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*CR 2002/13*

**Cour internationale de Justice**

**LA HAYE**

**International Court of Justice**

**THE HAGUE**

**ANNÉE 2002**

*Audience publique*

*tenue le jeudi 7 mars 2002, à 10 heures, au Palais de la Paix,*

*sous la présidence de M. Guillaume, président, puis de M. Shi, vice-président,*

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

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**COMPTE RENDU**

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**YEAR 2002**

*Public sitting*

*held on Thursday 7 March 2002, at 10 a.m., at the Peace Palace,*

*President Guillaume and Vice-President Shi presiding, successively,*

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

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**VERBATIM RECORD**

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*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

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

***Le Gouvernement de la République du Cameroun est représenté par :***

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

*comme agent;*

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

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

*comme coagents, conseils et avocats;*

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

*comme agent adjoint, conseil et avocat;*

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

*comme conseiller spécial et avocat;*

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

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

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

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

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

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

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

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

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

*comme conseils et avocats*;

***The Government of the Republic of Cameroon is represented by:***

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

*as Agent;*

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

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

*as Co-Agents, Counsel and Advocates;*

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

*as Deputy Agent, Counsel and Advocate;*

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

*as Special Adviser and Advocate;*

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

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

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

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

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

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

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

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

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

*as Counsel and Advocates;*

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

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

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

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

*comme conseils;*

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

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

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

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

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

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

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

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

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

M. Ousmane Mey, ancien gouverneur de province,

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

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

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

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

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

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

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

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

*as Counsel;*

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

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

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

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

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

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

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

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

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

Mr. Ousmane Mey, former Provincial Governor,

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

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

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

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

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

M. Robert Tanda, diplomate, ministère des relations extérieures

*comme conseillers*;

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

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

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

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

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

M. André Loudet, ingénieur cartographe,

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

*comme experts;*

Mme Marie Florence Kollo-Efon, traducteur interprète principal,

*comme traducteur interprète*;

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

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

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

*comme assistants de recherche*;

M. Boukar Oumara,

M. Guy Roger Eba'a,

M. Aristide Esso,

M. Nkende Forbinake,

M. Nfan Bile,

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

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

*as Advisers;*

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

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

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

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

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

Mr. André Loudet, Cartographic Engineer,

Mr. André Roubertou, Marine Engineer, Hydrographer,

*as Experts;*

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

*as Translator-Interpreter*;

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

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

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

*as Research Assistants*;

Mr. Boukar Oumara,

Mr. Guy Roger Eba'a,

Mr. Aristide Esso,

Mr. Nkende Forbinake,

Mr. Nfan Bile,

M. Eithel Mbocka,

M. Olinga Nyozo'o,

*comme responsables de la communication*;

Mme Renée Bakker,

Mme Lawrence Polirsztok,

Mme Mireille Jung,

M. Nigel McCollum,

Mme Tete Béatrice Epeti-Kame,

*comme secrétaires de la délégation.*

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

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

*comme agent;*

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

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

*comme coagents;*

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

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

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

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

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

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

*comme conseils et avocats;*

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

Mr. Eithel Mbocka

Mr. Olinga Nyozo'o,

*as Media Officers*;

Ms René Bakker,

Ms Lawrence Polirsztok,

Ms Mireille Jung,

Mr. Nigel McCollum,

Ms Tete Béatrice Epeti-Kame,

*as Secretaries*.

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

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

*as Agent;*

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

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

*as Co-Agents;*

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

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

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

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

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

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

*as Counsel and Advocates;*

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

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

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

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

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

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

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

*comme conseils;*

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

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

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

M. A. O. Cukwurah, conseil adjoint, ancien conseiller en matière de frontières (ASOP) auprès du Royaume du Lesotho, ancien commissaire pour les frontières inter-Etats, commission nationale des frontières,

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

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

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

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

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

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

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

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

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

*comme conseillers;*

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

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

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

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

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

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

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

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

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

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

*as Counsel;*

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

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

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

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

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

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

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

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

Colonel A. B. Maitama, Ministry of Defence,

Mr. Jalal Arabi, Member, Nigerian Legal Team,

Mr. Gbola Akinola, Member, Nigerian Legal Team,

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

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

*as Advisers;*

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

Mr. Dick Gent, United Kingdom Hydrographic Office,

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

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

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

M. Bruce Daniel, *International Mapping Associates*,

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

Mme Stephanie Kim Clark, *International Mapping Associates*,

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

Mme Claire Ainsworth, *NPA Group*,

*comme conseillers scientifiques et techniques;*

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

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

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

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

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

*comme personnel administratif.*

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

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

*comme agent et conseil;*

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

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

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

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

*comme conseillers;*

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

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

Mr. Bruce Daniel, International Mapping Associates,

Ms Victoria J. Taylor, International Mapping Associates,

Ms Stephanie Kim Clark, International Mapping Associates,

Dr. Robin Cleverly, Exploration Manager, NPA Group,

Ms Claire Ainsworth, NPA Group,

*as Scientific and Technical Advisers;*

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

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

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

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

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

*as Administrators.*

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

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

*as Agent and Counsel;*

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

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

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

Mr. Antonio Nzambi Nlonga, Attorney-General,

*as Advisers;*

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

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

*comme conseils et avocats;*

Sir Derek Bowett,

*comme conseil principal,*

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

*comme conseil;*

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

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

*comme experts juridiques;*

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

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

*comme experts techniques.*

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

*as Counsel and Advocates;*

Sir Derek Bowett,

*as Senior Counsel;*

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

*as Counsel;*

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

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

*as Legal Experts;*

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

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

*as Technical Experts.*

Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte et je donne la parole, au nom de la République fédérale du Nigéria, au professeur James Crawford. You have the floor, Professor Crawford.

Mr. CRAWFORD:

**THE MARITIME BOUNDARY: CAMEROON'S CLAIM LINE(S) MEASURED AGAINST THE PRACTICE OF THE PARTIES**

1. Good morning, Mr. President, Members of the Court, in this presentation I will do three things:

*(a)* First I will tell the picaresque story of Cameroon's claim line.

*(b)* Secondly, I will recall and illustrate the history of the maritime areas in question, in particular the history of the oil practice. That history is relatively consistent and intensely practical, qualities that distinguish it to a marked degree from Cameroon' claim line.

*(c)* Thirdly, Mr. President, Members of the Court, I will outline the maritime claims and agreements between the various States fronting on the western segment of the Gulf of Guinea. In particular I will focus on the two treaties recently concluded by Nigeria with its neighbours, Equatorial Guinea and Sao Tome and Principe, in the light of Cameroon's observations of last week.

**Cameroon's claim line: a line in search of itself?**

2. As the Court will be aware, Cameroon did not put forward any claim line in its Application. It simply called on the Court to delimit the maritime areas to the south of Bakassi consequent upon its determination of disputed issues of land sovereignty. The first indication of its claim line was the sketch-map, entitled *"la ligne équitable"* — when I say those words, I put them in inverted commas —, which you can see on the screen and in tab 89 in your folders. That was included in several places in Cameroon's Memorial in 1995. It was presumably an attempt to be accurate. After all, a maritime claim line before this Court is a serious thing, and whatever the position with its Application, Cameroon had had time to get it right in the Memorial, which is after all the primary statement of the case. One does not expect an applicant in an optional clause case to announce its claim for the first time in its Reply.

3. Indeed, the Court noted the problem itself, when in the Preliminary Objections Judgment it raised of its own motion the question whether "the dispute between the Parties has been defined with sufficient precision for the Court to be validly seised of it" (para. 110). The Court's answer to its own question was, yes, on the whole; although several Members of the Court took a different view. The Court's conclusion, and the mere fact of the Court's question, implied a lack of precision on the part of Cameroon which was remarkable at the post-Memorial stage.

4. That was, however, not the half of it. As with Tunisia's offering in the *Tunisia/Libya* case (this is tab 90) the Court was to get a *sheaf* of lines. Except that in the *Tunisia/Libya* case the lines were presented as *alternatives*. Tunisia did not suggest they were all to be awarded; that would have been inconsistent. By contrast, in these proceedings Cameroon has fired out to sea a selection of lines like arrows from a quiver, sometimes singly, sometimes in pairs, all in slightly different directions and with differing degrees of imprecision and error, all of them presented as *the* equitable solution.

5. Let us look at Cameroon's sheaf of equitable lines, which we will successively present on the screen now, transposed on a single map for the purpose of comparison. Again, this is tab 91 in your folders. This is the original *ligne équitable* of Cameroon's Memorial; we can call it the 1995 line. It is shown as a purple line on the map, which is now overlain on an accurate French base-map which was, however, not used in Cameroon's Memorial.

6. Then in its Reply, six years after its Application, Cameroon presented for the first time what it said was an accurate depiction of its line. About time, you might think. But unfortunately, as Nigeria pointed out in its Rejoinder, it was not one depiction but two, or rather a description in the text and a different depiction in the graphics. You can see them on the screen now. The green line marked CR 2000 (A) was the line shown repeatedly on Cameroon's Reply map. The black line marked CR 2000 (B) was the line described in the text. Cameroon now says of course, through Professor Pellet, that the described line, the black line, was the one they intended. Mr. President, how were we to know? The green line (CR 2000 (A)) was pretty well consistent with the 1995 map line, as you can see. The black line was new. There was no indication in the Reply that Cameroon was proposing a new line; it purported to re-present the *"ligne équitable"* as presented in its Memorial. Moreover both the map line and the text line, the black and the green lines, were

referred to at the same time in Cameroon's submissions in the Reply at paragraph 13.01 *(c)*. So the Court had no way of telling which line was claimed. Instead of one *ligne équitable* we had *plusieures lignes équitables, plus ou moins*.

7. Moreover the difference was not trivial. There were 7,400 km$^2$ of valuable and for the most part already granted Nigerian oil-lands between the two lines, the black line and the green line. Mr. President, Members of the Court, one might have wondered, by this time, whether the claim was a serious one, whether it had been properly considered. If it was considered, why could they not get it right?

8. In fact Cameroon did not notice the error for another eight months after the publication of its Reply. It was only after Nigeria had pointed it out in the Rejoinder, in January 2001, seven years late, that Cameroon finally and unequivocally identified a claim line. This is the 2001 line, which is the blue line shown on the map and depicted CL 2001 (corr.). "L" here stands for letter because it was in a letter to the Court that Cameroon finally put forward a definitive line. In a way, that was appropriate. After all there have been so many letters to the Court from Cameroon during this proceeding that it was appropriate that its maritime claim be finally announced in a letter. As part of your reform programme, Mr. President, perhaps we could do away with the formal pleadings and simply have an exchange of correspondence! But at least we knew where we were, at last.

9. Let me pause for a moment with the line CL 2001 (corr.). The Court will note that this line proceeded further out to sea from point K. It proceeded to a point which we have called for convenience point "L". Now point L is almost exactly 200 nautical miles from the nearest point on the land boundary claimed from Cameroon, that is East Point. Cameroon did not bother to tell the Court that, but it is true. So from Cameroon's point of view it was a rational point to stop. Nigeria has given you the co-ordinates of point L. Cameroon objects to this, but it seems to be appropriate; after all it was easy to read the co-ordinates and the Court is entitled to know them.

10. But now, Mr. President, the line has changed again. I am not trying to show the Court an unauthorized video. But, with *this* line, a motion picture seems the appropriate medium! Actually the line has changed in three ways during the first round. First, Cameroon now tells us that it does not stop at point "L" but keeps on going out to deep water. Secondly, the line has been bent further

towards Nigeria around point I, in order to go around Equatorial Guinea's maritime boundary with Nigeria. Nigeria has been compensated for this forced exchange of maritime territory by a little bit further south. In fact there are Nigerian oil wells in the area Professor Pellet claimed for Cameroon last week, but none in the area he gave us in return. So Cameroon got the better of the forced exchange. You can see these further modifications on the screen.

11. Thirdly and for the moment finally, Cameroon has carved out a square, a white box, it is a sort of geographical maritime *non liquet*, on which it says the Court should not rule. You can see it on the screen. The Cameroon line enters the white box and it emerges from the other side. What it does while it is in the box, no one knows. The Court will no doubt recall that in old maps they used to put serpents in the sea where they did not know what was going on in order to scare mariners away: well, we could put a serpent in the white box. Perhaps the Court is supposed to be scared away from enquiry as well!

12. We can call this new ensemble of changes CO 2002 (P). We await further developments.

13. Mr. President, Members of the Court, it is true that in litigation a party's claim may be developed and refined within the pleadings. New documents may be revealed, new information may come to light. But that is not the situation here. The maritime positions of the Parties here developed over 40 years. The information as to concessions and wells, set out in Nigeria's Counter-Memorial and in further detail in the Rejoinder, was public, commercially available information. Professor Pellet complained that we had not referenced our information. In fact we had. We deposited with the Court relevant extracts of the *Bulletin of the Association of American Petroleum Geologists* for the years 1958 to 1990. Subsequent information came from the scouting services, in particular IHS Energy, formerly known as Petroconsultants, whose information is commercially available in the industry. The information concerns an industry which has invested billions of dollars in infrastructure in the now disputed area, and which is strongly represented with offices and representatives in each of the two Parties' countries. The information did not come from a strange land, or from some hitherto secret archive. It should have been taken into account in establishing a claim line. Yet the first time that Cameroon unequivocally specified its new litigious claim was in a letter to the Registrar after the completion of Nigeria's Rejoinder. And now it has

changed the line yet again. This is quite extraordinary. The Court should draw the appropriate conclusion.

14. The appropriate conclusion, Mr. President, Members of the Court, is that Cameroon is manufacturing a dispute by a claim which is unrelated to the real dispute between the Parties, which is unrelated to the law, which is unrelated to the facts. In Australia, as I said yesterday, this would be called an ambit claim, an extravagant claim made with a view to expanding the jurisdiction of the Court. My friend and colleague, Professor Abi-Saab, will show shortly how Cameroon's ambit claim is completely unsustainable as a matter of law, having regard to the Court's constant jurisprudence and to the actual geography. In what follows, I will set the scene by setting out in summary form the history of the region both in terms of actual economic activity and in terms of the negotiations between the various concerned States.

**The practice of the Parties in the area in dispute**

15. Mr. President, Members of the Court, in my introductory speech yesterday I showed how the maritime dispute between Cameroon and Nigeria could only be resolved as between the coasts facing on to the area in dispute. I also showed how the west-facing coast of Cameroon, opposite the east coast of Bioko, has absolutely no relevance to the present case. The area between these two coasts which you see on the screen now, and in tab 92, is irrelevant to this dispute. The maritime areas between these coasts appertain exclusively to Cameroon and Equatorial Guinea. Further south, they appertain also to Sao Tome and Principe. Nigeria has no claim to any of them, and their delimitation between the States concerned can have no effect on the delimitation to be achieved in the sector which does concern Nigeria, to the west of Bioko.

16. Turning then to the north-eastern sector of the Gulf of Guinea, which is the only sector of interest to the Court, the graphic you can see on the screen — tab 93 — has an equidistance line shown between Bioko and the mainland. That is the Equatorial Guinea's claim line, as the Court has been informed. It is obvious that the location of that equidistance line is unaffected by any issue concerning land territory between Nigeria and Cameroon.

17. In its Counter-Memorial, Nigeria outlined the history of hydrocarbon development in the area, a subject on which Cameroon had previously been silent (Counter-Memorial of Nigeria,

paras. 20.13-20.17). It is worth pointing out that a State party in a case brought under the optional clause has at least the normal obligation to provide relevant information to the Court in relation to its claim: actually, there is the burden of proof. Cameroon has not provided the information in respect of the maritime claims, despite its numerous pleadings, formal and informal, authorized and unauthorized, epistolary and other.

18. Even in its Reply, Cameroon provides only scanty information. The most significant element was its map R25, entitled *"Concessions pétrolières camerounaises et nigérianes — chevauchements"* (Reply of Cameroon, p. 437, map R25). You can see this map on the screen now; it is tab 94. The map shows, by a heavy dashed and dotted line, Cameroon's stated limit of operations in the disputed area. The situation is, in principle, confirmed by the data which Nigeria has added to the map. The Cameroon installations are in purple, the Nigerian in green. These items are based on public information and they show the extent of the installations, wells and pipelines in the area.

19. It is the case that there are two areas of overlapping licences, one in the north, one in the south. The areas of overlap are shown in blue on Cameroon's map R25. And they are now shown on the graphic on the screen and in tab 94, which comes from the Rejoinder. In fact there are no actual Cameroon activities in the southern end of overlapping licences; there are no Cameroon installations there and no Cameroon wells have been drilled there. The area of overlap is a limited one; it was the area that the Parties realized was a matter for negotiation, but — as I said yesterday — entirely without prejudice to the question of sovereignty over the Bakassi Peninsula.

As this graphic shows, Cameroon as a coastal State has never asserted or acted upon the claims to maritime territory which it now makes as a litigant before the Court.

20. Mr. President, Members of the Court, in its Rejoinder, Nigeria traced in detail the development of offshore licensing in this area in the 40 years from 1960 to 1999. Cameroon did not bother to disclose this information — from publicly available sources. I am not going to take the Court through it again in tedious detail; you can see it graphically displayed in the Appendix to Chapter 10 of the Rejoinder. The only points that need to be made here are, first, that the marginal area of overlap arose in 1977, and that apart from that the practice has been consistent; secondly,

that the practice is of long standing and has been an obvious basis for reliance and conduct, including the conduct of third parties, in relation to the offshore area.

21. The graphic you can now see on the screen is tab 95. It shows the offshore installations of Cameroon (in purple), Nigeria (in green) and Equatorial Guinea (in yellow). That is the situation as at 2000. You can see Equatorial Guinea's Zafiro field in the bottom left-hand corner, as also the wells associated with Nigeria's Ekanga field.

22. This graphic, tab 96, is the licensing situation offshore as depicted in Nigeria's Rejoinder, taken from the same public sources.

23. Cameroon argues that the oil practice is unilateral, recent, secret, inconsistent and unlawful. Let me deal briefly with these claims.

24. First, it is not unilateral. You can see it has been engaged in by all three States in the region.

25. Second, it is not recent. It goes back to a *modus vivendi* of the late 1950s which has been in place since then. It is true that some licences along the oil practice line are more recent, and Professor Kamto valiantly sought to make something of this. But as we have shown in every case these licences covered areas already previously licensed under other designations. Let me take, for illustrative purposes, the position in 1979. This is from our Rejoinder and is also at tab 96. It shows the slight overlap which I have illustrated. The licence areas are comprehensive and they go down to the equidistance line with Equatorial Guinea.

26. Third, the oil practice is not secret. The licences are awarded publicly after advertised tendering rounds, in accordance with normal oil industry practice. The facts are published by the scouting services and in the oil industry literature. This is shown on the excellent French nautical maps which Cameroon has annexed and used for other purposes, but on which it did not bother to depict its claim line. As you can tell from this graphic, which is tab 97, the installations are close together. The dates attached to the various installations show that the activity took place over a very long period of time. Everyone was well aware of it.

27. Fourth, the practice is not inconsistent, certainly not at in any significant way. The developments shown in the Appendix to Chapter 10 of the Rejoinder demonstrate a high level of

consistency. The small areas of overlap of licences I have already shown you. From the graphic on the screen you can see a clear illustration of its comparative consistency.

28. Fifth and finally, it was not unlawful. Professor Kamto took you to the Minutes of meetings in 1991 and 1993 in an attempt to demonstrate that Nigeria did not inform Cameroon of its activities. In fact each side knew well what the other was doing. The documents he cited — you can read them for yourself — demonstrated the opposite of his contention; that is, an agreement that each party was free to exploit its own resources along the common maritime border. That was a continuing activity.

**Existing maritime boundaries**

29. Mr. President, Members of the Court, I turn now briefly to describe the position with respect to maritime boundary claims, negotiations and agreements as between the States in the region. Again, virtually none of this information has been provided by Cameroon, which presents a maritime claim as devoid of diplomatic history as it is of the history of oil activity.

***(a)*** **Nigeria and Cameroon**

30. Let me deal with the Parties themselves first. As the Court observed in its 1998 Judgment, "Cameroon and Nigeria entered into negotiations with a view to determining the whole of the maritime boundary"[1]. If I may say so with respect, that is true. But it is important to see precisely what the two Parties were negotiating about. They were not, I repeat not, negotiating about Cameroon's claim line in any of its versions, or anything remotely like it. They were concerned with three issues: the Maroua Declaration, the existence of areas of overlapping licences — which I have already shown you — and the location of the tripoint.

31. You can see this, for example, from the Minutes of the third session of the Nigeria-Cameroon Joint Meeting of Experts on Boundary Matters, held in Yaoundé from 11 to 13 August 1993. As to the maritime boundary beyond point G, the Minutes record the following:

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[1] *I.C.J. Reports 1998*, p. 275 at p. 322, para. 110.

"(B) DETERMINATION OF THE TRI-POINT BETWEEN CAMEROON, NIGERIA AND EQUATORIAL GUINEA

> The Cameroonian Delegation stressed the need to determine the tri-point between Nigeria, Cameroon and Equatorial Guinea in order to enable each of the three countries to exploit its natural resources in the area in peace. It argued that the absence of Equatorial Guinea at this forum should not prevent Cameroon and Nigeria from exchanging constructive views on the proposal . . . The Nigerian side, on its part, expressed its reservations concerning the examination of the proposal in the absence of Equatorial Guinea. The two parties then agreed that a tripartite meeting should be convened to examine the issue of the determination of the tri-point."[2]

This was a year before Cameroon's Application. The passage shows quite clearly that the Parties — who had good knowledge of each other's positions — accepted that there was a tripoint with Equatorial Guinea and were concerned only with its precise location as well as with their freedom to develop their resources along the border. These are the issues which the Parties had identified for negotiation. This was the negotiation that the Court talked about There was a clear acceptance by the two Parties that there was a *de facto* maritime border in the area, even though there was a dispute over the Bakassi Peninsula itself. That was the situation when Cameroon brought its Application.

### *(b)* Equatorial Guinea and Sao Tome and Principe

32. I turn now to the situation between Equatorial Guinea and Sao Tome and Principe. The Treaty of 26 June 1999 between those two States confirms the *de facto* median line boundary between them. That line is depicted on the screen and on tab 98. As far as we know, Cameroon has never protested at that line. If it has protested, it has not bothered to tell you.

### *(c)* Nigeria and Equatorial Guinea

33. The next maritime boundary situation, and the most important in the western half of the Gulf, is that between Nigeria and Equatorial Guinea. Negotiations between these two States over their common maritime boundary were long and difficult. The process was outlined in Nigeria's pleadings and I will not repeat the details. I would however make several points about the eventual Agreement of 2000. First, as I have said, negotiations for the Agreement began in 1990 and

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

extended over 15 formal negotiating sessions[3]. Cameroon knew of the negotiations; they were reported in the general and specialist press as well as in our pleadings. Nigeria had, and has, the conscientious belief that it was not required to stop negotiating a maritime boundary with Equatorial Guinea just because Cameroon had made a new claim against Nigeria before the Court. The Government of Equatorial Guinea was insistent that negotiations proceed; it repeatedly sent high-level multi-Minister delegations and it was well advised. The suggestion that it was coerced is bizarre.

34. At the time the line eventually included in the Agreement of 2000 was agreed on between the parties, neither of the parties to that Agreement knew the actual extent of Cameroon's maritime claim. The actual line agreed on between Nigeria and Equatorial Guinea was agreed on before Cameron's Reply was filed — in any event, the Reply contained a manifest contradiction.

35. The eventual line can be seen on the screen and in tab 99 of your folders. The irregular configuration of the line around points (ii) to (v) is due to the need to ensure that the line respects existing installations of both parties in the Ekanga and Zafiro region — both Parties have protested the other's activities in that region. Respect for all existing installations was one of the cardinal principles on which the negotiations proceeded.

36. The situation can be seen more clearly from the graphic which is tab 99. This shows the Treaty line in relation to the wells drilled by both parties. The Court will note the Ekanga field and the Equatorial Guinea's Zafiro field just on the other side. Agreement on the location of the line was reached without reference to any Cameroon claim, and without any knowledge by either party as to precisely where the claim line was. The Treaty was signed by Presidents Obasanjo and Mba Sogo on 23 September 2000 at Malabo — not, I think, a scene for a coerced treaty (see Rejoinder of Nigeria, Ann. NR 174). In accordance with Article 7.3, the Treaty was provisionally applied from that date. However, it was agreed that it would not be ratified until the parties and the companies concerned had agreed a unitization arrangement for the Ekanga field, which straddles the boundary. This has now been done.

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[3]Rejoinder of Nigeria, para. 10.33.

37. The Treaty is expressed to be a partial delimitation. The end of the partial line is point (i) which you can see on the screen. You will note that it stops well short of the point which has for many years been the actual *de facto* tripoint with Cameroon, a point whose existence the parties themselves had acknowledged, even if its precise location remained to be formally fixed. In accordance with Article 3 of the Treaty, the parties' respective claims to the north and east of point (i) are maintained pending the outcome of the present proceedings. The southernmost point, which is point (x), is on the equidistance line between Equatorial Guinea and Sao Tome and Principe agreed between them by treaty in 1999.

***(d)* Nigeria and Sao Tome and Principe**

38. Finally I should say a brief word about the negotiations between Nigeria and Sao Tome and Principe. These were also difficult, in that Nigeria was not prepared to accept that archipelagic baselines should be treated as equivalent to coastal frontages for delimitation purposes, whereas that was the position maintained by Sao Tome and Principe, which is an archipelagic State.

39. The JDZ Agreement accordingly preserved the parties' respective claims and established a joint development zone in the area of overlapping claims. This is the area shown in red lines on the screen and in tab 100. The JDZ Agreement has been ratified and is now in force.

40. Mr. President, Members of the Court, Nigeria makes no apology for continuing to negotiate agreements with its island neighbours in the western part of the Gulf of Guinea, negotiations of which it informed the Court at each stage of the written and oral proceedings concerning the maritime boundary. Cameroon's unilateral Application to the Court, with an entirely new and completely unclear claim, could not be allowed suddenly to freeze those negotiations. Nor could it put an end to the clear and consistent practice of Nigeria, Cameroon and Equatorial Guinea to the north. As that practice demonstrated, there was a tripoint beyond which Cameroon had never made an effective claim. Indeed, outside the pleadings in this case, it has to this day never made such a claim.

Mr. President, Members of the Court, that concludes this presentation of the history and the positions of the Parties. I would now ask you to call upon Professor Abi-Saab who will critique in

more detail Cameroon's new claim line in the context of the applicable international law. Thank you, Sir.

The PRESIDENT: Thank you very much, Professor Crawford. Je donne maintenant la parole au professeur Georges Abi-Saab.

M. ABI-SAAB : Merci, Monsieur le président.

## LA DÉLIMITATION MARITIME

### CRITIQUE DE LA «LIGNE ÉQUITABLE» DU CAMEROUN

1. Monsieur le président, Madame et Messieurs de la Cour, mes propos ce matin se divisent en deux parties :

La première consiste en une critique de la construction de ce que le Cameroun appelle «la ligne équitable» pour effectuer la délimitation des zones maritimes relevant de la compétence des deux Parties; tandis que la seconde partie examinera l'«équité» de cette ligne à la lumière de la jurisprudence.

**Critique de la construction de la ligne équitable**

2. Pour ce qui est de la première partie, la ligne réclamée par le Cameroun pose de nombreux problèmes. L'un d'eux, et non le moindre, est celui de son identification. Car, comme l'a si bien démontré mon collègue et ami, le professeur Crawford, cette ligne emprunte une configuration quelque peu différente chaque fois qu'elle apparaît dans une pièce de plaidoiries du Cameroun, et quelques fois dans la même pièce, et cela jusqu'à la procédure orale.

3. Cependant, dans toutes ses configurations, l'allure générale de cette ligne reste la même, reflétant une construction réfractaire aux principes et aux méthodes du droit de la mer, tels qu'ils ont été élaborés et appliqués jusqu'ici. C'est donc aux prémisses mêmes de cette ligne soi-disant «équitable», que mes critiques sont adressées, plutôt qu'à ses détails et son parcours précis.

4. Ces critiques portent principalement sur cinq points :

1. la nature même de la ligne;
2. les côtes pertinentes utilisées pour sa construction;
3. le traitement réservé aux îles dans cette construction;

4. la définition de la zone pertinente pour la délimitation; et enfin

5. la méthode suivie dans la construction de cette ligne.

**1. La nature de la ligne**

5. Ma première critique s'adresse à la nature même de cette ligne. Car, ainsi que le Nigéria l'a expliqué dans son contre-mémoire (p. 609-611, par. 23.13-23.17) et dans sa duplique (p. 423, par. 9.1-9.2), il ne s'agit pas d'une «ligne de délimitation», mais d'une «ligne d'exclusion».

6. Une ligne de délimitation a pour fonction de séparer les zones maritimes relevant de la compétence nationale des deux parties dont les côtes sont adjacentes ou se font face, que ces parties soient des parties contractantes ou des parties à une instance juridictionnelle, comme dans la présente affaire. Mais le but que se donne la ligne camerounaise est tout autre et autrement ambitieux.

7. Dans le golfe de Guinée, le Nigéria se trouve en présence de trois Etats, dont les côtes sont adjacentes ou font face à ses propres côtes, à savoir : le Cameroun, la Guinée équatoriale et Sao Tomé-et-Principe.

[Vous voyez la configuration générale sur l'écran et sous la lettre A dans le dossier de plaidoiries; projection lettre A.]

8. La ligne camerounaise aurait pour effet inéluctable non pas d'effectuer une délimitation entre les zones maritimes relevant des deux Parties à la présente instance, mais entre le Nigéria, d'une part, et tous les autres Etats côtiers du golfe de Guinée pris globalement, d'autre part. C'est dans ce sens qu'il s'agit d'une ligne d'exclusion, car elle a pour but de mettre le Nigéria hors jeu, ou de l'exclure de toute délimitation subséquente dans le golfe de Guinée.

[Projection, également sous lettre A]

9. En fait, le Cameroun s'arroge ainsi le droit de parler au nom des deux autres Etats, sans leur autorisation, et même contre leur volonté, dans une opération de délimitation globale avec le Nigéria; tout en gardant pour plus tard, c'est-à-dire après l'exclusion du Nigéria, la délimitation de la zone indivise issue de cette première opération. Ce qui ne cadre pas du tout avec la notion technique de délimitation, qui est par essence *inter partes*.

10. Il est vrai qu'il n'est pas exceptionnel, dans les délimitations maritimes, que d'autres Etats de la région puissent avoir des prétentions qui touchent ou chevauchent la zone pertinente où s'opère la délimitation. C'est le sens du paragraphe 130, que le Cameroun cite dans son mémoire, de l'arrêt de la Cour dans l'affaire du *Plateau continental (Tunisie/Libye)* (*C.I.J. Recueil 1982*, p. 91, par. 130); pour arguer que de telles tierces prétentions n'empêchent pas la Cour d'opérer la délimitation entre les Parties.

11. Il est également vrai que, mise à part la protection formelle des intérêts des tiers par l'effet relatif de la *res judicata* (article 59 du Statut de la Cour), les juridictions internationales ont pu pallier le risque de préjuger les droits des tiers, en arrêtant la ligne de délimitation juste en deçà des zones de possible chevauchement avec les intérêts des Etats tiers. Mais cela est-il possible dans la présente affaire, notamment si l'on suit la ligne camerounaise ?

12. Un simple regard sur la carte suffit pour nous convaincre que, vue sous cet angle, cette ligne serait mort-née, car à peine elle quitte son point de départ, le point G, elle entre dans le champ d'attraction de l'île de Bioko, c'est-à-dire qu'elle empiète déjà sur les droits, ou du moins les prétentions, de la Guinée équatoriale.

13. Il ne s'agit donc pas d'une situation où la ligne de délimitation divise l'essentiel de la zone pertinente, mais s'arrête à sa périphérie, où la présence des droits et des prétentions des tiers commence à se faire sentir. Ici, le tiers est omniprésent dès le début. Et cette présence devient de plus en plus pesante, cependant que celle du Cameroun devient de plus en plus éphémère, si tant est qu'elle continue d'exister, avec le mouvement de cette ligne soi-disant équitable vers le sud-ouest, dans des régions où chaque point est plus proche des côtes des îles de Bioko et de Sao Tomé-et-Principe, et/ou des côtes nigérianes que des côtes camerounaises qui sont censées générer cette ligne et la légitimer.

14. Une conséquence de cette construction illogique est que la ligne camerounaise préempte toute délimitation entre le Nigéria et les deux Etats dont les côtes font face à ses côtes sans entrave, la Guinée équatoriale et Sao Tomé-et-Principe, dans des zones qui sont en chaque point plus proches, et plus intimement liées aux côtes de ces trois Etats qu'aux côtes camerounaises. Et c'est dans ce sens que cette ligne est une ligne d'exclusion.

15. Une telle macro-délimitation sans procuration des intéressés, forcluant pour le Nigéria, mais également pour les deux autres Etats, toute possibilité de futures délimitations, alors que la position réciproque de leurs côtes appelle une délimitation selon le droit de la mer; une telle ligne est-elle compatible avec le droit international ?

Monsieur le président, Madame et Messieurs de la Cour, je me permets de vous laisser avec cette question.

**2. Les côtes pertinentes**

16. J'aimerais m'adresser maintenant aux prémisses ou aux paramètres mêmes de la construction de la «ligne équitable» camerounaise, à commencer par la notion de «côtes pertinentes» qui sont prises en considération pour les besoins de cette construction.

17. Les articles 15, 74 et 83 de la convention de Montego Bay, qui traitent de la délimitation des zones maritimes de compétence nationale, comme auparavant les articles correspondants des conventions de Genève de 1958, parlent tous de «délimitation ... entre des Etats dont les côtes sont adjacentes ou se font face».

18. Les côtes adjacentes sont des côtes qui se touchent et se continuent. Elles décrivent une situation où la ligne de la frontière terrestre débouche sur la mer à un point sur la même côte. Alors que les côtes qui se font face sont par définition des côtes «opposées» (en anglais «opposite coasts»). Mais qu'elles soient parallèles ou à un angle (variable évidemment), ces côtes entre lesquelles la délimitation aura lieu, doivent «se faire face», c'est-à-dire doivent être en position de vis-à-vis l'une de l'autre, pouvoir se regarder sans entrave.

19. C'est donc seulement les côtes (ou plutôt les parties des côtes) nigérianes et camerounaises qui correspondent aux qualificatifs «adjacents» ou qui «se font face», ainsi que je viens de l'esquisser, et seulement celles-ci, qui constituent les côtes pertinentes pour les besoins de la délimitation et qui serviront de paramètres pour la détermination de la zone pertinente, c'est-à-dire la zone à délimiter entre les deux Parties. [Vous avez la région donc ici sous A3 dans le dossier des plaidoiries.]

[Projection également sous lettre A]

20. Si nous examinons les côtes du Nigéria et du Cameroun qui donnent sur le golfe de Guinée, il est clair qu'elles ont un rapport d'adjacence dans la région où la frontière terrestre se termine, c'est-à-dire aux alentours de Bakassi (à l'est selon le Nigéria, à l'ouest selon le Cameroun).

21. Mais dès qu'on s'éloigne de cette région relativement exiguë, vers l'ouest pour la côte nigériane, jusqu'à Akasso (où la côte change de direction en tournant vers le nord-ouest, donnant le dos au golfe de Guinée), ou vers l'est pour la côte camerounaise, (qui tourne rapidement en arc vers le sud) jusqu'à cap Debundsha, ces côtes répondent à la description des «côtes qui se font face». A cap Debundsha commence l'effet d'obstruction de l'île de Bioko, dont la pointe nord-est forme, avec le cap Debundsha, un détroit dont les eaux sont totalement épuisées dans les eaux territoriales respectives des deux Etats; ou, en d'autres termes, ceux de la Chambre de la Cour dans l'affaire du *Golfe de Maine*, (*C.I.J. Recueil 1985*, p. 336, par. 221) «un point ... où il n'y a plus ... d'étendues maritimes dépassant les 12 milles à partir de la laisse de basse mer...»

[Projection également sous lettre A]

22. Au-delà de ce point, la côte camerounaise se dirigeant vers le sud jusqu'à la frontière avec la Guinée équatoriale, est totalement obstruée par la grande île de Bioko, appartenant à la Guinée équatoriale et portant sa capitale. Il n'y a plus de vis-à-vis entre cette partie de la côte camerounaise et la côte nigériane. Par conséquent, cette partie de la côte camerounaise, dès le cap Debundsha, ne peut être qualifiée juridiquement comme relevant des côtes camerounaises «faisant face» aux côtes nigérianes; en d'autres termes, elle ne peut plus être prise en compte en tant que «côte pertinente» pour les besoins de la construction de la ligne de délimitation.

23. Or, le Cameroun, non seulement inclut cette partie de ses côtes dans ce qu'il considère comme les côtes pertinentes pour les besoins de la délimitation, mais il s'approprie en plus toute la façade continentale de la Guinée équatoriale, ainsi qu'une bonne partie de la côte gabonaise.

24. Par quelle prouesse d'imagination juridique peut-on arriver à une telle représentation ? En bonne part à travers un traitement fantaisiste des îles; ce qui m'amène à mon prochain point.

**3. L'effet des îles**

25. Monsieur le président, Madame et Messieurs de la Cour, ce n'est pas dans ce prétoire que j'ai besoin de rappeler la fameuse injonction de la Cour en 1969, selon laquelle «il n'est jamais question de refaire la nature» (Affaires du *Plateau continental de la Mer du Nord, C.I.J. Recueil 1969*, p. 49, par. 91). Or, la ligne camerounaise non seulement refait radicalement la géographie physique du golfe de Guinée, en y éliminant le chapelet important d'îles qui le sectionne presque au milieu de haut en bas; mais elle défait également la géographie politique des côtes qui l'entourent, en appropriant les côtes continentales de la Guinée équatoriale et du Gabon au Cameroun pour les besoins de la construction de la ligne, soi-disant équitable, comme je viens de l'expliquer.

26. Quant aux îles, l'existence de l'île de Bioko, une île importante par sa surface et sa population, qui porte la capitale de la République de la Guinée équatoriale, l'existence de cette île toute proche des côtes des Parties, est tout à fait ignorée par la «ligne équitable», et cela sur plusieurs registres :

— premièrement, j'ai déjà mentionné que la ligne ignore totalement son effet d'écran, qui cache une partie importante des côtes camerounaises, si on les regarde à partir des côtes nigérianes, leur ôtant ainsi la qualité de côtes pertinentes;

— deuxièmement, elle n'exerce aucune influence sur le parcours de la ligne dans les deux premiers secteurs G-H et H-I, secteur H-I qui semble paradoxalement plus proche de Bioko que des côtes camerounaises;

— troisièmement, elle n'est pas prise en compte dans le calcul de proportionnalité (calcul faux par ailleurs, comme j'essayerai de le démontrer dans un instant), en vue de situer le point I sur la ligne tirée par le Cameroun dans ce but, entre Bonny et Campo; une ligne qui, traverse paradoxalement l'île de Bioko (et que vous voyez sur l'écran et dans le dossier de plaidoiries sous A4).

27. Il en est de même, plus au Sud, pour les lignes transversales qui enjambent l'archipel de Sao Tomé-et-Principe, archipel qui constitue un Etat indépendant.

28. Pour la «ligne équitable» camerounaise, il ne s'agit donc pas de concéder un effet quelconque à ces îles, car seules les côtes continentales comptent. Et ces côtes sont amalgamées en

un seul ensemble en faveur du Cameroun face au Nigéria. On en revient ainsi à la logique de la ligne d'exclusion.

29. Mais cela ne saurait prévaloir en droit. Car aussi bien la convention de 1982 que la jurisprudence constante, sont très claires sur ce point. Il suffit de rappeler le paragraphe 185 du récent arrêt de la Cour dans l'affaire *Qatar c. Bahreïn* où il est dit :

> «Conformément au paragraphe 2 de l'article 121 de la convention de 1982 sur le droit de la mer, qui reflète le droit international coutumier, les îles, quelle que soient leur dimension, jouissent à cet égard du même statut, et par conséquent engendrent les mêmes droits en mer que les autres territoires possédant la qualité de terre ferme.» (*C.I.J. Recueil 2001*, par. 185.)

30. Il est vrai que dans certaines décisions judiciaires et arbitrales internationales, les effets des îles sur la construction d'une ligne d'équidistance a été modéré. Mais en l'absence d'autres circonstances pertinentes ou spéciales, cela ne s'est produit que par rapport à des îles qui appartiennent à l'un ou à l'autre des Etats parties à la délimitation, et seulement dans des situations où la configuration particulière des côtes aurait projeté de manière par trop exagérée le front maritime de l'Etat auquel les îles appartiennent vers les côtes de l'autre Etat, dans le calcul de l'équidistance.

31. Dans de telles situations, si les îles sont au large de l'Etat côtier, l'organe juridictionnel pourrait leur attribuer moins qu'un effet total, tel que l'a fait la Cour dans l'affaire du *Plateau continental (Tunisie/Libye)*, par rapport aux îles Kerkennah (*C.I.J. Recueil 1982*, par. 128-129). En revanche, si les îles se trouvent du «mauvais côté» d'une ligne d'équidistance construite sans prise en considération des îles, c'est-à-dire que les îles appartenant à un Etat se trouvent juste devant les côtes de l'autre Etat, la solution adoptée parfois, tel dans l'arbitrage franco-britannique de la *Mer d'Iroise*, pour ce qui est des îles anglo-normandes qui sont situées tout près des côtes françaises, cette solution est celle de l'enclave. Mais dans les deux cas de figure, il s'agit des îles appartenant à l'une des parties à la délimitation, îles qui en avançant la façade maritime de l'Etat auquel elles appartiennent dans une configuration particulière, affectent de manière exagérée la répartition de la zone pertinente entre ces les deux parties, si la délimitation est effectuée par une ligne d'équidistance leur attribuant plein effet.

32. Il s'agit donc toujours de modérer les effets des îles dans le déplacement de la façade maritime ou des côtes pertinentes des parties, et entre ces parties.

33. Mais cette modération des effets des îles, ne saurait être envisagée quand les îles appartiennent à un tierce Etat, à moins qu'il y ait une autre circonstance pertinente ou spéciale qui pourrait la justifier.

34. La raison en est que dans la situation où l'île appartient à un tiers Etat, il ne s'agit plus de corriger ou de modérer les effets exagérés de la position des îles en tant qu'incident géographique mineur, qui intervient dans la façade maritime de l'une ou l'autre des deux parties. Mais il s'agit d'*une nouvelle façade maritime* qui entre en jeu, interrompant le tête-à-tête des deux parties et appelant ainsi une autre délimitation, dans le sens d'une délimitation additionnelle.

35. Cela m'amène, Monsieur le président, Madame et Messieurs de la Cour, à mon prochain point, celui de la définition de la zone pertinente dans la présente affaire.

**4. La définition de la zone pertinente**

36. Une des fonctions des côtes pertinentes est de servir de paramètre pour la définition de la «zone pertinente», c'est-à-dire la zone à délimiter entre les parties en présence.

37. Sur ce sujet aussi, le Cameroun ne semble pas être très sûr de son affaire. Dans son mémoire (p. 453, par. 5.96), il définit la zone pertinente dans la présente affaire ainsi :

> «Il s'agit d'une zone située *au-delà* de la limite des 200 milles marins des lignes de base à partir desquelles on mesure la largeur des eaux territoriales par rapport aux côtes continentales. La zone ne peut exclure les éléments géographiques donnés par la nature, y compris le fait de la présence de l'île de Bioko et, plus au large, celle des îles de Sao Tomé et de Principe. La zone est celle indiquée par le croquis page suivante.»

Et d'illustrer cette définition par le croquis que vous trouvez sur l'écran et sous la lettre B dans le dossier des plaidoiries (mémoire, p. 544) :

[Projection lettre B]

38. Quelques remarques sur cette définition et sur ce croquis (qui par ailleurs ne coïncident pas totalement).

39. En premier lieu, la définition comporte une erreur, ou plutôt un lapsus important — peut-être freudien —, car la zone se situe non pas *au-delà* de la limite des 200 milles marins, mais à l'intérieur de cette limite.

40. Deuxièmement, la zone est représentée dans le croquis en forme rectangulaire, bordée au sud par une ligne partant grossièrement au milieu de la façade continentale de la côte de la Guinée

équatoriale, qui est censée refléter la ligne de 200 milles marins à partir des côtes horizontales du golfe de Guinée. Ce rectangle n'a pas de bordure verticale à l'ouest, ce qui serait nécessaire pour un calcul de surface en vue d'une éventuelle vérification de proportionnalité.

41. Troisièmement, la ligne commence au sud, comme je viens de dire, du milieu de la façade continentale de la Guinée équatoriale et passe juste au-dessous de l'île de Principe, presque en l'effleurant, c'est-à-dire à travers l'Etat archipélagique de Sao Tome-et-Principe, avant d'évoluer vers l'ouest en remontant doucement. En d'autres termes, elle se trouve en pleine mer territoriale et eaux archipélagiques de deux autres Etats qui ne sont pas partie à la délimitation; ce qui se passe de commentaires.

42. Cependant, dix pages plus loin dans le mémoire du Cameroun, nous rencontrons une configuration totalement nouvelle de ce qui est appelé cette fois-ci nébuleusement «l'aire totale pertinente»; notion reprise et retraitée de manière un peu plus rigoureuse dans la réplique, qui la décrit comme «ce que le Cameroun considère comme la zone pertinente au sens de la jurisprudence de la Cour» (réplique du Cameroun, p. 421, par. 9.83). Selon la réplique, cette zone : «recouvre une aire comprise entre la ligne réelle des côtes partant d'Akasso/Brass au Nigéria ... [jusqu'au] Cap Lopez au Gabon [où elle] est fermée par une ligne droite allant de ce point à Akasso au Nigéria» *(ibid.)*. [Vous avez la carte sur l'écran et elle figure sous la lettre C dans le dossier des plaidoiries.]

[Projection lettre C]

43. On aboutit ainsi, dans le même mémoire, puis dans la réplique, à une zone triangulaire et non plus rectangulaire, dont le côté vertical du triangle s'étend beaucoup plus loin vers le sud, jusqu'au Cap Lopez, c'est-à-dire cette fois au Gabon, et non seulement jusqu'au milieu de la côte continentale de la Guinée équatoriale, comme pour le rectangle.

44. Ce qui interpelle immédiatement celui qui regarde cette carte, c'est la question de savoir s'il s'agit vraiment d'une ou de plusieurs zones pertinentes. Et si la réplique nous dit «la zone pertinente ainsi définie se devise en trois secteurs» (réplique du Cameroun, p. 422, par. 9.85), j'y vois personnellement, en revanche, comme par ailleurs le mémoire du Cameroun auquel la réplique réfère, non pas trois secteurs d'une même zone, mais «trois zones différentes» (mémoire du Cameroun, p. 553, par. 5.119); ce sont les mots du mémoire. Cependant, contrairement au

mémoire, j'entends par cela trois véritables «zones pertinentes», dans le sens technique du terme, qui sont différentes parce que impliquant des délimitations entre trois ensembles différents d'Etats. Permettez-moi d'en faire la démonstration.

45. Comme je viens de l'expliquer, une zone pertinente est déterminée par, ou en fonction des côtes pertinentes des parties à la délimitation, côtes définies à leur tour comme «adjacentes» ou «se faisant face». Si nous appliquions ces définitions à la «zone pertinente» qui nous est proposée par le Cameroun, nous trouverions effectivement plusieurs, et non pas seulement deux côtes pertinentes; et ces côtes bordent non pas un seul, mais plusieurs espaces maritimes répondant à la qualification juridique de «zone pertinente».

46. Et, comme mon collègue le professeur Crawford vient de décrire en détail le contexte géographique général du golfe de Guinée, y compris les côtes et les îles et les rapports entre elles, là où ces rapports existent ou cessent d'exister, je me limiterai à énumérer les différentes zones pertinentes qui en résultent, et qui sont au nombre de trois [vous les trouverez dans le dossier des plaidoiries sous la lettre D 1, 2, 3].

[Projection lettre D]

47. En premier lieu, et c'est l'évidence même, il y a une zone pertinente qui commence dans la région d'adjacence des côtes nigérianes et camerounaises sur le côté horizontal du triangle au nord du golfe de Guinée. Cependant, au-delà de la région d'adjacence relativement exiguë autour de la péninsule de Bakassi, à l'est, la côte camerounaise change radicalement de direction en virant brusquement vers le sud, se mettant ainsi en position de vis-à-vis, ou de côte qui fait face, au prolongement horizontal vers l'ouest de la côte nigériane au-delà de la région d'adjacence. Cette première zone pertinente s'étend ainsi vers l'ouest, sur la côte nigériane, jusqu'à Akasso et vers l'est, comme je l'ai déjà indiqué, jusqu'au cap Debundsha sur la côte camerounaise, avec comme clôture à l'est la ligne qui ferme le détroit entre ce cap et la pointe nord-est de Bioko. Les côtes nord et ouest de Bioko constituent la troisième côte pertinente de cette zone.

48. Au sud, cette zone converge vers un tripoint, au nord-ouest de Bioko, dont la position exacte dépend de celle du point terminal de la frontière terrestre entre le Nigéria et le Cameroun. Mais ce tripoint est confiné dans des limites relativement étroites, étant donné la configuration des côtes pertinentes et qu'une autre zone pertinente prend immédiatement le relais au sud et à l'ouest.

49. Les deux autres zones pertinentes résultent de l'effet de bissectrice qu'exercent les chapelets d'îles dans le golfe de Guinée. En tant qu'écran diagonal, ces îles divisent le reste du golfe en deux zones pertinentes, avec deux façades maritimes des mêmes îles à l'est et à l'ouest. [Projection également sous lettre D]

50. A l'est, la façade maritime des îles borde une zone pertinente avec, de l'autre côté, la côte continentale verticale de l'Afrique. Cette zone est bordée au nord par la ligne de fermeture du détroit entre la pointe nord-est de Bioko et le cap Debundsha sur la côte camerounaise, et comprend le segment de cette côte allant du cap Debundsha jusqu'à la frontière avec la Guinée équatoriale, puis toute la façade continentale de la Guinée également, et la partie des côtes gabonaises qui donne sur le golfe de Guinée.

51. Les côtes bordant cette zone est, n'ont aucun rapport avec les côtes nigérianes; elles n'ont par conséquent aucune pertinence pour la délimitation dans la première zone pertinente au nord. Et réciproquement, les côtes nigérianes n'ont aucune pertinence pour la délimitation de cette zone est, qui est confinée aux Etats dont les côtes la bordent.

52. La seule manière pour le Cameroun de faire intervenir une partie de sa côte verticale à l'est en tant que côte pertinente dans la délimitation avec le Nigeria, c'est de prétendre que cette côte génère une zone horizontale de compétence nationale pour le Cameroun, qui s'étend à travers la partie sud-ouest du golfe de Guinée, chevauchant ainsi avec la zone qui prolonge vers le sud les côtes nigérianes, donc au-dessous de Bioko.

53. Mais cette construction invraisemblable, mise à part l'absence de vis-à-vis entre les côtes concernées, assume au préalable qu'une telle zone camerounaise horizontale puisse percer l'écran infranchissable que constitue le chapelet d'îles, en passant entre l'île de Bioko et l'île de Principe, pour aboutir, dans la troisième zone pertinente, à l'ouest du chapelet d'îles. Ce qui est loin d'être démontré, pour autant que cela soit démontrable. Et de toute manière, le Cameroun n'a pas formulé une telle prétention dont la Cour serait saisie.

[Projection également sous lettre D]

54. La troisième zone pertinente dans la région est celle qui se trouve à l'ouest du chapelet d'îles, au sud de la première zone qui culmine en un tripoint au nord-ouest de Bioko. Cette zone est bordée par la côte nigériane au nord, allant du point terminal de la frontière terrestre avec le

Cameroun jusqu'à Akasso, d'une part, et la façade ouest-sud-ouest de l'île de Bioko, prolongée par celles ouest-nord-ouest de Sao Tome-e-Principe, d'autre part. Au-delà du tripoint, qui marque la clôture nord de la zone, les côtes camerounaises n'ont aucune pertinence dans cette zone. La méthode de construction de la ligne «équitable», qui s'ingénie à prolonger la zone de compétence nationale camerounaise jusqu'aux tréfonds de cette zone pertinente ouest, est si fantaisiste qu'elle vaut le détour, et je m'y arrêterai quelques instants.

**5. La méthode de construction de la ligne**

55. Monsieur le président, Madame et Messieurs de la Cour, permettez-moi de rappeler que, dans son mémoire, le Cameroun a commencé par nous présenter une zone pertinente de forme rectangulaire, mais quand il arrive à la construction de la ligne, il nous présente cette fois-ci un triangle beaucoup plus grand issu de la fermeture de l'ensemble du golfe de Guinée, sous la dénomination nébuleuse de l'«aire totale pertinente».

[Projection lettre E]

56. Peut-on déceler, à travers cette hésitation terminologique, un certain embarras devant un élargissement par trop exagéré de ce que la réplique appellera fermement par la suite la «zone pertinente» (et je crois avoir démontré qu'elle enferme en réalité trois zones pertinentes) ? Mais cet élargissement au-delà de tout ce qu'on aurait pu imaginer comme «côtes pertinentes» était en fait nécessaire pour les besoins de la méthode fantaisiste utilisée pour la construction de la ligne.

57. Cette «méthode» consiste à choisir deux points sur la côte nigériane d'un côté, et trois points sur la côte continentale verticale du golfe de Guinée de l'autre, et à tirer des lignes transversales entre ces points à travers le golfe. Ces lignes sont coupées par un point dont la position sur la ligne est supposée refléter la proportion entre les longueurs des côtes pertinentes des deux côtés, à la hauteur de la ligne. Ces points sont reliés pour produire la soi-disant «ligne équitable».

58. Cette méthode, je dois l'admettre, est une fille d'une imagination fertile; elle ne résiste cependant pas au premier examen critique, et cela à maints égards; les deux principaux sont en premier lieu le choix des points d'ancrage des lignes transversales sur les côtes, une question reliée à la détermination des côtes pertinentes et de leur longueur; et en second lieu, la technique même

de tirer des lignes transversales, et la détermination de la position du point bissecteur sur chacune d'elles.

59. En ce qui concerne le choix des points d'ancrage des lignes sur les côtes du golfe de Guinée, ces points ne peuvent figurer que sur les côtes pertinentes, c'est-à-dire les côtes qui bordent la «zone pertinente» à délimiter entre les Parties. Or, deux des trois points sur la côte verticale du golfe de Guinée sont bien loin du Cameroun, à Cabo San Juan en Guinée équatoriale, et Cap Lopez au Gabon. On ne voit pas de quelle manière ces côtes, et par conséquent les points appuyés sur elles et les lignes tirées de ces points, peuvent être «pertinents» pour la délimitation.

60. Et même pour la première ligne, dont les points d'ancrage sont Bonny sur la côte nigériane et Campo au point terminal de la frontière terrestre entre le Cameroun et la Guinée équatoriale, ces points sont arbitraires ou faux. Arbitraires, car le choix de Bonny, plutôt qu'Akasso, ne se justifie guère logiquement, Bonny se situant au milieu de la côte pertinente nigériane; sauf grâce à la gentillesse du Cameroun, car, selon la réplique,

> «le choix d'Akasso aurait eu pour conséquence d'orienter le tracé encore plus à l'ouest, créant un effet de fermeture vis-à-vis des côtes nigérianes, et aboutissant de la sorte à un résultat inéquitable» (réplique du Cameroun, p. 425, par. 9.89).

61. Cela ne serait vrai, même si l'on acceptait la méthode douteuse de calcul de proportionnalité qui sous-tend tout l'exercice, que si le choix de l'emplacement de l'autre point de l'ancrage de la ligne, à Campo, était correct. Or, il ne l'est pas, étant donné que, comme je viens de l'expliquer, la côte camerounaise subit l'effet d'obstruction de l'île de Bioko dès le cap Debundsha et jusqu'à la frontière avec la Guinée équatoriale à Campo et cesse par conséquent d'être pertinente; ce qui rend Campo comme point d'ancrage également inéligible, au même titre que Cabo San Juan et Cap Lopez.

62. Mais c'est la technique même utilisée pour tirer ces lignes qui est viciée, et c'est mon deuxième point dans cette rubrique et qui est l'objet de ma seconde remarque. Ces lignes sont censées refléter, par la position d'un point figurant sur leur tracé, la proportion des longueurs des côtes pertinentes des Parties, mesurées des deux côtés du point terminal de la frontière, jusqu'à l'emplacement de ces deux points.

63. Or, comme on vient de le voir, deux de ces trois lignes commencent du côté nigérian à Akasso, mais elles aboutissent à deux points de plus en plus distants de l'autre côté. En d'autres

termes, elles sont censées refléter la proportion entre une distance fixe d'un côté et une distance qui s'allonge de l'autre, ce qui est illogique. Mais, de toute manière, comme ni l'une ni l'autre ne se termine sur une côte pertinente, s'agissant de côtes des Etats tiers, et qui sont en plus cachées des côtes nigérianes par les chapelets d'îles, ces lignes n'ont plus de sens comme indicateurs de proportion entre des longueurs des côtes pertinentes.

64. Il en est de même, pour la troisième ligne entre Bonny et Campo (qui aurait dû logiquement, de l'aveu du Cameroun, commencer également à Akasso), étant donné que la partie de la côte camerounaise, du cap Debundsha jusqu'à Campo, est exclue des côtes pertinentes pour les besoins de la délimitation.

[Projection lettre E]

65. Pour pallier l'inclusion des côtes de la Guinée équatoriale continentale et du Gabon (mais pas de la partie non pertinente de la côte camerounaise), la réplique du Cameroun nous dit que chacune des deux lignes d'Akasso à Cabo San Juan et à Cap Lopez «est diminuée du segment en pointillés sur la carte ... correspondant à l'influence de la côte équato-guinéenne [ou gabonaise] sur la longueur totale de la portion pertinente des côtes des deux Parties» (réplique du Cameroun, p. 425, par. 9.91).

[Vous voyez les parties en pointillés sur l'écran et sous la lette E dans le dossier de plaidoiries; projection lettre E.]

66. Le Cameroun inclut évidemment dans la mesure de la côte pertinente camerounaise toute la partie non pertinente à partir du cap Debundsha, comme il ne déduit pas de la longueur de la première ligne la partie de cette ligne qui traverse Bioko.

67. Mais assumant *arguendo* que tout cela soit exact, cette solution, soi-disant équitable, que nous donne-t-elle comme carte ?

[Vous verrez la réponse sur l'écran et sous la lettre F dans le dossier; projection lettre F.]

68. En fait, le Cameroun essaye, par ce stratagème, de transformer un golfe avec cinq Etats côtiers en un golfe avec seulement deux : lui-même et le Nigéria. Et cela, en donnant un demi-tour à sa côte, lui faisant éviter largement l'effet d'obstruction de Bioko, en la faisant pivoter autour de Bioko vers le sud-ouest, se confondant avec la ligne du chapelet d'îles pour le dépasser au sud. C'est comme si on redessinait le golfe avec la ligne rouge plutôt qu'avec sa partie méridionale. Le

Cameroun déplace ainsi sa côte, comme par un jeu de saute-mouton par-dessus le chapelet d'îles, de l'est à l'ouest, pour la bonifier la partie obstruée par les îles, qui devient ainsi «côte pertinente» par rapport à la côte nigériane jusqu'à Akasso. Pour ce faire, le Cameroun décale toute la façade est du golfe de Guinée vers l'ouest, et la ligne divisoire avec elle, tout en raccourcissant l'ouverture du golfe.

69. Je me permets, Monsieur le président, Madame et Messieurs de la Cour, de demander, si cela n'est pas refaire la nature, qu'est-ce qui peut l'être ? De telles acrobaties mentales ne mènent à rien qu'on puisse asseoir confortablement sur un raisonnement juridique solide et compatible avec le droit et la jurisprudence.

Monsieur le président, j'en arrive à ma deuxième partie qui prendra entre quinze et vingt minutes. Je suis «entre vos mains».

Le PRESIDENT : C'est comme vous préférez, Monsieur le professeur. Si c'est entre quinze et vingt minutes, nous pouvons interrompre maintenant ou dans quinze/vingt minutes. Vous faites votre choix.

M. ABI-SAAB : Je préfère continuer.

Le PRESIDENT : Alors, continuez.

M. ABI-SAAB : Merci.

**L'«équité» de la «ligne équitable» à la lumière de la jurisprudence**

70. En fait, ces acrobaties sont justifiées, nous dit-on dans les écritures camerounaises, par la quête de la «solution équitable», la seule norme, ou «Grundnorm» qui vaille en matière de délimitation maritime. Comme si en droit on peut arguer que la fin peut justifier tous les moyens, sans se soucier de la crédibilité du raisonnement; ce qui aboutirait fatalement à une justice purement d'espèce, la «justice irrationnelle» selon Max Weber. Mais cette solution, nous réplique-t-on, est inspirée de la jurisprudence d'où sont découpées les pièces du puzzle utilisées pour construire la ligne équitable. Voyons donc si cela est vrai, ou si les pièces du puzzle sont si déformées au point de ne plus pouvoir se réclamer d'une telle ascendance.

71. Avant d'examiner la jurisprudence et tester la pertinence des analogies, je me permets, cependant, Monsieur le président, de résumer la position du Cameroun à cet égard — et j'espère que je ne la déforme pas. Le Cameroun énumère dans ses écritures une longue liste de ce qu'il considère, à la lumière de la jurisprudence, comme circonstances pertinentes (mémoire du Cameroun, p. 545-546, par. 5.98-5.99; réplique du Cameroun, p. 403-409, par. 9.54-9.62), liste réduite à trois, il est vrai, dans les plaidoiries orales, à savoir, la longueur de sa côte, sa concavité et l'existence proche de l'île de Bioko. Le Cameroun considère que la conjugaison de ces circonstances en l'espèce suffit à établir, toujours selon le Cameroun, ce qu'on pourrait appeler (mais les termes sont les miens) le caractère «uniquement inique» de la position géographique des côtes camerounaises. Les solutions adoptées par la jurisprudence en prenant compte de ces circonstances dans les diverses affaires, fonderaient, à nouveau selon le Cameroun, la construction fantasque de la ligne équitable que je viens de critiquer.

**1. Le plateau continental de la mer du Nord (1969)**

72. Alors, commençons par le commencement, qui est en la matière 1969, avec l'arrêt de la Cour dans les affaires du *Plateau continental de la mer du Nord* (*C.I.J. Recueil 1969*, p. 3). Ai-je vraiment besoin de rappeler une fois encore les sages énoncés de la Cour, selon lesquels «l'équité n'implique pas nécessairement l'égalité», et qu'«il n'est jamais question de refaire la nature», mais simplement «de remédier à une particularité non essentielle d'où pourrait résulter une injustifiable différence de traitement» (*ibid.*, p. 50-51, par. 91).

73. En d'autres termes, il s'agit seulement d'adoucir les effets d'incidents mineurs qui produiraient des effets disproportionnés si le principe et la méthode de l'équidistance sont appliqués machinalement; des opérations esthétiques mineures pour arrondir les angles et non pas pour changer ou camoufler le visage ou l'allure du sujet.

74. Et c'est exactement ce qu'a fait la Cour en 1969 dans ces affaires.

[Vous voyez la solution de la Cour projetée là; elle se trouve sous la lettre G1 dans le dossier; projection lettre G.]

75. La position de l'Allemagne dans ces affaires était beaucoup plus «coincée» que celle du Cameroun dans la présente affaire, car sa côte concave était plus exiguë, les frontières avec le Danemark et les Pays-Bas étaient beaucoup plus rapprochées de ces côtes.

76. La solution adoptée par la Cour pour adoucir ou infléchir légèrement l'effet de la forme concave de la côte sur les lignes d'équidistance des deux côtés était d'ouvrir un peu les angles du triangle, par quelques degrés seulement, pour éloigner le point triple quelque peu vers le large; et cela notamment qu'il existait un point d'aboutissement qui s'imposait logiquement, sur la ligne d'équidistance avec l'Etat d'en face, le Royaume-Uni, et qui se trouvait à une distance raisonnable du tripoint équidistant non corrigé.

77. On est loin de cette configuration dans la présente affaire. Car ici, le triple point n'est pas entre trois pays limitrophes qui bordent le golfe, mais entre deux Etats, dont les côtes sont adjacentes, et les côtes d'un troisième, qui leur font face. C'est Bioko, qui est ici dans la position du Royaume-Uni dans le schéma de 1969. Et la solution que prône la ligne équitable est autrement plus ambitieuse, en fait extravagante comparée à celle de la Cour en 1969. Une solution qui n'a jamais été envisagée ou avancée par le Cameroun dans les négociations précédentes. Ces négociations envisageaient toutes un point triple, même s'il y avait ou n'y avait pas d'accord sur son emplacement exact. La «ligne équitable» qu'on a maintenant ne veut plus de point triple, elle veut forcer vers le sud et le sud-ouest jusqu'à 200 milles marins et même au-delà.

78. C'est comme si l'Allemagne avait réclamé en 1969 un plateau continental qui traverse les lignes de délimitation avec le Royaume-Uni et la Norvège, et passe entre les plateaux de ces deux Etats vers le large, dans l'Atlantique Nord, en se gonflant tout au long du chemin, peut-être jusqu'à l'Islande. Voyez la solution qui sortira de la solution équitable.

[Projection également sous lettre G]

79. Il est vrai que le Cameroun persiste à ne pas définir la zone camerounaise qu'engendrerait la «ligne équitable»; et il a raison, car il ne peut pas le faire en l'absence de la Guinée équatoriale et de Sao Tomé-et-Principe. Mais sans ces deux Etats, l'exercice relèverait un peu du théâtre de l'absurde; car comment peut-on, sans savoir la superficie de la zone réclamée, vérifier l'équité du résultat par le test de la proportionnalité, qui est l'argument principal du

Cameroun et la justification première de cette ligne désignée par le qualificatif équitable ? Mais passons.

[Projection lettre H]

80. Cette zone camerounaise, bien que non définie, se laisse entrevoir tout de même à travers les croquis et les arguments camerounais, et de toute manière, elle est confinée par des paramètres géographiques inévitables, qui laissent apparaître une silhouette — que vous trouverez à l'écran sous la lettre H dans le dossier — ayant la forme d'un cerf-volant, relativement dodu dans la région d'adjacence, mais s'amincissant dans son mouvement vers le sud (au long de la ligne H-I), sous le poids conjugué des deux côtés de la côte nigériane et de Bioko; s'amincissant disais-je, mais non pas pour se mourir en un point triple, au nord-ouest de Bioko, mais pour traîner une très longue queue, qui commence comme une mince ficelle au large de Bioko, mais qui vire abruptement dans une direction sud-ouest, en se gonflant en queue de poisson, tout au long, jusqu'au point qui figure sur la carte, mais qu'on n'a pas le droit de nommer point L. Alors, appelons-le le non-point (comme dans les négociations diplomatiques on a des non-papiers *(non papers)*.

81. Le non-point n'est pas là où il est par hasard. Il est à 200 milles, mesurés à partir des côtes camerounaises. En plus, on nous dit que le non-point n'est pas l'arrêt final, car le plateau continental au-dessous de la zone va continuer sa marche triomphale jusqu'aux plaines abyssales.

82. Mais je me permets de vous demander, Monsieur le président, Madame et Messieurs de la Cour, de regarder sur la carte où se trouve ce non-point, et de contempler les rapports de cet endroit avec les côtes en présence.

83. Si nous appliquions, selon l'expression de la Cour dans l'affaire du *Plateau continental (Libye/Malte)* (*C.I.J. Recueil 1985*, p. 41, par. 49) le critère ou la notion «de l'adjacence en fonction de la distance», et même en comprenant la distance dans un sens plus flexible qu'une pure équidistance, un simple regard suffit pour voir que la région du non-point est non seulement très éloignée des côtes camerounaises, mais ne peut être considérée comme les prolongeant en aucune manière. En fait, elle se trouve verticalement au-dessous et même au-delà de l'extrémité ouest de la côte nigériane faisant face au golfe de Guinée, au-delà même d'Akasso, à peine à 100 milles marins de cette côte, alors qu'elle est tout à fait décalée loin au sud-ouest par rapport à la côte camerounaise. Il est impossible de voir de quelle manière elle peut être considérée comme

prolongeant naturellement cette côte. Cette région est beaucoup plus proche, étroitement liée et prolongeant plus naturellement les côtes nigérianes et celles de Principe que celles du Cameroun. Et cela s'applique *mutatis mutandis* à toute la zone à l'est de la ligne équitable, dès les points K, J, et même I, si on remplace Principe par Bioko.

**2. Saint-Pierre-et-Miquelon (1992)**

84. Le Cameroun réplique en invoquant un autre précédent, celui de *Saint-Pierre-et-Miquelon*, où le tribunal arbitral a accordé à ces deux îles au large des côtes canadiennes, au-delà de la solution de l'enclave, un couloir vers le large jusqu'à 200 milles marins. [Vous avez le croquis sous la lettre J dans le dossier.]

[Projection lettre J]

85. Mis à part les réserves qu'on peut avoir quant au caractère de précédent de cette décision, il s'agit d'un contexte géographique radicalement différent de celui de la présente affaire. La côte pertinente canadienne était toute droite. Les îles obstruaient une toute petit partie de cette côte, et le tribunal les a considérées, pour ce qui est du couloir, comme si elles ont remplacé, sur la façade maritime canadienne, la partie de la côte qu'elles obstruaient; un couloir, de la simple «largeur d'ouverture côtière des îles» (décision, par. 71), et de la même largeur tout au long. Mais ce qui compte le plus et surtout, c'est qu'il n'y avait aucune obstruction en face; et le tribunal ajoutait, «il ne faut pas laisser une telle projection vers le large empiéter sur une projection frontale parallèle de segments adjacents du littoral sud du Terre-Neuve ou *amputer* leur projection» (*ibid.*, par. 70).

86. Dans la présente affaire en revanche la côte camerounaise est arrondie et l'île de Bioko qui l'obstrue est une très grande île.

87. Un couloir camerounais partant de la région d'adjacence, aussi étroit qu'il soit, s'il suit une tendance plutôt horizontale, amputera de manière radicale la zone prolongeant la côte nigériane; et s'il développe une tendance verticale, il amputera de la même façon les zones prolongeant les côtes de Bioko et de Principe au sud, s'il arrive jusque là. De toute manière, il ne sera pas le prolongement naturel de la côte camerounaise, car s'écartant de son axe droit vers le large. Or, cet axe droit, c'est précisément l'axe du chapelet d'îles. Et c'est là que réside le problème du Cameroun. Mais, hélas, on ne saurait refaire la nature, du moins pas par le droit.

88. C'est là que réside la limite de l'équité également. Mais, en fin de compte, est-ce que la situation géographique des côtes camerounaises est vraiment «uniquement inique», à la lumière de la jurisprudence, au point de permettre de tels écarts des méthodes, règles et principes juridiques pour arriver à la solution fantasque de la ligne soi-disant équitable ?

**3. Plateau continental (Tunisie/Libye) (1982)**

89. La réponse est clairement négative. Car, cette Cour même a traité d'une affaire très semblable, à laquelle elle a apporté une solution qui n'a rien à voir avec l'extravagance de celle prônée par le Cameroun. Je me réfère, Monsieur le président, Madame et Messieurs de la Cour, à l'affaire du *Plateau continental (Tunisie/Libye)*, qui a été décidée par la Cour en 1982.

90. La position géographique de la Tunisie n'était pas dissimilaire de celle du Cameroun, sauf pour l'inversion de la direction, nord-est pour la Tunisie, sud-ouest pour le Cameroun. [Vous avez le croquis de la situation générale sous la lettre K1 dans le dossier; projection lettre K.] Il s'agissait également d'un golfe (le golfe de Gabès), avec la frontière terrestre avec la Libye à Ras Ajdir, beaucoup plus proche du creux du golfe que dans le cas du Cameroun, circonstance plus aggravante pour la Tunisie. Au large du golfe de Gabès, la Tunisie est ceinturée par deux chapelets d'îles : les plus proches sont les îles italiennes de Pantelleria et Lampedusa, et à quelque distance, la Sicile et Malte. Au nord-nord-est, les côtes italiennes clôturent ce qui reste de la côte tunisienne.

91. La Tunisie a défendu un faisceau de lignes alternatives, construites par différentes méthodes, mais variant dans une fourchette étroite de 2 à 3°; ce qui lui aurait permis d'ouvrir l'angle de la ligne au-delà de l'équidistance, lui donnant une plus grande ouverture vers l'est méditerranéen, excipant du même type de circonstances pertinentes que celles avancées par le Cameroun dans la présente affaire.

[Projection, également sous lettre K]

92. Le faisceau de lignes tunisiennes, dans ses rapports avec les côtes libyennes, rappelle étrangement la configuration de la «ligne équitable» camerounaise avec la côte nigériane.

[Vous avez ici la carte renversée de la côte tunisienne pour montrer la trajectoire de la ligne; projection, également sous lettre K.]

93. Mais la Cour n'a pas suivi la Tunisie dans sa démarche. Au contraire, dans la première des deux secteurs de la ligne, dans la région d'adjacence à partir du point terminal de la frontière terrestre, la Cour a tracé une ligne perpendiculaire à la côte, à un angle plus étroit côté tunisien qu'une ligne d'équidistance (à 26° plutôt que 42-43° qui aurait été l'équidistance) sur la base d'un «*modus vivendi* tacite» entre la France et l'Italie, qui s'est formé à partir d'une proposition italienne d'«une ligne de démarcation entre les bancs d'éponge libyens et tunisiens» , suite à un incident en 1913 (*C.I.J. Recueil 1982*, p. 70, par. 93).

[Projection, également sous lettre K]

94. La Cour admet que «les éléments relatifs à un tel *modus vivendi*, reposant uniquement sur le silence ou l'absence de protestation des autorités françaises ... ne suffisent pas à prouver l'existence d'une limite reconnue entre les deux Parties». Mais elle ajoute toutefois que

> «à défaut de limites maritimes établies d'un commun accord ou clairement définies, le respect du *modus vivendi* tacite, qui pendant fort longtemps n'a jamais été officiellement contesté ni d'un côté ni de l'autre, autoriserait à y voir une justification historique dans le choix de la méthode de délimitation du plateau continental entre les deux Parties...» (*Ibid.*, p. 70, par. 95.)

95. La Cour ajoute encore, de manière significative, qu'elle

> «ne peut manquer de relever l'existence d'une ligne *de facto* se projetant de Ras Ajdir vers le nord-nord-est, à un angle de 26° environ, qui concrétise la manière dont les deux Parties ont octroyé à l'origine des permis ou concessions pour la recherche ou l'exploitation d'hydrocarbures en mer. Cette ligne entre des concessions adjacentes, qui a été observée tacitement pendant des années et qui coïncide en outre à peu près avec la perpendiculaire à la côte au point frontière appliquée dans le passé comme limite maritime *de facto*, paraît être à la Cour d'une grande pertinence pour la délimitation.» (*Ibid.*, p. 71, par. 96.)

96. Dans le deuxième secteur de la ligne, qui change de direction, parallèlement au changement de direction de la côte après le creux du golfe, cette ligne s'ouvre davantage sur le large à un angle de 52° (*ibid.*, p. 92-94, par. 133). Il est à relever cependant, ce qui n'est pas mentionné dans l'arrêt, que cet angle, à un degré près, est celui d'une ligne frontière tuniso-libyenne, se dirigeant vers un point triple d'équidistance avec Malte (*ibid.*, p. 92-94, par. 133).

97. Ainsi, dans une situation géographique semblable à celle du Cameroun, une côte concave ceinturée par des îles étrangères au large proche, la Cour, plutôt que de céder à la tentation de justice distributive aux dépens de la logique de la configuration géographique, a tracé la ligne en

fonction des accommodements et arrangements tacites et des tolérances mutuelles entre les parties, en matière de pêche sédentaire et d'activités pétrolières dans le premier secteur à partir de la frontière terrestre, ainsi qu'en fonction du respect des droits d'Etats tiers dans le second secteur plus au large, en choisissant une trajectoire qui vise un point triple d'équidistance avec le tiers.

[Projection lettre A]

98. Monsieur le président, Madame et Messieurs de la Cour. Tout cela est très loin de la ligne fantasque du Cameroun, qui est construite au mépris des notions et des règles essentielles du droit international en la matière. Une ligne qui vise à compenser l'injustice de la nature près des côtes en s'appropriant de vastes zones au large lointain. Or, les zones de compétence nationale en mer sont des accessoires. C'est la terre qui domine la mer et les côtes qui génèrent ces zones; ou, en d'autres termes, ces zones sont censées projeter et prolonger les côtes en mer. Pour cela, elles doivent être adjacentes aux côtes, et, comme l'a dit la Cour, cette «adjacence» est jugée «en fonction de la distance», comprise dans un sens large. Et, en tout cas, ces zones doivent être «intimement liées» aux côtes qui les génèrent.

99. C'est aller contre toute cette conception que d'imaginer une ligne entraînant une zone qui s'étouffe près des côtes qui la génèrent, mais qui subit une résurrection miraculeuse — comme le Phénix qui renaît de ses cendres — en s'éloignant de plus en plus de ces côtes, et en se décalant de son axe, pour se situer dans une trajectoire plus proche et plus directement liée à d'autres côtes. Cela peut aller, selon mon grand ami le professeur Alain Pellet, au point où une telle zone peut s'interrompre et renaître plus loin. Mais comment peut-on faire cadrer cela avec la notion de projection, de prolongement, de lien intime, d'accessoire ?

100. Peut-on vraiment soulager l'encombrement près des côtes en octroyant des alotissements lointains au large, des îles d'eau imaginaires ? Ne serait-ce pas compenser les injustices de la nature en la refaisant ?

101. La convention de Montego Bay avait prévu un mécanisme limité de justice distributive, à travers sa partie 11 qu'on a malheureusement diluée par la suite, mais pas à travers l'octroi de zones compensatoires de compétence exclusive à titre individuel.

102. L'équité selon le droit *(intra legem)* ne veut pas dire l'arbitraire; elle s'accomplit par le maniement raisonnable des notions et des techniques que le droit nous fournit en gardant un esprit d'équité en les interprétant.

Je vous remercie, Monsieur le président, Madame et Messieurs de la Cour.

Le PRESIDENT : Je vous remercie, Monsieur le professeur. La séance est suspendue pour une dizaine de minutes.

*L'audience est suspendue de 11 h 30 à 11 h 40.*

The VICE-PRESIDENT, Acting President: Please be seated. Owing to an important commitment, the President has asked me to preside over the remainder of today's hearings, as well as over tomorrow's hearings. I now give the floor to Professor Crawford.

Mr. CRAWFORD: Thank you very much, Sir.

**THE MARITIME DELIMITATION**

1. Mr. Vice-President, Members of the Court, although this is Nigeria's final speech on the maritime boundary in its first round, it is, if I may quote Winston Churchill, "not the beginning of the end but the end of the beginning". There remain three rounds of oral pleadings devoted to the maritime boundary — I detect a sense of regret in that statement —, including Equatorial Guinea's intervention.

2. Moreover Nigeria has the following difficulty. Cameroon, in this case, has throughout declined to argue in the alternative. All you have on the maritime boundary is its elaborate method of construction of lines across the "Gulf as a whole", and the resulting *"ligne équitable"*. Cameroon is well aware of our criticisms of this construction line. In the Counter-Memorial we criticized it in principle on the basis of virtually every decided case on maritime boundaries in history[4]. In the Rejoinder[5], we criticized it again and in further detail, making many of the points about relevant coasts, relevant areas, and so on, which you have already heard from me and which Professor Abi-Saab has this morning so elegantly synthesized. But answer came there none, not

[4]Counter-Memorial of Nigeria, Chaps. 21, 23.

[5]Rejoinder of Nigeria, Chaps. 12-13.

from any of Cameroon's counsel in the first round. Cameroon has criticized Nigeria for arguing in the alternative in terms of the relation of the Bakassi Peninsula to the maritime boundary. But it has declined entirely to argue for any alternative version of the maritime boundary that meets any of the criticisms we have made of its *"ligne équitable"*. It is true that it has changed its *"ligne équitable"* but not in response to our criticisms but in a search for some form of accuracy. For example, if one accepts — as it seems to me, with all respect, one must accept — that Cameroon's west-facing coast opposite the east coast of Bioko is irrelevant to this delimitation, then there is still a question — what maritime zones *would* be generated by Cameroon's *relevant* coasts? You can see these again at tab 11 of your folders. We accept that Cameroon has a relevant coast looking on to the area; it is the coast from Cape Debuntscha to Rio del Rey. The Bakassi Peninsula has a relevant frontage of its own. Cameroon made *no attempt* to argue what maritime zones *these* coasts would generate in the context of the present proceedings between Nigeria and Cameroon. In short, it has failed completely to address the real issue before the Court.

3. This presents us with a dilemma. Is Nigeria to argue Cameroon's case for a maritime boundary in terms of the relevant area and the relevant coasts, in order to refute it? As Cameroon's example showed, for one side to construct an alternative argument for the other rapidly degenerates to the level of parody, if not misrepresentation. Moreover this case is brought under the optional clause and Cameroon is the Applicant. Our position is, and always has been, that the maritime zones should be delimited by negotiations, including with Equatorial Guinea, in accordance with the relevant provisions of the 1982 Convention. By the time any negotiations can now commence, the Court will have decided on sovereignty over the Bakassi Peninsula, and on associated questions, allowing the Parties to address the maritime boundary anew. In these circumstances, Cameroon's *sole* argument for maritime delimitation on a global basis having failed, it is, as I said yesterday, open to the Court to dismiss Cameroon's claim and to call on the Parties to agree their maritime boundary in the relevant area in accordance with the 1982 Convention.

4. So far I have presented only one side of the dilemma. Cameroon has completely failed to argue the real maritime delimitation issues before the Court but has relied, uniquely, on a completely inadmissible method — a uniquely inadmissible method, as Professor Abi-Saab would

say. Nigeria cannot be expected to construct an alternative Cameroon argument which does address the real issues.

5. But, on the other hand, we do want to assist the Court, and I accept that simply calling on the Court to dismiss Cameroon's maritime delimitation claim might be thought not to be very helpful. Thus in this presentation, which is only the end of the beginning, I am going to try to assist the Court by making a series of observations on the real issues — the relevant coasts, the relevant areas, the specific scope of the Court's jurisdiction, the relevant circumstances, the equitable result. For its part, Cameroon having specified its maritime line in a letter to the Court last year, may perhaps, in the second or third or fourth round, address the actual issues you face on the maritime boundary. Or then perhaps the Court can expect further correspondence . . .

**A. The applicable law and the role of equidistance**

6. So let me start this series of, I hope helpful, observations by turning to the applicable law. I have the comfort now that I can talk about the applicable law in the absence of the relevant author, because I am going to refer to a lecture given by the President to the Sixth Committee of the General Assembly last year[6]. No doubt it is the case that what is said by the President on such occasions does not bind the Court; we do not suggest otherwise. But he did, in his speech to the Legal Committee, provide a succinct and, I would say with respect, an accurate account of the development of the international law of maritime delimitation by the Court over the last 20 years.

7. The President began with the remark, echoing what had been said judicially by several of his predecessors, that by 1985

> "case law and treaty law [on delimitation of the continental shelf and exclusive economic zone] had become so unpredictable that there was extensive debate within the doctrine on whether there still existed a law of delimitation or whether, in the name of equity, we were not ending up with arbitrary solutions".

One thinks in this context, of course, of the incisive criticisms of Professor Prosper Weil. The President then went on to say that the Court had responded to this criticism by proceeding "to develop its case law in the direction of greater certainty", beginning with *Libya/Malta*, through *Jan Mayen,* to *Qatar/Bahrain.* Taken together, those decisions imply that the normal starting point

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[6]Speech by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations, New York, 31 October 2001.

will be an equidistance line, both in the case of opposite and adjacent coasts, and that "consideration would then be given as to whether there are relevant circumstances leading to an adjustment of the line". If I may quote again:

> "In all cases, the Court, as States do, must first determine provisionally the equidistance line. It must then ask itself whether there are special or relevant circumstances requiring this line to be adjusted with a view to achieving equitable results. The legal rule is now clear. However, each case nonetheless remains an individual one, in which the different circumstances invoked by the parties must be weighed with care."[7]

8. And the President, referring to other cases on the Court's docket involving maritime delimitation, went on to say "[t]he international community may rest assured that those cases will be adjudicated in the same spirit"[8].

9. Evidence for this approach, for this spirit, is to be found in the Court's recent Judgment in the *Qatar/Bahrain* case. I refer in particular to the following passage:

> "For the delimitation of the maritime zones beyond the 12-mile zone it [that is the Court] will first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line.
>
> The Court . . . notes that the equidistance/special circumstances rule, which is applicable in particular as to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated."[9]

10. The Court then proceeded to ask "whether there are circumstances which might make it necessary to adjust the equidistance line in order to achieve an equitable result"[10].

11. Equidistance, or simplified equidistance, has also been a feature of recent arbitral decisions, for example the decision of the Court of Arbitration in the second phase of the *Eritrea/Yemen* case[11].

12. Last week, counsel for Cameroon repeatedly accused Nigeria of adopting an unqualified and unconditional form of equidistance, so that no factor of any kind could lead to the Court to

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[7] *Ibid.*, p. 10.

[8] *Ibid.*

[9] Case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*, Judgment of 16 March 2001, paras. 230-231.

[10] *Ibid.*, para. 232.

[11] 2001, 40 *ILM* 983.

depart from a median or equidistance line. Like so many of Cameroon's arguments, this was a parody of Nigeria's position. Counsel for Cameroon seemed throughout unwilling to confront our actual arguments; they tended rather to invent different arguments that Nigeria did not make, which they could then happily refute. This was another example.

13. Of course Nigeria accepts that an equidistance or median line is only a starting point. But it *is* a starting point in most cases. Consideration of the equidistance line helps to focus the issues; it provides a base, not dependent upon subjective appreciation, from which to consider what factors might need to be taken into account in order to reach an equitable result between the parties to the delimitation. Indeed that was the role it performed even in the *North Sea Continental Shelf* cases, which my friend Professor Abi-Saab has already discussed. The Court may be interested in the graphic on the screen, tab M, which transposes on to a map of our region, in a scaled form, the eventual results of the negotiations between the three States, in the North Sea context. Negotiations which of course followed that decision and were guided by it. It will be seen immediately that the outcome of the decision — according to Cameroon the apotheosis of the rejection of equidistance — supports nothing like the extended projection off to the west which Cameroon implicitly claims against Nigeria. On the contrary, the *axis* of the area eventually attributed by agreement to Germany was essentially based on equidistance. Moreover the projection was a tapering one, based on the diminishing effect of the German coastline with distance, as well as the effect of third States, such as the United Kingdom. It did not project that coastline undiminished through areas in which other States' coasts were dominant — as Cameroon's method seeks to do. Nor did it drive through areas of long-established oil installations and licences — as Cameroon seeks to do.

14. It is true that the decided cases acknowledge the possibility that some other method of delimitation, not based on equidistance, may be appropriate in special circumstances. But in none of the decisions, which have adopted geometrical or other constructions not based on adjusted equidistance, has there been anything like the outcome that Cameroon seeks to achieve here. Indeed looking at those decisions, one is struck by their similarity to modified equidistance lines; and it seems that similar results could have been achieved in such cases, using the approach in *Jan Mayen* and *Qatar/Bahrain*.

15. Moreover the element of arbitrariness which Professor Abi-Saab just now referred to has not been absent from some of those geometrical decisions. Let me take one example. The *Gulf of Maine* case adopted a series of construction lines based on a simplified model of the Gulf and of its relation to the general direction of the Atlantic coastline between the American state of Maine and the Canadian Province of Nova Scotia. One can see the point of doing so; the Gulf of Maine is rectilinear relative to the Atlantic coast, the general direction of which is virtually a straight line across the mouth of the Gulf. But having done that, having simplified the coastal geography by adopting a geometric method, the Chamber then thought it appropriate to take into account one very small island, Seal Island, off the Canadian coast[12]. The whole point of the initial construction, was to avoid the effects of minor features. This was why the criticism of arbitrariness was so often laid at the Court's door during that period.

16. Mr. Vice-President, Members of the Court, in the present case it is appropriate to *start* with an equidistance line, and this for a number of reasons. I will give five.

17. The first is that the Court itself, in its more recent decisions, has consistently adopted that approach.

18. The second is that there are strong indications in the practice of the Parties, and of Equatorial Guinea, that the equidistance line is the starting point in delimitation, even if there may be reasons for departing from it to some extent.

19. The third reason is that while there may be situations *inter partes*, where some other overall geometrical approach needs to be adopted, no international court or tribunal has ever adopted such an alternative approach vis-à-vis third States concerned with the relevant area. No international court or tribunal has abandoned equidistance as a starting point in a case involving third States. Even though an equidistance or median line may not be the conclusion of the delimitation, it is a valid basis for the claims of coastal States. The third States in the Gulf of Guinea whose coasts look on to the Cameroon claim line — Equatorial Guinea and Sao Tome and Principe — claim maritime zones on the basis of equidistance. Their claims may or may not be ultimately justified. But they are not unreasonable or illegitimate. The Court has no jurisdiction in

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[12] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, pp. 336-337, para. 222.

the present case to reject their equidistance claims. Mr. Pellet may regard them as extravagant, the Court has no jurisdiction to reject them. The Court cannot decided that those States may only claim some lesser area. That being so, the Court's jurisdiction is confined to waters that are closer to Cameroon and Nigeria than they are to any other State.

20. In other words, the *framework* for this case is laid down by considerations of equidistance vis-à-vis third States which are *not* parties to this case. That is itself a reason for applying an equidistance approach as between the States which *are* parties to the present case, and asking what relevant or special circumstances there may be which would call for an adjustment of that line and which remain within the sphere of the Court's competence *inter partes*.

21. The fourth reason for beginning with an equidistance line is simply that this is the most practical, predictable and objective way to proceed. In particular it avoids the risk of building in assumptions from the beginning into the geometric model, which beg the question, effectively predetermining the result. Cameroon's unique method is full of such assumptions. For example, Cameroon's method assumes that island coastal frontages are to be ignored, but as the Court said in *Qatar/Bahrain*:

> "In accordance with Article 121, paragraph 2, of the 1982 Convention on the Law of the Sea, which reflects customary international law, islands, regardless of their size, in this respect enjoy the same status, and therefore generate the same maritime rights, as other land territory."[13]

22. In the present case, the islands in question are populated islands, which are substantial in size. The aggregate coastal frontage of the island of Bioko is over 100 nautical miles. A construction method, which takes no account of islands in the circumstances of the case, begs the question entirely.

23. That brings me to my fifth reason for starting with equidistance, which is that there is no other approach on offer in terms of the relevant coasts of the two Parties. The point bears repeating. Cameroon has until now offered no methodology of delimitation which relates to the relevant area, which involves the relevant coasts, which concerns the dispute actually before the Court. What it has done is something entirely different, that is to say, to seek to carve up the pie of

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[13]Judgment of 16 March 2001, para. 185.

the Gulf of Guinea by reference to implicit criteria of its own, calculated to give it what it regards as its fair share. Moreover it has done so without bothering to tell the Court what is its fair share.

24. But this is an impermissible method the Court has repeatedly affirmed. For example in the *North Sea Continental Shelf* cases, you said:

> "Delimitation in an equitable manner is one thing, but not the same thing as awarding a just and equitable share of a previously undelimited area, even though in a number of cases the results may be comparable, or even identical."[14]

25. In the *Jan Mayen* case, you said:

> "The task of a tribunal is to define the boundary line between the areas under the maritime jurisdiction of two States; the sharing-out of the area is therefore the consequence of the delimitation, not vice versa."[15]

26. Both passages were cited with approval in the *Qatar/Bahrain* Judgment[16]. Other statements of the Court to similar effect are set out in our pleadings[17].

27. Indeed in *Jan Mayen* the Court issued a warning against approaches which are rather like Cameroon's present construction method. Perhaps your warning gave Cameroon ideas! You said:

> "judicial treatment of maritime delimitation does not involve the sharing-out of something held in undivided shares . . . Thus the law does not require a delimitation based upon an endeavour to share out an area of overlap on the basis of comparative figures for the length of coastal fronts and the areas generated by them."[18]

The law does not required that, you said.

28. The only comment one would make is that Cameroon's method does not even rise to the level of the endeavour which you criticized and rejected in 1993. This is because Cameroon's method does not use *relevant* coastal fronts, and because it refuses to tell you what is its share.

29. Subject to these important qualifications, however, Cameroon stands before you as the proponent of "the doctrine of the just and equitable share", a doctrine condemned in the *North Sea Continental Shelf* case and in virtually every subsequent case[19]. And this is the *only* doctrine Cameroon propounds. It has no alternative. That being so, there is no alternative to the Court's

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[14] *I.C.J. Reports 1969*, p. 22, para. 18.

[15] *I.C.J. Reports 1993*, p. 67, para. 64.

[16] Judgment of 16 March 2001, para. 234.

[17] See Counter-Memorial of Nigeria, paras. 21.10 ff.

[18] *I.C.J. Reports 1993*, p. 66, para. 64.

[19] *I.C.J. Reports 1969*, p. 22, para. 19; p. 29, para. 39.

classical approach, no alternative method for maritime delimitation between these parties and their facing coasts has been proposed.

30. For all these five reasons, Nigeria submits, the Court should begin with an equidistance line drawn from the land boundary between the two States and proceeding to the point where it meets maritime areas claimed by third States. It should then consider whether any modifications, and if so, what modifications are justified and required by the circumstances of the case in order to reach an equitable result.

**B. The scope of the Court's delimitation task**

31. Mr. Vice-President, Members of the Court, you may perhaps have noticed that there are not many points of agreement in this case. On the maritime boundary, I could find four. The first point of agreement concerns a point of law. If the parties to a delimitation dispute have already delimited their maritime boundary, in whole or in part, by a valid agreement, the agreement applies. Article 74 (4) and Article 83 (4) of the 1982 Convention specifically so provide. Of course the Parties disagree as to whether there was a valid agreement or agreements here, partially delimiting their maritime zones. Mr. Brownlie has already addressed that question.

32. There are three other points of agreement as to the circumstances of the present case. The first is that, except on points of detail, neither Party protested the oil licensing and exploitation activities of the other. The second is that, except in the very limited area I showed you this morning, there was and is no overlap between the Nigerian and Cameroonian oil concessions on their respective sides of the oil practice line. There was an overlap between Nigeria and Equatorial Guinea which has been resolved by the Agreement of 2000. The third point of agreement concerns the extent of relevant Nigerian coasts up to Akasso, and this brings me to the present section of this presentation.

33. For I turn now to consider in some more detail the scope of the delimitation task which faces the Court. There are three issues to which I will draw your attention. One is the south-west, at and beyond point L — which I call a point, my colleague Mr. Abi-Saab calls it a *non point*, so we do not agree on that point. It also relates to Akasso, which is more or less the nearest point on the land to point L. The second geographical issue is in the south; it relates to Equatorial Guinea.

The third is in the east; it concerns the extent of Cameroon's relevant coasts. Taken together these three points delimit the scope of the Court's task of delimitation. Indeed, we submit, they delimit it rather precisely.

34. As the Court will see from this graphic, which is tab N in your folders, a point just somewhat west of Akasso marks the point where the Nigerian coast turns from south to south-west facing. The Parties agree that the coastline beyond Akasso is not relevant to this delimitation: that is the third point of agreement in relation to the dispute. Nigeria has a substantial coastal frontage to the west of Akasso. It is about 265 nautical miles. You will see marked on the graphic the claimed maritime boundaries of the coastal States to the west of Nigeria. The 200 nautical miles limit, which you can see, from this coastline is uncontroversial. The lateral boundaries of the States, Benin, Togo and Ghana, are unresolved. Nigeria's negotiations with Benin on their lateral maritime boundary, under my colleague Alhaji Dahiru Bobbo, who is the Chairman of the National Boundary Commission, are proceeding well. Here of course we are not concerned with those lateral boundaries: we are concerned with the outer boundaries of the exclusive economic zone.

35. As the Court has been informed, Cameroon now claims a line extending indefinitely beyond point L. As you can see from this tab, which is tab N, the line cuts right across Nigeria's coastal frontage. It extends across the joint development zone with Sao Tome and Principe, which zone is, as I have explained, claimed in its entirety by Sao Tome and Principe. It then extends into waters which, because they are more than 200 nautical miles from Nigeria, Nigeria does not claim, and only Sao Tome and Principe claims. It then comes to perhaps a temporary halt at a point which we will call "M". This is just on the point of entering the as yet undiscussed area of outer continental shelf beyond the 200 nautical miles zones of all of the States on the Gulf. The odyssey of this line is a remarkable one. It is Homeric, it is a true Ulysses of a line.

36. There are several points to be made here. The first is that point M could not be claimed by Cameroon even if was the only State in West Africa. Point M is in deep water. It is 350 nautical miles from the nearest point on the coast which is claimed by Cameroon and still further from actual territory of Cameroon. Vis-à-vis Cameroon, it does not meet the criteria for outer continental shelf laid down in Article 76 of the 1982 Convention. The line stops in Sao Tome and Principe EEZ, at point M.

37. In any event, it is obvious that the Court's jurisdiction over the *"ligne équitable"*, if it could possibly have survived up to point L, must stop when the line hits the Sao Tome and Principe claim line, which it does more or less south of Akasso. Sao Tome and Principe's claim line has not been withdrawn even vis-à-vis Nigeria, still less vis-à-vis Cameroon. Cameroon's aspiration to reach the open Atlantic is thus doomed by the facts of distance and depth.

38. Faced with this reality, it is necessary to retreat back along Cameroon's claim line, and as a first point of withdrawal I would like to take you back to just around point L. This is 86 nautical miles from Akasso, 110 nautical miles from Principe, 200 nautical miles from East Point on Bakassi and further still from Cameroon. On any possible assumption it marks the outer limits of any conceivable claim by Cameroon to an exclusive economic zone. But Cameroon claims points on its line beyond point L which, while more than 200 nautical miles from any possibly relevant coast, are well within 200 nautical miles of Nigeria, Sao Tome and Principe and Equatorial Guinea. You can see this on the graphic on the screen, which uses 200 nautical mile arcs to demonstrate where point L is located. It is tab N in your folders. These points completely overlap and cover point L, as would an arc drawn from Bioko which you now see. I simply recall that a claim beyond point L is untenable under the law of the sea. A State cannot claim outer continental shelf within another State's exclusive economic zone. Otherwise there would be incompatible claims to the same seabed resource. The exclusive economic zone of course includes seabed resources. How could Article 56 of the 1982 Convention confer sovereign rights over the seabed of the exclusive economic zone on a State, if Article 76 (4) conferred the same exclusive rights on a different State or States? How could the Commission on the Limits of the Continental Shelf have capacity to decide on delimitation of claims, or to act in any way within 200 nautical miles of the coasts of third States? Article 3 1 *(a)* of Annex II of the 1982 Convention is perfectly clear on the point. So the claim to a projection beyond point L fails.

39. So let us now continue our retreat up the line. I would like to stop, briefly, at a point which Cameroon itself noted last week, and which I will call point $K_1$. As you recall, this is the point where the line is closest to the Sao Tome and Principe median line. It is less than 4 nautical miles from that median line.

40. Mr. Vice-President, Members of the Court, in maritime delimitation you do not delimit lines, you delimit areas. You delimit areas *with* lines. As you said in *Jan Mayen*, the task of the Court is to "define the boundary line between the areas under the maritime jurisdiction of two States; the sharing-out of the area is therefore the consequence of the delimitation"[20]. But what area is shared out here? It is surely not a strip of 3 nautical miles, 200 nautical miles away from alleged Cameroon territory. Point $K_1$ is 86 nautical miles from Principe. Assume for the sake of argument that the Court were to attribute point $K_1$ to Cameroon over Nigeria. It would not attribute that point to Cameroon over Sao Tome and Principe. So you would not be awarding an area at all, you would be awarding a line.

41. Let me make the same point, perhaps less formalistically. Cameroon declines to make any claim to a maritime area. But Cameroon relies on the *St. Pierre and Miquelon* case as precedent for a projection from a coast, irrespective of its relative proximity to closer coasts of the other party, or third parties. In fact it is the *only* precedent for such a projection. You have heard Professor Abi-Saab explain why that decision is irrelevant as a precedent here, even if it is correct in principle in relation to the geographical context, which the Court of Arbitration had to deal with — that is, what it saw as the unimpeded south-facing coast of Newfoundland, including the French islands. But we can also look at the practicalities. A projection a few nautical miles wide is good for nothing. It is completely impractical for commercial exploitation. Even the 10.5 nautical mile mushroom stalk awarded by the Court of Arbitration in *St. Pierre and Miquelon* has been criticized as totally impractical.

42. Let us, however, for the sake of argument, take a width of exclusive economic zone equivalent to the total coastal frontage of the Bakassi Peninsula, that is, 14 nautical miles. You see it on the screen now and in tab N of your folders. It shows a projection with the *"ligne équitable"* as its northern boundary. A claim to such a projection — and could Cameroon be claiming less? — such a claim in substance and reality concerns maritime areas reasonably claimed by Equatorial Guinea and Sao Tome and Principe: they are the areas in purple on the screen. The Court should recognize and disallow that claim as a claim to the maritime areas of third States. It

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[20] *I.C.J. Reports 1993*, p. 67 (para. 64).

is, with great respect, not the function of the Court to lend support to the maritime claims of an optional clause claimant, such as Cameroon, vis-à-vis third States not parties to the optional clause, not parties to these proceedings.

43. So, Mr. Vice-President, we now move back to the point where Cameroon's claim line emerges mysteriously from the areas attributed to Equatorial Guinea under the Agreement of 2000 and re-enters waters attributed to Nigeria by that Agreement. You can see that point on the screen, it is labelled — I am sorry, this is the point where the claim line emerges from areas within the Equatorial Guinea equidistance line and enters waters which are claimed by Nigeria and not by Equatorial Guinea. Cameroon argues that the Court should grant it the line at point $I_1$ and, indeed, the line from where the 2000 boundary is down to point $I_1$, and/or points in between. But the Court cannot do that without first deciding that Cameroon is entitled to the area which falls within the zone attributed to Equatorial Guinea by the Agreement of 2000. There cannot be an enclave of maritime areas to the south. There can only be a continuous line, or more exactly the boundary of a continuous area of Cameroon maritime territory. Once the exclusive economic zone and continental shelf of Cameroon attributable to the coastline to the west of Debuntscha Point stops, it cannot be mysteriously resurrected. Thus in order to award any areas in this segment of the line, the Court would have to decide that there is a continuous stretch of Cameroon maritime area in an area specifically claimed by Equatorial Guinea and attributed to Equatorial Guinea by the Agreement of 2000. This, clearly, the Court cannot do.

44. Counsel for Cameroon the other day tried to avoid this by two stratagems, by the white square, and by the forced exchange of territories. I have already mentioned them both. Dragons or no dragons, the white square is an obvious subterfuge: the Court cannot be seen to do indirectly that which it has no jurisdiction to do directly. As to the forced exchange of territories, the bump in the line enabling the Court to "go around" Equatorial Guinea, that is a device totally lacking in any principled basis. Indeed it is unjustified even in terms of Cameroon's global allocation method. It is an obvious subterfuge. Mr. Vice-President, Members of the Court, you have jurisdiction in order to delimit; you do not delimit in order to have jurisdiction.

45. So, Mr. Vice-President, we now move back along the *ligne équitable* to the point, which we will call point $I_2$, where Cameroon's "*ligne équitable*" first meets areas attributed to Equatorial

Guinea under the Agreement of 2000. Cameroon says, well, white square or no white square at least you have jurisdiction up to this point. But again this is based on a confusion. Cameroon accepts and emphasizes that it is not bound by the Agreement of 2000. *Pacta tertiis nec nocent nec prosunt*: this of course is the rule stated in the Vienna Convention on the Law of Treaties, Article 34. Nigeria agrees entirely. Cameron is neither bound by, nor can it take any advantage of, the Agreement of 2000. This follows from the strictly bilateral character of the Agreement and the *inter partes* character of maritime delimitation. It is true that an agreement could be recognized by third States so that maritime zones can come by a process of recognition to have an *erga omnes* character. But that has not happened with respect to this line; you heard Cameroon say they refused to recognize it. It equally follows that the Agreement does not involve a withdrawal by Equatorial Guinea vis-à-vis Cameroon of any maritime claim.

46. I can simply illustrate this point by taking the Ekanga indentation, which you can see on the screen, and at tab N of your folders. As I have explained, it is a small area which was claimed by Nigeria and which is associated with several Nigerian wells. Consistent with the principles on which the Agreement was based, it was conceded by Equatorial Guinea to Nigeria. It is now the subject of a unitization agreement. I say again that Cameroon has never protested at the granting of any licences in this area or at the drilling of any wells. It is absolutely clear that Equatorial Guinea made no concession to Cameroon of the Ekanga field. If you were to award the Ekanga field to Cameroon — I speak of course hypothetically — such an award would not bind Equatorial Guinea which would be entitled to claim it and would no doubt do so; it was very reluctant to concede it to Nigeria. In short, Equatorial Guinea's equidistance line is still in place vis-à-vis Cameroon, notwithstanding the Agreement of 2000. To the north of point (i) of course, it is still in place vis-à-vis Nigeria as well.

47. So finally, then, we retreat back to the point — in this long retreat from point M — where Cameroon's claim line crosses the Equatorial Guinea equidistance line. This is shown on the screen with a yellow arrow. It is clear from the record that the Equatorial Guinea equidistance claim is made *erga omnes*, and not just vis-à-vis Nigeria; it applies to Cameroon as well as Nigeria. The oil practice line which I illustrated this morning involved Equatorial Guinea as well as Cameroon and Nigeria and was based on equidistance; it was a practice participated in to the north

of Bioko by all three States. It is particularized in legislation of Equatorial Guinea and the claim is unaffected by the Agreement of 2000. Accordingly, since the Court has precise information as to its location, the Court can delimit up to the tripoint, that is to say, up to the point where the Cameroon-Nigeria line, as you decide it to be, meets the equidistance line with Equatorial Guinea — on the hypothesis, of course, that you decide to proceed with any delimitation. That is the extent of the Court's jurisdiction. In our submission, that point will lie somewhere to the north and east of point (i) of the 2000 Agreement.

48. Mr. Vice-President, Members of the Court, I turn to the third question affecting the scope of your task, which concerns the limits of Cameroon's relevant coast in the east. This is not of course an issue of jurisdiction, but one of determining the scope of Cameroon's relevant coastline fronting on to the area in dispute. Nigeria has already stated in its written pleadings, and through Professor Abi-Saab, why it considers that the Cameroon relevant coast stops at Debuntscha Point[21]. That marks the turn in Cameroon's coast where it is opposite to the north-facing coast of Bioko, less than 24 nautical miles away. The whole of the straight is territorial sea. Accordingly Cameroon's relevant coast facing on to the area in dispute with Nigeria is to be drawn westwards from Debuntscha Point to the Rio del Rey, giving a coastal frontage of 30 nautical miles.

49. Cameroon did not discuss this issue in the first round. This was an aspect of its all-or-nothing preference for its global allocation model. Accordingly there is nothing further to be said on the point at this stage. I will be happy to come back to it if Cameroon wishes to take issue with it.

**C. Equidistance and relevant circumstances**

50. Mr. Vice-President, Members of the Court, I have already established that in this situation the appropriate starting point in terms of any delimitation is to draw a provisional equidistance or median line from the coast and then to consider whether any adjustment should be made to that line having regard to any relevant or special circumstances. Because the land boundary is in dispute, it is necessary to consider how the equidistance line would be drawn both to the west and to the east of the peninsula. In fact, however, Bakassi as a separate unit makes

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[21]Rejoinder of Nigeria, paras. 13.8-13.9.

relatively little difference to the overall situation in the Gulf; its coastal frontage is only 14 nautical miles. Even that coastal frontage produces a maritime claim 90 some per cent of which is against third States. Much more significant is the effect of Equatorial Guinea, immediately offshore.

51. You can see both points very neatly illustrated from the graphic on the screen, which is tab P in your folders. This shows the position of the median or equidistance line as it would be if the islands of Bioko and Sao Tome and Principe did not exist. And of course, under Cameroon's method, they *do not* exist. It calls for a number of comments. The first is that, as you can see, only a very small maritime zone is attributable to the Bakassi Peninsula as such. The second is that the equidistance line drawn between Rio Muni and Cameroon in the south-east, which is not an agreed line, may well need some lateral adjustment because of the precise location of the boundary along the coast. The third point is more important: it is that the overall effect of the median line as between the two sides of the Gulf is not evidently disproportionate — if you take a line down the middle of the gulf, it is not evidently disproportionate.

52. Now you can see on your screen, and also at tab P, the equidistance position with the islands added. There is obviously a major effect, and this corresponds to the point I have already made as to the impact of islands in the middle of an area such as this Gulf in terms of attracting maritime entitlements. The addition of the islands has a major effect on *all* the mainland States and territories, from Gabon all the way round to Nigeria. It has the least effect on Bakassi itself, which loses only a tiny area at the tip of the zone of potential entitlement using equidistance. There is a very substantial effect on Cameroon, no doubt, but it is not unique. Moreover, such an effect is inevitable with an island of substantial size located directly off the coast and belonging to a third State: you will note that a significant proportion of the area Cameroon "loses" is occupied by the land territory of Bioko itself. There is no doubt that Cameroon is squeezed — but leaving aside the inevitable and immutable effect of the land territory of Bioko and its territorial sea, the squeezing effect occurs between Bioko and Rio Muni, on the easterly side of the Gulf. Proportionately, Cameroon loses little to the north and west as compared with the area it loses to the south and east by reason of the combined effect of Bioko and Rio Muni. To the north and west of Bioko there is not much maritime space beyond the territorial sea at all — and what there is, as we have seen, very fully occupied by oil installations of various kinds.

53. Rio Muni itself is affected by the much smaller island of Principe, considerably further away from its coasts than Bioko is from Cameroon. Sao Tome has a major effect also on Gabon. And Nigeria is affected as well, and significantly affected. You see the area in a sort of dirty green colour, approximating to khaki, on the screen. This is the area attributable to the islands on an equidistance basis that would otherwise be a potential entitlement of Nigeria. It constitutes more than 40 per cent of the area shown in green on the previous graphic. There is a significant cut-off effect, with the equidistance line passing directly in front of Nigeria's coasts.

54. On the sector to the east of the Gulf, one might envisage a *North Sea Continental Shelf* type solution as between Bioko, Cameroon and Rio Muni, which could have the effect of pushing the notional tripoint between the three territories further to the south-west. But what a *North Sea Continental Shelf* solution in this segment would *not* do — as Professor Abi-Saab's wonderful red arrow demonstrated — would be to shift continental shelf entitlement around Bioko to the north-west. That is refashioning geography. In effect, Cameroon's global projection system is a way of transferring its geographical disadvantage in the waters between its long west-facing coast and the island of Bioko, over the top of Bioko and well to the west. This is the game of leap sheep; I understand it is in French. In English, one leaps frogs — but leap sheep or frogs, we are leaping over here, carrying our coastal frontage behind us, if I can use another nursery rhyme. Cameroon thereby seeks to seize Nigerian waters (already seriously impacted by Bioko). This is totally unacceptable for the reasons already discussed.

55. Despite its geographical and legal irrelevance to our situation, it has been worth while to look at this comparison in a little detail. It places Cameroon's situation in its proper context and perspective, and it shows how seriously Nigeria itself is affected on its side of the Gulf by the presence of the two island States.

56. Mr. Vice-President, Members of the Court, I turn then to the relevant coastal frontages as between the two Parties to the present case, which you can see in tab R. The question is whether the equidistance lines which will be shown respectively to the east or west of the Bakassi Peninsula should be adjusted, applying the by now standard methodology which I outlined earlier.

57. Although Cameroon has not attempted to ask, let alone to answer this question, Professor Kamto last week did identify several relevant factors in terms of the delimitation: two of

these were coastal lengths and the effect of offshore islands. There is of course a third, which he did not regard as relevant, but merely special, associated with the practice of the Parties. Let me take these points in order.

58. As to coastal lengths, you will see that the coastal frontages here are very much weighted in favour of Nigeria. The distance from Debuntscha Point to the midpoint in the Rio del Rey is 30 nautical miles, from Akasso to the midpoint in the Cross River Estuary is 114 nautical miles. Even if, for the sake of argument, one takes only the coast up to Bonny, which is merely one point in a straight coastline with no special feature attaching to it — the distance is still 70 nautical miles. Moreover the effect of adding to Cameroon's undisputed coastal frontage the disputed coastal frontage of Bakassi — a proposition Nigeria, of course, does not accept — would not change matters much: the result would still favour Nigeria. Indeed a direct line from Debuntscha Point to East Point on Bakassi is hardly longer than a line from Debuntscha Point to the Rio del Rey, as Nigeria showed in its Rejoinder[22]. Thus there is no basis for an adjustment of the median line adverse to Nigeria on the basis of disproportionate coastal lengths. Indeed, there's quite a good argument for an adjustment the other way.

59. Professor Kamto's second relevant or special circumstance was the effect of Bioko, immediately offshore. I have already illustrated this effect, which is substantial for both Parties, Nigeria *and* Cameroon. But the problem is to find a principled basis on which to "discount" the effect of Bioko at Nigeria's expense. We are not dealing with small islands such as Seal Island[23], Filfla[24], or Qit'at Jaradah[25], the effect of which the Court has discounted in earlier cases involving the States with sovereignty over those islands. Nor are we dealing with a small group of island dependencies of a State party, such as the Channel Islands, which might possibly justify an enclave solution between those two Parties. We are dealing with a substantial island State, the seat of the capital of Equatorial Guinea, which has a substantial coastal frontage looking on to the disputed area. No doubt from a Cameroonian point of view, Bioko is in the "wrong place". But that is its

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[22]P. 509, Fig. 13.4.

[23]*Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, pp. 336-337, para. 222.

[24]*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 48, para. 64.

[25]Judgment of 16 March 2001, para. 219.

place in the world, unalterably. None of the decided cases suggest any solution of principle as to how an island State such as Bioko might be given less than full effect, and of course there is the further point that Equatorial Guinea is not a party to these proceedings. It is one thing to discount the coasts of small islands belonging to States parties to a dispute. It is quite another to discount the coasts of a large island State; a non-party to the proceedings; and this Court has never done so. Rather, as we have shown in our written pleadings, you have been notably careful to respect the claimed positions of third States in maritime delimitation.

60. Mr. Vice-President, it is not just that Cameroon has presented no argument whatever as to how Bioko might be taken into account as a relevant or special circumstance. The point goes further. It is very odd to talk about a third State, intervening as a third State before the Court, as a "relevant circumstance" at all. It is as if a husband were to refer to his mother-in-law as a "relevant circumstance"; we would all know what we meant of course, but it would not be a very creditable remark. Professor Pellet referred to Equatorial Guinea's claims as exorbitant, but they are at least prima facie entitlements under the law of the sea, and Cameroon has presented no theory by which they can be set aside. Mothers-in-law have entitlements too.

61. Finally, I turn to the oil practice. This is undoubtedly a relevant circumstance, and for a number of reasons. Before I enumerate them, I should first note that Professor Kamto last week did not deny that oil practice, provided it was open, public and lawful, could be a relevant circumstance in maritime delimitation. Indeed he argued that Nigeria's oil practice was not open, public or lawful. I have already dealt with that argument, which is quite frankly fanciful.

62. In any event, practice of the parties, including oil practice, is plainly relevant, as you held in *Tunisia/Libya*[26]. The only requirement is that the practice should be "sufficiently clear, sustained and consistent", to use the language of the Chamber in the *Gulf of Maine* case[27], or "sufficiently unequivocal to constitute either acquiescence or any helpful indication of any view of either party as to what would be equitable differing in any way from the view advanced by that

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[26]*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 71, para. 96, p. 84, para. 117.

[27]*I.C.J. Reports 1984*, p. 309, para. 146.

party before the Court", as you said in *Libya/Malta*[28]. I have already shown that the oil practice in this area is, on any view, "sufficiently clear, sustained and consistent". Indeed it is unequivocal.

**D. Conclusion: Cameroon's non-claim and Nigeria's claim**

63. Mr. Vice-President, Members of the Court, I began this presentation by noting that Cameron has yet presented no argument whatever for a maritime boundary properly so called, beyond the immediate area of "point G". Its initial argument is that the boundary should take what I might describe as a sharp right-hand turn at point G in order to regain the equidistance line at point H. That is a useful confirmation of the relevance of equidistance inshore, but of course there is clear evidence of acquiescence in relation to the areas west and south-west of this point, and even inshore, Cameroon's proposed line is flatly inconsistent with the oil practice of the Parties; its claim to maritime areas anywhere near point H is purely notional.

64. Beyond point H, however, Cameroon's line — both in its orientation, its direction and its underlined rationale — loses any semblance of being a delimitation line based upon relevant coasts and relevant areas, and takes the form of a general maritime exclusion line operating unilaterally against Nigeria. There is nothing more that needs to be said as to the inadmissibility of this line.

65. Nigeria reserves its position on any arguments that Cameroon may present next week which would concern actual maritime delimitation in the area which is actually in dispute between the Parties, being the rather confined area which I depicted earlier in this presentation. In the circumstances, because there is no argument relating to the allocation to Cameroon of areas other than on the basis of its global approach, it would in our view be an appropriate disposition of this case if the Court were to reject Cameroon's *"ligne équitable"* on the basis that it does not involve any actual maritime delimitation. I would respectfully remind the Court that your earlier decision to join the eighth preliminary objection to the merits is both consistent with this submission, and allows full scope for this Court so to decide.

66. Alternatively, if and to the extent that, as put forward by Cameroon, the line is considered to represent an actual maritime delimitation and not an exclusion line, in our submission the Court should decide that the line *as a whole* entails claims against the States not parties to these

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[28] *I.C.J. Reports 1985*, p. 29, para. 25.

proceedings and is inadmissible. Cameroon is fond of arguments about severability; its approach is inseverable.

67. If, however, the Court actually decides to delimit the maritime boundary, we respectfully submit that jurisdiction to do so extends down to the Equatorial Guinea equidistance line and no further.

68. Within the limits of its jurisdiction as between Nigeria and Cameroon, the appropriate line, prima facie, is an equidistance line. The effects of that line, drawn in the Rio del Rey on the basis of Nigeria's sovereignty over the Bakassi Peninsula, is as shown on the screen, and at tab S in your folders. Title over the Bakassi Peninsula itself has already been established by my colleagues. So that is where we start.

69. Given the density of the oil practice of the Parties and the very substantial character of the vested rights existing on both sides of the "common border", if the Court agrees with Nigeria that this practice is determinative, it would be appropriate for the Court to allow the Parties to negotiate the precise location of the line in a way that would reflect each Party's existing installations, as well as determining the tripoint with Equatorial Guinea in a manner binding upon that State.

70. If, on the other hand, the Court were to hold that the oil practice here is not determinative — and Cameroon apparently argues that it is not — and were to decide to proceed with its own delimitation, there are no other relevant or special circumstances that would justify any modification of the boundary that would otherwise be drawn from the point on the coast constituting the land boundary between Nigeria and Cameroon, in accordance with the principle of equidistance.

71. In particular, taking into account disproportionate coastal lengths favouring Nigeria, and the impropriety — to put it at its lowest — of "discounting" the significant offshore island of Bioko belonging to the third party, Equatorial Guinea, there are no special relevant circumstances warranting a departure from the equidistance principle in Cameroon's favour, starting from the point on the coast where the land boundary terminates.

72. Mr. Vice-President, Members of the Court. This is the end of the end of the beginning. That concludes Nigeria's presentation in this first round on the maritime boundary. Tomorrow

morning, with your permission, we will turn to issues of State responsibility and counter-claims. I thank you for your patient attention.

The VICE-PRESIDENT, Acting President: Thank you, Professor Crawford. This brings to a close this morning's hearings. The next sitting will be held tomorrow morning at 10 o'clock. The Court will now rise.

*The Court rose at 12.55 a.m.*