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Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le mercredi 6 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 Wednesday 6 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,

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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,

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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,

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

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

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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,

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M. Nigel McCollum,

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

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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,

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

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

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

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

as Technical Experts.

Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte et je donne immédiatement la parole, au nom de la République fédérale du Nigéria, à M. Ian Brownlie. Monsieur le professeur, vous avez la parole.

Mr. BROWNLIE: Thank you, Mr. President.

THE POSITION IN LAKE CHAD

1. Mr. President, distinguished Members of the Court, it is my purpose this morning to examine the foundations of the Nigerian claim to title in respect of certain areas of the Lake Chad region. The claim encompasses 33 villages, which are listed at tab 71 in the judges' folder. These communities of fishermen and farmers have a total population of approximately 60,000 people. The villages are included in the Nigerian local government authorities of Marte and Ngala.

2. The limits of Nigeria's claim to areas of Lake Chad are shown on the graphic now before the Court, also at tab 71. These limits reflect the areas under the administrative control of Nigeria.

3. The legal position can be summarized in the following propositions:

First: It is the position of Nigeria that the areas of Lake Chad to the north and east of the terminus of the land boundary at the mouth of the Ebedji constitute territory the title to which is undetermined. This is subject to the existence of the title of Nigeria to specific areas based upon historical consolidation of title and acquiescence.

Second: The work of the Lake Chad Basin Commission did not result in a delimitation which was final and binding upon Nigeria. In the absence of a delimitation jointly agreed upon by the riparian States, there is no boundary in place which is opposable to Nigeria.

Third: The premise of the work of the Lake Chad Basin Commission was precisely that, whilst the colonial treaties constituted relevant data in relation to delimitation, their provisions as such did not provide a definitive solution.

Fourth: The practice of the riparian States confirms that there is no definitive delimitation in place.

Fifth: Title to the areas of Lake Chad claimed by Nigeria is based upon historical consolidation of title and acquiescence.

Sixth: And, finally, title to the areas vests in Nigeria independently of the present status of the delimitation work carried out under the auspices of the Lake Chad Basin Commission.

4. It will be helpful to remind the Court that "Lake Chad" is the description which is customarily applied to the area which is the historical flood zone as indicated on standard maps available in the public domain. The graphic before the Court, also at tab 72, was produced from a digital database published by the United States Defence Mapping Agency. The historical flood zone includes the area of actual inundation at any one time. This historic version of Lake Chad is sometimes described as the "normal" Lake Chad — it is the image one sees on atlas maps.

5. Numerous villages exist on the dried-up bed of the Lake. These are to be distinguished from the settlements on the mainlands of Nigeria and other riparian States. The Lake villages may be sited either on islands which are surrounded by water perennially, or on locations which are islands in the wet season, or on locations which are sited on the dried-up historical flood zone of the "normal" Lake Chad, with episodes of flooding as a contingency. For present purposes it is necessary to employ the concept of the "normal" Lake Chad as the base of reference. It is this customary usage which is legally relevant and which constitutes the region to which the ongoing process of delimitation and demarcation relates.

6. My first purpose is to demonstrate that there has been no delimitation which is final and binding upon Nigeria. This demonstration involves three elements.

First: the colonial boundary agreements of the period 1906 to 1931 did not produce a conclusive delimitation in the Lake Chad region.

Second: the uncertainties remained after the independence of Nigeria and Cameroon.

Third: the work of the Lake Chad Basin Commission did not produce a delimitation which was final and binding on Nigeria.

7. The documents relating to the function of the LCBC in determining the boundaries of the riparian States within Lake Chad sometimes employ the term "demarcation" to describe the nature of the task. As will appear as the background is examined, the essence of the process is delimitation and the demarcation element is necessarily consequent upon legal appreciations involving the interpretation and application of various boundary agreements of the colonial era.

8. The nature of the agenda in front of the technical experts of IGN emerges very clearly from the language of the IGN Report of the Marking Out of the International Boundaries in Lake Chad adopted at N'Djamena on 14 February 1990. This refers, with logical justification, to "the delimitation of boundaries". I refer to the Additional Application, Annex 5. The introduction to the report reads as follows, in the English translation of the Registry:

> "We the undersigned,
>
> experts from the Member States of the CBLT/LCBC (Cameroon, Niger, Nigeria and Chad), duly designated by our States to supervise and monitor the work on the demarcation of our boundaries in accordance with resolution No. 2 adopted by our Governments at their Sixth Summit Meeting held in N'Djamena on 28 and 29 October 1987,
>
> on the one hand,
>
> and IGN-France International (IGN-FI), holder of contract No. CBLT/MO2/88, approved on 26 May 1988, for the delimitation of the boundaries between the territories of Cameroon, Niger, Nigeria and Chad,
>
> on the other,
>
> have proceeded, from 13 June 1988 to 12 February 1990, to effect the delimitation and marking-out [delimitation and marking-out] of the said boundaries and submit to the approval of the respective Governments the following description of the boundaries that we marked out."

9. In this context it is necessary to look at the classical distinction between delimitation and demarcation. The reader of the documents produced by the LCBC in relation to the exercise in boundary-making on Lake Chad must inevitably recognize that the operation was not limited to demarcation alone.

10. The leading authority Charles Rousseau pointed out that the two terms are often confused in diplomatic language. I am referring to his treatise: *Droit International Public*, Volume III, 1997, at page 269. And in a book published in 1979, the present speaker observed that:

> "It is common practice to distinguish delimitation and demarcation of a boundary. The former denotes description of the alignment in a treaty or other written source, or by means of a line marked on a map or chart. Demarcation denotes the means by which the described alignment is marked, or evidenced, on the ground, by means of cairns of stones, concrete pillars, beacons of various kinds, cleared roads in scrub, and so on. The principle of the distinction is clear enough, but the usage of the draftsman of the particular international agreement or political spokesman may not be consistent. In fact the terms are sometimes used to mean the same thing." (Brownlie, *African Boundaries*, 1979, p. 4.)

11. I shall now pursue my demonstration that there is no delimitation which is final and binding upon Nigeria.

12. The first element to be emphasized is that the colonial boundary agreements of 1906 to 1931 did not produce a conclusive delimitation in the Lake Chad region, and that substantial uncertainties remained to be solved.

13. The colonial boundary agreements and other pre-independence developments have been carefully analysed in the Nigerian Counter-Memorial and it is not necessary to repeat the analysis (Chapter 15 and also Chapter 16, pp. 381-389). The conclusion of the Nigerian Counter-Memorial was as follows:

> "Thus, as at 1 June 1961, the date upon which Northern Cameroons was incorporated into the independent Federation of Nigeria, the process of delimitation and demarcation of the boundary in Lake Chad was still at an embryonic stage." (Para. 15.99.)

The arrangements for boundary delimitation and demarcation: the role of the Lake Chad Basin Commission

(i) The position after the independence of Cameroon and Nigeria

14. In the years following the independence of Cameroon and Nigeria no work of delimitation was undertaken. It is true that in the 1970s there were various bilateral contacts relating to boundary problems. Moreover, the mandate of the Joint Boundary Commission, established in 1965, included the determination of difficulties concerning the boundary from Lake Chad to the sea: I refer to the Minutes of the Meeting of the Commission on 12 to 14 August 1970 (Preliminary Objections of Nigeria, Ann. NPO 13). But these diplomatic efforts did not have any practical outcome so far as Lake Chad was concerned.

(ii) The origins of the renewed effort at delimitation of the boundaries on Lake Chad

15. In the event the task of delimitation was undertaken under the auspices of the Lake Chad Basin Commission established by a Convention concluded on 22 May 1964 (Counter-Memorial of Nigeria, Ann. NC-M 60). The member States are the four riparian States of Lake Chad, together with the Central African Republic.

16. The Statute of the Lake Chad Basin Commission contains the following elaboration of "Principles and Definitions":

> "*Article I*: The Member States solemnly declare their desire to intensify their cooperation and efforts in the development of the Chad Basin as defined in Article II.
>
> *Article II*: For the purpose of this Convention the Chad Basin shall comprise the area as demarcated on the map annexed to the present Convention.
>
> *Article III*: The Chad Basin is open to the use of all Member States parties to the present Convention, without prejudice to the sovereign rights of each as stipulated in the present Statute, revision thereof, or subsequent relations thereunder or by special agreement.
>
> *Article IV*: The development of the said Basin and in particular the utilization of surface and ground waters shall be given widest connotation, and refers in particular to domestic, industrial and agricultural development, the collection of the products of its fauna and flora."

17. The functions of the Commission include the following in Article IX:

> "*(a)* to prepare general regulations which shall permit the full application of the principles set forth in the present Convention and its annexed Statute, and to ensure their effective application;
>
> *(b)* to collect, evaluate and disseminate information on projects prepared by Member States and to recommend plans for common projects and joint research programmes in the Chad Basin;
>
> *(c)* to keep close contact between the High Contracting Parties with a view to ensuring the most efficient utilization of the waters of the Basin;
>
> *(d)* to follow the progress of the execution of surveys and works in the Chad Basin as envisaged in the present Convention, and to keep the Member States informed at least once a year thereon, through systematic and periodic reports which each State shall submit to it;
>
> . . . . . .
>
> *(g)* to examine complaints and to promote the settlement of disputes and the resolution of differences;
>
> *(h)* to supervise the implementation of the provisions of the present Statute and the Convention to which it is annexed."

18. The LCBC constitutes an international organization, as indicated in Article XVII of the Statute, and its aims are essentially the achievement of co-operation in pursuit of the most efficient utilization of the waters of the Lake Chad basin. The taking up of the agenda of delimitation resulted from considerations of security in the region.

19. In 1983, disturbances in the region of Lake Chad caused by Chadian bandits gave rise to the convening of an extraordinary session of the Lake Chad Basin Commission in Lagos, from 21 to 23 July. In his statement, Dr. Alhaji Bukar Shaib, the Chairman of the Commission, explained the position. In his words:

> "On this occasion, our meeting has been prompted by the recent events along the border between Nigeria and Chad in the Lake area of the basin. This matter has been the subject of bi-lateral negotiations between the two Member States which, happily, have succeeded in restoring normalcy and a return to the situation existing before the incidents occurred. However, in order to find a lasting solution to the perennial problem often caused by long and undefined borders between neighbouring states no matter how friendly their relationship, and in this particular case, on the very Lake itself where the borders of our four States converge, both Nigeria and Chad rightly agreed that the Lake Chad Basin Commission should be the proper forum for discussing all the important ramifications of the problem and the modalities of effecting the necessary solutions once and for all not only between them but between all the four Member States." (Preliminary Objections of Nigeria, Ann. NPO 88, pp. 859-860.)

20. In the report of the extraordinary session the same speech was summarized in very similar terms (see Ann. NPO 88, p. 862).

21. The meeting decided to establish two sub-committees, one for the delimitation of the borders and the other for security matters. The report indicates the nature of the agenda in the following passage:

> "After the recess, the meeting of experts began, with Mr. N. O. Popoola, the Permanent Secretary of the Ministry of Water Resources of Nigeria as Chairman. As the two matters to be discussed were so closely inter-related, it was decided that both sub-committees should meet together in the Conference Hall and discuss first the border delimitation problems and later the security matters. On the proposal of the Chairman and with the concurrence of the Delegations present the following agenda were adopted for the two Committees.
>
> *Agenda for the Committee on Demarcation*
>
> 1. Possible exchange of information and documents on the boundaries.
>
> 2. Boundaries Committee programme and work methodology.
>
> 3. Joint Demarcation Team.
>
> *Agenda for the Committee on Security*
>
> 1. Measures for ensuring the effectiveness of the joint Border Patrols.
>
> 2. Complete Demilitarization of the Lake by the Member States.
>
> 3. Measures to ensure the non-violation of Agreements reached.

4. Security of the Boundary Demarcation Team." (Ann. NPO 88, p. 864.)

22. The modalities of implementation of the decisions taken at Lagos were discussed at the twenty-eighth, twenty-ninth and thirtieth sessions of the LCBC in 1984 and 1985. Progress had been slow, in part, because of problems relating to funding.

23. In the report dated 17 November 1984 of the LCBC Sub-Commission on the delimitation of the frontiers within Lake Chad, the following passage appears under the heading *"documents juridiques de base"*:

> *"5. Aprés discussions et échange de vues, la sous-commission a retenu comme documents de travail, les textes suivants traitant de la delimitation des frontières dans le Lac Tchad; . . ."* (Memorial of Cameroon, Ann. MC 271, pp. 2238-2240).

Four treaties of the colonial period are then listed.

24. The content of this report makes it clear that the enterprise envisaged would necessarily involve the determination of the alignment and not only a process of demarcation.

25. In 1985 the Fifth Conference of the Heads of State of the LCBC was held. The Minutes of the Fifth Conference (Counter-Memorial of Nigeria, Ann. NC-M 275) include, as Annex B, the report of the then Chairman, Dr. Alhaji Bukar Shaib.

26. Under the rubric "Border Demarcation and Security on Lake Chad", this report provides the following helpful assessment:

> "32. Following the border incidents between Nigeria and Chad on the Lake Chad in April 1983 and the Protocol Agreement between the two countries in July the same year, the Commission was called in as the forum through which to effect a permanent settlement of the border problems in the area. Consequently, an extraordinary session of the Commission, which was held in Lagos from 21st-23rd July, 1983 set up two Sub-Commissions: one on border demarcation and the other on security on Lake Chad.
>
> 33. From 12-16 November, 1984, the experts on border demarcation and security on Lake Chad from the four Member States met in Lagos and agreed on the basic legal documents for future work."

27. This report by the Chairman describes the LCBC as "the forum through which to effect a permanent settlement of the border problems in the area", and forms part of the Minutes which were formally adopted by the Sixth Conference of Heads of State on 28 October 1987 (Counter-Memorial of Nigeria, Ann. NC-M 276 and Preliminary Objections of Nigeria, Ann NPO 67).

28. The final Communiqué of the Fifth Conference (Ann. C to Ann. NC-M 275) records that:

"The Heads of State noted with satisfaction the measures being taken by the Commission to find permanent solutions to the issues of border demarcation and security on Lake Chad, and to this effect instructed the Commission to intensify its efforts."

29. The decisions taken in 1987 by the Sixth Conference of Heads of State included the decision on "Border Demarcation", as follows:

"— that member States have agreed to finance the cost of the demarcation exercise which amounts to 312,884,000 F.CFA;

— that the amount would be shared equally among the four member States;

— that a special bank account be opened for this purpose;

— that work should start in March 1988." (Ann. NC-M 276, p. 19.)

30. Thus the LCBC found itself mandated by the four member States, all riparians of Lake Chad, to proceed with the technical programme of delimitation and demarcation.

(iii) The specifications prepared for the technical operation

31. In March 1988 a meeting of experts of the member States of the LCBC met "to determine the terms of reference for the demarcation and survey of the boundaries in Lake Chad" (Counter-Memorial of Nigeria, Ann. NC-M 277). The General Conditions for Invitation of International Tender (Ann. NC-M 278) were approved by the LCBC at the same meeting.

32. A separate instrument adopted at this stage was the Technical Specifications for Boundary Demarcation and Survey in the Lake Chad (Ann. NC-M 279). The contents of this document deserve close attention because they reveal the essential nature of the task envisaged, which involved elements of evaluation which went far beyond the normal task of demarcation.

33. Chapter 1 of the Technical Specifications speaks for itself in this respect. It provides as follows:

"1.1 All activities on surveying, and border demarcation between Cameroon, Niger, Nigeria and Chad in the Lake Chad and its surroundings shall comply with the terms laid down in these specifications.

1.2 *Scope of the work to be done*

The area involved covers approximately 61,000 km^2 and is located between the following geographical co-ordinates: [which I omit].

The Contractor shall carry out the following assignments:

(i) Reconnaissance and physical marking out of 21 GPS Control Points and 7 major border points;

(ii) Placement of 62 intermediate beacons between the border points at intervals of not more than 5 kilometres;

(iii) Determination of the geographical coordinates of both border and the intermediate points.

1.3 *Documents to be given to the Contractor by the Lake Chad Basin Commission*

The Lake Chad Basin Commission shall supply the Contractor with the following documents to enable him to carry out his assignment:

(i) A table of existing survey and control points;

(ii) Aerial photographs, mosaics and maps where available;

(iii) Texts and documents dealing with border demarcation in the Lake Chad:

(a) Convention between Great Britain and France respecting the delimitation of the Frontier between British and French Possessions east of the Niger (signed in London on 29 May 1906);

(b) Convention confirming the boundary between Cameroon and French Congo (signed in Berlin on 18 April 1908);

(c) Agreement between the United Kingdom and France on the delimitation of the border between the British and French possessions east of the Niger (signed in London 19 February 1910);

(d) Exchange of notes between His Majesty's Government in the United Kingdom and the French Government concerning the boundary between British and French Cameroons (done in London on 9 January 1931);

(e) Minutes of the meeting of 2 March 1988 between Chad and Niger to determine their bi-points on the Lake Shore."

34. As the Court will readily appreciate, such reference to treaty instruments indicates that the exercise was in reality in the nature of a delimitation. Moreover, given the choices to be made in relation to the collection of treaty instruments, even the delimitation process would involve decisions on matters of substance.

35. In the event IGN France International was awarded the contract (Minutes of the Examination of Tenders, Counter-Memorial of Nigeria, Ann. NC-M 280). The contract (*ibid.*, Ann. NC-M 281) provided in part as follows:

"*Article 7: Documentation handed to the Contractor by the Lake Chad Basin Commission*

The Lake Chad Basin Commission shall supply the Contractor with the following documents:

(i) An index list of existing geodetic and height points;

(ii) All the existing photographic mosaics and maps in their present state;

(iii) Texts and documents dealing with boundary demarcation in Lake Chad;

. . . . . .

[There follows the same treaties as those listed in the Technical Specifications]

Article 8: Documentation furnished by the Contractor to the Lake Chad Basin Commission

The Contractor shall furnish:

(1) All the documents mentioned in Articles 3 and 7; . . ."

36. The contract between the LCBC and IGN was approved by the LCBC on 26 May 1988.

37. In August 1988, a special session of the LCBC, prompted by a disagreement on the location of the Cameroon/Nigeria bipoint, decided that the national experts should resolve the problem and prepare "concrete recommendations". The report of the national experts who met in September 1988 noted the different claims of Cameroon and Nigeria which appeared to be the result of the River Ebedji (El-Beid) opening into two channels as it approaches the Lake, and recommended that a point obtained by scaling from the map attached to the 1931 Treaty be adopted as the mouth of the River Ebedji as at 1931. This recommendation was endorsed by the Commissioners at their thirty-sixth session in December 1988. It is not my purpose to pursue that issue here.

(iv) The delimitation exercise, 1988 to 1990

38. The technical operation of delimitation and demarcation was carried out by IGN in the period 1988 to 1990 and the results were reported to the Seventh Conference of the Heads of State in 1990. The relevant part of the Minutes of the Conference records the decision of the Heads of State as follows:

"*Decision No. 1: Report on the Boundary demarcation Exercise*

. . . . . .

Considering that as at 12th February, 1990, the Contractor IGN France International had monumented 7 major points and 68 intermediary beacons;

Considering that after examining all the documents and the field work, the experts have accepted the work executed;

The Heads of State decided:

— to take note of the satisfactory achievement of the International Boundary demarcation Exercise for Cameroon, Niger, Nigeria and Chad in the Lake and direct the Commissioners to get the appropriate documents ready within three months and sign them on behalf of their respective countries." (Counter-Memorial of Nigeria, Ann. NC-M 282.)

39. The Heads of State had received the Report of the Marking-Out of the International Boundaries in Lake Chad adopted at N'Djamena on 14 February 1990 (Ann. 5 to the Additional Application). The most relevant parts of the report are as follows (in the English translation provided by the Registry):

"We the undersigned,

. . . . . .

have proceeded, from 13 June 1988 to 12 February 1990, to effect the delimitation and marking-out of the said boundaries and submit to the approval of the respective Governments the following descriptions of the boundaries that we marked out.

Chapter I. General Considerations

1.1 *Nature of the work*

The work consisted of a faithful reconstitution, on the ground, of the indications defining the course of the inter-State boundaries, as given in the agreements, treaties, exchanges of notes, conventions and maps currently in force.

1.2 *Course of the boundary*

The boundary line is drawn as a straight line from one beacon to another, and marked out on the ground by major beacons linked to each other by intermediate beacons, erected every 5 kilometres or so. Seven major beacons have been set up at the points defined in the texts and maps in force.

Sixty-eight intermediate beacons have been strung out along the traverse for traverses I-II, I-VII, II-V and III-VI, and follow the curve of the geographical parallel for traverses I-IV and II-III.

. . . . . .

Chapter VI. Cameroon-Nigeria Boundary in Lake Chad

This section of the boundary line has been reconstituted in accordance with the indications given in:

(1) the Exchange of Notes between His Majesty's Government in the United Kingdom and the French Government, respecting the boundary between the French and British zones of the Mandated Territory of the Cameroons, effected in London on 9 January 1931.

(2) the report of the meeting of experts relating to the determination of the co-ordinates of the mouth of the El-Beid (Ebedji), which was held on 15 and 16 September 1988 in N'Djamena, Chad."

40. It is significant that the first of the passages quoted above refers to "the delimitation and marking-out of the said boundaries". It is clear that "marking out" involves a separate operational category. Of particular significance is the definition of the "nature of the work". The work thus consisted of "a faithful reconstitution, on the ground, of the indications defining [defining] the course of the inter-State boundaries, as given in the agreements, treaties, exchanges of notes, conventions and maps currently in force". These formulations confirm that the work involved *both* delimitation *and* demarcation. They also indicate that the work necessarily involved decisions of a legal character concerning the interpretation and application of the various international agreements.

(v) The sequel to the delimitation exercise

41. In November 1990, at their thirty-ninth meeting, the Commissioners resolved that the national experts should go back to the field to complete some specific tasks relating to two intermediate beacons (Preliminary Objections of Nigeria, Ann. NPO 74, p. 701). In the course of the discussions of the relevant sub-commission, the position of the Nigerian delegation as recorded in the minutes was as follows (Ann. NPO 74, p. 708,):

> "For its part, the fourth delegation, i.e. that of NIGERIA, considered that the project was not fully completed (the failure to number beacon II-III.1, substandard quality of numbering by LCBC, non-demolition of beacon II-V.1 which was wrongly erected, non stabilization of GPC and Azimuth station on lines I-II and II-V and disappearance of two GPS stations on the line I-II)."

In consequence, Nigeria refused to sign the report of the experts on the beaconing. At a June 1991 meeting of experts, Nigeria rejected the resolution adopted at the thirty-ninth meeting (Counter-Memorial of Nigeria, Ann. NC-M 283).

42. In August 1991 at Yaoundé, at the first meeting of Cameroonian and Nigerian experts on boundaries (this was not an LCBC meeting), the Nigerian experts explained that the delay in signing the "final documents" on the demarcation of Lake Chad had been due to the need for

certain technical clarifications (Preliminary Objections of Nigeria, Ann. NPO 52). The Cameroon delegation at this meeting referred to the IGN exercise in terms of "delimitation and demarcation". At the second such meeting of experts in December 1991, it was recommended that the LCBC be contacted by both delegations to arrange early completion of certain outstanding works but that this "should not delay the signing of the demarcation report by the Nigerian experts" (Ann. NPO 54).

43. At a meeting of LCBC experts in January 1992, Nigeria indicated that it was now ready to implement the resolution of the thirty-ninth meeting and to sign the "report on demarcation" subject to the approval of the Heads of State (Ann. NPO 75). The Commission noted the intention of the experts to implement the resolution by June 1992 (Ann. NPO 75, p. 715,). At the forty-first session of the Commission in April 1993 (see extracts of minutes at Counter-Memorial of Nigeria, Ann. NC-M 284), it was reported that the experts had gone back to the field, finalized the technical aspects of the job and signed the technical documents. However, because of a dispute regarding the location of beacon VI on the Chad/Cameroon boundary, the Chad Commissioner stated that he was unable to endorse that aspect of the work, and as a result of there being a lack of consensus, it was resolved that "the documents regarding the demarcation exercise" be signed by the Executive Secretary and made available to the Commissioners for presentation to their Governments so that the issue could be finalized at the next Summit — that is, the summit of Heads of State.

44. The Minutes of the forty-first session of the Commission contain the decision to present the documents "relating to the border demarcation exercise" to the Heads of State and Government of the member States "for a final decision" (Ann. NC-M 284, p. 13, para. 90).

45. The Minutes of the Eighth Summit (Ann. NC-M 285) of the Heads of State and Government (in 1994) record at page 13 Decision No. 5 concerning "Border demarcation and security in the Lake Chad basin area": the document is at tab 83. The text of the Decision is as follows:

> "Faithful to the principles and objectives of the OAU and the United Nations Charter;
>
> Conscious of the traditional bonds uniting the riparian people of the Lake Chad;
>
> Firmly determined to strengthen and guarantee peace and security in the sub-region;

Considering that the physical work on border demarcation has been fully completed and the technical document signed by the national experts and the Executive Secretariat;

Considering the concern of the LCBC to ensure the social and economic development of the population living in the conventional basin;

Considering the growing insecurity situation in the Lake Chad conventional basin area;

Considering the strong will of member States to resolve this persistent problem of insecurity in the sub-region;

The Heads of State decided:

A. *Boundary demarcation*

to approve the technical document on the demarcation of the international boundaries of member States in the Lake Chad, as endorsed by the national experts and the Executive Secretariat of the LCBC.

that each country should adopt the document in accordance with its national laws.

that the document should be signed latest by the next summit of the Commission.

to instruct state/local administrations of each country to mount social mobilisation campaigns to educate the local populations on the demarcation and their rights and privileges on the Lake.

congratulated the Commissioners, the national experts, the Executive Secretariat and the Contractor IGN-France for a job well done."

I shall not read out the Section B on security issues.

46. This decision of the Heads of State involves the approval of "the technical document on the demarcation of the international boundaries of Member States", subject to the adoption by each member State "in accordance with its national laws" and subject, further, to signature by the next Summit of the Commission.

47. During the Ninth Summit (the Minutes are at Ann. NC-M 286) on 30 to 31 October 1996, the Heads of State and Government adopted as Decision No. 2 (p. 11), in tab 83:

"*Country Reports on the Adoption and Signing of Document on Boundary Demarcation*

Considering the item on adoption of the document on boundary demarcation;

Noting the sensitivity of the issue in view of recent developments;

Considering the necessity for peace and tranquillity in the sub-region;

Noting the absence of the Heads of State of Cameroon and Nigeria.

The Heads of State decided:

— to defer discussions on the issue.

— to mandate the President of the Summit to intervene either through consultations or meetings with the two Heads of State of Cameroon and Nigeria, to find an amicable solution to the problem in the spirit of African brotherhood."

The Heads of State attending were those of Chad, Niger and the Central African Republic.

48. The Minutes of the forty-fourth session of the Lake Chad Basin Commission held at N'Djamena on 26-28 October 1996, which include the resolutions adopted, make no reference to the question of delimitation within Lake Chad (Rejoinder of Nigeria, Ann. NR 103).

49. In the same way no reference to the question of delimitation appears in the resolutions adopted by the Commission at its forty-fifth session in 1998 (Ann. NR 104) or its forty-sixth session in 1999 (Ann. NR 105).

50. At the Tenth Summit of the Heads of State and Government held in N'Djamena on 28 July 2000 once again no reference was made to the question of boundaries within Lake Chad: I refer to Annex NR 106 and the documents in tab 83. Thus the position has not changed since the Ninth Summit in 1996.

(vi) Nigeria had a discretion in the matter of acceptance of the decision of the Heads of State in 1994

51. The Nigerian Government has not seen fit to give approval to the technical outcome of the delimitation and demarcation exercise provisionally adopted in 1994. The Nigerian Government considers that the legal position is that each member State of the LCBC had a discretion in the matter of acceptance of the provisional decision of the Heads of State. This was clearly the view of the Heads of State at the Ninth Summit in 1996. In any event, the voting principle operating in the LCBC is that of unanimity, as Article X of the Statute provides. In the first round, Professor Cot suggested that Nigeria was automatically bound by the determinations of the experts, but produced no evidence to support that proposition. It is clear from the practice of the LCBC that dispositive decisions were the prerogative of the Heads of State, and only the Heads of State.

52. The Nigerian position is compatible with sound legal and political policy. The boundary settlement involved matters of substance, which had not been resolved either in 1919 or in 1931,

and remained unresolved at the time of independence. Nigeria has significant interests in the region and a substantial population of Nigerians lives in the towns and villages which are under Nigerian sovereignty.

53. In the light of the evidence the only reasonable conclusion is that the work of the LCBC did not produce a result which was final and legally binding upon Nigeria. This position was accepted by Professor Cot in the first round argument (CR 2002/2, para. 66). Professor Cot then followed this admission by asserting that Nigeria had nonetheless accepted the alleged delimitations of 1919 and 1931 by her conduct. This Nigeria denies. In any event, the assertion involves a *petitio principii*. There were no definitive delimitations either in 1919 or in 1931 to be accepted.

54. Professor Cot repeated the familiar contention that there has been a well-established boundary on Lake Chad since 1919 and/or 1931 (CR 2002/2, pp. 30-32, paras. 1-13). In insisting on the existence of a treaty-based title Cameroon relies upon the Thomson-Marchand Declaration, in the form of the Anglo-French Exchange of Notes of 9 January 1931. However, the transactions of 1931 did not involve a final determination of the Anglo-French boundary but provided for delimitation by a boundary commission. In this respect the British Note, forming part of the exchange, gives the picture:

> "2. His Majesty's Government agree that this Declaration [this refers to the Thomson-Marchand Declaration] is, as you point out, not the product of a boundary commission constituted for the purpose of carrying out the provisions of Article 1 of the Mandate, *but only the result of a preliminary survey* conducted in order to determine more exactly than was done in the Milner-Simon Declaration of 1919 the line ultimately to be followed by the boundary commission; that none the less, the Declaration does in substance define the frontier; and that it is therefore desirable that the agreement embodied therein shall be confirmed by the two Governments in order that *the actual delimitation of the boundary may then be entrusted to a boundary commission,* appointed for the purpose in accordance with the provisions of Article 1 of the Mandate.
>
> 3. His Majesty's Government note that the French Government by their note under reference confirm, for their part, the agreement embodied in the Declaration; and I have the honour in reply to inform your Excellency hereby that His Majesty's Government similarly confirm this agreement.
>
> 4. His Majesty's Government in the United Kingdom accordingly concur with the French Government that the actual delimitation can now be entrusted to the boundary commission envisaged for this purpose by Article 1 of the Mandate." (Counter-Memorial of Nigeria, Ann. NC-M 54; emphasis added.)

55. It is clear from the language of the Exchange of Notes that the arrangements were essentially programmatic. There was no delimitation effected within the Lake as a consequence of the Exchange of Notes, and it is not surprising that, when the LCBC took up the task of delimitation in 1984, the Exchange of Notes was not regarded as definitive. Unfortunately, Professor Cot did not provide the Court with a sufficiently precise account of these transactions.

The practice of the riparian States

56. Mr. President, it is to be emphasized that Nigeria's is not the only State with the opinion to the effect that there is no definitive delimitation in place. That was the opinion of the LCBC itself when it embarked on a procedure intended, subject to the *lex specialis* of the LCBC as an organization, to result in a final delimitation. This is also the opinion of the majority of the riparian States expressed in their conduct outside the framework of the LCBC. Thus in recent months Nigeria has engaged in bilateral talks concerning the boundary in Lake Chad with Chad and Niger respectively. Further talks are envisaged. Nothing could indicate the realities of the existing position with greater clarity.

The present legal position

57. The present legal position can be summarized as follows:

First: The tasks pursued by the LCBC involved both delimitation and demarcation.

Second: The treaty instruments of the colonial period had not created a final delimitation within Lake Chad.

Third: The work of the LCBC did not produce an outcome which was legally binding on Nigeria.

Fourth: In any event, the operation intended to lead to an overall delimitation of boundaries on Lake Chad is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon.

And the bases of this Nigerian title is my next subject.

Introduction: the bases of the Nigerian title

58. The three bases of the Nigerian claim to title over Darak and the other villages are as follows:

(1) long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title;

(2) effective administration by Nigeria, acting as sovereign, and an absence of protest; and

(3) manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over Darak and the other Lake Chad villages.

59. These three bases of claim apply both individually and jointly. In the view of the Nigerian Government each of these bases of title would be sufficient on its own.

60. The villages in Lake Chad which are in dispute between Nigeria and Cameroon are, as I have already indicated, listed in the judges' folder at tab 71.

61. And the distribution of the villages and adjacent areas can be seen on the graphic (tab 71).

62. Whilst some of the villages lie to the west or south of the provisional demarcation of Lake Chad boundaries carried out by the IGN, most of the villages lie to the east. It is a basic premise of Nigeria's legal position that title to the named villages vests in Nigeria independently of the present status of the delimitation as such.

63. In this general context it is to be recalled that when the operation of the principle of *uti possidetis* provides no decisive outcome, the conduct of the parties is "of particular importance", as the Chamber of the Court pointed out in the *Land, Island and Maritime Dispute* case. As the Nigerian Government has had occasion to point out already, the Chamber in several significant passages places emphasis on the qualifying role of acquiescence and recognition in relation to the principle of *uti possidetis*. The citations will appear in a later section of this presentation.

64. The villages in the group are located on islands, or former islands, on the bed of Lake Chad. The dates of foundation of the majority of the villages are listed at page 415 of the Counter-Memorial.

65. The longest existing village, Katti Kime, was founded 40 years ago and the newest settlement, Murdas, was established 13 years ago. The majority of these villages have been in existence for between 20 and 40 years.

66. The activities of the fishermen and farmers who founded these communities were open and peaceful, and the process of administration by the Ngala Local Government Authority (LGA), which followed the process of settlement, was equally open and peaceful. At no stage prior to the present proceedings before the Court did the Government of Cameroon make any reservation or protest.

67. The elements of the legal concept of historical consolidation of title have been elaborated upon already in my first speech in this round, and I shall now deal with the specific components of historical consolidation in relation to the claim of Nigeria relating to Lake Chad.

The specific components of the historic consolidation of Nigerian title

(i) The attitude and affiliations of the population of Darak and the other Lake Chad villages

68. The first component consists of the attitude and affiliations of the population of the villages. The legal relevance of the attitude and affiliations of the population in the territory in question has been canvassed already in relation to Bakassi. As in the case of Bakassi, inhabitants of the villages regard themselves as Nigerians. The contemporaneous notes which recorded interviews with the *bulamas*, or headmen, of the villages in May 1998 show the significant sense of allegiance to Nigeria by the people of the area. These notes are included as an Appendix to Chapter 17 of the Counter-Memorial.

69. Even those residents who are not Nigerians by origin accept Nigerian authority and pay community tax to Nigeria without complaint, as can be seen in the interviews with the *bulamas* of Doron Liman, Katti Kime, Darak, Kafuram, Sagir and Kirta Wulgo, as shown on the graphic which is at tab 73. Reflecting the allegiance of the population, the *bulamas* of the villages recognize Nigerian authority.

70. The majority of the residents come from Nigerian tribes, of which the Kanuri and Hausa form the major components, and for the most part speak only the Kanuri and Hausa languages.

(ii) Historical associations

71. The second component takes the form of the historical associations of the region. The history of this area has been described in detail in Chapter 12 of the Counter-Memorial. The Emirate of Borno traces its history back to 1386, when a Kanuri branch of the Kanem Empire broke away and moved to the area to the south and west of Lake Chad. This administration had an organized political and social structure, which enabled it to become both powerful and successful.

72. By 1800, the previously great Empire of Kanem had dwindled in stature and had become a province of the Emirate of Borno, the confines of which stretched all around Lake Chad. During the first half of the nineteenth century, despite the struggles and wars with the neighbouring Fulani Empire to the west of Borno the Emirate of Borno remained as an independent entity, and preserved its traditional system of organization, with the Shehu as political leader. The strong allegiance of the people of this area has always been, and still remains, to the Shehu.

73. This system of traditional rule was preserved during the brief administration of the French, and then under the British, who introduced a system of indirect rule, whereby the Shehu retained most of his powers and authority, albeit under the protection of the British Empire. Even the Germans, who set up a rival Emirate, Dikwa, in 1902, preserved the system of traditional rulers and appointed a Shehu of Dikwa. This Emirate became a sub-division of Borno after 1916, when the British took over the administration of Dikwa.

74. The area, including the Lake Chad region, has been under the rule of the Emirate of Borno for a period of over 500 years.

(iii) The exercise of authority by traditional rulers

75. The third component of title by historical consolidation is the exercise of authority by traditional rulers. The traditional rulers still retain an important position in Nigerian society and within the social structure of the Borno/Lake Chad region. The allegiance of the people in the region is still primarily to the Shehu of Borno.

76. The Shehu is the official head of a sophisticated system of administration, and chairman of the Emirate Council. This is an hereditary position, although the selection from the eligible group is made by the Emirate Council and the Shehu is approved and crowned by the State government.

77. The membership of the Emirate Council, the traditional executive council, is in most cases hereditary, and the members are appointed and crowned by the Shehu.

78. The Shehu is assisted by the *Ajia* (or district head) and the *Lawan* (sub-district head), which are both also hereditary positions, but appointed and crowned by the Shehu.

79. The head of each of the villages is the *Bulama*, who is responsible for the maintenance of peace, order, discipline, and the collection of taxes within the village unit. The Bulama is selected by the Lawan in consultation with the community elders under the delegated authority of the Shehu.

(iv) The settlement of nationals of the claimant State

80. I now come to the fourth component. As Nigeria has stated in the Counter-Memorial, in the formulation of title by a process of historical consolidation there can be no doubt that the existence of the long-established settlements of the nationals of the claimant State plays a significant role. The settlement of nationals has been treated as relevant in the jurisprudence of international tribunals. The relevant material is set forth in the Counter-Memorial, at pages 234 to 237 (paras. 10.50-10.55). The jurisprudence includes the Judgment of the Chamber in the *Land, Island and Frontier Dispute* case (*I.C.J. Reports 1992*, p. 147, para. 180; and p. 516, para. 265).

81. The villages claimed by Nigeria are inhabited by Nigerians, who are in the majority in all of the villages except one (in which the majority are Malians, who live happily under Nigerian administration). In none of them, in none of them, is there a significant Cameroonian population.

(v) Acts of administration by the Federal Government of Nigeria and by Borno State

***(a)* Introduction**

82. As Nigeria has pointed out in her Counter-Memorial, a major component in the process of historical consolidation is the evidence of peaceful possession and administration, consisting of acts involving "a manifestation of sovereignty" in respect of the Lake Chad villages or "acts of such a character that they can be considered as involving a manifestation of State authority" in respect of the villages. I am here recalling the criteria employed by this Court in the *Minquiers and Ecrehos* case (*I.C.J. Reports 1953*, pp. 58 and 71).

83. The evidence of administration and peaceful state activity by Nigeria in the disputed villages will now be reviewed.

***(b)* The maintenance of public order**

84. First, I shall review the evidence concerning the maintenance of public order. The relevant graphic is in tab 74. The contemporaneous notes on villages in the area, in the Appendix to Chapter 17 of the Counter-Memorial, show that the police station in Darak was established by the Federal Government. This was in 1981: I refer to Annex NR 107 which also includes details of Nigerian police outposts at Wulgo, Chika'a, Kirta Wulgo and Doron Mallam.

85. There is also a mobile police unit stationed at Darak. The unit can be seen in its general role of maintaining public order, for example in 1987 to 1988 (Rejoinder of Nigeria, Ann. NR 108). There is also a police station at Kirta Wulgo. The police presence reflects the significance of the region. Darak, the local administrative centre, has a population of 20,000. Kirta Wulgo has a population of 6,000.

86. There have, in the past, been a number of occasions when armed bands from other countries, in particular from Chad, have harassed the Nigerian fishermen and villagers, extorting money and, in one or two cases, committing more serious crimes. It is usually the case that the small police station on Darak is under-equipped to deal with such a serious situation. In such cases the Chairman of Ngala LGA is contacted and he requests assistance from the Governor of Borno state. The Governor mobilizes units from the 21st Armoured Brigade of the Nigerian Army, which is based at Maiduguri. These are sent to the area to act as peacekeepers, and protect the villagers and fishermen from further attack or harassment. There is an army unit presently stationed on Darak to cope with the general threat presented by bandits emanating from Chad.

87. The Divisional Police Headquarters is at Gamboru in Ngala Local Government Area.. There is ample documentation of the police administration based upon the Gamboru-Ngala Division. This includes lists of police stations and the details of postings to Nigerian villages including Kirta Wulgo, Darak, Doron Mallam, Chika'a and Katti Kime, in the period 1987 to 2000 (Rejoinder of Nigeria, Ann. NR 109). In addition there are crime diaries from Ngala police station for the period 1987 to 1988 which refer to the following villages: Jribrillaram, Kasuram Mareya,

Doron Mallam, Darak, Katti Kime and Kirta Wulgo (Ann. NR 110). The locations of these villages are shown on the graphic at tab 74.

88. Police reports are available for the period 1987 to 1991 (Ann. NR 111). These reports derive from Ngala Divisional Headquarters, from Doron Mallam and from Darak police station. In a report, for instance, from Darak police station, dated 2 February 1989, reference is made to a crime reported by a resident of the village of Ramin Dorinna.

89. The police are also involved in the monitoring of the "dumba" fishing method, which involves barriers, in association with the Federal Department of Fisheries (Borno state) (Ann. NR 112).

Mr. President, with your permission, that might be a convenient place to stop?

The PRESIDENT: Well, Professor Brownlie, if it is a convenient place for you, it is a convenient place for the Court. Nous allons donc suspendre pour une dizaine de minutes.

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

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise et je donne la parole au professeur Ian Brownlie.

Mr. BROWNLIE: Thank you, Mr. President. I shall continue my survey of manifestations of state sovereignty on the part of Nigeria in the Lake Chad region.

(c) Taxation

90. Taxation forms an important part of such a picture. The Lake Chad villages all pay community tax, *Haraji,* to Ngala LGA in Borno state. An extract from the cash book recording receipts for 1991 is at Annex NC-M 288 of the Counter-Memorial of Nigeria. Examples of community tax receipts for 1991 are at Annex NC-M 289. These records relate to the following 15 villages, which appear on tab 75 and will be indicated on the screen: Chika'a, Darak, Dororoya, Fagge, Garin Wanzam, Gorea Gutun, Kafuram, Katti Kime, Kirta Wulgo, Mukdala, Murdas, Naga'a, Njia Buniba, Ramin Dorinna, and Sagir.

91. *Haraji* cash books in respect of Wulgo Village Unit, recording receipts for 1989 and 1990, are at Annexes NR 113 and NR 114 of the Rejoinder of Nigeria. These records relate to the same 15 villages and three others, namely Gorea Changi, Kamunna and Sokotoram.

92. Cattle tax, *Jangali,* is also paid by the residents of the villages to the Borno state authorities: I refer to the extract from the *Jangali* cash book for 1990 (Ann. NR 115), which relates to Naga'a, Katti Kime and Darak. Reference to the payment of cattle tax is also made in the contemporaneous notes appended to Chapter 17 in the Counter-Memorial.

93. Extracts from the Wulgo Village Unit Education cash books for 1988 and 1989 are at Annexes NR 116 and NR 117. These relate to the following villages: Chika'a, Darak, Darak Gana, Dororoya, Fagge, Garin Wanzam, Gorea Gutun, Kafuram, Kamunna, Katti Kime, Kirta Wulgo, Mukdala, Murdas, Naga'a, Naira, Njia Buniba, Ramin Dorinna, Sagir and Sokotoram.

94. The residents also pay an education levy. Extracts from the Education Cash Book and Receipts for 1991 are at Annex NC-M 290. They relate to the following seven villages: Chika'a, Darak, Kafuram, Kasuram Mareya, Katti Kime, Kirta Wulgo, Naira.

95. The residents of these villages originally paid all these various taxes to Dikwa Native Authority in the 1960s and 1970s: since the 1980s they have paid them to Ngala Local Government Area. Further examples of individual tax receipts for community taxes, *Haraji,* and the education levy are at Annex NR 118.

96. The Wulgo Village Unit *Haraji* tax assessment register for the tax year 1973 to 1974 includes Chika'a and Naga'a (Ann. NR 199). The community tax assessment register for 1980 to 1981 includes Katti Kime and Naga'a (Ann. NR 120). Community tax assessment registers are also available for the years 1982 to 1983 and 1984 to 1985. Extracts of these are at Annexes NR 121 and NR 122 and these include the villages of Chika'a, Darak, Doron Mallam, Dororoya, Fagge, Garin Wanzam, Gorea Changi, Gorea Gutun, Kafuram, Katti Kime, Kirta Wulgo, Mukdala, Murdas, Naga'a, Njia Buniba, Ramin Dorinna and Sagir.

97. In 1975 the District Head of Ngala wrote to the Village Head of Wulgo in the following terms:

> "Greetings. I write to inform you that nomadic Fulanis are beginning to troop into your territory. They are currently in the region of Lake Chad around the area of Katti Kime and Kirta Wulgo.

In view of the above therefore I herewith send two of my body guards who should join your people in approaching their people to collect poll tax." (Ann. NR 123.)

98. There is an additional feature of the situation which is of considerable importance. At no time have the residents of these villages paid taxes of any kind to the authorities in Cameroon. Indeed, it is a matter of record that the residents refused to pay taxes when Cameroon officials appeared in their villages. I refer now to the contemporaneous notes on the villages in the Appendix to Chapter 17 of the Counter-Memorial.

(d) Voluntary associations

99. The Nigerian character of the villages is confirmed by the role of voluntary associations. The fishermen of the villages in the Lake Chad area form themselves into voluntary associations in order to improve the livelihood of their members. These associations have applied for loans and other assistance, on behalf of the fishermen, to Ngala Local Government Authority. Receipts are given for payments in respect of these loans (Ann. NR 124).

(e) Census taking

100. Census taking is a classical expression of sovereignty and the Nigerian National Census held a census in 1973 and the National Population Commission in 1991. Darak and the other villages in the area were enumerated as part of Wulgo Enumeration Area.

101. Documents available relate to claims for travel expenses in December 1973 from the Village Head at Wulgo for transporting the enumerator and supervisors from Gamboru to villages in the Lake Chad area, including Chika'a, on enumeration days (Ann. NR 125). The claim is addressed to the Divisional Census Officer, through the Assistant Divisional Census Officer, Gamboru-Ngala. The results of the 1991 census are at Annex NC-M 292.

(f) The administration of justice

102. I move next to the administration of justice. The villages form a part of the Nigerian system of the administration of justice. Cases arising in the Nigerian villages are heard in the Wulgo Area Court, with the possibility of appeal to the Ngala Upper Area Court. Records available relate to the period 1981 to 1982 (Anns. NR 126 and NR 129). The parties involved in the recorded cases were residents of Darak, Kirta Wulgo and Na'aga. The relevant tab is tab 76.

(g) Public education

103. In the sphere of public education, the Ngala LGA has established primary schools in Chika'a, Naga'a, Darak, and Kirta Wulgo: I refer to the tab 77 and the graphic now on the screen. The residents of Kafuram attend the school in Kirta Wulgo.

104. In August 1976 the Education Secretary of Ngala received the following letter from the District Head of Ngala:

> "Greetings. I take liberty in drawing your attention on the need for a conclusion of new classes within the lake area.
>
> There is need to construct three classes in areas such as Kirta Wulgo, Chika . . .
>
> I believe any time you are ready the ward head of Wulgo (Lawan) will be pleased to show you a location.
>
> I hope you understand." (Ann. NR 130.)

(h) Provision of public health

105. In relation to public health, the Ngala LGA and Borno state have created a system of health care in the Lake Chad villages involving on-site provision of care and various forms of preventive medicine. Naga'a and Kirta Wulgo have their own clinics; and the relevant tab is tab 78.

106. Mobile clinics are provided for the villages of Chika'a and Darak. The residents of Kafuram attend the clinic at Kirta Wulgo. The Ministry of Health mobile clinic reports monthly to the Director-General, Ministry of Health, Maiduguri. Thus in a letter dated 13 July 1988 it is stated that the mobile clinic "left Maiduguri on 4 June 1988 to Ngala Local Government Area to the following villages: Doro Kirta, Kirta Wulgo . . . Darak". The numbers of people with measles and whooping cough in Darak are listed (Counter-Memorial of Nigeria, Ann. NC-M 295).

107. The Primary Health Care Department of Ngala LGA provides a system of disease control and preventive medicine in the villages. The health post at Darak was the site of one of several dispensaries provided by the Ngala LGA (Anns. NC-M 296 and NC-M 297).

108. Reports of outbreaks of measles and whooping cough at Darak were responded to by appropriate action on the part of the authorities in Maiduguri (Anns. NC-M 298 to NC-M 302). Requisitions were duly made for the provision of drugs and health assistance. In November 1994 a

situation report referred to an outbreak of cholera in the villages of Darak, Chika'a, Naga'a and Sagir (Ann. NC-M 303).

109. Cases of vomiting and diarrhoea in the villages were treated by the Disease Control Unit of Ngala (Ann. NC-M 304). A detailed report, dated 22 November 1994, relates to the situation in Chika'a, Doron Liman, Naga'a and Darak (Ann. NC-M 305). Later reports concern the situation in Chika'a, Dororoya, Naga'a and Darak (Anns. NC-M 306 and NC-M 307).

110. The Public Health Department of Ngala LGA also operates a programme for the prevention of epidemic disease, in conjunction with the Ministry of Health of Borno state (Anns. NC-M 308 to NC-M 310). The programme includes an ongoing vaccination exercise (Ann. NC-M 311) and a programme of surveillance of infectious diseases.

111. There is a letter dated 24 November 1992 from Kirta Wulgo health clinic to the co-ordinator of the Health Care Department of Ngala Local Government concerning flood disasters (Ann. NC-M 313).

112. A letter dated 27 November 1992 from the Ngala Local Government Primary Health Department is headed "Situation Report on Flood Disaster in Darrak". In fact, 15 people were injured when running from fast-flowing water (Ann. NC-M 314).

113. There is a letter dated 3 August 1993 from Katti Kime Primary Health Care Department of Ngala LGA to the co-ordinator for health care reporting on the outbreak of measles. It lists the names and ages of children with measles in Katti Kime (Ann. NC-M 315).

114. A letter from the health office in Gamboru to the Environmental Health Officer in Maiduguri dated 31 May 1996 reports on an outbreak of gastro-enteritis in Darak and comments on the actions taken by the Local Council (Rejoinder of Nigeria, Ann. NR 132). A Disease Control Unit was set up in Darak to cope with the outbreak (Counter-Memorial of Nigeria, Ann. NC-M 312).

115. There is a letter dated 25 August 1996 from Darrak Village unit to the District Head of Ngala LGA concerning the outbreak of cholera in Chika'a and Naga'a and requesting help (Ann. NC-M 316).

116. The Medical and Health Department of the Ngala LGA has since 1977, at least, been concerned with environmental sanitation in the villages (Ann. NC-M 317). In particular, measures have been taken to introduce water sanitation and treatment in Darak (Ann. NC-M 318).

(i) General powers of administration

117. I shall turn now to the general powers of administration in the Lake Chad region. A letter dated 1 July 1996 from the Department of State Services of Ngala Local Government Authority to the Chairman states:

> "Although the police and this service have jointly intensified efforts to frustrate and/or prevent further use of the 'dumba' [that is the fish barrier] on the shores of Lake Chad which fall within Nigerian territorial waters, the situation is still pregnant with confusion . . .
>
> The Police had on 18th June 1996 invited and charged the duo of the Hausa community leader in Darrak, one Mohammed DAN LANSU and the Secretary General of the so called faceless Darrak multi-purpose co-operative society, Ali MOHAMMED, in its continued efforts to stop completely the use of dumba on the shores of Lake Chad." (Ann. NC-M 319).

118. There is written correspondence within Ngala Local Council concerning the demolishing of the dumba fish traps by the Nigerian army. This was done in the Darak area and the army stayed in Darak during the operation (Ann. NC-M 322).

119. A letter dated 18 September 1996 from Ngala Local Government Council to the district head of Ngala states: "I am directed to write . . . and inform you of the earlier decision of the Security Committee Members to remove Bulama Dan Lantso, as the Bulama of Darrak" (Ann. NC-M 323).

120. The appointment of the village headmen — *bulama* — was traditionally within the power of the Shehu of Borno. More recently, although it remains part of the function of the Shehu, or Lawan, the Governor of Borno state has to give final approval, and he can appoint and dismiss a bulama as appropriate (Ann. NC-M 294). Salaries of headmen are paid by the relevant Local Government Authority.

121. Tab 79 is now relevant. It was the responsibility of the district head of Ngala to appoint ward heads in the Lake Chad region. Thus in a letter dated 29 April 1969 the district head of Ngala instructs the village head of Wulgo as follows:

"This is to inform you that you should go down to Kirta Wulgo and install Bulama Malum Fannami as the Ward Head of Kirta Wulgo.

You should also inform the people of the area that Bulama's domain will include Ndigiri, Yerwa Kura, Kusuma, Sigal and also all the towns in the lake." (Rejoinder of Nigeria, Ann. NR 233.)

122. In a letter dated 15 May 1969, the district head of Ngala instructs the same village head "to travel to Chika town and install Bulama Kachalla as the ward head of Chika" (Ann. NR 134).

123. In correspondence from February to March 1991, there is a letter from the Dikwa Emirate Council to the district head of Ngala requesting nominations for village heads of new village units, including Darak. The reply lists the *curricula vitae* of the suitable candidates and a letter of appointment and an invitation to the appointee to attend the turbaning ceremony was sent (Ann. NR 135).

(j) Registration of electors

124. The next subject is the registration of electors. A substantial proportion of the population in the Lake Chad villages is registered as electors for the purposes of Nigerian legislation. There is no evidence that the inhabitants vote in Cameroonian elections.

125. In the Nigerian local government elections in both 1988 and 1989, Darak and Wulgo constituted an electoral ward. Bukar Torobe was elected as councillor to represent the ward in the Ngala Local Government Council. His Certificate of Election is at Annex NC-M 328.

126. In the 1993 local government election, Mohammed Lawan was elected as councillor for the ward. In the 1996 and 1997 local government elections, Jidda Khurso Mohammed was elected as councillor. His Certificate of Election is also at Annex NC-M 328.

(k) Licensing and regulation of fishing

127. My next subject is the regulation of fishing. And tab 80 is now relevant. The contemporaneous notes reveal that Ngala LGA licenses fishing in the area. Both the Borno state government and Ngala LGA provide fishing nets and equipment. In this context Ngala LGA supervises and regulates the fisheries.

128. The Federal Department of Fisheries, Borno state, has carried out a number of activities in respect of the fishing on the Lake, which include the provision of development assistance to

Darak fishermen. It has set up an outpost on Darak and in 1982 provided 10 tons of capacity to supply ice blocks to the fishermen at Darak. A summary report of these activities is at Annex NR 136 (Rejoinder of Nigeria).

129. In December 1992, the Nigerian Institute for Freshwater Fisheries Research, a department of the Federal Ministry of Science and Technology, approved the establishment of semi-fishing ponds for the production of fresh fish by the Darrak Multi-Purpose Co-operative Society (Ann. NR 137). The project involved the bulamas of Darak, Darak Gana, Dororoya, Ramin Dorinna, Garin Wanzam, Chika, Naga'a, Doron Mallam, Kafuram and other Lake Chad villages. In October 1993, the same Institute also approved the use of cross-water fishing traps in Lake Chad by the same Society (Ann. NR 138).

130. In co-operation with the police, measures are taken by Ngala LGA to deter and terminate the use of inappropriate fishing methods and, in particular, the illegal use of fishing barriers (dumba). As part of this policy Ngala LGA has created (in 1995) the Dumba Demolishing Committee (Counter-Memorial of Nigeria, Ann. NC-M 324). These measures provoked legal action, or at least the threat of legal proceedings, by the Darrak Co-operative Multi-Purpose Society (Ann. NC-M 325). It is to be noted that the proceedings envisaged would have been in the Nigerian legal system.

131. In January 1996 the same legal representatives petitioned the then Military Governor of Borno state on the same subject (Ann. NC-M 326). In June 1996, the Governor's Office wrote to the Chairman of Ngala Local Government Council requesting that action be taken to restrain those individuals still using the "dumba" method of fishing (Rejoinder of Nigeria, Ann. NR 139).

(l) The regulation of trading

132. The Ngala local authority has the power to regulate trading when it deems this to be necessary. Thus in a letter dated 14 May 1992 regarding Darak Patent Vendors, Ngala Local Government Council stated "that the Local Government have a notice of patent vendors serving in Darak. They are totaling to about Twelve, and we had directed them early this year to go and get their State Licence and they were on the process" (Ann. NC-M 327).

***(m)* Distribution of disaster relief**

133. The next subject is the distribution of disaster relief, and the relevant tab is at 81. In 1982 and 1983 disastrous fires afflicted the village of Chika'a. In 1982 the Village Head turned to Ngala LGA requesting help (Rejoinder of Nigeria, Ann. NR 140), and in 1983 the Bulama turned to the Lawan (Traditional Ruler) of Wulgo for assistance (Ann. NR 141).

134. The village heads of Katti Kime and Naga'a similarly wrote to Ngala LGA requesting help after fire disasters in July 1983 and March 1984 respectively (Anns. NR 142 and NR 143).

***(n)* Immigration**

135. The Nigerian Immigration Service has been routinely patrolling Darak and the Lake Chad villages since the late 1960s. In 1973, an Immigration Control Post was established at Gamboru, and from here the Darak area was monitored (Ann. NR 144).

136. A full control post was established at Darak in October 1994, with an initial strength of ten officers. Documents relating to the administration of Darak outpost in 1994, both when it was still a patrol post and after it had been established as a control post, are at Annex NR 145.

***(o)* Development assistance**

137. The Ngala LGA of Borno state has either provided assistance to the villages or has informed the village communities that development assistance is available, for example, for the construction of wells: I refer now to tab 82.

138. Development assistance has been provided to the following villages:

Naga'a	a school, a clinic, a cement well, and provision of fertilizer and pesticides.
Gorea Changi	construction of a well.
Darak	mobile services, including a clinic, provision of drugs, provision of fertilizer and pesticides, construction of a well, provision of nets, maintenance of the navigability of the waterway to Katti Kime and assistance in times of flood damage.
Nimeri	provision of fishing nets and fishing equipment.
Kirta Wulgo	a clinic and a school.

139. In 1997 the Ngala Local Government made a grant for the improvement of the road leading to the Katti Kime/Darak area (Counter-Memorial of Nigeria, Ann. NC-M 293).

(viii) The evidence presented in the Cameroon pleadings

140. In its Memorial Cameroon did not present any evidence relating to the exercise of state activities in the Chad region (pp. 405-413). In the Reply such evidence is presented at pages 137 to 139 (paras. 3.71-3.83) and 147-153, and also in Annex RC 225.

141. The evidence presented in the Reply on behalf of Cameroon has serious flaws. In the first place the evidence is confined to the years 1982 to 1988, with certain exceptions. The evidence of Nigerian activities covers a substantially longer period. There is also a contradiction in the fact that evidence is presented by Cameroon in respect of villages which, in the view of Cameroon, are under the control of Nigeria, that is to say, "occupied" by Nigerian security forces.

142. The Cameroon Reply avoids any examination of the evidence of peaceful possession introduced by Nigeria in the Counter-Memorial (Reply of Cameroon, pp. 137-139, 147-153, and 536-547). In the first round counsel for Cameroon argued that the Nigerian *effectivités* were *contra legem* (CR 2002/2, pp. 37-39, paras. 71-77). But this line of arguments, in the context of Lake Chad and its history, is completely question begging and circular. It also fails to explain the failure of Cameroon to protest.

143. In the first round Professor Cot also argued that the Nigerian presence in the Lake Chad region could not be *à titre de souverain* in view of the LCBC exercise relating to delimitation and demarcation (CR 2002/2, pp. 36-37, paras. 68-70). This opinion, of course, depends upon the Cameroonian premise that the report of the experts was binding upon Nigeria automatically.

144. In any event, Mr. President, the process of historical consolidation would not be ruled out as a matter of principle. To this consideration must be added several other considerations: the peaceful character of the Nigerian activities in the Lake region; the open and public character of those activities; and the absence of protest on the part of Cameroon.

145. The Cameroon Government has produced no evidence relating to 15 of the villages claimed by Nigeria: I refer to the Rejoinder, page 265, paragraph 5.97.

146. In respect of the following six villages only two documents have been produced by Cameroon (Reply of Cameroon, pp. 147-153): Aisa Kura, Bashakka, Darak Gana, Karakaya, Naira and Nimeri.

147. The documents involved are the same in each case; that is, Annexes RC 109 and RC 119, which documents relate to a single administrative tour of the district of Hile-Alifa. It is not established that the tour was actually undertaken. Thus, in relation to these 21 villages there is no respectable evidence of the actual exercise of sovereignty by Cameroon.

148. It is also necessary to observe that many of the documents produced on behalf of Cameroon are entirely programmatic in content, involving the planning of census tours and so forth, in the absence of evidence that the events actually occurred.

149. The evidence concerning State activities must also be related to the fact that Cameroon made no protests in face of the Nigerian administration of the villages until 1994. This silence on the part of Cameroon is of particular significance in light of the fact that Nigeria's State activities were entirely open and visible to all.

150. It is time to move to the final element in the process of historical consolidation of title, that is, the acquiescence of Cameroon in the peaceful exercise of sovereignty by Nigeria.

The acquiescence of Cameroon in face of the peaceful exercise of sovereignty by Nigeria

(i) The legal relevance of acquiescence

151. Acquiescence constitutes a major element in the process of historical consolidation of title and I shall first of all recall its overall legal relevance. In consequence, the first, but by no means the only, role of acquiescence, is played alongside the other elements of historical consolidation, which I have reviewed already.

152. The second, and independent, role of acquiescence is that of confirming a title on the basis of the peaceful possession of the territory in dispute, that is to say, the effective administration of the Lake Chad villages by Nigeria, acting as sovereign, together with an absence of protest on the part of Cameroon.

153. In the third place, acquiescence may be characterized as the main component of title, that is, providing the essence and very foundation of title rather than a confirmation of a title

logically anterior to and independent of the process of acquiescence. There can be no doubt that in appropriate conditions a tribunal can properly recognize a title based upon tacit consent or acquiescence.

154. The independent role of acquiescence as a source of title is acknowledged in many passages in the Judgment of the Chamber in the case concerning the *Land, Island and Maritime Frontier Dispute*. The pertinent passages include the following: paragraphs 67, 80, 81, 169, 176, 280, 284, 341, 345, 364 and 368. The following passage from the Judgment expresses the role of tacit consent with clarity:

> "The Chamber considers that this protest of Honduras, coming after a long history of acts of sovereignty by El Salvador in Meanguera, was made too late to affect the presumption of acquiescence on the part of Honduras. The conduct of Honduras, vis-à-vis earlier *effectivités* reveals an admission, recognition, acquiescence or other form of tacit consent to the situation. Furthermore, Honduras has laid before the Chamber a bulky and impressive list of material relied on to show Honduran *effectivités* relating to the whole of the area in litigation, but fails in that material to advance any proof of its presence on the island of Meanguera." (*I.C.J. Reports 1992*, p. 577, para. 364.)

(ii) The evidence of acquiescence by Cameroon

155. I shall now move on to the evidence of acquiescence by Cameroon. The villages claimed by Nigeria contain significant and well-established communities. The population sizes are substantial.

156. The activities of the fishermen and farmers who founded these communities were open and peaceful, and the process of administration by Ngala LGA, which followed the process of settlement, was equally open and peaceful. At no stage prior to the present proceedings before the Court did the Government of Cameroon make any reservation or protest.

157. Thus, in the Application dated 29 March 1994 the "subject of the dispute" involved no reference to issues relating to the Lake Chad region. This silence provides a necessary perspective in which to evaluate the Cameroonian assertions that in 1987 there was an "invasion" of Cameroon's territory by Nigerian forces; I refer here to the Reply, pages 536 to 547 and pages 567 to 569.

158. Consequently, there is no reference to any issues relating to the Lake Chad region. The first reference to the Lake Chad region occurs in the Cameroonian Note to Nigeria dated

11 April 1994 (Counter-Memorial of Nigeria, Ann. NC-M 287 and Memorial of Cameroon, Ann. MC 355) which reads, in material part, as follows:

> "The Ministry of External Relations of the Republic of Cameroon presents its compliments to the Embassy of the Federal Republic of Nigeria in Yaoundé, and has the honour to draw the attention of the Embassy to the following.
>
> Nigerian nationals have occupied the Cameroonian locality known as Kontcha (Faro and Deo Division) in the Adamawoua Province of Cameroon. The Cameroonian authorities have observed that in the past, Nigerian military occupation of Cameroonian territory generally followed the illegal occupation of parts of her territory by Nigerian citizens. The *Nigerian military occupation of Darak* and parts of the Bakassi Peninsula are cases in point." (Emphasis added.)

159. This issue was then taken up in the Additional Application introduced by the Government of Cameroon on 6 June 1994 — on 6 June 1994 —, which refers in paragraph 11 to "this new dispute". In this instrument the Government of Cameroon describes the "subject of the dispute" as follows:

> "1. This aspect of the dispute relates essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad — located between the Cameroon-Nigeria frontier and the Cameroon-Chad frontier and extending to around the middle of the remaining waters — the Republic of Cameroon's title to which is contested by the Federal Republic of Nigeria; . . ."

160. The Cameroonian claim, as it appears in the Additional Application, takes the form of a response to a Nigerian Note dated 14 April 1994 (Memorial of Cameroon, Ann. MC 356). In reality, this Nigerian Note was a response to the Cameroonian Note, dated 11 April 1994, already referred to. The Nigerian Note constitutes the first Nigerian reference to the issue concerning Lake Chad and reads as follows (in material part):

> "It is both unfortunate and unacceptable that Darak which has always been part and parcel of Wulgo District of Ngala Local Government area of Borno State of Nigeria and which has since time immemorial been administered as such, is now being claimed as part of Cameroon territory."

161. The evidence available shows that the Nigerian villages have, in greater part, existed for periods of between 20 and 40 years. The terrain is flat and open and the activities in the Nigerian villages have been public and unconcealed. The conclusion which necessarily presents itself is that the Government of Cameroon has for decades maintained a silence in face of the long established and public Nigerian presence.

162. In its pleadings the Government of Cameroon confirms the absence of any protest prior to 1994. The Memorial, under the heading *"Les protestations camerounaises"*, refers only to a single Note dated 21 April 1994 (pp. 589-590, Ann. MC 357).

163. The Reply at pages 142 to 143 denies acquiescence by Cameroon and yet cites as evidence of this denial the same Cameroon Note dated 21 April 1994, which preceded the Additional Application dated 6 June 1994 by only a few weeks.

(iii) The military initiatives by Cameroon in 1987

164. In its Memorial Cameroon contends that in February 1987 certain villages appertaining to Cameroon were invaded by Nigerian civilians armed with machetes, and that this episode was followed by a military occupation by Nigeria, which began on 2 May 1987 (pp. 587-589, paras. 6.81-6.86). Similar assertions appear in the Reply (pp. 536-547, paras. 11.165-11.214 and pp. 567-569, paras. 12.25-12.28).

165. It is the position of Nigeria that the incidents in May 1987 complained of by Cameroon involved violent initiatives by Cameroonian security forces. These initiatives by Cameroon disturbed a Nigerian administrative status quo. The Cameroonian attack of 1987 was prefigured by a visit by Cameroonian officials to Kirta Wulgo in 1985, in response to which Nigeria presented a Note Verbale to Cameroon: I refer to the telegram of the Nigerian Ministry of External Affairs dated 26 March 1985 (Counter-Memorial of Nigeria, Ann. NC-M 376). The contents of this telegram indicate that there was a status quo consisting of a Nigerian administration in place.

166. And so, the events of May 1987 again involved initiatives by Cameroon: I refer here to the Nigerian internal military and police reports (Counter-Memorial of Nigeria, Anns. NC-M 379, NC-M 380 and NC-M 381). In response Nigeria sent a protest, dated 8 May 1987, which reads (in material part):

> "The Ministry of External Affairs of the Federal Republic of Nigeria presents its compliments to the Embassy of the Republic of Cameroun and has the honour to inform the Embassy that reports have reached the Ministry concerning intrusion by Camerounian soldiers and agents into some border villages in Ngala Local Government Area of Borno State in the Federal Republic of Nigeria. The reports also indicate that this has not been the first time such incidents have occurred. Reports further state that not only were the Nigerian nationals molested, but their villages were also occupied by the Camerounian soldiers and agents, the Nigerian flags in the

villages were pulled down and burnt, and the Cameroun flag was hoisted in their place, even on Nigerian territory.

The Ministry hereby calls the attention of the Embassy to this unfriendly and flagrant act of trespass committed in spite of the cordial relations existing between Nigeria and Cameroun, and hereby registers the concern and dismay of the Federal Military Government of Nigeria at this unsavoury and unprovoked recurring incursions of which the Federal Military Government takes a serious view.

The Ministry further demands an explanation for this unfriendly act, and assurance that there will not be a recurrence of such incidents in the future." (Ann. NC-M 382).

167. In the event both the Nigerian village heads and the security forces resisted Cameroonian encroachments. In November and December 1987, a further attempt at Cameroonian encroachment occurred and this was again met with a pre-existing Nigerian administrative presence. It should be recalled that no protest emanated from Cameroon until 1994.

(iv) Conclusion: the acquiescence of Cameroon

168. The legal position of Nigeria can now be summarized as follows:

(1) For varying periods between 20 and 40 years in duration, Nigeria has had peaceful possession of the Lake Chad villages, which were at all times administered as part of the Borno state of Nigeria.

(2) At no stage prior to the Note dated 11 April 1994 did Cameroon make any protest or claim relating to the Lake Chad villages presently in issue.

(3) At no stage has Cameroon had a system of administration in place in the region.

(4) The episode of Cameroonian interference in 1987 was short-lived and did not lead to any claim to the region on the part of Cameroon. At no stage has Cameroon exercised peaceful possession.

(v) Conclusion: the elements of historical consolidation

169. The various elements constituting the process of historical consolidation of title in respect of the Lake Chad villages can now be summarized:

First: The attitude and affiliations of the population of the Lake Chad villages indicate an exclusive association with the Borno state of Nigeria.

Second: The historical associations of the region constitute strong evidence of the gravitational pull, in geopolitical and economic terms, of the Borno Emirate (and its successors) in relation to the shores of Lake Chad and, more especially, the southern sector.

Third: The historical associations of the area in question are reinforced and complemented by the contemporary political power and constitutional status of the Nigerian traditional rulers and, in the region concerned, of His Royal Highness, the Shehu of Borno.

Fourth: The villages are inhabited by Nigerian nationals.

Fifth: The Lake Chad villages have been administered as part of Nigeria for a considerable period of time.

Sixth: The acquiescence of Cameroon in face of the peaceful exercise of sovereignty by Nigeria.

170. In the context of the process of historical consolidation of title in respect of the villages claimed by Nigeria, it is to be understood that the process has not had the effect of displacing the definitive title of Cameroon or of any other riparian State. In the absence of a final delimitation within the Lake Chad region, the areas within the lake necessarily have the status of territory the title to which is undetermined.

171. The existence of such a category is recognized in the literature: I refer to *Oppenheim's International Law*, 9th edition, Volume I, 1992, at pages 566 to 567. The concept of a title which is "indeterminate" was recognized by the Arbitration Tribunal in the First Award in the *Eritrea/Yemen* case (see *ILR*, Vol. 114, pp. 46-58, paras. 145-188).

172. The margin or shoreline of the "normal" Lake Chad constitutes the significant line of division between the mainlands of Nigeria and the other riparian States on the one hand and the areas the title to which remains indeterminate, on the other hand.

173. It must follow that the process of historical consolidation of title has occurred in a context in which a title was created, and not displaced. It is also particularly appropriate that the process of consolidation of title should lead to a certainty which was otherwise lacking.

Finally, I would like to thank Christopher Hackford and David Lerer for their assistance in the preparation of this presentation. That concludes my presentation this morning. Mr. President I would ask you to give the floor to Professor Crawford.

Le PRESIDENT : Je vous remercie, Monsieur le professeur. Je donne maintenant la parole au professeur James Crawford.

Mr. CRAWFORD:

Mr. President, Members of the Court, it is again an honour to appear before you in this important and highly-charged case.

THE MARITIME BOUNDARY: PRELIMINARY ISSUES

Introduction and overview

1. In this part of its oral pleading, Nigeria will respond to the Cameroon presentations concerning the maritime boundary. The Nigerian presentations will be structured as follows:

(a) Today I will make a number of preliminary remarks as to the Cameroon claim, outlining the development of the issue both in the relations between the Parties and, on the other hand, in the pleadings before the Court, and focusing on the separation of the land and maritime boundary questions. I will conclude by reviewing the geography of the region, dealing in particular with the crucial coastal relationships.

(b) Secondly — and this will be tomorrow morning — I will complete this introductory review by tracing the development over 40 years of the oil practice of the Parties as well as the current state of treaties and proposed treaties between Nigeria and other States in the region. Cameroon characterizes the oil practice as unilateral (on the part of Nigeria), recent, secret, inconsistent and unlawful. Its presentation of the practice is nothing short of absurd, as I will show. I will also outline the background to the maritime delimitation treaties concluded by Nigeria with its two island neighbours in the Gulf.

(c) Thirdly, my colleague Professor Georges Abi-Saab will then present a comprehensive critique of Cameroon's claim line — the *ligne équitable*. As he will point out, Cameroon's claim line is not a maritime delimitation line at all. Cameroon claims no *area* of maritime territory, whether continental shelf or exclusive economic zone (EEZ), but calls on the Court to exclude Nigeria from any delimitation with the other coastal States in the Gulf. In effect, Cameroon asks the Court to stand with it on the line and to say to Nigeria: you can come this far but no further. The Court, however, cannot decide that it will be Cameroon for whose benefit it is

standing on the line; that it will be Cameroon which is entitled to the areas on the other side of the line. Given the distance of those areas from Cameroon and the fact that they are all closer to third States than to Cameroon, the probability is that it will not be Cameroon for whose benefit the Court does this. Perhaps the Court may be standing on the line — of course I speak metaphorically: I do not propose a *descente sur les lieux* — but Cameroon may well not be the State for whose benefit it is doing so. In short, the line Cameroon wants you to draw — the so-called "equitable line" — is at the same time unilateral and multilateral. It is unilateral in that its sole legal effect is to exclude Nigeria. It is multilateral in that its effect is to exclude Nigeria vis-à-vis all the other States in the Gulf (and to do so irrespective of their wishes). But maritime delimitation in the absence of concerned third parties is neither unilateral nor multilateral: it is bilateral, *inter partes*. Cameroon's constructed projection crucially ignores this aspect. Cameroon's claim line must thus be rejected outright, even on its own premises.

(d) But of course Nigeria accepts almost none of the premises. After the coffee break tomorrow, I will turn from the refutation of Cameroon's line to the presentation of Nigeria's position. In the course of doing so I will outline the applicable law, define the scope of the Court's task in geographical terms and review both the starting point in terms of principle for a delimitation and the various relevant circumstances which might affect the placement of a line.

2. Of course the Court has set aside several sessions to hear Equatorial Guinea's intervention, which focuses exclusively on the maritime boundary. Listening to Professor Pellet last week you may have thought that he was anticipating the intervention proceedings, getting in early, saying things to the Court in the absence of Equatorial Guinea — and of course they were and they are absent. For its part Nigeria will not anticipate the points to be made in relation to that intervention. But it is necessary to emphasize at the outset that the position of Equatorial Guinea, and for that matter Sao Tome and Principe, is not something to be compartmentalized and quarantined at the end of the case. It is not, as it were, an optional extra to a case under the optional clause. Indeed it is precisely because of the position of third States, and in particular of Equatorial Guinea, that the Court joined one of Nigeria's preliminary objections to the merits. So before entering into the facts of this dispute, a number of preliminary points need to be made.

The Court's Judgment on the seventh and eighth preliminary objections

3. The first of these does concern the Court's 1998 Judgment on the preliminary objections relating to the maritime boundary. As the Court will no doubt recall, there were two preliminary objections on the maritime boundary, numbered 7 and 8.

4. The seventh preliminary objection raised two distinct questions. The first concerned the question of a possible separate phase for the maritime boundary. Given the large number of issues in this case and the prior character of the land boundary issue — a priority the Court itself acknowledged at paragraph 106 of the Judgment — Nigeria continues to believe that it would have been appropriate to separate the land from the maritime boundary and to deal with the former first. The issues are, as I will show in more detail in a moment, distinct ones and have been treated as such by the Parties. However, this was a matter for the Court to arrange and of course Nigeria accepts the way in which it has done so.

5. The second aspect of the seventh preliminary objection related only to the maritime boundary beyond point G. Nigeria pointed out that there had been no negotiations between the Parties as to this sector of the maritime boundary, and that the first notice it had had of Cameroon's maritime claim — the *ligne équitable* — was when it received Cameroon's Memorial. Cameroon did not, and does not deny that fact, which has been corroborated now by Equatorial Guinea. Neither of Cameroon's neighbours in this area had the slightest idea of its claim, or that Cameroon was suddenly departing from a maritime status quo which had existed since independence. Faced with this undeniable fact, Cameroon ignored the absence of any negotiations and argued instead that Articles 76 and 83 of the Law of the Sea Convention did not require an attempt to reach agreement, at least if it was clear that no agreement would be forthcoming. The Court for its part noted that it had jurisdiction under the optional clause, Article 36, paragraph 2. Thus it was for the Court to determine the meaning and effect of Articles 76 and 83 at the stage of the merits[1]. The Court also noted that, despite the imprecision of the Cameroon claim, "there is a dispute on this subject between the Parties which, ultimately and bearing in mind the circumstances of the case, is precise enough for it to be brought before the Court"[2].

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[1] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 321-322, para. 109.

[2] *Ibid.*, p. 322, para. 110.

6. Mr. President, Members of the Court, Nigeria did not suggest that, following the deposit of Cameroon's Memorial, there was no dispute on the maritime boundary beyond point G. Whatever may have been the position at the time of the Application, by the time the preliminary objections hearing was held in 1998, there was clearly a dispute, a difference of legal position between the Parties as to Cameroon's claim and as to their respective maritime entitlements. That dispute has gone on changing as Cameroon's line has chopped and changed. But it would be fruitless to deny the existence of a dispute now, and Nigeria does not do so. Moreover even if the dispute as to the maritime boundary beyond the tripoint did not crystallize until the date of Cameroon's Memorial, the Court has pointed out that there is no point in requiring a State to go away and start proceedings again because of some temporal gap which can be easily remedied[3].

7. All that is true. But it does not exhaust the point of the fundamental norm in Articles 76 and 83 of the Law of the Sea Convention. As the Court clearly implied in its Judgment on preliminary objections, that lays down a substantive rule, not a procedural prerequisite. There are many other reasons for rejecting Cameroon's claim on the merits, as we will show. But it is also a ground for doing so that there has been no attempt by Cameroon even to *present* that claim at the diplomatic level, either to Nigeria, or as we now see to Equatorial Guinea. The Court is not a forum for negotiations, or for the making of, what we in Australia call, ambit claims — that is claims of an extreme character — wholly unrelated to reality. Yet that is what Cameroon is doing, and we invite the Court to contrast its conduct with the clear language of Articles 76 and 83: in the first instance, maritime boundaries are to be determined "by agreement", that is to say, by notification to the other side of one's claims and entitlements and by discussion and compromise. There are good reasons for that requirement in the governing treaty, the 1982 Convention. Maritime delimitation is not a mechanical process, as the Court knows only too well. The parties in the region concerned are in a better position to deal with the issues, and the more complex the problem, the denser the pattern of vested rights and expectations, the more this is true. Negotiation is not merely in fact the normal process for maritime delimitation; it is *prescribed* as the normal process, as the proper and primary way of achieving an equitable result. That prescription

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[3] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment, I.C.J. Reports 1996*, p. 595 at p. 612 (para. 24).

Cameroon has completely ignored, beyond point G, vis-à-vis both Nigeria and Equatorial Guinea, and, I might say, as far as the record shows, Sao Tome and Principe as well. Cameroon asks the Court to take on its three neighbours in the Gulf of Guinea on its behalf. Cameroon should have attempted a negotiated settlement itself. It made no attempt whatever to do so — I mean no attempt in the sense of their current claim line, or anything remotely like it.

8. Let me turn now to the eighth preliminary objection, which the Court joined to the merits. The question here is the effect of any ruling of the Court on a third State, Equatorial Guinea, which is not a party to the proceedings. As to this, the Court said:

> "the Court cannot rule out the possibility that the impact of the judgment required by Cameroon on the rights and interests of the third States could be such that the Court would be prevented from rendering it in the absence of these States, and that consequently Nigeria's eighth preliminary objection would have to be upheld at least in part. Whether such third States would choose to exercise their rights to intervene in these proceedings pursuant to the Statute remains to be seen."[4]

9. I want only to make two points about this passage at this stage. The first concerns the inshore maritime area, that is, the area out to the approximate tripoint with areas claimed by Equatorial Guinea. The second concerns the area beyond, extending further out into the Gulf of Guinea, every point of which is closer to Nigeria and Equatorial Guinea, or to Equatorial Guinea and Sao Tome and Principe, or to Nigeria *and* Sao Tome and Principe *and* Equatorial Guinea, than it is to Cameroon.

10. As to the first point, concerning the inshore maritime area, the Court in 1998 upheld its jurisdiction to determine the maritime boundary between the Parties in the waters south of Bakassi, that is, in maritime areas which are closer to Cameroon and Nigeria than they are to any third State, in particular Equatorial Guinea. Of course Nigeria accepts this entirely, and we will show in these presentations how Cameroon's claims in these waters must be rejected on the merits. They should be rejected first and foremost because the Bakassi Peninsula is Nigerian, and the underlying maritime boundary should reflect that. But even on the assumption — which, of course, Nigeria rejects — of Cameroon's position as to the Bakassi Peninsula, its maritime claim beyond point G must be rejected. We will explain why in the course of these presentations.

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[4]Judgment of 11 June 1998, *I.C.J. Reports 1998*, p. 324, para. 116.

11. The second point to make about the Court's joining of the eighth preliminary objection to the merits is the following. Nothing that has happened since 1998 has altered the force of that objection, which Nigeria continues to maintain. It is true that Equatorial Guinea has intervened in these proceedings, but only as a third party, not as a party to the case. It is true that Nigeria and Equatorial Guinea have concluded a treaty on maritime delimitation. Neither these developments, nor any other developments of the situation, affect the point that in order to decide on Cameroon's extended exclusion line hundreds of miles out into the Gulf, the Court will be deciding on the rights and interests of third States. The Court has no jurisdiction to do this, and the fact that the Court will be hearing in more detail about this on the last days of this very long case does not affect the position at all.

12. In fact there is a relation between the first and the second points I have just made, concerning the area out to the approximate tripoint — where the Court has jurisdiction — and the area beyond — where we say that it has not. The Court, having judiciously postponed the issue of jurisdiction beyond the tripoint, does not need to deal with it at all. And the reason is quite simple. Having regard to its own conduct as well as to its geographical situation, Cameroon has no claim to maritime territory beyond the approximate tripoint. Its attempt to get the Court to connect it to a large area of alleged maritime riches hundreds of miles from its coast, to the north and west of Bioko, must fail, must be rejected, because the Court never gets beyond the tripoint. The two Parties to this case, and all relevant third parties, have always treated Cameroon's maritime zones in the sector to the north and west of Bioko, as having their limits there, in the waters immediately east and south of Bakassi. For reasons we shall give, this practice is definitive as to the maritime boundaries. The Court should not attribute to Cameroon maritime areas it has never, in the real world as distinct from the paper world of its pleadings, treated itself as having or claiming. Thus in Nigeria's submission, the jurisdiction the Court held that it had in 1998 over the maritime boundary is quite sufficient for the purposes of this case.

The relation between the maritime and land boundary questions: the practice of the Parties

13. Mr. President, Members of the Court, let me turn away from such rather arid questions of competence and jurisdiction, and deal with an important point concerning the relationship between

the land and maritime sectors of this case, a question which goes to the merits. Evidently disputes about the continental shelf and exclusive economic zone concern the relation between land and sea, and the Court in this case has above all to determine the location of the land boundary: in that sense maritime issues are subordinate. Indeed it is the fact that the Parties to the present case have treated questions of maritime delimitation — to the extent they considered them at all — as not merely subordinate, but as separate and distinct from the dispute over the Bakassi Peninsula. I say "to the extent they considered them at all" because there was relatively little discussion or debate about the offshore, beyond point G, of any sort. The general position offshore, established in the 1960s, was maintained and extended by each Party, to the knowledge of the other, and by Equatorial Guinea, rather later, with little debate or disagreement. The connection between activities on sea and on land — a purely abstract and formal connection in terms of the lives of the Nigerian residents of the Bakassi Peninsula — was not drawn. Thus the negotiations over the inshore boundary in the 1970s had as a principal concern questions of maritime access. It did not involve any discussion over the Bakassi Peninsula.

14. Conversely, as Mr. Brownlie has shown, the dispute over sovereignty over the Bakassi Peninsula has developed, and has been pursued by both Parties, in substantial disregard of the question of the exploitation of the hydrocarbon resources in the waters to the south of the peninsula. Nigeria did not protest at the substantial Cameroon activity to the south of the peninsula. No more did Cameroon protest or object to any Nigerian activity in the waters slightly further west and south-west, apart from minor issues about precise localities. This long-standing activity and acquiescence by both Parties must have legal consequences on vested rights and legitimate expectations in the maritime domain, however the issue of sovereignty over the Bakassi Peninsula may be resolved.

15. I say, *however that issue may be resolved.* And that is the essential point. The Parties have had a dispute about the Bakassi Peninsula for a number of years. The peninsula was occupied and administered by Nigeria as its own, as my colleagues have shown. At the same time both States were interested in exploiting the offshore areas south of the peninsula and both did so without any protest from the other except for marginal areas or isolated incidents. The conduct of the Parties is incomprehensible except on the basis that the two issues were considered as separate.

Perhaps the international lawyer living in a world of abstractions might find it hard to see why they were separated. After all, in principle sovereignty over the coast is the basis for maritime title. The land dominates the sea, as it is repeatedly said. But here it did not, because in the perception of those actually involved on both sides the two issues were distinct. Oil exploitation focused on the offshore area and had as its vital purpose national development. The Bakassi dispute involves the fate of a large number of Nigerian people, real people living in real places, with problems wholly distinct from those of oil licensees. Both States were anxious to proceed with the development and not to allow disagreements on the land boundary to get in the way. And, without any formal standstill agreement, that is what they did.

16. You can see the disjunction of issues in the diplomatic record. I take, for example, the joint meeting of 1993, which is an important document in that it reflects attitudes of the Parties long after the oil practice had arisen. Cameroon relies on the minutes of this meeting itself, though the interpretation it places on them is untenable, as I will show tomorrow. But there is no doubt the meeting occurred. At the meeting there was discussion of boundary issues both land and maritime. No one suggested that the offshore exploitation of oil and gas was in any way dispositive of the acknowledged dispute over Bakassi. Rather the two heads of the delegations

> "observed that the grounds of disagreement between Nigeria and Cameroon over the Maroua declaration of 1975 are more political than technical. In order not to hinder the furthering of the existing excellent relations between the two nations, they resolved to refer the matter to their respective heads of state for determination."[5]

17. And they went on to discuss maritime co-operation and exploitation of maritime resources in the border area. The land boundary issue was not settled, there was an acknowledged dispute over Bakassi, but even so it was agreed that the Parties would continue to develop maritime resources on their own account. The continued political difficulties over Bakassi and Maroua would not be allowed to stand in the way of continued progress on technical issues concerning the maritime area. That was a sensible and practical way to proceed. It shows how the two strands, land and maritime, became disjoined in the practice and in the perceptions of the Parties.

18. It should be noted that international tribunals are becoming more sensitive to the problem of determining the fate of peoples, of inhabited territories, by reference to considerations of abstract

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[5]Rejoinder of Nigeria, Ann. NR 173.

title. The disposition by both Parties of oil-bearing offshore areas should not be allowed to determine the fate of the people onshore. Nor was there any intention on either side at the time to allow that to happen. But Nigeria's flexibility offshore bore no relationship to its position onshore, where it insisted — and insists — on the right of the Nigerian people to live under their own administration as they have always done.

19. If precedent for this disjunction be sought, it can be found in the recent unwillingness of the Court of Arbitration in the *Yemen/Eritrea* case to allow issues of offshore oil concessions to determine sovereignty over the islands. It was the Court of Arbitration itself which raised that issue and even conducted a separate hearing. Moreover the concession activity there was not trivial, although it paled into insignificance compared with the long-established practice here. Yet the Court held that the offshore petroleum contracts entered into by both Parties "fail to establish or significantly strengthen the claims of either Party to sovereignty over the disputed islands"[6]. These were, it is true, not inhabited islands; but the positions *a fortiori* for densely inhabited localities such as Bakassi. And the indications are that this is how the Parties saw it.

An outline of the coastal geography

20. Mr. President, Members of the Court, I now turn to my third major point this morning, which consists of a preliminary analysis of the coastal geography. In doing so I should like to express my thanks to the members of the Nigerian technical team who have assisted with the graphics, in particular Claire Ainsworth, Chris Carleton, Robin Cleverly and Dick Gent.

21. This case involves a substantial area of the coast of west and central Africa. You see on tab 84 of your folders a depiction of the overall coastline. The Parties agree that the present question arises within the Gulf of Guinea, from which, however, Cameroon, at the back of the Gulf, seeks to escape. Indeed it is not too much to say that its projected construction system was specifically designed to project Cameroon's entire coastal frontage from the back of the Gulf to the front of the Gulf, ignoring the entitlements of insular States on the way. But this is not the Gulf of Fonseca; there is no condominium over these waters, and to project coasts huge distances forward in this way is quite illegitimate, as we will see.

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[6]Award of 9 Oct. 1998, 114 *ILR* 1 at p. 114, para. 437.

22. Now a closing line of the Gulf of Guinea could be drawn from Cap Lopez in Gabon, to a point just west of Akasso: one can draw a line across bumps in the coast. Even so, it is quite a line. The case is full of lines with ambitions. This "closing line" is around 335 nautical miles in length. It is a completely abstract line, it has no legal pertinence of its own. The closing line of the Gulf of Fonseca, I would remind the Court, is less than 20 nautical miles[7].

23. We can now move a little closer in —seems appropriate — into the Gulf of Guinea itself. This is tab 85. As you will see there are a large number of distinct coastlines in the area. In fact there are five States with claims to maritime zones: Nigeria, Equatorial Guinea, Cameroon, Gabon and Sao Tome and Principe. And Equatorial Guinea has two distinct substantial territories, each with its own coastal frontage.

24. As a first step it is thus necessary to determine the coastal frontages of these five States. To do so we will draw straight lines across the various indentations following the general direction of the coastlines, with the coastal States represented in terms of their maritime frontages by the lengths of these lines. To avoid prejudicing questions of land delimitation, we will give Bakassi its own coastal frontage. It is also necessary in this exercise to measure the outward facing coastal frontages of Bioko, leaving the north-east facing frontage into the straight aside, as well as the inward facing coastal frontages of the island of Principe.

25. On that basis we have the following approximate coastal frontages:

(a) Nigeria — 140 nautical miles.

(b) Bakassi — 14 nautical miles.

(c) Cameroon — the total distance 155 nautical miles.

(d) The outward facing coasts of Bioko — 94 nautical miles.

(e) Rio Muni (the second part of Equatorial Guinea) — 75 nautical miles.

(f) Gabon, north of Cape Lopez — 114 nautical miles.

(g) And Principe, as far as relevant — 19 nautical miles.

26. The Court of course will be aware that Sao Tome and Principe is an archipelagic State within the definitions contained in Articles 46 and 47 of the 1982 Convention. In accordance with

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[7]See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 588, para. 383.

Article 48 it claims to measure its EEZ and continental shelf from those baselines. We have only taken its actual coastal frontage into account, but that is a further complication.

27. Overall then, this is an extremely complex situation. It is created by a combination of physical and political geography in the region as a very large whole. But faced with this situation, it is obvious that the Court cannot deal with it as a whole; certain that it cannot do so between two States only, Nigeria and Cameroon. Cameroon's method is to take the situation as a whole and to divide up the maritime areas while ignoring the two island States which are at the heart of the problem. Professor Mendelson the other day very candidly admitted this. He said, yes of course we *should* take Bioko into account, but that would be unfair to Nigeria. Mr. President, Cameroon's projected construction is completely inadmissible for any number of reasons. But key among these is an attempt to deal with the region as a whole while ignoring the crucial elements in the equation.

28. Rather than following Cameroon down this line — or I should say down its elaborate system of lines — the Court will have to focus on particular situations within the region. The complex overall situation has to be broken up into its constituent elements for it to be manageable. And the key element in this process is to recognize the following fundamental axiom of maritime delimitation. *Courts decide maritime delimitation disputes as between the States parties to the dispute and in relation to the coasts of those States which face or look on to the area of the dispute.* Even then it may not be possible to resolve the dispute fully because other coastal States, not parties to the proceeding, may look on to the area as well; and their claims, which the Court can neither decide nor ignore, may prevent a complete delimitation. But at least it is a necessary beginning, to look at the specific coastal relationships of the parties in relation to the area in dispute between them, the area in front of their coasts.

29. So the very beginning of an analysis of the problem is to separate its different elements. And here the first step is to recognize that some coastal frontages within the Gulf of Guinea are totally irrelevant to this dispute and cannot be taken into account in any analysis of it. Let me take as a first example the east-facing coastal frontage of Bioko, which is shown in tab 86. Clearly that frontage is completely irrelevant to this dispute. No one would argue that that coastline faces on to the disputed area, or that it should be taken into account in any way. Then we have the coastal frontage of Rio Muni, the mainland territory of Equatorial Guinea. Again this is completely

irrelevant to this dispute. It is true that the distance between Rio Muni and Nigeria, through the gap between the two island States, is less than 400 nautical miles. If the islands were not there, a delimitation issue could arise: but the islands are there and they cannot be ignored. Nigeria has no claim to maritime areas vis-à-vis Rio Muni, and the question of Rio Muni's coasts never arose — was never mentioned — in the ten years of negotiation of the Nigeria-Equatorial Guinea agreement.

30. Mr. President, Members of the Court, it is a curious feature that Cameroon's projected construction takes into account Rio Muni, which is irrelevant, but not Bioko, which is, they admit, not merely a relevant circumstance but a special circumstance. Cameroon's projected construction ignores special circumstances and builds upon irrelevant coastlines, it inhabits a world of pure theory and bears no relation to reality.

31. But if the coastal frontage of Rio Muni is irrelevant, so too is the adjacent westward-facing coastal frontage of Cameroon. The distance between Campo — the black dot on the screen and at tab 86 — and Bioko is 92 nautical miles The "tripoint" — it is not technically a tripoint, but where the line turns on the screen — is 45 nautical miles from the coast of Cameroon: that is a very long way from the Bioko-Principe agreed equidistance line, which you can also see on the screen. I am not suggesting, of course, that the boundary between Campo and the Equatorial Guinea waters is actually agreed — but that is the equidistance line. The maritime area between the coasts north of Campo and Nigeria has no pertinence to the present dispute.

32. Mr. President, there is a further point, which concerns the effect of islands on delimitation in an area of overlapping potential entitlements. All coasts may be equal but I am afraid that some coasts are more equal than others. And this is particularly the case for offshore islands, which tend to generate much more extensive maritime entitlements than coastal States per unit of coastal frontage. One reason of course is that they face in all directions. Bioko has a total coastal frontage on all four sides in excess of 100 nautical miles. Moreover Bioko is not the only relevant feature in the Gulf. The line you see on the screen actually describes a longer line of islands running straight through from Mount Cameroon through Bioko, through Principe, Sao Tome to Anubon — which is also part of Equatorial Guinea — in a south-southwesterly direction. The line is uncannily straight: and that is because it is a tectonic line, a line of volcanoes — those

volcanoes created the Cameroon mountains and the offshore islands. You can see this very clearly from the topographical map, which is tab 87. And it reflects an obvious geographical reality. The Gulf of Guinea has two sectors, very nearly two halves. Cameroon likes the word "unilateral", which it used many times in the first round, but I have not been able to count them all. Well, we have to say that, in geographical and legal terms, the Gulf of Guinea is bilateral. On the eastern side there are a series of delimitation problems which are presented by the facing coasts of Cameroon and Bioko, by the adjacent coasts of Cameroon and Rio Muni, by the facing coastal frontages of Rio Muni and the archipelagic State of Sao Tome and Principe and so on down. Within the Gulf, there are at least six maritime delimitations along the eastern side of the tectonic line. Some of these have been resolved *inter partes*, some have not. They are: (1) the opposite coasts of Cameroon and Equatorial Guinea to the north and east of the island of Bioko; (2) the adjacent coasts of Cameroon and Rio Muni; (3) the opposite coasts of Bioko (Equatorial Guinea) and Principe (Sao Tome and Principe); (4) the opposite coasts of Rio Muni and Sao Tome and Principe; (5) the adjacent coasts of Rio Muni and Gabon; (6) the opposite coasts of Gabon and Sao Tome and Principe. *Nigeria is not a party to a single one of those relationships.* It has no interest in the resolution of any of them. The coasts in question do not face Nigeria's coasts. Nigeria makes no claims to these waters in the eastern sector of the Gulf. Nigeria's long coastal frontage is irrelevant to each and every one of them.

33. Now let us look at the western sector of the Gulf, which is tab 88. Here Nigeria's long coastal frontage, south-facing, is dominant. Bioko's west-facing frontage looks on to the area. So does Sao Tome and Principe. Cameroon has a relatively short frontage in this western part, to which I will return tomorrow. So in the western segment of the Gulf, to the west of the tectonic line, there are a further five delimitation issues, (1) the adjacent coasts of Nigeria and Cameroon in the north; (2) the short opposite coasts of Cameroon and Bioko (Equatorial Guinea), also in the north through the strait; (3) the opposite coasts of Nigeria and Bioko (Equatorial Guinea); (4) the westerly sector of the boundary between Equatorial Guinea and Sao Tome and Principe, which is an agreed boundary — you can see it on the screen; and (5) the opposite coasts of Nigeria and Sao Tome and Principe. Nigeria is a party to three of these five relationships.

34. Mr. President, Members of the Court, the contrast could not be clearer. The lesson is that the Court must look at the relevant coasts, and the areas they face, if it is even to begin to be able to furnish a solution to this dispute, which is only one of the dozen or so delimitation questions that concern the various States fronting the Gulf of Guinea.

35. Mr. President, that completes this part of my introduction to the maritime boundary issues. I hope I may be permitted to return tomorrow to talk about the actual situation on the ground, or more accurately on the water. That situation has been essentially stable for many years, in sharp contradistinction to Cameroon's ever-changing and mutable claim line. Thank you, Mr. President.

Le PRESIDENT : Je vous remercie, Monsieur le professeur. Ceci met un terme á la séance de ce matin. La prochaine séance aura lieu demain matin à 10 heures. La séance est levee.

L'audience est levee à 13 h 05.