may seem incidental to the territorial dispute onto which it is grafted, this is an extremely serious issue. The invasion of several areas of Cameroonian territory, whether of Bakassi in particular or the Darak zone, occurred several years ago now, and the military occupation has continued since. This invasion and subsequent occupation have caused considerable damage and continue to do so today. I am speaking here, of course, of material loss, both actual damage and loss of earnings. Above all,

035 however, as the Agent of the Republic of Cameroon pointed out last Monday[39], the military action has caused human losses: as you know, there have been many casualties, including a number of dead and many more injured.

3. Mr. President, none of this would have occurred if Nigeria had respected the territorial sovereignty of Cameroon and had genuinely opted for negotiation or any other peaceful means of its choice. In accordance with the well-established principles of international State responsibility, Nigeria owes reparation for all of the injury that it has caused by its unlawful invasion and subsequent occupation.

4. At first sight this aspect of the case is thus particularly simple. Cameroon has demonstrated, both in its written and in its oral pleadings over the last few days, that the disputed territories occupied by Nigeria clearly fell under Cameroonian sovereignty. Now, and this is an important point, Nigeria does not deny that it is present in the territories in question, neither does it deny — at the very least "in principle" here again — the rule prohibiting the invasion or occupation of territories under the sovereignty of a neighbouring State[40]. An irrefutable conclusion follows from these premises: there is *no* reason, legal or otherwise, preventing Cameroon from obtaining reparation for all of the injury that Nigeria has caused.

5. How, then, in these circumstances is Nigeria attempting to evade its responsibility? First of all, as we know, it claims that it has occupied only areas of its *own* territory. This first argument refers directly to the territorial dispute, and might lead one to think that, *a contrario*, Nigeria admits its responsibility if the Court recognizes the rights of Cameroon over the disputed territories.

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[39]CR 2002/1, p. 26, para. 4.

[40]Counter-Memorial of Nigeria, Vol. III, p. 632, para. 24.19; Rejoinder of Nigeria, pp. 552-553, paras. 15.10 and 15.11, *in fine*.

However, and somewhat surprisingly, this is not the case. This is not the case because, according to Nigeria, there are special circumstances, specific to the present case, which preclude any responsibility on its part, even admitted, *ex hypothesi*, that it has invaded and subsequently occupied certain territories that are not under its sovereignty.

036 6. There is no circumstance specific to the present case which precludes the raising and engagement of Nigeria's responsibility. That is what, if I may, I wish to demonstrate to you initially, before Professor Thouvenin describes to you the course of the invasion on the ground. Lastly, Professor Tomuschat will show that Nigeria has not complied with the Order made by the Court on 15 March 1996 and on that account alone has incurred international responsibility; and he will sum up this section of Cameroon's argument.

The incurring of international responsibility by Nigeria

7. First, therefore, as regards my part of the presentation, there can be no doubt that in principle Nigeria has incurred international responsibility, because, by the invasion and subsequent military occupation of territories to which it has no title, it is clearly violating the most fundamental principles of international law: non-use of force, the peaceful settlement of disputes, the principle of non-intervention, respect for sovereignty[41]. This invasion and the wrongful occupation that followed it are the direct responsibility of the Nigerian army. The two separate elements that constitute international responsibility, the wrongful act and the attribution of that act, are thus present[42].

8. Here again the facts, like the law, speak for themselves. That is a source of deep embarrassment for our opponents, who have therefore developed a strategy in their pleadings that seeks to complicate this aspect of the dispute as much as possible. In this respect three elements are worth selecting from the Nigerian Rejoinder[43], and these are the three elements that I will address in turn in my argument this morning:

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[41]Memorial of Cameroon, pp. 596 *et seq.*

[42]International Law Commission, Art. 2 of the Draft Articles on State Responsibility, Aug. 2001; General Assembly, Off. doc., *Fifty-Sixth Session, Supplement No. 10* (A/56/10).

[43]Rejoinder of Nigeria, Vol. III, Chap. 15.

— first, one might think on reading the Nigerian pleadings that Cameroon's Application sought to hold Nigeria responsible for each of the many incidents that have occurred all along the
037 frontier[44] between the two countries; this, however, is not the case, Mr. President, as I will shortly show;

— secondly, and in any event, Nigeria claims to have acted in self-defence when it invaded and subsequently occupied several parts of Cameroonian territory; this argument is totally without foundation, as we will see in a few minutes;

— lastly, our opponents are putting forward an argument that is to our knowledge unprecedented in the annals of legal history, that of an invasion and "reasonable" occupation resulting from an "honest" mistake that purely and simply relieves it of responsibility; this singular notion will be rebutted in the third and last part of my presentation.

A. The scope of Cameroon's Application: the unlawful invasion and subsequent occupation of parts of its territory

9. Cameroon will not take the path that Nigeria seeks to make it follow, namely to attempt to treat in isolation each of the many incidents that have occurred all along the frontier[45]. Since its first submissions, the Republic of Cameroon has expressly treated the Nigerian invasion and subsequent military occupation as a single entity[46]. Last Monday Dean Kamto recalled this, with citations in support, so I am not returning to it[47].

10. This overall approach, which deeply embarrasses the other side, is governed in the first place by the facts, so obvious is it that all the specific events of invasion and subsequent occupation form part of a single strategy conducted by the Nigerian State over a period of many years[48]. I venture here to refer you to the Memorial of Cameroon for further details.

11. However, and that is what matters to us here, the need to view Nigeria's conduct as a
038 whole follows directly from the specific legal rules that govern State responsibility. In the part of

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[44]Rejoinder of Nigeria, p. 538, para. 14.15 ; p. 543, paras. 14.23 and 14.24 ; p. 551, C. ; p. 602 *et seq.*, C.

[45]Rejoinder of Nigeria, Chap. 16, pp. 597-712.

[46]Memorial of Cameroon, p. 670, *(e)* and *(f)*; Reply of Cameroon, p. 592, *(e)* and *(f)*.

[47]CR 2002/1, pp. 39-41, paras. 31-39; Reply of Cameroon, p. 537, para. 11.169; p. 493, para. 11.25; p. 495, para. 11.30.

[48]Memorial of Cameroon, p. 563 *et seq.*

its draft dealing with a breach of an international obligation extending in time, the International Law Commission states that "the breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation"[49]. Article 14, paragraph 2, of the International Law Commission draft was annexed to resolution 56/83 of the General Assembly of the United Nations of 12 December last. In its commentary the Commission cited in this connection: "the unlawful occupation by one party of the territory of another State or the stationing of forces in another State without its consent"[50]. Legally, therefore, the occupation of a territory is to be regarded as a single act.

12. This is precisely the situation in which we find ourselves in the present case. Mr. President, Members of the Court, as I speak the Nigerian military occupation continues on the ground and Nigerian military forces are stationed on Cameroonian territory without the consent of Cameroon. This indisputable fact can be established independently of the international responsibility that Nigeria may have incurred in any particular specific incident.

13. The fact that the various elements of one and the same military operation should not be considered in legal isolation has been recognized by the Court itself in circumstances other than the particularly obvious situation of the occupation of a territory. In the *Military and Paramilitary Activities* case the Court considered then condemned the policy of support by the United States for the *contras* in its entirety; it did not seek to isolate each of the circumstances in which this support showed itself[51]. More recently, in the *Legality of Use of Force* case, the Court, as you will doubtless recall, dismissed claims by Yugoslavia seeking to isolate the various aspects of the armed

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attack by the respondent States. Here again, the Court preferred to stress the need to consider the military action as a whole, stating that the acts in question — and here I cite the Court — "have been conducted continuously . . ."[52].

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[49]Art. 14, para. 2, draft annexed to resolution 56/83 of the General Assembly of the United Nations of 12 Dec. 2001.

[50]Para. 3 of the commentary on Art. 14; see also *Yearbook*, 1978, Vol. II, Part I, pp. 39-40, para. 29.

[51]*I.C.J. Reports 1986*, p. 146, para. 3 of the operative part.

[52]*Legality of Use of Force (Yugoslavia* v. *Belgium), Order of 2 June 1999, I.C.J. Reports 1999*, p. 134, para. 28.

14. In our specific case, because here there is an occupation, *a fortiori* one cannot isolate each of the events that illustrate the invasion and subsequent occupation by Nigeria of Cameroonian territory. The conduct of Nigeria is in law *one* single and continuing wrongful act, which does not prevent its taking the form on the ground of a large number of acts (or omissions) which are linked *inter se* by the same rationale, legal as well as factual.

15. What place is there then, in this context, for the arguments concentrating on certain particularly serious events which Professor Thouvenin will be presenting to you in a few minutes' time?

16. Those events illustrate the reality of the invasion and subsequent occupation on the ground, and show that this is in no sense a "peaceful" occupation, as Nigeria claims in seeking to rely on a right of conquest in order to create its territorial title artificially. Moreover, the emphasis that will be given to certain particularly serious attacks is directly relevant to the assessment of damage, to be made in a subsequent phase of the proceedings[53] and which, in accordance with international case law, may result in the award of a global amount deemed to cover all of the damage caused[54].

B. Nigeria cannot preclude the wrongfulness of its conduct by invoking a situation of self-defence

17. I now come to the second part of my argument, which involves rebutting the "self-defence" argument raised by Nigeria[55]. Nigeria's arguments are untenable here also, and here again it is essential to note that the failure of its case on the boundary dispute would inevitably lead

040 to its responsibility being put in issue. Thus, Mr. President, we are faced with two alternatives:

— either Nigerian forces did in fact enter Cameroonian territory, and the self-defence argument cannot be raised, because then it is Cameroon, as the occupied State, that could avail itself of that argument;

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[53] *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), I.C.J. Reports 1974*, p. 204, para. 76; case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), I.C.J. Reports 1986,* pp. 142-143, para. 284; *United States Diplomatic and Consular Staff in Tehran, I.C.J. Reports 1980,* p. 45, para. 6, of the operative part of the Judgment.

[54] *Rainbow Warrior, RSA,* Vol. XX, pp. 202 and 213 and Report by the ILC on the work of its 45th Session, *Yearbook* 1993, II, Part 2, p. 84, para. 20.

[55] Counter-Memorial of Nigeria, p. 646, para. 24.49 and Rejoinder of Nigeria, pp. 581-582, paras. 15.59-15.60.

— or, and this is the other alternative, the Nigerian forces as it were "invaded" and subsequently "occupied" their own territory, and it is then, but then alone, that the "self-defence" argument might possibly be raised.

Thus Nigeria must first establish the validity of its case on the territorial dispute before it can consider raising any defence in terms of responsibility.

18. Since, in any event in Cameroon's view, it cannot get over the first hurdle, it will by definition be unable to cross the second. Moreover, even if the Court were to find in its favour on the territorial dispute, it is more than doubtful whether the conditions essential to true self-defence are met in the present case. In particular Nigeria has certainly not established at this point that it had previously been the victim of a veritable "armed attack" by Cameroon.

19. Moreover, Mr. President, it appears that Nigeria does not even dare to *claim* that it has been the victim of an armed attack within the meaning of Article 51 of the United Nations Charter. Neither in its Counter-Memorial nor in its Rejoinder does Nigeria use that expression in relation to the conduct which it believes itself entitled to attribute to Cameroon. Significantly, it prefers toned-down expressions such as, and here I cite the Nigerian pleadings, "incursion"[56], or "armed incursion"[57], "incident" or more rarely "serious incident"[58]. On the other hand, there is no mention at any point of an armed attack - or *"agression armée"* - to cite the expressions used in Article 51 of the United Nations Charter in the two languages.

041 20. Mr. President, Members of the Court, to my knowledge we are in an unprecedented situation in contemporary international law, in which a State adduces the argument of self-defence before an international court without even claiming to have been the victim of a prior armed attack.

21. In any case the self-defence argument is unsustainable, whatever the language used by Nigeria. Cameroon has never attacked anyone. It is Nigeria, and Nigeria alone, that has sent its troops to the other side of the boundary.

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[56]Counter-Memorial of Nigeria, p. 646, para. 24.49, p. 804, para. 25.5; Rejoinder of Nigeria, p. 559, n. 29, p. 561, para. 15.34.

[57]Counter-Memorial of Nigeria, p. 824, para. 25.75.

[58]Rejoinder of Nigeria, p. 561, para. 15.35.

C. Nigeria incurs responsibility notwithstanding any "reasonable mistake" or "honest belief"

22. I now come to the third and last part of my argument, which will involve rebutting the argument, as extraordinary as it is fallacious, of "reasonable mistake" and "honest belief", which, according to Nigeria, amount to a circumstance excluding the wrongfulness of its conduct. If we follow the reasoning of our opponents, Nigeria has always honestly believed that the Cameroonian territories that it occupies belonged to it, which would enable it, on the assumption that this belief proved to be erroneous, to avoid its international responsibility being engaged in any way.

23. However, Nigeria does not cite any precedent or authority in its support. And in fact no State has ever claimed to justify an invasion or an occupation of territory by relying on its honest belief. To my knowledge Nigeria's argument is without precedent. It cannot find support in any legal text, or in the practice of States, still less in recognition by international jurisprudence.

24. Nigeria answers that no judicial decision on a territorial delimitation has ever been coupled with an award of reparation. I will not return to the *Temple of Preah Vihear* precedent, already cited by Dean Kamto last Monday, which plainly contradicts Nigeria's argument[59]. In any event it is not clear what can be deduced from this debate in the present case. In most of the precedents cited by Nigeria, the jurisdiction of the Court was based on a special agreement, and it

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is certainly quite true that such agreements have concerned territorial disputes, containing no mention of any dispute concerning international responsibility[60]. It could perfectly well have been otherwise. In any case it seems excessive at the very least to allege a practice, and *a fortiori* an *opinio juris*, capable of constituting a general custom — one, moreover, opposable to Cameroon, which would prevent it today from submitting a claim for reparation against a State that has invaded and then occupied several parts of its territory.

25. Nigeria insists curiously on a need to take account of the particular characteristics of the legal rules applicable in the present case, which it claims allow honest belief or reasonable mistake as a defence. However, it should be recalled here that the prohibition of the use of force, which is clearly the rule principally involved here, is fundamentally opposed to any violation of the "existing international boundaries of another State" (resolution 2625 (XXV) of the United Nations

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[59]CR 2002/1, pp. 37-38, paras. 23-25 ; *I.C.J. Reports 1962*, pp. 11 and 37; Reply of Cameroon, p. 474, para. 10.35.

[60]Reply of Cameroon, p. 474, para. 10.36.

General Assembly), with no exception for the hypothetical case of the "honest belief" of an intervening power regarding the position of that boundary. What matters, therefore, is to determine whether the conventional line claimed by Cameroon is valid in terms of international law. If that is the case, we then have an "existing international boundary" that has been crossed by force. The responsibility of Nigeria is then clearly engaged.

26. Nigeria then suggests that, should the Court find against it on account of an unlawful occupation that had continued for many years, it would be penalized "by surprise", since the rules engaging its responsibility were being applied, as it were, retroactively. However, there can be no question of any such retroactivity because, whatever the outcome of the territorial dispute, we all know that the Court will not determine a boundary *de novo*. It will determine where the boundary between the two States parties lies with — to cite a landmark decision — a "declaratory effect from the date of the legal title upheld by the Court"[61]. If Nigeria had been in doubt as to the position of this boundary, it should have refrained from using armed force. By choosing force rather than law it has acted to the detriment of Cameroon in the first place, but also and above all, it has acted at its own risk.

0 4 3 27. Mr. President, my presentation might end there but, strange as it may seem, this purported defence of "reasonable mistake and honest belief" is Nigeria's only real argument, and therefore I would like to complete my speech by expanding briefly on the following two points:

— first, Nigeria cannot show in the present case that it has made a "reasonable mistake";

— secondly, "reasonable mistake" does not amount to a circumstance precluding wrongfulness, any more than "honest belief"does.

1. Nigeria cannot show in the present case that it has made a "reasonable mistake"

28. First of all, Nigeria cannot show in the present case that it has made a "reasonable mistake". It should be recalled at this point that the boundary between Cameroon and Nigeria has been established for decades, and is recorded in clearly identified conventional instruments. The disputed zones of Bakassi and Lake Chad have even been the subject of a demarcation process, which for the most part has been brought to its conclusion. Here, then, we are a very long way

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[61] *Frontier Dispute (Burkina Faso/Mali), I.C.J. Reports 1986*, pp. 563-564, para. 17.

from a situation like that in a maritime zone, in which determining a boundary line with certainty may sometimes be tricky, just as it may be difficult to make a delimitation when conventional instruments are rare or even non-existent. As my colleagues have already shown, Nigeria itself recognized this conventional line for many years, and even participated directly in the demarcation work up to relatively recent times. In these circumstances, it seems particularly inappropriate for it suddenly to claim that it has made a mistake as to the position of the boundary line separating the two States.

29. Moreover, it is equally obvious that the conduct of the Nigerian authorities cannot be described as "reasonable". Scholarly opinion is in agreement in contrasting reasonable conduct with that which is "excessive", and in equating the former with that which is "normal", reasonable and measured[62]. Mr. President, Members of the Court, do we have reasonable conduct before us here? Even if we were to read several hundred precedents in which the concept of reasonableness
044 has been invoked, we would find that no court, or even State, has ever claimed that it was "reasonable" to have been so seriously mistaken about the extent of one's rights[63].

2. "Reasonable mistake" or good faith are not circumstances precluding wrongfulness

30. In any case, and this brings me to the second point that I wished to clarify, a mistake, even assuming it to be reasonable and made in good faith, cannot amount to a circumstance precluding wrongfulness. At most, perhaps, under certain conditions it might have limited legal consequences in relation to the calculation of compensation[64]. On the other hand, there is no precedent in which a State has purely and simply avoided its responsibility by showing that it had acted "reasonably" or "by mistake" in invading its neighbour.

31. It should moreover be made clear that in our case the very invocation of the notion of a circumstance precluding wrongfulness is in itself problematic. The rule prohibiting the use of force is so fundamental that the possibilities of derogation have been drastically limited, as is shown by Article 26 of the ILC draft which I just cited, which provides: "Nothing in this Chapter [which

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[62]See "reasonable", *Dictionnaire de droit international public*, J. Salmon (dir.), Brussels, Bruylant,/AUF, 2001, pp. 923-924.

[63]O. Corten, *L'utilisation du "raisonnable" par le juge international*, Brussels, Bruylant, 1997, 696 p.

[64]Reply of Cameroon, p. 473, para. 10.34.

concerns circumstances precluding wrongfulness] precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law."[65] There is no doubt that cases of invasion or occupation are covered by this type of provision. But, apart from the specific case of self-defence, they thus in principle admit of no circumstance precluding wrongfulness.

32. In any event, and this is perhaps the decisive factor, it is pointless to look for any hint of "reasonable mistake" or "honest belief" in the section of the Commission draft dealing with circumstances precluding wrongfulness. Nigeria claims that the list drawn up by the Commission is not exhaustive[66]. Allow me, Mr. President, at this stage to cite a recently published dictionary of international law, which in this connection merely states a truth accepted by scholarly opinion:

> "Chapter V of the first part of the ILC draft articles on State responsibility contains an *exhaustive* list of these circumstances: the consent of the (victim) State (Art. 20), countermeasures in respect of an internationally wrongful act (Art. 23), *force majeure* (Art. 24), distress (Art. 25), necessity (Art. 26) and self-defence (Art. 22) (see ILC draft articles on State responsibility, 2001 version)."[67]

33. There are six circumstances that preclude wrongfulness, no more and no less, and this is the result of a discussion that has lasted for many years, as those on the other side of the bar are perfectly well aware. Thus there is no hint of reasonable mistake or honest belief, either in the

045 draft or, despite what Nigeria implies[68], in its preparatory work[69]. There has never been any question of introducing an article on "reasonable mistake" or good faith into this part of the draft. Nor is there any sign of these alleged grounds for relief in the case law, or indeed in legal writings that have dealt with the topic[70].

34. Even assuming that they were proven — *quod non*, as we have seen —, in no case could Nigeria's "reasonable mistake" or "good faith" be regarded as circumstances precluding the wrongfulness of its conduct. If we think about it, good faith implies rather, in the words of an

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[65]ILC Report, 2001, as cited above.

[66]Rejoinder of Nigeria, pp. 578-580, para. 15.57.

[67]J. Salmon (dir.), *Dictionnaire de droit international public*, *op. cit.*, p. 171 ; emphasis added.

[68]Rejoinder of Nigeria, p. 580, para. 15.57.

[69]Second report on State responsibility, James Crawford, 30 Apr. 1999, A/CN.4/498/Add. 2, para. 215.

[70]J. Salmon, *"Les circonstances excluant l'illicéité"* in K. Zemanek and J. Salmon, *Responsabilité internationale*, Paris, *Pedone*, 1987.

adage recognized in international law, that "no one can rely on his own wrongdoing"[71]. Today, therefore, Nigeria cannot rely on its past negligence, or, more specifically, on its own incorrect interpretation of the conventional instruments applicable, for this indeed — assuming that it did occur — would represent a true error of law, Mr. President, an error in the interpretation of the conventional instruments and legal rules applicable to delimitation of the boundary. To decide in Nigeria's favour on this particular point would create a precedent, dangerous to say the least, in the history of law and international relations. Any State could then invade and subsequently occupy the territories that it claims with no risk of engaging its responsibility, even though — and you know better than anyone that this is not a frequent occurrence — its international responsibility had been engaged and recognized as such by an international court.

35. In short, Mr. President, Members of the Court, we must not lose sight of the essence of the situation: facts acknowledged by both Parties — the deployment and continuous stationing of Nigerian troops in Cameroonian territory; legal principles accepted by all, in particular, the prohibition on the use of force; a conclusion: the responsibility of Nigeria.

36. Mr. President, Members of the Court, I thank you most warmly for your attention. Mr. President, after the break I will ask you to give the floor to Professor Jean-Marc Thouvenin,
046 who will describe in detail in his presentation this morning the course, on the ground this time, of the invasion and subsequent occupation by the Nigerian army.

The PRESIDENT: Thank you, Professor. We will now adjourn for approximately ten minutes.

The Court adjourned from 11.25 to 11.45 a.m.

The PRESIDENT: Please be seated. The sitting is resumed, and I now give the floor to Professor Jean-Marc Thouvenin on behalf of the Republic of Cameroon.

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[71] R. Kolb, *La bonne foi en droit international public*, Paris, P.U.F., 2000, pp. 487-499.

Mr. THOUVENIN: Thank you, Mr. President.

III. RESPONSIBILITY

11. Nigeria's responsibility

(c) *Serious violations by Nigeria of basic principles of international law*

1. Mr. President, Members of the Court, my task now is to show you how Nigeria has violated and continues to violate the most basic principles of international law by invading then forcibly occupying parts of Bakassi and Lake Chad under Cameroonian sovereignty. I shall begin with the events which took place in Bakassi, before considering the case of Lake Chad.

(i) Bakassi

2. In regard to Bakassi, I shall concentrate in my statement on the most serious acts, first the invasion and occupation of south-west Bakassi in 1993 and 1994, then, second, the fighting in February 1996.

I. The military invasion of south-west Bakassi

3. The Parties both agree that Nigeria deployed troops in the western part of the Bakassi Peninsula from 1993 onwards, and has maintained its military occupation since then. Nigeria has expressly acknowledged this (Counter-Memorial of Nigeria, p. 668, para. 24.94; Rejoinder of Nigeria, p. 656, para. 92; Rejoinder of Nigeria, p. 552, para. 15.10); it has even produced
047 photographs illustrating its military occupation (Counter-Memorial of Nigeria, Vol. XXII, Ann. of photographs, plate 13).

4. Three points still divide us, which I shall address in turn.

***(a)* There was no military occupation of any part of Bakassi by Nigeria prior to late December 1993**

5. Mr. President, not content with admitting that it has occupied part of Bakassi since the end of 1993, Nigeria has added (Counter-Memorial of Nigeria, p. 250, para. 10.90; Rejoinder of Nigeria, p. 118, para. 3.131) or implied (CR 1996/4, p. 82 (Sir Arthur Watts)) that it has maintained a military presence there over a far longer period. Obviously, our opponents advance this argument to enable them to claim that the Nigerian troops did not invade anything in 1993 — it is not

possible to invade a territory which one already occupies — and that any fighting in Bakassi was purely the result of Cameroonian attacks.

6. This is the first point of total disagreement. Cameroon contends exactly the opposite, namely, *primo*, that Nigeria had not established any military presence at Bakassi prior to December 1993, and, *secundo*, that, on the contrary, the Cameroonian forces were established there.

7. The Court will first observe that Nigeria has been unable to produce any evidence whatever in support of its arguments, which it merely repeats (Rejoinder of Nigeria, p. 118, para. 3.131; Counter-Memorial of Nigeria, p. 250, para. 10.90). Not without contradicting itself, however, particularly with regard to the Isaac Boro military camp. Although it states in its written pleadings that "The Isaac Boro military camp has been situated near West Atabong since the Nigerian civil war" (Counter-Memorial of Nigeria, p. 250, para. 10.90), we also read in the pleadings that the Nigerian armed forces in fact left the Isaac Boro base back in 1968, after the end of the civil war in Nigeria (Counter-Memorial of Nigeria, p. 267, para. 10.157).

8. The reality is that, after a short period which, if Nigeria is to be believed, came to an end in 1968, Nigeria had no military installations left in Bakassi, at least before the invasion of 1993-1994. It is not I who say this, but the Nigerian Minister for Foreign Affairs himself, Mr. Babagana Kingibe, in an interview given to the BBC, extracts from which were published in *The Guardian* newspaper on 12 February 1994. According to Mr. Kingibe at the time: "the disputed area had for long been neglected by successive governments". And he added, confirming

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a contrario the absence of Nigeria from the area before 1993-1994: "We are going to establish our effective presence there" (Memorial of Cameroon, Ann. 338).

9. It is admittedly true that, since the early 1980s, and especially during the 1990s, it was possible to observe a certain Nigerian military "presence" in Bakassi, as a result of a number of infiltrations (see Reply of Cameroon, pp. 510-527, paras. 11.77-11.121). Moreover, such "expeditions" might have been launched from the Nigerian naval base of Jamestown, as the Respondent appears to acknowledge in its Rejoinder (Rejoinder of Nigeria, p. 118, para. 3.131, and p. 250, para. 10.90). However, until December 1993, the actual facts amounted neither to an

invasion nor to an occupation. They represented temporary infiltrations, which were prejudicial to Cameroon but had no lasting effects.

10. The incidents at Jabane in 1990 and 1991 offer a clear illustration of this. On the map projected behind me, you can see the Bakassi Peninsula depicted in a somewhat faded colour — for which I apologize. Mr. Bodo will indicate with the pointer the location of Jabane. This map is also found in the judges' folders, I believe as document No. 110.

11. From December 1990, alarming information began to reach the Cameroonian authorities that the Nigerian Navy had moved into position at Jabane, raised the Nigerian flag over the village, and stated that it intended to remain there permanently (Memorial of Cameroon, Ann. MC 307). In reaction to this, Cameroon carried out patrols and site visits over the following year, both to ascertain what the situation was and, if need be, to respond to it. It did so with such efficiency that by April 1991 the Nigerian Navy had left the place (Ann. MC 308), subsequently making only sporadic appearances there (Ann. MC 311).

12. Conversely, there can be no doubt that Cameroon maintained a well-established sub-prefecture at Idabato, with all the administrative, military and police services attaching to that. Moreover, it was from Idabato — pointed out now on the projected map — that many of the Nigerian infiltrations were observed and reported (OCDR, Ann. 3).

13. The existence of this administrative unit is corroborated by all the relevant items of evidence in the dossier.

049 14. Among the annexes produced by Cameroon — annexes to the written pleadings — the Court will find the minutes of a workshop held at Idabato on 18 March 1989, for senior officials in the Cameroonian public services. One subject covered in particular was the need to strengthen the building housing the border police post. Thus there was indeed a border police post at Idabato. And it was Cameroonian (Reply of Cameroon, Ann. RC 180).

15. The Court will also find, this time in the annexes produced by our opponents, a report by the Nigerian Chief of Naval Staff, dated 5 March 1990. This senior officer noted in his report: "[t]he presence of Cameroonian military installations around Atabong West" (Rejoinder of Nigeria, Ann. NR 24). "Atabong West" is the name used by the Nigerians for Idabato.

16. Everything therefore confirms that Cameroon did maintain permanent military structures at Idabato. And indeed maintained them well before 1989, well before the end of the 1980s. Nigeria itself acknowledges this, quoting in its Counter-Memorial a Nigerian police report which it does not hesitate to describe as "detailed and objective". This report noted, back in 1976, that "the Cameroonian Navy maintains a unit based at Atabong" (Counter-Memorial of Nigeria, p. 273, para. 10.171).

17. On this point, indeed, the Nigerian report makes no mistake. It may even be added that the Cameroonian armed forces, who had long been present in Idabato, generally carried out missions of surveillance and intelligence. You will find annexed to the written pleadings a report of 27 April 1991, addressed by the Idabato unit to the central authorities, which is, I believe, a good illustration of this (OCDR, Ann. 3).

18. Mr. President, the military situation in the Bakassi Peninsula is now totally different, owing to the sudden, massive landing of heavily armed Nigerian forces from December 1993 onwards. The reports produced by Cameroon establish that:

— On 28 December 1993, three Nigerian warships, with over 1,000 troops on board, constantly patrolled the waters around Jabane, whilst military engineers were busy on land constructing barracks in hard materials (Memorial of Cameroon, Ann. MC 329);

— Two days later, 500 troops landed at Jabane, under air cover (Ann. MC 328);

0 5 0 — On 4 January 1994, the Nigerian Navy proceeded from Jabane to Diamond, establishing a second bridgehead there. It rapidly took up position close to the Cameroonian military post at Idabato, and turned heavy artillery fire upon it (Ann. MC 331).

19. Cameroon immediately reinforced its positions in Bakassi, progressively setting up a defence system in the peninsula, with two operational headquarters, one at Isangele (now pointed out on the map and called COM GON), and the other at Idabato, COM GOS. The same map is to be found in the judges' folder as document No. 111.

20. The Idabato headquarters post was fully operational from 4 January 1994 onwards. It then comprised a total of 90 men, whose mission was to defend the south of the peninsula (OCDR, Ann. 5). And I do mean "defend". Indeed, a message was immediately sent to the post, instructing

the unit to hold its positions and no more (Memorial of Cameroon, Ann. MC 331 and OCDR, Ann. 4).

***(b)* Nigeria has not demonstrated that its military intervention was founded on considerations of public order**

21. I reiterate, Nigeria acknowledges that it sent massive numbers of troops to Bakassi in December 1993. However, and this is the second point of disagreement, it endeavours to justify this by claiming that it did so on the grounds of containing clashes between two Nigerian federal states which claimed competing rights over Bakassi. And Nigeria emphatically states that Cameroon was told of this.

22. It does not draw any particular legal conclusion from this. However, such affirmations might be regarded in the same light as Nigeria's astonishing "defence" of a "reasonable" military invasion founded on "honest belief", a defence which has already been rebutted by my friend Professor Olivier Corten.

23. Three observations, of a factual nature, complementing his statement are called for here.

24. The first is that no document submitted by Nigeria mentions imminent internal clashes in Nigeria in 1993.

25. The second observation is that Cameroon knew of Nigeria's "grounds" only afterwards, not beforehand. It was not warned in advance about the military operation. Nor was such intervention solicited.

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26. On the other hand, and this, Mr. President, is my third observation, Nigeria cannot claim to have been unaware that the intervention of its troops in Bakassi would be seen by Cameroon as a serious infringement of its sovereignty. The Nigerian Government had available to it, *inter alia*, two unambiguous official documents. They were two extremely clear Notes of protest, one dated 5 May 1993 (Memorial of Cameroon, Ann. MC 325), and the other 23 June of the same year (Ann. MC 326).

27. In the second Note, on which I shall concentrate here, Cameroon vigorously denounced the deployment of Nigerian troops on the border. The troops were not actually *in* the peninsula, but were at the gates. At that time already, Cameroon expressed its concerns at an official level, describing the events as serious, unfriendly acts.

28. Nigeria could therefore not be unaware that landing several hundred armed men on the peninsula, without warning, would be regarded as a hostile act by Cameroon. Cameroon's Note of protest of 4 January 1994 (Ann. MC 328), which called the invasion an act of war, could not have come as a surprise to Nigeria, whose argument of "honest belief" thus lacks foundation, to say the least. All the more so, in that, on the ground, it was the Nigerian troops which, in February 1994, opened fire.

(c) **It was Nigerian, not Cameroonian, troops which initiated hostilities**

29. Mr. President, Members of the Court, Nigeria would have us believe that the hundreds of men landed in Cameroonian territory from the end of 1993 onwards obediently stayed put, whilst Cameroon, it is claimed, was endeavouring to dislodge them by force, in particular on 14, 18 and 19 February 1994 (Rejoinder of Nigeria, p. 657).

30. This is our third point of disagreement, and, here again, Cameroon's contentions are diametrically opposed to those of the other Party.

31. The Court will first observe that Nigeria has advanced only one item of evidence justifying its position, namely a compilation of comments published in the Cameroonian media concerning the events in Bakassi, a compilation undertaken by the *Agence France Presse* in March 1994 (OCDR, Ann. 12). In its own words, Nigeria's arguments here are "on that basis alone" (Counter-Memorial of Nigeria, p. 664, para. 24.88). Yet there is absolutely nothing in the document to confirm its allegations.

32. Moreover, the allegations lack credibility as much as they lack truth. Nigeria's assertions concerning these events have varied, depending on circumstances. The spokesman for the Nigerian Ministry of Defence, a very senior figure, General Fred Chijuka, issued nothing less than a formal denial, on 21 February 1994, of the very existence of hostilities (OCDR, Ann. 6). They had never taken place. Today the position is different. The Court will form its own judgment.

33. Cameroon, for its part, has provided consistent evidence that it was Nigerian forces which initiated hostilities, not the reverse.

34. Without repeating our previous statements (Memorial of Cameroon, pp. 570-571, paras. 6.30-6.34), we can refer to a message sent to the Cameroonian troops at Idabato on 4 January 1994, ordering them to open fire only if attacked (OCDR, Ann. 4).

35. There is also the series of reports from the officers in charge of the Idabato and Ekondo-Titi posts (Memorial of Cameroon, Ann. MC 339), reporting the Nigerian attacks. What is apparent from these reports, in particular, is that on 18 February the attack on Kombo a Janea was repulsed, whereas Akwa and Mbenmong fell the next day.

36. The places I have mentioned are now being indicated on the map, which is found in the judges' folder as document No. 112.

II. The events of February 1996

37. I now come to the events of February 1996, in other words, two years after the events I have been referring to.

38. Nigeria accepts that there was fighting. But maintains that it was triggered by Cameroonian naval forces from outside Bakassi, and claims that Nigeria was merely defending positions already held (CR 96/4, pp. 82-90, Sir Arthur Watts; Rejoinder of Nigeria, pp. 688-693, paras. 158-168).

39. In support of this claim, Nigeria makes what is essentially an assumption, which I shall show to be erroneous. I shall then go on to describe the events of February 1996 in greater detail.

0 5 3 (a) ***Nigeria's erroneous assumption***

40. Nigeria's initial allegation is still the same: Cameroon, in 1996 this time, held no military position in the peninsula, whereas Nigeria occupied all of it (CR 96/3, pp. 13, 66; CR 96/4, p. 87, etc.). This assumption is fundamental for our opponents, determining the credibility of their argument as it does. Moreover, this is why, during their oral argument on provisional measures, Nigeria's Agent and counsel stated it, repeated it, underlined it, rammed it home.

41. But Nigeria did not even bother to try and prop up its statements with any proof. Nothing, Members of the Court, on these famous Nigerian military positions, either in 1996, or at other times either.

42. What is acknowledged, on the other hand, is the fact that Cameroon had a military post at Idabato. I have already shown this, but would add that this post remained a stronghold of Cameroon until 1996. It housed "COM GOS", the headquarters of operational group south. And Cameroon was counting on it, among other things, to contain the advance of the Nigerian forces. And it did so for two years. Moreover, the annexes to the written pleadings contain reports indicating that, from 1994 to 1995, it was here that the troops were normally relieved (Anns. OCDR 8 and OCDR 9).

43. In fact, Cameroon thought that the situation would remain stable until the delivery of your judgment on the merits. But, from August 1995, the Nigerians began to test Cameroon's reactions by various manoeuvres (Anns. OCDR 13 and OCDR 14). And there was indeed an attack on Idabato, on 24 September 1995. The Cameroonian troops were merely asked to hold their ground (Ann. OCDR 15).

44. This was the military situation on the ground prior to 3 February 1996.

(b) ***The development of the fighting***

45. I now come to the fighting. Nigeria's version of how it developed is essentially as follows: on 3 February 1996, Cameroonian troops from Isangele are claimed to have infiltrated the creeks and heavily shelled Nigerian positions at Atabong. There was an assault, but, ill prepared, it

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was repulsed. Having suffered a serious defeat, the Cameroonian troops, out of pique, then allegedly attacked all the villages through which they passed as they pulled back to Isangele (CR 96/4, pp. 82-90, Sir Arthur Watts).

46. This account is partly based on three documents. They are the military communications, which the Court has already considered during Nigeria's oral argument on provisional measures, and which are claimed to show how the Cameroonians allegedly launched the attack (Rejoinder of Nigeria, Anns. NR 196-198).

47. These documents, as the Court will no doubt recall, cannot be readily understood. They contain numerous abbreviations, and the terms used are perhaps even coded. In any case, they are not "seemingly clear" (Rejoinder of Nigeria, p. 690, para. 161), and I doubt whether anyone could understand what they may mean without thorough explanations. Cameroon has presented its own

explanations, which confirm its own version of the facts, and wholly tally with the strategic and military situation then existing on the ground (Reply of Cameroon, p. 534, paras 11.158-11.161).

48. By contrast, the story which Nigeria claims that they tell is frankly extraordinary. It is the story of a Nigerian military post being heavily shelled, while a market full of civilians also comes under mortar fire. The post is heavily armed and has adequate manpower. But it does nothing. Absolutely nothing for at least five-and-a-half hours. Civilians perish certainly. Installations are hit, soldiers wounded. But it waits for precisely two hours and thirty-five minutes after the explosion of the first shells before asking its senior commanders what to do, making it quite clear — curiouser and curiouser! — that this request should be treated "as most urgent". But it continues to do nothing for three hours. Only then do the senior commanders apparently issue their order: maintain your positions. Just telling this story shows that it makes no sense.

49. Other documents relate the true sequence of events.

50. I shall revert only very briefly to a testimony already referred to in the Reply, which is that of Lieutenant-Commander Jean-Pierre Meloupou, who was commanding the Idabato unit at the time of the Nigerian attack (Reply of Cameroon, pp. 529-530, para. 11.146). It requires explanation on one point. Shortly before noon on 3 February, the day of the attack, Lieutenant-Commander Jean-Pierre Meloupou had ordered some of his soldiers to relax on the beach as a sign of reduced tension. Nigeria finds this idea manifestly unconvincing (Rejoinder of Nigeria, p. 693, para. 168). On the contrary, it is perfectly plausible when placed in context. The Nigerian army had since 1994 been positioned within firing range of the post at Idabato, headquarters of COM GOS, commanded by Lieutenant-Commander Meloupou. As time passed, a certain routine developed. Yet, during the night of 2-3 February, the atmosphere was unusually tense owing to the repeated infiltrations of Nigerian scouts in canoes and their capture by the Cameroonians. The commander of the unit at Idabato therefore wanted the situation not to deteriorate, and above all wanted the Nigerians not to imagine that he was preparing an attack in retaliation for the infiltrations by scouts. His orders were categorical: maintain their positions and do nothing else. He was well aware that the Nigerian soldiers were observing the activity of his men from a distance, so ordered some of them to behave as though the tension had lessened and to accompany him to relax on the beach, in other words, simply sit on the sand and have a beer.

51. The attack began just after. The commander of operational group south at Idabato (COM GOS) says this in a message to COM DELTA, the regional military headquarters, situated at Limbé. I shall read this message, decoding as necessary to make it comprehensible.

> "Enemy attack today at 1200 hours. Counter-attack by us in progress. Provisional toll on our side: several wounded, some very seriously. Fighting continues. Enemy toll: enemy vessel Jonathan on fire. Request reinforcements second degree, airlift for seriously wounded." (Ann. OCDR 18.)

52. The resistance of the post at Idabato did not last long. What then happens emerges from the account of a message sent by the Nigerian command post at Jabane to its superiors on 4 February, intercepted and decoded by Cameroon (Ann. OCDR 21). Here it is stated that, on 4 February, at 00.25, the Cameroonian position at Idabato had fallen and that prisoners had been taken. Cameroon confirms that the post commanded by Lieutenant-Commander Meloupou had in fact been overwhelmed by the force of the Nigerian attack, and was no longer able to offer the slightest resistance. Lieutenant-Commander Meloupou and the soldiers from the post who were still able-bodied then chose to jump into the creeks rather than fall into enemy hands. They were rescued by Cameroonian forces some days later, in a very poor state of health (Ann. OCDR 23).

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Conversely, the Nigerian troops were in "good health", according to the message I referred to a few moments ago (Ann. OCDR 21). It was also learned that the Nigerian command post at Jabane was then urgently awaiting reinforcements, for what it called "the final assault" *(ibid.)*.

53. So much for Idabato. But other places held by Cameroonian forces fell, such as Uzama and Kombo a Janea (Anns. RC 211 and OCDR 24), until on 8 February, a message intercepted and decoded by Cameroon ordered the Nigerian forces to "cease hostilities", and to "return fire only if the enemy opens fire first" (Ann. OCDR 25). *A contrario*, it is apparent that, until this date, the Nigerian soldiers had been instructed to open fire first. Mr. Bodo will now show you on the screen the line of the Nigerian positions after the attacks; this is thus the second line, the one furthest to the east in the Bakassi Peninsula.

54. The true facts thus bear no relation to the account Nigeria gave of them during the preliminary measures phase. This attack of 3 February, allegedly launched by Cameroon from Isangele, after an infiltration through the creeks (CR 96/4, p. 84), is pure invention. This story of Cameroonian soldiers who, after suffering an unexpected defeat, had allegedly pulled back,

attacking all the Nigerian villages in their path, as though seeking to exact savage revenge (CR 96/4, p. 87), is pure invention. The truth, Mr. President, is that the Cameroonian soldiers who managed to escape were not able to attack anyone, because they jumped into the water, solely intent on surviving without falling into enemy hands.

(ii) Lake Chad

55. I now come to Lake Chad. The essential fact on which Cameroon relies here in calling upon the Court to recognize that Nigeria incurred responsibility is that Nigeria invaded and militarily occupied part of Cameroon's territory in Lake Chad 15 years ago, as my eminent colleague, Professor Jean-Pierre Cot, so capably demonstrated last Tuesday (CR 2002/2, p. 38).

56. Cameroon's Reply was extremely clear in this respect (Reply of Cameroon, paras. 11.165-11.170) but, as in connection with the events in Bakassi moreover, Nigeria focuses

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the discussion in its Rejoinder on certain incidents, which it seeks to demonstrate are not proven, or that they are so trivial that they cannot engage its responsibility (Rejoinder of Nigeria, pp. 660-665 and 701-708).

57. There is no need to go over this discussion again at this stage in the proceedings. Not only because at the end of two rounds of written pleadings the Court probably has enough information to make a determination, but also because the essentials of the issue have already been addressed.

58. From Cameroon's point of view, the essential point here is to ascertain whether Nigeria militarily occupied and is still militarily occupying part of its territory in Lake Chad.

59. Nigeria acknowledges that it is occupying the territory in question: "the relevant areas in Lake Chad . . . vested . . . and still vests, in Nigeria, which occupies and administers them as of right" (Rejoinder of Nigeria, p. 658; see also Counter-Memorial of Nigeria, Vol. III, p. 632, para. 24.19).

60. Mr. President, Members of the Court, the "relevant areas" to which Nigeria refers are villages which we can see on the map now being shown and which you will find in the folder under reference No. 13. It can clearly be seen that almost all of them are in Cameroon's territory — regardless, moreover, of the line finally adopted. Nigeria acknowledges that it occupies them and

administers them. The essential fact on which Cameroon bases its claim with respect to Lake Chad is therefore established.

61. Mr. President, Members of the Court, thank you for your kind attention. May I now ask you to give the floor to Professor Christian Tomuschat, who is going to speak to you about Nigeria's failure to comply with the Court's Order of 15 March 1996.

The PRESIDENT: Thank you, Professor Thouvenin. I now give the floor to Professor Christian Tomuschat.

058 Mr. TOMUSCHAT:

III. RESPONSIBILITY

11. Nigeria's responsibility

(d) *Nigeria's failure to comply with the Court's Order of 15 March 1996 indicating provisional measures*

Mr. President, distinguished Members of the Court.

1. The Order issued by the Court on 15 March 1996[72] for the indication of provisional measures remains one of the key elements in the legal framework of this dispute. The first three operative paragraphs of the Order are particularly important, namely the instruction to both Parties that they

> "ensure that no action of any kind, and particularly no action by their armed forces, is taken which might prejudice the rights of the other in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before it" (para. 1);

that they cease all hostilities in accordance with the agreement reached between the Ministers for Foreign Affairs in Kara on 17 February 1996 (para. 2); that they ensure that the presence of their "armed forces in the Bakassi Peninsula does not extend beyond the positions in which they were situated prior to 3 February 1996" (para. 3). Cameroon accuses Nigeria of failure to comply with these key elements of the Order of 15 March 1996.

2. It should be recalled that the Order in question contained two additional paragraphs in which the Court ordered the Parties to "take all necessary steps to conserve evidence relevant to the

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[72] *I.C.J. Reports 1996*, p. 13.

present case within the disputed area" (para. 4), and to lend "every assistance to the fact-finding mission which the Secretary-General of the United Nations has proposed to send to the Bakassi Peninsula" (para. 5). On these two points also, Nigeria has shown no willingness to conduct itself in full accordance with the Court's decision.

3. Following the Court's Judgment in the *LaGrand* case of 27 June 2001, it is no longer necessary to seek to demonstrate that the Court's Orders indicating provisional measures do in fact constitute decisions creating genuine legal obligations on the parties to which they are addressed (see paras. 92 to 116 of the Judgment). On the basis of a careful examination of the text of Article 41 of the Statute, of its object and purpose, and of the preparatory work, the Court reached the conclusion that "orders on provisional measures under Article 41 have binding effect" (para. 109). This is not, moreover, an "invention" of the Court, which would apply only *pro futuro,* i.e., from 27 June 2001. The Court did no more than interpret the law, as it is required to do in the discharge of its duties. Cameroon considers that debate now closed. It will therefore refrain from demonstrating once again that the interpretation adopted by the Court was the correct one. That would be tantamount to seeking to reinvent the wheel.

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4. Another consequence of the *LaGrand* Judgment is that the binding force of a decision under Article 41 of the Statute is not affected by somewhat "weak" language. Even if the Court opted for the word "should" in indicating provisional measures, it rendered a genuine decision and did not merely address a recommendation to the parties. Moreover, in the *LaGrand* case the English text of the Order of 3 March 1999 prohibiting the execution of Walter LaGrand used the term "should"[73], but this did not prevent the Court from attributing to the Order the full legal force of an act binding on the party to which it was addressed. In our case, it will be noted in particular that the French text of the Order of 15 March 1996 is drafted in much more categorical language than the English text, stating in peremptory indicative mood that both parties should ensure *("veillent à")* that certain actions are not taken (this language is used in paragraphs 1 and 3) or that they should observe *("se conforment")* certain instruments governing their mutual relations (this language is used in paragraph 2). It is therefore beyond doubt that the Order produced legal effects

[73] "The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings . . ." (para. 29).

which, up to this day or pending pronouncement of the final judgment in the case, have been and will be binding on both Parties.

5. In the first place, Nigeria has not ceased all hostilities, thereby failing to abide by the first two points in the operative part of the Court's Order. The Nigerian Government seeks in vain to deny that it launched attacks against the Cameroonian positions in the Bakassi Peninsula. In the course of the statement made by my colleague, Jean-Marc Thouvenin, Cameroon has already
060 projected a sketch (No. 112 in the judges' folder) which shows, in the first place, the positions of the Cameroonian and Nigerian forces after the first wave of invasion, which took place from December 1993 to February 1994, and then the new front line as produced by the advance of the Nigerian forces in February 1996. It was those new attacks which led Cameroon to lodge with the Court a request for the indication of provisional measures. However, although the legend of the sketch indicates that the positions of the Nigerian forces have remained essentially unchanged to this day, that does not mean that Nigeria has not sought to dislodge the Cameroonian forces from their positions in the eastern part of the Bakassi Peninsula. The Court will observe that all the localities which will be mentioned subsequently as having been the scene of fighting — Benkoro, Sangre, Itabuna — are situated to the east of the line which currently defines the two zones into which the peninsula is divided: the zone controlled by the Nigerian invasion forces, roughly two thirds of the area of Bakassi, and the zone controlled by the forces of the legitimate sovereign power, the Republic of Cameroon, which comprises roughly one third of Bakassi. Despite its many attempts to appropriate the whole of Bakassi, Nigeria has not succeeded in doing so. The most recent attacks against the Cameroonian positions ended in failure. Only in small sectors has Nigeria been able to gain ground.

6. The most serious incidents took place from 21 to 24 April 1996, just a few weeks after the Court rendered its Order (see Anns. OCDR 29-33). Those incidents, which continued at a lower level of intensity until May 1996 (see Anns. OCDR 34-37), caused many casualties among the Cameroonian forces. After being informed of them, the Cameroonian Minister for Foreign Affairs immediately issued a press release on 26 April 1996, in which he denounced "this new aggression by Nigeria" (Reply of Cameroon (translation), Vol. III (Ann. RC I), Ann. 11, p. 47).

7. Cameroon did not content itself with informing the media and the public at large, but also considered it essential to bring these clashes to the attention of the competent United Nations bodies. Thus, its Minister for Foreign Affairs sent a letter to the Security Council (*ibid.*, Ann. 12, p. 49). This letter was written on 30 April 1996, i.e., only a few days after the clashes took place. It gives a detailed account of events, referring to the presence in the area of 10,000 Nigerian

061 infantrymen, 2,300 of them in Cameroonian territory, 3,000 on the border and 4,000 in a state of alert in Calabar, with the tragic result for Cameroon that these forces had succeeded in occupying the village of Benkoro, inflicting losses of some 120 to 130 men. It is obvious that Cameroon would not have engaged in such a campaign of denunciation of the Nigerian operations if it had itself initiated the fighting. At the same time, it should be emphasized that, at the actual time of these hostilities, Nigeria maintained a total silence. It is for the Court to consider this lack of reaction on the Respondent's part, and to draw the necessary conclusions.

8. To supplement its information campaign, Cameroon ultimately turned to the Court. In a letter of 2 August 1996, its Agent formally informed the Registrar of the clashes and their unfortunate consequences for Cameroon.

9. Nigeria responds to Cameroon's allegations in paragraphs 171 to 174 of its Rejoinder (Vol. III, pp. 694-696). A careful reading of that response shows that it is based on a strenuous effort to draw together the most disparate arguments. First of all, Nigeria puts forward the well-rehearsed argument that there is no "independent confirmation of any fact" (*ibid.*, para. 172 *(b)*). That is quite true, but who could have provided independent testimony through first-hand observation of the fighting? It has to be said very clearly that in a situation like this the available evidence is necessarily of an indirect nature: one is obliged to rely on circumstantial evidence, and that evidence militates in favour of the view defended by Cameroon.

10. Nigeria's second line of defence for Nigeria consists in a claim that the Nigerian attacks did indeed take place, but that Cameroon has not succeeded in establishing that they "were carried out without provocation" (*ibid.*, para. 172 *(c)*). In the face of this claim, one might ask what advantage Cameroon could have gained from "provoking" Nigeria, given the situation of inequality between a country with a population of 120 million inhabitants and a substantial military force

which has effectively been able to take possession of a major part of the Bakassi Peninsula, and a neighbour with only 13 million inhabitants.

11. Finally, it will be observed that, according to Nigeria's assertions, the Nigerian Minister
062 for Foreign Affairs sent a letter of protest to his Cameroonian counterpart — on 21 June 1996[74]! In other words, two months after the attacks claimed by Nigeria to have been launched by Cameroon against the Nigerian positions during the period from 21 April to 1 May 1996, and more than seven weeks after Cameroon had complained to the United Nations Security Council, Nigeria suddenly discovered that it had been attacked by the Cameroonian armed forces! All this is barely credible. It is a total distortion of the facts, which Cameroon does not hesitate to characterize as such. A State falsely accused of having launched a military attack would have protested at once, denouncing its adversary's false position. Nigeria did no such thing. It reacted only when it realized that its silence could in fact be interpreted to its disadvantage. It was at that point in time that it put forward its allegations that the Party really guilty of the armed incidents was Cameroon. The reality of the acts which Cameroon imputes to Nigeria cannot be denied. The Cameroonian positions were attacked by Nigerian forces during the second half of the month of April 1996, in violation of the Order issued by the Court only a few weeks earlier.

12. Cameroon does not intend, in this address, to go back over all the other military incidents which have been described in its Memorandum of April 1997 (pp. 4-8) and in its observations by way of rejoinder to Nigeria's counter-claims (see Ann. OCDR 38), where the attacks launched by Nigeria in September and December 1996 are documented. It will confine itself to drawing the Court's attention to a statement by General Abacha, President of Nigeria, broadcast by Radio Calabar on 28 May 1996, in which he said that the Nigerian troops engaged at Bakassi were to be reinforced by elite forces (Reply of Cameroon (translation), Vol. III (Ann. RC I), Ann. 32, p. 78). This statement strikes an annexationist tone regrettably at odds with the Court's Order. Reinforcement of the troops stationed in Bakassi is an operation manifestly inconsistent with the Court's instructions. While Cameroon is obliged frankly to admit that it is not in a position to provide positive proof, given its limited means of reconnaissance, that the impressive number of

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[74]Counter-Memorial of Nigeria, Ann. 361.

troops already deployed in Bakassi (see letter to the Security Council of 30 April 1996, above, para. 7) was increased following that statement, the Court will note that Nigeria has not denied Cameroon's allegation. Since the President of Nigeria was at the same time the Commander-in-Chief of the armed forces, it may be assumed that his words were translated into action.

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13. All the issues of fact today disputed by Nigeria could easily have been settled if Nigeria had agreed to the establishment of a fact-finding mission as proposed by the Secretary-General of the United Nations. That fact-finding mission occupied an important place in the Court's Order of 15 March 1996. Cameroon's response thereto was positive. In several communications it stressed the need to implement the Court's proposal. In a letter of 12 April 1996 (Reply of Cameroon, Vol. III (Ann. RC I), Ann. 4, p. 32), the President of Cameroon informed the President of the Security Council of his full agreement to a fact-finding mission, whose terms of reference would include, *inter alia*,

> "— the situation of the successive military positions of each of the Parties since the seisin of the Court; and
>
> — the general state of affairs resulting from the armed incidents".

Unfortunately, owing to Nigeria's reluctance, very little came of all this. The President of Nigeria, General Abacha, accepted the idea of such a mission "in principle" — a formula apparently much favoured by those in charge of that country's affairs, as Cameroon has learned in the course of these proceedings. In perfect harmony with this acceptance "in principle", Nigeria subsequently sought to impose tight restrictions on the terms of reference for the mission. In a letter to the President of the Security Council dated 24 May 1996 (see Reply of Cameroon (Translation), Vol. III (Ann. RC I), Ann. 29, p.174), the Secretary-General of the United Nations referred to a letter from the Nigerian Government which announced that it would "shortly" be addressing to himself and to the Security Council a "detailed reply" to the proposals put forward. However, that detailed reply either never arrived or recommended lowering the level of intervention by the United Nations (for more details on the good offices mission, see Reply of Cameroon (Translation), Vol. III, pp. 8-9). In any event, the mission was eventually given a clearly inadequate mandate, against the original wishes of Cameroon. Having been conceived by Cameroon as an appropriate

instrument for a serious investigation of the facts, it was transformed into a good offices mission with the task of

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> "gathering information and formulating suggestions capable of inducing the two parties to adopt constructive measures which could promote the creation of an atmosphere of mutual confidence; and
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> *(b)* examining with the parties concrete and specific measures designed to reduce tension between them and to prevent a deterioration of the situation in the area".

These terms of reference are certainly not devoid of all value, but the report that emerged therefrom had no real impact whatever. In any event, it was impossible for the members of the good offices mission to verify the situation on the ground in accordance with Cameroon's wish. In their report, they expressed their views in somewhat vague terms in a single paragraph, paragraph 19, on the military situation in the Bakassi Peninsula.

14. In this connection, Cameroon would also draw attention to paragraph 4 of the operative part of the Court Order of 15 March 1996, in which the two Parties were called upon to take "all necessary steps to conserve evidence relevant to the present case". On account of the occupation of the Cameroonian administrative centres in Bakassi, Cameroon finds itself unable, to the extent that it has no access to the documents on the premises of the competent authorities there, to prove the effective reality of its governmental presence. Cameroon has been further informed that a boundary pillar from the German era was destroyed in the region of Typsan and that the Nigerians dug up boundary pillar No. 103 in the Akwaya sector (Ann. MC, p. 56). These are clear violations of the Court's Order.

15. Among the post-1996 events, Cameroon notes the attack by Nigerian troops on Sangre in the Bakassi Peninsula, an attack which claimed seven Cameroonian lives (see CR 98/3, 5 March 1998, p. 13, para. 20). Nigeria did not dispute that this incident took place (see CR 98/5, 9 March 1998, p. 13, para. 8), but confined itself to arguing that it was completely irrelevant. That is not the case. Sangre is clearly to the east of the dividing line between the armed forces of the two countries, which constituted the basis of the Court's Order of 15 March 1996. This fact alone shows once again that Nigeria has persisted in its annexationist intentions without regard for the measures ordered by the Court.

16. Another attack against the Cameroonian positions in the locality of Sangre took place on 19 May 2001, on the eve of Cameroon's national holiday. Apart from substantial material damage, the Cameroonian forces sustained the loss of one soldier, with several seriously wounded. From 15 to 30 June 2001, Nigerian forces carried out other attacks, notably in the localities of Itabuna and Okonte, and launched a number of offensives against the entire Cameroonian force, using mortars, machine guns, small arms and armed patrols on foot or in motorboats. Those attacks resulted in the loss of three Cameroonian soldiers and several seriously wounded (see communication of 5 September 2001 to the Registrar of the Court). A glance at the sketch which has already been projected is sufficient to show that their aim was to push the Cameroonian forces out of the Bakassi Peninsula. I repeat, this is shown in sketch No. 112.

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17. Apart from the military clashes, the responsibility for which lies with Nigeria, a range of additional facts demonstrates beyond all question that Nigeria also failed to comply with the Court's Order in other areas. I am referring to a number of legal measures taken by Nigeria with a view to strengthening its *de facto* position by presenting the Court and Cameroon with a fait accompli. Nigeria cannot deny that these steps were taken, and it did not in fact do so in its Rejoinder. By its actions, Nigeria has violated the first point of the Court's Order, namely that it should refrain from any action which might prejudice the rights of Cameroon.

18. The first of the measures in question was the establishment of the municipality of Bakassi, in October 1996. The Nigerian newspaper *The Guardian* reported in its 1 October 1996 edition that the Government had created six new states and 183 "councils", or municipalities (Reply of Cameroon, Vol. III (Ann. RC I), Ann. 43, p. 241). In the edition of 3 October, two days later, it is confirmed that Bakassi is one of the new municipalities (*ibid.*, p. 245). In this connection, the newspaper gives the following commentary:

> "The government's decision to create a separate council for Bakassi is interpreted as a tactical step to move development nearer and create a sense of belonging for the indigenes who are constantly harassed by Cameroonian gendarmes."

An official list of the new municipalities was published on 5 December 1996 by the *Daily Sketch* newspaper (*ibid.*, Ann. 50, p. 285). This list confirms that Bakassi had become a new municipality within Cross River State.

19. There can be no doubt that this measure, the creation of a new territorial entity under the
066 name "Bakassi", blatantly violates the Court's Order of 15 March 1996. Nigeria was bound by the terms of operative paragraph 1 of the Order to refrain from any action which might prejudice the rights of Cameroon. But by classifying Bakassi as a municipality forming part of Cross River State, Nigeria used an act of government to give expression to its territorial claims to Bakassi. Inevitably, as will be shown subsequently, this decision produced consequences. Under Nigerian law, once a municipality exists, an administration has to be organized, elections for a municipal council have to be held, and so on. Cameroon does not dispute Nigeria's procedural right to defend its argument that Bakassi in fact falls under Nigerian sovereignty. Before this Court, Nigeria is free to present any arguments it deems fit. However, taking concrete measures in Bakassi to strengthen its hold on that part of the peninsula which it has claimed by force is quite another matter. By formally binding the resident population to the political system of Cross River State, Nigeria seeks to establish a fait accompli which it would be difficult to undo even after its failure in these proceedings. It is imposing on the population an obligation of loyalty towards its authorities which is totally irreconcilable with the loyalty owed by those same inhabitants to the Cameroonian authorities.

20. Clearly, Nigeria cannot, by means of unilateral acts, extinguish Cameroon's rights to Bakassi under international law deriving from the Treaty of 11 March 1913. No State can release itself from its international obligations simply by violating them. Nevertheless, and even though it is incapable of changing the situation with regard to the substance of the dispute, the creation of the municipality of Bakassi is a decision which seriously prejudices Cameroon's rights, since it will substantially hamper the *de facto* reintegration of the Bakassi Peninsula into the political system of Cameroon after this case has been concluded by the final judgment of the Court.

21. At the same time, the creation of the municipality of Bakassi in October 1996 undeniably establishes that Bakassi fell under Nigerian domination only as a result of the invasion of the peninsula, which began in December 1993 and reached its climax in February 1994. It would be utterly incomprehensible if a portion of territory forming part of the area of the peninsula currently occupied by Nigeria should lack its own administrative organization and be attached to a distant
067 entity on the far bank of the Akwayafe. It was only after the invasion, once Nigeria had established

its *de facto* authority, that it considered itself duty-bound to introduce an administrative structure enabling the local population to live in fictitious normality under the auspices of the Cross River State authorities and the federal authorities. It was precisely the well-known nineteenth century model of colonization that was followed. First, the armed forces arrived, on the pretext that it was necessary to protect the rights and interests of Nigerians living in Bakassi. The next stage was to set up a civilian administration in order to show that the restoration of normality was an established fact, and in order to be able to argue that Bakassi had always been inhabited by Nigerians, as reflected in the existing administrative structures. In a letter of protest sent to the Nigerian High Commission in Yaoundé in 1997, Cameroon's Minister for Foreign Affairs expressed his condemnation of the registration of the inhabitants of Bakassi in Nigeria's electoral registers.

22. Following this first unlawful measure and remaining committed to its annexationist logic, Nigeria organized municipal elections on 5 and 6 December 1998 in the part of the Bakassi Peninsula which it had occupied. Cameroon denounced this fresh violation of its sovereign rights in a letter from its Minister of State for Foreign Affairs dated 10 December 1998, addressed to the United Nations Security Council (doc. S/1998/1159, 11 December 1998). It is obvious that, here again, the same considerations apply as those whereby it was shown that the establishment of the municipality of Bakassi was contrary to the Court's Order of 15 March 1996. Once again, Nigeria has sought to create a fait accompli by strengthening the *de facto* incorporation of Bakassi in its national territory. Thus, in a Note of 15 January 1999 (No. C.28/99), Nigeria asserted in lofty tones that the elections, "being a recognised sovereign act of the Nigerian state, . . . can therefore not be regarded as a violation of the interim measures issued by the International Court of Justice on 15 March, 1996".

23. This assertion totally begs the question. It in no sense represents a reply to Cameroon's charge that Nigeria failed to comply with the Court's Order not to exacerbate the situation in dispute by taking actions liable to prejudice the rights of Cameroon. By organizing municipal elections in the part of Bakassi which it had occupied, Nigeria attempted to impart the appearance of normality to the situation in Bakassi, as if that area fell as of right under Nigerian sovereignty.

However, the very purpose of the Order of 15 March 1996 was to call upon the two Parties to leave matters as they stood. This, then, was a flagrant violation of the Court's decision.

24. It is clear that the same charges may be levied against Nigeria's decision to organize other elections in January 1999, including the election of governors in the western part of Bakassi. This was a further step along the path of irredentism pursued in violation not only of Cameroon's sovereign rights, but also of the Court's Order.

25. The Nigerian Government's decision in December 1996 to prohibit low altitude flights for all types of aircraft over the Bakassi Peninsula (see Reply of Cameroon (translation), Vol. III (Ann. RC I), Ann. 55, p. 123), fits into the same overall picture. Cameroon protests in the strongest terms against yet another arrogation of power by Nigeria for the purpose of promulgating a measure applicable to the whole of Bakassi, as if it were accepted that it was Nigeria which held the sovereign rights over the peninsula. It is very clear that the Court's Order forbids Nigeria in any event to extend its territorial claims beyond the area it occupied before 3 February 1996. In terms of law, the Order froze the situation. The two Parties are obliged, for the full duration of the proceedings, to respect the existing *de facto* situation. However, in promulgating an order which purports to regulate air traffic over that part of Bakassi defended and occupied by Cameroon's armed forces, Nigeria has once again demonstrated its annexationist intentions.

26. To sum up, it must regrettably be concluded that, even after the Court had issued the Order of 15 March 1996, Nigeria continued to take concrete measures to strengthen the *de facto* links which it had artificially created between the western part of Bakassi and its own territories to the west of Cross River and the Akwayafe. The series of acts which I have just cited are flagrantly in breach of the Order. It is the Court's responsibility to settle the dispute, and the Court was therefore right in seeking to prevent its Judgment from being thwarted by any unilateral measures which, pending pronouncement of its final Judgment, might have been taken by one or the other of the interested Parties.

069 No responsibility has been incurred by Cameroon — Summing up and conclusions regarding responsibility

Mr. President, Members of the Court, in the last part of my statement, I shall refer briefly to the Nigerian counter-claims alleging that Cameroon has committed a series of internationally wrongful acts. I shall also recapitulate Cameroon's position with respect to the responsibility of Nigeria.

1. Nigeria asserts that Cameroon, for its part, also violated its obligations under international law. Nigeria has accordingly submitted a number of counter-claims. Cameroon responded in detail to those allegations in a document entitled "Observations of the Republic of Cameroon" dated 4 July 2001. It is therefore now for Nigeria to express its views on the arguments put forward by Cameroon. Before setting out its final submissions, the Republic of Cameroon must ascertain whether Nigeria accepts the explanations it has given or whether it wishes to pursue the claims it has made. Cameroon has therefore asked the Court to grant it a short period of time for additional argument, in order to respond orally to Nigeria's reply concerning the counter-claims. The Court has acceded to this request. Cameroon thanks the Court for that decision, which was notified to it by a letter of 10 January 2002 from the Registrar. It will therefore reply to any observations Nigeria might be prompted to make in respect of the counter-claims, in the first instance during the next round of oral pleadings and, subsequently, in accordance with the Court's decision, either before or after the pleadings relating to the intervention by Equatorial Guinea.

2. To complete the arguments concerning responsibility, the following is a summary of Cameroon's position:

The claims for reparation in respect of violations of Cameroonian sovereignty are maintained, as these are particularly serious violations. They include:

— the invasion of the Bakassi Peninsula and its occupation with a view to its annexation;

— the occupation of a substantial portion of Cameroonian territory in the region of Lake Chad, also with a view to annexation;

— and Nigeria's failure to comply with the Court's Order of 15 March 1996 indicating provisional measures.

070 3. In all these cases and more particularly, but not exclusively, as regards Bakassi, the operations concerned were carefully planned and cannot be explained by mere errors committed "in good faith". The military invasion of a neighbour's territory is not perpetrated "in good faith". Moreover, any party disputing an international boundary determined by international agreement knows that, prima facie, all the evidence militates against its position and that it is therefore exposed to a major risk and will have to bear all the consequences thereof if its challenge to an established legal situation fails. Cameroon would point out in this connection that it has requested

the Court to permit it to present an assessment of the amount of compensation due to it as reparation for the damage it has suffered as a result of those acts, at a subsequent stage of the proceedings (Reply of Cameroon, Vol. I, p. 592, para. 13.02).

4. Furthermore, Cameroon maintains its request for the rejection of the Nigerian counter-claims (Reply of Cameroon, p. 593, para. 13.03). In this connection, however, as I have just mentioned, it reserves the right to lodge its final submissions after it has had the opportunity to reply to Nigeria's arguments concerning those claims (see above, para. 1).

Mr. President, that concludes the first round of Cameroon's oral argument.

The PRESIDENT: Thank you, Professor. Your statement indeed brings to an end the first round of oral argument by the Republic of Cameroon. Oral arguments in the case will resume next Thursday, 28 February at 10 a.m. in order for the Federal Republic of Nigeria to be heard. The sitting is closed.

The Court rose at 1 p.m.