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Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le jeudi 14 mars 2002, à 15 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président,

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

COMPTE RENDU

YEAR 2002

Public sitting

held on Thursday 14 March 2002, at 3 p.m.], at the Peace Palace,

President Guillaume presiding,

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

VERBATIM RECORD

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

M. Couvreur, greffier

Present:	President	Guillaume
	Vice-President	Shi
	Judges	Oda
		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,*

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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,

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

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as Special Adviser and Advocate;

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

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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,

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

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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,

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

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

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

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

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

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

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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,

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M. Guy Roger Eba'a,

M. Aristide Esso,

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

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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,

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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,

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

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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,

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

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,

comme conseils;

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

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

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

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,

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

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

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

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Mr. Dick Gent, United Kingdom Hydrographic Office,

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M. Bruce Daniel, *International Mapping Associates*,

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

Mme Stephanie Kim Clark, *International Mapping Associates*,

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

Mme Claire Ainsworth, *NPA Group,*

comme conseillers scientifiques et techniques;

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

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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,

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M. Geoffrey Anika,

M. Mau Onowu,

M. Austeen Elewodalu,

M. Usman Magawata,

comme responsables de la communication.

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,

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

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Mr. Geoffrey Anika,

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Mr. Usman Magawata,

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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,

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

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

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

comme conseils et avocats;

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,

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

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

comme experts techniques.

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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;

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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, à M. Alastair Macdonald.

Mr. MACDONALD: Merci, Monsieur le président.

LAND BOUNDARY

1. Mr. President, distinguished Members of the Court, it is a great honour for me to address you again for a second time. On this occasion, I have only nine simple maps to show you, and I will keep my feet firmly planted on the ground.

2. My first speech last week demonstrated why Nigeria believes that there are serious problems of delimitation on those parts of the land boundary covered by the 1931 Declaration and the 1946 Order in Council. In the course of Cameroon's second round oral pleadings on Monday 11 March, Professor Simma paid me the compliment of a prolonged attack on this demonstration. However, the Agent for Cameroon, in his speech to the Court on Tuesday, acknowledged that Cameroon would no longer seek to oppose Nigeria's claim that parts of the delimitation instruments are defective and require amendment, by saying: "*Nous nous en remettons, Madame et Messieurs de la Cour, entièrement à votre jugement sur ce point.*"[1]

3. Mr. President, distinguished Members of the Court, faced with this change of position by Cameroon, I will try to reassure you that you do have the materials at your disposal for this task. In the course of doing so, I propose to deal with the criticisms made by Professor Simma of Nigeria's maps and its boundary alignment and his claim that the existing boundary instruments provide a sound delimitation. I am sorry that he has had to leave and cannot hear my response in person. First, however, I would like to explain the confusion that M. Pellet identified[2], about the length of the boundary used by Nigeria in its pleadings.

4. Let me say straightaway that in including an overall length of the boundary in its pleadings, Nigeria was only providing the context for the Court. Nigeria did not consider that this length would be a determining factor in the case. Our first length of 1,600 km was a rough estimate made at the time of our Counter-Memorial. This converts to 1,000 miles. Our second

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[1]CR 2002/17, p. 65, para. 4 (Mr. Ali).

[2]CR 2002/15, pp. 24-25, para. 23 (Mr. Pellet).

estimate at the time of the Reply resulted from our more detailed investigations which took into account the twist and turns of the boundary when examined on maps at 1:50,000 scale. This gave a greater distance of 1,840 km. Because we were only using the length of the boundary in an indicative sense, we rounded it down to the nearest 100 km as 1,800 km — but we converted the original figure of 1,840 km to 1,150 miles and rounded that *up*. Nigeria can only apologize for the confusion this has caused and suggest with respect that the Court use the figure of 1,800 km as a general and approximate indication of boundary length.

Cameroon's claim to have not submitted an alignment itself

5. I now turn to Professor Simma's criticisms of my first round speech. First, he[3] referred to Nigeria's boundary line set out in detail in the atlas submitted with its Rejoinder. He went on to remind the Court that:

> "Cameroon on its part has never considered offering the Court any similar line, because Cameroon, as the Applicant in the present proceedings, has formulated its claim as not to go beyond an authoritative confirmation by the Court of the validity and applicability of the boundary instruments".

Mr. President, may I refer the Court to the table in Chapter 6 of the Cameroon Reply, a copy of the second page of which is at tab 10 of the judges' folder. The text in Chapter 6 explains the contents of the table. In particular, paragraph 6.04 says this:

> "The maps referred to in column 7 are the official maps to which the relevant legal instruments refer. Thus, the representations on these maps — in particular, the line of the boundary — express the agreement of the contracting Parties. The last two columns of the table summarize the respective positions of the Parties."

6. Though the columns are not numbered, column 7 appears to be the column headed "*Atlas Carte No*". And what do we find in this column, Mr. President? A list of Cameroon's own atlas maps extracted from its 1:200,000 map series. And what does Cameroon say of them? It says that the representations on these maps — in particular the boundary line — express the agreement of the contracting Parties. That is a very sweeping claim, Mr. President, which, of course, Nigeria disputes. Is it any wonder that Nigeria felt the need to submit its own line to the Court with its Rejoinder?

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[3]CR 2002/15, p. 49, para. 15 (Mr. Simma).

Cameroon's criticism of the maps used by Nigeria

7. Professor Simma then suggested[4] that Nigeria's use of "composites", "topographic maps" and its references to Nigerian and Cameroonian map sources were both contradictory and misleading. Mr. President, I welcome the opportunity to clarify these matters for the Court and for our opponents.

8. Here on screen is an example of a composite map produced from Nigerian and Cameroon map sources and submitted in our Rejoinder[5]. It is also at tab 11. Let me now deal with counsel's questions. How was it produced? By scanning both the DOS and the IGN maps, merging them together using computer software and then printing out the resulting combination. To what end? Mr. President, there is no mystery. The maps of one country portray the other in limited detail. So our purpose was simply to show the Court where we believe the boundary to run, in the context of the best possible portrayal of the terrain on *both* sides of the line. Nigeria believes that this broad view helps both the Court and the Parties to better understand the circumstances.

9. Did we display composite maps merged from the two sources in our display last week? Of course we did. If the Court would be kind enough to look again at the map on screen — and now compare it with this map from last week's presentation — also at tab 12, you will see that they are basically the same. All we did was to enlarge last week's map for greater clarity.

10. What did I mean by "topographic maps"? I used the term to describe *all* the maps, whether composited or simply taken from Nigerian sources alone, which I used in my presentation. The term is a generic one and was used as such.

11. Mr. President, counsel's questions have simple and transparent answers which Nigeria has been happy to give. These questions in no way "seriously diminish the evidential value of the entire presentation"[6] as Professor Simma would have you believe.

12. But before I move on, can I ask the Court to look at the area at an even greater enlargement — this is at tab 13 — and to note how detail from both maps matches across the divide between the two sources. Both rivers and roads are in good agreement at the points arrowed. Although some individual contour lines do not fit precisely because of the different

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[4]CR 2002/15, p. 50, para. 16 (Mr. Simma).

[5]Rejoinder of Nigeria, fig. 7.11, opp. p. 336 (Mr. Simma).

[6]CR 2002/15, p. 50, para. 16.

units — metric and imperial — yet, nevertheless, the general agreement of relief portrayal is also striking. This correspondence is a very impressive tribute to both the Directorate of Overseas Surveys and the *Institut Géographique National*. Two sets of employees from different cultures and training schemes, two sets of aerial photography from different contractors, possibly using different types of cameras and flying at different altitudes, two types of plotting machines used to draw the maps — and they come up with the same result. Mr. President, could there be a better independent check? And Professor Simma tries to worry you with thoughts that these maps are "fallacious"[7]! No, Mr. President, these maps were made by two of the finest map-making agencies in the world. They can be relied upon.

13. Professor Simma showed the Court two examples of Nigeria's maps, one at Narki and one at the source of the Tsikakiri, and claimed that the lack of river or stream channels on these maps not only introduces concerns about the quality of the maps but also invalidates Nigeria's line itself. Mr. President, I am afraid this leads into a short discussion on cartographic procedures. When producing maps at a scale of 1:50 000, it is not always possible or even, some would say, desirable to show every detail that is visible on the aerial photography. Keates, a well-known authority on cartography, states[8]:

> "Small topographic features . . . may be omitted on the grounds that they are unimportant at map scale. The difficulty for the map user — and this is particularly true of medium-scale topographic maps — is that some features are shown while others are not, even though there is a symbol to represent them. An obvious example is the network of drainage channels present in a hilly region, in areas with an abundant rainfall and extensive surface drainage. On medium-scale maps the inclusion of all of them would lead to a mass of short lines which would provide little useful information, and might interfere with the legibility of other detail. So some are omitted, but some are kept to indicate the general characteristics and distribution of the drainage."

14. Here is an acknowledged expert explaining that the selective display of watercourses forms a normal part of the design process for medium-scale maps such as those we are discussing. The lack of a river on the map at Narki or of a stream as the source of the Tsikakiri does not lead to

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[7]CR 2002/15, p. 62, para. 40 (Mr. Simma).

[8]*Cartographic Design and Production*, J. S. Keates, 1989, ISBN 0-582-30133-5, p. 41, Chap. 4.

the sweeping conclusion that the maps are, as Professor Simma would have you believe, "erroneous, incomplete and inaccurate"[9] or even "fallacious" [10].

15. What then does the experienced map user do when he needs more detail? He turns to the aerial photography from which the map was constructed. There he finds all the detail that exists in reality and he can easily relate this information to the map.

16. Here is the aerial photograph that was used for the construction of the DOS map at Narki — it is at tab 14 and has already been seen by the Court. On this photograph, we are looking at a large river, powerful, wide and deep when in flood, but quite dry for a large part of the year. It flows in from the left and splits into a series of channels before disappearing into the Agzabame Marsh off to the right. It does not, as Professor Simma had it, flow *out* of the marsh from the right.

17. And if I may be permitted to make an aside here, Mr. President, can I reply to the Professor's worry about the direction in which rivers flow on these maps[11]? I am sure the Court knows that as rivers flow downhill, you can ascertain their direction very simply by reading the contour values. The great majority of the maps that we have submitted possess contours — it is just a question of Professor Simma using all the information available to him.

18. To return to the issue at hand, we have a large river splitting up into a multitude of channels beyond Banki. Over the years, channels will grow and wane in size and importance, as in any delta. It may well be that channels that the Directorate cartographers did not, in 1965, think worthy of inclusion, were much bigger in 1931. We cannot know for sure but we can see these old channels on the aerial photography here, running north of Narki and again, smaller but still visible, to the south. However, the DOS cartographer decided not to show them. That does not mean that they do not exist nor does it mean that the map is "fallacious"[12].

19. I now turn to the Tsikakiri and I will use an enlarged map of the same area as Professor Simma — it is now on screen and is also at tab 15. At this point, Mr. President, Nigeria wanted to locate the highest possible source of the southern branch of the river. Once again, the

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[9]CR 2002/15, p. 52, para. 21 (Mr. Simma).

[10]*Ibid.*, p. 62, para. 40.

[11]*Ibid.*, p. 55, para. 27.

[12]*Ibid.*, p. 62, para. 40.

experienced map user turned to the aerial photographs, which are identified on the map and are still available. They give a three dimensional view — the same used by the cartographers in the original construction — and, from this view, it becomes clear that there is a small stream valley running up towards the peak, and shown in blue. This valley is also shown by small indentations in the contours on the map — and I am sure our mountaineer from Savoie will recognize their significance. I would emphasize that our purpose with this map in our atlas was not to show where the exact source of the Tsikakiri lay but to indicate the alignment of the boundary as Nigeria believed it to run.

20. Nigeria submits that the alleged discrepancies on Nigeria's maps submitted by Cameroon cannot in any way be taken as evidence that they are "fallacious"[13] or that they possess any other defect which makes them suspect in this case. There is no reason whatever for the Court to doubt that the maps produced by DOS and IGN meet all appropriate tests of accuracy.

Cameroon's criticisms of Nigeria's boundary alignment

21. Mr. President, distinguished Members of the Court, I turn now to the criticisms that counsel for Cameroon made of the reliability of Nigeria's boundary alignment. First, Professor Simma criticized the appearance of two locations for Mada on map 19 in the atlas submitted with Nigeria's Rejoinder. It is now on screen and at tab 16. One location — arrowed — is in the east and one in a black box adjacent to Nigeria's line in the west. The provenance of the black box containing the name Mada on the west of the sheet is based on the map attached to the 1931 Declaration, which you can now see on screen and in enlargement at tab 17. This map clearly shows a settlement of Mada to the south of Sale. No pointer was included on our atlas map as the position was considered approximate — it was just intended as an additional guide to the Court, no more than that. As for the village of Mada in the east, it is well inside Cameroon and I am not sure that I can help Professor Simma. However, anyone conversant with dry areas in this part of the world would know that villages often move to seek water or improved grazing and they take their village name with them. It is quite possible that the 1931 village had, by 1964, moved to this new location.

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[13]CR 2002/15, p. 62, para. 40 (Mr. Simma).

22. Professor Simma seems very worried about the fate of Djarandoua — seen on the map on screen and at tab 18. Mr. President, he need not worry. Nigeria can give him a categorical assurance that the map is correct; the GPS position is correct; Djarandoua is a Cameroonian village on Cameroonian land. Here it is, seen from the GPS point on the boundary. In fact, Nigeria has allowed Cameroon to construct this dam, viewed here from the same GPS point, on the Nigerian side of the boundary to provide water for the Cameroonian inhabitants' cattle. Both photographs are in tab 18. This is a good example of international co-operation, which I am sure the Court will be pleased to see.

23. Then we come to the confluence of the Benue and the Tiel. Professor Simma refers again to this matter, first raised by his friend Mr. Khan in the first round. Nigeria did not respond then but let me do so now. Mr. Khan submitted a map extract[14] taken from sheet 197 of the 1:100 000 series of Nigeria published in 1960. It is at tab 19. He told you[15] that Article 29 of the 1931 Declaration said: "Thence the Mayo Tiel as far as its confluence with the Faro."

24. I am afraid that Cameroon has once again got the geography wrong. What Article 29 says is this: "Thence the course of the Mayo Tiel as far as its confluence with the *Benue.*" It is Article 30 that takes us to the Faro River. Mr. Khan goes on later to talk of the Tiel emptying into the Faro River but he should have said the Benue — and this is not some obscure, minor stream but the second largest river in Nigeria, with a large catchment in Cameroon!

25. Having sorted out the geography, let us look at Mr. Khan's complaint. This was that the more easterly boundary line shown on map 43 in Nigeria's atlas — now on screen and at tab 19 — is in "sharp contrast" to the earlier map and in "clear contradiction with the express wording of the Declaration". He also tells us that the "topographical situation" at the junction of these two major rivers flowing in wide flood plains is "unambiguous". Mr. President, the Court will be well aware of the power of African rivers in flood and their ability to shift channels. In the case of the Tiel, this means taking the boundary with the channel. In no way can the situation be described as "unambiguous".

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[14]Tab 34/4 *(b)*, judges' folder, 19 Feb. 2002.

[15]CR 2002/2, p. 59, para. 30 (Mr. Khan).

26. Nigeria, in its atlas, has used an alignment that it now believes to be current in this highly unstable area but it acknowledges that it is a difficult area. It is fertile farming land and any shifts of the main channel of the Tiel can play havoc with farmers' livelihoods. Nigeria accepts that this will call for skilful and statesmanlike boundary management, especially at demarcation. It does not accept that the line on map 43 of its atlas is in "clear contradiction with the express wording of the Declaration".

Cameroon's claim that the delimitation is sound

27. Mr. President, distinguished Members of the Court, more than one counsel for Cameroon has suggested that the problem areas raised in Nigeria's Rejoinder are simple matters for demarcation and do not require any further delimitation — although their position is now much more muted. In fact, Cameroon's pleadings contain many geographical inaccuracies and contradictions and they frequently show a complete inability to understand the limitations of the 1931 Declaration and the 1946 Order in Council. They refuse to see their own inconsistencies, even in the very simple cases like Maio Senche — to which I referred last week — where their line follows two streams in spite of a clear instruction to remain on the watershed.

28. Counsel further suggested[16] that the following statement by Sir Arthur Watts is nonsense, and I quote from his own paper:

> "It is true that in 1931 the United Kingdom and France thought that the Thomson-Marchand Declaration was sufficiently clear to make provision for demarcation . . . But that was 1931: today is 2002, and quite a lot more is now known of the local topography."

29. Forgive me, Mr. President, but are these not two very self-evident facts? He goes on to claim that, because 135 miles of demarcation was successfully carried out in 1938-1939 on the very southernmost part of the Anglo-French boundary[17], it follows that the rest of the boundary — over 800 miles — would automatically be trouble free. That surely is not the case. If you drive from here to Rome and meet no traffic jams in Holland, can you be confident that as a result you will not meet any in Germany, Switzerland or Italy? Of course not.

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[16]CR 2002/15, p. 57, para. 31.

[17]Memorial of Cameroon, Ann. MC 185, p. 1416.

Comments on the deficiencies of the boundary instruments

30. Let me now turn to some specific locations mentioned by Professor Simma. He sensibly said very little about Tipsan[18] and there is no need for me to say any more either. I think Nigeria has effectively disposed of that problem, the primary reason for including the land boundary in these proceedings. On the "incorrect watershed", he appeared[19] to approve without reservation Nigeria's transposition of the incorrect line to the modern map, though not of our efforts to make it more comprehensible to the local population. His condemnation of the shift "up 4 km to the east" was strange. First, because Nigeria suggested a movement of 4 km to the east in only one location, at Amsa, midway between Mount Kuli and Muti. Second, because the shift of the boundary from the "incorrect watershed" to the east in this area simply brings it into alignment with the boundary shown on Cameroon's own map[20].

31. In spite of Nigeria's careful demonstration of the "incorrect watershed" problem, he still felt he had to say that he was "in the presence of a delimitation problem where none exists in reality". Mr. President, I cannot believe that this Court has ever had to confront such an extraordinary text requiring such a sophisticated treatment to get anywhere near a solution. It cries out for a proper delimitation.

32. Again, Mr. President, he had not got very much to say about Mount Kombon or, as we call it, Itang Hill[21] except to speculate on Nigeria's purpose in putting forward its line. Are we seeking to grab all of Tamnyar, he asked? No, we are not, Mr. President. Tamnyar is a village largely on the Nigerian side of the watershed but that part of it that is on the Cameroon side of the watershed is without question in Cameroon, and remains there under our proposals. One might wish that Cameroon were as honest in the matter of Turu. But, before we leave this area, can I just draw the attention of the Court to item 1.15 in Cameroon's written reply to Judge Fleischhauer of 10 March. I am afraid we have here yet another of those little Cameroon geographical inaccuracies which have occurred regularly throughout these proceedings. Cameroon says that Tonn Hill is 18 km from Itang Hill. It is not: it is 1.8 km.

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[18]CR 2002/15, p. 58, para. 33 (Mr. Simma).

[19]*Ibid.*, p. 59, para. 34.

[20]Reply of Cameroon, atlas, map 7.

[21]CR 2002/15, p. 60, para. 36 (Mr. Simma).

33. Mr. President, distinguished Members of the Court, we are pleased that counsel now accepts[22] that the watershed criterion will govern the course of the boundary wherever the legal instruments refer to it. But his idea that watersheds in mountainous areas can change because of drought is ludicrous. What happens when no rain falls? Do the mountains shrink in some way? Do the ridgelines melt in the heat? Of course they don't. River basins by and large stay the same whether rain falls or not — and so do watersheds. Of course, in extreme situations and with heavy and continuous rainfall, the occasional breach from one basin to another may occur. But not on the Mandara Mountains — it is just not possible. They are solid granite. Nigeria *was* pleased to see that counsel added a cautionary note[23] to the effect that "[n]ature may under specific circumstances even prevent the watershed line to follow the most obvious natural feature in this regard, namely the crest line". Now this is *exactly* what we are saying at Itang Hill.

Conclusions

34. Mr. President, distinguished Members of the Court, having refuted the unfounded criticisms of our opponents, Nigeria wishes to emphasize three points:

(i) First, Cameroon did propose an alignment for the land boundary in its atlas at Chapter 6 of its Reply, in spite of its claim to the contrary.

(ii) Second, Nigeria's cartographical evidence and its suggestions in relation to the 22 land boundary issues and the alignment of the land boundary as a whole are sound and Cameroon has failed to make out any adequate argument to the contrary.

(iii) Third, the issues arising in relation to all 22 of the boundary issues identified in Nigeria's written and oral pleadings are indeed issues of delimitation and not just demarcation.

35. Before I close, Mr. President, may I record one last disagreement with Professor Simma. He referred[24] to this boundary as running through "very remote and virtually uninhabited territory, difficult to access" and he went on to say: "The environment we face here is wilderness in the true meaning of the word." These are seriously misleading statements. To be sure, some sections of the boundary *are* uninhabited and difficult to access, but the greater length is inhabited by people on

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[22]CR 2002/15, pp. 61-62, paras. 37-38 (Mr. Simma).

[23]*Ibid*, p. 62, para. 38.

[24]*Ibid.*, p. 64, para. 44.

both sides — farmers, traders, families, children — to whom this is not a wilderness but just home. They live at places like Kodo Mugdo, Banki, Turu, Madaguva, Gembu, which is a little way from the border but close enough, Lip, and Mberogo. You will find these photographs at tab 20.

36. All these people need certainty in their lives. The Court now has a unique opportunity to remove the *un*certainties that surround the 1931 Declaration and the 1946 Order in Council and to provide a definitive specification. Nigeria urges the Court to grasp that opportunity in the context of both international law and the lives of the many, many people that live on both sides of the boundary.

37. Mr. President, I thank the Court for their patience and I ask you to call Sir Arthur Watts to continue Nigeria's pleadings in the second round.

The PRESIDENT: Thank you very much, Mr. Macdonald. J'appele maintenant à la barre sir Arthur Watts.

Sir Arthur WATTS: Thank you very much, Mr. President.

LAND BOUNDARY AND BAKASSI

1. Mr. President and Members of the Court, in following Mr. Macdonald's compelling refutation of Cameroon's arguments on a number of specific matters relating to the land boundary — a refutation which, if I may say so, owes not a little to his coincidental possession of an expertise which counsel for Cameroon was unwise to belittle — I shall now offer some general observations on the arguments which Cameroon has put forward in recent days on the land boundary. This will lead me on to a treatment of certain aspects of the Bakassi problem. In the course of this pleading I will also seek to offer at least a preliminary response to questions put by Judge Elaraby, Judge Fleischhauer, and Judge Kooijmans.

2. Let me start, then, with the land boundary. Counsel for Cameroon acknowledged that the Parties agree on which instruments are relevant to the determination of the land boundary between Lake Chad and Bakassi — they are the instruments to which the Parties have regularly referred and with which the Court will by now be very familiar. Cameroon has several times in these present hearings accused Nigeria of being belated in its acceptance of those instruments as the instruments which delimit the land boundary. This is far from being the case. Nigeria, in its

Counter-Memorial[25], identified the instruments in question, and said that it accepted them in principle; and Nigeria has made it clear that that qualification *only* covered certain specific inadequacies of delimitation[26]. That has all along been Nigeria's position, which by now Cameroon should understand.

3. Indeed, Mr. President and Members of the Court, *between* Lake Chad and Bakassi, there is not only agreement that those instruments are relevant, but also that they do effectively delimit the boundary in all but the 22 specific locations which Nigeria has identified. So, for the land boundary as a whole, the delimitation of by far the greater part of that boundary is agreed. There are differences between the Parties only with respect to those few specific locations.

4. Before turning to some particular aspects of those locations, let me make a general point. As Nigeria showed, there is no substantial difference between the kind of task which is before the Court in this part of the case and the task which this Court, and other international tribunals, have performed in other cases involving boundary disputes. Other cases have often consisted solely of a dispute of precisely the kind which is in issue in these proceedings — only here we have 22 of them, all at once, and just as part of a much wider case involving many other issues.

5. Cameroon created the occasion for an examination of those locations in these proceedings by its original request that the Court should "specify definitively" the land boundary. But it is noteworthy that Cameroon has refrained from giving the Court any assistance in carrying out the very task which Cameroon asked the Court to undertake.

6. Nigeria does not wish to dwell unduly on this question of the request to the Court to "specify definitively" the land boundary. There is no doubt that Cameroon used those words, in paragraph 17 *(f)* of its Additional Application. Cameroon now says that it did not mean what Nigeria thought it meant, and accuses Nigeria of "unilaterally" interpreting Cameroon's words — as if that were some sort of crime. But how else is Nigeria to interpret them? — it can only do so for itself. And as I explained last week, Nigeria took Cameroon's words exactly *in* their context when seeking to interpret them — the suggestion that Nigeria had taken them out of context or interpreted them in bad faith is as false as it is time-wasting. Cameroon can scarcely blame

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[25]Counter-Memorial of Nigeria, pp. 486-487, paras. 18.26-18.28.

[26]Rejoinder of Nigeria, pp. 311-314, paras. 6.42-6.49; CR 2002/11, pp. 43-44, paras. 6 and 7 (Sir Arthur Watts).

Nigeria, or the Court, for taking Cameroon's words at face value, as meaning that the Court was seised of a request to delimit the land boundary with exactitude[27].

7. Counsel for Cameroon yet again quibbled over Nigeria's acceptance of the boundary instruments only "in principle"[28], but counsel knows perfectly well that this issue is utterly dead. Nigeria's position has been repeatedly explained with abundant clarity[29]. There is no justification for Cameroon to waste yet more time on the issue.

8. Similarly with counsel's repetition of Cameroon's view that Nigeria was attempting to rewrite the boundary instruments, and to interpret them unilaterally. As explained last week[30], Nigeria has simply submitted its views as to the proper interpretation of various texts which give rise to difficulties of delimitation; unless Cameroon thinks that words can usefully be interpreted by using exactly the same words again, it is evident that a process of interpretation involves using different words from those being interpreted.

9. It is a misrepresentation of a similar kind for Cameroon to refer to Nigeria's suggested interpretation of the defective provisions as establishing a "claim line"[31]. Nigeria is not seeking to claim any territory: it is seeking simply to identify, and then subsequently to apply, the correct interpretation of the relevant boundary instruments.

10. Indeed, Mr. President, it is a curious fact that it is probably just that which *both* Parties seek: both Parties accept that the boundary is delimited by the four relevant instruments, and the Parties only disagree about the correct interpretation of a specific and relatively small number of those provisions. Nigeria says that those disagreements are evident on the face of the relevant texts, that they matter, and that they should be sorted out in these proceedings, since it is important to conclude this litigation. Moreover any future demarcation commission must have a clear idea what it is meant to be demarcating, and in the meantime the local populations need to have a clear idea of where the boundary runs. Cameroon says, in principle, that those disagreements do not matter at this stage; they can be sorted out at the demarcation stage. But even Cameroon now

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[27] *I.C.J. Reports 1998*, para. 98.

[28] CR 2002/15, p. 46, para. 7 (Mr. Simma).

[29] CR 2002/11, pp. 43-44, paras. 6-7 (Sir Arthur Watts).

[30] *Ibid.*, p. 53, paras. 42-44 (Sir Arthur Watts).

[31] CR 2002/15, p. 49, para. 15 (Mr. Simma).

admits that there may in practice be delimitation problems which the Court may pronounce on if necessary[32]. And that is precisely Nigeria's point — and now is the time for it to be done, not later.

11. Cameroon's position is in fact very curious. Counsel for Cameroon mocked Nigeria for having presented a consistent case throughout these proceedings[33]. Mr. President, consistency in the presentation of its case is the one thing which Cameroon certainly cannot be accused of! It is particularly striking in the present context. Throughout these proceedings Cameroon has declined to discuss the details of the evidently defective boundary delimitations to which Nigeria has drawn attention, dismissing them as only a matter for demarcation. Nigeria it was said — and was said even this week[34] — was simply trying to complicate matters. But now even Cameroon has had to recognize that Nigeria was right and that some at least of those defective delimitations were indeed defective, and may indeed be too difficult to be solved by a demarcation commission, so may indeed be better dealt with by this Court.

12. But of course, having left it so late before waking up, Cameroon finds that it has omitted to argue its case on these matters of detail. So now it is Cameroon which, after years of accusing Nigeria of causing interminable delays in these proceedings, contemplates causing yet further delay itself — and all just because it has left it until this very last moment to acknowledge the facts which have been staring it in the face all along. Nigeria submits, Mr. President and Members of the Court, that any such attempt to secure further delay should be dismissed out of hand. Cameroon has chosen not to argue its case, even though it has had plenty of opportunity to do so. It made its choice of its own free will: it must live with the consequences, and not put Nigeria to yet further delay and expense as a consequence of Cameroon's ill-advised strategy.

13. It is at this point that it would be appropriate for me to respond to the proposal put before the Court at the end of Tuesday morning by the Hon. Agent for Cameroon[35]. Let me set out what that proposal amounted to. And it seemed to have seven main elements:

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[32]CR 2002/15, p. 62, para. 40 (Mr. Simma); p. 34, para. 17 (Mr. Cot); CR 2002/2, p. 59, para. 30 (Mr. Khan).

[33]CR 2002/15, pp. 19-20, paras. 4-8 (Mr. Pellet).

[34]*Ibid.*, p. 27, para. 34.

[35]CR 2002/17, pp. 64 *et seq.*, paras. 1 *et seq.*

— first, if the Court considers that certain of the defective delimitations raised by Nigeria can be dealt with by the Court, Cameroon would see nothing inappropriate in that;

— second, if on the other hand the Court does not feel able to deal with those matters and if therefore its judgment leaves certain matters uncertain, Cameroon does not want to have to discuss those matters bilaterally with Nigeria;

— third, in that event — that is, if the Court feels that it has to leave certain matters still uncertain — Cameroon is ready to refer those matters for decision to an organ established by an impartial third party in the course of the necessary demarcation of the as yet undemarcated frontier sectors;

— fourth, this organ should, in Cameroon's strong preference, be established by the Court or under its auspices;

— fifth, failing that, and in the absence of agreement between the Parties, the organ could be established by the United Nations;

— sixth, in either case, it could include representatives of Germany, France and the United Kingdom; and

— seventh, this organ would have to have powers of demarcation, extended so far as necessary to encompass the task now being envisaged for it.

14. Mr. President, it is difficult for Nigeria to know quite how to understand this proposal. Is it a proposal for negotiation? Or is it a proposal — that is, a submission — regarding action to be taken by the Court in delivering its judgment on the case which Cameroon brought before it?

15. Since it cannot be a submission as to what the Court should do — for reasons which I will explain in a moment — it would seem to be a proposal for negotiation. But it cannot be that either, since Cameroon makes it clear, with emphasis, that it is not prepared to negotiate bilaterally with Nigeria. And a proposal of this kind, even if meant as a proposal for negotiation, comes rather late in the day, at the very end of Cameroon's second round pleading. And in any event, the Parties are presently engaged in these proceedings before the Court, and we are all here as litigating parties, not as potential participants in an intergovernmental negotiation.

16. So let me turn to the other, and perhaps more obvious, alternative, namely that Cameroon is making a proposal, a submission, as to what the Court should do in its judgment in this case.

And here Cameroon's proposal is, in effect, in two parts. First, says Cameroon, if the Court can decide the proper interpretation of those parts of the boundary instruments which contain defective or uncertain delimitations, all well and good: Cameroon will accept such a decision of the Court. Second, if the Court feels that it cannot decide some of those matters, let there be an impartial organ established to sort those matters out as part of an eventual demarcation process.

17. Let me take the first aspect — Cameroon's readiness to accept the Court's decision on those matters of defective or uncertain delimitation which the Court feels able to deal with. But that, Mr. President, is what Cameroon is committed to in any event. Having come before this Court as the Applicant, Cameroon has already bound itself to accept the Court's judgment on all the matters which Cameroon put before the Court for adjudication: the Court's judgment will be binding for Cameroon. So this part of Cameroon's proposal adds nothing to the situation which exists anyway.

18. There is, however, something new in the second element of Cameroon's proposal — the establishment of what is in effect a demarcation and dispute settlement organ, to deal with those matters of defective delimitation which the Court feels unable to deal with. Mr. President, there is at the outset a very simple question to be asked — what power does the Court have to establish such an organ? For that is what Cameroon seeks: it says of this proposed organ that it would strongly wish to see it set up by the Court or under its auspices[36].

19. The Court in fact, as the Court will be well aware, does not have the power as part of its jurisdiction in contentious proceedings to set up subsidiary organs, and certainly not ones involving, as Cameroon insists, third States not otherwise before the Court — for it is an essential part of Cameroon's proposal that it must not be left to face Nigeria in a tête-à-tête. Quite apart from that, the Court's jurisdiction in the present case does not extend to the management and control of the demarcation phase of whatever boundary settlement may be decided.

20. Perhaps Cameroon is aware of all this, because Cameroon's proposal envisages the possibility of this organ being established either by an agreement between the Parties or, in the absence of such an agreement, by the United Nations. Since Cameroon so adamantly refuses to

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[36]CR 2002/17, p. 66, para. 8 (Mr. Kamto).

negotiate bilaterally with Nigeria, the first option is obviously a sham. So we are left with the United Nations. But what has that to do with the Court, in arriving at its judgment? Nothing at all, Mr. President and Members of the Court.

21. But whether this organ is to be set up by the Court or by the United Nations, in either case there are three other very substantial points to be made.

— First, it will not necessarily be straightforward to secure the participation in the prospective organ of Germany, France, and the United Kingdom — or indeed any other three States which might be acceptable to both Parties, for clearly their agreement will be needed to whatever outside States are to be involved.

— Second, who is going to establish the organ's terms of reference? Clearly this will not be easy, given that Cameroon contemplates the organ having dispute settlement functions as well as straightforward demarcation functions.

— Third, and by no means least, who is going to finance this organ? The Secretary-General's Trust Fund is unlikely to be able to meet what will clearly be very considerable costs, and I imagine that there are other more urgent calls on the Court's budgetary resources.

22. It is apparent that Cameroon's proposal is as ill conceived as it is inappropriate for adoption as part of the Court's judgment in this case. Nigeria does not wish, however, to be entirely negative about what the Hon. Agent for Cameroon said on Tuesday. For Nigeria understands what lies behind Cameroon's proposal, and sympathizes with the position in which Cameroon now finds itself.

23. Cameroon has now made it absolutely clear that it acknowledges that some at least of the 22 defective or uncertain delimitations which Nigeria has raised do indeed raise genuine problems. That is a welcome admission, confirming hints which had already appeared in the pleadings of several of Cameroon's counsel. And Cameroon is happy for the Court to deal with such of the 22 delimitation problems as it feels able to. Nigeria welcomes that: it is no more than what Nigeria has sought from the Court all along.

24. Cameroon goes on to explain that its *"unique souci est que la frontière soit précisée définitivement*[37]. Mr. President, that phrase has a familiar ring. What started off in Cameroon's Additional Application as *"préciser définitivement"*[38] has now become — well, *"précisée définitivement"*. Wheels seldom turn full circle with such precision and elegance! Of course, Nigeria shares Cameroon's concern that the boundary should be specified definitively: that has been Nigeria's concern all along — a consistency which counsel for Cameroon derided[39] but which it might have been to his benefit to have emulated.

25. Nigeria has supported its consistent position with all the necessary argument and cartographic evidence. That evidence has included the appropriate maps, from whatever was the best available source. Nigeria had used, principally, the 1:50,000 series of maps produced between 1965 and 1969 by the Directorate of Overseas Survey, and the maps at the same scale prepared by the French *Institut Géographique National* in the 1960s. Nigeria has patiently and carefully explained the delimitation problems which have arisen, and has submitted what Nigeria suggests would be the appropriate interpretation to be given to the defective delimitations. Faced with all this material, Cameroon has, by its own free choice, done nothing to help the Court resolve the problems which were inherent in Cameroon's original request to the Court to specify definitively the land boundary.

26. It is, of course, Cameroon's right to choose to let its case go by default. But when it was Cameroon which seised the Court with its request to determine the land boundary with exactitude, and when Nigeria has placed all the necessary cartographic material and legal argument before the Court to enable it to reach clear decisions on the correct interpretation of the boundary instrument, then it seems only right that Cameroon should *not* be permitted to divert the Court from completing the task which Cameroon gave it.

27. In short, Nigeria agrees with Cameroon that the Court should deal with the 22 defective or uncertain delimitations, and, of course, the Court's judgment will be binding for Nigeria, as for Cameroon. Moreover Nigeria believes — apparently, unlike Cameroon — that the Court already

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[37]CR 2002/17, p. 65, para. 5 (Mr. Kamto).

[38]Additional Application, para. 17 *(f)*.

[39]CR 2002/15, pp. 19-20, paras. 4-8 (Mr. Pellet).

has before it ample material on the basis of which to reach such a decision on each and every one of the 22 problem delimitations. The Court accordingly can and should, in Nigeria's respectful submission, proceed to deal with all of them on the basis of the material before it, and decide those issues in the manner requested by Nigeria.

28. Mr. President and Members of the Court, let me turn to another matter. At the conclusion of the first round of the oral pleadings, Judge Fleischhauer asked two interrelated questions of both Parties. And these were,

> "How was the land boundary in those specified areas in which Nigeria contests the correctness of the delimitation, in practice handled both before and after independence? In particular, where has the course of the boundary in those areas been treated as running?"

29. In order to provide a full and careful answer to Judge Fleischhauer's questions Nigeria will, as I am sure the Court will understand, require enquiries to be made with the local authorities in all the locations in question. All Nigeria's pleadings, both written and oral, regarding the land boundary have been based heavily on, and have benefited greatly from, the extensive research carried out by the various authorities in Nigeria, particularly the National Boundaries Commission, and Nigeria will again ensure that they make the further researches which are necessary in order fully to answer Judge Fleischhauer's questions.

30. But it may nevertheless be of assistance to the Court if, even now, I offer a brief preliminary response to those questions, even though it will have to be subject to whatever Nigeria's subsequent researches may reveal.

31. As the Court will recall, Nigeria has drawn attention to 22 locations at which questions arise regarding the delimitation of the land boundary as described in the Thomson-Marchand Declaration or the 1946 Order in Council. But those 22 were of two kinds. Thirteen of them were locations at which Nigeria itself discerned defects in the very terms of the delimitation, that is in the delimitation as such.

32. The other nine locations were different. They were locations where, so far as Nigeria is concerned, the delimitation is both clear and adequate. It is only because Cameroon has adopted a position which departs from the clear and adequate delimitation in the relevant instrument, that Nigeria has drawn attention to the nine locations in question. In respect of them Nigeria has simply

asked the Court to confirm that the relevant language of the boundary instruments does indeed delimit the boundary, and to require Cameroon to act consistently with that delimitation.

33. The distinction between these two categories of locations will be reflected in Nigeria's eventual written response to Judge Fleischhauer's question — which Nigeria will, of course, submit by 4 April, as the Court has requested.

34. During the first round of these oral pleadings, Nigeria, after its treatment of the land boundary, added an explanation of where the boundary ran in the area where the 1913 Anglo-German Treaty ceased to be an effective boundary delimitation because of the defective "Bakassi provisions" of that Treaty. Nigeria described that line — a customary line, given the absence of an effective treaty line — in its Rejoinder[40] and during these hearings last week[41]. That line is shown on the map which is now on the screen, and at tab 21 in the judges' folder.

35. Cameroon's response to that line was very limited[42]. Counsel for Cameroon made just four points. The line was, he said, not a treaty line. True: but that does not mean that there is no boundary. There is no rule of international law requiring that boundaries can only be established by treaty. Many boundaries are not set out in treaties. In the absence of a treaty, a boundary will be a customary boundary, and that is a perfectly familiar notion in international law and practice.

36. Second, counsel said that there was no administrative document establishing the boundary. No, there is not — and nor does there have to be. Indeed, that is often the essence of a customary boundary.

37. Third, counsel said that there was no basis for the customary boundary asserted by Nigeria. Again, he is wrong. The boundary has two elements — first across the land between the Akpa Yafe and the head of the Rio del Rey, and second down the Rio del Rey and out to sea. The basis for the land boundary lies in the territorial extent of the jurisdiction and power of the Kings and Chiefs of Old Calabar. Their jurisdiction and powers extended to the region coloured red on the map now on the screen, and at tab 22 in the judges' folder — a map which the Court saw last

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[40]Rejoinder of Nigeria, pp. 289-293, paras. 11.7-11.19.

[41]CR 2002/11, pp. 59-62, paras. 67-80 (Sir Arthur Watts).

[42]CR 2002/15, p. 23, para. 19 (Mr. Pellet).

week. The Court will notice the equivalence between the northern extremity of that area and the boundary now asserted by Nigeria.

38. As for the boundary in the Rio del Rey, its basis lies both in the territorial limits of the Kings and Chiefs of Old Calabar, and in the clear recognition, in such Anglo-German agreements as actually entered into force, of the Rio del Rey as both the dividing line between British and German spheres of interest, and as the westward limit of German territorial expansion[43]. One of those agreements also defined the location of the head of the Rio del Rey[44].

39. So there is a wholly adequate basis for both elements of the customary boundary asserted by Nigeria.

40. While that map is still on the screen, let me just deal with a point made by another of Cameroon's counsel. He pointed out that the red area went as far as the River Ndian. Did that not mean, he asked, that Nigeria was now claiming the whole territory as far as the Ndian, that is, well beyond the Rio del Rey? And if that was not the case, then why not? Mr. President, the answer is simple. That map indicated the extent of the powers and jurisdiction of the Kings and Chiefs of Old Calabar as they were before the 1884 Treaty of Protection, as was made clear during Nigeria's oral presentation last week[45]. As was also made clear at that same time, the British Consul in his report back to London in 1890 stated that the Kings and Chiefs had themselves retired from their more easterly territories. There is nothing mysterious about it at all.

41. To go back to the four points made in criticism of Nigeria's overland boundary between the Akpa Yafe and the head of the Rio del Rey, counsel's final point was that he could not find the various natural features which Nigeria used for its boundary line, and he even doubted whether they existed. On the screen now, and at tab 23 in the judges' folder, is a map on which the various creeks and streams referred to by Nigeria can clearly be seen — Archibong Creek, its tributary flowing in from the south, and Ikankan Creek, leading to the head of the Rio del Rey.

42. It is worth noting that Nigeria set out its boundary in this area in its Reply, and it is only this week, in a hurried, one paragraph, comment in its second round of pleadings, that Cameroon

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[43]CR 2002/8, pp. 51-53, paras. 55-63 (Sir Arthur Watts).

[44]CR 2002/11, p. 61, para. 77 (Sir Arthur Watts).

[45]CR 2002/8, p. 77, para. 8 (Sir Arthur Watts).

seeks to provide some response. It is a feeble response, despite all the time which Cameroon has had to prepare it.

43. Mr. President and Members of the Court, having begun in this way a consideration of the situation of Bakassi, this is a convenient starting point at which to consider Cameroon's arguments seeking to refute Nigeria's arguments about the Protectorate and the 1913 Treaty and thereby to deny Nigeria's title to Bakassi.

44. Counsel for Cameroon made, I think, four principal points. His first was a denial that the Kings and Chiefs of Old Calabar possessed international personality capable of sustaining territorial title. His arguments for doing so were varied. He suggested that they were merely City States which were in a loose federation, and that this showed that they were not independent international persons[46]. But he seemed to be looking at this community through early twenty-first century eyes, rather than with a perspective more contemporary with the circumstances in question — that is a more inter-temporal perspective. We are *not* dealing with a State seeking admission to the United Nations, but with an entity the looseness and informality of whose structures was typical of much of Africa — and also other parts of the world, including Asia — at the period in question. The idea of a "loose federation" may not fit tidily into modern notions of international personality and statehood, but there was nothing extraordinary about it in African and late nineteenth century terms.

45. Counsel, in reaching his conclusions about the supposed lack of international personality of the Kings and Chiefs of Old Calabar, seems to have failed to draw the right conclusions from this Court's Advisory Opinion in the *Western Sahara* case[47]. The Court was dealing with the situation existing in 1884 — by coincidence the very year of the Treaty of Protection which is relevant in the present case. The Court's conclusion was that at that time "Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them."[48] It was on that basis that the Court concluded that the territory inhabited by those tribes was not *terra nullius*, that is, that they had in international law a

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[46]CR 2002/16, p. 21, para. 12 (Mr. Shaw).

[47]*I.C.J. Reports 1975*, p. 12.

[48]*Ibid.*, p. 39, para. 81.

title to their lands which others could only acquire derivatively from them. The degree of social and political organization, and territorial stability, possessed by the Kings and Chiefs of Old Calabar far exceeded that of the nomadic tribes which the Court was then concerned with. Their international legal capacity to hold title to territory is an *a fortiori* case.

46. Counsel's further point that no State recognized the international personality of the Kings and Chiefs of Old Calabar ignores, again, that we are talking of the late nineteenth century, not today. Recognition was not conceived of then as an essential prerequisite of international personality. The Court made no mention of the need for recognition in the *Western Sahara* case. It was a question which, in any event, would only have arisen if and when other States had a need to take some internationally relevant step in their dealings with the community in question. And when they did need to deal with it, they did not hesitate to do so — by, for example, appointing a consul to the area, which Great Britain did as far back as 1849[49], and by concluding treaties, which both France and Great Britain did[50]. Treaty making cannot be as lightly dismissed as counsel for Cameroon sought to do: treaty-making capacity is a critical element in the possession of international personality, and concluding major bilateral treaties has long been accepted as an occasion for necessarily implying recognition.

47. Counsel then said that it was far from clear how and when and by what means the Kings and Chiefs of Old Calabar had transmuted into the present-day Nigeria. Apart from cautioning against taking too formalistic a view of matters which are often, and were particularly over 100 years ago, the result of gradual and incremental evolution, perhaps I might leave the response to counsel's point to the preliminary answer which I shall give in a moment to the questions put by Judge Kooijmans.

48. Counsel for Cameroon's second main point was as insubstantial as his first. He questioned the territorial extent of the domains of the Kings and Chiefs of Old Calabar. He showed again the map Nigeria had shown, but failed to put it in its correct temporal context. I have already referred to this map: it is on the screen again now, and at tab 22 in the judges' folder. Counsel suggested that it showed that Nigeria ought now to be claiming land as far east as the River Ndian.

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[49]Counter-Memorial of Nigeria, p. 74, para. 5.14.

[50]CR 2002/8, p. 43, paras. 22-23 (Sir Arthur Watts).

As I have already said, it is clear that the Kings and Chiefs had themselves relinquished their claims to their more easterly lands, which, of course, they were perfectly entitled to do. There is no mystery about it; and it involved no exercise by Great Britain of any purported legal power. But that was the only point that counsel made. He said nothing to suggest that the red area on the map did not in fact represent the territorial extent of the Kings and Chiefs' domains.

Mr. President, my next point concerns the Treaty of Protection of 1884 and it may go on for a little while. I am happy to carry but if this would be a convenient moment for a break, that would also suit me very well.

The PRESIDENT: If it's convenient for you as I said earlier, it is convenient for the Court. La Cour va donc suspendre une dizaine de minutes.

L'audience est suspendue de 16 h 15 à 16 h 25.

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

Sir Arthur WATTS: Thank you, Mr. President. Before the break, I was considering four main points which had been made by Cameroon. First of all, concerning the international personality of the Kings and Chiefs of Old Calabar, and then the territorial extent of their domains. So, let me, if I may, now continue.

49. Counsel for Cameroon, having failed to show that the Kings and Chiefs of Old Calabar lacked international personality, and having failed to show — or even argue — that Bakassi was not within their territorial jurisdiction and authority, then — as his third main point — turned his attention to the Treaty of Protection of 1884. Let me just make six points by way of brief reply.

— First, counsel argued that the provisions of domestic law relating to the distinction between a colony and a protectorate were irrelevant. That is entirely wrong. The fact is that it is *very* relevant that British legislative action, right from the beginning and up to 1960 dealt with the Nigeria Protectorate as something affecting a *foreign* country, within which Great Britain had

acquired authority by virtue of a *treaty*, and Great Britain was *not* dealing with it as a colony[51]. It is also important that the British Government was absolutely clear that that was its intention: the record, set out in Nigeria's Counter-Memorial[52] and including statements by British ministers (including the Lord Chancellor, Lord Selborne), is absolutely clear that Britain was definitely not wanting to acquire a colony and was only wanting instead, to acquire a limited protectorate.

— Second, counsel then delivered another interesting lecture, of a wholly general kind, about what he said were the characteristics of protectorates. He talked, for example, of protectorates "mutating" into colonies, so that the Protecting State acquired sovereignty. All very interesting — but beside the point. In relation to this particular Protectorate it was, as I have just said, abundantly clear that Great Britain had no intention whatsoever of acquiring another colony, and nothing it did — neither the terms of the Treaty of Protection which it concluded, nor the terms of its domestic legislation by which it exercised the rights which the Treaty had given it — indicated otherwise.

— Third, counsel did not deal only with interesting, but ultimately irrelevant, generalities. Cameroon did — at last, but only on the penultimate day of its pleadings in this case — look at the actual terms of the Treaty of Protection. He took us through the terms of Articles III, IV and V, and showed that they gave Great Britain quite extensive powers. So they did — but all of them were limited to matters of *internal* affairs. And even the last point he made — that appeals went to the British Government — underlined the protectorate character of the Treaty, for the appeals went to Her Majesty's Secretary of State for Foreign Affairs — that is, the Secretary of State who dealt with *foreign* countries, not the Minister for the Colonies as would have been appropriate for a colony.

— Fourth, but what was truly astonishing about counsel's examination of the Treaty of Protection was that he said *not a word* about the meaning of the two Articles — the only two Articles — which set out the terms of the *international* protection which is at the heart both of the Treaty and of Nigeria's Protectorate status. The only Articles which set out the internationally

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[51] Counter-Memorial of Nigeria, pp. 117-122, paras. 6.72-6.80.

[52] *Ibid.*, pp. 101-106, paras. 6.45-6.57.

relevant protectorate terms of this particular Treaty of Protection are passed over in silence! Cameroon thus ignores the requirement laid down in the case concerning *Nationality Decrees Issued in Tunis and Morocco*[53] that the position of each protectorate depends on the particular terms of its own treaty of protection. Cameroon thus also has no answer to Nigeria's submission that, if the far more extensive rights given to France by the Treaty of Fez did not prevent Morocco from being regarded by both France and the Court as continuing to possess international personality[54], then it must go without saying that the international personality of the Kings and Chiefs of Old Calabar continued. Cameroon's silence on Articles I and II of the 1884 Treaty is a matter of great astonishment on Nigeria's part — but also gratification, Mr. President, since it means that Nigeria's view of those Articles — a view expressed as long ago as May 1999 in Nigeria's Counter-Memorial[55] — remains unchallenged. Nigeria trusts that the Court will take due note of that fact.

50. Finally, Mr. President and Members of the Court, counsel, as his next point, turned to the 1913 Treaty. May I first remind the Court of the question which I posed many times last week: Who gave Great Britain the power to give away Bakassi to Germany? And how? And when? That was, and was intended to be, a challenge to Cameroon. And Cameroon has simply refused to answer; it has no answer. It avoided, as I have just shown, any discussion whatsoever of the only provisions in the Treaty of Protection which affect the issue. Instead Cameroon argued only that the Nigeria Protectorate was really a colony, even though nothing in the Treaty of Protection can possibly lead to that conclusion, and even though such was expressly not the intention of the British Government, and even though British legislation right through to independence in 1960 was flatly contrary to any such thesis. Nigeria's answer to the question, who gave Great Britain the power to give away Bakassi? and when?, was clearly stated last week — "nobody", and "never". Cameroon has scarcely even tried to provide any other answer.

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[53] *P.C.I.J., Series B, No. 4*, p. 27.

[54] *Rights of Nationals of the United States of America in Morocco, Judgment, I.C.J. Reports 1952*, p. 185; CR 2002/8, p. 49, para. 44 (Sir Arthur Watts).

[55] Counter-Memorial of Nigeria, pp. 109-111, paras. 6.63-6.65.

51. As one final point on the 1913 Treaty, I should like to say just a few words in response to counsel for Cameroon's remarks about the severance of Articles XVIII to XXII of that Treaty. There are three points which counsel made to which I should like briefly to respond.

52. First, he asserted that the severance of those Articles could not be countenanced because it was contrary to what he regarded as principles of indivisibility and completeness — principles which, it was suggested, were particularly applicable to boundary treaties. Yet the Vienna Convention on the Law of Treaties, which took account of the special position of boundary treaties in Article 62, added no such qualification to Article 44, paragraph 3 of which expressly allows the severance of treaty provisions.

53. Second, counsel asserted that Articles XVIII to XXII could not be removed from the Treaty, because it would undermine the remaining boundary provisions. But nowhere did he actually examine those remaining provisions, or try to show that Articles I to XVII and Articles XXIII to XXX could not continue to apply, even in the absence of the defective "Bakassi provisions".

54. Third, counsel chose once more to characterize Nigeria's attitude as one of "picking and choosing", as if Nigeria were on some arbitrary basis selecting to retain the Articles giving advantages for Nigeria but rejecting those seen as prejudicial. But there is nothing arbitrary in Nigeria's position: Articles XXVIII to XXII are tainted by a fundamental legal defect, and therefore cannot be legally effective. That does not apply to the other Articles. And nor is it right to regard the other non-defective Articles as in some way especially advantageous for Nigeria: both States benefit equally from their provisions.

55. Mr. President, Members of the Court, in addition to responding to the points made by Cameroon in its second round, Nigeria would like to take this opportunity to give at least a preliminary response to the questions put to Nigeria by Judge Kooijmans and Judge Elaraby. Their questions related to the argument about Bakassi, so they come naturally at this point in my pleading.

56. I say that this response will be "preliminary" because it is apparent that a full answer will require some research, and it has not been possible to complete this in the time available since these

questions were put at the end of last week. What I say now is, therefore, inevitably subject to the fuller written answer which Nigeria will supply by 4 April.

57. Judge Kooijmans's first two questions concerned the extent of any consultation with the Kings and Chiefs of Old Calabar in the years following the conclusion of the Treaty of Protection of 1884. Before making a brief comment upon each of his questions, there are two background points to be made.

58. The first is that dealings with the Kings and Chiefs of Old Calabar will almost exclusively have taken place locally, in what for convenience I will continue to refer to as Nigeria, even though that it not strictly accurate for the earlier part of the period. Any records relating, for example, to take Judge Kooijmans's first question, to occasions when the Kings and Chiefs of Old Calabar as a separate entity had formal contacts with the protecting State after the conclusion of the Treaty of Protection, will have originally been prepared, produced and held locally.

59. That means that they will at first have been in Old Calabar, which in due course became the modern town of Calabar, or then in Lagos — for although Lagos and its immediate surrounding area was itself a colony and was thus always constitutionally distinct from the Protectorate, it was, after about 1906, the centre of British administration for the whole of Nigeria. British practice regarding its administration of its overseas territories was generally not to transfer complete sets of local records back to London — either at the time or later, for example at the time of independence. If something was sufficiently important for the local Governor formally to send a report back to London, then there is a *probability* that that report will have survived in the Foreign Office or Colonial Office archives which are now in the Public Record Office at Kew.

60. Most British records of meetings between British officials and the local people would in any event have merited no more than preservation in Calabar or Lagos. They would, in the normal case, be kept for only a limited time — perhaps several years, but certainly not for several decades. As for records which may have been made by the Kings and Chiefs themselves, they are unlikely to have been as bureaucratically-minded as British officials were, and such written records as they may have made of their dealings with the British are perhaps even more unlikely to have been kept by them for very long, if at all.

61. The second background point I would make is that the Kings and Chiefs of Old Calabar were not, as Nigeria pointed out in its Counter-Memorial, a simple unitary entity. They were, as there described, something like what today we might classify as a loose federation. There were a number of Kings and Chiefs, having in common the fact that they had their territorial base in and around the area of Old Calabar, and acting more and more, in an evolutionary process which is quite common, under the paramountcy of one of their number, and in this case the ruler of Old Calabar. Over time the primacy of Old Calabar was transformed into the Obongship of Old Calabar, and now of Calabar. The significant date appears to be 1902, at which time the Kings and Chiefs agreed on a system whereby the senior among them was chosen, in rotation, to be the Obong — a title which, in the Efik language, is equivalent to King.

62. Thus when, in 1884, they needed to constitute a single unit in order to be the one party to a Treaty of Protection to which Great Britain was the other party, they acted together as a unit. As Nigeria showed during the first round[56], in concluding that Treaty steps were taken expressly to bring within its ambit a number of local Kings and Chiefs who were subject to the jurisdiction and authority of the Kings and Chiefs of Old Calabar. But where it was more appropriate for one or more of their number to act on their own in their dealings with other States, they did so: they acted as a unit, or as their separate constituent units, as circumstances dictated. The federation was both loose and informal, but it was nevertheless real — it was, in the words of the Court in the *Western Sahara* Advisory Opinion[57], a "social and political organization" of the local communities. It has been acknowledged that the conclusion by local rulers of treaties of protection, like that of 1884, "constitutes a recognition of personality both of the ruler and of the people concerned"[58].

63. Against that background let me address, in a preliminary way, the questions put by Judge Kooijmans. The first question asked "how often and on what kind of occasions the Kings and Chiefs of Old Calabar as a separate entity had formal contacts with the Protecting Power after the conclusion of the 1884 Treaty of Protection". Subject to one incident which I shall note in a moment, Nigeria has at present no information *either way* on this question. Nigeria can neither say

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[56]CR 2002/8, p. 45, para. 30 (Sir Arthur Watts); also Counter-Memorial of Nigeria, pp. 93-94, para. 6.33.

[57]*I.C.J. Reports 1975*, p. 39, para. 80.

[58]Shaw, *Title to Territory in Africa: International Legal Issues* (1986), p. 37: quoted at Counter-Memorial of Nigeria, p. 88, para. 6.20.

that no such meetings ever took place, or that they did take place. So far as is known at the present time, the records which would enable the question to be answered probably no longer exist, either in London, or in Calabar or Lagos, or in the National Archives of Nigeria in Enugu or Ibadan.

64. The one incident which I would mention is the visit to London in 1913 of certain Kings and Chiefs of Old Calabar[59]. In that year they made very strong representations *in Calabar* at what they saw as a British proposal to amend the system of indigenous land tenure applicable in South-Eastern Nigeria (an area which, of course, includes Bakassi). The Kings and Chiefs sent a representative delegation to London to pursue the question — no small matter at that time. They gave evidence to the Parliamentary Committee established to examine the land tenure question, and a question was asked on their behalf in Parliament. The delegation was sent by Eyo Honesty VIII, Obong of Calabar, together with his Council of Etuboms. The delegation consisted of some 20 members: the two leading members of the delegation were Prince Bassey Duke Ephraim IX (a member of the Native Council of Calabar and a son of the late King Duke) and Prince James Eyo Ita VII, Chief of Creek Town and a grandson of King Eyo.

65. Judge Kooijmans's second question was whether the Kings and Chiefs of Old Calabar were "consulted when the Protecting Power in 1885 incorporated their territory in the British Protectorate of the Niger Districts... which in turn had become part of the Protectorate of Southern Nigeria when the 1913 Anglo-German Treaty was concluded". If the answer was "no", Judge Kooijmans wanted to know why they were not consulted; and if the answer was "yes" he wanted to know what their reaction was and whether it was contained in a formal document.

66. Again, this is a matter about which Nigeria, at present has no information *either way*. So far as is known at the present time, the records which would enable the question to be answered probably no longer exist, either in London, or in Calabar or Lagos, or in the National Archives of Nigeria in Enugu or Ibadan. It seems likely that it will prove impossible to say with any certainty, supported by documentary evidence, that the Kings and Chiefs were not consulted, or that they were and their answer was such and such.

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[59]Counter-Memorial of Nigeria, p. 179, para. 9.3 (5).

67. To that I would only add that under English law there was no requirement that the rulers of the Protectorate territories had to be consulted before a Proclamation could be made unifying in one Protectorate the various individual British Protectorates existing in Nigeria at the time. Consequently there was no need in English law for the Proclamation to recite that such consultation had taken place, and accordingly, if it had indeed taken place, it was not the kind of matter which would necessarily have had to be formally reported back to London.

68. Judge Kooijmans's third question was whether the "incorporation [of the territory of the Kings and Chiefs of Old Calabar into the British Protectorate of the Niger Districts] brings to an end the purported international personality of the Kings and Chiefs of Old Calabar as a separate entity", and "if not, when did it cease to exist?"

69. The present, preliminary, answer to the main body of the question is "no". The unification of certain protectorate territories did not result in the instant international disappearance of the Kings and Chiefs of Old Calabar. While for British administrative purposes there may have been — indeed, presumably was — convenience in treating all the protectorate territories as one, this is not the same as saying that the protected communities legally lost their distinct legal personalities. Those distinct personalities remained, subject to the rights and obligations set out in their respective treaties of protection.

70. The continuation in law of those treaties of protection, and thus of the original parties to them and their successors in title, was a notable feature of the British legislation right up to the time of independence. As Nigeria has shown in its Counter-Memorial[60], British legislative action in relation to Nigeria always, right through to independence in 1960, distinguished carefully and consistently between the *colony* of Lagos, and the *Protectorate* of Nigeria. The Nigerian Protectorate was dealt with under the terms of the Foreign Jurisdiction Acts[61], which permitted Orders in Council to be made where the British Crown had acquired power and jurisdiction in a foreign country "by Treaty, Capitulation, Grant, Usage, Sufferance, and other lawful means".

71. In relation to the Nigerian Protectorate this enactment was applied in a succession of Orders in Council, and they included a definition of the term "treaty" for the purposes of the

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[60]P. 107, para. 6.58; pp. 117-118, para. 6.72; pp. 121-122, paras. 6.79-6.80.

[61]Counter-Memorial of Nigeria, pp. 118-122, paras. 6.73-6.80.

Orders. It was, so far as relevant, that the term treaty "includes any treaty, convention, agreement or arrangement, made on behalf of [the Crown] with . . . any Native tribe, people, chief, or king"[62].

72. That definition clearly covers the 1884 Treaty of Protection with the Kings and Chiefs of Old Calabar. Moreover, the Orders in Council typically included a statement that the rights secured to the protected community by any treaties or agreements could not be derogated from by ordinances, and that "all such treaties and agreements shall be and remain operative and in force, and all pledges and undertakings therein contained shall remain mutually binding on all parties to the same"[63].

73. This formula continued to be used in the Protectorate Orders in Council right up to independence in 1960. It confirms that the Treaty's legal existence only came to an end with the attainment of independence in 1960.

74. What happened to the international legal personality of the Kings and Chiefs of Old Calabar after 1885 — the date when their territories were merged with other protectorate territories for British administrative purposes — is not a question susceptible of a clear-cut answer. Like much of the constitutional and international development of the British Empire in the late nineteenth century and the first half of the twentieth century, the matter was one of gradual evolution. The emergence to full international independence of, for example Australia, Canada, India, New Zealand, was a slow process, and it is difficult to pinpoint any one event by which in each case that process could be said to have been completed: it was at the time a matter of much debate.

75. And so too with Old Calabar. Two processes were at work. First, there was a gradual emergence of a single Nigerian entity. The first time that the term "Nigeria" was used in formal British legal instruments appears to have been in two Orders in Council made in 1899[64], probably as a conglomerate name invented for administrative purposes. From then on "Nigeria" gradually became the dominant concept, and came for many purposes — but not necessarily all — to constitute the legal person which was the subject of the Protectorate.

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[62]The full text is at Counter-Memorial of Nigeria, p. 165, para. 8.46, and at Anns. NC-M 44 and 53.

[63]Counter-Memorial of Nigeria, pp. 165-166, para. 8.47.

[64]Counter-Memorial of Nigeria, pp. 113-114, para. 6.68 (5).

76. The second process which was at work was the transformation of the Kings and Chiefs of Old Calabar into the Obongship of Calabar. The pattern of local rulers, however, was never ended. Whether as the entity "Kings and Chiefs of Old Calabar", or as individual Kings and Chiefs as constituent components of that entity, or as the Obongs of Calabar, the authority of those local rulers has been continuous, and still continues to this day. The authority of the traditional rulers is still a significant part of local government authority today.

77. At what stage within this process of evolution they can be said to have ceased to enjoy international personality cannot be precisely determined. They presumably ceased to have it in 1960, when Nigeria became the recognized independent State in respect of their territories. At least for some purposes it would appear to have continued, at least until then. Certainly, up to that date the Protecting State, the United Kingdom, regarded their treaties — including the Treaty of Protection of 1884 — as still "operative and in force".

78. This Court, and its predecessor, in the cases concerning *Nationality Decrees Issued in Tunis and Morocco*[65], *Rights of Nationals of the United States of America in Morocco*[66], and *Western Sahara*[67], set certain standards and reached certain conclusions as to the international personality of various emerging entities. By comparison with the particular situations with which the Court was dealing in those cases — the nomadic tribal society in *Western Sahara*, and the protectorates in the other two cases — there seems no room for doubt that the Kings and Chiefs of Old Calabar had international personality at the time of the conclusion of the 1884 Treaty of Protection — indeed their conclusion of the Treaty was itself a manifestation of that personality — and they did not lose it by virtue of that Treaty, and that that personality continued to survive the various changes which ensued in the following years, until independence in 1960.

79. It will be apparent, Mr. President and Members of the Court, that the foregoing answers to Judge Kooijmans's three questions can only be preliminary answers, as I said at the outset. Much of the ground to be covered in preparing full answers will require further research — particularly in Nigeria. The Nigerian team have already contributed an enormous amount to the

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[65] *P.C.I.J., Series B, No. 4.*

[66] *I.C.J. Reports 1952.*

[67] *I.C.J. Reports 1975.*

preparation of Nigeria's case, for which I and my fellow counsel have been enormously grateful. They have already set in hand the necessary further research, in the hope that Nigeria can answer more definitively than I have been able to the three questions put to us by Judge Kooijmans. This we will do by 4 April, as the Court has requested.

80. Mr. President and Members of the Court, let me now try to offer again at least a preliminary answer to the question put to Nigeria by Judge Elaraby. He noted the references made to the legal régime established by the League of Nations Mandate and the United Nations Trusteeship, and then asked whether it would "be possible to elaborate further and provide the Court with additional comments on the relevance of the boundaries that existed during that period".

81. It may help the Court if at this point I remind the Court, with the aid of some graphics, of the way in which the boundary between Nigeria and Cameroon has developed.

82. After the conclusion of the two Protectorate Treaties in 1884 between, on the one hand, Great Britain and the Kings and Chiefs of Old Calabar and, on the other, Germany and Kings Akwa and Bell, Great Britain and Germany concluded a number of treaties fixing the boundary between their respective territories. By the time the First World War broke out in 1914, this Anglo-German treaty boundary ran from Lake Chad in the north to a point on the Akpa Yafe just north of the Bakassi Peninsula. This treaty line is depicted on the map now on the screen, and at tab 24 in the judges' folder.

83. With the outbreak of the War, British, French and Belgian forces occupied the German territory of Kamerun. That occupation was completed by 1916, and the administration of the territory was taken on by Great Britain and France. Franco-British negotiations then took place between M. Picot for France and Strachey for the United Kingdom regarding the provisional administration of Kamerun, including the depiction on a map of a line of division between their respective areas of administration[68]. The two Governments, by an Exchange of Notes of 3 and 4 March 1916, accepted the lines drawn on the map signed by the two negotiators. However, the original of this map has not been found by either Party. Therefore the actual course of this line is

[68]See Counter-Memorial of Nigeria, p. 488, para. 18.30.

not known. In any event, wherever it ran, it was superseded in 1919 by a further Anglo-French agreement.

84. With the end of the War in 1918, Germany relinquished its title to the former German territory of Kamerun by Articles 118 and 119 of the Treaty of Versailles 1919[69]. It is common ground between the Parties that the German possession of Kamerun was one of the German overseas possessions covered by these Articles.

85. As part of the provisional arrangements made by the Principal Allied and Associated Powers, German Kamerun continued to be administered under the authority of the British and French Governments. On 10 July 1919 the United Kingdom and France signed a "Franco-British Declaration"[70]. This document is generally referred to as the Milner-Simon Declaration, those being the names of the British and French Ministers who signed it.

86. The Milner-Simon Declaration described the land boundary from Lake Chad — at the mouth of the Ebedji — to the Atlantic — to seaward of the junction of the Matumal and Victoria Creeks, in effect at the mouth of the Cameroon River. This boundary thus formed the eastern boundary of the British area of Cameroons, and the western boundary of the French area of Cameroons. It is illustrated on the map now on the screen, and at tab 25 in the judges' folder.

87. In 1922 the Franco-British transitional administration was converted into their administration of their respective areas of Cameroons as the Mandatory Powers. Article 1 of the Mandate for the British Cameroons described the territorial scope of that Mandate in the following terms: "The territory for which a Mandate is conferred upon His Britannic Majesty comprises that part of the Cameroons which lies to the west of the line laid down in the Declaration signed on the 10th July 1919, of which a copy is annexed hereto." That Declaration was, of course, the Milner-Simon Declaration.

88. This description, in Article 1 of the Mandate, set out, by its reference to the Milner-Simon Declaration, only the *eastern boundary* of the British Cameroons. The northern, southern and western boundaries were left as covered simply by the reference to "that part of the Cameroons": i.e., if a territory was part of the Cameroons, and if it lay to the west of the line set

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[69]Counter-Memorial of Nigeria, Vol. V, Ann. NC-M 49, p. 476.

[70]Counter-Memorial of Nigeria, pp. 488-490, paras. 18.31-18.33; Ann. NC-M 50.

out in the Milner-Simon Declaration, then it was covered by the Mandate and was part of the British Cameroons.

89. Consequently, the boundaries of the British mandated territory of the Cameroons were essentially the same as those which determined the area under British transitional administration by virtue of the Milner-Simon Declaration, and as shown on the map still on the screen. That is,

— the northern boundary was the boundary of the former Kamerun facing Lake Chad,

— the southern boundary was the coastline (together with its territorial sea) of the former Kamerun facing the Gulf of Guinea, and

— the western boundary was the boundary between the Nigeria Protectorate and the former Kamerun, as described in various Anglo-German treaties.

90. In short, the language of the territorial definition in Article 1 of the Mandate for the British Cameroons (and its mirror image in the Mandate for the French Cameroons) begs the question whether any particular piece of territory was or was not "part of the Cameroons". This question is, of course, of particular relevance to the position of the Bakassi Peninsula, for the reasons of which the Court will be well aware, and which are fully set out in Nigeria's written pleadings and oral arguments.

91. No formal change was made to the terms of Article 1 of the Mandate for either the British or French Cameroons during the continuance of the Mandate. However, the Governor of Nigeria, Sir Graeme Thomson, and the Governor of the French Cameroons, M. Paul Marchand, put in hand arrangements for further specifying the boundary between the British and French Cameroons and the result of their work was a further "Declaration . . . defining the Boundary between British and French Cameroons"[71], signed by them, but not dated — although it would appear to have been signed in 1929. This Declaration is referred to as the Thomson-Marchand Declaration. It describes the whole Anglo-French boundary, from Lake Chad to the sea at, in effect, the mouth of the Cameroon River. The Declaration was approved by the two Governments in an Exchange of Notes of 9 January 1931[72]. The Thomson-Marchand Declaration merely

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[71] Ann. NC-M 54, p. 4.

[72] Ann. NC-M 54.

attempted to set out the Milner-Simon Declaration in somewhat greater detail. The course of the boundary, accordingly, was unchanged, and remained as shown on the map still on the screen.

92. In 1946, after the Second World War had ended and in preparation for the forthcoming arrangements for United Nations Trusteeship, the United Kingdom made new arrangements for the administration and government of the British Cameroons. These involved dividing the mandated area into a northern part and a southern part. The dividing line between the northern and southern parts of the British mandated area of Cameroons was set out in the Second Schedule to the Nigeria (Protectorate and Cameroons) Order in Council 1946[73] — that is the "1946 Order" to which reference was made in the land boundary part of the oral hearings. This administrative change was solely concerned with the internal administrative line of division, and did not at that time affect the external boundaries of the mandated area, in particular the boundary with French Cameroons, which continued as before. Nevertheless, it resulted in an east-west division of the British Cameroons in the manner shown on the map now on the screen and at tab 26 of the judges' folder.

93. Essentially the same boundaries applied throughout the Trusteeship period. The Trusteeship Agreement for the British Cameroons came into force on 13 December 1946[74]. It defined the territory to which it applied in terms equivalent to those adopted in Article 1 of the Mandate. Article 1 of the Trusteeship Agreement, however, in addition to referring to the Milner-Simon Declaration, also described the boundary by reference to the Thomson-Marchand Declaration. And I would here just note that, since the eastern boundary of the British Trust Territory ought to be identical with the western boundary of the French Trust Territory, there is a discrepancy between Article 1 of each of the Trusteeship Agreements in that, somewhat curiously, the French Agreement does not contain any reference to the Thomson-Marchand Declaration[75].

94. Anyway, as with the Mandate, Article 1 of the Trusteeship Agreement, by its reference to the Milner-Simon Declaration and the Thomson-Marchand Declaration, only defined the *eastern boundary* of the British Cameroons. The northern, southern and western boundaries were left as covered simply by the reference to the phrase "that part of the Cameroons": in other words, if a

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[73]Ann. NC-M 55.

[74]Ann. NC-M 56.

[75]See Counter-Memorial of Nigeria, pp. 542-543, paras. 19.68-19.70.

territory was part of the Cameroons, and if it lay to the west of the line set out in the Milner-Simon and Thomson-Marchand Declarations, then it was covered by the Trusteeship Agreement. This therefore continued, in effect, to beg the question whether any particular piece of territory was or was not "part of the Cameroons" — a question, as I say, of particular relevance to the position of the Bakassi Peninsula, as already explained.

95. With the attainment of independence by Nigeria and Cameroon in 1960, a referendum was held in the British Cameroons to determine whether the population wanted to be part of Nigeria or part of Cameroon. The Northern Cameroons voted to be part of Nigeria, and Southern Cameroons voted to be part of Cameroon. This resulted in the boundary being constituted as shown on the map now on the screen and at tab 27 in the judges' folder. And that is the boundary today.

96. Since throughout the Mandate and Trusteeship periods the *western* boundary of the territory was only described by reference to the phrase "part of the Cameroons", it follows that throughout that period the question of Bakassi's status, whether as formally part of the Protectorate or as part of the mandated, and later trust, territory depends upon the answer to the prior question whether Bakassi was part of the German possession of Kamerun in 1914 — a question which in turn depends upon the proper construction of the Anglo-German Treaty of March 1913. And for the reasons which Nigeria has set out in some detail, the answer to that question has to be that Great Britain had no right or power by that 1913 Treaty to give away Bakassi to Germany.

97. It follows that the boundaries of those territories which came within the Mandate and Trusteeship systems were, when those régimes came to an end, precisely what they were at the beginning, that is in 1922. This conclusion is inescapable since it is accepted law that under the Mandate and Trusteeship régimes the Mandatory States and Administering Authorities under Trusteeship Agreements did not have sovereignty over the territories under their administration. In particular, they did not have the power unilaterally to alter the territories' boundaries *either* so as to increase the limits of the territories *or* so as to diminish them. Since in relation to the Bakassi Peninsula there was no approval given by the League or United Nations supervisory organs for any transfer of territory, the Bakassi Peninsula had the same territorial status in 1960 as it had in 1922. Since, as Nigeria has shown, Bakassi could not, at any time previously, have been given away by

Great Britain to Germany, it must still at that time have been part of the Protectorate territory governed by the 1884 Treaty of Protection, a status which it continued to possess until Nigeria's attainment of independence in 1960.

98. I hope, Mr. President, that that preliminary answer will be of some assistance to the Court. And as I have said, Nigeria will submit a fuller and more considered response to Judge Elaraby's question — and to those of Judge Kooijmans and Judge Fleischhauer — in writing, by 4 April, as requested by the Court.

99. Mr. President, that brings me to the end of this pleading. I am grateful to the Court for its attention. Could I ask you now to call upon Mr. Brownlie to continue Nigeria's second round pleading. Thank you very much.

Le PRESIDENT : Je vous remercie, sir Arthur. Je donne maintenant la parole au professeur Ian Brownlie.

Mr. BROWNLIE : Thank you, Mr. President.

LAKE CHAD

1. Mr. President, distinguished Members of the Court. In the second round I need to return to the podium to respond to certain points made by counsel for Cameroon relating to Lake Chad. This response will be relatively brief because counsel for Cameroon did not dwell for very long on the issues specifically related to Lake Chad as opposed to more general issues concerning the land boundary and related instruments.

2. As a preliminary matter, Cameroon continues to assert that modification of a treaty-based boundary can only take place with the consent of both parties. Nigeria does not agree with this view of the law.

3. As a further preliminary point, my distinguished opponent takes issue with the description of the Exchange of Notes of 1931 as programmatic. But, Mr. President, so it was (CR 2002/15, p. 36, para. 22). The Thomson-Marchand Declaration was not self-executing and a boundary commission was necessary. These arrangements did not result in any delimitation on Lake Chad and after the independence of Nigeria and Cameroon the Lake Chad Basin Commission put new arrangements in place.

4. Cameroon, both in the Reply and in the second round, contends that Nigeria is seeking to reopen issues which were resolved by the Judgment on Preliminary Objections (CR 2002/15, pp. 35-36, para. 20).

5. This contention on the part of Cameroon, in my submission, is based upon a misunderstanding and can be disposed of quite briefly. In the part of the Judgment to which Cameroon refers, the relevant passages (*I.C.J. Reports 1998*, pp. 307-309, paras. 70-72) conclude with the Court pointing out that the issues relating to the powers of the LCBC and the legal consequences of the pertinent proceedings of the LCBC were issues reserved for the Merits phase. In the words of the Court:

> "It is not for the Court at this stage to rule upon these opposing arguments. It need only note that Nigeria cannot assert both that the demarcation procedure initiated within the Lake Chad Commission was not completed and that, at the same time, that procedure rendered Cameroon's submissions moot. There is thus no reason of judicial propriety which should make the Court decline to rule on the merits of those submissions." (P. 309, para. 72.)

6. In response to the Nigerian view relating to the Exchange of Letters of 1931 and the history of delimitation and demarcation on Lake Chad, Professor Cot takes the position that in 1931 the Lake was full of water and that, in consequence, demarcation was physically impossible (CR 2002/15, pp. 36-37, para. 23).

7. Mr. President, Nigeria appreciates Professor Cot's sense of humour but, if I may say so, his argument does not hold water. The LCBC programme of delimitation and demarcation was not related to the presence or absence of water in the Lake, and there is no reason to believe that the Anglo-French programme of delimitation of 1931 was conditioned by the existence of a dry lake.

8. Nigeria is familiar with conditions in Lake Chad. Several members of the Nigerian team have visited the region. Even when water *is* present, it is very shallow. And the delimitation of international lakes is a familiar political fact: I refer to Pondaven, *Les Lacs-Frontière*, published by Pedone in 1972, with a preface by Charles Rousseau.

9. Counsel for Cameroon enters into a discussion of the *effectivités* invoked by Nigeria in support of her claim to the villages (CR 2002/15, pp. 37-38, paras. 24-25).

10. Professor Cot insists that the Nigerian villages in question would have been under water, permanently, or at least seasonally, in 1960, one of the dates referred to in the Nigerian evidence.

As with his other points relating to water, counsel for Cameroon is mistaken. The villages in question were initially created on islands which appeared when the water level decreased. Villages, such as Katti Kime, now exist on the dry bed of the Lake but were formerly on islands.

11. As in the case of Bakassi, so in the case of Lake Chad, there is no detailed comment on the Nigerian evidence. In the result the Nigerian evidence can be reaffirmed, and we must assume that Professor Cot has not seriously challenged either the competence or the good faith of Christopher Hackford and Clive Schofield, who prepared the reports, or those who evaluated their work.

12. Counsel for Cameroon asserts that counsel for Nigeria admits that Cameroon administered the villages prior to 1987 (CR 2002/12, p. 49, para. 141). Consequently, it is suggested, there could be no long usage (CR 2002/15, p. 37, para. 25). However, what was said on behalf of Nigeria was as follows:

> "The evidence presented in the Reply on behalf of Cameroon has serious flaws. In the first place the evidence is confined to the years 1982 to 1988, with certain exceptions. The evidence of Nigerian activities covers a substantially longer period."

13. Nigeria has presented substantial evidence relating to the period prior to 1982, to the years 1982 to 1988, and also to the period after 1988. Once again, Cameroon avoids any detailed examination of the Nigerian evidence of *effectivités*.

14. In the present context, it is suggested by Professor Cot that the Nigerian presence in the Lake did not involve a "long-established usage". But there is no fixed time-limit for the process of historical consolidation. As the literature on the subject makes clear, historical consolidation is distinct from prescription.

15. If I can quote Charles De Visscher once more:

> "Proven long use, which is its foundation, merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given State. It is these interests and relations, varying from one case to another, and not the passage of a fixed term, unknown in any event to international law, that are taken into direct account by the judge to decide *in concreto* on the existence or non-existence of a consolidation by historic titles."

16. At least counsel for Cameroon cannot discount the literature of international law by asserting that at the material time it was subject to flooding.

17. Counsel for Cameroon accepts that many of the inhabitants of the villages come from Nigeria, but alleged that until 1987 they carried out their activities under the laws of Cameroon (CR 2002/15, p. 38, para. 26).

18. Nigeria denies that the laws of Cameroon applied until 1987. In the same passage of his speech, counsel for Cameroon makes certain points about ethnicity. Nigeria did not, of course, claim that all Hausa or Kanuri are Nigerian. Nigeria pointed out that the residents of the villages come from Nigerian tribes, of which the Hausa and Kanuri form the major components (see CR 2002/12, p. 36, para. 70).

19. Finally, Cameroon repeats her position on acquiescence (CR 2002/[ ], p. 38, para. 27). The Parties have not changed their positions on this issue and Nigeria would respectfully refer the Court to the pertinent first round speech (CR 2002/12, pp. 50-54, paras. 151-168). In particular Cameroon admits that it did not protest the Nigerian presence in the villages until 1994.

20. Mr. President, in concluding, I affirm the position of Nigeria in relation to Lake Chad as explained at length in my first round speech on the subject. I refer to CR 2002/12, pp. 18 to 55.

21. I also wish to acknowledge the assistance I have received from Christopher Hackford, David Lerer and Clive Schofield.

Mr. President, that completes our presentation for today. I would thank the Court for its usual patience and courtesy. My friend and colleague Professor Abi-Saab will ask for the podium tomorrow morning.

Le PRESIDENT : Je vous remercie, Monsieur le professeur Brownlie. Ceci met donc un terme à la séance de cet après-midi. La Cour se réunira à nouveau demain matin à 10 heures. La séance est levée.

L'audience est levée à 17 h 45.