

CR 2002/8

Cour internationale
de Justice

LA HAYE

International Court
of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le jeudi 28 février 2002, à 10 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président,

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

COMPTE RENDU

YEAR 2002

Public sitting

held on Thursday 28 February 2002, at 10 a.m., at the Peace Palace,

President Guillaume presiding,

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

VERBATIM RECORD

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

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

 Registrar Couvreur

Le Gouvernement de la République du Cameroun est représenté par :

S. Exc. M. Amadou Ali, ministre d'Etat chargé de la justice, garde des sceaux,

comme agent;

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

M. Peter Y. Ntamar, professeur à la faculté des sciences juridiques et politiques de l'Université de Yaoundé II, *Barrister-at-Law*, membre de l'Inner Temple, ancien doyen,

comme coagents, conseils et avocats;

M. Alain Pellet, professeur à l'Université de Paris X-Nanterre, membre et ancien président de la Commission du droit international,

comme agent adjoint, conseil et avocat;

M. Joseph Marie Bipoun Woum, professeur à la faculté des sciences juridiques et politiques de l'Université de Yaoundé II, ancien ministre, ancien doyen,

comme conseiller spécial et avocat;

M. Michel Aurillac, ancien ministre, conseiller d'Etat honoraire, avocat en retraite,

M. Jean-Pierre Cot, professeur à l'Université de Paris 1 (Panthéon-Sorbonne), ancien ministre,

M. Maurice Mendelson, Q. C., professeur émérite de l'Université de Londres, *Barrister-at-Law*,

M. Malcolm N. Shaw, professeur à la faculté de droit de l'Université de Leicester, titulaire de la chaire sir Robert Jennings, *Barrister-at-Law*,

M. Bruno Simma, professeur à l'Université de Munich, membre de la Commission du droit international,

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

M. Olivier Corten, professeur à la Faculté de droit de l'Université libre de Bruxelles,

M. Daniel Khan, chargé de cours à l'Institut de droit international de l'Université de Munich,

M. Jean-Marc Thouvenin, professeur à l'Université de Paris X-Nanterre, avocat au barreau de Paris, société d'avocats Lysias,

comme conseils et avocats;

The Government of the Republic of Cameroon is represented by:

H.E. Mr. Amadou Ali, Minister of State responsible for Justice, Keeper of the Seals,

as Agent;

Mr. Maurice Kamto, Dean, Faculty of Law and Political Science, University of Yaoundé II, member of the International Law Commission, *Avocat* at the Paris Bar, Lysias Law Associates,

Mr. Peter Y. Ntmark, Professor, Faculty of Law and Political Science, University of Yaoundé II, Barrister-at-Law, member of the Inner Temple, former Dean,

as Co-Agents, Counsel and Advocates;

Mr. Alain Pellet, Professor, University of Paris X-Nanterre, member and former Chairman of the International Law Commission,

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Mr. Joseph-Marie Bipoun Woum, Professor, Faculty of Law and Political Science, University of Yaoundé II, former Minister, former Dean,

as Special Adviser and Advocate;

Mr. Michel Aurillac, former Minister, Honorary *Conseiller d'État*, retired *Avocat*,

Mr. Jean-Pierre Cot, Professor, University of Paris 1 (Panthéon-Sorbonne), former Minister,

Mr. Maurice Mendelson, Q.C., Emeritus Professor University of London, Barrister-at-Law,

Mr. Malcolm N. Shaw, Sir Robert Jennings Professor of International Law, Faculty of Law, University of Leicester, Barrister-at-Law,

Mr. Bruno Simma, Professor, University of Munich, member of the International Law Commission,

Mr. Christian Tomuschat, Professor, Humboldt University of Berlin, former member and Chairman, International Law Commission,

Mr. Olivier Corten, Professor, Faculty of Law, Université libre de Bruxelles,

Mr. Daniel Khan, Lecturer, International Law Institute, University of Munich,

Mr. Jean-Marc Thouvenin, Professor, University of Paris X-Nanterre, *Avocat* at the Paris Bar, Lysias Law Associates,

as Counsel and Advocates;

Sir Ian Sinclair, K.C.M.G., Q.C., *Barrister-at-Law*, ancien membre de la Commission du droit international,

M. Eric Diamantis, avocat au barreau de Paris, Moquet, Bordes & Associés,

M. Jean-Pierre Mignard, avocat au barreau de Paris, société d'avocats Lysias,

M. Joseph Tjop, consultant à la société d'avocats Lysias, chercheur au Centre de droit international de Nanterre (CEDIN), Université Paris X-Nanterre,

comme conseils;

M. Pierre Semengue, général d'armée, contrôleur général des armées, ancien chef d'état-major des armées,

M. James Tataw, général de division, conseiller logistique, ancien chef d'état-major de l'armée de terre,

S. Exc. Mme Isabelle Bassong, ambassadeur du Cameroun auprès des pays du Benelux et de l'Union européenne,

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

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

M. Etienne Ateba, ministre-conseiller, chargé d'affaires a.i. à l'ambassade du Cameroun, à La Haye,

M. Robert Akamba, administrateur civil principal, chargé de mission au secrétariat général de la présidence de la République,

M. Anicet Abanda Atangana, attaché au secrétariat général de la présidence de la République, chargé de cours à l'Université de Yaoundé II,

M. Ernest Bodo Abanda, directeur du cadastre, membre de la commission nationale des frontières,

M. Ousmane Mey, ancien gouverneur de province,

Le chef Samuel Moka Liffafa Endeley, magistrat honoraire, *Barrister-at-Law*, membre du Middle Temple (Londres), ancien président de la chambre administrative de la Cour suprême,

M^c Marc Sassen, avocat et conseil juridique, société Petten, Tideman & Sassen (La Haye),

M. Francis Fai Yengo, ancien gouverneur de province, directeur de l'organisation du territoire, ministère de l'administration territoriale,

M. Jean Mbenoun, directeur de l'administration centrale au secrétariat général de la présidence de la République,

Sir Ian Sinclair, K.C.M.G., Q.C., Barrister-at-Law, former member of the International Law Commission,

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Major-General James Tataw, Logistics Adviser, Former Head of Staff of the Army,

H.E. Ms Isabelle Bassong, Ambassador of Cameroon to the Benelux Countries and to the European Union,

H.E. Mr. Biloa Tang, Ambassador of Cameroon to France,

H.E. Mr. Martin Belinga Eboutou, Ambassador, Permanent Representative of Cameroon to the United Nations in New York,

Mr. Etienne Ateba, Minister-Counsellor, Chargé d'affaires a.i. at the Embassy of Cameroon, The Hague,

Mr. Robert Akamba, Principal Civil Administrator, Chargé de mission, General Secretariat of the Presidency of the Republic,

Mr. Anicet Abanda Atangana, Attaché to the General Secretariat of the Presidency of the Republic, Lecturer, University of Yaoundé II,

Mr. Ernest Bodo Abanda, Director of the Cadastral Survey, member, National Boundary Commission,

Mr. Ousmane Mey, former Provincial Governor,

Chief Samuel Moka Liffafa Endeley, Honorary Magistrate, Barrister-at-Law, member of the Middle Temple (London), former President of the Administrative Chamber of the Supreme Court,

Maître Marc Sassen, Advocate and Legal Adviser, Petten, Tideman & Sassen (The Hague),

Mr. Francis Fai Yengo, former Provincial Governor, Director, *Organisation du Territoire*, Ministry of Territorial Administration,

Mr. Jean Mbenoun, Director, Central Administration, General Secretariat of the Presidency of the Republic,

M. Edouard Etoundi, directeur de l'administration centrale au secrétariat général de la présidence de la République,

M. Robert Tanda, diplomate, ministère des relations extérieures

comme conseillers;

M. Samuel Betah Sona, ingénieur-géologue, expert consultant de l'Organisation des Nations Unies pour le droit de la mer,

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M. Jean-Jacques Koum, directeur de l'exploration, société nationale des hydrocarbures (SNH),

M. Jean-Pierre Meloupou, capitaine de frégate, chef de la division Afrique au ministère de la défense,

M. Paul Moby Etia, géographe, directeur de l'Institut national de cartographie,

M. André Loudet, ingénieur cartographe,

M. André Roubertou, ingénieur général de l'armement, hydrographe,

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Mlle Sandrine Barbier, chercheur au Centre de droit international de Nanterre (CEDIN), Université de Paris X-Nanterre,

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M. Guy Roger Eba'a,

M. Aristide Eso,

M. Nkende Forbinake,

M. Nfan Bile,

Mr. Edouard Etoundi, Director, Central Administration, General Secretariat of the Presidency of the Republic,

Mr. Robert Tanda, diplomat, Ministry of Foreign Affairs,

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Mr. Samuel Betah Sona, Geological Engineer, Consulting Expert to the United Nations for the Law of the Sea,

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Mr. Paul Moby Etia, Geographer, Director, *Institut national de cartographie*,

Mr. André Loudet, Cartographic Engineer,

Mr. André Roubertou, Marine Engineer, Hydrographer,

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Mr. Boukar Oumara,

Mr. Guy Roger Eba'a,

Mr. Aristide Esso,

Mr. Nkende Forbinake,

Mr. Nfan Bile,

M. Eithel Mbocka,

M. Olinga Nyozo'o,

comme responsables de la communication;

Mme Renée Bakker,

Mme Lawrence Polirsztok,

Mme Mireille Jung,

M. Nigel McCollum,

Mme Tete Béatrice Epeti-Kame,

comme secrétaires de la délégation.

Le Gouvernement de la République fédérale du Nigéria est représenté par :

S. Exc. l'honorable Musa E. Abdullahi, ministre d'Etat, ministre de la Justice du Gouvernement fédéral du Nigéria,

comme agent;

Le chef Richard Akinjide SAN, ancien *Attorney-General* de la Fédération, membre du barreau d'Angleterre, ancien membre de la Commission du droit international,

M. Alhaji Abdullahi Ibrahim SAN, CON, commissaire pour les frontières internationales, commission nationale des frontières du Nigéria, ancien *Attorney-General* de la Fédération,

comme coagents;

Mme Nella Andem-Ewa, *Attorney-General* et commissaire à la justice, Etat de Cross River,

M. Ian Brownlie, C.B.E., Q.C., membre de la Commission du droit international, membre du barreau d'Angleterre, membre de l'Institut de droit international,

Sir Arthur Watts, K.C.M.G., Q.C., membre du barreau d'Angleterre, membre de l'Institut de droit international,

M. James Crawford, S.C., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, membre des barreaux d'Angleterre et d'Australie, membre de l'Institut de droit international,

M. Georges Abi-Saab, professeur honoraire à l'Institut universitaire de hautes études internationales de Genève, membre de l'Institut de droit international,

M. Alastair Macdonald, géomètre, ancien directeur de l'*Ordnance Survey*, Grande-Bretagne,

comme conseils et avocats;

M. Timothy H. Daniel, associé, cabinet D. J. Freeman, *Solicitors*, City de Londres,

Mr. Eithel Mbocka

Mr. Olinga Nyozo'o,

as Media Officers;

Ms René Bakker,

Ms Lawrence Polirsztok,

Ms Mireille Jung,

Mr. Nigel McCollum,

Ms Tete Béatrice Epeti-Kame,

as Secretaries.

The Government of the Federal Republic of Nigeria is represented by:

H.E. the Honourable Musa E. Abdullahi, Minister of State for Justice of the Federal Government of Nigeria,

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Chief Richard Akinjide SAN, Former Attorney-General of the Federation, Member of the English Bar, former Member of the International Law Commission,

Alhaji Abdullahi Ibrahim SAN, CON, Commissioner, International Boundaries, National Boundary Commission of Nigeria, Former Attorney-General of the Federation,

as Co-Agents;

Mrs. Nella Andem-Ewa, Attorney-General and Commissioner for Justice, Cross River State,

Mr. Ian Brownlie, C.B.E., Q.C., Member of the International Law Commission, Member of the English Bar, Member of the Institute of International Law,

Sir Arthur Watts, K.C.M.G., Q.C., Member of the English Bar, Member of the Institute of International Law,

Mr. James Crawford, S.C., Whewell Professor of International Law, University of Cambridge, Member of the English and Australian Bars, Member of the Institute of International Law,

Mr. Georges Abi-Saab, Honorary Professor, Graduate Institute of International Studies, Geneva, Member of the Institute of International Law,

Mr. Alastair Macdonald, Land Surveyor, Former Director, Ordnance Survey, Great Britain,

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M. Alan Perry, associé, cabinet D. J. Freeman, *Solicitors*, City de Londres,

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M. Geoffrey Marston, directeur du département des études juridiques au *Sidney Sussex College*,
Université de Cambridge, membre du barreau d'Angleterre et du Pays de Galles,

comme conseils;

S. Exc. l'honorable Dubem Onyia, ministre d'Etat, ministre des affaires étrangères,

M. Maxwell Gidado, assistant spécial principal du président pour les affaires juridiques et
constitutionnelles, ancien *Attorney-General* et commissaire à la Justice, Etat d'Adamaoua,

M. Alhaji Dahiru Bobbo, directeur général, commission nationale des frontières,

M. A. O. Cukwurah, coconseil,

M. I. Ayua, membre de l'équipe juridique du Nigéria,

M. F. A. Kassim, directeur général du service cartographique de la Fédération,

M. Alhaji S. M. Diggi, directeur des frontières internationales, commission nationale des frontières,

M. K. A. Adabale, directeur pour le droit international et le droit comparé, ministère de la justice,

M. A. B. Maitama, colonel, ministère de la défense,

M. Jalal Arabi, membre de l'équipe juridique du Nigéria,

M. Gbola Akinola, membre de l'équipe juridique du Nigéria,

M. K. M. Tumsah, assistant spécial du directeur général de la commission nationale des frontières
et secrétaire de l'équipe juridique,

M. Aliyu Nasir, assistant spécial du ministre d'Etat, ministre de la Justice,

comme conseillers;

M. Chris Carleton, C.B.E., bureau hydrographique du Royaume-Uni,

M. Dick Gent, bureau hydrographique du Royaume-Uni,

M. Clive Schofield, unité de recherche sur les frontières internationales, Université de Durham,

M. Scott B. Edmonds, directeur des opérations cartographiques, *International Mapping Associates*,

M. Robert C. Rizzutti, cartographe principal, *International Mapping Associates*,

Mr. Alan Perry, Partner, D. J. Freeman, Solicitors, City of London,

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Mr. Christopher Hackford, Solicitor, D. J. Freeman, Solicitors, City of London,

Ms Charlotte Breide, Solicitor, D. J. Freeman, Solicitors, City of London,

Mr. Ned Beale, Trainee, D. J. Freeman, Solicitors, City of London,

Dr. Geoffrey Marston, Fellow of Sidney Sussex College, University of Cambridge; Member of the Bar of England and Wales,

as Counsel;

H.E. the Honourable Dubem Onyia, Minister of State for Foreign Affairs,

Mr. Maxwell Gidado, Senior Special Assistant to the President (Legal and Constitutional Matters),
Former Attorney-General and Commissioner for Justice, Adamawa State,

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Mr. I. Ayua, Member, Nigerian Legal Team,

Mr. F. A. Kassim, Surveyor-General of the Federation,

Alhaji S. M. Diggi, Director (International Boundaries), National Boundary Commission,

Mr. K. A. Adabale, Director (International and Comparative Law) Ministry of Justice,

Colonel A. B. Maitama, Ministry of Defence,

Mr. Jalal Arabi, Member, Nigerian Legal Team,

Mr. Gbola Akinola, Member, Nigerian Legal Team,

Mr. K. M. Tumsah, Special Assistant to Director-General, National Boundary Commission and
Secretary to the Legal Team,

Mr. Aliyu Nasir, Special Assistant to the Minister of State for Justice,

as Advisers;

Mr. Chris Carleton, C.B.E., United Kingdom Hydrographic Office,

Mr. Dick Gent, United Kingdom Hydrographic Office,

Mr. Clive Schofield, International Boundaries Research Unit, University of Durham,

Mr. Scott B. Edmonds, Director of Cartographic Operations, International Mapping Associates,

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M. Bruce Daniel, *International Mapping Associates*,

Mme Victoria J. Taylor, *International Mapping Associates*,

Mme Stephanie Kim Clark, *International Mapping Associates*,

M. Robin Cleverly, *Exploration Manager, NPA Group*,

Mme Claire Ainsworth, *NPA Group*,

comme conseillers scientifiques et techniques;

M. Mohammed Jibrilla, expert en informatique, commission nationale des frontières,

Mme Coralie Ayad, secrétaire, cabinet D. J. Freeman, *Solicitors*, City de Londres,

Mme Claire Goodacre, secrétaire, cabinet D. J. Freeman, *Solicitors*, City de Londres,

Mme Sarah Bickell, secrétaire, cabinet D. J. Freeman, *Solicitors*, City de Londres,

Mme Michelle Burgoine, spécialiste en technologie de l'information, cabinet D. J. Freeman, *Solicitors*, City de Londres,

comme personnel administratif.

Le Gouvernement de la République de Guinée équatoriale, qui est autorisée à intervenir dans l'instance, est représenté par :

S. Exc. M. Ricardo Mangue Obama N'Fube, ministre d'Etat, ministre du travail et de la sécurité sociale,

comme agent et conseil;

S. Exc. M. Rubén Maye Nsue Mangue, ministre de la justice et des cultes, vice-président de la commission nationale des frontières,

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

M. Domingo Mba Esono, directeur national de la société nationale de pétrole de Guinée équatoriale, membre de la commission nationale des frontières,

M. Antonio Nzambi Nlonga, *Attorney-General*,

comme conseillers;

M. Pierre-Marie Dupuy, professeur de droit international public à l'Université de Paris (Panthéon-Assas) et à l'Institut universitaire européen de Florence,

M. David A. Colson, membre du cabinet LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., membre du barreau de l'Etat de Californie et du barreau du district de Columbia,

comme conseils et avocats;

Mr. Bruce Daniel, International Mapping Associates,

Ms Victoria J. Taylor, International Mapping Associates,

Ms Stephanie Kim Clark, International Mapping Associates,

Dr. Robin Cleverly, Exploration Manager, NPA Group,

Ms Claire Ainsworth, NPA Group,

as Scientific and Technical Advisers;

Mr. Mohammed Jibrilla, Computer Expert, National Boundary Commission,

Ms Coralie Ayad, Secretary, D. J. Freeman, Solicitors, City of London,

Ms Claire Goodacre, Secretary, D. J. Freeman, Solicitors, City of London,

Ms Sarah Bickell, Secretary, D. J. Freeman, Solicitors, City of London,

Ms Michelle Burgoine, IT Specialist, D. J. Freeman, Solicitors, City of London,

as Administrators.

The Government of the Republic of Equatorial Guinea, which has been permitted to intervene in the case, is represented by:

H.E. Mr. Ricardo Mangué Obama N'Fube, Minister of State for Labor and Social Security,

as Agent and Counsel;

H.E. Mr. Rubén Maye Nsue Mangué, Minister of Justice and Religion, Vice-President of the National Boundary Commission,

H.E. Mr. Cristóbal Mañana Ela Nchama, Minister of Mines and Energy, Vice-President of the National Boundary Commission,

Mr. Domingo Mba Esono, National Director of the Equatorial Guinea National Petroleum Company, Member of the National Boundary Commission,

Mr. Antonio Nzambi Nlonga, Attorney-General,

as Advisers;

Mr. Pierre-Marie Dupuy, Professor of Public International Law at the University of Paris (Panthéon-Assas) and at the European University Institute in Florence,

Mr. David A. Colson, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., member of the California State Bar and District of Columbia Bar,

as Counsel and Advocates;

Sir Derek Bowett,

comme conseil principal,

M. Derek C. Smith, membre du cabinet LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., membre du barreau du district de Columbia et du barreau de l'Etat de Virginie,

comme conseil;

Mme Jannette E. Hasan, membre du cabinet LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., membre du barreau du district de Columbia et du barreau de l'Etat de Floride,

M. Hervé Blatry, membre du cabinet LeBoeuf, Lamb, Greene & MacRae, L.L.P., Paris, avocat à la Cour, membre du barreau de Paris,

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M. Coalter G. Lathrop, *Sovereign Geographic Inc.*, Chapel Hill, Caroline du Nord,

M. Alexander M. Tait, *Equator Graphics*, Silver Spring, Maryland,

comme experts techniques.

Sir Derek Bowett,

as Senior Counsel;

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as Counsel;

Ms Jannette E. Hasan, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., member of the District of Columbia Bar and Florida State Bar,

Mr. Hervé Blatry, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Paris, Avocat à la Cour, member of the Paris Bar,

as Legal Experts;

Mr. Coalter G. Lathrop, Sovereign Geographic Inc., Chapel Hill, North Carolina,

Mr. Alexander M. Tait, Equator Graphics, Silver Spring, Maryland,

as Technical Experts.

Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte aux fins d'entendre, à partir d'aujourd'hui, la première série de plaidoiries de la République fédérale du Nigéria. Je donne immédiatement la parole à S. Exc. l'honorable Musa E. Abdullahi, ministre d'Etat, Ministre de la justice, agent du Nigéria. Mr. Minister, you have the floor.

Mr. ABDULLAHI:

1. Mr. President, distinguished Members of the Court, it is an honour and a privilege for me to address you in my capacity as the Agent of the Federal Republic of Nigeria. Before I begin I should like, on behalf of my Government, to thank both the Court and our distinguished opponents for your and their condolences on the sad death of the late Chief Bola Ige, my predecessor as Agent. He is much mourned and sorely missed.

2. Mr. President, we in Nigeria have always been proud of the fact that Nigeria has accepted the Court's jurisdiction for over 40 years. Nigeria has always had confidence in the Court. By contrast, Cameroon deposited its acceptance of the Court's jurisdiction under Article 36, paragraph 2, of the Statute in March 1994, instituting these present proceedings just a few days later. As the Court will recollect, Cameroon began this case in two stages: first an Application relating only to the Bakassi Peninsula and the maritime boundary between the two States, and then, three months later, by an Additional Application introducing a variety of miscellaneous further grounds of complaint, as an afterthought. The effect has been to present this Court with one of the largest cases ever to come before it, covering title to territory, maritime delimitation, the complex problems of a large inland lake, an 1,800-km or 1,000-mile land boundary, questions of State responsibility, and the fate of well over 200,000 Nigerians.

3. Although Nigeria regards Cameroon's legal case as a weak one, Nigeria has nevertheless always treated this dispute with great seriousness. The Court should be aware of how Nigeria sees this case. Although it concerns a number of other issues, in Nigeria it is known as the "Bakassi Case". This reflects the importance of Bakassi in the minds of the Nigerian people. The peninsula, a thriving well-populated part of Nigeria, is the main focus of this case. What Cameroon is attempting to do is to prise away parts of Nigeria and its people. The Bakassi issue, in particular, has already caused widespread anxiety and disquiet within Nigeria.

4. Although Cameroon is now claiming sovereignty in Bakassi, it has never had title, and has never acted as if it had title. Nor has it ever taken any positive interest in the people; on the contrary its hostility to them has been apparent for many years. Its conduct has been not only alien, but violent and destructive, its pre-eminent characteristic being occasional predatory forays into the peninsula by Cameroonian gendarmes. It is therefore unsurprising that we search in vain in Cameroon's evidence for indicators that there are people in Bakassi who want to be taken over by Cameroon. Cameroon has said that there are many Nigerians living in Bakassi. So there are, but there is this great difference: in Bakassi, Nigerians live under Nigerian rule. In Cameroon they live under Cameroonian rule.

5. It is ironic, Mr. President, distinguished Members, that the distinguished Agent for Cameroon referred in his opening address to what he called Nigeria's envy, which he said was exacerbated by the presence of oil wealth on Bakassi. Nigeria's case has nothing to do with envy. Nigeria's primary interest is in its territory, and in the Nigerian inhabitants. This is obvious from the well-documented facts. The distinguished Cameroon Agent's own speech is in truth only one in a large number of indicators showing that, contrary to what he says, it is Cameroon, and not Nigeria, that regards Bakassi as little more than a mangrove swamp, to be exploited for its hydrocarbons. Cameroon would have the Court believe that the peninsula is virtually unpopulated, and doubtless that is what it would prefer, faced as it is by a large and determinedly Nigerian population. Nigeria has painstakingly assembled the impressive body of evidence that has been lodged with the Court in the course of the written proceedings. It was a lengthy and complex task involving visits to a wide range of locations in and outside Bakassi. In truth, whatever our opponents say, it was not the kind of exercise that could be successfully carried out by a United Nations fact-finding or goodwill mission to Bakassi. The evidence shows beyond any doubt at all that Bakassi has always been considered in Nigeria to be Nigerian sovereign territory and an integral part of the Federal Republic of Nigeria.

6. The Bakassi Peninsula, is inhabited by a population of Nigerian fishermen and farmers. They are tied politically, culturally, historically and ethnographically to Nigeria. They pay allegiance to Nigerian traditional rulers. They pay taxes to Nigeria. Their schools and clinics are built and run by Nigerian local authorities. Their links are to mainland Nigeria and not to

Cameroon. It is Nigeria that has looked after these people and continuously exercised sovereignty over the land. Cameroon has not.

7. Let me now turn to the offshore maritime boundary. The Gulf of Guinea is an area very rich in resources, both hydrocarbon and fish. It is an area of great importance to the world's petroleum industry, and has seen thousands of millions of dollars' worth of investment over the last 40 years. Except for inshore waters, this maritime space has never been the subject of negotiations between Cameroon and Nigeria, the reason being quite simply that until the lodging of Cameroon's Memorial, Cameroon had made no claim. On the other hand, after a decade of amicable and sincere negotiations, Nigeria has agreed its maritime boundary with Equatorial Guinea. The Treaty deliberately refrains, for the time being, from extending the boundary into the area where both Nigeria and Equatorial Guinea believe there to be a tripoint with Cameroon.

8. Nigeria has also negotiated, agreed and ratified a joint development zone in the area of overlapping claims with Sao Tome and Principe. It is in the process of negotiating its maritime boundary with the Republic of Benin. All of this conforms to the requirements of the United Nations Convention on the Law of the Sea. In marked contrast, as far as we are aware, Cameroon has failed to negotiate any of its maritime boundaries with any of its coastal neighbours. Indeed, in bilateral contacts, it has failed even to present a claim to those boundaries. Instead, out of nowhere, Cameroon has presented the Court with maritime claims that are grossly exaggerated, claims which assume that the Court has jurisdiction to parcel out the area as a whole to the various Gulf of Guinea States.

9. As Nigeria has stated in its pleadings, the Cameroonian claim cuts through Nigeria's maritime areas, where long-established oil concessions are to be found, and where oil companies have invested huge sums. I repeat: Cameroon has never before laid claim to these areas. These licences, both Equatorial Guinean and Nigerian, have been public knowledge for many years. Cameroon has never protested about them. Now it is trying to have the Court compensate it, at the expense of its neighbours, for the facts of its geography and for its own practices, its conduct, its own acquiescence.

10. Mr. President, distinguished Members of the Court, this case also concerns the boundaries in Lake Chad, and the whole length of the land boundary from Lake Chad to the

Bakassi Peninsula, as well as issues of State responsibility. The fact that Cameroon added most of these issues in a second Application clearly shows that Cameroon regards them as of lesser importance than its Bakassi claim and its claim to a maritime boundary well to the west of Bakassi. As we shall show, these claims are very much an afterthought.

11. Nigeria will explain to the Court how it is that the boundary with Cameroon in Lake Chad is still unresolved. As with Bakassi, so too in the areas of Nigeria claimed by Cameroon in the region of Lake Chad, a large population of Nigerians (approximately 60,000 of them) lives and works. In this area, too, all their ties, religious, ethnographic and cultural, are with Nigeria, and in particular with Borno. Significant investment in schools, clinics, administration and infrastructure has been made by Nigeria in these towns and villages. Cameroon has done nothing to assist the inhabitants, despite its claim to sovereignty. They consider themselves Nigerians, and have always been administered by Nigeria.

12. Lake Chad is an area with fundamental environmental problems, particularly the diminishing size of the Lake itself, and these are highlighted in Nigeria's Counter-Memorial. The Lake Chad Basin Commission (the "LCBC") is a multilateral body comprising the littoral States and the Central African Republic. It was established to deal with these issues. They are still unresolved, and joint action by these States is imperative to ensure the continuing livelihood of the population and to prevent the Lake drying up completely. Nigeria is the major financial contributor to the LCBC, and continues to work on these major problems.

13. Mr. President, distinguished Members of the Court, Cameroon's first round pleadings showed yet again our opponents' persistent failure to face up to the real issues. For a start, Cameroon invents arguments it would prefer to deal with, and substitutes those invented arguments for the ones Nigeria has actually put forward. Furthermore, Cameroon's arguments have mostly been based on generalities. Cameroon is strikingly reluctant to get to grips either with the texts or with the other hard evidence. Cameroon's reluctance to engage with Nigeria's case is combined with a notable inconsistency even in the way it presents its own arguments. Its changes of position are particularly marked in relation to the definitive specification of the land boundary, to particular land boundary questions such as Tipsan, to State responsibility, and to Cameroon's maritime claim lines. My distinguished colleagues will return to these matters in due course.

14. Cameroon claims that Nigeria does not accept the treaties and instruments which established the boundary between Lake Chad and the Bakassi Peninsula. This is then used as a pretext for the untenable claim that Nigeria is an aggressive neighbour, and I shall return to that in a moment. But first, since Cameroon's first round speeches attempted yet again to misrepresent our attitude to the relevant treaties and instruments, let me repeat our unchanged position. Nigeria accepts them in principle. It cannot accept them without qualification because, taken by themselves, they contain defects which affect the delimitation as such. Nigeria cannot accept them without qualification because *Cameroon's* conduct has called into question boundary delimitations which Nigeria believes to be clear. Nigeria has identified the particular locations in question, and it is *only those specific locations* which qualify Nigeria's acceptance of the land boundary instruments. Moreover, Nigeria has the following legitimate concern. If the Court were to do as Cameroon wants — that is, simply to endorse the instruments as they stand — Cameroon would treat this as an endorsement of its version of the boundary. Yet that version is — as we will show — wrong in many respects, and Cameroon's errors involve questions of principle and of definition, not just of demarcation. There are a limited number of quite specific disputes along the boundary. Several of them could be separate cases before this Court. In aggregate, they affect an area of land actually greater than the Bakassi Peninsula.

15. Nigeria regards the resolution of the land boundary issues raised by Cameroon as fundamentally important for the maintenance of public order and for peaceful neighbourly relations. For this reason, Nigeria in its Rejoinder suggested how these instruments might be interpreted in a way which faithfully reflects what appears to have been the intentions of the original drafters. The result is set out in the atlas accompanying the Rejoinder. Nigeria believes that such an interpretation would produce a sensible and meaningful delimitation of the boundary which, if it meets with the Court's approval, would afford a sound basis for a subsequent demarcation on the ground. Cameroon has offered no alternative. Nigeria invites the Court to conclude that Nigeria's interpretation represents as closely as possible the intentions underlying the delimitation included in the relevant instruments.

16. Mr. President, distinguished Members of the Court, since these proceedings began, our opponents have missed no opportunity to portray us in a completely false light, as aggressors and

invaders, not only in Bakassi but elsewhere along the boundary. For these purposes Cameroon and her counsel systematically use inappropriate language. Incidentally, Mr. President, a new low for sheer invention was reached when a speech last Friday described us as practising “oil imperialism”, even going so far as to say that Nigeria had, and I quote, “imposed” a maritime boundary on Equatorial Guinea¹. The Court can see that the treaty was an even-handed one, as it was amicable, and will in due course hear Equatorial Guinea speak for itself. Cameroon’s language of “aggression” and “invasion” is particularly inflated and undignified. That is Cameroon’s problem. So is the fact that the name-calling begs the questions the Court is to decide.

17. Cameroon’s misuse of language must be viewed in light of the fact that the status quo in Bakassi is solidly Nigerian, and has been so for many decades. This is simply proved by the evidence for which our opponents pretend to such contempt. In later years, especially in the 1980s and early 1990s, Cameroon made various violent attempts to disturb the status quo. For example, Cameroon ambushed a peaceful Nigerian patrol in the area in 1981, killing five Nigerian soldiers. Later, Cameroon had to apologize and pay compensation². Similarly, there has been a series of well-documented incidents in which Cameroon’s gendarmerie earned the very unsavoury reputation it now enjoys in Bakassi thanks to violent forays into the peninsula and its molestation of the population³. For Cameroon to call Nigeria “aggressive” and an “invader” is thus the reverse of the truth, as the Court can judge from the evidence Cameroon is so afraid to discuss. The references are in the transcript.

18. Characteristically, Cameroon seeks to present Nigerian security reinforcements in late 1994 as an “invasion”, disingenuously pretending that there had been no Nigerian security forces in Bakassi prior to that date, and presenting as aggression Nigeria’s very real need to reinforce its military presence⁴. In the same way, Cameroon attacked on 5 February 1996, and then tried to exploit the resulting situation by applying to the Court for the indication of interim measures. Yet, what really happened was that Cameroon’s armed forces bombarded the Nigerian town of

¹CR 2002/5, pp. 51-52, paras. 44-45.

²Counter-Memorial of Nigeria, paras. 24.65-24.67; Rejoinder of Nigeria, paras. 16.35-16.46.

³See, for example, Counter-Memorial of Nigeria, paras. 10.160-10.180 and 25.9-25.13.

⁴Counter-Memorial of Nigeria, para. 24.94.

West Atabong on a market day, killing ten innocent Nigerian civilians and wounding 20 more. At the same time they killed two Nigerian soldiers and wounded three more⁵. The references are in the transcript. Cameroon's explanation is senseless: they now suggest that Cameroonian soldiers relaxed with their beers on the beach, in response to which *Nigeria* bombarded the innocent Nigerian villagers.

19. Mr. President, distinguished Members of the Court, after independence in 1960, Nigeria adopted Africa as the centrepiece of its foreign policy objectives, entrenched this policy in her Constitutions and took up this role very seriously. Nigeria thus used her limited resources and diplomatic influence for the decolonization of other African States. In the affairs of southern and eastern Africa, Nigeria became a member of the Front Line States, even although Nigeria itself is in the west. Nigeria was the Permanent Chairman of the United Nations Action Against Apartheid Committee. In these roles it played a significant part in the struggle for the independence of Mozambique, Namibia, Angola, Zimbabwe, and the end of apartheid in South Africa.

20. In relation to West African affairs, Nigeria contributed over US \$3 billion and large numbers of men — many of whom it lost — to United Nations contingents led by Nigeria, bringing peace and the restoration of democracy in Sierra Leone and Liberia. Nigerian soldiers are still in Sierra Leone, in our efforts to consolidate the gains of democracy.

21. In Africa today, it is the West African subregion that has developed furthest towards economic and political union. Nigeria is the seat of the West African Parliament. It is also the headquarters of ECOWAS, that is the regional economic body for West Africa. Through ECOWAS, visa restrictions are removed so that citizens can travel across the borders. A plan for a single currency for the subregion has reached an advanced stage. In all these activities, Nigeria's role cannot be underestimated, for its resources, in men and material, are almost equal to the remaining countries put together. Yet Nigeria never imposes on these countries. Surely, Mr. President, Nigeria cannot have Africa as the centrepiece of its foreign policy objectives and at the same time be what Cameroon presents it to be before this Court.

⁵Counter-Memorial of Nigeria, paras. 25.16–25.17, Rejoinder of Nigeria, App. to Chap. 16, paras. 151–169, CR 2002/7, p. 55, para. 50, and Reply of Cameroon, para. 11.159.

22. The Court should be aware that Nigeria's policies and performance in international relations have always been a matter of justified national pride. In 1960 Nigeria became a Member of the United Nations within a week of acceding to independence. A populous State — now of some 120 million people — Nigeria has always had the will and peacekeeping capabilities to play a leading role in resolving the troubles of other States in the region and in Africa as a whole. Outside Africa, as inside, it has played an active role in peacekeeping operations throughout the world, including Yugoslavia, Tajikistan and Lebanon. Over the years it has been involved in no less than 20 United Nations missions.

23. The present Government of Chief Olusegun Obasanjo hosted the Abuja summit in October 2001, at which an agreement was reached in an attempt to resolve the land rights issue in Zimbabwe. President Obasanjo's predecessor, Abdul Salami Abubakar, is the Head of the Commonwealth team which has been sent to Zimbabwe to act as observers in the forthcoming elections. Nigeria has also played an active role in trying to bring peace to the Democratic Republic of Congo. In short, Nigeria's record in developing and maintaining peace in Africa and troubled regions of other continents is exemplary, and Nigeria takes this role very seriously.

24. And that is not all. Nigeria has been involved in substantive and amicable negotiations with her other neighbours, Equatorial Guinea, Sao Tome and Principe, and the Republics of Benin, Niger and Chad, as to boundary questions, land and maritime. This shows that Cameroon's further assertion, that Nigeria is not prepared to negotiate, is likewise completely baseless. Perhaps Cameroon should take a closer look at her poor negotiating record with her own neighbours. The saying "People who live in glass houses shouldn't throw stones" is apposite here.

25. By her pleadings, persistent letters and oral presentations to this Court, Cameroon tries to paint Nigeria in a very damaging light — a picture of a huge country well endowed with people and resources but hostile to its neighbours, a bully nation, an irredentist nation, a belligerent nation, and in fact a nation with expansionist instincts. It is my duty to disabuse your minds of these false impressions that Cameroon persistently attempts to implant in them. Mr. President, distinguished Members of the Court, Nigeria is not a hostile nation, it is not a bully nation, nor is it an irredentist nation. Nigeria is not a belligerent nation, nor is it interested in expanding its frontiers at the expense of its neighbours. On the contrary, Nigeria is one of the most peaceful countries in Africa,

with a strong record of peaceful neighbourliness. Nigeria has never gone to war with any of its neighbours. Nigeria shares land and maritime boundaries with Niger, Chad, Benin, Equatorial Guinea and Sao Tome and Principe, as well as with Cameroon. It is only with Cameroon that things are different. These other countries will never agree with Cameroon's false and bloated negative presentation of Nigeria before this Court.

26. Mr. President, distinguished Members of the Court, Nigeria will not, by detailed rebuttal, lend dignity to the Cameroonian allegations that it has not behaved properly and in accordance with the procedure and processes of the Court. These allegations scarcely call for much attention from either Nigeria or the Court. If Nigeria has any comment to make on the conduct of this matter, it is this: Nigeria regrets the long series of letters which Cameroon has sent to the Registrar of the Court since these proceedings began. Cameroon is not content to keep its arguments within the framework of the written pleadings, but persistently seeks to use letters to the Court as a means to introduce additional pleadings of a wholly inappropriate kind, and to produce still further documents of little or no relevance to the real issues in this case. Nigeria has for the most part refrained from being provoked into entering into this type of skirmishing within the litigation. Acrimonious and propaganda-laden correspondence between the Parties during the course of the case over alleged incidents — if they happened at all — is, in Nigeria's view, unhelpful to the Court. What role can Cameroon expect these letters to play? Like so much of Cameroon's conduct, they must surely be intended to prejudice the Court against Nigeria by publishing a long list of unsubstantiated allegations.

27. There is another aspect of Cameroon's conduct which is worrying for Nigeria. Nigeria has justified concerns for the human rights both of its own citizens harassed in the border areas and also of Nigerians living in Cameroon. There are a substantial number of reports of maltreatment of Nigerian citizens in Cameroon. Cameroon is a State where many people of Nigerian descent are being made to feel like second-class citizens. Recent reports from the British Broadcasting Corporation (BBC), on 5 October 2001, stated that Cameroonian police have clamped down on their rights to protest. I quote

“Earlier this week, riot police violently broke up banned marches, trailed as non-violent gatherings by English-speaking [inhabitants], in two towns in western Cameroon. The authorities said they were provoked, but it is clear that they were well

prepared, having dispatched elite troops from the capital, Yaoundé, and neighbouring provinces into the area.

Leaders of the English-speaking minority have increasingly complained that they are treated as second-class citizens. They say that they are exempted from top government jobs . . .

Newspapers — the public's main source of news — are subject to considerable government restrictions. Libel laws are used to inhibit the press and journalists have been jailed as a result."

28. The United Nations Commission on Human Rights has a Special Rapporteur on Torture. He visited Cameroon in 1999. Nigeria drew attention in its Rejoinder to his report, dated 11 November of that year. Cameroon chooses to sweep this aside. Please allow me to quote again from that United Nations report, which stated that "torture is widespread and used indiscriminately against many people under arrest". The report goes on to state that there is independent evidence that in Cameroon "torture is resorted to by law enforcement officials on a widespread and systematic basis".

29. Cameroon is therefore hardly a State to which Nigerians would wish to belong. And, I can assure you that the very substantial populations involved vehemently do not want to be transferred to Cameroonian sovereignty. We have presented in our pleadings contemporaneous notes of interviews held during trips to the disputed areas, which manifestly show the desire of these local populations to remain part of Nigeria.

30. Mr. President, distinguished Members of the Court, over the next few days, we shall highlight some of the many proofs that Bakassi belongs to Nigeria, that the boundaries in Lake Chad are still to be finally determined by the riparian States, that Cameroon's claims in respect of the land boundary are incorrect, that Cameroon's maritime claim in the Gulf of Guinea is untenable and that it is not Nigeria which has carried out acts which give rise to State responsibility, but Cameroon.

31. Mr. President, distinguished Members of the Court, it is now my honour to introduce the advocates who will present Nigeria's case before the Court. Both of my distinguished colleagues and Co-Agents, Chief Richard Akinjide and Alhaji Abdullahi Ibrahim, each a former Attorney-General and Minister of Justice, will be addressing the Court, the former in the course of the second round, the latter on Monday.

32. Nigeria will begin, today and tomorrow, by dealing with the heart of this case, the Bakassi Peninsula. Mrs. Nella Andem-Ewa, the Attorney-General of Cross River State, the Nigerian State of which Bakassi is part, will give you a brief portrayal of the peninsula, its culture and people.

33. Sir Arthur Watts will then examine the position of Bakassi before Independence, then deal with the March 1913 Anglo-German Treaty. Tomorrow, Mr. Ian Brownlie will deal with the post-Independence history of the Bakassi Peninsula and describe the constituents of Nigeria's legal title.

34. Next week, Professor Georges Abi-Saab will set out Nigeria's position on the concept of *uti possidetis juris*. Alhaji Ibrahim, who you will recall addressed you as Agent during the oral hearings on the preliminary objections, will open our presentation of the land boundary issues. He will be followed by Sir Arthur Watts and Mr. Alastair Macdonald, who will outline and explain the legal and geographical issues.

35. Thereafter, Mr. Ian Brownlie will discuss the matters at stake in the Lake Chad area. Professor James Crawford will then introduce some general aspects of the maritime boundary, and he and Professor Abi-Saab will then provide and complete a more detailed study of this issue.

36. Thereafter, Sir Arthur Watts and Professor Abi-Saab will address you on State responsibility and Professor Crawford on counter-claims.

37. Mr. President, distinguished Members of the Court, thank you for your attention and patience. I ask you please to call Mrs. Nella Andem-Ewa.

Le PRESIDENT : Je vous remercie, Monsieur le Ministre. I now give the floor to Mrs. Nella Andem-Ewa, Attorney-General of Cross River State. You have the floor.

Mrs. ANDEM-EWA:

INTRODUCTION TO BAKASSI

1. Mr. President, distinguished Members of the Court, it is a rare privilege for me, as the Attorney-General of Cross River State of the Federal Republic of Nigeria, to appear before this distinguished body.

2. Cross River State is one of the 36 States which, together with the Federal Capital Territory, make up the Federal Republic of Nigeria. It is situated in the south-east of the country.

3. Cross River State shares a common border with Cameroon for some 277 km, from the Obudu highlands in the northern part of the State through lush tropical rainforest to the mangrove forests of the Bakassi Peninsula at its southern tip.

4. The Bakassi Peninsula itself has a landmass covering an area of approximately 700 km², and is principally made up of a network of islands and creeks.

5. Transport between the various islands is by water, particularly through creeks of varying size and navigability. On the screen now are a couple of photographs of the waterways. These can be found at tab 1 of the judges' folder. As you can see, Bakassi has a very rich and diverse aquatic life. The confluence of rivers in the region creates undercurrent planktons suitable for breeding various species of fish, crayfish, shrimps and lobsters. It is hardly surprising therefore that the abundance of these natural resources has meant that the area has been readily exploited by the local population, with the result that fishing is the predominant occupation of the inhabitants of Bakassi.

6. The vegetation in Bakassi is thick and dense, with the principal flora being mangroves, characterized by arching roots. Further inland from the coast, the mangroves give way to very old and well-established rainforest, as can be found in areas around Archibong Town, Akwa and Mbenmong. On the screen now are some photographs of the rainforests of the region. These can also be found under tab 1 of the judges' folder.

7. The Bakassi Peninsula forms part of Cross River State. At Independence, it was administered as part of Akpabuyo Local Council, thereafter it was administered under Odukpani Local Government Area, and then under Akpabuyo Local Government Area. Bakassi Local Government Area was created in 1996. It is now one of the 18 Local Government Areas that make up Cross River State. The headquarters of this Local Government Area is at Abana, on the western shore of the peninsula. On the screen now, and in your judges' folder at tab 2, is a selection of photographs of Abana. From these you can see that Abana is a large town, with permanent structures. It also has an established community — as you can see — contrary to the impression given by Cameroon that it is a small fishing settlement with an itinerant population of fishermen.

8. The photograph now on the screen, which can be found at tab 3, shows some of the population of Abana. This photograph was taken during a visit to the area in June 1997 by members of the Nigerian legal team and, since they were visiting an area on high alert, they required armed protection. On the left of the photograph are the village chiefs — where the arrow indicates — and the elders are next to them. In the centre are dancers dressed in traditional Efik attire, called Abang.

9. Nigeria has prepared a short video which, with your kind permission, shall be played to the Court in order to give the distinguished Judges a better understanding of the area I am describing. Similar images to these were included in Volume XII of the Counter-Memorial and are at tab 4 of the judges' folder.

Le PRESIDENT : Excusez-moi. May I interrupt one second. The practice has always been that if videos are to be shown, they have to be communicated to the Registry and to the other Party in advance. Has this been done?

Mrs. ANDEM-EWA: This has not been done.

The PRESIDENT: Can we postpone the projection of this video to a later stage?

Mrs. ANDEM-EWA: Yes. Thank you very much.

History

10. Now, let me explain briefly to you some of the history of the peninsula. It has been established in Nigeria's written pleadings that, for several centuries, the region extending from the lower Cross River up to and around its estuary has been known as the City States of Old Calabar. The extent of this region is shown in red on the map now on screen, which can be found at tab 5 of the judges' folder.

11. History confirms that one or more Efik clans made their way to the lower reaches of the Cross River, beyond the region of the Akwayafe River up to the Rio del Rey sometime after 1700⁶.

⁶See Daryll Forde (ed.), *Efik Traders of Old Calabar*, London, 1956, p. 27; *The Diary (1785-8) of Antera Duke*, at p. 43. A copy of this book has been lodged with the Court.

12. There is historical evidence that the first Efik to settle on Bakassi was Chief Abasi Eke, a native of Creek Town, Old Calabar. Archibong Town and Mbenmong were founded by descendants of King Archibong I, one of the Kings of Old Calabar who reigned from 1849 to 1852⁷.

13. By the late fifteenth century, all the clans that made up Old Calabar paid homage, tribute and allegiance to the Obong of Calabar. The Obong in turn provided them with protection against aggression. Right up into the colonial period, however, treaties were entered into by the Kings and Chiefs of Old Calabar. Despite Professor Ntamark's assertion that the Kings and Chiefs were not an independent entity capable of entering into international agreements, Nigeria has clearly produced evidence to the contrary in its Counter-Memorial⁸. Such blatant disregard of true historical facts is not appropriate in this forum.

14. The Efik polity predates the 1400s. It still administers its territories through the Etuboms, who are representatives of the various clans from which an Obong is selected. The Etuboms constitute themselves into a council, which forms the nucleus of the Obong's Council, a governing body that operates like a parliament, representing the interests of the citizenry.

15. The Efiks all regard the Obong's role in society as being of great importance, and the Obong himself takes his position and the protection of his people very, very seriously. For instance, when it was thought that the British administration in the region was attempting to transfer the ownership of the natives' land or dispossess them, the then Obong Edem Efeiong directed two of his sons — Prince Bassey Duke (whose statue adorns the city centre of present-day Calabar) and Prince James Eyo Ita (who later became King Eyo Honesty IX) — to present a memorandum on this issue on behalf of the native communities to the British Crown and Parliament in London⁹. The British Government vehemently denied any such attempt.

16. The local cultural and social affiliation between the inhabitants of Bakassi and the Obong of Calabar is of extreme importance. Mr. Ian Brownlie will discuss these affiliations in greater detail tomorrow. Suffice it to say, however, that it is very significant that, as a matter of wholly

⁷"The Kings and Chiefs of Old Calabar" by Ekei Essien Oku, pp. 55-62.

⁸Counter-Memorial of Nigeria, Vol. IV, Anns. NC-M 3-NC-M 14 and NC-M 21-NC-M 23.

⁹Counter-Memorial of Nigeria, Vol. VI, Anns. NC-M 110.

consistent practice, the Obong of Calabar and the Etubom's Council have always regarded and administered the Bakassi Peninsula as part of the Kingdom and City States of Old Calabar, and therefore of Nigeria.

17. Apart from the political administration of the Efik monarchy, law and order was, and still is, maintained through a confraternity called "Ekpe". The Ekpe Society is unique to the Efiks. It represents the strongest traditional administrative and judicial organization in the area, and co-exists alongside more recent religious and administrative bodies. The Ekpe shrines are in every Efik community. It is worthy of note that an Ekpe shrine was referred to in Antera Duke's diary entry as far back as 8 February 1786 when he referred to his walk with one Archibong Duke up to the palaver house (which is also called "ufok afanikong") on Bakassi, where the "efe Ekpe", which means Ekpe shrine, was situated¹⁰. The main Ekpe shrines are in the major towns on Bakassi, including Akwa, Archibong, Abana and West Atabong.

18. The Ekpe Society is one of the most fundamentally important aspects of life on Bakassi and amongst the Efiks in the region generally. The significance of this organization is felt throughout the area, in Bakassi, in the rural areas of south-eastern Nigeria and also in the towns and cities of the region, including Calabar. The Ekpe Society centres around the Palaver House, which is the "efe Ekpe". Only respected Chiefs and elders are permitted access to the Palaver House. The Society has established a method of governing morally, judicially and administratively in the region, and adherence to the principles of Ekpe is central to the daily life of the Efik population.

Physical and social geography

19. Mr. President, I now wish to describe the geography of the peninsula in greater detail. Despite there being a large covering of mangroves, large areas of the peninsula are conducive to habitation and have been inhabited since the first Efik settlers arrived. The northern end of Bakassi, at the point where the Akpa Yafe River turns west, is well above sea level. Towns in the north, Archibong, Mbenmong and Akwa, are built on solid earth, some 15 feet above sea level. For nearly two centuries there have been solid permanent structures in these towns. The old Methodist

¹⁰*The Diary of Antera Duke*, p. 43 *supra* footnote 1.

church at Archibong Town, for instance, dates back to the 1880s. Also, the Ekpe Shrine at Archibong is the oldest on Bakassi.

20. In the southern areas of Bakassi, along the coastal reaches, there are large areas of sandy beaches stretching in a number of places for several hundreds of metres, both along the coast and inland. These are devoid of vegetation and therefore ideal places for establishing habitation. Some of the larger settlements in the south including East and West Atabong, Abana and Onosi, as well as Ine Akpa Ikang in the north, are built on these stretches of sand. These are amongst the largest of the towns on Bakassi, ideal for fishing and trading.

21. All the larger towns on Bakassi, such as Archibong Town, Abana and West Atabong, have modern facilities and institutions including local churches, schools and clinics. West Atabong and Abana also have their own markets. Water purification schemes have been built up in the major towns, and electricity has recently been established. Indeed, West Atabong even has a cinema.

22. It is clear therefore that the Bakassi Peninsula is not an uninhabitable mangrove swamp, populated only by itinerant fishermen. No, it is not. In fact, it sustains a permanent population of over 150,000 people, the vast majority of whom live all year round in the towns I have mentioned and in smaller fishing villages such as Ine Ekpo, Ine Utan, Onosi, Ine Akpak, Ine Odiong and Ine Nkan Okure. These smaller settlements, built in amongst the creeks and therefore protected from tidal waters and storms, are just as permanent as the other, larger towns.

23. Since the fifteenth century, the inhabitants have fished, farmed and traded with the mainland, principally with Calabar, Ikang, Jamestown and Oron — which are in Nigeria. It should be noted, incidentally, that the Cross River estuary has been, for many years, an important trading route between Calabar and other places in the area, including Fernando Po, now called Bioko. The local administration infrastructure followed these inhabitants. Those inhabitants of the towns and villages in the northern part of Bakassi paid their taxes to the tax collectors from Ikot Nakanda, they traded at Ikang market, attended schools, clinics and courts in Ikang, Ikot Nakanda and Calabar.

24. The southern part of Bakassi was settled by people from across the Calabar estuary to the west, who were, again, predominately fishermen. They built homes on the large sandy areas of the

Bakassi Peninsula on the southern shores, from which villages developed and grew at East and West Atabong, amongst others. These fishermen traded with the mainland across the estuary, with Oron, Jamestown, Atabong Beach and Calabar. Taxes were collected from the villages established on Bakassi by inspectors from Jamestown, for instance, and schools and clinics were set up by the local government administration based in Enwang, Jamestown and Oron.

Ethnography

25. Mr. President, distinguished Members of the Court, I turn now to the ethnography of Bakassi. As my earlier comments have shown, the Bakassi Peninsula is habitable, and a substantial population lives and works there. The inhabitants of the majority of the Bakassi Peninsula are almost exclusively Efik, having been settled originally by Efik clans and descendants of Efik kings. They are from, and affiliated to, the Efik people who live in Calabar and the surrounding area to the north and south.

26. The links between the people who inhabit the northern parts of Bakassi and the mainland south of Calabar, and indeed Calabar itself, are manifold and manifest. They share a custom: matters such as traditional attire, wedding ceremonies, naming and burial ceremonies, beliefs, music, food are the same in Calabar as they are in Bakassi. They share the same language. The Efik language spoken by the inhabitants of Bakassi is spoken throughout Calabar, Bakassi up to the Rio del Rey. It is not spoken by the Cameroonians — it is not. As far back as the 1880s the Efiks had built trading outposts on the Rio del Rey and Efik was widely spoken in the region.

27. It is worth noting that the names of towns and settlements in the entirety of the Bakassi Peninsula are Efik names, and have always been so. As I stated earlier, the word “Ine”, used to prefix most of these names, means “fishing settlement” in the Efik language.

28. There is also another tribe which founded some towns in the most southerly part of Bakassi, and these are the Effiats. They originated from across the Calabar estuary, from towns such as Jamestown and Tom Shot, in what now forms part of Akwa Ibom State. On 11 September 1884, the chiefs of Tom Shot signed a treaty in which they affirmed that they would be “subject to the authority and jurisdiction of the Kings and Chiefs of Old Calabar”¹¹. Since that

¹¹Counter-Memorial of Nigeria, Vol. IV, Ann. NC-M 23.

time the Effiats have become assimilated into Efik culture, so that they now share strong cultural similarities with the Efiks, including the Ekpe Society, the Ekpe traditional attire, music and food, for example. There is also a keen similarity in their dialect. Although originally distinct from the Efiks, these differences today are almost imperceptible, and they have co-existed in the peninsula without dispute over the last two centuries.

29. It is again worth noting that the villages in the southern part of Bakassi share names with Effiat villages and towns on the mainland. Ine Okopedi is named after Okopedi, a town which is now the headquarters of Oron local government area. East and West Atabong derive their names from Atabong Beach, a commercial town on the western banks of the Calabar River.

30. In more recent times, there has been an increasing immigration into this rich fishing area by migrant fishermen from other tribes of Nigeria, such as the Ijaws, Andonis, Ibibios and Ogonis. There are, however, no Cameroonian fishermen in these waters or living in the Bakassi Peninsula — none.

31. Mr. President, distinguished Members of the Court, I should at this point explain briefly the history of a dispute over attribution of the Bakassi Peninsula between two Nigerian States, Cross River State, which is my own State, and Akwa Ibom State.

32. Cross River State and Akwa Ibom State used to be part of a larger State called South Eastern State. This was renamed Cross River State in 1976. During this period, the Bakassi Peninsula was administered by two local government areas within that State. The majority of the peninsula was administered by Akpabuyo Local Government Area, while the most southerly part was administered by the local government areas on the mainland west of the Calabar estuary. Mr. Ian Brownlie will discuss this in detail tomorrow.

33. In 1987 Cross River State was divided into two, with Akwa Ibom State being created out of the south-western third of the old State. This meant that the Local Government Areas, which were administering the Bakassi Peninsula were now in two different States in Nigeria. A dispute arose: of course, the dispute was between the two States as to which of them should govern the whole of Bakassi.

34. This intensified in the early 1990s, and troops were sent to the area to ensure public order was maintained. In 1996 the Federal Government created Bakassi Local Government Area, with

its headquarters at Abana, as a constituent part of Cross River State. Although this decision was disputed by Akwa Ibom State, the 1999 Constitution, which lists the constituent Local Government Areas within each State, puts Bakassi Local Government Area within Cross River State. Consequently, the matter has been laid to rest. This dispute was widely publicized and yet, while it was going on, not a word — not a word of protest or concern — was expressed by Cameroon. For Cameroon now to suggest that the creation of Bakassi Local Government Area was in order to present the Court with a *fait accompli* blatantly ignores not only the historical ties of the area with the Obong of Calabar, but also the history of administration of the peninsula by successive Nigerian Local Government Areas over many, many years.

Nigeria's original title

35. In conclusion, Mr. President, distinguished Members of the Court, let me say a few words about the legal position of Bakassi, to add to what I have said about its geographical, historical and cultural characteristics.

36. First, though, let me clarify one point of terminology. I refer to Bakassi as “Nigerian”. But, of course, Nigeria as it exists today — a separate, unified and identifiable State — did not exist, say, a hundred or two hundred years ago. To use the term “Nigerian” to describe the lands to which I am now referring as they were in the nineteenth century is, therefore, somewhat anachronistic: to a considerable degree the same is true of Cameroon and the term “Cameroonian”. But, Mr. President, I trust that the Court will appreciate that the use of the modern adjective “Nigerian” in relation to the circumstances of the nineteenth century is both a simple matter of convenience, and appropriateness. The chain of identity from the Kings and Chiefs of Old Calabar to present-day Nigeria is clear enough and cannot be wished away by Cameroon.

37. Cameroon does, of course, dispute Bakassi's current status as part of Nigeria. But, as Nigeria has shown¹², there is no doubt that historically Bakassi is Nigerian. Nigeria's forerunners in this area were the Kings and Chiefs of Old Calabar. They were not just a miscellaneous group of undeveloped tribes. They were, rather, an entity with recognized sovereign status. Within their territory they ruled with sovereign authority with the outside world they conducted their relations

¹²Counter-Memorial of Nigeria, pp. 67-76, paras. 5.1-5.20; Rejoinder of Nigeria, pp. 8-21, paras. 1.6-1.21.

through an extensive network of treaties, including treaties both with Great Britain and other States: Nigeria's Counter-Memorial contains a long, but even so not necessarily complete, list of such treaties¹³.

38. The Kings and Chiefs of Old Calabar exercised their sovereign authority over a large area around the Calabar estuary: that authority extended a considerable distance to the east. The Bakassi Peninsula was therefore clearly within their domains. Of that there can be no doubt.

39. One must ask, Mr. President, what can have happened to change that clear position. Nigeria's answer is simple — nothing. A century ago Bakassi was clearly and admittedly Nigerian; the same remains today. Bakassi was, and still is, Nigerian territory.

40. Cameroon's answer, of course, is different. But what, Mr. President, does it amount to? If one takes away the surrounding rhetoric, it involves essentially two propositions.

- (a) The first is that, by a series of negotiations in the closing years of the nineteenth century and the early years of the twentieth century, Nigerian territory was progressively given up and taken into what is now Cameroon, and that that process included the Nigerian territory of the Bakassi Peninsula.
- (b) The second proposition on which Cameroon relies is that Cameroon has in practice been present in Bakassi, where it has exercised the normal attributes of territorial sovereignty.

41. Mr. President and distinguished Members of the Court, Nigeria has already explained in its written pleadings that those two propositions are both wrong in fact and in law.

42. That they are wrong in fact is, as Sir Arthur Watts and Mr. Ian Brownlie will explain today and tomorrow, apparent from the factual record, which is already before the Court. That factual record makes abundantly clear the extent of *Nigerian* administration of, and exercise of sovereignty over, the Bakassi Peninsula, and the absence of any comparable Cameroonian activity.

43. Cameroon is misguided in its legal arguments and this is equally apparent from a simple statement of what those arguments amount to.

- (a) In the first place they involve giving weight to a series of proposed agreements as if they had entered into force: but they never did enter into force.

¹³Counter-Memorial of Nigeria, pp. 71-74, paras. 5.11-5.13; and Rejoinder of Nigeria, Ann. NR 1.

(b) In the second place they involve the astounding proposition that a State can give to another State something — in this instance, a piece of territory — which the first State does not itself have. Mr. President, there can be few, if any, legal principles more universally respected than that expressed in the maxim *nemo dat quod non habet*. Yet Cameroon wishes this Court to deny respect for that legal principle. Cameroon wishes this Court to agree that Great Britain, which did not have sovereignty over the Bakassi Peninsula, could nevertheless give that territory to Germany and thus, later, to Cameroon. One has only to state that argument to see that it is not just fundamentally flawed in law but contrary to the most elementary notions of justice.

44. Mr. President, distinguished Members of the Court, this might be a convenient time for a coffee break. After the coffee break — or even now, if the Court prefers — I please ask you to call Sir Arthur Watts, who will develop in greater detail these aspects of Nigeria's case. Thank you, Mr. President.

The PRESIDENT: Thank you very much. I understand Sir Arthur would prefer probably not to be interrupted, so we will take the coffee break now. Par conséquent, nous suspendons la séance pour une dizaine de minutes.

The Court adjourned from 11.20 p.m. to 11.30 p.m.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise et je donne la parole à Sir Arthur Watts.

Sir Arthur WATTS: Thank you, Mr. President.

PRE-INDEPENDENCE BAKASSI

1. Mr. President, Members of the Court, I have the honour, once again, to appear before you, on behalf of the Federal Republic of Nigeria.

2. My task is to present the first part of Nigeria's case on title to Bakassi. I shall address the history of Bakassi up to the early years of the twentieth century, including in particular the significance of the Protectorate Treaty of 1884. Then I shall turn to the Anglo-German Treaty of

March 1913. Finally, I shall consider the administration of Bakassi from 1913 until Nigeria's attainment of independence in 1960.

Bakassi up to the early years of the twentieth century

3. A brief account of the early period of Bakassi's history will, I believe, assist the Court in its understanding of the later developments which are central to this case. In doing so I will, as Mrs. Andem-Ewa did, for convenience, use the term "Nigerian" in relation to the earlier periods for which, strictly speaking, that term is inexact. I do not believe, Mr. President, that any confusion is likely to result: the link between today's Nigeria and yesterday's Old Calabar is clear¹⁴.

4. Cameroon would appear to prefer that Nigeria should say nothing about Old Calabar. It is, they say, a "mysterious entity", a "mythical entity", even a "mirage". The only mystery is how Cameroon can form such a view. Old Calabar was, as I will explain, very real indeed.

5. I shall pick up only two points in the early history of Bakassi: first, that it was part of the domains of the Kings and Chiefs of Old Calabar; second, that the Kings and Chiefs of Old Calabar possessed international legal personality, and in particular the capacity to conclude treaties.

6. The geographical extent of the territories under the authority and control of the Kings and Chiefs of Old Calabar has been explored in some detail in Chapters 4 and 5 of Nigeria's Counter-Memorial. Nigeria has there shown that in south-eastern Nigeria, in the period after 1700, the chief tribes were the Efiks and the Efiat.

7. Many Efik towns were clustered together around the mouth of the Cross River — on earlier maps often marked as the Calabar River. This area was known as Old Calabar, and it was the centre of Efik activity and authority. An old map — it dates from 1822 and it is at tab 6 in the judges' folders, and now on the screen — shows these towns, towns such as Duke Town, Creek Town, Henshaw Town and Obutong Town, also known as Old Town. Other Efik towns were further afield — such as Tom Shott's Town, and Arsibon's Town (now Archibong) — not shown on this old map but approximately in the area now being indicated: it is shown on other maps in Nigeria's Counter-Memorial. Each of these towns, or "Houses" — virtually City States — had its own King or Chief, so that by the early nineteenth century there were several local Kings in Old

¹⁴Counter-Memorial of Nigeria, p. 211, para. 10.1.

Calabar. From these there gradually emerged the paramount chieftaincy or kingship — later the Obongship — of Old Calabar. Cameroon seeks to poke fun at this process, but as the Court will know, it reflects a very normal process of institutional and constitutional evolution.

8. In the nineteenth century Old Calabar was a major port — a glance at the map will show what a geographically favoured location it was. Old Calabar and its Efik “Houses” had established their authority not only over the area around Old Calabar, but also over all the lands between the Cross River and the Rio del Rey. The area subject to the direct rule of the Kings and Chiefs of Old Calabar is the red area shown on the map at tab 7 in the judges’ folders, and on the screen now — a map which has already been seen this morning.

9. These activities of the “Houses” of Old Calabar included the founding of settlements on the Bakassi Peninsula. Those settlements, and the villages and towns into which they soon developed, were within the dominions of Old Calabar: they are specifically identified in Chapter 3 of Nigeria’s Counter-Memorial¹⁵. The map shows the disposition of the various City States and the relationship with the Bakassi Peninsula.

10. Evidence from the period immediately following the conclusion of the 1884 Treaty of Protection, and testifying to the extent of Old Calabar, and in particular its inclusion of the Bakassi Peninsula, has been set out in Nigeria’s Counter-Memorial¹⁶. Without reading the relevant quotations in full, let me just pick out the key passages.

11. First there is the memorandum which Hewett, the British consul who negotiated the 1884 Treaty, sent back to London with his report of the signing of the Treaty: in it he describes Old Calabar in the following terms: “This country with its dependencies extends from Tom Shots . . . to the River Rumby (on the west of the Cameroon Mountains), both inclusive.”

12. These locations are on the map on the screen, and at tab 8 in the judges’ folders.

13. Second is a report to the Foreign Office just six years later, in 1890, by a later Consul, Johnston. In it he states “the rule of the Old Calabar Chiefs extended far beyond the Akpayafe River to the very base of the Cameroon Mountains”, qualifying this by adding that the “Efik people . . . only went as far east as the right bank of the Ndian River”. He went on:

¹⁵Counter-Memorial of Nigeria, pp. 37-39, paras. 3.37-3.43.

¹⁶Counter-Memorial of Nigeria, pp. 94-96, paras. 6.35-6.36.

“The trade and rule of the Old Calabar Chiefs extended, in 1887, considerably further to the east than the Ndian River . . . The left or eastern bank of the Akpayafe and the land between that river and the Ndian is under the rule of Asibon or Archibong Edem III, a big Chief of Old Calabar . . .”

He concluded by reporting that the Old Calabar Chiefs had withdrawn from the lands east of the Ndian, to which obviously Johnston thought that they had a somewhat dubious title; but that giving up any additional territory would cause real trouble as it would involve “their real, undoubted territory”. So Johnston’s report was, in effect, that while the territory beyond the Ndian might only arguably be Old Calabar’s, territory to the west belonged “undoubtedly” to Old Calabar. Bakassi, and the Rio del Rey, are demonstrably to the west of the Ndian: Bakassi, Mr. President and Members of the Court, was part of Old Calabar’s heartlands.

14. Cameroon sought to argue that it was wholly inappropriate to talk of Old Calabar as though it acknowledged the kind of territorial conceptual framework which is common in modern European practice. Old Calabar, and similar peoples, it was said, simply did not have formal defined territorial limits, and this showed that for Nigeria to talk of Bakassi being part of Old Calabar’s territories was entirely anachronistic.

15. Mr. President and Members of the Court, most States nowadays have well-defined and agreed territorial boundaries because that is how international life has developed. But it has not always been so. Formally delimited frontiers emerged only gradually, as the need for territorial certainty arose. And it is clear that fixed and agreed boundaries are in no way a precondition for international personality, even today: a number of States have boundaries which are to a greater or lesser extent unsettled.

16. A century and more ago, that was even more the position. The Court decided in the *Western Sahara* case¹⁷ that even nomadic tribes who are present in a territory and have a social and political organization have a sufficient existence in international law to prevent their territory being *terra nullius*. Consequently title to their territories was acquired, not unilaterally by occupation as in the case of *terra nullius*, but “through agreements concluded with local rulers”¹⁸. The Kings and Chiefs of Old Calabar were much more than nomadic tribes, as I shall show in a moment.

¹⁷*I.C.J. Reports 1975*, p. 3.

¹⁸*Ibid.*, p. 39.

17. There was no need for the Kings and Chiefs of Old Calabar to have formally defined territorial limits. Their tribal affinities and social structures were entirely sufficient, in the circumstances of the time, to give their authority its territorial dimension. And they were well aware of what, territorially speaking, was theirs and what was someone else's. When they concluded a treaty with Great Britain in 1856¹⁹, the party to the Treaty was "the Chiefs of Old Town, Old Calabar on the part of themselves *and their country*". When King Archibong III and his Chiefs in 1878 concluded a treaty with Great Britain on trade and commerce, it referred to "all the land where he claims sovereignty"²⁰. When Great Britain proposed the inclusion, in the Treaty of Protection of 1884, of an article providing for freedom of trade "in every part of the territories of the Kings and Chiefs", they rejected that article, in order to protect their inland areas from foreign commercial encroachments²¹. They knew perfectly well what their "sovereignty" referred to, what "their country" was and what "their territories" meant, and the particular value to them of their inland areas. Their territorial sense was well developed even if their boundaries were not written down on some formal piece of paper.

18. There can thus be no doubt, Mr. President and Members of the Court, that in the last half of the nineteenth century Bakassi was under the authority of Old Calabar.

19. One must then go on to ask, however, what kind of entity was this "Old Calabar" of which Bakassi was a dependency? And that answer is also clear, and has been given in Nigeria's Counter-Memorial: "Old Calabar and its component City States [were] independent entities with international legal personality"²².

20. Now, it is apparent from the very title "Kings and Chiefs of Old Calabar" that we are talking not of a single unitary entity, but rather of a grouping of political units, effectively separate City States — the principal among which were Duke Town (which became known as Old Calabar, and later the present-day Calabar), Creek Town and Old Town (also Obutong). Each had its own territorial basis, but at the same time worked together with the others within a single loose political

¹⁹Counter-Memorial of Nigeria, Ann. 6.

²⁰Counter-Memorial of Nigeria, Ann. 15; Counter-Memorial of Nigeria, pp. 88-89, para. 6.21.

²¹Counter-Memorial of Nigeria, pp. 89, 93, paras. 6.22-6.23, 6.32.

²²Counter-Memorial of Nigeria, p. 74, para. 5.15, and pp. 86-90, paras. 6.15-6.26.

framework. In very general terms the arrangement has been described as a “federation or conglomeration of loosely-knit towns”²³. There are numerous maps going back several centuries which depict City States of Old Calabar. The Atlas accompanying Nigeria’s Counter-Memorial lists eight such maps²⁴, dated 1662, 1729, 1750 to 1772, 1794, 1822, 1871, 1879 and 1888. There is also copious other expert evidence testifying to the existence of Calabar as a well-established African polity: it too is set out in Nigeria’s Counter-Memorial²⁵. Old Calabar and the City States are no figment of the imagination; they are no “myths” or “mirages”; there is no “mystery” about them — unless, that is, all these authoritative observers have been in error — a suggestion which not even Cameroon has yet dared put forward.

21. These City States of the Calabar region most certainly existed, and over time came to act together as the Kings and Chiefs of Old Calabar. By the time that European territorial interest in the region was becoming intense in the early and mid-nineteenth century, that entity had crystallized so as to be the entity with which they had to deal.

22. And deal with it they did, Mr. President. The record demonstrates beyond any doubt the range and quantity of the dealings between, on the one hand, various of the City States as well as the Kings and Chiefs collectively, and, on the other, Great Britain. Thus as early as 1849 a British Consul was appointed²⁶. And from an even earlier date the Kings and Chiefs of Old Calabar were concluding treaties with Great Britain — at least 17 such treaties were concluded between 1823 and 1884²⁷. Mr. President and Members of the Court, Great Britain has been accused of many things but never, until now, of making treaties with “myths”!

23. It would be wrong to give the impression that it is only Great Britain which concluded treaties with “myths”. A glance at the *Consolidated Treaty Series* will quickly show that France, too, followed the same practice. As early as 1842, the King of Old Calabar (“*Le Roi du Vieux Calabar*”), pending the arrival in the Old Calabar River of a French warship to negotiate a treaty of

²³See Counter-Memorial of Nigeria, p. 67, para. 5.1.

²⁴Counter-Memorial of Nigeria, Atlas maps Nos. 16-22 and 13.

²⁵Counter-Memorial of Nigeria, pp. 69-70, paras. 5.7-5.10.

²⁶Counter-Memorial of Nigeria, p. 74, para. 5.14.

²⁷Counter-Memorial of Nigeria, pp. 71-73, para. 5.12.

commerce and friendship, undertook in writing to protect French commercial personnel and to treat them as well as the British were being treated²⁸.

24. Mr. President, States and other international persons may take many forms: formal written constitutions, and frontiers delimited by agreement, are not essential. The Court's Opinion in the *Western Sahara* case demonstrated that. The record shows clearly that the political and legal personality of the Kings and Chiefs of Old Calabar was fully recognized at that time. Their territory was not *terra nullius*. And in particular, they concluded their treaties as full treaty partners, on terms of legal equality with the co-contracting State.

25. It was on that basis that they concluded with Great Britain the very important treaties of protection in 1884 — first, two preliminary Treaties of 23 and 24 July 1884, and then the main Treaty concluded by the Kings and Chiefs of Old Calabar on 10 September.

26. Cameroon has chosen to treat these treaties only very sketchily. Perhaps Cameroon believes that they do not matter. But they *do* matter, Mr. President. Indeed, they are of the utmost importance for the legal consequences flowing from the Treaty of 1913, which we will come to in a moment. They formed the basis of the British protectorate over Nigeria, and thus established the limits of Great Britain's powers in relation to Nigeria. It is those limits which made it impossible for Great Britain lawfully to transfer the Nigerian territory of the Bakassi Peninsula to Germany — or indeed to anyone else.

27. Allow me, therefore, Mr. President, to spend a little time on the 1884 Treaties. In practice, we need only concentrate on the last of them, concluded on 10 September. That was the substantive Treaty of Protection. It cannot be ignored, for two reasons. It undermines Cameroon's whole thesis that the Kings and Chiefs did not have treaty-making capacity — it was every bit as much of a treaty as were other *treaties* of protection which were cited by Cameroon. And it specifies the terms of protection in a way completely inconsistent with the position which Cameroon takes.

28. Before looking more closely at its terms, I should like to plant in the Court's mind a single, crucial question. It is this. Who conferred on Great Britain the authority to give away

²⁸ *Consolidated Treaty Series*, Vol. 93, p. 476.

Bakassi? And not just “who?”, but also when? and how? It is a question I shall have occasion to repeat many times.

29. But with that question firmly in mind, let me now look at the Treaty of Protection in more detail. Let me look first at who was bound by it.

30. On the one hand, Queen Victoria. On the other hand, the Kings and Chiefs of Old Calabar. Their position is of considerable legal interest — apart from anything else, it shows a sophisticated approach to treaty-making authority. The party to the treaty was the Kings and Chiefs of Old Calabar. But in neighbouring areas there were a number of kings and chiefs who were subject to the authority and jurisdiction of Old Calabar. They, therefore, could not themselves become direct parties to the Treaty of 10 September 1884. But they had to be brought within its scope. So each of them made a Declaration, in substantially identical terms, stating that they were “subject to the authority and jurisdiction of the Kings and Chiefs of Old Calabar”, that they could not, “therefore, make any Treaty with a foreign Power for ourselves”, but adding that “any Treaty the said Kings and Chiefs of Old Calabar have made, or may hereafter make, is, and will be, binding on us”. Such Declarations were made by the Kings and Chiefs of Tom Shot, the Efut and the Idommbi.

31. Having established that the Treaty was binding on several of the local kings and chiefs under the general paramountcy of the Kings and Chiefs of Old Calabar, now let us consider the territorial scope of the Treaty. When reporting the Treaty and the Declarations to the British Foreign Secretary, the British Consul, Hewett, referred to the Declarations in the following terms:

“The Chiefs of Tom Shot country, *of Efut, the country about the Rio del Rey*, and of Idombi, the country about the River Rumby, made declarations that they were subject to Old Calabar.”²⁹

32. As the map at tab 9 in the judges’ folders and now on the screen shows, the River Rumby is well to the east of Bakassi; and Efut covered the land “about the Rio del Rey”, which waterway is itself on the *eastern* side of the Bakassi Peninsula. The general area of the territories of the Kings and Chiefs of Tom Shot, Efut and Idommbi is also indicated on the map. Quite apart from

²⁹Counter-Memorial of Nigeria, p. 90, para. 6.33: emphasis added.

Bakassi being, as I have already shown, part of the dominions of the Kings and Chiefs of Old Calabar, it is wholly clear that the 1884 Treaty included Bakassi within its geographical scope.

33. Let me now turn to another aspect of the Treaty of Protection: what were its substantive provisions? They are brief, and I need only cite the first two articles: their text is at tab 10 in the judges' folders and also, for convenience, on the screen:

“Article I. Her Majesty the Queen of Great Britain and Ireland, &c, in compliance with the request of the Kings, Chiefs, and people of Old Calabar, hereby undertakes to extend to them, and to the territory under their authority and jurisdiction, her gracious favour and protection.

Article II. The Kings and Chiefs of Old Calabar agree and promise to refrain from entering into any correspondence, Agreement, or Treaty with any foreign nation or Power, except with the knowledge and sanction of Her Britannic Majesty's Government.”³⁰

34. Before looking at the terms of these articles more closely, it is important to emphasize two things. First, this is a *treaty*: it in terms describes itself as such. It is in classic contractual form, with Great Britain offering one thing, in return for which the Nigerian party undertook another. The co-contracting parties were international persons, equal in law; they were manifestly agreeing to certain dispositions within the framework of international law. Great Britain's domestic legislation consistently regarded the Treaty of Protection as a “treaty”³¹. In short, this was an international treaty in the full sense of that term.

35. The second thing to emphasize is that, as a treaty, it must be considered and assessed in the light of its *particular terms*, something which Cameroon shows a marked reluctance to do.

36. Cameroon's position can be summed up in four propositions: first, international law knows only international protectorates and colonial protectorates; second, the so-called international protectorates are those like Bhutan, Sikkim, French Indo-China; third, by contrast, Nigeria was only a colonial protectorate; and fourth, in a colonial protectorate the protected State becomes virtually a colony of the protecting State, which therefore has sovereign rights over it, including the right to dispose of its territory.

37. Such an analysis is interesting, but, in so far as it is not wrong, it is irrelevant.

³⁰The full text is at Counter-Memorial of Nigeria, Annex 23, read in conjunction with Annex 16.

³¹Counter-Memorial of Nigeria, p. 111, para. 6.66; pp. 165-166, paras. 8.46-8.48.

- (a) It is not international law which knows those two categories of protectorates, but some commentators on international law; what international law knows is *particular* protectorate relationships, established by *particular* treaties.
- (b) The position of Bhutan, Sikkim, French Indo-China and other protected, or formerly protected, States is very interesting, but this case is about the Nigeria Protectorate, established by the Treaty of 1884.
- (c) Even by Cameroon's criteria, the Nigeria Protectorate was an international protectorate, having been established by a treaty concluded between two existing international persons whereby the one, without losing its identity, placed itself under the protection of the other. Great Britain dealt with the Nigeria Protectorate under British legislation which was appropriate, by its very terms, for the exercise of British jurisdiction in *foreign States*³². British Ministers were absolutely clear that they were not taking on another colony, but only a protectorate³³; and Consul Hewett was himself well aware of the distinction between the two — he wrote to King Ja Ja of Opobo, who asked what “protection” meant, that the British Queen “under[takes] to extend her . . . protection, which will leave your country still under your Government”³⁴.
- (d) Finally, since Great Britain was expressly and intentionally acquiring only certain limited rights of protection over the Nigerian Protectorate, and no way annexing it or acquiring colonial sovereignty over it, Great Britain was not thereby acquiring any sovereign right to dispose of territory.

38. No general notion of “protectorate” developed by writers is sufficient to define the content of particular relationships of protection. We have a specific Treaty of Protection, and the kind of protection relationship which it establishes as between Nigeria and Great Britain depends *only* on the particular terms of *that* treaty: not on the terms of any other treaty, but solely and exclusively on the terms of the Treaty of 1884.

³²Counter-Memorial of Nigeria, pp. 117-123, paras. 6.72-6.84; Rejoinder of Nigeria, pp. 19-20, paras. 1.38-1.39.

³³Counter-Memorial of Nigeria, p. 106, para. 6.55 (Lord Chancellor Selborne).

³⁴Counter-Memorial of Nigeria, pp. 107-108, para. 6.59.

39. It was the Permanent Court of International Justice, in its 1923 Advisory Opinion on *Nationality Decrees Issued in Tunis and Morocco*, which said that

“The extent of the powers of a protecting State depends, first, upon the Treaties between the protecting State and the protected State establishing the Protectorate . . . In spite of common features possessed by Protectorates under international law, they have individual legal characteristics resulting from the special conditions under which they were created . . .”³⁵

40. One must, therefore, look carefully at what the 1884 Treaty of Protection said. And here let me remind the Court of the crucial question which I put earlier: who conferred on Great Britain the authority to give away Bakassi? And when? And how?

41. The Treaty said, first, that Great Britain would extend its “protection” to Old Calabar and the other territories to which the Treaty applied. And it said, second, that for its part Old Calabar would refrain from having dealings with foreign States without Britain’s knowledge and permission. And so far as is relevant for our present purposes, that is all it said. The Treaty said nothing about Britain being given the power to dispose of Old Calabar’s territory; it said nothing about Britain having sovereign rights in respect of Old Calabar; it said nothing, even, about Great Britain exercising the international relations of Old Calabar — indeed, it specifically left those relations still to be conducted by Old Calabar, only requiring that the Kings and Chiefs should not enter into any correspondence or agreement with foreign nations without Britain’s knowledge and permission.

42. The Treaty of 1884 thus left intact most of the rights and powers of the Kings and Chiefs of Old Calabar. They retained their international personality and their sovereignty, subject only to the limited contractual constraints upon their rights set out in the terms of the Treaty.

43. In that respect a comparison with this Court’s decision in the case concerning *Rights of Nationals of the United States of America in Morocco*³⁶ is instructive. There the Court had to deal with the position under the French Protectorate over Morocco. The Protectorate Treaty of Fez of 1912 — “an arrangement of a contractual character” as the Court called it — was characterized by the Court as an arrangement “whereby France undertook to exercise certain sovereign powers in

³⁵*P.C.I.J., Series B, No. 4*, p. 27. The full quotation is at Counter-Memorial of Nigeria, page 108, paragraph 6.62.

³⁶*I.C.J. Reports 1952*, p. 176.

the name and on behalf of Morocco, and, in principle, all of the international relations of Morocco”³⁷.

44. Yet, despite that extensive attribution to France of powers and rights over and in relation to Morocco, the Court still held the view that “Under this Treaty, Morocco remained a sovereign State”, and the Court noted that France itself had “not disputed . . . that Morocco, even under the Protectorate, has retained its personality as a State in international law”³⁸. There can, in Nigeria’s submission, be no doubt that Old Calabar’s position under the much less onerous Treaty of 1884 with Great Britain was even more firmly that of continuing sovereign status.

45. One can look also at the situation from the opposite perspective — not “what rights did Old Calabar give up to Great Britain?”, but “what rights did Great Britain gain from the Treaty?”. But the answer is to the same broad effect. The rights given up were, as we have seen, both specific, and limited. In the context of protection, the rights acquired were similarly specific and limited — namely, the right for Great Britain to extend to Old Calabar Britain’s “gracious favour and protection”. Indeed that was an obligation as much as a right.

46. It is the word “protection” which needs emphasizing. Great Britain was undertaking to *protect* Old Calabar, not to invade it, absorb it, plunder it, or dismember it. “Protection”, Mr. President and Members of the Court, requires that the interests of the protected person be looked after; “the concept of a Protectorate involves considerations of good faith, trust and a duty to act in the interests of the protected State”³⁹. If those interests are dissipated, then the protected person is neither granted any “favour” nor any “protection”. A grant of authority to alienate territory needs clear language, and any arguably relevant language is to be interpreted restrictively. “Protection” does not meet those requirements: rather, it precludes the unauthorized giving away of the territory which was to be protected.

47. That Treaty of Protection of 1884 was the origin of Britain’s actions in relation to much of Nigeria for more than three quarters of a century — until, in fact, Nigeria’s attainment of independence in 1960. Under its domestic powers for dealing with territories which were under

³⁷*Ibid.*, at p. 188. A fuller quotation from the Court’s Judgment is at Counter-Memorial of Nigeria, pages 98 to 99, paragraph 6.42.

³⁸*Ibid.*

³⁹Counter-Memorial of Nigeria, p. 162, para. 8.39.

British protection, Great Britain over the years enacted a series of Orders in Council making provision for the organization and exercise of British jurisdiction in the Nigeria Protectorate. By one of these the territory of Bakassi fell within the boundaries of what at the time constituted the Protectorate of Southern Nigeria.

48. In its essentials that position did not change before the conclusion of the Anglo-German Treaty of March 1913; and it is Nigeria's submission that it in no way changed as a result of that Treaty, nor indeed did it change in substance until Nigeria became independent.

49. Before concluding this section of my speech about the Protectorate, I should recall that it was not only in what is now Nigeria that a protectorate was established. The same happened in the neighbouring territory, of what is now Cameroon. There the protecting State was Germany. The German Protectorate was established in 1884, the same year as the British Protectorate.

50. Two things are significant about the arrangements made by Germany. In the first place, the two local chiefs — Kings Akwa and Bell — placed themselves very fully under Germany's authority. They assigned their rights of sovereignty, legislation and administration over their territory. This contrasts with the very different, and much more limited, arrangements made by Great Britain with the Kings and Chiefs of Old Calabar: they made Germany's relationship with Cameroon close to that of a colony, rather than to the clear protectorate arrangements between Great Britain and Old Calabar⁴⁰.

51. Secondly, Kings Akwa and Bell had quite limited territories. They were precisely identified in the agreement: it was "the country called Cameroun situated along the River Cameroon, between the River Bimbia in the North and Kwakwa in the South, and up to 4° 10' N latitude"⁴¹. This did not cover the whole of Cameroon, but in effect only the area inhabited by the people of Douala, which was the only area subject to the authority of the two Kings. On the screen now and at tab 11 of the judges' folders, you can see this area, showing in particular the River Bimbia and the parallel 4° 10' N latitude. It is clear that the whole of this area lay well to the south of the territories of the Kings and Chiefs of Old Calabar, and in particular of the Rio del Rey, the mouth of which is at approximately 4° 30' N.

⁴⁰Counter-Memorial of Nigeria, pp. 81-83, paras. 6.4-6.8.

⁴¹Counter-Memorial of Nigeria, Ann. 19.

52. The focus of British activity in this area was at the mouth of the Old Calabar River and the various settlements of Old Calabar — which, as we have seen, included Bakassi. The focus of German activity lay further to the east, at the mouth of the Cameroon River and the neighbouring Cameroon settlements. It was inevitable that there arose differences over the limits of the areas in which Great Britain and Germany had acquired a degree of authority.

53. As early as the year after the conclusion of the 1884 agreements there was talk between Great Britain and Germany of adopting the Rio del Rey as the dividing line⁴². Britain offered such a line in 1885. Germany countered by seeking to extend its Cameroon possessions as far west as the Calabar River (part of the river network comprising also the Cross River and the Akpa Yafe). Britain could not agree.

54. That exchange established the broad framework for much of the negotiations which were to follow. Britain was willing to give up interests to the east of the Rio del Rey. Germany, while ready to advance to the Rio del Rey, wanted to go even further, to the Cross River estuary. In between, of course, lay Bakassi.

55. In 1885 there was an Anglo-German Exchange of Notes which settled a line of separation between British and German activities in the area⁴³. And the line agreed began along the Rio del Rey and then followed a defined course into the interior, via a point on the Cross River.

56. The Exchange of Notes had nothing to do with territorial sovereignty. Its line separated what the text referred to as “spheres of influence”. In doing so it did no more than establish for each State a freedom to act within the geographical limits laid down for it, and a prohibition against acting within the limits laid down for the other State. The line agreed was, in effect, essentially a line of mutual forbearance, or non-encroachment, for the purpose of promoting the two countries’ trading interests. As part of the agreement, Germany engaged not to make acquisitions to the west of the Rio del Rey.

57. That Exchange of Notes took the line of separation a certain distance into the interior, the following year — 1896 — the two States concluded another Exchange of Notes by which they

⁴²Counter-Memorial of Nigeria, pp. 129-130, paras. 7.2-7.3.

⁴³Counter-Memorial of Nigeria, pp. 130-134, paras. 7.5-7.12.

extended the earlier line even further into the interior⁴⁴. In doing so they repeated that the line went up the Rio del Rey, and again made clear that they were only talking about spheres of action or influence.

58. There then arose a problem. It was discovered that there was no Rio del Rey — or rather, no river of that name with a distinct source which could be linked up with the Cross River. The difficulty was overcome by the Berlin Treaty of 1890. Article IV adopted “a provisional line of demarcation . . . between the German sphere in the Cameroons and the adjoining British sphere”. This line started at the “head of” the Rio del Rey Creek. This provision has to be read with Article VII, which stipulated that the two States would not “interfere with any sphere of influence assigned to the other by Article . . . IV [the one I just referred to] . . .”⁴⁵. Thus once again the Rio del Rey was confirmed as the line of separation, and once again it was confirmed that the separation was between spheres of influence, not territorial sovereignty; and once again Germany undertook not to make acquisitions in the British sphere.

59. By a further agreement concluded in 1893 the two States specified what they had meant in the 1890 Treaty by the reference to “the head of the Rio del Rey Creek”⁴⁶. Once more, therefore, they were confirming the Rio del Rey line, in a context which was expressly trade-related.

60. In a further Anglo-German agreement concluded later the same year, the two States implicitly reaffirmed the Rio del Rey line which they had previously agreed, and expressly repeated that the delimitation was one “between the territories *under the influence of* their respective Governments”⁴⁷.

61. And at that point the *agreements* between Great Britain and Germany relevant to the Bakassi Peninsula come to an end, until the Treaty of March 1913. There were, it is true, various reports made to the two Governments in the intervening years, and various proposals made, and even an agreement signed in 1909, which envisaged moving the boundary from the Rio del Rey to

⁴⁴Counter-Memorial of Nigeria, pp. 134-135, paras. 7.13-7.19.

⁴⁵Counter-Memorial of Nigeria, pp. 136-137, paras. 7.22-7.24.

⁴⁶Counter-Memorial of Nigeria, pp. 138-140, paras. 7.26-7.30.

⁴⁷Counter-Memorial of Nigeria, pp. 140-141, paras. 7.31-7.33: emphasis added.

a new location along the Akwayafe River, to the *west* of Bakassi⁴⁸. But they were just “reports”, and “proposals”, and even the signed agreement was only signed as a text recommended for approval by the two Governments, and in the event, for reasons of real substance, it was not approved: so it never entered into force.

62. I emphasize that point, because Cameroon has sought to attach legal weight to those events, asserting that they “acknowledged” that Bakassi was under German jurisdiction, and showed that “the local British and German Authorities in Nigeria and Cameroon had agreed that the frontier was to reach the coast at the mouth of the River Akwayafe”, and that “it can be said without hesitation that, since 1901, the Governments concerned both considered that the River Akwayafe represented the frontier”⁴⁹. Far from these propositions being accepted “without hesitation”, they call for the utmost hesitation. As a fact, the two Governments did *not* reach agreement on those matters. And in law, no mere proposals or reports, no agreements which have not entered into force, can be held to constitute an acknowledgment of, or agreement to, whatever it is that is being proposed. What the local officials in Nigeria and Cameroon may have agreed was, when referred back to these capitals, *not* approved by their Governments.

63. The net result of these earlier attempts to negotiate a separation between Cameroon and Nigeria was that, by 1913, nothing had been changed, and that the boundary between the British and German spheres of influence continued to lie along the Rio del Rey, to the *east* of the Bakassi Peninsula: indeed, the Rio del Rey was the recognized westward limit of the German Protectorate of Kamerun, and Germany had undertaken to respect the Rio del Rey as the boundary and to make no acquisitions to the west of it. That waterway is again being pointed out to you, this time on a modern map, which is on the screen now and at tab 12 in the judges’ folders.

The Anglo-German Treaty of 11 March 1913

64. That was the position when the two States made what was to prove their last attempt to settle the boundary between Cameroon and Nigeria, by the Treaty of 11 March 1913.

⁴⁸Counter-Memorial of Nigeria, pp. 145-151, paras. 8.1-8.13.

⁴⁹Memorial of Cameroon, paras. 2.88, 4.282 and 4.300: see Counter-Memorial of Nigeria, pp. 152-153, paras. 8.15-8.16.

65. Taken at face value, it is quite a simple treaty. It, in effect, delimits a boundary between the two countries. It does so in 22 numbered Articles. We can ignore for present purposes Articles I to XVII: they delimit the boundary in a series of sections southwards and southwestwards from Yola, far into the interior, and do not relate to the boundary in the area which we are now considering.

66. Articles XVIII to XXII are, however, a different matter. They continue the boundary line after the point which it had reached at the end of Article XVII, the text of which is at tab 13 in the judges' folders along with the text of Article XVIII. Article XVII took the boundary down to

“a pillar on the bank of the River Akpakorum about 2/3rds of a mile (1 kilom) downstream from the point where the Ekonako-Ekong road crosses the Akpakorum, and thence by the shortest line to the thalweg of the River Akpakorum, known in its lower reaches as the Akwayafe (Akwajafe)”.

67. Those locations are being shown to you on the map which is now on the screen and at tab 14 in the judges' folders.

68. So far, so good. It is the next following Articles which create the problem. For Article XVIII provides that from there on, the boundary “follows the thalweg of the Akpakorum (Akwayafe) River . . . [and] then follows the thalweg of the Akwayafe as far as a straight line joining Bakassi Point and King Point”.

69. The line of the Akwayafe River, down to Bakassi Point and King Point, is being shown to you on the screen.

70. Mr. President, it is immediately apparent that the boundary as it results from Articles XVIII to XXII of the 1913 Treaty has the purported effect of redrawing the eastern boundary of the Protectorate of Southern Nigeria in such a way that the boundary between the Protectorate and Cameroon runs not along the Rio del Rey to the *east* of Bakassi, but along the Akwayafe to the *west* of Bakassi: the effect is thus to attribute the Bakassi Peninsula to Germany.

71. And that, Mr. President, Members of the Court, is just the problem. Again I must pose the crucial question. What possible authority did Great Britain have to give away the Bakassi Peninsula to Germany?

72. Did Great Britain itself have sovereignty over Bakassi? Nowhere is that suggested. It certainly does not flow from the 1884 Treaty. That Treaty gave Great Britain only a limited

protectorate over Old Calabar, and in no way made it into a British colony. Great Britain acknowledged this by making its various Orders in Council for the Nigeria Protectorate under the Foreign Jurisdiction Acts, which is the appropriate vehicle for legislation for *foreign* territories, and not under the prerogative powers as would have been appropriate for a colony⁵⁰.

73. From where else might Great Britain have got the authority to give away Old Calabar's territory? There was no express and *ad hoc* grant of authority, that is sure. Nor could it come from the very limited rights given to Great Britain by the 1884 Treaty of Protection — "protection", Mr. President, not "dismemberment".

74. The plain truth of the matter is that Great Britain had no power or authority to give away something that was not hers to give. Bakassi did not belong to Great Britain, and therefore Great Britain had no right and no power to give Bakassi to Germany. There can be few legal principles with such a wide and elemental authority as that expressed in the maxim *nemo dat quod non habet*. Cameroon, Mr. President and Members of the Court, would have you disregard that principle; Cameroon invites you to agree that a State can, without express authority from the owner, give away some other State's territory.

75. Nothing, Mr. President, can justify such a position. It was clearly rejected in Judge Huber's Award in the *Island of Palmas* case⁵¹. There the United States claimed title to an island because the island had, it was contended, been ceded to the United States by Spain. Judge Huber said:

"The title alleged by the United States of America as constituting the immediate foundation of its claim is that of cession, brought about by the Treaty of Paris, which cession transferred all rights of sovereignty which Spain may have possessed in the region indicated in Article III of the said Treaty and therefore also those concerning the Island of Palmas (or Miangas). It is evident that Spain could not transfer more rights than she herself possessed . . . It is evident that whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers."⁵²

76. Bakassi, Mr. President, was Old Calabar's — that is, Nigeria's. Old Calabar could certainly have disposed of it, but Old Calabar did not do so. Instead, Great Britain took it upon

⁵⁰See Counter-Memorial of Nigeria, pp. 117-122, paras. 6.72-6.80.

⁵¹(1928) 2 *UNRIIAA* 829.

⁵²*Ibid.*, at pp. 842, 843. A fuller quotation from the Award is at Counter-Memorial of Nigeria, page 159, paragraph 8.30.

herself to purport to give away territory over which she did not have sovereignty, and which she had no other authority to give away. In doing so Great Britain acted wholly in excess of any powers which she had; the purported alienation of Bakassi was an *ultra vires* act on Great Britain's part. As such it was wholly ineffective in law to achieve the transfer of territory which it purported to effect. No other conclusion, Mr. President, is in Nigeria's submission tenable.

77. So far, we have considered Great Britain's conduct in terms of its authority, or rather lack of authority, to act as it did. But there are other aspects of the matter which should not be ignored.

78. Thus, not only did the 1884 Treaty of Protection not give Great Britain the power to transfer Old Calabar's territory to some other State, but that Treaty also imposed certain obligations upon Great Britain. Foremost among these was the duty assumed by Great Britain to protect Old Calabar. For Great Britain then to purport to give away Old Calabar's territory amounted to a clear breach of its obligation to afford "protection" to Old Calabar. Great Britain cannot by its wrongful act acquire for itself additional rights which it did not otherwise possess, such as the right to alienate territory.

79. Moreover, as explained in Nigeria's Counter-Memorial⁵³, the practice of both Britain and Germany at the time was such as to establish two propositions. First, in a protectorate any transfer of territorial sovereignty was not a matter for the protecting State, but a matter for the local ruler, who retained territorial sovereignty and should be compensated for any cession of his territory to which he might agree; and second, when a transfer of territory is made, provision is made for the future care of the inhabitants of the territory.

80. Furthermore, there is in the record of this case clear evidence that Germany acknowledged and understood that the 1913 Treaty was not concerned with the acquisition or cession of territory: the words used by the State Secretary of the German Imperial Colonial Office in April 1913 — just a month after the conclusion of the Treaty — were that the 1913 Treaty was not concerned with "the acquisition or assignment of parts of a protectorate"⁵⁴.

⁵³Counter-Memorial of Nigeria, pp. 166-170, paras. 8.49-8.51.

⁵⁴Counter-Memorial of Nigeria, pp. 164-165, para. 8.45.

81. Seen as a whole, the transaction in the Anglo-German Treaty of 1913 whereby Great Britain purported to transfer Bakassi to Germany would, if it were allowed to be effective to achieve that result, have the following characteristics:

- (a) it would be contrary to the nature and terms of Great Britain's 1884 Treaty of Protection with the Kings and Chiefs of Old Calabar;
- (b) it would be contrary to the territorial rights of the Kings and Chiefs of Old Calabar;
- (c) it would be contrary to the interests of the inhabitants of Bakassi;
- (d) it would be contrary to the financial interests of the title-holders of Old Calabar who should have been compensated;
- (e) it would be contrary to the recognized westward limit of the German Protectorate;
- (f) it would be contrary to earlier undertakings by Germany to respect the Rio del Rey as the boundary and to make no acquisitions west of it; and
- (g) it would be contrary to Germany's acknowledgment and understanding that the treaty was not concerned with the acquisition or cession of territory — the protection and promotion of trading interests were the motivation for the agreement, not territorial transfers.

82. No treaty, Mr. President, and Members of the Court, which encounters such a litany of defects can possibly be given full legal weight and effect.

83. Which then presents a problem: what are the consequences of such ineffective provisions?

84. The first is clear. As the *Island of Palmas* case expressly showed, Germany could not have acquired from Great Britain any better title than Great Britain herself possessed. And therefore Germany could have acquired a good title to Bakassi by virtue of the 1913 Treaty only if, in 1913, Great Britain had had a good title herself. But Great Britain had no title whatsoever to territorial sovereignty over Bakassi.

85. The second consequence is equally clear. Great Britain, having concluded the 1884 Treaty with the Kings and Chiefs of Old Calabar, remained bound by that treaty. As a treaty, that 1884 Treaty was as much subject to the principle *pacta sunt servanda* as any other treaty. A later treaty concluded by Great Britain with a third party, such as the 1913 Treaty concluded with Germany, could not detract from the legal force of Great Britain's 1884 Treaty with Old Calabar.

And Great Britain recognized this: in Orders in Council made in respect of the Nigeria Protectorate both before *and after* the 1913 Anglo-German Treaty, Great Britain demonstrated its intention not to affect the rights secured by the Kings and Chiefs and peoples of Old Calabar by the 1884 Treaty, to continue to be bound by all pledges in that treaty, and to maintain it “operative and in force”⁵⁵.

86. The third consequence is also clear: the offending treaty provisions cannot be given legal effect which their terms would purport to have. In short, the boundary purportedly laid down by those defective provisions must be disregarded.

87. That does not mean, however, that the Treaty of 1913 must be regarded as wholly without legal effect. There is, Mr. President, nothing wrong with Articles I to XVII: they are untainted by the defect which deprives Articles XVIII to XXII of their purported effects. The earlier articles can perfectly well continue in full force and effect, and in Nigeria’s submission they do so. They are self-standing provisions, and their application is in no way dependent upon the defective Articles XVIII to XXII.

88. Those last five boundary articles — what may be called “the Bakassi provisions” — are a different matter. They are the Articles which purport to effect a cession which Great Britain was without legal power to grant. They must be struck from the Treaty, and left aside.

89. Such severance of treaty provisions is permissible in international law. Article 44 of the Vienna Convention on the Law of Treaties may be taken as representing the law in this matter, in 1913 as much as today. Paragraph 3 of that Article clearly and expressly permits the severance of treaty provisions⁵⁶. It requires that three conditions be met before treaty provisions can be severed. All three are satisfied —

- (a) there is no difficulty at all in applying the Treaty of March 1913 minus its “Bakassi provisions”;
- (b) there is nothing to suggest that the offending Articles had any special quality about them — they were five among a total of 30 Articles, the boundary being delimited in 22 of them, none of which was of greater significance than the others: the “Bakassi provisions” were not the *quid pro quo* for some stipulation elsewhere in the Treaty; and

⁵⁵Counter-Memorial of Nigeria, pp. 165-166, paras. 8.46-8.48.

⁵⁶Rejoinder of Nigeria, pp. 35-37, paras. 1.70-1.72.

(c) there is nothing unjust in treating Articles I to XVII and XXIII to XXX as continuing to govern the boundary, since both parties have in practice continued to benefit equally from the certainty and stability which result from the long-established observance of those remaining provisions — the injustice would lie in ignoring the inevitable consequences of the *nemo dat* principle.

90. The severability of defective treaty provisions must, however, be seen in its proper context. It is only a secondary, consequential, matter. The primary matter is the substantive unlawfulness of the treaty provisions. Given that treaty provisions are unlawful — and Nigeria has shown that Great Britain had no authority whatsoever to give Bakassi to Germany — the question of severability concerns what then to do about that primary conclusion. *Ultra vires* provisions cannot just be left as they stand; severability is simply one of the means whereby the proper consequences attending the finding of unlawfulness can be addressed. Nigeria — as well as Cameroon — has no wish to see the whole 1913 Treaty brought to an end: both parties accept, and have in practice observed, and have benefited from, the non-defective boundary delimitation articles in that Treaty. Severance is, in Nigeria's submission, the appropriate consequential remedy in the present situation.

91. With the "Bakassi provisions" ineffective, and in effect discarded, the boundary prescribed by the Anglo-German Treaty of March 1913 ends with the final stipulation of Article XVII. This provides that the boundary goes, in the manner described in the Article, to the thalweg of the River Akpakorum. The location of that terminal point prescribed by the 1913 Treaty will be dealt with later, in the context of the land boundary. It is sufficient here to say that to the north of that terminal point the boundary continues to be the treaty-based boundary laid down in the 1913 Treaty; but to the south of that point the boundary has no treaty basis, and falls to be determined on other grounds.

The administration of Bakassi, 1913-1960

92. Let me now turn, Mr. President and Members of the Court, to what happened after that Treaty was concluded in 1913. In doing so, may I recall the question which I keep putting before you: Who conferred on Great Britain the authority to give away Bakassi? And not just "who?",

but also when? and how? Nigeria has shown that nothing in the 1884 Treaty of Protection did so, nor anything else in the period up to 1913.

93. Just over a year after the Treaty of March 1913 was concluded the First World War broke out. The German territory of Cameroon was occupied by British, French and Belgian forces. That occupation was complete by May 1916.

94. The first question which has to be asked is whether the German authorities in Cameroon did anything between March 1913 and May 1916 to put the 1913 Treaty into effect in Bakassi: did they physically occupy or administer Bakassi in any way during that period?

95. Cameroon has produced no evidence to that effect. We were told that the Treaty text was published locally by Germany, but that scarcely constitutes an *effectivité* in relation specifically to Bakassi. The weight of such evidence as there is strongly suggests that there was no German occupation or administration of Bakassi, and no significant pattern of German activities there during this initial period⁵⁷.

96. Had there been any attempt by Germany to move into the area, and disrupt or change the traditional ties between the population of Bakassi and the Kings and Chiefs of Old Calabar, such a move would have met with lively opposition. There is no evidence of any protests in that sense in the period from 1913 to 1916. Rather than any German takeover, it seems that the authority in Bakassi of the Kings and Chiefs of Old Calabar, and of the developing Nigerian regional and local government structures of the Nigerian Protectorate, continued uninterrupted.

97. The outbreak of war with Germany in August 1914 made it impossible thereafter for Germany to seek to implement any provisions of the 1913 Treaty which remained to be implemented. In any event, not only did Germany by Article 119 of the Treaty of Versailles renounce in favour of the Allied Powers “all her rights and titles over her overseas possessions”, but as a result of Article 289 the 1913 Treaty was and remained abrogated⁵⁸. Cameroon accordingly could not, in 1960, have acceded to the 1913 Treaty itself— and although a lawful boundary established by a treaty survives as a boundary, so far as concerns the “Bakassi

⁵⁷Counter-Memorial of Nigeria, pp. 177-180, paras. 9.3-9.4.

⁵⁸Counter-Memorial of Nigeria, p. 170, para. 8.53; p. 181, para. 9.8.

provisions” of the 1913 Treaty there was no lawful boundary which could survive the abrogation of the Treaty.

98. The military occupation by Britain of the western part of German Cameroon led to British administration of that area, followed by its continued administration by Britain pursuant to the Treaty of Versailles, then under the British Mandate of 1922 until after the Second World War, and then under the United Nations Trusteeship Agreement of 1946. These changing British administrative roles occurred in parallel with developments in the forms of British-organized administration in the neighbouring Nigerian Protectorate. Throughout all these various changes, the fact is that administrative, legal and other ties between Bakassi and the rest of Nigeria continued unbroken and uninterrupted until Nigeria’s independence in 1960 and thereafter. Effective authority continued to be exercised by the traditional source of power and authority in the Peninsula, namely by the Kings and Chiefs of Old Calabar — now, of course, the Obongs of Calabar.

99. Cameroon has sought to erect a theoretical barrier to these practical arrangements. The argument appears to be as follows: since Bakassi was part of German Cameroon, therefore it must be regarded as forming part of the British Mandated, later Trusteeship, territories and not part of the Nigerian Protectorate; and consequently, British acts of administration were performed not as part of the administration of Nigeria but as part of Britain’s Mandate or Trusteeship administration, and therefore when, later, the southern part of the British Trust Territory chose to become part of Cameroon, that part included Bakassi.

100. The argument is misconceived. For a start, its premise is wrong: Bakassi was not German territory, either under the 1913 Treaty or on any other basis. For here we must go back to the crucial question: Who conferred on Great Britain the authority to give away Bakassi? And not just “who?”, but also when? and how? It is not enough, in law, to assume that, simply because the 1913 Treaty provided for Bakassi to be given to Germany, that was therefore enough to give Great Britain the authority to do so. As of 1913 the only answer to that question is, nobody had given Great Britain the necessary authority.

101. And that answer undermines Cameroon’s whole subsequent case. For if the necessary authority had not been conferred upon Great Britain by some identifiable person and process, at

some identifiable time, by 1913, it is difficult to see how else it could have happened: if Bakassi was still part of the Nigerian Protectorate at the end of 1913 — as it must have been if the principle *nemo dat quod non habet* means anything — it must in law have continued in that position for as long as the Protectorate lasted.

102. Over the following years we may distinguish four separate periods.

- (a) First, during the First World War Great Britain was a belligerent occupant of German territory;
- (b) second, during the period between the end of the War and the beginning of the Mandate, Great Britain had transitional administrative powers under the Treaty of Versailles;
- (c) third, from 1922 to 1947 Britain administered part of Cameroons under the Mandate;
- (d) fourth, from 1947 to 1961, Britain continued its administration of the British Cameroons, but now as the Administering Authority under the Trusteeship Agreement.

103. All of those four periods have two features in common. Throughout all the four periods the 1884 Treaty of Protection was still in force and still binding upon Great Britain: so at no time during those periods did Great Britain have the legal authority to give away Bakassi — not after 1914, not after 1919, not after 1922, and not after 1947.

104. The second feature which those four periods shared was that Great Britain's authority over the neighbouring strip of formerly German Kamerun was limited. Whether as belligerent occupant, or as the transitional administering authority, or as the Mandatory authority, or as the Administering Authority under the Trusteeship Agreement, Great Britain was without any authority unilaterally to alter, whether by subtraction or addition, "the territorial configuration" of the territory it was administering. Counsel for Cameroon expressly accepted this in relation to the Mandate⁵⁹: there can be no reason to doubt that the same applies to Great Britain's other administrative capacities.

105. It thus follows that throughout those periods Great Britain was neither competent, as Protecting State, to give away Bakassi, nor competent, as the State administering part of neighbouring Cameroons, to acquire it. Since Bakassi could not, as Nigeria has shown, legally

⁵⁹CR 2002/4, pp. 22-23, para. 1 (Shaw).

have become part of German Kamerun in 1913, it equally could not lawfully have become part of Cameroons during any of the subsequent periods.

106. To reach any other conclusion requires a very specific answer to the crucial question which I have set out a number of times: Who conferred on Great Britain the authority to give away Bakassi? And when? And how? Nigeria's answer is clear: "Nobody", and "Never". Cameroon, on the other hand, has not begun to answer that question with the necessary detailed examination of the legal position. It is simply a question which Cameroon submerges under a sea of silence.

107. Cameroon has dwelt at length⁶⁰ on the limited authority of Mandatory Powers and Trusteeship Administering Authorities. Nigeria has no quarrel with this part of Cameroon's analysis. But it does not answer the question. Before those limits to territorial authority can in any way be relevant, it has to be shown that Bakassi was part of the Mandate or Trusteeship territories. Cameroon *asserts* it to be so, but refrains from *arguing* it, let alone *proving* it. Before being able to conclude that Bakassi became German in 1913, and thus became part of the territorial chain leading to the Mandate and Trusteeship periods, Cameroon must show on what *legal* basis that came about. Nigeria has shown that, on the basis of the specific terms of the 1884 Treaty of Protection, there could have been no legal basis for Great Britain to give Bakassi away. Cameroon has signally failed to show, *precisely*, in what way Nigeria's argument might be wrong.

108. Without a satisfactory answer to that question, it is clear that no amount of British activity in relation to Bakassi in the Mandate or Trusteeship periods can, in law, have severed Bakassi from the Nigeria Protectorate. First, British activity must have continued to relate to Bakassi as part of the Nigeria Protectorate— for by what legal means had it ever ceased to have that status? Second, even if British officials on some few occasions may have acted as though they thought that Bakassi was part of the mandated territory, that would not have been enough in law to make it so. The Treaty of Protection was still in force as a limit on Britain's authority as protecting State to give away Bakassi, and no amount of "thinking" on Britain's part would be sufficient to amend that Treaty; and the limits on Britain's authority under the Mandate and Trusteeship Agreements precluded Britain from accepting or effecting any variation of the territory's

⁶⁰CR 2002/4, pp. 18-27: Ntamar, Shaw.

boundaries without the approval of the appropriate international supervisory authority — and there was none.

109. Britain itself, of course, as a party to the 1913 Treaty, was likely to act on the assumption that that Treaty had determined the boundary between the Protectorate and what was to be the British Cameroons. But assumption, or belief, is not a basis for legal title; no amount of British believing that Bakassi was in British Cameroons would be enough to make it so in law; no amount of mistaken belief could retrospectively make good Great Britain's lack of authority to give away Bakassi; no amount of mistaken belief could give Britain a power which the Treaty of Protection had clearly not given it. *All* Britain's actions in the Mandate and Trusteeship periods which assumed the alienation of Bakassi from the Protectorate or which might be construed as having that result were tainted in that way. This applies whether they were acts of bureaucracy, or of local administration, or of government, or of legislation (such as the Governor's Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954⁶¹). For at all these times, one has still to answer the crucial question: Who conferred on Great Britain the authority to give away Bakassi? And when? And how?

110. But all this, Mr. President and Members of the Court, takes us some way from the practicalities of the real world in the Bakassi Peninsula. After the First World War the whole of the mandated territory of the British Cameroons came to be administered as part of the Nigeria Protectorate; any distinction between mandated and protectorate territory was of virtually no practical significance for the people of Bakassi and Calabar.

111. There was no practical day-to-day need for the British or local administration to distinguish between what might have been former German territory and what was British protected Nigerian territory. For the people of Bakassi they continued to be, as they always had been, Nigerian and, despite whatever changes there might have been in the constitutional arrangements, they continued to look to Nigeria as the source of governmental support and authority.

112. It is clear from the detailed evidence placed before the Court in some 17 pages in Nigeria's Counter-Memorial, with the accompanying Annexes⁶², that during the whole period from

⁶¹Counter-Memorial of Nigeria, Ann. 59.

⁶²Counter-Memorial of Nigeria, pp. 186-203, paras. 9.20-9.72.

1913 to 1960 the realities of the ties between Bakassi and Calabar were intense, and that British administrative officials showed no disposition to ignore or override them. It is also apparent from the record that, although in the early period of the mandate a very few British officials were troubled by the territorial distinctions with which they were faced, those distinctions simply fell away during the time of United Nations Trusteeship. At that time, as the population of both Bakassi and the Nigeria Protectorate as a whole increased, Nigerian local authority legislation became increasingly specific, and in particular made express reference to settlements on Bakassi.

Mr. President and Members of the Court, this pleading has been rather long, but I can summarize its main points very simply.

113. First, Bakassi was part of the territory of the Kings and Chiefs of Old Calabar.

114. Second, in 1884 the Kings and Chiefs of Old Calabar had international treaty-making capacity.

115. Third, when in 1884 Great Britain became the protecting State in respect of Old Calabar, Great Britain acquired only the limited rights conferred by the terms of the Treaty of Protection, and those rights did not include either sovereignty over the territory of Old Calabar or the right or power to give away its territory: "protection", not dismemberment, was Great Britain's role.

116. Fourth, Great Britain consequently had no legal title to Bakassi and no legal authority to transfer Bakassi to Germany by the Treaty of March 1913.

117. Fifth, Germany could acquire no more than it was lawful for Great Britain to give, and thus could acquire no good title to Bakassi.

118. Sixth, no successor to Germany, right through to Cameroon, could acquire from its predecessor any better title.

119. Seventh, at all times up to 1960 title to Bakassi consequently remained with the Kings and Chiefs of Old Calabar and, thereafter, with Nigeria.

120. Eighth, at all times while the Treaty of Protection remained in force Great Britain continued to lack power to give Bakassi away, and at all times when it was administering part of Cameroons, Britain lacked all authority unilaterally to vary its boundaries, whether by addition or subtraction.

121. Ninth, and last, in practice throughout the period from 1913 to 1960 Bakassi was administered from and as part of Nigeria, and was never administered from or as part of Cameroon.

Mr. President and Members of the Court, I thank you for your attention. I would invite you, at an appropriate time — perhaps tomorrow morning — to call upon Mr. Ian Brownlie to continue the presentation of Nigeria's case. Thank you, Mr. President.

Le PRESIDENT : Je vous remercie, sir Arthur. Ceci met un terme à la séance de ce matin. Nous reprendrons nos travaux demain matin à 10 heures. La séance est levée.

L'audience est levée à 13 h 05.
