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Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le vendredi 15 mars 2002, à 10 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président,

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

COMPTE RENDU

YEAR 2002

Public sitting

held on Friday 15 March 2002, at 10 a.m., at the Peace Palace,

President Guillaume presiding,

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

VERBATIM RECORD

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

Le Gouvernement de la République du Cameroun est représenté par :

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

comme agent;

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

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

comme coagents, conseils et avocats;

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

comme agent adjoint, conseil et avocat;

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

comme conseiller spécial et avocat;

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

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

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

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

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

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

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

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

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

comme conseils et avocats;

The Government of the Republic of Cameroon is represented by:

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

as Agent;

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

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

as Co-Agents, Counsel and Advocates;

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

as Deputy Agent, Counsel and Advocate;

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

as Special Adviser and Advocate;

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

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

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

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

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

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

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

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

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

as Counsel and Advocates;

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

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

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

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

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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,

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

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as Counsel;

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

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

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

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

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

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

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

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

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

Mr. Ousmane Mey, former Provincial Governor,

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

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

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

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

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

M. Robert Tanda, diplomate, ministère des relations extérieures

comme conseillers;

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

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

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

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

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

M. André Loudet, ingénieur cartographe,

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

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comme assistants de recherche;

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M. Guy Roger Eba'a,

M. Aristide Esso,

M. Nkende Forbinake,

M. Nfan Bile,

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

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

as Advisers;

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

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

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

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

Mr. André Loudet, Cartographic Engineer,

Mr. André Roubertou, Marine Engineer, Hydrographer,

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Mr. Guy Roger Eba'a,

Mr. Aristide Esso,

Mr. Nkende Forbinake,

Mr. Nfan Bile,

M. Eithel Mbocka,

M. Olinga Nyozo'o,

comme responsables de la communication;

Mme Renée Bakker,

Mme Lawrence Polirsztok,

Mme Mireille Jung,

M. Nigel McCollum,

Mme Tete Béatrice Epeti-Kame,

comme secrétaires de la délégation.

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

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

comme agent;

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

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

comme coagents;

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

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

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

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

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

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

comme conseils et avocats;

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

Mr. Eithel Mbocka

Mr. Olinga Nyozo'o,

as Media Officers;

Ms René Bakker,

Ms Lawrence Polirsztok,

Ms Mireille Jung,

Mr. Nigel McCollum,

Ms Tete Béatrice Epeti-Kame,

as Secretaries.

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

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

as Agent;

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

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

as Co-Agents;

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

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

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

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

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

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

as Counsel and Advocates;

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

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

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

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

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

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

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

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,

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

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

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

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

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

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

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

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

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

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

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

Mr. Jalal Arabi, Member, Nigerian Legal Team,

Mr. Gbola Akinola, Member, Nigerian Legal Team,

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

as Counsel;

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

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

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

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

Colonel A. B. Maitama, Ministry of Defence,

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Mr. Dick Gent, United Kingdom Hydrographic Office,

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

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

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

M. Bruce Daniel, *International Mapping Associates*,

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

Mme Stephanie Kim Clark, *International Mapping Associates*,

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

Mme Claire Ainsworth, *NPA Group,*

comme conseillers scientifiques et techniques;

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

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

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

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

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

comme personnel administratif,

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,

Mr. Bruce Daniel, International Mapping Associates,

Ms Victoria J. Taylor, International Mapping Associates,

Ms Stephanie Kim Clark, International Mapping Associates,

Dr. Robin Cleverly, Exploration Manager, NPA Group,

Ms Claire Ainsworth, NPA Group,

as Scientific and Technical Advisers;

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

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

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

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

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

as Administrators,

Mr. Geoffrey Anika,

Mr. Mau Onowu,

Mr. Austeen Elewodalu,

Mr. Usman Magawata,

as Media Officers.

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*,

comme conseillers;

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

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

comme conseils et avocats;

Sir Derek Bowett,

comme conseil principal,

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

comme conseil;

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

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

comme experts juridiques;

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

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

comme experts techniques.

Mr. Antonio Nzambi Nlonga, Attorney-General,

as Advisers;

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

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

as Counsel and Advocates;

Sir Derek Bowett,

as Senior Counsel;

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

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

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

as Legal Experts;

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

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

as Technical Experts.

Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte et je donne tout de suite la parole au nom de la République fédérale du Nigéria, M. le professeur Georges Abi-Saab.

M. ABI-SAAB :

LA RESPONSABILITÉ INTERNATIONALE

1. Monsieur le président, Madame et Messieurs de la Cour, mes propos ce matin ont pour but de revisiter rapidement la question du fardeau de la preuve dans le cadre de la demande en responsabilité du Cameroun. Ce qui m'induit à le faire, ce sont les remarques du professeur Tomuschat qui révèlent que nos contradicteurs n'ont pas compris, ou n'ont pas voulu comprendre, ce que j'ai dit, et qu'ils continuent à entretenir une certaine confusion entre les considérations de droit et les considérations de fait de sorte que je me trouve donc obligé de reformuler brièvement mes propos à ce sujet, en termes très simples, en espérant dissiper la confusion ainsi créée.

2. Il n'y a pas de controverse sur le fait que c'est le Cameroun qui est la Partie demanderesse dans la présente affaire, ayant introduit l'instance par une requête unilatérale conformément à l'article 36, paragraphe 2, du Statut. Cela recouvre toutes les demandes du Cameroun, y compris les demandes en responsabilité. Selon la règle la plus fondamentale en matière de preuve, la charge de la preuve incombe à la partie demanderesse.

3. Le professeur Tomuschat nous déclare dès l'ouverture de sa plaidoirie du lundi 11 mars (CR 2002/16, p. 51, par. 1) que «La responsabilité du Nigeria résulte principalement de son invasion de la péninsule de Bakassi...» Ailleurs, il nous dit que «Bakassi a été occupé militairement» (*ibid.*, p. 54, par. 7). Il interjette par la suite une proposition normative : «La seule présence de troupes sur *un territoire étranger* est en lui-même la preuve concluante de la responsabilité» (*ibid.*, p. 62, par. 28), pour arriver à la fin de sa plaidoirie à la conclusion suivante :

> «des troupes ainsi que des forces de sécurité nigérianes sont déployées tant dans la péninsule de Bakassi que dans un large secteur du lac Tchad, *chaque fois en territoire camerounais* où elles n'ont aucun droit de présence. Cette présence constitue à elle seule un fait internationalement illicite.» (*Ibid.*, p. 71, par. 53; les italiques sont de nous.)

4. Ces affirmations audacieuses sont basées sur des présomptions postulées par le Cameroun quant aux aux faits et quant au droit, et qui sont :

i) qu'il y a eu effectivement «invasion» et «occupation» militaires, ou pour employer les termes plus neutres du professeur Corten «un déploiement et stationnement de troupes nigérianes»;

ii) que ce déploiement et stationnement de troupes se sont faits dans un territoire qui était, au moment du déploiement, effectivement contrôlé et administré par le Cameroun, et qu'ils se sont déroulés contre son gré, c'est-à-dire par la force.

Ce sont là deux présomptions quant aux faits; la troisième présomption camerounaise est quant au droit, à savoir :

iii) que ce territoire appartient en droit au Cameroun de manière claire et incontestable.

5. Or, comme il ne s'agit pas de présomptions juridiques, c'est-à-dire des présomptions édictées par le droit, et qui, par conséquent, renversent la charge de preuve, il incombe au demandeur, le Cameroun, de prouver leur véracité, comme toute autre affirmation qu'il émet pour soutenir sa demande en justice. Mais le Cameroun ne l'a pas fait jusqu'à cette heure tardive, presque à la fin de la procédure orale. Permettez-moi de m'expliquer.

6. La troisième présomption du Cameroun, celle quant au droit, à savoir que Bakassi comme les autres points en litige appartiennent en droit, sans conteste, au Cameroun, assume que la présente affaire a déjà débouché sur une issue favorable au Cameroun, et que la situation juridique était aussi claire au moment du déroulement des faits. Mais c'est une issue loin d'être acquise. Les deux Parties ont soumis à la Cour ce qu'elles considèrent comme leurs titres juridiques respectifs, et la Cour tranchera. C'est le propre d'un différend territorial ou frontalier que de mettre en présence des prétentions contradictoires quant au titre au territoire ou quant à une certaine ligne de frontière. Et si le jugement, pour des raisons juridiques évidentes, est censé avoir un effet déclaratoire, on ne peut, par préséance, prévoir ce qu'il révèlera ou déclarera, avant qu'il ne soit prononcé.

7. Mais entre-temps, c'est là où c'est important pour nous, ce qui compte dans ce type de situation, (et je m'excuse de répéter un peu ce que j'avais dit déjà vendredi passé), ce qui compte en présence d'un différend territorial ou frontalier, ce n'est pas tant le titre contesté par les deux parties et dont le sort ne sera révélé de manière définitive que plus tard, par le jugement ou par un

accord entre les parties. Ce qui compte, c'est le contrôle et l'administration paisible du territoire, et qui détermine le *statu quo* protégé par le droit.

8. C'est une solution conforme aux besoins de la sécurité juridique et qui s'accorde avec l'interprétation la plus autorisée de l'article 2, paragraphe 4, de la Charte, figurant dans la déclaration relative aux principes de droit international touchant aux relations amicales (résolution 2625 XXV de l'Assemblée générale, 1970), ainsi que c'est en conformité avec la pratique du Conseil de sécurité, que j'ai citée dans ma première intervention.

9. Cela m'amène à la seconde présomption du Cameroun, postulant que le territoire, objet de l'invasion et de l'occupation par les troupes et les forces de l'ordre nigérianes, était contrôlé et administré par le Cameroun, au moment où cette supposée invasion a eu lieu.

10. Et c'est là que le bât blesse l'autre Partie. Car, plutôt que de fournir des preuves de sa présence effective à Bakassi par des signes visibles de son contrôle et de son administration réelle de ce territoire à titre de souverain, le Cameroun, Partie demanderesse, donc ayant la charge de la preuve, s'est contenté d'invoquer des titres contestables et contestés par le Nigéria. Et là où il présente ce qu'il considère comme des éléments de preuve, c'est par exemple une pièce de législation pour changer en bloc la toponymie du territoire contesté, dont je vous laisse en tirer la conclusion.

11. Le Nigéria, en revanche, bien que Partie défenderesse, s'est efforcé de démontrer en détail, par une abondance de preuves, qu'il a toujours été, lui comme ses prédécesseurs, présent à Bakassi, qu'ils ont administré en tant que puissance publique, à titre de souverain, sans interruption jusqu'à présent, avec la ferme conviction qu'il s'agit d'une partie du territoire national.

12. Cela m'amène enfin à la première présomption du Cameroun, qu'il y a eu en fait invasion et occupation du territoire. Or, la vérification de cette présomption dépend de la vérification de la seconde, concernant le contrôle et l'administration effective du territoire. Car, envahir veut dire s'introduire par la force chez autrui. On n'envahit pas un territoire qu'on contrôle et qu'on gouverne déjà. Ainsi, la qualification juridique du déploiement et du stationnement des troupes dépend de l'identité du gouvernement qui contrôle et administre le territoire. Si les troupes appartiennent à ce même gouvernement, il s'agit simplement de l'exercice de la puissance

publique, et non pas d'une invasion. C'est seulement si ces troupes appartiennent à un autre gouvernement et qu'elles se déploient sans son consentement, qu'on peut parler d'invasion.

13. Ainsi, en l'espèce, bien que l'administration nigériane de Bakassi était tout à fait adéquate et adaptée aux besoins de la région, ces besoins étaient limités en termes de présence militaire et de forces de sécurité après la fin de la guerre civile. Cependant, vers la fin de 1993, pour des raisons internes déjà expliquées dans les écritures du Nigéria (duplique, p. 118, par. 3.131 et suiv.) — que mon éminent collègue et ami le professeur Brownlie a exposées en détail hier — et qui ont trait à un différend entre deux Etats de la Fédération nigériane qui menaçait de dégénérer en conflit ouvert, le Gouvernement fédéral a dû renforcer sa présence militaire à Bakassi; mais c'était également pour protéger la population des incursions croissantes et du harcèlement des gendarmes camerounais. Un renforcement d'une présence déjà existante dans une région administrée par le Nigéria, relevant du maintien de l'ordre et de la défense du territoire; fonctions normales de tout gouvernement.

14. En fait, les plaidoiries orales camerounaises reconnaissent, bien que de manière oblique, ces faits. Ainsi, le professeur Thouvenin, dans sa plaidoirie du mardi 26 février (CR 2002/16, p. 48, par. 11), nous informe qu'à partir de décembre 1990, les autorités camerounaises ont reçu des informations alarmantes selon lesquelles la marine nigériane s'est positionnée à Jabane. Les autorités camerounaises n'y étaient donc pas et ont dû attendre que les nouvelles leur parviennent. Quelques paragraphes plus loin, le professeur Thouvenin nous dit : «le poste d'Idabato fut pleinement opérationnel dès le 4 janvier 1994» (*ibid.*, p. 50, par. 19). La séquence chronologique est intéressante, elle nous indique qui était déjà là et qui s'est introduit par la suite.

15. Cela m'amène à mon dernier point, qui est la qualification juridique de ce que le Cameroun considère comme «le fait internationalement illicite» et l'interprétation de la règle primaire que ce fait est censé violer.

16. Le Cameroun prétend que le Nigéria a violé le principe du non-recours à la force, et le professeur Tomuschat m'attribue «une nouvelle théorie sur la signification et la portée» de ce principe :

> «Selon lui [Abi-Saab], le Nigéria n'a pas engagé sa responsabilité, parce qu'il n'a jamais remis en cause le *statu quo* territorial et que, sur le terrain, il n'a fait qu'administrer paisiblement un territoire qu'il croyait le sien. Le professeur Abi-Saab

voit dans ces circonstances une nouvelle exception à l'interdiction de franchir par la force une frontière internationalement reconnue.» (CR 2002/16, p. 55, par. 9.)

17. Que mon collègue le professeur Tomuschat se rassure. Je ne prétends à aucune innovation en la matière; j'adhère fermement à l'interprétation la plus exigeante de ce principe fondamental, qui n'admet aucune exception, sauf celle expressément stipulée dans la Charte, la légitime défense face à une attaque armée préalable. Mais je ne peux manquer de relever la contradiction dans son propre propos, ou plutôt dans sa formulation de la théorie qu'il m'attribue. Car comment peut-on ne pas remettre en cause le *statu quo* territorial et administrer paisiblement un territoire qu'on croit le sien, tout en *franchissant par la force en même temps une frontière internationalement reconnue* ?

18. A part la contradiction dans les termes, on en revient ainsi à deux des présomptions non vérifiées du Cameroun :

i) la première : c'est qu'il existe une frontière internationalement reconnue. Mais, comme nous l'avons déjà vu, la frontière réclamée par le Cameroun est contestable et contestée par le Nigéria, qui ne la reconnaît pas; et c'est le même objet de l'instance actuelle dont la Cour est saisie;

ii) deuxième présomption : qu'il y ait eu franchissement de cette frontière par la force. Mais cela nous ramène à l'état initial du contrôle et de l'administration du territoire. Comme je viens de le rappeler, c'est le Nigéria qui était en place à Bakassi, donc il ne pouvait pas s'auto-envahir, utiliser la force contre lui-même. Alors que le Cameroun, Partie demanderesse, n'a pas fourni la preuve de sa présence et de son contrôle du territoire, en se bornant à invoquer sa qualité de possesseur de titre; titre qui est contesté par le Nigéria, de même que la frontière qu'il fonde.

19. Cependant, et jusqu'au jugement — votre jugement —, le droit protège le possesseur paisible, qui administre le territoire à titre de souverain, car il considère, pour des raisons juridiques crédibles, qu'il a titre sur ce territoire. Et cela même si son titre est contesté par un autre Etat. Mais il n'y a aucun recours à la force dans ce scénario de la part du possesseur paisible qui était déjà là.

20. Il s'agit là d'une règle primaire qui définit le *statu quo* territorial protégé par la règle de non-recours à la force, à la lumière de l'interprétation fournie par la déclaration des principes

(résolution 2625 XXV de l'Assemblée générale, 1970), ainsi que de la pratique de l'Organisation des Nations Unies et la doctrine. C'est le Nigéria qui est le bénéficiaire en l'espèce de cette protection, ayant fourni la preuve qu'il remplissait les conditions d'application de cette règle.

21. Le professeur Tomuschat, s'accrochant à une analogie faite dans les écritures nigérianes avec la doctrine d'*«honest belief and reasonable mistake»* en *common law*, critique la qualification juridique de la position du Nigéria, ainsi que je viens de la présenter, disant qu'il s'agit d'une qualification juridique changeante, allant de la «faute» aux «circonstances excluant l'illicéité», qui appartiennent toutes aux règles secondaires de la responsabilité, pour finir par une règle primaire.

22. Mais là aussi, il y a confusion. Car il s'agit simplement d'arguments *«in the alternative»* très courants dans les plaidoiries, présentant un argument juridique de substitution au cas où la Cour n'accepterait pas l'argument principal, qui reste pour le Nigéria celui de la règle primaire, ou plutôt de l'absence de toute violation de la règle primaire. Quant à l'argument *«in the alternative»*, tiré des règles secondaires de la responsabilité, c'est mon éminent collègue et ami sir Arthur Watts qui va le développer.

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

Le PRESIDENT : Je vous remercie, Monsieur le professeur. I now give the floor to Sir Arthur Watts.

Sir Arthur WATTS: Thank you, Mr. President.

STATE RESPONSIBILITY

1. Mr. President, Members of the Court, when Cameroon responded, earlier this week, to Nigeria's case on State responsibility, counsel focused on only two matters. He concentrated on, first, the so-called invasion and occupation of Cameroon territory, and, second, on what he regarded as Nigeria's violations of the Court's Order of 15 March 1996 — the Provisional Measures Order. And indeed, Cameroon's steadily shrinking case on State responsibility does reduce itself to those two alleged bases for responsibility. We heard — quite rightly — no more about violations of the principle of *uti possidetis juris*, and no more about violations of the obligation to settle disputes by peaceful means.

2. And that is entirely correct, Mr. President. The alleged breaches of the Court's Provisional Measures Order are a self-contained and somewhat separate basis for responsibility, and Nigeria will deal with them in a moment. But for the rest, although Cameroon started out with a whole catalogue of alleged bases of international responsibility on Nigeria's part, they were all simply different ways of looking at the one basic complaint. The alleged violation of territorial sovereignty, the use of force, the intervention, and so on — they were all just the one complaint dressed up in different legal clothes, centring on the so-called invasion and occupation of Cameroonian territory.

3. As counsel expressed it[1], the crux of this case is at the north and south ends of the Nigeria-Cameroon boundary. And he repeated Cameroon's current presentation of its case, to the effect that the various specific incidents which Cameroon had cited were only part of that central element of Cameroon's case and not autonomous bases of international responsibility. Nigeria commented last week on this change of course by Cameroon, and will not repeat those comments now.

4. Nigeria will, however, just observe that if the incidents are simply part of the so-called invasion and occupation at the two ends of the Nigeria-Cameroon boundary, what was Cameroon doing in citing a number of incidents "all along the land boundary", to use Cameroon's own words? Those words were, in any event, a gross exaggeration of the relatively few, and insubstantial, incidents which Cameroon in fact put forward, but even so they are now shown to be irrelevant to Cameroon's case. For the Court has already held that those land boundary incidents do *not* establish that the boundary itself was in dispute[2], so they are irrelevant in that context; and now by Cameroon's own admission they are irrelevant to what Cameroon itself regards as the crux of its State responsibility case. They can therefore be completely disregarded — quite apart, that is, from their inadequacy in any event as bases for any claim of Nigeria's international responsibility.

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[1]CR 2002/16, p. 52, para. 2 (Mr. Tomuschat).

[2]*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, para. 90.

5. To turn then to Cameroon's contention that Nigeria has violated its international obligations in "invading" and "occupying" Bakassi and various areas in Lake Chad, there is at the outset a question of fact, or at least a mixed question of fact and law. As Professor Abi-Saab has shown, the basic issues are, what was the status quo, and which Party disturbed it by resorting to armed force?

6. As Mr. Brownlie has shown so conclusively, the status quo was undoubtedly one in which Nigeria was the Party in possession, not just for the past few years but since independence. That Nigerian presence, that Nigerian civil administration of Bakassi, was not only sufficient to constitute a consolidation of Nigeria's title to Bakassi, but was also the clearest demonstration possible of a status quo which Cameroon sought to destabilize.

7. Nigeria did not need to mount an "invasion" of Bakassi in order to "seize" it, as counsel put it. Nigeria was already there, and had been for a long time. And being there in peaceful possession — peaceful, that is, until Cameroon started its campaign of systematic encroachment into Nigerian territory — Nigeria had little need for an extensive military presence in that area. Of course, if need arose, Nigeria was perfectly entitled to strengthen its security forces to meet whatever the need was. And this Nigeria did, indeed, do from time to time — for example, in late 1993. At that time, as Nigeria has shown[3], there was a serious risk of civil disturbance in Bakassi as well as a perceived threat also from Cameroon, and to avoid possible trouble security reinforcements were sent to the area. Cameroon has chosen to see this as an "invasion" of its territory, but that is Cameroon's mischaracterization of Nigeria's action, not their reality. The Nigerian Government has a duty to protect the population of Bakassi and to protect the territory of the State. There was no "invasion" of Cameroonian territory, only deployments to defend Nigeria's sovereign interests and territorial integrity.

8. Counsel tried to make something out of the suggestion by Professor Bassey Ate that one option open to Nigeria was that it "could unilaterally occupy Bakassi Peninsula". Let me just make four points. First, Professor Ate did not mention the use of force. Second, the passage counsel quoted showed that the purpose of the contemplated occupation option was to secure negotiations

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[3]Rejoinder of Nigeria, App. to Chap. 16, p. 656, para. 92 (2).

with Cameroon. Third, it is clear that the occupation was just one option amongst others being considered by the Professor. Fourth, Cameroon should be able to distinguish between an academic think tank and a government. The Professor's views are nothing to do with the Government of Nigeria.

9. Counsel sought also to show that it was perfectly normal for questions of State responsibility and territorial title to be joined. But this is not so in practice, nor is it appropriate. As the Court will know, there have been many cases in which territorial disputes have affected populated areas which one side or the other has administered and controlled — several such cases have indeed been considered by the Court. Yet Cameroon cited no case in which a territorial dispute has been resolved in favour of one State, and in which the losing State was then held internationally responsible for its acts of civil administration or maintenance of public order in areas in which, as a result of the decision on the territorial dispute, it was found to have had no right.

10. That absence of any finding of State responsibility in such circumstances is, Nigeria submits, appropriate. It reflects the generally accepted practice of litigating States to treat the rightness or wrongness of the State's administration of a disputed area as simply consequential upon the territorial finding by which the dispute is resolved, rather than in itself a primary source of State responsibility. Any other approach would turn every territorial dispute into a State responsibility case, sometimes of enormous magnitude.

11. Mr. President and Members of the Court, given Cameroon's change of attitude towards its various alleged separate incidents, Nigeria sees no need to add very much to what it has already said, especially in its Rejoinder[4], by way of showing the inadequacy of those incidents either as separate and individual bases of responsibility or, as Cameroon would now have it, as supporting evidence for its main allegations of State responsibility. In both respects those incidents need to be properly established by credible evidence meeting the appropriate standards, and Cameroon has not come even close to discharging the necessary burden upon it.

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[4]Pp. 599-601, paras. 16.1-16.10, App. to Chap. 16, and paras. 17.1-17.3, pp. 619-717.

12. But although Nigeria will refrain at this stage from any detailed rehearsal of this ground, it is, in view of counsel for Cameroon's comments, necessary for me just to make a brief further response to Cameroon's continued presentation of the notorious incident of 16 May 1981 as one which engaged Nigeria's international responsibility — an incident which, I must note, was introduced into these proceedings by Cameroon. The facts of that incident speak for themselves, and Nigeria has set them out in full[5]. But reduced to its bare essentials what we have here is a military incident resulting in loss of Nigerian life, followed by formal expressions of regret in writing by Cameroon's Head of State and orally by Cameroon's Foreign Minister as an envoy sent specially to Nigeria for the purpose, and the payment of compensation by Cameroon — with no indication that it was paid *ex gratia* or otherwise without admission of liability. Those, Mr. President and Members of the Court, are not the actions of a State which is guilt free. Nigeria sees no need to try to embellish those bare facts any more. As a basis for some alleged *Nigerian* international responsibility, as Cameroon alleges, the whole affair is completely without substance.

13. I need also to say a word or two about one very minor incident, and I do so only because it was the subject of the four late documents which the Court admitted into the record by its decision of 7 February 2002. Cameroon appears to be complaining about an alleged overflight of Cameroonian — occupied territory by a Nigerian military survey team, flying a civilian aircraft.

14. This complaint, however, is not borne out by the documentary evidence submitted by Cameroon. That evidence consists of an apparently intercepted internal Nigerian message. Let me take the first document supplied by Cameroon: it is the first document in the judges' folder at tab 28. I should add that in the left-hand margin of that document, there are some missing letters, but that is how the document was provided to Nigeria: it is not a fault in Nigeria's photocopying. I think nevertheless the message itself is perfectly understandable. But, converting the message's military abbreviations into a language with which the Court may be more familiar, the intercepted message which was being reported was as follows: "Be informed that military survey team will be using civil aircraft for survey around the general area of occupation. Don't panic and ensure your troops do not fire at aircraft. Dates 5-7 December 2001. Act and acknowledge." The rest of the

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[5]Rejoinder of Nigeria, pp. 611-615, paras. 16.35-16.46, and App. to Chap. 16, pp. 631-640, paras. 29-45.

evidence submitted by Cameroon consists of Cameroon's reaction to that intercepted message, and reports that a survey flight had taken place on 5 December.

15. The crucial fact about these documents is that they are wholly imprecise as to *where* the flight took place. The intercepted message simply refers to a planned flight "around the general area of occupation", and I invite the Court to note the words "around" and "general area". Even the term "area of occupation" is unclear and unspecific. Cameroon's own reports are no more precise. They simply say that the aircraft flew "from north to south and vice versa". "North to south" over what land area, Mr. President? Given that Cameroon's evidence tells us nothing about the kind of survey which was taking place, there can be no basis for assuming that any flight had to be vertically above the area being surveyed — for example, oblique, high-level photographic surveying is an accepted technique for a number of purposes.

16. But apart from that, there is another point to be made about Cameroon's documents. Could I now invite the Court, Mr. President, to look at the next document which is at tab 29 in the folder. It is not clear what this document is, but its substance is plain — it sets out the English text of the message we have just looked at, that's the one at tab 28, together with a French translation. But not quite, Mr. President. May I invite your attention to the very first line of the English text of the document at tab 29: it refers to a "CRS Survey Team". "CRS" refers to "Cross River State", and that's clear from the French translation of that second message, which spells out the words Cross River State. But if you recall, Mr. President, in the first message we looked at, at that place in the message — it is in the fourth line — the reference is to a "Mil [i.e. military] survey team". Mr. President, someone has altered the terms of the message to turn a civilian survey into a military survey: it certainly wasn't Nigeria which made that alteration.

17. In short — and quite apart from the underlying question of title to the territory being overflown — Cameroon has, quite simply, yet again, provided no useful evidence — and indeed contradictory evidence — regarding this survey flight. Cameroon's complaint is shown to be without foundation.

18. Mr. President and Members of the Court, I should now like to turn to the question of defences to international responsibility. First, it is necessary for me to emphasize that this is essentially a secondary, or consequential, issue. The primary question is whether Nigeria has

committed an act which is prima facie wrongful. Nigeria denies that Cameroon has established that that is so. For Nigeria, therefore, the question of possible defences does not arise, since there has been no act of wrongfulness which could be precluded by the application of one or other of the possible defences which might be invoked.

19. It is only *if* such a potentially wrongful act has been proved to have been committed by Nigeria that the possibility of defences needs to be considered. It is, as Professor Abi-Saab has just said, essentially an argument in the alternative. In the first place, Nigeria has committed no potentially wrongful act; alternatively, if Nigeria has committed a potentially wrongful act, then it is not in fact wrongful because its wrongfulness is precluded by the operation of one or more defences. It is only on that alternative hypothesis that Nigeria has raised the possible application of certain defences[6]. And it is only on that basis that Nigeria considers the matter further here.

20. There are some general points to be made at the outset. The law in this area is sometimes stated in an oversimplified form. It is not the case that defences can all be packaged and placed, so to speak, in a box marked "defences", so that whenever a State wants to invoke, say self-defence, it goes to the box to find that particular defence. In truth, the matter is more complicated. In some cases what may usually be seen as a defence may in fact be one of the constituent elements of the substantive rule the breach of which is in question. Defences are thus, on analysis, not absolute concepts, but are relative to the primary obligations in question.

21. This reflection bears also on the International Law Commission's draft Articles on State Responsibility. That impressive product of many years' work calls for two comments in the present context. First, while it is impressive, and has a lot of authority, it is *not* a treaty or quasi-legislative act: it has not been adopted by States. It would be wrong to regard its prescriptions as necessarily a reflection of customary international law. Second, it is in effect a code of general application, and in the present context a general formulation of the circumstances precluding wrongfulness applicable in principle to all or most international obligations. It sets out to cover the whole field in terms of general application, but as a result it may not always fit precisely the particular circumstances to which it is sought to be applied.

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[6]Counter-Memorial of Nigeria, pp. 638-639, para. 24.34.

22. In short, it is a good — but not necessarily infallible — guide. And it is probably — one might venture the thought that it is almost certainly — the case that as commentators come to grips with it, many of its apparent certainties will acquire a coating of caution.

23. It is in the light of the foregoing remarks that Nigeria's invocation of "honest belief" and "reasonable mistake" falls to be considered. Cameroon seeks to dismiss them as non-existent defences in international law. But they merit more careful consideration than that. After all, any primary rule which contains as part of the rule a consideration of reasonableness is well on the way to allowing either that the making of a reasonable mistake when committing an act will prevent there having been any breach of the rule in the first place, or that if a breach has occurred then the existence of the reasonable mistake will be a defence preventing the act being wrongful.

24. Cameroon sought to argue that there could not be a reasonable mistake, or honest belief, where a boundary has been established by treaty[7]. Of course, so far as concerns Bakassi, that is the very question at issue: Cameroon believes that the 1913 Treaty effectively establishes the boundary, but Nigeria takes the opposite view — on grounds which Nigeria is satisfied are sound in law and which certainly cannot be dismissed as without serious merit. Nigeria does genuinely believe that its arguments are sound, and expects the Court to uphold them. But if, contrary to Nigeria's expectations, the Court finds against Nigeria, then while it may follow that Nigeria's presence will have been found to be unlawful it will also be the case that Nigeria's presence will have been based on a reasonable mistake as to the real situation, and on an honest belief that the situation had been as Nigeria believed it to be. Nigeria submits that in such circumstances it is hardly imaginable that Nigeria should be held internationally responsible for behaviour which, at the time it took place, Nigeria had every reason to believe was lawful.

25. Were it otherwise, every case involving a territorial dispute would necessarily involve a series — possibly an extensive series — of State responsibility issues by virtue of the carrying out in the disputed territory, over a period of many years, of normal State activity by whichever State eventually lost the case. I have referred earlier to the general practice — one could probably say universal practice, Mr. President, but frankly there has not been time to do the research which

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[7]CR 2002/17, p. 43, para. 28 (Mr. Corten).

would enable me to say so with confidence — so, the general practice of litigating States to treat the rightness or wrongness of the State's administration of a disputed area as simply consequential upon the territorial finding by which the dispute is resolved, rather than in itself a primary source of State responsibility. Thus the relevant State practice, *in precisely the kind of context with which the Court is here dealing*, implicitly acknowledges that in such circumstances any apparent wrongfulness of the losing State's conduct in administering the disputed area is in the event not to be treated as wrongful since that administration was only determined to have been wrongful in retrospect. It is not at all inappropriate to characterize that kind of situation as one involving the losing State's honest belief in its right to administer the area, nor is it inappropriate to regard it as involving a reasonable mistake to the like effect.

26. Counsel went on to suggest that it was not reasonable to make such a serious mistake as one over title to territory[8]. But whether such a mistake was made is a question of fact. Once *that* becomes the argument, then the principle has been accepted that reasonableness, if established, is a defence. Nigeria has shown, by its arguments, that its belief that Bakassi is Nigerian is entirely reasonable — and that is putting it at its lowest, for in Nigeria's view its honest belief in its right to Bakassi is not just reasonable but sound. Conducting itself as a reasonably competent Government, to use the phraseology of another of Cameroon's counsel[9], the result for Nigeria is the same. Knowing what it knows about its relationship to Bakassi, and the history of the whole matter, the Government of Nigeria has every justification for honestly believing in its sovereignty over Bakassi.

27. Counsel for Cameroon also drew attention to the fact the International Law Commission's draft Articles on State Responsibility did not mention either honest belief or reasonable mistake as defences to the wrongfulness of conduct[10]. And he asserted that the list of defences in those draft Articles was exhaustive. This, however, is where the cautionary remarks which I made earlier need to be recalled. There is not only room for a more subtle analysis of the role of "defences" than is contained in the general code prepared by the International Law

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[8]CR 2002/17, p. 45, para. 34 (Mr. Corten).

[9]CR 2002/16, p. 59, paras. 20-21 (Mr. Tomuschat).

[10]*Ibid.*, p. 58, para. 16.

Commission, but there is also room for argument whether the Commission's catalogue of defences is indeed exhaustive.

28. One recent writer, commenting on the equivalent provisions of an earlier draft of the Commission's Articles, observed that

> "In any case, it is difficult to see the ILC's enumeration of defences as a complete catalogue of the relevant law since many substantive rules clearly provide for specific defences as part of the definition of the content of the relevant obligation . . . The assumption in the ILC's work that a uniform regime of defences applies to all international obligations therefore requires some qualification. In most cases, the application of any one of the defences will also be influenced by the content of the norm violated, as well [as by] other competing principles of international law."[11]

29. And the same writer noted also that "the practice of international tribunals has been to contextualize defences and not to make general assumptions uninfluenced by the specific norm in question and the issues of principle which underpin it"[12]. The references, Mr. President, will be in the transcript.

30. One other aspect of Nigeria's possible defences to allegations of wrongfulness levied against it must be addressed, and that concerns self-defence. Counsel for Cameroon sought to deny the applicability of any Nigerian argument based on self-defence, on the ground that Nigeria nowhere claimed that Cameroon was an "aggressor", but only spoke of "incidents" or "incursions"; nowhere, it was said, had Nigeria claimed that Nigeria had been the subject of an "armed attack"[13].

31. Two short points can be made in response to those arguments. First, Nigeria did not seek to engage in the kind of extravagant language which has been such a feature of Cameroon's case. What matters, Mr. President, are the facts, not the labels used to refer to them.

32. The second point is to the same effect. While it is true, of course, that Article 51 of the United Nations Charter acknowledges the inherent right of self-defence where a State is the victim of an armed attack, that does not mean that the use of those precise words is a *sine qua non* for the exercise of the right of self-defence. What matters is that there is, on the facts, an armed attack, not whether that attack is in terms described later as constituting an "armed attack". When Nigeria has

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[11]Okowa, in *The Reality of International Law*, eds. Goodwin-Gill and Talmon, 1999, p. 391.

[12]Pp. 390-391.

[13]CR 2002/17, p. 39, paras. 17-20 (Mr. Corten).

shown that Cameroonian military units have attacked Nigerian posts or towns, firing weapons at Nigerian targets, and causing casualties among the Nigerian population or security forces, those *facts* are sufficient to give rise to the right to take action in self-defence without the need for Nigeria formally to characterize them as constituting an "armed attack". To hold otherwise would be to place form above substance to a quite astonishing degree.

33. Mr. President and Members of the Court, let me now respond to Cameroon's further arguments by which Cameroon seeks to show that Nigeria is in breach of the Court's Order of 15 March 1996 — the "interim measures" Order.

34. Nigeria has already responded to Cameroon's allegations that there has been some kind of breach by Nigeria of the Court's Order, and has shown them to be without foundation[14]. Counsel for Cameroon nevertheless came back, on four points[15]. Let me take them one by one.

35. He repeated, first, that Nigeria was responsible for the proposed United Nations "fact-finding" mission ending up as only a "goodwill" mission, which he characterized as a much more low-key affair. Mr. President, as I noted in the first round[16], the decision on what kind of mission should be sent was a political matter decided by governments in New York. At the time of the Court's Order all that the Parties had on the table in New York was a "proposal" from the Secretary-General for a fact-finding mission to the Bakassi Peninsula. The Court, therefore, could only ask that the Parties should assist that *proposed* mission — but in the event, for political reasons which no doubt commended themselves to governments, all that was agreed was the goodwill mission: it is too simple to treat the eventual outcome in New York as the result of the views of any one government — many factors come into play with many governments when decisions of this kind are being taken in New York. The fact is that the political decision which was eventually taken in New York was not to have the fact-finding mission which was proposed at the time the Court made its Order, but to have a goodwill mission instead. That was the only mission which in practice came to exist, it was the only mission with which Nigeria could co-operate, and Nigeria did co-operate fully with it.

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[14]Rejoinder of Nigeria, p. 577, para. 15.53; CR 2002/14, pp. 36-38, paras. 46-54 (Sir Arthur Watts).

[15]CR 2002/16, pp. 63-66, paras. 31-36 (Mr. Tomuschat).

[16]CR 2002/14, p. 36, para. 49 (Sir Arthur Watts).

36. Then, as his second point, counsel for Cameroon reverted to the incident which occurred in late April and early May 1996. He noted in particular that Cameroon protested immediately, whereas Nigeria, which asserted that in truth it had been the victim of the attack and had only acted in self-defence, had only protested to Cameroon in a letter sent in June 1996. Mr. President, this is really a far-fetched argument.

37. As an "answer" to Nigeria's response on this incident, Cameroon's argument — and it was the only argument on this incident — is singularly unconvincing. In fact, five or six weeks for a considered letter is by no means unduly long, especially for a government — like Nigeria's — which wanted to make careful enquiries about the facts, and which in any event covered, in its eventual letter of protest, not only the attack of April-May 1996 but also a number of other matters which arose at around that time.

38. As counsel's third point, he argued that Nigeria, in concentrating on Nigeria's continued provision of local health, educational and social welfare services in the Nigerian population of Bakassi, had misunderstood Cameroon's allegation. Cameroon's allegation was not about such beneficial services, so counsel said, but about the creation of a new municipal authority which, so Cameroon argued, created a situation which would prejudice Cameroon's position in the event that the Court might decide in Cameroon's favour. Counsel purported to see in this new local government arrangement an admission by Nigeria that Bakassi had not previously formed part of the Nigerian administrative system: it was, he said, a new act, changing the situation to the prejudice of Cameroon.

39. Counsel's argument is wrong in many respects. Let me identify just some of them. First, in the event that the Court should decide that Bakassi is part of Cameroon (a possibility, of course, which Nigeria denies), there is nothing irreversible in whatever municipal administrative arrangements are made for Bakassi, so there can be no prejudice to Cameroon. Second, it is local government arrangements which provide the administrative umbrella under which the various beneficial social services are provided to the population: unless the local government system is kept modernized, the provision of social services will suffer. Third, it is untrue that the local government arrangements made in 1996 were the first of their kind: on the contrary, Nigeria has by legislation established local government services in Bakassi since the 1960s. The fact that

Cameroon is not aware of that, Mr. President, just confirms that Cameroon's assertions that it was in occupation of Bakassi are without foundation.

40. Counsel's fourth point was no better than the first three. He said that air traffic control arrangements for flights over Bakassi were clearly an invasion of Cameroon's territorial rights. Apart from the question-begging nature of that assertion, it is, even on the assumption that Bakassi is Cameroonian territory (which of course Nigeria does not accept), incorrect. It is a cardinal principle of international civil aviation that air traffic control zones and similar arrangements are established with safety considerations primarily in mind, and are not intended to reflect national frontiers on the ground, and are without prejudice to such frontiers.

41. It is apparent that little of Cameroon's claims in the field of State responsibility remains for consideration by the Court. They are not well founded in law, and they are not adequately established in fact. The record before the Court has shown Cameroon's case to have been supported — if that is not too strong a word — by allegations misleadingly made and unreliably attested. As the Applicant, Cameroon bears a heavy burden of proof, both as to the law and even more so as to the facts. Cameroon has not satisfied that burden of proof, and Nigeria submits that Cameroon's State responsibility claims against Nigeria should accordingly be dismissed.

42. Mr. President and Members of the Court, that concludes Nigeria's second round pleading on the issue of State responsibility. I am grateful for the Court's attention. Could I now invite you please, Mr. President, to call upon Professor Crawford to continue Nigeria's pleading. Thank you.

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

Mr. CRAWFORD: Thank you, Mr. President.

NIGERIA'S COUNTER-CLAIMS AND CAMEROON'S FAILURE TO RESPOND

1. Mr. President, Members of the Court, in the first round I addressed you at some length on Nigeria's counter-claims. I tried not to go into too much detail. But I did emphasize a number of points, as to the admissibility of the claims, as to their context and as to their content.

2. Cameroon in its second round said hardly a word on these issues. They were addressed by my good friend and former colleague, Professor Christian Tomuschat, for a total of — by my watch — 13 minutes[17]. He spent at least five of those minutes on one incident, the shooting incident of 16 May 1981[18]. That was an important incident in the history of the dispute between the two States, as Chief Richard Akinjide has explained. But it is not a counter-claim because the tender and acceptance of an apology and compensation by Cameroon to Nigeria resolved it; it puts an end to the claim. The incident was thereby closed in terms of any issue of responsibility.

3. By my mathematics, 13 minus five is eight. Cameroon has so far spent either minutes on the counter-claims, which it nonetheless accepts are fully admissible.

4. In the remaining minutes that he used after he had finished dealing with the incident of May 1981, Professor Tomuschat made a few points, to which I should briefly respond.

5. First, as I have noted, he formally accepted that all the Nigerian counter-claims are admissible[19]. That is progress, as compared with Cameroon's written observations.

6. Secondly, he sought to bolster Cameroon's case as to the incidents of 3 February 1996 by reference to a number of documents[20]. One concerned a statement by a Nigerian brigadier-general, which is not shown to relate to any action at all. One concerned the handover of the body of a Nigerian officer on 22 December 1995. One concerned an ICRC communication of 25 April 1997. None of these events, as the dates will show, have any bearing on actual issues of responsibility for what happened on 3 February 1996, a matter already dealt with by Sir Arthur Watts.

7. Then Professor Tomuschat raised a quibble as to the precise time of the 18 April 1998 attacks. He said: "the statements diverge in a substantial way concerning the time of the attack". Actually, there are 20 or so statements — they are in Annex NR 203 of the Rejoinder of Nigeria — although only one suggests that the attack took place at noon. Two say it was at dawn or in the early hours; the others do not mention the time. The statements are, taken together, consistent in their reporting of a Cameroon attack which killed one and injured at least 20, nearly all civilians.

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[17]CR 2002/16, pp. 66-71, paras. 37-54.

[18]*Ibid.*, pp. 66-68, paras. 38-40.

[19]*Ibid.*, p. 66, para. 37.

[20]*Ibid.*, pp. 68-69, paras. 44-47.

Professor Tomuschat thinks it unlikely that this could have been caused by "bombs", which he says would have caused greater damage. The statements suggest that these were mortars, not carpet bombing: on that basis the casualty figures are entirely credible.

8. Then Professor Tomuschat referred to the incidents of 23 February and 27 June 1993, and claimed that the relevant documents do not say where the incidents took place. That is true of the second incident, which took place at sea "on the border"; the local fishermen actually do not carry GPS trackers with them. But the first one is specifically said to have taken place "at Abana" (Counter-Memorial of Nigeria, Ann. NC-M 356). So there is nothing in that quibble either.

9. Much more significant than what Professor Tomuschat said was what he did not say. In particular the Court will remember that I gave an estimate, in the first round, of total casualties and damage incurred on the Bakassi Peninsula in the decade from 1991 on both sides. That includes the period of the so-called invasion and occupation by Nigeria. The tally was carefully prepared looking at all the annexes duly tendered on both sides of this case in the pleadings. It assumed that all particularized allegations were true, irrespective of whether there was much evidence in their support; so it made the assumption that all particularized allegations are true. It excluded generalized allegations in newspaper clippings, and other items of a general character, though these would have significantly increased the casualty figures on the Nigerian side. Thus it is fairly reliable, and nothing more reliable can be forthcoming in these proceedings.

10. May I remind you of the overall figures:

(a) Attributed to Cameroon in the Nigerian documents: 30 killed (of whom 27 were civilians); 117 wounded (of whom 106 were civilians); eight houses and four boats destroyed or damaged, together with a substantial amount of other damage.

(b) Attributed to Nigeria in the Cameroon documents: three killed, 13 wounded (all military).

Thus there were small numbers of military casualties on both sides; fewer dead on each side in fact than in the incident of May 1981. But there were substantial civilian casualties on the Nigerian side. And there is no evidence whatever of Nigerian troops killing or wounding their own people.

11. In the part of his speech, in the eight minutes devoted to counter-claims this week, Professor Tomuschat did not comment on those figures. All he said was that *"il peut y avoir eu des*

victimes civiles, ce que Cameroun regrette profondément"[21]. Faced with a balance of casualties such as that I have given, for counsel to say *"il peut y avoir eu des victims civiles"* is not very helpful. To be told belatedly that Cameroon "profoundly regrets" does little to mitigate the damage caused, and still being caused, by Cameroon. For it is not the case that there "may have been" victims: *"il peut y avoir eu des victimes civiles"*. There *were* such victims. There continue to be civilian victims. If there had been none, Cameroon would have been the first to tell you.

12. Mr. President, Members of the Court, Professor Tomuschat did not hesitate to raise quibbles about our counter-claims, when he thought he could do so. I have dealt with them. He said he had no time, and in fact you were patient in giving him extra time. No doubt silence is not consent, but in the context of an orderly forensic procedure such as that of the Court, with more than ample time in ten days of oral argument, Cameroon's approach is significant. *"Il peut y avoir eu des victimes civiles . . ."*

13. I note again what the Court has said of the function of counter-claims: "to have an overview of the respective claims of the Parties and to decide them more consistently"[22]. The figures I have given as to the respective claims of the Parties are substantially accurate and are so far unchallenged. They stand in stark contrast with the inflated rhetoric of Cameroon's pleadings, with its language of aggression, conspiracy, coercion, extortion and oppression. When there are military incidents, Cameroon's language becomes white hot; when there are significant numbers of civilian victims, the tone changes to that of marked understatement: *"Il peut y avoir eu des victimes civiles."*

14. Professor Pellet seems to think it is a sin to get a map wrong. Actually it is not, as I will show. It gives the other Party an opportunity for which they should be both pleased and grateful, as we are. But there *are* forensic sins, and they relate to real ones. To inflate problems between States, whose general relations are as precarious as those now between Cameroon and Nigeria, is questionable. To make wholly unsupported allegations of extortion and coercion is questionable. You have heard Cameroon say the whole boundary is ablaze with conflict and you have seen what the truth is. You have heard Cameroon allege a serious dispute at Tipsan, and you have seen what

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[21]CR 2002/16, p. 70, para. 48.

[22]*I.C.J. Reports 1997*, p. 257, para. 30.

the truth is. You have heard Cameroon allege Nigerian coercion and extortion against its neighbours in the Gulf; we will see next week whether that allegation is sustained, after the alleged victim has had its chance to speak. Cameroon's pleading is all of a piece; sensationalist, rhetorical, unbalanced and unsupported by serious attempts at proof.

15. Complaining of lack of time, Professor Tomuschat reserved the right to respond in Cameroon's final statement to the counter-claims. No doubt he wanted to make up for his failure to do so this week. It is a safe way of making up, secure from any possibility that we can reply to it. But Cameroon is welcome to respond if it can to the overall civilian casualty figures, and to the consequent contrast between rhetoric and reality on the Cameroon side. In the absence of such a response the Court will finally be in a position "to have an overview of the respective [State responsibility] claims of the Parties and to decide them more consistently".

Mr. President, that is all I have to say about counter-claims in the circumstances. I think that makes eight minutes. May I ask you to call on Professor Abi-Saab to begin our response on Cameroon's maritime boundary claim, but perhaps a brief coffee break would be appropriate before that.

Le PRESIDENT : Je vous remercie beaucoup, Monsieur le professeur. Nous allons écouter le professeur Abi-Saab maintenant ; nous prendrons la pause-café après son intervention.

M. ABI-SAAB : Merci, Monsieur le président, pour votre patience. J'essaierai de ne pas la taxer trop.

LA DÉLIMITATION MARITIME

1. Monsieur le président, Madame et Messieurs de la Cour, j'entame maintenant le chapitre de la délimitation maritime. Nous approchons du terme de ces longues plaidoiries, et nous sommes tous un peu fatigués, en tout cas moi. Je n'ai pas envie de polémiquer avec mon jeune collègue, le professeur Kamto, à propos de sa plaidoirie de mardi passé, en lui répondant point par point.

2. Pour faciliter la tâche de la Cour, j'essayerai d'identifier les points de divergence, en expliquant les bases juridiques de nos positions. Cela dit, je maintiens toutes les critiques que j'ai formulées à l'égard de l'approche du Cameroun et de la ligne qu'elle a produite, et je me permets de vous référer à ma plaidoirie de jeudi passé.

3. Nos points de divergence ont pour point focal, la définition de la zone pertinente et des côtes pertinentes qui lui servent de base. De là découlent d'autres divergences sur la méthode de construction d'une ligne pour délimiter cette zone, et l'équité de cette délimitation à la lumière de la jurisprudence. Commençons donc par la zone et les côtes pertinentes.

Zones et côtes pertinentes

Une zone ou trois ?

4. Dans sa plaidoirie du mardi 12 mars, le professeur Kamto a critiqué le point de vue du Nigéria, selon lequel le golfe de Guinée enferme trois zones pertinentes et non pas une seule. Pourtant, cette notion de trois zones pertinentes vient en premier lieu du mémoire du Cameroun, qui parle de trois zones différentes tout en les décrivant (mémoire du Cameroun, p. 503, par. 5.119-5.121), pour conclure «Ayant procédé par étape en fonction des différentes zones pertinentes dans lesquelles la délimitation doit être effectuée, il convient de construire une ligne...» (*Ibid.*, par. 5.122.)

5. Cependant, s'il s'agit d'une même délimitation, entre les mêmes deux Parties, pourquoi aurions nous alors trois zones pertinentes ? Les côtes sont les mêmes, et l'opération est la même, impliquant les mêmes Etats. Il y a unité de personnes et de lieux.

6. Nous sommes en revanche d'accord qu'il y a bien trois véritables zones pertinentes, mais qui sont différentes, car il n'y a ni unité de personne — elles impliquent des ensembles différents d'Etats côtiers —, ni unité de lieux — s'agissant de façades maritimes différentes. [Projection n° 30.]

7. Or, c'est à ce moment-là (*at the 11th hour*, comme disent les Anglais), que le professeur Kamto nous dit qu'il ne s'agit que d'une seule zone pertinente, qui n'inclut que les deux Parties, sauf pour le petit détail de l'île de Bioko, qu'on peut envelopper à la Christo dans une petite enclave, comme les îles Anglo-Normandes; ce qui ne laisse aucun obstacle entre la côte nigériane et la côte camerounaise, qui s'étendrait ainsi, par une certaine astuce magique à laquelle je reviendrai, jusqu'à la fermeture du golfe de Guinée, à Cap Lopez au Gabon. Il ne resterait entre les deux qu'un tout petit bout de la mer territoriale de Principe, au fin fond de cette zone pertinente homogène et presque bilatérale.

8. Il y a donc, selon le Cameroun, une seule zone pertinente et non trois, couvrant tout le golfe de Guinée, à laquelle le Cameroun a un accès total non obstrué par un chapelet d'îles imaginaires faisant fonction d'écran et bissectant le golfe en deux.

Examinons cette vision camerounaise idyllique de la zone pertinente.

Le chapelet d'îles et la bissectrice du golfe

9. Regardons en premier lieu ce qu'a fait la nature, sans se soucier de l'intervention humaine. [Projection 31.]

Cette carte topographique et bathymétrique du golfe de Guinée indique bien qu'il y a un chapelet continu d'îles et que ce chapelet a un effet de bissectrice et qui parle tout seul. [Projection 32.]

10. Le professeur Kamto est prêt à faire une petite exception pour Bioko. Mais il considère que Bioko n'a aucun lien avec l'archipel de Sao Tomé-et-Principe. Cependant, si on regarde la carte de ces îles avec leurs eaux territoriales, on remarquera immédiatement que les distances qui les séparent au-delà de la mer territoriale est de 88 milles marins, c'est-à-dire bien en deçà d'un quart de l'étendue d'une zone économique exclusive pour chacune d'elles, on remarquera également que cette distance est plus proche que toute côte continentale au-dessous de la latitude de Bioko. N'oublions pas également que la zone économique exclusive générée par Bioko vers le sud rencontre celle générée par la côte continentale de la Guinée équatoriale, dans une direction nord-ouest. Si tout cela ne produit pas un effet d'écran infranchissable, je ne vois pas qu'est-ce qui pourrait le faire.

11. Venons-en donc à Bioko à laquelle le professeur Kamto est prêt à accorder une petite exception à la manière des îles Anglo-Normandes. Bioko est une grande île; elle porte la capitale de la République de la Guinée équatoriale, une population importante, constituant une grande partie de la population totale de l'Etat. Elle a une surface maritime de 110 milles marins, alors que la façade maritime du Cameroun n'est que de 155 milles marins; c'est-à-dire que Bioko à elle seule a une façade maritime équivalant aux deux tiers de celle du Cameroun. Ce qui compte en droit de la mer c'est la façade maritime, et non pas la masse terrestre qu'elle enferme. La Cour l'a très

clairement dit dans l'affaire du *Plateau continental Libye/Malte* (*C.I.J. Recueil 1985*, p. 40, par. 49). [Projection 33.]

12. De plus, le droit est très clair quant au traitement des îles, comme la Cour l'a déclaré dans son dernier arrêt dans l'affaire *Qatar c. Bahreïn* (par. 185), en se référant à l'article 121, paragraphe 2, de la convention de Montego Bay, qu'elle considère comme exprimant le droit coutumier et qui stipule que «les îles, quelle que soit leur dimension, jouissent ... du même statut, et par conséquent engendrent les mêmes droits en mer que les autres territoires possédant la qualité de terre ferme».

13. A part l'importance intrinsèque de Bioko, la référence dans son contexte au traitement des îles Anglo-Normandes dans l'affaire de la *Mer d'Iroise*, est tout à fait déplacée. Car, comme je l'ai dit dans ma première plaidoirie, il y a une différence radicale entre le traitement des îles qui appartiennent à une partie à la délimitation et les îles qui appartiennent à un tiers Etat, et qui introduisent par cela même une nouvelle façade maritime indépendante dans la délimitation. Il ne s'agit donc pas dans ce cas d'un déplacement exagéré de la façade maritime d'une des Parties vers la façade de l'autre, par l'incident de l'existence de l'île, mais de l'avènement d'une troisième partie, qui ne peut être traitée de manière cavalière, égalité souveraine oblige.

14. Et même si, par hypothèse, on alloue à Bioko moins qu'un effet total, ce que ni les parties, et avec tout mon respect, ni la Cour, ne peuvent faire, au stade initial d'une délimitation, en l'absence de la Guinée équatoriale, même dans ce cas-là, *arguendo,* la ligne soi-disant équitable que nous propose le Cameroun mord sur plus que la moitié de l'effet de Bioko, comme le démontrera plus tard mon collègue et ami le professeur Crawford.

15. Le professeur Kamto nous dit «mais Bioko est sur le plateau continental du Cameroun» on pourrait répondre et vice versa. Ils sont condamnés à vivre sur le même plateau continental et de le partager mais pas dans le dos d'un autre Etat qui est le Nigéria. Il est d'ailleurs intéressant de relever que la première ligne transversale, tirée par le Cameroun entre Bony et Campo, traverse Bioko. Le professeur Kamto nous explique dans sa plaidoirie, que l'intérêt de Bioko a été préservé dans le choix de la position du point I sur cette ligne, qui, selon lui, ne reflète plus, comme on nous l'avait dit précédemment, les proportions des longueurs des côtes des deux Parties aux deux points d'ancrage de la ligne, mais qu'il ne s'agit que d'une ligne d'équidistance ajustée, en décalant de la

moyenne de la largeur de Bioko le point I vers l'ouest à partir du point d'équidistance. Cette nouvelle justification du point qui ne figure nulle part jusqu'à la plaidoirie du deuxième tour démontre ainsi que la base de la construction de la ligne a complètement changé par rapport à l'explication initiale. Et que de toute manière, s'il y a ajustement de l'équidistance en faveur de l'Etat tiers, c'est exclusivement et complètement à la charge d'une des parties, qui est en l'espèce le Nigéria.

16. Par ailleurs, à propos de cette première ligne, je dois répéter, que même selon la logique du système, comme on nous l'a expliqué auparavant, cette ligne rogne une partie substantielle de la longueur de la côte nigériane pour ce secteur, en commençant à Bony, plutôt qu'à Akasso, tout en ajoutant une partie substantielle non pertinente de la côte camerounaise, à savoir toute la partie obstruée du cap Debundsha jusqu'à la frontière sud.

17. S'il devait y avoir une ligne de ce genre, même si on accepte sa logique, elle aurait dû être tirée d'Akasso à cap Debundsha. Ce qui m'amène à la définition des côtes pertinentes des Parties.

Les côtes pertinentes des Parties

18. Le professeur Kamto critique notre description des côtes pertinentes des Parties (CR 2002/17, p. 50, par. 20-22). Mais j'aimerais le rassurer; il s'agit là d'une certaine mesure d'un malentendu. Il n'y a pas de controverse sur le fait que la côte pertinente nigériane est celle qui s'étend du point terminal de la frontière terrestre jusqu'à Akasso, d'où la côte nigériane vire brusquement vers le nord, en tournant le dos au golfe de Guinée. En ce qui concerne la côte pertinente camerounaise — et c'est là que s'insère le malentendu — cette côte commence évidemment au point terminal de la frontière terrestre, et s'étend plus loin jusqu'à cap Debundsha. Ce qui change après la région exiguë de l'adjacence, et qui affectée par le virement en arc (comme je l'ai dit jeudi passé), vers le sud de la côte camerounaise, c'est le type de rapport entre les côtes, passant d'un rapport d'adjacence dans la vicinité immédiate du point terminal de la frontière terrestre, à un rapport de vis-à-vis avec le virement vers le sud de la côte camerounaise. [Projection 34.]

19. Ce rapport de côtes se faisant face, ou de vis-à-vis, s'arrête au cap Debundsha, non pas parce que la côte vire radicalement vers le sud, comme a pu le croire le professeur Kamto, car de toute manière elle continue à s'orienter vers le golfe de Guinée. Ce qui change c'est que ce rapport de vis-à-vis s'interrompt par l'effet d'écran de Bioko, et la côte qui fait face à la côte camerounaise dès le cap Debundsha et jusqu'à la frontière avec la Guinée équatoriale, à Campo, n'est plus la côte nigériane, mais la façade est de l'île de Bioko.

20. Il y a, en plus, une autre raison, cette fois-ci juridique et non plus naturelle, qui invite et impose la même solution. Il s'agit du fait que le cap Debundsha constitue avec la pointe nord-est de Bioko, un détroit qui ne dépasse pas en largeur 24 milles marins, c'est-à-dire un détroit dont les eaux s'épuisent totalement dans les eaux territoriales des deux Etats côtiers. C'est la raison pour laquelle une fermeture à ce niveau là s'impose, comme l'a indiqué la Cour dans l'affaire du *Golfe du Maine* (*C.I.J. Recueil 1984*, p. 336, par. 221). Il faut également relever ici, dans le calcul des côtes pertinentes, que dans des situations où il y a des échancrures profondes, même quand elles donnent sans obstruction sur la zone pertinente, les juridictions internationales les ont toujours fermées par une ligne droite dans la mesure des côtes pertinentes. C'est la solution que la Cour a adoptée dans l'affaire du *Golfe du Maine* en fermant l'embouchure de la baie de Fundy (*ibid.*, p. 268, par. 31). [Projection 35.]

21. De même le tribunal arbitral dans l'affaire de *Saint Pierre-et-Miquelon* a adopté la même solution pour le détroit de Cabot dont l'embouchure maintenant la fermeture est de 50 milles alors que si l'on calculait la façade intérieure cela aurait été de 500 (décision, par. 29). [Projection 36.]

22. C'est pour ces raisons-là que la partie de la côte camerounaise, dès le cap Debundsha et jusqu'à la frontière à Campo, ne peut plus être qualifiée de côte pertinente dans le contexte de la présente délimitation.

La définition de la zone pertinente

23. J'aimerais revenir un instant sur la zone pertinente. Nous l'avons définie comme étant la zone bordée par les côtes pertinentes, en d'autres termes, les côtes des Parties qui sont ou bien «adjacentes», ou bien qui «se font face», et qui constitue ainsi la zone de délimitation.

24. Cette définition est conforme avec la jurisprudence constante de cette Cour, dont il suffit de citer deux affaires : l'affaire du *Plateau continental (Tunisie/Libye),* où la Cour dit :

> «C'est donc en partant de la côte des Parties qu'il faut rechercher jusqu'où les espaces sous-marins relevant de chacune d'elles s'étendent vers le large, ainsi que par rapport aux Etats qui leur sont limitrophes ou leur font face. *Les seules zones qui puissent intervenir* dans la décision ... sont celles qui peuvent être considérées comme étant au large [des Parties]... Néanmoins, pour délimiter le plateau entre les Parties il n'y a pas à tenir compte de la totalité des côtes de chacune d'elles... Les cartes mettent en évidence, sur la côte de chacune des deux Parties, l'existence d'un point au-delà duquel ladite côte ne peut plus avoir de lien avec les côtes de l'autre Partie aux fins de la délimitation des fonds marins.» (*C.I.J. Recueil 1982*, p. 61, par. 74-75; les italiques sont de nous.)

25. De même, dans l'affaire du *Golfe du Maine*, la Cour nous dit : «en définitive, seule la notion d'aire de délimitation *[delimitation area]* est une notion juridique... Par contre, la notion de «région du golfe du Maine» ... apparaît comme une notion aux confins très élastiques» (*C.I.J. Recueil 1984*, p. 272, par. 41).

26. Dans l'affaire de la *Mer d'Iroise*, le tribunal arbitral, nous dit également «que la méthode de la délimitation à adopter pour la région atlantique doit être en rapport avec les côtes des Parties *qui bordent effectivement* le plateau continental de cette région» (*RSA*, vol. XVIII, par. 248).

27. Le Cameroun, cependant, a construit sa ligne en s'appuyant sur, c'est-à-dire en s'appropriant, les côtes continentales de la Guinée équatoriale et du Gabon jusqu'au Cap Lopez. Il invoque comme justification, l'affaire *Guinée/Guinée-Bissau.* Dans cette affaire, le tribunal, plutôt que d'utiliser comme ligne de base la laisse de basse mer, a tiré une ligne droite de direction générale de la côte de l'Afrique occidentale, joignant la pointe des Almadies (Sénégal) au Cap Shilling (Sierra Leone). Cette ligne englobe donc les côtes des deux parties, mais les dépasse, car elle trouve son ancrage dans deux autres Etats. Je sais que le professeur Kamto aime bien cette affaire. En fait, il lui a consacré un article dans la revue égyptienne de droit international de 1985. Un très bon article de jeunesse et je l'en félicite. [Projection 37.]

28. Mais tout de même, cette décision isolée faisant recours à la macro-géographie ne saurait faire jurisprudence face à l'attitude claire de la Cour. En plus, il ne s'agissait pas de définir une zone pertinente de délimitation, mais simplement de tirer une ligne droite de la direction générale de la côte, produisant une façade maritime homogène non obstruée vers le large, comme les lignes de base droite pour la mer territoriale.

La méthode de construction de la ligne

29. De toute manière, rien ne peut justifier en droit l'appropriation par le Cameroun de la côte continentale de la Guinée équatoriale et de la côte gabonaise jusqu'à Cap Lopez. Je n'ai pas besoin de revenir ici sur ma déconstruction de cette ligne dans ma plaidoirie de jeudi passé. Et je suis même flatté que le Cameroun ait adopté comme sienne la carte que j'ai préparée à cet effet. [Projection 38.]

30. Il est clair que l'astuce des parties pointillées des lignes transversales n'a pour but que de faire passer la côte camerounaise, par une sorte de saute-mouton géographique, par-dessus le chapelet d'îles pour aboutir dans la zone pertinente occidentale. Il s'agit donc d'une refonte radicale de la nature, on a redessiné la baie qui se ferme avec la ligne rouge plutôt que comme elle l'est dans la nature. Mais ce que je n'ai pas dit jeudi passé, c'est que le Cameroun, en ce faisant, prolonge de toute manière sa côte de la longueur de la ligne rouge. Donc, il continue à s'approprier une longueur qui ne lui appartient pas.

L'équité de la ligne équitable à la lumière de la jurisprudence

31. Enfin, et en guise de conclusion, Monsieur le président, Madame et Messieurs de la Cour, j'aimerais commenter les propos du Cameroun concernant les deux arrêts dans les affaires du *Plateau continental de la mer du Nord*, et du *Plateau continental Tunisie/Libye.*

32. En ce qui concerne le *Plateau continental de la mer du Nord*, la Cour a fait un ajustement relativement minimal par rapport à une solution d'équidistance stricte. Tout ce que la Cour a proposé était de pousser le point triple vers le large, vers un point qui s'imposait logiquement et qui ne se distançait que modérément du tripoint d'équidistance stricte, moins que 50 % de la longueur de la ligne qui le reliait au creux de la côte allemande. De même, l'ouverture des angles des deux côtés du triangle ne dépassait en aucun point un coefficient de 0.2 de la côte la plus proche des parties. Et on a la solution adoptée par la Cour dans la carte 39. [Projection 39.]

33. En aucun cas, il ne s'agissait de l'élimination pure et simple du triple point en faveur d'une percée de la ligne d'équidistance avec l'Angleterre en face, avec un grand virage vers le large en passant entre le Royaume-Uni et le Danemark. C'est, dans notre contexte, la ligne équitable du Cameroun. [Projection 39.]

34. En ce qui concerne l'affaire du *Plateau continental Tunisie/Libye*, le professeur Kamto a fait un grand effort pour la distinguer de la présente affaire. Mais il ne s'est pas adressé aux points de similitude que j'ai évoqués et qui sont que la Tunisie également a une côte concave, bordée d'îles étrangères, en fait deux rangées d'îles étrangères, et que par conséquent elle était condamnée à n'avoir qu'une ceinture étroite parallèle à ses côtes, sans avoir une échappée vers le large. Je ne voudrais pas entrer dans les détails pour répondre au professeur Kamto point par point, bien que je sois tenté de le faire, ayant été conseil dans cette affaire. [Projection 40.]

35. Mais la Cour savait bien que la Tunisie avait déjà conclu un accord avec l'Italie, qui empêchait toute percée au nord et au nord-est de ses côtes. Par conséquent, la seule échappée qu'elle aurait pu avoir, étant donné la proximité de la frontière terrestre avec la Libye du creux de la baie de Gabès, pouvait se situer seulement entre la Libye et Malte, au sud-est de ses côtes, vers la Méditerranée orientale.

36. En adoptant la ligne qu'elle a adoptée, qui était même moins de l'équidistance dans son premier secteur, et qui visait un tripoint équidistant avec Malte dans le second secteur, la Cour était bien consciente qu'elle parachevait la ceinture autour de la Tunisie. Sans doute, la Cour s'est sentie obligée de le faire, car elle ne pouvait pas, au nom de l'équité, adopter une solution extravagante allant à l'encontre des données essentielles de la nature et de la pratique bien établie des parties.

Un dernier mot sur le terme «ligne d'exclusion» que mon collègue et ami le professeur Kamto n'aime pas. Il dit que le Nigéria veut être présent dans toutes les délimitations car il a des ambitions impérialistes et veut être le maître du partage. Mais regardons en fait cette ligne équitable du Cameroun. Que nous dit cette ligne ? Il dit au Nigéria qu'elle doit abandonner toute délimitation avec deux Etats, qui sont la Guinée équatoriale et Sao Tomé-et-Principe, dans des zones où leurs côtes sont beaucoup plus proches de ses zones que toute côte camerounaise, et qui sont plus intimement liées avec cette zone, car elle est dans la trajectoire de leurs côtes alors qu'elle est tout à fait décalée des côtes du Cameroun, en disant que le Nigéria aura sa part équitable par cette ligne. Et pour le reste on va se débrouiller avec les autres et aussi sans définir la zone, la part qu'il voudrait en tirer et qui permettrait de juger l'équité de la part du Nigéria en termes de proportionnalité, quelle que soit la méthode pour mesurer cette proportionnalité. Qui veut dans ce

schéma être le maître du partage ? Celui que l'on fait sortir en premier ou celui qui garde toutes les cartes dans sa main sans même donner le critère de mesure de l'équité de cette solution ?

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

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

L'audience est suspendue de 11 h 45 à 11 h 55.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise. I now give the floor to Professor James Crawford.

Mr. CRAWFORD: Thank you very much, Sir.

THE MARITIME BOUNDARY: CAMEROON'S APPROACH CONTRASTED WITH NIGERIA'S APPROACH

1. This speech will be in two parts. In the first part I will respond to a number of points made by counsel for Cameroon in their second round concerning the Maroua Declaration. In the second part I will turn to consider the issue of the maritime boundary, as adumbrated by Professors Pellet and Kamto on Tuesday.

A. The Maroua Declaration

2. Mr. President, Nigeria informed Cameroon at the latest by 1978 that it did not accept the Maroua Declaration. Cameroon now agrees that this was the case[23]. There was thus a dispute, by this time, as to the validity of the Declaration.

3. Nigeria has already dealt extensively with the issues associated with the Maroua Declaration in its written pleadings and in the first round[24]. I would only make three further points about it at this stage.

4. The first concerns the Nigerian Note of 27 March 1962, on which Professor Mendelson placed such emphasis[25]. But the question is what precise effect this Note is said to have. The focus

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[23]CR 2002/6, p. 6, para. 10.

[24]CR 2002/9, pp. 36-42, paras. 97-120.

[25]CR 2002/16, p. 38, para. 16.

of the Note is on the offshore; the author's concern was oil licensing. The letter gives some insight into the way in which, from an early stage of the independence of the two States, the oil practice developed. Nigeria has made no secret whatever of that practice; indeed if there has been any reticence on that score it has been Cameroon's. But it is impossible to believe that in the modern world the fate of inhabited territories and their peoples can be determined by correspondence of this character; that the fate of substantial human populations can be decided as a side-wind or a by-product of oil licensing. The letter is certainly not a cession of territory, nor is it a proleptic abandonment by Nigeria, that is, an abandonment for the future, of any claim to Bakassi based upon such factors as historical consideration and actual administration. Thus the letter must take its place among other items of evidence in the record, in the overall balance that the Court will have to strike on that score. Indeed, as Mr. Brownlie has already recorded, counsel for Cameroon accepted that that balance favours Nigeria.

5. The second question concerns the issue of constitutional invalidity, which Mr. Brownlie discussed in the first round[26]. In the course of his speech on that subject[27], Sir Ian Sinclair presented his own analysis of Nigeria's constitutional position, which is in fact relatively easy to follow, and not at all "highly complex" as he suggested. In his case it was not a question of art being used to conceal difficulties but rather to exaggerate them. His purpose was to demonstrate that at the time the Maroua Declaration was signed (and indeed at the time of the Yaoundé II Declaration, to the extent that it may be relevant), the constitutional position was governed by Nigeria's 1963 Constitution as amended by Decree No. 1 of 1966, and that this had been the position ever since the passing of Decree No. 13 of 1967, restoring the 1963 Constitution as amended.

6. Sir Ian concluded that, in the same way as under Decree No. 1 of 1966, the 1967 Decree had vested both executive and legislative authority in the Federal Executive Council, and he cited a compilation by Blaustein and Flanz in support of this conclusion[28]. But it is difficult to understand how, having concluded that such authority vested in the Council as at 1 June 1975, he could then

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[26]CR 2002/9, pp. 36-42, paras. 98-120.

[27]CR 2002/17, pp. 34-36, paras. 10-14.

[28]*Ibid.*, p. 35, para. 12.

conclude with the statement that Cameroon's interpretation of the position was, nevertheless, that the Head of Nigeria's Federal Military Government acting alone was entitled to make treaties without even the advice, let alone the approval, of the Federal Executive Council — that body, as he indicated, was essentially an extended sub-committee of the Supreme Military Council.

7. In these circumstances there is no need for me to repeat what Nigeria said in its Rejoinder, or indeed in its first oral round. Nothing in our opponents' observations affects the demonstration that President Ahidjo was clearly aware of the constitutional constraints under which General Gowon was operating. The position of the Nigerian Government is clear and unchanged. There can be no presumption that as an incidental result of a series of meetings concerning the maritime boundary, Nigeria was surrendering a significant tract of territory in its lawful possession and populated by Nigerians — still less that it was doing so during a discussion in which there is no record that the Bakassi Peninsula was mentioned even once.

8. It is against this background that you need to consider my third point, which concerns the August 1993 Joint Meeting of Experts on Boundary Matters[29]. Remember this came just seven months before Cameroon's initial Application put in issue before the Court both Bakassi and the maritime boundary. The minutes thus constitute a very helpful snapshot of the situation just prior to the commencement of the case. Since the Parties agree that you should read the minutes, I will not take you through them in detail.

9. But in contrast to Cameroon's reading of them, you will be able to see the following elements:

(1) The meeting was headed by senior officials on both sides.

(2) It was apparently amicable, though there had evidently been tension between the parties on particular points.

(3) It was held not less than 15 years after Nigeria informed Cameroon that it did not accept the Maroua Declaration. Both parties were well aware of that disagreement and of the reasons for it.

(4) The next step in terms of the land boundary was to be a workshop convened by Cameroon.

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

(5) Along the maritime boundary, both parties were aware of each other's oil activities; joint ventures could be considered, but in the event both parties accepted "the freedom of each country to develop its resources along the border", and this despite the disagreement over the Maroua Declaration, a disagreement patent on the face of the same document.

(6) There was concern "to maintain a régime of peace in the area".

(7) The tripoint with Equatorial Guinea had still to be determined, in order to enable each party "to exploit its natural resources in the area in peace".

(8) Nigeria had failed to respond to Cameroon's announcement that it would go ahead with work on the Betika West structure, just south of point G.

10. Sir Ian Sinclair, who is usually "the very pineapple of politeness"[30] — that comes from his favourite author, Sheridan — accused me of making up the facts; "indebted to my imagination" he called it, perhaps he is more a pineapple on some occasions than on others[31]. So it is worthwhile to compare Cameroon's position about the facts as at the early 1990s with Nigeria's. I cannot of course deal with all of the facts in the time available and this day you would not want me to, but here is a brief review:

(1) Cameroon says that the whole boundary alignment was in dispute. There is no evidence of that in the minutes, which cover the area from Lake Chad to the sea.

(2) At the same time, Cameroon says that there were no particular problems of delimitation along the boundary, only problems of demarcation. But as the minutes show, the two parties were examining questions of delimitation *and* demarcation as well as problems of transboundary co-operation.

(3) Cameroon says that the parties must have realized that their oil practice was fatally inconsistent with Nigeria's position on the Maroua Declaration and Nigeria's claim to Bakassi. But both parties in the same minutes agreed *(a)* that *that* dispute was unresolved and should be referred to higher authority, *and (b)* in the meantime, that they were free to develop their resources separately along the border. Hence the disjunction of land and maritime issues to which I referred, without imagination, in the first round.

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[30]R. B. Sheridan, *The Rivals* (1775), Act 3, scene 3.

[31]CR 2002/17, p. 41, para. 23.

(4) Cameroon says it was ignorant of the oil practice south of point G. But the minutes deal with precise issues that the parties were well aware they faced there — the location of the tripoint; the proposed Betika West structure.

(5) Cameroon says, through Professor Pellet, that Nigeria was coercing Cameroon licensees not to operate in the southern zone of overlapping claims. But when did this happen? There is no suggestion of it in the minutes. There is no trace of evidence of it in the record of this case, unless Professor Pellet was himself giving evidence — a strange thing for counsel to do, especially in the second round. Perhaps he should be called to make a declaration under Rule 64 *(a)*?

(6) Cameroon says it was deliberately refraining from licensing in the areas to the south and west of the approximate tripoint, and along what is now its claim line, in order not to aggravate a dispute. The minutes tell a completely different story. The parties wanted to determine the tripoint to enable them to continue to exploit their own areas securely. They were not planning to determine the tripoint in order to have Cameroon immediately ignore it with a maritime claim out to 350 nautical miles. If Cameroon had for a moment entertained such a claim — or indeed a claim even to point H, at right angles to point G in the midst of known Nigerian installations — don't you think it might have said so during this meeting? At least a reservation of rights would have been appropriate — certainly not discussion of how to agree on the precise location of the tripoint. Cameroon complains about the non-exchange of information following the meeting — this seems an item of information the parties would have considered relevant, not to say novel, had it been in Cameroon's mind.

11. So the Court will see from this review just where lies the balance of truth and imagination in this situation, just months before the present case was commenced, just a short while before the ultimate critical date.

B. The maritime boundary

12. Mr. President, Members of the Court, that brings me to the controversy over the maritime boundary. Just as I have compared Cameroon's and Nigeria's position in 1993 over the land

boundary and especially Maroua and Bakassi, so I will compare our two positions on the delimitation of the maritime boundary.

13. An initial point is that Cameroon has left unchallenged or undiscussed large areas of Nigeria's maritime boundary presentation last week. I can illustrate this from tab 41, now on the screen. We showed how their line could not possibly go out to point M. No response. We showed how it could not possibly go beyond point L. No response. We argued that for the Court to award a three-mile strip of maritime territory around point L would be effectively to deal with the rights of Sao Tome and Principe. We showed how their line could not mysteriously emerge from Equatorial Guinea's waters in the south, at point I_1. No response on either point. We showed that the line could not go around Equatorial Guinea by a forced exchange of territories. Silence. We showed how Professor Pellet's white box, his maritime *non liquet*, was untenable. The white box has disappeared. We argued that the Agreement of 2000 did not involve a relinquishment by Equatorial Guinea of any maritime areas vis-à-vis Cameroon. That issue — crucial to your jurisdiction — is apparently postponed. We argued that the coastline of Rio Muni could not possibly be relevant here. No response. This was not a dialogue of the deaf[32]. Cameroon was not speaking at all; it was mute; it was a Nigerian soliloquy.

14. I must, however, acknowledge one thing. On this occasion, at least, Cameroon's claim line has not changed. This is the first phase of the written and oral pleadings at which their line has remained the same, and for this stability we must be grateful. I congratulate them. Cameroon still claims exactly the same line, right out to point M, even if in its second round it has not attempted to defend the extension of the line out to that point.

15. But, Mr. President, this unchanging line is actually rather odd, because you heard Professor Kamto change the *reasoning* for the line[33]. Now he justifies it as an adjusted equidistance line, adjusted sideways by the average thickness of Bioko. But is it not odd how two methods so totally different — lateral apportionment of the Gulf of Guinea in slices by reference to coastal ratios ignoring the islands, on the one hand, and the adjustment by reference to Bioko of a median line drawn *inter partes* — on the other hand, how two methods so totally different could

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[32]CR 2002/17, p. 31, para. 2.

[33]*Ibid.*, pp. 58-60, paras. 41-48.

still manage to produce *the very same point*, point I? Let alone the very same points J, K, L and M? A remarkable coincidence: I will return to it.

16. And then you heard Professor Pellet apologize for their mapping errors. Forgive me Court, he said, for we have sinned[34]. Mr. President, it is not a sin to make mapping errors; we all do it occasionally, although I cannot resist saying that they might have traded in one or two of their large team of foreign counsel for a good surveyor and cartographer, had they been serious about their maritime claim — or for that matter their land boundary.

17. The problem is not sin, which can be forgiven; it is ignorance, which in those blind to the truth presents a greater problem. Cameroon's presentation of the maritime boundary ignores the facts and the law, as I will now show.

1. The practice of the Parties

18. The first issue concerns the practice of the Parties. This involves questions both of fact and law. Let me take the facts first.

19. Professor Pellet complained that Cameroon's map of overlapping concessions, which you can see on the screen, and in tab 42, was based on inaccurate Nigerian data from our Counter-Memorial; if they had sinned, he said, it was because they were led into error[35]. In fact Cameroon had and has its own sources of information in its *Société Nationale des Hydrocarbures*, in its oil companies and in the scouting services. Moreover, this Cameroon map is a relatively accurate one; as I said in the first round, it does not differ in essentials from the map of overlapping concessions shown in Nigeria's Rejoinder, and again last week. That map was carefully based on information obtained from the licensees and from the Nigerian Department of Petroleum Resources[36].

20. The inaccurate maps are those that Professor Pellet showed you on Tuesday. The Cameroon maps in your folder for 12 March show erroneous licensing co-ordinates for blocks OPL 230 and OML 114. The correct co-ordinates were included in our Counter-Memorial,

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[34]CR 2002/17, p. 19, para. 4.

[35]*Ibid.*, p. 27, para. 31.

[36]Reply of Cameroon, map R 25, after p. 438.

Annex NC-M 341, signed by a surveyor[37]; they are depicted accurately in our Counter-Memorial[38] and our Rejoinder[39]. We suspect Professor Pellet's maps of Tuesday use data obtained commercially from IHS. But these are essentially secondary sources. Nigeria went back to the primary sources, the actual licenses, which we annexed and depicted accurately. The map now shown on your screen (Reply of Cameroon, map R 24), which is also in tab 42 — another Cameroon map — again gets the situation approximately correct, unlike Cameroon's graphics this week, which mark a regression away from the comparative accuracy of their map of overlapping concessions.

21. A second factual point. Professor Pellet agreed with us that there had been no Cameroon oil activities in the southern zone of overlapping licences. And although he was less clear, he also seemed to agree with us that concordant oil practice could be a relevant circumstance in maritime delimitation, since he invoked it in respect of areas north of point G. But he argued that the practice south of point G was unilateral[40]. Mr. President, even if it had been unilateral, it was public, open and of long duration. In those circumstances even a unilateral practice, unprotested by other States in the region, would be a basis for acquiescence and the establishment of vested rights. But of course the practice was not unilateral. Actually it was trilateral. It involved all three States. You can see it from the familiar graphic in tab 43. That is not an indication of a merely unilateral practice. I refer you again to the Appendix in Chapter 10 of our Rejoinder for the history of the practice.

22. While on the facts of practice, we had again the allegation — another allegation totally unsupported by any evidence or proof — of force and threats by Nigeria against its neighbours. Now we are told of "intimidation and threats" against Equatorial Guinea over Ekanga, as well as against Sao Tome and Principe over the JDZ Agreements[41]. I will not dignify these allegations with an answer. I was at both negotiations, I helped to draft both agreements. But I will not give evidence about them. No doubt next week Equatorial Guinea can speak for itself.

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[37]Counter-Memorial of Nigeria, Vol. X, pp. 2600-2601.

[38]Counter-Memorial of Nigeria, fig. 20.4.

[39]See, e.g., Rejoinder of Nigeria, fig. 10.2.

[40]CR 2002/17, p. 28, para. 36.

[41]*Ibid.*, p. 29, para. 40.

23. I turn from the facts to the law on the subject of oil practice and its relevance. It is true that in a number of cases the practice of the Parties has not been sufficient either to show acquiescence, or to provide evidence of the Parties themselves as to what would be equitable, or to establish a set of legitimate expectations. But in our case, as we showed in our written pleadings, that was because the practice in those other cases was ephemeral, disputed, equivocal or of short duration prior to the dispute arising. For example, mere seismic work is ephemeral and will not have much or any effect, as you implied in the *Aegean Sea* Order on Provisional Measures. Nor will licensing of relatively short duration, especially if protested and not accompanied by actual drilling and exploitation, as in *Gulf of Maine* or the second phase of *Eritrea/Yemen*. But States are well aware of the difference between mere licensing and general surveying, on the one hand, and actual exploitation on the other, and they protect themselves by standstill agreements. There was such an agreement in the *St. Pierre et Miquelon* case: it was in force from 1967 until 1992 when the decision of the Court of Arbitration was implemented.

24. Professor Pellet did not disagree with the decision in *Tunisia/Libya*, nor that the Court treated the oil practice as relevant[42]. But he said it was the "*cas-limite*" for such practice, the limiting case. Here there are two points to make. First, even if it is the limiting case, and there is no statement to that effect in the jurisprudence, the present case is even stronger. The evidence here is of longer practice, it is practice of three States not two, it involves much denser patterns of activity, and there has at no stage been a large discrepancy between oil concessions and oil installations such as eventually developed between Tunisia and Libya. The evidence here does precisely show a tacit accord between the Parties, no doubt still subject to some minor clarification and to the need for a final delimitation. It certainly shows acquiescence on the part of Cameroon.

25. Professor Pellet treated *Tunisia/Libya* as based entirely on a *de facto* line established by oil concessions[43], and it is true that the Court paid attention to the pattern of concessions, as you said in your Judgment[44]. But it also paid particular attention to the actual pattern of exploitation, as I will show. The Court will see on the screen and in tab 44 the pattern of oil concessions, including

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[42]CR 2002/17, p. 25, para. 24.

[43]*Ibid.*, p. 25, para. 23.

[44]*I.C.J. Reports 1982*, p. 84, para. 117.

the stepped Tunisian concessions essentially along the line of 26°. The area of overlapping licences offshore, which are shown in bluey-grey on this graphic, only appeared in 1974 and only some distance offshore. The Special Agreement was signed in 1977. The concession practice went back to the late 1950s, as it does here. You can see from the black-arrowed line on the screen the Court's actual delimitation, and it is evident that inshore the general concordance of licences was a highly relevant circumstance.

26. But it was not just the licences. Now you can see on the screen (again tab 44) the actual wells drilled by the two States, red for Tunisia, black for Libya. And you can see the line the Court drew, neatly between them — with only one exception, a late Tunisian well on the wrong side of the line which was dry, non-productive and had been abandoned. It is clear that the actual pattern of exploitation was highly significant.

27. I need hardly remind the Court of the extent of practice here. You see it on the screen (tab 43). The practice is much denser and is now of considerably longer duration than was the case with Tunisia and Libya in the late 1970s. If the Court values consistency and legitimate expectations, this has to be a highly relevant circumstance.

28. Finally, Mr. President, a mixed question of law and fact. Cameroon argues again that Nigeria's failure to inform it of further oil practice renders the practice illicit[45]. To this there are any number of answers. First, although it is true that there may have been some problems of communication at different times, Cameroon has not shown that Nigeria persistently failed to communicate relevant information, at Ministry level, before or after the case began. It is Cameroon, in fact, that has declined to be open with the Court over the oil practice. Secondly, the indications are that both sides were well informed of the other's practice, as they might well have been. Thirdly, the information was in the public domain anyway, at least in its general outlines. Fourthly, to the extent that Cameroon relies on the alleged commitments made in 1991 or 1993, they could not possibly have made unlawful an existing 30-year-old practice, of which both Parties were well aware. Fifthly, there is no evidence of protest at any generic failure to give information. The 1993 minutes, for example, do not contain such a protest. They do contain one specific

[45]CR 2002/17, p. 26, para. 26.

complaint by Cameroon concerning Nigeria's failure to respond to a recent request concerning the proposed Betika West field. But the specific excludes the general: there was no *general* complaint about lack of information and there is no indication that information was wanting. The Parties knew what each was doing and no one suggested that any temporary failure to provide information, if such failure there was, affected the rights of the parties on each side of the common border.

2. Deficiencies in Cameroon's global model

29. Mr. President, Members of the Court, I turn to the second major issue which separates the Parties still. This is Cameroon's global model for allocation of maritime spaces in the Gulf of Guinea, shown again in tab 45. Ever since that claim was first made in 1995, it has been based on the now familiar set of transverse lines and of points along those lines determined in accordance with the ratio of coastal lengths between Nigeria and Cameroon, ignoring the islands.

30. Up to and including Cameroon's first oral round, the *ligne équitable* was always justified on the same basis. According to Cameroon, the global situation excluded any version of an equidistance line, which was fundamentally inequitable to Cameroon. So it divided the Gulf of Guinea laterally with these three lines. On the outermost two lines, it indicated a non-pertinent section attributable respectively to Rio Muni and Gabon. It divided the remainder of each lateral line in the ratio of the coastal lengths of Cameroon and Nigeria to create points I, J and K. There was no pretence of equidistance and no attempt to take into account the single most important factor in the Gulf, the coastal frontages of Bioko and Principe. That was the method of the written pleadings and of Professor Mendelson.

31. Professor Mendelson explained it in the first round. You will recall him saying that the first lateral line had to be drawn to Bonny rather than Akasso so that the three boxes would have approximately the same area[46]. Why they should have the same area is not clear, and he did not explain it — but for the moment we are playing this game to Cameroon's rules, and that was one of them. You will also remember that he said he could not take Bioko into account because to do so would shift the line even further west and that would be unfair to Nigeria[47].

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[46]CR 2002/6, p. 52, paras. 17-18.

[47]*Ibid.*, p. 53, paras. 22.

32. In our written pleadings and in our first round, we showed that this method was untenable in principle, under the applicable law, that is to say, the international law of maritime delimitation between two States as laid down by the Court. I will not repeat that demonstration. I will only show, very briefly, that Cameroon cannot even apply its own method consistently. After four rounds of argument it cannot even get its own method right.

— First, Cameroon consistently confuses coastal lengths and coastal ratios. To make any sense of these straight lines you have got to measure ratios along them, not coastal lengths. That is elementary.

— Secondly, Cameroon cannot work out which parts of the lateral lines are non-pertinent. They have come up with two versions, as you can see on the screen and in tab 46, one in their Memorial, one in their Reply. Both are wrong. Neither of them represent actual coastal lengths as you can see from the arcs on the screen. Nor do they represent coastal ratios. It is still unclear what they represent.

— Thirdly, Cameroon's change in non-pertinent sections should have changed the location of points J and K. After all, those points are determined supposedly by applying coastal ratios to the remaining pertinent section. Yet those points did not change. Cameroon is completely confused about its own method. If counsel for Cameroon do not understand the method themselves, how can they expect the Court to do so?

— Fourthly, if you apply their method as Professor Mendelson explained it, you get completely unacceptable results. As you can see, we have drawn the non-pertinent sectors as he said they should be drawn. We have then divided the remaining line by the coastal ratios, the coastal ratios according to Cameroon. The new points J1 and K1 you can see on the screen. On this basis, point L is off the west coast of Nigeria and point M is on the Benin-Nigeria maritime boundary. Their method achieves a complete cut-off of the whole coastal frontage of Nigeria from east to west. As I said earlier, this is quite a line!

33. No doubt conscious of these difficulties, Mr. President, Members of the Court, Professor Kamto has courageously tried a completely new tack. Now he justifies the line as an adjusted form of equidistance line!

34. Mr. President, in your absence last week I took the liberty of quoting your lecture to the Sixth Committee last year showing the virtues of equidistance as a starting point for maritime delimitation[48]. Professor Kamto was evidently deeply impressed. I wish lectures of mine had such an effect! For now he produces a completely different justification for the line[49]. First, he shows you an equidistance line — you see it on the screen, tab 47. Then he says it should be adjusted. How? Well what he says in effect — I will not quote it at length, it's paragraph 44 of the *compte rendu* — is that it should be adjusted by the mean thickness of Bioko applied sideways. And we've done that now, a 30 km line applied sideways.

35. This attempt calls for the following remarks.

— First, it is transparently an *ex post facto* attempt to recast their line as an adjusted equidistance line under the influence of a lecture from the President. Professor Mendelson in the first round expressly denied that they had taken Bioko into account at all.

— Secondly, the *ligne équitable* is not an adjusted equidistance line. It is the transposition upon a lateral line Campo/Bonny of the thickness of an island. As the Court will be aware, equidistance lines are not drawn in this way, adjusted or not.

— Thirdly, the method, giving lateral effect to the average thickness of Bioko along the Campo/Bonny transverse line, miraculously produces point I !! A completely different method produces precisely the same point out of the universe of possible points along the Campo/Bonny line. What a coincidence!

— Fourthly, the transposition does not start from a pure equidistance line either, as you can see. It starts from a virtually straight line, at best a simplified equidistance line. The Court has not been told how it has been drawn. The real equidistance line, giving nil effect to Bioko, is shown now in green. Mr. President, if, for the sake of argument, you attempt to transpose the average thickness of Bioko along the Campo/Bonny line from a zero effect equidistance line, you would not get point I, you would get point X. It's about 2.5 nautical miles further eastwards. So Cameroon is wrong on that too.

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[48]CR 2002/13, pp. 53-54, paras. 6-8.

[49]CR 2002/17, p. 59, para. 44.

— But, fifthly, the coincidence deepens. Not merely is the adjusted equidistance line said to produce point I, it is also said to produce points J, K, L and even M out to sea. Professor Kamto did not bother to tell us how[50]. This is adjusted equidistance of a truly novel kind. As it proceeds, it gets further and further away from an equidistance line, and for no discernible reason.

36. But most fundamentally of all, Professor Kamto's method bears no relationship whatever to the law of maritime delimitation, any more than did Professor Mendelson's different justification for the very same line. Why take the southern coastal frontage of Bioko, which does not face Nigeria at all, and use it as a basis for an adjusted equidistance line? Why not take the north-west facing coast and use that? I think because it would not produce point I. Cameroon's new method, like its old, ignores the basic axiom that maritime delimitation occurs between facing coasts. The Court of Arbitration in *St. Pierre et Miquelon* did not take the south-facing coastal frontage of the French islands and treat it as a basis for shifting a nil effect line to the west. It gave separate effect to the west-facing coasts of the French islands, and to the south-facing coasts.

37. In the second place, the method operates on the entirely novel basis of State thickness. How thick is a State? The Court delimits from coastal frontages, not from hinterlands, as you already said in *Libya/Malta*[51].

38. For the Court to adopt this method would be to abandon the hard-won progress in the law of maritime delimitation for an obviously arbitrary, result-oriented and partisan approach. I am afraid Professor Kamto was in the position referred to by the playwright Sheridan, of whom Sir Ian should have warned him. As to Cameroon's method of delimitation, he could "only spoil it by trying to explain it"[52]. If it were not already spoiled — which, for the reasons we have given, it already thoroughly is.

39. A final point, Mr. President, Members of the Court. Let us for the sake of argument assume that you were to give less than full effect to Bioko as against the opposite coast. You obviously could not give it less than half effect. It is a substantial island with a substantial coastal

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[50]CR 2002/17, p. 60, paras. 47-48.

[51]*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 40-41, para. 49.

[52]R. B. Sheridan, *The Rivals* (1775), Act 4, sc. 3.

frontage. The half effect line is shown on the screen now. It is entirely within the waters attributed to Equatorial Guinea under the Agreement of 2000. It is obvious that that line cannot be the subject of a judgment of the Court. You have no jurisdiction as to the area where the half effect line runs. But, secondly, to give anything less than full effect to Bioko is to judge Equatorial Guinea, to exercise jurisdiction over it, and it is not a party to these proceedings. So Cameroon's talk of partial effect for Bioko — one way or another, sideways, backwards, however — can be given no application in this case.

3. "Point H" and Cameroon's claim to maritime areas to the south

40. Mr. President, Members of the Court, I turn to my third point this morning, which is Cameroon's implicit claim to maritime areas to the south of the line between point G and point H. Cameroon, through Professor Kamto sought to justify point H as the jumping off point for an inadmissible system of global distribution but he also gave an independent reason for it based on equidistance[53].

41. Members of the Court will see in tab 49 a close-up of the position around points G and H. I wish to make a number of points in relation to these.

42. First of all, of course, Nigeria does not accept the validity of point G to start with. That's part of the issue about the Maroua Declaration, which I have already discussed.

43. Secondly, even if — *quod non* — point G were to be considered as a valid starting point, it would by no means be inequitable *as a geographical matter alone.* As we have already established, Nigeria's relevant coastal lengths significantly outweigh those of Cameroon, by a factor of about 2:1. Secondly, even on Cameroon's own assumptions as to the land boundary, Nigerian coastline dominates the Calabar estuary by a factor of 3:1. A solution similar to the *Gulf of Maine* case would produce a line deflected to the Cameroon side.

44. But the dominant considerations concern the practice of the Parties. The claim to a sharp right-hand turn was never articulated at any stage by Cameroon prior to the deposit of its Memorial. The claim was never made. It contrasts sharply with the practice of the Parties, for

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[53]CR 2002/17, p. 59, paras. 44-45.

example in terms of the proposed Betika West well, which, as you can see, seems never to have been drilled[54].

45. Above all, for the Court to grant point H to Cameroon would involve the transfer to Cameroon of three oil-bearing structures, that is to say, three fields, of two operational platforms, of two producing wells and of a complex of pipelines. These were constructed, under Nigerian licences, unprotested and became operational in the mid-1980s. For the reasons I've already given, the allocation of these facilities to Cameroon is excluded in terms of an equitable outcome in the circumstances. No doubt the transfer of these facilities would marginally improve Cameroon's oil reserves and monthly production; but even Professor Pellet suggested that this was not really a juridical consideration in terms of delimitation[55], and we strongly agree. For the Court to transfer these installations to Cameroon would strike at the roots of security of tenure in terms of offshore oil operations, not limited to the Gulf of Guinea. It would open the door to further ambit claims of this kind wherever oil was discovered and exploited near a boundary.

4. Nigeria's claim line

46. Finally, Mr. President, I should say something further about Nigeria's claim line. As I said last week, Cameroon disputes the relevance of oil practice. If the Court agrees with that position, the result should in our submission be an equidistance line drawn from the point on the coast where the land boundary ends, until it meets the equidistance line with Equatorial Guinea. In the context of Nigeria's longer relevant coast, and in the absence of any other special circumstances, that equidistance line will be the maritime delimitation line. In Nigeria's submission, consequent upon the Court's upholding its claim to the Bakassi Peninsula, the line will be located in the Rio del Rey.

47. On the other hand, for the purposes of maritime delimitation the practice of the parties is a relevant circumstance, as I have said. What is relevant for Nigeria, we accept, is relevant for Cameroon, and the Court will necessarily have to take this factor into account, if it upholds Nigeria's position against Cameroon on the point of principle.

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[54]Cf. CR 2002/7, p. 23, para. 17.

[55]CR 2002/17, p. 21, para. 10.

48. As to the precise location of the equidistance line, the Court will see from the satellites photograph on your screen and in tab 50 that there is a substantial, 2 km, sand island off the Rio del Rey. It appeared on the satellite photographs in the mid-1990s; it is still there. Nigeria was willing to treat it as a basepoint for the delimitation of maritime zones; Cameroon seems reluctant to accept this, though it should be noted that they have not denied the existence of the island. They deny that it has yet appeared on nautical charts — if it exists it will appear on nautical charts. Accretion, siltation and the formation of islands in this region is by no means an unusual phenomenon. Look at the maps of Bakassi over the period of the dispute and you will see Bakassi itself silting up. This is a form of consolidation of land, it is not the historical consolidation of title of which Professor Brownlie spoke; but it is a form of consolidation

C. Conclusion

49. Mr. President, Members of the Court, during his final speech last Thursday, the distinguished Agent for Cameroon made what was described as a new proposal. It has already been analysed by Sir Arthur Watts. It applied equally to the land and maritime boundary[56]. If I may say so, with respect, it contained the following contradiction. The Agent said: we accept that there may be areas along the boundary where there is no adequate delimitation. In relation to these areas, the Court should decide. Or alternatively it should establish a demarcation commission[57]! But the premise of the argument is that there are unresolved points of *delimitation*. For these, a demarcation commission will not help, even if the Court could mandate one — which Sir Arthur has shown you cannot. Nor can you delegate your judicial power, the power vested in you by virtue of Cameroon's Application made in conformity with the Statute, as you have already decided it was — there was, I think, a three-second discussion of the *Barcelona Traction* dictum in Cameroon's second round, but my timing might have been wrong. The Court has no alternative but to delimit itself, in those areas where the existing delimitation is found to be inadequate or defective.

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[56]CR 2002/17, p. 64, para. 2.

[57]*Ibid.*, p. 65, para. 7.

50. As to the maritime boundary, the proposal is even more contradictory; one does not demarcate a maritime boundary out to sea. Moreover despite Cameroon's reluctance to negotiate with Nigeria, that is precisely what the 1982 Convention requires. It is Nigeria's view that once the Court has laid down the general legal framework for the maritime delimitation, the three States can readily resolve the precise location of the tripoint, thus producing the result contemplated by the two Parties in 1993, as well as by the 2000 Agreement between Nigeria and Equatorial Guinea. That would be in full compliance with the applicable law.

51. On the other hand, the Court now has all the information it needs to delimit the maritime boundary *inter partes* down to the approximate tripoint with Equatorial Guinea, in accordance with the methodology I outlined last week. For the reasons given, you have no jurisdiction to go beyond the equidistance line with Equatorial Guinea. For the reasons given, you have no need to do so in any event.

52. Mr. President, Members of the Court, that completes Nigeria's presentation on the maritime boundary in this round. I would ask you to call on Nigeria's Agent, the Honourable Musa Abdullahi, to conclude Nigeria's reply. Thank you very much.

Le PRESIDENT : Je vous remercie, Monsieur le professeur. I now give the floor to His Excellency the Agent of Nigeria.

Mr. ABDULLAHI:

1. Mr. President, distinguished Members of the Court. First I should like to say how honoured I am to have acted as Agent for Nigeria in these proceedings. I am extremely proud of the dignified and constructive way in which Nigeria has striven to respond to our opponents' attacks, even when these have been deeply wounding and have questioned our commitment to peace and progress, our honesty and integrity, and our generosity — the very elements of our self-respect.

2. The moment is long overdue, Mr. President, for our neighbours' attitude to change. They have declared us an "enemy country". The Court has seen that intermittent Cameroonian incursions into Nigerian villages and fishing settlements in disputed areas has been accompanied by arrests, detentions, torture, rape and killings. The record grows daily and Nigeria keeps it up to

date. Yet despite all this — and I say despite all this, Mr. President, because the Court can see that Nigeria has had a very great deal to put up with — Nigeria continues to show forbearance and openness, in circumstances where other States might not have done so. We do this because it is our traditional way, because of our pacific foreign policy, and because of our commitment to our role as a leader and co-architect of initiatives to further peace, security and economic development in Africa.

3. In furtherance of this attitude of openness and positive engagement, between 1985 and the year 2002, four Nigerian Presidents visited Cameroon. They are, Mr. President, General Ibrahim Babangida, General Sani Abacha, and General Abdulsalami Abubakar and the present President Olusegun Obasanjo. It is striking evidence of Cameroon's attitude to us that there has never been a return presidential visit till today. Similarly, although Nigeria has continued throughout to maintain the highest level of diplomatic relations with Cameroon, by the presence of an Ambassador and Consuls-General, Cameroon maintains the lowest level of diplomatic and consular representation in Nigeria. When they tell the Court they do not want to talk to us, they are at least being consistent!

4. Cameroon never speaks of the people, the living communities that it wants the Court to transfer from Nigeria to Cameroon. Its interest in the disputed territories is simply in land and oil. But, Mr. President, as is very evident from the copious evidence that Nigeria has supplied to the Court, Bakassi has a large indigenous Nigerian population.

5. At its heart, this case is about the people, the communities, that would be thrown into chaos if Cameroon were to succeed in taking control of them. Cameroon accepts that they are Nigerians. Will these tens of thousands of people, in various parts of Nigeria, agree to a sudden change to their nationality so as to become Cameroonians? Everything known about their attitude, and Cameroon's own deplorable record, makes this extremely unlikely. Would the populations concerned have in reality to vacate their homes, either because Cameroon forcibly displaced them or because they were too frightened and intimidated to stay on in them? It seems virtually certain. Where will they move to? What will it lead to? In a world of power politics, will the Security Council be able to do anything about this, despite the emphasis given by both the League of Nations and the United Nations itself to the interests and security of populations?

6. Mr. President, distinguished Members of the Court, Cameroon has tried to tell you that the Kings and Chiefs of Old Calabar did not have the necessary international legal personality to enter into a protection treaty with the British. Nigeria, most recently through Sir Arthur Watts, has shown that our opponents are wrong about this. The Court will note that Professor Shaw, one of Cameroon's own counsel, has written

> "Africa was not regarded as *terra nullius*, and occupation was not therefore available as a mode of acquiring legal title to territory. Territory was acquired on the continent primarily by means of agreements of cession with local leaders."[58].

Is Cameroon now saying that nineteenth century Calabar was *terra nullius*?

7. Cameroon has tried to play games with photocopies by presenting the Court with the famous Dr. Elias letter. My Co-Agent Chief Akinjide yesterday put forward our comments on that letter. As he said, a lawyer is only as good as his brief. But permit me to add, Mr. President, that what Cameroon presented to the Court was not a letter but a newspaper publication containing a purported extract of the late jurist's views. Is it accurate? And what does it leave out? Unfortunately Dr. Elias, whom I respect and is a distinguished Nigerian of great repute, is no more alive to claim or disclaim it as his work or to comment on the accuracy of the piece. Clearly in these circumstances the evidential value of such a newspaper article is close to nil.

8. Cameroon also makes much of a document purporting to be a Nigerian Ministry of Justice legal opinion on this dispute. Ian Brownlie has already put this in its proper perspective under the rules of international law. Permit me to add, Mr. President, as a Minister of Justice in Nigeria, that under our practice all official communications are signed by the Attorney-General, the Minister, or the Solicitor-General. Directors, Deputy Directors and Assistant Directors do not sign letters on behalf of the Ministry. Mr. Olukolu, unfortunately now deceased, was an Assistant Director in the Department of International and Comparative Law, and so not authorized to sign letters on behalf of the Ministry. The paper Cameroon has presented to the Court was neither signed by anybody nor on the Ministry's letterhead nor stamped. It was not a letter to anybody. Cameroon could not even inform the Court how it came into possession of this document, yet it wants the Court to believe that it is Nigeria's legal opinion. Mr. President, distinguished Members of the Court, the

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[58]Malcolm Shaw: "Title to Territories in Africa", Clarendon Press, 1986, p. 33.

matters I am raising here are matters of elementary legal knowledge! My answer to this is that this is not a document emanating from my Ministry. The so-called opinion, like the late Dr. Taslim Elias's opinion, is simply not to be relied upon.

9. But let me go back to the people, Mr. President, who are the heart of this case. Cameroon claimed to be amazed when we said that Bakassi local government area has a population of 156,000 people. I want to state that this population is real. It is, as Chief Akinjide showed yesterday, adapted to live densely according to the terrain, such as mangrove in some areas, flat and sandy terrain in others such as Abana, and higher, firmer areas such as Archibong. It may interest the Court to know that Lagos, which is a tiny city state in Nigeria, has a population of 13 million people. And, if you take the population of Lagos and Ibadan together the population is more than 16 million people, which is the entire population of Cameroon. As a late Nigerian musician, Fela Kuti, put it in a song — let me quote him in our pigeon Nigerian language: "Every day my people dey inside bus, 44 sitting, 99 standing." That tells you the nature of the population we have. The minimum population for the creation of a local government creation in Nigeria during the last local government creating exercise was 100,000 people. Bakassi qualified. And in any event, we are talking of large numbers of people, whatever the exact figure. They are people, Nigerian people, legally in a Nigerian territory.

10. With all respect to the Court, Mr. President and distinguished Members, Nigeria did not think it fit either or necessary that a difference between two neighbours can be brought to court without first exhausting bilateral or friendly options. However, I believe that the positive way in which Nigeria has defended the case shows much more clearly than mere protestations could do that Nigeria has great confidence not only in the justice of the Court, but in the strength of its case, on Bakassi, on Lake Chad, on the land boundary, on the maritime boundary, on State responsibility and on counter-claims.

11. Today, Mr. President, distinguished Members of the Court, the Nigerian Government and people, and particularly the communities whose futures are placed at risk by these proceedings, have their eyes fixed upon The Hague. They believe that they will be vindicated by the Court's judgment.

12. In proper respect to our opponents, I now turn to the closing speech of the distinguished Agent of Cameroon, H.E. Amadou Ali. I have four things to say to him through the Court, if I may put it that way, Mr. President. I hope he will find all four of these points as constructive as they are intended to be.

13. First, I am glad that he is so happy about our position on the instruments governing the land boundary, though I confess I am genuinely at a loss to understand why he is so suddenly happy, since nothing in Nigeria's position has changed.

14. Second, I am sorry that he finds our attitude to the boundary instruments exaggerated. We did not choose to embark on this exercise. Cameroon forced us to examine the meaning of the instruments in detail, and we have therefore come up with our conclusions and presented them fairly and squarely to the Court. Absolutely nothing in our response is artificial or unreasonable.

15. Third, although Sir Arthur Watts has already dealt with the proposals made in the distinguished Cameroonian Agent's final speech, I am pleased to see that our Cameroonian colleagues now appear at last to accept that there is a very genuine need, in the interests of stability and good order, for clarification of the meaning of the boundary instruments, as Cameroon itself requested in its now famous words *"préciser définitivement"*.

16. Finally, although Cameroon may feel at the present time that it does not like Nigeria very much, we remain African brothers and neighbours. We Nigerians believe that one day they will love us as brothers should. I hope it will not take too long. As a first step in the right direction Nigeria invites Cameroon to relearn the language of dialogue and friendship. This is good as an instrument of international obligation, it is a matter of common sense and of good neighbourliness.

17. Mr. President, I should like to finally pay tribute to the literally hundreds of Nigerians, both the distinguished and the relatively humble, who have played a part in enabling Nigeria's case to be brought to this Court and presented openly and confidently. Given the sheer scale of our opponents' applications, and the manner in which they have pursued their claims, it has been a very considerable exercise. I will say nothing of the expense, but it is right for me to pay particular tribute to the many Nigerians who have worked selflessly, often for long hours and in difficult conditions, to provide the Court with the evidence that the nature of this case requires. A number of them have been present in Court during these proceedings. Our country will not forget them.

Nor will it forget the services of the distinguished team of foreign lawyers and experts who have assisted us with the case.

18. Finally, I should like on behalf of my Government to express Nigeria's thanks to you, Mr. President, to your Vice-President, and to the other distinguished Members of the Court, for your patience, goodwill and impartiality in studying the lengthy written documentation and sitting patiently and attentively through all these oral presentations. Mr. President, I do not say this merely out of conventional courtesy. Nigeria knows to its cost how wide ranging and complicated are the issues raised in these proceedings. It is truly grateful to you and your colleagues for your attention and your patience, and also to the Registrar and the Court staff, including particularly the interpreters and translators, for all their hard work.

19. Mr. President, I have the honour to inform you that this completes Nigeria's speeches for today. I thank you very much.

Le PRESIDENT : Je vous remercie, Monsieur l'agent. Votre déclaration met un terme au second tour de plaidoiries de la République fédérale du Nigéria. Ainsi qu'il en a été convenu, la Cour consacrera l'essentiel des séances qu'elle tiendra la semaine prochaine à l'audition des observations de la Guinée équatoriale, Etat autorisé à intervenir dans l'instance, ainsi qu'à l'audition des Parties sur l'objet de l'intervention de la Guinée équatoriale.

J'ajouterai que, comme il a été décidé, la Cour tiendra également la semaine prochaine une brève audience aux fins de permettre au Cameroun de répondre, fût-ce brièvement, aux observations formulées par le Nigéria lors de son dernier tour de plaidoiries au sujet des demandes reconventionnelles qu'il a présentées. La date et la durée de cette audience seront précisées ultérieurement.

La Cour se réunira à nouveau lundi prochain 18 mars à 10 heures pour entendre le premier tour de plaidoiries de la République de Guinée équatoriale. Je vous remercie, la séance est levée.

L'audience est levée à 13 heures.