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Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le lundi 4 mars 2002, à 10 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président,

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

COMPTE RENDU

YEAR 2002

Public sitting

held on Monday 4 March 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. Ntamark, 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 Humbold 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. Ntamark, 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,

as Deputy Agent, Counsel and Advocate;

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[e] 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,

Mr. Eric Diamantis, *Avocat* at the Paris Bar, Moquet, Bordes & Associés,

Mr. Jean-Pierre Mignard, *Avocat* at the Paris Bar, Lysias Law Associates,

Mr. Joseph Tjop, Consultant to Lysias Law Associates, Researcher at the *Centre de droit international de Nanterre* (CEDIN), University of Paris X-Nanterre,

as Counsel;

General Pierre Semengue, Controller-General of the Armed Forces, former Head of Staff of the Armed Forces,

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,

M. Thomson Fitt Takang, chef de service d'administration centrale au secrétariat général de la présidence de la République,

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,

comme experts;

Mme Marie Florence Kollo-Efon, traducteur interprète principal,

comme traducteur interprète;

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

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

M. Richard Penda Keba, professeur certifié d'histoire, cabinet du ministre de la justice, ancien proviseur de lycées,

comme assistants de recherche;

M. Boukar Oumara,

M. Guy Roger Eba'a,

M. Aristide Esso,

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,

as Advisers;

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

Mr. Thomson Fitt Takang, Department Head, Central Administration, General Secretariat of the Presidency of the Republic,

Mr. Jean-Jacques Koum, Director of Exploration, National Hydrocarbons Company (SNH),

Commander Jean-Pierre Meloupou, Head of Africa Division at the Ministry of Defence,

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

Mr. André Loudet, Cartographic Engineer,

Mr. André Roubertou, Marine Engineer, Hydrographer,

as Experts;

Ms Marie Florence Kollo-Efon, Principal Translator-Interpreter,

as Translator-Interpreter;

Ms Céline Negre, Researcher, *Centre d'études de droit international de Nanterre* (CEDIN), University of Paris X-Nanterre,

Ms Sandrine Barbier, Researcher, *Centre d'études de droit international de Nanterre* (CEDIN), University of Paris X-Nanterre,

Mr. Richard Penda Keba, Certified Professor of History, *cabinet* of the Minister of State for Justice, former Head of High School,

as Research Assistants;

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 et du pays de Galles, 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,

as Agent;

Chief Richard Akinjide SAN, Former Attorney-General of the Federation, Member of the Bar of England and Wales, 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,

as Counsel and Advocates;

Mr. Timothy H. Daniel, Partner, D. J. Freeman, Solicitors, City of London,

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

M. David Lerer, *solicitor*, cabinet D. J. Freeman, *Solicitors*, City de Londres,

M. Christopher Hackford, *solicitor*, cabinet D. J. Freeman, *Solicitors*, City de Londres,

Mme Charlotte Breide, *solicitor*, cabinet D. J. Freeman, *Solicitors*, City de Londres,

M. Ned Beale, stagiaire, cabinet D. J. Freeman, *Solicitors*, City de Londres,

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, conseil associé, ancien conseiller de l'Organisation des Nations Unies en matière de frontières (ASOP) auprès du Royaume du Lesotho, ancien commissaire pour les frontières inter-Etats, commission nationale des frontières,

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 Nigéra,

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

M. Aliyiu 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*,

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

Mr. David Lerer, Solicitor, D. J. Freeman, Solicitors, City of London,

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,

Alhaji Dahiru Bobbo, Director-General, National Boundary Commission,

Mr. A. O. Cukwurah, Co-Counsel, Former UN (OPAS) Boundary Adviser to the Kingdom of Lesotho, Former Commissioner, Inter-State Boundaries, National Boundary Commission,

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,

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

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,

Mr. Robert C. Rizzutti, Senior Mapping Specialist, International Mapping Associates,

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 Mangue Obama N'Fube, Minister of State for Labor and Social Security,

as Agent and Counsel;

H.E. Mr. Rubén Maye Nsue Mangue, 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,

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;

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,

comme experts juridiques;

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

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

comme experts techniques.

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,

as Senior Counsel;

Mr. Derek C. Smith, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., member of the District of Columbia Bar and Virginia State Bar,

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. La séance est ouverte et je donne la parole au nom de la République fédérale du Nigéria au professeur Georges Abi-Saab.

M. ABI-SAAB :

LE PRINCIPE DE L'*UTI POSSIDETIS JURIS*

Monsieur le président, Madame et Messieurs de la Cour.

1. C'est un grand privilège et plaisir pour moi de me retrouver devant vous aujourd'hui pour représenter la République fédérale du Nigéria.

2. Mes propos porteront ce matin sur le rôle, les effets et les limites du principe de l'*uti possidetis juris* dans son application à la présente affaire.

Origines et fonctions

3. L'avènement de ce principe remonte au premier tiers du XIX[e] siècle. Il fut appelé par la première vague de décolonisation massive de notre époque, dans une situation qui était caractérisée par le vague, si ce n'est la vacuité, des principes de droit international face à ce nouveau phénomène.

4. En effet, comme l'a bien rappelé la Chambre de la Cour dans l'affaire du *Différend Frontalier (Burkina Faso/République du Mali)*, ce principe a

> «été invoqué pour la première fois en Amérique hispanique, étant donné que c'est sur ce continent qu'on a assisté pour la première fois au phénomène d'une décolonisation entraînant la formation d'une pluralité d'Etats souverains sur le territoire ayant antérieurement appartenu à une seule métropole» (*C.I.J. Recueil 1986*, p. 565, par. 20).

5. Ainsi, à l'origine, l'élaboration du principe de l'*uti possidetis* servait un double objectif : un objectif défensif vis-à-vis du reste du monde, et en particulier vis-à-vis de l'Europe de la Sainte-Alliance, au cas où elle songerait à rétablir ou à remplacer l'*imperium* défaillant de l'Espagne et du Portugal. Le principe servait cet objectif par une négation radicale de toute vacance de souveraineté, c'est-à-dire de *terra nullius*, dans les territoires décolonisés. En d'autres termes, c'était une affirmation de souveraineté territorialement étanche des républiques émergeantes, sur tous les territoires abandonnés par l'ancienne puissance coloniale, y compris les

zones de l'intérieur qui n'étaient pas tout à fait explorées ou contrôlées par elle, ou qui n'étaient pas encore totalement contrôlées par les nouvelles républiques.

6. Le second objectif était de nature conservatoire pour éviter ou du moins minimiser les conflits entre les successeurs, et cela par le gel du découpage territorial en l'état dans lequel il se présentait au moment de l'indépendance.

7. C'est ce second objectif que souligne la Chambre de la Cour quand elle déclare que «sous son aspect essentiel, ce principe vise, avant tout, à assurer le respect des limites territoriales au moment de l'accession à l'indépendance» (*ibid.*, p. 566, par. 23).

8. Ces limites territoriales peuvent être de deux sortes. Elles peuvent être en premier lieu des limites administratives à l'intérieur d'un même empire, comme cela était le cas pour la très grande majorité des républiques issues de l'Empire hispanique. C'est là que résidait le nouveau phénomène auquel se référait la Chambre de la Cour dans l'extrait que je viens de citer. Mais elles pouvaient être également des frontières proprement internationales entre deux colonies appartenant à des empires différents, par exemple entre le Brésil et les territoires hispaniques. Elles pouvaient séparer également une ancienne colonie d'un Etat indépendant comme celles entre le Mexique et les Etats-Unis.

9. C'est dans le premier cas de figure, celui de l'accession à l'indépendance de plusieurs nouveaux Etats issus d'un même empire, que le principe de l'*uti possidetis juris* trouve un rôle propre et autonome, en servant de titre juridique international à un découpage territorial interne et en transformant des lignes divisoires administratives en frontières internationales. Et c'est dans ce rôle que la Chambre de la Cour l'a décrit comme «un principe d'ordre général nécessairement lié à la décolonisation où qu'elle se produise» (*ibid.*, p. 566, par. 23).

10. Alors que dans le deuxième cas de figure il existait déjà avant l'indépendance deux souverainetés en présence, donc une frontière internationale entre elles, qu'elle soit ou non délimitée, et qui ne pouvait être affectée par le changement de souveraineté d'un côté ou de l'autre, changement qui ne constitue en réalité qu'une sorte de subrogation personnelle à la même assiette territoriale.

11. Dans ce cas, le principe de l'*uti possidetis* ne fait que répliquer, et par conséquent il se confond totalement, avec les règles de la succession d'Etats, comme l'a constaté à nouveau la Chambre de la Cour en 1986 :

> «L'obligation de respecter les frontières internationales préexistantes en cas de succession d'Etats découle sans aucun doute d'une règle générale de droit international, qu'elle trouve ou non son expression dans la formule *uti possidetis*.» (*Ibid.*, p. 566, par. 24.)

12. Et si, à l'origine, la doctrine de l'*uti possidetis* visait indistinctement les deux cas de figure, cela s'explique par les conditions historiques qui régnaient à l'époque, et notamment par les incertitudes qui entouraient la notion de succession d'Etats au début du XIX[e] siècle (voir Marcelo Kohen, *Possession contestée et souveraineté territoriale*, Paris, PUF, 1997, p. 434).

13. En somme, «les limites territoriales» dont le principe «vise ... à assurer le respect ... au moment de l'accession à l'indépendance» sont, dans le deuxième cas de figure, une frontière internationale déjà existante, qu'elle soit délimitée ou non, et quel que soit le titre juridique qui la fonde. Alors que dans le premier cas de figure, il s'agit d'une limite qui subit une mutation dans son statut juridique, la transformant d'une ligne administrative en une frontière internationale. Mais — et c'est un grand «mais» — cette limite, pas plus que la frontière internationale déjà existante dans l'autre cas de figure, ne subit aucun changement dans son contenu comme résultat de cette transformation. Car elle conserve tous les éventuels vices, lacunes et ambiguïtés qu'elle aurait pu comporter avant l'accession à l'indépendance; ce qui m'amène à mon prochain point, qui est celui de l'effet juridique du principe de l'*uti possidetis*.

L'effet juridique du principe de l'*uti possidetis* (en général)

14. De quelle manière le principe de l'*uti possidetis* assure-t-il le respect des limites territoriales au moment de l'accession à l'indépendance ?

Ici aussi, la Chambre de la Cour, dans l'affaire du *Différend Frontalier*, nous fournit la réponse :

> «Par le fait de son accession à l'indépendance, le nouvel Etat accède à la souveraineté avec l'assiette et les limites territoriales qui lui sont laissées par l'Etat colonisateur. Il s'agit là du fonctionnement normal des mécanismes de la succession d'Etats. Le droit international — et par conséquent le principe de l'*uti possidetis* — est applicable au nouvel Etat (en tant qu'Etat) non pas avec effet rétroactif mais immédiatement et dès ce moment-là. Il lui est applicable *en l'état* c'est-à-dire à

l'«instantané» du statut territorial existant à ce moment-là.» (*C.I.J. Recueil 1986*, p. 568, par. 30.)

15. Il faut se rappeler que ce dictum est énoncé dans un paragraphe qui traite du rôle du droit colonial dans l'identification de ce statut territorial au moment de l'accession à l'indépendance. La Chambre s'efforce d'expliquer que la prise en considération du droit colonial par le droit international à travers le principe de l'*uti possidetis* ne constitue pas dans ce contexte un «renvoi» dans le sens technique du terme, en ajoutant, entre parenthèses — c'est le jugement qui l'ajoute — : «(comme s'il y avait un *continuum juris*, un relais juridique entre ce droit et le droit international)». La Chambre précise que le rôle du droit colonial se limite dans ce contexte à celui d'«un élément de fait, parmi d'autres, ou [d'un] moyen de preuve et de démonstration de ce qu'on a appelé le «legs colonial», c'est-à-dire de l'«instantané territorial» à la date critique» (*ibid.*, p. 568, par. 30).

16. Pour prendre cet instantané-là, la Chambre de la Cour nous dit que «le principe de l'*uti possidetis* gèle le titre territorial; il arrête la montre sans lui faire remonter le temps» *(ibid.*, p. 568, par. 30). En d'autres termes, pour établir l'«état des lieux» territorial du «legs colonial» au moment de l'accession à l'indépendance, le principe de l'*uti possidetis,* agissant comme un appareil photographique, fixe ou gèle un statut territorial dynamique, car pouvant évoluer pendant la période coloniale et jusqu'à ce moment-là; il le fixe pour les besoins de la prise de la photo, dans son état à l'instant où elle est prise, ce qui nous donne l'instantané territorial.

17. La date critique, c'est-à-dire le moment pertinent, pour établir l'état des lieux du «legs colonial» territorial, c'est le moment de l'accession de l'indépendance; et le gel ou la fixation de cet état des lieux est nécessaire à ce moment-là, pour savoir ce qui revient à chacun des «ayants droit»; mais seulement à ce moment-là. Car, une fois le «legs» établi et acquis, il est assujetti aux mêmes lois (et aléas) gouvernant l'évolution de tout acquis; un point sur lequel je me permettrai de revenir, ainsi que sur la notion de la date critique.

18. Cet effet juridique général du principe de l'*uti possidetis* d'«assurer le respect des limites territoriales «au moment de l'accession à l'indépendance» appelle deux séries de précisions.

L'effet de l'*uti possidetis* quant au contenu du «legs colonial»

19. La première précision concerne le contenu de l'«instantané territorial», de cette photographie, car il s'agit là d'une photo non retouchée, qui reproduit toutes les défectuosités de l'original. Le principe de l'*uti possidetis* garantit le passage au nouvel Etat du «legs colonial» en forme de limites territoriales, telles qu'elles étaient au moment de l'indépendance, sans les améliorer, en les complétant par exemple là où elles n'existaient pas ou en purifiant les titres juridiques qui les sous-tendent de leurs vices et ambiguïtés éventuels.

20. Cela ressort très clairement, même dans le cas le plus caractérisé et le plus protégé de succession à des limites territoriales, celui d'une frontière internationale établie par traité avant l'indépendance. Dans cette hypothèse, il suffit de rappeler l'article 11 de la convention de Vienne sur la succession des Etats en matière de traités, article qui stipule : «Une succession d'Etats ne porte pas atteinte en tant que telle : *a)* à une frontière établie par traité...»

21. Car, même dans ce cas, et comme le font remarquer les Etats-Unis dans leurs observations sur le projet d'articles de la Commission du droit international qui a servi de base à cet article 11 :

> «Un Etat successeur ne peut acquérir comme domaine territorial que le territoire et les droits territoriaux du prédécesseur. Si le territoire que possède l'Etat a des frontières solidement déterminées et établies par traité..., l'Etat successeur hérite de tout cet ensemble... En revanche, si le territoire que détenait l'Etat prédécesseur avait des frontières mal définies à la suite d'un traité mal rédigé, l'Etat successeur acquiert ce qu'avait le prédécesseur, c'est-à-dire un territoire aux frontières mal définies.» (*Annuaire de la Commission du droit international*, 1974, vol. II, première partie, p. 82.)

22. De même, la Commission du droit international, dans son commentaire sur le projet d'article en question, précise que :

> «Une telle disposition porterait exclusivement sur les effets de la succession d'Etats à l'égard du règlement des frontières. Elle n'influerait en rien sur un autre motif qui pourrait être invoqué pour réclamer la revision ou le rejet d'un règlement de frontière, qu'il s'agisse de l'autodétermination ou de la nullité ou l'extinction du traité.» (*Ibid.*, p. 207, par. 17.)

23. Cela est confirmé davantage par l'article 14 de la même convention qui stipule : «Rien dans la présente convention n'est considéré comme préjugeant en quoi que ce soit toute question relative à la validité d'un traité.»

24. Ces dispositions et longues citations ne font qu'exprimer de manières différentes une évidence juridique qui est le principe général de droit : *Nemo dat quod non habet*, «personne ne peut donner ce qu'il n'a pas» (ou «plus qu'il n'en a» selon une autre version).

25. D'où la conclusion que même dans le cas le plus clair de l'existence, déjà avant l'accession à l'indépendance, d'une frontière internationale établie par un traité, pour qu'on puisse faire valoir «la règle générale de droit international» à laquelle se réfère le jugement de 1986 (*C.I.J. Recueil 1986*, p. 566, par. 24) et qui est codifiée dans l'article 11 de la convention de Vienne, qu'on confère également à cette règle le nom d'*uti possidetis* ou non, trois conditions doivent être remplies préalablement :

i) qu'un accord au sens du droit international, définitif et obligatoire, existe réellement;

ii) que cet accord ne soit pas entaché de nullité ou d'extinction; et finalement en troisième lieu,

iii) que son contenu porte réellement sur l'établissement ou la délimitation de la frontière en question.

26. Ainsi, dans la présente affaire, et pour ce qui est de la région du lac Tchad, le Cameroun prétend dans son mémoire et dans sa réplique et les plaidoiries orales, que la délimitation de la frontière s'est effectuée pendant la période coloniale déjà, par l'échange des lettres franco-britanniques du 9 janvier 1931 (réplique du Cameroun, p. 103, par. 3.11), et que «la frontière est transmise lors des indépendances au Cameroun et au Nigéria par application du principe *uti possidetis*» (*ibid.*, par. 3.09).

27. Or, le Nigéria conteste la prétention selon laquelle cet échange de lettres de 1931 comporte un accord suffisamment concret et définitif dans son contenu pour constituer un traité de délimitation dans cette région. Et s'il n'y a pas de délimitation, il ne peut y avoir de démarcation subséquente pour la traduire sur le terrain (ou sur l'eau en l'espèce, si l'on parle du lac Tchad) (duplique du Nigéria, p. 232-233, par. 4.33-4.34).

28. Il est clair dans ce cas, que l'on ne saurait si le principe de l'*uti possidetis* peut ou non entrer en jeu pour «assurer le respect» de la ligne défendue par le Cameroun qu'une fois tranché au préalable le différend sur l'existence du prétendu accord de délimitation qui sous-tend cette ligne.

29. Il en est de même dans la région de Bakassi, où le Cameroun affirme que l'accord germano-britannique de 1913 a établi la frontière; frontière transmise lors des indépendances par application du principe *uti possidetis.*

30. Là également, le Nigéria s'est efforcé de démontrer en détail dans son contre-mémoire (chap. 8) et dans sa duplique (chap. I), et ici même, par la voix de mon éminent collègue sir Arthur Watts, que cet accord germano-britannique, dans la mesure où il touchait le statut territorial de Bakassi, comportait un dépassement de pouvoir, ou, en d'autres termes, était un acte *ultra vires* de la part de la puissance protectrice britannique, qui n'était pas habilitée, aux termes du protectorat, à disposer du territoire nigérian; et que, par conséquent, cet accord, dans la mesure où il portait sur Bakassi, était inapplicable, et en tout état de cause, inopposable à la Partie nigériane.

31. Ici aussi, c'est mettre la charrue avant les boeufs que d'invoquer le principe d'*uti possidetis* pour soutenir une ligne dont l'existence dépend de l'applicabilité du traité qui la sous-tend, alors que cette applicabilité constitue l'objet même du différend.

32. Les traités établissant des frontières peuvent comporter des défectuosités de moindre importance, ainsi que des lacunes, des inexactitudes et des ambiguïtés que le principe de l'*uti possidetis*, en endossant un «instantané territorial» fidèle à la réalité, ne saurait purifier, combler corriger ou lever.

33. Cela s'applique tout particulièrement, dans la présente affaire, aux différents accords conclus entre les puissances coloniales des deux côtés avant l'indépendance, et qui portent sur la délimitation de la frontière au-delà de la région du lac Tchad et jusqu'à Bakassi; un point sur lequel je me permettrai de revenir dans quelques instants.

34. Ces précisions concernant la portée et les limites du champ d'application du principe de l'*uti possidetis* là où un titre juridique, aussi solide qu'un traité établissant une frontière, existait avant l'accession de l'indépendance, s'appliquent *a fortiori*, et même davantage, là où un tel titre n'existait pas.

35. Dans tous ces cas, qu'il s'agisse de traités défectueux ou ambigus, d'une frontière internationale non encore délimitée par traité, ou de limites administratives mal définies, on ne saurait faire abstraction des développements subséquents à l'accession à l'indépendance, ce qui m'amène à mon prochain point, qui porte sur l'effet de l'*uti possidetis* dans le temps.

L'effet de l'*uti possidetis* dans le temps

36. C'est un sujet que j'ai effleuré rapidement en essayant d'expliquer pour quelle raison et de quelle manière, le principe de l'*uti possidetis* «gèle» le titre territorial au moment de l'accession à l'indépendance.

37. Ce moment-là constitue la «date critique» pour l'établissement de l'«état des lieux» du «legs colonial». Le «gel» intervient à ce moment, fixant ou figeant la situation «en l'état», pour les besoins de la prise de la photo qui représente cet état des lieux et en porte témoignage. C'est ce que la Chambre a appelé «l'instantané territorial».

38. Le «gel» ne dure en fait que l'instant de la prise de l'«instantané territorial» (le moment où le photographe dit «que personne ne bouge» et presse sur le bouton). Mais il a un autre effet, plus durable. Car l'«instantané territorial», endossé et authentifié par le principe de l'*uti possidetis*, devient titre juridique, le titre territorial (et par conséquent le titre des frontières) du nouvel Etat.

39. Mais il ne faut pas oublier que ce titre, comme instantané non retouché de l'original, porte en lui toutes les défectuosités qui entachaient cet original au moment de l'indépendance. Et surtout, ce «gel», pour les besoins de la prise de l'instantané, n'implique pas que la frontière, ainsi que le titre juridique qui la sous-tend, resteront gelés jusqu'à la fin des temps.

40. En effet, le langage imagé utilisé par la Chambre de la Cour porte en lui-même la négation d'une telle proposition. Car un instantané ou une photo sur une carte d'identité ne fige pas la personne dans sa forme photographiée pour l'éternité, et ne peut empêcher son évolution normale au-delà du moment de la prise de l'instantané. Un «legs» également; une fois fixé et spécifié au moment de la succession, ne reste pas bloqué pour autant, mais intègre le patrimoine de l'ayant droit et suit l'évolution de sa fortune.

41. De la même manière, une frontière, une fois établie selon l'instantané territorial du nouvel Etat au moment de l'indépendance — instantané authentifié en même temps par le principe de l'*uti possidetis* comme titre juridique; une fois cette frontière ainsi établie, elle peut évoluer selon les processus normaux du droit international, c'est-à-dire à travers les actes et les faits qui produisent des effets juridiques selon ce droit.

42. C'est une conclusion évidente, qui est largement partagée par la doctrine. Ainsi par exemple, le professeur Daniel Bardonnet, dans son cours magistral donné ici même à l'Académie

de droit international en 1976, intitulé «Les frontières terrestres et la relativité de leur tracé» (*RCADI*, t. 153, (V-1976), p. 69) a ceci à dire, à propos de la «résolution du Caire» adoptée par l'assemblée des chefs d'Etats et de gouvernements de l'OUA en 1964, et qui entérinait le principe de l'*uti possidetis* pour le continent africain :

> «Affirmer, comme on l'a fait fréquemment, que la charte de l'OUA et la résolution du Caire consacrent le principe de l'intangibilité des frontières est un abus de langage. Les rédacteurs de ces textes n'ont jamais dit que les frontières des Etats africains, telles qu'elles existaient au moment de leur accession à l'indépendance, étaient fixées une fois pour toutes et ne pouvaient jamais être modifiées par des procédés pacifiques; ils ont seulement dit qu'elles devaient être «respectées», c'est-à-dire qu'elles ne pouvaient, en aucun cas, conformément au principe de l'intégrité territoriale, être remises en cause par la force.»

43. Le Cameroun semble approuver ce raisonnement logique dans sa réplique. En effet, après avoir cité le paragraphe 30 de l'arrêt de 1986 où la Cour déclare que «le principe de l'*uti possidetis* gèle le titre territorial», la réplique ajoute :

> «Il est important de ne pas déformer la position de la Chambre. L'*uti possidetis* ne résout pas tous les problèmes frontaliers pour l'éternité, mais il fournit un mécanisme internationalement accepté afin de déterminer les frontières du nouvel Etat au moment de l'indépendance. *Par la suite, la question de frontière relève d'autres normes juridiques.*» (Réplique du Cameroun, p. 80, par. 2.109, les italiques sont de nous; cf. p. 79, par. 2.107.)

44. Cependant, quand il s'agit d'identifier «ces autres normes juridiques» dont relève la question de la frontière suite à l'indépendance, le Cameroun les confine, semble-t-il, étrangement, à l'accord formel des Parties (par. 2.110). Il ignore ainsi toute la gamme de processus de droit international, reflétant largement par ailleurs les principes généraux de droit, qui permettent de déceler un consentement tacite, du moins en forme d'acquiescement, dans des situations longuement tolérées et non contestées.

45. Cependant, il n'y a aucune raison juridique valable pour écarter l'opération de ces processus normaux de droit international dans ce cas particulier.

46. Par ailleurs, ici aussi une autre Chambre de la Cour, cette fois-ci c'est celle qui a décidé l'affaire du *Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras)* en 1992, vient éclairer notre lanterne, quand elle déclare :

> «Si la situation résultant de l'*uti possidetis juris* peut être modifiée par une décision d'un juge et par un traité, la question se pose alors de savoir si elle peut être modifiée d'autres manières, par exemple par un acquiescement ou une reconnaissance. Il n'y a semble-t-il aucune raison, en principe, pour que ces facteurs n'entrent pas en

jeu, lorsqu'il y a assez de preuves pour établir que les parties ont en fait clairement accepté une variante, ou tout au moins une interprétation, de la situation résultant de l'*uti possidetis juris*.» (*C.I.J. Recueil 1992*, p. 401, par. 67.)

47. Et quelques paragraphes plus loin, la Chambre revient au même thème, déclarant qu'elle :

«n'estime pas que l'application du principe de l'*uti possidetis juris* dans l'Amérique espagnole avait pour effet de figer pour toujours les limites des provinces qui, avec l'indépendance, ont constitué les frontières entre les nouveaux Etats. Il était évidemment loisible à ces Etats de modifier par un accord les frontières les séparant; et certaines formes d'activité ou d'inactivité pourraient valoir acquiescement à une limite différente de celle de 1821.» (*Ibid.*, p. 408, par. 80.)

48. La possibilité pour le droit international de prendre en considération les développements postérieurs à l'accession à l'indépendance, possibilité affirmée avec vigueur par la Chambre de la Cour en 1992 dans les deux extraits que je viens de citer, soulève deux séries d'interrogations : la première concerne la notion de la «date critique» et la seconde les situations dans lesquelles ces développements postérieurs peuvent être pris en considération.

La «date critique»

49. En ce qui concerne la première interrogation, la possibilité pour le droit international de prendre en considération les développements postérieurs à l'accession à l'indépendance met radicalement en question une certaine conception monolithique de la «date critique», défendue ardemment par le Cameroun dans la présente affaire, et qui prétend qu'il n'y a qu'une seule «date critique» pour établir le «titre territorial» du nouvel Etat, qui est celle de l'accession à l'indépendance.

50. Cela implique que tous les développements postérieurs à cette date ne peuvent entrer en ligne de compte. En d'autres termes, on en revient par un détour à la notion du «gel» perpétuel de la frontière dès la date de l'indépendance, ce qui va totalement à l'encontre de toute l'analyse qui précède, et tout particulièrement de l'analyse de la Chambre en 1992.

51. En effet, le premier extrait de la décision de la Chambre que j'ai cité, vient du paragraphe 67, qui traite précisément de la «date critique», et je me permets de citer encore le début de ce paragraphe, car il est crucial, ou critique si vous voulez, sur ce point :

«Le principe de l'*uti possidetis juris* est quelquefois affirmé en termes presque absolus, comme si la situation à la date de l'indépendance était toujours déterminante; comme si, en bref, il ne pouvait y avoir d'autre date critique. Or, ... il ne saurait en

être ainsi. Manifestement, une date critique ultérieure peut apparaître, par exemple par suite d'une décision d'un juge ou d'un traité frontalier.» (*C.I.J. Recueil 1992*, p. 401, par. 67.)

52. Il faut dire que la notion de la «date critique» est une notion polysémique. Car le qualificatif «critique» ne se comprend que par rapport à un référant qui lui est extérieur. La date est «critique», c'est-à-dire juridiquement déterminante, par rapport à un certain objet ou but spécifique, et non pas de manière générale.

53. Cette notion de «date critique» est apparue dans le langage du droit international dans les années cinquante, dans un effort de tracer les origines des différends dans le temps, en vue de les situer par rapport aux limites temporelles à la compétence de cette Cour.

54. La notion a été également utilisée dans le contexte judiciaire, pour exclure, dans la considération par la Cour d'une espèce, les actes entrepris par l'une ou l'autre partie après la cristallisation du différend, qui pourraient être soupçonnés de viser à améliorer sa position au prétoire.

55. Ainsi, pour chaque acte ou fait juridique, c'est-à-dire productif d'effets de droit, il peut y avoir une «date critique» différente. Pour ce qui est de l'application de la notion de la «date critique» au principe de l'*uti possidetis*, il est clair que cette date est celle de l'accession à l'indépendance. Mais cette date est «critique», c'est-à-dire pertinente et même déterminante pour les besoins d'un but ou d'un objet spécifique, qui est l'établissement du titre territorial avec lequel le nouvel Etat commence sa vie d'Etat indépendant. Elle n'est pas «critique» pour les actes et les faits juridiques qui peuvent influer sur ce titre ou acquis territorial après l'indépendance, conformément au droit international.

56. Ainsi, comme l'a dit la Chambre de la Cour, si les parties concluent un traité délimitant, ou même changeant la ligne de l'*uti possidetis* pour un segment de la frontière après l'indépendance, c'est la date de ce traité qui devient la «date critique» pour cette délimitation. De même, en cas de recours à un organe juridictionnel, c'est la date de sa décision qui devient la «date critique» pour ce segment de frontière, que la décision suive la ligne de l'*uti possidetis* ou non (voir *C.I.J. Recueil 1992*, p. 401, par. 67).

57. Naturellement, pour les autres processus informels de droit international, qui n'aboutissent pas en un acte juridique ponctuel dans le temps, tel un traité ou un jugement, mais

opèrent de manière progressive et cumulative, il est beaucoup plus difficile de leur trouver un ancrage dans le temps en forme de date critique.

58. Dans ces cas, le seul repère possible dans le temps pour les jauger, c'est le moment de la cristallisation du différend auquel ils peuvent donner lieu. Ce qui m'amène à mon dernier point, qui traite de ces processus dans leur application à la présente affaire.

Les développements postérieurs à l'indépendance et la ligne de l'*uti possidetis*

59. De quelle manière les développements postérieurs à l'indépendance peuvent-ils influer sur la ligne de l'*uti possidetis juris* ?

60. J'ai déjà mentionné les traités et les décisions juridictionnelles qui ne sont pas sujets à controverse. Mais dans le contentieux territorial, ce sont surtout les processus informels qui le sont. Le rôle de ces processus, et par conséquent leurs effets, dépend du type de situation dans laquelle ils opèrent.

61. J'ai dit, au début, que le titre territorial passe au nouvel Etat avec toutes les défectuosités qu'il comportait avant l'indépendance. Ce qui me permet de distinguer trois situations, représentant trois modes d'interaction entre le titre territorial issu de l'*uti possidetis* et les développements postérieurs à l'indépendance.

62. Premièrement : là où il n'y a pas eu, pendant la période coloniale, une frontière délimitée, ou la délimitation était partielle ou parcellaire, il n'y a pas de «legs colonial» à transmettre là où il n'y avait rien. De même, si des traités de délimitation ont été conclus, mais étaient entachés d'inapplicabilité ou de nullité. Ce premier cas de figure correspond, dans la présente affaire, à la situation dans la région du lac Tchad et à Bakassi.

63. Dans ce cas, où il n'y a pas de titre en forme d'acte juridique, ce sont les processus informels du droit international, en forme de contrôle paisible et d'accommodement mutuel, qui établissent progressivement la frontière sur le terrain, qu'on les appelle accord tacite, acquiescement ou consolidation historique. Cette dernière classification convient particulièrement à ce cas de vide initial de titre formel. Ces processus opèrent dès la période coloniale et continuent après l'indépendance de manière cumulative, que le professeur Bardonnet a qualifiée de «densification des frontières».

64. Deuxièmement : là où une délimitation a été effectuée déjà pendant la période coloniale, mais où les traités de délimitation comportent des inexactitudes et des ambiguïtés. C'est le cas, dans la présente affaire, du parcours de la frontière au-delà de la région du lac Tchad jusqu'à Bakassi.

65. Dans ce cas, et dans la mesure où il n'y a pas eu de démarcation sur le terrain acceptée par les deux parties, les processus informels d'accommodement mutuel, notamment par les administrateurs locaux ou les populations locales, peuvent rectifier les erreurs, clarifier les ambiguïtés et même ajuster quelque peu la ligne décrite dans le traité pour mieux correspondre à la topographie ou répondre aux besoins locaux. Et cela avant comme après l'indépendance.

66. Cela peut être considéré comme une interprétation par les parties du traité (ou de la ligne de l'*uti possidetis*) selon le principe de la «pratique subséquente» (voir *C.I.J. Recueil 1992*, par. 333, 345, 368). Et en cas de recours à un organe juridictionnel (de même que pour une commission de démarcation), cet organe dispose d'une certaine marge de discrétion pour pallier ces défectuosités et ambiguïtés, même au dépens d'une interprétation par trop littérale des instruments (voir *C.I.J. Recueil 1992*, par. 46).

67. Troisièmement : qu'il y ait eu une ligne d'*uti possidetis* ou non au moment de l'indépendance, un acquiescement à une autre ligne a eu lieu «durant les années qui ont suivi l'indépendance».

68. En effet, la Chambre de la Cour en 1992 met beaucoup l'accent sur la notion d'acquiescement, souvent en alternance avec le principe d'interprétation de la «pratique subséquente» que je viens de mentionner. Ainsi, par exemple, au paragraphe 345 de l'arrêt, elle déclare :

> «Lorsque la limite administrative en cause était mal définie ou lorsque son emplacement était contesté, le comportement des deux Etats nouvellement indépendants dans les années qui ont suivi l'indépendance pouvait très bien, de l'avis de la Chambre, fournir une indication quant à l'emplacement de la frontière, soit dans l'idée commune que s'en faisaient les deux Parties, soit dans l'idée que s'en faisait l'une d'entre elles et en fonction de laquelle elle avait agi, l'autre ayant acquiescé.» (Voir par. 64, 80 et 205 ci-dessus.)

69. La Chambre se réfère à l'acquiescement dans de nombreux paragraphes (*C.I.J. Recueil 1992*, *inter alia* par. 64, 80, 169, 176, 205, 280, 341, 364, 368). Elle l'analyse

comme faisant partie d'un faisceau de phénomènes juridiques reflétant différentes formes de consentement tacite reconnues en droit international. Ainsi, par exemple, au paragraphe 364, quand elle déclare que : «Le comportement du Honduras vis-à-vis des effectivités antérieures révèle une admission, une reconnaissance, un acquiescement ou une autre forme de consentement tacite à l'égard de la situation.»

70. Quant à la pertinence pour la présente affaire de ces différents modes d'interaction entre les développements postérieurs à l'indépendance et la ligne de l'*uti possidetis*, dans la mesure et dans l'état où une telle ligne existait au moment de l'indépendance, mon éminent collègue et ami le professeur Ian Brownlie l'a déjà démontré en détail pour Bakassi et le fera plus tard pour la région du lac Tchad, et je me permets de vous y référer.

71. J'en viens, Monsieur le président, à ma conclusion, et elle est brève.

72. Le principe de l'*uti possidetis juris* joue un rôle stabilisateur utile en droit international, en marquant une pause pour prise d'inventaire au moment de l'indépendance, pour que le nouvel Etat commence sa vie internationale avec un bilan territorial clair. Mais il n'ajoute rien à cet inventaire ni à ce bilan. Et surtout, il n'arrête pas une fois pour toute le fonctionnement des processus normaux du droit international déclenchés par les transactions et les interactions des sujets de droit avant comme après l'indépendance; processus qui, en permettant le changement pacifique conformément au droit, remplissent également un rôle stabilisateur.

Je vous remercie, Monsieur le président, Madame et Messieurs de la Cour. Et je vous prie d'appeler à la barre le Haji Abdullahi Ibrahim, coagent de la République fédérale du Nigéria.

Le PRESIDENT : Je vous remercie Monsieur le professeur. I now give the floor to Alhaji Abdullahi Ibrahim CON, SAN, Co-Agent of Nigeria. Vous avez la parole.

Mr. IBRAHIM:

INTRODUCTION TO THE LAND BOUNDARY

1. Mr. President, Members of the Court, it is an honour for me, once again, to have this opportunity to address this most distinguished Court.

2. It falls to me to open Nigeria's presentation of its case concerning the land boundary between Nigeria and Cameroon — and by "land boundary" I mean the boundary *between* Lake

Chad and Bakassi: the boundary actually *in* those two areas is dealt with elsewhere in the presentation of Nigeria's case.

3. Cameroon has chosen these proceedings as the vehicle for claiming that the land boundary is in dispute. But there was no "live" dispute at the time, nor was there any previous attempt by Cameroon to hold comprehensive intergovernmental negotiations with Nigeria about any boundary dispute. Indeed, Cameroon thought so little about the matter that it only brought it before the Court as an afterthought, in its Additional Application filed on 6 June 1994.

4. The Court, in its Judgment on Nigeria's Preliminary Objections, held that there was a dispute in relation to Tipsan. Apart from that one disputed area — a matter to which I shall return — the situation we now have is one in which the differences between the Parties really boil down to this: are the applicable boundary instruments, about the identity of which the Parties agree, sufficiently clear and comprehensible?

5. Cameroon says "Yes". Nigeria's answer is more prudent; Nigeria's answer is: "Yes, except only in relation to some 22 specified locations, where the delimitation as such is either defective or where the meaning of the delimitation has been put in question by Cameroon's conduct." Nigeria accordingly submits that the Court should address these problems of delimitation, in order that both Parties can be in no continuing doubt as to the delimitation of their common boundary. Only in that way can the Court comply with Cameroon's initial request to the Court to "specify definitively" the land boundary — a request to which Nigeria holds Cameroon, and which Cameroon is not unilaterally entitled to withdraw.

6. Before embarking upon the substantive issues which these differences between the Parties raise, it may assist the Court if I first say a few words about the geography and topography of the land boundary area, about the cartographic realities, and about the state of relations between Nigeria and Cameroon along the length of our common land boundary.

7. First, then, let me say something about *the geography and topography of the land boundary area.*

8. The land boundary is long — some 1,200 miles, or 1,800 km. It is topographically and climatically extremely varied. In the north it passes through the hot, dry plains around Lake Chad some 300 m. above sea level. It then passes through the cultivated high ground of the Mandara

Mountains at 1,000 m. before following a series of rivers down to the Benue and Faro Rivers. From here, it climbs once again to around 1,000 m. to follow the crest of the remote Alantika mountains. After a short stretch in lower country, it then rises up into the high grasslands of the Mambilla Plateau, passing the summit of Nigeria's highest mountain, Chappal Warri at over 2,400 m. on the way. From Mambilla, it gradually descends to the savannah woodland zone, sometimes following rivers, sometimes crossing the grain of the land in long straight lines. Finally it enters the rainforests of the coastal belt as far as the sea.

9. Temperatures can range from 45°C in the north to freezing on the Mambilla Plateau. Annual rainfall can be as low as 200 mm on Lake Chad, and as high as 5 m. on the coast. Moreover, the impact of seasonal changes of weather can be very substantial. There can be extensive flooding, with roads often becoming impassable; and in the dry season rivers can dry up.

10. It is apparent that, for substantial parts of its length, the boundary passes through remote and inhospitable areas which are only sparsely inhabited. Yet in some areas the climate and the land are benign, and there are sections of the boundary which, on both sides, are heavily populated and farmed.

11. For the most part the boundary is delimited with accurate clarity, but for most of its length it has not been demarcated on the ground. Even so, local farmers and villagers will often have a good understanding of where the boundary runs. Populations living on the two sides of the border will often be from the same families, and will often be closely related. They will naturally come from similar backgrounds and will share many local interests. On both sides of the boundary, what characterizes their lives is primarily the business of making a livelihood, often in physically difficult conditions.

12. Mr. President, let me now turn to *the cartographic realities*. Some 1,200 miles, or 1,800 km, of land boundary has been delimited by four principal instruments — or five, if the Milner-Simon Declaration of 1919 is counted as a separate instrument from the Thomson-Marchand Declaration of 1929-1931 which superseded it. The other three instruments are the British Order in Council of 1946, and the two Anglo-German Treaties of March and April 1913. Nigeria has drawn attention to a number of boundary areas where there are delimitation problems. All involved only the Thomson-Marchand Declaration or the Order in

Council of 1946. I will draw the Court's attention only to certain aspects of the mapping which is particularly relevant to those two instruments.

13. Usually maps are introduced into the record of a case as evidence of title to disputed territory, showing, so it is alleged, that that territory has been depicted as belonging to one side or the other. But that is not the purpose for which maps are primarily relevant in relation to the land boundary in this present case.

14. Although in a sense any boundary determination affects the extent of the territorial sovereignty of one side or the other, in the present proceedings that is only an incidental consequence of the case. Subject only to certain specific deficiencies to which Nigeria has drawn attention, Nigeria accepts that the land boundary is delimited by the instruments which both Parties agree to be relevant. The real issue, as Cameroon has requested and as Nigeria accepts, concerns the need to "specify definitively" the land boundary as delimited by those instruments.

15. For *that* purpose, maps are relevant, first, to the topographical accuracy of the delimitation in the respective instruments. They are also relevant, second, because certain maps of official Cameroonian provenance are evidence of Cameroon's assertion of a boundary which does not conform with the boundary as delimited in the instruments on which Cameroon itself relies.

16. Now let me mention the matter of scale, which is directly relevant to a map's topographical accuracy and completeness. Nowadays boundary delimitations, and the delineation of the resultant boundary on a map, would not normally be undertaken on the basis of maps of a scale smaller than 1 in 50,000. At 1 in 50,000, natural features relevant to the delimitation of the boundary can be identified, and such a map would also be technically appropriate for any demarcation which might take place in the future.

17. The utility of maps at that scale may be compared with the maps officially accompanying the immediately relevant instruments. First, the Order in Council can be ignored in this respect: it was not accompanied by any map forming an integral part of the instrument. Second, the Thomson-Marchand Declaration did determine a boundary line which was described in the Annex to the Declaration and was "traced on the map annexed hereto". That annexed map was prepared at a scale of 1 in 1 million, a scale manifestly too small for effective and accurate delimitation. The Milner-Simon Declaration which preceded the Thomson-Marchand Declaration, in addition to

making use of Moisel's map, used an even smaller scale to illustrate its description of the frontier — 1 in 2 million. For accurate delimitation purposes it is quite useless.

18. I should remind the Court of another feature of the map annexed to the Thomson-Marchand Declaration[1]. The map published with the printed version of the 1931 Exchange of Notes embodying the Thomson-Marchand Declaration was not the map annexed by Thomson and Marchand to their Declaration; indeed, the published map only became available some months *after* the Exchange of Notes was signed; and it was in any event not an agreed Anglo-French map.

19. Let me mention another important map, which features largely in these proceedings. This is the map prepared by the German cartographer Moisel. His map, published in various editions between 1908 and 1913, was used as the base map for several of the delimitation agreements. But its scale was only 1 in 300,000: at that scale the ability of Moisel's map to record relevant features accurately enough to serve as a sufficiently detailed boundary map was limited. Moreover, his understanding of the topography was also limited.

20. It is for these reasons, Mr. President and Members of the Court, that Nigeria has, in its Counter-Memorial and Rejoinder, made frequent reference to two modern series of maps, as the most technically appropriate maps available for the purpose. These are both at a scale of 1 in 50,000. One series was produced between 1965 and 1969 for the Government of Nigeria by the (British) Directorate of Overseas Survey; the other was produced by the French Institut Géographique National in the 1960s. Of course, at the time when the boundary was being delimited in the various relevant instruments maps at such a scale did not exist, so no blame attaches to the fact that they were not used. But nevertheless that cannot lead the Court to ignore the evident inadequacies of the earlier smaller scale maps.

21. Leaving aside the question of map scales, let me address the matter of the reliability — or rather, the relative unreliability — of many of the older maps which are relevant to the land boundary. If, for example, we take Moisel's map, not only did its scale seriously limit its ability to record relevant features accurately enough, but its manner of preparation compounded that

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[1]Rejoinder of Nigeria, Vol. II, pp. 307-308, para. 6.37 (4).

limitation. Moisel's map was dependent for its content upon reports from German travellers in the region. If no travellers had penetrated a particular area, that area would either be left blank on the map or be represented in a very generalized and often incorrect way. This is vividly illustrated by Article 25 of the Thomson-Marchand Declaration. This concerns a stretch of the boundary about which Mr. Macdonald will say more in due course. For the moment just let me recall that Article 25 requires that the boundary should adhere to "the incorrect line of the watershed shown by Moisel on his map". I repeat, "the *incorrect* line of the watershed": the parties in 1929 knew of this clear, and important, error in Moisel's map.

22. It is undeniable, of course, that modern mapping, based on aerial photography, satellite imagery and GPS technology, is, topographically, vastly more accurate than the older maps relied on in preparing the earlier delimitation texts. The very high degree of accuracy attainable in modern mapping has two particular consequences. First it is in part precisely because of that level of accuracy that the delimitation in those earlier texts can in some places be seen to be defective. Second, features described in the older delimitations are not always easy to identify with features shown on the more accurate and larger scale modern maps.

23. This particular difficulty is made more complicated by the fact that none of the principally relevant instruments delimits the boundary by reference to any geographical co-ordinates, apart from a sole mention in the Anglo-German Treaty of March 1913, which is not relevant here. They all delimit the boundary by reference to geographical features. Nor, indeed, does Cameroon in its Additional Application or Memorial or Reply propose any geographical co-ordinates for the various relevant points along the boundary, with the sole exception of its proposed location for the mouth of the Ebeji River — a matter to which Sir Arthur Watts will refer in a moment. This studied lack of geographical co-ordinates makes the task of interpreting accurately the delimitation agreed by reference to natural features all the more difficult, and makes deficiencies of scale and accuracy in the available older maps all the more significant. In order to "specify definitively" the boundary, which is what Cameroon as the Applicant has asked for, geographical co-ordinates are an unavoidable element in any delimitation. The older instruments do not provide them; Cameroon does not provide them. Nigeria, however, has provided

co-ordinates for all appropriate locations along the land boundary, as set out in the Appendix to Chapter 8 of its Rejoinder.

24. So far as concerns *Nigeria-Cameroon relations along the land boundary*, Cameroon has sought in its original Additional Application and in its subsequent written pleadings, and again just a few days ago in these hearings, to characterize the land boundary as an area of major discord between the Parties, with the whole boundary being disputed and major incidents occurring along the length of the land boundary. Mr. President, any such characterization of relations between the Parties in relation to the land boundary bears absolutely no relation to the truth.

25. We have heard a lot from Cameroon during these hearings to the effect that Nigeria is destabilizing the whole boundary. This is quite untrue. I would just make two points. First, drawing attention to a dozen specific and limited locations in which the delimitations are defective does absolutely nothing to destabilize the whole boundary. Let us get the perspective right: the defective areas account for some 210 km of the boundary, while the whole boundary is some 1,800 km long.

26. My second point is this. Far from *de*stabilizing the boundary, Nigeria wishes only to *avoid* problems in the future. Clarifying the dozen areas of delimitation difficulty is precisely one way of avoiding future problems; so too is correcting Cameroon's conduct in those other nine locations where Cameroon is itself not observing the clear terms of the boundary instruments. Certainty, and thus stability, Mr. President, are exactly what Nigeria seeks from the Court in the present proceedings. That is why Nigeria is insistent that Cameroon cannot back away from its request to the Court to specify the land boundary in detail.

27. Of course, with a boundary of somewhat over 1,000 miles, passing in parts through difficult country, and largely undemarcated, there are bound to be occasional local difficulties in ensuring a proper level of what may be termed "boundary management". It is inevitable that from time to time there will be local incidents, as is only to be expected in agricultural border areas where family and tribal affinities have for generations paid more regard to the struggle to make a livelihood than to the niceties of border arrangements. Such incidents will involve people from both sides of the boundary. But the essence of such incidents lies in the word "local": they are local incidents, involving local populations and local problems, such as local farming rights, local

communities, and local law and order. Most importantly, they are problems which are typically settled locally. What they are *not*, by any stretch of the imagination, is some manifestation of an extensive boundary dispute between the two States.

28. In fact, inter-State relations along the boundary as a whole are, in all the circumstances, remarkably pacific and undisputatious. For Cameroon to pretend that there is between our two States a major international dispute about the boundary is absurd.

29. It is absurd on the facts. Cameron never alleged in diplomatic or other correspondence or dialogue with Nigeria that there was a dispute over the whole boundary, which the Parties should seek to resolve. On the facts, there is no evidence of any over-arching boundary dispute between the two States. The Court has acknowledged the correctness of Nigeria's position in this respect. In its Judgment on the Preliminary Objections the Court said:

> "The occurrence of boundary incidents certainly has to be taken into account in this context. However, not every boundary incident implies a challenge to the boundary. Also, certain of the incidents referred to by Cameroon took place in areas which are difficult to reach and where the boundary demarcation may have been absent or imprecise. And not every incursion or incident alleged by Cameroon is necessarily attributable to persons for whose behaviour Nigeria's responsibility might be engaged. Even taken together with the existing boundary disputes [here the Court was referring to those which it found to exist in Lake Chad, Bakassi and Tipsan] the incidents and incursions reported by Cameroon do not establish by themselves the existence of a dispute concerning all of the boundary between Cameroon and Nigeria." (P. 315, para. 90.)

30. Cameroon's suggestion that there exists a major boundary dispute is also absurd in substance: for there is nothing of that nature for the Parties to have a dispute about. All that Cameroon did persuade the Court of, Mr. President, was that — as the passage I have just quoted shows — there was a boundary dispute at Tipsan. It involved, so Cameroon said and Nigeria denied, a Nigerian occupation of Cameroonian territory by building and operating a Nigerian immigration post at Tipsan. Sir Arthur Watts will deal later with this matter in some detail, and I will just make one comment. Cameroon has now admitted that the post is "indisputably situated in Nigerian territory"[2]. So, Mr. President, the *only* land boundary dispute which the Court identified and which was the basis for the Court's rejection of Nigeria's preliminary objection about the land boundary, now turns out to have been based entirely on Cameroon's now admitted error.

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[2]Reply of Cameroon, para. 4.99.

31. Cameroon now seeks from the Court an affirmation of the land boundary in terms set out in the four directly relevant instruments. Mr. President, if that was all that Cameroon wanted, there was no need for Cameroon to trouble this Court. Nigeria has made it clear that it has no wish to overturn those instruments, or to deny their legal validity in relation to the land boundary.

32. As I said at the outset, what divides the Parties in these proceedings, so far as concerns the land boundary, is the adequacy of a simple affirmation of the relevant instruments. Cameroon, as the Applicant, originally requested the Court to "specify definitively" the course of the boundary, but then went on to propose that the Court could do so simply by endorsing the terms of those instruments. Cameroon then, in its Reply and in these proceedings, sought to resile from this position and seems no longer to be seeking from the Court a "definitive specification" of the boundary, having first tried — wrongly — to attribute to Nigeria the introduction of that phrase.

33. Nigeria regrets that Cameroon is seeking to back away from its original request that the Court should specify the line of the land boundary with adequate precision to enable an effective demarcation to take place. Indeed Cameroon having, as the Applicant, initially made this request of the Court, Nigeria does not, as explained in its Rejoinder[3], accept this attempt by Cameroon to withdraw this issue from the Court. Nor is Cameroon permitted to do so. This Court, in the *Barcelona Traction* case, considered the extent of an applicant State's right to discontinue proceedings, and the right of the Respondent to object to discontinuance. The Court said:

> "The right of objection given to a respondent State which has taken a step in the proceedings is protective, to enable it to insist on the case continuing, with a view to bringing about a situation of *res judicata*; or in other words (perhaps more pertinent for the present case), to enable it to ensure that the matter is fully disposed of for good."[4]

34. Mr. President and Members of the Court, Nigeria welcomes a definitive specification of the land boundary. But it will not be achieved by merely reaffirming the relevant instruments.

35. Nor is it enough as a practical matter — that is, as a means of giving the Parties and the populations in border areas clear guidance as to precisely where their common boundary lies, so that they can better avoid the kind of minor frontier altercations which are otherwise unavoidable along such a 1,800 km land boundary.

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[3]Rejoinder of Nigeria, Vol. II, pp. 311-313, paras. 6.41-6.44.

[4]*I.C.J. Reports 1964*, p. 20.

36. Nigeria believes that a detailed specification of the land boundary is *necessary* if border problems are to be avoided and the matter "fully disposed of for good". A detailed specification is also needed if any eventual demarcation is to be able to take place on a sound basis, since as Nigeria has shown in its written pleadings and will show in the next few days, the terms of the instruments on which Cameroon is now content to rely are in places manifestly defective. Although this will be argued more fully by Sir Arthur Watts, let me here just say that the defects are not mere matters of demarcation, to be swept under the carpet until some uncertain future date. It is the delimitations in themselves — the delimitations as such — which cause the problems.

37. It is those delimitation deficiencies — and I must emphasize, those deficiencies *alone* — which have caused Nigeria to qualify its acceptance of the relevant boundary instruments by the words "in principle", a usage in which Cameroon professes to see some sinister evasion on Nigeria's part. Mr. President, as I am sure the Court will appreciate, it is nothing of the sort. As Nigeria has from the outset noted, the relevant instruments contain a number of deficiencies; we will make this abundantly clear in the coming sessions. If Nigeria had stated as a general proposition that it accepted a boundary delimitation known and sincerely believed to be defective, Nigeria would have misled the Court, and it would not have contributed to securing a clear settlement of the boundary between Nigeria and Cameroon. Those deficiencies have all been explained in full in Nigeria's written pleadings: nothing has been passed over in silence. Subject *only* to those *identified* deficiencies, Nigeria — let me repeat — accepts the delimitation of the land boundary on the basis of the relevant boundary instruments on which Cameroon relies, and which Nigeria also accepts.

38. Mr. President, I have tried to give the Court a general perspective in which to consider the land boundary issues which Cameroon has brought before the Court. Those issues affect specific areas of the land boundary. They cover relatively limited stretches of the land boundary — only some 140 miles, or 210 km, out of the total length of about 1,200 miles, or 1,800 km.

39. Nigeria has explained in its Counter-Memorial, and even more fully in its Rejoinder, the particular issues of difficulty[5]. Nigeria has no wish to burden the Court by repeating now all that

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[5]Counter-Memorial of Nigeria, Vol. II, pp. 509-535, paras. 19.1-19.55; Rejoinder of Nigeria, Vol. II, pp. 317-397, paras. 7.1-7.204.

has been said in those pleadings. Nigeria believes, however, that it will assist the Court if something is now said to explain further, with the help of graphics, some of the more complicated of these specific land boundary issues. This, Mr. President, will be the task of Sir Arthur Watts and Mr. Alastair Macdonald.

40. Accordingly, Mr. President, may I now invite you to call on Sir Arthur Watts to continue the presentation of this part of Nigeria's case — but perhaps after a coffee break if the Court would prefer. Thank you, Mr. President.

Le PRESIDENT : Je vous remercie. J'ai l'impression que la préférence de sir Arthur Watts est également pour une pause maintenant. Donc la séance est suspendue pour une dizaine de minutes. Merci.

L'audience est suspendue de 11 h 20 à 11 h 30.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise et je donne maintenant la parole, au nom de la République fédérale du Nigéria, à sir Arthur Watts.

Sir Arthur WATTS: Thank you, Mr. President.

LAND BOUNDARY

1. Mr. President and Members of the Court, in considering the land boundary between Lake Chad and Bakassi, the Parties, I am happy to say, agree on one thing. Both Parties agree upon the instruments which are relevant, and which they refer to collectively as the boundary instruments or, simply, the relevant instruments. And those instruments are, listing them in the order in which they delimit the boundary from north to south:

— the Thomson-Marchand Declaration of 1929-1931, which amplified and superseded the Milner-Simon Declaration of 1919;

— the British Order in Council of 1946;

— the Anglo-German Treaty of April 1913;

— and, subject to the particular problem of the so-called "Bakassi provisions", the Anglo-German Treaty of March 1913.

2. Beyond that, however, the Parties differ. Cameroon's position is, simply: "confirm the treaties". In effect, confirm them as they stand, as they were when agreed in, as the case may be, 1913, 1929-1931 or 1946; confirm them in disregard of any improvements in cartographic technique or topographical knowledge over the past three quarters of a century or so; confirm them in disregard of anything which may have happened since then — except, of course, in relation to the mouth of the Ebedji, where Cameroon itself finds it convenient to rely on more recent developments.

3. Nigeria submits that Cameroon's approach is the wrong approach. Merely to confirm the boundary instruments in their out-of-date terms will do nothing to resolve such boundary differences as exist between the Parties, or prevent others in the future. So, Nigeria's approach is different from Cameroon's, but just as simple, and it has been consistently expressed: in short, it is in effect — "confirm the boundary instruments, but be sure that they are intelligible first".

4. In a number of respects those instruments are, as delimitations, defective, or they have been applied by Cameroon in a way which is manifestly at variance with their terms. Consequently for the Court simply to confirm that those instruments delimit the boundary will only perpetuate the deficiencies, not cure them. Only when they are cured will the Court have complied with the request presently before it, namely to "specify definitively" the land boundary. And only then will the delimitation be sufficiently effective to enable the Parties to turn to the task of boundary demarcation.

5. Cameroon, however, professes to believe that, not only will Nigeria's attempt to open up questions of interpretation of the boundary instruments have the effect of undermining those instruments, but that that is indeed Nigeria's very aim. Nothing could be further from the truth, on both counts, as the distinguished Co-Agent for Nigeria has just explained.

6. There is no way in which the interpretation of a few provisions of the boundary instruments could undermine the whole edifice of Nigeria-Cameroon boundary arrangements.

7. Nigeria has been both specific, and limited, about the particular locations which it has raised in its pleadings. Leaving aside Bakassi, which is outside the scope of the present "land boundary" issues, Nigeria has identified just 22 specific locations as calling for some kind of consideration.

8. Moreover, talking of even 22 locations, Mr. President and Members of the Court, overstates the extent of the problems perceived by Nigeria. As the headings in Nigeria's Rejoinder make abundantly clear, those 22 locations fall into two categories. First are those which involve "Areas of Defective Delimitation": and there are 13 such areas. The second category is, "Cameroon's Failure Correctly to Apply The Agreed Delimitation": and there are nine such areas. So it is apparent that it is only in 13 places that Nigeria, of its own initiative, draws the Court's attention to the boundary's defective delimitation. And I would add that of those 13, Cameroon has already agreed with Nigeria that two of them are indeed defective: the delimitation of the mouth of the Ebedji, where Cameroon puts forward its own alternative delimitation[6] — and boundary pillar 64, where Cameroon in these hearings has in terms accepted Nigeria's proposed interpretation[7].

9. None of this amounts to Nigeria disputing the whole boundary[8]. Nor does it, by any stretch of the imagination, "undermine" the boundary. Such exaggeration simply demonstrates Cameroon's desperation. As to what the reality is, Mr. President, let me quote: "for the very great part of its total length the boundary does not pose any difficulties at all", although there are indeed difficulties "in a small number of spots"[9]. Those are not Nigeria's words, but admissions by counsel for Cameroon.

10. But let me go back to the specific problem locations, and look a little more closely at the nine where Nigeria raised delimitation problems because it was driven to do so by Cameroon's manifest failure to comply with the terms of the delimitation instruments. Those nine account for nearly half of the outstanding problem areas.

11. Nigeria submits that there is absolutely no room for doubt that in these areas Cameroon has failed, and is failing today, to comply with the terms of the Thomson-Marchand Declaration and the 1946 Order in Council: they refer to a watershed, but Cameroon adopts a boundary

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[6]CR 2002/2, p. 40, para. 82 (Cot).

[7]CR 2002/2, p. 70, para. 27 (Shaw).

[8]CR 2002/1, p. 27, para. 11 (Ali).

[9]CR 2020/2, p. 55, para. 20 (Khan).

nowhere near a watershed; they refer to a river, but Cameroon places the boundary somewhere else, or they refer to one river and Cameroon chooses another; and so on.

12. Nigeria has only raised these nine cases because Cameroon had itself departed from the line so clearly laid down by the boundary instrument: because Cameroon did so, Nigeria had to infer that there must be divergent views as to the instruments' interpretation. But in Nigeria's view the instruments are abundantly clear, and Nigeria would welcome Cameroon abiding by their terms.

13. Mr. President and Members of the Court, there are, as I have said, 22 specific locations in relation to which the delimitation texts need to be clarified. Nigeria does not wish to speak to each and every one of these locations during this proceeding. They are set out in full in Nigeria's Rejoinder[10]. Without in any way detracting from what has been said there, Mr. Macdonald and I will deal with only some of them, in order to demonstrate the sorts of problems which have arisen and which in Nigeria's submission need to be resolved before the delimitation of the boundary can be regarded as settled.

14. Contrary to the view expressed by the Agent for Cameroon[11], Nigeria is not asking the Court to involve itself in matters of minute detail. Nigeria accepts that, as counsel for Cameroon correctly said, "purely technical" matters should be left for demarcation[12]. But, as will become apparent, Nigeria is raising issues which are far from being purely technical: rather, they involve sometimes substantial pieces of territory and sometimes substantial numbers of people, and sometimes both.

15. The soundness of Nigeria's distinction between "purely technical" demarcation matters and substantive delimitation issues will I hope, Mr. President, become clear as Mr. Macdonald and I set about our task. In fact, the first "defective delimitation" which I should like to explain to the Court illustrates the point very clearly. It involves a location which has already been mentioned.

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[10]Rejoinder of Nigeria, Chap. 7.

[11]CR 2002/1, p. 30, para. 21.

[12]CR 2002/2, p. 55, para. 19.

The mouth of the Ebedji

16. Travelling down from north to south, the land boundary starts on the shores of Lake Chad. The locator map, at tab 33 in the judges' folders and now on the screen, shows where on the boundary the area is: at that same tab is also the relevant text from the Thomson-Marchand Declaration. This arrangement, Mr. President — a locator map, plus the text from the relevant instrument, at the first tab for each boundary area being discussed — will be followed throughout this pleading.

17. The very first point on the land boundary is set out in Article 2 of the Thomson-Marchand Declaration. The land boundary begins at "the mouth of the Ebeji" and thence "from this mouth" follows the course of the Ebedji, and so on. Article 2, it will be noted, does not define this mouth by reference to a set of co-ordinates.

18. The crucial term, therefore, Mr. President, is the "mouth of the Ebeji". It sounds straightforward. But it is not, for two reasons. An aerial photograph is now on the screen: a copy is at tab 34 in the judges' folders. First — and as a general point — in a situation like that on the shores of Lake Chad, where the edges of the lake are variable, the location of the "mouth" of a river calls for accurate definition.

19. Second, and more specifically, the assumption in the text of Article 2 that the Ebedji has a single mouth is incorrect: as the photograph shows, it has two main channels with their separate mouths, as well as a number of lesser channels. Cameroon accepts that the Ebedji has two mouths[13]. While it is perhaps conceivable that the precise location of the single mouth of a river could be left to a demarcation team, the *choice* between two different mouths is a matter which cannot be left to them.

20. This is apparent not just from the nature of the choice which has to be made, but from the history of the Parties' attempts to reach agreement about it. It is clearly a very difficult matter. It was considered by national technical experts appointed within the framework of the Lake Chad Basin Commission. In 1988, those experts proposed a geographic point, identified by co-ordinates, which was to be treated as the mouth of the Ebedji. In circumstances fully explained in Nigeria's

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[13]Reply of Cameroon, p. 107, para. 3.20.

Rejoinder[14], this proposal was referred to the 1996 Summit of the Lake Chad Basin Commission for signature. But that Summit merely decided "to defer discussion of the issue", and it authorized the President of the Summit to contact the Heads of State of Nigeria and Cameroon to find an amicable solution to the problem. So at the end of a difficult process lasting several years, the question was *expressly* deferred by the Summit itself, and acknowledged still to be outstanding, and no final decision was taken on the experts' proposals.

21. That history alone is enough to show that this was not something which could be left to a demarcation team. It also shows that the co-ordinates selected by the technical experts were not agreed by the two States, and that the underlying problem still existed and called for future settlement. There is therefore no justification for Cameroon to seek to rely on those co-ordinates as fixing a position for the mouth of the Ebedji which has been agreed between Cameroon and Nigeria. It has not been agreed.

22. Nevertheless, in putting forward its own interpretation Cameroon clearly admits that the bare terms of Article 2 of the Thomson-Marchand Declaration were acknowledged by Cameroon as well as Nigeria as *not* sufficient as a delimitation of the boundary. Cameroon thus admits that where those terms are inadequate, they need to be supplemented or clarified in some way in order to produce an effective boundary delimitation. That, of course, is precisely Nigeria's position, which otherwise Cameroon rejects.

23. Moreover, Mr. President and Members of the Court, not only was the point chosen by the technical experts as the mouth of the Ebedji not agreed, but it is also inappropriate. The mapping relied upon by the experts was, as Nigeria has shown in its Rejoinder[15], seriously defective. And the result of their work was to select as the mouth of a river a point which has no well-defined channel leading to it: were that result to be adopted, we would have created a unique geographical feature — a river mouth without any river leading to it! And Cameroon admits that the point it proposes as the mouth of the Ebedji is at a location where there is in fact no river mouth[16]. Yet the

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[14]Rejoinder of Nigeria, pp. 324-325, paras. 7.12-7.13.

[15]Rejoinder of Nigeria, pp. 327-328, para. 7.19.

[16]CR 2002/2, p. 41, para. 83.

one thing about which this part of the Thomson-Marchand Declaration is clear is that the boundary has to be at the "mouth" of a river.

24. Mr. President, Nigeria recognizes that this whole problem is difficult. The *only* agreed language we have is the phrase "the mouth of the Ebeji". And that is a geographical reference. Yet the geography of the immediate area is complex. There is a wide variation in the water levels of Lake Chad[17], which has continued over many years. As a matter of geography, it is difficult to fix the mouth of a river which flows out into a lake whose area varies continuously over the years, especially when large parts of the lake dry up, leaving the area of water miles away from the channels of rivers flowing into it.

25. Nigeria submits that there is assistance to be gained from modern aerial photography. Again on the screen, and at tab 34 in the judges' folders, is the aerial photograph which you saw earlier. It shows clearly where the river flows in from the bottom of the picture and then bifurcates into the two main channels: one goes in a north-easterly direction, the other in a northerly or north-westerly direction.

26. A choice has to be made. The basis for making the choice is, in a sense, clear: it requires choosing the more important channel, or the major channel as it is sometimes put. But it is not at all clear what criteria apply in determining the main channel of a river in circumstances such as those of the Ebedji. Cameroon produced what it said was relevant evidence about the watercourse[18] but as this was new evidence which was on its face dated January 2002 and had not previously been submitted, Nigeria has not been able to study it, and submits that the Court should ignore it.

27. Cameroon has also invoked[19] a passage from the Court's Judgment in the *Kasikili/Sedudu Island* case[20]. There the Court said that "the determination of the main channel must be made according to the low water baseline and not the floodline"[21]. Both before and after that passage, however, the Court considered the depth of the competing channels (at para. 32), the

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[17]See Reply of Cameroon, Map R 3.

[18]Documents 19 February 2002, Docs 19/4, 20/4, 21/4.

[19]CR 2002/2, p. 43, paras. 90 *et seq.* (Cot).

[20]*I.C.J. Reports 1999.*

[21]At para. 37.

volume of water they carry (para. 33), the profile of their beds (para. 39), and their navigability (para. 40).

28. In considering this issue, Mr. President and Members of the Court, Nigeria submits that above all else there is one basic rule — namely, each river is subject to its own particular circumstances. The Court, in the *Kasikili/Sedudu Island* case, was not, in Nigeria's submission, laying down general criteria for the determination of any major channel, applicable to all rivers and all situations in which a choice has to be made between two or more river channels.

29. So far as concerns the River Chobe — which was the only river with which the Court was concerned in the *Kasikili/Sedudu Island* case — the Court's finding that the determination of the main channel had to be made at low water was clearly related to the particular situation of the Chobe River, for the Court found that it could not use a high-water criterion, it could not use the floodline, because:

> "when the river is in flood, the Island is submerged by flood water and the entire region takes on the appearance of an enormous lake. Since the two channels are then no longer distinguishable, it is not possible to determine the main channel in relation to the other channel."[22]

30. That is a description specific to the River Chobe. The situation is quite different at the mouth of the Ebedji.

31. Where a river bifurcates into two separate channels — which is the situation at the mouth of the Ebedji — it is Nigeria's submission that the test applied by the Court of Arbitration in the *La Palena* arbitration[23] offers appropriate guidance. That Court, also dealing with a river dividing into two tributaries, said that "In the Court's opinion the three principal criteria to be applied in a problem of this kind are length, size of drainage area, and discharge." The Court's use of the phrase "in a problem of this kind" shows that the Court was not speaking only in relation to the particular river before it.

32. The second of these criteria does not help in the present case, since both channels of the Ebedji draw their water from the same upstream drainage area. But the other two considerations, in Nigeria's submission, demonstrate that the north-easterly channel is the more important. It is the

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[22] At para. 37.

[23] *ILR*, Vol. 38, at pp. 93-95: the full quotation is given at Rejoinder of Nigeria, p. 328, para. 7.20.

longer of the two channels, it has a well-defined course, and it leads to a more substantial outfall in the area now marked "Pond". An enlarged section of this photograph is now on the screen, and is at tab 35 in the judges' folders.

33. In Nigeria's submission "the mouth of the Ebeji" intended by the reference in Article 2 of the Thomson-Marchand Declaration is located where that north-eastern channel flows into the feature marked "Pond". From that point the terms of the Declaration can be applied so that the boundary runs upstream from that mouth of the Ebedji, following the middle of the north-eastern channel until it meets the point where the Ebedji bifurcates into its two main channels.

34. The precise terms in which such an intention could be expressed are given in Nigeria's Rejoinder, at paragraphs 7.21-7.25.

Jimbare

35. Mr. President, let me now turn to the situation at Jimbare. This is located just over halfway down the stretch of boundary covered by the Thomson-Marchand Declaration: it is shown on the locator map which is at tab 36 in the judges' folders, together with the relevant texts.

36. The problems in this area arise out of the terms Articles 36 and 37 of the Thomson-Marchand Declaration.

37. Let me start with Article 36. Article 36 provides that, starting from the south peak of the Alantika Mountains, the boundary goes "by the River Sassiri . . . as far as the confluence with the first stream coming from the Balakossa Range". The map at tab 37 in the judges' folders and now on the screen illustrates the defect in that language. The south peak of the Alantika Mountains is at the top right-hand corner. But the River Sassiri does not flow from these mountains: the river flowing westwards from the south peak of the Alantika Mountains is named the Leinde, or Lugga; instead, the Sassiri can be seen flowing northwards from Nanaoua and from the direction of the Balakossa Range, marked along the bottom of the map: but even then the Sassiri does not meet the requirement of being "the first stream coming from the Balakossa Range", since it has its source not in the Balakossa Range but a short distance north of Nanaoua. The terms of Article 36, as they stand, do not make sense.

38. Even though the problem may arise from a simple mistaken reference to the names and descriptions of rivers, the meaning of the text still needs clarifying, since the discrepancy between the language and reality is too great to be left to a demarcation team. Nigeria submits that the intention of the negotiating parties was that, from the south peak of the Alantika Mountains the boundary follows the River Leinde, or Lugga, until its confluence with the River Sassiri, which is the first stream coming from the general direction of the Balakossa Mountains; the boundary would then follow the Sassiri upstream. Specific language which would give effect to that intention is set out in Nigeria's Rejoinder, at paragraph 7.76.

39. Now let me turn to Article 37. It gives rise to three separate problems.

40. On the screen now is the area slightly to the south of the previous area. If the explanation just offered by Nigeria about the boundary prescribed by the previous Article is accepted, that Article had taken the boundary up the River Sassiri. That river is being pointed out, at the top of the map, which is now on the screen. It stops just north of Nanaoua. Article 37 follows that apparent reference to the River Sassiri by saying that "Thence the boundary rejoins the old boundary about Lapeo in French territory." Lapeo is at the right-hand edge of the map: it is being pointed out now, and is indeed clearly in French, that is Cameroonian, territory.

41. It is immediately apparent that there are two major problems. First, there is a large unfilled gap between the source of the Sassiri at Nanaoua — or just north of Nanaoua — and Lapeo; no indication is given as to how the boundary should traverse that gap. Second, and being more specific, the gap is between the Sassiri and "the old boundary about Lapeo": but there is nothing to show where that "old boundary" was or what was meant by it. This stretch of the boundary, perhaps some 3 or 4 km long — one cannot be precise without knowing where the "old boundary" is meant to be — is clearly defectively delimited.

42. The next problem to which Article 37 gives rise derives from its provision that, after the reference to the "old boundary about Lapeo" — whatever that may mean — the boundary follows "the line of the watershed of the Balakossa range as far as a point situated to the west of the source of the Labidje or Kadam River". This part of the delimitation is defective in at least four respects.

(a) First, it is clear that the boundary should somehow get up on to the watershed of the Balkosa Mountains. The approximate line of that watershed is being indicated on the screen now. So

is Lapeo. There is a considerable gap between them. Not only is the "old boundary about Lapeo" wholly obscure, but the means of linking that obscure point of reference to the watershed is worse than obscure — it is absent.

(b) Second, the delimitation treats "Labidje" and "Kadam" as two different names for the same river: but they are not — as the map on the screen shows, they are two quite separate rivers, with their sources in very different places.

(c) Third, the assumption in the text that a watershed can be followed without interruption among the Balkosa Mountains to a point near the source of either of those rivers is unfounded. If the intention was to follow the watershed to the source of the Kadam, the result would be to make the boundary double back on itself — and then have nowhere to go. Obviously, nonsense. But if the intention was to follow the watershed to the source of the Labidje River, then, as the map on the screen shows, this involves moving down from the watershed of the Balkosa Mountains and crossing the Kadam River: those Mountains (near the bottom of the map, marked "Hosere Balkosa" — "Hosere" simply means "mountains") descend in the east into a lower and flatter area, through which the River Kadam flows on its way further south. The source of the Labidje is on the far side of the Kadam, so, in order to get to that source from the watershed along the Balkosa Mountains, the River Kadam has to be crossed somewhere. Article 37 makes no provision for such a crossing.

(d) Fourth, Article 37 takes the boundary not to the source of the Labidje (or possibly the Kadam) River, but "to the west of the source" of the river. One hundred metres to the west? One kilometre to the west? Five kilometres to the west? Nobody knows: Article 37 does not help.

43. The final defect in Article 37 — yes, there is one more, Mr. President — arises from its final words. The text of the Article is on the screen (and at tab 36 in the judges' folders). The problem with the final words is simple — they do not make sense. The text stipulates that the boundary runs to the point described "to the west of the source of the Labidje or Kadam River, which flows into the River Deo, and from the River Sampee flowing into the River Baleo to the north-west". It is the final words of this passage which cause difficulty: there is nothing in the sentence to which the words "and from the River Sampee" can relate.

44. It is abundantly clear, Mr. President and Members of the Court, that in this Jimbare sector of the boundary, Articles 36 and 37 are riddled with a series of defects which together create quite a substantial problem of delimitation.

45. As Nigeria has noted in its Rejoinder[24], a fuller description of the boundary in this section was given in a procès-verbal signed by British and French officials, Logan and Le Brun, in 1930[25]. Nigeria is prepared to accept that Articles 36 and 37 of the Thomson-Marchand Declaration are to be understood in the light of the Logan-Le Brun procès-verbal. On that basis Nigeria suggested in its Rejoinder how the text of those Articles should be understood in order properly to give effect to the apparent intentions of the negotiating parties[26].

Sapeo

46. The next defective delimitation which I should like to draw to the Court's attention concerns the area around Sapeo. It is, in fact, the area immediately to the south and west of the Jimbare area I have just been dealing with. The upper part of the map which is now on the screen, and at tab 38 in the judges' folders, is a lower part of the map the Court saw a few moments ago — the Court can see again, this time at the top of the map, the Balkosa Mountains, and just to the left of that there is the downstream portion of the Kadam River, while a little further down and to the left is the downstream portion of the Labidje River.

47. The relevant provision of the Thomson-Marchand Declaration is Article 38: the text is at tab 36 in the judges' folders. It starts with the words "From this point", which is a reference back to the last point determined by the previous Article, Article 37. As I have just explained, the last part of Article 37 is, to say the least, confused, and it is impossible to give clear meaning to it. So Article 38 begins with a distinct lack of clarity.

48. But from that starting point — whatever it is — the Article stipulates that the boundary continues "along the line of the watershed between the River Baleo and the River Noumberou along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, . . . which is in Nigeria", and so on.

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[24]Rejoinder of Nigeria, pp. 347-349, paras. 7.72-7.76.

[25]Rejoinder of Nigeria, Ann. 154.

[26]Rejoinder of Nigeria, p. 349, para. 7.76.

49. The various named features are all indicated on the map. The River Baleo is indicated, at the top of the map, as being some 10 km further off to the north-west; the River Namberu is marked in the lower central part of the map; the Tschapeu — that is, Sapeo — Range is marked, as "Hosere Sapeo", in the upper central part of the map; and the village of Namberu is marked, near the middle of the map. The township of Sapeo is also marked, near the centre of the map. Assuming that the previous sector of the boundary brings the boundary down as far as the area of the Kadam River, then the watershed line of the Sapeo Range would fairly clearly run in the direction now being indicated, as far as Namberu.

50. However, Mr. President, there is a serious problem with this stretch of the boundary. It is evidently not consistent with what was intended when the Thomson-Marchand Declaration was drawn up; moreover, it does not accord with the extensive practice on the ground for the past three quarters of a century.

51. The Thomson-Marchand Declaration did not, of course, stand alone as the indicator of the boundary. It built on the Milner-Simon Declaration of 1919 — which in the present context offers no assistance — and the delimitation proposed in a report by two British and French officials, Mair and Pition, in 1920[27]. Their report was more informative. And in addition to making various proposals, they gave a detailed description of the boundary area. Their proposal had the effect of placing Namberu and Sapeo on the British, or Nigerian, side of the boundary, and a separate area between the Maio Laro and Kontcha on the French, or Cameroonian, side[28]. The attribution of Sapeo to the British side of the boundary was confirmed in 1930, *after* the Thomson-Marchand Declaration was adopted but before its formal approval in 1931, in the Logan-Le Brun procès-verbal[29], to which I have already referred. Logan and Le Brun also referred to a series of cairns forming a line running south-east of Sapeo, and indicating the correct line of the boundary: remains of three of those cairns still exist — and photographs of two of them are at tab 39 of the judges' folders, and are now on the screen.

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[27]Counter-Memorial of Nigeria, pp. 523-524, paras. 19.34-19.36.

[28]Counter-Memorial of Nigeria, Ann. 331.

[29]Counter-Memorial of Nigeria, Ann. 332.

52. The text of the Thomson-Marchand Declaration, however, while giving effect to the attribution of Namberu to Britain and of the Maio Laro-Kontcha area to France, inexplicably omitted to give effect to the attribution of Sapeo to Britain. I say that "its text" inexplicably did so, because although the *text* describes a boundary line running north-west of Sapeo, the map attached to the Thomson-Marchand Declaration — at tab 40 in the judges' folders, and now on the screen — showed a boundary line running to the south of Sapeo and thus placing it, as had originally been intended, on the British side of the boundary.

53. There was clearly a mistake in the Declaration, Mr. President. The text and its accompanying map differ, and the evidence is clear that it is the map which is correct. So far as the local people are concerned, the boundary proposals were "very carefully explained" to them in 1920 by Mair and Pition, and were "announced to them as immediately binding and operative till the confirmation by the British and French Governments is formally received"[30]. In 1930 Logan, in a covering letter accompanying his submission of the Logan-Le Brun procès-verbal, justified their choice of boundary line by referring to "the existence of the frontier, as shown on the map, for the last ten years"[31] — which is, of course, just the period which had elapsed since Mair and Pition were in the area.

54. Practice ever since has consistently treated Sapeo as part of the Northern Cameroons, and then of Nigeria. In the context of the land boundary, counsel for Cameroon has stated that when Nigeria invokes practice in support of its views it never provides any details. Mr. President, counsel really should read Nigeria's pleadings. Nigeria has set out this practice at paragraphs 7.80 and 7.81 of its Rejoinder, and none of the acts there mentioned has been the subject of any protest by Cameroon. Just by way of example, let me mention that Sapeo was included as part of the Northern Cameroons for the purposes of the plebiscite in 1959, and also that the villagers participated in the Northern Cameroons plebiscite of 1961.

55. Two particular concerns which Cameroon has shown relate to the period of supervision by the Mandates Commission and the Trusteeship Council, and in particular their concern not to

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[30]Counter-Memorial of Nigeria, p. 523, para. 19.35.

[31]Rejoinder of Nigeria, p. 352, para. 7.80.

allow unapproved alterations of territorial boundaries of mandated or trust territories. This concern does not affect the situation which I just described in the Sapeo area.

56. First, as I have shown, the map attached to the Thomson-Marchand Declaration clearly depicted Sapeo as falling on the British side of the line: its inclusion as part of the Northern Cameroons would therefore have been no surprise.

57. Second, there is evidence in the record of this case[32] that the adjustment of the boundary in this area was brought to the attention of the League of Nations. In the British report submitted in 1934 there is a reference to "the demarcation of some 15 miles of the boundary in the northern part of Adamawa and a consequent slight adjustment of territory". While this does not in terms mention Sapeo, it is highly probable that that is the adjustment which is being referred to: the timing fits with the other evidence, the location and distances are right, and there is no other candidate to which this report might be referring. It is also, incidentally, noteworthy in general that, as this example shows, reports to the League were not necessarily detailed in their references to territorial adjustments.

58. It is therefore, Mr. President, clear not only that there was a mistake in the text of the Thomson-Marchand Declaration, but also that the well-established practice on the ground since 1920 has assumed the existence of a boundary such as would have been in place had no textual mistake been made.

59. Nigeria suggested in its Rejoinder how the terms of the Thomson-Marchand Declaration might be interpreted so as correctly to fit with its annexed map and give effect to the Parties' evident intentions[33]. In brief, Nigeria suggests that the correct interpretation of the Declaration places the boundary, as is now being shown on the screen and at tab 41, so that it runs to the south of Sapeo, by following the course of the Kadam River in the north and the Namberu River in the south, and the line of the three cairns for the stretch between those rivers.

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[32]Ann. NC-M 265.

[33]P. 353, para. 7.83.

The Sama River

60. The next area I should like to address is one which is covered, not by the Thomson-Marchand Declaration, but by the British Order in Council of 1946. That Order, as the Court will recall, deals with the central east-west stretch of the boundary, in effect joining the long stretch delimited by the Thomson-Marchand Declaration with the stretch covered by the two Anglo-German Treaties of 1913.

61. The relevant part of the Order in Council is set out at tab 42 in the judges' folders. It reads as follows: "the line follows the River Gamana upstream to the point where it is joined by the River Sama; thence up the River Sama to the point where it divides into two; thence a straight line to the highest point of Tosso Mountain . . ."

62. The map at tab 43 in the judges' folders, and which is now on the screen, shows the relevant features very clearly. The River Gamana flows across the top right-hand corner of the map; the River Sama joins it, flowing up from the south; and Mount Tosso is in the bottom right-hand corner.

63. The defect in the Order in Council is simple. It requires the boundary to follow the Gamana and then go up the Sama "to the point where it divides". But where is that point? There are two possible confluences, where tributaries flow into the river Sama, both flowing from the west: there is one to the north, and one further south. Which is the point of division being referred to in the Order in Council? That is the only question, for once that point of division is ascertained, the drawing of a straight line to Mount Tosso poses no problem.

64. Nigeria submits that the southern tributary establishes the confluence to which the Order in Council is referring; Cameroon prefers the northern tributary. These two alternatives are now being illustrated on the map on the screen, with Cameroon's line in blue and Nigeria's in red. The difference between them places a triangular piece of land in dispute, extending over some 8 sq. km.

65. Nigeria submits that the confluence with the southern tributary meets the criterion of "divides in two" more clearly than does the confluence with the northern tributary. The southern tributary is three times as long, and drains a much larger catchment area, similar in size to the catchment of the continuation of the river coming in from the south. Moreover it is apparent that the Sama River flows for a short distance almost due east below this confluence, and that the

southern tributary flows in from the north and the upper reaches of the Sama flow down from the south: the geometry of this confluence, forming in effect a T-junction, lends itself more readily to a river "dividing in two" than does the northern tributary's confluence, which is more a straightforward flow of a side water into a main stream. The southern tributary also runs through a much more clearly defined and larger valley on its way to meet the Sama River. In contrast, the junction with the northern tributary is geographically nondescript — had it been the junction intended by the drafters of the Order in Council it would for that reason have had to be described with greater particularity.

66. Nigeria has suggested in its Rejoinder how the Thomson-Marchand Declaration might be interpreted so as more accurately to reflect the drafters' intentions as to the point at which the Sama divides, placing the point of division at the confluence of the Sama and the southern tributary[34].

Mberogo

67. In the same general area, Mr. President, another problem arises, but this time because of Cameroon's conduct in relation to the boundary. It concerns the villages of Mberogo and Tosso. The map now on the screen, and at tab 44 in the judges' folders, is very similar to the map you last saw, but this time a number of place names have been added. Mberogo, and Tosso North and Tosso South are being pointed out: and all three are along the banks of the Gamana River.

68. The issue is the following. Cameroon has made incursions into the Nigerian villages of Mberogo and Tosso. Questions of responsibility for these incursions are pursued separately: here Nigeria's only concern is with the boundary implications. The boundary hereabouts is delimited, as the Court will recall, by the Sama River, and a straight line from the place where it "divides into two" to Mount Tosso. The map shows the Sama River, the point of division as submitted by Nigeria as well as that contended for by Cameroon, and the straight lines joining those two locations with Mount Tosso. The red line is the boundary which Nigeria believes to be correct; the blue line is the boundary according to Cameroon. From Mount Tosso eastwards the boundary again follows a straight line, with, again, a dispute as to the terminal points of these lines — which

[34]Rejoinder of Nigeria, p. 366, para. 7.116.

Mr. Macdonald will deal with later — so that the map again shows two lines, one red and one blue, disappearing eastwards.

69. The first thing to note, Mr. President, is that Mberogo and Tosso North and Tosso South are not only well within Nigeria on the basis of Nigeria's view of the location of the border, but they are also well within Nigeria even on the basis of Cameroon's apparently claimed border. So on the face of it any Cameroon incursions into these two places would seem clearly to involve transgressions across the boundary.

70. But in responding to Nigeria's complaint about these incursions, Cameroon in its Reply introduced the thought that there are *two* villages with each of these names, one of each pair being in Nigeria and one of each in Cameroon. On the map you can now see where the map which Cameroon prepared for its Reply[35] indicates that these duplicate villages are — the doppelgänger effect, if you like.

71. Nigeria is very sceptical about this recent assertion by Cameroon. No other maps available to Nigeria or submitted by Cameroon record villages of those names in this area. The local inhabitants on the Nigerian side of the boundary have no knowledge of any Cameroonian villages of those names in the vicinity. Even Cameroon, on the map which it submitted in the judges' folders on 19 February[36], depicted only one Tosso — plainly in Nigeria.

72. On purely geographic grounds, Mr. President, the alleged location of Cameroon's additional Tosso is highly dubious. Cameroon seems to locate it high on Mount Tosso, at just over 1,000 m. And it is perched on the side of a sharp conical summit of the mountain whose peak is at 1,140 m. There is no evidence of any local water supply, or any nearby land on which to grow crops. It is, altogether, a highly improbable location for a settlement.

73. As to Mberogo, Cameroon has itself given an account of a visit by Cameroonian officials to what they called the Cameroonian village of Mberogo[37]. A fuller extract is set out in Nigeria's Rejoinder[38], but for present purposes let me just draw attention to three passages.

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[35]Reply of Cameroon, map R 27, p. 581.

[36]Doc. 36/5.

[37]Reply of Cameroon, Ann. 224.

[38]Rejoinder of Nigeria, pp. 395-396, para. 7.201.

74. The account records a question asked by one "Panso Kimalaki, a Nigerian who identified himself as a teacher in Toso, a Nigerian village located at about one kilometre from Mbelogo at the extreme boundary of Cameroon and Nigeria ".

75. It is clear, Mr. President, that this is referring to the *Nigerian* villages of Mberogo and Tosso. A glance at the map shows that those are the only villages which can satisfy the distance mentioned in the report — "about one kilometre from Mberogo". Moreover, as I have shown, the Cameroonian version of Tosso, near the top of a barren mountain, is a most unpromising site for a school.

76. The report goes on to record that Mr. Kimalaki said that "there is no map that indicates the boundary to be on the river". In the context this can only be taken as a reference to the River Gamana, which runs north of Mberogo and Tosso South and would thus leave them in Cameroon, strongly suggesting that the Cameroonian officials had been asserting that river to be the boundary.

77. Finally, the Cameroonian Sub-Prefect is recorded as telling Mr. Kimalaki "in concrete terms that Mvelogo is in Cameroon territory and he as a foreigner must respect the laws of Cameroon and not to teach the population rebellion against their own fatherland".

78. This is the clearest assertion that Cameroonian officials regard Mberogo as in Cameroon, and since the Mberogo being referred to can only be the one in Nigeria, it follows as a clear implication in the context that Cameroonian officials believe the boundary to be constituted by the River Gamana, and try to enforce it as such.

79. This is a manifestly incorrect view of the meaning of the Order in Council which delimits the boundary in this area. Nigeria accordingly asks the Court to make the declarations set out in paragraph 7.202 of Nigeria's Rejoinder, which, in brief, is to declare that the boundary asserted by Cameroon is not in accordance with the Order in Council, and that the boundary delineated by Nigeria on its map is in conformity with the Order in Council.

Tipsan

80. I come now, Mr. President and Members of the Court, to Tipsan. This is a location which has been the subject of previous exchanges before the Court, during the preliminary

Objections phase of the proceedings. I hope I will not be misunderstood if I venture the comment that those earlier exchanges were not entirely fruitful.

81. Put shortly, we are, again, not here faced with a problem of defective delimitation. Instead, the problem is simply this. The Thomson-Marchand Declaration is clear; the local topography in the Tipsan area is clear; and Cameroon has repeatedly affirmed its wish to uphold and maintain the Thomson-Marchand Declaration. Yet in this instance Cameroon seems unable or unwilling to accept the Declaration, and has persistently claimed in these proceedings that Nigeria, in building an immigration post at a particular location on the Nigerian side of the Thomson-Marchand line, has somehow been violating the terms of that Declaration.

82. The relevant provisions of the Declaration are Articles 40, 41 and 42. Those Articles are with the locator map at tab 45 of the judges' folders. On the screen now and at tab 46 in the judges' folders, is a map of the area. As I read the Articles, the relevant features will be identified.

83. The Articles provide for a boundary which, from the point reached as a result of the previous Article, proceeds as follows:

> "40. Thence along a line parallel to the Bare-Fort Lamy Track and 2 kilometres to the west of this track, which remains in French territory.
>
> 41. Thence a line parallel to and distant 2 kilometres to the west from this road (which is approximately that marked Faulborn, Januaro 1908, on Moisel's map) to a point on the Maio Tipsal (Tiba, Tipsat or Tussa on Moisel's map) 2 kilometres to the south-west of the point at which the road crosses said Maio Tipsal.
>
> 42. Thence the course of the Maio Tipsal upstream to its confluence with the Maio Mafu, flowing from the west, to a point some 12 kilometres to the south-west of Kwancha town."

84. From those features the course of the boundary can fairly easily be constructed. The various stages are now being pointed out, as I go through them. One starts with the Bare-Fort Lamy track. One then notionally moves it 2 km to the west so as to create an exactly equivalent line parallel to the track. One then takes that parallel line down to the Tipsan River, to a point 2 km south-west of the point at which the Bare-Fort Lamy track crosses that river; and then one follows the Tipsan River upstream to the next sector of the boundary. This boundary is now shown on the map on the screen by the red dotted line which has now been added.

85. To complete the picture, Article 41 of the Thomson-Marchand Declaration refers to Moisel's map. A copy of the relevant part of that map is at tab 47 in the judges' folders, and is now on the screen. As can be seen towards the right-hand side of the map, the Faulborn track is clearly marked, as is the River Tipsan — or, as Moisel has it, Tibsat or Tiba. They are clearly in the places indicated by the Thomson-Marchand Declaration, and confirmed by modern mapping. Let me now go back to the previous map of the Tipsan area.

86. And let me note one potential difficulty with the construction of the boundary line in the way I have described. It is a purely technical one — as a matter of geometry it is not a straightforward matter to construct a line parallel to an irregularly shaped line. Nigeria submits that this can most readily be done in this instance by a notional transfer of the track line 2 km in the required westward direction.

87. Apart from that one technical matter, which does not affect the substance of the problem now being discussed, the location of the boundary seems abundantly clear, on the basis of the terms of the Thomson-Marchand Declaration.

88. Yet, Mr. President, Cameroon has thought otherwise. Nigeria has an Immigration Post in this area. It is marked on the map, and is being pointed out now; the Post has attracted some habitations around it, so the Post is sometimes referred to as the village of Tipsan. Cameroon has contended that this Immigration Post was situated in Cameroon; this means, of course, either that Cameroon believes that the border runs further to the west than it really does, so as to bring that Post into Cameroon's side of the boundary, or that Cameroon does not accept that the location of Nigeria's Immigration Post is as shown on the map but is further to the east, genuinely inside Cameroon.

89. Mr. President, let me say straight away that this second hypothesis is completely untenable. The location of Nigeria's Immigration Post has been fixed by satellite readings, and is where it is shown on the map.

90. So only the first alternative is left. But even the maps submitted by Cameroon itself do not support such a position. The boundary line marked on map 14 of Cameroon's Reply map atlas shows the boundary, as it passes the vicinity of the Immigration Post, following the Tipsan River — i.e., the boundary runs on the Cameroonian side of the Immigration Post.

91. Where does all this leave the Court? Perhaps as confused as it leaves Nigeria, at least as regards what Cameroon thought it was doing. And what was Cameroon doing? Cameroon was not just making a harmless mistake. No, Mr. President. On this hopelessly misunderstood geographical basis, Cameroon was, in its Memorial, raising a claim of State responsibility against Nigeria, arising out of Nigeria's use of the Nigerian Immigration Post — which Cameroon claimed involved an occupation of Cameroonian territory[39].

92. And Cameroon did not just do this in its Memorial. Faced with Nigeria's patient explanation of the true position, in the sense in which I have again just set it out, Cameroon reaffirmed its allegations orally during the preliminary objections phase of this case[40]. And given Cameroon's response to Nigeria's explanations, the Court, in rejecting Nigeria's fifth preliminary objection, concluded that there was a dispute at Tipsan — the *only* location along the entire 1,800-km land boundary at which the Court found there to have been a dispute as to the course of the boundary.

93. Mr. President, the Court was not to blame: at that stage the Court only had limited evidence and argument before it. But the "dispute" which the Court held existed was, it is now clear, a dispute wholly fabricated by Cameroon, and had not existed until Cameroon misled the Court by advancing its preposterous boundary claim.

94. In support of its impossible position, Cameroon has adduced various arguments. At first, it seemed to base itself on a belief that German officials had marked the border with stones several kilometres to the west of Kontcha — and we even heard echoes of this in these present hearings[41]. But the Thomson-Marchand Declaration makes no mention of stones in connection with the boundary in this area; and anyway, Cameroon nowhere explains how German officials, who had left the country during the First World War, could have played any role in demarcating a boundary negotiated between British and French officials over the period 1919-1930.

95. Cameroon's next response, during the preliminary objections phase, was to claim that the Nigerian road from Toungo to Tipsan (which continues to Kontcha) was the Bare-Fort Lamy track

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[39]Memorial of Cameroon, p. 590, paras. 6.90 *et seq.*

[40]CR 98/4, p. 14; CR 98/6, pp. 37-38.

[41]CR 2002/7, p. 64, para. 14 (Tomuschat).

mentioned in the Thomson-Marchand Declaration[42]. This argument was patently absurd. Cameroon cited no evidence to support it, and there is none. The map at tab 48 and on the screen shows the locations of Toungo and Kontcha, and of Bare and Fort Lamy (now N'Djamena, the capital of Chad). Manifestly, roads joining these pairs of places would be running at right angles to each other. In any event, the Toungo-Tipsan road bears no relation to Moisel's "Faulborn 1908" track so precisely identified in the Thomson-Marchand Declaration.

96. Cameroon, having raised this issue both as a boundary issue and as a State responsibility issue, tried to explain its position further in two places in its Reply (paras. 4.95 *et seq.* and 11.218 *et seq.*). Mr. President, Cameroon must be given full marks for trying: alas, it can get no marks for achievement — which is not surprising, since its geographical confusion, is complete.

97. However, at least some progress is made. In paragraph 4.99 of its Reply, Cameroon has now expressly accepted — despite all that has gone before — that the Nigerian Immigration Post is "indisputably situated in Nigerian territory"[43]. We can now be clear. Cameroon admits that it was wrong all along about the Immigration Post. So, there was no Nigerian occupation of Cameroonian territory which could found a claim of State responsibility; and there was no dispute about the boundary either.

98. But Cameroon is not finished yet. There is, we were told in Cameroon's Reply, *another* settlement called Tipsan, situated on Cameroon's side of the line and apparently 3 km from Kontcha. Cameroon seems rather fond of "doppelgänger" villages. But anyway, where do we find the evidence for this "other" Tipsan? There is none. No maps submitted by Cameroon show it, not even those submitted with its Reply. All previous arguments by Cameroon, especially in the preliminary objections phase, have proceeded on the basis that there was just the one Tipsan, located with the Nigerian Immigration Post.

99. That Cameroon's cartographic confusion is complete is made even more evident by Cameroon's yet further arguments as to the location of the boundary. Thus, in its Reply, it is suggested that the boundary is 4 km from Kontcha, on a stream known as the Maio Djigawa[44]. But

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[42]CR 98/6, p. 38.

[43]P. 193, para. 4.99.

[44]Para. 11.225.

in the very next paragraph it is suggested that the boundary is 9 km from Kontcha, not 4[45]; and anyway, how did the Maio Djigawal become relevant? It is certainly not mentioned in the Thomson-Marchand Declaration by which Cameroon sets such store. As I say, Mr. President, full marks for trying, but none whatever for achievement.

100. But Cameroon keeps on trying — with equally unimpressive results. During these hearings we heard yet another story. First, counsel emphasized how "famous" the Bare-Fort Lamy track was[46], from which one might assume that Cameroon would know where it was. However, another member of the Cameroon team reported that from a recent helicopter visit to the area he was "unable to find and identify with certainty the road Bare-Fort Lamy"[47]. There really is no problem — at least on the ground, which is where the track is rather than in a helicopter. Moisel's map, referred to in the Thomson-Marchand Declaration, very clearly identifies it in precisely the manner described in the Declaration; modern maps mark it in the same place.

101. And then counsel showed us a map, on which he purported to identify, with a laser light, the location of Tipsan. First, it is to be noted that the map in question, which was map 28/4 *(b)* in the judges' folder for the second day of the hearings, shows no location identified as "Tipsan". Second, the map equally shows no location for the Nigerian Immigration Post or the Nigerian village of Tipsan.

102. The attempt was made to make good these last omissions by showing a photograph which the Cameroon legal team, including counsel — acting now as a witness of fact, it may be noted, but let that pass —, had taken from the helicopter. The photograph was document 29/4 *(b)* in the judges' folder for that day, and is now again on the screen, and at tab 49 of today's judges' folder. Counsel said that this photograph showed only the Immigration Post — a square concrete structure which he identified at the top centre of the photograph, and said that it was "a rather isolated building" and that he "could not detect from the air . . . any substantive human settlement in the vicinity of this immigration post"[48]. Mr. President and Members of the Court, the concrete

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[45]Para. 11.226.

[46]CR 2002/1, p. 71, para. 8 (Simma).

[47]CR 2002/2, p. 57, para. 26 (Khan).

[48]*Ibid.*

structure in question is a clinic, not the Immigration Post; the Immigration Post, as one would expect, is next to the road, in a group of trees; and several hutments — quite enough to constitute a village in the local sense — are clearly visible amongst the trees: shade, Mr. President, being somewhat useful in this area.

103. There can be no doubt whatsoever that Cameroon's position regarding Tipsan is invention from beginning to end — a gross mistake, seriously misleading the Court, which Cameroon does not have the grace to admit, even when it has acknowledged in its Reply that the Nigerian Immigration Post was "indisputably situated in Nigerian territory".

104. The short point is, Mr. President and Members of the Court, that the boundary in this area is both correctly and clearly delimited in Articles 40 to 42 of the Thomson-Marchand Declaration. That boundary is delineated in red on the map on the screen, which is also in Nigeria's Rejoinder. Cameroon has done nothing to show that that boundary is in any way incorrect. Nigeria has accordingly submitted that the Court should confirm the correctness of that delimitation and delineation.

Mr. President and Members of the Court, that brings me to the end of this part of my pleading on the land boundary. I am grateful for your attention. Mr. President, might I now invite you to call upon Mr. Alastair Macdonald to continue the presentation of Nigeria's case on the land boundary — although given the hour, you may prefer to wait until tomorrow morning before doing so. Thank you, Mr. President.

Le PRESIDENT : Je vous remercie beaucoup. Nous arrivons au terme de cette séance et la Court reprendra ses travaux demain matin à 10 heures.

L'audience est levée à 13 heures.