INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING THE LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA

(CAMEROON v. NIGERIA)

COUNTER-MEMORIAL

OF

THE FEDERAL REPUBLIC OF NIGERIA

VOLUME I

BAKASSI

(CHAPTERS 1-11)

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BAKASSI

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SCHEME OF THIS COUNTER-MEMORIAL

In this case, Cameroon has raised a large number of questions. The present *Counter-Memorial* is designed in such a way as to deal in the most logical and helpful manner with the various issues in the case, including Nigeria's counter-claims.

The scheme of the *Counter-Memorial* is accordingly as follows. The body of the *Counter-Memorial* is contained in three Volumes, as follows:-

Volume I (Bakassi) opens with a Table of Contents, two introductory Chapters dealing with the procedural history of the case and the general relations between Cameroon and Nigeria. These introductory Chapters are then followed by Part I of the *Counter-Memorial* (Chapters 3-11), dealing with issues relating to the Bakassi Peninsula.

Volume II (Lake Chad, and the Land and Maritime Boundary) opens, for convenience, with a duplicate of the Table of Contents. This is followed by Part II of the *Counter-Memorial* (Chapters 12-17) dealing with Darak and the Nigerian villages in Lake Chad. Part III follows (Chapters 18 and 19), dealing with the lengthy land boundary between the two States from Lake Chad to Bakassi. Volume II is completed by Part IV of the *Counter-Memorial*, which deals (in Chapters 20-23) with Cameroon's maritime claims.

Volume III (State Responsibility and Counter-claims, Conclusions and Submissions) likewise opens, for convenience, with a duplicate of the Table of Contents. This is followed by Part V of the *Counter-Memorial* (Chapter 24), in which Nigeria addresses the issues of State Responsibility raised by Cameroon, and by Part VI (Chapter 25), containing Nigeria's counter-claims. The Volume concludes with Part VII of the *Counter-Memorial*, containing Nigeria's Conclusions and Submissions.

In addition to the three Volumes referred to above, the *Counter-Memorial* comprises two Volumes of Annexes (Volumes IV and V), entitled "Treaties and other Instruments" arranged in chronological order. A further six Volumes of Annexes (Volumes VI to XI), contain all the other documents referred to by Nigeria in order of reference in the main text. There is also an Annex of Photographs (Volume XII), an Annex containing, for ease of reference, the Table of Contents and Annex Indices (Volume XIII) and an *Atlas* in two volumes.

All Annexes are referred to as "NC-M ..." followed by the relevant Annex number. "MC" refers to Cameroon's *Memorial*, "NPO" to Nigeria's *Preliminary Objections* and "CO" to Cameroon's *Observations*.

CHAPTER 1

PROCEDURAL HISTORY OF THE CASE

1.1 On 29 March 1994, the Republic of Cameroon lodged with the Registry of the Court an *Application* dated 28 March 1994 instituting proceedings against the Federal Republic of Nigeria. The Application was said to concern a dispute bearing "essentiellement sur la question de la souveraineté sur la presqu'île de Bakassi"[1] and the "frontière maritime ... jusqu'à la limite des zones maritimes que le droit international place sous leur juridiction respective".[2]

1.2 Subsequently, Cameroon decided to make a further Application, which it filed with the Court on 6 June 1994. At a meeting between the President and the representatives of Nigeria and Cameroon held on 14 June 1994 His Excellency the Agent for Cameroon informed the President that the *Additional Application* was intended as an amendment to the initial *Application*. Nigeria having made no objection, the Court by an Order dated 16 June 1994 directed that the *Additional Application* be treated as an amendment to the initial *Application*, and that it would deal with the whole as one case. Cameroon was ordered to file its *Memorial* by 31 March 1995.

1.3 In the *Additional Application* the Court is asked not only to adjudge and declare "que la souveraineté sur la parcelle litigeuse dans la zone du lac Tchad est camerounaise" ....[3] but also to "préciser définitivement la frontière entre elle et la République fédéral du Nigéria du lac Tchad à la mer"[4] (*Additional Application* of 6 June 1994, paragraph 17(f)).

1.4 In due course, Cameroon pleaded its case in its *Memorial* dated 16 March 1995.

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[1] "essentially on the question of sovereignty over the Bakassi Peninsula" - *Application* of 29 March 1994, para. 1.

[2] "the maritime boundary ... up to the limit of the maritime zones which international law places under their respective jurisdictions" - *Application* of 29 March 1994, para. 20

[3] "that Cameroon has sovereignty over the disputed parcel in the area of Lake Chad"

[4] "specify definitively the frontier between her [Cameroon] and the Federal Republic of Nigeria from Lake Chad to the sea"

1.5 On 13 December 1995 Nigeria filed with the Registry a document raising eight Preliminary Objections to the jurisdiction of the Court and the admissibility of the Cameroonian claims.

1.6 By a letter of 10 February 1996 His Excellency the Agent for Cameroon communicated to the Court a *Request for the Indication of Provisional Measures* in accordance with Article 41 of the Statute of the Court. By an Order dated 15 March 1996, the Court indicated certain Provisional Measures, applicable to both parties, pending a decision in these proceedings.

1.7 On 30 April 1996 Cameroon presented a written statement of its *Observations on Nigeria's Preliminary Objections.*

1.8 The oral hearings of Nigeria's Preliminary Objections took place from 2 to 11 March 1998.

1.9 Nigeria presented new documents under cover of a letter dated 2 February 1998, and, as these were unopposed by Cameroon, they were admitted under Article 56 of the Rules of Court. Cameroon introduced new documents under cover of letters dated 9 April 1997 and 11 February 1998, which the Court decided to admit under the provisions of the same Article.

1.10 By a Judgment dated 11 June 1998, the Court rejected seven of the eight Preliminary Objections raised by Nigeria and declared that the eighth Preliminary Objection did not have an exclusively preliminary character. The Court further found that it had jurisdiction to adjudicate upon the dispute and that the *Application* of 28 March 1994 as amended by the *Additional Application* of 6 June 1994 was admissible.

1.11 On 1 July 1998 the Court fixed 31 March 1999 as the time limit for the filing of the *Counter-Memorial* by Nigeria.

1.12 On 28 October 1998, Nigeria filed an *Application* dated 21 October 1998, requesting an interpretation of the Judgment of 11 June 1998 on the *Preliminary Objections*. This request concerned the part of that Judgment which dealt with Nigeria's Sixth Preliminary Objection, namely that "There is no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions".

1.13 On 23 February 1999 Nigeria applied for an extension of the time limit for the filing of the *Counter-Memorial*. The Court on 3 March 1999 extended the time to 31 May 1999.

1.14 On 25 March 1999, the Court gave judgment on Nigeria's Request for Interpretation, declaring it to be inadmissible.

CHAPTER 2

THE RELATIONSHIP OF NIGERIA AND CAMEROON

A. Introduction

2.1 Nigeria and Cameroon are neighbouring States in West Africa. Their location is shown in Nigeria's *Atlas*, Map 1. Map 2 shows the main cities, Abuja being the Federal Capital Territory of Nigeria and Lagos its main port and commercial centre. Yaoundé is the capital of Cameroon, and Douala its main port and commercial centre. The immediate neighbours of both countries are also shown. Map 3 shows the relief of the terrain through which Nigeria and Cameroon's common boundary runs. The land boundary is some 1,700 kilometres in length and runs through remote and sometimes difficult terrain from Lake Chad to the sea.

2.2 The population of Nigeria is currently estimated to be in the region of 120 million. Its land area is approximately 924,000 square kilometres. The population of Cameroon is approximately 15 million and its land area about 475,000 square kilometres.

2.3 This Chapter briefly describes the States that emerged in Nigeria and Cameroon from the colonial period. It then outlines the general nature and tone of the bilateral relationship between the two States during the four decades since they became independent in 1960.

B. The Experience of Colonialism

2.4 Nigeria's experience of European colonialism in the 19th and 20th centuries was almost exclusively of the British. Consequently the Nigerian Federation which emerged in 1960 inherited from the colonial past, alongside its rich African heritage, a number of British traditions, the English language as a unifying tongue for the entire Federation, and a natural position as one of the most important African nations in the Commonwealth. Nigeria was also endowed at Independence with democratic institutions which were essentially British-inspired.

2.5 Cameroon's experiences of European colonialism were parallel. The Cameroonian experience of direct European rule began in the 1880s with the establishment of German rule. Both Nigeria and *Kamerun* were described as "protectorates", but they were subject to different European colonial powers, each with its own laws and traditions. German *Kamerun* was conquered by Britain, France and Belgium between 1914 and 1916, in the course of the First World War, and with the exception of what then became the British Cameroons continued to develop in a very different way from Nigeria. Ultimately the Cameroon that would emerge from the German protectorate and subsequent French mandate and trusteeship periods was a very different State from Nigeria. Its political institutions were presidential in style, modelled on France's Vth Republic, and its government was predominantly francophone.

2.6 At the time that the Republic of Cameroon became independent on 1 January 1960 it was far from clear whether any part of the British Cameroon territories under United Nations trusteeship would form part of the new Cameroonian State. Nigeria itself was not to gain independence until 1 October of the same year.

2.7 The Preamble to Cameroon's first Constitution, of February 1960, expressed the new State's aspiration to reunite with Cameroonians inhabiting territories beyond the national borders (most obviously in the British trusteeship territory in the Western Cameroons), in the following words:

> "[le peuple camerounais] ... proclame sa volonté de tout mettre en oeuvre pour répondre aux aspirations des Camerounais habitant les térritoires séparés de la mère patrie, afin de leur permettre de rentrer dans la Communauté nationale et de vivre fraternellement dans un Cameroun uni".[5]

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[5] "[the Cameroonian people] ... proclaims its will to do everything in order to respond to the aspirations of the Cameroonians inhabiting territories separated from the motherland, in order to permit them to return to the national Community and to live fraternally in a united Cameroon". [Translation into English by the Federal Republic of Nigeria]

2.8 In 1961, following a plebiscite under the auspices of the United Nations, the Southern Cameroons, previously under British trusteeship, were united with the new Cameroon Republic. In the same year, the Northern Cameroons, which had likewise been administered by the British as a United Nations trust territory, opted, in a similar plebiscite, to join newly independent Nigeria.

2.9 Cameroon was badly disappointed by this development, and brought some of its grievances to the Court in the *Case concerning the Northern Cameroons*. In its judgment,[6] the Court declined to intervene. President Ahidjo of Cameroon gave expression to what was evidently a very considerable sense of disappointment by declaring a national day of mourning, to be observed annually thereafter.[7]

2.10 Nigeria had acceded to Independence on 1 October 1960 and was admitted to the United Nations on 7 October of that year. From the moment of Independence, Nigeria adopted a policy of good neighbourliness in its external relations. The first Prime Minister of Nigeria, Sir Abubakar Tafawa Balewa, gave expression to this policy when he said "Nigeria would never impose itself upon any other country and shall treat every African country, big or small, as our equal".[8] This has at all times been, and is now, Nigeria's consistent policy.

2.11 Both before and after Nigeria acceded to Independence, Bakassi was considered part of Nigeria and administered as such. Cameroon showed little interest in it. For that reason, neither State saw in Bakassi any significant impediment to good relations.

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[6] Judgment of 2 December 1963, ICJ Reports 1963, p.15

[7] A.N.Njoye, *Le Cameroun dans les rélations internationales*, 1976, p. 18a

[8] Sam Epelle (ed.) *Nigeria Speaks: Collected Speeches of Sir Abubakar Tafawa Balewa* (London: Longmans, Green & Co., 1968), p.67

C. The General Character of Relations Between the Two States

2.12 Although the two newly independent States, Cameroon and Nigeria, were, for the reasons stated above, very different in character, their relations were cordial from the outset. Nigeria notes with regret that in the course of the present proceedings Cameroon has begun to claim that relations all along the common boundary have been "poisoned" ever since the mid 1960s.[9] This assertion is completely unfounded. The facts cited by Cameroon fail to support it.

2.13 In most parts of the world, most of the time, minor differences are resolved amicably between neighbouring States. This was true of the post-Independence relationship between Nigeria and Cameroon on the rare occasions when differences arose. Cameroon's attempt to portray the relationship in a different light is a recent and unwelcome development. It does an injustice to both States and is contradicted by the facts.

2.14 The two States have maintained uninterrupted diplomatic representation in each other's capitals since Independence. There has also been extensive co-operation, both bilaterally and in a regional context, in such fields as telecommunications, cross-border travel requirements, air services, police, judicial, economic, scientific and technical matters.

2.15 Both during and after the Nigerian Civil War in the late 1960s, relationships between the Cameroonian and Nigerian governments remained cordial under the governments of General Gowon and his successors. For their part, the two Presidents of Cameroon in the 38 years since Independence, namely President Ahidjo and President Biya, had no difficulty in maintaining friendly relations with Nigeria, on a reciprocal basis which included frequent exchanges of State and Ministerial visits, meetings of bilateral commissions and the full array of meetings

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[9] Cameroon *Memorial* ("MC"), paras. 1.02, 1.03, 1.07 and 1.08

and communications that would be expected between neighbouring and fraternal African States. Cameroon's own *Memorial*, with its repeated references to discussions, joint commissions, negotiations, agreements and concessions bears testimony to the normality of the bilateral relationship between the two States.

D. General Character of Nigeria's Foreign Relations

2.16 Throughout the period since Independence Nigeria has followed the policy expressed by Sir Abubakar Tafawa Balewa (above, paragraph 2.10). Nigeria has been a good neighbour to all adjoining States, including not only Cameroon but Benin, Niger, Chad, and Equatorial Guinea. Nigeria has at all times been a committed, active and responsible member of the United Nations, the Organization of African Unity, the Economic Community of West African States and many other bodies. The international community has recognized this. Nigeria has taken part in numerous international peace-keeping and other assistance operations, the great majority under the auspices of the United Nations. They include the following:

(1)	ECOMOG	ECOWAS (Economic Community of West African States) Ceasefire Monitoring Group in Liberia
(2)	MINURSO	United Nations Mission for Referendum in Western Sahara
(3)	MONUA	United Nations Observer Mission in Angola
(4)	NATAG	Nigerian Army Technical Assistance Group
(5)	ONUC	United Nations Operations in the Congo
(6)	UNAMIR	United Nations Assistance Mission in Rwanda
(7)	UNAVEM	United Nations Angola Verification Mission
(8)	UNIFIL	United Nations Interim Force in Lebanon
(9)	UNIIMOG	United Nations Iran/Iraq Monitoring Group
(10)	UNIKOM	United Nations Iraq-Kuwait Observation Mission
(11)	UNIPOM	United Nations Indo-Pakistan Observer Mission
(12)	UNMIBH	United Nations Mission in Bosnia and Herzegovina

(13) UNMOP United Nations of Observers in Prevlaka

(14) UNOSOM United Nations Operation in Somalia

(15) UNPREDEP United Nations Preventive Deployment Force in Macedonia

(16) UNPREDEV United Nations Preparation and Election Verification in Macedonia

(17) UNPROFOR United Nations Protection Force in the Former Yugoslavia

(18) UNTAES United Nations Transitional Administration in Eastern Slavonia

(19) UNTAG United Nations Transitional Assistance Group in Namibia

(20) UNTSO United Nations Truce Supervision Organisation

(21) UNMOT United Nations Mission of Observers in Tajikistan

E. The Development of Nigeria-Cameroon Relations in the 1990s

2.17 The cordial relationship between Nigeria and Cameroon continued until the early 1990s, when Cameroon decided to force the issue over Bakassi. The methods Cameroon has used since 1993 to pursue its claim have certainly made the bilateral relationship a more difficult one. There are, however, two key points to be made in this regard. First, apart from the incident of 1981 referred to below, the deterioration of relationships since 1993 had no parallel in the earlier relationship of the two States. Secondly, Nigeria has taken care to behave throughout the entire period since 1990 with restraint despite provocations.

2.18 Later in this *Counter-Memorial* Nigeria will comment more fully on various Cameroonian allegations. In the context of an analysis of bilateral relations since 1960 it suffices to note that since Cameroon decided to press its claim to Bakassi in the early 1990s, the tone and credibility of Cameroon's assertions has for the first time suffered a *sustained* deterioration. The point can be illustrated by two examples.

(i) Nigeria's alleged "civil occupation of Kontcha"

2.19 Cameroon claimed that Nigeria has carried out a "civil occupation of Kontcha".[10] This claim is completely false. Nigeria made it clear to Cameroon, in a diplomatic Note of 14 April 1994, that Nigeria has no claim to Kontcha and has never occupied the place (Annex NC-M 61). That Note is exhibited to Cameroon's own *Memorial* as Annex MC 355. Cameroon's claim is further discredited in the Appendices to Cameroon's own *Observations*.[11] In these passages Cameroon put forward a markedly different contention, namely that Nigeria has occupied territory at Tipsan, *near* Kontcha. Tipsan is a very different location. It happens to be demonstrably within Nigeria, not in Cameroon, as will be shown below in Chapters 19 and 24.

(ii) The incident of 1981

2.20 Nigeria refers again to this subject at this point only because Cameroon has, since lodging its Application with the Court, repeatedly put this allegation forward. Yet the allegation was *never* advanced between 1981 (the date of the incident) and 1994.

2.21 The essence of the allegation lies in the claim that on 16 May 1981 a Nigerian patrol opened fire on a Cameroonian vessel in waters off the Bakassi Peninsula and then tried to exploit the situation to shift the blame onto Cameroon. This completely reverses the facts. There was an unprovoked attack by Cameroonian forces on a Nigerian patrol (see Nigeria's *Preliminary Objections* and Chapter 24 below). Even since 1994 Cameroon has continued to accept that the incident involved no Cameroonian deaths or other casualties, but, on the contrary, the deaths

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[10] Cameroonian letter of 11 April 1994 (Annex 1 to the *Additional Application)* and *Memorial* para. 1.09. See generally Chapter 24, below.

[11] Memorial paras. 6.90 *et seq.*, *Observations* Vol. II - Repertory, App. 20

of five Nigerians. Nor does Cameroon deny that the President of Cameroon made a full apology to Nigeria and paid compensation to the victims' families. These facts are clearly set out in paragraphs 34 to 39 of Nigeria's *Preliminary Objections* and in the Exhibits thereto marked NPO1, NPO2 and NPO3. A copy of the letter from Cameroon and evidence of payment are to be found in NC-M 62 and NC-M 63. Cameroon simply treats these events as if they had never occurred.

F. Conclusion

2.22 Overall bilateral relations between the two States remained not merely correct but cordial, in a consistent pattern and with rare interruptions, until the early 1990s. Cameroon wholly fails to make out a case to the contrary, far less to lay blame in this regard upon Nigeria.

PART I

THE BAKASSI PENINSULA

CHAPTER 3

DESCRIPTION OF THE BAKASSI PENINSULA, ITS GEOGRAPHY AND ETHNOGRAPHY

A. Location and Appearance

3.1 The Bakassi Peninsula (hereafter "Bakassi"),[12] is a network of islands and creeks situated between latitudes 4°50' and 4°25' North. It is bounded to the North by the river known as the Akpa Yafe.[13] Its western limit lies at approximately 8°29' longitude and its eastern limit approximately 8°43' East of Greenwich. To the West lies the estuary of the Cross River, into which flows the Akpa Yafe. To the East of Bakassi lies the Rio del Rey estuary.[14] The line of the boundary between Nigeria and Cameroon from the head of the Rio del Rey to the point at which it joins the Akpa Yafe is described in Chapter 11 below. To the South of Bakassi lies the South Atlantic Ocean, known in this region as the Gulf of Guinea, consisting of the Bight of Benin and the Bight of Bonny (known in the past as the Bight of Biafra). The Bakassi Peninsula itself is criss-crossed by a tracery of channels and creeks of varying size and navigability. Transport around the peninsula is by water.

3.2 The distance from the town of Archibong on the Akpa Yafe to the South coast of Bakassi is approximately 35 kilometres. At its widest point Bakassi is approximately 28 kilometres across. The total area of the peninsula is approximately 700 square kilometres.

3.3 Nigeria's *Atlas* contains the following maps and images of Bakassi and its environs:

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[12] Bakassi is sometimes spelled *Bakasi*, particularly in older documents. *Backasay* and *Bakassey* are also found.

[13] *Akpa* in the Efik language means 'river'. In this Counter-Memorial therefore the River will generally be referred to as the 'Akpa Yafe'. Variations will be found in the Treaties, on maps and in correspondence. They include:
Akpayafe, *Akpa-Yafe*,
Akwa Yafe - meaning *Great Yafe* in Efik,
Akwayafe, *Akpa Iyefe* or *Akpajafe*
Akwajafe and *Akpakorum* or *River Korum*. Both these last names are used in the Treaty of March 11, 1913 (which also refers to *Bakassi* as *Bakasi*).
Where there are references in the text to the river, it may be spelled as it appears in the document under reference.

[14] The Rio del Rey is shown on some charts as the *Fiari*.

(1) Map entitled "Calabar & Ikang" at a scale of 1:100,000, made by the Federal Surveys Department of Nigeria in 1960 and showing physical features and settlements but no boundaries. (*Atlas*, Map 4)

(2) Illustrative map at a scale of 1:50,000, showing the Bakassi Peninsula only and marking all the present-day settlements on the Peninsula. (*Atlas*, Map 5)

(3) Mosaic of aerial photography flown in 1958/1959.[15] (*Atlas*, Map 6)

(4) SPOT Panchromatic satellite image of Bakassi and environs taken on 19 December 1986 (10m. Resolution). (*Atlas*, Map 7)

(5) SPOT Multispectral XI image of Bakassi taken on 9 January 1999 (20m. Resolution). (*Atlas*, Map 8)

(6) 1986 satellite image, with outline shoreline and creeks from 1999 satellite image superimposed. (Atlas, Map 9)

(7) Southernmost section of 1958 aerial photography mosaic, with outline 1999 satellite image shoreline superimposed. (*Atlas*, Map 10)

(8) Geological and Mineral Map of Nigeria published by the Federal Survey Department of Nigeria in 1957. (*Atlas*, Map 11)

(9) Extract of Geological map of the Calabar area published by the Director of Geological Survey (Nigeria) in 1957. (*Atlas*, Map 12)

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[15] This was commissioned by the United Kingdom's Department of Overseas Surveys for a mapping programme which was later abandoned.

As will be seen from the composite comparison of Bakassi (*Atlas,* Map 9) the outline of the peninsula and its creeks has remained basically unchanged over the past 40 years. Some erosion has taken place, particularly around the southern and western coastline: this is shown in the *Atlas*, Map 10. Partly as a result of this erosion, the pattern of settlements may shift slightly with the passage of time. These characteristics are dealt with further below.

B. Physical Geography

(i) Geology and Physical Characteristics

3.4 The geology of Bakassi is intimately connected with, and controlled by, the geological evolution of the structural element known as the Calabar Flank. The Calabar Flank is a sedimentary basin bounded to the North by what is known as the Oban Massif, to the southwest by the Niger Delta and to the East by the Cameroon Volcanic line.[16] The configurations of the sedimentary areas and rock involved are shown on the geological maps included in the *Atlas,* Maps 11 and 12.

3.5 According to the continental drift theory, the South American Plate separated from the African Plate in the early Cretaceous period (about 160 million years ago), resulting in the opening up of the South Atlantic Ocean. The Benue Trough[17] and the Calabar Flank developed as events related to this opening up of the South Atlantic Ocean. The termination of the Calabar Flank at the Cameroon Volcanic fault line (see *Atlas*, Map 12) produces a series of structural traps favourable to the accumulation of oil, gas and mineralised solutions. The Cameroon Volcanic fault line projects from Mount Cameroon far out into the Gulf of Guinea, to Bioko

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[16] The Cameroon volcanic line proceeds out to sea in a south-westerly direction. The islands of Bioko (Equatorial Guinea), São Tomé & Príncipe and Annobón are the continuation of that line.

[17] The Benue River rises in Cameroon and flows from East to West through central Nigeria, until it joins the River Niger at Lokoja: see *Atlas*, Map 12.

(formerly Fernando Po), Príncipe, Saõ Tomé and beyond. The lower-lying lands of the Calabar area, including the Bakassi Peninsula, lie to the West of the fault.

3.6 The Nigerian coastal plain consists of one great sedimentary basin[18] of the order of 350km wide and 670km long (*Atlas*, Map 11). Geologically, the crystalline basement materials making up the West African mainland are deeply buried under relatively recent accumulations of sedimentary materials. The entire coastal zone, including Bakassi, therefore consists of a depositional plain characterised by estuarine lagoons and mangrove swamps. The coastline itself is the consequence of the interplay of two dominant factors, the deposition of massive quantities of sediment of all types by Nigeria's rivers (the Niger and Benue are the main sources, contributing about 60 per cent. of the total) and the action of the Atlantic Ocean into which the sediments are deposited. The waves, tides and currents associated with the marine environment take the huge sediment load of the rivers and serves to redistribute it along the coastline, building sedimentary features in the process.

3.7 These extensive marine influences during the greater part of its geological history may account for the absence of deltas in the Calabar Flank area (compare the Niger delta to the west) and the occurrence of river estuaries in the area. However, the dominance of the strong southwestern monsoon constantly blowing on-shore all year round, and the fact that there is a large oceanic space just offshore, means that there is a long 'fetch' which, coupled with the prevailing winds, translates into powerful waves and thus a strong tendency towards shifting and redistributing sediments. The high intensity of this wave action on the shore also leads to the creation of littoral currents. In Bakassi's case the significant current is that trending eastwards from the tip of the Niger delta towards the Cross River estuary. These factors combine to create pronounced 'littoral drifting' which is probably the most significant process moulding Bakassi's and indeed the entire Nigerian and

[18] Only the Coastal Plains, Sands and Recent Alluvial Deposits are represented in the Bakassi area. The dividing line between Alluvium and Coastal Plains Sands shown on Map 12 is strikingly reproduced in the satellite image of January 1999 (Map 8).

Cameroonian coastline in the vicinity. Tides are significant - brackish water penetrates the coastal zone through the distributaries of the various river deltas to such an extent that saline water penetration of the coast has been detected in the vicinity of Onitsha, 220km. inland from the Nigerian coast (*Atlas*, Map 11).

3.8 The composite comparison of the aerial images showing the 40 years from 1959 to 1999 (*Atlas*, Map 10) indicates natural erosion taking place on the western and south-western coastline of Bakassi. This erosion is the result of the force of the current flowing down the Cross River Estuary combined with tidal forces in the Bight of Bonny.

3.9 The dictates of cloud cover mean that satisfactory satellite imaging of the area tends to take place between about December/January and March of each year, just prior to the commencement of the rainy season. Water levels tend therefore to be lower at this time of year than they would be, for example, in November, when the rainy season is coming to an end. Significant variations of water level in the creeks of Bakassi do occur from season to season. They have the effect of altering the topography according to the season. These topographical variations affect habitation patterns on some areas of the Peninsula.

3.10 Much of the Peninsula consists of mangrove swamp and, as such, it is uninhabitable save by the construction of houses raised on stilts. There are also, however, expanses of sandy beach and raised land which occur mainly on the western seaboard. It is on this western seaboard that the most significant erosion has taken place in the last 40 years. Towards the northern end of the peninsula the land rises to form modest cliffs, which rise to approximately six or seven metres above sea-level. There are tracks and paths on the land, but no roads.

(ii) Climate and Vegetation

3.11 Bakassi lies within the tropical rainforest belt, with heavy rainfall and high temperatures all year round, and two distinct seasons, rainy and dry. The rainy season begins in March and lasts until October or early November: the annual rainfall exceeds 3,000mm. The dry season is from November to March. The mean annual temperature is about 25°C, with a range of about 8°C. Three airmasses dominate the dynamics of the climate of Bakassi. The Tropical Maritime Airmass from the South West, the South Westerly Trade Winds, called *Ofum Usuk* in the Efik language, dominate the rainy season. The Tropical Continental Airmass from the North East, the North Easterly Trade Winds, called *Ofum Ekarika*, blow in from the Sahara during the dry season: this wind is also known more widely in Nigeria as the *Harmattan*. The Equatorial Easterlies, called *Ofum Ikot Idomi*, cause frequent squalls in the Dry Season, described locally as bringing "blinding lightnings and deafening thunders".

3.12 In March, April and May the rains come in violent storms, destroying crops and the roofs of houses. There is a heavy downpour of short duration, when several inches may be recorded within an hour. The sudden and torrential run-off which usually accompanies these thunder-storms gives rise to wide-spread sheet erosion on inland slopes, producing the huge amounts of silt carried down to the sea by the rivers mentioned above. It also causes their distinctive yellowish or reddish brown colour.

3.13 Relative humidity remains high all through the year excepting during the short Harmattan spell. It averages over 90 per cent along the coast.

3.14 The high temperature and high humidity favour quick plant growth, but although the natural vegetation is tropical rainforest, the features typical of the coastal plain throughout this area are heavily influenced by saline penetration. Mangrove swamps develop on tidal mud flats, and the myriad meandering channels which cut

through the swamp eventually develop to provide links between larger channels (often river distributaries), thus resulting in the complex interconnected system of waterways. The dominant vegetation along the coast is mangrove, characterised by arching stilt-roots. This is gradually displaced inland by fresh water swamp vegetation and, where the land becomes more elevated, by rainforest or, where primary rainforest has been cleared for cultivation, by secondary forest.

3.15 Parts of the region have been so farmed that traces of the true vegetation are only to be found in *juju* groves[19] which are rarely more than one acre in extent. This is true on Bakassi where, away from the mangrove swamps, the land has to a large extent been cleared and planted with crops, especially in the northeast around Archibong and Akwa.

C. A Historical Description of the Area

3.16 Some of the most evocative descriptions of the area are to be found in the writings of early European travellers, particularly those charged with opening the area up in the 'Scramble for Africa' in the latter half of the 19th century. The Cross River, Calabar, Bakassi and the Rio del Rey were explored and written about extensively by H.H. (later Sir Harry) Johnston who was, in the 1880s, Her Majesty's Vice-Consul for the Oil Rivers. Johnston was much travelled in Africa. His address to the Royal Geographical Society, published in the Proceedings of the Society,[20] is extracted below to give a picture of the area at that time. Much remains unchanged, and some modern photographs taken at Bakassi during the last two or three years illustrate some of the scenes he described. Johnston first describes the landscape:

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[19] Areas of bush which have special spiritual significance and limited access.

[20] Evening Meeting of the Royal Geographical Society on 12 November 1888. A copy of this lecture, and of other proceedings of the Royal Geographical Society referred to in later Chapters, have been lodged with the Court in a separate bound volume.

"The 'Oil Rivers' - so called from the fact of their producing the bulk of the palm oil exported from West Africa - are the main rivers, creeks and estuaries lying between the eastern boundary of the British colony of Lagos and the northern frontier of the German Protectorate of the Cameroons. ... although close to the sea-coast, within tidal influence, the estuaries of these rivers are interconnected by a wonderful network of more or less navigable creeks (Plate 1).[21]

...

Arriving from Europe by sea, it is generally by the soundings and discoloured appearance of the water that we become aware of the near approach to land, rather than by sighting any part of the shore. When within a few miles of the mouth of one of these rivers, the low coast-line is at first indicated by isolated trees, which appear as islets of forest unconnected with each other, and distorted by the mirage of each horizon. Gradually these islets, which are really the loftier trees of the fringe of coast forest, become united in one line of purple green (Plate 2), divided only by the imposing gap of the estuary for which our ship is bound.

The bar of the river may be - as in the case of Old Calabar ... so deep as to be without danger ... . Once over the bar and within the estuary, we find ourselves surrounded by a lake-like expanse of smooth water, the shores of which are fringed with lofty mangroves (Plate 3) with their ghastly white, blood-streaked trunks - streaked where the bark has been torn or frayed (Plate 4) - and their graceful poplar-like foliage of a sad, dull, yellow-green (Plate 5). Behind the mangroves, however, generally show the dark and dense masses of inland forest, growing where the land has acquired firmness and lies just above the limits of high tide (Plate 6); or as far as you can see from the ship's deck, all and everything that is not yellow water may be unvarying mangrove.

...

At some spot where there is a stretch of clean white sand and firm soil emerging from the mud, you may distinguish a landing-place of some native village (Plate 7), which is usually characterised by a strip of varied forest (Plate 8), mingling with the lingering pandanus and mangrove. Possibly this is some little inlet or bay (Plate 9), protected from the strong wavelets created by the sea-breezes, which are liable

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[21] The photographs illustrating this and later Chapters are to be found in the Annex of Photographs (Vol. 12 of the *Counter-Memorial*). References are to numbered plates in the Annex.

> to disturb the equilibrium of the native's canoe. The shore of the sandy beach is bright with the crimson flowers of the tall cannas. The natives' canoes are drawn up to the limit of the high tide, and fastened to stakes (Plate 10). The village will probably lie some quarter of a mile inland and be embowered in exuberant forest (Plate 11). The houses will be poor, ramshackle structures of palm-fronds (Plate 12), and their inhabitants timid, naked fisher-folk possessing a few fowls, goats, and mangy dogs."

3.17 Johnston goes on to describe the administration of the area by the British, the characteristics of Old Calabar and the close affinity that the local population had developed with the British:

> "... the country between the boundary of Lagos and the German boundary of Cameroons is at present administered by Her Majesty's consular officers, under various Orders in Council. ... The headquarters of the consular establishment is at the important and relatively healthy town of Old Calabar, on an affluent of the Cross river. Old Calabar not only contributes a larger share of the [palm oil] trade than any of the settlements on the Oil Rivers, but it promises from its position and relative healthiness to be an important administrative centre in the future. It has a population of probably 15,000 natives, and about 150 British subjects who are foreigners, of whom over fifty are whites. Some of the Europeans (missionaries) have resided there for over thirty-seven years; two of them are aged respectively eighty-two and eighty-one, and the health of the whites, both in Old Calabar and Creek Town, is generally superior to that of any other town in the Oil Rivers, or, indeed, in West Africa.
>
> The natives of the Old Calabar district are thoroughly loyal to Great Britain, and very gladly accept its rule. They are ruled over by a number of native kings and chiefs, some of them of long descent and proud lineage, who live in handsome well-built European residences, and on Sundays and feast days dress elaborately in European clothes...
>
> The interiors of the Calabar houses are not devoid of taste, and their architecture gives a faint suggestion of Saracenic, as though originally they had been under the influence of the Niger peoples. Indeed, the arrangement of their houses differs markedly from that which prevails in the Bantu country across the Cameroons border."

3.18 As Vice-Consul, Johnston took great care in his travels to ascertain the origins of the local peoples and he had this to say about the provenance of the peoples around Old Calabar and lower Cross River:

> "The natives of Old Calabar and the lower Cross river belong to the Efik race. In language, and no doubt in origin, they are allied to the Ibos of the Niger Delta. They have scarcely been settled at Old Calabar more than a century and a half. Originally they came from the Ibibio district on the Cross river, and drove out and partly supplanted the Akpa tribe, who originally inhabited Old Calabar."

There can be no doubting Johnston's portrayal of the area as being physically, culturally and politically part of the domain of Old Calabar and firmly under British influence.

3.19 Johnston's published papers were illustrated with maps. Two of those maps are reproduced in the *Atlas* (Maps 13 and 14). The first of these maps sketches in the Anglo-German boundary line running north-eastwards from the head of the Rio del Rey or Fiari to the Cross River Rapids. The "Bakassey Peninsula" is shown as an area "previously [i.e for some time] under British protection" and an area further up the Cross River is shown as having been "added by recent treaties",[22] many of which Johnston himself concluded. The second map (Map 14) does not name the peninsula, but it shows in outline the pattern of the islands. "Arsibon's Town" (the modern Archibong) is shown to the North. The Anglo-German Boundary is shown as running northwards from the head of the "Ndiani [*sic*] River" which flows into the Rio de Rey (on this, see further para. 3.22 below). The line then departs in a north-easterly direction.[23]

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[22] See further Chapter 6 below

[23] This was almost certainly a cartographic error - it should have turned northwest towards the Cross River Rapids.

3.20 On both maps the area is shown as being populated by Efut people. The Efut people were migrants and were in fact absorbed by the Efik people. The Efik were mainly responsible for founding settlements on Bakassi and are shown on Map 14. Later the Ibibio also came to settle in the villages founded by the Efik, rather than *vice versa* as Johnston thought. Nowadays Efik is the dominant language and the people of Bakassi are generally referred to as Efik.

3.21 The Rio del Rey estuary on the eastern seaboard of Bakassi and its significance is described in detail by Johnston who was by that time Acting Consul, in his *Report on the Survey of the Rio del Rey*[24] undertaken during the first months of 1887. The Report is the work of a thorough and, in many ways, remarkable man. Johnston came to West Africa following expeditions to the Congo and to Mount Kilimanjaro in East Africa. He was to assume office and travel in many parts of Africa subsequently. This survey of the Rio del Rey followed a short trip up the Cameroons River, and six weeks' exploration of the Cameroons Mountains, as he called them. The three months he spent surveying the Rio del Rey district were the most intensive survey work he did, for, in addition to being appointed by Lord Salisbury as Vice-Consul of the Cameroons (his first post) he became, on the failure of Consul Hewett's health,[25] Vice-Consul of the Oil Rivers Protectorate and Acting Consul for the Bights of Benin and Biafra.

3.22 What is particularly striking in this Report, for the purposes of this *Counter-Memorial*, is the passage appearing on page 9 entitled "Note (D) - the Anglo-German Boundary". It reads as follows:

> "If I might be allowed to offer an opinion, I would suggest that the most satisfactory delimitation of the boundary between the British and German Protectorates would be for the western limit of German rule in the Cameroons to follow the left bank of the Rio del Rey from the

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[24] See para. 7.20 below.

[25] The activities of Consul Hewett are described in more detail in Chapter 6 below.

> sea to the Ndian River,[26] and then continuing along the main stream of the Ndian as far as the source of that river, to follow a straight line drawn in a north-easterly direction from the source of the Ndian to the rapids of the Cross River, an approximate distance of 40 miles.
>
> From this point on the Cross River, as already arranged, the boundary strikes right across to the bend of the Upper Binué. As previously mentioned, the Ndian River is in many respects a suitable boundary as it marks a distinct ethnographical frontier. On the northern side the ruling inhabitants mainly belong to the Calabar tribes and speak the Efik language or tongues akin thereto; at any rate (with the exception of a few straggling Barondo Settlements of semi-slaves) they all agree in not being Bantu, and all their trade is directed to Old Calabar. Moreover, the ruling Chiefs have placed themselves by Treaty under British protection (1884). On the southern side of the Ndian River the Calabar Settlements are only, as far as I can ascertain, two in number, and the bulk of the population consists of purely Bantu tribes such as the Barondo and Bakundu, who, in their language, physique, superstitions, and customs, are related to the people of the Cameroons, the Congo, and the South-West Coast, and to the races of the great Lakes, the Zambesi, the East Coast, Zululand, and Natal. With the exception of the two Calabar Settlements, the greater part of the commerce south of the Ndian River is carried on with Cameroons.
>
> An essential consideration to be remembered in delimiting the frontier is the great importance of the Akwayafe River to Old Calabar.
>
> ... Should any portion of the course of the Akwayafe River be alienated from British rule, it would produce a most unfortunate impression at Old Calabar."

3.23 Johnston was an acute observer and knew what to look for in determining colonial spheres of influence. As will be apparent from subsequent Chapters, the truths underlying the observations he made over 100 years ago remain unchanged today as far as Bakassi is concerned. The ethnographic influence on the toponymy of Bakassi is examined in detail below under the heading "Naming of Settlements".

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[26] See *Atlas* Map 15 for the locations of the Ndian River, the Rio del Rey and the Cross River Rapids.

3.24 Johnston's Report on his Survey was made in 1887. By 1890 he had become Consul for the Bights of Benin and Biafra and was in a position to put his observations into practice: see para. 6.36 below.

D. Human Geography of Bakassi

(i) Population and Settlements

3.25 Figures given by the National Population Commission in Calabar state that the current population of Bakassi is estimated to be in the region of 37,500. This figure is projected from the last census, which was carried out by Nigeria in 1991. Approximately 40 per cent. of the population are fishermen.

3.26 The most densely populated areas on the peninsula are those where there is firm, dry land. These include the area around Archibong at the northern end of Bakassi (see *Atlas* Map 5). Nigeria's legal team visited Bakassi in June 1997, following in the footsteps of the U.N. Fact Finding Mission which went there in October 1996. The majority of the Bakassi photographs which follow in the Photographic Annex were taken on the occasion of the Nigerian team visit. The team first visited Archibong (Plates 13-15) and were greeted by children dancing in welcome (Plate 16): they were given a guided tour to the Palaver House (Plate 17), the old Methodist Mission Bell (Plate 18) and the rubber plantations (see para. 3.31 below). Pictures of the Palaver House (Efe Ekpe Shrine) without its hangings and the Methodist Church established in 1893 appear at Plates 19 and 20.

3.27 South of Archibong, on the western seaboard of Bakassi, lies Abana (see *Atlas* Map 5). The area around Abana has been the subject of substantial erosion but there are still extensive beaches: the people on the beach demonstrated their feelings about Bakassi very openly with placards and ceremonial dancers (Plates 21 and 22).

3.28 Similar colourful and ceremonial demonstrations were staged at Atabong East (Plate 23) and Atabong West (Plate 24). Plate 23 shows ceremonial sword fighting on the jetty at Atabong East. At Atabong West the team was met by an assembly of elders (Plate 24). The Atabongs lie on either side of the wide creek known as Bakassi Creek or Atabong Creek. They form the most substantial settlements on Bakassi's Atlantic seaboard.

3.29 Fishing settlements vary in size from a few huts (Plate 25) to sizeable collections of houses. The construction of houses varies from the traditional palm and cane structures to mud-walled houses to modern brick-built structures (Plate 26).

(ii) Agriculture

3.30 The land on Bakassi is mostly unsuitable for agriculture. The main food crops of the area are cassava, yams, coco yams, maize, fluted pumpkins and plantain, but not much of any of these is grown on Bakassi. The heavy rainfall causes such soil as there is to be water-logged for most of the year, and growing is restricted to small plots of plantains, bananas and coconuts with some small vegetable gardens around the compounds. The people therefore depend on other sources for their food. The area has not traditionally been associated with growing the oil palm trees that were the staple economic crop of the Oil Rivers Protectorate. Raffia palms are, however, grown. Their productive life is short. Palm wine is extracted from the raffia palm for about two months, usually in its tenth or eleventh year, after which it withers and dies. Raffia palm wine is particularly tasty, being rich in yeast. However, in addition to wine, raffia palm provides most of the traditional building materials, raffia and piassava fibre. Raffia leaves are made into mats, and the ribs are used for rafters as well as for constructing the walls of houses, whilst the piassava is used in place of nails and twine. Brooms, hard brushes and raffia for the local weaving industry which produces colourful mats and bags, are also products of the raffia palm.

3.31 Around Archibong there are also rubber plantations (Plates 27 and 28) which have been in the ownership of local families for many years.[27]

(iii) Fishing

3.32 Fishing is the main commercial activity in the area. Indeed, this part of the Nigerian coast borders one of the most important commercial fishing areas off Nigeria. Fishing is carried out along the creeks, along the coast and in distant waters. The geographical location of Bakassi is such that it is situated right at the meeting point of two very different ocean currents, the Guinea current, which flows from West to East and is a warm current, and the Benguela current, which flows from South to North up the West coast of Africa and is a cold current. This confluence produces not only a variety of water temperatures, but also seas which are frequently choppy. These are conditions much favoured by shellfish for breeding. The artisanal fishing activity in the region is dominated by canoe-based fishing, and is targeted at pelagic species such as bonga, sardinella, anchovy and shad, as well as demersal species such as grouper, mullet, sole and shrimp. Although the fishermen travel a long way down the coast, the main activity occurs within five miles of the shore.

3.33 As the result of the unique combination of maritime conditions in the area, "stranger fishermen" come from the Niger Delta, Ogoni, Okitipupa and as far West as Ghana. These strangers are full-time fishermen. They are not permitted to exploit any forest produce except firewood and sticks to be used for drying fish. They therefore depend on the local people for fishing traps, raffia nets (used mainly for shrimps, crayfish and lobsters), canoes and roofing mats, the raw materials for which all come from the forest. Many of the local fishermen traditionally spend

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[27] NC-M 64 contains a written statement dated 23 October 1997 signed by Mrs Ofonyete recounting a brief history of the rubber plantations. NC-M 65 contains accounts for Agricultural Co-operative loans. These Co-operative Societies receive backing from Cross River State.

part of the year making or repairing this equipment, not only for themselves but also for these stranger fishermen. Over the last 30 years the introduction of more modern fishing equipment has meant that a growing number of local people have taken to fishing as a full-time occupation. Many of them migrate to distant fishing grounds up and down the Cameroon coast and beyond. These migrant fishermen usually return home during festive occasions when they bring back large quantities of dried fish for sale, there being a much greater demand for fish in the Calabar area than in the Cameroons.

3.34 A variety of fishing methods is employed, including the use of traps and nets (Plate 29), but weirs are not allowed except across small creeks. The one-inch mesh net may be used only to catch small-sized fish like Ekpai (*ethmalosa sardinella*). Women take part in creek fishing and gathering periwinkles, but their main job in the fishing economy is to sell the catch, which is usually disposed of in the form of dried fish.

3.35 The innovations in the local fishing industry of the past 30 years, such as the use of nylon nets which are lighter but stronger and more durable, has led to the establishment of Fishing Co-operative Societies with the assistance of State funding.[28] There are over 170 groups identified for credit administration within the co-operatives, with approximately 1,150 men and over 600 women being beneficiaries. Over 17 million Naira[29] have been paid out by the Federal Department of Fisheries through the Cross River State Government Fisheries Development Unit, which has its headquarters at Ikang. The co-operatives use these moneys to purchase outboard engines for their canoes and nylon nets which have resulted in larger catches, but the problem of preserving fish remains. Smoking is the acceptable method of preserving fish not sold fresh, but a

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[28] Examples of accounts produced for Fishing Co-operative Societies on Bakassi are contained in NC-M 66, together with correspondence with the Federal Fisheries Officer in Calabar applying for a loan worth £60,000 from one of the Co-operative Societies which comprised Bakassi Fishermen amongst its members.

[29] The Naira has fluctuated in value over the years, but the sums involved are of the order of £500,000 to £1,000,000 (U.S.$ 800,000 to 1.6m).

considerable quantity has in the past gone to waste because of poor smoking. Salting was introduced, but was unpopular because, amongst other things, it involved expenditure in purchasing salt as well as containers. As part of the Fisheries Development Programme, processing ovens have been installed at strategic points on and around Bakassi.

3.36 Plates 30 to 31 show fishermen at work in the creeks and the fishing fleet going out to sea from West Atabong. Between 70 and 100 boats were counted on the occasion when these photographs were taken. Many more boats can be seen on the beaches at the Atabongs and Abana (Plates 32 to 33).

E. The Naming of Settlements on Bakassi

3.37 At the turn of the century the permanent population was much lower than it is now. Bakassi tended to be used by the inhabitants of larger settlements west of the Calabar/Cross River estuary as a base for seasonal fishing activity.[30] The practice thus grew up of naming settlements on Bakassi after the Efik families who used these settlements as a fishing base. Sometimes the founder's name was used, sometimes the name of the town from which he came. It is for this reason that one finds place names on Bakassi linked with the names of settlements lying further to the West and North-west, but never (so far as is known) to the East or South-east.

3.38 The word *Ine* in Efik means fishing settlement. Thus Ine Ekpai is a fishing village founded by the head of the Ekpai family, and Ine Okopedi a settlement founded by people from Okopedi which is now in the Okobo Local Government Area of the present day Akwa Ibom State. In addition, village names may incorporate reference to a local physical or vegetation feature: for example *Utan* in Efik means "sand". *Atabong* literally means "place of cane".

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[30] Bakassi was colloquially referred to as the "Fish Towns" area, especially by the British.

3.39 The origins of the name *Bakassi* itself are variously described. Traditionally, in Efik, it means "go early and arrive before dawn". However, the first Efik fisherman to establish his fishing hut in the forest region is traditionally thought to have been Abasi Eke, a native of Old Town or Obutong (part of present day Calabar). The Efik at first called the forest *Akai Abasi Eke* (Abasi Eke Forest). The British sailors who frequented the area in the eighteenth century are said to have anglicised *Abasi Eke* to *Bakassey*.

3.40 The earliest Efik settlements in the region were sited at the northern end of Bakassi. Arsibon's Town, which became known as Archibong, was referred to as early as 1786 in Antera Duke's Diary:[31] it was re-populated by Prince Asibong Edem III as his own family colony, in the early part of the 19th century.

3.41 Abana is situated on land which is traditionally held to have been given by King Orok Bassey Duke to his two brothers-in-law, Ntuen Umo and Ebe, who migrated from Esuk Mba (in present-day Akwa Ibom) over a hundred years ago. The original settlement has, according to the Town & Country Planning Division, Department of Lands, Surveys and Town Planning, Calabar, been entirely submerged due to the incursion of the Cross River estuary. The sand bars are visible during low ebb tide at the original site of Abana (Akani Obio). Mention has already been made above of this process of erosion.

3.42 Lists of settlements on Bakassi appear in the Tables at the end of this Chapter. Table 1 is a list of all the present-day settlements on Bakassi, together with their co-ordinates. All these settlements appear on Map 5 in the *Atlas*. Table 2 is a list of settlements with translations of the Efik words in their names and details of their founders, showing their Efik ancestry. The names are, where possible, cross-referenced to the genealogical tables of Efik clans appearing in Tables 3 and 4.

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[31] See, further, reference to the Diary in paras. 4.10 and 5.16 below. The Duke family, originally from Old Calabar, are one of the most prominent on Bakassi - see paras. 4.18 *et seq.* and Tables 2-4 at the end of this Chapter.

Tables 3 and 4 list the twelve main families who were traditionally members of the Council of the Obong of Calabar many of whom are associated with founding settlements on Bakassi. Seven of these families now remain. Many settlements have a central core with surrounding groups of huts, each with its own distinctive name. These are too numerous to be shown on maps of the scale contained in the *Atlas*. Examples are listed in Dr. Effiong-Fuller's recent book on Bakassi referred to below in paragraph 5.19.[32]

3.43 The Efik origins of these names assume particular significance when read in the context of the Government Edicts and Decrees naming settlements in particular administrative areas. These are considered in detail below in Chapter 10 and show incontrovertible traditional links between the population of Bakassi and its modern administration.

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[32] *The Story of Bakassi*, Calabar, 1996. A copy has been lodged with the Court.

CHAPTER 3: TABLE 1

PRESENT-DAY SETTLEMENTS ON BAKASSI (para. 3.42)

S/N	NAME	EASTINGS	NORTHINGS
1.	Archibong Town	8° 36' 57"	4° 48' 43"
2.	Mbenmong	8° 35' 35"	4° 47' 57"
3.	Nwanyo	8° 35' 10"	4° 46' 23"
4.	Ine Ikang	8° 32' 57"	4° 46' 23"
5.	Ine Nwaho	8° 33' 33"	4° 45' 37"
6.	Ine Nkane Okure I	8° 34' 23"	4° 45' 30"
7.	Ine Nkane Okure II	8° 35' 20"	4° 46' 03"
8.	Fumen	8° 37' 53"	4° 46' 26"
9.	Inu Nya	8° 37' 04"	4° 45' 13"
10.	Ine Ukpong	8° 37' 20"	4° 44' 07"
11.	Ayan Ufok	8° 35' 32"	4° 44' 11"
12.	Ine Akpa Ikang	8° 33' 43"	4° 43' 07"
13.	Eso Andu	8° 35' 23"	4° 42' 23"
14.	Ine Ekpai	8° 33' 57"	4° 41' 27"
15.	Okom Kiet I	8° 37' 43"	4° 41' 30"
16.	Okom Kiet II	8° 38' 07"	4° 40' 50"
17.	Inua Akpa Village	8° 33' 06"	4° 40' 38"
18.	Utan Edim	8° 33' 06"	4° 40' 32"
19.	Esit Edik	8° 33' 22"	4° 39' 35"
20.	Ine Ikoi	8° 30' 28"	4° 39' 44"
21.	Ofum Akpa	8° 32' 43"	4° 38' 57"
22.	Ine Utan	8° 30' 37"	4° 38' 33"
23.	Usuk Akpa Village	8° 34' 57"	4° 38' 27"
24.	Debondo	8° 37' 20"	4° 38' 43"
25.	Ine Effiom	8° 34' 43"	4° 37' 06"
26.	Ine Utan Asuquo	8° 32' 50"	4° 36' 00"
27.	Anki Ette Village	8° 35' 30"	4° 35' 47"
28.	Effiong Ancha	8° 37' 27"	4° 36' 22"
29.	Ifiari I	8° 32' 07"	4° 35' 30"

S/N	NAME	EASTINGS	NORTHINGS
30.	Anki Ette Location	8° 37' 03"	4° 34' 43"
31.	Lalagbene	8° 32' 06"	4° 33' 59"
32.	Anjeh Effiom	8° 33' 37"	4° 33' 54"
33.	Ifiari II	8° 31' 07"	4° 33' 40"
34.	Abana Ntuen	8° 29' 43"	4° 33' 28"
35.	Abana	8° 32' 13"	4° 33' 30"
36.	Akpa Nkanya	8° 30' 42"	4° 33' 33"
37.	Ndo Village	8° 35' 57"	4° 33' 28"
38.	Ndo Location	8° 36' 03"	4° 33' 00"
39.	Adak Uko	8° 29' 53"	4° 32' 44"
40.	Ishie	8° 33' 57"	4° 32' 25"
41.	Akanwe Extension	8° 34' 37"	4° 32' 22"
42.	Akpong	8° 36' 23"	4° 32' 17"
43.	Esit Ufak II	8° 34' 06"	4° 32' 11"
44.	Ine Ibighi Edu	8° 33' 57"	4° 31' 40"
45.	Esit Ufak I	8° 33' 33"	4° 31' 38"
46.	Ine Ekeya	8° 33' 20"	4° 31' 06"
47.	Issac Boro Camp	8° 32' 47"	4° 31' 00"
48.	Akwe Ine Ibekwe	8° 32' 23"	4° 30' 57"
49.	Ufot Ine Itung	8° 35' 13"	4° 31' 03"
50.	Akpa Tete	8° 36' 37"	4° 30' 53"
51.	Ake Njok	8° 36' 00"	4° 31' 00"
52.	Ine Amamong	8° 34' 07"	4° 30' 46"
53.	Anono Anjeh	8° 37' 01"	4° 31' 00"
54.	Onosi	8° 30' 13"	4° 30' 38"
55.	West Atabong	8° 32' 50"	4° 30' 37"
56.	Ine Okopedi	8° 34' 34"	4° 30' 27"
57.	Ibuot Utan Atabong	8° 32' 20"	4° 30' 03"
58.	Ine Itung	8° 34' 34"	4° 30' 00"
59.	Akwa Ine Itung	8° 36' 13"	4° 29' 54"
60.	East Atabong	8° 33' 09"	4° 29' 35"
61.	Ibekwe	8° 33' 30"	4° 29' 41"

S/N	NAME	EASTINGS	NORTHINGS
62.	Ine Ifung	8° 34' 34"	4° 29' 44"
63.	Edem Abasi	8° 35' 57"	4° 29' 25"
64.	Ibiong Utan Itung	8° 33' 44"	4° 29' 16"
65.	Esit Ufak III	8° 33' 14"	4° 32' 39"
66.	Ibiong Utan Ibekwe	8° 31' 50"	4° 29' 57"
67.	Afia Utan	8° 36' 33"	4° 47' 00"
68.	Ine Etak Ukim	8° 37' 19"	4° 46' 44"
69.	Etak Edat	8° 32' 13"	4° 41' 25"
70.	Uba Mbat	8° 34' 44"	4° 35' 33"
71.	Ntokoba	8° 34' 05"	4° 48' 25"
72.	Esit Ufak	8° 33' 54"	4° 48' 44"
73.	Etak Edat	8° 33' 47"	4° 49' 09"
74.	Ine Mba I	8° 38' 45'	4° 33' 27'
75.	Ine Mba II	8° 39' 01'	4° 32' 67'
76.	Inua Mba	8° 40' 388'	4° 31' 75'
77.	Ine Akpak	8° 41' 75'	4° 31' 59'
78.	Ine Atayo	8° 41' 81'	4° 31' 08'
79.	Ine Odiong	8° 40' 884'	4° 29' 31'

CHAPTER 3: TABLE 2 - BAKASSI LIST OF SETTLEMENTS WITH TRANSLATIONS AND FOUNDATION DETAILS (para. 3.42)

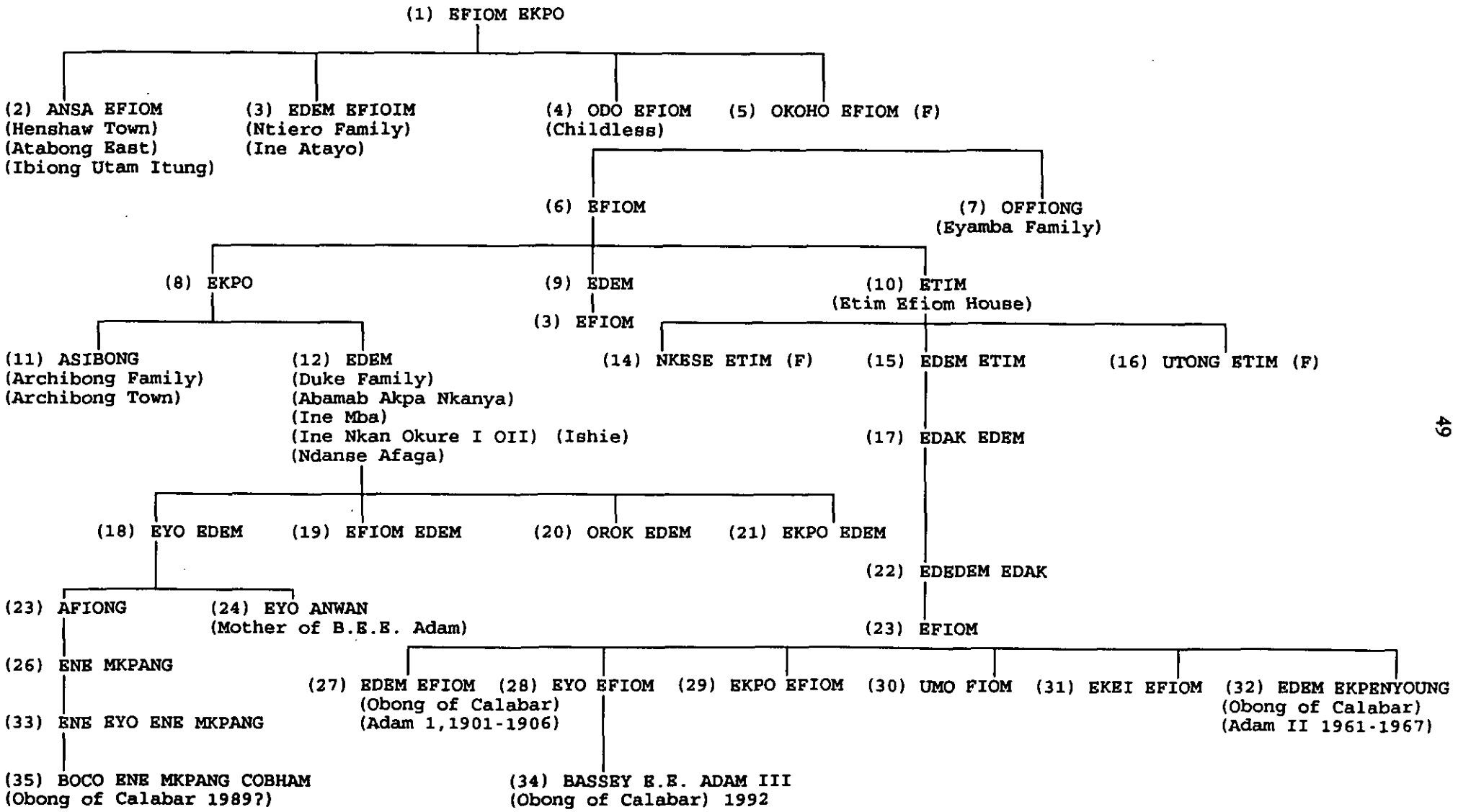
NO.	PLACE NAME	TRANSLATION FROM EFIK/ EXPLANATION	TABLE X-REF	HISTORY
1.	Abana	Named after the founder	3-12	Founded about 200 years ago by Obong Abana Ntuen Umo, an Efik of Efiat descent
2.	Abana Ntuen	Ntuen's Abana	3-12	Founded in the nineteenth century by Edidem Ntuen Umo.
3.	Adak Uko or Adana	Oko Boundary Line	-	Originally called Adana Oko Eyo Ema to show boundary between Otung and Efiom Ekpo Group of Families at Creek Town, W. Calabar.
4.	Akpa Nkanya	Named after the location where wild roofing palms grow in abundance	3-12	The presence of fish in Bakassi was not the only incentive to settle in the area. The wild palms that grow there are of great economic value for they are used in weaving roofing mats. Established by Efiong Etim Efa from Akwa Obio Efiat, which is Tom Shott in the estuary of the Cross River.
5.	Akwa	A large town near Archibong Town	-	This town is a combination of several small villages.
6.	Akwe Ine Ibekwe	A large fishing settlement of Ibekwe people	-	Allocated to indigenes of Ibekwe in Ikot Abasi, Akwa Ibom State.
7.	Akwa Ine Itung	Large fishing settlement of cover	4-14	Founded by Antai Ema Otong Otu Mesembe of Adiabo, Western Calabar.
8.	Archibong	Named after the founder	3-11	Founded c1886 by Prince Asibong Edem Ekpo Effiom, a descendant of Duke Ephraim of Calabar.
9.	East Atabong	Place where there is cane	3-2	Established in the 19th Century by Obong Ekpot Abia Ntekim Antai Umo of Henshaw Town. Ibekwe and Okopedi II are two of the settlements belonging to Atabong East.

NO.	PLACE NAME	TRANSLATION FROM EFIK/ EXPLANATION	TABLE X-REF	HISTORY
10.	West Atabong	Place where there is cane	3-14	Founded in the 19th Century by Obong Antai Ema Otong Otu Mesembe, an Efik of Adiabo in Western Calabar.
11.	Edem Abasi	Part/Back of God	-	Founded in the 19th Century.
12.	Ibiong Utan Ibekwe	Ibiong - Lying across Utan - Sandy Area Ibekwe-Ibekwe	-	The name *Ibekwe* suggests that the settlement is owned by the people of Sandy Ibekwe in Akwa Ibom State. (See No.6 above)
13.	Ibiong Utan Itung	A sandy cove lying across	3-2	Founded by Ema Andem Inyang.
14.	Ibuot Utan Atabong	Sandy head where there is cane	-	Established by Atabong indigenes.
15.	Ifiari I	Not known, but there is an Efik word *efiari* (bitter kola nut)	-	
16.	Ifiari II	Not known, but there is an Efik word *efiari* (bitter kola nut)	-	
17.	Ine Akpa Ikang	Fishing settlement, Ikang River	4-5	Founded in the 19th Century by Obong Adim Atai, a King from Old Town (Obutong), Calabar
18.	Ine Atpak	Fishing settlement (founded by) Akpak	-	Founded by Akpak Nte Obiong Ntekim of Ibout Utan.
19.	Ine Amamong	Fishing settlement	-	Established by persons from Amamong Okobo in Akwa Ibom State
20.	Ine Atayo	Fishing settlement named after founder	3-3	Founded by Atayo Umo of Ntiero family lineage. There are two villages called by this name, and the second (smaller) one was founded by Atayo Ososi of Esuk Enwang.
21.	Ine Ibighi Edu	Fishing settlement named after founder	-	Founded by the Okobo people from Ebighi-Edu in Akwa Ibom State.

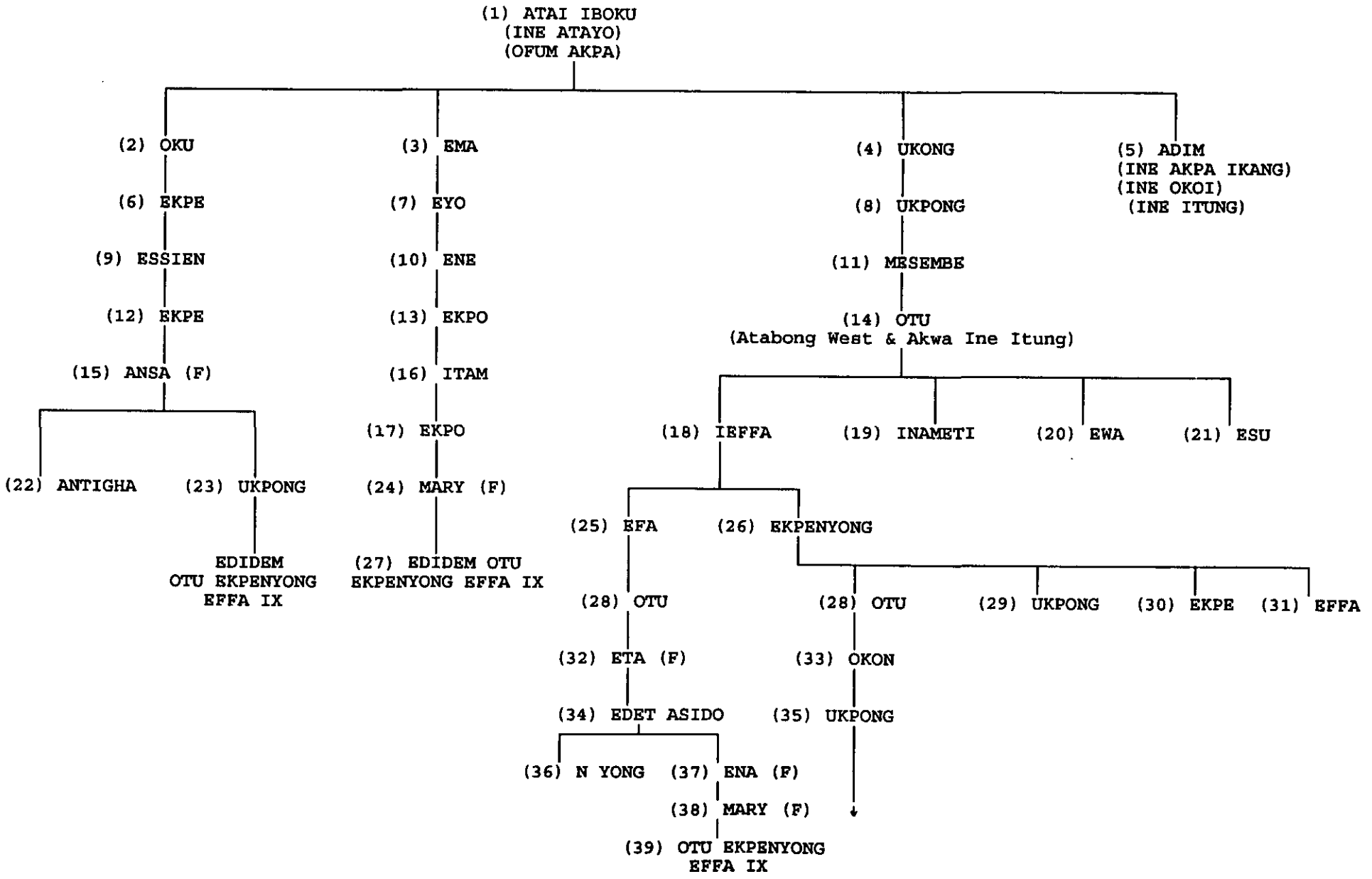
NO.	PLACE NAME	TRANSLATION FROM EFIK/ EXPLANATION	TABLE X-REF	HISTORY
22.	Ine Effiom	Fishing settlement named after founder	-	Founded in the 19th Century.
23.	Ine Ekpai	Settlement noted for Ekpai fishing	-	Ekpai is a type of fish, the size of a sardine.
24.	Ine Ekeya	Fishing settlement founded by Ekeya	-	Fishing settlement founded by people of Ekeya Okobo origin.
25.	Ine Ikang	Fishing settlement in the neighbourhood of Ikang	-	Founded in the 19th Century by Obong Adim Atai, a King from Old Town (Obutong), Calabar.
26.	Ine Ikoi	Fishing settlement of the Ekoi	4-5	Founded by Obong Adim Atai a King from Old Town.
27.	Ine Itung	Fishing settlement at cove	4-5	Founded by Etim Ntung.
28.	Ine Mba	Fishing settlement named after Mba Efiom	3-12	Mba Efiom, a trusted servant of Great Duke Ephraim IV, who also founded Esuk Mba in Akpabuyo.
29.	Ine Nkane Okure I Ine Nkane Okure II	A collection of fishing settlements	3-12	Founded in the 19th Century. Nkan-Okure is a type of enclosed settlement.
30.	Ine Nwaha Ofong	Fishing settlement	-	In the early days of this settlement, a fight broke out in which those involved had their clothes torn, hence the name "Nwaha-Ofong" (torn clothing).
31.	Ine Odiong	Fishing settlement founded by Odiong	-	Founded by Odiong Nsa Ikwo Emeneyo of Obong Nim.
32.	Ine Okopedi	Fishing settlement of the Okopedi	-	Founded by Okobo people from Okopedi.
33.	Ine Ukpong	Fishing settlement founded by Ukpong	-	Founded in the 19th Century.
34.	Ine Utan	Sandy fishing settlement	-	
35.	Ine Utan Asuquo	Sandy fishing settlement founded by Asuquo	-	

NO.	PLACE NAME	TRANSLATION FROM EFIK/ EXPLANATION	TABLE X-REF	HISTORY
36.	Inua Mba	Fishing settlement	-	Same as nos. 30 and 31.
37.	Ishie	Unknown	3-12	There is an Ishie Town in the Calabar urban area.
38.	Mbenmong	Edge of River	-	Founded in the 19th Century by Obong Ekanem Esin, from his extral-lineal family of Great Duke Ephraim.
39.	Nwanyo	*Fishing Settlement*	-	*Settlement of Usak Edet Efik.*
40.	Ofum Akpa	Breeze River	4-1	
41.	Onosi	Fishing Settlement	-	Onosi, n. the fabled abode of the dead, *Hades*, located on S.W. point of Bakassi. According to Efik lore, Onosi is the ghost land to where all the dead go each year. It was believed that all the ghosts of persons who die each year sail in a large canoe at midnight every December 31, singing and paddling to their new home in Onosi in the words *Ekpo ke enyono Onosi-o Uwayaya!* ("The ghosts are returning to Onosi-Uwayaya".) Founded in the 19th Century by Ntuen Akpe Odiong Ntekim.
42.	Ufot Ine Itung	Middle fishing settlement at cove	-	Founded by Etim Ntung.
43.	Utan Edim	Sand rain	-	

CHAPTER 3: TABLE 3 GENEALOGY OF PRESENT DAY EFIK CLANS AND FOUNDERS OF BAKASSI SETTLEMENTS (i) (para 3.42)



CHAPTER 3: TABLE 4 GENEALOGY OF PRESENT DAY EFIK CLANS AND FOUNDERS OF BAKASSI SETTLEMENTS (ii) (para 3.42)



CHAPTER 4

THE HISTORICAL BACKGROUND PRIOR TO 1884

A. Introduction

4.1 This part of Nigeria's *Counter-Memorial* outlines the historical background to Nigeria's title to the Bakassi Peninsula.

4.2 The history of the south-eastern corner of Nigeria, where Bakassi is situated, has many characteristics which can be explained only by reference to the particular geography of the region. As indicated in Chapter 3 above, Bakassi is largely a collection of mangrove islands, virtually inaccessible except by boat up a complex network of creeks and sandbars. This topography, and the geography of the hinterland further north, has done much to define the history not only of the peninsula itself, but also of the adjoining territory further West.

B. The Period up to 1807

4.3 The Ibo[33] peoples of South Eastern Nigeria, and their neighbours to the South-East towards the Cameroon border in the regions of the Niger Delta, the Calabar River, Cross River, Akpa Yafe and the Rio del Rey, already had a long history of their own by the time the Portuguese first explored what is now the Nigerian coastline in the course of the 15th century.[34]

4.4 Geographical and political conditions in south-eastern Nigeria have always been very different from those prevailing in the North, which are described more fully in Chapter 13. The forest areas East of the Niger were difficult to penetrate. Consequently, the Muslim States of the North seldom made much headway into the Ibo territories or into the rain forest to the South, bordering the Gulf of Guinea.

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[33] Also called "Igbo"

[34] The early history is to a considerable degree undocumented, and knowledge of it therefore depends heavily on archaeological discoveries and local tradition. Most of the available written records date from 1600 and later.

In these areas, which had little experience of being invaded or overrun from the outside, there was little tradition of developed monarchical government. Nevertheless, a sophisticated and populous society appears to have developed as early as the 9th century.[35]

4.5 The peoples of the Guinea coast were thus to a considerable degree sealed off from the developed northern states by geographical factors, and evolved in a very different way. Since the 16th century they have been materially influenced by, and themselves influenced, the European traders active on the coast.

4.6 In the seventeenth and eighteenth centuries, the primary commercial activity of the Guinea Coast was the slave trade, which expanded dramatically to meet the demand from the southern part of North America and from the Caribbean.[36] The kings and chiefs of the area around the Cross River estuary were often themselves active traders and fishermen. In addition to slaves, they also exported commodities such as gold, gum, hides, timbers and palm products.

4.7 By the eighteenth century many had more than a smattering of European education, and could read, write and reckon. Frequently they were powerful commercial figures, playing an active part in the booming slave trade. They dwelled in what they consciously called towns, often compactly situated within river estuaries or indentations.

4.8 The emergence of such trading towns in and to the east of the Niger Delta represented a social revolution as well as a political and economic innovation. The kinship system gave way to a "House" system, by which both freemen and the large

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[35] This civilisation appears to have enjoyed surpluses of wealth supporting developed craft specialisations, including a high and distinctive bronze art.

[36] There was at this time a considerable demand for slaves in the European colonies in the Americas. To satisfy this demand a substantial body of trade grew up, regulated by numerous international agreements, including the well-known Spanish *Asiento* contracts. The main source of supply for the slavers was the coast of West Africa.

numbers of slaves needed to man trading canoes and strategic and economic interests merged into large 'corporations' headed by the leading merchants. The result was the emergence of a series of "City States", dominated by the ruling Houses.

4.9 There was far more available land than could be farmed, and consequently its value was low. As elsewhere in South Eastern Nigeria,[37] the land was in a sense communal. In the Calabar area it was controlled by the traditional rulers, who held it in trust for the people. Wealth was measured not in land but, quite realistically, in the people who could produce food, carry on trade and fishing, exploit minerals, practise arts and crafts, and support the local kings and chiefs, their households, administrations and armies. Measured by population, the area was wealthy. Thanks to the practically insatiable demand for slaves from the mid-seventeenth century onwards, people were a commodity, for the European traders and the indigene chiefs alike. The slave trade was heavily focused on the Guinea Coast, and led to a prolonged commercial boom and a great growth in trade of all kinds.

4.10 This booming pattern of trade led to the appearance on the coast of a new class of African merchants, freed from many of the restrictions of traditional society and able to accumulate personal wealth and power to rival local kings, or even to become kings themselves. Most of the new men were experienced in European ways, and often secured for their sons elements of a European education.[38]

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[37] P. Amaury Talbot: *The Peoples of Southern Nigeria, 1926*, Vol. III p. 680

[38] For example, Antera Duke Ephraim (Ntiero Edem Efiom) of Calabar, was an Efik slave-trading chief and a senior member of the Ekpe [Leopard] Fraternity, the leading Efik secret society. He had received English lessons, either from the schools, the European traders or in England. He kept a valuable diary from 1785-1788 (see below, Chapter 5, Section E). The existence of the diary shows that long before the 19th century the Efiks were keeping records written in pidgin English. This was presumably necessary for commercial purposes. Several published narratives from the early 19th century refer to the keeping of accounts and journals by the leading Efiks of the time.

C. The Indigenous Peoples of the Coastline of Old Calabar

4.11 The chief tribes in the region of Old Calabar in the period after 1700 were and are the Efiks (a branch of the Ibibio, themselves sometimes classified as a "semi-Bantu" people[39]), and the Efiat (classified in the same way). This remains the position in recent times, as the Nigerian Ethnic Groups Survey map of 1972 at Fig. 4.1 shows. The predominant local people, in terms of numbers and influence, were and are the Efiks.

4.12 There are extensive oral traditions as to the early migrations of the Efik people before they came to Old Calabar, and these are discussed in some detail in A.K. Hart, *Report of the Enquiry into the Dispute over the Obongship of Calabar*, published in 1964 by the Government Printer, Enugu, Eastern Nigeria.[40] As regards their subsequent immigration into Old Calabar and its environs, it seems clear that there were at different times successive influxes of different tribal groups.[41]

4.13 Old Calabar appears to have been founded around the year 1400. From Old Calabar Efik influence spread far and wide. Tradition has it that New Calabar, some 150 kilometres to the West, was founded about the year 1650 by a member of the Ephraim Duke family from Old Calabar.[42]

4.14 What is clear is that by the eighteenth century, if not before, various Efik City States had emerged as the culmination of the southward movement of the Efik and other peoples towards the mouth of the Cross River.[43]

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[39] P. Amaury Talbot, *op.cit.* 1926, Vol. II p. 61

[40] See Chapter 4 of that Report, at pp. 24 *et seq*; a copy of the entire Report has been lodged with the Court.

[41] E.E. Oku, *The Kings and Chiefs of Old Calabar*, Glad Tidings Press, 1989, pp. 23-25. A copy has been lodged with the Court.

[42] See Oku, *op.cit.*, p.xiii, citing a quotation from Mary Kingsley in 1899, recorded in Efion Ukpong Aye, *Old Calabar through the Centuries*, Calabar, Hope Waddell Press, 1967 p. 43

[43] Noah, *Studies in Southern Nigerian History*, (1982) Chapter 4

NIGERIAN ETHNIC GROUPS SURVEY 1972

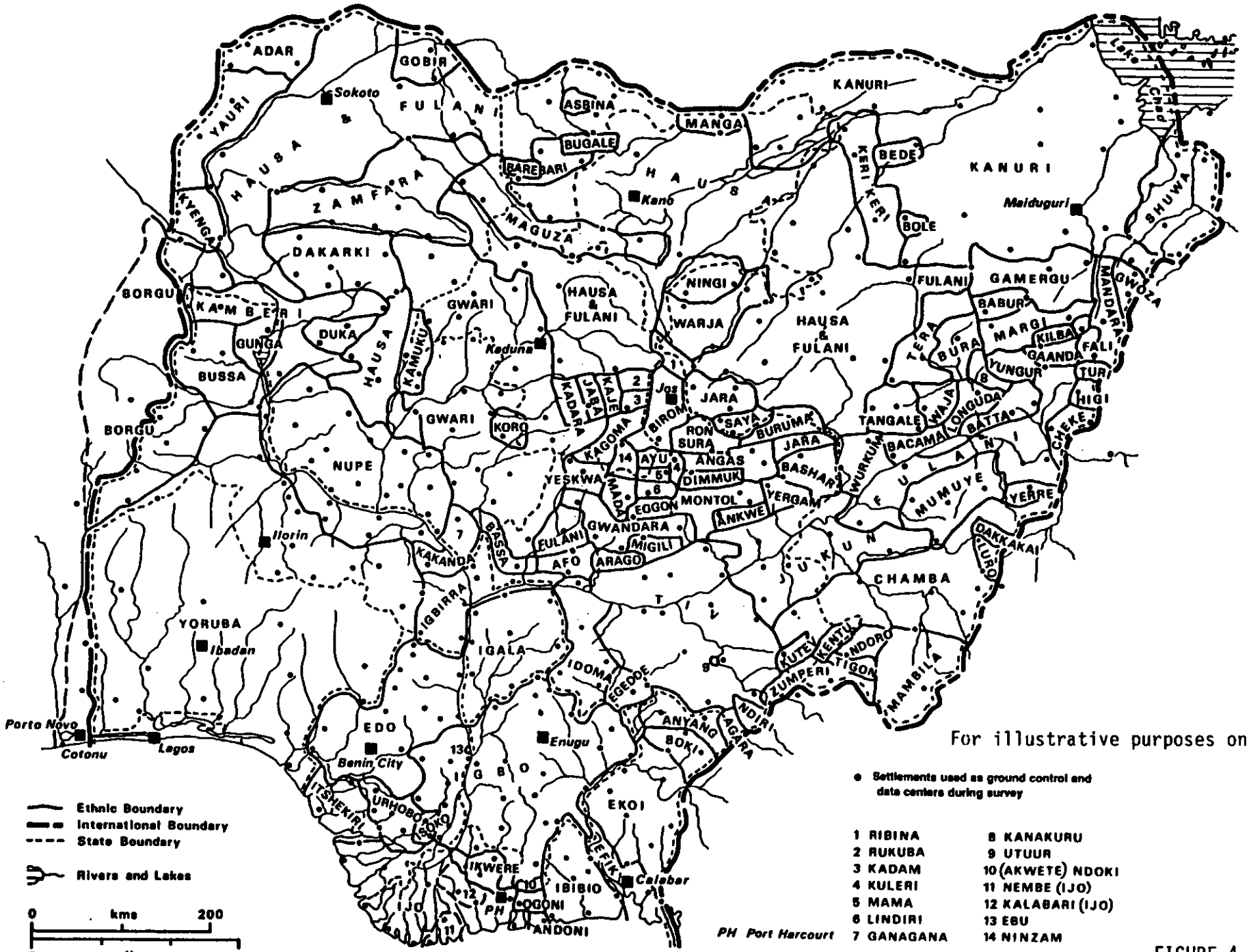


FIGURE 4.1

D. The Emergence of the Efik Polity

4.15 Over time the Efiks established themselves on the coast and became active fishermen and traders, ultimately setting up something of a sea-borne empire, with City States up and down the Guinea Coast from the Niger Delta to the Rio del Rey, and settlements even beyond. Many of their towns - Duke Town, Creek Town, Henshaw Town, Obutong Town - were clustered together in the heart of the area which became known as Old Calabar. This area included other Efik settlements some of which were relatively far-flung, such as Tom Shott's Town (west of the Cross River at the mouth of the estuary) and Arsibon's Town (Archibong) (near the northern edge of the Bakassi Peninsula). The location of these Towns is shown on Maps 14 and 15 in the *Atlas*.

4.16 The Efiks of this unique polity were governed by a patriarchal "House" system, under which each of the above communities was headed by its own King or Chief, elected by that House.[44] The ruling oligarchy was united by a highly organised secret society, the Ekpe Society, which played an important part in the religious and civic life of the Efik polity and is still important today.[45] The local activities of the Ekpe Society centre on the Palaver House at Atabong (see paragraph 3.26 above).

4.17 Towards the end of the 18th century there were thus several petty Kings in Old Calabar. As Hart put it:

> "Internal strife and rivalry in trade brought about the emergence in the area of two dominant families, the Eyo in Creek Town and the Duke in Duke Town, headed by Eyo Honesty I and Great Duke Ephraim respectively. It should, however, be noted that the paramountcy of these two families in traditional matters was only apparent, but not real

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[44] A.K.Hart, *op.cit.* pp. 45 *et seq.*

[45] *ibid.* pp. 52 *et seq.*

> .... The petty kings retained their independence and ruled over their own Houses free from external interference, both Eyo and Duke Ephraim being still traditionally equal to the other family group heads."[46]

4.18 Nevertheless, Hart acknowledges the gradual emergence of a paramount chieftaincy or kingship at Old Calabar.[47] The Efik polity evolved quite rapidly in the course of the 19th century. Great Duke Ephraim IV[48] ruled at Old Calabar from 1814 to 1834. Ephraim IV appears to have been an authoritarian and dictatorial ruler, reducing the number of "Houses" in Old Calabar from nearly 30 to 15, and integrating many of them into his own (Duke) House.[49] Ephraim had a royal court in which all the seven clans of Old Calabar were represented, and his traditional scribe was his cousin - an educated, rich and widely-travelled man.[50]

4.19 Ephraim IV had full control of trade in Old Calabar and entrenched his position in alliance with the European traders, so incurring the displeasure of neighbouring settlements such as Henshaw Town. The extent of his power and authority can be seen from the fact that he refused the Europeans permission to settle on the coast or penetrate the hinterland, because he had already established flourishing markets in various areas of the Cross River Basin such as Kipa, Enion, Agwagune, Ikot Ana, Umon and Kiom.[51] There he erected sheds at strategic points, collected oil from the neighbouring districts, and stored it at the sheds until canoes could convey it to Old Calabar, whence it was shipped to England.[52]

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[46] *ibid.* p. 70

[47] *ibid.* p. 76

[48] Born in about 1750, this person was variously styled Akwa Duke Ephraim, Akwa Efiom Edem and Efio Edem Akamba, all meaning Great Duke Ephraim: - Oku, *op.cit.* p. 10

[49] *ibid.* p. 13 and the authorities there cited.

[50] *ibid.* p. 23

[51] Some of these are shown on Map 14 in the *Atlas*.

[52] *ibid.* p. 14

4.20 The kings of Old Calabar were not absolute monarchs, and none of them ruled without counsellors. The paramount chieftaincy, or Obongship, emerged in modern times operating in conjunction with a "cabinet" or Council of Etuboms. An Etubom is an Efik chief of the rank from which the Obong is selected: Etuboms are created by the chiefs and members of a House to administer that House.[53]

E. The Geographical Extent of Efik Rule and Trade

4.21 Calabar was (and is) the Efik metropolis. In the 19th century it was also the major port on the coast between Lagos and Douala. By the 1880s Old Calabar and its Efik Houses had established their authority not just over the surrounding area but over all the lands between the Cross River and the Rio del Rey. All these lands were dominated by the Efiks: see *Atlas* Map 13, and, more generally, Chapter 3.

4.22 By this period, the Efiks had evolved into one of Africa's pre-eminent trading peoples. For several generations they had been the chief medium through whom the Europeans had traded with the numerous tribes inhabiting the river-banks and inland parts of the Cross River basin. Their language had become the *lingua franca* of the Old Calabar and Cross River areas, their laws, customs and fashions had been adopted by many of the up-river peoples,[54] and they had a virtual monopoly of trade.

4.23 Efik influence had by such means come to permeate the spectrum of social, economic and cultural life not only in south-eastern Nigeria but far into the western Cameroons, and the offshore islands of what is now Equatorial Guinea.[55] The area subject to the direct rule of the Kings and Chiefs of Old Calabar is shown in the *Atlas* at Map 14. By virtue of the activities of the Houses of Old Calabar in

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[53] Hart *op.cit.* Chapters XI to XIII and p. 107

[54] See Charles Partridge, *Cross River Natives*, p. 32

[55] Ajata Amos, *Focus on South Eastern State of Nigeria*, London 1970, Vol. 1 No. 1

founding settlements of increasing permanence in the previously unsettled Bakassi Peninsula, the dominions of Old Calabar came to include the settlements in Bakassi specifically identified in Chapter 3.

F. European Influence in the Nineteenth Century

4.24 The United Kingdom outlawed the slave trade in 1807, and other nations rapidly followed suit. In its opposition to the slave trade, the United Kingdom attempted in 1807 to blockade the West African coast, but the trade continued at Old Calabar, to a limited extent, until 1841, when British representatives signed anti-slavery treaties with Duke Town and Creek Town.[56] Since British shipping was paramount in the area, the rulers and merchants of the Efik City States were obliged to adapt to the new conditions, which they did primarily by offering palm oil as an alternative to slaves. Extensive plantations lay to the East, in the hinterland of the main Efik settlements in Duke Town and Creek Town, worked by slave labour and owned by the Kings and Chiefs of Old Calabar. The growing communities of Old Calabar came to depend on these plantations for food.

4.25 By 1858 British and German missionaries and trading centres had been established in a wide area of the West African coast, including the area from the Cross River as far East as the towns which are now Victoria and Douala in Cameroon. The European traders had formed a Court of Equity at Douala in 1856 to protect their interests.[57] An agreement was signed in January 1860 between the British Consul Hutchinson and King Eyo Honesty III of Creek Town, to protect the interests of British subjects trading in the area.[58] In May of the same year a similar agreement was signed between Hutchinson and King Archibong II of Duke Town.

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[56] Donald Simmons, *Sketch on the Efik People*

[57] A.J.H Latham: *Old Calabar 1600 - 1891*, Oxford, Clarendon Press, 1973 p. 137

[58] Oku *op.cit.* p. 71

4.26 The mid-nineteenth century saw the emergence on the coast of Efik capitalist enterprises, such as the firm of Henshaw Brothers. Europeans were now permitted to establish settlements ashore, and in 1864 the British West Africa Company was established. This was followed by Miller Brothers in 1868 and the United Africa Company in 1879. For commercial reasons, however, the Efiks remained determined to exclude Europeans from their inland markets. Under no circumstances would they permit Europeans to journey inland.

4.27 In the 1860s and 1870s the economy of Old Calabar deteriorated markedly. The area was still heavily committed to the trade in palm oil and palm kernels, but the boom conditions of the preceding two decades were giving way to the beginnings of a recession. The trade in slaves had finally come to an end. The slaves were now employed internally on palm plantations and food-producing farms. Such production involved far larger numbers of people than had previously been involved in the slave trade.[59]

G. Colonial Activities on the Guinea Coast

4.28 By 1884 the British had for many decades been interested in the West African coast, including the Cameroons. The United Kingdom had, as early as 1833, refused an offer by the indigenes to cede that part of the mainland lying between Bimbia (near present-day Victoria, in Cameroon) and the Rio del Rey. Instead, the British Government from the 1830s onwards entered into a series of treaties with the kings and chiefs in various parts of the Guinea Coast, including the Cameroons. Key British objectives in this period were to encourage the trade in palm oil and ivory, and to end the traffic in slaves. Further information about British treaty-making activity along the Guinea Coast is provided in Chapter 6.

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[59] *Cambridge History of Africa*, Vol. 6 pp. 49 *et seq.*; Oku *op. cit.* pp. 82-84

4.29 In 1845, the first British settlement in Cameroon was established, near Douala on the Cameroon River. The Court of Equity referred to at paragraph 4.25 above was established in 1856 and presided over by the British Consul. In the 1860s, British missionaries established the settlement of Victoria, but that settlement did not enjoy the formal protection of the British Government.

4.30 To the West of the Niger, the British were, by the 1870s, established at Lagos and, from 1874, the Gold Coast. Their traditional colonial rivals were the French, and in this period the British feared French competition much more at Lagos than further East along the coast. However, the threat to British commercial hegemony on the Guinea Coast came increasingly from Germany rather than from France,[60] although Germany was not perceived in the 1870s to have any sustained interest in colonies.

4.31 In August 1879 five local kings in the Cameroons sent a letter to Queen Victoria to say that they had spoken to the British Consul many times about having "an English Government" in the area, but had never had an answer:

> "When we knew about Calabar River, how they have all English laws in their towns, and how they have put away all their superstitions, oh, we shall be very glad to be like Calabar River".[61]

4.32 The British did not take up this idea. In the early 1880s, the Liberal Government under Gladstone continued to turn a deaf ear to West African requests for stronger institutional ties with the United Kingdom. British policy on the Guinea Coast was, however, to change sharply when Germany took Britain by surprise and established a protectorate over Cameroon.

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[60] By 1883 Germany controlled something like half of all West African trade. See Adalbert Owona: *La Naissance du Cameroun 1894-1914* (1996) p. 27: a copy has been lodged with the Court.

[61] Cited in J. Scott Keltie, *The Partition of Africa*, London, 1873, at p. 197

CHAPTER 5

THE HISTORIC TITLE OF THE CITY STATES OF OLD CALABAR TO THE BAKASSI PENINSULA

A. Introduction

5.1 In very general terms, the City States of the Calabar region were, in pre-colonial days, an acephalous federation, the major cities being Duke Town, Creek Town and Old Town (Obutong). In the words of Dr. Kannan K. Nair:

> "The political system of Calabar might be thought of as a federation or conglomeration of loosely-knit towns. Each town was a political unit with a territorial basis, its head having jurisdiction over his own town or house and representing the founding ancestors of his particular family. Each maintained its own administration and had the right to enforce sanction on others. Both these factors point to the fact that each of the towns was recognized to be politically equivalent. The relations between the major towns - Duke Town, Creek Town and Old Town - were in the order of inter-town dealings. Thus, they were in their political relations similar to European nation states in the eighteenth and nineteenth centuries. Political power was ultimately resident in the segments rather than in a central government."[62]

5.2 These City States were the holders of an original or historic title over the cities and their dependencies, and the Bakassi Peninsula was for long a dependency of Old Calabar. It is this historic title which the British Crown acknowledged in treaties with the Kings and Chiefs of Old Calabar and it was this same historic title which subsisted under the umbrella of the Protectorate of Southern Nigeria created in 1906.

5.3 The original title of the Kings and Chiefs of Old Calabar plays a significant role in the process of historical consolidation of title which confirmed Nigeria's title after independence in 1961: see Chapter 10 below.

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[62] K. K. Nair, *Politics and Society in South Eastern Nigeria 1841-1906*, London, 1972, pp. 2-3

5.4 On older maps the estuary of the Cross River is marked as the Old Calabar River. The disposition of the various City States and the relationship with the Bakassi Peninsula can be seen from Map 13 in the *Atlas*.

B. The Political Independence of the City States of Old Calabar

(i) The City States on Authoritative Maps

5.5 The historical record available establishes that the independence of the City States of Old Calabar dates from the late seventeenth century.

5.6 Blaeu's famous atlas of 1662 includes a plate devoted to Guinea, on which "Calbray" is marked. (*Atlas*, Map 16) Other maps of relevance include the following:

(1) Map prepared by N. Bellin, French Royal Hydrographer (1703-72), *Carte du Golfe de Guinée* (n.d.). (*Atlas*, Map 17)

(2) Herman Moll, *Negroland and Guinea* (part of Moll's *Atlas Minor*, London 1729, and later editions). (*Atlas*, Map 18)

(3) Samuel Dunn, *Africa and Its Several Regions*, Laurie and Whittle, 1794 (part of *A New Atlas of the Mundane System*, London 1794). (*Atlas*, Map 19)

(4) Bold, *A Corrected Draught of Old Calabar River from the Breakers to Creek Town, circa* 1822. (*Atlas*, Map 20)

(5) John Bartholomew, *Descriptive Hand Atlas of the World*, A. Fullarton & Co., London and Edinburgh, 1871, Plate 19, *Africa* (Duke Town is marked). (*Atlas*, Map 21)

(6) *The Church Missionary Atlas*, 6th ed., 1879, p.36 : The Niger (Creek Town, Old Town and Duke Town marked). (*Atlas*, Map 22)

(7) *Map of the Cross River (Old Calabar)*, Proc. R.G.S., Vol.12 (1888). (*Atlas*, Map 13)

(ii) Other Expert Opinion Evidence

5.7 Historical atlases of African history indicate Calabar as a long-established polity. It appears on the relevant graphic in Fage's *Atlas of African History*, which is entitled "Africa as known to Europeans in the Mid-XVIIIth Century" (*Atlas*, Map 23). Similarly, the graphic showing the nineteenth century picture includes "Old Calabar" (*Atlas*, Map 24). It is clear that the author considers that Old Calabar existed in the seventeenth century (*Atlas*, Map 25).

5.8 The maps appearing in the *Historical Atlas of Africa* by Ajayi and Crowder are carefully colour-coded and show "African polities". "Calabar" is indicated as an African polity on the maps for 1850 and 1884 (*Atlas*, Map 26).

5.9 The seventeenth century origins of Old Calabar are confirmed by local historians and genealogists. A helpful source, out of many, is the account of *The Kings and Chiefs of Old Calabar (1785-1925)* by Chief (Mrs.) Ekei Essien Oku, Calabar, 1989.[63] The seventeenth century origin is also indicated by Kannan K. Nair, *Politics and Society in South Eastern Nigeria* (paragraph 5.1 above); and A.K. Hart, *Report of the Enquiry into the Obongship of Calabar*.[64] For a dating at the

[63] Referred to in Chapter 4 above.

[64] See paragraph 4.12 above.

end of the fifteenth century, see Chief Eyo Okon Akak, *Efiks of Old Calabar*, Vol.IV, Calabar, 1983.[65]

(iii) The Evidence of Travellers

5.10 The region of Old Calabar and its City States was described by a series of travellers in the course of the nineteenth century. The reports of such travellers which became matters of record include the following:[66]

C.H. Coulthurst, *Journal of the Royal Geographical Society*, 1832, Vol. 2, pp.305-10.

R.K. Oldfield, *Journal of the Royal Geographical Society*, 1837, Vol. 7, pp.195-8.

Captain Becroft and J.B. King, *Journal of the Royal Geographical Society*, 1844, Vol. 14, pp.260-83.

Captain James Broom Walker, *Journal of the Royal Geographical Society*, 1876, Vol. 20, pp.224-30.

Captain James Broom Walker, *Journal of the Anthropological Institute of Great Britain and Ireland*, 1877, Vol. 6, pp.119-24.

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[65] Copies of these books have been lodged with the Court.

[66] Copies of each of these reports have been bound together and lodged with the Court.

C. The Recognition of the Independence of the City States of Old Calabar in British Treaty Practice

5.11 The political and legal personality of the Kings and Chiefs of Old Calabar were recognised in the treaty-making of the British Crown. Thus, in the period 1823 to 1884 no fewer than seventeen treaties were made between the British Government and the King and Chiefs of Old Calabar.

5.12 The *Index of British Treaties* 1101-1968, published in three volumes in 1970, lists the following instruments:[67]

(1) Engagement of King of CALIBA (cession of Lemain Island), signed at Lemain 14 April 1823,[68] (NC-M 1).

(2) Engagement of the King of CALEBA permitting British subjects to cut and heave stones and to make quarries on the mainland of Yani. Signed off McCarthy's Island 7 May 1827,[69] (NC-M 2).

(3) Treaty with King Eyamba. Signed at Old Calabar River 6 December 1841. Parties: Great Britain and CALABAR,[70] (NC-M 3).

(4) Agreement signed by King Archibong of CALEBAR. Signed at Duke Town, Calebar 28 May 1849,[71] (NC-M 4).

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[67] Clive Parry and Charity Hopkins (eds.), *An Index of British Treaties 1101-1968*, 3 vols., H.M.S.O., 1970; Vol. 1, p.92. Copies of these Treaties can be found in the Treaty Volume of Annexes, NC-M 1 to NC-M 14 and NC-M 21 to NC-M 23.

[68] 63 BSP 1106; 14 HCT 942

[69] 49 BSP 1124; 14 HCT 960

[70] 40 BSP 908; 8 HCT 978

[71] 38 BSP 602; 8 HCT 58; 14 Martens (III) 457

(5) Agreement between the Chiefs of OLD CALABAR and the delegates of slaves of the QUA PLANTATIONS. Signed at Duke's Town 15 February 1851. Parties: Great Britain, Old Calabar, slaves of Qua Plantations,[72] (NC-M 5).

(6) Treaty with the Chiefs of Old Town, OLD CALABAR for the abolition of human sacrifice, the use of poison-nut and the practice of killing twin children. Signed at Old Town 21 January 1856,[73] (NC-M 6).

(7) Agreement with Duke Ephraim, King of Duke Town, OLD CALABAR. Signed 17 June 1856,[74] (NC-M 7).

(8) Agreement between the British supercargoes and the native traders of OLD CALABAR. Signed at Old Calabar River 19 September 1856,[75] (NC-M 8).

(9) Agreement with the Third Chief of Creek Town, OLD CALABAR, relative to the appointment of a British consul to reside at Fernando Po. Signed 16 January 1860,[76] (NC-M 9).

(10) Agreement with the Chiefs of Duke Town, OLD CALABAR, relative to the appointment of a British consul to reside at Fernando Po. Signed at Duke Town 3 May 1860,[77] (NC-M 10).

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[72] 41 BSP 727; 9 HCT 23
[73] 47 BSP 555; 10 HCT 33
[74] 48 BSP 906; 10 HCT 685
[75] 47 BSP 882; 10 HCT 686
[76] 14 HCT 966
[77] 14 HCT 966

(11) Agreement with the King and Chiefs of Creek Town, OLD CALABAR for the abolition of substitutionary punishments. Signed 18 January 1861,[78] (NC-M 11).

(12) Agreement between the British and other supercargoes and the native traders of OLD CALABAR. Signed at Old Calabar River 5 May 1862,[79] (NC-M 12).

(13) Agreement with the King and Chiefs of OLD CALABAR (Duke Town) for the abolition of substitutionary punishments. Signed at Old Calabar 26 April 1871,[80] (NC-M 13).

(14) Treaty with the King and Chiefs of Creek Town, OLD CALABAR (recognition of King, and ratification of former treaties). Signed at Old Calabar River 27 February 1874,[81] (NC-M 14).

(15) Preliminary Treaty with Kings and Chiefs of Creek Town, Old Calabar River. Signed 23 July 1884,[82] (NC-M 21).

(16) Preliminary Treaty with Kings and Chiefs of Duke Town, OLD CALABAR. Signed at Old Calabar River 24 July 1884,[83] (NC-M 22).

(17) Treaty with the Kings and Chiefs of OLD CALABAR. Signed at Old Calabar River 10 September 1884. Accessions: Efut - 8 September 1884; Idommbi - 9 September 1884, Tom Shot - 11 September 1884,[84] (NC-M 23).

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[78] 55 BSP 182; 11 HCT 31
[79] 55 BSP 186; 12 HCT 94
[80] 61 BSP 202; 13 HCT 25
[81] 65 BSP 1185; 14 HCT 24
[82] 17 HCT 134
[83] 17 HCT 136
[84] 17 HCT 154

5.13 The last items on the list are important. The Kings and Chiefs of Old Calabar concluded such treaties as full treaty partners and did not, as a result of the treaty as such, suffer any diminution of legal or political status. The legal consequences of the treaties of protection will be examined in Chapter 6, below.

D. Recognition in the Form of the Appointment of Consuls

5.14 The practice of treaty-making was accompanied by the appointment of consular officers. In 1849 John Beecroft was appointed as Her Majesty's Consul to the several Chiefs on the coast of Africa, including Old Calabar : see the Commission and Instructions dated 30 June 1849 (NC-M 67). The appointment was gazetted on 27 November 1849:

> "The Queen has been pleased to appoint John Beecroft, Esq., to be Her Majesty's Consul in the Territories on the coast of Africa lying between Cape St. Paul and Cape St. John."[85]

E. The Bakassi Peninsula as a Dependency of Old Calabar

5.15 The status of Old Calabar and its component City States as independent entities with international legal personality is of particular significance in these proceedings. The original title to the Bakassi Peninsula vested in Old Calabar and, in subsequent political changes, this historic and original title has provided the benchmark of a title founded upon regional forms of legitimacy.

5.16 There is cogent evidence to the effect that, at all material times, the Bakassi Peninsula was a dependency of Old Calabar. The important contemporary record

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[85] 1849 *London Gazette* 3584 (NC-M 68)

of the 18th century Efik Chief, Antera Duke, gives an account of his visit to Aqua Bakassey Creek, which is clearly within his own territory.[86]

5.17 The diary entry reads as follows (in material part):

> "At 5 a.m. in Aqua Bakassey Creek; it was a fine morning and I arrived at Aqua Bakassey corral at 1 o'clock. I found Archibong Duke and went alongside his canoe. I took a bottle of beer to drink with him and we called first at New Town and stayed at the landing and then went to town at 3 o'clock. We walked up to the palaver house to put the Grand Ekpe in the house and played all night."

5.18 The *Journal of the Royal Geographical Society*, in 1872, printed a "Note on the Old Calabar and Cross Rivers" by Captain J.B. Walker. This contains the following passage:

> "The Qua River has its rise in the Qua Mountains ... The small tribes of either bank - Efiat (Tom Shots), Usahadet (Bakasi), Iduä (Ekri Tobacco), Adön - are dependencies of Calabar."[87]

5.19 The existence of the sovereign authority of Old Calabar in the Bakassi Peninsula is confirmed by the studies of E.O. Efiong-Fuller, a professional geographer teaching at the University of Calabar: see, in particular, his work, *The Story of Bakassi*, Calabar, 1996.[88]

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[86] See Daryll Forde (ed.), *Efik Traders of Old Calabar*, London, 1956, p.27; *The Diary (1785-8) of Antera Duke*, at p.43 (entry of 8 February 1786). A copy of this book has been lodged with the Court.

[87] *Journal of the Royal Geographical Society*, 1872, Vol.16, pp.135-7 at p.136: a copy of the article is included in the bundle of Royal Geographical Society Journals lodged with the Court.

[88] A copy of this book has been lodged with the Court.

F. Conclusion

5.20 The existence of the City States of Old Calabar constitutes the foundation of a chain of title which plays a significant role in the present proceedings. For several hundred years Old Calabar had had both a regional legitimacy and an externally recognised legal personality. In the Chapters below the subsequent role of the original title of Old Calabar to Bakassi will be developed further.

CHAPTER 6

THE PROTECTORATES

A. Introductory Summary of Chapters 6 to 9

6.1 In this Chapter and the three Chapters which follow, Nigeria will develop the following legal argument:

(1) in 1884 Germany established a Protectorate over certain areas of what is now Cameroon (Chapter 6);

(2) in the neighbouring area of Old Calabar the Kings and Chiefs at that time, and for many years previously, possessed externally recognised legal personality (Chapter 6);

(3) in 1884 Great Britain by Treaty established a Protectorate over the Kings and Chiefs of Old Calabar (Chapter 6);

(4) under that Protectorate Treaty Great Britain acquired only certain limited powers, and in particular did not acquire sovereignty over the territories of those Kings and Chiefs (Chapter 6);

(5) Great Britain and Germany, as Protecting Powers over neighbouring territories, concluded various agreements in and after 1885 to delimit their respective spheres of interest (Chapter 7);

(6) Great Britain and Germany in 1913 concluded a Treaty which purported to transfer the Bakassi Peninsula to Germany (Chapter 8);

(7) the Bakassi Peninsula did not belong to Great Britain, which therefore could not transfer it to another State, and the relevant provisions of the Treaty were accordingly ineffective to bring about that transfer (Chapter 8);

(8) the 1913 Treaty accordingly did not alter sovereignty over Bakassi, the original title to which survived the Treaty, maintaining the *status quo ante* (Chapter 8);

(9) no transfer of sovereignty resulted from the subsequent history of the Bakassi Peninsula up to the Independence of Nigeria in 1960, during which period that area continued to be under the authority of the Kings and Chiefs of Old Calabar and of the Nigerian regional and local government system (Chapter 9).

B. Establishment of the German Protectorate in 1884

6.2 By the early 1880s British, German and French rivalry in West Africa had acquired considerable momentum (see Chapter 4). In particular, Germany was by then seen as the principal commercial threat to British interests in the area, and from the early 1880s began to take a great interest in acquiring territorial interests in Africa. The German trading house of Wörmann made a purely commercial agreement with the Cameroonian King Akwa on 30 January 1883.

6.3 In April 1884, German official action on the West African coast was stepped up. Dr Nachtigal, then German Consul at Tunis, was appointed Imperial Commissioner for West Africa. On 1 June 1884 he sailed for West Africa aboard a German vessel, the *Möwe*. On 11 July 1884 the German Consul at Gabon, Herr Schulze, who was also the agent for the Wörmann trading house, signed a treaty at Bimbia with the local chiefs, under which they made grants of their territory to the Wörmann concern.

6.4 The *Möwe* arrived at the Cameroon River that evening, and Nachtigal and Schulze met. A further agreement was quickly signed (on 12 July 1884) between the German traders and King Deido. On the same day, the *Möwe* steamed up the

Cameroon River to Bell Town and Akwa Town, where an agreement was signed the same day by Kings Akwa and Bell (the two local chiefs of Douala), and the representative of the German trading houses, Wörmann and Jantzen & Thormählen (NC-M 19). Under that agreement, subject to certain reservations, Kings Akwa and Bell assigned their rights of sovereignty, legislation and administration over their territory to the two trading companies. The territory of the two Kings was precisely identified as "the country called Cameroun situated along the River Cameroon, between the River Bimbia in the North and Kwakwa in the South, and up to 4° 10' North latitude". This did not cover the whole of Cameroon, but in effect only the area inhabited by the people of Douala, which was the only area subject to the authority of the two Kings: the area did not extend North beyond the parallel 4° 10', nor beyond the River Bimbia, the mouth of which is approximately at 3° 58'N (just to the North of the estuary of the Cameroon River). Thus, the whole of the area lay well to the South of the mouth of the Rio del Rey, which is at approximately 4°30'N. The relevant features are shown on Map 27 in the *Atlas*.

6.5 The next day, on 13 July 1884, the two German companies concluded an agreement with the Imperial Commissioner (NC-M 20).[89] By that agreement, the companies transferred their rights to the German Empire, and Germany agreed to extend its protection to the acquisitions made by the two companies and to extend its suzerainty over the territory of Cameroon. The German flag was hoisted soon afterwards. German protection over the territories of Kings Akwa and Bell was therefore established by somewhat indirect means. Formally, the German trading houses acquired certain rights from the two Kings, and then transferred those rights to Germany. Germany in return undertook to protect the rights acquired by the traders and to extend its suzerainty over the territory of Cameroon (which was a somewhat more extensive term than the strictly limited territorial grant made to the two companies: see paragraph 6.4 above).

[89] The text of this agreement and the agreement of 12 July 1884 (above) are taken from *La Naissance du Cameroun 1884-1914*, Paris 1996, by Adalbert Owona: a copy has been lodged with the Court.

6.6 On 19 July 1884 the British Consul, Hewett, arrived in the area. Next day he registered a formal protest with Nachtigal at German activities in an area whose kings and chiefs had already formed ties with Great Britain. However, Germany paid little attention and moved rapidly to establish its authority in Cameroon. On 15 October 1884, Germany notified the major European powers and the USA that Germany had established a Protectorate in *Kamerun* (NC-M 18).

6.7 These events established a significant part of the Cameroon territories as what in German law was known by the term *Schutzgebiet*, the formal meaning of which connoted a protected area, but the significance of which was, in German law, close to that of a colony. By entering into an arrangement with the local Cameroon Rulers resulting in a significant part of Cameroon (Kamerun) becoming a *Schutzgebiet*, Germany acquired jurisdiction in the Rulers' territories. This opened the way for their effective occupation by Germany. In German law at the end of the nineteenth century *Schutzgebiete* were fully under the authority of Germany and, in relation to foreign countries, constituted German territory, although they were not part of the Imperial territory in the sense of the German constitution and legislation. This qualification upon the quality of *Schutzgebiete* as fully German territory justified the reference to them, in English, as Protectorates, although their actual status involved a much closer integration into the Imperial *Reich* than was the equivalent case with, for example, British Protectorates.

6.8 On 23 January 1885 the British Lord Chancellor (Lord Selborne), writing to Sir Julian Pauncefote, Permanent Under-Secretary of State at the Foreign Office, showed his understanding of the German (and French) position regarding their territories in Africa, and noted that:

> "... there is no substantial obstacle, in their case, to their treating the distinction between Protectorate and annexation as purely nominal; so that by Protectorate they mean (as Sir Travers Twiss said) annexation under another name." (NC-M 69)

Nevertheless, "Protectorate" was, at least initially, the term used to describe the nature of Germany's interest in Cameroon, as is apparent from the terms in which notice was given that a British Vice-Consul had been appointed

> "for the Territories under the Protectorate of Germany, in the Districts of Cameroons, bounded on the west by the Rio del Rey."[90] (NC-M 70)

However, by the time of the conclusion of the Anglo-German Agreement of 14 April 1893, it was considered appropriate to refer to the Rio del Rey as establishing the boundary between the Oil Rivers Protectorate and "the Colony of the Cameroons" (Article II).

6.9 Five particular points are to be noted about this German protectorate, as announced in the formal communication to certain European States and the USA in October 1884:

(1) The protectorate had a two-fold basis - "Treaties which have been in part concluded by Dr Nachtigal, the Consul-General dispatched to West Africa, with independent Chiefs" and "partly in virtue of applications for protection made by Imperial [i.e. German] subjects, who have acquired certain tracts by covenants with independent Chiefs".

(2) The language clearly distinguished between "Treaties" made by the representative of Germany and "covenants" made by German subjects: i.e. there was no suggestion that the latter agreements had any international status.

(3) Both the Treaties and the covenants were made with "independent" Chiefs.

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[90] *London Gazette*, 5 June 1885

(4) The language was that of protection, not acquisition of sovereignty: "has taken certain districts of this coast under its protection", and "have been placed under the protection of His Majesty the Emperor".

(5) The extent of the territory taken under German protection was, so far as presently relevant, simply stated to be "Cameroons". The terms of the agreement of 12 July 1884 with Kings Bell and Akwa (above, paragraph 6.4) defined the area in terms which made it clear that it did not include all of present-day Cameroon.

6.10 It may also be noted that, notwithstanding the establishment of the German Protectorate over Cameroon, the British Consul continued for a short time to convoke and preside over the Court of Equity at Douala referred to in paragraphs 4.25 and 4.29 above - a Court which the British had established in Douala in the late 1850s by agreement between European traders and local rulers. Its function was to resolve disputes between European traders (both British and German) and the indigenous people: in effect, the German traders had accepted this British protection of their interests. In July 1884 Dr Nachtigal sought to undermine the Court of Equity, but the British Consul (Hewett) and British traders and missionaries refused to accept the virtual abolition of an institution set up by agreement. Eventually the German authorities in Cameroon abolished the Court of Equity by unilateral decision, paying no attention to British protests. The incident nevertheless demonstrates that British influence originally extended into what is now Cameroon, and did not end immediately upon the establishment by Germany of a Protectorate over certain Cameroon territories.

6.11 The nature of Germany's 1884 Protectorate over Cameroons fell to be examined by the Anglo-German Mixed Arbitral Tribunal established after the First World War: see *Niger Company Ltd. v. German State*.[91] Before the war, a bill of exchange

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[91] (1923) Rec. T.A.M., Vol. III, p. 232

had been drawn by the Resident of the German Protectorate of Kamerun upon the *Kolonialhauptkasse* (Principal Colonial Pay Office) at Berlin. The bill was in favour of the Niger Company Ltd. The bill was not received by the company until after the outbreak of war and could not therefore be sent to Berlin for payment: the company continued to hold the bill. After the conclusion of the Treaty of Versailles the company sought payment from the German Government through the Clearing Office established under that Treaty. Germany contested the claim, *inter alia* on the ground that Kamerun possessed an independent legal personality, entirely separate from the German Imperial Administration, and that, as it had ceased to be German by virtue of Article 119 of the Treaty of Versailles, its debts did not form part of the liabilities of Germany. The Mixed Arbitral Tribunal in effect upheld the German Government's contentions. It said:

> "The administrative tutelage exercised for the Protectorate and exemplified by the necessity for the budget of the Protectorate to be settled by the German Empire at Berlin does not exclude the separate existence of the Protectorate as a legal entity in private law, and with regard to commercial matters. This separate existence is exemplified, *inter alia*, by the German law of March 30th, 1892 under Section V of which it is provided that the pecuniary liabilities arising from the administration of the Protectorate are to be covered only by the assets of the Protectorate. This excludes any debt or liability of the Empire with regard to transactions entered into by the officials of the Protectorate".[92]

C. Establishment of the British Protectorate in 1884

(i) General

6.12 In the 1880s, Britain and Germany sought to establish and consolidate their respective spheres of influence in the area, and in particular along the coastal

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[92] *ibid.*, at p. 236

stretches of what are today Nigeria and Cameroon. To that end, numerous treaties were entered into between these colonial powers and native chiefs. While generally these treaties are often referred to as "treaties of protection" or "protectorate treaties", their true legal significance can only be established by a careful reading of their terms. In particular, it is important to distinguish between the notion of protectorate as reflected in the internal law of the State exercising the protectorate (e.g. the German concept of *Schutzgebiet* (above, paragraph 6.7) and the British concept of a "protectorate" (below, paragraph 6.72 *et seq.*)), and the equivalent notion in international law governed by the terms of the treaty by which the protectorate was established (below, paragraph 6.38 *et seq.*).

6.13 For the United Kingdom, a series of such treaties was concluded between 19 July and 10 September 1884, covering the stretch of coast from Old Calabar in the West to Victoria, some 60 miles along the coast to the East. These treaties were concluded by or under the authority of the British Consul, Edward Hewett. He reported on these various treaties, copies of which he sent back to London, in his despatch of 24 September 1884 to Lord Granville.[93]

6.14 In relation to the Bakassi Peninsula, the directly relevant treaties are those concluded with the Kings and Chiefs of Old Calabar in July and September 1884. They form enclosures 2 and 4 to Consul Hewett's despatch of 24 September 1884. For convenience they are reproduced separately as NC-M 72.

(ii) International personality of pre-1884 Old Calabar and its component City States

6.15 Before (and after) 1884 an effective system of government existed in the region of Old Calabar, based on the acknowledged role of the traditional rulers.

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[93] The texts of the despatch, and of 19 enclosures, are at NC-M 71.

6.16 Generally, pre-colonial Africa did not consist of the type of European nation states existing within fixed borders. Rather, there were a number of empires, emirates and kingdoms in many areas of the Continent, each of which was a government in its own right with sovereign powers. This was the case in Nigeria. In the North there were the Sultan of Sokoto and Emirs (such as the Fulani-Kanuri Empires or Emirates) as well as various other potentates of the middle and lower Niger, with sovereign powers. In the Southern areas there were the Yorubaland and Benin Empires (where the Obas reigned) as well as, along the coastal areas, what were in effect a number of City States. These constituted the indigenous governmental system in pre-colonial Nigeria. The Sultan, Emirs, Obas, Kings and Chiefs of Old Calabar and other traditional rulers were territorial rulers. The European imperial powers used the concept of "protectorate" as the legal basis for much of their activity in Africa, acquiring protectorates on the basis of treaties of protection between themselves and the Kings and Chiefs of the protected lands. This system effectively met the European Powers' needs for a degree of control in "their" protectorates which excluded that of their rivals, while at the same time leaving in place the local authority of the Kings and Chiefs within their territories.

6.17 The traditional ruling class was a recognised feature of the pre-colonial Nigerian reality. The exact number of these pre-colonial Empires, Kingdoms, Caliphates and autonomous communities cannot easily be determined, and varied from period to period. Furthermore, the size, character and form of these traditional political units were not uniform. Some were as large and populous as some African States today, while the influence and activities of others were limited. The Kings and Chiefs of Old Calabar, however, constituted a very powerful polity wielding considerable influence and authority, extending even to Victoria in Cameroon. During the pre-colonial period, these traditional authorities exercised complete sovereign power over their people and territory. In some pre-colonial societies, political power was centralised in the office of the traditional ruler while in others it was dispersed to a variety of smaller units.

6.18 It is important to emphasise that during the pre-colonial period an effective system of government of the above kind was in operation in the region. This was why, when European Powers and their agents (including public and private commercial enterprises) sought to establish themselves on the shores of West Africa, they negotiated and entered into treaties of friendship, protection and commerce with the relevant Traditional Rulers. Along the coast of Nigeria such treaties were entered into with the City States, and similar treaties were entered into with the Obas in the Yorubaland and Benin Empires. In Northern Nigeria by 1888 some 235 treaties had been entered into.

6.19 The International Court of Justice has accepted that where territories are inhabited by tribes or peoples having a social and political organization, those territories are not *terra nullius* but are rather territories over which the local rulers have authority, and any acquisition of rights over or in relation to those territories must derive from agreements with those local rulers: see *Advisory Opinion on Western Sahara*.[94]

6.20 Chapter 5 of this *Counter-Memorial* has noted the extensive treaty-making powers exercised by the Kings and Chiefs of Old Calabar: this power extended to the conclusion of the Treaty of Protection of 10 September 1884 (NC-M 23). As has been said:

> "it does seem that the conclusion of treaties of protection constitutes a recognition of personality both of the ruler and of the people concerned and therefore eliminates the possibility of the area in question being considered a *res nullius*":[95]

6.21 The international rights and obligations which the local rulers in West Africa were generally regarded by European Powers as possessing included sovereignty over territory. Thus the Agreement of 6 September 1878 between the British Consul (on behalf of Her Majesty's Government) and King Archibong III (NC-M 15) and his

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[94] ICJ Reports 1975, at p. 39, para. 80

[95] Shaw, *Title to Territory in Africa: International Legal Issues* (1986), p. 37

Chiefs concerning trade and commerce and certain other matters asserted, in the preamble,

> "that the King will cause at once to be made known throughout all the *land where he claims sovereignty*, either by the beating of Egbo Drum or other effective method, the following articles ..." (emphasis added).

6.22 In the particular case of Old Calabar, Article I of the Treaty of Protection of 10 September 1884 (NC-M 23) expressly prescribed the scope of the British protection being granted by the Treaty by reference to "the territory under their [i.e. the Kings' and Chiefs'] authority and jurisdiction", thus clearly acknowledging their possession of territorial rights. Moreover, the authority of the Kings and Chiefs over their territories was demonstrated by their rejection in the draft Treaty of Protection presented to them of an Article VI which provided that:

> "the subjects and citizens of all countries may freely carry on trade in *every part of the territories* of the Kings and Chiefs parties hereto, and may have houses and factories therein" (emphasis added).

6.23 Although the Kings and Chiefs signed the Treaty, they expressly did not agree to that Article. Their success in protecting their inland areas from foreign commercial encroachment shows that they had - and were recognised by European traders and their governments as having - effective territorial control in those areas, equivalent to that which today amounts to territorial sovereignty.

6.24 In considering the status of local Rulers in West Africa over a century ago it is important not to apply terms and concepts which, while current today, would be anachronistic if applied to the circumstances of those times in that region. Those circumstances must be evaluated in the light of the law as it stood at the time - the

principle of the "inter-temporal law" enunciated in the *Island of Palmas Case,*[96] where the Arbitrator (Huber) said that:

> "... a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled".

6.25 The principle has been acted upon by the International Court in several cases. Writing in 1953[97] Sir Gerald Fitzmaurice was able to say (dating the full acceptance of the rule from its enunciation in the *Island of Palmas Case*):

> "It can now be regarded as an established principle of international law that in such cases the situation in question must be appraised, and the treaty interpreted, in the light of the rules of international law as they existed at the time, and not as they exist today"[98]

6.26 Considered in that light, it is clear from what has been said in Chapter 5 and preceding paragraphs in this Chapter that the local Rulers in West Africa were generally regarded by the European powers as having rights and obligations in international law, including treaty-making powers and sovereignty over territory.

(iii) The Treaties of 23-24 July and 10 September 1884 between Great Britain and Old Calabar and its Component City States

6.27 By the end of the eighteenth century, three major trading towns had emerged in the area of the Old Calabar River - Creek Town, Duke Town (which became known as Old Calabar, and later the present day Calabar), and Obutong (also known as Old Town) - each with its own Ruler: other trading towns, such as Henshaw Town and King Qua Town, also existed at that time (*Atlas,* Map 13).

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[96] 1928 2 R.I.A.A. 829 at p. 845

[97] *BYBIL*, Vol. 30 (1953), p. 1

[98] *Collected Papers* (1986), p. 135

6.28 The British Consul (Hewett) negotiated a number of treaties with local rulers throughout the region, including those with Old Calabar and its component entities. These treaties, it should be remarked, were not drafted on the spot by the British Consul during the course of his negotiations with local rulers. They were based on drafts which had been carefully prepared in London, and with which the Consul had been provided to use as "model" drafts in his negotiations: see below, paragraphs 6.49 - 6.51.

6.29 These negotiations were far from a formality. Thus the refusal of the Kings and Chiefs of Old Calabar to accept Article VI of the "model" draft has already been noted (paragraph 6.23). The British Consul's explanations of the difficulties he encountered in negotiating the Protection Treaties (below, paragraph 6.30), and manuscript amendments written in to the printed "model" draft which was the basis for British discussions with the local Kings and Chiefs, show that there were real negotiations with independent local rulers negotiating at arm's length even with so strong a European power as Great Britain was at the time. And where they were not sure what they were being asked to agree to, they did not hesitate to demand explanations and reassurance, as in July 1884 when King Ja Ja of Opobo asked the British Consul about the meaning of "protection" as that term was used in the draft treaty (see paragraph 6.59 below).

6.30 Indeed, the negotiating difficulties faced by the British Consul (Hewett) were such that with some local rulers he had to take things in stages, first concluding preliminary treaties, and later returning to conclude full treaties of protection. Writing of the difficulty which he had in making treaties with the Kings and Chiefs in his district, the British Consul continued:

> "I do not despair of obtaining their assent to all the Articles which appear in the printed form supplied to me by your Lordship's direction, but it requires so much time to explain and argue out, and for the Kings and Chiefs to consider among themselves the several points, that I have been obliged to content myself in most cases with

> what I have called a Preliminary Treaty. This embraces only Articles I, II, and IX of the printed form, which appeared to be of the first importance. I intend revisiting by and by the places where these Preliminary Treaties have been signed, and making other Treaties to include them and as many more of the Articles of the printed form, as I can:" (Despatch of 30 July 1884 to the Secretary of State for Foreign Affairs,[99] NC-M 73)

6.31 The first of the Old Calabar Protectorate Treaties to be concluded by the British Consul was the Preliminary Treaty with the Kings and Chiefs of Creek Town, Old Calabar River, signed on 23 July 1884 (NC-M 21). It was concluded between, on the one hand, the Kings and Chiefs of Creek Town, Old Calabar River, and, on the other, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, &c, represented by Lieutenant Moore, the Commander of HMS *Goshawk*. It states that the parties, "being desirous of maintaining and strengthening the relations of peace and friendship which have so long existed between them", "have agreed upon and concluded the following Articles". There follow only two Articles of substance (Article III simply stipulates that the Treaty is to come into operation from the date of its signature). Article I records that there had been a "request of the Kings, Chiefs, and people of Creek Town, Old Calabar River" and that Her Majesty the Queen "in compliance with the request ... hereby undertakes to extend to them, and the territory under their authority and jurisdiction, her gracious favour and protection". By Article II the Kings and Chiefs agreed to refrain from entering into any correspondence, Agreement or treaty with any foreign nation of Power, except with the knowledge and sanction of the British Government. A similar Preliminary Treaty was concluded the next day by the British Consul (Hewett) on behalf of Her Majesty with King Duke IV of Duke Town, "in compliance with the wish of the Kings, Chiefs and people" (NC-M 22).

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[99] F.O. Confidential Print 5021, pp. 27-8

6.32 The second, and final, treaty in the present context was the Treaty of Protection with the Kings and Chiefs of Old Calabar, concluded on 10 September 1884 (NC-M 23). Again the parties were the British Queen (represented by the British Consul, Hewett) and the Kings and Chiefs of Old Calabar, apparently a compendious name for the various kings and chiefs in the area of the Calabar River. The purpose of the Treaty was the same as that of the Preliminary Treaty (NC-M 21) signed nearly two months earlier, and the first two Articles, and the final "entry into operation" Article, were in substance identical with those of that earlier Treaty. The September Treaty, however, contained six additional Articles. These concerned the reservation of civil and criminal jurisdiction over British subjects to British authorities (Article III), settlement of disputes (Article IV), the obligations of the Kings and Chiefs to assist the British Consular authorities, and to act on their advice on a range of specified matters (Article V), freedom of trade in the territories of the Kings and Chiefs (Article VI - but this provision was not agreed by the Kings and Chiefs: see above, paragraphs 6.22-6.23), religious freedom (Article VII), and shipwrecks (Article VIII). This Treaty of 10 September 1884 did not say anything regarding its relationship with the Preliminary Treaties concluded two months earlier. It is probably implicit that the Preliminary Treaties were superseded by the later Treaty, given that Creek Town and Duke Town were parties and that their two substantive Articles were repeated *verbatim* in the later Treaty, which went on to add a series of additional Articles. Hewett, in reporting the conclusion of the series of West African treaties concluded between July and September 1884 (NC-M 71), referred to Old Calabar having 'signed the full Treaty', thus indicating that the Preliminary Treaties were just a first step, pending the conclusion of a fuller treaty in due course.

6.33 The Treaty of 10 September 1884 was concluded with the Kings and Chiefs of Old Calabar. There were, in addition, a number of Kings and Chiefs in neighbouring areas who were subject to the authority of the Kings and Chiefs of Old Calabar, and who therefore could not themselves become direct parties to the Treaty of 10 September 1884. In order to ensure that they too were brought within the scope of

that Treaty, each of them made a Declaration, in substantially identical terms, stating that they "are subject to the authority and jurisdiction of the Kings and Chiefs of Old Calabar", that they "cannot, therefore, make any Treaty with a foreign Power for ourselves", but that "any Treaty the said Kings and Chiefs of Old Calabar have made, or may hereafter make, is, and will be, binding on us". Such Declarations were made on, respectively, 11, 8 and 9 September 1884 by the King and Chiefs of Tom Shot, the King and Chiefs of Efut, and the King and Chiefs of Idömmbi (texts of the Declarations are set out in NC-M 23). In reporting these Declarations to Lord Granville (who at the time was Secretary of State for Foreign Affairs), together with the text of the 1884 Treaty itself, Hewett referred to them in the following terms: "The Chiefs of Tom Shot country, *of Efut, the country about the Rio del Rey*, and of Idombi, the country about the River Rumby, made declarations that they were subject to Old Calabar" (emphasis supplied). It will be noted that the River Rumby is a river well to the East of Bakassi. Thus clearly, quite apart from the direct impact of the Treaty upon Bakassi by virtue of Bakassi being within the domains of the Kings and Chiefs of Old Calabar, the Treaty also, by virtue of the Declaration of the King and Chiefs of Efut, covered the Efut country "about the Rio del Rey" (which waterway, of course, is on the *eastern* side of the Bakassi peninsula), as well as territory even further to the East.

6.34 As a result of the three Declarations, therefore, the Treaty of 10 September 1884 applied to the territories of the King and Chiefs of Old Calabar, including, as territories under their "authority and jurisdiction", the territories of the Kings and Chiefs of Tom Shot, Efut, and Idömmbi. The general area of these territories is indicated on Map 28 in the *Atlas*.

6.35 Contemporaneous evidence of the extent of Old Calabar, and in particular its inclusion of the Bakassi Peninsula, is available in the reports of the British Consul (Hewett) in September 1884, and of the later Consul (Johnston) in 1890. In a memorandum sent with his despatch of 27 September 1884 to the Secretary of State for Foreign Affairs, Hewett included the following passage:

"Old Calabar:- This country with its dependencies extends from Tom Shots (which lies immediately to the eastward of Qua Ibo) to the River Rumby (on the west of Cameroon Mountains), both inclusive."[100] (NC-M 74)

6.36 In a letter to the Foreign Office dated 23 October 1890, Johnston stated:

"Originally [i.e. in 1884, when the Protection treaties were concluded] the rule of the Old Calabar Chiefs extended far beyond the Akpayafé River to the very base of the Cameroons, but the Calabar race (the Efik people) and language only went as far east as the right bank of the Ndian River.

...

The trade and rule of the Old Calabar Chiefs extended, in 1887, considerably further to the east than the Ndian River, as did the scope of our Treaties with Chief Yellow Duke and others, but as the Ndian was the most important affluent of the Rio del Rey estuary, and about midway between the extreme eastern and western feeders of that inlet, I drew the true boundary between Calabar and Cameroons at the Ndian, and advised the Calabar Chiefs to content themselves with that limit.

...

The left or eastern bank of the Akpayafé and the land between that river and the Ndian is under the rule of Asibon or Archibong Edem III, a big Chief of Old Calabar, who is the legitimate heir to the Throne of Old Calabar ...

At my advice the Old Calabar Chiefs retired from the occupation of districts east of the Ndian, and withdrew their claims for damages against the German Government for the really undeserved destruction of their settlements and the disposal of their followers. To yield over more of their territory, and *this time their real, undoubted territory* to the Germans, would create, firstly, a very angry feeling in Old Calabar; and, secondly, a German party among the Efik Chiefs."[101] (NC-M 75)

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[100] F.O. Confidential Print No. 5033, pp. 79-80

[101] F.O. Confidential Print No. 6146, p. 122: emphasis added

It is apparent that Bakassi was not peripheral to the domains of the Kings and Chiefs of Old Calabar, but was part of their heartlands.

(iv) The effect of the 1884 Agreement of Protection: establishment of a Protectorate

6.37 It is central to the proper understanding of the Treaty of 10 September 1884 to note that it was a Treaty establishing British protection over the territories in question, and not a treaty purporting to acquire territorial sovereignty or other title over them. Although the local Rulers had, by virtue of their sovereignty over their territories, the power in international law to cede territorial sovereignty to Great Britain (see above, paragraphs 6.19 and 6.26), they did not exercise that power. They granted to Great Britain only the more limited rights of protection, so as to make themselves a British Protectorate. An Article providing for the cession of their territory when requested by Great Britain was omitted from the Treaty they signed (see below, paragraphs 6.49-6.51)

(a) <u>The notion of a "protectorate" or "protected State" was at that time, and is now, well known in international law</u>

6.38 For these purposes the two terms "protectorate" and "protected State" are largely synonymous. Article 34 of the General Act of the Conference of Berlin, signed on 26 February 1885,[102] provided that:

> "La Puissance qui dorénavant prendra possession d'un territoire sur les côtes du Continent Africain situé en dehors de ses possessions actuelles, ou qui, n'en ayant pas eu jusque-là, viendrait à en acquérir, et de même la Puissance qui y assumera un Protectorat, accompagnera l'acte respectif d'une Notification adressée aux autres Puissances

[102] BFSP, Vol. 76 (1884-1885), p. 4

> Signataires du présent Acte, afin de les mettre à même de faire valoir, s'il y a lieu, leurs réclamations."

This language acknowledges that there was a distinction between acquiring "possessions" and assuming a "Protectorate", that this distinction was applicable on the coasts of the African continent, and that European Powers might in that region have only a Protectorate. As with the less formal establishment of spheres of influence (see below, paragraphs 7.8 - 7.10), so too Protectorates were not created primarily for the purpose of acquiring territory (for which colonial annexation would have been appropriate) but rather as a way of preventing other States from extending their interests (usually commercial) into the territory over which the Protectorate was established (see also below, paragraphs 6.47 - 6.49).

6.39 As to the international position of protectorates (to use the term most commonly used in this context) the legal, social, economic, cultural and political circumstances of each "protectorate" varied greatly. So too - consequentially - did the nature and content of the arrangements whereby the protectorate was created.

> "An arrangement may be entered into whereby one state, while retaining to some extent its separate identity as a state, is subject to a kind of guardianship by another state. The circumstances in which this occurs and the consequences which result vary from case to case, and depend upon the particular provisions of the arrangement between the two states concerned ... Protectorate is, however, a conception which lacks exact legal precision, as its real meaning depends very much upon the special case ... The position within the international community of a state under protection is defined by the treaty of protection which enumerates the reciprocal rights and duties of the protecting and the protected states. Each case must therefore be treated according to its own merits ... But it is characteristic of a protectorate that the protected state always has, and retains, for some purposes, a position of its own as an international person and a subject of international law".[103]

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[103] *Oppenheim's International Law*, Vol. I, 9th ed., 1992, pp. 267, 268, 269

6.40 The international position of Protectorates involves two essential elements. First, before the Protectorate comes into being there is in existence an international person having legal personality in international law; second, that person comes under the protection of (without being absorbed into) another State by virtue (usually) of a treaty or agreement between itself and the other State. Both elements were satisfied in relation to the Kings and Chiefs of Old Calabar.

6.41 The Permanent Court of International Justice had occasion to consider the status of protectorates in international law in its Advisory Opinion on *Nationality Decrees in Tunis and Morocco*.[104] In that case the Court, in considering questions of competence to legislate on matters of nationality, treated the protectorates in question (Tunis and Morocco) as separate from the protecting State itself, and not as mere portions of the latter (at pp. 27, 28).

6.42 The International Court of Justice addressed the issue in the *Case Concerning Rights of Nationals of the United States of America in Morocco*.[105] In that case the issues before the Court concerned the discriminatory character of certain Moroccan decrees and the extent of United States jurisdiction in Morocco pursuant to various earlier treaties. Relevant to those issues, and in particular the obligation upon France and Morocco to guarantee commercial or economic equality in Morocco, was the status of Morocco as a French Protectorate. That Protectorate was established by the Treaty of Fez 1912.[106] The Court held that:

> "The establishment of the French Protectorate over Morocco by the Treaty of March 30th, 1912, between France and Morocco, did not involve any modification in this respect" [i.e. in respect of the requirement of 'equality of treatment in commercial matters' in certain earlier treaties concluded by Morocco, and notably the General Act of Algeciras of 7 April 1906] (at p. 184);

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[104] 1923, PCIJ, Ser. B, No. 4

[105] ICJ Reports 1952, p. 176

[106] *ICJ Pleadings, Morocco Case (France v USA)* Vol. I, p. 650

> "It is not disputed by the French Government that Morocco, even under the Protectorate, has retained its personality as a State in international law. The rights of France in Morocco are defined by the Protectorate Treaty of 1912." (at p. 185);
>
> [in considering the treaties which determined the extent of the rights of the United States relating to consular jurisdiction] "The third group of treaties concerned the establishment of the Protectorate. It included the agreements which preceded the assumption by France of a protectorate over Morocco, and the Treaty of Fez of 1912. Under this Treaty, Morocco remained a sovereign State but it made an arrangement of a contractual character whereby France undertook to exercise certain sovereign powers in the name and on behalf of Morocco, and, in principle, all of the international relations of Morocco. France, in the exercise of this function, is bound not only by the provisions of the Treaty of Fez, but also by all treaty obligations to which Morocco had been subject before the Protectorate and which have not since then been terminated or suspended by arrangement with the interested States." (at p. 188).

6.43 It is apparent from these passages that:

(1) before the establishment of the Protectorate, Morocco was an international person and entered as such into treaties with other States: the Judgment referred to such treaties concluded by Morocco in the 17th, 18th and 19th centuries;[107]

(2) the Treaty of Fez (1912) establishing the Protectorate was a true treaty in international law between two international persons, France and Morocco;

(3) France's rights and obligations under the Protectorate Treaty were extensive;

(4) notwithstanding the extent of the rights and obligations conferred on France by the 1912 Treaty, Morocco continued to be an international person during the currency of the Protectorate up to at least 1952 (the date of the Court's

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[107] At, for example, pp. 187, 189: see also *Pleadings*, Vol. I, pp. 417-564

judgment) and in fact until 1956 (when the Protectorate terminated upon the independence of Morocco);

(5) the international rights and obligations *of Morocco* continued to exist under the Protectorate, although by the terms of the Treaty of Fez they were, on the international plane, exercised by France.

6.44 Moreover, in considering the nature of a protectorate it must be recalled that the relationship which it establishes between the protecting State and the protected State is one of "protection" of the latter by the former. As expressed in the first edition of *Oppenheim's International Law* (1905) in introducing discussion of States under protection,

> "Generally speaking, protectorate may ... be called *a kind of international guardianship* (at p. 138). [Substantially the same language has been used in all subsequent editions, up to and including the 9th ed., 1992, at p. 267.]

It was a means for "furthering the moral and material well-being of the native population", which was one of the concerns expressed in the General Act of the Conference of Berlin of 26 February 1885[108] (see below, paragraph 8.50). This gives to the position of the protecting State a strong fiduciary character: its duty is to act in support of, and not against, the interests of the protected State, and to refrain from taking for itself any advantage from the relationship without making the protected State fully aware of what was being done in the protection of its interests. The relationship involves strong considerations of trust and good faith.

[108] *BFSP*, Vol. 76 (1884-1885), p. 4

(b) The distinction between the acquisition of sovereignty and the establishment of a Protectorate was well known to the British Government at the time

6.45 In the 1880s there was much debate in British circles about the possibility of annexing parts of West Africa and formally acquiring sovereignty over them. In part these discussions originated from requests by local Rulers that Great Britain should annex their territories. Thus (see paragraph 4.32 above) in the early 1880s the British Prime Minister (Gladstone) rejected West African requests for stronger institutional links with Great Britain and politely declined to annex local territory when requested to do so by King Bell Honesty of Douala (in 1881) and by King Akwa (in November 1881). Similarly, in 1883 the supporters of Prince James Eyamba complained to the Foreign Office in London about the barbarities of the King, and requested, unsuccessfully, that Britain annex the territory. Suggestions that Britain should annex the lands in the region had the support of the British Consul (Hewett); he wanted to forestall the French (who had already established themselves at Porto Nuovo in 1883, were beginning to rival the British in the Oil Rivers District and the Niger Delta, and were even getting near to Lagos) and favoured the annexation of the whole coast from Cameroon to Benin. So did British trading interests, fearing that France was aiming at territorial annexations both near Lagos and near Big Batanga below Douala. Although the British Consul's wish to see the entire coast annexed was not acceded to, the pressure on the British Government from various quarters to take some action to forestall French aspirations in the area mounted steadily. Annexation was not agreed upon, but the British Cabinet did decide, by the end of 1883, to strengthen the consular administration in Calabar and to send the British Consul to visit the coastal chiefs, taking with him a draft model treaty by which they could obtain British protection (paragraph 6.28 above, and paragraphs 6.49-6.51 below). In the event, as has been seen above, it was the development of German interests in neighbouring Cameroon which provided the practical spur to the conclusion of the various protectorate treaties.

6.46 It is clear from the internal British Government papers of the time that the British Government was well aware of the distinction between protection and sovereignty, and consciously chose to opt for the more limited "protection" agreement and to avoid any acquisition of sovereignty. The nature of a Protectorate was correctly and clearly acknowledged in 1883 by Sir Edward Hertslet, the Librarian of the Foreign Office (who was used within the Foreign Office as an expert on matters of international law at a time when the Foreign Office did not have its own full-time staff of lawyers). In response to certain questions put to him in writing by T.V. Lister (Assistant Under Secretary of State, Foreign Office, in charge of African Affairs), Hertslet stated:

> "A Protectorate implies an obligation on the part of a powerful State to protect and defend a weaker State against its enemies, in all, or certain specified eventualities ... The usual form of establishing a Protectorate is by the conclusion of a treaty, either between the more powerful State which has undertaken to defend or protect the weaker one, and the weaker state itself, or between the protecting Power and other Powers, relating to such protection."[109] (NC-M 76).

6.47 The question of exercising various degrees of authority in African territories within the British sphere of interest was considered by the British Cabinet during 1883. On 23 November 1883 Cabinet decided upon a policy of not accepting offers of cessions of territory on the Bights of Benin and Biafra but of concluding treaties of protection instead. In a memorandum dated 27 February 1884, H.P. Anderson (Senior Clerk in the Foreign Office) described the Cabinet decision thus:

> "No progress has yet been made as to the policy approved by the Committee of the Cabinet, though the details are ready. It was decided, as I understand, that the Cameroons district was to be placed under British protection on certain conditions; that Treaties were to be concluded with the Chiefs at the mouths of the Niger and on the Oil Rivers which would prevent them from placing themselves under foreign protection, to the detriment of British trade; and that an

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[109] F.O. Confidential Print No. 4825, p. 7

> effective Consular establishment was to be organized to supervise the execution of the Treaties and protect our commerce."[110] (NC-M 77).

6.48 It seems that the Foreign Office wished to accept "to a limited extent" offers of cession made by certain Kings and Chiefs in the Cameroons and that the "Treaties" for this purpose were to be drawn up by the Colonial Office. On 5 January 1884, the Colonial Office (R. H. Meade, Assistant Under Secretary of State, Colonial Office) wrote to the Foreign Office (Sir J. Pauncefote):

> "3. Lord Granville [Secretary of State for Foreign Affairs] will remember that it was recommended by the Committee of the Cabinet which considered the question that there should be no attempt at present to create a new British Colony or Settlement, with all the necessarily expensive machinery of government, but that the districts to be taken over should continue for the present under such control and supervision as the Consul for the Bights of Benin and Biafra can exercise by means of visits paid as frequently as circumstances may permit." (NC-M 78)

Meade then stated that there would be objections to accepting cessions, in particular in respect of the slave trade. He continued:

> "9. The most convenient course would seem to be that the Chiefs should, at all events for the present, be left to manage their own affairs, and that they should receive frequent visits from the Consul, who should be authorised to inquire into and settle any matters which he might find to be in dispute.
>
> 10. As the principal object which it is sought to obtain by acquiring jurisdiction at the Cameroons is the exclusion of the French, it appears to Lord Derby [Secretary of State for the Colonies] that this might be sufficiently effected by making a Treaty with the Kings and Chiefs, guaranteeing to them the favour and protection of Her Majesty's Government, and taking from them an engagement to cede to Her Majesty, whenever required to do so, so much of their territories as she may consider it necessary or desirable to acquire.

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[110] F.O. Confidential Print No. 5004, pp. 33-34

> This would get over the immediate difficulty of making British territory land which we are not at present prepared to occupy or govern, and would at the same time render its acquisition easy if at some future time circumstances should make it advisable. All the objects which Her Majesty's Government have in view in regard to the Cameroons would thus be attained without incurring any of the serious inconveniences already mentioned.
>
> A draft of such a Treaty as is proposed is inclosed, for Lord Granville's information, and the use of your Department."

6.49 The "Draft of Treaty with Kings and Chiefs of the Cameroons" sent with Meade's letter to the Foreign Office, was in substantially the same form as that later concluded on 10 September 1884 with the Kings and Chiefs of Old Calabar, which is discussed below. There was, however, an important provision in the Colonial Office draft for the Cameroons which was not included in the treaty eventually signed with Old Calabar. The draft proposed by Meade in January 1884 contained an Article II as follows:

> "In return for the benefits accorded to them by Article I, the Kings and Chiefs of the Cameroons hereby undertake to cede to Her Majesty the Queen of Great Britain and Ireland, etc., whenever she may call upon them to do so, so much of their territory as she may consider it necessary or desirable to acquire in order to facilitate the objects of this Treaty."

6.50 By a letter dated 16 May 1884, the Secretary of State for Foreign Affairs, Earl Granville, with the concurrence of the Secretary of State for Colonial Affairs, Lord Derby, instructed the British Consul, Hewett, to take the necessary steps to enter into agreements with "the various native Chiefs". It is clear that the Chiefs were regarded as having the right to refuse, and thus were regarded as having equal bargaining power, since the instructions, signed by T.V. Lister, stated:

> "You should explain to them that you have special instructions to express to them the desire of Her Majesty to maintain and strengthen the relations of peace and friendship which have for a long time

> existed; you should state that [Her Majesty] is willing, *if requested*, to extend to them her favour and protection on condition that they give such guarantees as shall be considered satisfactory for the lives and property of British subjects, and for the freedom of commercial intercourse and religious worship." (emphasis added) (NC-M 79).

6.51 Attached to the instructions of 16 May 1884 was a "Draft of a Treaty with the Kings and Chiefs of ..." to be used as a model for the agreements to be made. This draft was similar to that sent in respect of the Cameroons by the Colonial Office to the Foreign Office in January 1884 though significantly it lacked the Article II, cited above (paragraph 6.49), of the Cameroons draft. Article I of the May draft, like Article I of the January draft prepared for Cameroons, read (*ibid.*, p. 58):

> "Her Majesty the Queen of Great Britain and Ireland, etc., in compliance with the request of the Kings and Chiefs, and people of ..., hereby undertakes to extend to them, and to the territory under their authority and jurisdiction, Her gracious favour and protection."

6.52 This text thus indicated that (i) the Kings and Chiefs had voluntarily sought the agreement; and (ii) the agreement was to be one of protection, not of annexation.

6.53 Article II of the model draft of 16 May 1884 read:

> "The Kings and Chiefs of ... agree and promise to refrain from entering into any correspondence, Agreement, or Treaty with any foreign nation or Power except with the knowledge and sanction of Her Britannic Majesty's Government."

6.54 This text thus indicated that Great Britain acknowledged that the Kings and Chiefs were still capable of entering not only into a mere "Agreement" but also into a "Treaty" with "any" foreign "nation" or "Power", which necessarily implied that the British Government recognised the Kings and Chiefs as actors at the level of international law.

6.55 On 3 January 1885, less than six months after the conclusion of the Treaty of Protection with the Kings and Chiefs of Old Calabar, the British Lord Chancellor (Lord Selborne) wrote a note, in which he referred to a draft report of the Law Officers of the Crown concerning "the formalities to be observed in order to render future occupations on the coast of Africa effective". In that note he said:

> "The Law Officers do not expressly advert to the distinction, which I think important (and which appears to me to be well elucidated by Sir E. Hertslet's memorandum of the 24th April 1883), between annexations and Protectorates. Annexation is the direct assumption of territorial sovereignty. Protectorate is the recognition of the right of the aboriginal, or other actual inhabitants, to their own country, with no further assumption of territorial rights than is necessary to maintain the paramount authority and discharge the duties of the protecting Power." (NC-M 80)

6.56 Later that same month, on 23 January 1885, Lord Selborne wrote to Sir Julian Pauncefote, Permanent Under-Secretary of State at the Foreign Office, about German and French activities in Africa, stating that

> "... there is no substantial obstacle, in their case, to their treating the distinction between Protectorate and annexation as purely nominal; so that by Protectorate they mean (as Sir Travers Twiss said) annexation under another name. But it is otherwise with us, and that for reasons, some of which are of peculiar force in Africa. If we annexed any territory in Africa, the immediate consequence must be that, in that territory, slavery must at once cease to exist." (NC-M 69)

6.57 This legal distinction was never abandoned in British practice. Even on the last day of British authority in respect of Nigeria - 30 September 1960 - the Protectorate of Nigeria, as distinct from the Colony of Lagos, was British protected territory, not British territory, and those born in it were British Protected Persons, not British subjects.

6.58 The British Consul in the region (Hewett), as negotiator of the several treaties of protection, was well aware of the difference between the acquisition of sovereignty

and the grant of protection. This is, for example, apparent from his contemporaneous despatch to Lord Granville of 28 July 1884, reporting that he had "annexed to the dominions of [the Crown]" the settlement at Amboises Bay (more usually referred to as Ambas Bay). The actual Notice effecting the annexation was entitled "Assumption of Sovereignty over the Settlement at Amboises Bay, West Coast of Africa" and its body stated that "the territory ... has now been taken over by Her Majesty the Queen of Great Britain and Ireland, and forms an integral part of her dominions" (text at NC-M 81). Similarly, Great Britain proclaimed the taking possession of Lagos on 4 August 1861, and the cession of the Port and Island of Lagos was confirmed by the Treaty of 6 August 1861 between Great Britain and the King of Lagos.[111] That ceded settlement became a separate British colony in 1886,[112] known first as the Colony of Lagos and, after the Letters Patent of 28 February 1906, as the Colony of Southern Nigeria, described as the "Island of Lagos and such portions of the neighbouring territories as have been annexed to our dominions".[113] But Great Britain also over a period acquired rights of protection over territories in the neighbourhood of, but outside, the limits of the settlement of Lagos. Those outer territories were designated as the separate Lagos Protectorate in 1885 (and were subsequently absorbed into the Protectorate of Southern Nigeria in 1906). The distinction between the Colony and Protectorate of Lagos was made clear in the Lagos Protectorate Orders in Council 1899 and 1901, which defined the Protectorate in such a way as expressly to exclude "that portion of Her Majesty's dominions which is known as the Colony of Lagos".

6.59 Hewett himself explained the restricted nature of a protectorate. He had submitted one of the standard drafts to King Ja Ja of Opobo, in the Niger Delta. On 1 July 1884 the King had asked him for clarification of the word "protection" in Article I of the draft treaty. Hewett replied:

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111 *Hertslet's Commercial Treaties*, Vol. 11, pp. 41, 42

112 *ibid.*, Vol. 17, p. 113

113 *ibid.*, Vol. 24, p. 147

> "I write, as you request, with reference to the word 'protectorate' as used in the proposed treaty that the Queen does not want to take your country or markets, but at the same time is anxious that no other nation should take them. She under[takes] to extend her gracious favour and protection, which will leave your country still under your Government." (NC-M 82)

6.60 Throughout the discussions which led to the conclusion of the 1884 Treaty of Protection, and in that Treaty itself. it is evident that the language used was consistently that of protection, and not that of annexation and acquisition of sovereignty, with which it stands in marked contrast. This distinction was maintained until the independence of Nigeria in 1960, and was consistently reflected in British Orders in Council (where they applied to the two different categories of territory in the Southern parts of the country) by their separate designation as "the Colony and Protectorate of Southern Nigeria" or "the Colony and Protectorate of Nigeria" (see further below, paragraph 6.68 (1) - (10)).

(v) The substantive content of the 1884 Protectorate

6.61 "Protectorate" is not a concept with a single substantive content which can be applied generally to all Protectorates. The legal nature of any particular Protectorate depends upon the terms by which the Protectorate was established.

6.62 In the *Tunis and Morocco Nationality Decrees* case (PCIJ, Ser. B, No. 4) the Permanent Court said:

> "The extent of the powers of a protecting State in the territory of a protected State depends, first, upon the Treaties between the protecting State and the protected State establishing the Protectorate, and, secondly, upon the conditions under which the Protectorate has been recognised by third Powers as against whom there is an intention to rely on the provisions of these Treaties. In spite of common features possessed by Protectorates under international law, they have individual legal characteristics resulting from the special conditions

under which they were created, and the stage of their development." (at p. 27)

See also above, paragraph 6.39.

6.63 The essential "protectorate" provisions of the Treaty of 10 September 1884 with the Kings and Chiefs of Old Calabar (NC-M 23) are as follows:

> "ARTICLE I. Her Majesty the Queen of Great Britain and Ireland, &c, in compliance with the request of the Kings, Chiefs, and people of Old Calabar, hereby undertakes to extend to them, and to the territory under their authority and jurisdiction, her gracious favour and protection.
>
> ARTICLE 2. The Kings and Chiefs of Old Calabar agree and promise to refrain from entering into any correspondence, Agreement, or Treaty with any foreign nation or Power, except with the knowledge and sanction of Her Britannic Majesty's Government."

6.64 Five features of these provisions may be noted.

(1) *First*, they record that the protection arrangements were the result of a request from the Kings and Chiefs of Old Calabar. A similar request had been recorded in the Preliminary Treaty concluded with Creek Town on 23 July 1884, while the Preliminary Treaty concluded with Duke Town had stated that protection was being given "in compliance with the wish of the Kings, Chiefs and people" (above, paragraph 6.31). This was no mere formal recital. The instructions given to the British Consul (Hewett) to negotiate the various protection agreements stipulated that he was to express Britain's willingness, *if requested*, to extend its protection (above, paragraph 6.50). And as already seen, there had been several previous requests by local rulers to secure British protection, and even annexation (above, paragraph 6.45). This has been acknowledged by Cameroon, which in its *Memorial* cites with approval an extract from the pleadings in the *Northern Cameroons* case which begins "The local rulers [in the Cameroons

coastal strip] requested formal British protection on various occasions ...".[114]

(2) *Second*, the protection arrangements clearly involved "an arrangement of a contractual character".[115] Indeed, specifically, they were brought into effect by a treaty, the international contractual arrangement *par excellence*. The 1884 Treaty of Protection was expressly described as a "Treaty" in Article IX, and was consistently regarded by the British Government as a treaty. Thus on 17 January 1885 the Secretary of State for Foreign Affairs, Lord Granville, wrote to the British Minister in Madrid asking him to point out to the Spanish Government that the British Government "by *Treaties* concluded with the native Chiefs" had "assumed the Protectorate over the whole coast from Ambas Bay to the River Benin inclusive, comprising Old Calabar and the lower portion of the Cross River" (emphasis supplied) (NC-M 83); this notification was duly passed to the Spanish Minister of Foreign Affairs on 30 January 1885 (NC-M 84). Similarly, in the notice of 5 June 1885 proclaiming the British Protectorate of the Niger Districts (NC-M-70), it was recited that "By virtue of certain *Treaties* concluded between the month of July last and the present date, and by other lawful means, the territories on the West Coast of Africa, hereinafter referred to as the Niger Districts, were placed under the Protectorate of Her Majesty the Queen from the date of the said *Treaties* respectively" (see below, paragraph 6.66: emphasis added).

(3) *Third*, Article 1 does not provide for Great Britain to exercise the international relations of the Kings and Chiefs of Old Calabar, or otherwise act, in their name and on their behalf.

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[114] *MC*, 2.07

[115] ICJ Reports 1952, at p. 188, quoted above in paragraph 6.42

(4) *Fourth*, Article 2 does not provide that the Kings and Chiefs have given up their right and power to have dealings (including making Treaties and Agreements) with foreign States, but that they will do so only after having first informed the British Government and obtained its approval (above, paragraphs 6.53-6.54).

(5) *Fifth*, it must also be borne in mind that, by virtue of the Treaty concluded in September 1884 together with the three contemporaneous unilateral declarations by Kings and Chiefs who were subject to the authority of the Kings and Chiefs of Old Calabar, the geographical extent of the Protectorate arrangements established by the 1884 Treaty included the area of the Bakassi Peninsula (see paragraphs 6.33-6.36 above).

6.65 Thus, the Kings and Chiefs of Old Calabar retained, after the conclusion of the Treaty of Protection in 1884, their separate international status and rights, including their power to enter into relationships with other international persons, although under the Treaty that power could only be exercised with the knowledge and approval of the British Government. That position, in its essentials, did not change before the conclusion of the March 1913 Anglo-German Treaty; nor indeed did it change in substance until Nigeria became an independent State in 1960.

6.66 Following the conclusion of the 1884 Treaty of Protection, Great Britain by proclamation established the "British Protectorate of the Niger Districts".[116] The proclamation recited that "By virtue of certain Treaties concluded between the month of July last and the present date, and by other lawful means," British protectorates had been established. It went on to bring together in one Protectorate the various territories covered by the individual treaties of protection and lying "on the line of coast between the British Protectorate of Lagos and the right or western

[116] *London Gazette*, 5 June 1885, p. 2581

river-bank of the mouth of the Rio del Rey", together with certain inland areas to the North. It thus included the Bakassi Peninsula.

6.67 During the same period (and principally in the period from October to December 1884) the National African Company Ltd. concluded "treaties" with numerous local rulers, by which the rulers typically "ceded" their territories to the Company. In 1886, a Royal Charter was granted to the Company (whose name was changed later to The Royal Niger Company, Chartered and Limited). This company continued, although less frequently, the practice of concluding agreements with local rulers. It is to be noted that, since neither the National African Company Ltd nor the Royal Niger Company was an international person, terms such as "treaty" and "cession" in their agreements with local rulers do not bear the meaning which they have in international law. They did not have the power to conclude "treaties" or to hold sovereignty over territory "ceded" to them, or to exercise governmental rights as understood in international law.

6.68 After the 1885 Order in Council, further Proclamations or Orders in Council from time to time varied the name by which the Protectorate was known, its territorial limits and the arrangements for its governance. Thus:

(1) On 18 October 1887[117] (NC-M 85) the British Protectorate of the Niger Districts was expanded to include all the territories in the Basin of the Niger and its affluents which were administered by the Royal Niger Company.

(2) At some time before 1891 the term "Oil Rivers Protectorate" entered into use. The precise extent of that Protectorate and its relationship to the British Protectorate of the Niger Districts is not clear, but it certainly included the eastern portion of the coast of that Protectorate up to the Anglo-German

[117] *London Gazette*, 21 October 1887, p. 5651

boundary and included Old Calabar and Bakassi: in Command Paper C 9372, at p. 36, it is said:

> "The Oil Rivers are the Benin, Escarvos, Warri, Forcados, Brass, St Nicholas, St Barbara, St Bartholemew, Sombrero, New Calabar, Bonny, Andorio, (St Antonio), Opobo, Quo Ibo, Akpayafi, Qua, Cross, and Old Calabar." (NC-M 86)

(3) In 1893[118] (NC-M 87) part of the British Protectorate of the Niger Districts was constituted a separate Protectorate, under the name "Niger Coast Protectorate", and ceased to be known as the "Oil Rivers Protectorate". The eastern limit of the Niger Coast Protectorate was expressed as the limit defined in the Anglo-German Agreement of 14 April 1893 (NC-M 28).

(4) At the end of 1899 the Charter of the Royal Niger Company was revoked, and the Royal Niger Company Act 1899 was passed. The preamble recited that "it [was] proposed to transfer to the Crown the administrative powers of the said Company, and the benefit of the treaties made by the Company". Since the Crown did not thereby acquire any greater rights that the Company had itself possessed, this recital needs to be understood in the light of the comments made in paragraph 6.67 above.

(5) On 1 January 1900[119] (NC-M 88), the Northern Nigeria Order in Council 1899 and the Southern Nigeria Order in Council 1899 came into force. By the first Order, territories formerly administered by the Royal Niger Company within a defined area were constituted into "Northern Nigeria". By the second Order, certain of the territories formerly administered by the Royal Niger Company were added to the Niger Coast Protectorate to form

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[118] *London Gazette*, 16 May 1893, p. 2835

[119] *London Gazette*, 5 January 1900, pp. 69-73

the "Protectorate of Southern Nigeria". This latter Protectorate included Bakassi. Its eastern boundary was defined in part as

> "a line commencing on the coast of the Gulf of Guinea at the mouth of the Rio del Rey Creek, the right bank of which it follows to the head of the Creek, ...".

It appears that it was in those two Orders in Council that the term "Nigeria" was used for the first time in formal official British instruments. It was probably a conglomerate name invented for administrative convenience.

(6) The position reached by that stage was summarised by the Chancellor of the Exchequer, Sir M. Hicks-Beach, in introducing the Orders in Council before a Committee of the House of Commons. Having referred in passing to the "German sphere of influence at the Cameroons". He said that

> "... within this region of Africa three different kinds of British administration were established. First, there was the Colony of Lagos under the control of the Colonial Office; secondly, there was the Niger Coast Protectorate under the Foreign Office; and, thirdly, there was the Royal Niger Company, subject only, as far as Her Majesty's Government were concerned, to the very slight control I have stated to the Committee."[120] (NC-M 89)

He later added:

> "For the present, and until a healthy site for a capital can be selected and better means of communication provided, the territories will be divided for administrative purposes into three divisions, all under the control of the Colonial Office. One division will be in Lagos, with its present area; the next will be Southern Nigeria, composed of the Niger Coast Protectorate and part of the Niger Company's territories, nearly half as

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[120] *Parliamentary Debates (Commons)*, 4th series, Vol. 73, cols. 1290-1291 (3 July 1899)

> large again as now; and the third, Northern Nigeria, composed of the rest of the company's territories, including Borgu and Ilorin, bounded on the south by a line drawn from Dahomey along the 9th parallel of latitude to Idda on the Niger, and thence following the same direction to the Anglo-German frontier."[121] (NC-M 89)

(7) The Southern Nigeria Protectorate Order in Council 1906 (NC-37), which applied to "the territories of Africa which are bounded on the ... north and north-east by the British Protectorate of Northern Nigeria, and on the east by the frontier between the British and German territories" had the effect of incorporating into the Protectorate of Southern Nigeria the territories hitherto within the Lagos Protectorate.

(8) The Southern Nigeria Protectorate Order in Council 1911 (NC-M 44) made new arrangements for the governance of the Southern Nigeria Protectorate, principally by combining the exercise of certain functions in respect of the Protectorate with those of the Colony of Southern Nigeria (i.e. the former Colony of Lagos: see above, paragraph 6.58). The Order nevertheless maintained the distinction between the Colony and Protectorate, and continued to define the territories of the Protectorate as being "bounded ... on the east by the frontier between the British and German territories" (Article II).

(9) By Letters Patent issued on 29 November 1913 (NC-M 90) the Colony of Southern Nigeria was in future to be known as the Colony of Nigeria. At the same time the Nigeria Boundaries Order (NC-M 48) defined that Colony of Nigeria by a perimeter line, and annexed to it any territories within the line which were not hitherto included in Her Majesty's dominions.

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[121] *ibid.*, cols. 1298-1299

(10) The Nigeria Protectorate Order in Council 1913 was made on 22 November 1913 (NC-M 47) and came into force on 1 January 1914. Thus it was both made, and entered into force, after the Anglo-German Treaty of 11 March 1913 was concluded. The Order amalgamated the Protectorates of Northern and Southern Nigeria into one Protectorate, under the name "Protectorate of Nigeria", defined in part as the

> "territories of Africa which are bounded on the south by the Atlantic Ocean ... and on the east by the frontier between the British and the German territories",

but excluding from the territorial scope of the Protectorate the Colony of Nigeria (i.e. the former Colony of Lagos). Both the Order and the Letters Patent provided that the term "Nigeria", used without qualification, meant the Colony and Protectorate of Nigeria (thus confirming the distinction between the two concepts).

6.69 Thus, at the time the Anglo-German Treaty of 11 March 1913 was concluded,

(1) the relevant British-protected territory bordering the coast along this part of West Africa was the British Protectorate of Southern Nigeria;

(2) the Bakassi Peninsula was part of that Protectorate by virtue of the definition of its eastern boundary as being the right bank of the Rio del Rey - Southern Nigeria Order in Council 1899 (above, paragraph 6.68 (5)). Thereafter, no Anglo-German agreement changed the boundary in this respect, so that equally no change resulted from the subsequent definition of the eastern boundary of the Protectorate in the Southern Nigeria Protectorate Order in Council 1906 as being "the frontier between the British and German territories" (above, paragraph 6.68 (7));

(3) accordingly, the eastern boundary of the Protectorate as it stood immediately before the conclusion of the Treaty of 11 March 1913 was as shown on Map 29 in the *Atlas*.

6.70 Upon the subsequent amalgamation of the Protectorates of Northern and Southern Nigeria into the Protectorate of Nigeria, with effect from 1 January 1914, the same language for the definition of the eastern boundary of the Protectorate was adopted (above, paragraph 6.68 (10)).

6.71 Thus, by the various stages outlined above, the constitutional relationship between Great Britain and Old Calabar and other territories in the area of what is now Nigeria from 1884 to 1913 remained (despite some evolution in matters of administrative detail, and apart from the small areas which were specifically made colonies) one of Protectorate, governed (in the case of Old Calabar) by the terms of the Treaty of Protection of 10 September 1884, and subject to the limitations imposed by it. During that period the rights and obligations of the Kings and Chiefs of Old Calabar continued to exist, including their rights over Bakassi. The fact that during that period the internal administrative practice of Great Britain, as the Protecting State, was to refer increasingly to "Nigeria" as a separate unit of administration, manifesting itself differently in the various areas of "Nigeria" (e.g. Colony of Nigeria, Protectorates of Southern Nigeria and of Northern Nigeria) does not detract from the essential nature of the relationship, for international law purposes, as one flowing from the 1884 Treaty of Protection between Great Britain and the Kings and Chiefs of Old Calabar.

(vi) The law of the United Kingdom as to the status of British Protectorates

6.72 Great Britain had a well-developed practice of acquiring sovereignty over some overseas territories (thereby making them part of the Crown's dominions, as colonies) and of establishing "Protectorates" over others (thereby making them

British Protected States or Protectorates, but leaving them still in law essentially foreign States). The distinction was apparent in the constitutional arrangements made for the governance of the various territories. In the last quarter of the nineteenth century, the British Government administered its overseas interests through the Colonial Office (in the case of colonies), the Foreign Office (in the case of protectorates, because of their "foreign" status), and the India Office (in the special case of India). Legally, the government of Colonies, as part of the Crown's dominions, was in principle and until replaced by some statutory arrangement, a matter regulated by Orders in Council made in exercise of the prerogative powers of the Crown. The government of Protected States and Protectorates, on the other hand, was regulated by Orders in Council made under powers granted by successive Foreign Jurisdiction Acts, the first enacted in 1843 and substantively[122] the last in 1890.

6.73 The Foreign Jurisdiction Act 1843 (NC-M 91) was enacted because doubts had arisen as to the Crown's authority within foreign territories within which the British Crown had acquired various powers. The long title of the Act established that it was -

> "An Act to remove doubts as to the Exercise of Power and Jurisdiction by Her Majesty within divers Countries and Places out of Her Majesty's Dominions, and to render the same more effectual."

6.74 Section I of the Act provided in relevant part:

> "Whereas by Treaty, Capitulation, Grant, Usage, Sufferance, and other lawful Means Her Majesty hath Power and Jurisdiction within divers Countries and Places out of Her Majesty's Dominions; And whereas Doubts have arisen how far the Exercise of such Power and Jurisdiction is controlled by and dependent on the laws and Customs of this Realm, and it is expedient that such Doubts should be removed:

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[122] A later Act, the Foreign Jurisdiction Act 1913, made some minor amendments to the 1890 Act, but left that earlier Act the principal Act on the matter.

> Be it therefore enacted ... That it is and shall be lawful for Her Majesty to hold, exercise, and enjoy any Power or Jurisdiction which Her Majesty now hath or may at any Time hereafter have within any Country or Place out of Her Majesty's Dominions, in the same and as ample a Manner as if Her Majesty had acquired such Power or Jurisdiction by the Cession or Conquest of Territory."

6.75 It is clear from these provisions that the Act was concerned with the acquisition of power and jurisdiction in territories *outside* Her Majesty's dominions, that is territories which were *not* under British sovereignty. Similarly, the purpose of the Act was to make it clear, *as a matter of the law of the United Kingdom*, that it was lawful for the Crown to exercise *the power and jurisdiction which the Crown had acquired* in the same way "as if" *that* power and jurisdiction had been acquired by way of cession or conquest, i.e. as if the territory had become subject to British sovereignty. This clearly treats these "foreign" territories as remaining foreign and as not having become British sovereign territory, and provides for the exercise of only those powers which the Crown had acquired by the "Treaty, Capitulation, Grant, ... etc." in question. It does not (nor could it) establish that the Crown's powers over that territory, as laid down *internationally* in the "Treaty, etc" by which they were acquired, exceed those acquired by the Crown pursuant to that "Treaty, etc.".

6.76 Although the 1843 Act was amended several times before 1884 (e.g. in 1865, 1866, 1875 and 1878) and the Acts were collectively known as "the Foreign Jurisdiction Acts, 1843 to 1878", those amendments did not affect the essential structure of the 1843 Act, which remained the principal Act in force when the 1884 Protectorate Agreement was entered into. In particular, although Section 3 of the 1878 Act provided that by Order in Council certain statutes might be extended to countries or places to which the Foreign Jurisdiction Act 1843 applied (i.e. "foreign" countries or places) and that thereupon those statutes shall apply "as if that country or place were one of Her Majesty's Colonies", the use of the words "as if" makes it clear that the countries or places in question were *not* colonies. Similarly, the

fact that by Section 4 any country or place to which Orders in Council made under the Foreign Jurisdiction Acts applied were, for a particular purpose of English law, "deemed" to be a colony makes it clear that they were in reality *not* colonies.

6.77 The fact that, as a matter of English law, powers were taken to deal with Protectorates "as if" they were colonies, not only shows that they were in fact *not* colonies, but also does not, as a matter of international law, affect their international status as Protectorates, as derived from the relevant treaties of protection. Those treaties must be observed whatever particular rules of municipal law may provide: if a State fails to comply with a treaty's provisions, it cannot justify that failure by reference to its municipal law. The rule now embodied in Article 27 of the Vienna Convention on the Law of Treaties 1969 is well-established in international judicial practice:

> "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

In the *Greek and Bulgarian Communities Case*,[123] the Permanent Court in 1930 said:

> "it is a generally accepted principle of international law that in the relations between powers who are contracting parties to a treaty, the provisions of municipal law cannot prevail over those of a treaty".

The same principle has been expressed in many subsequent judicial decisions, and it is now accepted that it is a

> "fundamental principle of international law that international law prevails over domestic law".[124]

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[123] PCIJ, Series B, No. 15, pp. 26-7

[124] *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, ICJ Reports 1988, pp. 12, 34

6.78 The various Foreign Jurisdiction Acts were consolidated in 1890 as the Foreign Jurisdiction Act 1890 (NC-M 92). The relevant provisions of that Act confirmed the essential provisions of the 1843 Act. The preamble recited that

> "Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within divers foreign countries, and it is expedient to consolidate the Acts relating to the exercise of Her Majesty"s jurisdiction out of Her dominions ...".

Section 1 provided:

> "It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory."

By Section 16 the expression "foreign country" is defined to mean "any country or place out of Her Majesty's dominions", and "jurisdiction" is defined so as to "include power". That Act of 1890 was amended in a minor respect by the Foreign Jurisdiction Act 1913, but without affecting the provisions quoted.

6.79 In relation to the various British protected territories in what is now Nigeria, the provisions of the Foreign Jurisdiction Acts as from time to time in force were invoked in making the various Orders in Council under which arrangements were made for their administration, referred to above (paragraphs 6.66-6.68). These "foreign jurisdiction" Orders in Council continued to provide the governing legal and constitutional framework for the administration of the Protectorate(s) right up to the date of Independence. In the Nigeria Independence Act 1960, by which Nigeria's Independence was established, the entity to which Independence was being granted was still referred to as "the Colony and the Protectorate of Nigeria".

6.80 Thus, from 1884 until Independence in 1960, British practice consistently treated the various Nigerian territories as Protectorates (save only for the Lagos area - not relevant to the present case - where Great Britain acquired sovereignty).

6.81 The essential characteristics of a Protectorate, as explained in 1883 by Sir Edward Hertslet of the British Foreign Office, have already been quoted (above, paragraph 6.46). The position of Protectorates as a matter of English law was explained judicially in these terms by Kennedy LJ in *R. v. Earl Crewe, ex parte Sekgome*:[125]

> "Now the features of Protectorates differ greatly. ... The one common element in Protectorates is the prohibition of all foreign relations except those permitted by the protecting State. Within a Protectorate, the degree and the extent of the exercise by the protecting State of those sovereign powers which Sir Henry Maine has described (International Law, p. 58) as a bundle or collection of powers which may be separated one from another, may and in practice do vary considerably. ... What the idea of a Protectorate excludes, and the idea of annexation on the other hand would include, is that absolute ownership which was signified by the word 'dominium' in Roman Law, and which, though perhaps not quite satisfactorily, is sometimes described as territorial sovereignty. The protected country remains in regard to the protecting State a foreign country ..."

6.82 Similarly, in *Nyali Ltd v Attorney-General*,[126] the Court of Appeal accepted that the Kenya Protectorate was not under British sovereignty. In language mirroring the constitutional position in relation to the Colony and Protectorate of Nigeria, Denning LJ explained the situation in Kenya as follows:

> "... The difference in law between Kenya Colony and Kenya Protectorate is this: In Kenya Colony the jurisdiction of the British Crown is unlimited; but in the Kenya Protectorate it is only limited. It is limited to such jurisdiction as the Crown has acquired by treaty,

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[125] (1910) 2 K.B. at p. 619

[126] (1956) 1 Q.B. 1

capitulation, grant, usage, sufferance and other lawful means." (at p. 14)

6.83 Both the British cases cited (and others not cited) acknowledge the foreignness of British Protectorates and that they did not form part of British sovereign territory. They accept that the details of the relationship between the protecting and the protected States are (as already noted at paragraph 6.62) matters which depend on the particular circumstances of each Protectorate, and the subject-matter in relation to which the question arises. None contradict the proposition that the extent of British powers in relation to the Protectorate are, at the international level, determined by the agreement or other instrument establishing the Protectorate.

6.84 Although the terminology used for States' internal or constitutional purposes does not always reflect the true international concept of protectorate, it may also be noted that for purposes of British nationality law, the British Protectorates, Protected States and Protected Persons Order in Council 1949 (NC-M 58) listed the British Protectorates and Protected States existing at that time. The Protectorates were: Aden, Bechuanaland, British Solomon Islands, Gambia, Kenya, *Nigeria*, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone, Somaliland, Swaziland, Uganda and Zanzibar; the Protected States were The Malay States (namely Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah, Perlis, Kelantan, Trengganu), Brunei, Tonga, The Maldive Islands, The Persian Gulf States (namely, Kuweit, Bahrein, Qatar) and The Trucial Sheikdoms of Oman (namely, Abu Dhabi, Ajman, Dubai, Kalba, Ras al Khaimah, Sharjah, Umm al Qaiwain).

(vii) Nigerian constitutional arrangements during the Protectorate

6.85 The status of the Protectorate of Nigeria as a State foreign to the United Kingdom although under its protection (but not under its sovereignty) is reflected in the

reliance which the British authorities placed after 1884 on the Traditional Rulers as an integral part of the system of government in the Protectorate. The indigenous system of government by the Traditional Rulers (see above, paragraphs 6.16-6.18) was used by the British authorities, and the Traditional Rulers were assigned a specific role in the administration of the Protectorate. Thus, in particular, they were in charge of the administration of the local government (sometimes referred to as Native Authorities). Their incorporation in the British administrative machinery in Nigeria was known as "Indirect Rule", which was in effect simply the continuance of the pre-existing political institutions. Without Emirs, Kings and Chiefs, there would have been no native authority or native administration during the period of the British Protectorate.

6.86 Because of the importance and relevance of the Traditional Rulers at the time, the indigenous system was strengthened in statutory law to make it more effective. In general, native authorities carried out a wide range of legislative, executive and judicial functions in the country, especially during the final phase of British rule and upon the attainment of Independence by Nigeria. (See further paragraphs 9.48-9.72 below.)

6.87 A formal constitutional role for Traditional Rulers and Chiefs was incorporated in Nigeria's **Constitution of 1946**. A Regional Council was established for each of the existing three regions, namely the Northern, Western and Eastern Provinces. The Regional Council in the Northern Province comprised a House of Chiefs and a House of Assembly, with all first class Chiefs as well as no fewer than ten second class Chiefs constituting the House of Chiefs, and the Chief Commissioner as President. At this time the Eastern and Western Provinces each had only a House of Assembly, the Western Province's House of Assembly including unofficial members among whom were three Head Chiefs nominated by the Governor in consultation with the Head Chiefs of the Province. The Legislatures in each of the Provinces (i.e. the House of Assembly and (where existing) the House of Chiefs) were authorised to deliberate on the annual expenditure estimates for their

respective Provinces and to make recommendations thereon to the Legislative Council which dealt with the whole country. Recommendations accepted by the Governor were duly incorporated when the relevant legislation was taken in the Legislative Council. As members of the relevant legislative institutions, the Traditional Rulers and Chiefs were constitutionally recognised parts of the system of government.

6.88 Under the **Constitution of 1951** a House of Chiefs was introduced into the Western Province, and all three Provinces were renamed Regions. Thus by this Constitution, the Legislatures of two regions were bicameral, while that for the Eastern Region was still unicameral.

6.89 The **Independence Constitution of 1960** introduced many changes to take into account the attainment of Independence by Nigeria. A House of Chiefs was created for the Eastern Region, thus making all three Regions bicameral. Each of the three Regions was given its own Constitution, which, in the present context, all followed a similar pattern. The House of Chiefs was in each case made an integral part of the Regional Legislature, which had the power to make laws for the peace, order and good government of the Region. There were, however, certain limits upon the House of Chiefs' powers in relation to financial matters.

(viii) Conclusions as to Protectorate Status

6.90 In the light of the relevant considerations of international and municipal law, it is apparent from the terms of the 1884 Treaty and subsequent British arrangements for the governance of Nigerian territories that:

(1) those territories constituted British Protectorates;

(2) the Protectorates were at no stage transformed into a British colony;

(3) they were in no way assimilable to a British colony;

(4) the United Kingdom possessed in relation to them only such rights and powers as had been conferred by the 1884 Treaty of Protection;

(5) the United Kingdom at no time possessed territorial sovereignty over them, in whole or in part;

(6) in their relationship with the United Kingdom, the Protectorates were at all times foreign countries; and

(7) in exercising its rights and responsibilities as the protecting State, the United Kingdom was bound to uphold and not to subvert the interests of the Protectorates.

CHAPTER 7

NEGOTIATIONS CONCERNING THE BRITISH AND GERMAN PROTECTORATES, 1884-1913

A. Introduction

7.1 The contemporaneous establishment of British and German Protectorates over neighbouring territories along the coast of, and inland from, the Gulf of Guinea, and the competing activities of the British Consul (Hewett) and the German Imperial Commissioner for West Africa (Dr. Nachtigal) in concluding treaties with African rulers, inevitably gave rise to differences between their respective States over the limits of the respective areas in which they had acquired a degree of authority. In the area of present concern, the focus of German activity was at the mouth of the Cameroon River and the neighbouring Cameroon settlements. The focus of British activity was at the mouth of the Old Calabar River and the various settlements of Old Calabar. The Bakassi Peninsula lay within the territories of Old Calabar (above, paragraphs 6.33-6.36).

7.2 The Rio del Rey, on the eastern side of the Bakassi Peninsula (then considered to be a major river leading into the interior was discussed very early as a possible line of division. On 9 March 1885 Lord Granville (the British Foreign Secretary) described to the British Minister in Berlin (Charles Scott) a proposal which he had made to Count Herbert Bismarck:

> "England would agree to retire from the Protectorate of Bota, and of all the remaining territory up to the right bank of the Rio del Rey inclusive. This territory would comprise both branches of the Rio del Rey, as well as the Rumby River, the Bamboko, and the Bibundi territory, and the territory between that and Bota. On all this coast Treaties providing for British Protectorates have been concluded. The only point reserved would be the station occupied by the Baptist missionaries at Victoria, Ambas Bay, which has been for a long time British property. With that exception, England would undertake not to interfere or make any fresh Treaties on the whole coast mentioned, or in the inland districts lying between the Rio del Rey and the French Colony of the Gaboon. Germany would thus have the full control of the Cameroon Mountains and the adjoining territory.
>
> Germany on her part would undertake in the same manner to refrain from interference or from concluding Treaties in the territory

> westward of the right bank of the Rio del Rey up to the boundary of the British Colony of Lagos; and this engagement would apply, like the British undertaking, both on the coast and in the districts of the interior." (NC-M 93).

7.3 Although Count Bismarck gave his general approval to Lord Granville's suggestion, he sought to negotiate for "an extension of our Cameroon possessions in the west down to the Calabar River". Lord Granville could not agree with that proposal.

7.4 Those exchanges established the broad framework for much of the negotiations which were to follow, with:

(1) Great Britain willing to give up its interests to the east of the Rio del Rey, and to confine them to the Rio del Rey and territory to the west of that waterway;

(2) Germany ready to "advance" westwards up to the Rio del Rey, but also wanting to move even further West by setting the borders of its area of interest as far as the Cross River and the Akpa Yafe (assuming them to be what was meant by the reference to "the Calabar River"); and

(3) the area between the Rio del Rey and the Cross and Akpa Yafe Rivers - that is, the area of the Bakassi Peninsula - thus being the principal area of contention.

B. <u>The Anglo-German Exchange of Notes of 29 April - 7 May 1885</u>

7.5 The first agreement on a line of separation between British and German activities in the area was concluded by an Exchange of Notes on 29 April and 7 May 1885 (NC-M 24). This Exchange of Notes was the culmination of negotiations for "separating and defining the spheres of action of Great Britain and Germany in

those parts of Africa where the Colonial interests of the two countries might conflict" (as set out in Lord Granville's Note initiating the exchange[127]).

7.6 The line of separation laid down was:

> "the following line: that is, on the coast, the right river bank of the Rio del Rey entering the sea between 8°42' and 8°46' longitude east of Greenwich; in the interior, a line following the right river bank of the Rio del Rey from the said mouth to its source, thence striking direct to the left river bank of the Old Calabar or Cross River, and terminating after crossing that river at the point about 9°8' of longitude east of Greenwich, marked 'Rapids' on the English Admiralty Chart".[128]

7.7 It is to be noted that that line was not prescribed as a frontier line between two areas under different territorial sovereigns: indeed, at least on the British side it could not have done since Britain did not have sovereignty over the territory on the British side of the line of separation. Rather than being a line determining sovereignty over territory, the line was essentially a line of mutual forbearance, or non-encroachment, primarily (as the associated Notes exchanged between the parties show) for the purpose of promoting their trading interests. The British Note proposed, and the German Note in reply substantially repeated, that Germany:

> "engages not to make acquisitions, accept Protectorates, or interfere with the extension of British influence in that part of the coast of the Gulf of Guinea lying between the right river bank of the Rio del Rey, as above described, and the British Colony of Lagos; nor in the interior to the west of the line traced in the preceding paragraph".

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[127] Count Münster's Note in reply was in substance to the same effect, although expressed slightly differently: "negotiations ... with regard to a separation and definition of their respective spheres of influence in the territories of the Gulf of Guinea".

[128] It may be noted that the German text, in translation, is slightly different in its description of the line. In particular, it refers to a "line which is drawn through the right river bank of the Rio del Rey" (as distinct from "a line following the right river bank etc."), and to a line which goes from the source of the Rio del Rey "thence in a straight line turns to the left towards the left bank of the Old Calabar or Cross River" (as distinct from "thence striking direct to the left river bank of the Old Calabar or Cross River").

The German Note proposed, but the British initiating Note did not, an equivalent engagement on the part of Great Britain. Both Notes recorded the agreement of "Both Powers ... to withdraw any Protectorates already established within the limits thus assigned to the other" (subject to a specific reservation about the British Settlement of Victoria, Ambas Bay, which was to remain a British possession). In short, the Notes established political limits upon the two European Powers' activities and influence in that part of Africa, and curtailed their spheres of influence accordingly. They did no more than establish for each State a freedom to act within the geographical limits laid down for it, and a prohibition against acting beyond those limits and within the limits laid down for the other State. This freedom, and this prohibition, affected only those two States' own positions, and were thus properly matters which they could by treaty regulate between themselves. They were established for each State *vis à vis the other State only*, and in particular, they did not, and could not, affect the legal rights and obligations of the local Kings, Chiefs and Rulers, for whom Anglo-German arrangements were *res inter alios acta*.

7.8 The concept of "spheres of interest" was well known in the later years of the nineteenth century and early years of the twentieth, although since then it has been of diminishing significance. Hall, in *Foreign Powers and Jurisdiction of the British Crown* (1894), wrote:

> "The term 'sphere of influence' is one to which no very definite meaning is as yet attached. Perhaps in its indefiniteness consists its international value. It indicates the regions which geographically are adjacent to or politically group themselves naturally with, possessions or protectorates, but which have not actually been so reduced into control that the minimum of the powers which are implied in a protectorate can be exercised with tolerable regularity. It represents an understanding which enables a state to reserve to itself a right of excluding other European powers from territories that are of importance to it politically as affording means of future expansion to its existing dominions or protectorates, or strategically as preventing civilized neighbours from occupying a dominant military position. ...

> No jurisdiction is assumed, no internal or external sovereign power is taken out of the hands of the tribal chiefs; no definite responsibility consequently is incurred." (p. 228)

7.9 The fifth edition of the same author's *Treatise on International Law* (1904) repeated this language. The first edition of *Oppenheim's International Law*[129] dealt with the matter in the same sense:

> "'Spheres of influence' are therefore the names of such territories as are exclusively reserved for future occupation on the part of a Power which has effectively occupied adjoining territories. In this way disputes are avoided for the future, and the interested Powers can gradually extend their sovereignty over vast territories without coming into conflict with other Powers."

The sense of this passage has been retained in all subsequent editions, with the addition in the 4th ed. (1928, ed. McNair) of the further sentence:

> "But the establishment of a sphere of influence does not in itself vest 'territorial rights of a legal nature' in the State exercising the influence."[130]

7.10 The essential characteristics of "spheres of influence" were thus that they established (as against any other State acknowledging the sphere of influence) for the State exercising influence a certain priority and exclusiveness for future acquisition, but without conferring on it any present territorial rights.

7.11 The very simplicity of the line prescribed in the Exchange of Notes is entirely consistent with it being a line separating spheres of interest, rather than a strict division of territorial sovereignty. The sketch map (*Atlas*, Map 30) illustrates this

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[129] 1st ed., 1905, p. 281

[130] 1992, pp. 691-692 (See now the 9th edition)

simplicity, in marked contrast to the sinuosities of the more precise later-established boundary illustrated at Map 30 in the *Atlas*.

7.12 It may in passing be noted that the status of this Exchange of Notes as constituting a binding international agreement is open to question, for example in that the two Notes are not in exactly matching language. In part the discrepancies of language may be a matter of translation; but some are more substantive (for example, the absence of an engagement on Great Britain's part matching that asserted by Germany, already noted in paragraph 7.7). Nevertheless, it seems that the practice of the parties was subsequently to treat the Exchange as if it were an agreement.

C. The Anglo-German Exchange of Notes, 27 July/2 August 1886

7.13 Just over a year after the 1885 Exchange of Notes, the two Governments embarked upon a further delimitation of their separate spheres of activity by a new Exchange of Notes of 27 July and 2 August 1886 (NC-M 25). Essentially this new Exchange of Notes extended into the interior (as far as a point close to Yola) the line described in the 1885 Exchange of Notes. So far as this Exchange of Notes may be relevant to the boundary north of the Bakassi Peninsula, it is considered further in Chapters 18 and 19. It is relevant to this present Chapter and to Bakassi in so far as it repeats that the line of separation of the British and German spheres of action or influence ran up the Rio del Rey and thence to the Cross River rapids.

7.14 The initiating British Note of 27 July 1886 referred back to the 1885 Exchange of Notes establishing the British Government's "adherence" to an "Arrangement" under which:

> "a specified line of demarcation would separate the districts on the Gulf of Guinea within which Great Britain and Germany would respectively be free to acquire territory, accept Protectorates, and exercise influence".

7.15 The Note recorded Germany's "acceptance of the Arrangement". It then went on to recall the line set out in the 1885 Exchange of Notes, in terms differing slightly from the earlier version:

> "The line agreed upon follows in the interior the right river-bank of the Rio del Rey from the mouth of the river to its source, thence strikes direct to the left river-bank of the Old Calabar, or Cross River, and terminates, after crossing this river, at the point, about 9°8' of longitude east of Greenwich, marked 'Rapids' on the English Admiralty Chart."

7.16 The British Note went on to state that the British Government would be prepared:

> "to agree to an extended line of demarcation, which, starting from the point on the left river-bank of the Old Calabar or Cross River, where the original line terminated, shall be continued diagonally to such a point on the right bank of the River Benue to the east of, and close to, Yola, as may be found on examination to be practically suited for the demarcation of a boundary."

7.17 The German Note of 2 August 1886 in reply in effect expressed Germany's concurrence in that extension of the 1885 line.

7.18 But as with the 1885 Exchange of Notes, the German Note was not in all respects identical with the British Note, and, in saying that the British Note had proposed an "Agreement", was factually incorrect. Although, as with the 1885 Exchange of Notes (above, paragraph 7.12), there may be doubt as to the legal status of the 1886 Exchange of Notes, it again seems that the practice of the parties was subsequently to treat the Exchange as if it were an agreement.

7.19 Like the earlier Exchange of Notes (above, paragraph 7.7), the 1886 Exchange of Notes did not purport to draw a line establishing a boundary between two adjacent areas of territorial sovereignty, but was merely a line of mutual forbearance or non-encroachment, curtailing the two States' future spheres of influence.

D. The Anglo-German Agreement respecting Zanzibar, Heligoland and the Spheres of Influence of the two Countries in Africa, Berlin, 1 July 1890

7.20 The 1885, and by extension the 1886, Exchanges of Notes had been concluded on the assumption that the Rio del Rey was a river and that it had a distinct source, from which a line could be drawn to a particular point on the Cross River. It was, however, soon questioned whether that assumption was correct. Both the British Vice-Consul for the Oil Rivers Protectorate based at Old Calabar (Johnston), and the Governor of the German Protectorate of Kamerun (Baron von Soden) were conscious of the problem posed by the use of the Rio del Rey as a line of separation. Johnston made a survey of the area and in his report of 14 July 1887 to the Foreign Secretary (Lord Salisbury) wrote:

> "The Rio del Rey is in fact what may be termed a 'huge, unnecessary estuary', which serves as a common receptacle for a great number of creeks that are, most of them, little more than the escapes to the overflow of neighbouring [rivers]. The only stream which has any right to be considered the true Rio del Rey is the River Ndian." (NC-M 94)

7.21 For his part, Baron von Soden wrote on 12 July 1888 to the British Consul (Hewett):

> "You know as well as I that there is no Rio del Rey, at least no source of such a river; thus our Governments must either agree upon another frontier, e.g. a degree of latitude, or they must leave it to us to baptize one of the numerous creeks as Rio del Rey, and to fix the sources of the said creeks, or at least a spot where the sources are supposed to be." (NC-M 95)

7.22 In the event the matter was resolved in the Berlin Treaty of 1 July 1890 (NC-M 26). Article IV.2 provided:

> "2. It having been proved to the satisfaction of the two Powers that no river exists on the Gulf of Guinea corresponding with that marked on Maps as the Rio del Rey, to which reference was made in the Agreement of 1885, a provisional line of demarcation is adopted between the German sphere in the Cameroons and the adjoining British sphere, which, starting from the head of the Rio del Rey Creek, goes direct to the point, about 9°8' of east longitude, marked 'Rapids' in the British Admiralty Chart."

7.23 Article VI provided that:

> "All the lines of demarcation traced in Articles I to IV shall be subject to rectification by agreement between the two Powers, in accordance with local requirements",

and went on to provide, with specific reference to the boundaries traced in Article IV, that it was understood that Commissioners would meet as soon as possible for the object of such rectification.

7.24 The reference to the German "sphere" and British "sphere" must be read in the light of the purpose of the 1885 Exchange of Notes, the title of the Berlin Agreement and its Article VII which provided that:

> "The two Powers engage that neither will interfere with any sphere of influence assigned to the other by Article I to IV. ..."

Accordingly, there was still no question of the Agreement purporting to establish a boundary between two adjacent areas of territorial sovereignty.

7.25 It is also to be noted that Article IV.2 of the Berlin Agreement made no provision regarding the course of the line of separation along the Rio del Rey itself.

E. The Anglo-German Agreement respecting the Rio del Rey, Berlin, 14 April 1893

7.26 Article IV.2 of the Berlin Agreement of 1 July 1890 had identified the boundary in the Rio del Rey from "the head of the Rio del Rey Creek". There was a felt need to identify this point more precisely, and to specify the boundary from there down to the sea. Article I of the Agreement of 14 April 1893 specified the head of the Rio del Rey Creek as:

> "the point... at the north-west end of the island lying to the west of Oron, where the two waterways, named Urüfian and Ikankan, on the German Admiralty Chart of 1889-90, meet."

The German Admiralty Chart referred to appears to be that at Map 31 in the *Atlas*. The map which accompanied the text of the 1893 Agreement in Hertslet's *Africa by Treaty* is reproduced as Map 32 in the *Atlas*. Hertslet's map is clearly based on the German Admiralty Chart appearing as Map 31.

7.27 The boundary from that point down to the sea is specified in the following terms in Article II:

> "From this upper end of the Rio del Rey to the sea, that is to say, to the promontory marked West Huk on the above-mentioned chart, the right bank of the Rio del Rey waterway shall be the boundary between the Oil Rivers Protectorate and the Colony of the Cameroons."

7.28 While this might appear to be the first time that the delimitation line purported to separate adjacent territories under the administration of the respective European Powers, rather than just a line of mutual forbearance or non-encroachment, this Agreement is directly linked to the earlier agreements establishing only spheres of influence. The British negotiator, in transmitting a text back to London, referred to it as only "the text of a proposed customs boundary."[131] Seven months later

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[131] Sir C. MacDonald's despatch of 26 March 1893 (NC-M 96)

the two parties concluded a further agreement referring once more to the delimitation being of areas under their influence (see below, paragraph 7.33).

7.29 By Article III (the only other Article) Germany engaged "not to allow any trade-settlements to exist or be erected on the right bank of the Rio del Rey Creek or waterway". For its part, the British side engaged "not to allow any trade-settlements to exist or be erected on the western bank of the Backasay (Bakassey) Peninsula from the first creek below Archibong's (Arsibon's) village to the sea, and eastwards from this bank to the Rio del Rey waterway". The effect of this provision thus appears to have been that, while the right bank of the Rio del Rey was, by virtue of Article II, established as the boundary between the British Protectorate and the German Colony, the Bakassi Peninsula, which was clearly on the Protectorate side of that boundary, was established as a zone which was to be free of trade settlements.

7.30 Thus the parties were establishing restrictions upon rights which would normally flow from control and authority over territory, namely the establishment of trade settlements; for the British this restriction applied to virtually the whole Bakassi Peninsula, while at the same time the acknowledgement that the boundary ran along the right bank of the Rio del Rey was deprived of any implication that Germany had any right to establish trade settlements along that bank. The British negotiator (Sir C. MacDonald) understood at the time that the outcome was that the "boundary ends where the sea begins."[132] There is nothing in the text of Article III to suggest that by providing that the boundary followed "the right bank of the Rio del Rey" Germany was getting control of a narrow strip of land along *and inland from* the Rio del Rey. The normal meaning of language establishing a boundary line "along the right bank of a river" accords with Sir C. MacDonald's understanding at the time (above), and is that the boundary was at the line where the bank met the

[132] Sir C. MacDonald's despatch of 26 March 1893, (NC-M 96).

waters of the river.[133] Any grant of rights inland from a line so determined would need express provision, which could easily be given if there were agreement to that effect. Apart from the restriction as to trade settlements, the Agreement did nothing to alter the Protectorate status of the territories to the West of the Rio del Rey, and in particular did not amount to a transfer of the Bakassi Peninsula to German protection. Moreover, had it purported to do so, it would have been a purported alienation of the territory of the Kings and Chiefs of Old Calabar in violation of the Treaty of Protection of 10 September 1884, and thus ineffective to achieve that result - a matter to be discussed later in the context of the Anglo-German Agreement of 11 March 1913.

F. The Anglo-German Agreement respecting Boundaries in Africa, Berlin, 15 November 1893

7.31 This Agreement was concerned with the fixing of the point close to Yola which had been referred to in the 1886 Exchange of Notes (paragraph 7.13 above) and then carrying the boundary further northwards. Accordingly, it did not directly deal with the boundary in the Bakassi area. But in fixing the point close to Yola (see sketch map at Map 30 in the *Atlas*), the Agreement began by drawing a line:

> "from the point on the right bank of the Old Calabar or Cross River, about 9°8' of longitude east of Greenwich, marked 'Rapids' in the English Admiralty Chart referred to in the above-quoted Agreement of 1885".

7.32 This essentially repeated the language previously used to fix the place where the Rio del Rey line met the Cross River.

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[133] As to this see *Vermont v. New Hampshire* ((1933) 289 US 593; AJIL, 27 (1933), p. 779) in which the U.S. Supreme Court, applying language prescribing that a boundary should be "the western banks of the River Connecticut", held that the boundary was the low water mark on the western side of the River, and expressly rejected the opposing view that the boundary should run along the top of the western bank of the River.

7.33 It is to be noted that the preamble to this Agreement still referred to the delimitation as being one:

> "between the territories under the influence of their respective Governments in the region extending into the interior from the Gulf of Guinea".

CHAPTER 8

THE ANGLO-GERMAN TREATY OF 11 MARCH 1913 AND DEMARCATION AGREEMENT OF 12 APRIL 1913

A. The Treaty of 11 March 1913

(i) Background to the Treaty

8.1 In the years following the April 1893 Agreement, Britain and Germany continued to negotiate an agreed delimitation of their respective territorial interests.

8.2 In October 1895 a joint Anglo-German Boundary Commission (under Captain Close for Britain and Lieutenant von Besser for Germany) surveyed the boundary from the point fixed by the Agreement of 14 April 1893 as the head or upper end of the Rio del Rey Creek to the point on the Cross River marked "Rapids" on the Admiralty Chart. In their joint Report (NC-M 97) the Commissioners stated that there was no natural boundary possible between the two points, and they proposed a new line which crossed and re-crossed the straight lines in the earlier agreements. They also said:

> "3. It is to be noted that the existing trade of every village through which we passed is with Old Calabar, either down the Cross River, through Oban, or through Ekonaku. Also that all the villages to the north of the Okuri Peak shown on the attached photograph are of the Ekoi race, which extends from the Calabar River."[134]

8.3 It is thus apparent, from the Commissioners' joint Report, that in this general boundary region the local links were essentially westward, with Old Calabar, and not eastwards with Cameroon. This is made even clearer by the report of 21 December 1895 from the British Acting Consul-General in Old Calabar (Moor) to the Foreign Office (NC-M 98), commenting upon the joint Report of the Boundary Commissioners:

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[134] F.O. Confidential Print No. 6837, p. 33

> "1. The country through which the survey party passed is all on the German side of the direct boundary drawn between the fixed points on the creek leading into Rio del Rey and in the Cross River.
>
> 2. All the inhabitants in this country regard themselves as under English rule, and carry on their trade exclusively with Old Calabar. There are Efik (Calabar) traders in many of the towns, and I am credibly informed that many of these towns have, up to a late date, paid tribute to Efik Kings and Chiefs as subjects.
>
> 3. The upper part of the direct and proposed boundary lines north of Ekong, passes through a country inhabited exclusively by the Ekoi people, and will cut off a portion of this race from the main body. The Ekoi people extend from the upper waters of the Calabar River across to the rapids of the Cross River, and for some little distance beyond.
>
> 4. The country inhabited by these Ekois who will be thus cut off if the direct or proposed boundary be made absolute, is of no very great extent, nor is it of any very great value. The interests of these people would, I think, be best considered by their being placed within the Protectorate, and the resulting loss to the Germans would be only a small matter."[135]

8.4 Moor also noted that, whereas the "Rapids" on the Cross River had in all earlier agreements been said to be at 9°8' East longitude, they had now been fixed by the Boundary Commissioners at 8°55' East longitude, thus in effect (so he thought) shifting the boundary towards the West. Although this apparent shift of the boundary was a misunderstanding on Moor's part,[136] it added to his concerns about splitting the Ekoi people, and led him to suggest - as had previously been often suggested (see above, paragraph 6.36) - that the better boundary between British and German territorial interests would be the Ndian River, the mouth of which flowed into the north-east sector of the Rio del Rey.

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[135] F.O. Confidential Print No. 6837, p. 18.

[136] Moving the longitude grid on the surface of the ground was a purely technical matter and did not affect the position of the boundary, which was related to a geographical feature, i.e. the rapids.

8.5 In the event, it was agreed that the boundary line recommended by the Boundary Commissioners in 1895 could not be accepted as a basis for a definitive settlement of the frontier. On 18 May 1899 the British Foreign Secretary (Lord Salisbury) wrote to the German Ambassador, saying:

> "Her Majesty's Government agree that until a final agreement on the subject can be arrived at between this country and Germany, the only course that remains is to retain the original frontier line which was fixed by Article 4 of the Agreement of the 1st July 1890, and described in detail in the Agreement of the 14th April, 1893." (NC-M 99)

8.6 Moor's report of 1895 (above, paragraph 8.3) had, however, pointed the way in which future negotiations were to develop, with Great Britain concerned to place the boundary as far to the East as possible in order to preserve the territorial and social integrity of the Protectorate and its local inhabitants and to avoid local societies being disrupted by the drawing of arbitrary boundary lines, and with Germany seeking a boundary as far to the West as possible (and in particular at the Akpa Yafe) in order to protect German trading interests.

8.7 Further negotiations took place in the years around the turn of the century, principally between Moor (now Sir Ralph Moor, and High Commissioner for Southern Nigeria) and the Governor of Kamerun (von Puttkamer). In 1901 they reached an agreement on a "boundary ... proposed for consideration of the British and German Governments" (NC-M 32). By Article III this boundary would have met the coast "at the mouth of the Akpa Iyefe River" (i.e. Akpa Yafe/Cross River) and would have put the Bakassi Peninsula "into the German Colony of Cameroon". In November 1901 the German Government rejected the Moor-von Puttkamer proposals, and the treaty they proposed was never agreed.

8.8 Further negotiations were held, however, in which boundary matters were linked with various commercial matters regarding transit on the rivers in question. It was

still, apparently, the common assumption that the adjusted boundary to be agreed would begin in the South in the Cross River estuary and follow the lower course of the Akpa Yafe, i.e. still putting Bakassi on the German side of the line. By an Exchange of Notes of 25 September/4 November 1905 (NC-M 36), Great Britain and Germany established a Mixed Commission to demarcate the boundary between the coast and the Cross River, and to conduct certain mapping activities in the area to the east of the Cross River Rapids. While the two notes showed some disagreement as to the precise area with which the Mixed Commission was to concern itself, both Governments shared the view that the demarcation to be undertaken by the Mixed Commission was to have only a provisional character, pending the approval of the two Governments: the German Note said more specifically that the provisional demarcation would only come into force on the ratification of the eventual Boundary Agreement (which was to include also the agreed provisions regarding the outstanding commercial matters).

8.9 The Mixed Commission carried out its work between December 1905 and June 1906, as recorded in the report submitted by the British Commissioner (Captain Woodroffe) (NC-M 100). The Mixed Commission marked the line of the land boundary with a series of pillars. The total length of the line surveyed was about 200 kilometres (125 miles). This stretch demarcated with pillars was well to the North of the Bakassi Peninsula, and may therefore be disregarded for immediate purposes.

8.10 The Commissioners' proposals also covered the southern stretch of the boundary, down to the sea. These were recorded in an undated Protocol bearing the

signatures of the two Commissioners: it was apparently signed on 20 April 1906.[137] The Protocol (NC-M 101 and 102) proposed:

> "the following boundary between Southern Nigeria and Kamerun:
>
> 1. The boundary-line begins at the mouth of the Akwayafe (Akpa Iyefe) River at the middle point of the line joining King Point and Bakassi point. The boundary then follows the thalweg of the Akwayafe River (known also in the upper reaches as the Akpakorum River) to the junction of the Ebe and Akpakorum Rivers in such a way that the Mangrove Islands, near Ikang, are divided as shown on the adjoining map, and the two small Mangrove Islands north of Archibongs and Ikang, respectively, fall on the English side.
>
> The boundary then follows the Akpakorum River to a pillar ..." [this being the southernmost pillar erected by the Mixed Commission: paragraph 8.9 above].

8.11 Although Great Britain was ready to accept the Protocol (Note of 23 May 1907, NC-M 103), Germany wanted changes and additions to be made (Note of 2 July 1907, NC-M 104). There followed a protracted correspondence between the British and German Governments over particular aspects of the boundary line proposed in the Woodroffe-Herrmann Protocol, particularly the course it should follow in the Cross River estuary seaward of the line joining King Point and Bakassi Point, which

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[137] Cameroon has exhibited in Annex MC 38 the typescript of a French version of the official English and German texts of the Protocol taken from an unattributed source. This typescript ends (at p. 245) with an "author's note" to the effect that the Protocol was signed on 20 April 1906 at the village of Archibong. It is not clear whether this purports to reflect a note in the original text (although one which does not appear in the official print exhibited by Cameroon in Annex MC 39) or whether it was added by the person who translated the official text into French. The latter would seem to be the case, since there is some doubt whether the Protocol was signed on that date, at least by the German Commissioner. The Report prepared by the British Commissioner recorded that, the German Commissioner having announced that he might have to sail early for Europe, the British Commissioner and a colleague

> "marched to Esu Aye to complete the Protocol with Captain Herrmann before he sailed.... [On arriving at Esu Aye they] received a letter from the German Commissioner on the 26th that, with much regret, he was compelled to leave Rio-del-Rey for Duala and Germany the next day. The British Commissioner under these circumstances wrote out a Protocol and forwarded it at once to Calabar in the hope of its reaching Captain Herrmann before he left Duala. It did not, however, reach him in time." (FO 367/42, NC-M 101)

had not been determined by the Commissioners in their 1906 Protocol. The outcome was the signature by British and German officials on 6 October 1909 of an "Agreement respecting Boundary between Nigeria and the Cameroons" (NC-M 42). This agreement was submitted to the respective Governments for approval. That approval was not given.

8.12 Nevertheless, the terms of the Agreement were influential for future developments. Starting well to the north of the area of Bakassi, in paragraphs 1-17 it delimited the boundary southwards down to the point which had been established by the southernmost pillar of the 1905-1906 demarcation (see above, paragraph 8.9). The last part of paragraph 17, and paragraphs 18-22, provided for the boundary to run from that point:

> "... thence by the shortest line to the thalweg of the River Akpakorum, known in its lower reaches as the Akwayafe (Akpajafe).
>
> 18. Thence it follows the thalweg of the Akpakorum (Akwayafe) River, dividing the Mangrove Islands near Ikang in the way as shown on the accompanying map, T.S.G.S. 2240, sheet 2. It theOn follows the thalweg of the Akwayafe as far as a straight line joining Bakasi Point and King Point.
>
> 19. Should the thalweg of the lower Akwayafe, upstream from the line Bakasi Point-King Point, change its position in such a way as to affect the relative positions of the thalweg and the Mangrove Islands, a new adjustment of the boundary shall be made, on the basis of the new positions, as determined by a map to be made for the purpose.
>
> 20. Should the lower course of the Akwayafe so change its mouth as to transfer it to the Rio del Rey, it is agreed that the area now known as the Bakasi Peninsula shall still remain German territory. The same condition applies to any portion of territory now agreed to as being British, which may be cut off in a similar way.
>
> 21. From the centre of the navigable channel on a line joining Bakasi Point and King Point, the boundary shall follow the centre of the navigable channel of the Akwayafe River as far as the three-mile limit of territorial jurisdiction. For the purpose of defining this boundary, the navigable channel of the Akwayafe River shall be

considered to lie wholly to the east of the navigable channel of the Cross and Calabar Rivers.

22. The 3-mile limit shall, as regards the mouth of the estuary, be taken as a line 3 nautical miles seaward of a line joining Sandy Point and Tom Shot Point."

8.13 Although this 1909 Agreement did not expressly provide for the demarcation of the boundary delimited by it, it was implicit in its terms that there would be a demarcation. Thus paragraph 27 referred to something which was to happen "within six months from the date of marking out the boundary", and paragraph 28 provided that "In marking out the boundary the representatives of the two Governments" had certain powers to make minor deflections. Furthermore, the officials, in submitting the Agreement to their Governments for approval, had added a recommendation "that the delimitation of the boundary on the spot should be undertaken during the next dry season, that is in the autumn of next year" (i.e. 1910). Although the Agreement was not approved by the two Governments and therefore did not enter into force, the two Governments nevertheless embarked upon the demarcation which was envisaged, resulting in the Demarcation Agreement of 12 April 1913 (NC-M 46 and see paragraph 8.60 below).

8.14 At this point it is necessary to emphasise that although there had been various negotiations between Great Britain and Germany about the frontier, none of them had led to the conclusion of agreements which ever entered into force. This is in particular true of:

(1) the boundary recommendations put forward in the Report of the Anglo-German Boundary Commission (Close/von Besser) in 1895 (above, paragraphs 8.2-8.5);

(2) the proposals put forward by Moor and von Puttkamer in 1901 (above, paragraph 8.7);

(3) the proposals put forward in the Protocol signed in 1906 by the Anglo-German Mixed Commission (Woodroffe/Herrmann) (above, paragraph 8.10); and

(4) the Agreement signed on 6 October 1909 (above, paragraphs 8.11-8.12).

Thus immediately before the conclusion of the Anglo-German Treaty of 11 March 1913, the only Anglo-German agreements relevant to sovereignty over the Bakassi Peninsula which had entered into force were the Exchanges of Notes of 1885 and 1886 and the Agreements of 1890 and April 1893, by virtue of which the boundary between British and German spheres of influence was set at the Rio del Rey, thus leaving the Bakassi Peninsula clearly on the British side of the boundary.

8.15 Nevertheless, Cameroon has sought to argue that:

> "the Bakassi Peninsula had, for several years prior to 1913, been acknowledged to come under German jurisdiction. In other words, the shifting of the boundary from the right bank of the Rio del Rey (as defined by the Agreement of 14 April 1893) to the thalweg of the lower reaches of the Akwayafé (as defined by the Herrmann-Woodroffe Protocol) was by this time held to be definitive ..." *Memorial,* 2.88)

8.16 There is no legal justification for attributing to "agreements" which never entered into force any "acknowledgement" of the situation which would have existed had they ever done so, and still less is there any legal justification for regarding as "definitive" the shifting of the boundary which would have resulted from their entry into force had they ever done so. Similarly, Cameroon's assertions that:

> "since 1901, the local British and German Authorities in Nigeria and Cameroon had agreed that the frontier was to reach the coast at the mouth of the River Akwayafé" (*Memorial*, paragraph 4.282)

and that

> "it can therefore be said without hesitation that, since 1901, the Governments concerned both considered that the River Akwayafé represented the frontier" (*Memorial*, paragraph 4.300)

are without any legal foundation.

8.17 This apparent reliance on the Moor-von Puttkamer proposals of 1901 as the basis for these propositions ignores the fact that, although those two people were senior *local* officials of the two States, their proposals were not agreed by their two governments (see above, paragraph 8.7). Cameroon thus seeks to convert a conditional British proposal (rejected by Germany) into an accomplished and binding fact with sweeping and serious legal consequences.

8.18 Cameroon has indeed itself recognised that the various "agreements" did *not* enter into force.[138] Each of the abortive "agreements" is accepted by Cameroon as having required governmental approval but as never having received it. The inescapable conclusion is that as a matter of law the boundary (such as it was) remained that laid down in those agreements which *had* entered into force, namely those of 1885, 1886, 1890 and April 1893.

8.19 The position is much the same as regards certain acts which, even before March 1913, appear to have been taken on the basis that one or other of the various "agreements" between 1895 and 1909 were about to take, or had already taken, effect, from which it might seem that the 1913 Treaty merely confirmed those results flowing from the earlier "agreements". This, however, is not so. An example is the British War Office's map of 1902, referred to in Cameroon's *Memorial*, paragraph 4.323. But even Cameroon accepts that this map treats the Bakassi Peninsula as "*de facto* an integral part of the German Cameroons", thus acknowledging that *in law* the position was otherwise. Nor in any event can a single map of this kind have the legal effect of ceding territory. To repeat: the

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[138] See, for example, paragraphs 2.51, 2.52-58 and 2.75 of the *Memorial*.

earlier "agreements" referred to never legally entered into force, and therefore did not, in law, have any effect upon the boundary between German Kamerun and the British Protectorate of Southern Nigeria. Any actions which might have been taken in some expectation that the boundary question might be settled on the basis of one or other of those "agreements" were either ill-considered or simply premature (or both) and without legal effect, and in particular did not give those "agreements" a legal force which they did not have. The line of separation remained as laid down in the existing *treaties in force*, in accordance with which the Bakassi Peninsula lay on the British,and not the German, side of the Rio del Rey line.

(ii) The terms of the Treaty of 11 March 1913

8.20 The Treaty (NC-M 45) was concluded in view of the Parties' wish to provide for "the settlement of the frontier between Nigeria and the Cameroons, from Yola to the sea" (preamble). In a series of Articles numbered from I to XXII the Agreement provided for the course of the boundary (subsequent Articles deal with certain related matters, but do not directly purport to delimit the course of the boundary).

8.21 Articles I to XVII delimit the boundary in a series of sections southwards and south-westwards from Yola: they do not relate to that part of the boundary which is here under consideration (but see Chapter 19 of this *Counter-Memorial* as regards the boundary between Bakassi and BP 64). The last section identified in Article XVII refers to the boundary running to:

> "a pillar on the bank of the River Akpakorum about 2/3rds of a mile (1 kilom.) downstream from the point where the Ekonako-Ekong road crosses the Akpakorum, and thence by the shortest line to the thalweg of the River Akpakorum, known in its lower reaches as the Akwayafe (Akwajafe)".

8.22 Articles XVIII, XIX, XX, XXI and XXII continue the boundary line as follows:

> "XVIII. Thence it follows the thalweg of the Akpakorum (Akwayafe) River, dividing the Mangrove Islands near Ikang in the way shown on the aforesaid map T.S.G.S. 2240, sheet 2. It then follows the thalweg of the Akwayafe as far as a straight line joining Bakasi Point and King Point.
>
> XIX. Should the thalweg of the Lower Akwayafe, upstream from the line Bakasi Point - King Point, change its position in such a way as to affect the relative positions of the thalweg and the Mangrove Islands, a new adjustment of the boundary shall be made, on the basis of the new positions, as determined by a map to be made for the purpose.
>
> XX. Should the lower course of the Akwayafe so change its mouth as to transfer it to the Roi [*sic*] del Rey, it is agreed that the area now known as the Bakasi Peninsula shall still remain German territory. The same condition applies to any portion of territory now agreed to as being British, which may be cut off in a similar way.
>
> XXI. From the centre of the navigable channel on a line joining Bakasi Point and King Point, the boundary shall follow the centre of the navigable channel of the Akwayafe River as far as the 3-mile limit of territorial jurisdiction. For the purpose of defining this boundary, the navigable channel of the Akwayafe River shall be considered to lie wholly to the east of the navigable channel of the Cross and Calabar Rivers.
>
> XXII. The 3-mile limit shall, as regards the mouth of the estuary, be taken as a line 3 nautical miles seaward of a line joining Sandy Point and Tom Shot Point."

8.23 It is apparent that this part of the boundary was delimited in terms virtually identical with those of the equivalent provisions of the (non-approved) Agreement of 6 October 1909. Thus although that Agreement was not approved by the two Governments at that time, its substance was in this respect eventually approved by them in concluding the Treaty of 11 March 1913. This is borne out by Article XXX of the March 1913 Treaty, which confirmed the maps signed (but not

approved - see above, paragraph 8.11) on 6 October 1909 by the British and German delegates, and treated them as an integral part of the 1913 Treaty.[139]

8.24 It is immediately apparent that the boundary as it results from Articles XVIII - XXII of the 1913 Treaty has the effect of purporting to re-draw the eastern boundary of the Protectorate of Southern Nigeria in such a way that the boundary between that Protectorate and Cameroon runs to the West of Bakassi, thus attributing the Bakassi Peninsula to Germany (a conclusion reinforced by the terms of Article XX).

8.25 Before the conclusion of the 1913 Treaty, Bakassi formed part of the territories of the Kings and Chiefs of Old Calabar, which in turn formed part of the British Protectorate of Southern Nigeria. Accordingly, the boundary delimitation provisions of the Treaty had the purported effect of alienating Bakassi and transferring it to German administration.

8.26 However, under the Protectorate Treaty of 1884 Great Britain did not then acquire, or in 1913 have, territorial sovereignty over Bakassi. Because of the nature and scope of the Protectorate agreed by the Kings and Chiefs of Old Calabar with Great Britain, the Kings and Chiefs did not grant to Great Britain any right to transfer their title to Bakassi to any third party. Great Britain could not and did not, therefore, transfer territorial sovereignty over Bakassi to Germany by the Anglo-German Treaty of 11 March 1913. That part of the Treaty was not in 1913 opposable by Germany to the Kings and Chiefs of Old Calabar, who were third parties whose rights remained unaffected. It was not subsequently, and is not now, opposable by Germany's successors (now, ultimately, Cameroon) to the successor of the Kings and Chiefs of Old Calabar (now, Nigeria).

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[139] These maps were Series TSGS 2240, Sheets 1 and 2, and are referred to as such in substantive provisions of the (non-approved) 1909 "agreement" and the 1913 Treaty.

(iii) Germany's knowledge of Great Britain's legal position

8.27 The limitations on Great Britain's powers under the Protectorate established in 1884, and in particular its lack of sovereignty over the Bakassi Peninsula and thus its lack of legal authority in international law to dispose of title to it, must have been known to Germany at the time the 1913 Treaty was concluded, or ought to have been on the assumption that Germany was conducting itself in a reasonably prudent way.

(1) The conclusion of the 1884 Treaty of Protection was publicly known. It was published in *Hertslet's Commercial Treaties*,[140] which was published in 1890. It was also within the scope of an announcement in the official *London Gazette* of 5 June 1885 (NC-M 70), which announced that Britain had acquired Protectorates "by virtue of certain Treaties concluded between the month of July last and the present date, and by other lawful means" up to "the right or western river-bank of the mouth of the Rio del Rey"; a copy of this announcement was sent by the Foreign Office to the British Embassy in Berlin, who passed a copy to the German Foreign Office which, on 18 June 1885, acknowledged receipt of it (NC-M 105).

(2) Although there is no direct evidence that a copy of the 1884 Treaty was formally communicated to Germany by the British Government, it is inconceivable that Germany was not well aware of its terms, both as a result of the publications previously referred to and as a result of normal diplomatic activity on the part of its Embassy in London (including the preparations which will have preceded the negotiation of the various exchanges and agreements from 1885 onwards, up to and including the 1913 Treaty).

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[140] Vol. 17, at p. 154

(3) Germany, which itself established its "protectorate" over Kamerun in the same year as the British took equivalent action in respect of Old Calabar by the 1884 Treaties, will have been fully aware of the distinction between establishing a protectorate and acquiring sovereignty. This knowledge is demonstrated, for example, by (a) the General Act of the Conference of Berlin, signed on 26 February 1885 and to which Germany and Great Britain were parties, which acknowledged in Article 34 (above, paragraph 6.38) that there was a distinction between a European Power which acquires "possessions" and one which assumes "a Protectorate" on the Coasts of the African continent; and (b) the Anglo-German Agreement of 15 November 1893 (NC-M 28), Article V of which records the two States' agreement that neither would, in the sphere of influence of the other, "accept sovereign rights or Protectorates" - a clear acknowledgement of a distinction between the two, and a repetition of the similarly clear acknowledgement in Article VII of the Anglo-German Agreement of 1 July 1890 (NC-M 26).

(iv) The principle *nemo dat quod non habet*

8.28 *Nemo dat quod non habet* is a well-established principle of law and of legal logic - one of the general principles of law recognised by civilised nations. In any situation where territorial title derives from a cession, the successor State will acquire a good title only if the predecessor State was itself, at the time of the transfer, the holder of a good title which it was free to transfer.

8.29 The *Island of Palmas Case*[141] establishes the legal position. In that case the issue was whether the Island was under the sovereignty of the United States or The Netherlands. The United States based its claim to sovereignty on the cession of

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[141] (1928) 2 R.I.A.A. 829

various territories, said to include the Island, by Spain to the United States under the Treaty of Paris, 1898.

8.30 The Arbitrator (Huber) held that the mere fact that Spain and the United States had concluded a Treaty the terms of which might have applied to the Island of Palmas was not conclusive of the United States' title. He said:

> "Titles of acquisition of territorial sovereignty ... like cession, presuppose that the ceding and the cessionary Powers or at least one of them, have the faculty of effectively disposing of the ceded territory. ... (at p. 839). The title alleged by the United States of America as constituting the immediate foundation of its claim is that of cession, brought about by the Treaty of Paris, which cession transferred all rights of sovereignty which Spain may have possessed in the region indicated in Article III of the said Treaty and therefore also those concerning the Island of Palmas (or Miangas). It is evident that Spain could not transfer more rights than she herself possessed. ... (at p. 842). It is evident that whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers. ... The essential point is therefore whether the island of Palmas (or Miangas) at the moment of the conclusion and coming into force of the Treaty of Paris formed a part of the Spanish or Netherlands territory. ... (p. 843). The claim of the United States to sovereignty over the Island of Palmas (or Miangas) is derived from Spain by way of cession under the Treaty of Paris. The latter Treaty, though it comprises the island in dispute within the limits of cession, and in spite of the absence of any reserves or protest by the Netherlands as to these limits, has not created in favour of the United States any title of sovereignty such as was not already vested in Spain. The essential point is therefore to decide whether Spain had sovereignty over Palmas (or Miangas) at the time of the coming into force of the Treaty of Paris. ... (p.866-7)."

8.31 Finding that as between Spain and The Netherlands, during the period up to 1898, title to the Island was not vested in Spain, the Arbitrator held that, Spain having had no title in 1898, could not transfer title by cession to the United States in that year and that the Island accordingly formed part of Netherlands territory. In commenting on this case, Sir Gerald Fitzmaurice treated the underlying principle as self-evident. He said:

> "On the basis *Nemo dare potest quod non habet*, it was manifest that the United States could only have a good title if, in 1898, Spain had a good title. The issue therefore was whether in 1898 Spain in fact had a good title, or whether at that date some other country, and in particular Holland - the other party to the dispute - had a good title."[142]

8.32 In the *Lighthouses Case* between France and Greece,[143] Judge *ad hoc* Séfériadès, in the context of limitations upon the powers of a territorial sovereign in respect of territories occupied by another State, invoked the principle in saying (at p. 49):

> "There is a general principle of law which must not be lost sight of in the case we are considering; it is summed up in five words: *Nemo dat quod non habet*."

8.33 It was, he noted, a principle which had served as the basis of several modern codes, and he cited as examples the provisions of the French, Italian and Netherlands' Civil Codes regarding the purported sale of another person's property.

8.34 The same principle underlies the rule that a cession of territory carries with it the international obligations connected with the territory, since otherwise the ceding State would be able to transfer the territory unencumbered by those local obligations and that would be to accept that that State could transfer greater rights than it possessed at the time of the cession: see *Oppenheim's International Law*,[144] invoking the maxim *nemo plus juris transferre potest quam ipse habet*.

8.35 The same can be said of attempts to pass to a successor a title to property free from doubts which attach to that title. Accordingly, Article 11 of the Vienna Convention on Succession of States in respect of Treaties 1978 provides that a succession of States does not "as such" affect a boundary or boundary regime established by a

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[142] *Collected Papers* (1986), Vol. 1, p. 262

[143] PCIJ, Series A/B, No. 62

[144] Vol. 1 (9th ed., 1992), p. 682

treaty. The International Law Commission, in its commentary on draft Article 11, explained that such a provision:

> "would relate exclusively to the effect of the succession of States on the boundary settlement. *It would leave untouched any other ground of claiming the revision or setting aside of the boundary settlement*, whether self-determination or the invalidity or termination of the treaty. Equally, of course, it would leave untouched any legal ground of defence to such a claim that might exist.
>
> In short, the mere occurrence of a succession of States *would neither consecrate the existing boundary if it was open to challenge* nor deprive it of its character as legally established boundary, if such it was at the date of the succession of States."[145] (emphasis added)

8.36 The Commission continued that its formulation of the rule:

> "*leaves untouched any legal ground that may exist for challenging the boundary*, such as self-determination or the invalidity of the treaty, just as it also leaves untouched any legal ground of defence to such challenge"[146] (emphasis added).

8.37 This position was reinforced by Article 14 of the Convention, which provides that:

> "Nothing in the present Convention shall be considered as prejudicing in any respect any question relating to the validity of a treaty".

8.38 In the context of the present proceedings, Germany could not have acquired from Great Britain any better title than Great Britain itself possessed; and therefore Germany could have acquired a good title to Bakassi by virtue of the 1913 Treaty only if, in 1913, Great Britain had a good title. Great Britain, however, did not have any title at all to territorial sovereignty over Bakassi.

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[145] *YBILC*, 1974, Vol. II, Pt. 1, p. 210, para. (17).

[146] *ibid*:, para. (20)

8.39 Furthermore, Great Britain was given no express authority by the Protectorate Treaty to act on behalf of and in the name of the Kings and Chiefs of Old Calabar (see paragraph 6.64(3) above). In the absence of some specific subsequent grant of authority (of which there is no evidence), such authority as Great Britain might have had in that respect could only have resulted from an implication from the use of the term "gracious favour and protection" in the Treaty in describing what Her Majesty "undertakes to extend". But this language concerns what Great Britain was granting to the Kings and Chiefs, not what they were granting to Great Britain. A grant of authority to alienate territory needs clear language, and being a grant derogating from the sovereignty of Old Calabar, any arguably relevant language is to be interpreted restrictively. As already noted (paragraph 6.44 above) the concept of a Protectorate involves considerations of good faith, trust and a duty to act in the interests of the protected State. Those considerations, like the very word "protection", preclude the unauthorised giving away of territory which was to be "protected".

8.40 Accordingly, the 1913 Treaty, in purporting to transfer to Germany territory which was not Great Britain's to transfer, was concluded in excess of any territorial rights and legal powers vested in Great Britain, and was to that extent ineffective to achieve the purported transfer of territorial sovereignty.

(v) Consequences of Ineffectiveness

8.41 The legal effect of a purported transfer of title in conflict with the principle *nemo dat quod non habet* is, as the *Island of Palmas Case* (*supra*) clearly shows, that the purported transfer of title is without legal effect. The position is essentially one in which a party to a treaty purports to deal with a matter which is not that party's to deal with. It is as if, for example, France and Ireland were to conclude a treaty which purported to dispose of sovereignty over the Channel Islands and Isle of Man. Whatever other effects such a treaty might have as between those two States,

it could not result in any transfer of sovereignty away from the State presently possessing that sovereignty, namely the United Kingdom. Whether this issue is looked at as a lack of power to conclude a treaty on that matter, or as the conclusion of a treaty having as its object a matter which cannot properly be the subject-matter of a treaty between the parties, or as the conclusion of a treaty purporting to affect the rights of a third party, the result is the same: the treaty cannot (to the extent of the impropriety) achieve the purported result.

8.42 The principle *nemo dat quod non habet* is so well-established and accepted that occasions for applying it seldom arise. But when occasion does arise, involving treaty stipulations inconsistent with the principle, those stipulations inevitably fail to achieve their purported effect. In the present context, holding the "Bakassi provisions" to be ineffective restores the parties to positions which are consistent with their underlying obligations, attitudes and practices.

8.43 On Germany's side, the Cameroon Rulers with whom Germany concluded protectorate treaties had no claims to territories to the West of the Rio del Rey: indeed, their boundaries stopped some way to the East of the Rio del Rey. The agreement with Kings Akwa and Bell in July 1884, by which they gave up their rights of sovereignty and which was at the root of Germany's rights in Cameroon, defined their territories as "the country called Cameroon situated along the River Cameroon between the River Bimbia in the North and Kwakwa in the South and up to 4°10' North latitude" (above, paragraph 6.4). The *Atlas* at Map 27 shows the locations of the River Bimbia, Kwakwa, and the 4°10'N parallel of latitude. When formally announcing its newly acquired protectorate to various States in October 1884 (above, paragraphs 6.6 and 6.9(5)), Germany referred simply to the "Cameroons", and that reference can only be understood on the basis of the protectorate agreement. Great Britain, in notifying the appointment of a Vice-Consul

> "for the Territories under the Protectorate of Germany, in the Districts of Cameroons, bounded on the west by the Rio del Rey" (see paragraph 6.8 above)

recognised that the Cameroon Districts did not extend westwards of the Rio del Rey. By purporting to extend the territory of German Cameroon even further to the west so as to include the Bakassi Peninsula, Germany was going beyond the territorial limits laid down by its treaties with the Cameroon Rulers who had placed themselves under Germany's protection. Bakassi had not previously been subject to the territorial authority of the Cameroon Chiefs, but on the contrary to the authority of the various Kings and Chiefs of the Old Calabar region (see above, paragraphs 6.33-6.36).

8.44 Germany had, moreover, undertaken to Great Britain not to make acquisitions to the West of the Rio del Rey. This undertaking was an express commitment in the Exchange of Notes of 29 April/7 May 1885 referring to "that part of the coast of Guinea which lies between ... the mouth of the Rio del Rey and the British Colony of Lagos". Similarly, Article IV.2 of the Agreement of 1 July 1890 established the line separating the British and German spheres of interest as starting from the head of the Rio del Rey, and Germany engaged, in Article VII, not to make acquisitions in the British sphere.

8.45 After the conclusion of the 1913 Treaty it was made clear, in a letter of 19 April 1913 from the State Secretary of the Imperial Colonial Office to the State Secretary of the Imperial Foreign Office (NC-M 106), that in the German view the March 1913 Treaty was intended to make only "border corrections", implementing the earlier agreements of 1885, 1886, 1890 and 1893 and retaining the borders there laid down. Those earlier agreements, of course, used the Rio del Rey as the boundary in this area. The letter stated that the 1913 Treaty was therefore not concerned with "the acquisition or assignment of parts of a protectorate". Although this letter was only an internal communication between the two relevant German

Ministries, it seems to have been prepared in the context of a request from the British Foreign Office about the eventual publication of the Treaty. It was precisely on the basis that the Treaty only involved minor border adjustments and did *not* involve any cession or acquisition of territory that Germany concluded that no approval by the German legislature was needed, and therefore informed the British Government that there was no objection to publication.

8.46 Great Britain, for its part, was of course bound by the 1884 Treaty of Protection, which imposed obligations of protection upon Great Britain, and conferred various rights on Great Britain but only within certain limits. The principle *pacta sunt servanda* applies to that 1884 Treaty of Protection as much as to any other: a later treaty concluded by Britain with a different party could not detract from it. Great Britain itself recognised the continued binding force of the 1884 Treaty. Orders in Council providing for the governance of the Southern and Northern Nigeria Protectorates typically included a definition of the term "Treaty" in the following standard terms:

> "'Treaty' includes any treaty, convention, agreement or arrangement, made by or on behalf of [the Crown] with any civilised Power, or with any Native tribe, people, chief, or king, and any regulation appended to any such treaty, convention, agreement or arrangement."

8.47 Such a provision was, for example, included in Article III of the Southern Nigeria Protectorate Order in Council 1911 (NC-M 44), and Article III of the Nigeria Protectorate Order in Council 1922 (NC-M 53). That definition clearly covers, *inter alia*, the 1884 Treaty of Protection with the Kings and Chiefs of Old Calabar. Both of those Orders in Council contained a further clause permitting the making of Ordinances, but qualified in the following terms:

> "Provided ... That nothing in any such ordinance or ordinances contained shall take away or affect any rights secured to any natives

> in the said territories[147] by any treaties or agreements made on behalf or with the sanction of [the Crown], and all such treaties and agreements shall be and remain operative and in force, and all pledges and undertakings therein contained shall remain mutually binding on all parties to the same." (Articles V and XII of the two Orders, respectively)

8.48 Thus shortly before, as well as shortly after, the conclusion of the Anglo-German Treaty of 11 March 1913, the British Government demonstrated its intention not to affect the rights secured to the Kings and Chiefs and peoples of Old Calabar by the 1884 Treaty of Protection, to continue to be bound by all pledges and undertakings in that Treaty, and to maintain it "operative and in force". And, of course, that was the continuing position of the United Kingdom until 1960, since the whole structure of the United Kingdom's authority and jurisdiction in respect of the relevant part of the Protectorate was based on that Treaty.

8.49 The practice of both Germany and Great Britain towards the end of the nineteenth century showed certain common features:

(1) In a Protectorate any transfer of territorial sovereignty was a matter for the local Ruler (who retained territorial sovereignty), not for the Protecting State; and any such cessions would normally take place against the payment of compensation. By way of example the provisions of the Anglo-German Agreement of 1 July 1890 concerning Zanzibar may be noted. By Article XI of that Agreement (NC-M 26).

> "Great Britain engages to use all her influence to facilitate a friendly arrangement, by which the Sultan of Zanzibar shall cede absolutely to Germany his possessions on the mainland comprised in existing Concessions to the German East African Company, and their dependencies, as well as the Island of Mafia.

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[147] The 1922 Order in Council referred to "Protectorate" instead of "territories".

> It is understood that His Highness will, at the same time, receive an equitable indemnity for the loss of revenue resulting from such cession ..."

Those provisions are a particularly relevant example of the practice adopted in such cases, since they were part of the same Agreement which, in Article IV, contained specific provisions about the parties' West African protectorates bordering the Gulf of Guinea (see above, paragraph 7.22).

(2) Article XI of that Agreement merely provided that, in relation to the territory of the Protectorate, Great Britain would use its influence with the Sultan in order to secure a cession of territory *by him*. Where the State in question itself has sovereignty over the territory, only then is it appropriate for the treaty directly to provide for the cession of territory. Article XII of that same Agreement of 1 July 1890 illustrated clearly this aspect of the matter, in relation to the cession to Germany of the island of Heligoland, over which at the time Great Britain had sovereignty.

(3) Where territory is transferred provision is made for the future care of the inhabitants of the territory. Again, Article XII.2-7 of the Agreement of 1 July 1890 illustrates this practice in relation to the cession of Heligoland. Further evidence is also provided by the concern Great Britain showed for the future welfare of certain British missionaries who remained at Ambas Bay after that territory was transferred to German authority. In the Exchange of Notes of April/May 1885 (NC-M 24), the fourth paragraph of the initiating British Note of 29 April from Earl Granville, while providing for a withdrawal from territories falling within the limits of the sphere of action falling to the other party, made a special reservation "as to the Settlement of Victoria, Ambas Bay, which will continue to be a British Possession". This was followed up by a separate Note of the same date (NC-M 107), in which Lord Granville explained that that reservation had been in respect:

> "of a settlement of Baptist missionaries whom Her Majesty's Government could not undertake to transfer against their will to German jurisdiction".

He added, however, that:

> "if the German Government should be able themselves to come to a satisfactory arrangement with the missionaries, there being no political necessity involved, the difficulty as to the cession of Ambas Bay would disappear, and Her Majesty's Government would be ready to agree to its being included in the territories to be placed ... under German protection".

In other words, Great Britain was unwilling ("could not undertake") to agree to the cession of Ambas Bay to Germany unless the inhabitants of the British possession of Ambas Bay (i.e. the missionaries) could come to a mutually satisfactory arrangement with Germany safeguarding their interests.

8.50 In this respect, there was a marked contrast between Great Britain's concern for the inhabitants of transferred territories in the cases mentioned, and the lack of any similar concern in respect of the inhabitants of the Bakassi Peninsula (other than a continuation of fishing rights in Article XXVI, and a right of emigration within six months in Article XXVII - provisions which at least recognise that the inhabitants were not previously subject to German authority). Yet by the 1884 Treaty of Protection, entered into at the request of "the Kings, Chiefs, *and people* of Old Calabar", Great Britain undertook "to extend to them ... [the Crown's] gracious favour and protection". To transfer people to the authority of another State, without their consent and as if they were mere chattels, would not have been consistent with the obligation to extend to them British "protection". Nor would it have been consistent with the concern of Great Britain and Germany, expressed in the preamble to the General Act of the Conference of Berlin of 26 February

1885[148] ("préoccupés en même temps des moyens d'accroître le bien-être moral et matériel des populations indigènes"[149]) to transfer native populations from one national administration to another without their consent, and even without having informed them or consulted them. This would have disregarded their well-being rather than furthered it. Overall, the lack of any real concern for the fate of the inhabitants renders iniquitous the provisions of the Treaty purporting to transfer the Bakassi Peninsula to Germany, and is a further ground for rejecting their effectiveness.

8.51 It is indeed apparent that not only was the consent of the local inhabitants not sought, but that they were not even informed of any prospective transfer of the Bakassi Peninsula to German administration. Had it been otherwise, there can be little doubt that the delegation of local chiefs to London in mid-1913 (below, paragraph 9.3 (5)) would have raised the matter during their visit - but there is no record of them doing so. In this connection the observations of the Arbitrator in the *Island of Palmas Case* are relevant. The Spanish-American Treaty of Paris, which apparently included the Island of Palmas in the area ceded to the United States, had been notified to The Netherlands (the other State with claims to sovereignty over the Island), which had raised no reservation on the point. The question arose whether that silence on the part of The Netherlands could affect its title to the Island. The Arbitrator in the *Island of Palmas Case*,[150] observed that:

> "it would be entirely contrary to the principles laid down above as to territorial sovereignty to suppose that such sovereignty could be affected by the mere silence of the territorial sovereign as regards a treaty which has been notified to him and which seems to dispose of part of his territory" (at p. 843).

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148 *BFSP*, Vol. 76 (1884-1885), p. 4

149 "concerned at the same time as to the means of furthering the moral and material well-being of the native population"

150 (1928) 2 R.I.A.A. 829

That conclusion would follow even more strongly where the territorial sovereign was not even informed of the cession.

8.52 Taking into account the various considerations set out in paragraphs 8.24-8.51 above, to take the "Bakassi provisions" at their face value would not only be wrong in law but would also be contrary to the established practices of the parties in similar contexts at that time. The conclusion that the March 1913 Treaty ceded Bakassi to Germany would be *against* the nature and terms of Great Britain's 1884 Treaty of Protection with Old Calabar, *against* the interests of the inhabitants, *against* the financial interests of the title holders of Old Calabar who should have been compensated, *against* the recognised westward limit of the German Protectorate, *against* earlier undertakings by Germany to respect the Rio del Rey as the boundary and to make no acquisitions to the west of it, and *against* Germany's acknowledgement and understanding that the Treaty was not concerned with the acquisition or cession of territory. Considerations of cession were, it would seem, far from the minds of the parties. In reality, it would seem more the case that their concerns were with matters of trade: it was the protection of their trading interests which was their main concern.

8.53 As a final observation on the Treaty of 11 March 1913 it is to be noted that it lapsed as a result of the First World War. Article 289 of the Treaty of Versailles provided for the revival of pre-war bilateral treaties concluded by Germany on notification to Germany by the other party. However, Great Britain took no steps to revive the March 1913 Treaty. In the terminology of Article 289 it was and remained abrogated. Cameroon did not therefore succeed to the Treaty itself.

8.54 However, in accordance with well-established rules of international law, in so far as a boundary was lawfully established by that Treaty, the boundary survives until lawfully changed by some subsequent act binding upon the States concerned. For the reasons already given, the boundary purportedly established by that Treaty in relation to Bakassi was not lawfully established, and there was therefore no

consequent lawful boundary which could survive the lapse of the Treaty purportedly establishing it.

(vi) Severability of the "Bakassi provisions" of the 1913 Treaty

8.55 The ineffectiveness of the 1913 Treaty because of inconsistency with the principle *nemo dat quod non habet* applies only to those parts of the Treaty which purport to prescribe a boundary which, if effective, would have involved a cession of territory to Germany - for convenience referred to as "the Bakassi provisions". The remaining provisions of the Treaty are untainted by that defect. They are self-standing provisions, and their application is not dependent upon the Bakassi provisions. The Bakassi provisions, being in law defective, are therefore to be severed from the rest of the Treaty, and the Treaty's other provisions accordingly remain in force and fully effective according to their terms.

8.56 The ineffective "Bakassi provisions" of the Treaty of 11 March 1913 are primarily Articles XVIII, XIX, XX, XXI and XXII. The rest of the Treaty's provisions can continue to be applied. Doing so has the following effect.

8.57 The valid provisions delimiting the boundary stop with Article XVII. At the end of that Article the boundary line is described as running:

> "to a pillar on the bank of the River Akpakorum about 2/3rds of a mile (1 kilom.) downstream from the point where the Ekonako-Ekong road crosses the Akpakorum, and thence by the shortest line to the thalweg of the River Akpakorum, known in its lower reaches as the Akwayafe (Akwajafe)."

The location of the pillar referred to is shown at about latitude 5°11'N on *Atlas*, Map 33 (which is a reproduction of the map referred to in Articles XVI and XVIII).

8.58 Article XVII stipulates that the boundary runs from this pillar "by the shortest line to the thalweg of the River Akpakorum, known in its lower reaches as the Akpa Yafe (Akwajafe)". The reference to the thalweg, i.e. the navigable channel in the river, implies a reference to a part of the river where it is navigable. For the kind of small craft using these reaches of the river, the river is normally navigable without interruption up to the waterfall and rapids marked on maps, some 25 kilometres downstream from the location of the pillar. The terms of Article XVII itself thus take the boundary considerably to the south of the boundary pillar.

8.59 Since the next Article is ineffective, its stipulations as to the boundary are not directly relevant. Accordingly, the boundary effectively established by Article XVII runs southwards along the thalweg of the Akpa Yafe beyond the beginning of the navigable part of the river. The point on that stretch of the river which marks the end of the effective delimitation in accordance with Article XVII is the point at which the territorial authority of the Kings and Chiefs of Old Calabar ceased. Available evidence (see, e.g. above, paragraphs 6.35 and 6.36) shows that their authority extended at least as far up the Akpa Yafe as various settlements in the neighbourhood of the present town of Archibong, and included the present townships known as Akwa, Mbenmong and Nwanya, all of which are long established Nigerian settlements. The appropriate point on the Akpa Yafe at which the boundary effectively established by Article XVII ends is a point to the north of these locations, and in particular is the point on the thalweg of that River which is opposite the mid-point of the mouth of Archibong Creek (as to which see paragraphs 11.7 and 11.8(1) below).

B. <u>The Anglo-German Demarcation Agreement of 12 April 1913/ 6 July 1914</u>

8.60 While the Treaty of 11 March 1913 was being negotiated a joint Anglo-German survey and demarcation was taking place. This led to two Commissioners (Captain Nugent for Great Britain and Oberleutnant Detzner for Germany) signing a Protocol

at Obokum on 12 April 1913 incorporating a detailed description of the boundary line on which they had reached agreement (NC-M 46). This boundary covered the stretch of Anglo-German Boundary from near the southernmost pillar of the Yola-Lake Chad demarcation previously carried out (some 45kms. - 30 miles - south-west of Yola) to a point at a bend in the Cross River about 2½ miles upstream from Obokum, on the North bank of that river (see also paragraph 18.44 *et seq.* and 19.104 below). On 6 July 1914 Notes were exchanged between the two Governments by which each accepted the text signed by the Commissioners (with some minor corrections).[151]

8.61 The stretch of boundary covered by this Agreement ran no further South than the point on the Cross River referred to. That point is well to the North of the Bakassi Peninsula. The line demarcated by this Agreement is therefore not directly relevant to the question of title to that Peninsula. It is relevant to the Sector of the Nigeria-Cameroon boundary which runs northwards from the identified point on the Cross River, and is considered further in Chapters 18 and 19.

8.62 It may be noted here, however, that the two Governments had instructed their Commissioners only to demarcate the boundary as far South as the Cross River. It is apparent from the Note of 16 July 1912 from Sir Edward Grey to the German Ambassador and the reply of 16 August 1912 (both at NC-M 108) that the two Governments did so because in their view the portion of the boundary between the Cross River and the sea had been marked with boundary pillars by the Boundary Commission which had operated in 1905-1906.[152] In fact the pillars erected during that demarcation involved the erection of no pillars in the Bakassi area, the southernmost pillar being erected on the right bank of the Akpakorum River, some

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[151] The Exchange of Notes is evidenced by the Translation into English of Prince Lichnowsky's Note of 6 July 1914 which is Annex MC93 to Cameroon's *Memorial* and appears as Annex NC-M 329 referred to in para. 18.47 below.

[152] As to which see below, paragraph 19.58 (3).

60 kilometres North of Bakassi Point and some 25 kilometres North of the waterfall that interrupts navigation on the Akpa Yafe.

CHAPTER 9

BAKASSI: 1913-1960

A. Non-implementation of the 1913 Treaty by Germany on the ground

9.1 The signature of the Treaty of 11 March 1913 was followed in August 1914 by the outbreak of World War I, leading to the military occupation of German Kamerun by British, French and Belgian forces. That occupation was complete by May 1916.

9.2 Cameroon relies on the Treaty of 11 March 1913 in support of its claim to the Bakassi Peninsula,[153] but nowhere contends that that Treaty was carried into effect in the form of actual occupation or administration of Bakassi by the authorities of German Kamerun.

9.3 The weight of the evidence strongly suggests that there was no German occupation or administration of Bakassi, and no significant pattern of German activities there, in the period between March 1913 and May 1916. During that period and thereafter, the authority in Bakassi of the Kings and Chiefs of Old Calabar and of the developing Nigerian regional and local governmental structures of the Nigerian Protectorate continued uninterrupted.

(1) It is clear from the diplomatic exchanges prior to 11 March 1913 set out in NC-M 109 that a major reason why Germany sought control over Bakassi, apart from the strategic issue of control over the Cross River estuary, was to exercise customs control over traders in the Peninsula. Cameroon alleges nothing that could amount to a German act of sovereignty in the Peninsula: nor has Cameroon produced evidence that Germany ever occupied or administered the Bakassi Peninsula.

(2) Bakassi was an extremely remote area, difficult of access except by sea, and with most of its settlements situated on the western side of the Peninsula.

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[153] *Memorial*, Chapter 2, Section 2A, sub-sections 9 and 11

For these reasons, a German occupation of the Peninsula, or the establishment of an administrative structure within it, would have been difficult for logistical reasons, even if the population had welcomed it.

(3) There is a further reason why it is intrinsically improbable that the Germans would have endeavoured to establish themselves in the Peninsula. There is ample evidence that Germany found it quite difficult enough to establish and maintain its control over Kamerun itself. Furthermore, there were few Germans in the colony. Even in 1914 the total number of Europeans in the colony, including traders both German and British, numbered only 1,871. Consequently in German Kamerun, as indeed in Nigeria, administration continued in this period to be conducted largely on an indirect basis, through the traditional authorities. This kind of administration necessarily depends upon consent, and it is improbable that the population of Bakassi, owing allegiance to the Kings and Chiefs of Old Calabar, could have been persuaded in this period to acknowledge the authority of traditional authorities emanating from Kamerun. There is in any event no evidence that any attempt was ever made so to persuade (or indeed inform) them, either before or after 1916.

(4) Any attempt to disrupt or change the traditional ties between the population of Bakassi and the Kings and Chiefs of Old Calabar (particularly on the basis of a treaty of which the Kings and Chiefs were at the time unaware - see sub-paragraph (6) below) would have met with a lively adverse response, particularly since the treaties of 1884 remained well within living memory, and it was certainly remembered that these had been treaties of protection.[154] There is no evidence of any such protest in the period 1913 - 1916.

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[154] A similar point was made by Johnston as early as October 1890 - see paragraph 6.36 above.

(5) By contrast, in the same year in which the Treaty was concluded, 1913, the Kings and Chiefs did mount vigorous protests, both in Calabar and in London, at a development which they considered unfavourable, namely at perceived British proposals to amend the system of indigenous land tenure applicable in south eastern Nigeria. These matters are alluded to at paragraph 8.51 above. In that year Eyo Honesty VIII, Obong of Calabar, together with his Council of Etuboms, dispatched a delegation to London consisting of Prince Bassey Duke Ephraim IX (a member of the Native Council of Calabar and a son of the late King Duke) and Prince James Eyo Ita VII, Chief of Creek Town and grandson of King Eyo. In the course of that visit the subject of land tenure in the Protectorate was aired in the British Parliament. Mr. Cathcart Wason MP asked Mr. Harcourt, Secretary of State for the Colonies, whether

> "... the Government proposes to transfer the ownership of land in Southern Nigeria from the native communities to the Crown or to dispossess the natives of their land."

The answer came back:

> "... No, Sir, the Government have never made, and never entertained, and would not entertain such a proposal."[155]

(6) The Government of Nigeria has been unable, despite extensive research, to obtain any evidence tending to show that the Kings and Chiefs of Old Calabar were even aware that the Treaty of 11 March 1913 was under discussion or that it was signed in London, far less of its terms. In the absence of any evidence of protest, the overwhelming probability is that the matter was never brought to the attention of the Kings and Chiefs prior to the outbreak of World War I. Cameroon asserts[156] that the Treaty was

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[155] *Hansard*, 11 July 1913, (NC-M 110)

[156] *Memorial*, para. 4.287

published in the German Colonial Gazette[157] Vol. 24 of 1913 and in the British *Treaty Series*, 1913, No. 13. There is, however, no evidence that the Kings and Chiefs saw either document or were made aware of the implications of the contents of these publications.

9.4 Cameroon seeks to rely[158] in support of its contentions upon certain contemporary maps, which Cameroon contends showed Bakassi as part of German *Kamerun*. Nigeria reserves its position generally as to map evidence in the present case, but nevertheless repeats that, as is clear for the reasons set out in paragraphs 8.14-8.19 above, on no view could the Akpa Yafe have become the international boundary prior to March 1913. Consequently any map produced prior to that date, although it may to some degree have reflected the expectations of map-makers as to future boundary arrangements, was and is in no sense a reliable indicator as to title to the Peninsula.

B. The Effects of the Versailles Treaty of 1919

9.5 The Versailles Treaty of 1919[159] came into force on 10 January 1920. Part IV of that Treaty was entitled "German Rights and Interests Outside Germany", and included Article 118, which read as follows:

> "In territory outside her European frontiers as fixed by the present Treaty, Germany renounces all rights, titles and privileges whatever in or over territory which belonged to her or to her allies, and all rights, titles and privileges whatever their origin which she held as against the Allied and Associated Powers ...
>
> In particular, Germany declares her acceptance of the following Articles relating to certain special subjects."

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157 *Deutsches Kolonialblatt*

158 *ibid.* Chapter 3, Section 5 (Cartography)

159 The Articles cited appear in NC-M 49

9.6 Article 119 read as follows:

> "Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions."

9.7 Article 289 read as follows:

> "Each of the Allied or Associated Powers, being guided by the general principles or special provisions of the present Treaty, shall notify to Germany the bilateral treaties or conventions which such Allied or Associated Power wishes to revive with Germany. ... Only those bilateral treaties and conventions which have been the subject of such a notification shall be revived between the Allied and Associated Powers and Germany; all the others are and shall remain abrogated".

9.8 The existence of a state of war between Germany and Great Britain in and after August 1914 made it impossible at any time thereafter for Germany or any successor power to seek to implement any provision of the Treaty of 11 March 1913 that remained to be implemented. Moreover, one of the effects of the treaty provisions cited above was that the Treaty of March 1913 was and remained abrogated (above, paragraph 8.53). Accordingly, at no time after 10 January 1920 was it possible for Germany or any successor to seek to implement any provision of the Treaty of March 1913 that remained to be implemented.

C. <u>The realities of administrative development in Bakassi between 1913 and 1960 show that, as before, Bakassi continued throughout the period to be administered as part of Nigeria</u>

9.9 After 1916, the territories on both sides of the Akpa Yafe continued, as before, to be administered by Great Britain. The western part of the former German Kamerun was administered by Britain, first as a result of military occupation, then pursuant to the Treaty of Versailles (signed on 28 June 1919), the Milner-Simon Declaration

of 10 July 1919, and subsequently under the British Mandate of 20 July 1922, until the Second World War. After World War II it was administered by Great Britain under the United Nations Trusteeship Agreement of 13 December 1946.

9.10 Administrative, legal and other ties between Bakassi and the rest of Nigeria continued unbroken and uninterrupted throughout the period between 1913 and Nigerian Independence in 1960.

9.11 Cameroon contends that after World War I, Bakassi was administered as part of the British mandate territory of the Southern Cameroons. In the event, after World War I the whole of the mandated territory of the British Cameroons came to be administered as part of the Nigeria Protectorate, so that the distinction between mandated and protectorate territory, while acknowledged in principle, had virtually no practical significance for the people of Bakassi and Calabar. There was no practical day-to-day need for the British or local administration to distinguish between what might have been former German territory and what was British protected Nigerian territory. Conduct in relation to Bakassi would in practice have been the same whether it was regarded as former German territory or whether it was British protected territory.

9.12 There was in any event no question of non-British rule, and no question of putting an end to the traditional authority of the Kings and Chiefs of Old Calabar. Whether in the Protectorate or in the mandated territory, British rule in the early post-war period was predominantly indirect, through the traditional indigenous authorities. In view of the remoteness of Bakassi, the difficulties of getting access to the Peninsula, the seasonal activities of much of the population, and the unhealthiness of the climate, it is not surprising to observe that direct British interventions in the Peninsula, remained very limited throughout the period prior to Nigeria's Independence in 1960. Effective authority continued to be exercised by the traditional source of power and authority in the Peninsula, namely by the Kings and Chiefs of Old Calabar.

9.13 This state of affairs was reinforced by the fact that the boundaries of the British mandated territory were never defined precisely or comprehensively.

(1) The Milner-Simon Declaration of 1919 (NC-M 50) did not do so: it was adopted before the mandate had been created and so could not have purported to define its territorial boundaries; as noted in paragraph 19.39 below, it described the boundary in evidently inadequate detail; and in any event, it described only the Franco-British boundary - i.e. the eastern boundary of the British mandated territory - and not the whole of that territory.

(2) The Mandate itself (NC-M 51) did not do so, since in Article 1 it merely described the British mandated territory as comprising that part of Cameroon lying to the West of the line agreed upon in the Milner-Simon Declaration of 1919. It accordingly imported into the Mandate the deficiencies of that Declaration, dealing only with the eastern boundary of the British mandated territory. As regards the western boundary, it said nothing other than what was to be implied by the mandated territory having been "part of Cameroon". This, so far as concerned Bakassi, involves a reference back to the legally effective boundary between Cameroon and the Nigeria Protectorate - which, for the reasons explained in Chapter 8, left Bakassi as part of that Protectorate.

(3) The British Mandate Order in Council 1923 (NC-M 111) did not do so.

(4) The Cameroons Under British Mandate Order 1932 (NC-M 112) did not do so.

(5) The Nigeria (Protectorate and Cameroons) Order in Council 1946 (NC-M 55) did not do so.

(6) The Trusteeship Agreement for the British Cameroons 1946 (NC-M 56) did not do so, being concerned with the future trusteeship arrangements, and not with the Mandate.

9.14 There is no doubt that the provisions of the March 1913 Treaty concerning title to Bakassi have caused considerable confusion over the years. In the absence of a detailed analysis of the legal position of the type carried out in Chapters 6 to 8 above, there was a natural tendency on the part of administrative officials to have regard to those provisions. Even so, during the inter-war years, those officials found the provisions to be contrary to local custom, usage, administrative practicality and common sense.

9.15 There is evidence that some British officials administering the mandated territory of the Southern Cameroons thought that the location of the boundary between the mandated and protectorate territories left Bakassi within Nigeria proper. Thus in a letter written on 17 April 1919 (NC-M 113), Mr. Hunt, the British District Officer at Ossidinge, in Southern Cameroons, in official correspondence with the British Resident at Buea, clearly stated that the boundary with the Nigerian protectorate fell on the right bank of the Rio del Rey. He continued by stating that the boundary should in fact fall farther to the East, in order to include within the Nigeria Protectorate all the Rio del Rey estuary and basin.

9.16 Both the Milner-Simon Declaration of 1919 and the British Mandate of 1922 refer to the Moisel map which was apparently made in 1911. That map was, for many reasons, unreliable as to the true location of the boundary, but it appears to have had an unwarranted influence on cartographers' perception of the Bakassi boundary. It purported to be an authoritative map, and its credibility was enhanced by its adoption by Milner/Simon as the map annexed to the 1919 Declaration. Unsurprisingly, given the constraints of knowledge at the time, it turns out to have

many deficiencies.[160] Map-makers at this period were still largely reliant on accounts given to them by travellers regarding difficult terrain in remote locations. They would also have taken at face value the wording of relevant treaties or even, as is apparent with regard to Bakassi, exchanges of notes or protocols within the public domain.

9.17 The Sheet of the Moisel Map which shows the purported 1913 boundary West of Bakassi, was actually dated 1 August 1911, eighteen months before the March 1913 Treaty was signed. The exact legal status of the documents relied upon to produce maps would not have been the concern of cartographers such as Moisel. The disproportionate influence exercised by the Moisel map has continued to haunt Bakassi ever since its first publication. The evidence is that generations of cartographers have unquestioningly followed Moisel's original 1911 portrayal of Bakassi as being in Kamerun (and subsequently in the Cameroons) without regard to the underlying legal reality.

9.18 There was a body of opinion amongst British mandatory officials which, influenced no doubt by that map, regarded the Akpa Yafe, albeit mistakenly, as the boundary between the Nigerian Protectorate and the Mandated Territory. There was consequently some confusion as to whether the Bakassi area (known during this inter-war period as 'Fish Towns' or 'Fishtowns') should, at least for some purposes of the British administration, be administered as part of the Victoria District, with Douala as its centre. Later, part of Bakassi became nominally included in Kumba Administrative District, with its headquarters at Mamfe. Both these towns were and are significantly further away from Bakassi than Calabar (see *Atlas*, Map 34).

9.19 However, for the reasons already stated in Chapters 6 to 8, those British officials who believed that at least in theory Bakassi was part of the Mandated Territory were simply mistaken. Where British officials held that view, they did so with

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160 Some of these are referred to below in Chapters 18 and 19, particularly at paragraph 18.60

reluctance, and regarded the point as far more a theoretical than a practical one. Mandatory Powers did not acquire sovereignty over the territories placed under their administration. They therefore did not have the requisite authority or power to alter, whether by addition or substraction, the territorial sovereignty of the area under their administration. Their acts of administration, including any which might be regarded as having treated Bakassi as part of the British mandated territory, are thus irrelevant to the sovereignty over that territory, and in particular do not suffice to overcome the legal defects in the process by which Bakassi is alleged by Cameroon to have been part of the British Mandated Territory rather than of the British Protectorate.

9.20 The distance from the administrative centres of the British Cameroons would have made various administrative tasks, such as the collection of taxes, unduly difficult, and also flew in the face of the realities of local and indigenous ties and lines of authority. The reality was that Bakassi continued to be administered from Calabar.

9.21 An Assessment Report of the Fish Towns area by the Acting Divisional Officer, Mr F. Carr, carried out in February 1922 stated that:

> "The more permanent dwellers ... are said to be of a tribe known as IFIALE. It is stated their country is situated in Nigeria to the North East of Calabar, and having no fish in their own part they use this area to obtain it. Numbers of Calabar men come to the towns for fishing and trading." (NC-M 114)

9.22 The Report (at p.3) also highlighted the fact that a number of villages on Bakassi were already established in this period, including Abana, Atabong East and Atabong West, Ine Akpak, Ine Atayo, Ine Odiong and Edim Abasi.

9.23 It was clear to the British mandatory officials that whatever the exact position as to legal title to the Bakassi Peninsula, the realities of the ties between Bakassi and

Calabar could not and should not be ignored or overridden. These matters are recorded in NC-M 115 to NC-M 133.

9.24 These documents include protracted correspondence between the British officials in Calabar, Eket, Buea, Victoria and Mamfe concerning the status of the Peninsula, during the period 1932-1937. The problem of the status of the area had arisen as a result of the taxation of the fishermen who lived and worked on the Peninsula, at Abana, East and West Atabong, Ine Odiong and other villages which were already established at this time. Attempts were being made to tax them, in duplication of the efforts of the Calabar Division of the Calabar Province in the Nigeria Protectorate, through the Victoria Division in Cameroons Province.

9.25 On 8 June 1932, the Chiefs of Abana, Atabong, Ine Odiong, Ine Atayo and other villages in the Bakassi area wrote to the Divisional Officer at Victoria regarding the establishment of a Native Administration Mangrove Reserve. Their letter gave details as to the origins of the fishermen in the Bakassi villages:

> "The fishers at Ine Odiong come from James Town. Abana, from Akpabuyo. Inua Abasi, from Ibino. Ine Atayo, from Enwang." (NC-M 115)

9.26 The attempt to set up the Mangrove Reserve, together with problems over tax collection, led to a demonstration by the women of Abana (NC-M 116). As a direct result of this demonstration, the British authorities took a keener interest in the situation and the problems in this previously under-regarded part of their administration. On 20 June 1932, the Divisional Officer of Victoria Division in Southern Cameroons wrote to the Resident at Buea in the following terms:

> "3. It was also stated that *the Rio del Rey* estuary formed the boundary line between the spheres of the Calabar people and the Bimbia-Bakweri. (emphasis added)

> 4. Although the fish town area is populated almost exclusively by people from Calabar, the District Head claims on behalf of the Bakweri the land as Bakweri land. there [*sic*] are no Bakweri people or natives of the Cameroons resident and little or no communication between the fish towns and the nearest Bakweri villages.
>
> 5. From the records in this office it seems that the greater proportion of the inhabitants have their main habitation and connections on the Calabar mainland and their occupation of the Fish Towns is only seasonal and for fishing.
>
> ...
>
> From June to October the majority of the settlements are deserted either wholly or in part, the people returning to their Calabar towns.
>
> 9. It may be suggested that a possible solution [to the problems of administration of the area] will be found in the alteration of the Administrative boundary." (NC-M 117)

9.27 A further memorandum from the District Officer in Victoria to the Resident in Buea dated 18 July 1932 emphasises this view by stating:

> "3. There were then people of Calabar trading and fishing down the coast, but no attempt at permanent settlement or to claim land as Efik land was made. There was, it is claimed, a mutual agreement between the Duke family in Calabar and William Billa [of Rumby area] to regard the Rio del Rey estuary as the middle of the Mangrove swamps as a limit of control.
>
> 4. With the advent of the German administration this rough boundary became the inter colonial boundary. *It is in fact the natural boundary between the tribes of the Cameroons Mountain and the Efik tribe.*
>
> ...
>
> 8. Since my last report, I have received a letter from the heads of families operating in fish towns. The letter states clearly their views, which indicate that a Native Administration based on Victoria as Headquarters [*sic*] will be difficult to operate successfully." (emphasis added) (NC-M 118)

9.28 This Memorandum effectively acknowledged that Bakassi was not in fact administered from Victoria and that it would be mistaken to attempt to do so. The theme was resumed in a Memorandum dated 23 July 1932 from the Resident of Cameroons Province at Buea to the Secretary of Nigeria's Southern Province, at Enugu, forwarding the above memoranda, which stated that "it may be better that this area should be administered from Calabar" (NC-M 119). The preponderant strength of the ties between Bakassi and Calabar was repeatedly acknowledged, on a significant number of occasions, by the British authorities both in the Protectorate and in the British Cameroons.

9.29 A Memorandum dated January 1933 from the Resident of Cameroons Province to the Resident of Calabar Province (NC-M 120) expressly acknowledged that no effective British administration of the "Fish Towns" yet existed. That comment, so revealing of the continuation of the pre-war status quo, is nevertheless perfectly consistent with the continuing authority in Bakassi of the Kings and Chiefs of Old Calabar. The Memorandum set out the case for the change in the boundary and for administration of the Fish Towns area by Calabar Province in the following terms:

> "The Fish Towns are inhabited, mostly seasonably, by people who have their normal place of residence in the Calabar Province and when they enter the Cameroons Province they do so purely to fish and subsequently to return to their homes. The area is difficult of access from Victoria and any attempt to form any administrative organisation has proved abortive. This is not surprising as such organisation as they may have is centred in their homes.
>
> The report[161] [by the District Officer of the area] - shows clearly the attitude of the people and it appears from this that the only way *in which effective administration can be introduced* is by administration from Calabar." (emphasis added).

9.30 That Report by the District Officer, Mr. P. Riley, dated 7 December 1932 (NC-M 121) ridiculed the "theoretical" administration of Bakassi by the Victoria Native

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[161] NC-M 121

Authority, and at the same time indicated, so far as legal jurisdiction was concerned, that the Victoria Courts were not in practice exercising any jurisdiction in the Fishtowns area:

> "6. To attempt to administer these people from Victoria is in my opinion ridiculous and the present position is entirely contrary to modern re-organisation theories. ... I am aware however that difficulties arise when dealing with the transfer of an area from the mandated territory; could not Fishtowns remain in the Cameroons Province but be administered from Calabar or Eket? It appears that the majority of the inhabitants come from the latter Division.
>
> 7. The advantages of this would be :
>
> (1) The Fishtowns people would immediately come under the control of Native Authorities which, if not actually their own, would possess similarity of custom and language. At present theoretically they are under the Victoria Native Authority, which is strange to them both as regards language and custom.
>
> (2) It is the wish of the people themselves.
>
> (3) Tax collection would be rendered far easier. It is almost twice the distance from Victoria to the Fishtowns than from Calabar. ...
>
> (5) They would come under the jurisdiction of their own Courts and not as at present under both the Victoria and Calabar Courts. Actually, as stated before, they never use the Victoria Court."

9.31 The Resident in the Cameroons Province sent a letter to the Secretary of the Southern Province of Nigeria, Enugu on 15 November 1933. The letter was sent after research and surveys into the Fishtowns area had been carried out. It stated:

> "2. The position is that the administrative advantage of transferring the Fishtown Area to the Eket Division [in Nigeria] is admitted." (NC-M 122)

9.32 A Report on the Fishtown Area in February 1935 by Mr Bridges, the District Officer for Victoria Division, and Mr Childs, his Assistant, further reveals the attitude of the population and the affiliations of the people in the mid-1930s. This independent official report clearly showed that the population of the area were and continued to think of themselves as Nigerian; that their allegiances, both cultural and judicial, were to Nigeria; and that the British authorities firmly believed that they should be administered from Calabar or Eket in Nigeria and not from the Cameroons:

> "8. The regular inhabitants of the Fishtowns come mostly from the Eket Division of the Calabar Province; a certain number, however, come from Uyo District, and there are also various 'strangers' who come from Bonny, Port Harcourt and other parts of Nigeria. The population is almost entirely male, and the sole purpose of its existence is to fish and to fish hard.
>
> 9. Headmen exist in each settlement, being either proper Elders, recognised as such in their home villages, or men specially chosen to act in this capacity in the Fishtown settlements only. ... Small disputes are settled where possible by the Headmen, while serious matters are referred to the parties' own Native Court on return to their country [Nigeria] ...
>
> 12. The Efiats of Eket, who constitute the largest individual clan in the area, hold an annual juju meeting at Atabong West [on Bakassi],
>
> ...
>
> 15. When questioned as to their views in regard to the establishment of a court in the area, the universal reply was that everyone who so desired, attended his own clan court, and in some cases it was added that such a question could not be answered without prior reference to the proper elders 'at home'. No-one wished to have any dealings with the Isangelis, and it was abundantly evident that everyone wished merely to be left alone to fish in peace. ... It should be mentioned here that it is customary for Court Messengers from Calabar Province to serve summonses and execute warrants of arrest in the Fishtowns without prior reference to the District Officer at Victoria. ...

> 18. It will be observed that ... the distance from Oron to Abana [on Bakassi] is only about 24 miles, while that from the Ndian to Rio del Rey is about 25 miles, owing to the deviation in the river, and a further 12 miles or so to the Trojan. From Victoria to the Trojan is a distance of approximately 50 miles. It will therefore be easily seen that Oron is nearer the majority of the Fishtowns than are Ndian or Victoria." (NC-M 123)

9.33 The Report continued by considering proposals for the future administration of the area:

> "19. It has already been pointed out that all complaints or matters out of which cases may arise are taken to the Fishtown 'Obongs' or else are referred back in due course to the Clan Courts of the parties concerned.0.. Administrative Officers from Victoria are not in a position to hear complaints or to verify census details.
>
> ...
>
> 25. By far the greater proportion of the Fishtown people are Efiats from the Eket Division of the Calabar Province, and, of the remainder, the majority come from other parts of the same Province. It would therefore appear best that the area should be administered from Eket. In the first place, Oron is nearer to the Fishtowns than are either Ndian or Victoria. The District Officer [of Eket] is in a position to trace the majority of tax defaulters, and also to assess the rates and amounts that should be paid by regular Fishtown inhabitants. He also possesses all facilities for enquiring into complaints and tracing and verifying the action taken on them in the courts or elsewhere.
>
> 26. The vast majority of the Fishtown inhabitants pay tax in some part of the Calabar Province, and one of their standing grievances is that they have to pay tax twice."

9.34 The Report reached the following conclusions, in the process rejecting both the idea that Fishtowns could be administered from the Cameroon mandated territories and any claim by the people of Isangele (Cameroon) to ownership of the area:

> "27. The Fishtowns desire to be administered from the Calabar Province and show no inclination to associate in any way with the Isangelis, while the latter have no desire to be administered from Calabar. It hardly appears likely that the Isangelis could justify any claim to the ownership of this area..
>
> 28. The foregoing facts and conclusions suggest as to the obvious solution that the whole of the Fishtowns area should be administered from Eket [in Nigeria]. If, however, for any reason connected with the Mandate, it is considered unsuitable for an area forming part of the mandated territory to be administered from Nigeria, then a possible alternative solution lies in a joint administration by the Eket and Victoria Divisions."

9.35 A note dated 17 January 1936 (NC-M 124) emphasised that those conclusions were "the same as those reached by every reporting officer since Mr Drummond-Hay who made an assessment report in March 1923, namely that the area is a 'no man's land' and is used by fishermen from the Eket clans of Calabar ... the important thing, which differentiates them from their neighbours the Isangelis and Bakoles, is that the Fish Town people have their home towns in the Calabar Province, and attend their own clan courts". The inference could not be clearer: in so far as there was any external administration of the Bakassi Peninsula, it continued to be from Nigeria, in very much the same way as prior to 11 March 1913.

9.36 The Report by Mr Bridges was handed to the District Officer of Eket Division, Mr Gorges, at a meeting with Mr Bridges in March 1935. The report of the meeting stated that:

> "2. Mr Gorges agreed in principle that the Fishtowns would probably be best administered from Eket, and proposes to request the Resident Calabar to send an Administrative Officer from that Province to write an intelligence report on the area... The Fishtown dwellers come mostly from the various districts of the Calabar Province and Mr Gorges considers it essential to arrive at the definite numbers coming from each one of these districts. This work can, of course, only be undertaken successfully by an officer who can get into direct touch with the proper home towns of the Fishtown dwellers." (NC-M 125)

9.37 The Resident in the Cameroons Province sent a letter to the Secretary of the Southern Province of Nigeria, Enugu on 8 August 1935. The letter reported the results of discussions between the District Officers for Victoria (Mr Bridges), Eket (Mr Gorges) and Kumba (Mr Childs), and stated:

> "4. The conclusion reached by Mr Bridges and Mr Childs - a conclusion with which it appears that Mr Gorges was in general agreement, is that as the Fishtowns area is occupied almost entirely by fishermen from the Calabar Province, and it is difficult to administer as part of either the Kumba or Victoria Divisions, it should be administered as part of the Calabar Province." (NC-M 126)

9.38 This letter also reflected the growing concern of the District Officers that the tax collected from the fishermen of the Fishtowns Area by Victoria Division was not used at all for the benefit of the people of Fishtowns, but spent instead in other parts of Victoria Division, a statement repeated in a letter dated 9 May 1936 (NC-M 127). The letter also showed the increasing concern that any proposals for an alteration to the Mandated Territory would arouse suspicion at the Permanent Mandates Commission in Geneva, and a feeling that for this reason it would appear more appropriate to seek a less formal *modus vivendi* for the administration of the area.

9.39 Concern about the possible reaction of the Permanent Mandates Commission to a proposed change of the boundary and administration of the Bakassi Peninsula is expressed in a hand-written note dated 10 September 1935 stating that "the Resident thinks that the P[ermanent] M[andates] Commission might think we attach special strategic importance to the Fishtowns" (NC-M 128).

9.40 The Resident in the Cameroons, in a letter dated 9 May 1936 to the Secretary of the Southern Provinces at Enugu, clearly contemplated the possibility of avoiding difficulties over the mandate and yet administering the "fishtowns" from Calabar:

> "4. I would go further and suggest that if there would be no difficulties as regards Mandated Territory vis-à-vis the Protectorate of Nigeria, the fishtowns should become part and parcel of the Calabar Province as an extension of Eket Division. I advocate this, not so much in the interests of taxation as of general administrative control." (NC-M 127)

9.41 On 28 May 1936, the Resident in the Calabar Province expressed his agreement, stating that he could "see no good reason why the Fish Towns should not be administered by the Resident Calabar" (NC-M 129). Although the mandate and protectorate authorities seem to have been in some doubt about the formal legal position in relation to the boundaries of the mandated territory, British administrative opinion clearly did consider that the United Kingdom was entitled to administer the Fishtowns as part of the Calabar Province (manuscript note dated 7 July 1936: NC-M 130). There is also evidence that the British authorities believed that they did have the right and legal authority to transfer Fish Towns to Calabar Province (see manuscript notes at NC-M 131).

9.42 The question was referred to the Governor of the Nigerian Protectorate, at Lagos, in a letter dated 27 July 1936 from the Secretary at Enugu. The letter also stated that "the ideal arrangement would be for the Fish Towns to be transferred for all purposes from the Cameroons to Calabar Province" (NC-M 132). The clear intention was to complete the *de facto* administration by Calabar Province with recognition, *de jure*, of the point which at least some of the British administration had lost from sight in the years since 1913, namely that legally the Bakassi Peninsula remained part of Nigeria and should be recognised as such.

9.43 On 10 September 1936, the Chief Secretary at Lagos sent a letter to Enugu stating that "there are certain objections to the transfer of a portion of Mandated territory on the coast to a Province of Nigeria" and suggesting a specific solution to the problem of double-taxation, which included the collection of taxes from the Bakassi

area by the authorities of the Calabar Province (NC-M 133). This information was passed on to the District Officers on the ground.

9.44 It is ironic that the District Officers should have sought a change which, had they understood the true legal status of Bakassi, would not have been considered necessary. In the context of a situation in which the British were administering both sides of the boundary, it in fact made little practical difference to either the local officials or the local population on the ground which side of the boundary the Bakassi Peninsula lay. In all practical respects the boundary continued to lie, as it had always done, not on the Akpa Yafe but on the Rio del Rey.

D. The pattern of administration

9.45 In addition to the developing British administration and the role in Bakassi of Calabar, Eket and the traditional rulers of Calabar, the pattern of administration as it developed in this period further establishes that Bakassi and its people continued to constitute part of the Protectorate of Nigeria. The population of the Peninsula was growing in this period, as increasing numbers of fishermen moved into the area from the Calabar region in order to exploit the abundant fish stocks. Before World War I the settlements had been predominantly seasonal. As the settlements grew larger and more numerous, however, an increasing proportion of the population became permanently resident in the Peninsula all the year round.

9.46 Administration and governance of the area came virtually exclusively from Nigeria. A substantial body of evidence, throughout the period from 1913 to 1960, constitutes proof that Bakassi remained organically integrated within the Nigeria Protectorate by a wide range of ties - traditional, administrative, economic and social.

9.47 As the population of both Bakassi and of the Nigeria Protectorate as a whole increased, Local Authority legislation became increasingly specific. As will be shown below, the distinctions which had troubled the District Officers during the period of the Mandate simply fell away during the period of United Nations trusteeship, when local Nigerian legislation increasingly made specific reference to settlements on Bakassi.

(i) Local Government Administration

9.48 Nothing in the regional and local government legislation of the Nigerian Colony and Protectorate gives any support to the Cameroonian contention that title to Bakassi vested after 1913 in the Cameroons. On the contrary, the legislative record supports the conclusion that Bakassi continued to be administered throughout the period up to 1960 as part of the Nigeria Protectorate.

9.49 The Southern Nigeria Order in Council of 27 December 1899 formed the Protectorate of Southern Nigeria (see above, paragraph 6.68 (5)) out of what had previously been the Niger Coast Protectorate together with the territories administered by the Royal Niger Company. The text of Section 2 of the Order defined the limits of the new Protectorate as being bounded by a "line commencing ... at the mouth of the Rio del Rey Creek, the right bank of which it follows to the head of the Creek" (NC-M 31).

9.50 On 1 January 1914, the northern and southern parts of Nigeria were amalgamated into the single Protectorate of Nigeria (above, paragraph 6.68 (10)), and the system of local government hitherto prevailing in the North, with its successful system of "Native Authorities", was extended to the South.

9.51 Government Notice No. 99 of 23 December 1915 (NC-M 134) defined the administrative boundaries of Calabar Province and Calabar Division. The Province

extended to the Nigeria-Cameroon frontier in the East (a frontier which was not defined in the Notice). The Calabar Division, an area of about 3,619 square miles (5,790 square kilometres), was defined as stretching to the Nigeria-Cameroon boundary in the East, again without defining that boundary.

9.52 In 1922 the British introduced a system of indirect rule, using "Warrant Chiefs", the local traditional rulers, to implement the administration of the country on the ground. Also in 1922, by Government Notice No. 71 of 3 August 1922 (NC-M 135), Eket Division was created out of Calabar Division, with its headquarters at Eket.

9.53 The existing system of indirect rule was superseded by the native authority system introduced by the Native Authorities Ordinance of 1933 (NC-M 136).

9.54 By 1948, the Eastern Region of Nigeria (Southern Nigeria having been divided into two halves) featured 217 native authorities and 300 subordinate authorities. This over-burdened system of local government was therefore rationalised by the Eastern Region Local Government Ordinance No. 16 of 1950.[162] This set up a structure of county councils, district councils and local or urban councils.

9.55 As part of this process, the Akpabuyo County Council (Establishment) Instrument 1953 (NC-M 137) created Akpabuyo County Council, including the Local Council of Ikang. Within the area of Ikang Local Council were listed the villages of Ine Ikoi, Ine Nkane Okure I, Ine Nkane Okure II, Ine Ikang and Ine Akpa Ikang, all of which are villages located on Bakassi.

9.56 The three-tier system of local government was replaced in 1955 by a two tier system under the Eastern Region Local Government Law.[163]

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[162] A copy has been lodged with the Court.

[163] A copy has been lodged with the Court.

9.57 Eastern Region Legal Notice No. 267 of 1959 for Calabar Division (NC-M 138) listed the Bakassi villages of Ine Ikoi, Ine Akpa Ikang, Ine Nkane Okure I and Ine Nkane Okure II under Ikang Local Council.

9.58 The local administration of the area throughout the period after 1913 thus demonstrates that Bakassi remained, for administrative purposes, organically integrated within Nigeria.

(ii) Legal jurisdiction

9.59 Throughout the period 1913-1960, the people living on the Bakassi Peninsula continued to attend Nigerian courts and to fall within the jurisdiction of these courts. Thus, for example, in 1915 a letter from the District Officer at Calabar (NC-M 139) makes it clear that the Efiks from Archibong "have always been in the habit of going to Ikot Nakanda Court", which, as can be seen on *Atlas* Map 35, is situated well inside Nigerian territory.

9.60 The Native Courts were established in the first years of British rule under their system of indirect rule. The local traditional ruler (Warrant Chief), directly subordinate to the District Officer, acted as judge in the Native Court.

9.61 A notice of 7 April 1918 (NC-M 140) tells of a case between Abana Ntuen and Ekpenyong Ita. The notice stated that "Abana is a separate Town by herself and shall have nothing to do with *Usak Edet*, any inhabitants of Abana having a complaint or complaints should go to Calabar, Oron or *Akpabuyo Plantation* and lay such complaints", thus indicating that Abana was a permanent settlement within the Nigerian jurisdiction.

9.62 The Native Authorities Ordinance of 1933 (NC-M 136) introduced new native courts organised along similar lines to the local native councils. These served

small, natural social groupings, and the acknowledged head of the clan held the position of President of the Court. Within the jurisdiction of the Effiat-Mbo Court in 1941, for example, was the settlement of Abana, located on the Bakassi Peninsula (NC-M 141).

(iii) Taxes

9.63 There is clear evidence already cited above (and see NC-M 115 to NC-M 133) that the people of this region were paying taxes to Calabar and Eket authorities without protest, and these Divisions within Nigeria were collecting the taxes.

(iv) Schools

9.64 A Methodist school was established at Abana on Bakassi in 1937, and was administered and inspected from Eket as part of the education system of the Calabar Province.

(v) Census

9.65 A census of the area was conducted under the auspices of Eket Division in 1953 (NC-M 142). This included the Bakassi villages of Ine Ikang, Ine Akpa Ikang, Ine Ekoi, Ine Nkani Ekure, Ine Utan and Ine Utan Asukwo within Calabar Province.

(vi) Ties with the traditional authorities of Old Calabar continued uninterrupted

9.66 Nowhere were the continuing ties between Bakassi and the rest of the Nigerian Protectorate more obvious than in the authority over the Bakassi Peninsula of the rulers of Calabar. The role of the traditional rulers in Bakassi continued uninterrupted.

9.67 In the eastern region of Nigeria, which included Calabar and Bakassi, social institutions were complex. There were elders, guilds of title holders and associations such as the Ekpe Fraternity, which was predominant in the area. There were also various religious groupings and a system of "native" judicial administration. This indigene system of government worked reasonably well, and, for a range of reasons already cited, the British administration preferred "indirect" rule. They had indeed never even attempted to impose a full system of direct rule, which would clearly have overtaxed the resources of the protectorate administration. The British therefore ruled mainly through designated chiefs, called "Warrant Chiefs", who, directly subordinate to District Officers, also acted as judges in the Native Courts.

9.68 The British administration laid no claim to indigene land, which remained in native occupation, held by the Kings and Chiefs, as traditional rulers on trust for their people. In view of the remoteness of Bakassi, it is clear that the British authorities relied on these Chiefs for the day-to-day administration of the area. The correspondence already cited above (NC-M 115 to NC-M 133) reveals both that the British found it difficult to gain adequate access to the Bakassi Peninsula and also that the British authorities recognised the continuing allegiance and ties which bound virtually the entire population of the Peninsula to the Kings and Chiefs of Old Calabar, in very much the same way as had been the case prior to World War I.

9.69 The 1935 Report by Mr Bridges, District Officer of the Victoria Division emphasised the continuing role of the traditional authorities and clan courts, at Calabar, stating (NC-M 123):

> "19. It has already been pointed out that all complaints or matters out of which cases may arise are taken to the Fishtown 'Obongs' or else are referred back in due course to the Clan Courts of the parties concerned... Administrative Officers from Victoria are not in a position to hear complaints or to verify census details."

9.70 The Native Authorities Ordinance of 1933 (NC-M 136) established native authorities in the Protectorate of Nigeria, creating an administrative role for the traditional chief under the supervision of the Governor, which included a role in the maintenance of order and good government. The village Chiefs were relied upon by the British authorities throughout this period to carry out public duties concerned with the welfare of the people the prevention of crime and the administration of justice.

9.71 The Etuboms' Council at Calabar, which constituted the Native Authority in this area, consisting of the Obong of Calabar and the elected Heads of the villages,[164] at all times contained at least one representative from the communities of Abana, Atabong or Archibong on Bakassi. The Council functioned uninterruptedly throughout the period from 1913 to 1960 and maintained authority over the Peninsula and the whole area within the traditional jurisdiction of the indigenous authorities at Calabar. The Council continues to sit today at the Obong's Palace in Calabar and still retains a significant role within the administration of this part of the Nigerian Federation.[165]

9.72 The importance of the role of the Chiefs in local society throughout Nigeria was recognised in the 1959 Provincial Administration Law which created, *inter alia*, a

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164 See above, para. 4.20

165 See below, paras. 10.34 - 10.47

House of Chiefs as a legislative institution within the Nigeria constitution. This was not simply a matter of preserving the existing role of the traditional rulers, but actually gave a new, extended role in the provincial government. The House of Chiefs comprised, on an *ex officio* basis, all the traditional rulers of the Eastern Region, first class chiefs appointed to represent the provinces and 55 other chiefs, including the Obong of Calabar. Its role, on a local legislative basis, was equivalent to the Senate in the Federal Constitution.

E. The survival of the original title to Bakassi

9.73 For the reasons set out in Chapters 6, 7 and 8 above, and in the present Chapter,

(1) in and before 1913 the Kings and Chiefs of Old Calabar possessed sovereignty over the Bakassi Peninsula; and

(2) the Anglo-German Treaty of 11 March 1913, in so far as it purported to transfer to Germany a territorial title which Great Britain did not possess and which it had no power or authority to transfer, did not transfer territorial sovereignty over Bakassi to Germany. The *status quo ante* was undisturbed, and title accordingly remained vested in the Kings and Chiefs of Old Calabar.

9.74 The subsequent history of Bakassi did not serve to transfer the sovereignty which the 1913 Treaty itself was ineffective to transfer.

(1) Generally, so far as the United Kingdom was concerned, any apparent acceptance of or acquiescence in the purported transfer of Bakassi to Germany in the years between 1913 and 1960 was ineffective to overcome the defects of that purported transfer, based as they were on the United Kingdom's own wrongful conduct. Two well-established principles lead to

that conclusion: the first is that a State cannot benefit from its own wrong (*nullus commodum capere de sua injuria propria*), and the second is that legal rights cannot originate from wrongful acts (*ex injuria ius non oritur*). As the Umpire in *The Montijo Case* (1875) succinctly stated: "No one can be allowed to take advantage of his own wrong".[166]

(2) The United Kingdom's conduct after 1913 was, in relation to Bakassi, tainted by the impropriety of its purported transfer to Germany of territory which was not the United Kingdom's to transfer. The United Kingdom did not have any general authority, by virtue of the Protectorate arrangements, to act on behalf of and to commit any relevant Nigerian Rulers or other authorities to such a purported transfer of territorial sovereignty, and no such authority was at any time given by those Rulers or authorities to the United Kingdom. Acts of administration which might have been undertaken by the British authorities after 1913 are tainted by that original unlawful conduct, and do not bind Nigeria in relation to the question of title to Bakassi. The United Kingdom's unilateral acts cannot cure the underlying ineffectiveness of its purported transfer of sovereignty over Bakassi away from those in whom it was rightfully vested, inconsistently with its treaty with them. Subject to that overriding consideration, the following further considerations show that events after 1913 did not serve to effect any transfer of sovereignty away from the Kings and Chiefs of Old Calabar or the emerging entity of Nigeria.

(3) The First World War broke out only 16 months after the conclusion of the 1913 Treaty; and Germany's administration of Kamerun was brought to an end in 1916. During that short pre-war and early-war period there was insufficient time for any significant pattern of German activities in Bakassi

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166 Moore, *History and Digest of the International Arbitrations to which the United States has been a Party*, Vol. 2, pp. 1412 & 1437.

to have been established so as to have had the effect of overcoming the defect in the purported transfer of Bakassi to Germany.

(4) Similarly, during that short period British (and Nigerian) actions were insufficient to constitute acquiescence in the purported, but defective, transfer of title such as to defeat the continuing lawful title of the Kings and Chiefs of Old Calabar.

(5) From 1916 to 1919 Britain and France occupied German Kamerun, but this occupation did not give either of those two States any authority to alter the sovereignty over Bakassi, whether by directly purporting to do so, or by implication from their conduct in relation to Bakassi: the nature of their authority (as belligerent occupants) over that German territory precluded their acts from having effects which could vary sovereignty over parts of that territory either by divesting Germany of its sovereignty or by acquiring sovereignty *for the benefit of Germany.*

(6) The War brought about the lapse of the Anglo-German Treaty of March 1913, and the Treaty was not revived after the War under Article 289 of the Treaty of Versailles. Having lapsed, no subsequent action could be regarded as having been in implementation of it.

(7) Further, by virtue of Articles 118 and 119 of the Treaty of Versailles 1919 Germany renounced its rights and titles to *inter alia* its West African territories, in favour of the Principal Allied and Associated Powers. Given the ineffectiveness of the Treaty of March 1913 to transfer title over the Bakassi Peninsula to Germany, those Articles gave no power to the Principal Allied and Associated Powers to take any action having the effect of changing the sovereignty over the Peninsula.

(8) The situation was substantially unchanged for the period between 1919 (when Germany was deprived of its West African territories) and 1922 when the Mandates for British and French Cameroons entered into force. During that short period neither the United Kingdom nor France possessed the authority to divest the (Nigerian) holder of sovereignty over Bakassi.

(9) With the entry into force of the Mandates, the situation continued substantially unchanged. Legally, the United Kingdom as Mandatory Power did not have the right to alter territorial sovereignty over British mandated territories; and in practice the British mandated territory of Cameroons was administered as part of the Nigeria Protectorate, so that, while the distinction between mandated and protected territories was acknowledged in principle, in practice it was not so sharp. There was no practical day-to-day need for the British or local administration to distinguish between what might have been former German territory and what was British protected Nigerian territory. Conduct in relation to Bakassi would in practice have been the same whether it was regarded as former German territory or whether it was British protected territory.

(10) With the termination of the Mandates in 1946 and their replacement by Trusteeship Agreements, the situation remained essentially unchanged. The United Kingdom, as Administering Authority, still lacked the power and authority to add to the territorial sovereignty of the area under its administration, or by its conduct to give legitimacy to the purported and unlawful transfer in 1913 of Bakassi to Germany.

(11) Similarly, the United Kingdom at no time since 1913 had the power, as the Protecting State, to acquiesce in or otherwise accept the purported transfer of Bakassi to Germany in 1913, or the subsequent consequences of that purported transfer. At all relevant times the United Kingdom, whether as Protecting State over the Protectorate, or as the occupant of German

possessions in West Africa, or as one of the Allied and Associated Powers, or as the Mandatory Power or Administering Authority in relation to the Mandated territory or the Trust Territory, did not have power directly or indirectly to deprive Nigeria of its sovereignty over Bakassi, and in particular did not have the power by its conduct to give legitimacy to its previous unlawful conduct.

(12) Throughout the period from 1913 to the present the various States which were, at least partially,[167] in the position of successor States to the former German interest in West Africa obtained, upon their succession, no better rights than their predecessor had. Thus Cameroon, upon the integration of Southern Cameroon into Cameroon in 1961, obtained no better rights than the United Kingdom, as the Administering Authority, had possessed; the United Kingdom as Administering Authority obtained no better rights than it had previously possessed as the Mandatory Power; as Mandatory Power it obtained no better rights than the Allied and Associated Powers had acquired, and they in turn had obtained from Germany under the Treaty of Versailles no better rights than Germany had possessed; and as shown in Chapters 8 and 9 above, Germany had acquired no rights to sovereignty over the Bakassi Peninsula by virtue of the Treaty of 11 March 1913 or any other agreement.

(13) Whatever may have been the nature of British acts in relation to Bakassi from 1913 onwards, the peninsula in practice effectively remained part of Nigeria throughout the period up to Independence in 1960, and the authority of the Nigerian Kings and Chiefs of Old Calabar provided continuity throughout the period, for much of which it was virtually the only real authority exercised there.

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167 States exercising Mandates, and Administering Authorities of Trust Territories, are only to a limited extent 'successor States'.

(14) After Independence, Nigeria exercised sovereignty in Bakassi, demonstrating the continuity of its administration of the area since before the establishment of the Protectorate. See further Chapter 10 below.

9.75 The title to Bakassi which, for the reasons given, was not affected by the Anglo-German Treaty of 11 March 1913 or subsequent events, was originally a title vested in the Kings and Chiefs of Old Calabar. Their rights came over time to be absorbed into the emerging entity of Nigeria (still subject to United Kingdom protection). Internationally it is now Nigeria which is vested with the rights of territorial sovereignty originally vested in the Kings and Chiefs of Old Calabar. Their role, however, is still important. Both under the Protectorate, and still today, the various Constitutions of Nigeria have recognised the legitimate role of local chiefs and rulers as part of the constitutional structure of the State.

CHAPTER 10

NIGERIA'S ORIGINAL TITLE TO THE BAKASSI PENINSULA WAS CONFIRMED AFTER INDEPENDENCE BY HISTORICAL CONSOLIDATION, ACQUIESCENCE AND RECOGNITION

A. Introduction

(i) The Legal Situation at the Time of Independence

10.1 The title of Nigeria to Bakassi was originally a title vested in the Kings and Chiefs of Old Calabar. The original title of Old Calabar was not affected by the Anglo-German Treaty of 11 March 1913 (as explained in Chapters 8 and 9) and was eventually absorbed in the emerging entity of Nigeria. By the time of Independence in 1960 the original title to Bakassi vested in Nigeria as the successor to Old Calabar.

(ii) The Bases of the Nigerian Title

10.2 The four bases of the Nigerian claim to title over the Bakassi Peninsula are as follows:

(1) Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar which title vested in Nigeria at the time of Independence in 1960.

(2) Effective administration by Nigeria, acting as sovereign, and an absence of protest.

(3) Manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula.

(4) Recognition of Nigerian sovereignty by Cameroon.

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

10.4 For the sake of clarity it may be emphasized that the claims of Nigeria do not operate on the premiss that the Bakassi Peninsula constitutes *terra nullius*, that is to say, territory available for occupation. The legal situation appears to the Respondent State to be essentially similar to that obtaining in the *Minquiers and Ecrehos*[168] case. The essence of the matter is conveyed in the following two passages from the Judgment in that case;

> "Both Parties contend that they have respectively an ancient or original title to the Ecrehos and the Minquiers, and that their title has always been maintained and was never lost. The present case does not therefore present the characteristics of a dispute concerning the acquisition of sovereignty over *terra nullius*."[169]
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> "What is of decisive importance, in the opinion of the Court, is not indirect presumptions deduced from events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers groups."[170]

10.5 This emphasis on evidence of possession in situations in which the territory in dispute is not *terra nullius* is also to be found in the Judgment of the Chamber in the *Land, Island and Maritime Frontier Dispute*[171] case. The Judgment is of particular assistance for present purposes because the Chamber takes care to place the principle of *uti possidetis juris*, together with its variants, in the appropriate legal perspective.

10.6 The Judgment makes clear the fact that, when the *uti possidetis* dispensation produces no decisive outcome, the conduct of the parties since Independence, is "of

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168 I.C.J. Rep. 1953 p. 47

169 *ibid.* p. 53

170 *ibid.* p. 57

171 I.C.J. Rep. 1992 p. 351

particular importance".[172] In this context the Chamber in several significant passages places emphasis on the qualifying role of acquiescence and recognition in relation to the principle of *uti possidetis juris*. The point is explained in three key passages as follows:

> "There has also been some argument between the Parties about the 'critical date' in relation to this dispute. The principle of *uti possidetis juris* is sometimes stated in almost absolute terms, suggesting that the position at the date of independence is always determinative; in short, that no other critical date can arise. As appears from the discussion above, this cannot be so. A later critical date clearly may arise, for example, either from adjudication or from a boundary treaty. Thus, in the previous Latin American boundary arbitrations it is the award that is now determinative, even though it be based upon a view of the *uti possidetis juris* position. The award's view of the *uti possidetis juris* position prevails and cannot now be questioned juridically, even if it could be questioned historically. So for such a boundary the date of the award has become a new and later critical date. Likewise there can be no question that the parts of the El Salvador/Honduras boundary fixed by the General Treaty of Peace of 1980 now constitute the boundary and 1980 is now the critical date. *If the uti possidetis juris position can be qualified by adjudication and by treaty, the question then arises whether it can be qualified in other ways, for example, by acquiescence or recognition. There seems to be no reason in principle why these factors should not operate, where there is sufficient evidence to show that the parties have in effect clearly accepted a variation, or at least an interpretation, of the uti possidetis juris position.* "[173] (emphasis added)

> "As already explained (paragraph 67 above), the *Chamber does not consider that the effect of the application of the principle of the uti possidetis juris in Spanish America was to freeze for all time the provincial boundaries which, with the advent of independence, became the frontiers between the new States. It was obviously open to those States to vary the boundaries between them by agreement; and some forms of activity, or inactivity, might amount to acquiescence in a boundary other than that of 1821.* Even on the hypothesis that Honduras's analysis of the legal effect, under Spanish colonial law, of the grant of the Citalá *titulo ejidal* is corrected, so that from 1776

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172 *ibid.* p. 565, para. 345

173 *ibid.* pp. 408-9, para. 80

onward the provincial boundary remained to the south-west of the land comprised in that title (and followed the line E-F-G'-H-J-A), the conclusion does not follow that that is the course of the international frontier today. The situation was susceptible of modification by acquiescence in the lengthy intervening period; and the Chamber finds that the conduct of Honduras from 1881 until 1972 may be regarded as amounting to such acquiescence in a boundary corresponding to the boundary between the Tepangüisir lands granted to Citalá and those of Ocotepeque."[174] (emphasis added)

"In the present case both Parties have argued their respective claims with regard to the operation of the *uti possidetis juris* on the basis, in effect, that this is a principle the application of which is automatic: on independence, the boundaries of the relevant colonial administration divisions are transformed into international frontiers. In the first place, it should not be overlooked that Spanish colonial divisions in Spanish America did not individually have any 'original' or 'historic' titles, as those concepts are understood in international law. The original title belonged exclusively to the Spanish Crown, not the internal administrative subdivisions established by it; and it was equally the Spanish Crown which had sovereignty of the colonial territories. Secondly, as the Chamber's examination of the sectors of the land boundary has shown, in practice the operation of the principle is more complex. *Where the relevant administrative boundary was ill-defined or its position disputed, in the view of the Chamber the behaviour of the two newly independent States in the years following independence may well serve as a guide to where the boundary was, either in their shared view, or in the view acted on by one and acquiesced in by the other (cf. paragraphs 64, 80 and 205 above).* This aspect of the matter is of particular importance in relation to the status of the islands, by reason of their history."[175] (emphasis added)

10.7 In the submission of the Nigerian Government these statements of principle apply to the circumstances of the Bakassi Peninsula in the period after the Independence of Nigeria on 1 October 1960. The Republic of Cameroon became independent on 1 January 1960.

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174 *ibid.* pp. 408-9, para. 80

175 *ibid.* p. 565, para. 345

(iii) The Definition of the Bakassi Peninsula

10.8 For present purposes the Bakassi Peninsula has the limits marked in the *Atlas* on Map 36. These limits more or less coincide with the boundary adopted in the Anglo-German Agreement concluded on 14 April 1893 (NC-M 27), but with a northward extension to the Akpa Yafe, by way of the creek two kilometres north-east of Archibong. The particulars of this northward extension are set out in Chapter 11.

10.9 In this connection it is relevant to keep in mind the distinction between a formal basis of title, for example, a description of a boundary in a treaty, and the effect of acts of administration, which have the role of showing the territorial expanse of a title. As the Chamber of the Court observed in the *Frontier Dispute* case:

> "Apart from the texts and maps listed above, the Parties have invoked in support of their respective contentions the 'colonial *effectivités*', in other words, the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period. For Burkina Faso, the *effectivités* can support an existing title, whether written or cartographical, but when their probative value has to be assessed they must be systematically compared with the title in question; in no circumstances can they be substituted for the title. For its part, Mali admits that in principle the *effectivités* cannot be brought into operation where they are contrary to the text of a treaty, but argues that in a situation where there is no boundary described in conventional or legislative form, it is necessary to ascertain the boundary by other methods, and an investigation of the *effectivités* then becomes essential. The role played in this case by such *effectivités* is complex, and the Chamber will have to weigh carefully the legal force of these in each particular instance. It must however state forthwith, in general terms, what legal relationship exists between such acts and the titles on which the implementation of the principle of *uti possidetis* is grounded. For this purpose, a distinction must be drawn among several eventualities. Where the act corresponds exactly to law, where effective administration is additional to the *uti possidetis juris*, the only role of *effectivités* is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the

> legal title, preference should be given to the holder of the title. *In the event that the effectivité does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The effectivités can then play an essential role in showing how the title is interpreted in practice.*"[176] (emphasis added)

10.10 This passage was adopted by the Chamber of the Court in the *Land, Island and Maritime Frontier Dispute* case.[177]

(iv) The Entitlement of Nigeria is not affected by the Maroua Declaration

10.11 On 1 June 1975 the Heads of State of Cameroon and Nigeria adopted the Maroua Declaration, which, in material part, reads as follows:

> "During the meeting held at MAROUA from May 30th to June 1st 1975, the two Heads of State of CAMEROON and NIGERIA agreed to extend the delineation of the maritime boundary between the two countries from Point 12 to Point G on the Admiralty Chart No. 3433 annexed to this Declaration.
>
> The delineated boundary adopted by the two Heads of State is defined as follows:
>
> ...
>
> The two Heads of State further reaffirmed their commitment to freedom and security of navigation in the Calabar/Cross River channel of ships of the two countries as defined by International Treaties and Conventions." (NC-M 143)

10.12 The Declaration was not ratified by the Supreme Military Council. A few weeks after this Declaration was signed, General Gowon was deposed by Murtala

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176 I.C.J. Rep. 1986 p. 586, para. 63

177 I.C.J. Rep. 1992 p. 398, para. 61

Muhammed. During the short period that he held office before his assassination, he was, as would be expected, preoccupied with other affairs of state, and the fact of the non-ratification was not communicated to Cameroon. On his death, he was replaced as Head of State by General Obasanjo.

10.13 The Government of Nigeria regards the Declaration as lacking legal validity and expressed this opinion in negotiations with Cameroon some time ago. At a meeting between the two Heads of State on 7 to 9 August 1977, General Obasanjo informed President Ahidjo that Nigeria did not accept the Maroua Declaration. General Obasanjo also told President Ahidjo that, as Nigerian Head of State, he was a trustee of Nigerian property, both land and territorial waters, and he could not alienate them or give them away unconstitutionally. He explained that the Declaration had not been ratified by the Supreme Military Council, and was therefore regarded as a nullity by Nigeria. President Ahidjo asked what was therefore to be done. General Obasanjo replied that, since President Ahidjo was not prepared to re-negotiate, the matter should be left to be dealt with by their successors, and the issue was left open.

10.14 Since then, in bilateral summits between heads of state and between boundary experts, Nigeria has confirmed that the Maroua Declaration was not ratified and was therefore not binding on Nigeria. However, Cameroon has continued to insist that it is valid.

10.15 In any event, there is compelling evidence that the subject-matter of the Declaration did not extend to the question of title to land territory. The evidence includes the following data.

(1) The text of the Declaration itself makes no reference to the disposition of land territory.

(2) The brief on the forthcoming meeting on 31 May 1975 prepared by the Ministry of External Affairs of Nigeria, dated 20 May 1975 (NC-M 144) refers exclusively to issues relating to the Calabar Channel.

(3) The text of the agreed Communiqué (dated 1 June 1975) (NC-M 145) confirms that no issues relating to land territory were on the agenda.

(v) The Relevance of the Critical Date

10.16 The role of the critical date is variable and the doctrine of international law does not favour the view that in each case there will be found, a single, all-purpose, critical date. A fairly typical view is as follows:

> "In any dispute a certain date, or several dates, will assume prominence in the process of evaluating the facts. The choice of such a date, or dates, is within the province of the tribunal seized of the dispute and will depend in some circumstances on the inevitable logic of the law applicable to the particular facts and, in other cases, on the practical necessity of confining the process of decision to relevant and cogent facts and thus to acts prior to the existence of a dispute. In the latter context the tribunal is simply employing judicial technique in the use of evidence and more especially the exclusion of evidence consisting of self-serving acts of parties at a stage when it was evident that a dispute existed. Of course, evidence of acts and statements occurring after the critical date may be admissible if not self-serving, as in the case of admissions against interest. There are several types of critical date, and it is difficult and probably misleading to formulate general definitions: the facts of the case are dominant (including, for this purpose, the terms of the special agreement empowering the tribunal to hear the case) and there is no necessity for a tribunal to choose any date whatsoever. In many cases there will be several dates of varying significance."[178]

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178 Brownlie, *Principles* (1998) 5th ed., at p.128

10.17 For present purposes, it is relevant to indicate the date, or period, at which the dispute relating to the Bakassi Peninsula crystallised in order to assess the role of historical consolidation and, more particularly, the elements of acquiescence and recognition. The *Memorial* of Cameroon established "the" critical date in the following way:

> "3.382 La seule date pouvant servir de 'date critique' aux fins de la frontière camerouno-nigériane dans son ensemble est la dernière date possible à laquelle ont été fixées les relations juridiques entre les deux Etats: la date à laquelle le temps est supposé 's'arrêter'. Cette date n'était pas celle de l'indépendance du Cameroun ni du Nigeria. Celle-ci ne concernait qu'une partie de la frontière.
>
> 3.383 La date doit donc être la plus tardive des deux dates auxquelles les deux Parties distinctes des anciens Cameroun septentrional et méridional ont été respectivement rattachées au Nigeria et au Cameroun. Etant déjà des Etats indépendants, ces derniers ont en fait acquis - par une forme très particulière d'acquisition territoriale - des territoires administrés auparavant dans le cadre d'accords de tutelle (et avant cela, de mandat). Le fait que le Nigeria ait acquis le Cameroun septentrional le 1er juin 1961 et la Cameroun le Cameroun méridional le 1er octobre 1961 complique encore la question -mais seulement pour un court laps de temps. La frontière unitaire et complète entre le Cameroun et le Nigeria n'a existé qu'à partir de la plus récente de ces deux dates. Toutefois, ces deux opérations ont fait partie d'un seul et même processus.
>
> 3.384 Le 1er octobre 1961 est donc la seule date qui ait mis un terme au processus collectif de décolonisation et d'autodétermination, et qui donc peut être considérée comme la 'date critique' aux fins de déterminer les frontières dans cette affaire en liaison avec le principe *uti possidetis*."

10.18 This approach has two purposes. First, it is intended to persuade the reader that the territorial *status quo* was frozen in October 1961, and, secondly, the implication is that the principle of *uti possidetis* conduces to the creation of a permanent regime. In the first place the law does not insist that the boundary at Independence is frozen

for all time: see the position of the Chamber of the Court in the *Land, Island and Maritime Frontier Dispute* case.[179]

10.19 Furthermore, the approach adopted in the Cameroon *Memorial* avoids any identification of the date, or period, at which the dispute crystallised between Cameroon and Nigeria. The evidence available suggests that the dispute did not emerge until January 1994. This conclusion is supported by the contents of the Application and also the text of the Cameroon *Memorial*, pp. 15-22, paras. 1.19-1.35. In this context a key document is the Nigerian Note to the British Foreign Office dated 20 April 1994[180] (NC-M 146). This substantial document supplements and confirms previous expressions of the Nigerian claim by the Foreign Affairs Minister, Mr. Baba Gana Kingibe early in February 1994[181] (NC-M 147).

10.20 In face of open and continuous activity by Nigerian public authorities in Bakassi, the Government of Cameroon had failed to make any protest relating to Bakassi as a whole and, prior to 1993, there is very little evidence of any administration in the area by Cameroon. The evidence in this respect will be reviewed in due course. When the Cameroonian Ministry of Foreign Affairs did make representations, these related only to Abana, and the first protest did not appear until 1969: see Memo dated 15 September 1969 (NC-M 148).

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179 *op.cit.* para. 5

180 *Memorial*, VII, Ann. MC 341

181 *Memorial*, Vol. VII, Ann. MC 338

B. Historical Consolidation of Title: The Legal Concept

10.21 The legal concept of historical consolidation of title is invoked by Nigeria as the principal basis of its claim to sovereignty over the Bakassi Peninsula. The principal elements of the concept are adumbrated by the editors of *Oppenheim's International Law* in the following terms:

> "**Consolidation of historic titles.** Yet continuous and peaceful display is a complex notion when applied to the flexible and many-sided relationship of a state to its territory and in relation to other states. The many and varied factors which it may comprise were felicitously subsumed by Charles de Visscher under the convenient rubric of 'consolidation by historic titles'; of which he says:
>
> "Proven long use, which is its foundation, merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given State. It is these interests and relations, varying from one case to another, and not the passage of a fixed term, unknown in any event to international law, that are taken into direct account by the judge to decide *in concreto* on the existence or non-existence of a consolidation by historic titles."
>
> In an important examination of the criteria applied by tribunals to resolve territorial disputes, Munkman identified *inter alia* the following: recognition, acquiescence and preclusion; possession and administration; affiliations of inhabitants of disputed territory; geographical considerations; economic considerations; historical considerations. Of these several factors it has been said that: 'Recognition is the primary way in which the international community has sought to reconcile illegality or doubt with political reality and the need for certainty'."[182] (footnotes omitted)

10.22 Charles de Visscher first formulated the principle in 1953 (in his work *Théories et Réalités en Droit International Public* (1953) pp. 244-5). The principle was explained by de Visscher in a later publication in these terms:

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[182] 9th ed., Vol.I, by Sir Robert Jennings and Sir Arthur Watts, 1992, pp. 709-10, para. 272

> "L'arret de la Cour internationale de Justice en l'affaire des *Pêcheries* (Royaume-Uni-Norvège) a donné sa pleine expression à la notion d'une effectivité par consolidation de titres historiques. Il a déclaré la méthode norvégienne de délimitation des eaux territoriales 'consolidée par une pratique constante et suffisamment longue en face de laquelle l'attitude des gouvernements atteste que ceux-ci ne l'ont pas considérée comme contraire au droit international'. Plus large que la notion de la prescription acquisitive, fondée sur une fausse analogie avec le droit privé, la consolidation embrasse à la fois le cas d'une possession triomphant d'une possession adverse et celui d'une possession s'appliquant à un territoire dont l'appartenance antérieure à un autre Etat ne saurait être établie avec certitude.
>
> La consolidation n'est en définitive que la résultante d'un processus où le renforcement progressif des activités étatiques confére à l'effectivité dans la possession sa physionomie juridique aussi bien qu'historique sous la double garantie de la durée et d'une tolérance généralisée. Ce qui la caractérise lorsque la possession s'exerce à l'encontre d'un titre de souveraineté, c'est le fléchissement graduel du titre négligé sous le poids d'une possession adverse déclarée et longtemps tolérée. La signification juridique de celle-ci s'accroit par le temps, encore que, respectueuse du titre, la jurisprudence incline ici à se montrer plus rigoureuse dans l'appréciation de l'effectivité."[183]

10.23 The principle of historical consolidation has been recognised and accepted by a number of authorities:

(1) Professor D.H.N. Johnson, *Cambridge Law Journal* (1955), p. 215 at pp. 222-25.

(2) Professor Georg Schwarzenberger, *International Law*, Vol. I, (London 1957) pp. 290-3.

(3) Professor Suzanne Bastid, *Recueil des Cours*, Hague Academy, Vol. 107 (1962, III), p. 441.

(4) Dr. Marjorie Whiteman, *Digest of International Law*, Vol. 2, (December 1963), pp. 1224-29.

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183 de Visscher, *Les Effectivités du Droit International Public*, Paris (1967), pp. 107-8

(5) Professor Sir Robert Jennings, *The Acquisition of Territory in International Law* (Manchester 1963), pp. 23-28.

(6) Dr. Yehuda Blum, *Historic Titles in International Law*, (The Hague, 1965), pp. 335-7.

(7) Professor Ian Brownlie, *Principles of Public International Law*, (Oxford, 1966), pp. 154-6.

(8) Professor Malcolm Shaw, *Title to Territory in Africa*, (Oxford, 1986), pp. 18-20; and the same author in *International Law*, 4th edn. (1997), pp. 345-6.

(9) Dr. Marcelo G. Kohen, *Possession Contestée et Souveraineté Territoriale*, (Geneva, 1997), pp. 40-45, 57-59.

10.24 Against this background, the various elements contributing towards the process of historical consolidation in the present case will be reviewed.

C. The Specific Components of the Historic Consolidation of Nigerian Title

(i) The Original Title of the City States of Old Calabar

10.25 The first component of title by Historical Consolidation, and appropriately the first element, is the legal personality of the City States of Old Calabar and the original title which they had in accordance with the pertinent inter-temporal law, prior to the imposition of colonial rule. This component interacts with several other components.

10.26 In the passage quoted above from the ninth edition of Oppenheim, reference is made to "historical considerations" and this element is given prominence in the classical study by Munkman in the *British Year Book*.[184]

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[184] Vol. 46 (1972-73), pp. 99-100, 108-9

(ii) The Attitude and Affiliations of the Population of Bakassi

10.27 The same passage quoted from the ninth edition of Oppenheim refers to the relevance of the "affiliations of inhabitants of disputed territory". On the operation of this factor Munkman observes:

> "*Where the territory is inhabited, the affiliations of the inhabitants will be of great - but, probably, because of the considerations militating in favour of the State in actual possession, secondary - importance. Where the administration is itself disputed and doubtful, the affiliations of the inhabitants will probably be decisive*. In inhabited areas considerations of geography, strategy, etc., will usually be a very secondary consideration. Economic, historical, cultural and social factors, and considerations of convenience will usually correspond to the affiliations of the inhabitants. But these considerations, even if they do not all weigh on the same side, will probably only call for some adjustment of a boundary delimited primarily on the basis of the affiliations of the inhabitants.[185]
>
> .....
>
> This is probably one of the more theoretically controversial criteria. It must be remembered, however, that the traditional theories of territorial sovereignty were developed with reference to uninhabited areas, or with respect to relations between colonizing powers *inter se* in areas inhabited by 'natives'. Today, there are few significant uninhabited areas, and the principle or right of self-determination and the doubtful status of title by 'conquest' (whether by the lawful or unlawful use of force) have probably led to considerable modification of the traditional law. Furthermore, modern territorial and boundary disputes generally concern not situations of dynamic expansion of frontiers, but relatively static situations where boundaries are settled in principle or within relatively narrow limits. Claims now generally affect relatively small areas of territory, and are concerned less with territorial aggrandisement than with the establishment of a convenient and stable boundary.
>
> Furthermore, *in most disputes concerning inhabited territory, the affiliations of the inhabitants will be bound up with, and reflected in,*

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185 *op.cit.*, p.100

the actual administration of the territory".[186] (emphasis added, footnotes omitted).

10.28 The majority of the fishermen and farmers living in the Bakassi Peninsula have for centuries belonged to the Efik and Ibibio ethnic groups, which have always had strong links with the City States of Calabar. The principal towns and villages of the Efik, which have been located at Map 35 in the *Atlas*, are as follows:

Calabar
Ikang
Itu
Ikot Nakanda.

10.29 The principal towns and villages of the Ibibio, which are also located on the same Map 35, are as follows:

Uyo
Eket
Oron
Ikot Ekpene.

10.30 The permanence of the Efik and Ibibio settlements in Bakassi and their social and ethnic links to Calabar are confirmed by the historical sources. This has been examined in detail in Chapters 3, 4 and 5.

(iii) The Toponymy of Bakassi

10.31 The toponymy of the settlements in the Bakassi Peninsula confirm the affiliation of the towns and villages with the Efik and Ibibio groups. A detailed study of the toponymy of this area is provided in Chapter 3: see also the Tables in Chapter 3.

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[186] *op.cit.*, pp.106-7

(iv) The Administration of Bakassi as part of Nigeria in the Period 1913 to 1960

10.32 Nigeria has, in Chapter 9, submitted that the 11 March 1913 Treaty was not given effect, and that Bakassi continued to be administered by Nigeria, and in particular by South Eastern State, throughout the period 1913 to Independence.

10.33 Evidence of such administration included the recognition by the British of the strong links between Calabar and Bakassi, the inclusion of Bakassi villages in the *numerous Edicts and Orders throughout the 1950s*, and the continuing role played by the Obong of Calabar in the administration of the Bakassi Peninsula. Furthermore, during this period, the settlements on Bakassi remained within the jurisdiction of the Nigerian Native Court system based in the Calabar and Eket Divisions of South Eastern State, and schools set up in Bakassi settlements were administered within the Eket/Opobo School Board of Eket Division.

(v) The Exercise of Authority by Traditional Rulers

10.34 The role of traditional rulers in Nigerian society has been recognised and maintained within the framework of the post-Independence Constitution. This role has been maintained even during periods of military rule. In relation to the Bakassi Peninsula the historical position of the Obongs of Calabar is reflected in the cultural pattern which has obtained since Independence.

10.35 The relation is maintained through the Council of the Obong of Calabar where all cognate Efik Clans are represented. Set out below is a schedule[187] naming the existing members of the Council, some of whom are also natives of the Bakassi area:[188]

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187 The original document from which this schedule is taken is NC-M 149

188 The names of the villages which are located on Bakassi are set out in bold for clarity, both in this schedule and throughout the remainder of this Chapter.

NAME	MEMBERSHIP STATUS IN OBONG'S COUNCIL	STATUS IN BAKASSI	OCCUPATION
Etubom Itam Eyo Ibitam	Present Chairman of Council	Amoto Clan	Farming
Etubom Oyo Orok Oyo-Ita	Former Chairman of Council	**Akwa** Clan	FIFA Official
Etubom Ukorebi Ukorebi Asuquo	Former Secretary of Council	Odon Ambai Ekpa Clan	Immediate Past Deputy Rector, Calabar Polytechnic
Chief Ekpo Eyo	Present Secretary of The Obong's Council	(a) Present Secretary General of Bakassi Natives Assembly (b) Clan Head Elect of Amoto Clan (c) Direct Descendant of Founders of both Amoto and **Akwa** Clans	Political Scientist and Lecturer in Public Administration
Etubom Ekpo E. E. Archibong	Vice Chairman of Council	Direct Descendant of **Archibong** Clan	Business man
Chief Micah Eniang Ededem Archibong	Adviser	**Archibong** Clan	Broadcaster
Chief Eniang Esien	Secretary, Etuboms' Traditional Council	**Abana** Clan	Former Hon. Commissioner of Cross River State
Chief Efiom Eyamba	Adviser	Odon Amabi Ekpa Clan	Engineer
Chief Mrs Cecilia Ekpenyong	Ada Idaha Ke Efik Eburutu (Chief of Area)	Direct Descendant of Founder of **Mben Mmong** Ekanem Esin Village of **Akwa** Clan	Present Chairman, CRSLG Service Commission; Former Deputy Governor of Cross River State Govt.
Chief Dr Sama Ekpo Sama	Ada Idaha Ke Efik Eburutu	**Akwa** Clan	Medical Doctor
Chief Okon Edet Usim	Ada Idaha Ke Efik Eburutu	Direct Descendant of Founders of Odon, Amoto and Efut Inwang Clans	Serving Nigerian Diplomat in Iraq
Chief Mrs Florence Ita Giwa	Ada Idaha Ke Efik Eburutu	Ekpot Abia Clan	Politician
Chief Mrs Ekanem Ikpeme	Ada Idaha Ke Efik Eburutu	Odon Clan	Medical Matron

NAME	MEMBERSHIP STATUS IN OBONG'S COUNCIL	STATUS IN BAKASSI	OCCUPATION
High Chief Dr Emmanuel Nyong Nsan	Ada Idaha Ke Efik Eburutu	**Atabong** Clan	Medical Consultant; Former Federal Government Minister Health
Chief Dr Archibong Edem Young	Ada Idaha Ke Efik Eburutu	Direct Descendant of Founder of Amoto Clan	Engineer
Chief (Engr) Richard Ekanem	Ada Idaha Ke Efik Eburutu	Efut Inwang Clan	Former Rector of Cal Polytechnic
Etubom Okon Etim Okon Asuquo	Etubom of Atabong Clan	Present Antai Ema **Atabong** Clan Head Elect	Retired Superintende Police
Chief Etim Okon Edet	Ada Idaha Ke Efik Eburutu	Native of **Abana** Clan - Former Akpabuyo/Bakassi Local Govt Chairman	Politician
Chief Dr Emmanuel Efiong-Fuller	Ada Idaha Ke Efik Eburutu	Native of and Community Leader in **Akwa** Clan	Senior Lecturer, Dep Geography in Univer of Calabar
Chief Barrister Andem Attah	Adviser	Native of **Atabong** Clan	Lawyer

10.36 Examples of the Certificate of Recognition by Cross River State Government for two of the above listed Chiefs, Chief Okon Etim Okun Asuquo and Chief Ekpo Edem Archibong, are annexed at NC-M 150. These documents, issued pursuant to section 13 of the Traditional Rulers Law of 1978,[189] reveal that these Chiefs are the village head of **Atabong West** and **Archibong** Town in Akpabuyo Local Government Area.

10.37 Customary procedure for the appointment of Clan Heads and Heads of Cognate Efik families is similar throughout Calabar and Bakassi. The attendant criteria are also similar. They are:

(1) Ability to prove one's birth and speak Efik;

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189 See paragraph 10.42 below and Annex NC-M 154

(2) Must not be a charlatan;

(3) Must be a house owner;

(4) Must be a full initiate of Ekpe Society;

(5) Appointment must be made by the acknowledged king-makers.

10.38 The role of the Etuboms and Chiefs must not be under-estimated. The inhabitants of the area have great allegiance to their leaders and rely on them for their safety, welfare and good administration. In an area as remote as Bakassi from the centre of Federal Government originally in Lagos and then in Abuja, the role played by the traditional rulers is very important.

10.39 Correspondence between Etubom Okon Ita, Etubom of the people of Atabong, and the Chiefs of local villages on Bakassi in 1968 reveals an interesting insight into their position in society. During the Nigerian civil war, a letter dated 5 April 1968 (NC-M 151) from the Etubom to the Chiefs of **Abana, Ine Odiong, Ine Atayo, Ine Akpak** and **Ine Atabong** stated his concern that their villages had been taken over and occupied by Cameroonian soldiers and police acting under the orders of the Cameroonian Government, and that the villagers were being forced to change their nationality from Nigerian to Cameroonian. He requested the attendance of the Chiefs at a meeting to discuss the situation. This letter was followed by correspondence in Efik (translations are also provided) in which the Etubom arranged the meeting and requested that the villages pay some of the cost of a visit by the Etubom and his lawyer, Barrister Anwan, to Lagos to bring the situation to the attention of the relevant Federal Authorities (NC-M 152). It shows that the Etubom and his Chiefs were concerned by the appearance of Cameroonian soldiers and police and the threat that this constituted to their people, their society, their culture and their allegiances.

10.40 The correspondence further shows that the Obong and Etuboms' rule was paramount. In the letter dated 1 May 1968 (NC-M 152), the Obong tells his Chiefs

in the Bakassi villages that they should inform the Cameroonian police that anything done in the villages without the consent of the Etubom is null and void.

10.41 On 28 December 1973 the South Eastern State Traditional Rulers Edict No.17 was promulgated.[190] Its Schedule 2 listed the Divisions, Clans, Village Groups and villages in South Eastern State to which the respective Paramount Rulers, Clan Heads, Group Heads or Village Heads were restricted in the performance of their traditional functions. The village groups listed under Efik Clan in Calabar Division include Archibong. Under Oron Division it reveals the following Bakassi villages in the Fishing Settlements with no Common Name Village Group in Effiat Clan:

Abana Ntuen
Akpa Nkaya
Onosi
Ine Ekoi

It also reveals the following Bakassi villages in the Ntekim Village Group:

Ine Odiong
Edem Abasi
Ine Ibekwe Atabong [East Atabong]
Ine Atabong [West Atabong]
Ine Akpak
Ine Atayo

10.42 Cross River State promulgated the Traditional Rulers Law in 1978 (Edict No. 14 of 1978) which included Archibong within the Efik Clan of Calabar Municipality.[191]

10.43 Under this legislation the Local Government Clans, Villages (Variation) Order of 1 July 1983 was made (NC-M 155) designating various local government clans.

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190 Annex NC-M 153 contains the relevant pages. The full text has been lodged with the Court.

191 Annex NC-M 154 contains the relevant pages. The full text has been lodged with the Court.

10.44 The Order provides as follows:

"I. Schedule 1 of the Traditional Rulers Law, 1978 is hereby varied in respect of the Local Governments named below by adding in columns (1) and (2) as regards the Local Governments and Clans named below the following new items:

Variation of Schedule I to the Traditional Rulers Law, 1978 (Edict No. 14 of 1978)

ORON LOCAL GOVERNMENT

Clan	**Villages**
Atabong	Ikot Ema Antie
	Ikot Iquo
	Ikot Itabinya
	Ikot Odiong
	Ikot Osukpon
	Ikot Etim Ntung
	Ikot Antal Oko
	Ikot Okokon
	Ikot Ema Andem Inyang
	Ikot Ema Andem Ema
	Ikot Ekpenyong
	Itung Fishing (Settlement)
	Aqua Ine Itung
	Ikot Antai Okon
	Ibiong Utan Itung
	Ufot Ine Itung
	Aqua Ine Ibekwe
	Ibiong Utan Ibekwe
	Ishie"

10.45 In 1990 the State of Akwa Ibom adopted the Traditional Rulers Edict (the relevant pages of which are contained in Annex NC-M 156), which made provision for the establishment in each local government area of a traditional council to act as an advisory body on the customs and traditions of the local government area.

10.46 The Schedule to the Edict lists the villages designated for the purposes of the Edict as follows:

"Section 4

NAMES OF VILLAGES IN MBO LOCAL GOVERNMENT AREA

Local Government	*Area of Authority*	*Headquarters*
MBO	*Clans/Villages*	ENWANG
	.....	
	EFFIAT VILLAGES IN BAKASI	
	Aya (Inua Abasi)	
	Abana Ntuen	
	Onosi	
	Akpa Nkanya	
	Ini Odiong	
	Ine Akpak	
	Ine Atayo	
	Ine Inua Abasi	
	Ibuot Efe	
	Ine Ekoi	
	Ine Iyoso	
	....	
OKOBO	**ATABONG VILLAGES IN BAKASSI**	**OKOPEDI**
	Itung Fishing Settlement	
	Aqua Ine Itung	
	Ibiong Utan Itung	
	Aqua Ine Ibekwe	
	Ufot Ine Itung	
	Ibiono Utan Ibekwe	
	Ishie"	

10.47 The Cross River State Clans Creation Edict (No. 1 of 1996)[192] created clans in villages in the Akpabuyo L.G.A. including the following villages in the Bakassi region:

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192 Annex NC-M 157 contains the relevant pages. The full text has been lodged with the Court.

Ikang Clan:	**Ine Ukpong** **Ine Effiom** **Ine Akpa Ikang** **Ine Ikang** **Ine Utan Asuquo** **Ine Utan** **Ine Nkan Okure I** **Ine Nkan Okure II**
Archibong Clan:	**Archibong Town**
Akwa Clan:	**Akwa Town** **Nwanyo Otto** **Mbenmong Ikot Ekanim Esin**
Ambai Ekpa Clan:	**Ine Inua Mba** **Rio del Rey**
Abana Clan:	**Abana Ntuen** **Akpa Nkanya** **Onosi** **Ine Ekoi** **Ine Mba** **Ine Effiom**
Odiong Clan:	**Edem Abasi.**

(vi) Jurisdiction of Customary Law Courts

10.48 Modern legislation in Nigeria has maintained and regulated the customary law courts. As early as 17 June 1941, the Effiat-Mbo Native Court issued a warrant for the Effiat-Mbo (Oron Clan) Court, which included within its jurisdiction the Bakassi village of Abana (NC-M 141).

10.49 Within this framework, courts were also established by virtue of the South-Eastern State Customary Courts Edict of 1969.[193] By means of a Warrant dated

[193] A full copy of this text has been lodged with the Court.

29 October 1970 (NC-M 158) the Effiat-Mbo District Court was created replacing the Native Court, with jurisdiction in the area comprising the villages set out in the Schedule thereto. This included the Bakassi village of **Abana Ntuen**.

(vii) The Settlement of Nationals of the Claimant State

10.50 In the formation of title by a process of historical consolidation there can be no doubt that the existence of long-established settlements of the nationals of the claimant state plays a significant role. It is helpful in this respect to recall the views of Sir Gerald Fitzmaurice expressed in 1957:

> "The element of racial or national affinity between the population of the claimant State and the inhabitants of the territory claimed, can never in itself be a legal ground of title. As with historical factors, it might assist in supporting a claim based on other grounds, or as an evidential factor - for instance it might assist in showing that certain acts were carried out *animo occupandi* with the intention of asserting sovereignty. but, especially if the territory is, or has passed into the effective control of another State, affinities of race or country can never be a substitute for effective control, or for continuity, or in themselves give title. *Different considerations arise where it is not merely a question of racial or national affinity, but of actual nationals of the claimant State, for, if settlers in a territory have a certain nationality, that may be an element (though not necessarily a conclusive one) in showing the existence of effective control by their parent State.*"[194] (emphasis added)

10.51 The settlement of nationals has been treated as relevant, though by no means decisive, in the jurisprudence of international tribunals.

10.52 In the *Guatemala-Honduras Boundary Arbitration* the Special Tribunal was required to determine the line based on the *uti possidetis* of 1821. The Tribunal was expressly authorised to modify the *uti possidetis* line to take into account 'interests'

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[194] Recueil des Cours, Hague Academy, Vol. 92 (1957. II), p.149

acquired by either party beyond that line. The Tribunal consequently assumed an implied power to take account of interests derived from actual possession, including settlement. In the words of the Tribunal:

> "The criteria to be applied by the Tribunal in the exercise of this authority are plainly indicated. It is not the function of the Tribunal to fix territorial limits in view of what might be an appropriate division of the territory merely with reference to geographical features or potential advantages of a military or economic character, apart from the historical facts of development. The Treaty cannot be construed as authorising the Tribunal to establish a definitive boundary according to an idealistic conception, *without regard to the settlement of the territory and existing equities created by the enterprise of the respective Parties*. So far as may be found to be consistent with these equities, the geographical features of the territory indicating natural boundaries may be considered.
>
> In fixing the boundary, the Tribunal must have regard (i) to the facts of actual possession; (2) to the question whether possession by one Party has been acquired in good faith, and without invading the right of the other Party; and (3) to the relation of territory actually occupied to that which is as yet unoccupied. In the light of the facts as thus ascertained, questions of compensation may be determined."[195] (emphasis added)

10.53 In the *Argentine-Chile Frontier* case (1966) the Court of Arbitration, of which Lord McNair was the President, was required by the *Compromiso* to reach its conclusions 'in accordance with the principles of international law'. In its Report the Court considered that, as a matter of principle, evidence of settlement was relevant. The court made the following observations about the evidence proffered by the parties:

> "Chile has introduced a great deal of evidence designed to show effective Chilean administration over the disputed area. Even unofficial acts are relied upon, such as ministrations by priests coming under the Apostolic Vicarage of Aysen in Chile, *and strenuous efforts have also been made to show that the settlers of the disputed area have*

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[195] *Guatemala - Honduras Boundary Arbitration* (1933); International Law Reports, Vol. 7, p.115, at p.122

Chilean loyalties and have 'by their conduct attorned to the Chilean authorities'. (Final Submission No. 25).

Argentina has claimed throughout the proceedings that since 'the interpretation and fulfilment of the Award' is a matter for the Court, and not for the Parties, all this Chilean evidence is irrelevant. While maintaining this general position, Argentina has criticised and sought to discredit much of the Chilean evidence, especially those parts of it which depend upon the acts of local as opposed to central authorities, and even more those parts of it which reflect the conduct and sentiments of private individuals. Subject to her general reservation, Argentina has also submitted evidence of Argentine activity in the disputed area, which Chile in her turn has sought to discredit for various reasons. The very voluminous material submitted by both sides, and especially by Chile, came to be known in the case as 'the fulfilment materials'.

Although the Court - for reasons which will be explained below - shares Argentina's view that the reference to interpretation and fulfilment in the Compromiso is intended to mean interpretation and fulfilment by the Court rather than by the Parties, the Court has not taken the view that 'the fulfilment material' submitted by either side ought to be excluded as completely irrelevant. *This is because, in the Court's opinion, such evidence is relevant to the question of settlement - whether for instance what was settled in 1902-03 has since become unsettled or has become settled in a different way, and whether too 'the fulfilment material' throws any light on the question whether what was left unsettled in 1902-03 has since become settled.*"[196] (emphasis added)

10.54 Essentially the same approach was adopted by the Chamber of the Court in the case concerning the *Land, Island and Maritime Frontier Dispute*. The following passages from the Judgment are illustrative of the acceptance by the Chamber of the relevance of evidence of settlement:

"Turning now to the evidence of effectivités submitted by Honduras, there is first some evidence of diplomatic correspondence, and in particular a formal request by El Salvador for extradition of alleged malefactors residing in a place called 'La Vecina, jurisdiction of the town of La Virtud, Department of Gracias' in Honduras. La Vecina

196 International Law Reports, Vol. 38, p.10, at p.88

is shown on the maps of both Parties as a village near the headwaters of the river Gualcuqín or Amatillo. Secondly, *considerable material was presented as an annex to the Honduran Reply to show that Honduras also can rely on arguments of a human kind, that there are 'human settlements' of Honduran nationals in the disputed areas in all six sectors*, and that various judicial and other authorities of Honduras have exercised and are exercising their functions in those areas. So far as the present sector is concerned, Honduras has presented material under ten headings: (i) criminal proceedings; (ii) police or security; (iii) appointment of Deputy Mayors; (iv) public education; (v) payment of salaries of employees and remuneration to public officials; (vi) land concessions; (vii) transfer or sale of immovable property; (viii) birth certificates; (ix) death certificates; (x) miscellaneous ...".[197]

"*Turning now to the evidence of effectivités submitted by Honduras, as already mentioned, considerable material was presented as an annex to the Honduran Reply to show that Honduras also can rely on arguments of a human kind, that there are 'human settlements' of Honduran nationals in the disputed areas in all six sectors*, and that various judicial and other authorities of Honduras have exercised and are exercising their functions in those areas. So far as the present sector is concerned, Honduras has presented material under ten headings: (i) criminal proceedings; (ii) police or security; (iii) military patrols; (iv) taxation; (v) appointment of deputy mayors; (vi) public education; (vii) land concessions; (viii) birth certificates; (iv) death certificates; (x) miscellaneous. These relate to a considerable number of localities, identified simply by the name of the village or place; no map has been supplied to show the geographical position of these places. The Chamber considers that, in view of its decision as to the boundary on the basis of the *uti possidetis juris*, it can confine its attention to such villages as appear on Honduran maps to lie between the boundary as found by the Chamber and the boundary claimed by Honduras."[198] (emphasis supplied)

10.55 In a situation in which evidence of historical consolidation is particularly appropriate, the existence of long-established settlements of nationals has considerable probative value.

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197 I.C.J. Rep. 1992 p. 147 at para. 180

198 *ibid.*, p. 516, para. 265

(viii) Acts of Administration by Nigeria after Independence in 1960

(a) The Evidential Sources

10.56 A major component in the process of historical consolidation is the evidence of peaceful possession and administration, consisting of acts involving "a manifestation of sovereignty" in respect of the Bakassi Peninsula (*cf. Minquiers and Ecrehos* case),[199] or "acts of such a character that they can be considered a manifestation of State authority" in respect of Bakassi.[200]

10.57 In the Judgment of the Chamber in the *Land, Island and Maritime Frontier Dispute* case, there is repeated reference to the requirement of "effective administration".[201]

10.58 The various types of evidence of administration by Nigeria will be reviewed in the sections following.

(b) The Maintenance of Public Order and the Investigation of Crime

10.59 Occupying a leading position in any chronicle of "acts of such a character that they can be considered a manifestation of state authority" are the maintenance of public order and the investigation of crime. In this context it may be recalled that in the *Rann of Kutch Arbitration* account was taken of the exercise of police and criminal jurisdiction.[202]

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199 I.C.J. Rep. 1953 pp. 58-59

200 *ibid.* p. 71

201 See I.C.J. Rep. 1992 pp. 418-19, para. 96, p. 515, para. 264

202 R.I.A.A., Vol. XVII, pp. 558-9 (Opinion of the Chairman)

10.60 The relevant evidence includes the exercise of jurisdiction by Customary Law Courts acting by virtue of Nigerian legislation. This aspect has been examined above in paragraphs 10.48 and 10.49.

10.61 The documents available provide evidence of the following acts of law enforcement by Nigerian police officials in the Bakassi region:

(1) In 1963 a Nigerian police launch intercepted a Cameroon government launch in the territorial waters of Nigeria near **Abana**. This incident, on 16 November 1963, was the subject (along with other similar incidents) of a Nigerian protest dated 1 April 1964 (NC-M 159).

(2) On 29 October 1965 a Nigerian police officer arrested members of a Mobil Oil survey team in the delta of the Cross River. The relevant Cameroon Note (dated 22 November 1965) reserves the position of the Cameroon Government but no protest is made (NC-M 160).

(3) In 1970 Nigerian officials were sent to the village of Eket to investigate a murder case. The intervention of Cameroon officials at Atabong prompted a Nigerian protest in the following terms:

> "The Embassy of the Federal Republic of Nigeria presents its compliments to the Ministry of Foreign Affairs of the Federal Republic of Cameroon and has the honour to bring the following to the attention of the latter.
>
> On the 28th of May, 1970, two Nigerian Police Constables, Edem Asanga No. 114302 and Okon Willie No. 122304 were arrested by the Cameroon authorities at **ATABONG**, a fishing village while on their way to EKET to investigate a murder case.
>
> The Embassy would be grateful if the Ministry would be good enough to cause the immediate release of these men who were on official duty.

> The Embassy of the Federal Republic of Nigeria avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Federal Republic of Cameroon the assurances of its highest consideration." (NC-M 161)

(4) The two Nigerian detective constables involved were employed by the State Criminal Investigation Department at Calabar. The relevant report, dated 17 June 1970, prepared by the Nigerian police officers, includes the following passages:

> "We, Nos. 11431 Detective constable Edem Asanga and 12234 Detective constable Okon Willie are of the State Criminal Investigation Department, Calabar, South Eastern State of Nigeria. There was a petition from one Okon Ononoedi Etto against Eket Police alleging of the bad handling of a murder case which his late brother Sunday Ononoedi Etto was the victim. Therefore, we from the State C.I.D., Calabar were scheduled to take up the investigation.
>
> 2. The petitioner alleged that some people from Ntak Inyang, Eket, fishing at **Ine Odiong** murdered his brother Sunday Ononoedi Etto their co-fisherman and buried the corpse in the mud. We left Calabar on the 18th May, 1970 to Ine Odiong on investigation. On our way we called at Eket Police Station and at Etebi, Eket the village of the deceased. In order to allay suspicion as to the condition of the corpse during exhumation, at Etebi and Ntak Inyang we collected some of the deceased's relatives and the suspects and proceeded to **Ine Odiong** in two canoes.
>
> 3. We arrived **Ine Odiong** on 22nd May, 1970. After necessary enquiries, on 24th May 1970, we exhumed the corpse for Post Mortem Examination. It was only the skull which was in order but other parts of the body had been rotten and decomposed. So far there was a statement to the effect that the head was broken, we had to carry the skull still to be examined by a medical officer. We left **Ine Odiong** for Eket the same date but we were intercepted by the Cameroon soldiers and Navy at **Edem Abasi** water near to **Atabong Fishing Port** ...

> 6. We have put in over 12 years in the Nigeria Police Force and have investigated cases in **Abana, Atabong, Ibekwe, Akpa Nkanya, Ine Odiong Fishing Ports** etc. We had also done tax assessment and tax drive in these areas before the war, but there had never been any interruption by the Cameroon. We are very much embarrassed about this incident." (emphasis supplied) (NC-M 162)

10.62 The final paragraph of this report provides clear evidence of the existence of a *status quo*, subsisting (in the experience of the two witnesses) for twelve years and more, involving the maintenance of law and order in the Bakassi region by Nigerian police officers. Prior to this incident this peaceful state of affairs had not been interrupted by Cameroon.

10.63 The crime rate on Bakassi is not high, but the following incident reports are held at the police station in Ikang (westwards across the Akpa Yafe from Bakassi) and were investigated by the police from that police station (NC-M 163):

(1) On 24 March 1986, there was a complaint by Nickson MacLean that Chief Iyabo Agagbelewi had obtained money under false pretences in Inua Mba, Bakassi.

(2) On 22 January 1991, Akpan Daniel Udosen from Isangele made a complaint that an outboard engine was stolen.

(3) Also on 1 July 1991, Ededem Okon Edem of Ifiari reported to the Ikang police station that while on a vigil one night, he was assaulted by Etim Sunday Nnang and two others, and then they caused criminal damage to his clothes and stole 65 Naira from him.

(4) On 24 September 1991, Effiong Edet from Abana complained that a person had gone missing.

(5) Also on 24 September 1991, Effiong Okon Ayakang from Nwanyo on Bakassi complained that Etim Oto Nwayang, also of Nwanyo, stole 3,600 Naira in cash, a fishing net worth 3,200 Naira and three paddles all valued at 50 Naira.

(6) On 21 February 1993, Chief Ita Okon Ekpenyong from Abana complained that Odiong Inyang, also from Abana, had threatened violence against him, and assaulted him.

(7) On 28 September 1994, Ime Johnson Jimmy of Iso Ikot Ama Owo near **Abana** on Bakassi complained that Samuel Jackson of the same address had committed a negligent act.

10.64 These incidents show that the Nigerian police based at Ikang police station were responsible for law and order throughout the Bakassi Peninsula over a long period of time.

10.65 Furthermore, in 1994 a police station was established at **Abana** with the approval of the Head of State (NC-M 164).

(c) Taxation

10.66 Of particular evidential value is the collection of tax from residents of the Bakassi Peninsula by the Cross River State of Nigeria (Calabar Tax Division). The evidence takes the form of the Nominal Roll of tax payers who paid their taxes in Akpabuyo Tax District in Calabar Tax Division of Cross River State. Copies of this information (both in manuscript and in typescript) and a selection of related individual tax receipts, relating to the fiscal year 1967-68, can be found at NC-M 165 and NC-M 166. The evidence was provided by the Office of the Governor of Cross River State.

10.67 The Bakassi villages involved are as follows:

Akwa Town
Archibong Town
Mben Mong
Nwanyo
Atabong
Abana.

10.68 It is the case that in a Note dated 24 December 1964 the Ministry of Foreign Affairs of Cameroon complained that taxes were being collected by Nigeria "in fishermen villages situated near river Rio del Rey, in Cameroon Territory" (NC-M 167). The Nigerian response dated 14 January 1965 stated that the matter was being investigated (NC-M 168).

10.69 Evidence in the form of the Internal Revenue Stock and Distribution Register (Eastern Nigeria) established that, in the fiscal year 1969-70, income tax was being collected from Abana village on the Bakassi Peninsula (NC-M 169).

10.70 There can be no doubt that the imposition of taxes is recognised by tribunals as evidence of sovereignty. This Court accepted evidence of the imposition of local and other taxes as evidence of title in the *Minquiers and Ecrehos*[203] case. Evidence of taxation was also regarded as admissible by the Court in its Advisory Opinion concerning *Western Sahara*.[204]

(d) <u>The Exercise of Ecclesiastical Jurisdiction</u>

10.71 A normal outwork of a system of civil administration is the exercise of an ecclesiastical jurisdiction by religious authorities in the form of the registration of births, marriages and deaths. This type of evidence was taken into account by the

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[203] I.C.J. Rep. 1953 pp. 65, 69

[204] I.C.J. Rep. 1975 pp. 45-47, paras. 99-103

Chamber in the case concerning the *Land, Island and Maritime Frontier Dispute*.[205]

10.72 The Court is respectfully requested to study the pages from the baptismal and marriage registers of St. Mark's Parish, Oron, which contains the names of members resident in Abana in the Bakassi Peninsula (NC-M 170). The dates stretch from 1938 to 1979.

(e) Delimitation of Electoral Wards

10.73 Under the auspices of the National Electorial Commission Decree 1987 (NC-M 171), in 1990 the whole of Nigeria was divided into Local Government Electoral Wards: see the Local Government (Delimitation of Electoral Wards) Notice 1990 (NC-M 172).

10.74 In Ikang Central Ward (with code No. LG/29/CR) in Akpabuyo Local Government Area, of the 15 villages constituting that ward, **Ine Nkane Okure I, Ine Nkane Okure II, Ine Ekoi, Ine Utan Asuquo, Ine Ikang, Ine Ukpono, Ine Akpa Ikang, and Ine Utan** are all on Bakassi (NC-M 173).

10.75 Electoral Wards were designated in the Bakassi LGA under the auspices of the National Electoral Commission of Nigeria for Cross River State in 1996. The delimitation by the Electoral Commission appears in NC-M 174. From this it is apparent that:

Abana Ward includes **Abana Ntuen and Ine Ekoi**
Odiong Ward includes **Edem Abasi**
Akpa Nkanya Ward includes **Akpa Nkanya, Ine Mba and Ine Effiom**

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[205] I.C.J. Rep. 1992 p.351 at pp. 397-99 (paras. 60-62), pp. 435-6 (para. 123), pp.469-70 (paras. 177-8), pp. 471-2 (paras. 180-1), p.516 (paras. 265-6), pp.542-3 (para. 304)

Archibong Ward includes **Archibong Town.**

(f) Participation in Parliamentary Elections

10.76 In the 1959 Federal election, Mr. Okon John Eminue, a Methodist School head teacher, was elected member representing Eket East Constituency which included some of the Bakassi villages. During the 1964 Federal elections won by the then Barrister E.I. Nkereuwem (now a retired Judge of the Akwa Ibom State Judiciary), one polling booth was erected at **Akpa Nkanya**, two at **Abana**, one at **Ine Odiong**, one at **Ine Onosi**, one at **Atabong East** and one at **Atabong West**. Between 1960 and 1963 Etim Effiong Bassey, the retired principal of Methodist Boys' High School, Oron (from Eyofai Enwang) was a member representing Ward 5 - these being Effiat villages in Bakassi - in the then Okobo-Oron County Council of Eket Division. But between 1964 and 1966, Mr. Bassey was replaced by Ebi Umo, as the member representing this ward in the said Council. Ebi Umo, now the head of Akwa Obio Efiat, is a great grandson of Edidem Ntuem Umo, the reputed founder of Akwa Obio Effiat, and the fourth in the stock of the founder of **Abana Ntuen.**

(g) Census Taking

10.77 The taking of a census is a classical form of exercising sovereignty in respect of territory.

10.78 There was a population census of Nigeria in 1953, during the period of the trusteeship. This included as part of Akpabuyo Rural District Council, as the area was then known, within Calabar Province, the following villages located on the Bakassi Peninsula:

Ine Akpa Ikang
Ine Ekoi
Ine Nkani Ekure
Ine Utan

Ine Utan Asukquo
(NC-M 142)

10.79 There was also a population census in Nigeria in 1963, in which the Eastern Region phase included a return for Abana Ntuen within Ibaka Local Councils (NC-M 175).

10.80 In 1991 the National Population Commission visited Abana and made a report, dated 14 November 1991, to the control centre, Mbo Local Government Area, in which they counted the number of buildings in the village and drew a sketch map (NC-M 176). They also sketched and delimited a number of the Nigerian villages on Bakassi (NC-M 177).

10.81 In its Judgment in the *Minquiers and Ecrehos* case the Court took account of the visit of an official census enumerator to the islets as "a manifestation of sovereignty".[206]

(h) Public Works and Development Administration

10.82 The existence and the planning of public works and the provision of a subsidised infrastructure constitute evidence of title: see the *Rann of Kutch Arbitration*,[207] and the Judgment in the *Minquiers* case.[208]

10.83 The South-Eastern State Development Administration Edict No.7 of 1972[209] established a Development Administration system, in which the territorial units were Development Areas. The Development Areas established extended to the Bakassi Peninsula. The relevant Areas and their constituent villages were as follows:

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206 I.C.J. Rep. 1953 pp. 66, 69

207 R.I.A.A., Vol. XVII, p.557 (Opinion of the Chairman)

208 I.C.J. Rep. 1953 p.69

209 Annex NC-M 178 contains the relevant pages. A full copy of the text has been lodged at the Court.

"CALABAR DIVISION
30. Ikang Development Area
Constituent Villages

1. **Ine Nkani Okure No. 1**
2. **Ine Nkani Okure No. 2**
3. **Ine Utan**
4. **Ine Utan Asuquo**
5. **Ine Ikang**
6. **Ine Akpa Ikang**
7. Ine Ibuot Owong
8. **Ine Efiom**
9. **Ine Ukpono**
10. **Ine Ekoi**
11. Ikang Efio Ekpe
12. Ikang Town
13. Edik Idim Ikot Efanga
14. Efut Abua Ikot Eyei
15. Ikot Efio Odiong Ene
16. Ikot Inyang Nsidung
17. Akwa Obio Inwang Nsidung
18. Ekpri Obutong
19. Obutong Abasi Eke
20. Ekpri Ikang
21. Okukubarakpa Esighi
22. Ikot Ene Uyi Esighi
23. Usung Idim Ikot Antigha
24. Ikot Enene Esighi
25. Ikot Antigha Ene
26. Ikot Mkpang Esighi
27. Ikot Abasi Ene Esighi
28. Ekpene Esuk Esighi
29. Itam Ikot Antigha
30. Efut Abua Esighi
31. Idua Inwang Esighi
32. Ifiang Nsung
33. Ifiang Edem Inyang
34. Edik Okon Idem
35. Esuk Aye
36. Esuk Okon
37. Ikot Inwang Okpo
38. Abakpa Ikot Nkok Anie
39. Ikot Okon Ekpriwong
40. Ikot Edem Oku
41. Ikot Otu
42. Abakpa Efio Ase
43. Usung Esuk Efio Obori
44. Akpap Okon Ene Ita
45. Fait Ikot Nsa Ewa
46. Fait Ikot Naidung
47. Esine Ufot Nsidung
48. Nyomidibi Nsidung

157.Effiat/Ibaka Development Area
Constituent Villages

1. Ibaka
2. Akwa Obio Effiat
3. Inua Abasi
4. Ibuot Utan
5. Usuk Effiat
6. Obio Iyatta
7. **Abana Ntuen**
8. Esuk Enwang
9. Ibuot Ikot
10. James Town
11. Mkpang Utong
12. Utan Antai
13. Utan Efiong
15. Utan Bramah
16. Mbe Ndoro
17. Ine Okpo
18. **Ine Akpak**
19. **Ine Atayo**
20. **Ine Odiong**
21. **Akpa Nkanya**
22. **Edi Abasi**
23. Obong Nim
24. **Onosi Abana**
25. Idak Okono
26. Asiba
27. Ine Inua Abasi

14. Utan Udombo 28. Mbat Ekpa."

10.84 In accordance with the Edict of 1972 the Co-ordinator of Development Administration established the Effiat/Ibaka Area Development Committee, with authority to act in the area of the villages listed in the Schedule to the Edict. The relevant Instrument, dated 16 August 1972 (NC-M 179), included **Abana Ntuen** on the Bakassi Peninsula.

10.85 A letter from the Department of Development Administration in Oron to the Senior Divisional Executive at the Oron Divisional Office, dated 12 December 1973 (NC-M 180), refers to the following constituent villages being within Effiat/Ibaka Development Area of Oron East County Development Council:

Abana Ntuen
Ine Okpo
Ine Akpak
Ine Atayo
Ine Odiong
Akpa Nkanya
Edi Abasi
Onosi Abana.

10.86 The Edict of 1972 (Edict No. 7 of that year) was the basis for the Oron East County Council Development (Establishment) Instrument of 1974 (NC-M 181). The instrument provided, in part, as follows:

> "In exercise of the powers conferred on the Military Governor by section 10 of the South-Eastern State Development Administration Edict 1972 and delegated to me under the Development Administration Delegation of Powers Order 1972, I, MTIENYONG UDO AKPAN, Co-ordinator of Development Administration of the South-Eastern State of Nigeria, hereby make the following -

INSTRUMENT

1. The Oron East County Development Council (hereinafter referred to as 'the Council') is hereby established.

2. The Council shall exercise authority in accordance with the provisions of the South-Eastern State Development Administration Edict 1972 (hereinafter called "the Edict") throughout the Development Areas specified in Column 1 of the Schedule hereto.

3. The Council shall, exclusive of ex-officio members and such traditional rulers and special members as may be appointed to the Council by the Co-ordinator as provided in the South-Eastern State Development Administration (No.2) (Amendment) Edict 1973, consist of a chairman and not more than twenty-four members selected from the constituent villages [or] combination of villages set out in the Schedule hereto, in accordance with the Development Administration (Selection of Councillors and Committeemen) Regulations 1972."

10.87 The schedule to the instrument includes the Bakassi village of **Abana Ntuen** in the development areas thus constituted.

10.88 In October 1994 the Cross River State Government purchased fishing gear for fishermen of the Bakassi Peninsula to replace losses caused by political disturbances involving **Archibong Town, Abana, Atabong West and Atabong East**: see NC-M 182.

(i) <u>The Exercise of Military Jurisdiction</u>

10.89 The manifestation of sovereign authority may take the form of the exercise of military jurisdiction, as part of a generalised system for maintaining public order.

Such evidence was regarded as in principle admissible by the Chamber in the *Land, Island and Maritime Frontier Dispute*.[210]

10.90 Nigeria asserts that there has always been a Nigerian military presence on the Bakassi Peninsula. The Isaac Boro military camp has been situated near West Atabong since the Nigerian civil war. Furthermore, the Nigerian Navy have a base at Jamestown, from where regular patrols are sent out to patrol the creeks and shores of the Bakassi Peninsula.

(j) Public Education

10.91 The provision of public education is clearly an exercise of State functions constituting evidence of title. In the *Land, Island and Maritime Frontier Dispute* the Chamber of the Court recognised that the provision of public education counted as an *effectivité*.[211]

10.92 From as early as 1893 there was a Methodist School at Archibong, but in the period prior to the 1960s, the people of Bakassi, if they were able to afford the cost of transport, tended to send their children to Duke Town Primary School in Calabar, which had first been established in 1846.

10.93 Furthermore a Catholic school, St. Francis' Catholic School, existed from 1960 to 1968, when it was forced to close during the Nigerian civil war.

10.94 A Methodist School was established in 1968 at **Atabong**, and this was still within the authority of the Nigerian Education and Examination board in 1975 (NC-M 183).

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210 I.C.J. Rep. 1992 pp. 470-1, para. 179

211 See, for example, I.C.J. Rep. 1992 pp. 397-99 (paras. 60-62); pp. 542-43 (para. 304)

10.95 In a Note dated 15 September 1969, Cameroon protested when a primary school was established at **Abana** by the Catholic Mission based at Uyo (NC-M 148). Whilst the school was not supported by public funds, the Government of Cameroon clearly regarded this development as evidence of a form of Nigerian State activity.

10.96 Nine schools in total were established on Bakassi prior to 1994. These were located in the following settlements (see NC-M 184):

Settlement	Type of School	Date of Foundation	Number Enrolled
Archibong Town	Methodist	1893	300
Nkan Okure	Community	1962	200
Atabong West	Government	1968	450
Atabong East	Community	1968	345
Mbenmong	Community	1975	150
Nwanyo	Community	1981	100
Abana Town[212]	Government	1992	405
Archibong Town	State Secondary School	1993	150
Atabong Town	State Secondary School	1993	160

10.97 Some of these schools were forced to close during the troubles in the period 1967-1968, and also during the period at the beginning of 1994. This latter was as a result of the threat posed by the sustained attacks and occupation by Cameroonian soldiers and police. Such attacks in 1968 were drawn to the attention of the Etubom at Calabar and were perceived as very serious (see paragraphs 10.38-10.40).

10.98 In MC 317 and MC 322, there are two internal notes, which appear to be exactly the same but which bear two different dates, 18 February 1992 and 18 December 1992 respectively. These show that even Cameroon recognises the fact that these schools are Nigerian. These notes state:

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212 The School was actually established in 1969 in a local church building by the Roman Catholic Mission at Uyo (now in Akwa Ibom State). In 1992, Akpabuyo Local Government Council built a new building. Mr Michael Edet Okon was Head Teacher from 1980 to 1992. His statement is at NC-M 185.

> "the Community School, opened and directed by the Local Community of JABANA (Cameroun) [called **Abana** by the Efiks], receives subventions from AKPABUYO LOCAL GOVERNMENT, the State Commune of AKWA-BOM [*sic*] IN NIGERIA. Initially it was built of temporary materials and then in the process of being refurbished in permanent materials. The Teachers are all natives of NIGERIA" (NC-M 186).

10.99 More recently, the Cross River State Ministry of Education granted permission to open fifteen primary schools in villages on Bakassi which included **Akpa Nkanya, Ibekwe, Ine Ekoi, Mbenmong, Nwayo, Onosi** (NC-M 187).

(k) Provision for Public Health

10.100 Since 1959, the Nigerian authorities in Bakassi have established Health Centres for the benefit of the communities on Bakassi, and, indeed, these have often been built with the assistance of the local communities. These health centres are supplied from Nigeria, and the resident public health workers are trained in Nigeria. There are currently ten such health centres across the Bakassi Peninsula providing wide health care and programmes (NC-M 188). The following is a list of the foundation dates of some Health Centres (NC-M 184):

Name of Settlement	Date of Establishment
Archibong	1959
Mbenmong	1960
Atabong West	1968
Abana	1991
Atabong East	1992

10.101 In the course of 1994, Cross River State made provision for the equipping of health centres in **Archibong Town, Atabong West** and **Abana** (NC-M 189). At no stage had the Cameroon authorities made provision for health care in the Bakassi region. This view of the position is confirmed by the account of *effectivités* which appears

in the Cameroon *Memorial*, paragraphs 4.420 to 4.456, considered in further detail in paragraphs 10.132 to 10.153 below.

(l) The Granting of Oil Exploration Permits and Production Agreements

10.102 It is generally recognised that the granting of permits and licences in relation to exploration for, or exploitation of, oil, gas and other economic resources, constitutes evidence of the exercise of State authority: see the Judgment of the Permanent Court in the *Eastern Greenland* case.[213]

10.103 After the independence of Nigeria private operators interested in petroleum prospects recognised the existence of Nigerian title to the Bakassi Peninsula. Thus in 1965 surveyors, acting on behalf of Mobil Oil Cameroun, approached the Nigerian Government for permission to carry out survey work "on the Western bank at the mouth of the Calabar River" (NC-M 190). It is not clear whether this was a reference to the western coast of the Bakassi Peninsula or to territory in Akwa Ibom State.

10.104 In any event the resulting survey work appears to have been carried out at least in part on Bakassi and gave rise to an incident described in a Nigerian internal report as follows:

> "We have been approached by the Cameroun Ministry of Foreign Affairs in respect of an incident which befell certain American employees of Mobil Oil Cameroun in the Rio-del-Rey area of the Cross river. Apparently, inadvertently, they trespassed on Nigerian soil in order to carry out certain surveys which they were doing for Mobil Oil Cameroun. They were discovered by a Nigerian Policeman on the 29th of October who seized their passports and ordered them to quit within a week. The Cameroun Ministry of Foreign Affairs are not contesting the fact that the territory is Nigerian; however, they are

[213] 1933 P.C.I.J. Series A/B, No. 53, p. 22 at pp. 52-54

pleading that the Americans trespassed inadvertently and would be grateful if their passports are returned" (NC-M 191).

10.105 The response of the Cameroon Ministry of Foreign Affairs was (in material part) as follows:

> "A petrol survey team of the geographical section of the 'Mobil Oil' who were operating on a land concession given by the Cameroun Authorities in the delta of the Cross River (long. 8°33 E, lat. 4°30 N) were arrested on 29th October 1963 by a Nigerian police officer who considered that this land was part of the Nigerian territory and called the whole team to leave the place in a week's time; he also took his passport from Mr. Guy Cogswell an American citizen and a member of the team.
>
> The Ministry has been informed of this incident .. it deeply regrets it and reserves the position of the Cameroon Government as for the elements of the problem.
>
> The Ministry requests the Embassy to approach their Government so that Mr. Cogswell's passport be given back to him and seizes this opportunity to renew to the Embassy the assurance of its highest consideration." (NC-M 192).

10.106 The picture which emerges contains two basic elements. First, the area in dispute was the subject of competing exploration activities and, secondly, the incidence of oil-related activities was not, at least in the long run, regarded as conclusive of the issue of sovereignty. These elements are attested by the following Nigerian document dated 19 June 1992:

> "I am directed to inform you that the Government of Cameroon has indicated interest in cooperating with Nigeria in the exploration of petroleum products from deposits on our common maritime borders which had been under dispute.
>
> 2. It would be recalled that Cameroonian Government had been prospecting for oil in the area which it considered as falling within her territory under the 1975 Maroua Declaration. Nigeria too had been prospecting for oil in the same zone. But according to geological

surveys, productivity of oil in the zone has only a life span of two years.

3. Perhaps inspired by the burgeoning improvement in our relations, particularly on-border issues, the Cameroonian Government has suggested that both countries should jointly exploit the zone by using the technique of injecting water into the well on the Cameroonian side and pumping out oil from the Nigerian side and thereafter share the costs and benefits of production.

4. We are informed that a formal proposal along the above line will soon be forwarded to Nigeria. In the meantime, we are strongly inclined to commend the proposal for your favourable consideration because it accords well with new thrust in forging accommodation and peace with Cameroon and Nigeria's overall policy of good neighbourliness.

5. Our recommendation is however, without prejudice to your technical judgement as well as the strategic implications and the economic viability of the project. A sketch map indicating the oil fields in the disputed area is attached herewith" (NC-M 193).

(m) The Rio del Rey Port

10.107 The settlement and port of Rio del Rey has long been established near the head of the waterway, on the left bank of the Rio del Rey River. On 29 September 1960 (prior to Nigeria's accession to Independence) the Rio-del-Rey Port Declaration Order was made under powers conferred by legislation, in particular the Ports Act 1954 (as amended).[214]

10.108 The Order formally defined the limits of Rio-del-Rey Port. It did so in terms which included in the area of the Port the whole of the main stream of the Rio del Rey below 4°45' North and extended southwards for some distance below the mouth of the Rio del Rey. The text of the Order is at Annex NC-M 194, and *Atlas* Map 37 shows how those limits transpose onto the relevant chart.

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[214] Cap. 361 of the Consolidated Laws of the Federation of Nigeria 1990

10.109 The Rio-del-Rey Port remained a full working Port administered by Nigerians after Independence. The Order itself remains in force.[215] Cameroon did not protest against the Order at the time the Order was made, or at any time since.

(n) The Collection of Customs Duties

10.110 The collection of customs duties was taken into account by the Court in the *Minquiers and Ecrehos case*.[216] The exercise of customs jurisdiction was also taken into account in the *Rann of Kutch Arbitration*.[217]

10.111 Nigeria has operated a regular Customs patrol in the Bakassi area. Documents from the Nigerian Customs Service reveal that officers of the Customs Department at Ikang, Nigeria, regularly patrolled the Bakassi Peninsula until at least July 1970. The area of their patrol included, for instance, the Bakassi village of **Nkan Okure** (NC-M 195).

(o) Use of Nigerian Passports by Residents of the Bakassi Peninsula

10.112 Residents of the fishing villages in the Bakassi Peninsula use Nigerian passports. The passport application forms at NC-M 196 show that people from **Akpa Nkanya, Nkan Okure** and **Ine Mba** have applied to Nigeria for Nigerian passports in order to travel to Cameroon and elsewhere.

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215 Law No.154 of the Consolidated Laws of the Federation of Nigeria 1990

216 I.C.J. Rep. 1953 pp. 66,69

217 See the Opinion of the Chairman, R.I.A.A., Vol. XVII, pp. 557-8

(p) Immigration

10.113 The immigration post at Ikang has been in use since October 1966 (see the Handing Over Notes for the Immigration Office at Calabar dated October 1966 and September 1977, NC-M 197 and NC-M 198). This post was located at Ikang because Nigeria's internal road system in the area terminated at Ikang, and therefore any travellers by vehicle or foot to the border would have to pass through Ikang.

10.114 At NC-M 199 are the records for the immigration post in April and May 1988. These show the passage of persons entering Nigeria with identity cards. All the persons mentioned were travelling into Nigeria from Lobe in Cameroon (also known as Ekondo-Titi). No-one from any of the villages in Bakassi is noted. If the people of Bakassi were Cameroonian, they would carry identity cards and would have been noted down at Ikang immigration post, giving Bakassi settlements as their Port of Embarkation. There is no evidence of this.

(q) Local Administration

10.115 Before October 1, 1960, the Bakassi Peninsula was administered under Calabar in accordance with Akpabuyo County Council (Establishment) Instrument 1953, published in the Eastern Region Public Notice No. 86 of 1953 as amended (*cf.* para. 9.55 above) (NC-M 137).

10.116 After Independence, Bakassi was administered as a part of Nigeria by virtue of the following legislation:

(1) The Local Councils (Calabar Division) (Establishment) Instrument, 1953 of Eastern Region Legal Notice No. 88 of 1953, as amended by Legal Notice

No. 267 of 1959 and Eastern Nigeria Local Government Notice No. 1 of 1963 (under Ikang Local Council) (NC-M 200).

(2) The South Eastern State Development Administration Edict No. 7 of 1972 (which repealed South Eastern State Development Administration Edict No. 18 of 1971) under "Ikang Development Area" and "Effiat/Ibaka Development Area" (NC-M 178).

(3) The Cross River State Law on Local Government (No.9 of 1983) (see in particular p.A 69) (NC-M 201).

(4) Decree No. 36 - States (Creation and Transitional Provisions) - of 1996. This Decree constituted Bakassi into a Local Government Area under Cross River State of Nigeria with Headquarters at **Abana** (NC-M 202).[218]

(5) Decree No. 7 - Local Government (Basic Constitutional and Transitional Provisions) Decree of 1997 (NC-M 203).[215]

10.117 In 1975 the appointment of Justices of the Peace was reported in the South-Eastern State of Nigeria *Gazette* (NC-M 204). The relevant South-Eastern State Notice No. 248 refers to the appointment of Chief Akwu Edem Archibong in respect of the "Area normally covered by the Police Station at Ikang."

(r) Internal Nigerian State rivalry over Bakassi

10.118 After the division of Cross River State into two smaller States, Akwa Ibom and Cross River in 1987, the villages on the Bakassi Peninsula were administered by three different local authorities in two separate Nigerian States. Akpabuyo Local

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[218] Annexes 202 and 203 contain the relevant pages. Full copies of the texts have been lodged at the Court.

Authority in Cross River State administered the northern villages, while Mbo Local Authority and Okobo Local Authority in Akwa Ibom State administered those villages situated in the south of the Peninsula.

10.119 As a result of this division of authority, there arose some confusion over which local authority should administer the Bakassi Peninsula as a whole. Both States claimed that the Bakassi Peninsula was within its sphere of administration for a number of traditional, cultural and economic reasons. The Military Administrators of the two States were both increasingly involved in promoting the Nigerian presence on Bakassi through State administrative activities.

10.120 The rivalry between the States continued through to 1996, when the States (Creation and Transitional Provisions) Decree 1996 was promulgated. This Decree created Bakassi Local Government Area, with its headquarters at **Abana**, as part of Cross River State. This has resolved the internal Nigerian confusion as to which State has the rightful authority and administration over the whole of the Bakassi Peninsula.

(ix) Conclusion: the Elements of Historical Consolidation

10.121 The various elements constituting the process of historical consolidation of title can now be summarised:

(1) The original title of the City States of Old Calabar.

(2) The attitude and ethnic affiliations of the population of the Bakassi Peninsula.

(3) The Efik toponymy of the Bakassi fishing villages - see Chapter 3.

(4) The administration of the region as part of Nigeria in the period 1913 to the date of Independence - see Chapter 9.

(5) The exercise of authority over the villages and clans of Bakassi by traditional Rulers either based in Calabar or otherwise owing allegiance to Nigeria.

(6) The exercise of jurisdiction by customary law courts by virtue of Nigerian legislation.

(7) The long-established settlement of nationals of Nigeria in the region.

(8) Manifestations of sovereignty by Nigeria after Independence in 1960.

10.122 To these elements may be added two others: acquiescence and recognition. These significant elements will be examined in the following two sections.

D. The Acquiescence of Cameroon in face of the Peaceful Exercise of Sovereignty by Nigeria

(i) The Legal Relevance of Acquiescence

10.123 The precise role of acquiescence in Nigeria's claim calls for explanation. In the first place, acquiescence forms a very significant element in the process of historical consolidation of title. Thus its first (but by no means exclusive) role is played alongside the elements of historical consolidation reviewed above.

10.124 The second role of acquiescence is that of confirming a title on the basis of the peaceful possession of the territory concerned, that is to say, the effective administration of the Bakassi Peninsula by Nigeria, acting as sovereign and an absence of protest. In this connection a passage from the Judgment of the Chamber in the *Land, Island and Maritime Frontier Dispute* provides a general paradigm:

> "The conclusion at which the Chamber arrives in respect of the disputed islands is thus the following. It is the Chamber's duty, under Article 5 of the Special Agreement, to take into account the 'rules of International Law applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace'. In relation to the islands in dispute, the 'documents which were issued by the Spanish Crown or by any other Spanish authority, whether secular or ecclesiastical', do not appear sufficient to 'indicate the jurisdictions or limits of territories or settlements' in terms of Article 26 of that Treaty, so that no firm conclusion can be based upon such material, taken in isolation, for deciding between the two claims to an *uti possidetis* title. Under the final sentence of Article 26, the Chamber is however entitled to consider both the effective interpretation of the *uti possidetis* by the Parties, in the years following independence, as throwing light on the application of the principle *and the evidence of effective possession and control of an island by one Party without protest by the other, as pointing to acquiescence*. The evidence as to possession and control and the display and exercise of sovereignty, by Honduras over El Tigre and by El Salvador over Meanguera (to which Meanguerita is an appendage), coupled in each case with the attitude of the other Party, clearly shows however, in the view of the Chamber, that Honduras was treated as having succeeded to Spanish sovereignty over El Tigre, and El Salvador to Spanish sovereignty over Meanguera and Meanguerita."[219] (emphasis added)

10.125 In the third place, acquiescence may be characterised as the main component of title, that is, providing the essence and very foundation of title rather than a confirmation of a title logically anterior to and independent of the process of acquiescence. There can be no doubt that in appropriate conditions a tribunal can properly recognise a title based upon tacit consent or acquiescence.

10.126 The independent role of acquiescence as a source of title is acknowledged in many passages in the Judgment of the Chamber in the case concerning the *Land, Island and Maritime Frontier Dispute*.[220] The pertinent passages include the following: paras. 67, 80, 81, 169, 176, 280, 284, 341, 345, 364 and 368. The following passage expresses the role of tacit consent with clarity:

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219 I.C.J. Rep. 1992 p. 579, para. 368

220 I.C.J. Rep. 1992 p. 351

> "The Chamber considers that this protest of Honduras, coming after a long history of acts of sovereignty by El Salvador in Meanguera, was made too late to affect the presumption of acquiescence on the part of Honduras. The conduct of Honduras vis-à-vis earlier *effectivités* reveals an admission, recognition, acquiescence or other form of tacit consent to the situation. Furthermore, Honduras has laid before the Chamber a bulky and impressive list of material relied on to show Honduran *effectivités* relating to the whole of the area in litigation, but fails in that material to advance any proof of its presence on the island of Meanguera."[221]

10.127 It may also be recalled that the Chamber in the case concerning the *Frontier Dispute* (Burkina Faso/Republic of Mali) accepted that acquiescence, if proved, would be conclusive of the main issue. In the words of the Chamber:

> "The Parties have expounded at length the origins of the frontier dispute which is presently before the Chamber. Since however the line of the frontier has to be defined as it existed in the years 1959-1960, and the Parties agree that no legal validity attaches to any subsequent acts of administration which may have been performed by either of them on the territory of the other, a review of the frontier incidents and the efforts made to bring the dispute to an end would hardly be pertinent. Nevertheless, one Burkinabe argument warrants particular attention. This argument is based on the conduct of the Malian Government during the negotiations which led to agreements being concluded for the delimitation of the 900 or 1,022 kilometres of frontier which are no longer in dispute, and on that Government's attitude towards the work of a Mediation Commission of the Organization of African Unity which sat in 1975. According to Burkina Faso, Mali accepted as binding the solution to the dispute outlined by that Commission. *Since this argument from acquiesence would, if correct, make it unnecessary to endeavour to establish the frontier inherited from the colonial period, it should be dealt with at the outset as a preliminary question.*"[222] (emphasis added)

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221 I.C.J. Rep. 1992 p. 577, para. 364

222 I.C.J. Rep. 1986 p. 570, para. 34

(ii) The Legal Position

10.128 The evidence will be examined in due course. At this stage it is necessary to present a statement of the legal position on which Nigeria relies. The evidence indicates two stages in the post-Independence period.

10.129 **Stage 1**. From the time of Independence until 1968 Nigeria had peaceful possession of the Bakassi Peninsula, which continued to be administered as part of the South-Eastern State of Nigeria. In 1968 there were acts of harassment from Cameroonian soldiers which were aimed at some of the Nigerian fishing ports. However, Cameroon had no system of administration in place.

10.130 **Stage 2**. From 1972 there were Cameroonian initiatives concerning the renaming of villages which were ineffective but which clearly indicated the absence of any Cameroonian administration in the region. From 1972 onwards there were sporadic Cameroonian activities but Cameroon did not exercise overall or exclusive control.

10.131 The significant characteristics of the situation can be now identified:

(1) At least until 1968 Nigeria exercised peaceful possession of the Bakassi and Cameroon acquiesced in this *status quo*.

(2) At no stage did Cameroon exercise peaceful possession.

(3) The effective possession of Nigeria after Independence confirmed the original title which subsisted as a consequence of the non-implementation of the 1913 Treaty in the Bakassi region.

(4) Even if original title cannot be proved, the effective possession of Nigeria is to be found in acts manifesting a continuous and peaceful display of sovereignty over the territory. Although this sovereignty must be continuous

in principle, it need not be exercised at every moment, so long as there is an intention and will to act as sovereign. How extensive the acts of sovereignty need to be depends on the nature of the territory.

(iii) The Allegations concerning *effectivités* in the Cameroon *Memorial*

10.132 The section of the Cameroon *Memorial* relating to alleged "Cameroonian *effectivités* in the Bakassi Peninsula" (pp. 486-96) is very revealing. In the first place the data refers to no material prior to 1968 and very few items before 1973.

10.133 The Cameroonian assertions (pp. 490-6) in this respect can be analysed as follows.

10.134 **Para. 4.430**. The key item of legislation referred to is dated 30 August 1968. This document is not provided, nor either of the two Decrees also referred to. It is therefore not possible to comment on the area of authority of the three Sub-Divisions. Furthermore, only legislation is indicated and no reference is made to specific acts of administration.

10.135 **Para. 4.431**. The reference here is to the *Village Dictionary of Ndian Division*, published in 1973, which does not appear to have an authoritative status.

10.136 **Para. 4.432**. This paragraph contains references to instruments of the period 1973-1993, but there is an absence of documentary evidence.

10.137 **Para. 4.433**. This document invoked is dated 1 July 1976, sixteen years after the independence of Nigeria and Cameroon. It has not been possible to identify this document in Cameroon's annexes. In general terms, Nigeria reserves her position on the significance, if any, of the document concerned.

10.138 **Para. 4.434**. In this paragraph the assertions of the Cameroon Government are not backed by any evidence and no dates are given.

10.139 **Para. 4.435**. The data cited here are unsupported by any documents and relate to alleged events of 1993.

10.140 **Para. 4.436**. No evidence is provided to support the assertion contained in this paragraph.

10.141 **Para. 4.437**. No evidence is provided to support the assertion contained in this paragraph. Nigeria would point out, however, that Mbongo is situated about 50 kilometres inside Cameroonian territory and is therefore not in the vicinity of Bakassi (see *Atlas*, Map 38). The Nigerians referred to are, undoubtedly, expatriates living in Cameroon.

10.142 **Paras. 4.438 and 4.439**. No evidence is provided to support the assertions contained in these paragraphs. Furthermore, Ine Udo is not located by Cameroon.

10.143 **Para. 4.440**. The document quoted here (MC 265), dated 12 February 1982, makes no reference to the Bakassi Peninsula and has no relevance.

10.144 **Para. 4.441**. No document relating to this paragraph has been produced. Without reference to the text of the document as a whole, it is not possible to draw any inference.

10.145 **Para. 4.442**. None of the towns referred to in this Decree are located on the Bakassi Peninsula. They are all within Cameroonian territory (see *Atlas*, Map 38) and therefore have no relevance.

10.146 **Para. 4.443.** The document quoted here is not provided in support. Five of the places referred to in this paragraph are not on the Bakassi Peninsula (see *Atlas,*

Map 38), but located within Cameroonian territory, and therefore have no relevance.

10.147 **Para. 4.444**. No documents are provided in support of the assertion in this paragraph.

10.148 **Para. 4.445**. This assertion is not linked to the Bakassi Peninsula. Mbongue, Idenau and Bamuso are all located 50 or more kilometres from the Bakassi Peninsula (see *Atlas,* Map 38). Furthermore, no documents are provided in support of these assertions.

10.149 **Paras. 4.446, 4.447, 4.448 and 4.449.** No documents are provided to support the assertions contained in these paragraphs, with the exception of paragraph 4.448 (referring to MC 255). It may be noted that the period involved is long after the independence of Cameroon and it is apparent that no earlier evidence of revenue collection exists.

10.150 **Paras. 4.450 and 4.451**. No documents are provided to support the statements in these paragraphs. Nigeria would point out that Idombi, Bamuso and Mundemba are not on the Bakassi Peninsula, but within Cameroonian territory (see *Atlas,* Map 38).

10.151 **Para. 4.452**. No documents are provided in respect of the allegations in this paragraph.

10.152 **Para. 4.453**. No documents are provided in respect of the allegations in this paragraph. Furthermore Nigeria would point out that, of the villages referred to in this paragraph, none of them are located on the Bakassi Peninsula, but are all within Cameroonian territory (see *Atlas,* Map 38).

10.153 **Para. 4.454**. No documents are provided. Of the villages referred to, only Idabato (called West Atabong by Efiks) is located on the Bakassi Peninsula, and the area around West Atabong is not conducive to farming (*cf.* Chapter 3).

(iv) The Evidence of Acquiescence by Cameroon in face of the Exercise of Sovereignty by Nigeria

10.154 The evidence can be examined conveniently in separate phases.

(a) Phase 1: 1960 to 1972

10.155 For the period of twelve years ending in 1972 the Bakassi region was administered continuously as a part of Nigeria, this situation reflecting and continuing the *status quo* obtaining before Independence (Chapter 9).

10.156 In this period there were occasional episodes of harassment by Cameroonian officials but no sustained effort by Cameroon to administer the Bakassi Peninsula.

10.157 In March 1968, immediately after the end of the civil war, Cameroon sought to take advantage of the vulnerability of the Nigerian civilian population on the departure of the Nigerian military presence, which had been established under Isaac Boro. The Nigerian inhabitants of certain of the fishing ports faced the sudden eruption of Cameroonian soldiers in ten large launches and other craft. The soldiers later moved into **West Atabong** where they occupied some barracks vacated by units of the Nigerian Army only two weeks earlier. A few days afterwards an administrative officer from the Republic of Cameroon arrived at **West Atabong** and informed the inhabitants that they should regard themselves as Cameroonian nationals.

10.158 These facts are recounted in detail in a Petition (NC-M 205) from the fishing ports of the Bakassi Peninsula addressed to the Federal Ministry of External Affairs of Nigeria. In the Petition the following passages are of particular interest:

> "(f) An Administrative Officer from the Republic of Cameroun arrived at **West Atabong** within a few days afterwards (i.e. on or about the 10th of April 1968 as reported), and in his address to the local inhabitants assembled for the purpose he exhorted them from henceforth to regard themselves as Camerounians by nationality and to use Cameroun Currency and to trade at Victoria instead of Ikang, Oron and Calabar as hitherto; and also that a Police Post, a local Dispensary and a School would soon be built there for the people by the Government of the Republic of Cameroun.
>
> (g) On the next day after the arrival of the troops (i.e. on Tuesday the 26th of March 1968), a team of white officials reputed to be in the employ of the Shell Company also arrived in the AREA IN DISPUTE reportedly on an exploratory tour of the mangrove swamps therein - they arrived during the morning hours and left in the afternoon of the same day."

10.159 The contents of the Petition provide significant evidence of the *absence* of any Cameroonian presence in the region prior to the events of March 1968.

10.160 Similar disturbances of the *status quo*, this time at **Abana**, were reported in a Nigerian Aide-Mémoire dated 19 December 1968, in the following terms:

> "Reports from the Nigerian Ministry of Defence have indicated that some Cameroun soldiers have been molesting Nigerians (soldiers as well as civilians) along the border between the two countries. On the 11th of December, 1968, for instance, Cameroun soldiers were said to have seized three Nigerian soldiers at **Abana** near Ikang. The three Nigerian soldiers who were on a river patrol were taken to Cameroun Republic and their three rifles as well as a flying boat were confiscated. Reports have also been received that Nigerian villagers at **Abana** are being forced to sell their fish in the Cameroun and pay taxes to the Cameroun Republic.

> 2. The Nigerian Government would be very grateful if the Government of the Cameroun in the usual fraternal spirit could investigate these reports with a view to taking corrective measures so as to prevent any clashes between the soldiers of both countries along the border. Nigerian soldiers have been given strict orders not to retaliate. Urgent action will, therefore, be appreciated on the part of the Cameroun Government." (NC-M 206)

10.161 In 1970 the Nigerian Government had occasion to protest about Cameroonian activities in **Abana**, a long-established fishing village within Nigerian territory (NC-M 207). The Note recounts the sudden occupation of **Abana** by force, the closure of the school, and the detention of the teachers. Like the previous episode this conduct indicates the absence of any Cameroonian administration or control prior to the incident in 1970.

(b) Phase 2: 1973 to the Date of the Cameroonian Application (29 March 1994)

10.162 From 1973 onwards the evidence suggests that the Government of Cameroon had decided to seek to change the Nigerian character of the Bakassi region and to attempt to create evidence of a certain level of Cameroonian presence in the region. As the Court will see, the Cameroonian presence was episodic and precarious.

10.163 A development which involved the period 1972 to 1975 was the appearance of Cameroonian legislation with the purpose of changing the place names in the Bakassi Peninsula. The measures concerned were as follows. Late in 1972 a Cameroonian official made proposals for the renaming of fishing settlements in the "Idabato District" (NC-M 208). The outcome appears to have been a draft Prefectoral Order, dated 31 December 1973, purporting to change the names of the Nigerian fishing villages in the Bakassi region (NC-M 209). Finally, a definitive Prefectoral Order was promulgated in 1975 (NC-M 210).

10.164 The preambular part of the Prefectoral Order of 1975 and Article 1 of the instrument are very significant:

"Mindful of Decree No. 72/349 of 24th July, 1972, organising the United Republic of Cameroun;

Mindful of Decree No. 72/422 of 26th August, 1972 defining the functions and powers of Heads of Administrative Units;

Mindful of Decree No.72/DF/30 of 17th January, 1971, creating the District Jabane;

Mindful of Decree No.73/71 of 7th March, 1973, changing the names of Jabane District to Idabato District;

Mindful of Decree No. 73/470 of 23rd August, 1973 appointing Mr. Michael Nkamsi, Prefect of Ndian Division;

Considering the necessity of stability and proper administration;

ORDER

Article 1: The names of all the fishing settlements in Idabato District appearing in Column I in the following Schedule have been changed to those appearing in Column II of the Schedule."

10.165 The language employed in the preamble provides unequivocal proof that until 1973 (at the earliest) there was no Cameroonian claim to administer the Bakassi region. Moreover, the claim to change the long-established Nigerian place names involves an egregious attempt to challenge the legal *status quo* (the exercise of Nigerian sovereignty) and the ethnic character of the settlements (Nigerian and Efik).

10.166 The Cameroonian incursions in the period 1972 and 1973 provoked strong protests from the traditional authorities in Calabar (the Etuboms' Council). A Petition of the Etuboms' Council dated 6 July 1973 reads (in part) as follows:

"PROTEST NOTICE AGAINST THE FORCEFUL EJECTMENT BY THE CAMEROONS GOVERNMENT OF NIGERIANS OF EFIK ORIGIN FROM LAND FORMERLY THE JURISDICTION OF THE OBONG OF CALABAR NOW BY LAW TERRITORY OF THE FEDERATION OF NIGERIA.

cc: The Hon. the Commissioner for Information & Cultural Affairs

> The Etuboms' Council of Calabar, for and on behalf of His Highness the Obong of Calabar (now in traditional seclusion), crave the indulgence of His Excellency the Governor of the South Eastern State of the Federation of Nigeria, through the good offices of the Honourable the Commissioner for Home Affairs and Social Welfare, to register this PROTEST to the Head of State of the Federal Military Government of the Federation of Nigeria against the conduct of the Cameroons Government which has, unilaterally, ejected persons of Efik origin from the BAKASSI PENINSULA and the land adjacent to the AKPAYAFE RIVER which were formerly the natural jurisdiction of His Highness the Obong of Calabar and now part of the FEDERATION OF NIGERIA.
>
> 1. It has been authoritively reported (The Nigerian Chronicle, Monday, July 2, 1973 - No. 124) that **Nigerian fishermen living in five villages along the Nigerian/Cameroon border have been ejected and warned never to come back unless with Cameroon visa.**" (NC-M 211)

10.167 In 1973 there was also a Petition from the Atabong Welfare Association based in Calabar, which complained of harassment from Cameroonian gendarmes. The Petition was addressed to the Honourable Commissioner for Home Affairs and Social Welfare of the South-Eastern State of Nigeria, representing the Military Governor of the State (NC-M 212). The key descriptions of the harassment are as follows:

> "We count on His Excellency's assistance and co-operation in freeing the Atabong and the entire Efiat people from humiliation and defilement in the hands of the Cameroun gendarmes and the oppressive and repressive measures being metted [*sic*] out to our people by the Camerouns Armed Forces stationed at **Atabong Fishing Port**.
>
> The Atabong people like all other South-Easterners, suffered much during the period of the Civil War but their sufferings today appear unjustified. We are treated like a people in a Police State, and virtually compelled to live in a military camp, being denied freedom of movement. Our wives are not treated as women since any gendarme can seize a woman's wrapper on the road leaving her half-clad or naked if he likes the cloth. They enter a man's house and rape the wife in the presence of the husband and get the husband beaten to the point of death at the slightest sign of protest. These beastly men have no

> regards for human dignity and their District Officers appear to have no powers over them. They beat one of our sons to death about a year ago, and as recently as January, 1973 they beat another of our son almost to death and had carried him away to Camerouns his fate still unknown to us today.
>
> These may sound like stories but they are daily occurrences at **Atabong** on the Bakasi Peninsula. There could have been several exhibits as proofs of these brutal acts if Atabong people had the chance of bringing victims to Calabar or Oron. People trying to bring up victims even on pretext of coming to the hospital for treatment have been intercepted and beaten up."

10.168 In 1973 Cameroonian officials attempted to collect land rents from **Atabong** and other Nigerian settlements. The inhabitants refused to pay and complained through their Chiefs to the Nigerian Embassy in Yaoundé (NC-M 213). Their particular complaint was that no one "from time immemorial" had ever asked the inhabitants to pay land rent.

10.169 Other petitions came from the inhabitants of the region, including the people of **Atabong**. In this context the Petition dated 6 February 1974 is relevant. The opening passages of this document read as follows:

> "We have the honour most respectful to present this petition to the Honourable the Commissioner for Home Affairs (SES) praying that the Hon. Commissioner may use his good offices to prevail upon His Excellency's Government of the South Eastern State to devise positive measures to protect the interest of South Easterners whose only source of livelihood is now in jeopardy owing to the untoward conduct of Cameroons national on the Nigeria/Cameroons Border, *and our humble petition sheweth as follows*:
>
> 2. That we, the petitioners, represent as many as thirty-five thousand suffering citizens of the South eastern State drawn (I) Ito Division,(II) Oron (III) Uruan (Eyo Division), (IV) Imet, (V) Ibesikpo, (Uyo Division) who are primarily engaged in the fishing and shrimping industry and we hereby associate ourselves with the appeal previously made by the people of **Atabong** to the Honourable Commissioner against unremitting acts of molestation of persons of South Eastern

> State origin by nationals of the Republic of the Cameroons." (NC-M 214)

10.170 An episode in 1976 indicates the state of affairs then prevailing. Four Cameroonian navy men attacked three Nigerian fishermen at **Abana**, killing one and wounding another. In the aftermath the local people captured one of the Cameroonian naval personnel and he, together with the naval patrol boat involved, were taken to Ikang and the incident was reported to the Nigerian police on 27 December 1976. The background to the incident was the subject of an investigation by a State C.I.D. (Criminal Investigation Department) team from Calabar, which conducted an on-the-spot investigation at **Abana**.

10.171 The resulting Nigerian police report (NC-M 215) is detailed and objective in tone. The prevailing state of affairs is described as follows:

> "The Nigerians mentioned in paragraph two above are Ijaw traders and fishermen who are based at Ikang and carried on their profession between Ikang and **Abana** fishing ports. **Abana** and Ikang are contiguous fishing ports. **Abana** is claimed by the Republic of Cameroun though the inhabitants are all Nigerians while Ikang is indisputably a Nigerian fishing and commercial town on the Nigerian shore about 40 kilometres south of Calabar. By reason of occupation by Nigerians, Nigeria has a de jure control of **Abana** while the Cameroun exercises a de facto jurisdiction over the fishing port. Further South of **Abana**, the Cameroonian Navy maintains a unit based at **Atabong**, itself a disputed fishing port from where the Cameroonian Navy directs patrols off the continental shelf of Cameroun including **Abana**."

10.172 The implications of this document are several. In the first place, the Calabar criminal investigation department obviously regarded the area as Nigerian and therefore, as a matter of normal operational duties, exercised authority on behalf of Nigeria. Secondly, the Nigerian view of the overall situation is that the Cameroonian presence amounts to no more than the exercise of a "de facto jurisdiction". Thus a fairly low level Nigerian official, with local knowledge,

regards the territorial *status quo* as essentially Nigerian ("Nigeria has a *de jure* control ..."), whilst characterising the Cameroonian presence as lacking legitimacy.

10.173 The incidents at **Abana** produced an exchange of diplomatic correspondence. In a Note dated 31 December 1976 the Government of Cameroon made the following assertions:

> "From informed sources, it is believed that during a routine inspection course in **ABANA**, a Cameroonian village near the Cameroun/Nigeria border, 2 warrant officers were made to meet their death by three Nigerian civilians. Witnesses to the scene say that gun shots were heard before the disappearance of the boat.
>
> Searches made led to the fishing out of 2 bodies
> - that of a Cameroonian warrant officer
> - and that of a Nigerian civilian
>
> After burial of the two bodies it was discovered that the Nigerian civilian was a police officer. The second Cameroonian warrant officer was kidnapped and imprisoned in IKAN village in the Nigerian territory.
>
> The Ministry of Foreign Affairs would like the Embassy of the Federal Republic of Nigeria to pass this information to its government and if the above is true, to immediately release the warrant officer now imprisoned in Nigeria." (NC-M 216)

10.174 The Nigerian reply was as follows:

> "The Embassy of the Federal Republic of Nigeria in Yaoundé presents its compliments to the Ministry of Foreign Affairs of the United Republic of Cameroun and has the honour to refer to the incident at **Abana** on 26th December, 1976, which resulted in the deaths of a Nigerian and a Cameroonian.
>
> 2. The Embassy wishes to inform the Ministry that as a result of its Note N°. 809/DIPL/1 of 31st December, 1976, the Nigerian Consul-General in Buea went to Calabar, and secured the release of Sergeant Paul Njotu and the Naval Speed Boat which were taken to Ikang after the incident and was also able to learn that the incident involved three

> Nigerian fishermen and four members of the Cameroun Navy. According to information available to the Nigerian authorities, Mr. Jona Ekpenyon who is now held in Buea Prison in connection with the fight did not take part in the incident which led to the death of Corporal Njongo of the Cameroun Navy and the Nigerian fisherman Mr. Simeon Anki. But investigations are still continuing and those involved will soon be brought to trial.
>
> 3. In view of the foregoing, the Embassy hopes that Mr. Jona Ekpenyong will be released to the Nigerian Consul-General in Buea for repatriation. This gesture will not only save an innocent man from suffering but also further strengthen the cordial relations which so happily exist between the governments of Nigeria and Cameroun." (NC-M 217)

10.175 There is no suggestion in this Note that Nigeria recognises that the *locus in quo* is Cameroonian territory. The general tone conveys Nigeria's acceptance of responsibility for the maintenance of public order in **Abana**.

10.176 In the period 1991 to 1993 episodes of Cameroonian harassment continued to occur but Cameroon did not maintain a system of exclusive administration. Examples of this harassment are found at NC-M 218 and NC-M 219.

10.177 There is clear evidence that Cameroon was aware of an ongoing Nigerian presence in the Bakassi region. Cameroonian protests tended to reflect discoveries by Cameroon agents that there was a Nigerian-maintained *status quo* in place. An exchange of notes in 1991 illustrates the point very well. On 16 May 1991 Cameroon sent the following Note to Nigeria:

> "The Ministry of External Relations of the Republic of Cameroon presents its compliments to the Embassy of the Federal Republic of Nigeria and has the honour to bring to the latter's knowledge that:
>
> Information has been received from the South West Province of Cameroon that there is the persistent presence, at Jabane, of the Nigerian police from AKWA IBOM State.

> It would appear that AKWA IBOM State wants to annex Jabane. A sign post is said to have been put up there and authorities of AKWA IBOM State are alleged to have promised to build a school and a health centre for the people of the locality.
>
> This unfriendly attitude had already been brought to the notice of the Chargé d'Affaires of the Embassy who was received at the Ministry in January 1991.
>
> Considering the serious implications of such acts on the sovereignty of Cameroon as well as on the relations of good neighbourliness between our two countries, the Ministry of External Relations wishes to request the Embassy to contact the Government of the Federal Republic of Nigeria to cause the authorities of IKWA IBOM State to withdraw from the Cameroonian locality of JABANE with immediate effect and to refrain from any future acts likely to strain the excellent friendship and co-operation links uniting our two countries.
>
> The Ministry would like to be informed of the outcome of this peaceful demarche and avails itself of this opportunity to renew to the Embassy of the Federal Republic of Nigeria the assurances of its highest consideration." (NC-M 220)

10.178 This *démarche* provoked a Nigerian response, the content of which affirms the existence of Nigerian control of the region and the lack of justification for the Cameroonian actions. The Nigerian Note, dated 10 June 1991, was, in material part, as follows:

> "The Embassy of the Federal Republic of Nigeria in Yaoundé presents its compliments to the Ministry of External Relations of the Republic of Cameroon and with reference to the Ministry's Note No. 3374/DIPL/I of 16th May, 1991 has the honour to inform the Ministry that the appropriate Nigerian authorities have been duly informed.
>
> The Embassy wishes to suggest that the issue of our Common Maritime Boundaries be put forward for discussions at the next meeting of the National Boundary Commission with emphasis *on Abana, a small fishing village located in the Atlantic Ocean and forms part of Mbo Local Government Area of Akwa-Ibom State of Nigeria.*

> *It was also reported that Cameroonian Gendarmes crossed into the area and removed the Nigerian National Flag and arrested seven officials of the Mbo Local Government Council.*
>
> It would be highly appreciated if the Cameroon authorities would investigate the incident and also arrange the release of the arrested Nigerian persons including the Nigerian National Flag and other properties removed from **Abana**.
>
> It is in the interest of all to continue to maintain and strengthen the cordial and brotherly relationship that already exists between our two peoples and countries." (emphasis added) (NC-M 221)

10.179 Several similar exchanges took place in 1993. On 26 April 1993 Nigeria protested about the harassment of Nigerian citizens "living in the disputed areas of Bakassi Peninsula" (above, paragraph 10.176 and NC-M 219). In response the Government of Cameroon stated its position as follows:

> "The Ministry of External Relations of the Republic of Cameroon presents its compliments to the Embassy of the Federal Republic of Nigeria and, following the latter's Note Verbale N° 85/114/VOL.V/93 dated 26th April 1993 concerning the alleged disputed areas of Bakassi peninsula, has the honour to recall to the attention of the esteemed Embassy the content of the Ministry's Note N° 2651/DIPL/D1/SDAF of 5th May 1993.
>
> Furthermore the Ministry received reports that Nigerian inhabitants in some Cameroonian villages of the AKWAYA district (Cameroon) have tendency to consider these villages as Nigerian. This situation may be the consequence of some misinformation or misapprehension of the realities of the area.
>
> The Ministry of External Relations of the Republic of Cameroon avails itself of this opportunity to renew to the Embassy of the Federal Republic of Nigeria the assurances of its highest consideration." (NC-M 222)

10.180 The Cameroonian Note of 5 May 1993 referred to in this document was as follows:

"The Ministry of External Relations of the Republic of Cameroon presents its compliments to the Embassy of the Republic of Nigeria in Yaoundé and has the honour to bring to its attention that by a letter reference no. PSG/GSA/S/175/SG/60 of 28th January, 1993, the Cross River State Government complained to the Cameroon Consul in Calabar of the annexation of certain Nigerian villages around Akpabuyo. The same letter equally complained that the Cameroonian Authorities have been effecting raids against Nigerian population in Abana.

After verification, it was confirmed that no Nigerian village was annexed by the Cameroon Authorities. Cameroon will continue to respect the Colonial Border heritage. The reality in this issue is that certain number of Cameroonian villages around the Bakassi gives a number of hospitalities to many Nigerian population that lives in peace with their Cameroonian brothers. It is certain that with this situation people that found themselves in the Nigerian soil were encouraged to create that by some dignataries in their community. What is the essence of the Nigerian Community establishing a Primary School at Jabane, a Cameroonian village?

Recently, a certain Cameroonian Authority was authorised to remove a sign-board at Jabane which reads as follows:

'Welcome to Abana Clan, Akpabuyo Local Government Area, Cross River State - Federal Republic of Nigeria'.

The Cameroonian Government is energetically protesting to the Nigerian Government against the plantation of the said Sign-Board in the Cameroonian Territory knowing that this act is contrary to the good neighbourhood relationship and the co-operation that links Cameroon and Nigeria together which was again strengthened by the visit to Abuja of President Paul Biya and Ibrahim Babangida in August 1991." (NC-M 223)

10.181 The documents available indicate that in the period from 1973 until the date of the Cameroonian Application to the Court the Government of Cameroon took various steps to counteract the pre-existing Nigerian presence, both official and otherwise, in the Bakassi region. These steps took the form, usually, of forays by gendarmes and episodic attempts to coerce the population into acceptance of Cameroon authority.

10.182 Such attempts failed. Cameroon failed to establish administrative control over the region. The population continued to trade with large Nigerian centres and to use Nigerian currency. Symptomatic of the failure was the refusal of the population to respond to the normative Potemkin structures erected by Cameroon.

10.183 In respect of the attempt to change place names in the region, several years later, in 1986, a Cameroonian internal report complains that:

> "As it concerns your District, many of the fishing settlements have been given new names but scarcely are the new names being used by the Aliens and even some Cameroonians settling therein.
>
> "It would also appear that some new settlements have been made or discovered that have not been given new names yet e.g. Ine Akaribe, reference your letter N°. G.40.05.I/ID/45/293 of 11/10/83.
>
> This endorsement is therefore for your information and necessary action. Please, render to this office an account of your action." (NC-M 224)

10.184 The evidence examined in a temporal sequence leads to the following conclusions. First, until 1972 the Government of Cameroon acquiesced in the long-established Nigerian administration in the Bakassi region. Secondly, from 1972 onwards, there were various Cameroon initiatives, and, in particular, the project for the renaming of villages, which clearly demonstrate the previous absence of a Cameroonian administration. On the ground there were sporadic Cameroonian activities which did not result in the establishment of effective or exclusive Cameroon control in the region.

10.185 At no stage did Cameroon exercise peaceful possession. From the time of Independence in 1960 until 1972 the Government of Cameroon failed to challenge the legitimate Nigerian presence in the region. In the years after 1972, in spite of a growing intrusiveness on the part of Cameroon, this late development of an

expansionist policy (almost certainly related to the prospects of petroleum exploration) could not erase the effects of the earlier attitude of acquiescence.

10.186 This assessment receives general confirmation from the passages of the Cameroon *Memorial* which are concerned with "structures administratives et actes d'administration" (pp. 490-96). No data are related to any date earlier than 1968, and the other items, if they are given dates, are related to the years 1976 and later.

E. Recognition and Admissions by Cameroon in face of the Peaceful Exercise of Sovereignty by Nigeria

(i) The Legal Relevance of Recognition

10.187 Recognition has for long been accepted as an element in the proof of title to territory. In the *Right of Passage* case the Court applied the concept of tacit recognition in the following passage:

> "It is clear from a study of the material placed before the Court that the situation underwent a change with the advent of the British as sovereign of that part of the country in place of the Marathas. The British found the Portuguese in occupation of the villages and exercising full and exclusive administrative authority over them. They accepted the situation as they found it and left the Portuguese in occupation of, and in exercise of exclusive authority over, the villages. The Portuguese held themselves out as sovereign over the villages. The British did not, as successors of the Marathas, themselves claim sovereignty, nor did they accord express recognition of Portuguese sovereignty, over them. The exclusive authority of the Portuguese over the villages was recognized by the British in fact and by implication and was subsequently tacitly recognized by India. As a consequence, the villages comprised in the Maratha grant acquired the character of Portuguese enclaves within Indian territory."[223]

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223 I.C.J. Rep. 1960 p. 39

10.188 Sir Gerald Fitzmaurice refers to admissions and disclaimers as forms of State conduct "inconsistent with, or tending to negative, the existence of sovereignty".[224] In the context of the *Minquiers* Sir Gerald indicated the following elements deriving from the conduct of the parties:

> "(i) *Direct admissions or acknowledgement (recognition) of the other party's title.* The Court cited and gave due weight, as 'evidence of the French official view at the time', to a Note from the French Ambassador in London to the Foreign Office, transmitting a copy of a letter dated 14 September 1819 from the French Minister of Marine to the French Foreign Minister, 'in which the Minquiers group was said to be '*possédés par l'Angleterre*', and in one of the charts enclosed, the Minquiers group was indicated as being British'.
>
> (ii) *Tacit admission (recognition) of the other party's title, through failure to refute a claim to it.* The Court cited the diplomatic interchange of 1869, when a British Note to the French Government complained of depredations and thefts of fishing gear by French fishermen at the Minquiers group, which was referred to as 'as this dependency of the Channel Islands'. As the Court said, the French Government in their reply 'refuted the accusation against the French fishermen, but made no reservation in respect of the statement that the Minquiers group was a dependency of the Channel Islands."[225] (footnotes omitted).

10.189 In the case concerning the *Land, Island and Maritime Frontier Dispute* the Chamber of the Court relied upon recognition as a source of title in several passages in the Judgment.[226] Paragraph 364[227] expresses the underlying principle succinctly:

> "The Chamber considers that this protest of Honduras, coming after a long history of acts of sovereignty by El Salvador in Meanguera, was made too late to affect the presumption of acquiescence on the part of Honduras.The conduct of Honduras vis-à-vis earlier *effectivités* reveals an admission, recognition, acquiescence or other form of tacit

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224 British Year Book of International Law, (1955-6) Vol. 32, p. 58

225 *ibid.* pp. 60-1

226 I.C.J. Rep. 1992 pp. 466 (para. 169), 469 (para. 176), 485 (para. 205), 525 (para. 280) and 577 (para. 364)

227 *ibid.*

> consent to the situation. Furthermore, Honduras has laid before the Chamber a bulky and impressive list of material relied on to show Honduran *effectivités* relating to the whole of the area in litigation, but fails in that material to advance any proof of its presence on the island of Meanguera."

10.190 The editors of *Oppenheim* have stressed the significance of recognition as an element of the consolidation of historic titles in the following passage:

> "In an important examination of the criteria applied by tribunals to resolve territorial disputes, Munkman identified *inter alia* the following: recognition, acquiescence and preclusion; possession and administration; affiliations of inhabitants of disputed territory; geographical considerations; economic considerations; historical considerations. Of these several factors, it has been said that: 'Recognition is the primary way in which the international community has sought to reconcile illegality or doubt with political reality and the need for certainty." (footnotes omitted)[228]

(ii) The Evidence of Recognition by Cameroon in face of the Exercise of Sovereignty by Nigeria

10.191 In the first ten years after Independence, Cameroon made no protest in face of the exercise of State activity by Nigeria in the Bakassi region. Moreover, when diplomatic correspondence resulted from an incident involving a survey team the Government of Cameroon made no protest and recognised the exercise of State authority by Nigeria.

10.192 The correspondence involved consisted of a Cameroonian Note dated 22 November 1965 as follows:

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[228] *Oppenheim's International Law*, Vol.1, ed. by Sir Robert Jennings and Sir Arthur Watts, 9th ed., p.710

> "The Ministry of Foreign Affairs of the Federal Republic of Cameroon presents its compliments to the Embassy of Nigeria and referring to the interview which took place at the Ministry on November 5th 1965 between the Director of the European and American Affairs on one side and the First Secretary of the Embassy on the other side, has the honour to inform them of the following:
>
> A petrol survey team of the geographical section of the 'Mobil Oil' who were operating on a land concession given by the Cameroon Authorities in the delta of the Cross River (long. 8°33 E, lat. 4°30 N) were arrested on 29th October 1963 by a Nigerian police officer who considered that this land was part of the Nigerian territory and called on the whole team to leave the place in a week's time; he also took his passport from Mr. Guy Cogswell an American citizen and a member of the team.
>
> The Ministry has been informed of this incident; it deeply regrets it and reserves the position of the Cameroon Government as for the elements of the problem.
>
> The Ministry requests the Embassy to approach their Government so that Mr. Cogswell's passport be given back to him and seizes this opportunity to renew to the Embassy the assurance of its highest consideration." (NC-M 192)

10.193 The expression of regret in this document and the absence of any protest at the arrest of the survey team involve a tacit recognition of Nigerian sovereignty in respect of the *locus in quo*. In the circumstances the reservation of the position of the Cameroon Government is not conclusive.

10.194 The Nigerian reply, dated 26 November 1965, was, in material part, as follows:

> "The Embassy of the Federal Republic of Nigeria presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to the Ministry's note No. 2716/CAB/DIFL/IB of 22nd November, 1965 about the seizure of passport of Mr. Guy Cogswell an American, when he trespassed Nigerian territory with a survey team on the 29th of October, 1965. The Embassy wishes to inform the Ministry that since the interview with the First Secretary of this Embassy on the 5th of November, 1965, the matter has been referred to the competent Nigerian authority with a request to recover Mr.

> Cogswell's passport. Another note will be addressed to the Ministry as soon as a reply is received." (NC-M 225)

10.195 In this exchange it is clear that Cameroon is relying on the exercise of Nigerian governmental authority and does not seek to challenge the legality of the Nigerian presence in the region.

F. Conclusion

10.196 The evidence thus amply substantiates the four bases of the Nigerian claim to title over the Bakassi Peninsula (para. 10.2, above), namely:

(1) Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar which title vested in Nigeria at the time of Independence in 1960.

(2) Effective administration by Nigeria, acting as sovereign, and an absence of protest.

(3) Manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula.

(4) Recognition of Nigerian sovereignty by Cameroon.

10.197 As Nigeria has already observed (paragraph 10.3 above), these four bases of claim apply both individually and jointly. In the view of the Nigerian Government, each of the bases of title would be sufficient on its own.

CHAPTER 11

THE PRESENT BOUNDARY BETWEEN NIGERIA AND CAMEROON IN THE BAKASSI AREA

A. Introduction

11.1 For the reasons set out in Chapters 6-10, sovereignty over the Bakassi Peninsula vests in Nigeria. The boundary between Nigeria and Cameroon in that area remains to be determined.

11.2 The immediately relevant treaty - the Treaty of 11 March 1913 - is, for the reasons given, ineffective to determine the boundary in the Bakassi area.

11.3 No other valid and effective treaty is still in force which determines the line of the territorial boundary in that area: in particular, no earlier Anglo-German agreement remains in force which lays down a territorial boundary in the Bakassi area and the legal effects of which, given the ineffectiveness of the "Bakassi provisions" of the 1913 Treaty, could still be considered to apply.

11.4 In the absence of any determining treaty, the boundary line has to represent the geographical limits which reflect the elements constituting the process of historical consolidation of Nigeria's title to Bakassi, including historic areas of tribal authority, the extent of effective administration, and other manifestations of sovereignty. Historical considerations, and the evolution of the division of British and German spheres of interest in the Bakassi area, established the dividing line as being to the east of Bakassi, and in particular at the Rio del Rey (see paragraphs 6.33-6.36, and 7.1 *et seq.*). Historically, this waterway is in some ways a natural boundary between the tribes of the Cameroon Mountain area (i.e. the Bakundu, Bakole, Banbuko, Bakweri and Bimbia) and the Efik people of Old Calabar, (even though peoples subject to the authority of the Kings and Chiefs of Old Calabar also populated areas to the east of the Rio del Rey, as far as the Ndian River and even the River Rumby). For their part, the tribes of the Cameroon Mountain area never had pretensions to the exercise of authority as far West as the Rio del Rey, and certainly never did so to the West of that waterway.

11.5 The eastern boundary of Bakassi (and thus the boundary between Nigeria and Cameroon in this area) involves three distinct sectors:

(1) the stretch from the point on the thalweg of the Akpa Yafe identified in paragraph 8.59 to the head of the Rio del Rey;

(2) the head of the Rio del Rey to the mouth of that waterway;

(3) the maritime boundary beyond the mouth of the Rio del Rey.

(i) The head of the Rio del Rey

11.6 Crucial to (1) and (2) is the location of the head of the Rio del Rey. This was established by Article I of the Anglo-German Agreement of 14 April 1893. That provision reads:

> "Art. 1. - That the point named in Section 2, Article IV, of the Anglo-German Agreement of 1st July, 1890, as the head or upper end of the Rio del Rey Creek shall be the point at the north-west end of the Island lying to the west of Oron,[229] where the two waterways, named Urüfian and Ikankan, on the German Admiralty Chart of 1889-90, meet."

The Chart referred to is in the *Atlas* at Map 31 (see above, paragraph 7.26). A modern map of the same area is in the *Atlas* at Map 36. The rivers known as the Urüfian and Ikankan on the earlier map are marked on the modern map and this latter map shows their relationship to Obioba Creek (Ubioba on the earlier map) and Okartapa (Owaatapa on the earlier map). The island referred to in Art. 1 is more clearly shown on Map 32 of the *Atlas*, which is derived from the German Admiralty Chart of 1889-90. This island is bounded by the waterways named Owaatapa and

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229 Oron is now known as Odon.

Ikankan and by the Rio del Rey itself. The head of the Rio del Rey is thus the point at the northwest end of that island, at the confluence of the Urüfian and Ikankan (Point D *Atlas*, Map 36), the co-ordinates of which are 4° 45' 55" N, 8° 38' 19" E.

(ii) The boundary from the thalweg of the Akpa Yafe to the head of the Rio del Rey

11.7 The boundary from the relevant point on the thalweg of the Akpa Yafe to the head of the Rio del Rey follows a course which represents the limits of the territorial authority of the Kings and Chiefs of Old Calabar (above, paragraph 8.59). The starting point for this stretch of boundary has been identified in that paragraph as the point on the thalweg of that River which is opposite the mid point of the mouth of Archibong Creek. From that point the boundary runs to the head of the Rio del Rey by way of a line which would retain as Nigerian the towns or townships known as Archibong, Akwa, Nwanyo, Mbenmong and Fumen, all of which are long established Nigerian settlements, and leave as Cameroonian the towns of Isangele, Itabina, Amoto and Odon.

11.8 In drawing that line, the limits of the territorial authority of the Kings and Chiefs of Old Calabar are conveniently represented by two principal natural features in the area, namely the waterways known as the Ikankan River and Archibong Creek. The boundary line -

(1) leaves the *thalweg* of the Akpa Yafe at the point on the *thalweg* closest to the mouth of the Archibong Creek and goes in a straight line to the midpoint of that mouth (Point A on Map 36), the co-ordinates of which are 4° 49' 18" N; 8° 37' 38" E;

(2) follows the median line of the Archibong Creek upstream for a distance of approximately five kilometres to its junction with a tributary flowing from the South, thence by the median line of this tributary to its source (Point B on Map 36), the co-ordinates of which are approximately 4° 47'33" N; 8° 38'46" E;

(3) strikes southwards by the most direct convenient route for approximately 1.8 kms. to a point on the left (or North) bank of the Ikankan Creek (Point C on Map 36), the co-ordinates of which are 4° 46' 34" N; 8° 38 41" E;

(4) follows the same bank of the Ikankan Creek as that on which Point C is located, running first in a Southeasterly direction and then turning sharply to the West to reach the point defined as the head of the Rio del Rey in paragraph 11.6 above (Point D on *Atlas* Map 36), the co-ordinates of which are given in the same paragraph.

11.9 That boundary line is shown on Map 36 in the *Atlas* and on the satellite image in the *Atlas* on Map 39. The co-ordinates given above for Points A, B, C and D are taken from Map 36 in the *Atlas*.

(iii) The boundary from the head of the Rio del Rey to the mouth of the Rio del Rey

11.10 The evolution of the Rio del Rey into the *de facto* limit to the authority of the Calabar tribes on the one hand, and the Cameroon tribes on the other, left the course of the boundary along that waterway unclear. The historical circumstances were consistent with a boundary running along its left (East) bank, but it was at the least a waterway shared between them, with a boundary running down the middle of the waterway or the middle of its navigable channel.

11.11 The Anglo-German agreements of 1885, 1886, 1890 and April 1893 appeared to alter that pre-existing situation by establishing the right bank of the Rio del Rey as the boundary. But it has to be noted that those agreements were not agreements establishing boundaries between specific areas subject to the sovereignty of one party or the other, but rather agreements establishing a line of separation between their respective spheres of action, influence or interest (above, paragraphs 7.7-7.11). This is clear from the terms of the first three agreements in question (see above, paragraphs 7.7, 7.19, 7.24): and while the Agreement of April 1893 appeared to fix the right bank of the Rio del Rey as the boundary between the (British) Oil Rivers Protectorate and the (German) Colony of the Cameroons, so suggesting a territorial boundary in a true sense, in the Agreement concluded just seven months later (in November 1893) the parties reverted to the concept of delimiting "the territories under their influence" (see above, paragraph 7.28).

11.12 The parties acted correctly in limiting their actions in that way. For Great Britain and Germany to decide as between themselves the areas in which they would or would not exercise influence, etc., was properly a matter on which they could come to an agreement, since it entirely concerned their own interests and future actions; the disposition of sovereignty over territory, in contrast, was not a matter for them alone and was beyond the proper scope of their authority, since sovereignty over the territory in question did not vest in them (or at least, did not do so in the case of Great Britain).

11.13 Moreover, those Anglo-German agreements were principally concerned with establishing for the parties their separate spheres in which to pursue their commercial and trading interests. Those interests were essentially land-based, and the parties were therefore concerned with the separation of their respective spheres of influence on land, rather than with the intricacies of delimitation along the course of relevant waterways.

11.14 Since for the reasons given (paragraph 8.25 - 8.52), the Anglo-German Treaty of 11 March 1913 was ineffective to establish a boundary in the Bakassi area (in particular, a boundary running down the Akpa Yafe River, to the West of the Bakassi Peninsula), the result is that no true territorial boundary was established in the Bakassi area by binding and effective international agreement: the relevant provisions of the March 1913 Treaty were ineffective, and the four earlier agreements were only concerned with spheres of influence and not with the limits of territorial sovereignty, and were in any event not apt for the apportionment of waterways between the parties.

11.15 In these circumstances, the role of the Rio del Rey as the boundary river has to be re-examined. Historically, the limits of tribal authority made the Rio del Rey initially at the least a shared waterway, and possibly even a waterway wholly subject to the authority of the Kings and Chiefs of Old Calabar.

11.16 The Rio del Rey is, especially in its upper reaches, a complex waterway, dividing into several channels. In the absence of clear evidence to the contrary (such as the Rio del Rey Ports Order - see next paragraph), there is a presumption that where a boundary has to follow a river and the river divides into two or more channels, and nothing is said about which channel is to be followed, the boundary will normally follow the major channel.[230] Furthermore, where a boundary is to follow the line of a river, there is a presumption that it is the mid-line of that river which constitutes the boundary. In a context (such as that along the coast of the Gulf of Guinea) where water-borne trading and fishing interests are important for the local population, the "mid-line" of a river is the middle of the navigable channel in the river for so far upstream as navigation is possible and thereafter it is the geographical middle of the river. In relation to the Rio del Rey, that means that the boundary between Nigeria and Cameroon follows the middle of the navigable channel in that waterway as far inland as the head of that waterway.

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230 *Argentine-Chile Frontier Case (La Palena Arbitration)* 1966, ILR, vol.38, p.10

11.17 Account must, however, also be taken of the Rio del Rey Ports Declaration Order 1960. As discussed in paragraph 10.108 above, the Order defined the limits of Rio del Rey Port, and included in the area of the Port, the whole of the main stream of the Rio del Rey below 4°45'N and extended southwards beyond the mouth of the Rio del Rey.[231]

(iv) The boundary beyond the mouth of the Rio del Rey

11.18 The mouth of the Rio del Rey is marked on its left and right banks by, respectively, Erong Point and West Point. The distance across the mouth of the Rio del Rey from West Point to Erong Point is nearly three nautical miles. From the point at which the boundary along the Rio del Rey reaches the mouth of the Rio del Rey, the boundary line runs out to sea in accordance with established rules of international law, leaving on the western side of that line a belt of sea adjacent to Bakassi constituting Nigeria's territorial sea.

11.19 Accordingly, the area of the Bakassi Peninsula over which Nigeria has sovereignty is the totality of that Peninsula and its territorial sea, up to Nigeria's eastern boundaries with Cameroon which run -

(1) on the mainland, along the line described in paragraph 11.8 from the point on the thalweg of the Akpa Yafe identified in paragraph 8.59, to the head of the Rio del Rey (as defined in the Agreement of 14 April 1893);

(2) on the Rio del Rey, from its head as so defined, to its mouth; and

(3) at sea, seaward from the mouth of the Rio del Rey along a line, and for a distance, drawn in accordance with international law.

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231 NC-M 194 and Map 37 in the *Atlas*

PART II
LAKE CHAD

CHAPTER 12

THE HISTORICAL BACKGROUND

A. Introduction

12.1 The purpose of this Chapter is to describe in outline the long and diverse history of the area in which Lake Chad is situated. The ruling dynasties, their culture and the background of the individual settlements founded in the area will be reviewed in order to set into context the roots of the peoples who have settled in the south-western portion of the Lake and lake bed.

12.2 The story begins long before the arrival of the European Colonial powers in the 19th Century.

B. A Short History of the Bornu Empire[232]

12.3 The people of Northern Nigeria have a long and complex history. They inhabit the country called by the Arabs, *Bilad al Sudan* ("the country of the black people") or, as it was sometimes called, the Western Sudan (as distinct from the Republic of Sudan, formerly known as the Anglo-Egyptian Sudan). To the North lies the Sahara Desert and, along most of the southern edge, thick rainforest. In between there lies a belt of savannah and sparse bush stretching from the Benue River to the Nile, with a clearly marked dry season of intense heat and a wet season of growth. Right up to the 19th century there was no known route to the sea through the rainforest to the South, and the desert to the North provided a barrier to all but the hardiest prepared to undertake a gruelling three-month journey. Northern Nigeria was part of what was, effectively, a huge land-locked island.

12.4 Five thousand years ago the Sahara was a vast area of fertile territory flowing with rivers and streams, covered in trees and vegetation, with plentiful fish and game.

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[232] This Chapter draws upon *The Emirates of Northern Nigeria* by S.J. Hogben and A.H.M. Kirk-Greene (O.U.P. 1966) for the maps, tables and much of the information contained in it.

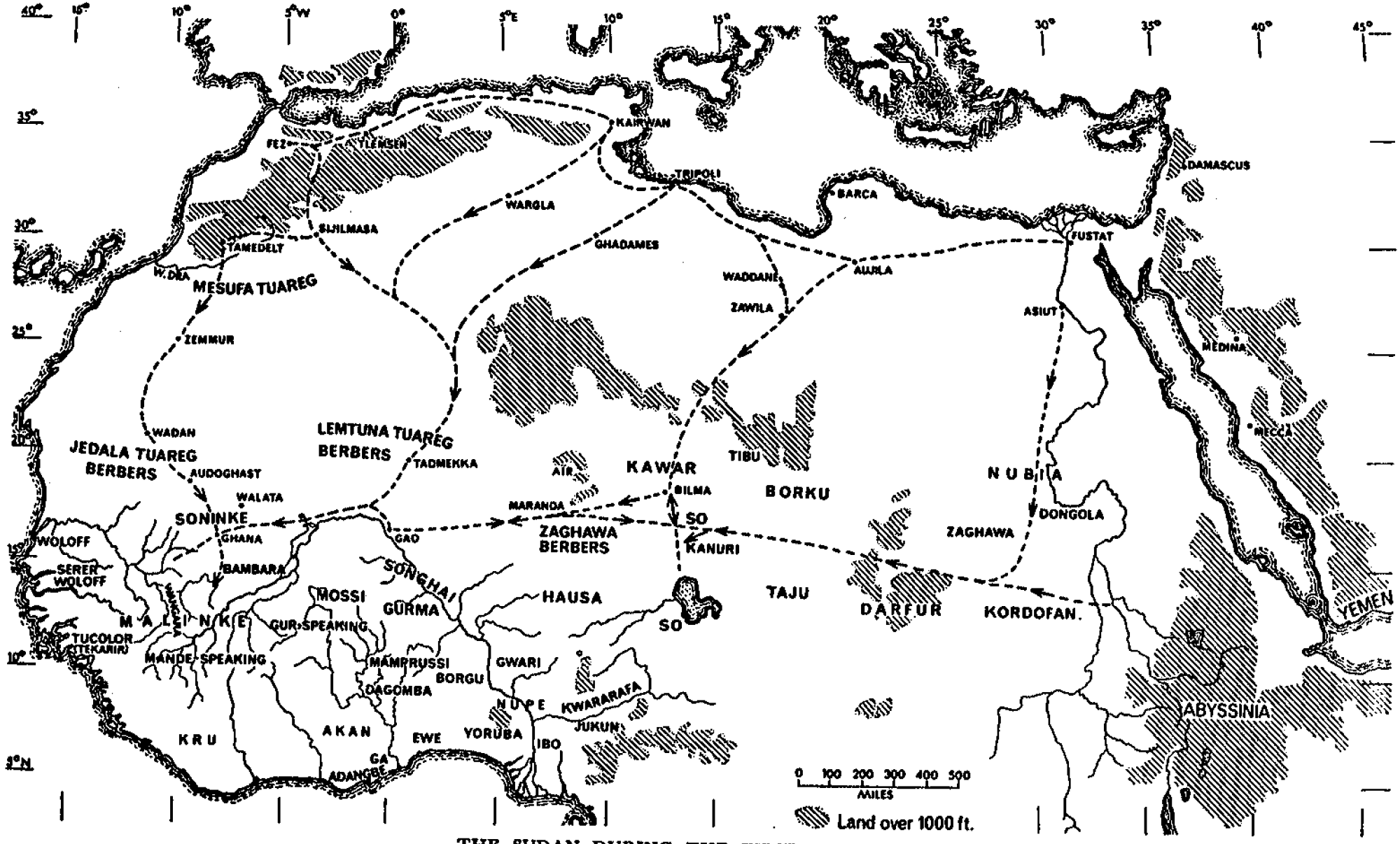
There was a flourishing Stone Age civilisation, connecting Egypt and the Maghrib with the Sudan and West Africa. Within two thousand years the land began to dry up, with disastrous effects - the rivers dwindled and ceased to flow, the trees died, the vegetation blackened, the game vanished and people had no choice but to escape. Some went East to the Nile, others to the North and still more to the South. There were also great migrations from the Nile following persecution by the powerful state of Adum in Ethiopia. The spread of peoples, and the migration which took place, are shown at Fig. 12.1. A Nilotic influence can be seen in the region of Lake Chad, where the main tribes were the So and the Kanuri.

12.5 In the seventh and eighth centuries white nomads, perhaps initially from the Yemen, came down to the Tibesti mountains and then moved further South to the greener lands of Chad. Berbers and Tuareg also came down following Arab conquests in Egypt, Cyrenaica and Tripolitania. The So (or Sau) themselves were a race of legendary stature[233] supposedly originating in Fezzan, south of Tripoli. With the Berbers and Tuareg came the Tubu people, whose word for "South" was *Kanem* - the South or promised land of their dreams. Kanem was the territory to the North of Lake Chad.

12.6 The first king of Kanem is said to have been Sef, a historic Yemeni figure descended from the Himyarite kings, but that was probably an invented pedigree. The true founder was probably Dugu of Beni-Sef (Sefawa or Seuwa) who, in about the year 800, with his Maghumi (Sefawa) people, carved themselves a slice of So territory, and became known as the Kanembu people. The Dugu family was to rule

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[233] Beautiful pots made by them found near Ngala are the size of a youth and were said to have been carried on the shoulder as water-jars (but they may have been used as burial urns). Examples are exhibited in the Lagos Museum.



THE SUDAN DURING THE FIRST MILLENNIUM A.D.

FIGURE 12.1

for more than a thousand years over Kanem and Bornu, until 1846.[234] They took the title of *Mai* (King).[235]

12.7 The 12th *Mai*, Urme, or Hume (1085-97) converted to Islam and became the first Sultan. Njimi became the capital of Kanem. The period from 1085 to 1224 was one of growing prosperity and power. Hume made the pilgrimage to Mecca, and the *Mai* who had formerly married only within the noble circle, entered into mixed marriages. The first black king was Selma, who ruled from 1193 to 1210.

12.8 By the beginning of the thirteenth century Kanem was indisputably the dominant state in the Sudan, with a sound political and administrative system of government encompassing a mixture of Muslim law and pre-Muslim tradition. In the reign of the 17th *Mai*, Dunama Dabalemi (1221-59), Kanem had diplomatic contacts in Egypt and North Africa. There were four provincial governors, all of whom were relatives and members of the royal house. The most important was Yenima, controlling the lands of Yeri against attacks from the Tuareg and the Galadima who controlled lands to the West.

12.9 During the 14th century, civil war broke out between the princes, brought about by the greed of their children. Much feuding took place between the rival tribes in Kanem and eventually, in about 1386, one branch of the Kanuri ruling family, whose head was called Daud, was expelled from the capital city of Njimi: they and their followers finally evacuated Kanem in about 1400. They moved South and West of Lake Chad to the country known as Bornu, which had been a province of the Kanem empire. The origin of the name is said to be *Bar-an* or place of the *Bar-*

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[234] A list of the most notable Kings of Bornu appears in Table 1 at the end of this Chapter.

[235] Dugu means "the son of a daughter of a Mai" and thus heir in a matrilineal society: Dugu may not therefore have been the founder's name but it indicates they were of Tuareg affinity. The present capital city of Borno State in Nigeria is "Maiduguri".

an, i.e. of the Barbars or Berbers. It is also said the word comes from Bahr Nah, the sea of Noah. European cartographers called the kingdom *Regnum Organa*.[236]

12.10 At first the Kanuri built a series of temporary capitals, all on the banks of the Komadugu Yobe, which flows into Lake Chad from the West (the river which was subsequently to form the northern boundary of Nigeria with the State of Niger). These early settlements bore names such as Wadi, Bimi Kimi and Yamia. In about 1470 they founded the settlement of Birni Ngazargamo, also on the banks of the Komadugu Yobe.

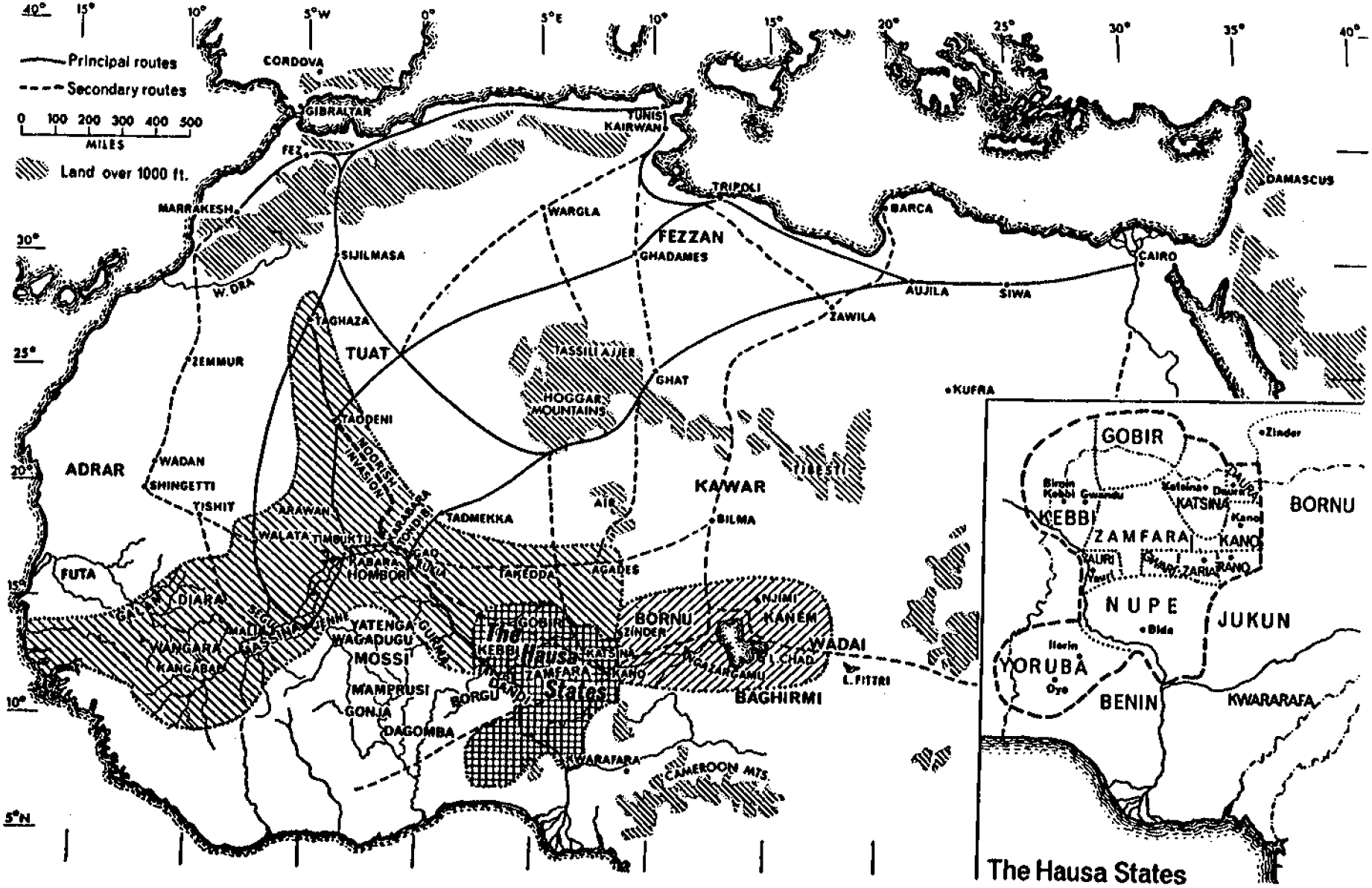
12.11 Birni Ngazargamo remained the capital of Bornu and the Kanuri people for the next 340 years, and Kanem became a province of Bornu instead of Bornu being a province of Kanem. The sixteenth century became a golden age for Bornu - a map (Fig 12.2) shows the extent of the Bornu-Kanem empire in 1591. Their great ruler was Idris Alooma, who reigned from 1571 to 1603. He subdued all the neighbouring tribes, particularly the Bulala, having secured fire-arms from Tripoli in the 1590s. He died in battle in 1603 and was buried near Lake Alo (from which he became known as "*Alooma*"), close to the modern Maiduguri.

12.12 At its peak, Birni Ngazargamo covered six square miles and had a population of 200,000, with four mosques and six hundred and sixty roads, according to an account written in 1658.

12.13 The remainder of the 17th and 18th centuries were relatively uneventful, but in 1750 Ali Ajimi (Ali ibn Haj Hamdun) became the 63rd *Mai*, and over the next 40 years suffered a series of crushing defeats at the hands of the Mandara and the growing numbers of Fulani and Shuna Arabs who had settled in the Dikwa area to the South of Bornu. In 1808, Bimi Ngazargamu was overcome by the Fulani.

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[236] See, for example, the Catalan Map of Charles V of Spain made in about 1375.



THE SONGHAI EMPIRE, THE HAUSA STATES AND BORNU-KANEM IN 1591

FIGURE 12.2

12.14 Within a year however the *Mai* Dunama had enlisted the help of the 30 year old Sheikh Haj Muhammad al Amin who, with his renowned Kanembu spearmen, won Birni Ngazargamo back. In return, he was given leadership of four tribes and became known as *Al Kanemi*. Al Kanemi was extremely pious and learned and much loved by the people. He entered into lengthy diplomatic correspondence with the Fulani. In 1814 he decided to set up his own capital, leaving the *Mai* in Bimi Kebala (they never returned to Birni Ngazargamo). He chose a site around a group of baobab trees, called *kuka*, by the shore of Lake Chad, and the town of Kukawa came into being.[237] This is the town from which the European treaty makers subsequently took their bearings (see Chapters 14 and 15 below). Nowadays, not only is the site of Kukawa not on the shores of Lake Chad, but all that remains of the original town is one baobab tree (see photograph *over*).

12.15 Al Kanemi died in 1835, having failed to re-establish Bornu in its former glory. In 1846 Ali Delatumi, the 68th and last *Mai*, died, bringing to an end the thousand year old Maghumi dynasty of the *Mais* of Bornu. The family of Al Kanemi, more generally remembered as Shehu Laminu, came forward as the true rulers of Bornu, and adopted the royal title of *Shehu*.[238] It was in the reign of Shehu Laminu's son, Shehu Umar, that the explorer and writer Heinrich Barth sojourned for many months in "the English house" at Kukawa. During this time he signed a trade treaty on behalf of the British Government. It provided free passage for British subjects within the Kingdom of "Bornoo" and permitted the appointment of an British Agent to reside in Kukawa. The administration of Bornu was at the time organized under the traditional Kanuri system. This consisted of the *Emir* (now Shehu) who ruled through the *Ajia* (district head) and *Lawan* (sub-district head) who were both aliens to the district. Beneath them were the *Bulama*, their local agent, and *Mbarma* (village head). The Shehu also had two special representatives, the *Wakil*, one of whom resided at Gujba and the other at Geidam. The Bornu Council

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[237] Local legend in Borno tells how Al Kanemi had said that he would build his capital on the spot where he reached the last *sura* of the Koran, which he used to read as he travelled: that spot was the site of the *kuka* trees.

[238] The family tree of the Al Kanemi dynasty is reproduced in Table 2 at the end of this Chapter.

of State met each day and kept a written record, the *Nokena*,[239] which was inaugurated by the 17th *Mai*, Dunama Dabalemi, in the 13th century.

12.16 By the time Shehu Umar died in 1880, the authority and influence of Bornu had declined considerably. In 1893 it was invaded from the East by a horde of Sudanese and Arabs led by "the African Napoleon", Rabeh, who started with 700 men armed with rifles and cannon and ended having a regularly drilled army of some 20,000 which he based in Dikwa, to the South of Bornu. Dikwa was the former stronghold of the So, who had been defeated by *Mai* Idris Alooma in 1575.

12.17 Rabeh moved up to Ngala for his campaign against the Shehu, who was murdered by his slaves. Rabeh sacked Kukawa, killing over 3,000 Kanuri and razing the city to the ground. For the next seven years Rabeh subjected Bornu to an a iron rule. A map of the Fulani Empire and Bornu in the 19th century is at Fig 12.3.

C. Arrival of the Colonial Powers

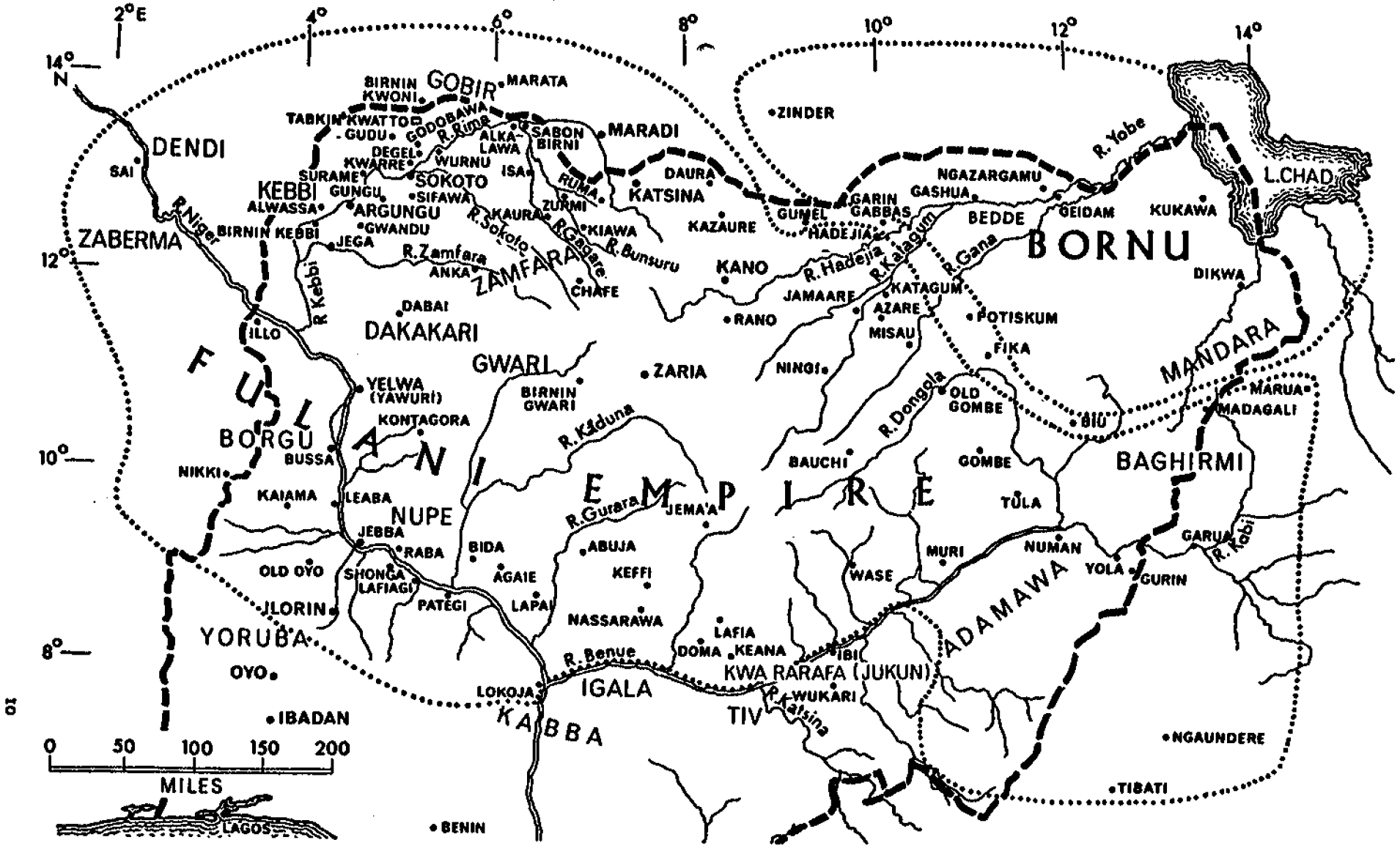
12.18 In 1900 France sent a huge military expedition against Rabeh under Colonel Lamy. Both Rabeh and Lamy died at the battle at Kusseri, by the confluence of the Chari and Logone rivers which flow into southern Lake Chad. After Rabeh's death, the French tried to revive the Al Kanemi dynasty and proclaimed Sanda Kura, son of Shehu Ibrahim, who died in Kukawa in 1845, the tenth Shehu of Bornu. He was deposed within a year, and replaced by his brother Garbai. The French demanded an indemnity of 80,000 dollars from him for delivering him from his enemies. This was an impossibly high sum to raise, so it was hardly surprising that he accepted an offer from Colonel Morland, in charge of the British columns in Bornu, to

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[239] *Hansard* was started in the 18th Century. Unfortunately, much of the *Nokena* has now been lost.



Kuka tree marking the centre of Kukawa



THE FULANI EMPIRE AND BORNU IN THE 19TH CENTURY
For illustrative purposes only

FIGURE 12.3

become Shehu of British Bornu. This caused the French to withdraw from Dikwa to Kusseri (now Fort Foureau[240]) on the West bank of the Chari river.

12.19 It was at this point that the Germans moved in and replaced the French at Dikwa, which was regarded as the key to the Chad basin. The Germans appointed Sanda Mandarama Shehu of Dikwa in 1902, and the French installed Turbon Gida as Shehu in 1904. There was a confusing period in which Shehus came and went, but Shehu Mandarama returned and continued as Shehu through the Cameroon campaign of 1914-16.

12.20 The British took over the Dikwa emirate in 1916, and in 1922 it was recognized as a separate Division of Bornu Province, which was mandated under the League of Nations.

12.21 When the Shehu of Bornu, Sanda Kura, died in 1937, Shehu Sanda Kiarmi of Dikwa became Shehu of Bornu, and his younger brother, Abba Masta, was appointed Emir of Dikwa. Bama became the capital city.

12.22 Bornu, too, had moved its capital from Kukawa to a place on the left bank of the River Alo near the big market village of Maiduguri. The capital was called *Yerwa* (an Arabic exclamation of grateful pleasure), but the Civil Administration set up its headquarters in Maiduguri, and outside Bornu this became the usual name for the capital.

12.23 Dikwa became a Trust territory in 1946. In 1959 56 per cent. of the people of the Northern Trust Territory voted against immediate inclusion into Northern Nigeria. As a result, a Commission of Enquiry was set up, and sweeping local government changes were introduced in 1960. In response to the separatist sympathies of the

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[240] Fort Lamy was founded in 1900, twelve miles to the North of Kusseri/Fort Foureau. Fort Lamy became N'Djamena, the capital of the Republic of Chad.

Gwoza hill-top peoples, their district was removed from the jurisdiction of the Dikwa emirate and created a separate Native Authority. At the subsequent U.N. plebiscite held in 1961 the people, satisfied with the Government's promise that they would become the 13th province of Northern Nigeria, voted in favour of rejoining their kith and kin. A year later, Dikwa requested to be transferred out of the new Sardauna Province, and returned to its historical home in Greater Bornu. Although Dikwa contains a large Shuwa Arab population, its Kanuri element and strong ties with Bornu made its request acceptable, and the transfer was effected at the end of 1962. A map of Northern Nigeria showing the provinces as they were in 1966, and many of the places mentioned above, is contained in the *Atlas* (Map 40).

D. Conclusion

12.24 The whole of Lake Chad and the surrounding area had thus, for a thousand years and more, been wrapped up in the history of an extraordinarily powerful and vigorous kingdom with a colourful history. The successive capitals of that kingdom were situated at the western end of the Lake - first at Bimi Ngazargamo on the Kamadougu Yobe for over 340 years, and then for nearly 100 years at Kukawa, originally on the shores of the Lake.

12.25 The French, the Germans and the British all tried to dominate this ancient culture at the turn of the century, and produced a set of arbitrary lines over what was then a substantial body of water.

12.26 Subsequently, as will be shown in Chapter 13, that water has receded and there has followed a natural expansion eastward of a people who have, for a thousand years, been used to living close to the Lake. As this expansion has taken place they have continued to administer the territory they have occupied, as an extension of their existing administration. The modern administration is carried out under the

Nigerian Local Government Areas of Ngala and Monguno. As the next Chapter will show, population movements into the area of the former Lake which has dried out are quite simply a natural extension over land which was not previously available for settlement, by people continuing a way of life whose traditions stretch back at least as far as many other civilisations in the world today.

TABLE 1

KINGS OF BORNU[241]

The Maghumi (Sefawa) dynasty: they took the title of Mai[242] *or Sultan*

1.	Sef ibn Dhi Yazan	c. 570
12.	Umme (Hume)	1085-1097
13.	Dunama ibn Umme	1098-1150
17.	Dunama Dabalemi	1221-1259
30.	Umar ibn Idris	1386-1390
47.	Ali Ghaji Dunamami	1476-1503
48.	Idris Katagarmabe	1503-1526
49.	Muhammad ibn Idris	1526-1545
52.	Aisa Kili Ngirmaramma (Magira)	1562-1570
53.	Idris Alooma	1571-1603
63.	Ali ibn Haj Hamdun	1750-1791
64.	Ahmed ibn Ali	1791-1808
65.	Dunama Lefiami	1808-1811
		1814-1817
66.	Muhammad Ngileruma	1811-1814
67.	Ibrahim	1817-1846
68.	Ali Dalatumi	1846

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[241] Only the more significant rulers are listed.

[242] There is considerable difference between the various authorities on the exact dates of the Maghumi *Mais*.

TABLE 2

The Kuburi (Al Kanemi) dynasty: they took the title of Sheikh or Shehu

(1) MUHAMMAD AL AMIN AL KANEMI (SHEHU LAMINU)
Died 1835

(2) UMAR
1835-80
(Dispossessed in 1853-54 by Abdurrahman)

(3) ABDURRAHMAN
1853-54

(4) BUKAR KURA
1880-84

(5) IBRAHIM
1884-85

(6) HASHIMI
1885-93

MASTA GUMSUMI

SANUSI

(10) UMAR SANDA KURA
1922-37
(Dikwa 1900-01)

(9) BUKAR GARBAI
1902-22
(Dikwa 1901-02)

(7) MUHAMMAD AL AMIN (KIARI)
1893

(8) SANDA LIMANAMBE WUDUROMA
1893

IBRAHIM
(Dikwa 1905-06)

SANDA MANDARAMA (UMAR)
(Dikwa 1902-05; 1906-17)

(11) UMAR SANDA KIARIMI
1937-
(Dikwa 1917-37)

MAI MASTA
(Dikwa 1937-50)

UMAR
(ABBA YAREMA)
(Dikwa 1954-)

ABBA MASTA (MUSTAFA)
(Dikwa 1952-54)

BUKAR
(Dikwa 1950-52)

Notes: (1) Up to 1846 the Shehus were merely the power behind the throne of the thousand-year-old Maghumi dynasty of the *Mai* of Bornu, which ended with the death of *Mai* Ali Dalatumi.

(2) After the execution of Kiari and Wuduroma by Rabeh in 1893, there was an interregnum until his destruction by the French in 1900, and their reinstatement of the Al Kanemi dynasty in Dikwa - with a consequent installation by the British of a counterpart Shehu, Bukar Garbai, in Bornu.

CHAPTER 13

THE PHYSICAL AND HUMAN GEOGRAPHY OF THE LAKE CHAD BASIN

A. Geology, Drainage Characteristics and Water Levels up to 1940

13.1 The Lake Chad Basin consists of an enormous depression covering an area of some 2,381,635 square kilometres - equivalent to 8 per cent. of the total area of continental Africa. An impression of the geographical extent of the Lake Chad Basin can be derived from the fact that it is over two and a half times the entire land area of Nigeria and in excess of five times that of Cameroon. Estimates of the number of people living within the Basin area vary from ten to twenty-five million. By the year 2020 there could be forty-five million (see paragraphs 13.35-13.38 below).

13.2 In prehistoric times, the Basin twice lay beneath the sea, as did virtually the whole of Lake Chad itself. The first inundation took place in the Cretaceous period (100 million years ago), when the sea probably encroached along what is the present valley of the Benue river to the south-west. The sea returned in the Tertiary era (25 million years ago), ocean waters probably entering via the same route from the Atlantic. The Lake itself now lies about 800 feet above sea level.

13.3 As illustrated in Map 41 in the *Atlas*, the Lake Chad Basin is bounded to the North by the Tibesti mountains which straddle the Chad/Libya boundary. To the East lie the hills of Erdi and Ennedi, and the Oudai Plateau. To the South lie the Nagoundere Plateau and the Ubangi-Shari Plateau, while to the West lie the Plains of Borno. Between Lake Chad itself and the Tibesti Mountains lies a region of dunes known as Kanem, a group of depressions which lie at a lower altitude than the Lake itself, connected by a great valley called Soro or Bahr el Ghazal. From this valley the land rises towards the North through an area named Bourkou to the Tibesti Mountains.

13.4 Although there is abundant evidence in the Bourkou and Kanem regions North of Lake Chad of former lake levels and river systems flowing southwards from the Tibesti massif, these areas are now arid or semi-arid and contribute little or nothing

to the contemporary water-level of the Lake. Instead the Lake is fed principally as a result of extensive run-off of water, from the southern part of the Basin and the Ngaoundere and Ubangi-Shari plateaux in particular. The two main rivers entering the Lake are the Logone and Chari, with the latter being the dominant feeder: together they contribute 95 per cent of the water intake. The Lake's waters are also traditionally supplemented by the Komadugu Yobe and Komadugu Gana rivers, flowing from the West, and the Ebeji and Yadseram from the South. However, the Komadugu Gana dried up approximately one hundred years ago, and the Komadugu Yobe has also been considerably reduced. The river channel down which the Nigeria/Cameroon boundary runs South of Latitude 12°N, the Ebeji (sometimes known also as the El Beid), has not carried water on a regular basis for over 50 years.

13.5 This gradual drying-up of the Lake's feeder rivers has led to a drastic reduction in the Lake's size. This will be explained in greater detail below. This reduction means that care has to be taken when referring to "Lake Chad" to explain what is meant, when the circumstances demand it. Thus, the Lake Chad Basin Commission in its Strategic Action Plan ("SAP"),[243] produced in May 1998 with assistance from the United Nations Organization for Economic and Social Affairs, refers to a "Normal Chad" or a "Big" or "Mean" Lake Chad to signify the Lake full of water. When the Lake shrinks, it is referred to as a "Small Chad".

13.6 The "Normal Chad" is the starting point for any consideration of a division of the area for political and legal purposes. Fig. 13.6 below shows the Lake in 1973, and that shape is reproduced in many of the Figures in this Chapter following Fig. 13.6. For the reasons given below, a precise location of the shoreline of a "Normal" Lake Chad would be no easy matter. Nevertheless, in general terms the assumption of a "Normal Chad" has to be made in any consideration of the political and legal

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243 A copy of the SAP has been lodged with the Court. Much of the information and the Figures contained in this Chapter are taken from the SAP.

position. It cannot be assumed that the Lake will never return to "Normal" in the event of a sustained increase in rainfall in the feeder basin.

13.7 Most maps have tended to show Lake Chad at high water. This is deceptive. The area covered by water varies from season to season and year to year. Owing to the extreme flatness of the area, a rise of 30 centimetres in the water level will give an increase in surface area of several hundred square kilometres. Most of the northern part of the Lake contains water to a depth of 60-100 cms. after the rains, but by July much of the western part of the Lake dries out, and has, indeed, been permanently dry for the major part of this century. The British traveller F.W.H. Migeod, writing on the Lake Chad Region in the Royal Geographical Society Journal in 1922[244] noted as follows (see Fig. 13.1 for place names):

> "In 1871 the water came to Kukuwa. Then in a year which was probably 1902 from the information supplied to me, the water reached Mongonu, having passed Ngornu. It also reached Kaua. At both Mongonu and Kaua the date supplied to me worked out at 1902, since they said twenty years ago; but I understood Ngornu to set it at thirty ... In August 1921 the water again came quite close to Ngornu, but did not pass it. Kaua claims that two previous towns of that name were eaten up by the lake, the present town on a dune being the third built".

13.8 Migeod concluded:

> "In the above record ... there is no evidence of a general retreat of the water from the time of Denham's visit in 1823 until 1902".

13.9 It is clear from Migeod's observations that at the turn of the century and up to the 1920s the waters of the Lake stretched at least as far West as Ngornu. The treaty-makers of those times were thus dealing with a substantial body of water at the western end of the Lake.

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[244] The full text of this article has been lodged at Court.

13.10 By the 1940s, some remarkable observations concerning the character of the Lake were being made concerning the area around the old Komadugu channel:

> "An important and disconcerting feature of this part of the lake is caused by the shallowness; whole areas covered with water at one time of day may be turned by the wind into dry land a few hours later, or the reverse. Though this may occur anywhere at anytime, the North-East wind is the strongest and the most prevalent, and there is frequently a tendency for the water to be blown to the South-West during the morning and to flow back again to cover the North-East in the evening".

The description continued:

> "The South-Eastern half has a much larger proportion of its area permanently covered with water ... In the dry season a large part of the South-West dries out, together with a large area in the extreme east ..."[245]

13.11 Already, therefore, one has a picture of the South-Western, Nigerian, portion of the Lake drying out by the early 1940's.

B. <u>The Current Situation in the Lake Chad Area</u>

(i) Area, Resources and Population

13.12 Lake Chad is the fourth largest lake in Africa, after Lakes Victoria, Tanganyika and Malawi. Discounting the Caspian and Aral Seas, it is the largest endoreic lake in the world in terms of area. Fig. 13.2 shows the entire geographical Basin which, as mentioned above, exceeds 2.3 million sq. kms.

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[245] From the *Geographical Handbook on French Equatorial Africa* produced by the Naval Intelligence Division of the British Admiralty in 1942, p.43

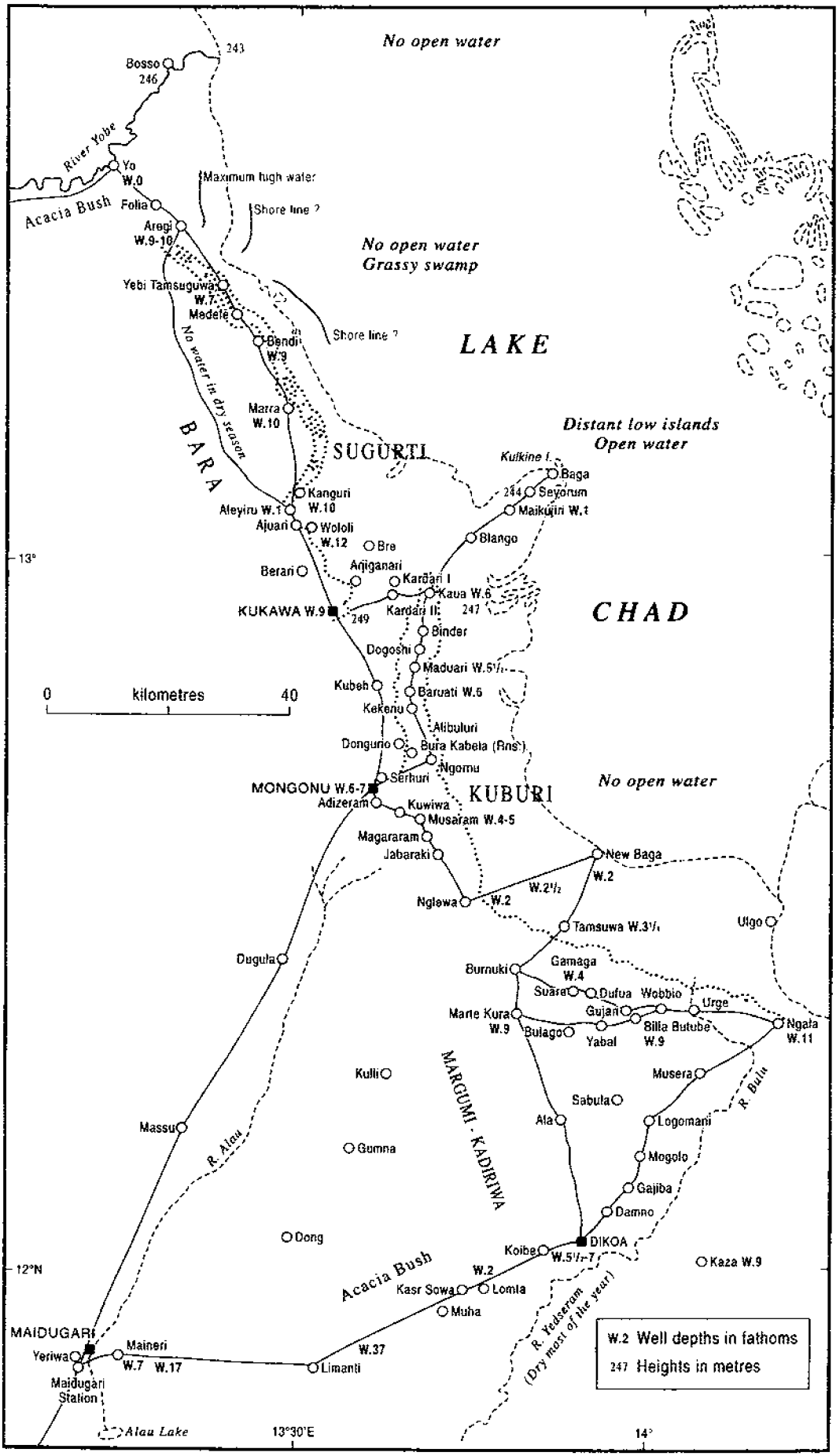


Figure 13.1: Adapted sketch map of the south-western shore of Lake Chad which was produced to illustrate Migeod's paper.

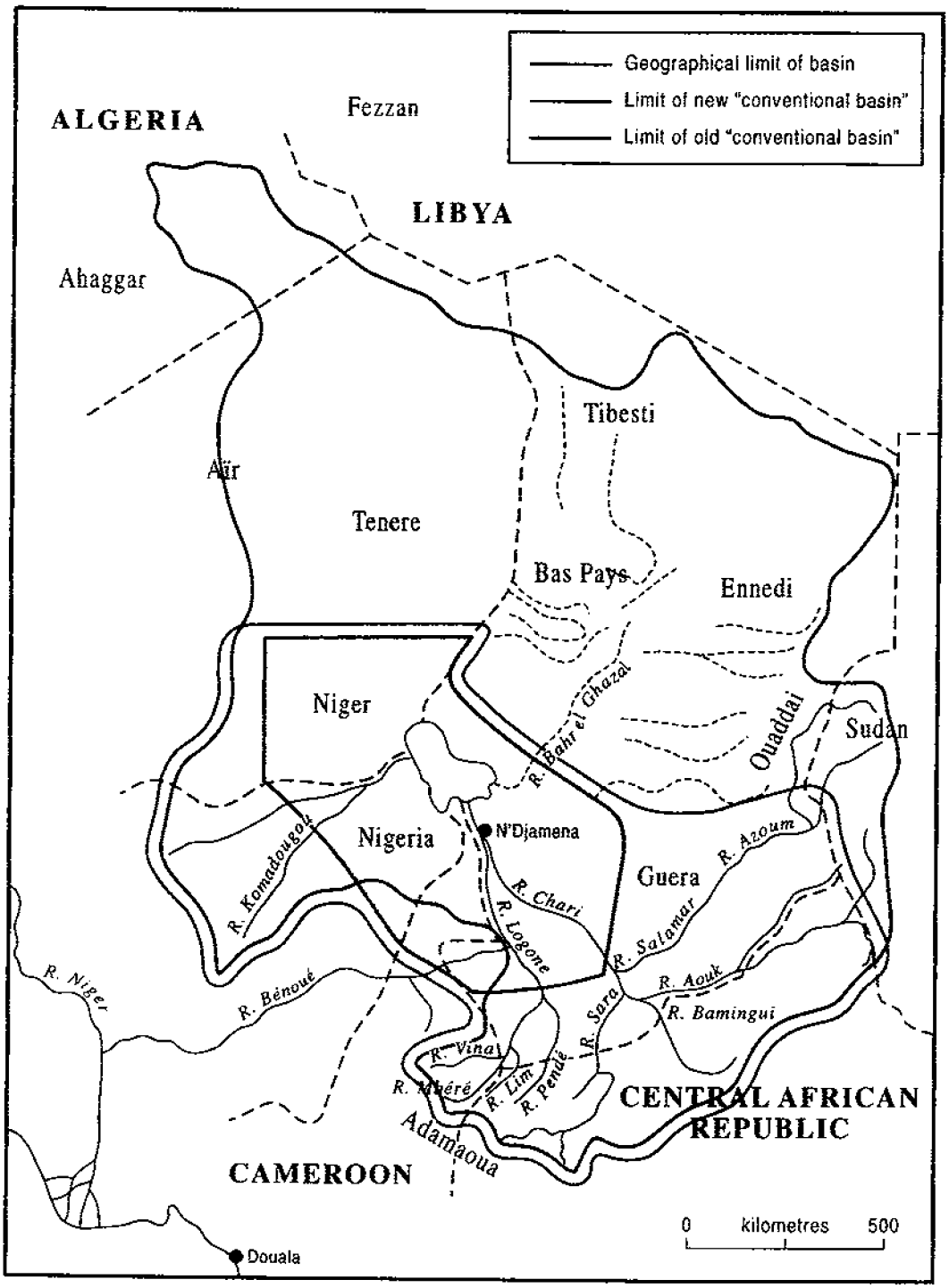


Figure 13.2: Lake Chad geographical and "conventional" basins *(source SAP p.21)*.

13.13 Lake Chad and the wetlands within its Basin form a unique ecosystem for the region, and a biodiversity reserve of world-wide interest. Twenty-one species of fish have been inventoried in the Lake,[246] and 372 species of birds have been inventoried in the Basin, a third of them being species that migrate to the Poles. Lake Chad and its wild habitats are a unique sanctuary for wildlife from the entire region, and a vital barrier against desertification.

13.14 The geographical Basin is divided up as follows, between seven different countries:

Geographical breakdown of Lake Chad Basin (source: FAO)

Country	**Area within country belonging to Basin**	**Percentage of Basin**
Nigeria	179,282	7.6
Niger	691,473	29.0
Algeria	93,461	3.9
Sudan	101,048	4.2
Central African Republic	219,410	9.3
Chad	1,046,196	43.9
Cameroon	50,775	2.1
Total	**2,381,645**	**100.0**

13.15 It will be recalled that, in 1964, four countries created the Lake Chad Basin Commission (LCBC), to handle the problems of development centred on Lake Chad in an area formerly referred to as the "conventional basin". The Commission, however, did not include the Central African Republic. Its area of competence excluded the large desert expanses of Algeria, northern Niger and Sudan and in particular excluded the upstream part of the active basins of the Chari-Logone and

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[246] CADP - 1992, Neiland *et al.* - 1994, Ita - 1993

Komadugu Yobe. The old conventional basin covered about 427,300 km^2 (see Fig. 13.2).

13.16 Since 1994, the Central African Republic has been a member of the LCBC and the conventional basin has been enlarged to include the upper basins of the Chari-Logone and Komadugu Yobe systems. It may now be considered that the LCBC's mandate covers the entire active basin (also referred to as the new conventional basin), with an area of 966,955 km^2 (see Fig. 13.2), divided up as follows between the five countries:

Distribution of active basin (or new conventional basin) according to LCBC (areas) and Harrisson and Kolawole (population)

Country	**New area of conventional basin (km^2)**	**Population in 1991 (in thousands)**	**Density in 1991 (per km^2)**
Cameroon	56,800	2,100	37
CAR	197,800	700	3.5
Niger	162,375	240	1.5
Nigeria	188,000	13,856	74
Chad	361,980	5,048	14
Total	**966,955**	**21,944**	**22.7**

As can be seen from this table, the Nigerian sector is by far the most heavily populated.

13.17 This new definition of the Lake Chad basin takes into account almost all the surface water that supplies the Lake, the *Yaérés* (the flatlands South of the Lake between the Logone and Chari) and the aquifer in the Lake area.

(ii) The Desertification of the Lake

13.18 The gradual drying up of the Lake foreshadowed in Chapter 12 has, over the past 25 years, accelerated dramatically.

13.19 It is shown graphically by photographs taken from space by NASA astronauts, who pass over Lake Chad soon after their launch from Cape Canaveral. The photographs (Fig. 13.3) show the difference between the Lake in 1966 and 26 years later, in 1992.[247] That huge difference is borne out by data obtained by the LCBC analysing remote sensing information obtained from satellites. The data are set out in the LCBC document entitled *Monitoring the Hydrological Behaviour of the Lake Chad (1972-95)*.[248]

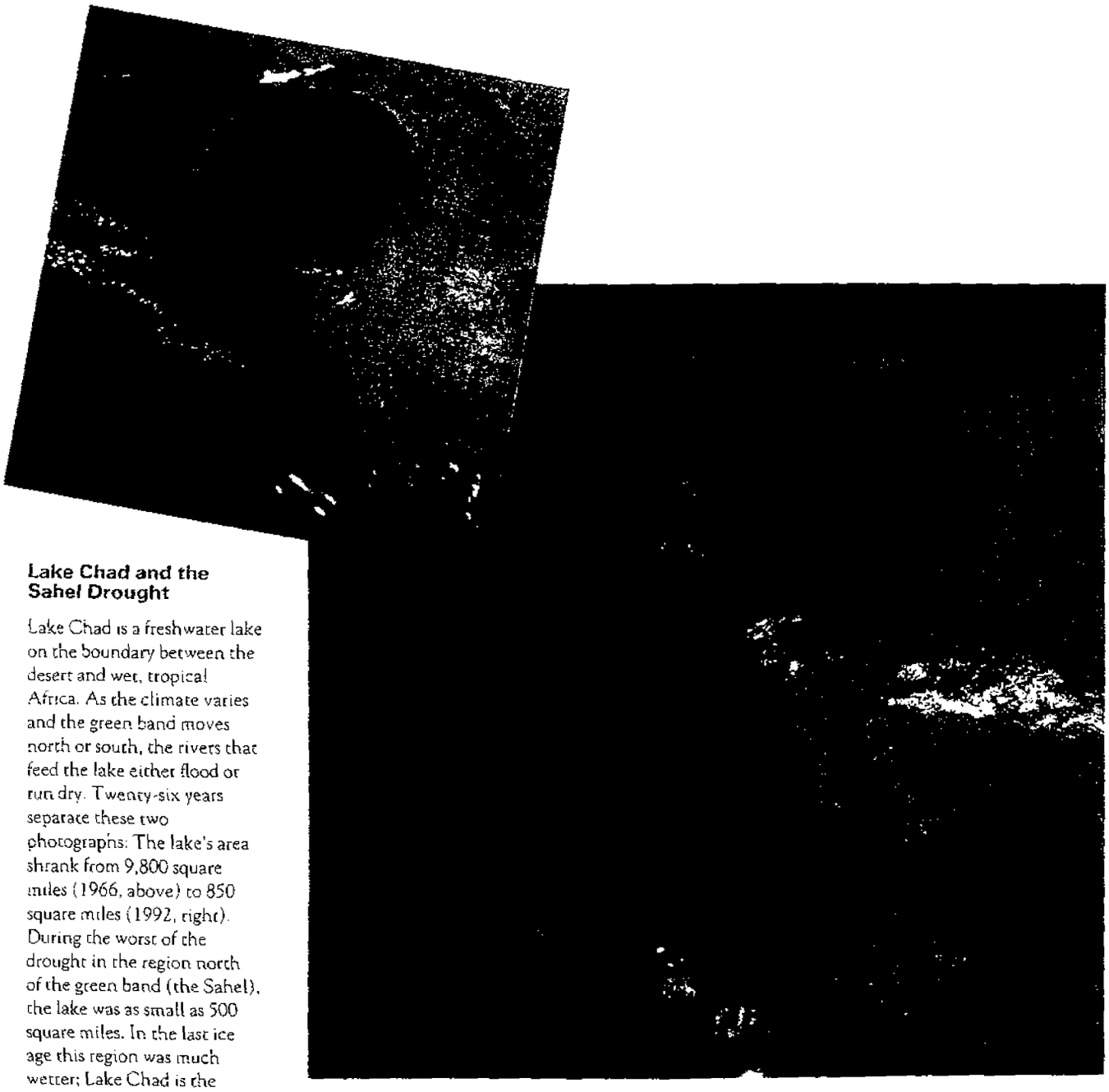
13.20 Two sources of information have been used. One is remotely sensed data from the Advanced Very High Resolution Radiometer (AVHRR) on board meteorological satellites belonging to NOAA (the USA's National Oceanographic and Atmospheric Administration): the other is the work of researches elsewhere using Remotely Sensed data. The two tables (Tables 3 and 4) appearing in the report are merged below, with the NOAA information (which is based on average figures for the relevant year) given in italics.

Year	Area of the Lake (km^2)	Source
1966	22,772	Gemini mission. In Mohler *et al.* (1989)
1973	15,400	Landsat (Mss). In RESTEC, JAPAN (1991)
1980	*1,408.99*	
1981	*1,522.99*	

[247] The photograph appears in *Orbit*, published by the National Geographic Society in 1996.

[248] A copy has been lodged at the Court.

Year	Area of the Lake (km^2)	Source
1982	2,276	Space Shuttle. In Mohler *et al.* (1989)
1982	1,600	NOAA (AVHRR). In RESTEC, JAPAN (1991)
1982	*1,803.00*	
1983	*1,656.11*	
1984	1,674	Space Shuttle. In Mohler *et al.* (1989)
1984	1,783	Meteosat. In Lucien (1990)
1984	*1,653.11*	
1985	1,653	Space Shuttle. In Mohler *et al.* (1989)
1985	1,567	Meteosat. In Lucien (1990)
1985	*1,385.49*	
1986	1,750	Meteosat. In Lucien (1990)
1986	*1,499.45*	
1987	*1,246.65*	
1988	1,300	Space Shuttle. In Wood *et al.* (1989)
1988	1,398	Meteosat. In Lucien (1990)
1988	*1,299.94*	
1989	3,140	Meteosat. In Lucien (1990)
1989	*1,991.26*	
1990	*1,576.28*	
1991	*1,249.13*	
1992	*1,456.06*	
1993	*1,656.04*	
1994	*missing*	
1995	*1,744.50*	



Lake Chad and the Sahel Drought

Lake Chad is a freshwater lake on the boundary between the desert and wet, tropical Africa. As the climate varies and the green band moves north or south, the rivers that feed the lake either flood or run dry. Twenty-six years separate these two photographs: The lake's area shrank from 9,800 square miles (1966, above) to 850 square miles (1992, right). During the worst of the drought in the region north of the green band (the Sahel), the lake was as small as 500 square miles. In the last ice age this region was much wetter; Lake Chad is the remnant of a great lake that once filled the 400,000-square-mile basin that contains most of the country of Chad.



Figure 13.3

13.21 There are slight variations in the data in some years, but a very clear pattern emerges of a dramatic reduction in Lake size taking place between 1966 and 1980. On any view the Lake shrank between those years by a factor of ten. The NOAA figures show that from 1980 to 1995 it remained at less than one tenth the size it was in 1966.

13.22 In its conclusion, the report states that for a return of the Lake to what is known as a "Normal Chad", which has a height above sea level of 280.5 metres (925 feet), there would have to be exceptional increases of inflow to the Lake by the Chari and other feeder rivers as well as direct rainfall on the Lake itself. To achieve a "Normal Chad" the flows of the Chari and other rivers would have to increase to over 43km^3 per year. In 1975-76 the annual flow of the Chari was 36.9km^3. By 1984-85 it was 6.7km^3. The flow had increased to 22.9km^3 by 1995-96 - approximately half of what was required - and in addition, two to three years of heavy rain would be needed to supplement the river flow.

13.23 The graph reproduced at Fig. 13.4 (from the SAP) shows Chari-Logone water resources flowing into Lake Chad between 1970 and 1990. These flows comprise 85 per cent. of total Lake inflows. The graph tells its own story.

(iii) Hydrology of the Rivers

13.24 The SAP (page 26) has this to say about the hydrology of the rivers in the area:

> "The hydrological regime of the rivers of intertropical Africa is affected directly by that of the rainfall, but also, after a certain lag time, by the cumulative effect of repeated rainfall shortages.
>
> Inflow from the rivers of dry Africa, from Senegal to the Chari, **amount to a total of 275 km3/year. The fall in water resources for the decade between 1981 and 1990 was 85 km3/year.

> In the recent period, it has been confirmed that, in spite of certain periods of relative abundance, flow in the rivers in the Lake Chad region has continued to decline. This persistent downward trend must be stressed, as it reveals a lasting decline in the hydrological system, in spite of a fairly significant recovery in terms of rainfall conditions.
>
> ...
>
> The natural low-water flow regime of the Chari at N'Djamena, like that of the other Sudano-Sahelian rivers, is severely affected by the present drought. The absolute low-water levels reached in the last two decades are systematically the lowest of the series. The change in the drying-up phase is the major phenomenon responsible for the decline in low water availability, to such an extent that people have referred to a 'low-water sickness' and 'hyper-drying' of the rivers.
>
> Furthermore, the shortage of rainfall over the present period is obviously responsible for the decline in the power of floods. It has an initial, immediate effect in the form of smaller and/or shorter floods, depending on the rainy season. There is then a memory effect, in the form of cumulative shortages from previous years and smaller inflows to the aquifers. It is therefore to be expected that there will be a certain persistence of low flood maxima even if there is a return to a wet sequence."

Thus, after such a prolonged period of drought, the return to a "Normal Chad" seems a distant prospect, although it is not impossible.

(iv) Rainfall Pattern

As to rainfall pattern, the SAP (p. 25) states:

> "Since the first serious sharp phase in the years 1972-1973, there have been consistent shortages of rainfall in the dry areas of tropical Africa, though they have varied in severity and extent from one year to another. A notable worsening in the drought occurred in 1983-1984, and shortages have remained the general rule up to the present day. These are exacerbated in terms of the flow in the major rivers. The geographical extent of the problem and its duration, *of which there is no equivalent in the hydroclimatological records* (Sircoulon, 1987,

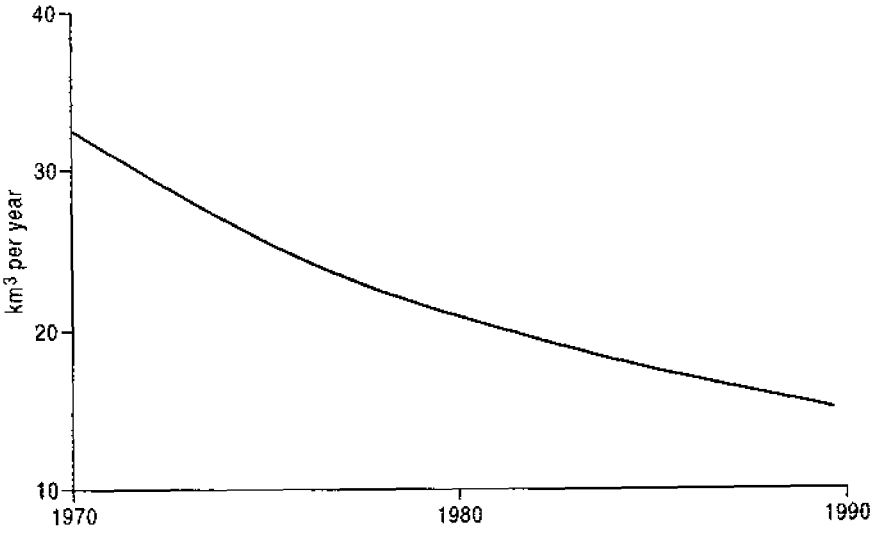


Figure 13.4: Chari - Logone water resources flowing into Lake Chad (85% of total lake inflows) *(source SAP p.29)*.

> 1989), have led certain authors to speak of a change in climate (Carbonnel and Hubert, 1985).
>
> The shortage of rainfall in the Lake Chad basin has been spectacular and persistent.
>
> The graph [reproduced in Fig. 13.5] shows the annual rainfall at N'Djamena for more than 35 years. The falling tendency can be seen throughout the period.
>
> ...
>
> This severe decline in rainfall over the entire lake basin has of course seriously affected the flow regime of the rivers." (emphasis added)

13.25 The combined effect of this consistent drop in rainfall and consequent fall in river flow volumes has resulted in a state of what is known as "Small Chad", where the average altitude of the surface of the Lake has dropped from 280.5 metres to 279 metres. A fall of 1.5 metres may not sound much, less than the height of the average man, but in an area as flat as Lake Chad the resulting change in the configuration of the Lake is quite remarkable. The two sketch maps based on Landsat satellite data reproduced on the same scale at Figs. 13.6 and 13.7 show how drastic the change has been.

(v) "Small" Lake Chad

13.26 The SAP states that the enormous reduction in area (90 per cent. of the unconfined water) shown in November 1977 is "still the situation today" (May 1998).

13.27 The variation in Lake water levels and the change in graphic terms from "Normal" to "Small" Lake Chad is shown in Figs. 13.8 and 13.9.

13.28 From all of the above, it is clear that the physical characteristics of Lake Chad at the turn of the century were very different from what one finds now. Members of Nigeria's legal team visited the Lake in July 1997 and in May 1998. The description below and the photographs contained in the Photographic Annex are based on their observations.

13.29 In order to reach the Lake today, it is necessary to drive many kilometres over the Lake bed in dry and dusty conditions (Plate 34). Not until Katti Kime (See *Atlas* Map 42) does the water appear. Even then, channels have to be cut through thick reeds (Plate 35) for another kilometre or two before one reaches reasonably open water. There, the presence of weed on the surface clearly shows the channels used by boats (Plate 36). Large clumps of reeds are still prevalent (Plate 37) and the journey over open water to Darak Island takes no more than 20 minutes.

13.30 Darak itself is a low-lying and green island (Plate 38) but large variations in its surrounding water level take place with the seasons. Areas many hundreds of metres from the water in July can be covered by water in November (Plate 39). The water seen in the distance would certainly come up to where people are standing in the foreground.

13.31 Such huge changes in the physical characteristics of the region are bound to have a great effect on population movement. A society which has traditionally fed itself through fishing will move to stay near the water. The Lake has abundant fish and both fresh and dried fish are consumed in large quantities (Plates 40 and 41). Fishing is carried out from boats, mainly with nets (Plate 42). The economic importance of fishing is shown below.

13.32 In addition to fishing, large herds of cattle are grazed on the bed of the Lake (Plate 43). There are no enclosures, and herdsmen move their cattle from pasture to pasture without regard to international boundaries.

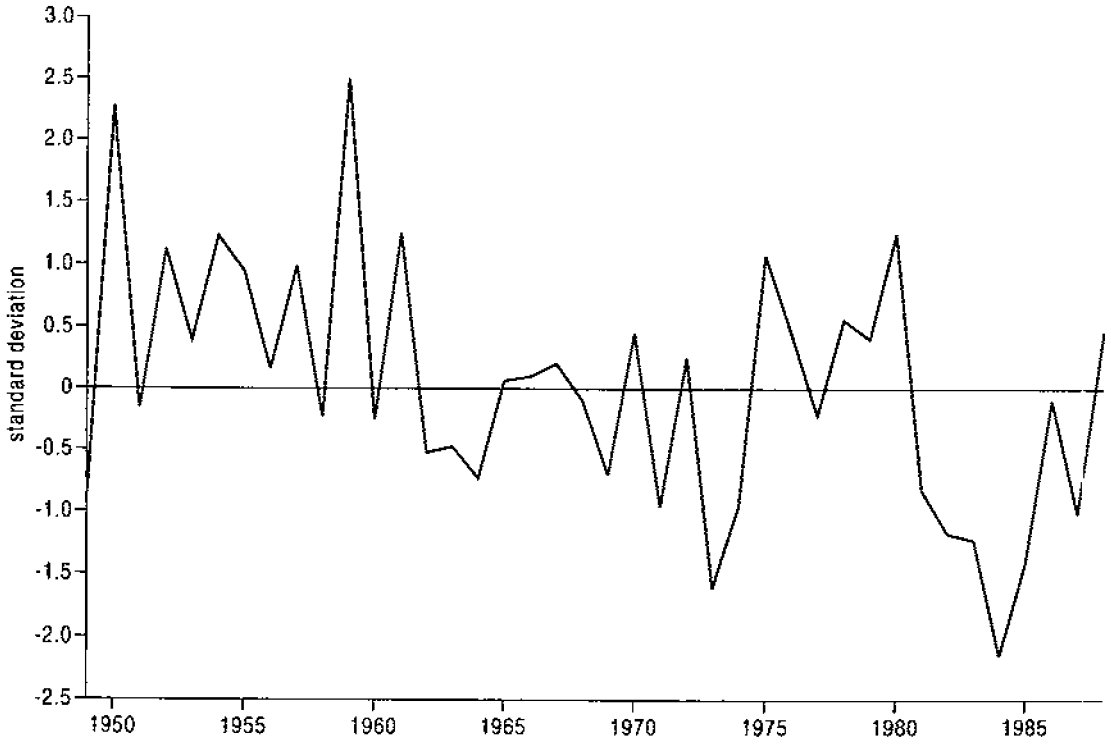


Figure 13.5: Annual rainfall at N'Djamena *(source SAP p.25)*.

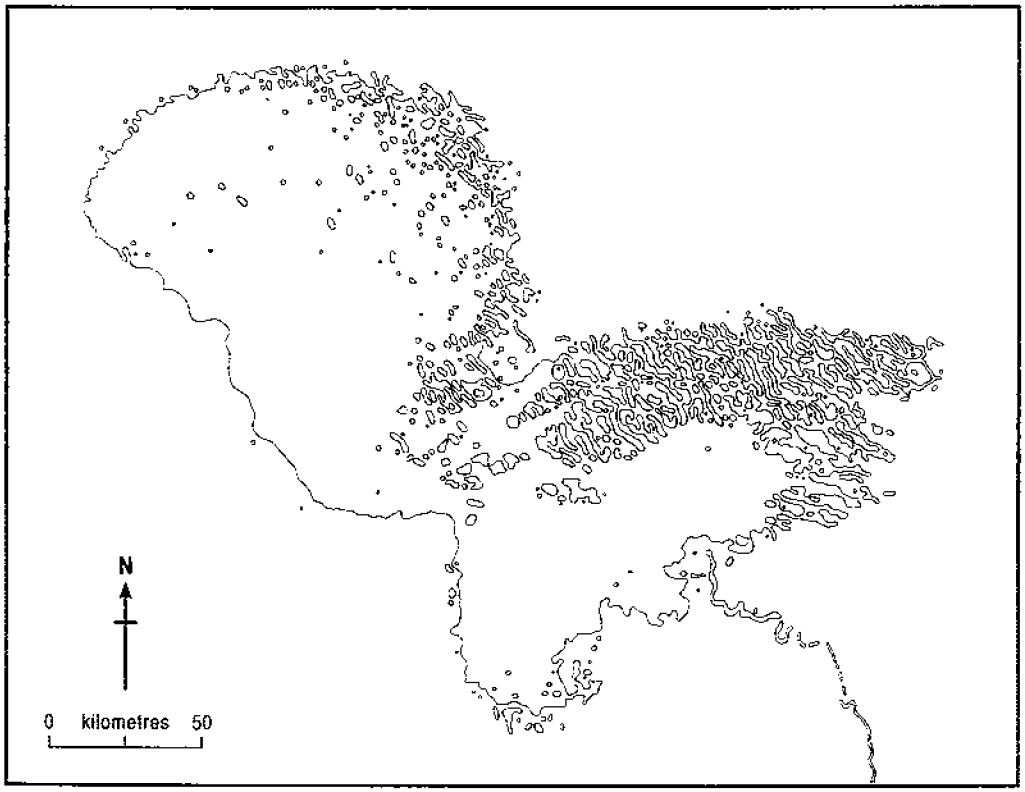


Figure 13.6: The Lake in 1973 (reproduced from Olivry *et al.*) *(source SAP p.24).*

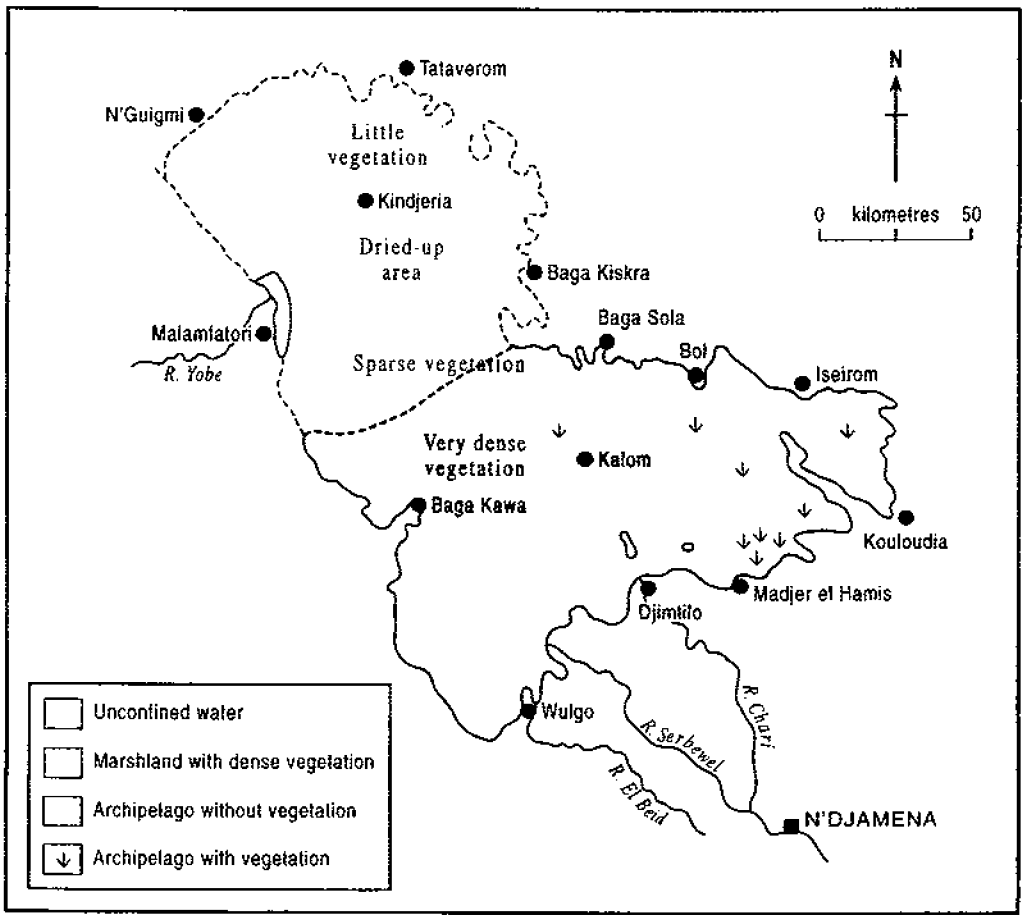
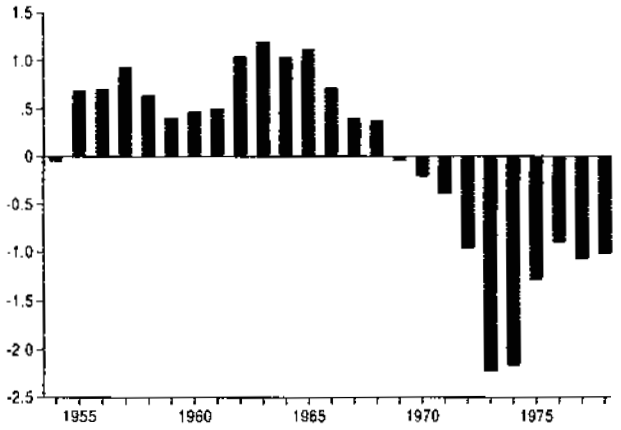


Figure 13.7: The Lake since 1977 (reproduced from Olivry *et al.*, 1996) *(source SAP p.24).*



Figure 13.8: Change from "normal" to "small" Lake Chad *(source SAP p.23)*.



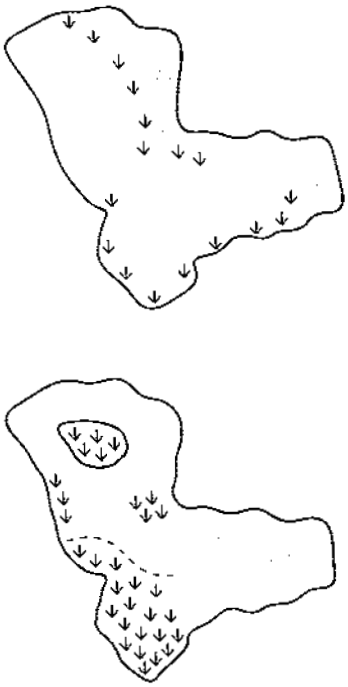


Figure 13.9: Variation in lake water level *(source SAP p.23)*.

13.33 Large quantities of underground water exist. This, together with the fertile nature of the dried-out Lake bed, makes the land highly productive. Crops are grown mainly near villages and for local consumption (Plate 44).

13.34 Extensive interviews carried out in the villages (see below, Chapter 17) show the pattern of occupation which has taken place over the past 20 years. Settlers have come mainly from Nigeria, but also from as far as Mali, Burkina Faso and Chad.

13.35 All of these factors have contributed to the human pressures identified by the SAP. These are dealt with in the next section.

(vi) Human Pressures in the Lake Chad Basin

13.36 In addition to the physical constraints, which relate mainly to problems of surface water resources in the area, there are certain constraints of human origin derived either directly from the increase in population or indirectly from the reactions of the population to the new climatic conditions. The SAP examines the following issues:

(1) demographic pressure,
(2) production activities,
(3) development activities.

(vii) Demographic Pressure

13.37 Between ten and twenty-five million Africans depend for their livelihood on activities carried out in the Lake and its basin.

13.38 The Kindler Report (1990) noted that there was a relatively small rural population in the basin as a whole. As can be seen from the map at Fig. 13.10, the heaviest concentration of population close to the Lake is in Borno State in Nigeria.

13.39 However, it should be noted that this map shows the situation in 1979, when the effects of drought were just beginning to be felt. It should further be noted that there are certain towns, in particular around the edge of the Lake, where people tend to gather during periods of difficult climatic conditions (see Fig. 13.11).

13.40 As far as population is concerned, the Kindler Report predicts a relatively high rate of increase. The figures put forward for 1963 and 1991, and forecasts for the years 2010 and 2020, indicate the upward trend of the population in the present conventional basin as shown by the graph at Fig. 13.12. By the year 2020 the number of people living in the Basin area could be as high as 45 million.[249]

(viii) Productive Activities

13.41 Productive activities in the Lake area include irrigated agriculture, flood-recession agriculture, fishing, stock-farming and industrial/mining activities.

(a) Irrigated Agriculture

13.42 Irrigated agriculture throughout the basin is practised in both large developed areas and in small ones spread along the rivers and around the Lake. The Nigerian irrigated areas all border the Lake. Without water in the Lake, the irrigation fails.

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[249] SAP page 10

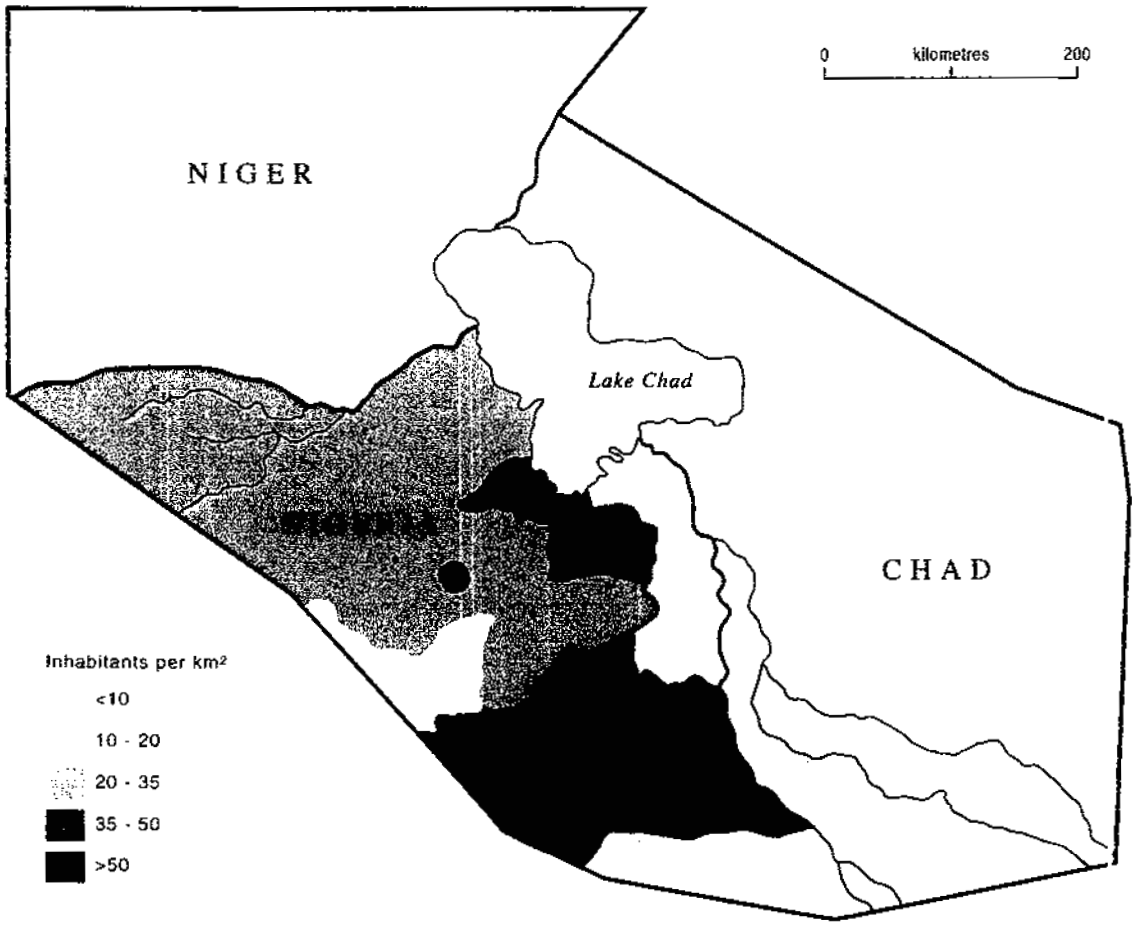


Figure 13.10: Sketch map showing rural population density in 1979 *(source SAP p.32)*.

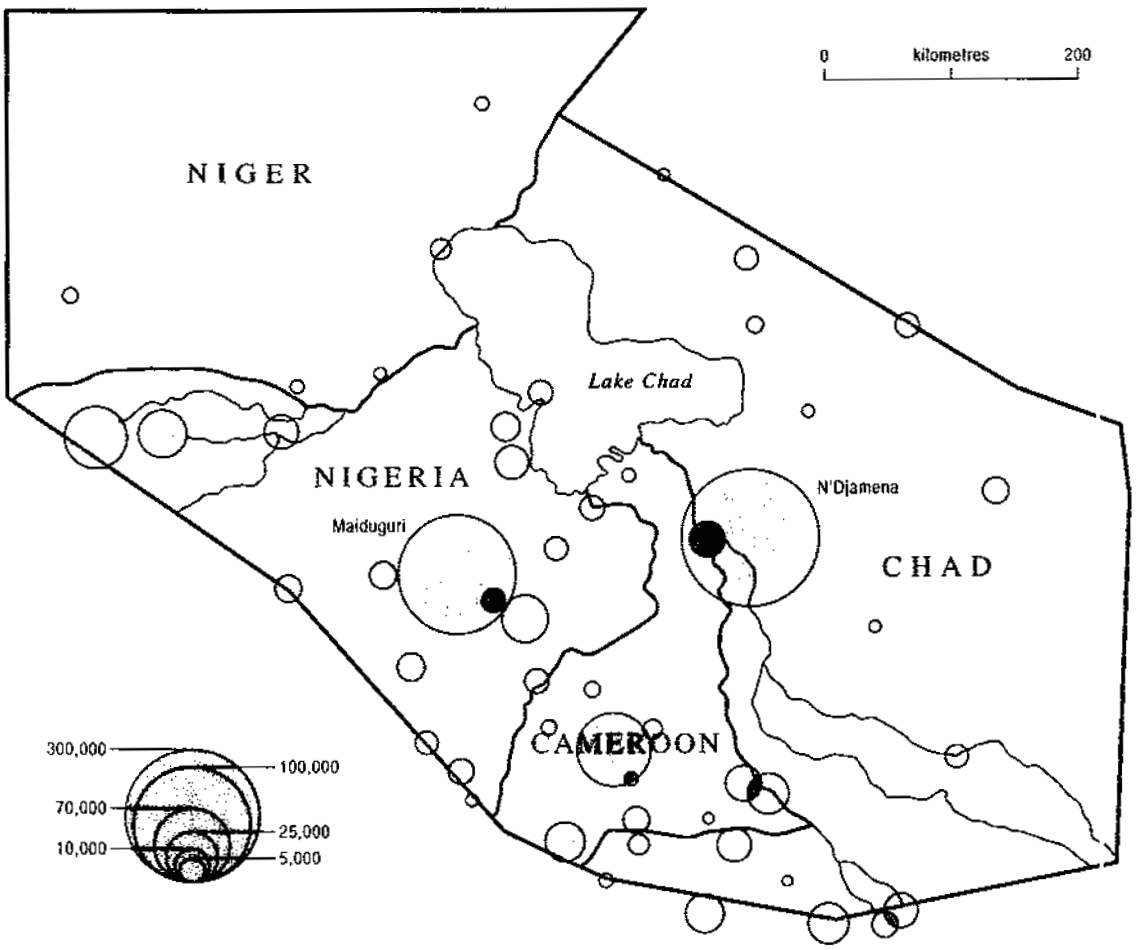


Figure 13.11: Sketch map showing main urban centres in 1979 *(source SAP p.33)*.

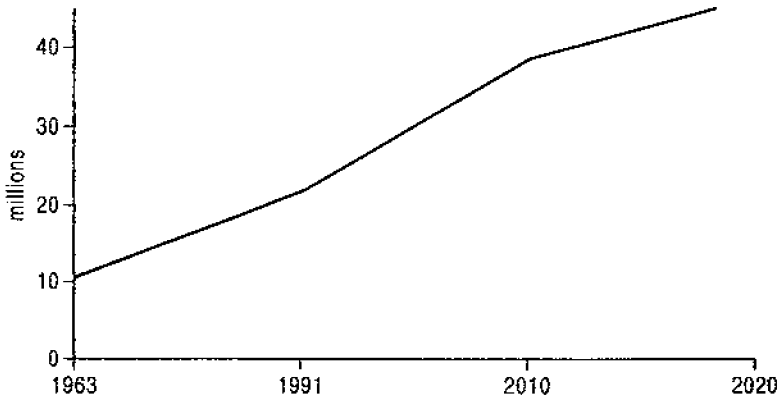


Figure 13.12: Population growth in the new conventional basin *(source SAP p.31)*.

(b) Fishing

13.43 Fishing is widespread throughout the Lake and along the rivers and in the ponds that one sees in the vicinity of the Lake. It may be practised as the main, secondary or occasional activity of the local populace, and is considered by certain authors to be by far the most important source of household income, as the Table below shows:

Sources of household income (source: King)

Activity	**CFA x 10**
Fishing	26.3
Flood-recession crops	15.5
Stock-rearing	8.6
Small irrigated areas	6.3
Large irrigated areas	5.5

(c) Stock-rearing

13.44 Extensive stock-rearing is also generalised throughout the basin. It is characterised by continuous growth and is of the seasonal migration (transhumance) type. Livestock numbers are growing with the population.

13.45 It is also important to stress the cross-border character of the seasonal routes taken by the herds. These are described by Kindler and reproduced on the map at Fig. 13.13, which shows the routes to the South and to the Lake during the dry season, and to the North during the wet season.

(ix) Industrial and mining activities

13.46 With the exception of N'Djamena, where a variety of industries have developed, there has so far been little development of the primary sector in the basin area. Operations that do exist include small gold and diamond mines and oil extraction projects.

13.47 Studies have not pointed out any particular constraints connected with this sector, though few precise observations have so far been made concerning the ecological consequences of these activities. Any harmful discharge, reintroduction of waste water and unexpected leakage will, of course, inevitably find its way to the centre of the basin or to the aquifer. Prevention is required in this area of activity in order to avoid any serious or irreversible side-effects.

(x) Conclusion

13.48 The SAP concludes the section on Human Pressures as follows:

> "In conclusion, the intensity and extent of production activities are not in themselves dangers, or even specific constraints during 'normal lake' periods, and it has been seen that they play only a marginal role in the offtake of surface water resources. In contrast, human threats are particularly serious to the fragile ecosystems, and when human and animal populations grow regularly.
>
> Indeed, man adapts slowly to changes in his environment. While wildlife flees and flora regresses if there are sudden and lasting negative changes in the environment, man adapts much more slowly. He seeks first of all to extend his activities, or even to intensify and diversify them, even though nature is becoming more fragile and the ecosystems of which he is a part are more vulnerable.
>
> For this reason, human pressure due to population growth and the intensification of human activities will be added to the physical

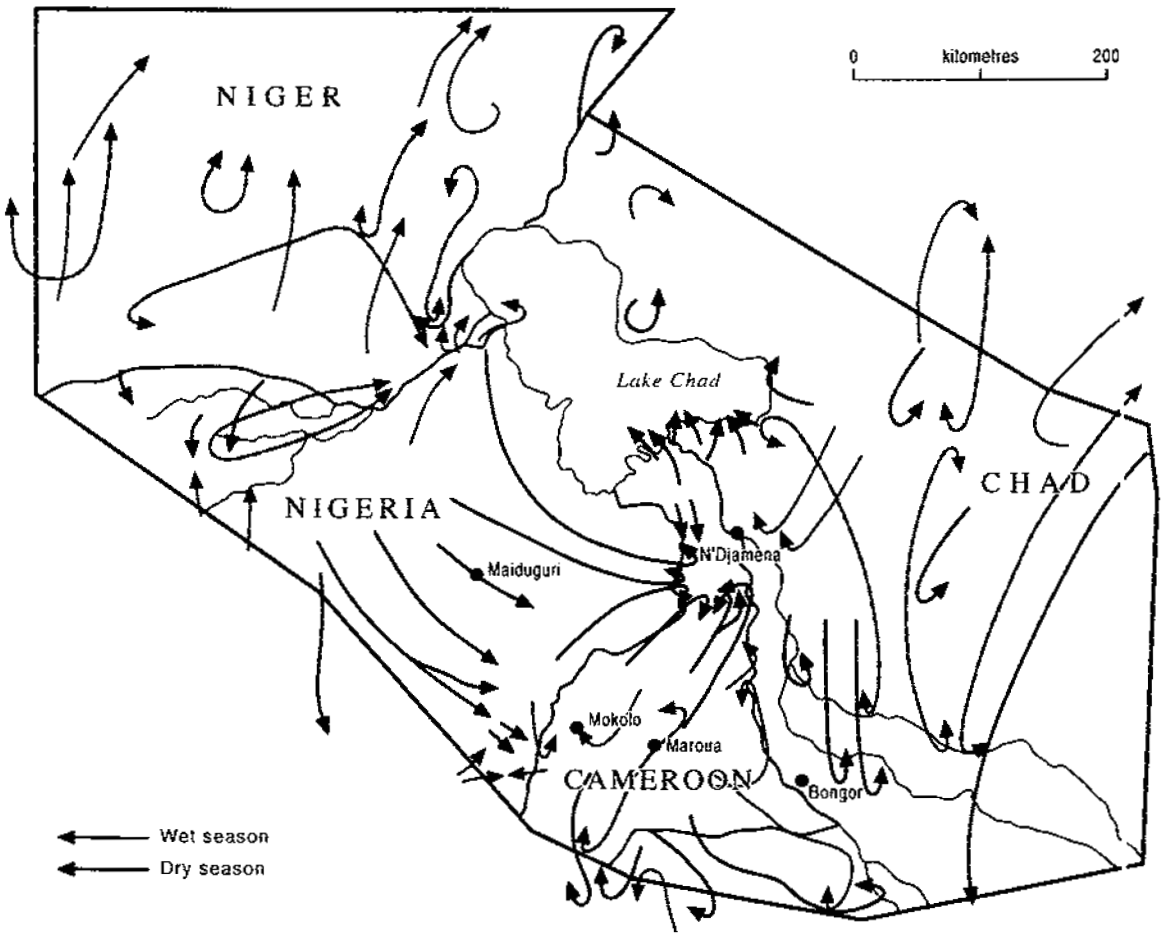


Figure 13.13: Transhumant routes taken by cattle in the Conventional Basin in a wet year (Kindler) *(source SA1 p.37)*.

> constraints described above, and will have increasingly serious social and economic consequences: namely migration of the inhabitants and their livestock, leading to the abandonment of traditional practices in one region and more severe competition with farmers in another, uncontrolled felling of trees, etc. Any sustainable development must take account of these constraints and risks."[250]

13.49 From the conclusion stated above it is clear that the Lake Chad Basin requires comprehensive and co-ordinated action if its natural resources are to be preserved for the benefit of the people living in the area (see paragraph 13.37 above). The SAP sets out a coherent programme for sustaining and developing the Basin.

13.50 If the plan fails, the future of the people living in the Basin will be highly uncertain.

13.51 Nigeria is, as it has always been, ready, willing and able to contribute from its vast resources to the success of the plan.

13.52 At the present time, Nigeria shoulders over half of the economic burden of the LCBC. The figures are as follows:

Current Budget Contributions (1998)

Country	%	**$000**
Nigeria	52%	**509**
Cameroon	26%	**255**
Chad	11%	**108**
Niger	7%	**68**
CAR	4%	**39**
	100%	**$979**

[250] SAP pages 37, 38

13.53 The importance of the role of the LCBC to the area has always been emphasised by Nigeria. The importance of the Lake itself as an integrative force is recognized by anyone who writes about Lake Chad and its Basin in modern times. The following passage appears in a book written in 1989:[251]

> "Lake Chad remains an extraordinary integrative factor for the entire Chad Basin sub-region. This point is valid whether we look at the lake in its fullest or in its state of diminutions. The lake, all through history, has played roles more of a bridge than a barrier: in particular, the lake has been the major explanation of the intensive and extensive cross-cultural or inter-ethnic interactions that have characterised the history of geopolitics of the Megachad region. The droughts, especially the most recent ones, have especially dramatised this role of the lake as an important centre for ethnic and cultural fusion, economic interaction and ethnic and cultural diffusion. This fusion and diffusion of diverse cultures in the bottom-land or the dried bed of the Mega-Chad has been primarily as a result of human response to geographical, ecological and political changes taking place in the Lake Chad Basin sub-region.
>
> The role of the Lake Chad as an important focus of diverse ethnic and cultural fusion and as farrago of diverse ideas has transformed it into a close human inter-link rather than a human divide in this region. It has provided a migratory corridor through which 'influences, ideas and cultures were repeatedly received and transmitted between North Africa, the Nile Valley, Southern and western Sudan for more than a thousand years.'
>
> ... for the bulk of the ordinary population, the Lake Chad Basin is still perceived as a politico-geographical unit and the lake itself is more of a link that a physical barrier. Thus, in spite of restrictive measures ... transborder migrations of the ordinary population appears to have been on the increase in the Lake Chad Basin ... . Any pragmatic and lasting solution must emanate from a coherent and collective sub-regional initiative."

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[251] I. James (1989) *Lake Chad as an Instrument of International Co-operation*, pp.307-315 in Asiwaju and Adeniyi (eds.) *Borderlands in Africa*, University of Lagos Press, at pp.308-309. James in turn quotes from J.A. Works (1976) *Pilgrims in a Strange Land: Hausa Communities in Chad*, New York: Colombia University at pp. ix-x

13.54 Fishing, raising crops and stock-rearing sustain life in the Lake Chad Basin. It is inevitable, with the physical changes which have taken place in the Basin in the last 40 years, that the communities dependent on these activities will move their settlements in order to survive. In subsequent Chapters in this Part of the *Counter-Memorial* the current settlement pattern is examined in the light of this recent history.

CHAPTER 14

DARAK AND THE NIGERIAN LAKE CHAD VILLAGES

14.1 The settlements of Darak and the other villages in Lake Chad listed below in paragraph 14.5 are Nigerian. The early history described in Chapter 12 shows that there has been an affinity between what is now Nigeria and this area going back over centuries. Nigerian fishermen have been using the waters of the Lake for their livelihood since the first settlers arrived in this region, and they continue to do so. As the level of Lake Chad dropped, so islands, such as Darak, were created, and these have always been used by Nigerian fishermen as resting places during fishing trips. As a result of the decreasing level of the Lake and of the fertility of the Lake bed, many farmers have settled in the area.

14.2 Permanent settlements began to be established at the end of the 1950s. Katti Kime, originally an island, was established by Nigerians as a settlement for fishing as early as 1959. The establishment of similar fishing settlements continued throughout the 1960s.

14.3 During the drought of 1973 to 1975, the level of the Lake receded considerably. Nigerian fishermen followed the receding Lake shore, establishing villages such as Darak, Naira and Ramin Dorinna. These settlements, like all the villages in this area, were settled peacefully and without any objection from Cameroon. Settlements that had previously been established as fishing settlements in the 1960s, such as Garin Wanzam, Chika'a and Doron Liman remained, but the inhabitants turned to farming, as the soil exposed by the receding Lake was very fertile.

14.4 The passage of nomadic fishermen and farmers was not restricted to Nigerians. Nomads from across the sub-saharan region, from Mali, Niger, Chad and further afield, have, over a period of many years, come into this area in search of the waters of Lake Chad, which are abundant in fish, or the fertile soil yielded up by the receding Lake, in order to settle and create a living. Villages such as Mukdala and Naga'a were established exclusively for the purposes of agriculture.

14.5 Villages over which Nigeria claims sovereignty are as follows:

Koloram	12°40.196' North	13°57.518' East
Sabon Tumbu	12°44.975' North	13°58.237' East
Jribrillaram	12°42.975' North	13°58.440' East
Doron Mallam	12°50.277' North	14°06.033' East
Kirta Wulgo	12°47.633' North	14°07.139' East
Sagir	12°45.600' North	14°08.943' East
Kamunna	12°44.719' North	14°10.492' East
Kafuram	12°47.649' North	14°11.297' East
Murdas	12°46.696' North	14°12.688' East
Mukdala	12°46.358' North	14°14.873' East
Gorea Gutun	12°44.338' North	14°15.142' East
Fagge	12°47.667' North	14°15.433' East
Chika'a	12°46.992' North	14°16.423' East
Naga'a	12°46.120' North	14°17.896' East
Garin Wanzam	12°47.505' North	14°17.848' East
Njia Buniba	12°52.101' North	14°15.585' East
Ramin Dorinna	12°49.271' North	14°17.365' East
Dororoya	12°49.063' North	14°17.697' East
Doron Liman	12°47.532' North	14°18.611' East
Gorea Changi	12°47.672' North	14°19.998' East

Katti Kime	12°49.615' North	14°20.117' East
Sokotoram	12°50.780' North	14°21.913' East
Darak	12°52.648' North	14°18.530' East
Darak Gana	12°52.496' North	14°19.996' East
Naira	12°54.684' North	14°18.813' East
Loko Naira	12°54.915' North	14°18.242' East
Ba shakka	12°56.370' North	14°18.412' East
Aisa Kura	12°57.268' North	14°18.050' East
Kasuram Mareya	12°58.622' North	14°16.875' East
Karakaya	12°58.903' North	14°14.952' East
Logon Labi	13°01.490' North	14°14.903' East
Kanumburi	13°00.653' North	14°16.420' East
Nimeri	13°01.240' North	14°18.845' East

14.6 Most of these settlements had been established by 1979. Darak Gana, a small fishing village, dependent entirely on Darak, was founded in 1983 and Murdas, a small farming community, was founded in 1986. The location of these Nigerian villages is shown on Map 42 in the *Atlas*.

14.7 This map shows the present location of Nigerian settlements in the Lake and the approximate line of the original Lake shore at the turn of the century. These settlements were founded and are still inhabited primarily by Nigerians. They are administered by the Nigerian Government at Federal, State and Local level. Evidence of this administration is set out in detail in Chapter 17.

14.8 The majority of the settlements in this area were visited by members of Nigeria's legal team in May 1998. Interviews were conducted with the Chiefs (*bulamas*) of the villages, and GPS[252] readings were taken for the purpose of locating the exact positions of the villages. The notes taken during the interviews with the *bulamas* of the settlements are appended to Chapter 17.

14.9 It is clear from the content of these interviews that the villagers give allegiance to Nigeria. They have been administered and assisted in their livelihood by the Federal Government of Nigeria, by Borno State Government and by Ngala Local Government Area. They have been paying their community and cattle taxes to Ngala Local Government Area in Nigeria since the founding of the villages. This deeply-felt attachment is now threatened by Cameroon, which, as is apparent from the interviews, has had no interest in these people or their welfare.

14.10 The records of the interviews also show that it is not only the Nigerian inhabitants who give allegiance to Nigeria. All the residents from Mali, Niger, Chad *and Cameroon*, who live in these settlements, have paid and still pay their community and cattle taxes to Ngala Local Government Authority without protest.

14.11 Cameroon asserts in its *Memorial* that Nigeria carried out a concerted invasion in 1987 which was co-ordinated by the Government and assisted by the military. The evidence alleged to support the assertion is sparse and based on secondary material. It is also incorrect. The history of the area and the interviews conducted with the *bulamas* of the villages reveal that Nigerians founded these settlements over an uninterrupted period of 40 years, and inhabited the area peacefully. They have not required military assistance to pursue their livelihoods, except for defence against bandits from other countries in the region.

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252 Geographical Positioning System ("GPS") hand-held receivers display information received from orbiting satellites which enable precise geographical co-ordinates to be obtained anywhere on the earth's surface.

14.12 Furthermore, despite the Cameroonian Government having apparently been aware of the alleged "invasion" of the these villages in 1987, it took seven years before lodging any protest. The first and only protest note was dated 21 April 1994, *after* the lodging of the initial *Application*, and related to one settlement only, Darak. Such silence over a period of 40 years amounts to acquiescence, as set out in Chapter 17 *in extenso*.

14.13 The continuing level of administration by Nigeria over these settlements, the corresponding lack of involvement by Cameroon, the wishes of the population of the villages and the history of the traditional emirates all contribute to and emphasise the importance that Nigeria attaches to these settlements.

14.14 There are therefore three obvious reasons why Nigeria wishes to retain its sovereignty over this area.

First: If Cameroon's claim to these settlements were ultimately to succeed, then tens of thousands of Nigerians would suddenly find their persons, lands, property and livelihood transferred to the exclusive control of a different State with different systems and traditions, which previously had no regard for them. This would deeply affect the way of life of these people who have always been Nigerian, have been administered as an integral part of Nigeria and regard themselves now as Nigerian.

Secondly: The territory in question, and the people and communities who live there, would be torn from the administration of Borno State Government and, in particular, Ngala Local Government Area, of which they have for many years been a part, and by whom they have been administered.

Thirdly: The people and the territory would likewise be torn from their traditional cultural communities, as well as their traditional ties to and rule by His Royal Highness, the Shehu of Borno. The role of the traditional rulers in this area is further described in Chapter 17. The traditional framework of native administration and society continues to play an important, vital and beneficial role amongst communities such as these.

CHAPTER 15

LAKE CHAD - BOUNDARY INSTRUMENTS PRIOR TO INDEPENDENCE

15.1 The purpose of this Chapter is to present an account of the international agreements, concluded during the colonial period, which related to the proposals for territorial division of the Lake Chad region. This account, which includes other relevant events occurring prior to the Independence of Nigeria and Cameroon in 1960, provides the background necessary to understand the position concerning boundaries in the Lake Chad region at the time of Independence.

A. Before the First World War

(i) Agreement between Great Britain and Germany respecting Boundaries in Africa, signed at Berlin, 15 November 1893 (NC-M 28)

15.2 Article II of this Agreement provided that the northern part of the Anglo-German 15 boundary should be continued from the point on the Benue River defined in Article I. The delimitation was detailed as follows:

> "A line shall be drawn from the point on the left bank of the River Benue fixed in that Article, which, crossing the river, shall go direct to the point where the 13th degree of longitude east of Greenwich is intersected by the 10th degree of north latitude. From that point it shall go direct to a point on the southern shore of Lake Chad, situated 35 minutes east of the meridian of the centre of the town of Kuka, this being the distance between the meridian of Kuka and the 14th meridian east of Greenwich, measured on the map [by Kiepert] published in the German Kolonialatlas of 1892."

15.3 This passage contains the earliest relevant reference to the meridian of longitude situated 35 minutes East of Kuka (also known as Kukawa), the end-point of the described boundary being identified as the intersection of that meridian with the southern shore of Lake Chad. Although the longitude of that meridian is given in the Article as 14° E, the fact that its situation relative to Kuka/Kukawa is given such prominence suggests doubt in the minds of the parties regarding the accuracy

of that longitude co-ordinate. Indeed, the co-ordinate was not used in later agreements.

15.4 Regarding the end-point on the shore of Lake Chad, Article II went on to stipulate:

> "In the event of future surveys showing that a point so fixed assigns to the British sphere a less proportion of the southern shore of Lake Chad than is shown on the aforesaid map, a new terminal point making good such deficiency, and as far as possible in accordance with that at present indicated, shall be fixed as soon as possible by mutual agreement."

(ii) Convention between the French Republic and Germany, for the Delimitation of the Colonies of French Congo and of Cameroon and of French and German Spheres of Influence in the Region of Lake Chad, signed at Berlin, 15 March 1894 (NC-M 29)

15.5 In defining the section of the boundary between Cameroon and the French Congo adjacent to the Lake, Article I of this Convention stated that the boundary would run in its last section along "le cours du Chari jusqu'au Lac Tchad", making specific reference to paragraph 5 of the Annex to the Convention. That paragraph of the Annex declared that:

> "Dans le cas où le Chari, depuis Goulfei jusqu'à son embouchure dans le Tchad, se diviserait en plusieurs bras, la frontière suivrait la principale branche navigable jusqu'à l'entrée dans le Tchad, avec cette réserve que, pour que ce tracé soit définitif, la différence de longitude entre le point ainsi atteint par la frontière sur la rive sud du Tchad et Kouka, capitale du Bornou, pris comme point fixe, sera un degré.
>
> Dans le cas où des observations ultérieures, dûment vérifiées, démontreraient que l'écart en longitude entre Kouka et la dite embouchure diffère de 5 minutes de degré en plus ou en moins, de celui qui vient d'être indiqué, il y aurait lieu, par une entente aimable, de modifier le tracé de cette partie de la frontière de manière que les

> deux pays conservent, au point de vue de l'accès au Tchad et des territoires qui leur sont reconnus dans cette région, des avantages équivalents à ceux qui leur sont assurés par le tracé porté sur la carte annexée au présent Protocole."

(iii) Convention Between Great Britain and France for the Delimitation of their respective Possessions to the West of the Niger, and of their Respective Possessions and Spheres of Influence to the East of that River, signed at Paris, 14 June 1898 (NC-M 30)

15.6 This agreement, to which two indicative maps were annexed, was the first to describe a boundary within the waters of the Lake. Article IV described the boundary East of the River Niger. The last part of the boundary delimitation ran as follows:

> "... then due north until it regains the 14th parallel of north latitude; then eastwards along this parallel as far as its intersection with the meridian passing 35' east of the centre of the town of Kuka, and thence this meridian southward until its intersection with the southern shore of Lake Chad." (Map 43 in the *Atlas*)

15.7 The Article continued:

> "The Government of Her Britannic Majesty recognises, as falling within the French sphere, the northern, eastern and southern shores of Lake Chad, which are comprised between the point of intersection of the 14th degree of north latitude, with the western shore of the lake and the point of incidence on the shore of the lake of the frontier determined by the Franco-German Convention of the 15th March, 1894."

(iv) Anglo-German Agreement signed 12 December 1902 (NC-M 33)

15.8 This was an instrument signed by British and German officials for the purpose of empowering Boundary Commissioners, *inter alia*, to "survey, trigonometrically and topographically, a strip of land as far as Lake Chad, in the presumed direction of the boundary, as it is laid down in [the Anglo-German Agreement of 15 November 1893]", anticipating "the eventual shifting of the boundary ... which may be necessitated by the determination of the longitude of Kuka" (Article III). Article IV provided for the determination of the position of the meridian 35' East of Kukawa thus:

> "Having reached the southern shore of Lake Chad, the Commissioners will carry on the triangulation to Kuka, in order to ascertain the position of the point on the shore which is 35' east of the centre of that town, or in case of difficulty they will ascertain that point by means of signals. It is left to the discretion of the Commissioners whether to determine absolutely the longitude of Kuka during one lunation in order to check approximately the results of the triangulation from Yola to Lake Chad. They will also ascertain the point where the 14th meridian east of Greenwich cuts the shore of Lake Chad."

15.9 Article V went on to specify that for the purposes of this exercise

> "The centre of the town of Kuka shall be a point situated midway between the walls surrounding the two separate parts into which the town was formerly divided."

15.10 Article VI provided:

> "The high-water mark shall be considered as the shore of Lake Chad."

15.11 Although Nigeria has been unable to find evidence that the document of 12 December 1902 was expressly approved by the British and German Governments, British and German Commissioners did in fact survey the strip of land referred to

from February 1903 until February 1904, apparently with the mandate of this 1902 Agreement.

(v) Anglo-German Protocol signed at Ullgo, Lake Chad, 24 February 1904 (NC-M 34)

15.12 This Protocol was signed by the British and German Commissioners, Louis Jackson and H. Glauning. The Protocol evidences, *inter alia*, that through an exercise of triangulation worked out from Yola, the Commissioners were able to agree the position of Kukawa (with reference to the position of Yola) within 11 seconds of both latitude and longitude. Based on a mean of the Commissioners' calculations for the centre of Kukawa, "a meridian 35 minutes east of [Kukawa] was deduced for the map". It seems that although it was possible to specify the position of this meridian with reference to Yola, a dispute amongst the Commissioners regarding the astronomical position of Yola precluded the calculation of the longitude co-ordinate of Kukawa, and hence the longitude of the meridian 35' to the East.

15.13 As well as the difference of opinion regarding the position of Yola, there was disagreement between the Commissioners concerning the position of the intersection of the boundary with the shore of Lake Chad. However, despite these differences, it had been possible to mark the position of the meridian:

> "The triangulation was carried out to a point very near the meridian 35 minutes east of Kukawa at the edge of the water as it at present stands. The meridian was also marked and aligned, on ground south of the highest water mark, by two hard wood posts."

15.14 The Protocol also records that:

> "The bush on the line of the Meridian posts was cleared, and the natives were warned to look after them."

(vi) Anglo-French Convention signed at London, 8 April 1904 (NC-M 35)

15.15 Article VIII of this Convention, which was concluded by the United Kingdom and France, set out the boundary which was intended to be substituted for the boundary fixed by the Convention of 14 June 1898. The final part of this delimitation had the boundary running along the thalweg of the River Komadugu Waubé (also referred to as the Komadougou Ouobé and today known as the Komadugu Yobe) as far as Lake Chad. The delimitation continued:

> "Thence it will follow the degree of latitude passing through the thalweg of the mouth of the said river up to its intersection with the meridian running 35' east of the centre of the town of Kouka, and will then follow this meridian southwards until it intersects the southern shore of Lake Chad." (Map 44 in the *Atlas*)

15.16 The Convention anticipated further modifications being made to this boundary line, and made specific provision regarding the boundary in Lake Chad:

> "It is further agreed that, on Lake Chad, the frontier line shall, if necessary, be modified so as to assure to France a communication through open water at all seasons between her possessions on the north-west and those on the south-east of the Lake, and a portion of the surface of the open waters of the Lake at least proportionate to that assigned to her by the map forming Annex 2 of the Convention of the 14th June, 1898."

(vii) Agreement between Germany and Great Britain respecting the Boundary between British and German Territories from Yola to Lake Chad (Nigeria and Cameroons), signed at London, 19 March 1906 (NC-M 38)

15.17 This Agreement between British and German officials was confirmed by an Exchange of Notes on 16 July 1906. These officials had been appointed to "consider and fix a definitive boundary" between their respective adjacent territories northwards from the vicinity of Yola, in accordance with the Convention of 15 November 1893 and the surveys of the German and British Commissioners in 1903/4. The Agreement purported "to determine the boundary" as described in the Agreement "and as delineated on the accompanying maps" prepared by the Commissioners.

15.18 Article 7 described the northernmost section of the boundary, from a point North of Dikoa located on the "line of German claim as defined on the attached maps", as follows:

> "The boundary then follows the line of the German claim in a straight line until it intersects the meridian 35' east of Kukawa, which was marked by the Boundary Commission by two posts above high-water mark. Thence it shall follow that meridian northward." (Map 45 in the *Atlas*)

15.19 The Treaty Series print of the Agreement annexed reproductions of the "accompanying maps". A copy of the map illustrating the northernmost section appeared at Annex II(a) - this map was signed by the officers who signed the agreement, and was in fact a copy of Sheet 1 of Map I.D.W.O. No. 1902, apparently bearing the signatures of British and German surveyors (Whitlock and Marquardsen), who signed the map on 8 April 1904 at Yola. It appears from the map that the boundary running North struck the meridian 35' East of Kukawa at a point approximately five kilometres North of the water level of the Lake, indicated on the map as the "present water level" as at 22 February 1904.

15.20 Although from that point the boundary headed North, the Agreement did not specify how far North the boundary was to run. However, even if the boundary ran North for a very short distance into the Lake, it would to that extent have coincided with the last section of the boundary fixed by the Anglo-French Convention of 8 April 1904, which ran along the meridian 35' East of Kukawa southwards until its intersection with the shore of Lake Chad. It would appear, therefore, that the two instruments contradicted each other.

15.21 The map also provides interesting information concerning the position of the meridian 35' East of Kukawa. Apart from apparently confirming the positioning of poles along the meridian, the map appears to indicate, by reference to its grid, that the meridian was thought to run near to the 14° 9' E line of longitude.

15.22 Article 8 anticipated that the boundary defined would be "marked out as soon as possible, except along the courses of rivers, in a permanent manner, with posts or otherwise." A stipulation was made concerning the discretion of those charged with the demarcation exercise:

> "The local representatives of the two Powers charged with the marking out of the boundary, as hereinafter provided, shall have discretion as follows. In cases where the boundary is not marked by a river, and where special local circumstances make it desirable not to follow the straight line they are authorized to vary it by mutual agreement to the extent of not more than 1 kilom., measured at right angles to the line. Such variations are to be clearly shown on plans and reported to the Governments at home. They will not be considered binding until they have been ratified by the Governments of Great Britain and Germany."

15.23 Article 12 provided:

> "After the ratification of this Agreement, the local Representatives of the two Governments shall be forthwith empowered to mark out the boundary, and to carry out the necessary transfer of territory. This shall be done by the Residents of the two Powers, or their representatives, acting in concert and in the presence of the local

> Chiefs whose territories are affected. Where the boundary so marked out does not depart from the line prescribed in this Agreement, the transfer of territory shall be definitive; but where the local representatives, acting on the discretion given to them in paragraphs 8 and 9 above, propose to vary the boundary, the line may be marked out and acted upon provisionally, subject to ratification as aforesaid."

(viii) Convention between the United Kingdom and France respecting the Delimitation of the Frontier between the British and French Possessions to the East of the Niger, signed at London, 29 May 1906 (NC-M 39)

15.24 This treaty was signed by government representatives Sir Edward Grey and M. Paul Combon, confirming an Anglo-French Protocol signed in London on 9 April 1906 by British and French Commissioners. Ratifications were exchanged on 29 August 1906.

15.25 The Protocol consisted of a proposed modification of the delimitation of the Anglo-French boundary contained in Article VIII of the 8 April 1904 Convention. The final paragraph of the boundary description contained in Article I of this Protocol read:

> "From the mouth of the Komadugu-Yobe in Lake Chad the frontier will follow towards the east the parallel of latitude, passing through the thalweg of the mouth of the said river as far as a point situated at a distance of 35 kilom. from the centre of the village of Bosso. From this point it will run in a straight line to the point of intersection of the 13th parallel of north latitude with the meridian running 35' east of the centre of the town of Kukawa, the meridian mentioned in the Conventions of the 14th June, 1898, and the 8th April, 1904." (Map 46 in the *Atlas*)

15.26 The alignment of the boundary line within the Lake in this Convention was significantly different from that agreed in the 1904 Convention. Whereas in the 1904 Convention, the boundary left the mouth of the Komadugu Yobe and headed

due East as far as the meridian 35' East of Kukawa, the boundary under the May 1906 Convention changed direction at a point 35km. from Bosso. From that point, the boundary ran in a south-easterly direction to the intersection of latitude 13° N and the meridian 35' East of Kukawa.

15.27 An annexed map referred to in Article III indicated the frontier described in the Protocol, including the final section in Lake Chad. However, rather curiously, the map[253] shows the boundary continuing beyond the last point described in Article I - from that point, it is shown running due South towards and beyond the southern shore of Lake Chad.

15.28 Article II of the Protocol read:

> "It is agreed that the Islands of Lake Chad situated within the line laid down in the last paragraph of Article I will form an integral part of British territory, and that those situated outside that line will form an integral part of the French possessions.
>
> The two High Contracting Parties agree to guarantee free navigation on the Lake to British subjects and British-protected persons, and to French citizens and French-protected persons, as far as regards their persons and goods."

15.29 Demarcation of the boundary was envisaged by Article IV, which stated:

> "The two Governments undertake to appoint within a year Commissioners who will be charged with delimiting and marking out on the spot the lines of demarcation between the British and French possessions, in conformity with and in accordance with the spirit of the stipulations of the present Protocol."

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[253] Sheet 2 of the Map annexed to the Convention

15.30 In this regard, an Annex to the Protocol stipulated that:

> "Although the delineation of the lines of demarcation shown on the map annexed to the present Protocol is supposed to be generally accurate, it is agreed that the Commissioners hereafter appointed to delimit the frontier on the ground shall be guided by the description of the frontier as set forth in the Protocol.
>
> It shall, however, be permissible for them to modify the said lines of demarcation for the purpose of fixing them with greater accuracy, and to make any indispensable alterations of detail. Alterations or corrections of a more important nature affecting the frontier line must be submitted, by the common consent of the Commissioners, to the approval of their respective Governments."

(ix) Convention to specify the Boundary between French Congo and Cameroon, signed in Berlin, 18 April 1908 (NC-M 40)

15.31 This Franco-German Convention confirmed a Protocol signed at Berlin on 9 April 1908 which delimited the boundary between Cameroon and what was then French Congo. Article 1(k) of that Protocol delimited its most northerly sector as follows:

> "De l'embouchure de la branche principale navigable de Chari dans le Tchad, telle qu'elle est déterminée dans la carte annexée au présent protocole, la frontière atteint l'intersection du méridien 12° 8' est de Paris (14° 28' est Greenwich) avec le parallèle 13° 5' de latitude nord, suit ensuite vers l'ouest ce parallèle jusqu'à la frontière franco-anglaise (Convention franco-anglaise du 29 mai, 1906)". (Map 47 in the *Atlas*)

15.32 This article thus provided for a Franco-German boundary within the Lake, originating in the eastern part of the southern shore of the Lake, and terminating at a point on the 1906 Anglo-French boundary. Because the last section of this Franco-German line continued West along the parallel 13° 05' N, it would have passed 05' North of the intersection of the meridian 35' East of Kukawa with the parallel of latitude of 13° N, which was the end point of the Anglo-French

boundary described in the 1906 Convention. The line would have continued West and intersected the 1906 Anglo-French boundary at a point North and West of that end point.

15.33 Article 1(k) of the Protocol went on to deal with the status of the islands in that part of Lake Chad delimited by the treaty:

> "Il est entendu que les îles du Tchad situées à l'ouest et au sud de la frontière ci-dessus indiquée font partie du territoire allemand: celles qui sont à l'est et au nord font partie des possessions françaises."

15.34 The Annex to the Protocol provided, *inter alia*, that the demarcation of the boundary should start within four months from the ratification of the treaty, and set out instructions for demarcation. The Commissioners appointed were to be given authority to make slight modifications to the boundary, which modifications were considered valid pending government approval.

(x) Exchange of Notes between Germany and Great Britain confirming Protocols defining Boundaries between British and German Territories in Africa - 22 February/5 March 1909 (NC-M 41)

15.35 By an Exchange of Notes of these dates, Great Britain and Germany confirmed two Protocols made between their Commissioners. The exchange was effected by Sir E. Goschen and Herr von Schoen who had also signed the Protocols.

15.36 One of the Protocols, signed at Kofa on 12 February 1907, related to the demarcation of the 19 March 1906 boundary from Gorege North to Lake Chad. Article 1 of the Protocol read:

> "The Anglo-German frontier from Gorege to Lake Chad has been demarcated according to the Agreement of the 19th March, 1906. The position of the boundary posts is shown on the accompanying sketch."

(xi) Protocol dated 19 February 1910 between the United Kingdom and France respecting the Delimitation of the Frontier between the British and French Possessions East of the Niger (approved by Exchange of Notes, 17 May/1 July 1911) (NC-M 43)

15.37 This Protocol contained a proposed description of the Anglo-French boundary in accordance with the provisions of the Anglo-French convention of 29 May 1906 and purported to make the 1906 Anglo-French delimitation more precise. The relevant provisions of Article I of the Protocol read:

> "The mouth of the Komadugu Yobe has been marked by an iron telegraph pole, cemented at the base, situated in 13° 42' 29" north latitude, 8,250 metres east of the centre of the village of Bosso.
>
> From this point the frontier follows the parallel of 13° 42' 29" north latitude, for a distance of 26,700 metres to the point on that parallel 35 kilom. from the centre of Bosso.
>
> An iron telegraph pole, set in cement, is erected on an island situated approximately 1,150 metres bearing 325° from this point.
>
> From this point the frontier follows a straight line bearing 144° 34', distance 96,062 metres to the point where the 13th parallel of north latitude intersects the meridian 35' east of the centre of Kukawa.
>
> The centre of Kukawa is in 12° 55' 35.5" north latitude.
>
> The centre of Bosso is in 13° 41' 59" north latitude, 0° 15' 11" West of Kukawa." (Map 48 in the *Atlas*)

15.38 It is apparent that the Commissioners ignored the Franco-German Convention of 1908. If that Convention had in fact established a Franco-German boundary in the Lake which ran West along the parallel 13° 05' as far as the 1906 Anglo-French

boundary, France could no longer have maintained that its boundary with British territory ran as far to the south-east as the 13th parallel.

15.39 Although the 1910 Protocol provided the precise latitude of the centres of Kukawa and Bosso, it did not stipulate their longitudes relative to Greenwich. It is thus clear that the Commissioners, like their predecessors from all three local Powers, continued to be unable to agree the exact position of Kukawa relative to Greenwich.

B. Since the First World War

(i) The Picot/Strachey Lines, February 1916 and the Crewe/Cambon Exchange of Notes, March 1916

15.40 After the fall of the German regime in the Cameroons to British and French forces in 1914, it became necessary to consider the division of the Cameroons between provisional British and French administrations. On 23 February 1916, the French Embassy representative, M. Picot, met representatives of the British Foreign Office (Oliphant) and Colonial Office (Strachey). Oliphant and Strachey drew up reports of the meeting, in which they reported that Picot had produced a map of the Cameroons on which he indicated a line marking the boundary of a strip which France was prepared for Britain to have South of Yola.[254]

15.41 Upon the British participants observing that the line drawn by France did not run North of Yola, and that the Emirate of Bornu would remain split up and "not be incorporated entirely in Nigeria", Picot indicated that he was ready to submit the matter to his Government. Strachey drew a broken blue line on the map indicating his recollection of the approximate extent of what had been the German part of

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[254] See pp. 13-14 of the *Memorandum on the Correspondence and Negotiations resulting in the Provisional Administrative Division of the Cameroons on 1st April 1916* written by A.J. Harding and dated 11 January 1917, at NC-M 226

Bornu.[255] The map so marked was then signed by Picot and Strachey. The temporary character of any arrangement which might later be concluded was acknowledged.

15.42 Although a copy of this map has not been located, it is not thought that Strachey's line was drawn further North than the shore of Lake Chad.

15.43 In a Note to the British Foreign Secretary, Grey, dated 3 March 1916, the French Ambassador, M. Cambon, expressed the French acceptance of the boundaries drawn on the map signed by Strachey and Picot subject to the reservation *inter alia* that the arrangement was of a temporary nature. The French Government went on to concede that (NC-M 228):

> "... le térritoire de Bornou compris dans les limites du Cameroun rentre sous l'administration Britannique et soit annexé à la Nigeria. Il admet en outre que les lignes tracées sur la carte établie par les delegués anglais et français pourront etre légèrement modifiées de manière à éviter le partage de villages, de champs appartenant à certaines tribus, de plantations ...".

15.44 The British reply to Cambon dated 4 March 1916, signed by the British Minister Lord Crewe (NC-M 229), agreed with the French proposals for "the provisional administration of the Cameroons during the continuance of the present war".

15.45 By a Note of 8 August 1916, the British Foreign Secretary, A.J. Balfour, advised the French Ambassador that he proposed to inform the Governor-General of Nigeria that:

> "... the limits of Bornu, which it is understood are well known locally, though not correctly shown on any map, should be determined by consultation and in agreement between the local French and British authorities; and that any difference of opinion, which there is no

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[255] See A. Bonar Law's letter of 3 October 1916 to Lord Lugard at NC-M 227

> reason to suppose will arise in view of the cordial relations between the authorities in question, should be referred to their respective Governments." (NC-M 230)

15.46 On 25 January 1918, the Governor-General wrote in reply to the despatch of the Secretary of State for the Colonies dated 4 August 1917 (NC-M 231), which despatch had requested that descriptions of alternative boundary lines should be prepared in anticipation of negotiations concerning the Anglo-French boundary. The Governor-General enclosed a memorandum dated 9 January 1918 from the Lieutenant-Governor of the Northern Provinces of Nigeria, H.S. Goldsmith, to which was attached

> "... a technical description with maps, prepared by the Acting Chief Surveyor, of the present Provisional Anglo-French boundary, and of the four alternative boundary lines so far as the Northern Provinces are concerned between Bornu and the Banyo District ..." (NC-M 232)

15.47 The Acting Chief Surveyor, T.J. Waters, had furnished the descriptions of the proposed alternative boundary lines from Lake Chad to the junction of the River Bantaji with the River Faro. The four descriptions uniformly set out as the first sector from the North the following:

> "Starting from the junction of the River Ebeji (or Lebait) with Lake Chad (latitude 12° 31' 30", longitude 14° 12') the boundary follows the course of the River Ebeji ..."

15.48 Also attached to Goldsmith's memorandum of 9th January 1918 was a document dated 28 November 1917 by Second District Officer G.J.F. Tomlinson entitled "Note on the relations of Gulfei and Logone to Bornu". Tomlinson concluded:

> "The upshot of these inquiries goes to show that in so far as the British claims in the Northern Cameroons are concerned with the extent of Bornu as it existed before Rabeh's invasion, the River Shari, at any rate north of the confluence with the Logone River, is not only

> the natural, but the political and historical boundary. The French would no doubt be unwilling to allow the international frontier to come so near to Fort Lamy as it did before the War. Kusseri, therefore, would have to be French along with Logone. It would, however, seem that on all grounds a good case could be made out for extending the British sphere to the Shari, north of the line which Moisel shows on his 1:300,000 map as forming the southern boundary of Gulfei Sultanate."

15.49 On 28 April 1919, in response to a request for information by the Acting Governor, the Secretary of State for the Colonies, now Lord Milner, telegraphed him as follows:

> "... regarding the boundary of the Cameroons, nothing has been decided at Paris yet, but Simon made the definite statement that the French would raise no difficulties about the British having the whole of German Bornu ...
>
> As regards Bornu, until a settlement is reached you must manage to tide over the difficulties while maintaining unimpaired our claim to all German Bornu." (NC-M 233)

(ii) The Milner/Simon Declaration, July 1919

(a) Negotiations at Versailles

15.50 A meeting of the Supreme War Council was held at Versailles on 7 May 1919. The British participants were Prime Minister Lloyd George and Foreign Secretary A.J. Balfour, with C. Strachey in attendance. President Clemenceau and M. Simon, the Minister for the Colonies, represented France. It was decided that in respect of Togoland and the Cameroons

> "France and Great Britain shall make a joint recommendation to the League of Nations as to their future" (NC-M 234, page 4)

15.51 In a memorandum dated in Paris on 29 May 1919, the Secretary of State for the Colonies, Lord Milner discussed the future status of the ex-German Cameroons (NC-M 235). Having indicated that Simon was convinced that the meeting of the Supreme War Council on 7 May 1919 had "virtually decided" that Cameroons should not be mandated territory, Milner pointed out on the other hand that Lloyd George's view of the meeting was that "that question was deliberately left open". Milner concluded:

> "In view of the difference of opinion which thus evidently exists as to what actually did happen at that Meeting, I think, as I have told M. Simon, that the only course for us to pursue is to confine our recommendations to the question of boundaries, on which we have come to a complete agreement, and not to attempt to make any joint recommendation with regard to mandates, but to leave the Council to deal with that matter as it thinks fit."

(b) The Declaration

15.52 On 10 July 1919, Lord Milner and M. Simon signed the following Declaration:

> "The undersigned ... have agreed to determine the frontier, separating the territories of the Cameroons placed respectively under the authority of their Governments, as it is traced on the map Moisel 1:300,000 annexed to the present declaration and defined in the description in three articles also annexed hereto." (NC-M 50)

15.53 The agreement used Moisel's 1:300,000 map of "Kamerun" in ten sheets. Sheet A4 (Tschad) related to the northernmost section of the line described. A map of the Cameroons[256] on the scale 1:2,000,000 was also attached to the annexed description to illustrate the description of the frontier.

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256 War Office edition No. 2793 dated July 1915

15.54 Article 1 of the description annexed to the Declaration began:

> "The frontier will start from the meeting-point of the three old British, French and German frontiers situated in Lake Chad in latitude 13° 05' N. and in approximately longitude 14° 05' E. of Greenwich.
>
> Thence the frontier will be determined as follows:-
>
> 1. A straight line to the mouth of the Ebeji; ..."

15.55 The line thus described (Map 49 in the *Atlas*) departed considerably from the Anglo-German boundary in the Lake delimited by the pre-1914 treaties. This can be seen by examining the Moisel Map A4 (Tschad) (Map 50 in the *Atlas*) on which the Ministers affixed their signatures. The overprinted green line ran from the starting point specified in a south-easterly direction. It crossed the red line representing the western boundary of the Cameroons within the waters of the Lake and arrived on the southern shore some five miles further eastwards.

15.56 Upon analysis of the various treaty lines running through the Lake (Map 51 in the *Atlas*) and comparison with the co-ordinates specified in Article I, it appears that the reference to the "meeting-point" of the old frontiers was intended as a reference to the point where the line of the 1908 Franco-German Convention met the line described in the 1906 and 1910 Anglo-French Instruments.

15.57 Paragraph 1 of Article 2 of the Declaration read:

> "It is understood that at the time of the local delimitation of the frontier, where the natural features to be followed are not indicated in the above description, the Commissioners of the two Governments will, as far as possible, but without changing the attribution of the villages named in Article 1, lay down the frontier in accordance with natural features (rivers, hills or watersheds).
>
> The Boundary Commissioners shall be authorised to make such minor modifications of the frontier line as may appear to them necessary in order to avoid separating villages from their agricultural lands. Such

> deviations shall be clearly marked on special maps and submitted for the approval of the two Governments. Pending such approval, the deviation shall be provisionally recognised and respected."

15.58 In sending to the Foreign Office printed copies of the Cameroon and Togoland Declarations, Strachey wrote on 28 August 1919 (NC-M 236) pointing out that:

> "These declarations are concerned only with the future boundaries of the territories, and their completion is a first step to carrying out the direction of the Supreme Council.
>
> At the present moment Great Britain and France have not gone further in the direction of a "joint recommendation". Questions as to the form of the mandates (and whether a mandate might be dispensed with in the case of Togoland) remain to be settled."

15.59 On 19 September 1919, Lord Milner wrote to the Governor of Nigeria explaining the background to the Declaration (NC-M 237). After discussing the boundary areas, Lord Milner wrote in conclusion:

> "12. Though the British and French Governments have thus reached a definite agreement as to the future territorial division of the Cameroons, various decisions have still to be taken before either country can receive a definite permanent title to its respective sphere. Whether the Cameroons should be held under mandate, and, if so, under which form of mandate, and whether the settlement will need the prior approval of the League of Nations are questions which are still unsettled. It is, however, desirable that your Government should be informed of the agreement which has been arrived at without delay, so that you may proceed to consider the steps which should be taken locally either before or after the outstanding questions have been decided and agreement has been confirmed by the Powers."

(c) The implementation of the Declaration

15.60 On 3 November 1919, the French Ambassador wrote to the Secretary of State for Foreign Affairs about the Declarations made on 10 July 1919 for the Cameroons and Togo (NC-M 238). He pointed out that they had been approved by the French Government and said he would be happy to learn whether the British Government likewise had approved them. He went on to state the French Government's opinion that it would be better to apply the two declarations immediately, if only provisionally. In reply, Lord Curzon wrote on 13 February 1920 (NC-M 239):

> "His Majesty's Government are in agreement with the French Government on this point, and are prepared to confirm the two declarations in question, and to consent to their provisional entry into force, pending the definitive settlement of the regime to be applied to these territories."

15.61 By a Note dated 12 April 1921 to the British Ambassador (NC-M 240), the French Foreign Minister referred to the provisional nature of the Declaration, and suggested that modifications be made prior to a definitive delimitation:

> "... Votre Excellence n'ignore pas que les zones françaises et anglaises du Cameroun n'ont encore été l'objet que d'une délimitation provisoire, à laquelle il y aura lieu d'apporter diverses modifications et il y aurait intérêt à ce que ces rectifications fussent arrêtées en principe avant le départ de la Commission mixte chargée de la délimitation définitive de la frontière."

15.62 The Foreign Office's position on this Note was contained in a Note to the British Ambassador on 27 May 1921 (NC-M 241) which stated that:

> "It will be preferable to leave this delimitation until after the mandates have been issued ..."

15.63 In response to a letter from the French Foreign Minister dated 18 July 1921 (NC-M 242), concerning modifications to be made to the line described by the Declaration, the British Ambassador wrote on 23 October 1921 as follows:

> "His Majesty's Government agree with the French Government in considering that some modification of the boundary agreed upon in the Milner-Simon declaration of 10th July, 1919, should be made. They are of the opinion, however, that the powers given by Article 2 of the description annexed to that declaration, which give to the Boundary Commissioners latitude to make minor modifications of the frontier line, will not be sufficient to enable the necessary modifications to be made. As the draft mandates submitted to the League of Nations for the Cameroons define the British and French spheres by reference to the Milner-Simon declaration, and as this declaration is not now capable of alteration, it would appear best, unless the preamble and Article I of the draft mandates are recast altogether, that the following sentence should be added to Article I of the draft mandates:-
>
> > 'This line may, however, be slightly altered by agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interests of the inhabitants or by reason of any inaccuracies in the map (Moisel 1:300,000) annexed to the declaration to adhere strictly to the line laid down therein.'
>
> Lord Curzon desires me to point out that if the above alteration were made by mutual agreement between the British and French Governments the draft Cameroons mandates would then be in a form in which they could be promptly approved by the League of Nations without there being any need for subsequent amendments to these mandates regarding the boundary; and that further the exact modifications of the boundary which are desirable could then be settled with the French Government at leisure, and preferably by negotiations between the Nigerian and French Cameroons administrations, subject to the agreement arrived at being subsequently approved by His Majesty's Government and the French Government." (NC-M 243)

15.64 In a Note dated 12 December 1921 the French Government agreed with the above proposal to amend Article I of the draft Mandate (NC-M 244), and in a Note dated 23 April 1922 it agreed with the proposal that the negotiations towards a

delimitation agreement should be conducted by the local authorities subject to approval by the home Governments (NC-M 245).

(d) The League of Nations Mandates

15.65 On 20 July 1922, the Council of the League of Nations issued an instrument conferring on Great Britain the mandate for part of the Cameroons (NC-M 51). Article 1, incorporating the amendment mentioned above, read as follows:

> "The territory for which a mandate is conferred upon His Britannic Majesty comprises that part of the Cameroons which lies to the west of the line laid down in the Declaration signed on the 10th July, 1919, of which a copy is annexed hereto.
>
> This line may, however, be slightly modified by mutual agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interests of the inhabitants or by reason of any inaccuracies in the map, Moisel 1:300,000, annexed to the Declaration, to adhere strictly to the line laid down therein.
>
> The delimitation on the spot of this line shall be carried out in accordance with the provisions of the said Declaration.
>
> The final report of the Mixed Commission shall give the exact description of the boundary line as traced on the spot; maps signed by the Commissioners shall be annexed to the report. This report with its annexes shall be drawn up in triplicate: one of these shall be deposited in the archives of the League of Nations, one shall be kept by His Britannic Majesty's Government, and one by the Government of the French Republic."

15.66 Article 11 read:

> "The consent of the Council of the League of Nations is required for any modification of the terms of this mandate."

15.67 On the same date, the Council of the League conferred a Mandate in similar terms on France in respect of the part of Cameroons situated to the East of the Milner/Simon line (NC-M 52).

(e) British dealings with the Permanent Mandates Commission and France, 1922-1930

15.68 A British Report on the Cameroons covering the year 1922 was presented to the League of Nations Permanent Mandates Commission in 1923. In respect of "the Emirate of Dikwa administered as part of the Nigerian Province of Bornu", the Report stated (para. 60) that "the 'temporary' international boundary then brought into force was of an artificial and arbitrary character". The Report declared (para. 65) that "the sooner a Boundary Commission with extensive powers is appointed the better" (the relevant pages of the Report are at NC-M 246).

15.69 During the proceedings of the Permanent Mandates Commission on 4 July 1924 (p.133 of the Minutes at NC-M 247) the British representative, Ormsby-Gore, stated that since the publication of the 1922 Report he had met the Governor of the British Cameroons and that the "political question" had been reduced to one of "very small proportions" as follows:

> "In view of all the circumstances and of the time that has now elapsed and the accommodations which have taken place, the British Government does not now desire to ask for any far-reaching changes of the Milner-Simon boundary, but would be glad if a few quite minor adjustments could be adopted by mutual and local consent."

15.70 The French representative responded by stating that this formula was in accordance with the views of the French Government, "which was of the opinion that minor adjustments of the frontier for the Cameroons ... were both possible and desirable".

15.71 The Commission reported to the Council of the League of Nations at its 29th Session (p. 1404 of the Minutes, at NC-M 248):

> "It is happy to observe that the French Government, forestalling the recommendation addressed to it by the Council, has not only consented to communicate its views concerning the desirability of effecting certain rectifications of the frontier-line, but has also stated its readiness to enter into negotiations with the British Government on this subject. The Commission hopes that these negotiations will soon be brought to a successful conclusion."

15.72 In a Note to the French Foreign Minister dated 25 February 1925, the British Ambassador stated (NC-M 249):

> "... His Majesty's Government are prepared to accept for the Cameroons, as well as for Togoland, the proposal contained in the Ministry of Foreign Affairs' note of 23rd April, 1922, to the effect that an agreement regarding the Anglo-French boundary as contemplated in the mandates for the French and British spheres should be provisionally reached by negotiations between the local Governments in Africa, that this provisional agreement should be submitted for confirmation to the French and British Governments, and that, if it be confirmed, the boundary should then be delimited by a Boundary Commission."

15.73 In a response dated 4 April 1925, the French Government agreed with this proposed procedure (NC-M 250).

(iii) The Thomson/Marchand Declaration, 1929 and the Henderson/de Fleuriau Exchange of Notes, 1931

15.74 At the meeting of the Permanent Mandates Commission on 11 November 1926 to examine the British Report on the Cameroons for 1925 (p.105 of the Minutes at NC-M 251), the British representative said that there had been a meeting of District Officers from both sides of the frontier, whose "recommendations regarding areas

in dispute would be submitted to the respective Governments, and in due course a commission would be appointed finally to delimit the frontier."

15.75 Negotiations concerning the boundary continued until 1929. In its Report for 1929, presented to the Commission in 1930, the British Government wrote at page 11 (NC-M 252):

> "The Protocol which was drawn up during 1928 ... was signed on behalf of both the Cameroons under British Mandate and the Cameroons under French Mandate during 1929. The Protocol has been submitted to the respective Home Governments for approval and ratification."

15.76 It is thus apparent that it was at some point in 1929 that the Governors of the British and French Cameroons, Thomson and Marchand respectively, signed the Declaration (NC-M 54) in which they stated that they:

> "have agreed to determine the frontier, separating the territories of the Cameroons placed respectively under the authority of the British and French Governments, as is traced on the map annexed to this declaration and defined in the description also annexed hereto."

15.77 The description indicated 138 points or sectors, and began as follows:

> "The boundary starts from the junction of the three old British, French and German boundaries at a point in Lake Chad 13° 05' latitude north and approximately 14° 05' longitude east of Greenwich. From there the boundary has been determined as follows:-
>
> (2) On a straight line as far as the mouth of the Ebeji ..." (Map 52 in the *Atlas*)

15.78 At the meeting of the Commission held on 4 November 1930 (p.20 of the Minutes at NC-M 253), in reply to the observation that the Milner-Simon line could be no better than the "old diplomatic boundaries" since it also cut through the territories

of tribes, the British representative pointed out that in the northern portion of the territory

> "... it was desired to restore the ancient boundaries of Bornu and Adamawa."

15.79 Within the British Foreign Office there was discussion on whether the Protocol should, like the report of the boundary commissioners in Togoland, be laid before Parliament. By a letter dated 27 May 1930, the Foreign Office proposed to the Colonial Office that it should be so laid (NC-M 254). In a reply dated 17 June 1930, the Colonial Office did not object to the procedure. However, it pointed out that:

> "... the Protocol, a copy of which was enclosed in the letter from this Office dated the 7th of May, is not the final record of the delimitation of the boundary but is a preliminary agreement on which the work of the Boundary Commission will be based. In Lord Passfield's opinion, therefore, it is not really necessary at this stage to lay the protocol before Parliament. He would also observe that, after the French and British Governments have approved the Protocol the Boundary Commission will have to be assembled in order to delimit the boundary on the ground, and to adjust certain points which, as mentioned in the third paragraph of the despatch from the Governor of Nigeria, have not yet been officially defined." (NC-M 255)

15.80 The French Ambassador, in a Note dated 27 June 1930 (NC-M 256), asked for the views of the British Government as to the procedure which should be adopted for ratification of the Protocol. On 8 July 1930, the Foreign Office wrote to the Colonial Office:

> "The present Protocol appears in substance to define the boundary and to leave little to be done by the Boundary Commission, but it is not the product of a Boundary Commission constituted for the purposes of Article 1 of the Mandate, but only a preliminary survey carried out in order to determine more exactly than was done in the Milner-Simon declaration of 1919 the line ultimately to be followed by the Boundary Commission. Moreover, it appears from your letter of 7 May last,

> that Lord Passfield [the Secretary of State for the Colonies] does not regard the Protocol as a final report of which a signed original version should be communicated to the League of Nations, and it will be seen from the enclosed Memorandum that the view of the French Ambassador on this point is the same." (NC-M 257)

15.81 The Foreign Office, with the agreement of the Colonial Office (see the Note dated 9 July 1930 at NC-M 258), suggested to the French Ambassador, in a Note dated 12 August 1930 (NC-M 259), that the Protocol should be confirmed by an Exchange of Notes.

15.82 On 9 January 1931 the British and French exchanged Notes which were signed by Foreign Ministers Henderson and de Fleuriau respectively (NC-M 54). The French Note read:

> "J'ai l'honneur de faire parvenir ci-joint à votre Excellence le texte d'une déclaration que le Haut-Commissaire au Cameroun sous mandat français et le Gouverneur de la Colonie et du Protectorat de Nigéria ont signé récemment. Elle est relative à la frontière entre nos zones respectives de mandat sur le Cameroun.
>
> Votre Excellence a sans doute reçu le texte de la même déclaration et elle a certainement observé qu'il ne s'agit là que d'une étude préliminaire. Celle-ci est destinée à donner à la description de la ligne que devra suivre la Commission de Délimitation plus de précision que ne l'a fait la déclaration Milner-Simon, de 1919.
>
> Quoi qu'il en soit, la première déclaration visée ci-dessus définit en substance la frontière dont il s'agit et le Gouvernement de la République a l'honneur de confirmer, par la présente note, l'agrément qui lui a été implicitement donné. Si une pareille confirmation est faite par le Gouvernement de Sa Majesté dans le Royaume-Uni, la délimitation définitive pourra être entreprise par la mission prévue à cet effet par l'Article 1 du mandat."

15.83 The British Note in reply read in part:

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

15.84 The British Report for 1930, presented to the Permanent Mandates Commission in 1931 (NC-M 260) repeated at paragraph 16 the understanding set out in paragraph 2 of that Note.

(iv) Post-1931 Demarcation Efforts

(a) Dealings with the Permanent Mandates Commission 1931-1939

15.85 At the meeting of the Permanent Mandates Commission held in October/November 1931, the delimitation of the frontier was discussed. It was pointed out (p. 124 of the Minutes at NC-M 261) that "the final report of the Mixed Delimitation

Commission" had not been filed, as required by the Mandate. In reply, M. Marchand stated:

> "... the work of delimitation had not yet started. The authorities of the French and British Cameroons had come to an agreement. The work of delimitation which was to begin in 1932, would take a considerable time."

15.86 The British Reports for the years 1931 to 1935 (the relevant pages of which are comprised in NC-M 262 to NC-M 266) presented to the Permanent Mandates Commission in the years 1932 to 1936 respectively, explained that the work to be carried out by the Boundary Commission had been repeatedly postponed, largely due to financial stringency. This reason was highlighted in the British Report for 1933, which stated at paragraph (ii) (NC-M 264):

> "Although the frontier is sufficiently defined for ordinary purposes the Government is alive to the desirability of an exact delimitation. In the present financial stringency the utility of the work would not justify the expense, estimated at several thousand pounds, which the appointment of a commission with the necessary technical staff would involve."

15.87 The British Report for 1936, presented to the Commission in 1937, announced that it had been provisionally agreed that the work of the Boundary Commission would begin on 1 November 1937 (NC-M 267, paras. 11-12). Likewise, it was noted at the 33rd Session of the Permanent Mandates Commission that the Report for Cameroons under French Mandate for 1936 stated that:

> "... the organisation of the mission for the delimitation of the frontier between the Cameroons under French mandate and the Cameroons under British mandate was on the point of completion, and that the work would probably begin in November 1937."
>
> (Extract from p.65 of the Minutes of the 33rd Session of the Permanent Mandates Commission, NC-M 268).

15.88 The British and French Governments in or before November 1937 agreed on Instructions to be sent to the Boundary Commissioners (NC-M 269). Article 6 of the Instructions read in part.

> "The Boundary Commission shall proceed to establish the whole of the boundary described in Article 1 of the Appendix to the Mandate."

15.89 Article 11 read:

> "In demarcating the boundary strict regard should be paid to the provisions of Article 2(1), (2) and (3) of the Appendix to the Mandate. Account should also be taken of the Agreement regarding the Boundary as recorded in the Declaration confirmed in the notes exchanged between the French Ambassador in London and His Majesty's Secretary of State for Foreign Affairs on the 9th January 1931."

15.90 The British Report for 1938 (NC-M 270), presented to the Commission in 1939, set out an account of the frontier and the work of delimitation which had started in the South. The account began (para. 21) as follows:

> "The work of delimiting the frontier between the French and the British Mandated Territories, begun in December 1937, proceeded during five months of the year under report."

15.91 In an apparent response to earlier questions from the Commission concerning the boundary, the 1938 Report stated (paras. 25 and 26):

> "25. It was left to the Mandatory Administrations to locate the line on the ground and to effect such minor adjustments as might prove necessary. The procedure adopted was for the local officers of the two Administrations to meet as opportunity offered and to work out jointly a provisional frontier on all the doubtful sectors, recording their agreement in *procès verbaux* for the ratification of their respective governments. Their task was not easy, although the only adjustments within their purview were those required for the fixing of a

> recognisable boundary where the Milner-Simon line could not be located, and for avoiding the severance of integral villages or hamlets, some of which had not existed or were unknown when the map was in compilation.
>
> 26. By 1930 the work had been carried so far that the two Governors were able to agree upon a Protocol describing almost the whole length of the frontier thus provisionally defined and embodying the local *procès verbaux* which had been approved in the preceding period. This Protocol was ratified, as a "preliminary study", by the British and French Governments in 1931, and forms the secondary basis for the final delimitation begun by the Joint Commission in 1937."

15.92 The outbreak of the Second World War halted the work of the Commissioners. However, there was a final winding up meeting of the British and French Commissioners. This took place in May 1940. A report of it was communicated to the Colonial Office by the Governor of Nigeria on 15 January 1942. The Governor stated in his despatch (NC-M 271) that the Commissioners had executed

> "... at intervals eleven Protocols, particulars of which are shown on the attached sheet ...
>
> ... Since the length of boundary actually demarcated was only 135 miles out of a total length of approximately 1,000 miles, I assume that it will not be necessary to execute a formal agreement at this stage."

15.93 Thus, the work of the Commissioners did not extend to any part of the boundary of the British Northern Cameroons with French Cameroons. The final paragraph of the text of the 11th Protocol of the Boundary Commissioners (NC-M 272) indicates that the demarcation had only proceeded as far as a point near the River Mbe, which river was referred to at paragraph 123 of the 1929 Protocol confirmed by the 1931 Exchange of Notes.

15.94 It is readily apparent that the description of the section of the boundary which had been demarcated as at the date of the 11th Protocol differs markedly from the relevant part of the description contained in the 1929 Protocol.

(b) Dealings with the United Nations Trusteeship Council, 1946-1961

15.95 The Cameroon Mandates to Britain and France were replaced by Trusteeship Agreements after the establishment of the United Nations. Article 1 of the Agreement for the British Cameroons, which was approved by the U.N. General Assembly on 13 December 1946, read as follows (NC-M 56):

> "The Territory to which this Agreement applies comprises that part of the Cameroons lying to the west of the boundary defined by the Franco-British Declaration of 10 July 1919, and more exactly defined in the Declaration made by the Governor of the Colony and Protectorate of Nigeria and the Governor of the Cameroons under French mandate which was confirmed by the exchange of Notes between His Majesty's Government in the United Kingdom and the French Government of 9 January 1931. This line may, however, be slightly modified by mutual agreement between His Majesty's Government in the United Kingdom and the Government of the French Republic where an examination of the localities shows that it is desirable in the interests of the inhabitants."

15.96 The Agreement for Cameroons under French Administration (NC-M 57), approved on the same date, provided a strikingly different description of the territory to which it related. Its Article 1 merely read:

> "The Territory to which the present Trusteeship Agreement applies comprises that part of the Cameroons lying to the east of the boundary defined by the Franco-British Declaration of 10 July 1919."

15.97 The first Report for the Cameroons under United Kingdom Trusteeship, for 1947, was presented to the Trusteeship Council of the U.N. in 1948 (NC-M 273). At page 3, it described the Thomson-Marchand Declaration and continued:

> "This protocol was ratified as a "preliminary study" by the British and French Governments in 1931 and formed the secondary basis for a final delimitation by the joint French and British boundary commission

> which began work in December, 1937. The Commission continued its work until 22nd April, 1938, when the wet season brought its activities to a temporary stop. It reassembled on 23rd November, 1938, and continued the delimitation of the frontier until May when its activities were interrupted by the invaliding and subsequent death of the Head of the French Commission, M. René Dugast, Administrateur en Chef. By the end of the second season the section of the frontier delimited and covered by *procès verbaux* had reached from the coast to the vicinity of Mount Manenguba in Kumba Division, a distance of some 135 miles. The outbreak of war prevented the reassembly of the Commission in the 1939-40 dry season and the delimitation has not since been resumed."

15.98 The U.K. Report for 1949, presented to the Trusteeship Council in 1950, stated at paragraph 46 that although the Joint Commission had not met since May 1939, "the Nigerian Government is considering the possibility of resuming delimitation" (NC-M 274). However, there is no evidence that the delimitation was resumed, or indeed that any further acts of delimitation or demarcation was carried out, at any subsequent time during the Trusteeship period.

C. Conclusion

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

CHAPTER 16

THE ASCERTAINMENT OF THE BOUNDARY WITHIN LAKE CHAD : THE ABSENCE OF A FINAL DELIMITATION

A. Introduction

16.1 The purpose of the present Chapter is to demonstrate that there has been no final determination of the boundary within Lake Chad between Nigeria and Cameroon. This demonstration involves the following elements:

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

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

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

16.2 As will be shown subsequently, in Chapter 17, without prejudice to the propositions rehearsed in the previous sub-paragraph, Nigeria has acquired title to a number of villages in the Lake Chad region on the basis of historical consolidation of title and acquiescence on the part of Cameroon.

B. The Ambit of Lake Chad for Present Purposes

16.3 "Lake Chad" is the description which is customarily applied to the area which is the historical flood-zone as indicated on maps available in the public domain. This area includes the area of actual inundation at any one time. This conventional version of Lake Chad is sometimes described as the "Normal" Lake Chad.[257]

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[257] See para. 13.5 *et seq.*, above. See also the Lake Chad Basin Commission SAP pp. 22-24, and the graphic at Fig. 13.6 above.

16.4 Numerous villages exist on the bed of the Lake. These are to be distinguished from the settlements on the mainlands of Nigeria and other riparian States. Such villages may be sited either on islands which are surrounded by water perennially, or on locations which are islands in the wet season, or on locations which are sited on the dried-up historical flood-zone of the "Normal" Lake Chad, with flooding as a remote contingency.

16.5 For present purposes it is necessary to employ the concept of the "Normal" Lake Chad as the base of reference. It is this customary usage which is legally relevant and which constitutes the region to which the ongoing process of delimitation and demarcation relates.

C. The General Character of the Process of Boundary Determination Called for in Lake Chad

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

16.7 The nature of the agenda in front of the technical experts of IGN emerges very clearly from the language of the IGN *Report of the Marking Out of the International Boundaries in Lake Chad* adopted at N'Djamena on 14 February 1990 (see paragraph 16.50 below). This refers, with complete justification, to "the delimitation of boundaries".

D. The Treaties of the Colonial Period

16.8 In Chapter 15 above an account is given of the complex pattern of treaties concluded in the colonial period and relating to the division of the Lake Chad region. From the sequence of international transactions described therein, five instruments stand out. These are as follows:

(i) The Anglo-French Agreement signed on 29 May 1906 (NC-M 39)

16.9 This Agreement modified the delimitation of the Anglo-French boundary contained in the Convention signed on 8 April 1904. The 1906 Agreement, which was ratified on 29 August 1906, took the form of a confirmation of the Protocol signed on 9 April 1906. The relevant provisions are as follows:

> "**Art.I.**
>
> ...
>
> From the mouth of the Komodugu-Yobe in Lake Chad the frontier will follow towards the east the parallel of latitude, passing through the thalweg of the mouth of the said river as far as a point situated at a distance 35 kilom. from the centre of the village of Bosso. From this point it will run in a straight line to the point of intersection of the 13th parallel of north latitude with the meridian running 35' east of the centre of the town of Kukawa, the meridian mentioned in the Conventions of the 14th June, 1898, and the 8th April, 1904.
>
> **Art.II.**
>
> It is agreed that the Islands of Lake Chad situated within the line laid down in the last paragraph of Art. I will form an integral part of British territory, and that those situated outside that line will form an integral part of the French possessions.
>
> The two High Contracting Parties agree to guarantee free navigation on the Lake to British subjects and British-protected persons, and to

French citizens and French-protected persons, as far as regards their persons and goods.

Art.III.

The frontier set forth in the present Protocol is indicated on the annexed map.

Art.IV.

The two Governments undertake to appoint within a year Commissioners who will be charged with delimiting and marking out on the spot the lines of demarcation between the British and French possessions, in conformity with and in accordance with the spirit of the stipulations of the present Protocol.

Annex

Although the delineation of the lines of demarcation shown on the map annexed to the present Protocol is supposed to be generally accurate, it is agreed that the Commissioners hereafter appointed to delimit the frontier on the ground shall be guided by the description of the frontier as set forth in the Protocol.

It shall, however, be permissible for them to modify the said lines of demarcation for the purpose of fixing them with greater accuracy, and to make any indispensable alterations of detail. Alterations or corrections of a more important nature affecting the frontier line must be submitted, by the common consent of the Commissioners, to the approval of their respective Governments.

It is understood that if the inhabitants living near the frontier thus determined should express the wish to cross the frontier in order to settle in the French possessions, or, inversely, in the British possessions, no obstacle will be placed in the way of their so doing, and they shall be granted the necessary time to allow them to gather in all standing crops, and generally to remove all the property of which they are the legitimate owners."

16.10 The Annex to this Agreement makes clear the provisional character of the arrangement and confers a power of further alteration or correction.

(ii) Franco-German Agreement signed on 18 April 1908 (NC-M 40)

16.11 This Agreement provides, in material part, as follows:

> "**Art.I**
>
> (a). La frontière entre le Congo français et le Cameroun à partir de la Guinée espagnole (El Muny), (méridien 9° est Paris, 11° 20' est Greenwich) suit:
>
> ...
>
> (j). De là, elle descend le Chari (Schari) jusqu'à son embouchure dans le lac Tchad (Tschad).
>
> (k). De l'embouchure de la branche principale navigable du Chari dans le Tchad, telle qu'elle est déterminée dans la carte annexée au présent protocole, la frontière atteint l'intersection du méridien 12° 8' est de Paris (14° 28' est Greenwich) avec le parallèle 13° 5' de latitude nord, suit ensuite vers l'ouest ce parallèle jusqu'à la frontière franco-anglaise (Convention franco-anglaise du 29 mai, 1906).
>
> Il est entendu que les îles du Tchad situées à l'ouest et au sud de la frontière ci-dessus indiquée font partie du territoire allemand: celles qui sont à l'est et au nord font partie des possessions françaises."

16.12 This instrument is one of the sources relevant to the process of delimitation within the Lake.

(iii) Anglo-French Agreement signed on 19 February 1910 (NC-M 43)

16.13 This Agreement was approved by an Exchange of Notes dated respectively 17 May and 1 July 1911. The original instrument approved was a Protocol recording the work of an Anglo-French Boundary Commission. The relevant part of the Protocol reads as follows (Article 1):

"From this point the frontier follows the thalweg of the River Komadugu Yobe as far as the mouth of the river in Lake Chad.

As the course of the Komadugu Yobe is extremely sinuous, rendering it liable to frequent changes, it is necessary to make an arrangement providing for such a change. The following appears the most suitable:

In the case of the river altering its course to the northward or westward so as to intersect the straight line between beacons 147 and 148 to the westward of the present point, the new thalweg of the river will constitute the frontier from the aforesaid new point of intersection.

In the case of the river altering its course to the southward or eastward so as not to intersect the line as described at 30 metres from beacon 148, the frontier will follow the thalweg of the river as now existing to the point where the thalweg of this old bed will join the thalweg of the new bed of the river.

From this point the frontier will follow the thalweg of the river as it may exist for the time being as far as the mouth of the river in Lake Chad.

The mouth of the Komadugu Yobe has been marked by an iron telegraph pole, cemented at the base, situated in 13° 42' 29" north latitude, 8,250 metres east of the centre of the village of Bosso.

From this point the frontier follows the parallel of 13° 42' 29" north latitude for a distance of 26,700 metres to the point on that parallel 35 kilom. from the centre of Bosso.

An iron telegraph pole, set in cement, is erected on an island situated approximately 1,150 metres bearing 325° from this point.

From this point the frontier follows a straight line bearing 144° 34', distance 96,062 metres to the point where the 13th parallel of north latitude intersects the meridian 35' east of the centre of Kukawa.

The centre of Kukawa is in 13° 55' 35.5" north latitude.

The centre of Bosso is in 13° 41' 59" north latitude, 0° 15' 11" west of Kukawa."

16.14 This description of the boundary supersedes that of 1906. The 1910 Agreement assigns a value to the parallel of latitude which forms the proposed alignment

between Nigeria and Niger from the mouth of the Komadugu Yobe river out to the more northerly proposed tripoint in Lake Chad between Nigeria, Niger and Chad. The longitude value of this point, stated to be 35 kilometres from Bosso, is given indirectly by a distance along the parallel from a marker at the mouth of the river. The longitude of Bosso is given relative to the centre of the village of Kukawa.

16.15 The Convention then provides two sets of data for establishing the end point – which at the time lay on the Anglo-German boundary between Nigeria and Kamerun. It gives a bearing and distance to this end point but it also gives the latitude of the point (13° N) and its longitude relative to the station in the centre of Kukawa. It is all but certain that the former data set was derived from the latter by calculation as it is inconceivable that the commissioners would have taken the trouble to measure a 96km. line by steel tape.

(iv) The Thomson-Marchand Declaration of 1929 (NC-M 54)

16.16 This Declaration of the Governors reads, in relevant part, as follows:

> "The undersigned:
>
> Sir Graeme Thomson, G.C.M.G., K.C.B., Governor of the Colony and Protectorate of Nigeria,
>
> Paul Marchand, Governor of the French Cameroons, have agreed to determine the frontier, separating the territories of the Cameroons placed respectively under the authority of the British and French Governments, as is traced on the map annexed to this declaration and defined in the description also annexed hereto.
>
> The boundary starts from the junction of the three old British, French and German boundaries at a point in Lake Chad 13° 05' latitude north and approximately 14° 05' longitude east of Greenwich. From there the boundary has been determined as follows:
>
> (2) On a straight line as far as the mouth of the Ebeji."

16.17 The reference to Lake Chad is to be taken in conjunction with the line as traced on the map annexed to the Declaration.

(v) The Anglo-French Agreement concluded by an Exchange of Notes on 9 January 1931 (NC-M 54)

16.18 By an Exchange of Notes dated 9 January 1931 the British and French Governments confirmed 'the agreement embodied in' the above Declaration. The precise language of the Exchange of Notes is significant in its emphasis on the existing need for 'an actual delimitation'. The English text of the Notes is as follows:

> *"French Embassy,*
> *London, January 9, 1931.*
>
> M. le Secrétaire d'Etat,
>
> I HAVE the honour to transmit to your Excellency herewith the text of a Declaration signed recently by the High Commissioner of the French mandated area of the Cameroons and the Governor of the Colony and Protectorate of Nigeria. It relates to the frontier between our respective spheres of the mandated territory of the Cameroons.
>
> Your Excellency will no doubt have received the text of the same Declaration and will certainly have observed that it concerns a preliminary survey only. This is intended to describe the line to be followed by the Delimitation Commission, more exactly than was done in the Milner-Simon Declaration of 1919.
>
> However, the first Declaration mentioned above does in substance define the frontier in question, and the Government of the Republic has the honour to confirm by the present note the implicit acceptance of the Declaration. If it is similarly confirmed by His Majesty's Government in the United Kingdom, the definitive delimitation can be undertaken by the commission provided for in Article 1 of the Mandate.
>
> Accept, &c.
> A. DE FLEURIAU"

Foreign Office, January 9, 1931

Your Excellency,

I HAVE the honour to acknowledge the receipt of your Excellency's note of to-day's date on the subject of the delimitation of the boundary between the British and French spheres of the mandated territory of the Cameroons, and to inform you that His Majesty's Government in the United Kingdom have, as you surmised, received from the Governor of the Colony and Protectorate of Nigeria the text of the Declaration recently signed by the High Commissioner of the French Republic in the French mandated area of the Cameroons and himself.

2. His Majesty's Government agree that this Declaration is, as you point out, not the product of a boundary commission constituted for the purpose of carrying out the provisions of Article 1 of the Mandate, but only the result of a preliminary survey conducted in order to determine more exactly than was done in the Milner-Simon Declaration of 1919 the line ultimately to be followed by the boundary commission; that, none the less, the Declaration does in substance define the frontier; and that it is therefore desirable that the agreement embodied therein shall be confirmed by the two Governments in order that the actual delimitation of the boundary may then be entrusted to a boundary commission, appointed for the purpose in accordance with the provisions of Article 1 of the Mandate.

3. His Majesty's Government note that the French Government by their note under reference confirm, for their part, the agreement embodied in the Declaration; and I have the honour in reply to inform your Excellency hereby that His Majesty's Government similarly confirm this agreement.

4. *His Majesty's Government in the United Kingdom accordingly concur with the French Government that the actual delimitation can now be entrusted to the boundary commission envisaged for this purpose by Article 1 of the Mandate.*

I have, & c.
ARTHUR HENDERSON."

(emphasis added)

16.19 The reference to Article 1 of the Mandate involves an indirect reference to the Franco-British (Milner/Simon) Declaration signed on 10 July 1919 (NC-M 50). Article 1 of the Declaration provides as follows:

> "The frontier will start from the meeting-point of the three old British, French and German frontiers situated in Lake Chad in latitude 13° 05' N. and in approximately longitude 14° 05' E. of Greenwich.
>
> Thence the frontier will be determined as follows:
>
> (1) A straight line to the mouth of the Ebeji; ..."

16.20 The text of the Declaration refers to a map:

> "The undersigned ...
>
> have agreed to determine the frontier, separating the territories of the Cameroons placed respectively under the authority of their Governments, as it is traced on the map Moisel 1:300,000, annexed to the present declaration and defined in the description in three articles also annexed hereto."

16.21 The location of the starting point of the boundary described in the Milner/Simon Declaration was made uncertain by the use of the word "approximately". But the line described departed considerably from the intra-lake Anglo-German boundary described by the pre-1914 treaties. This change can be seen by examining the Moisel Map A4 Tschad on which Milner and Simon affixed their signatures (*Atlas,* Map 50). The overprinted green line of the new Anglo-French Declaration cut across the red line representing the earlier Anglo-German boundary within the waters of the Lake. North of that point of intersection, the line described ran through waters which were not within German Kamerun at all but which were part of the British sector of the Lake: presumably, despite this northward extension of the line, the waters outside German Kamerun were still intended to be regarded as an integral part of the British Protectorate of Northern Nigeria. South of that point of intersection, the green line of the Anglo-French Declaration ran through the waters of German Kamerun and arrived on the southern shore some five miles further eastwards. This would have the effect, once implemented, of adding to the British administered sphere an area of the waters of the Lake which previously were within German Kamerun.

16.22 The following points stand out. First, the description of the situation within Lake Chad provided by the Thomson-Marchand Declaration in conjunction with the Mandate and the Franco-British Declaration of 1919 is imprecise. Secondly, the pre-1914 Agreements appear to have been superseded but this is not entirely certain. Thirdly, the Thomson-Marchand Declaration describes the starting point of the line in Lake Chad in general terms ("approximately").

16.23 In any event the delimitation of the alignment described in the Thomson-Marchand Declaration was discontinued in 1938 (see Chapter 15 above), and no work was done in Lake Chad. Major uncertainties remained, including the problem of determining the position of the centre of the village of Kukawa, a part of the problem of identifying the starting point in Lake Chad of the alignment described in the Declaration.

16.24 Other sources of uncertainty include the following:

(1) It is not obvious which geographical spheroid and datum should be used in identifying the alignment of the boundary described by the Thomson-Marchand Declaration within the Lake. This would directly affect the true position of the starting point of the line, in terms of identifying what is really meant by the latitude "13° 05' N", and plotting the old Anglo-French boundary of 1906 and the Meridian 35' East of Kukawa (the alignment of which was based upon the positions of Kukawa and/or Bosso).

(2) The expression "the mouth of the Ebeji" used in the 1919 and 1929 Declarations is not certain, and would be particularly confusing if the course of that river had changed in any way over the years.

E. The Independence of Cameroon and Nigeria in 1960

16.25 Both Nigeria and Cameroon acceded to Independence without any change in the pre-Independence boundaries, subject to the transfer of the Southern Cameroon Trust Territory to independent Cameroon as the result of the plebiscite. The plebiscite in the Northern Cameroon Trust Territory resulted in the area remaining within Nigeria and, consequently, the pre-Independence colonial agreements remained relevant in principle.

F. The Arrangements for Boundary Demarcation: The Role of the Lake Chad Basin Commission[258]

(i) The Position after the Independence of Cameroon and Nigeria.

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

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[258] The Minutes of the LCBC meetings are bulky documents, many of which were annexed by Nigeria to its *Preliminary Objections*. "NPO" references in this Section are to those annexes.

(ii) The Origins of the Renewed Effort at Delimitation of the Boundaries on Lake Chad

16.27 The process of delimitation has been undertaken under the auspices of the Lake Chad Basin Commission established by a Convention concluded on 22 May 1964 (NC-M 60). The Member States are the four riparian States of Lake Chad, together with the Central African Republic.

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

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

16.29 The functions of the Commission are defined as follows (in Article IX):

> "*Article IX*: The Commission shall have the following functions, inter alia:
>
> (a) to prepare general regulations which shall permit the full application of the principles set forth in the present Convention

and its annexed Statute, and to ensure their effective application;

(b) to collect, evaluate and disseminate information on projects prepared by Member States and to recommend plans for common projects and joint research programmes in the Chad Basin;

(c) to keep close contact between the High Contracting Parties with a view to ensuring the most efficient utilization of the waters of the Basin;

(d) to follow the progress of the execution of surveys and works in the Chad Basin as envisaged in the present Convention, and to keep the Member States informed at least once a year thereon, through systematic and periodic reports which each State shall submit to it;

(e) to draw up common rules regarding navigation and transport;

(f) to draw up Staff Regulations and to ensure their application;

(g) to examine complaints and to promote the settlement of disputes and the resolution of differences;

(h) to supervise the implementation of the provisions of the present Statute and the Convention to which it is annexed."

16.30 The LCBC constitutes an international organization (Article XVII (1) of the Statute) and its aims are essentially the achievement of co-operation in pursuit of the most efficient utilization of the waters of the Lake Chad basin.

16.31 The express powers of the LCBC do not include the resolution of boundary questions and the taking up of the business of demarcation resulted from considerations of security in the region.

16.32 In 1983, disturbances in the region of Lake Chad gave rise to the convening of an Extraordinary Session of the Lake Chad Basin Commission in Lagos, from 21 to

23 July. In the statement, Alhaji Bukar Shaib, the Chairman of the Commission, explained the position. In his words:

> "On this occasion, our meeting has been prompted by the recent events along the border between Nigeria and Chad in the Lake area of the basin. This matter has been the subject of bi-lateral negotiations between the two Member States which, happily, have succeeded in restoring normalcy and a return to the situation existing before the incidents occurred. However, in order to find a lasting solution to the perennial problem often caused by long and undefined borders between neighbouring states no matter how friendly their relationship, and in this particular case, on the very Lake itself where the borders of our four States converge, both Nigeria and Chad rightly agreed that the Lake Chad Basin Commission should be the proper forum for discussing all the important ramifications of the problem and the modalities of effecting the necessary solutions once and for all not only between them but between all the four Member States. We all know that undefined borders are abnormal situations which should not be allowed to continue to exist for too long as they create irritating incidents which sour the relationships between states and sometimes, if not quickly remedied, could lead to disastrous consequences and even war."
> (NPO 88, pp.859-860.)

16.33 In the Report of the Extraordinary Session the same speech was summarised in very similar terms:

> "In his opening address, the Honourable Minister seized the opportunity in welcoming his fellow Commissioners once again to Nigeria this year. He explained that the recent events along the border between Nigeria and Chad in the Lake area made the convening of an urgent extraordinary meeting necessary, even though normalcy had already been restored in the area through the bi-lateral negotiations between the two sister states. Nevertheless, it was felt that in order to find a lasting solution to the border problems, measures should be taken to discuss the various aspects and modalities for effecting the necessary solution to the problem between all the four Member States of the Commission. For that reason, it was rightly decided that the Commission itself should be the proper forum for discussing the problem in order to give the necessary political mandate and guidelines to the national experts for obtaining the necessary data and establishing the common framework within which the general security of the Basin

area can be sustained and jointly guaranteed by all Member States." (NPO 88, p.862)

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

> "After the recess, the meeting of experts began, with Mr. N.O. Popoola, the Permanent Secretary of the Ministry of Water Resources as Chairman. As the two matters to be discussed were so closely inter-related, it was decided that both sub-committees should meet together in the Conference Hall and discuss first the border delimitation problems and later the security matters. On the proposal of the Chairman and with the concurrence of the Delegations present the following agenda were adopted for the two Committees.
>
> *Agenda for the Committee on Demarcation*
>
> 1. Possible exchange of information and documents on the boundaries.
>
> 2. Boundaries Committee programme and work methodology.
>
> 3. Joint Demarcation Team.
>
> *Agenda for the Committee on Security*
>
> 1. Measures for ensuring the effectiveness of the joint Border Patrols.
>
> 2. Complete Demilitarization of the Lake by the Member States.
>
> 3. Measures to ensure the non-violation of Agreements reached.
>
> 4. Security of the Boundary Demarcation Team." (NPO 88, p. 864.)

16.35 The modalities of implementation of the decisions taken at Lagos were discussed at the twenty-eighth, twenty-ninth and thirtieth sessions of the LCBC in 1984 and 1985.[259] Progress had been slow, in part, because of problems relating to funding.

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[259] See extracts from the Minutes of these sessions, appearing at NPO 89 (28th), NPO 91 (29th) and NPO 61 (30th)

16.36 In 1985 the Fifth Conference of the Heads of State of the LCBC was held. The Minutes of the Fifth Conference of Heads of State (NC-M 275) include, as Annex B, the Report of the Current Chairman, Dr. Alhaji Bukar Shaib.

16.37 Under the rubric "Border Demarcation and Security on Lake Chad", this Report provides the following helpful assessment:

> "32. Following the border incidents between Nigeria and Chad on the Lake Chad in April 1983 and the Protocol Agreement between the two countries in July the same year, the Commission was called in as the forum through which to effect a permanent settlement of the border problems in the area. Consequently, an extraordinary session of the Commission, which was held in Lagos from 21st - 23rd July, 1983 set up two Sub-Commissions: one on border demarcation and the other on security on Lake Chad.
>
> 33. From 12-16 November, 1984, the experts on border demarcation and security on Lake Chad from the four Member States met in Lagos and agreed on the basic legal documents for future work.
>
> 34. The Sub-Commission on border demarcation has drawn up the technical specifications for the border demarcation, aerial photography and field mapping that need to be carried out. In view of the fact that the Commission cannot fund the field work, donor agencies have been contacted. But no positive response has been received so far.
>
> 35. On security, the experts defined the objectives, composition, logistics, discipline and bases of the mixed patrol teams established by the extraordinary session. However, after two meetings, in January and February 1985 in Maiduguri and Maroua respectively, the experts have not been able to agree on the definition of the patrol zone over which the mixed patrol teams would operate within each country. The experts have been directed by the 30th Session to meet again to resolve this issue."

16.38 This Report by the Chairman describes the LCBC as "the forum through which to effect a permanent settlement of the border problems in the area", and forms part

of the Minutes which were formally adopted by the Sixth Conference of Heads of State on 28 October 1987 (NC-M 276).[260]

16.39 In the Final Communiqué of the Fifth Conference (Annex C to NC-M 275):

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

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

> "- that member States have agreed to finance the cost of the demarcation exercise which amounts to 312,884,000 F.CFA.
>
> - that the amount would be shared equally among the four member States.
>
> - that a special bank account be opened for this purpose.
>
> - that work should start in March 1988."
> (NC-M 276 at p.19)

16.41 Thus the LCBC found itself mandated by the four Member States, all riparians of Lake Chad, to proceed with the technical programme of demarcation.

(iii) The Specifications Prepared for the Technical Operation

16.42 In March 1988 a meeting of experts of the Member States of the LCBC met "to determine the terms of reference for the demarcation and survey of the boundaries

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[260] The full text of the minutes appears at NPO 67

in Lake Chad" (NC-M 277). The *General Conditions for Invitation of International Tender* (NC-M 278) included the following:

> "Article 2: Scope of Work
>
> The tenderer shall execute the works mentioned hereafter in conformity with the Technical Specifications attached herewith
>
> i) Reconnaissance and physical marking out of the border points;
>
> ii) Placement of intermediate beacons between the border points;
>
> iii) Determination of the geographical coordinates of both border and the intermediate points."

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

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

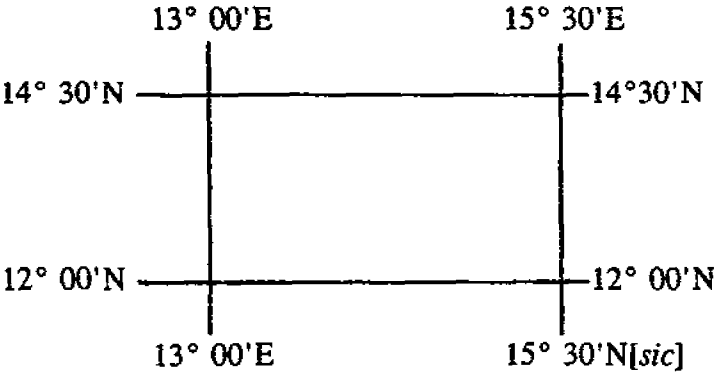
> "1.1 All activities on surveying, and border demarcation between Cameroon, Niger, Nigeria and Chad in the Lake Chad and its surroundings shall comply with the terms laid down in these specifications.

1.2 Scope of the work to be done

The area involved covers approximately 61,000 km² and is located between the following geographical coordinates:

A. Latitude 14°30'N
Longitude 13°00'E
Greenwich

B. Latitude 14°30'N
Longitude 15°30'E
Greenwich



C. Latitude 12°00'N
Longitude 13°00'E
Greenwich

D. Latitude 12°00'N
Longitude 15°00'E[*sic*]
Greenwich

The Contractor shall carry out the following assignments:

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

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

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

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

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

i) A table of existing survey and control points;

ii) Aerial photographs, mosaics and maps where available;

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

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

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

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

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

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

16.45 As the Court will readily appreciate, such reference to treaty instruments in the context of a "demarcation" exercise indicates that the exercise was in reality in the nature of a delimitation. Moreover, given the choices to be made in relation to the treaty instruments, even the delimitation process involved some active legal and political decisions.

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

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

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

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

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

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

a) Agreement between Great Britain and Germany concerning the boundary between British and German territories from Yola to Lake Chad, signed in London on 29 May 1906 [*sic*];

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

c) Agreement between the United Kingdom and France on the demarcation of boundaries between British and French possessions East of the Niger, signed in London on 19 February 1910;

d) Exchange of notes between the Governments of His Majesty of the United Kingdom and France concerning the frontiers between French Cameroon and British Cameroon in London on 9 February [*sic*] 1931;

e) Minutes of the meeting of 2 March 1988 between Chad and Niger to determine the bi-point of the North Frontier of Chad-Niger in Lake Chad.

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

The Contractor shall furnish:

i) All the documents mentioned in Articles 3 and 7;

ii) A sketch indicating the location of boundary points, intermediate points, geodetic points on reproducible materials in ten copies;

iii) Index cards for locating boundary beacons and Geodetic points on reproducible materials in ten copies;

iv) A list of computations of the co-ordinates of the Geodetic and boundary points in ten copies;

v) Proceedings on the demarcation and monumentation of the boundaries.

Article 9: The Role and Obligation of the Contractor

The Contractor shall ensure that the work is executed under the control of the eight experts and in conformity with the rules and standards in force. He shall be responsible to the Lake Chad Basin Commission for the appropriate execution of the work.

The Contractor shall undertake to commence the work immediately upon the notification order by the Commission. Moreover he shall furnish the Supervisor with a monthly progress report in ten copies.

The Contractor shall also be responsible vis-à-vis the Lake Chad Basin Commission for the quality of the materials used and their perfect adaption to the requirement of the work."

16.47 This contract between the LCBC and IGN was approved by the LCBC on 26 May 1988.

16.48 In August 1988, a Special Session of the LCBC, prompted by a disagreement on the location of the Cameroon/Nigeria bi-point, decided that the national experts should resolve the problem and prepare "concrete recommendations". The report of the national experts who met in September 1988 noted the different claims of Cameroon and Nigeria which appeared to be the result of the River Ebeji (El-Beid) opening into two channels as it approaches the Lake, and recommended that a point (longitude 14° 12' 11.7" E, latitude 12° 32' 17.4" N) obtained by scaling from the map attached to the 1931 treaty be adopted as the mouth of River Ebeji as at 1931. This recommendation was endorsed by the Commissioners at their 36th Session in

December 1988, at which meeting a report was presented which indicated that four major points, including the southern tri-point, had been monumented (NPO 70).

(iv) The Demarcation Exercise, 1988 to 1990

16.49 The technical operation of demarcation was carried out by IGN in the period 1988 to 1990 and the results were reported to the Seventh Conference of the Heads of State in 1990.[261] The relevant part of the Minutes of the Conference records the decision of the Heads of State as follows:

> "Decision No. 1 : Report on the Boundary demarcation Exercise
>
> Faithful to the principle and objectives of the OAU and the U.N. Charter;
>
> Conscious of the traditional bonds uniting the riperian [*sic*] people of Lake Chad;
>
> Firmly determined to strengthen peace and security in the sub-region;
>
> Considering that as at 12th February, 1990, the Contractor IGN France International had monumented 7 major points and 68 intermediary beacons;
>
> Considering that after examining all the documents and the field work, the experts have accepted the work executed;
>
> The Heads of State decided:
>
> - to take note of the satisfactory achievement of the International Boundary demarcation Exercise for Cameroon, Niger, Nigeria and Chad in the Lake and direct the Commissioners to get the appropriate documents ready within three months and sign them on behalf of their respective countries."

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[261] Annex NC-M 282 contains the relevant parts of the Minutes. A copy of the full set of Minutes has been lodged with the Court.

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

> "We the undersigned,
>
> experts from the Member States of the CBLT/LCBC Cameroon, Niger, Nigeria and Chad), duly designated by our States to supervise and monitor the work on the demarcation of our boundaries in accordance with resolution No. 2 adopted by our Governments at their Sixth Summit Meeting held in N'Djamena on 28 and 29 October 1987.
>
> On the one hand,
>
> and IGN-France International (IGN-FI), holder of contract No. CBLT/MO2/88, approved on 26 May 1988, for the delimitation of the boundaries between the territories of Cameroon, Niger, Nigeria and Chad.
>
> On the other,
>
> have proceeded, from 13 June 1988 to 12 February 1990, to effect the delimitation and marking-out of the said boundaries and submit to the approval of the respective Governments the following description of the boundaries that we marked out.
>
> *Chapter I. General Considerations*
>
> 1.1 *Nature of the work*
>
> The work consisted of a faithful reconstitution, on the ground, of the indications defining the course of the inter-State boundaries, as given in the agreements, treaties, exchanges of notes, conventions and maps currently in force.
>
> 1.2 *Course of the boundary*
>
> The boundary line is drawn as a straight line from one beacon to another, and marked out on the ground by major beacons linked to each other by intermediate beacons, erected every 5 kilometres or so.

Seven major beacons have been set up at the points defined in the texts and maps in force.

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

...

Chapter VI. Cameroon-Nigeria Boundary in Lake Chad

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

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

(2) the report of the meeting of experts relating to the determination of the co-ordinates of the mouth of the El-Beid (Ebedji), which was held on 15 and 16 September 1988 in N'Djamena, Chad. The co-ordinates of the mouth of the El-Beid (Ebedji) as defined by the experts were approved by the national Commissioners in their resolution No. 2 relating to the demarcation of the boundaries in Lake Chad, during the 36th Session of the Lake Chad Basin Commission meeting in Maroua, Cameroon, from 1 to 2 December 1988.

This section of the boundary, which is 61,700.36 metres long, runs in a straight line between major beacon II (tripoint Cameroon-Nigeria-Chad), type A, located at longitude 14° 04' 59"9999 and latitude 13° 05' 00"0001, and major beacon V (bipoint Cameroon-Nigeria at the mouth of El-Beid (or Ebedji)), type A, located at longitude 14° 12' 11"7005 and latitude 12° 32' 17" 4013, following the azimuth 186.4506 grad observed from major beacon II."

16.51 It is significant that the first of the passages quoted above refers to "the delimitation of the boundaries" and also "the delimitation and marking-out of the said boundaries". Of particular significance is the definition of the "nature of the

work". The work thus consisted of "a faithful reconstitution, on the ground, of the indications defining the course of the inter-State boundaries, as given in the agreements, treaties, exchanges of notes, conventions and maps currently in force". Those formulations confirm that the work involved *both* delimitation *and* demarcation. They also indicate that the work necessarily involved decisions of a legal character concerning the interpretation and application of various international agreements.

(v) The Sequel to the Demarcation Exercise

16.52 In November 1990, at their 39th Meeting, the Commissioners resolved that the national experts should go back to the field to complete some specific jobs relating to two intermediate beacons (p. 701 of NPO 74). In the course of the discussions of the relevant subcommission, the position of the Nigerian delegation as recorded in the Minutes was as follows (at page 708 of NPO 74):

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

In consequence, Nigeria refused to sign the Report of the experts on the beaconing. At a June 1991 meeting of experts, Nigeria rejected this resolution of the 39th Meeting (NC-M 283).

16.53 In August 1991 at Yaoundé, at the first meeting of Cameroonian and Nigerian experts on boundaries (not an LCBC meeting), the Nigerian experts explained that the delay in signing the "final documents" on the demarcation of Lake Chad had been due to certain technical clarifications still being sought (NPO 52). At the

second such meeting of experts in December 1991, the Nigerian delegation mentioned the irrelevance of the telegraph poles in Lake Chad, and it was recommended that the LCBC be contacted to arrange early completion of certain outstanding works which "should not delay the signing of the demarcation report by the Nigerian experts" (NPO 54).

16.54 At a meeting of LCBC experts in January 1992, Nigeria indicated that it was now ready to implement the resolution of the 39th Meeting and to sign the "report on demarcation" (NPO 75). The Commission noted the intention of the experts to implement the resolution by June 1992 (page 715 of NPO 75). At the 41st Session of the Commission in April 1993 (see extracts of Minutes at NC-M 284), it was reported that the experts had gone back to the field, finalized the technical aspects of the job and all signed the demarcation document. However, because of a dispute regarding the location of Beacon VI on the Chad/Cameroon boundary, the Chad Commissioner stated that he was unable to endorse that aspect of the work, and as a result of there being a lack of consensus, it was resolved that "the documents regarding the demarcation exercise" be signed by the Executive Secretary and made available to the Commissioners for presentation to their Governments so that the issue could be finalised at the next Summit.

16.55 At the third joint meeting of the national experts on boundaries, in August 1993, the Nigerian delegation declared that the outstanding works had been satisfactorily completed (NPO 55). However, the southern extremity connecting with the Ebeji River had been referred to the two countries by the LCBC.

16.56 The Minutes of the 41st Session of the Commission contain the decision to present the documents "relating to the border demarcation exercise" to the Heads of State and Government of the Member States "for a final decision" (NC-M 284, para. 90, p.13).

16.57 The Minutes of the Eighth Summit (NC-M 285)[262] of the Heads of State and Government (in 1994) record at p.13 Decision No. 5 concerning "Border demarcation and security in the Lake Chad basin area".

> "Faithful to the principle and objectives of the OAU and the United Nations Charter;
>
> Conscious of the traditional bonds uniting the riparian people of the Lake Chad;
>
> Firmly determined to strengthen and guarantee peace and security in the sub-region;
>
> Considering that the physical work on border demarcation has been fully completed and the technical document signed by the national experts and the Executive Secretariat;
>
> Considering the concern of the LCBC to ensure the social and economic development of the population living in the conventional basin;
>
> Considering the growing insecurity situation in the Lake Chad conventional basin area;
>
> Considering the strong will of member States to resolve this persistent problem of insecurity in the sub-region;
>
> The Heads of State decided:
>
> A. <u>Boundary demarcation</u>
>
> - to approve the technical document on the demarcation of the international boundaries of member States in the Lake Chad, as endorsed by the national experts and the Executive Secretariat of the LCBC.
>
> - that each country should adopt the document in accordance with its national laws.
>
> - that the document should be signed latest by the next summit of the Commission.

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[262] Annex NC-M 285 contains the relevant parts of the Minutes. The full set of Minutes appears at Annex NPO 77.

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

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

B. Security

- to immediately set up a joint security force with clear mandate as well as political and logistic support.

- that the force should have a structure of leadership that is rotational with defined mode of contribution of human and material resources.

- that Nigeria should provide the venue for experts meeting to work out the details of the nature, material and equipment required, funding, size and appropriate locations of the units."

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

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

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

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

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

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

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

The Heads of State decided:

- to defer discussions on the issue.

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

16.60 The position has not changed since the Ninth Summit.

(vi) Nigeria had a discretion in the Matter of Acceptance of the Decision of the Heads of State in 1994

16.61 The Nigerian Government has not seen fit to give approval to the technical outcome of the delimitation/demarcation exercise provisionally adopted in 1994. The Nigerian Government considers that the legal position is that each Member State of the LCBC had a discretion in the matter of acceptance of the provisional decision of the Heads of State.

16.62 In this context the following considerations militate in favour of this conclusion. In the first place, the voting principle operating in the LCBC is that of unanimity, as Article X of the Statute provides. Secondly, at the Ninth Summit in 1996 the Heads of State present decided to defer any decision on the adoption of the documents on boundary demarcation in view of the absence of Cameroon and Nigeria.

16.63 In passing it may be noted that the Decision No. 2 of 1996 indicates that the documents on "boundary demarcation" had not as yet been adopted.

16.64 Further considerations also buttress the Nigerian position. The tasks of boundary delimitation and demarcation do not form part of the normal functions of the LCBC

and, consequently, there is a strong presumption that unanimity is required and an equally strong presumption that a provisional decision is subject to a procedure of final and unanimous approval.

G. Conclusion

16.65 The review of the process of delimitation in Lake Chad carried out in the main body of this Chapter can only lead to the conclusion that the work of the LCBC did not produce a result which was final and legally binding on Nigeria.

CHAPTER 17

THE BASES OF NIGERIA'S TITLE TO DARAK AND THE OTHER LAKE CHAD VILLAGES: HISTORICAL CONSOLIDATION AND ACQUIESCENCE

A. Introduction: The Bases of the Nigerian Title

17.1 The three bases of the Nigerian claim to title over Darak and the associated villages are as follows:

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

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

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

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

17.3 The villages in Lake Chad which are in dispute between Nigeria and Cameroon are as follows:

1 Aisa Kura
2 Ba shakka
3 Chika'a
4 Darak
5 Darak Gana
6 Doron Liman
7 Doron Mallam
8 Dororoya
9 Fagge
10 Garin Wanzam
11 Gorea Changi
12 Gorea Gutun
13 Jribrillaram
14 Kafuram

15 Kamunna
16 Kanumburi
17 Karakaya
18 Kasuram Mareya
19 Katti Kime
20 Kirta Wulgo
21 Koloram
22 Logon Labi
23 Loko Naira
24 Mukdala
25 Murdas
26 Naga'a
27 Naira
28 Nimeri
29 Njia Buniba
30 Ramin Dorinna
31 Sabon Tumbu
32 Sagir
33 Sokotoram.

17.4 These villages have various characteristics in common, have a very similar economy, and form part of the Ngala Local Government Area ("LGA") within Borno State, which comprises a part of the Federal Republic of Nigeria. The administrative centre for these islands is Darak.

17.5 Whilst some of the villages lie to the West or South of the provisional demarcation of Lake Chad boundaries carried out by IGN, most of the villages lie to the East. The legal relevance of the IGN demarcation has been assessed in the previous Chapter, and it is a basic premise of the present Chapter that title to the named villages vests in Nigeria independently both of the present status of the demarcation as such, and of the incidence of the provisional alignment.

17.6 In this general context it is to be recalled that when the operation of the principle of *uti possidetis* produces no decisive outcome, the conduct of the parties is "of particular importance", as the Chamber of the Court pointed out in the *Land, Island*

and Maritime Dispute case.[263] As the Nigerian Government has had occasion to point out already, the Chamber in several significant passages places emphasis on the qualifying role of acquiescence and recognition in relation to the principle of *uti possidetis*.[264]

17.7 The villages in the group are located on islands, or former islands, on the bed of Lake Chad - see Chapters 13 and 14. The dates of foundation of the majority of the villages are as follows:

Katti Kime	1959
Sagir	1961
Fagge	1963
Gorea Changi	1963
Chika'a	1965
Dororoya	1968
Garin Wanzam	1968
Kirta Wulgo	1968
Darak	1972
Gorea Gutun	1973
Kamunna	1973
Mukdala	1973
Naira	1973
Ramin Dorinna	1973
Doron Liman	1976
Koloram	1976
Nimeri	1976
Jribrillaram	1978
Naga'a	1978
Kafuram	1979
Sabon Tumbu	1980
Darak Gana	1983
Doron Mallam	1983
Murdas	1986

17.8 It thus emerges that, out of these nineteen villages, the longest existing village (Katti Kime) was founded forty years ago and the newest settlement (Murdas) was

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263 I.C.J. Reports, 1992, page 565, para.345

264 See Chapter 10 paras. 10.6 *et seq.*

established thirteen years ago. The majority of these villages have been in existence for between twenty and forty years.

17.9 These are not insignificant settlements, although some are relatively small. The sizes of the total population of the majority of these villages are as follows:

Darak	20,000
Jribrillaram	8,000
Kirta Wulgo	6,000
Koloram	5,000
Naga'a	4,000
Katti Kime	4,000
Chika'a	3,000
Sabon Tumbu	2,000
Garin Wanzam	2,000
Doron Liman	1,000
Gorea Changi	550
Fagge	530
Gorea Gutun	500
Ramin Dorinna	500
Sagir	500
Doron Mallam	400
Darak Gana	400
Kafuram	300
Murdas	300
Nimeri	200
Kamunna	120
Mukdala	100
Naira	100
Dororoya	100

17.10 The activities of the fishermen and farmers who founded these communities were open and peaceful, and the process of administration by Ngala L.G.A., which followed the process of settlement, was equally open and peaceful.

17.11 At no stage prior to the present proceedings before the Court did the Government of Cameroon make any reservation or protest.

17.12 The Government of Cameroon began the present proceedings by an *Application* filed on 29 March 1994. This *Application* defined the "subject of the dispute" as follows:

> "1. The dispute relates essentially to the question of sovereignty over the Bakassi Peninsula, a territory of approximately 665 sq km lying between Cross River and the Rio del Rey, the Republic of Cameroon's title to which is contested by the Federal Republic of Nigeria. In so doing, the Government of the Republic of Nigeria is contesting the long-established frontier between the two countries.
>
> 2. Since the end of 1993, this contestation has taken the form of an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities in the Bakassi Peninsula. This has resulted in great prejudice to the Republic of Cameroon, for which the Court is respectfully requested to order reparation.
>
> 3. Moreover, the maritime boundary between the two States has been the subject of several delimitation agreements, from the Agreement of 11 March 1913 to the Maroua Declaration of 1 June 1975. However, this delimitation has remained a partial one and, despite many attempts to complete it, the two parties have been unable to do so. In order to avoid further incidents between the two countries, the Republic of Cameroon requests the Court to determine the course of the maritime boundary between the two States beyond the line fixed in 1975."

17.13 Consequently, there is no reference to any issues relating to the Lake Chad region. The first reference to the Lake Chad region occurs in the Cameroonian Note to Nigeria dated 11 April 1994 (NC-M 287) which reads (in material part) as follows:

> "The Ministry of External Relations of the Republic of Cameroon presents its compliments to the Embassy of the Federal Republic of Nigeria in Yaoundé, and has the honour to draw the attention of the Embassy to the following.
>
> Nigerian nationals have occupied the Cameroonian locality known as Kontcha (Faro and Deo Division) in the Adamaoua Province of Cameroon. The Cameroonian authorities have observed that in the

> past, Nigerian military occupation of Cameroonian territory generally followed the illegal occupation of parts of her territory by Nigerian citizens. *The Nigerian military occupation of Darak* and parts of the Bakassi Peninsula are cases in point." (emphasis added)

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

> "1. This aspect of the dispute relates essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad - located between the Cameroon-Nigeria frontier and the Cameroon-Chad frontier and extending to around the middle of the remaining waters - the Republic of Cameroon's title to which is contested by the Federal Republic of Nigeria; and to the course of the boundary between the Republic of Cameroon and the Federal Republic of Nigeria, from Lake Chad to the sea. By its action, the government of the Federal Republic of Nigeria is once again contesting the long-established frontier between the two countries, which has recently been defined in a multilateral context.
>
> *That contestation initially took the form of a massive introduction of Nigerian nationals into the disputed area, followed by an introduction of Nigerian security forces,* effected prior to the official statement of its claim by the Government of the Federal Republic of Nigeria quite recently, for the first time, in a Note dated 14 April 1994. It is a decision on the title to that territory and sovereignty over it that the Court is respectfully requested to give at the same time as its decision on the requests submitted by the Republic of Cameroon in its initial Application dated 29 March 1994."
>
> (emphasis added)

17.15 The evidence available shows that the Nigerian villages have, in greater part, existed for periods of between 20 and 40 years. The terrain is flat and open and the activities in the Nigerian villages have been public and unconcealed. The Cameroonian *Additional Application* refers to "a massive introduction of Nigerian

nationals into the disputed area". The conclusion which necessarily presents itself is that the Government of Cameroon had for decades maintained a silence in face of the long established Nigerian presence.

B. Historical Consolidation of Title: The Legal Concept

17.16 The elements of the legal concept of historical consolidation of title have been elaborated upon earlier in Chapter 10, paragraphs 10.21 to 10.24.

C. The Specific Components of the Historical Consolidation of Nigerian Title

(i) The Attitude and Affiliations of the Population of Darak and the other Lake Chad Villages

17.17 The legal relevance of the attitude and affiliations of the population in the territory in question has been canvassed already in Chapter 10 of the present *Counter-Memorial*, paragraphs 10.27 to 10.30. The inhabitants of these villages regard themselves as Nigerians. The contemporaneous notes which recorded interviews with the *bulamas* (headmen) of the villages in May 1998 show the significant sense of allegiance to Nigeria by the people of the area. These are included as an Appendix to this Chapter.

17.18 Even those residents who are not Nigerians by origin accept Nigerian authority and pay community tax to Nigeria without complaint, as can be seen in the interviews with the Bulamas of Doron Liman, Katti Kime, Darak, Kafuram, Sagir and Kirta Wulgo. Reflecting the allegiance of the population, the bulamas of the villages recognise Nigerian authority.

17.19 The majority of the residents come from Nigerian tribes, of which the Kanuri and Hausa form the major components.

(ii) Historical Associations

17.20 The history of this area has been described in detail in Chapter 12 of this *Counter-Memorial*. The Emirate of Borno traces its history back to 1386, when a Kanuri branch of the Kanem empire broke away and moved to the area to the South and West of Lake Chad. This administration had an organised political and social structure, which enabled it to become both powerful and successful.

17.21 By 1800, the previously great empire of Kanem had dwindled in stature and had become a province of the Emirate of Bornu, the confines of which stretched all around Lake Chad. During the first half of the nineteenth century, as a result of struggles and wars with the neighbouring Fulani empire to the West of Borno, the Kanuri and Fulani peoples became inter-mingled. The Emirate of Bornu still remained as an independent entity, however, and preserved its traditional Kanuri system of organisation, with the Shehu as its political leader. The strong allegiance of the people of this area has always been, and still remains, to the Shehu.

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

17.23 The area, including the waters of Lake Chad, has been within the realm and rule of the Emirate of Bornu for a period of over 500 years until the arrival of the

Imperial Powers at the turn of this century. Their preservation of the system of the traditional rulers, with the Shehu as a still powerful leader, has meant that the traditional social and political system, and the concept of the Emirate of Bornu, have also remained.

(iii) The Exercise of Authority by Traditional Rulers

17.24 Pre-colonial Africa did not consist of the type of European Nation States existing within fixed borders. There were a number of empires, emirates and kingdoms identifiable in many areas of the Continent. These empires, emirates and kingdoms were governments in their own right with sovereign rights. This was the case with the Shehu of Borno, who ruled the Emirate of Borno. The traditional rulers still retain an important position in Nigerian Society and within the social structure of the Borno/Lake Chad region.

17.25 The Shehu of Borno is the official head of a sophisticated system of administration, and chairman of the Emirate Council. This is a hereditary position, although the selection is made by the Emirate Council and the Shehu is approved and crowned by the State Government.

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

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

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

17.29 Since Independence the traditional rulers have had an important role in the constitution of the country, in administration, maintaining peace and civil order, and the collection of taxes. Under recent constitutional change, this role has been reduced, but nonetheless there is still reliance on the Shehu and the traditional rulers for the administration of the people of this area and the collection of their taxes, and the allegiance of the local people is still primarily to the Shehu.

(iv) Acts of Administration by the Federal Government of Nigeria and by Borno State

(a) The Evidential Sources

17.30 A major component in the process of historical consolidation is the evidence of peaceful possession and administration, consisting of acts involving "a manifestation of sovereignty" in respect of the Lake Chad villages (*cf. Minquiers and Ecrehos* case[265]), or "acts of such a character that they can be considered a manifestation of State authority" in respect of the villages.[266]

17.31 In the Judgment of the Chamber in the *Land, Island and Maritime Frontier Dispute* case, there is repeated reference to the requirement of "effective administration".[267]

17.32 The various types of evidence of administration by Nigeria will be reviewed in the sections following.

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265 I.C.J. Reports, 1953, pp. 58-59

266 *ibid, p.71*

267 I.C.J. Reports, 1992, pp. 418-19 (para. 96), 515 (para. 264)

(b) The Maintenance of Public Order

17.33 The contemporaneous notes (in the Appendix to this Chapter) show that the police station in Darak was established by the Federal Government. In addition to this, there is an army unit stationed in Darak (though it appears not to be permanent). There is also a police station at Kirta Wulgo.

17.34 There have, in the past, been a number of occasions when armed bandits from other countries, in particular from Chad, have harassed the Nigerian fishermen and villagers, extorting money and, in one or two cases, committing more serious acts of atrocity. It is usually the case that the small police unit stationed on Darak is under-equipped to deal with such a serious situation. Therefore the Chairman of Ngala LGA is contacted and he requests assistance from the Military Administrator of Borno State. The Military Administrator mobilises units from the 21st Armoured Brigade of the Nigerian Army, which is based at Maiduguri. These are sent to the area to act as peacekeepers, and protect the villagers and fishermen from further attack or harassment.

(c) Taxation

17.35 The Lake Chad villages all pay community tax (*Haraji*) to Ngala Local Government Area in Borno State. An extract from the Cash Book recording receipts for 1991 is at NC-M 288. Examples of Community Tax Receipts for 1991 are at NC-M 289. These records relate to the following villages:

Chika'a
Darak
Dororoya
Fagge
Garin Wanzam
Gorea Gutun
Kafuram

Katti Kime
Kirta Wulgo
Mukdala
Murdas
Naga'a
Njia Buniba
Ramin Dorinna
Sagir

17.36 The contemporaneous notes show that cattle tax is paid by the residents of the villages to the Borno State authorities.

17.37 The residents also pay an education levy. Extracts from the Education Cash Book and Receipts for 1991 are at NC-M 290. They relate to the following villages:

Chika'a
Darak
Kafuram
Kamunna
Kasuram Mareya
Katti Kime
Kirta Wulgo
Naira

17.38 There is an additional feature of the situation which is of considerable importance. At no time have the residents of these villages paid taxes of any kind to the authorities in Cameroon.

(d) House Assessment

17.39 The purchase of a local government guest house at Darak was preceded by a process of assessment by a committee organised (in 1995) by the Ngala Local Government Council of Borno State. The relevant document is at NC-M 291.

(e) Census Taking

17.40 The Nigerian National Census held a census in 1973 and 1991. Darak and the other villages in this area were enumerated as part of Wulgo Enumeration Area. The results of the 1991 census are at NC-M 292. These include returns for the following villages:

Chika'a
Darak
Darak Gana
Dororoya
Garin Wanzam
Jribrillaram
Kafuram
Kamunna
Katti Kime
Kirta Wulgo
Murdas
Naga'a
Nimeri
Ramin Dorinna
Sabon Tumbu.

(f) Development Administration

17.41 The Ngala Local Government Authority of Borno State has either provided assistance to the villages or has informed the village communities that assistance is available, for example, for the construction of wells.

17.42 Development assistance has been provided to the following villages:

Naga'a - a school, a clinic, a cement well, and provision of fertilizer and pesticides.

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

17.43 In 1997 the Ngala Local Government made a grant for the improvement of the road leading to the Katti Kime/Darak area (NC-M 293).

(g) The Appointment of Village Headmen

17.44 The appointment of the village headman *(bulama)* was traditionally within the remit of authority of the Shehu of Borno. More recently, although it remains part of the function of the Shehu or Lawan, the Military Administrator of Borno State has to give final approval, and he can appoint and dismiss a bulama as appropriate (see NC-M 294). Salaries of headmen are paid by the relevant local government authority.

(h) Public Education

17.45 The Ngala Local Government Authority has established primary schools in Chika'a, Naga'a, Darak, and Kirta Wulgo. The residents of Kafuram attend the school in Kirta Wulgo.

(i) Provision of Public Health

17.46 The Ngala Local Government Authority and Borno State have created a system of health care in the Lake Chad villages involving on-site provision of care and various forms of preventive medicine. Naga'a and Kirta Wulgo have their own clinics.

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

17.48 The Primary Health Care Department of Ngala Local Government Area provides a system of disease control and preventive medicine in the villages. The Health Post at Darak was the site of one of several dispensaries provided by the Ngala LGA (NC-M 296[268] and NC-M 297).

17.49 Reports of outbreaks of measles and whooping cough at Darak were responded to by appropriate action on the part of the authorities in Maiduguri (NC-M 298 to

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[268] Transcriptions of the manuscript documents contained in that and following Annexes have been made with spellings corrected.

NC-M 302). Requisitions were duly made for the provision of drugs and health assistance. In November 1994 a situation report referred to an outbreak of cholera in the villages of Darak, Chika'a, Naga'a and Sagir (NC-M 303).

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

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

17.52 Darak was the site of the Disease Control Unit set up in 1996 to cope with an outbreak of gastro-enteritis (NC-M 312).

17.53 There is a letter dated 24 November 1992 from Kirta Wulgo health clinic to the co-ordinator of the Health Care Department of Ngala Local Government concerning flood disasters. The manuscript note on the following page says "*the action on pipe line is for those in the Darrack areas for assistance*" (NC-M 313).

17.54 A letter dated 27 November 1992 from the Ngala Local Government Primary Health Department is headed "Situation Report on Flood Disaster in Darrak". It appears that there was an outbreak of disease after a flood in Darak. In fact, 15 people were injured when running from fast flowing water (NC-M 314).

17.55 There is a letter dated 3 August 1993 from Katti Kime Primary Health Care Department of Ngala Local Government authority to the co-ordinator for health care

reporting on the outbreak of measles. It lists the names and ages of children with measles in Katti Kime (NC-M 315).

17.56 There is a letter dated 25 August 1996 from Darrak Village unit to the District Head of Ngala L.G.A. concerning the outbreak of cholera in Chika'a and Naga'a and requesting help. This is followed by handwritten correspondence within the Local Government offices (NC-M 316).

(j) Environmental Sanitation

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

(k) General Powers of Administration

17.58 A letter dated 1 July 1996 from the Department of State Services of Ngala Local Government Authority to the Chairman states:

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

17.59 A letter dated 2 October 1996 from the Administration Department to the Chairman of the Local Government Authority states:

> "I wish to write and refer to the above subject matter [Request for Transport and Fuel Security Purposes at Lake Chad] and request for transport and fuel to enable the Local Government Security Secretary, the village head of Darrak, the Council representing Wulgo/Tuno Kalia and a member of the SSS on a fact finding mission on a matter relating to the security of the Local Government." (NC-M 320)

17.60 A letter dated 7 March 1997 from Borno State to Ngala Local Government Council states:

> "Report on Lawan of Darrak.
>
> I have been directed to request you to inform the village head of Darrak to see the Military Administrator through the Director General, Council Affairs ... on Monday 10th March 1997."

and there is a letter dated 7 March 1997 from Ngala Local Government to the village head of Darak requesting the same (NC-M 321).

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

17.62 A letter dated 18 September 1996 from Ngala Local Government Council to the district head of Ngala states:

> "I am directed to write ... and inform you of the earlier decision of the Security Committee Members to remove Bulama Dan Lantso, Bulama of Darrak" (NC-M 323).

(l) Licensing and Regulation of Fishing

17.63 The contemporaneous notes reveal that Ngala LGA licenses fishing in the area, including the villages. Both the Borno State Government and Ngala LGA provide fishing nets and equipment. In this context Ngala LGA supervises and regulates the fisheries. In co-operation with the police, measures are taken to deter and terminate the use of inappropriate fishing methods and, in particular, the illegal use of dumba (fishing barriers).

17.64 As a part of this policy Ngala LGA has created (in 1995) the Dumba Demolishing Committee (NC-M 324). These measures provoked legal action, or at least the threat of legal proceedings, by the Darak Co-operative Multipurpose Society Ltd (NC-M 325). It is to be noted that the proceedings envisaged would have been in the Nigerian legal system.

17.65 In January 1996 the same legal representatives petitioned the Military Governor of Borno State on the same subject (NC-M 326).

(m) The Regulation of Trading

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

(n) Registration of Electors

17.67 A substantial proportion of the population in the Lake Chad villages are registered as electors for the purposes of Nigerian legislation. There is no evidence that the inhabitants vote in Cameroonian elections.

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

17.69 In the 1993 Local Government Election, Mohammed Lawan was elected as councillor for the ward. In the 1996 and 1997 Local Government Election, Jidda Khurso Mohammed was elected as councillor. His Certificate of Election is also at NC-M 328.

17.70 In the 1997/98 Local Government Elections, Mohammed Zainami was elected councillor. For the 1998 election, Darak was made a separate electoral ward. Mohammed Zainami was re-elected as councillor.

(v) Conclusion : the Elements of Historical Consolidation

17.71 The various elements constituting the process of historical consolidation of title can now be summarised:

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

Second: The historical associations of the region constitute strong evidence of the gravitational pull, in geopolitical and economic terms, of the Borno

Emirate (and its successors) in relation to the shores of Lake Chad and, more especially, the southern sector.

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

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

17.72 To these elements in the process of historical consolidation the significant element of Cameroonian acquiescence must be added. This will be examined in the following section.

D. The Acquiescence of Cameroon in face of the Peaceful Exercise of Sovereignty by Nigeria

(i) The Legal Relevance of Acquiescence

17.73 Acquiescence constitutes a major element in the process of historical consolidation of title. In consequence, the first, but by no means the only, role of acquiescence, is played alongside the other elements of historical consolidation reviewed above.

17.74 The second, and independent, role of acquiescence is that of confirming a title on the basis of the peaceful possession of the territory in dispute, that is to say, the effective administration of the Lake Chad villages by Nigeria, acting as sovereign, together with an absence of protest on the part of Cameroon. In this connection a passage from the Judgment of the Chamber in the *Land, Island and Maritime Frontier Dispute* provides a general paradigm (see Chapter 10, para. 10.124).

17.75 In the third place, acquiescence may be characterised as the main component of title, that is, providing the essence and very foundation of title rather than a confirmation of a title logically anterior to and independent of the process of acquiescence. There can be no doubt that in appropriate conditions a tribunal can properly recognise a title based upon tacit consent or acquiescence.

17.76 The independent role of acquiescence as a source of title is acknowledged in many passages in the Judgment of the Chamber in the *Case Concerning the Land, Island and Maritime Frontier Dispute*.[269] The pertinent passages include the following paras., 67, 80, 81, 169, 176, 280, 284, 341, 345, 364 and 368. The following passage expresses the role of tacit consent with clarity:

> "The Chamber considers that this protest of Honduras, coming after a long history of acts of sovereignty by El Salvador in Meanguera, was made too late to affect the presumption of acquiescence on the part of Honduras. The conduct of Honduras, vis-à-vis earlier *effectivités* reveals an admission, recognition, acquiescence or other form of tacit consent to the situation. Furthermore, Honduras has laid before the Chamber a bulky and impressive list of material relied on to show Honduran *effectivités* relating to the whole of the area in litigation, but fails in that material to advance any proof of its presence on the island of Meanguera."[270]

17.77 It may also be recalled that the Chamber in the *Case Concerning the Frontier Dispute* (Burkina Faso/Republic of Mali) accepted that acquiescence, if proved, would be conclusive of the main issue. In the words of the Chamber:

> "The Parties have expounded at length the origins of the frontier dispute which is presently before the Chamber. Since however the line of the frontier has to be defined as it existed in the years 1959-1960, and the Parties agree that no legal validity attaches to any subsequent acts of administration which may have been performed by either of them on the territory of the other, a review of the frontier

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[269] I.C.J. Reports, 1992, p. 351

[270] I.C.J. Reports, 1992, p. 577, para. 364

> incidents and the efforts made to bring the dispute to an end would hardly be pertinent. Nevertheless, one Burkinabe argument warrants particular attention. This argument is based on the conduct of the Malian Government during the negotiations which led to agreements being concluded for the delimitation of the 900 or 1,022 kilometres of frontier which are no longer in dispute, and on that Government's attitude towards the work of a Mediation Commission of the Organization of African Unity which sat in 1975. According to Burkina Faso, Mali accepted as binding the solution to the dispute outlined by that Commission. *Since this argument from acquiescence would, if correct, make it unnecessary to endeavour to establish the frontier inherited from the colonial period, it should be dealt with at the outset as a preliminary question.*"[271] (emphasis added)

(ii) The Legal Position

17.78 The legal position of Nigeria can be summarised as follows:

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

(2) At no stage prior to these proceedings did Cameroon make any protest or claim relating to the Lake Chad villages presently in issue.

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

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

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[271] I.C.J. Reports, 1986, p. 570, para. 34

17.79 The evidence of Nigerian peaceful possession had been reviewed extensively in the previous section of the present Chapter. The Cameroonian incursion of 1987 was not only late in the day but does not appear to have been *à titre de souverain*. In any event it was resisted and the Cameroon authorities did not persist.

17.80 The interviews with local chiefs show a general absence of Cameroonian activity. On only two occasions did a village headman make any reference to interference by gendarmes from Cameroon, in Mukdala and Kafuram. In these two interviews the headmen said that the gendarmes were informed that the village was Nigerian, after which the Cameroonians left. In all the other interviews no reference was made to Cameroonian visits of any kind.

17.81 The treatment of the dispute in the Cameroonian *Memorial* is revealing in several significant respects: see pages 587-90, paras. 6.81-6.89. In the first place, no information is given relating to any Cameroonian presence or administration in the region either in 1987 or before or after 1987. No documents are cited and no administrative acts are referred to.

17.82 The key evidence of Cameroonian acquiescence lies in the silence of Cameroon prior to the Cameroonian Note to Nigeria dated 11 April 1994 (see above, para. 17.13). Subsequently the issue was taken up in the *Additional Application* introduced by the Government of Cameroon. This refers (in para. 11) to the "new dispute".

17.83 This "new dispute" was not referred to in the original *Application* filed on 29 March 1994.

17.84 This picture is confirmed by the content of the Cameroonian *Memorial*. The relevant passage is as follows:

> "La République du Cameroun a adressé de nombreuses protestations au gouvernement de Lagos. Celles-ci sont jusqu'à ce jour restées sans effet. A titre d'exemple, la note de protestation du 21 avril 1994 concerne la ville de Darak, qui est située à 35 km de la frontière nigéro-camerounaise internationalement reconnue et qui a toujours fait partie intégrante du Cameroun. Son occupation depuis 1987 et les allégations diplomatiques nigérianes selon lesquelles Darak serait située en territoire nigérian provoque les protestations les plus énergiques du Ministre des Affaires extérieures camerounais (Annexe M.C. 357)." (*Memorial*, para. 6.87)[272]

17.85 No details of the "numerous protests" are given and only one protest is referred to specifically: that of 21 April 1994, after Cameroon filed its first *Application*. The reader of the *Memorial* must find it strange that, if the allegations of Nigerian intrusions and misdeeds were justified, Cameroon failed to make any protest in 1987, failed to include the issue in its Application and finally invoked the issue of Lake Chad only in April 1994.

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[272] "The Republic of Cameroon has lodged numerous protests with the Nigerian Government, so far to no avail. For example, the protest note of 21 April 1994 concerns the town of Darak, which is located 35 km from the internationally recognized frontier between Nigeria and Cameroon and has always been an integral part of Cameroon. Its occupation since 1987 and the Nigerian diplomatic assertions that Darak lies in Nigerian territory draw the most forceful protests from Cameroon's Minister of External Relations (Annex M.C. 357)."

Appendix to Chapter 17
CONTEMPORANEOUS ACCOUNTS

Introduction

This Appendix is a collection of contemporaneous notes on villages in the disputed area of Lake Chad made (except in the case of the four villages mentioned below) by Christopher Hackford and Clive Schofield, members of the Federal Government of Nigeria's legal team, during a visit to the area in May 1998. They are based on interviews conducted with the local Chiefs (with the assistance of translators), eye-witness accounts and GPS recordings taken in the centre of each settlement.

Four villages (Doron Mallam, Jribrillaram, Sabon Tumbu and Koloram) were visited in the week commencing 18 May 1998 by a team of members of Borno State Government including surveyors and local government officials. Readings were taken using a GPS Magellan Receiver and interviews were conducted with the Bulamas of the four villages. These villages had not previously been visited by representatives of the Federal Government of Nigeria's foreign legal team, due to the difficulties of accessibility by four wheel drive vehicle or by boat.

The villages listed below were not visited by representatives of the Federal Government of Nigeria's legal team in May 1998, because the area was perceived as too dangerous as a result of an invasion of islands by Chadian bandits. The team was warned about this threat by Nigerian fishermen on the Lake. The GPS readings for these villages were taken by surveyors from Borno State Government at a later date. Readings were taken using a GPS Magellan Receiver and interviews were conducted with the Bulamas of the villages. However, the Borno team was intercepted on its journey by Chadian bandits and the notes of the interviews were destroyed.

Aisa Kura	Karakaya	Loko Naira
Ba shakka	Kasuram Mareya	Njia Buniba
Kanumburi	Logon Labi	Sokotoram
Nimeri		

MURDAS

The village of Murdas is situated at co-ordinates 12°46.696' North, 14°12.688' East.

The village was founded approximately 12 years ago by Bulama Hassana, who came from Abasani in Cameroon. The current Bulama is called Housseni Hamma, who is about 60 years old. The village was founded primarily for fishing, and there was evidence of boats in the village. However, the Lake has receded substantially from the village over a number of years, with the result that the population are no longer able to carry out any fishing. Instead the very fertile soil around the village is used for agricultural purposes, in particular the growing of maize and beans: the whole population is involved in farming. The villagers obtain their drinking water from a well which they have dug in the village.

Aside from the substantial agriculture surrounding the village, there was also evidence of horses, cattle, goats and donkeys (although these may also belong to the nomads who were prevalent in the area).

The buildings in Murdas are predominantly thatched constructions, although there were also some mud huts with grass roofs.

There are approximately 300 people in the village, of whom 200 are adult males. The principal ethnics groups of the village are Kanuri, Shuwa and Hausa. The villagers pay and have always paid community tax and cattle tax to Ngala Local Government Authority.

There has never been any dispute with Cameroon.

MUKDALA

This village is situated at co-ordinates 12°46.358' North, 14°14.873' East.

The village is also known as "Haile Kacha", and as "Bulakilakachi".

It was founded approximately 25 years ago for the purposes of farming, by a man called Adamou Adamkatcho, a Nigerian who had moved from Nigeria to Cameroon, before coming to the area and founding Mukdala. The current Bulama is called Mohammed Adamo, who was approximately 30 years old.

Mukdala is a very small village with a population of approximately 100 adults, of whom there were 57 men. They are all farmers who work in the fields surrounding the village. The predominant ethnic group are the Shuwa Arabs although there are also Kanuri, Kotoko and Hausa. The people pay community and cattle tax to Ngala Local Government Authority, as they have always done. They all regard themselves as Nigerians.

The Lake does come up near the village during the wet season, and then a number of the villagers carry out some fishing, but for the most part this is a permanent settlement surrounded by agricultural land. The village is small and predominantly contains grass huts, although there are a few mud huts with thatched roofs. A well has been built by the community in order to obtain drinking water.

The only conflict with Cameroon took place about nine years ago, when armed Cameroonian soldiers came into the village and claimed that it was a Cameroonian village. The villagers, however, informed the Cameroonians that it was a Nigerian village, after which the Cameroonians left the village and never returned.

CHIKA'A

Chika'a is a substantial small town at co-ordinates 12°46.992' North, 14°16.423' East.

Chika'a was allegedly found 33 years ago by Bulama Dan Dauda Sulaman who came from Wulgo in Nigeria. It was founded on a small island for the purposes of fishing. The name *Chika'a* means "fill up" (i.e. that the waters be full of fish). The current Bulama is Mohammed Wanzan, who is 68 years.

This large, very permanent settlement contains both grass and mud huts. Corrugated iron was used for roofs and doors for some of the buildings. There was a large market place, but it was not active on the day of our visit. There was also a dispensary, with a number of medications available for purchase.

There are mobile medical visits organised by the Ngala Local Government Authority. The children attend school at Naga'a, which is situated nearby. There is also a well which was built by the villagers. Aside from farming and fishing, which are the principal occupations of the villagers, there was evidence of petty trading in food stuffs, agricultural products and other miscellaneous provisions (e.g. washing powder etc.).

The approximate population of the settlement is 3,000, of which 2,000 are adult males. The largest ethnic tribe in the village is Hausa, but Kanuri, Shuwa, Kotoko, Kanembu and Fulani are all represented.

The people of Chika'a pay community tax and cattle tax to Ngala Local Government Authority, and have never paid it to any other authority.

The population are all Nigerians, and they have never had a dispute with Cameroon. The Bulama of this village had very strong feelings about the boundary, and claimed to know where it lay - on an island off Hadidi. The Bulama also said that they were Nigerians, they

had always been Nigerians and they wanted to remain Nigerians. They said that they would fight to remain a Nigerian village.

NAGA'A

Naga'a is another large settlement situated at co-ordinates 12°46.120' North, 14°17.896' East.

It was founded 20 years ago by Bulama Edriza, a Nigerian who had moved to Cameroon and from there moved to found Naga'a for the purposes of farming. *Naga'a* means "plain, unsettled, fertile land". The current Bulama is Boka Gouja, who is 52 years old.

The Local Government Authority has provided a school, a clinic and a cement well. The people have also built their own mosque, a Jummat mosque, which hosts Friday prayers for the muslim community.

The buildings in the village were principally built of grass and mud, but there was also use of corrugated iron, notably in the construction of the mosque. There was a security gate at the entrance to the village, which was manned by a security guard in Nigerian uniform.

The soil around Naga'a is very fertile, and Ngala Local Government Authority has provided the villagers with fertilizer and pesticides to assist in their farming. The principal occupation of the villagers is farming, although when the waters are high a number do also carry out fishing. Small-scale trading in fish and foodstuffs also takes place.

The estimated population is approximately 4,000, composed of Kanuri, Shuwa, Kotoko, Hausa and Ibo. The Shuwa are the largest ethnic group in the settlement.

The people of Naga'a pay community and cattle tax to Ngala Local Government Authority, and have always done so. The people are all Nigerians and have never had a dispute with Cameroon.

DORON LIMAN

Doron Liman is a small village situated at co-ordinates 12°47.532' North, 14°18.611' East.

Doron Liman was founded 22 years ago by Bulama Liman from Sokoto, in north-west Nigeria, principally for fishing. *Doron Liman* means the "island of Liman". The current Bulama is Bulama Mustafa, who is 45 years old.

The community in Doron Liman have built their own well, but also take water from the Lake when the water level rises and reaches near to the village. The principal occupation most of the year is farming, although some fishing is undertaken during the wet season, and trading in crops and fish takes place. The villagers receive no government assistance with the farming but have been told that if they have problems they should report to Ngala Local Government Authority, which they have not yet done.

We were informed that the population of the settlement was 1,000. The population consists principally of the Kotoko tribe (who come from Mali) but also Kanuri, Hausa and some Sara from Chad. The village seemed relatively deserted during our visit, but this was apparently due to the fact that a large number of people had gone to Katti Kime for fishing. The houses were grass huts, and there did not appear to be any mud huts. There was however some use of corrugated iron and there were also a number of boats in the village.

The people pay community and cattle tax to the village head of Darak, who passes it on to the Ngala Local Government Authority. This has always been the situation since the founding of the settlement.

In addition to the Malians, who are the largest group, and the Nigerians, there are a few Cameroonians and Chadians in the village, all of whom are happy to pay tax to Nigeria and have always done so without problem. There has never been a dispute with Cameroon.

GOREA CHANGI

Gorea Changi is a relatively large settlement situated at co-ordinates 12°47.672' North, 14°19.998' East.

It was founded approximately 35 years ago by Alhaji Ahmed, who came from Cameroon. He later migrated back to Cameroon, but the Nigerians, who had joined him at the settlement, remained. The village is named *Gorea Changi* after a white man called Changi (?) who visited this area.

The current Bulama is called Unus Adam and is approximately 50 years old.

Ngala Local Government Authority helped the community to build a well approximately ten years ago. The houses are predominately constructed from grass, although there were a few built of mud, and some corrugated iron was used.

There are approximately 550 adult males registered for election in the village, and a further 500 women and children. The main ethnic composition is Shuwa, but Kanuri, Kotoko, Kanembu, Fulani and Hausa are also present. Aside from farming, which is the major occupation of the population of the village, some also occupy themselves with fishing and trading.

People pay community and cattle tax to the village head of Darak, who pays it on to Ngala Local Government Authority. This has always been the case, and even the founder, Alhaji Ahmed, paid taxes to Nigeria, although he came from Cameroon. They are all Nigerians and have never had a dispute with Cameroon.

KATTI KIME

Katti Kime is a substantial settlement on the edge of the current Lake at co-ordinates 12°49.615' North, 14°20.117' East.

Katti Kime is split into two villages: Katti Kime Kora is the large commercial and harbour centre of the town, while Katti Kime Gana is the smaller residential area.

Katti Kime was apparently founded in the year of the eclipse - 1959, nearly 40 years ago. It was founded by a man called Alhaji Abdullahi, who came from Wulgo in Nigeria. It was founded for the purposes of fishing, but named Katti Kime after the red soil of the island.

For four months of the year, Katti Kime Kora is flooded, and the water reaches approximately one metre up the sides of the buildings. During these four months the entire population lives in Katti Kime Gana, or disperses to other settlements in the area.

The local community have built a well to supply drinking water.

At the last census (1991) there were some 4,000 people in the settlement, approximately half of whom were adult males. The population is made up of many of the ethnic tribes in Nigeria, but the majority are Kanuri. The population occupies itself principally with farming and fishing, although there is also some trading in foodstuffs and fish.

The population pays community tax and animal tax to the village head of Darak, who pays this on to Ngala Local Government Authority. This has always been the case since the settlement was founded.

The majority of the population are Nigerian, although there are approximately 10 Cameroonians, 10 Chadians, 20 citizens of Niger and 50 Malians. All these "aliens" pay tax to Nigeria and are happy to do so. There is no dispute either amongst the foreign population in the settlement or with Cameroon as a whole, nor has there ever been a dispute.

DARAK

Darak is a substantial town on an island in Lake Chad situated at co-ordinates 12°52.648' North, 14°18.530' East.

Darak was founded 26 years ago, in 1972, although the island had been visited a number of times by fishermen before then. It was settled by Bulama Yahia, who originated from Bodari, in Marte Local Government Authority, Borno State, Nigeria. It was founded as a fishing settlement. The name *Darak* means "direct", which refers to the wish of the people that the wind and the current of the water would direct the fish to them.

The Nigerian Federal Government has established a police station, an army unit, a customs and immigration post and State Security post on the island. In addition, six years ago, Ngala Local Government Authority began providing mobile services, including a clinic, drugs and pesticides for farming purposes. A school was also established by the Local Government Authority about five years ago, and a well was built approximately ten years ago. The Local Government Authority and Borno State Government also assist the community in improving seed varieties, providing pesticides and fertilizer for agriculture and providing nets for fishing. Ngala Local Government Authority also maintains the water passage between Katti Kime and Darak by clearing it of plant-life in order to ensure that it remains navigable by boat at all times.

Darak, in addition to the main town, has a small harbour area at the Lake shore. This is flooded annually and the people move into the town proper. On occasion the town itself is liable to flooding. In such a scenario, the Borno State and Ngala Local Government Authority assist by sending bulldozers to help build dykes and repair flood damage.

The population is approximately 20,000, consisting of 15,000 adults and 5,000 children. Members of most of Nigeria's diverse tribes live in the town, but the largest contingent are the Hausa tribe. After the initial settlement, the population grew rapidly as people from Wulgo and Kirta Wulgo moved to Darak to fish.

The population pay community tax and cattle tax to Ngala Local Government Authority, and also pay licences for fishing canoes to Borno State Government. They have never been required to pay taxes to any other authority, or to seek licences from any other body.

The principal activity of the population is fishing and farming, and the fishing community is substantial. They farm rice, maize, sweet potatoes and cassava. They also trade in fish and agricultural products, as well as textiles and other miscellaneous provisions. They trade as far afield as Maiduguri.

The villagers are predominately Nigerians, although there are a few Cameroonians, Ghanians and Malians in the settlement. They all pay taxes to the two ruling Bulamas, Mustafa and Isa. The different nationalities co-exist peacefully in the settlement.

The town is set out on a street pattern, and consists of compact houses, mainly built of mud although there are some of grass, which are closely situated along the streets. There are many well-established trees, and the town also contains a school and market area. There are many shops, and most items are available to buy, including washing powder and toilet paper etc. There are also barbers, hat shops and similar specialist shops.

There are a number of associations within Darak, including a Traders' Union, a Social Club, Fishermen's Union and a Farmers' Council.

Despite the size of the town, however, there is no generator or electricity, although there is a cinema, which shows Indian films.

There has never been a dispute with Cameroon, and the Cameroonians have never come and asked that the people of Darak pay tax to Cameroon.

There have been problems with Chad, particularly when uniformed soldiers come and forcibly seize fish from the fishermen of Darak, whilst they are fishing on the Lake.

On 4th May 1998, in the most recent incident, Chadians invaded Tetawa, killing some Nigerians and causing the rest of the Nigerians to flee. The Chadians pursued them to the island of Nimeri, which they still occupy. They never actually came to Darak, although they have harassed fishermen from this settlement.

DORoroya

The village of Dororoya is situated at co-ordinates 12°49.063' North, 14°17.697' East.

The village was founded approximately 30 years ago for the purposes of farming, by the current Bulama, Bulama Mallam, who came from Gamboru in Nigeria. The name *Dororoya* means "higher area surrounded by grassland".

The village is an open village, with mud huts and grass huts dispersed over a wide area. The interview was conducted in Arabic.

The only well on the island was built by the villagers. They have never asked for government assistance, although they have been approached by Ngala Local Government Authority, which has asked them whether they need any such assistance.

The population is only about 100, of which 55 are adult males, and they are all from the Shuwa Arab tribe. The sole occupation of the villagers is farming, and they grow maize, potatoes, cassava, beans and okra, in the very fertile soil surrounding the village. They pay community tax to Ngala Local Government Authority as they have always done. They are all Nigerians and have never had a dispute with Cameroon.

RAMIN DORINNA

The village of Ramin Dorinna is situated at co-ordinates 12°49.271' North, 14°17.365' East.

It was founded 25 years ago by the current Bulama, Bulama Usuna Garba. He originates from Hadje in Jigawa State in Nigeria. The name *Ramin Dorinna* means "hippopotamus hole", as apparently there used to be a number of hippopotami in this area.

The well and the mosque on the island were built by the villagers. The settlement was founded for the purposes of fishing, although this has decreased substantially since the founding of the settlement. The Lake waters are not far away, but no longer come up to the village. The villagers now occupy themselves with farming the fertile soil, growing maize, potatoes, cassava, sugar cane, onions, tomatoes, beans and okra. Aside from farming and fishing, a number of the villagers trade in fish, agricultural products and general provisions.

The population of the village is approximately 500, of whom 200 are adult males. The largest ethnic group are the Hausa tribe, although there are also Kanuri, Shuwa and Kotoko tribesmen in the settlement. The villagers pay community tax and animal tax to Ngala Local Government Authority as they have always done. They are all Nigerian, and they have never had a dispute with Cameroon or any other State.

FAGGE

The village of Fagge is situated at co-ordinates 12°47.667' North, 14°15.433' East.

The village was founded by Bulama Hisani Abdul Kadir, the father of the present Bulama, more than 35 years ago. He came from Kirenowa in Marte Local Government Authority, Nigeria. The current Bulama, Abdulla Hisani, who is 35 years old, was born in the village.

The village was settled for the purposes of farming, and this is still the sole occupation of the villagers, who grow maize, beans, cassava and okra, amongst other plants, in the very fertile soil of the area. They do not have animals and the Lake water is too far away for fishing.

Fagge is a large, quiet village with mud and grass huts. The mosque and well in the village were built by the villagers.

The population is approximately 530, of whom 300 or so are adult males. The entire population are Shuwa Arabs, who pay their community tax to Ngala Local Government Authority. The whole population is Nigerian, and there has never been any dispute with Cameroon or any other country. The bulama claimed that the boundary was very far away and therefore they had had no boundary disputes.

NIMERI

The team were unable to visit the island of Nimeri, due to its occupation by armed Chadian soldiers. However we were able to interview the bulama of Nimeri, who had fled to Darak. What follows below is a summary of that interview.

The village was allegedly founded some 26 years ago. It was founded by the father of the current bulama, who originated from Benue State and was called Abari Melamba. It was founded for fishing and its name means "on top of water". The current bulama is Daniel Gabriel, who is approximately 40 years old.

The sole occupation of the villagers is fishing. They receive fishing nets and fishing equipment from both Borno State Government and the Ngala Local Government Authority. They use Lake water for washing and drinking.

The population pays, as it has always done, community tax to the bulama of Darak, who pays it on to Ngala Local Government Authority. The people of Nimeri also receive their licences for fishing from the same authority.

The population of the settlement is only 200, of which 150 are adult males. The principal ethnic group is the Jukun tribe from Taraba and Benue States, although there are also Kanuri, Shuwa and Hausa. Every year Nimeri is subject to flooding, and the population leaves and goes to Darak, which they also depend on for their security.

Aside from the Nigerians in Nimeri, there are some Cameroonians, some Chadians and some Malians, altogether representing about 20 people, who come to Nimeri to catch fish during the wet season, after which they leave. They all pay tax to the village head of Darak and co-exist happily with the Nigerian villagers. There has never been a dispute with Cameroon.

There had never been a dispute with Chad. Recently however, Chadian armed soldiers invaded the island of Tetawa. They used this as a launching point for an invasion of Nimeri.

On 4 May 1998, 19 armed Chadian soldiers (presumed to be soldiers as they were in uniform) arrived in a boat. They came onto the island, bought some goods and removed the Nigerian flag. They informed the local inhabitants that if they (the Nimerians) ever told Nigerian officials of the removal of the Nigerian flag, on their return the Chadian soldiers would "deal with" the population. As a result, all the Nimerians left the island and sought protection in Darak.

The armed Chadian soldiers had said that the village was Chadian and not Nigerian. They also told the local population that they would come back and tax each Nimerian 1,000 Naira per person if they were still living in the village on their return. Apparently during our visit some of the adult males had returned to the island without their families.

DARAK GANA

The village of Darak Gana is situated at coordinates 12°52.496' North, 14°19.996' East.

The village was founded approximately 15 years ago by Bulama Garba, who came from Sokoto State in North-West Nigeria. *Darak Gana* means "small Darak". The current Bulama is Malam Sangaya, who is approximately 55 years old.

Darak Gana is a small village of a temporary nature, with simple grass huts. The water surrounding the village is not deep enough to allow access for any other than shallow-bottomed boats. Each year, during the wet season, the village floods and the population returns to Darak. Some of the villagers are farmers who grow maize, beans, potatoes and ground nuts, but the primary occupation is fishing. For water the people drink the Lake water, although there are also some small wells on the island.

There are approximately 400 people on the island, of whom half are adult males. The largest ethnic tribe are the Kanuri, although there are also members of the Hausa tribe. The people pay community tax to Ngala Local Government Authority, as they have always done. All the inhabitants of the island are Nigerian. In addition to the population of the village, some of the population of Nimeri have come to Darak Gana having fled the invasion of their village by Chadian soldiers.

There has never been a dispute with Cameroon, but apparently there is currently continual harassment from Chadians. As an example of such Chadian harassment, they quoted an incident on Sunday 10 May which took place at Naira, when the Chadians took 9½ bags of fish and 30,000 Naira from the fishermen there.

NAIRA

Naira is situated at co-ordinates 12°54.684' North, 14°18.813' East.

Due to harassment by armed Chadian soldiers, the inhabitants of the village of Naira had fled their village and moved to Darak and Darak Gana. We were able to interview the bulama of Naira, Bulama Kiarikaka, who is approximately 42 years old. We were also able to take a GPS reading just offshore from the village, but were unable to visit the settlement itself. The settlement was founded in 1973 by Bulama Fanami, who came from Geidam in Yobe State, Nigeria. It was called Naira as it was founded in the same year that the Naira was introduced as Nigeria's currency. It was settled solely for the purpose of fishing and fishing is still the sole occupation of the islanders.

The Local Government has asked the villagers whether they wish to receive any government assistance, but they have not requested any. Borno State Government also informed the population that it would construct a dyke near the island, but this has not yet been done. There are no wells, and the islanders drink and wash in the Lake water.

The village is seasonal and is liable to flooding during the wet season, when the inhabitants of the island leave and go to Darak to live for four months or so.

There are approximately 100 people in the island, of whom 60 per cent. are adult males. The major ethnic tribe are the Kanuri, although there are also Hausa tribesmen on the island. The villagers pay community tax to the village head of Darak, who pays it on to Ngala Local Government Authority. All the inhabitants of Naira are Nigerians, and they have never had a dispute with Cameroon. Until recently they have never had a dispute with Chad, although this is now no longer the case.

GARIN WANZAM

The village of Garin Wanzam is situated at co-ordinates 12°47.505' North, 14°17.848' East.

The village was founded approximately 30 years ago by Bulama Alhaji Haruna, who was also called *Wanzama* (the barber) - hence the name of the village. He originated from Daura, in Katsina State, Nigeria. He was present at the interview, but his son, 25 year old Bulama Sani, who is the present bulama and was born in the village, conducted the interview.

The village is very clean and tidy, with grass huts and mud huts with thatched roofs, surrounded by neat grass walls, enclosing private courtyards. The village itself was also walled by a straw fence. There is a mosque in the village, with a corrugated iron roof, which was built by the villagers, as was the well which the villagers use for drinking water. There are also a number of well-established trees.

The island was settled for fishing purposes, but this no longer is possible due to the drying up of the Lake, and now the main occupation of the population is farming. The soil around the village is very fertile, and the villagers grow maize, potatoes, cassava, ground nuts and sugar cane. In addition to farming, there is some trading in foodstuffs.

The population of the settlement is approximately 2,000, of whom half are adult males. They include tribesmen from the Kanuri, Shuwa, Fulani and Hausa tribes, the latter being the largest. The Bulamas are from the Hausa tribe.

The population of the island pay community tax to Ngala Local Government Authority. They are all Nigerians and have never had a dispute with Cameroon.

KAFURAM

The village at Kafuram is situated at co-ordinates 12°47.649' North, 14°11.297' East.

The village was founded 19 years ago by the present bulama, Umour Natoto, who came from Dapchi in Yobe State, Nigeria. The name of the settlement means "short man" and it was named after the short Bulama who founded the village. The village was settled for both fishing and farming purposes.

Kafuram consists of a number of thatched huts, although there were some mud huts. The residents go to Kirta Wulgo to attend the school or the clinic, both of which have been provided by the Ngala Local Government Authority. The villagers have built a well and a mosque.

Until ten years ago, the village would be flooded during the annual wet season, but this no longer happens. The Lake, however, is still not too far from the village, approximately a mile or so distance. Therefore, some of the villagers still fish, but farming is their primary occupation. The soil, again, is very fertile and the villagers grow maize, beans, okra, potatoes and cassava. The villagers claim that there is no need for any fertilizer, due to the richness of the soil. In addition to fishermen and farmers in the settlement, there are also petty traders who trade the fish and who buy and sell household goods and materials.

The population of the settlement is only about 300, of whom about 130 are adult males. The largest ethnic group is the Hausa tribe, although Kanuri, Shuwa and Fulani are also present. The villagers of the settlement pay community tax to Ngala Local Government Authority, and, in addition, the Fulani tribesmen, who own the cattle in the village, pay cattle tax to the same Authority. This has always been the situation.

In addition to the predominantly Nigerian villagers, there are approximately 30 Cameroonians, 20 Chadians, 10 citizens of Niger and 15 Malians living in the village.

There is no dispute amongst the villagers, and all of the villagers pay tax to the Bulama, who pays it on to Ngala Local Government Authority.

There has been, subject to the following, no dispute with Cameroon, as the villagers say the boundary is far away. However, they did mention an incident four years ago when twelve armed bandits from Cameroon entered the present bulama's house, stole his belongings and shot his wife. Six of them came back two days later and murdered the then bulama of the village, so most of the population moved to Darak. The Cameroonian bandits then, however, left and the population slowly returned. This incident took place at the time when there was an ethnic dispute between the Shuwa Arabs and the Kotokos in Cameroon. The Cameroonians who invaded this village were merely bandits looking for food. Although armed, they were not Cameroonian soldiers.

KAMUNNA

Kamunna is situated at co-ordinates 12°44.719' North, 14°10.492' East.

The village of Kamunna was founded approximately 25 years ago by the current bulama, Said Idrisa, for the purposes of farming. The name means "water come back" as the founder was hoping that the waters would return so that the community could fish.

The well in the village was built by the villagers. During the wet season, the water level rises, and reaches not far from the village, so some fishing takes place, but, for the most part, the villagers are occupied in farming maize, beans, potatoes and sugar cane.

The population of the settlement is only 120, of whom two-thirds are adult males. The villagers are ethnically diverse, coming from the Kanuri, Shuwa, Fulani and Hausa tribes. In addition, 10 Chadians and 5 Cameroonians live in the village, but they are aware that the village is Nigerian and they pay their community tax, along with the rest of the villagers, to Ngala Local Government Authority, as they always have done. There is no dispute, and has never been a dispute, between this village and Cameroon, or any other State.

SAGIR

The village of Sagir is situated at co-ordinates 12°45.600' North, 14°08.943' East.

Sagir was founded 37 years ago for the purposes of farming, by Bulama Tom Harella Manawaji, who came from Ngala. The word *Sagir* means "birds". He came to this area to farm, as there was water around and the soil was very fertile.

The waters of the Lake have now, however, receded some distance and there is no fishing community any longer, although one or two villagers go off to fish when the waters rise. Instead the villagers farm, growing maize, beans, potatoes, okra, rice and other crops.

Sagir is a large open Shuwa Arab village with grass huts and mud huts, and a number of well-established trees. The current Bulama, Nus Tom, is the son of the founder.

The population is approximately 500, of which 300 are adult males. The largest ethnic group are the Shuwa Arabs, although Fulani, Ibo, Yoruba, Hausa and Malians are also present. The villagers pay their community tax to the Ngala Local Government Authority, as they have always done. Essentially, with the exception of the Malians, the population is entirely Nigerian. The Malians pay their taxes to the Ngala Local Government Authority and recognise the village as a Nigerian village. There has never been a dispute with Cameroon.

In respect of the nearby beacon (Beacon II-V-8), the Bulama said that it means nothing to them. "Some white men came and erected the beacon and then went away again" the Bulama told us.

KIRTA WULGO

The village of Kirta Wulgo is situated at co-ordinates 12°47.633' North, 14°07.139' East.

The village was founded 30 years ago by the present bulama, Masoud Musa, a man of about 60 years old, who came from Wulgo in Nigeria. The area was an island when it was founded, and the name *Kirta Wulgo* means Wulgo Island. It was founded, therefore, primarily for fishing. However, the area is now only an island for the five or so months during the wet season.

Kirta Wulgo is a large settlement, with a street pattern, and a main street. It also has a market place and many shops, selling a whole range of diverse goods. It has a clinic and a school, which were built with assistance from Borno State Government. It also has a number of Federal institutions, including a police station, a customs & immigration post and a fisheries office. The mosque and wells in the settlement were, however, built by the villagers. On Wednesdays, there is a weekly market, to which villagers from the neighbouring areas (Ngala, Gamboru, Maiduguri and the whole Lake area) come to trade foodstuffs, fish and other miscellaneous provisions.

The village is no longer flooded during the wet season, but the waters do reach the edge of the village every six months. As a result, the villagers both fish and farm, depending on the season. The soil is very fertile, and maize, potatoes, cassava, sugar cane, beans, okra, onion, watermelon and other crops are grown.

The population of the settlement is approximately 6,000, of whom half are adult males. The largest groups are the Kanuri and the Shuwa Arabs, although there are also Fulani, Hausa, Ibo, Yoruba, Malians, citizens of Niger and Chadians in the village. There are no animals amongst the villagers, so the people do not pay cattle tax. However, they pay their community tax to the Ngala Local Government Authority as they always have done. The people of the village all regard themselves as Nigerian. The 20 or so Chadians and Nigeriens

pay tax to the bulama and co-exist happily with the Nigerians. A few Cameroonians come and stay occasionally, particularly on market day, but they have not settled there.

Kirta Wulgo used to be the village headquarters for the Lake Chad villages, but this responsibility was moved to Darak approximately four years ago, in 1994.

GOREA GUTUN

The village of Gorea Gutun is situated at co-ordinates 12°44.338' North, 14°15.142' East.

Gorea Gutun was founded 25 years ago by Bulama Abubaka Ajid, the brother of the present Bulama. He originated from Abassani in Northern Cameroons. The place was settled principally for farming, and the name *Gorea Gutun* means "cotton farming". The present Bulama is Zakariah Unus.

Gorea Gutun is a village consisting mostly of straw huts, although one or two are built of mud. There are a few well-established trees and the soil is very sandy. The mosque was built by the villagers. A small well has also been built by the community, but they usually use the Lake water as drinking water. Aside from some petty trading in farm products, the main occupation of the villagers is farming, predominantly maize and beans.

The population of the village is approximately 500, of whom 200 are adult males. The largest ethnic group are the Shuwa Arabs, although Kanuri and Kotoko are also present. The villagers pay their community tax to Ngala Local Government Authority as has always been the case. The population are all Nigerian, although sometimes a few Cameroonians come to the village and settle for a period, during which time they also pay their community tax to Ngala Local Government Authority, and they recognise that this is a Nigerian village. There has never been any dispute with Cameroon or any other nation.

DORON MALLAM

Doron Mallam is situated at co-ordinates 12°50.277' North, 14°06.033' East.

The village was founded 15 years ago by Bulama Mallam, who is still, at the age of 70, the Bulama of the village. He came from Baga in Nigeria, and founded Doron Mallam for the purposes of fishing. *Doron* means "an island", so *Doron Mallam* means "the island founded by Mallam".

There is a Federal marine police station in the village, and Borno State Government has funded a mobile dispensary station and, about ten years ago, a primary school, which is run by Ngala Local Government Authority. The villagers have built a dyke and a well, from which they get their water supply.

Doron Mallam is liable to flooding during the wet season, and so a number of the villagers are fishermen. However, the majority of the population are farmers, who grow diverse crops in the very fertile soil. In addition, there are a number of traders who trade in agricultural produce.

The population of the settlement is approximately 400, of whom 260 are adult males, 40 are adult females and 100 are children. The population is primarily from the Hausa tribe, although there are also families from the Kanuri, Shuwa, Kotoko and Fulani tribes. The villagers pay community tax to the Bulama of Darak, who pays it on to Ngala Local Government Authority. This has always been the situation. Most of the villagers are Nigerians from Ngala district in Borno State - there are no Cameroonians or Chadians, although there are four Nigeriens and about 100 Malians. These "foreigners" co-exist happily with the Nigerians, and pay their community tax to Ngala Local Government Authority.

In about 1986 (there was no exact date) some Cameroonian military and security personnel came to the settlement in flying boats and ordered the Bulama to assemble all the people on the island. The Bulama, having noticed they were from Cameroon, refused to do so, and

said that if they were here for the purposes of conducting a census, it ought to be carried out by the Nigerian Government and not the Cameroonian Government. The leader of the Cameroonian military ordered the Bulama to declare that the island was part of Cameroon, and threatened to kill him if he refused to do so. He repeated this threat three times, but the Bulama continued to refuse. Then three Nigerian army personnel standing nearby fired guns at the Cameroonians, and this lead to a general commotion, during which the Nigerians managed, by force, to take four guns from the Cameroonians. When the Cameroonians realised that the situation was not in their favour, they retreated and left the settlement. Since that event there has been no further dispute.

JRIBRILLARAM

This village is situated at co-ordinates 12°42.975' North, 13°58.440' East.

Jribrillaram was founded about 20 years ago and named after the founder, a gentleman called Jribrin. He came from Badiri in Marte Local Government Authority, Borno State, Nigeria. The current Bulama is called Garba Mainoma.

Originally the settlement was founded for fishing, but the area is no longer flooded or accessible to the Lake, and the main occupation of the villagers is farming the very fertile soil. In addition to farming there is an element of petty trading. The mosque and well were built by the villagers.

The population of the settlement is about 8,000, of which 3,000 are adult males. The largest ethnic group is from the Hausa tribe, but there are also Kanuri, Shuwa, Kotoko, Fulani and Sara living there. The villagers pay community tax to Marte Local Government Authority, and have always done so. In addition to the Nigerians, most of whom came from Marte Local Government Authority, there are also 100 Cameroonians, 80 Chadians, 15 Nigeriens and 80 or so Malians. These people are happily integrated into the village and pay their community tax to Marte Local Government Authority. There has never been any dispute with Cameroon.

SABON TUMBU

Sabon Tumbu is situated at co-ordinates 12°44.975' North, 13°58.237' East.

Sabon Tumbu was founded about 18 years ago, as a fishing village, by a man named Salihu Abubakar. He came from Hadejia in Jigawa State, Nigeria. *Sabon* means "new" and *tumbu* means "fishing spot" - i.e. it literally means "new fishing village".

Marte Local Government Authority assisted in building a cement well, from which the villagers obtain their drinking water. The population has also built a mosque. In addition to fishing, a number of the villagers farm the very fertile soil around the settlement and some engage in petty trading in fish and foodstuffs.

The population of the settlement is approximately 2,000, of whom about 800 are adult males. The Hausa tribe are the largest but there are also members of the Kanuri, Shuwa, Kotoko, Kanembu, Fulani and Sara tribes present in the village. They pay their community tax to Marte Local Government Authority as they have always done. Aside from the predominately Nigerian population, there are ten Chadians, six Cameroonians and a few Nigeriens. These people live happily within the community and also pay their taxes to Marte Local Government Authority. There has never been a dispute with Cameroon.

KOLORAM

Koloram is situated at co-ordinates 12°40.196' North, 13°57.518' East.

Koloram was settled about 22 years ago by Bulama Mutsa (who came from Gashua in Yobe State, Nigeria), as a fishing settlement. The present Bulama is Mailafiya, who is about 55 years old. The name *Koloram* means a place where clay pots are in abundance.

Marte Local Government Authority has provided a dispensary for the village. The villagers have built a mosque and a well, from where they obtain their drinking water. The soil is very fertile in this area, so amongst the villagers there are many farmers as well as fishermen.

The population is approximately 5,000, of whom 3,000 are adult males. The principal ethnic group is the Hausa tribe, although there are also Kanuri, Shuwa, Masa'a, Fulani, Sara and Ibo tribespeople living in the settlement. They pay their community tax to Marte Local Government Authority as they always have done. Most of the population is Nigerian, but there are eight Chadians and eight Malians, who have settled here, and who pay their community tax to Marte Local Government Authority. They have never experienced any dispute with Cameroon or any other country.

CHAPTER 18

INTRODUCTION AND BACKGROUND

A. Introduction

18.1 Cameroon did not put in issue the whole length of the boundary between Lake Chad and Bakassi until it filed its *Additional Application* on 7 June 1994. In paragraph 17(f) of that *Additional Application* Cameroon "respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea". The boundary in the areas of Bakassi and Lake Chad is dealt with in Parts I and II of this *Counter-Memorial*. This Part III will deal with the land boundary between those two areas.

18.2 By asking the Court to "specify definitively" the course of the land boundary, Nigeria understands Cameroon to be seeking a detailed identification of the course of the boundary ("specify"), in such a way as to be a final and conclusive settlement of the matter ("definitively"). Nigeria would welcome such a "definitive specification" of the land boundary by the Court.

18.3 Cameroon having thus requested the Court to "specify definitively" this 1,600 km. (1,000 miles) length of boundary, it is for Cameroon, as the Applicant, to establish the detailed delimitation of the boundary for which it contends. Cameroon has, however, manifestly refrained from putting forward in its *Applications* or *Memorial* its own "definitive specification" of this boundary.

18.4 Instead, Cameroon asks no more than that the Court should declare the course of the boundary in terms of its course as fixed by certain instruments. In paragraph 9.1 of the submissions in its *Memorial*, Cameroon asks the Court to adjudge and declare the course of the lake and land boundary between Cameroon and Nigeria along a specified course as set out by Cameroon. That course begins at a point which Cameroon regards as the tri-point in Lake Chad, and continues across Lake Chad to a point which Cameroon regards as the mouth of the River Ebeji (which Cameroon puts at longitude 14°12'11.7" E and latitude

12°32'17.4" N). From that point, according to Cameroon's submissions (in translation), the course of the boundary is as follows:

> "- thence it follows the course fixed by the Franco-British declaration of 10 July 1919, as specified in paragraphs 3 to 60 of the Thomson/Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931, as far as the "very prominent peak" described in the latter provision and called by the usual name of "Mount Kombon";
>
> - from Mount Kombon the boundary then runs to "Pillar 64" mentioned in paragraph 12 of the Anglo-German Agreement of Obokum of 12 April 1913 and follows, in that sector, the course described in Section 6(1) of the British *Nigeria (Protectorate and Cameroons) Order in Council* of 2 August 1946;
>
> - from Pillar 64 it follows the course described in paragraphs 13 to 21 of the Obokum Agreement of 12 April 1913 as far as Pillar 114 on the Cross River;
>
> - thence, as far as the intersection of the straight line joining *Bakassi Point* to King Point and the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs 16 to 21 of the Anglo-German Agreement of 11 March 1913."

18.5 The land boundary which Cameroon in its submissions requests the Court to "specify definitively" is thus a boundary the course of which Cameroon, despite the inference which might be drawn from the second paragraph of paragraph 86 of the Court's Judgment on the Preliminary Objections,[273] does not itself specify by reference to any geographical coordinates (except, by implication, for the starting point on the shores of Lake Chad, and one mention of co-ordinates in the instruments relied on by Cameroon - see paragraph 18.59 below). Nor does Cameroon elsewhere in its *Application, Additional Application*, or *Memorial* specify the line of the land boundary in terms of geographical co-ordinates.

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[273] There the Court said that: "Cameroon requests that the Court 'specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea' (Additional Application, para. 17(f)) along a line the co-ordinates of which are given in Cameroon's Memorial".

18.6 All that Cameroon does is to ask the Court to confirm that the land boundary between Lake Chad and Bakassi follows the lines of delimitation laid down in the several instruments cited by Cameroon. However, for the reasons to be explained (see paragraphs 19.2-19.52), those delimitation lines are inadequate as a contemporary "definitive specification" of the land boundary.

18.7 Two examples of the inadequacy of the delimitation set out in the instruments relied on by Cameroon may, however, be briefly noted here by way of illustration.

(1) The northern end of the land boundary is described in both the Milner-Simon Declaration and the Thomson-Marchand Declaration as being at "the mouth of the Ebeji [River]". Cameroon accepts that starting point: *so does Nigeria*. Both Cameroon and Nigeria thus accept the relevant terms of the applicable Declarations. But in its lower reaches the Ebeji River has two main channels, each with its own separate mouth into Lake Chad. The terms of the Declarations, which both parties accept, are thus clearly inadequate as a "definitive specification" of the boundary. The matter is discussed below, paragraphs 19.40-19.43.

(2) The southern end of that stretch of the boundary still governed by the Milner-Simon and Thomson-Marchand Declarations terminates at a peak, often referred to (and identified by Cameroon in its final submissions as) Mount Kombon. Yet Cameroon's own map of the area identifies two separate hills as "Kombon", neither of which appears to be the peak referred to in the Thomson-Marchand Declaration. Thus again, Cameroon relies on the terms of the Thomson-Marchand Declaration; *so too does Nigeria*. But again, those terms are, when applied on the ground, inadequate as a "definitive specification" of the boundary. The matter is discussed below, paragraph 19.14.

18.8 It is for such reasons (and others explained later) that Cameroon's invocation of the various instruments cited in its final submissions is unacceptable to Nigeria as a "definitive specification" of the land boundary. The terms of those instruments are an acceptable starting point for the delimitation of the boundary, and Nigeria in principle accepts them on that basis, but they are inadequate as a contemporary "definitive specification" of the boundary.

18.9 Cameroon, by relying on texts which are inadequate for the purpose for which Cameroon relies on them (namely as a "definitive specification" of the land boundary), has failed to put forward its own version of the boundary line which it claims to be the "definitive specification" it seeks from the Court. Cameroon has thus failed in its duty as the Applicant to identify adequately in these proceedings the actual boundary line which it claims to be the land boundary between Lake Chad and Bakassi. Until it does so, Nigeria reserves its position generally, and its right in particular to a proper opportunity to comment fully on whatever detailed claim-line (if any) that Cameroon may choose to put forward.

18.10 While reserving its position as to the location of the land boundary, Nigeria will, however, show why the terms of the various instruments Cameroon has cited are inadequate as a "definitive specification" of the land boundary. Further, in the absence of any official detailed claim-line put forward by Cameroon, Nigeria will also where appropriate take into account, as representing the best available evidence of Cameroon's official position, certain maps produced by the Centre Géographique National of Cameroon (see below, paragraphs 18.61 and 19.6).

B. Background

(i) Local chiefs and rulers

18.11 The territories now constituting the States of Nigeria and Cameroon came under British and German protection in the third quarter of the nineteenth century, and in

particular from 1884 onwards (see Chapters 6 to 9 above). Before then, those territories were subject to the control, jurisdiction and sovereignty of local chiefs and rulers. Cameroon's *Memorial* ignores this phase in the region's history. It is, however, important, since the extent of British and German authority depended upon the extent of the area which was subject to the control, jurisdiction and sovereignty of the various local chiefs and rulers with whom Britain and Germany concluded treaties of protection. While, as shown in Chapter 6 to 9 of this *Counter-Memorial*, this was particularly important in the context of the local chiefs' and rulers' authority over the Bakassi Peninsula, it is equally important in relation to other areas all along the land boundary between the present States of Nigeria and Cameroon.

(ii) General evolution of the boundary

18.12 The evolution of the boundary from a line separating spheres of influence into a true international boundary between independent States resulted from a series of agreements, which will be referred to in more detail in paragraphs 18.30-18.57. It may, however, be helpful at the outset to illustrate this evolution by reference to five sketch maps. The first four of these maps, in the *Atlas* at Maps 53 and 54, illustrate the line as it had evolved by 1893, 1913, 1931 and 1946 respectively. The fifth map, *Atlas* Map 55, brings the various relevant lines together on one map, so giving an overview of the evolutionary process as a whole.

(iii) Britain and Germany

18.13 Britain and Germany established their protection over the southern areas in 1884 - Germany by agreements concluded in July 1884 (see above, paragraphs 6.3-6.5), Britain by a series of treaties with local chiefs and rulers between July and September 1884 (see above, paragraphs 6.27-6.36). Both gradually extended their

protection and authority over the more northerly and inland areas in the following years.

18.14 The General Act of the Conference of Berlin, 26 February 1885[274] acknowledged that colonial sovereignty, as well as Protectorates, could exist in this part of Africa. It has to be noted that no African representatives attended the Conference, even though it was their territories which were the subject of the Conference: i.e. for them the results of the Conference were *res inter alios acta*.

18.15 By an Exchange of Notes of April-May 1885 (NC-M 24) Great Britain and Germany mutually recognised each other's spheres of influence in the region, separated by a line running from the mouth of the Rio del Rey to a point some 160 kilometres inland identified by a reference to "Rapids" on the Cross River.

18.16 Great Britain and Germany subsequently delimited the territorial extent of their Nigerian and Cameroon interests in a series of agreements. These were principally -

(1) an Exchange of Notes of July/August 1886, extending the 1885 line of separation further inland to the vicinity of Yola (NC-M 25);

(2) an Agreement of 1 July 1890 (NC-M 26), confirming (in Article IV.2) as a provisional line of demarcation a line running from the head of the Rio del Rey to the "Rapids" on the Cross River;

(3) an Agreement of 14 April 1893 (NC-M 27), further specifying the Rio del Rey line of separation;

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[274] BFSP, Vol. 76, (1884-1885), p. 4

(4) an Agreement of 15 November 1893 (NC-M 28), extending the delimitation northward from Yola up to Lake Chad;

(The Anglo-German delimitation as it stood after these agreements is illustrated by Map 53 in the *Atlas*.)

(5) an Agreement of 19 March 1906 (NC-M 38), replacing and making more precise the 1893 delimitation from Yola to Lake Chad;

(6) a Treaty of 11 March 1913 signed at London (NC-M 45), covering the Southern stretch of boundary from Yola to the sea; and

(7) an Agreement of 12 April 1913 signed at Obokum (NC-M 46) demarcating the boundary from Yola to Cross River.

18.17 The result of these various territorial delimitations was that the limits of British and German interests followed the line A-B-C-D-E-F-G-H shown in red on Map 53 in the *Atlas*.

(iv) World War I: The United Kingdom and France

18.18 Following the outbreak of the First World War in August 1914, France and Great Britain began offensive action against the German Colony of Kamerun, which was finally conquered in 1916. In 1916 France and the United Kingdom agreed on the "Picot-Strachey line" (see below, paragraph 18.30) as a provisional delimitation of the common boundary between the Kamerun (Cameroon) and Nigerian territories under their control and authority.

(v) The Treaty of Versailles: The United Kingdom and France: Mandates

18.19 After the end of the War in 1918, Germany, by Article 119 of the Treaty of Versailles 1919, renounced in favour of the Principal Allied and Associated Powers its rights and titles to its oversea possessions, and a few days later France and the United Kingdom, by the "Milner-Simon Declaration" (NC-M 50), agreed a division of territorial authority between them in respect of the former German possession of Kamerun (Cameroon).

18.20 In 1922, League of Nations Mandates were granted to the United Kingdom and France over these former German territories (NC-M 51 and NC-M 52), on the basis of the Milner-Simon Declaration. While the main area of Cameroon was placed under French Mandate, the British Mandated area consisted of two relatively narrow slices of territory adjacent to the eastern borders of Britain's Nigerian Protectorate: these narrow slices were separated, to the East of the town of Yola, by part of the territory of the Protectorate of Nigeria, whose boundary with Cameroon ran for about 90kms. (60 miles).

18.21 In 1929 the United Kingdom and France, by the Thomson-Marchand Declaration,[275] made a more precise delimitation of the boundary between their respective territories from Lake Chad to the sea. This delimitation was confirmed by an Exchange of Notes of 9 January 1931 (NC-M 54), and is indicated by the blue line on Map 54 in the *Atlas*. Except where it is necessary to refer separately to the Declaration and the Exchange of Notes, these two instruments will in this and the following Chapter be referred to together as "the Thomson-Marchand Declaration 1929-1931".

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[275] Although the Declaration exists as a separate document, it was never signed or dated as such. The entire Declaration is reproduced *verbatim* in the Exchange of Notes of 9 January 1931 (NC-M 54).

(vi) The United Kingdom and France: Trusteeship

18.22 In 1946 Trusteeship Agreements replaced the Mandates, following in substance the same boundaries (although the Agreements for the British and French Trust Territories did not define their common boundary in the same terms: see paragraphs 19.68-19.70 below).

18.23 By the Nigeria (Protectorate and Cameroons) Order in Council, 1946, the United Kingdom administratively divided its narrow slices of former Mandated, now Trusteeship, territory into the Northern and Southern Cameroons: this division followed an approximately East-West line, about half-way between Yola and the sea, and is indicated by the broken green line on Map 52 in the *Atlas*.

(vii) Independence

18.24 Following Independence for both Nigeria and Cameroon in 1960, and referenda in Northern and Southern Cameroons, the Northern Cameroons joined Nigeria and the Southern Cameroons joined Cameroon.

C. The Boundary Today

(i) Introduction

18.25 The effect of the successive stages in the development of the boundary between Nigeria and Cameroon is that the main land boundary between Nigeria and Cameroon today consists of four distinct and consecutive sectors, following the line marked in blue joining the points J-B-C-D-K-F-G-H illustrated on Map 56 in the *Atlas*. For purposes of comparison that sketch map also indicates, by a red line,

the delimitation resulting from the various Anglo-German agreements referred to in paragraph 18.16 above.

18.26 The four sectors of the present land boundary between Lake Chad and Bakassi are in broad terms as follows:

Sector 1: from the mouth of the Ebeji River (point J) to Hill 1660 in the vicinity of Mount Kombon[276] (point K): this sector is the former Anglo-French boundary resulting from the Milner-Simon Declaration 1919 and, in greater detail, the Thomson-Marchand Declaration 1930-1931, and incorporating, in its central section between points B-C-D, the former Anglo-German boundary established in 1906;

Sector 2: from Hill 1660 (point K) to Boundary Pillar 64 (point F): this sector is the former administrative boundary between the British administered Northern and Southern Cameroons, resulting from the Nigeria (Protectorate and Cameroons) Order in Council 1946;

Sector 3: from BP 64 (point F) to BP 114 (point G): this sector is the former Anglo-German boundary, resulting from the Agreement of 12 April 1913 recording the demarcation of the boundary from Yola to the Cross River;

Sector 4: from BP 114 (point G) to a point North of Bakassi (point H): this is the former Anglo-German boundary resulting from the Treaty of 11 March 1913.

18.27 Each of these four sectors of the land boundary is considered in turn in Chapter 19. As regards the rest of the Nigeria-Cameroon boundary:

- the boundary in Lake Chad is considered in Part II of this *Counter-Memorial*;

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[276] For the reason given below in Chapter 19, para. 19.14, it is preferable to refer to Hill 1660 rather than to Mount Kombon.

- the boundary southwards from point H is consequential upon the determination of title to the Bakassi Peninsula, and is considered in Part I of this *Counter-Memorial*; and

- the maritime boundary south of the Bakassi Peninsula is considered in Part IV of this *Counter-Memorial*.

18.28 The land boundary between Lake Chad and Bakassi as it is today is thus principally the result of the following instruments:

(1) the Thomson-Marchand Declaration 1929-1931 (as to the stretch from Points J to K on the sketch map at Map 56 in the *Atlas*, particularising the earlier Milner-Simon Declaration 1919);

(2) the Nigeria (Protectorate and Cameroons) Order in Council 1946 (as to the stretch from Points K to F on that sketch map);

(3) the Anglo-German Demarcation Agreement of 12 April 1913 (as to the stretch from Points F to G on that sketch map);

(4) the Anglo-German Agreement of 11 March 1913 (as to the stretch from Points G to H on that sketch map).

18.29 Each of these instruments was preceded by earlier texts which also delimited the relevant line wholly or in part, but as those earlier texts were to a large extent superseded by the later instruments listed above it is those instruments which principally delimit the current boundary. Nevertheless, those instruments must be seen in their historical context, since it may be necessary to refer to the earlier texts in order fully to understand the meaning of the later instruments. The background to each of those instruments will now be considered in turn, in the order in which

they successively delimit the four sectors of the land boundary identified in paragraph 18.26.

(ii) The Thomson-Marchand Declaration

18.30 This Declaration was the final stage in a series of delimitations agreed between the United Kingdom and France. The first stage was the so-called "**Picot-Strachey" line**. It was the result of negotiations between Picot (for France) and Strachey (for the United Kingdom) regarding the provisional administration of the German territory of Kamerun which, with the outbreak of the War in 1914, France and the United Kingdom had occupied. During their negotiations, the British and French negotiators had apparently had before them a map produced by Picot on which he had drawn a line indicating a division of territory South of Yola. During the discussions Strachey drew on it a rough line in blue pencil amending Picot's original line. The two Governments, by an Exchange of Notes of 3/4 March 1916, accepted the lines drawn on the map signed by the two negotiators, on the basis of certain other arrangements set out in the initiating French Note, with which the British Government agreed.[277] As Cameroon acknowledges, the original of the map on which this line was drawn, and which formed the basis for the Exchange of Notes of 3/4 March 1916, has not been found (*Memorial*, para. 4.52). Its nature and extent can therefore only indirectly be gleaned from the records left by the negotiators, and other internal papers of the two sides. Its direct practical relevance for the current boundary line is very limited, both because the actual course of the line is not known and because, wherever the line ran, it was superseded by later Anglo-French agreements.

18.31 With the conclusion of the Treaty of Versailles on 28 June 1919, by Article 119 of which Germany gave up its colonial possessions in West Africa (NC-M 49), on

[277] The text is at Annex 96 to Cameroon's Memorial, not Annex 99 as stated in the *Memorial*, para. 4.52

10 July 1919 the United Kingdom and France signed a "declaration", to which was annexed a document entitled "Description of the Franco-British frontier, marked on the map of the Cameroons, scale 1/300,000". This is commonly known as the **"Milner-Simon Declaration"**, those being the names of the Ministers of the two States who signed the "Description" and the declaration to which it was annexed (NC-M 50). The short covering document signed by the two Ministers records that they

> "have agreed to determine the frontier, separating the territories of the Cameroons placed respectively under the authority of their Governments, as it is traced on the map (Moisel 1/300,000) annexed to the present declaration, and defined in the description in three articles also annexed hereto".

18.32 The Description sets out the frontier in Article 1 as being a line starting in Lake Chad (as to which see Part II of this *Counter-Memorial*), thence by "A straight line to the mouth of the Ebeji", and thence, as set out in a series of short descriptive paragraphs up to paragraph 41, to the Atlantic Ocean. Only the paragraphs up to paragraph 22 are relevant to the present land boundary between Nigeria and Cameroon, since Hill 1660 lies within the description of the boundary in that paragraph and the former Anglo-French boundary running southwards from Hill 1660 is no longer relevant to the present boundary between Nigeria and Cameroon. For the reasons indicated in paragraph 19.62 below, these provisions may still serve a directly relevant purpose today.

18.33 Articles 2 and 3 of the Milner-Simon Declaration contain certain supplementary provisions which are relevant to the delimitation of the boundary. Thus Article 2 provides:

> "1. It is understood that at the time of the local delimitation of the frontier, where the natural features to be followed are not indicated in the above description, the Commissioners of the two Governments will, as far as possible, but without changing the attribution of the

villages named in Article 1, lay down the frontier in accordance with natural features (rivers, hills, or watersheds).

The Boundary Commissioners shall be authorised to make such minor modifications of the frontier line as may appear to them necessary in order to avoid separating villages from their agricultural lands. Such deviations shall be clearly marked on special maps and submitted for the approval of the two Governments. Pending such approval, the deviations shall be provisionally recognised and respected.

2. As regards the roads mentioned in Article 1, only those which are shown upon the annexed map shall be taken into consideration in the delimitation of the frontier.

3. Where the frontier follows a waterway, the median line of the waterway shall be the boundary ..."

Article 3.1 provides that "[t]he map to which reference is made in the description of the frontier is Moisel's map of the Cameroons on the scale 1/300,000", and identifies the particular sheets used. Article 3.2 identifies the map "attached to illustrate the description of the above frontier" as a "map of the Cameroons, scale 1/2,000,000".

18.34 The **Mandates** for the British and French Cameroons (NC-M 51 and NC-M 52) adopted the line fixed by the Milner-Simon Declaration as the line of division between the two mandated areas, the British and French areas being defined in Article 1 of each Mandate as the areas situated, respectively, to the West and East of that line. The text of the Declaration was annexed to each Mandate. Article 1 of each Mandate, however, allowed for the line to be slightly modified by agreement between the British and French Governments on points where, either in the interest of the inhabitants or because of errors in the Moisel 1:300,000 map annexed to the Declaration, examination on the ground showed it to be undesirable to hold exactly to the line indicated. The delimitation of the frontier on the ground was to be made in conformity with the provisions of the Declaration.

18.35 During the 1920s various relatively minor practical problems arose regarding the application of the Milner-Simon Declaration. The Governor of Nigeria (Sir Graeme Thomson) and the Governor of the French Cameroons (M. Paul Marchand) put in hand arrangements for further specifying the boundary between the British and French Cameroons. They signed a Declaration, known as the "**Thomson-Marchand Declaration**", relating to the frontier between the British and French areas of the mandated territory of the Cameroons (NC-M 54). The Declaration is undated, but would appear to have been signed in 1929.

18.36 The Declaration states that the signatories

> "have agreed to determine the frontier, separating the territories of the Cameroons placed respectively under the authority of the British and French Governments, as is traced on the map annexed to this declaration and defined in the description also annexed hereto".

The Declaration describes the boundary by reference to successive lines described in 188 short paragraphs. The first two paragraphs refer to the boundary in Lake Chad. This part of the Thomson-Marchand Declaration is dealt with in Part II of this *Counter-Memorial*. Paragraphs 3 - 60 deal with the land boundary between the mouth of the River Ebeji and "a fairly prominent, pointed peak"[278] (sometimes regarded misleadingly as a reference to Mount Kombon: but see paragraphs 18.7(2) above, and 19.14 below, and these are the paragraphs which relate to the current land boundary between Nigeria and Cameroon). Paragraphs 61 - 188 are not further referred to in this *Counter-Memorial* since they concern the former Anglo-French boundary running southwards from Hill 1660, and that part of the former boundary between the British and French Cameroons is no longer relevant to the present boundary between Nigeria and Cameroon.

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[278] The French text is slightly different: "...jusqu'à un pic assez proéminent ...", with no mention of the peak being pointed.

18.37 Although the Thomson-Marchand Declaration seemed, on its face, to constitute an agreement between the two Governors, the results of their work needed the approval of the two Governments. This was forthcoming in the Exchange of Notes of 9 January 1931 (NC-M 54). This Exchange has to be seen against the background of the Mandate for the French and British Cameroons (*supra*), Article 1 of each of which provided for a mixed commission to delimit the boundary between the French and British Cameroons. In approving the Declaration the two Governments noted that "this declaration is ... not the product of a boundary commission constituted for the purpose of carrying out the provisions of Article 1 of the Mandate, but only the result of a preliminary survey conducted in order to determine more exactly than was done in the Milner-Simon Declaration of 1919 the line ultimately to be followed by the boundary commission" (United Kingdom Note, paragraph 2).

18.38 Nevertheless, despite its preliminary character, the two Governments agreed that "the Declaration does in substance define the frontier", and the French Note confirmed its acceptance of the Declaration while the British Note similarly confirmed the agreement embodied in the Declaration. The two Governments went on to agree that the actual delimitation could now be entrusted to the boundary commission envisaged by Article 1 of the Mandate. However, mainly because of financial considerationsm no early progress was made in demarcating the boundary by a joint boundary commission. When such work was undertaken from December 1937 to May 1939 it related only to the stretch of the then boundary between British and French Cameroons which, after the referenda in 1961, is now wholly within Cameroon and is not relevant to the present boundary between Nigeria and Cameroon.

18.39 Despite the Anglo-French agreement on the terms of the Thomson-Marchand Declaration, it is to be noted that the Trusteeship Agreement for French Cameroons did not (although the parallel Agreement for British Cameroons did) mention the

Declaration when defining the boundaries of the Trust Territory: see paragraphs 19.68-19.70 below.

(iii) The Nigeria (Protectorate and Cameroons) Order in Council 1946

18.40 Although after the Second World War the existence of the League of Nations was terminated, Cameroons continued to be administered in accordance with the terms of the Mandate until other arrangements were agreed between the Mandatory Powers and the United Nations. It was also at that time convenient for the United Kingdom to make new arrangements for the administration and government of the Protectorate of Nigeria. Accordingly, by the Nigeria (Protectorate and Cameroons) Order in Council 1946 (NC-M 55) provision was made for the division of the Protectorate into two regions known as the Northern Provinces and the Southern Provinces (Article 5), and for the British mandated area of Cameroons to be divided into a northern and a southern part, the former to be administered (subject to the terms of the Mandate and of any future Trusteeship Agreement) as if it formed part of the Northern Provinces of the Protectorate and the latter to be administered as if it formed part of the Southern Provinces of the Protectorate (Article 6). The dividing line between the northern and southern parts of the British mandated area of Cameroons was set out in the Second Schedule to the Order.

18.41 The Order in Council gave the Governor the power, by Proclamation, with the approval of a Secretary of State, to vary the provisions of the Second Schedule (Article 6(2)). When further constitutional arrangements for Nigeria were made by the Nigeria (Constitution) Order in Council 1951, an equivalent provision was made allowing for the definition and variation of the boundaries of any Region of Nigeria (Section 5(2)(a)). The then existing boundaries of the different Regions were established by various instruments made at different times, and the Governor concluded that it was "expedient to define the boundaries of each Region in a single Proclamation, but without varying the same". The Governor therefore made the

Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation 1954 (NC-M 59). The Proclamation set out a detailed definition of the boundaries of the relevant Regions. Since it had previously been provided (above, paragraph 18.40) that the two parts of the British-administered Cameroons were administered as parts of, respectively, the Northern and Southern Provinces (now Regions) of the Protectorate of Nigeria, the line of division between those two parts featured in the Proclamation as part of the boundaries of the Northern Region, and in particular the boundaries described in the final few words of Sector N ("... to Boundary Post 64 situated on the right bank of the River Gamana") and in Sector O ("Thence following the River Gamana upstream ...").

18.42 The description in Sector O is in substance (and for the most part in terms) identical with the description in the Second Schedule to the 1946 Order in Council, which, of course, is to be expected, given the statement at the beginning of the Proclamation that it was the intention not to vary the boundaries as set out in the various earlier instruments. Nevertheless, apart from purely stylistic changes of text, there is an apparently more substantive change in the final few lines. In the 1946 Order in Council the line dividing the northern and southern portions of the Cameroons under British Mandate is described as running in various stages to the junction of the River Mburi and an unnamed stream, and

> "thence along this unnamed stream on a general true bearing of 120° for one and a half miles to its source at a point on the new Kumbo-Banyo road, near the source of the River Mfi; thence on a true bearing of 100° for three and five-sixths miles along the crest of the mountains to the prominent peak which marks the Franco-British frontier".

In the 1954 Proclamation the equivalent passage reads -

> "thence along this unnamed stream to its source at a point on the new Kumbo-Banyo road near the source of the River Mfi. From this point the bearing on the junction of the unnamed stream and the River Mburi is 313° (Magnetic) and on the southern and pointed peak of

> Hosere Tadji is 146° (Magnetic); thence east along the crest of the mountains to the prominent peak which marks the Franco-British Frontier".

Despite the different terms in which this stretch of the boundary is expressed, there is little doubt that these two descriptions refer to the same line. However, neither description is of the standard required to delimit an international boundary without ambiguity, and the 1954 Proclamation is weaker then its predecessor. It omits the distance measurements and its introduction of magnetic bearings is unfortunate. The bearing to Hosere Tadji can be clearly shown to be in error by 15° to 20°.

18.43 With the replacement of the Mandate by a Trusteeship Agreement for the British-administered Cameroons, the internal administrative dividing line between the northern and southern parts of the British-administered Cameroons continued to apply. That line did not affect the alignment of the boundary between the British and French Cameroons Trust Territories. After the attainment of Independence by Nigeria and Cameroons in 1960, referendums were held in 1961 in the northern and southern parts of the British trust territory of Cameroons. The result was that the northern part chose to become part of Nigeria, while the southern part chose to become part of Cameroons. When this outcome of the referendums took effect later in 1961, the result was the transformation of the hitherto internal administrative boundary between the British-administered Northern and Southern Cameroons into an international boundary between Nigeria and Cameroon.

(iv) The Anglo-German Demarcation Agreement of 12 April 1913/6 July 1914

18.44 Britain and Germany established their respective Protectorates over Nigeria and Cameroon in 1884. They needed to delimit their respective territorial interests. They accordingly concluded agreements over the next 25 years to delimit the boundaries of their respective spheres of influence in the area of their adjoining

Protectorates in Nigeria and Cameroon. Those agreements were, in particular, the Exchanges of Notes of 29 April/7 May 1885 (NC-M 24) and of 27 July/2 August 1886 (NC-M 25), and the Agreements of 1 July 1890 (NC-M 26), 14 April 1893 (NC-M 27), 15 November 1893 (NC-M 28), and 19 March 1906 (NC-M 38). These agreements began with the delimitation in the area of the Bakassi Peninsula, particularly along the Rio del Rey, and gradually refined earlier delimitations and extended them into the interior from the Gulf of Guinea, as far inland as Lake Chad.

18.45 In addition to those agreements which duly entered into force, British and German officials also drew up various draft agreements, or proposals for agreements, which, however, never received the approval of the two governments and accordingly never entered into force. These drafts included:

- the proposals of the Anglo-German Boundary Commissioners (Close and von Besser) in 1895 (above, paragraphs 8.2-8.5);

- the proposals of the two countries' senior officials in the region (Moor and von Puttkamer) in 1901 (above, paragraph 8.7);

- the proposals in the Protocol prepared by the Anglo-German Boundary Commissioners (Woodroffe and Herrmann) in April 1906 (above, paragraphs 8.9-8.11); and

- the boundary agreement signed by officials (but not approved) on 6 October 1909 (above, paragraph 8.11).

Those various draft or proposed texts did not, accordingly, effect any change in the legal position regarding territorial limits: in legal terms the line remained governed, until 1913, by the instruments referred to in paragraph 18.44.

18.46 On 11 March 1913 the U.K. and Germany concluded a Treaty covering the boundary from Yola to the sea (NC-M 45). In the following month, however, British and German negotiators (Nugent and Detzner), purporting to act pursuant to the (non-approved) 1909 Agreement, concluded a Demarcation Agreement. This second Agreement recorded the demarcation of the boundary from Yola to the Cross River, the boundary being marked by a series of Boundary Pillars, from BP 1 near Yola to BP 114 on the Cross River (below, paragraph 19.59). This demarcated boundary thus covered a large part of the boundary delimited in the March 1913 Treaty concluded one month earlier.

18.47 Thus at the very time at which the Nugent/Detzner Boundary Commission was demarcating the boundary between Yola and the Cross River pursuant to the (non-approved) 1909 agreement, the two States were negotiating and agreeing, in London, to a Treaty delimiting the boundary covering that same area and continuing it down to the sea. It seems that the two States were of the view that the boundary South of the Cross River, to the sea, had been settled and demarcated by the boundary commission of 1905-1906 as recorded in the Protocol signed on 20 April 1906 (but not approved by both governments: above, paragraphs 8.9-8.11), and that the alignment of the boundary northwards from the Cross River to Yola in the equally non-approved 1909 "agreement", which built upon the provisions of the non-approved 1906 Protocol, was in practice sufficiently a matter of common ground to justify its demarcation on the basis of that text, even though, strictly speaking, it had not been formally approved and had thus not entered into force. By negotiating the Treaty of 11 March 1913, which closely followed the proposed 1909 text for the stretch of boundary between Yola and the Cross River, the two States in effect belatedly gave a legal basis for the Nugent/Detzner Boundary Commission's work which was recorded in their Demarcation Agreement signed a month later. That Agreement (subject to some minor corrections) was approved by the two governments by an Exchange of Notes on 6 July 1914 (NC-M 329).

18.48 Because of the close relationship in practice between the non-approved 1909 text and the Yola-Cross River provisions of the Treaty of 11 March 1913, the demarcation of the Yola-Cross River stretch of boundary recorded in the Demarcation Agreement of 12 April 1913 was in substance the effective demarcation and more precise delimitation of the equivalent provisions of the March 1913 Treaty. As the later treaty to be concluded and approved, the Demarcation Agreement of 12 April 1913 (NC-M 46) is, for the stretch of boundary covered by it, the governing text.

18.49 This does not apply, however, to the stretch of boundary between the Cross River and the sea. The Demarcation Agreement of 12 April 1913 did not apply to that stretch, in relation to which the Treaty of 11 March 1913 stands alone.

18.50 As regards the northern stretch of boundary covered by the April 1913 Demarcation Agreement, from a point to the south-west of Yola (at point E on Map 56 in the *Atlas* to a point about half way between Yola and Bakassi where Boundary Pillar 64 was located (Point F on the sketch map), the boundary demarcated by that Agreement is no longer directly relevant to the Nigeria-Cameroon boundary, since it relates to territory which, following the referendum in 1961, is now wholly within Nigeria. From Boundary Pillar 64 (point F) south-westwards to the last Boundary Pillar covered by the April 1913 Demarcation Agreement (Boundary Pillar 114 (point G)) the boundary as demarcated under that Agreement is still the current boundary between Nigeria and Cameroon.

18.51 Three points about the Anglo-German Demarcation Agreement of 12 April 1913 need to be noted:

(1) the Agreement is no longer in force. It was not revived after the First World War under Article 289 of the Treaty of Versailles 1919 (above, paragraph 8.53). As a treaty it was abrogated. However, in accordance with well-established rules of international law, in so far as a boundary was lawfully

established by that Agreement, the boundary survives until lawfully changed by some subsequent act binding upon the States concerned (paragraph 8.54);

(2) Cameroon did not, therefore, succeed to the Agreement itself; and

(3) moreover, in so far as Cameroon succeeded to the boundary as delimited by the Agreement, Cameroon did not do so on attaining Independence in 1 January 1960, since at that time the western boundary of the southern part of the British-administered Cameroon Trust Territory was still an internal administrative boundary, and after Nigeria became independent on 1 October 1960 that boundary was the boundary between the Trust Territory and Nigeria. The boundary as delimited by the April 1913 Agreement only became an international boundary after the Southern Cameroon Trust Territory became part of Cameroon in 1961 following the holding of a referendum which supported that result.

(v) Anglo-German Treaty of 11 March 1913

18.52 The April 1913 Demarcation Agreement did not cover the whole boundary from Yola to the sea, but only as far as BP 114, which was located at a bend on the Cross River some 140 kilometres (87 miles) inland from the sea. Accordingly, the final southward stretch of the land boundary to the North of Bakassi remains governed by the terms of parts of the Anglo-German Treaty of 11 March 1913, as far South as prescribed by Article XVII (see above, paragraphs 8.55 *et seq.*). Further South, the boundary delimited by that Treaty purported to affect the Bakassi area, and is considered in Part I of this *Counter-Memorial*.

18.53 The same three points need to be noted about the Treaty of 11 March 1913 as have been noted about the Demarcation Agreement of 12 April 1913 (above, paragraph 18.51), namely:

(1) it is no longer in force, having been abrogated pursuant to Article 289 of the Treaty of Versailles 1919;

(2) Cameroon did not, therefore, succeed to the Treaty itself; and

(3) in so far as Cameroon succeeded to the boundary established by the Treaty, Cameroon did not do so on attaining Independence on 1 January 1960, but only later.

(vi) Nigeria accepts in principle the delimitation of the land boundary in accordance with the instruments referred to

18.54 Nigeria accepts in principle the course of the boundary as described by the instruments which are principally relevant to the delimitation of the boundary and relied on by Cameroon (referred to in paragraph 18.28 above). During the course of the Preliminary Objections phase of the present case, Nigeria had occasion to state that (it being understood of course that there was an admitted dispute as regards the Lake Chad and Bakassi areas which had implications for the boundary in those areas) the established boundary was accepted in principle by Nigeria, and that there was, so far as Nigeria was concerned, no dispute between Nigeria and Cameroon over the land boundary as such between Lake Chad and Bakassi.[279] Notwithstanding the view expressed by the Court in paragraphs 85, 87 and 93 of its Judgment of 11 June 1998 on Nigeria's Preliminary Objections, that remains the position: there is in principle no dispute that the delimitation of the land boundary between Lake Chad and Bakassi is to be carried out on the basis of the instruments invoked by Cameroon.

[279] CR 98/2, p. 19

18.55 While it is true that Nigeria claims title to the Bakassi Peninsula and to Darak and certain adjacent islands, the Court, in its Judgment of 11 June 1998 on Preliminary Objections,

> "does not find persuasive the argument of Cameroon that the challenge by Nigeria to the validity of the existing titles to Bakassi, Darak and Tipsan, necessarily calls into question the validity as such of the instruments on which the course of the entire boundary from the tri-point in Lake Chad to the sea is based ..." (paragraph 89).

That Cameroon argument, as will now be apparent, was indeed without foundation. As regards the land boundary between Lake Chad and Bakassi, Nigeria does not call into question the validity as such of the instruments on which that land boundary is based.

18.56 Nigeria, of course, was not called upon at the stage of Preliminary Objections to set out its arguments on the merits of the case brought against it by Cameroon. The Court recognised that

> "Nigeria is entitled not to advance arguments that it considers are for the merits at the present stage of the proceedings" (paragraph 93).

Nor was Nigeria called upon to indicate its arguments as to the legal basis on which the boundary rests when answering a question about the geographical co-ordinates of the boundary as they result from the texts relied on by Cameroon, especially since those texts - as Nigeria pointed out in its answer (and see above, paragraph 18.5) - did not describe the land boundary by reference to geographical co-ordinates.

18.57 Notwithstanding the absence of any such arguments on the part of Nigeria as to its position on the legal bases of the boundary, the Court felt able to conclude that

> "a dispute nevertheless exists between the two Parties, at least as regards the legal bases of the boundary" (*ibid.*).

Now that the proper time has arrived for Nigeria to set out its position on the merits, it is apparent that this was a conclusion which does not reflect Nigeria's position. As stated, and leaving aside the Lake Chad and Bakassi questions, Nigeria in principle accepts the course of the boundary as delimited in the instruments primarily concerned, and in principle accepts the validity of all of them as the basis for the land boundary between Lake Chad and Bakassi.

18.58 Against that background, it is now possible to consider the four sectors of the land boundary in more detail. Before doing so, three further preliminary and general points need to be made.

(a) Absence of geographical co-ordinates

18.59 As Nigeria stated during the *Preliminary Objection* phase of the case, and as noted above (paragraphs 18.5 and 18.56), none of the principally relevant instruments delimits the boundary by reference to any geographical co-ordinates (apart from a single reference in Article XVI of the Anglo-German Treaty of 11 March 1913). They all delimit the boundary only by reference to various geographical features: even the relatively detailed Anglo-German Demarcation Agreement of April 1913 made no reference to geographical co-ordinates. The essential question in the case is accordingly not whether the parties agree to the geographical co-ordinates of the various points along the land boundary (which are neither specified in the principally relevant instruments, nor proposed by Cameroon in its *Applications* or *Memorial* (except for the alleged location of the mouth of Ebeji River: but see paragraphs 18.7(1) and 19.40-19.43), but whether the land boundary between Nigeria and Cameroon between Lake Chad and Bakassi is "specified definitively" *by the terms of the principal instruments referred to*. Cameroon evidently believes

this to be so. In the final submissions in its *Memorial* (at paragraph 9.1) Cameroon, having requested in its *Additional Application* that the Court should "specify definitively" the boundary between Lake Chad and the sea, asks the Court to adjudge and declare that the course of that land boundary follows the course set out in the relevant instruments, and without reference to any geographical co-ordinates (save for the alleged location of the mouth of Ebeji River). For its part, Nigeria in principle accepts the boundary in all four sectors as delimited by those instruments. However, for reasons which will be explained, Nigeria does not agree that the terms of those instruments are sufficient in themselves to constitute the "definitive specification" of the land boundary for which Cameroon has asked.

(b) Map scales

18.60 Several of the instruments which delimit the boundary are accompanied by maps on which the boundary as delimited is delineated, or by reference to which the boundary is described. In some cases, the scale on which the map was prepared is unsuitable for accurate boundary delimitation or delineation. One of the most significant maps in this context is the map prepared by the German cartographer Moisel, which was used as the base map for several of the delimitation agreements. At a scale of 1:300,000, its ability to record relevant features accurately enough to serve as a sufficiently detailed boundary map was limited. Furthermore, its content depended on reports from German travellers. If no travellers had penetrated a particular area, that area would either be blank on the map or be represented in a very generalised and often incorrect way. Even smaller scale maps have been used. Thus Article 3.2 of the Milner-Simon Declaration attaches a map "to illustrate the description of the above frontier", and this is a map on a 1:2,000,000 scale (see above, paragraph 18.33). The boundary defined by the Thomson-Marchand Declaration was traced on an annexed map, which was on a scale of 1:1,000,000. It may also be noted that the Anglo-German Agreement of 11 March 1913 referred *passim* to, and in Article XXX confirmed, maps signed on 6 October 1909 which

were on a 1:250,000 scale, and also referred (Articles XIII, XVI - XVIII) to two sheets of series T.S.G.S. 2240 which was on a scale of 1:250,000. Even the current series of maps used officially by Cameroon for border delineation is on a scale of 1:200,000. None of these maps is at a scale which is adequate for the technical purposes of boundary demarcation. By contrast, the surveyors carrying out the demarcation of the southern part of the boundary between BP 114 and the Akpa Yafe in 1905-6 produced two maps at a scale of 1:100,000, while those engaged in the demarcation between Yola and BP 114 which ended in April 1913 produced eight maps at a scale of 1:125,000. Although these maps are not ideal, they can provide sufficient information to allow recovery of the boundary pillars and identification of the well-defined natural features used in the demarcation.

18.61 However, it is more appropriate where possible to refer to two series of 1:50,000 maps, one produced between 1965 and 1969 for the Government of Nigeria by the Directorate of Overseas Survey (a technical unit of the British Government's Ministry of Overseas Development) which operated between 1946 and 1985, and the other produced by the Centre Géographique National of Cameroon in the 1970s. The first series covers most of Nigeria, but leaves a gap on the international boundary between 6° 30' N and 5° N. On none of this series is a boundary marked: it was not always the practice of the Directorate of Overseas Survey ("DOS") to identify international boundaries on its mapping.[280] Nigeria is in possession of some of the second series of maps, but has no knowledge of the extent of its present coverage. The international boundary is marked on this series, albeit with the occasional caveat that it is "indefinite or badly determined on the ground".

18.62 At this 1:50,000 scale, natural features relevant to the delimitation of the boundary can be identified (although it must be noted that at the time when the boundary was

[280] (save for very small scale sketch maps forming part of the legend of each sheet, showing in general the area covered by the sheet)

delimited in the various agreements such maps did not exist, and therefore the correspondence between features described in an older delimitation and features shown on modern maps is not always straightforward to establish). Maps on a 1:50,000 scale would be technically appropriate for any demarcation which might take place: such a scale would normally be used for such a purpose. Accordingly, in explaining certain aspects of the boundary in this *Counter-Memorial*, frequent reference to these DOS (and, to a lesser extent, CGN Cameroon) 1:50,000 maps will be made, as the most technically appropriate maps available for the purpose, wherever they exist. Between 6°30'N and 5°N, reference will be made to Nigerian maps at scales of 1:100,000 and 1:125,000 and Russian maps at a scale of 1:200,000.

(c) Boundary 'incidents'

The land boundary between Lake Chad and Bakassi is about 1,600 kms. (1,000 miles) long. For much of its length it runs through difficult country and is largely undemarcated. It is therefore unsurprising that over the years there have been occasional incidents along this long stretch of boundary, in which nationals of the two States, including sometimes their officials, have been perceived by the other State as having trespassed across the boundary. These so-called incidents may be relevant to the present proceedings in two respects:

(i) they may be said to show by their very occurrence that the boundary is in dispute in specific areas, and

(ii) they may be said to give rise to international responsibility on the part of the State responsible for the transgression.

18.63 Questions of State Responsibility are considered further in Part V of this *Counter-Memorial*. As regards incidents which might be relevant as possible evidence as

to the existence of a dispute over the boundary, Nigeria recalls that the Court, in its Judgment of 11 June 1998 on the *Preliminary Objections*, considered the significance of boundary incidents for the scope of any dispute about the boundary as a whole. The Court, having formed the view that (apart from the position in respect of Lake Chad and Bakassi) there existed a dispute with respect to Tipsan,[281] held that:

> "All of these disputes concern the boundary between Cameroon and Nigeria. However, given the great length of that boundary, which runs over more than 1,600 km from Lake Chad to the sea, it cannot be said that these disputes in themselves concern so large a portion of the boundary that they would necessarily constitute a dispute concerning the whole of the boundary" (paragraph 88).

The Court continued:

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

18.64 In the light of the foregoing observations in this Chapter, Nigeria will in the next Chapter consider the course of the boundary as it results from the principal relevant instruments.

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[281] paras. 85, 87: a matter which will be considered further in Chapter 19 - see paras. 19.73-19.76

CHAPTER 19

THE COURSE OF THE BOUNDARY

A. Introduction

19.1 As stated in Chapter 18 of this *Counter-Memorial* (see paragraphs 18.54 and 18.57), Nigeria accepts in principle the delimitation of the boundary as set out in the instruments which are principally relevant to the delimitation of the present land boundary between Nigeria and Cameroon between Lake Chad and Bakassi.

19.2 Those instruments do not, however, constitute an adequate "definitive specification" of the land boundary, as sought by Cameroon in its *Additional Application* in these proceedings. There are three principal reasons:

(1) Cameroon's .own official maps show a boundary which is in places demonstrably inconsistent with the boundary as delimited in those instruments (paragraphs 19.5-19.22);

(2) the terms of those instruments do not reflect long-established practices and local agreements which have varied the land boundary as delimited in those agreements (paragraphs 19.23-19.38);

(3) in many places those instruments describe the land boundary in terms which give rise to difficulty when the attempt is made to apply them on the ground (paragraphs 19.39-19.53).

19.3 It is principally for these reasons that Nigeria qualifies its acceptance of the delimitation of the boundary by the relevant instruments as an acceptance "in principle". In order to settle the boundary once and for all ("definitively"), it is essential to examine the terms of the instruments with some care, in the light of current realities. To assert, as does Cameroon, that their terms are sufficient to "specify definitively" the land boundary is incorrect. The situation is, in truth, much more complex than Cameroon seems to be aware of. Each of the three reasons given in paragraph 19.2 for a more careful analysis of the situation than

Cameroon has provided will now be considered in turn. Thereafter, certain particular points on each of the four Sectors of the land boundary will be examined.

19.4 Map 57 in the *Atlas* identifies, in a simplified manner, the locations of each of the boundary areas which are the subject of specific consideration in this Chapter.

B. Cameroon's own maps show a boundary which is in places demonstrably inconsistent with the boundary as delimited in the principally relevant instruments

19.5 Although Cameroon has requested that the Court should "specify definitively" the land boundary between Lake Chad and Bakassi, Cameroon has nowhere itself offered its own "definitive specification" of the boundary as a whole, either in words or co-ordinates, or on maps. Cameroon has in effect chosen merely to repeat, by reference, the terms of the delimitations made in each of the principally relevant instruments (see above, paragraphs 18.2-18.6).

19.6 The Cameroon Government, however, has published official 1:200,000 maps on which the course of the boundary, as seen by Cameroon, is depicted. Cameroon has chosen not to submit these map sheets as part of the case presented in its *Memorial*, although Cameroon has included copies much reduced to A4 size, which for all material purposes are illegible. In addition, Cameroon is known to have published 1:50,000 maps covering at least part of the boundary, but has chosen not to submit these maps in any form. In the absence of any other official indication in the present proceedings of Cameroon's views as to the actual course of the boundary on the ground, Nigeria considers it necessary to bring certain of these maps to the Court's attention, as representing the best available evidence of Cameroon's official position. They demonstrate that, while Cameroon seeks a "definitive specification" of the land boundary in the terms of its delimitation in the principally relevant instruments, Cameroon's official maps of the border areas show a boundary line which is in places manifestly inconsistent with the terms of those

delimitations. From this it must follow either that Cameroon's official maps are incorrect, or that, if they are correct, Cameroon is claiming a boundary line at variance with the terms of the instruments which Cameroon requests the Court to specify as establishing the boundary. It will be sufficient to give four clear examples of such departures on Cameroon's official maps from the boundary line as delimited in the instruments on which Cameroon relies.

(i) First example: Kamale

19.7 The first example, in the Kamale area, relates to paragraphs (23) and (24) of the Thomson-Marchand Declaration 1929-1931. They read:

> "(23) Thence passing Humunsi on the French side the boundary lies between the mountains of Jel and Kamale Mogode[282] on the French side and running along the watershed.
>
> (24) Thence passing Humsiki, including the farmlands of the valley to the west of the village on the French side, the boundary crosses Mount Kuli."

It is clear from this text that between Mogode and Humsiki the boundary must "run ... along the watershed".

19.8 The part of the DOS 1:50,000 map sheet 136SW at Map 58 in the *Atlas* (actual size) shows the area through which this part of the boundary runs. The locations of Mogode and Humsiki (appearing as Roumsiki) are shown. The line of the watershed between those two locations is clearly discernible from the contours and other features shown on the map: it is indicated by a broken green line.

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[282] It should be noted that the text here should read "...mountains of Jel and Kamale *on the British side* and Mogode on the French side...", the words in italics apparently having been omitted in error. See C.O. Confidential Print, African (West), No.1049, No. 74, Enc. B2 (see reference in para. 19.53 below and Annex NC-M 335).

19.9 Map 59 in the *Atlas* is part of Cameroon's official 1:50,000 map sheet NC-33-XIV-4a covering the same boundary area. The boundary line (marked by a blue line), which it purports to delineate, manifestly does not follow the watershed, as required by the terms of the Thomson-Marchand Declaration, but instead follows a line some one to two kilometres to the West (i.e. into Nigeria), further down the escarpment. Although the boundary is marked on the map as "indefinite or badly determined on the ground", the displacement of the boundary from the watershed is so great that it cannot be claimed that it is representing an approximate version of the watershed. There is no justification for this line in the terms of paragraphs (23) and (24). Also marked on that map is a broken green line correctly marking the watershed. It can clearly be seen that the Cameroon line departs, without any justification, from the watershed line prescribed by the Thomson-Marchand Declaration.

(ii) Second example: Budunga

19.10 The second example, in the area of Budunga, relates to the terms of paragraphs (33) and (34) of the Thomson-Marchand Declaration. These read:

> "(33) Thence a line starting from Beacon 6, passing Beacon 7, finishing at the old Beacon 8.
>
> (34) Thence from this mark 8 placed on the left bank of the Mao Youwai, a small stream flowing from the west and emptying itself into the Mayo Faro, in a straight line running towards the south-west and reaching the summit of Wamni Range, a very prominent peak to the north of a chain of mountains extending towards the Alantika Mountains, and situated to the east of the old frontier mark No. 10."

It is clear from this description that the key points on this stretch of the boundary are Beacons 6, 7 and 8, and the summit of Wamni Range. The Declaration clearly requires the boundary to join these four points, and suggests that Beacons 6, 7 and 8 lie in a straight line. An inspection in late 1998 revealed that Beacon 6 has been

destroyed, though its location in the position shown on Map 60 in the *Atlas* can be deduced with reasonable accuracy by reference to the course of the Maio Hesso, near its confluence with the Maio Budunga. Beacon 7 was identified, though damaged, in the position shown. Beacon 8 has been destroyed, but its position has been extrapolated from the intersection of the extrapolated straight line from Beacon 6 to 7 and the small stream issuing from the Karin Pass below Tonbi Mountain. The locations of BPs 7 and 8 are identified by cairns of stones.

19.11 Map 60 in the *Atlas* is an extract from DOS 1:50,000 map sheets 197SE and 218NE (actual size), showing the area through which this part of the boundary runs, with the locations of the three Beacons, the summit of the Wamni Range and Tonbi identified. The three Beacons and Wamni are joined by a broken green line, representing the requirements of the Declaration.

19.12 Map 61 in the *Atlas* is a composite of parts of the Cameroon 1:200,000 maps GAROUA and TSCHAMBA (enlarged x4 to 1:50,000) of the same area. It purports to delineate this stretch of boundary - see the blue line. It leaves the Maio Hesso some 700m. to the North of the presumed position of BP6 and then follows an alignment to the summit of Wamni Range (where it correctly rejoins the watershed). This alignment is trebly defective. First, the line does not go through the established location of Beacon 7 but through the summit of Tonbi Mountain; second, although the Declaration identifies Beacon 8 as being on the left bank of a small stream (the Mao Youwai) and the Cameroon line runs to a point on that stream, that Cameroon point displaces Beacon 8 some 2.5 kms. upstream from the correct location of that Beacon; and third, while the Declaration requires the boundary to follow "a straight line running towards the south-west" from that point to the summit of the Wamni Range, the Cameroon line, as a result of its displacement of Beacon 8, reaches that summit by way of a crooked line which runs virtually due South.

19.13 Map 62 in the *Atlas* is the map referred to in paragraph 19.11, showing the extent to which the Cameroon blue line departs from the broken green line.

(iii) Third example: Mount Kombon

19.14 The third example concerns the reference to Mount Kombon, and involves a material ambiguity in Cameroon's submissions. The name *Kombon* is, on Cameroon's 1:50,000 map NC-32-XVIII-3a-3b (1955; *Atlas*, Map 63), applied to two different hills 2.5 kms. apart from each other, neither of which is apparently the peak referred to in the Thomson-Marchand Declaration, one being two kilometres northeast of that peak and the other four kilometres East of it.[283] It would appear that the peak in question is a hill 1,660 metres high, as shown on the Cameroon map referred to. It is recognised that Hill 1660 is not on a bearing of 17° from the cairn (as stipulated in paragraph (60) of the Thomson-Marchand Declaration), and that the hill which is on that bearing is the hill 3.5 kilometres to the East of Hill 1660; but that hill, unlike Hill 1660, is not on the watershed, which is the dominant requirement for the line of the boundary, nor is it "just to the east of the visible source of the Maio M'fi" as stipulated by paragraph (61) (whereas Hill 1660 meets that requirement). In the interests of clarity, the use of the term "Mount Kombon" is therefore better avoided, and in this *Counter-Memorial* the peak in question is referred to as "Hill 1660".

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[283] It should be noted that the relevant peak is not identified in the relevant paragraph (22) of the Milner-Simon Declaration 1919, although it is located along the watersheds specified in that paragraph.

(iv) Fourth example: Bissaula-Tosso

19.15 The fourth example, in the area of Bissaula-Tosso, relates to the terms of part of the Second Schedule to the Nigeria (Protectorate and Cameroons) Order in Council, 1946. The relevant part reads as follows:

> "... thence a straight line to the highest point of Tosso Mountain; thence a straight line eastwards to a point on the main Kentu-Bamenda road where it is crossed by an unnamed tributary of the River Akbang (Heboro on Sheet E of Moisel's map on Scale 1/300,000) - the said point being marked by a cairn; ..."

It is clear from this description that the boundary line must go in a straight line from Mount Tosso to the point of intersection of the tributary of the River Akbang (Heboro) and the Kentu-Bamenda road.

19.16 Map 64 in the *Atlas* is part of the DOS 1:50,000 map sheet 293NE (actual size) showing the area through which this part of the boundary runs. On the map the two branches into which the Akbang (Heboro) splits are marked, one branch running South (marked in green dots) and the other northwest (marked in blue dots). Also marked (by a broken black line) is the Kentu-Bamenda road. (The reason that the map has a break in its delineation of the road (shown as a broken line) near the crossing point is that in that location it runs through a stand of trees, and was therefore not visible on the aerial photography to the cartographer who would therefore have decided that he could not assume its existence or precise course.) The GPS position of the cairn referred to in the Order in Council is also shown.

19.17 Only the southern tributary crosses the Kentu-Bamenda road in the vicinity of a boundary cairn. There is no evidence on the map of any other stream crossing on this stretch of the road (this has been confirmed by an examination of the aerial photography from which the map was derived). The Order in Council requires that

the boundary run in a straight line from Mount Tosso to the point of intersection of the road and River. Mount Tosso is shown on the next maps.

19.18 Map 65 in the *Atlas* is a part of Cameroon 1:200,000 map sheet NKAMBE (enlarged x4 to 1:50,000). On this map, the boundary line asserted by Cameroon is highlighted in blue following the northwestern tributary to its source, then turning West along a ridge to its intersection with the Kentu-Bamenda road and thence in a straight line to Mount Tosso. It will be noted that the boundary line as shown on the Cameroon map does not cross the road at a point at which the road intersects with a river, which is an express requirement of the language used in the Schedule to the Order. It cannot do so, because the northwestern branch of the River does not cross the road at all, but has its source one kilometre to the East of the road. That line on the Cameroon map has no justification in the terms of the Schedule to the Order.

19.19 Map 66 in the *Atlas* is a composite extract which contains parts of DOS 1:50,000 map sheets 293NW and 293NE (actual size). On this extract, the Akbang River and its southern tributary are highlighted in a broken green line, while the northern tributary is highlighted in blue. The extract also shows in broken green a line from the stream crossing on the Kentu-Bamenda road straight to the summit of Mount Tosso. Also shown, in blue, is the line taken from the Cameroon 1:200,000 map of the same area. It purports to show the boundary, incorrectly, as following the northwestern (not the correct southern) tributary of the Akbang (Heboro), and then running along a ridge for 1 km. before cutting the Kentu-Bamenda road although not at a tributary some six kilometres North of the point at which the southern tributary crosses that road, before then proceeding in a straight line to Mount Tosso.

19.20 Thus, in all these examples, the terms of the delimitation are manifestly at variance with the line of the boundary as drawn on Cameroon's own official maps. This demonstrates that Cameroon itself does not in practice treat the delimitation in the

relevant instruments as the definitive specification of the boundary, but for its own reasons is ready to depart unilaterally from those terms in delineating the boundary on its official maps.

19.21 It will also be noted that all four examples given show Cameroon, wholly without justification, drawing the boundary line well on the Nigerian side of the boundary as delimited by the terms of the relevant instrument. In other words, these are map-making incursions *by* Cameroon *against* Nigeria. In so far as the maps give rise to any dispute as to the course of the boundary, the dispute would in no way be caused by Nigeria but would be caused entirely by Cameroon unjustifiably ignoring the terms of the relevant boundary delimitation.

19.22 It is also to be noted that, apart from representation on Cameroon's official maps, the terms of Cameroon's submissions (above, paragraph 18.4) treat as the mouth of the Ebeji River a location which has no basis in the terms of the Milner-Simon on Thomson-Marchand Declaration. The matter is examined below, at paragraphs 19.40-19.42.

C. The terms of the principally relevant instruments do not take account of long-established practices or local agreements which have varied the land boundary as delimited in those instruments, or locally agreed interpretations of unclear provisions of the instruments

19.23 It is a striking feature of a number of the international agreements which over the years have delimited the Nigeria-Cameroon boundary that they have in terms not been definitive, but have rather been indicative, leaving the parties to adjust the boundary as may be appropriate to the local circumstances. There are three international agreements which are principally relevant to the present boundary between Nigeria and Cameroon - the Anglo-German Treaty of March 1913, the

Anglo-German Demarcation Agreement of April 1913, and the Thomson-Marchand Declaration 1929-1931 (amplifying the Milner-Simon Declaration 1919).

19.24 Article XXVIII of the Anglo-German Treaty of March 1913 provided:

> "In marking out the boundary the representatives of the two Governments shall have the power, subject to subsequent approval by the two Governments, to make minor deflections from the boundary herein laid down, such deflections not to exceed 1¼ miles (2 kilom.) in cases where it is considered desirable, in order that farms shall not be separated from the villages to which they belong."

19.25 The Anglo-German Demarcation Agreement of April 1913 contained no such provision for variations to the boundary as delimited in the Agreement.

19.26 Such a provision was, however, indirectly incorporated in the arrangements established by the Thomson-Marchand Declaration 1929-1931. The Exchange of Notes of 9 January 1931 approved the terms of the Declaration, and agreed "that the actual delimitation can now be entrusted to the boundary commission envisaged for this purpose by Article 1 of the Mandate". That Article established the British and French Mandates for the Cameroons by reference to the line fixed by the Milner-Simon Declaration 1919, the text of which was annexed to each of the two Mandates. That Declaration, in Article 2.1, allowed for minor modifications to be made to the frontier line prescribed by the Declaration, and this was reinforced by Article 1 of the Mandate which similarly allowed for such modifications. By entrusting the demarcation of the Thomson-Marchand line to the boundary commission established by Article 1 of the Mandate, the two Governments agreed that that commission would approach its task on the basis prescribed by Article 1.

19.27 The terms of the two provisions referred to are as follows:

Milner-Simon Declaration

"Article 2

1. It is understood that at the time of the local delimitation of the frontier, where the natural features to be followed are not indicated in the above description, the Commissioners of the two Governments will, as far as possible, but without changing the attribution of the villages named in Article 1, lay down the frontier in accordance with natural features (rivers, hills or watersheds).

The Boundary Commissioners shall be authorised to make such minor modifications of the frontier line as may appear to them necessary in order to avoid separating villages from their agricultural lands. Such deviations shall be clearly marked on special maps and submitted for the approval of the two Governments. Pending such approval, the deviations shall be provisionally recognised and respected."

Mandates (both in this respect in identical terms)

"Article 1

...

This line may, however, be slightly modified by mutual agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interests of the inhabitants or by reason of any inaccuracies in the map, Moisel 1:300,000, annexed to the Declaration, to adhere strictly to the line laid down therein."

19.28 Other instruments relating to the boundary containing similar provisions for variations to allow for local circumstances are:

(1) Anglo-German Agreement of 1890 (NC-M 26): Article VI provided that relevant boundary lines traced in earlier provisions are "subject to

rectification by agreement between the two Powers, in accordance with local requirements" (see also below, paragraph 19.100).

(2) Anglo-German Agreement of 15 November 1893 (NC-M 28): Article III provided that

> "Any part of the line of demarcation traced in this Agreement, and in the preceding Agreements above quoted,[284] shall be subject to rectification by agreement between the two Powers."

(3) Trusteeship Agreement for British Cameroons (NC-M 56): Article 1, after defining the frontier by reference to the Milner-Simon and Thomson-Marchand Declarations, continued:

> "This [frontier] line may however be slightly modified by mutual agreement between Her Majesty's Government in the United Kingdom and the Government of the French Republic where an examination of the localities shows that it is desirable in the interests of the inhabitants."

19.29 These various provisions, taken together, show clearly that the British and German, and later British and French, Governments were aware that, however carefully they might prescribe boundary lines on the basis of the best available maps, those lines were likely in practice to prove less than perfect in view of the inevitable inadequacy of the maps available at that time, the difficult nature of the terrain, and the variable social structures of the communities which might be affected by the drawing of such lines. They foresaw, and made provision for, the adaptation of their prescribed boundary lines as may be necessary to meet local circumstances.

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[284] These are the agreements referred to in the preamble, namely "the Anglo-German Agreements of the 29th April/7th May, 1885, 27th July/2nd August, 1886, 1st July, 1890 and 14th April, 1893".

19.30 Quite apart from such provisions for variation of agreed boundary lines expressly written into various of the relevant international texts, it is a common occurrence for States, at a local level, to establish by long-standing usage or by local agreement (whether formal or informal) practicable boundaries which are appropriate to the local conditions even though they might vary the boundary lines laid down in formal agreements. The possibility of this occurring was accepted by the Arbitration Court (Lord McNair, President) in the *Argentine-Chile Frontier Case (La Palena Arbitration)* in 1966 (Int. Law Rep., vol. 38, p. 10). In relation to a disputed frontier area Chile introduced evidence (which became known as "the fulfilment material") designed to show effective Chilean administration over it. Argentina submitted that this material was irrelevant. The Court did not agree that the material ought to be excluded as completely irrelevant.

> "This is because, in the Court's opinion, such evidence is relevant to the question of settlement - whether for instance what was settled in 1902-03 has since become unsettled *or has become settled in a different way*, and whether too 'the fulfilment material' throws any light on the question whether what was left unsettled in 1902-03 has since become settled" (at p. 88: emphasis added).

Although in the event the Court did not consider that this material advanced matters any further, it clearly took the view that it was possible for such material to show that a boundary settled in one way in an agreement could over time come to be settled in a different way.

19.31 Given the circumstances of the area through which the Nigeria-Cameroon boundary runs, with its very difficult topography, and the remoteness of many of the villages and their dependence on special factors affecting their social, economic and political structures, it is not surprising that, in the absence of an official demarcation, local variations to the boundaries laid down in the principally relevant instruments have become accepted by the local communities.

19.32 An example is the long-established variation to the boundary as delimited in the relevant instrument which occurs in the neighbourhood of **Sapeo**. The Thomson-Marchand Declaration 1929-1931 delimits the boundary in the area in question in the following terms:

> "(37) Thence the boundary rejoins the old boundary about Lapao in French territory, following the line of the watershed of the Balakossa range as far as a point situated to the west of the source of the Labidje or Kadam River, which flows into the River Deo, and from the River Sampee flowing into the River Baleo to the north west.
>
> (38) Thence from this point along the line of the watershed between the River Baleo and the River Noumberou along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, turning by this village, which is in Nigeria, ..."

Although there are some difficulties in attributing a meaning to parts of this text,[285] the part here relevant is relatively clear - the boundary follows "the line of the watershed ... along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, ... which is in Nigeria ..." This boundary would place Sapeo on the Cameroon side of the boundary. That does not, however, accord with the long-established local usage. The DOS 1:50,000 map, sheet 238 NE (actual size) of this area is Map 67 in the *Atlas*, on which the relevant features are clearly indicated.

19.33 The Thomson-Marchand Declaration, of course, built on earlier agreements and discussions. The Milner-Simon Declaration provided as follows:

> "15. Thence [i.e. from the old boundary pillar No. 8] a line south-westwards reaching the watershed between the Benue on the north-west and the Faro on the south-east, which it follows to a point on the Hossere Banglang, about 1 kilom. south of the source of the Mao Kordo;"

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[285] See paras. 19.44 *et seq.* and 19.48 *et seq.* below.

This delimitation was too crude to be of much practical use.

19.34 A perambulation of the sector of the boundary from the Benue southwards to Kontcha and beyond was carried out in 1920 by D.K. Mair (a British District Officer) and Captain L. Pition (representing the French Administration). They submitted a more detailed description of the boundary from Boundary Pillar 8 to the Hossere Banglang (NC-M 330). The effect of paragraphs (5) to (11) of their delimitation was to place the villages of Namberu and Sapeo on the British/Nigerian side of the boundary, and, by the later paragraphs (12) to (17), to place a certain area between the Maio Laro and Kontcha on the French/Cameroon side.

19.35 They accompanied their proposed delimitation by a statement of their reasons for the proposed changes, which (NC-M 331) said:

> "By way of compensation [i.e. for the change in favour of France in the Kontcha area], and at the instance of the British representative, Mr W.D.K. Mair, a minor modification of the Frontier Line near Hosere Sapeo (Tschapeu on Moisel's map), in favour of Britain, is introduced with the object of assuring to Britain the retention of the two rest-houses near the Pagan hamlets of Namberu and Sapeo, and of that small section of road between Laro and Nassarao which will enable ready communication between the British villages situated to the north of the Hosere Balakossa and those to the north and west of the Hosere Banglang, and will obviate the necessity for a long detour to the north of the Sapeo Mountains and the consequent construction of a new piece of road in that neighbourhood.
>
> These two modifications of the frontier, as defined in the Agreement of 10th July, 1919, have been very carefully explained to the natives concerned and announced to them as immediately binding and operative till the confirmation by the British and French Governments is formally received."

19.36 The Governor of Nigeria forwarded these proposals to London but, in his covering letter said: "I think that ... the points where it is suggested that certain modifications are desirable can be left to be decided later by the Boundary

Commission which it is understood will ultimately be appointed".[286] This attitude is consistent with the view that throughout the 1920s and 1930s the prevailing current of opinion was to the effect that the boundary delimitations in the various formal instruments were in a sense merely indicative, and that the real boundary on the ground would be determined by the eventual demarcation which it was assumed would eventually take place (but which in fact did not).

19.37 The attribution of Sapeo to the British side of the boundary was confirmed in 1930 (i.e. *after* the Thomson-Marchand Declaration was adopted, but before its approval in 1931) by a document signed by R. Logan (authorised by the Resident, Adamawa Province, Nigeria) and Lt. le Brun (authorised by the Chef de la Circonscription de Garoua, Cameroon) on 16 October 1930 (NC-M 332). Described as "agreed on in rectification of the VEREKER - COSTE Procès-Verbal of the 13th of January, 1926, paragraph 11", it describes a line running

> "to a point on the Mayo NAMBERU approximately 2¼ miles EAST-SOUTH-EAST of the NAMBERU Resthouse, leaving **SAPEO**, JONGBA, and LEINDE hamlets to GREAT BRITAIN; thence the main course of the Mayo NAMBERU upstream ..."

19.38 In the event, however, while the Mair-Pition proposal for Namberu to go to Britain and the strip of territory further South to go to France were incorporated into the eventual Thomson-Marchand Declaration, for some unexplained reason the proposal affecting Sapeo was omitted from the text. Nevertheless, the local inhabitants observed the frontier modification as they had been instructed to do (see final sentence of passage quoted in paragraph 19.35 above). It is apparent from enquiries made by Nigeria's Federal Surveys in 1995 that the variation of the boundary at Sapeo has been observed by both sides as if it had been included in the Thomson-Marchand Declaration. A Cameroonian official letter dated 17 March

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[286] p. 178 of C.O. Confidential Print, African (West), No. 1049 (NC-M 335)

1979 (NC-M 333)[287] confirms that Cameroon accepts that Sapeo (Sépéou) lies on the Nigerian side of the boundary. Despite the text of the Thomson-Marchand Declaration, even the 1:1,000,000 map attached to it shows a boundary line running to the South of Sapeo and thus placing it on the British/Nigerian side of the boundary (*Atlas*: Map 68). The extract from DOS 1:50,000 map sheet 238 NE at Map 67 in the *Atlas* shows two cairns, three small hills and a rock which local inhabitants accept as marking the frontier. Moreover, the practice since the early 1920s demonstrates that Sapeo has consistently been regarded as subject to Nigerian authority. Sapeo is presently in Yelli District, Jada Local Government Area, the headquarters of which is in the town of Kojoli. There are 14 Wards in the Sapeo Village Area, including Lainde Jumba and Namberu, all of which are shown on Map 67. There are 435 taxable adults in the Village Area. Attached at NC-M 334 are copies of various Nigerian Voter's Registration Cards and Communal Tax receipts from the Sapeo area.

D. In many places the principally relevant instruments describe the land boundary in terms which give rise to difficulty when the attempt is made to apply them on the ground

19.39 Although the delimitation of the land boundary was carried out over a period of time, and with the assistance of surveys on the ground at certain places, it is nevertheless the case that in numerous instances the delimitation prescribed in the Thomson-Marchand Declaration was, simply as a matter of geography and surveying, defective. In so far as reliance may have to be placed on the terms of the Milner-Simon Declaration, the defects, from a geographical and surveying point of view, are even greater. It is self-evident that if a text such as the Thomson-Marchand Declaration, which deals with the relevant stretch of boundary in 58 paragraphs taking some 6½ printed pages, is in places inadequate clearly to identify

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[287] C.O. Vol. II, pp. 299-303

the line of the boundary, the Milner-Simon Declaration, which deals with the same stretch of boundary in 22 paragraphs covering just one page of printed text, will be manifestly defective. Little or no help is therefore to be derived from the Milner-Simon Declaration in resolving ambiguities and uncertainties in the terms of the Thomson-Marchand Declaration. So far as concerns that latter Declaration, in addition to the ambiguity over the use by Cameroon of the term "Mount Kombon" (above paragraph 19.14), its descriptive inadequacy can be readily illustrated by a few examples.

(i) First example: the Ebeji River

19.40 The first such example occurs at the mouth of the Ebeji River, at the very northern end of the land boundary where it meets Lake Chad. The Thomson-Marchand Declaration delimits a line from a point in Lake Chad and

> "From there ...
>
> (2) On a straight line as far as the mouth of the Ebeji.
>
> (3) Thence from this mouth along the course of the River Ebeji, ..."

This delimitation is defective, in that (i) it does not define accurately the location of the boundary at the mouth of the Ebeji River, and (ii) it assumes that the Ebeji has a single mouth.[288]

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[288] So far as it might be relevant, the relevant part of the Milner-Simon Declaration is in similar terms, starting from a point in Lake Chad, and

> "Thence ...
> 1. A straight line to the mouth of the Ebeji;
> 2. Thence the course of the river Ebeji ..."

19.41 Both the Thomson-Marchand Declaration and, before it, the Milner-Simon Declaration described the land boundary as starting at "the mouth of the Ebeji". In reality the Ebeji does not have a single mouth: it has two main branches which lead into Lake Chad, as well as several smaller waterways in that region, together giving the area the character of a small delta. Cameroon is aware of this deficiency in the texts upon which it relies. Since Cameroon cannot invoke any specific identification of "the mouth of the Ebeji" in the instruments which Cameroon asks the Court to confirm as the "definitive specification" of the boundary, Cameroon instead seeks from the Court confirmation of the location of the mouth of the Ebeji as it was proposed by technical experts meeting in September 1988, namely at longitude 14°12'11.7"E, latitude 12°32'17.4"N (see above, paragraphs 16.48 and 16.50). But that recommendation by the technical experts was never approved, and in 1996 discussion on the issue was expressly deferred (see above, paragraphs 16.57-16.60). Cameroon is therefore asking the Court to confirm, as though it were an already agreed fact, a definition of the mouth of the Ebeji which in fact is *not* agreed.

19.42 Wherever the true mouth of the Ebeji River may be, the co-ordinates adopted by the technical experts in 1988 and relied on by Cameroon do not reflect a true geographical "mouth of the Ebeji", that being the only term used by the Milner-Simon and Thomson-Marchand Declarations. Neither Declaration refers to the co-ordinates cited by Cameroon, which has therefore failed to follow its own criteria for the "definitive specification" of the boundary. Moreover, Cameroon, in seeking to interpret the terms of those Declarations by reference only to a non-agreed set of co-ordinates, has failed to satisfy the burden upon it, as Applicant, to establish the boundary for which it contends.

19.43 It does, however, seem to be agreed between the parties that, wherever the mouth may be, the two branches of the Ebeji divide at a bifurcation located at 12°30'14"N latitude and 14°12'03"E longitude (based on Adindan Datum). Upstream from that bifurcation, the boundary appears to be settled. Accordingly, the deficiency in the

delimitation expressed in the Thomson-Marchand Declaration (and the Milner-Simon Declaration before it) concerns

(1) the location of the mouth of the Ebeji, and

(2) the course of the boundary from that mouth to the bifurcation at the location identified.

Even if (which Nigeria denies) the recommendations of the technical experts in 1988 were held to constitute the mouth of the Ebeji for the purposes of (1) above, the problem at (2) would still remain.

(ii) Second example: Jimbare

19.44 The second example occurs near Jimbare, in the stretch of boundary covered by paragraphs (35) to (37) of the Thomson-Marchand Declaration. Those paragraphs read as follows:

> "(35) Thence the frontier follows ... the line of the watershed of the Benue to the north-west and of the Faro to the south-east as far as the south peak of the Alantika Mountains to a point 2 kilometres to the north of the source of the River Mali.
>
> (36) Thence from this peak by the River Sassiri, leaving Kobi to France and Kobi Leinde to Great Britain, Tebou and Tscho to France, as far as the confluence with the first stream coming from the Balakossa Range (this confluence touches the Kobodji Mapeo track), from this stream towards the south, leaving Uro Belo to Great Britain and Nanaoua to France.
>
> (37) Thence the boundary rejoins the old boundary about Lapao in French territory, following the line of the watershed of the Balakossa range as far as a point situated to the west of the source of the Labidje or Kadam River, which flows into the River Deo, and from the River Sampee flowing into the River Baleo to the north-west."

19.45 Map 69 in the *Atlas* comprises the relevant parts of the DOS 1:50,000 map sheets 217SE and 218SW (actual size) of the area. The key features in the delimitation are (a) the South peak of the Alantika Mountains, (b) the source of the River Mali, (c) the River Sassiri, (d) the point of confluence of that river and an identified stream, (e) the old boundary about Lapao, and (f) the watershed of the Balakossa range. With the exception of (e), the location of which is insufficiently known, these features are indicated on the map.

19.46 (1) Paragraph (35) takes the boundary as far as "the south peak of the Alantika Mountains": but this leaves the following words - "to a point 2 kilometres to the north of the source of the River Mali" - with an unclear significance (the French text uses "en" which should not be translated as "to" but might better be translated here as "at [a point situated ...]").

(2) Assuming that, as paragraph (36) suggests, the end point of the boundary delimited by paragraph (35) is the South peak of the Alantika Mountains, paragraph (36) takes the boundary "from this peak by the River Sassiri ... as far as the confluence with the first stream coming from the Balakossa Range (this confluence touches the Kobodji Mapeo Track)". This point of confluence can be established without any doubt from the map, at the position marked.

(3) From that point of confluence between the River Sassiri and the stream the boundary runs "from this stream towards the south": nothing is said about precisely what line the boundary is to follow on its southward route, other than that it must go between Uro Belo and Nanaoua (two places which have not been identified on modern mapping).

(4) That lack of clarity makes the starting point for the application of paragraph (37) unclear, since "Thence" has no specific point of reference.

(5) Even if it had, the delimitation provides that "Thence the boundary rejoins the old boundary about Lapao", and this is again unclear since it says nothing about where or by what route it is to rejoin the old boundary, nor indeed is it certain what alignment the "old boundary" followed.

(6) Finally, paragraph (37) makes a leap from this unidentified place on this unidentified old boundary to the "watershed of the Balakossa range": although this watershed is itself clear, the route which the boundary is to follow in order to get to it is undefined.

19.47 It should be noted that this stretch of boundary was amplified in 1930 (i.e. *after* the Thomson-Marchand Declaration was adopted, but before it was approved in 1931) by a document signed by R. Logan (authorised by the Resident, Adamawa Province, Nigeria) and Lt. le Brun (authorised by the Chef de la Circonscription de Garoua, Cameroon) on 16 October 1930 (NC-M 332). Described as "agreed upon in amplification of the VEREKER - COSTE Procès-Verbal of the 13th of January, 1926, paragraph 10", it delimits the boundary in greater detail that in the Thomson-Marchand Declaration. That this subsequent amplification of the terms of the delimitation was given does not detract from - indeed it supports - the argument that the terms of the Thomson-Marchand Declaration taken by themselves are inadequate to constitute the 'definitive specification' of the boundary for which Cameroon contends.

(iii) Third example: Namberu - Banglang

19.48 The third illustrative example occurs in the area of Namberu - Banglang, in that part of the boundary delimitation which has already been considered in the context of the agreed boundary variation at Sapeo (see paras. 19.32 *et seq.*, above). For present purposes the relevant boundary delimitation provision is paragraph (38) of the Thomson-Marchand Declaration, which reads -

> "(38) Thence from this point along the line of the watershed between the River Baleo and the River Noumberou along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberus, turning by this village, which is in Nigeria, going up a valley north-east and then south-east, which crosses the Banglang range about a kilometre to the south of the source of the Kordo River."

Parts of the DOS 1:50,000 map sheets 238NE and 238NW showing this area comprise Map 70 in the *Atlas*, on which the relevant features are clearly indicated.

19.49 For two reasons this provision cannot readily be applied as it stands to a demarcation on the ground.

(1) First, both the English and French texts err in referring to the boundary going up a valley "north-east and then south-east", since the map shows that the only valley which could here be being referred to runs north-*west* and then south-*west*. Indeed the reference to the valley is unclear as to whether it is a valley through which a river runs, whether (as seems likely) the river is the River Nangua, and whether the boundary follows that river despite the incorrect description of the direction in which it flows.

(2) Second, paragraph (38) is further defective in stipulating that the end point of this section of the boundary is at the point where the valley crosses the Banglang range "about a kilometre to the south of the source of the Kordo River". The location of this point is inadequately described for demarcation purposes.

(iv) Fourth example: Yin Crossing

19.50 A fourth example arises at the Yin Crossing, on the stretch of boundary delimited by paragraphs (48) and (49) of the Thomson-Marchand Declaration. Those paragraphs read:

> "(48) Thence to Hosere Lowul, which is well over 2 kilometres from the Kwancha-Banyo main road. This peak (Hosere Lowul) lies on a magnetic bearing of 296 from the apex of the Genderu Pass on the above-mentioned main road. From this apex, which is distant 3½ miles from the Generu Rest-house, and which lies between a peak of Hosere M'Bailaji (to the west) and a smaller hill, known as Hosere Burutol, to the east, Hosere M'Bailaji has a magnetic bearing of 45 and Hosere Burutol one of 185.
>
> (49) Thence a line, crossing the Maio Yin, at a point some 4 kilometres to the west of the figure 1,200 (denoting height in metres of a low conical hill) on Moisel's map E.2, to a prominent conical peak, Hosere Gulungel, ..."

The DOS 1:50,000 map sheet 277NE showing this area is Map 71 in the *Atlas*, on which the relevant features are clearly indicated.

19.51 In four respects this delimitation is technically defective, and cannot be readily applied in a demarcation on the ground.

(1) Hosere Lowul cannot be identified with certainty from available maps, and although various magnetic bearings to that peak are given, they do not produce an unequivocal location for it, since the Kwancha-Banyo main road is not shown on available maps and indeed is not visible on the aerial photographs from which the DOS map was constructed.

(2) From that peak (wherever it is) the delimitation states that the boundary is delimited by "a line" ("Thence a line") which crosses the Maio Yin at an identified point. But nothing is said about the course of that line (a

watershed line? a straight line? a track line?), or its direction(s), other than that its end point is at the point specified on the Maio Yin. Since it must extend for about ten kilometres, the absence of information is significant.

(3) Although the crossing point appears reasonably specific ("some 4 kilometres to the west of the figure 1,200 ... on Moisel's map E.2"), it is far too crude for demarcation purposes. First, "some" four kms. to the West of a given point introduces a clear element of uncertainty. Second, the identification of the given point by reference to a figure of 1,200 on Moisel's map (drawn at a scale of 1:300,000) is, on the ground, too imprecise to be of value for demarcation purposes: the relevant part of Moisel's map (enlarged x3) is Map 72 in the *Atlas* and it is apparent that the figure "1,200" referred to is on the map 13 mm long (which represents about 1.3 kms. on the ground), while the initial digit "1" of that figure is 4 mm high (representing about 400 metres on the ground).

(4) Finally, wherever the crossing point of the Maio Yin may be thought to be, the next section of the delimitation of the boundary is from that point "to a prominent conical peak, Hosere Gulungel". There is some uncertainty over the location of Hosere Gulungel. Neither Moisel's map nor the Declaration's map show a peak of that name, nor is it possible to identify a conical peak from the crude relief depicted by Moisel. DOS map sheet 277NE does show a river called Goungel draining south-eastwards from a group of mountains, whose northernmost peak is both prominent and conical. Although this peak carries the name Hossere Chelire, it may be (but this cannot be certain) that it is the peak referred to as Hosere Gulungel in the Declaration. Again, nothing is said about the course to be taken by the boundary line, or its direction(s) from the crossing of the Maio Yin.

19.52 There are numerous other such difficulties of application to which the terms of the principally relevant instruments give rise, but the examples given are sufficient to

show that, on this ground alone, for Cameroon to seek a "definitive specification" of the boundary solely by reference to the terms of those instruments is wholly inadequate.

19.53 It is unfortunate that an agreed boundary delimitation such as that in the Thomson-Marchand Declaration should in so many respects be geographically defective. In part it may have been due to inadequacies of the maps available at the time (although that hardly explains obviously incomplete and imperfect references to features along the line of the boundary). Periodically reports submitted to the League of Nations and the United Nations refer to deficiencies in the delimitation of the boundary and the need for greater precision or demarcation. It seems, however, very possible that the parties were primarily concerned to lay down the broad direction to be taken by the boundary, knowing that in places it might be less detailed than would have been ideal, but believing that any deficiencies would be clarified by the boundary commission which the parties fully expected would straight away undertake the task of demarcation on the ground. This is clear from the Exchange of Notes of 9 January 1931 by which the British and French Governments approved the Thomson-Marchand Declaration. They regarded that Declaration as "only the result of a *preliminary* survey conducted in order to determine more exactly ... the line *ultimately* to be followed by the boundary commission" (above, paragraph 18.37: emphasis added).[289] This would explain why in many places the delimitation is expressed not in precise topographical terms but in general descriptive language which is not apt for a technical delimitation but would be appropriate as guidance for the precise demarcation which it was thought would follow. In a sense, therefore, the delimitation fixed the boundary only approximately and provisionally, as a temporary holding measure, pending the demarcation which was expected to follow soon afterwards. In that expectation the

[289] See also above, para. 19.36; and, for example, C.O. Confidential Print, African (West), No. 1049, No. 74, p. 178; No. 77, p. 192; No. 78, para. 8, p. 194; No. 84, pp. 210-11 (NC-M 335)

parties were disappointed: the necessary demarcation of what was eventually to become the Nigeria-Cameroon boundary never took place.

19.54 The examples given of deficiencies in the terms of the delimitation also show that the difficulties to which they give rise essentially involve issues of demarcation. Accepting in principle, as Nigeria does, that the instruments establish generally speaking the boundary between the two countries, it is apparent that what is involved is not any dispute about the delimitation of the boundary, but rather questions about the demarcation on the ground of a boundary the delimitation of which is otherwise agreed in principle.

19.55 It is also the case that questions which arise in the context of locally agreed variations to or interpretations of the boundary (paragraphs 19.23-19.38 above) can, in Nigeria's view, be best considered within the framework of a joint demarcation of the boundary. Such a joint demarcation would also provide an opportunity for Cameroon to correct those of its official boundary maps which are clearly at variance with the terms of the instruments on which Cameroon itself relies and which Cameroon invited the Court to endorse.

E. The principal boundary sectors

19.56 It is appropriate now for Nigeria to comment in turn upon each of the four Sectors of the boundary which were for convenience identified in Chapter 18 (see paragraph 18.26).

19.57 Before doing so a preliminary word of explanation may be helpful regarding the origin and numbering of Boundary Pillars (BPs), the locations of some of which are still relevant to the present boundary between Nigeria and Cameroon. There were four series of separately numbered (and sometimes unnumbered) boundary pillars, which can be summarised as follows:

(1) BPs 1-17 erected in 1906 around the "Yola Arc", numbered from North to South;

(2) 4 named but unnumbered beacons, and BPs 1-29 running northwards from Yola to Lake Chad, also erected in 1906;

(3) 5 unnumbered BPs, and BPs 1-7 numbered from South to North, erected in 1905-1906. The unnumbered BPs lie between the Akwaporum and Awa Rivers in the South and the numbered BPs between the Cross River and Oyi River in the North; and

(4) BPs 1-114, numbered from North to South, starting close to BP 17 of the Yola Arc series and overlapping, in the South, with BPs 1-7 of the 1905-1906 series.

19.58 In greater detail these four series of boundary pillars were erected in the following circumstances. As to:

(1) and (2) the Anglo-German Agreement 1906 delimited the boundary between Yola and Lake Chad in two parts. First, an arc was defined around Yola (the "Yola arc") starting from the Benue River (Point C on Map 56 in the *Atlas*) and running south. During this work, 17 boundary pillars were erected, BP1 being on the south bank of the Benue River and BP17 being southwest of Yola. However, BPs Nos. 1 to 5 were made redundant by a variation contained in Article 1 of the Agreement which moved the alignment of the arc from dry land onto the Faro and Benue Rivers. The positions of BPs 1, 8, 15 and 17 are indicated on Map 56 (*ibid*). The second part of this boundary was provided for in Articles II to VII of the Agreement, which delimited the rest of the boundary in a northward direction to Lake Chad. Between the Benue River and Dikwa, four beacons were

named but not numbered, and between Dikwa and Lake Chad 29 boundary pillars were erected and numbered from 1 to 29. The positions of BPs 1 and 29 are also indicated on Map 56 *(ibid)*.

(3) In 1905, the Southern Nigeria-Kamerun Boundary Commission began work and by April 1906 had formulated proposals for the course of the boundary from the coast as far north as a pillar (No. 7) erected between the Okon and Oyi Rivers in latitude 6°05'N. In the course of this work, the commissioners erected four unnumbered pillars and one cairn between the Akwaporum and Awa Rivers in the South, a further unnumbered pillar on the bank of the Cross River North of the rapids, two more along a stream referred to as "Boundary stream" and then a series of seven pillars numbered from 1 to 7 ending as described above.

(4) Acting pursuant to the unratified Anglo-German Agreement of 1909 (NC-M 42), British and German officials agreed upon a further boundary demarcation from Yola southwards, and incorporated their agreed results in the Anglo-German Demarcation Agreement of April 1913 (NC-M 46). In this demarcation they began a new enumeration of Boundary Pillars, from BP1 to BP114. BP1 was stated by paragraph 1 of that 1913 Agreement to be "at a point a quarter of a mile north-west of Pillar 17 (the last pillar of the Yola-Chad demarcation)".[290] That BP1, which is close to BP17 of the earlier Chad-Yola series, is located at point B on Map 56 in the *Atlas*. The positions of BPs 1, 24, 44, 64, 91, 107 and 114 are indicated on Map 56 *(ibid)*. BP 107 is the most northerly of the seven pillars

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[290] The position of BP1 is more completely defined in the Anglo-German Treaty of 11 March 1913 as being "¼ mile ... north-west of boundary pillar 17 along the prolongation of the straight line joining boundary pillars 16 and 17".

established in the 1905-1906 demarcation exercise.[291] From the descriptions, it can be deduced that the correspondence in numbering is as follows:

1913 Demarcation Pillar No.	1905-6 Demarcation Pillar No.
7	107
6	108
5	109
4	110
3	111
2	112
1	113
built but not numbered	113A

Pillar 114 of the 1913 Demarcation was built in 1913 for the purpose of that demarcation and therefore has no equivalent. It is presumed that the pillars associated with the "Boundary Stream" in the 1913 Treaty were abandoned and possibly even destroyed. None of these coincided with BP 114.

19.59 (1) For the most part, and apart from occasional cross-references (as in paragraph 1 of the April 1913 Agreement just referred to), the 1906 series of Boundary Pillars running from Lake Chad to a point North of Yola can be disregarded as no longer directly applicable to the demarcation of the present boundary between Nigeria and Cameroon. As Map 56 shows, most of the Anglo-German boundary between Lake Chad and Yola now lies to the West of the present boundary between Nigeria and Cameroon.

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[291] Article 3 of the Protocol of the 1906 Demarcation enjoins any subsequent demarcation to use these seven pillars.

(2) BPs 6, 7 and 8 of that 1906 series (around the Yola arc) remain relevant as they are specifically referred to in the Thomson-Marchand Declaration.

(3) The 1905-1906 series of BPs 1-7 ending at the Oyi River were renumbered by the 1913 demarcation.

(4) The 1913 series of BPs 1-114 from Yola to the Cross River is still partly relevant to the present boundary between Nigeria and Cameroon. Although BPs 1-63 are no longer directly relevant to the demarcation of the present boundary between Nigeria and Cameroon since they concern the former Anglo-German boundary, BPs 64 to 114 now help to delimit the Nigeria-Cameroon boundary. BP64 is adjacent to Point F and BP114 is at Point G on Map 56 in the *Atlas*.

(i) Sector 1: The mouth of the Ebeji River to Hill 1660

19.60 The extent of the boundary in this Sector is illustrated on Map 56 *(ibid.)*, points J to K.

19.61 Apart from a small section at the mouth of the River Ebeji (and subject to paragraphs 19.40-19.42 above), the boundary in this Sector is currently delimited by the Thomson-Marchand Declaration 1929-31, and in particular by its paragraphs (3) to (60) (amplifying the Milner-Simon Declaration 1919). The text of the relevant paragraphs are set out in NC-M 54. Although it is the primarily relevant instrument, previous delimitations relating to the same stretch of boundary are still relevant.

(a) The Milner-Simon Declaration 1919

19.62 In particular, it has to be noted that the Thomson-Marchand Declaration followed the Milner-Simon Declaration 1919, paragraphs 1 to 22 of which relate to this Sector of the boundary (see above, paragraph 18.32). The text of the relevant paragraphs is set out in NC-M 50. They are of particular importance given Cameroon's reliance on them in its submissions to the Court and the omission from the Trusteeship Agreement for the French Cameroons of any reference to the Thomson-Marchand Declaration (see paragraphs 19.68-19.70 below).

(b) Anglo-German Agreements

19.63 Further, it has also to be noted that in the central section of this Sector of the boundary, between points B and D on Map 56 in the *Atlas*, the boundary delimited by the Thomson-Marchand Declaration follows the boundary previously laid down in various Anglo-German Agreements.

19.64 When the British Mandated area of Cameroon was established, it consisted of two separate areas along the eastern borders of the Nigeria Protectorate. The northern area was an approximately inverted triangular shape, with its base along the shores of Lake Chad and its apex at a point north-east of the town of Yola. The southern area was similarly an approximately triangular shape, with its base along the Atlantic coast and its apex at a point South of Yola. These two distinct areas are evident from Map 54 in the *Atlas*. Between the two apex points of these two areas there was a stretch of boundary between the point north-east of Yola to the point south of Yola: this stretch is referred to as the "Yola arc".[292] This arc thus originated as part of the old Anglo-German agreed boundary, and has since then always marked the boundary between Nigeria (first the Protectorate, then the

[292] See para. 19.58(1) above

independent State) and Cameroon (first the German Protectorate of Kamerun, then the French Mandated and Trust territory of French Cameroon, and finally the independent State of Cameroon).

19.65 The principal directly relevant Anglo-German agreements were:

(1) the Exchange of Notes of 27 July/2 August 1886 (NC-M 25);

(2) the Agreement of 15 November 1893 (NC-M 28);

(3) the Agreement of 19 March 1906 (NC-M 38).

(c) The Thomson-Marchand Declaration 1929-1931

19.66 These Anglo-German agreements are no longer directly in issue, since they have been superseded by the more detailed provisions of the Thomson-Marchand Declaration. They may still have a certain relevance, however, in shedding light on the historical development of the boundary in those places where the delimitation in the Milner-Simon and Thomson-Marchand Declarations may be defective.

19.67 On the basis already explained, and subject to the considerations noted in paragraphs 18.54-18.57 and paragraphs 19.2-19.53 above, Nigeria in principle accepts the boundary as delimited by the relevant paragraphs of that Declaration. In particular, and in relation to the Sector of the boundary now under consideration, Nigeria does not challenge the legal validity of the Milner-Simon Declaration, its adoption by reference as part of the Mandates for the British and French Cameroons, or the legal validity of the Thomson-Marchand Declaration as confirmed by the Exchange of Notes of 9 January 1931.

19.68 Nevertheless, Nigeria draws attention to the fact that the Trusteeship Agreements for the British and French Cameroons are, in relation to the Thomson-Marchand Declaration, in different terms. In short, the British Trusteeship Agreement defines the boundary of the British Trust Territory by reference to that Declaration, while the equivalent provision of the French Trusteeship Agreement makes no mention of it. The fact that the Thomson-Marchand Declaration was not mentioned in the French Trusteeship Agreement does not necessarily affect its validity, but does emphasise that (as noted in paragraph 19.53 above) these agreed border delimitations were not regarded as final and definitive settlements, but rather had an approximate and provisional character.

19.69 Article 1 of the Trusteeship Agreement for French Cameroons reads as follows:

> "The Territory to which the present Trusteeship Agreement applies comprises that part of the Cameroons lying to the east of the boundary defined by the Franco-British Declaration of 10 July 1919" [i.e. the Milner-Simon Declaration].

The relevant part of Article 1 of the Trusteeship Agreement for the British Cameroons reads as follows:

> "The Territory to which this Agreement applies comprises that part of the Cameroons lying to the west of the boundary defined by the Franco-British Declaration of 10 July 1919, and more exactly defined in the Declaration made by the Governor of the Colony and Protectorate of Nigeria and the Governor of the Cameroons under French mandate which was confirmed by the Exchange of Notes between His Majesty's Government in the United Kingdom and the French Government of 9 January 1931."

19.70 It thus appears that the western boundary of Cameroon was, upon its attainment of Independence from French administration, determined solely by reference to the Milner-Simon Declaration, and that, as against Nigeria, Cameroon cannot claim by way of succession under the Trusteeship Agreement that its boundary is determined

by the Thomson-Marchand Declaration. Cameroon's submission that the Court should specify the course of the boundary in terms of, *inter alia*, the Thomson-Marchand Declaration thus appears to be an attempt to make good the defect in Cameroon's position resulting from the terms of the Trusteeship Agreement for the French Cameroons.

19.71 In accepting in principle the delimitation of the boundary by the instruments referred to, Nigeria again draws attention to the fact that in some places some technical uncertainties and ambiguities attach to the delimitation of the boundary.[293] These uncertainties and ambiguities, however, do not mean that the delimitation as such is in dispute or rejected.

19.72 Apart from the matters already referred to in this Chapter, one other section of the boundary in this Sector calls for particular consideration.

19.73 This section of the boundary is the area near Tipsan and Kontcha. The area was given some prominence in Cameroon's *Memorial*.[294] It was also mentioned during the oral proceedings at the Preliminary Objections phase of the present case,[295] and it was apparent that there were a number of misunderstandings as to the true position. In paragraph 89 of its Judgment, the Court referred to Cameroon's argument about "the challenge by Nigeria to the validity of the existing titles to ... Tipsan ..."; and in paragraph 92 the Court noted that Nigeria "does differ with Cameroon about ... Tipsan ...".

19.74 The boundary in this area is delimited by paragraphs (41) and (42) of the Thomson-Marchand Declaration. They read:

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293 The deficiencies in the line described in the Milner-Simon Declaration were well recognised. See, for example, remarks in para. 24 of the Mandate Report for 1938 at NC-M 270.

294 MC, para. 6.90 *et seq.*

295 CR 98/1, pp. 24-25 (Nigeria); CR 98/4, p. 24 (Cameroon); CR 98/5, p. 42 (Nigeria); CR 98/6 pp. 37-38 (Cameroon)

> "(41) Thence a line parallel to and distant 2 kilometres to the west from this road (which is approximately that marked Faulborn. January, 1908, on Moisel's map) to a point on the Maio Tipsal (Tiba, Tibsat or Tussa on Moisel's map) 2 kilometres to the south-west of the point at which the road crosses said Maio Tipsal.
>
> (42) Thence the course of the Maio Tipsal upstream to its confluence with the Maio Mafu, flowing from the west, to a point, some 12 kilometres to the south-west of Kwancha town."

Parts of the DOS 1:50,000 map sheets 238SW and 258NW showing this area comprise Map 73 in the *Atlas*.

19.75 The various features referred to in the delimitation are clearly visible on this map, allowance being made for modern spellings. The road referred to is the road marked by a broken orange line on that map. An extract of Moisel's map (at scale) is at Map 74 in the *Atlas*, which clearly shows the track marked "Faulborn Jan. 08". The point at which the road crosses the River Tipsan is marked on Map 73 (*ibid*); the point on the River Tipsan two kilometres to the south-west of that point is also marked; and the course of the River Tipsan upstream is indicated.

19.76 It is apparent from this explanation of the terms of paragraphs (41) and (42) of the Thomson-Marchand Declaration that the assertions made in paragraphs 6.92 and 6.93 of Cameroon's *Memorial* are wholly unjustified. Cameroon asserted that Nigeria was aggressively intruding into Cameroon territory by establishing an immigration post at Tipsan. Cameroon said:

> "It transpires ... that the Cameroon-Nigeria frontier has been shifted to Typsan by the Nigerian army, which has established a border control post there ... The real frontier on the other hand, as materialized by stones left by the Germans, lies several miles to the west of Kontcha ..." (*Memorial*, paras. 6.92 - 6.93).

This is supported by a report from the Governor of Adamaoua Province reporting

> "the construction by Nigeria in 1994 of an emigration and immigration police post 6.5km inside Cameroonian territory in the Typsan locality of the village of Kontcha ..." (*Memorial*, para. 6.94)

Thus Cameroon, apart from being comprehensively in error in its claim to a *German* boundary marker, seeks to attach Tipsan to the village of Kontcha (which Nigeria accepts is in Cameroon territory), and to assert a boundary 6.5 kms. to the *West* of the Tipsan immigration post along the road to Bospan, as if Tipsan were part of Kontcha. Since that post is itself nearly four kms. West of Kontcha, Cameroon is thus placing the boundary some ten kms. West of Kontcha. Cameroon's confusion over the geographical relationship between Tipsan and Kontcha, and the location of the boundary (which runs *between* them), is responsible for what is in no way an intrusion by Nigeria into Cameroon territory but precisely the reverse. The clear terms of the Treaty show (a) that the location for the boundary asserted by Cameroon has no basis in the Treaty, and (b) the location of the Nigerian immigration post at Tipsan is clearly on the Nigerian side of the stream which forms the boundary. In so far as there is any dispute about the proper course of the boundary in this area, it is not a dispute of Nigeria's making. Nigeria subscribes to the delimitation set out in the Thomson-Marchand Declaration. It is Cameroon which, despite requesting the Court to endorse the delimitation set out in that Declaration, is itself not acting in accordance with it. By asserting a boundary which has no justification in the Treaty, and then on that erroneous basis making assertions about Nigeria's alleged aggression, Cameroon has acted irresponsibly.

(ii) Sector 2: Hill 1660 to Boundary Pillar 64

19.77 The extent of the boundary in this Sector is illustrated on Map 56 in the *Atlas*, points K to F: it is the former dividing line between the Northern and Southern Cameroons.

19.78 The boundary in this Sector resulted from the administrative division of the territories under British Mandate into northern and southern portions (see above, paragraph 18.40). When, following the referenda in 1961, the southern portion became part of Cameroon and the northern portion became part of Nigeria, the formerly internal administrative boundary between those two portions became the international boundary between Nigeria and Cameroon.

19.79 The internal administrative boundary was described in the following terms in the Second Schedule to the Nigeria (Protectorate and Cameroons) Order in Council 1946 (NC-M 55):

> "The line dividing the northern and southern portions of the Cameroons under British Mandate.
>
> From boundary post 64 on the old Anglo-German frontier the line follows the River Gamana upstream to the point where it is joined by the River Sama; thence up the River Sama to the point where it divides into two; thence in a straight line to the highest point of Tosso Mountain; thence in a straight line eastwards to a point on the main Kentu-Bamenda road where it is crossed by an unnamed tributary of the River Akbang (Heboro on Sheet E of Moisel's map on Scale 1/300,000) - the said point being marked by a cairn; thence down the stream to its junction with the River Akbang; thence the River Akbang to its junction with the River Donga; thence the River Donga to its junction with the River Mburi; thence the River Mburi southwards to its junction with an unnamed stream about one mile north of the point where the new Kumbo-Banyo road crosses the River Mburi at Nyan (*alias* Nton), the said point being about four miles south-east by east of Muwe; thence along this unnamed stream on a general true bearing of 120° for one and a half miles to its source at a point on the new Kumbo-Banyo road, near the source of the River Mfi; thence on a true

bearing of 100° for three and five-sixths miles along the crest of the mountains to the prominent peak which marks the Franco-British frontier."

19.80 In addition to the delimitation of the boundary by the 1946 Order in Council, Nigeria also notes the subsequent delimitation of the relevant boundary in the Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954 (NC-M 59). The significance of this Proclamation is considered in paragraphs 18.41 and 18.42 above.

19.81 On the basis already explained, and subject to the considerations noted in paragraphs 18.54-18.57 and paragraphs 19.2-19.53, Nigeria in principle accepts the delimitation of the boundary as set out in that Schedule. In particular, and in relation to the Sector of the boundary now under consideration, Nigeria does not challenge the legal validity of the Order in Council. There is, as far as Nigeria is aware, no dispute over that delimitation.

19.82 In accepting in principle the delimitation of the boundary by the instrument referred to, Nigeria again draws attention to the fact that in some places some technical uncertainties attach to the agreed delimitation of the boundary. These do not mean that the delimitation as such is in dispute or rejected.

19.83 In particular, attention is drawn to the fact that the boundary should not end at BP64 but at the point at which the median line of the Gamana River intersects a line joining BPs 64 and 65. There are, however, no instructions in the relevant texts on how to proceed from the median line of the Gamana River to BP64.

19.84 More generally, it is important to recall that the boundary in this Sector was originally prescribed as an *internal* boundary between two parts of the British Cameroons. Such internal, inter-provincial or inter-regional boundaries are seldom prescribed with the care which should attend the delimitation of an international

boundary. In terms of local social and economic factors, such as trans-boundary tribal movements or farming, so long as both provinces or regions are part of the same country, the precise line of the boundary has a reduced significance. When, as in the present situation, a boundary originally delimited as an internal boundary becomes an international boundary without any more specific delimitation, its imperfections for *international* purposes become more evident.

(iii) Sector 3: BP 64 to BP 114

19.85 The extent of the boundary in this Sector is illustrated on Map 56 in the *Atlas*, points F to G.

19.86 The boundary in this Sector results from the delimitation in the Anglo-German Treaty of 11 March 1913 and the Anglo-German Demarcation Agreement of 12 April 1913.

19.87 The Anglo-German Treaty of 11 March 1913 (NC-M 45) delimited the boundary from Yola to the sea. It sets out this boundary in Articles I to XXII. Articles I - VIII concern the boundary North of what was later to become known as BP 64, and no longer directly determine the present boundary between Nigeria and Cameroon. The pillar referred to in Article XV appears to be that eventually numbered BP 114 (see paragraph 19.58(4)). Accordingly only the provisions of Articles IX - XV are relevant to the Sector now under consideration, namely that between BP 64 and BP 114.

19.88 While the Agreement of 11 March 1913 was being negotiated, officials of the two countries were engaged in a joint demarcation of part of the boundary between the areas of British and German interest, pursuant to an Agreement concluded on 6 October 1909 (NC-M 42), but never approved by the two Governments. The results of this joint demarcation of the boundary were incorporated into the

Agreement of 12 April 1913 (NC-M 46: and see above, paragraphs 18.44-18.51). This Agreement stated that it was arrived at in order "to mark out a definite boundary between Nigeria and the Cameroons from Yola to the Cross River, in accordance with the Agreement of the 6th October, 1909". Although the negotiators of the 1909 Agreement recommended it to their Governments for approval, it never was approved. The 1913 demarcation officials, purporting nevertheless to act pursuant to the 1909 Agreement, "agreed to adopt the boundary shown on the accompanying map in 8 sheets, subject to the approval of their Governments". That approval was given by an Exchange of Notes of 4 July 1914. To the extent that the April 1913 Demarcation Agreement overlaps part of the boundary delimited in the March 1913 Treaty, the April 1913 Agreement supersedes the earlier 1913 Treaty.

19.89 The demarcation under the 1913 Agreement (which in fact followed quite closely the demarcation agreed *ad referendum* in 1909) began at Pillar 1, "at a point a quarter of a mile north-west of Pillar 17 (the last pillar of the Yola-Chad demarcation)" - see above, paragraph 19.58(4). The demarcation continued to BP 114 "at a bend in the Cross River about 2½ miles up-stream from Obokum on the north bank of this river". This BP 114 is approximately 140 kms. (87 miles) North of Bakassi. Accordingly, while the demarcation from BP1 to BP64 is no longer relevant to any present boundary between Nigeria and Cameroon, the rest of the demarcation, that is from BP64 to BP114 inclusive, covers the entire Sector now under consideration. That stretch of the demarcation is described in paragraphs 13 to 21 of the 1913 Demarcation Agreement.

19.90 The final substantive paragraph of that 1913 Demarcation Agreement provided that

> "In case the above description of the boundary does not agree exactly with the boundary as shown on the maps accompanying the present Agreement, and which are regarded as forming an integral part thereof, it is expressly understood that the position of the boundary as shown on the maps shall decide any dispute".

19.91 On the basis already explained, and subject to the considerations noted in paragraphs 18.54-18.57 and paragraphs 19.2-19.53, Nigeria in principle accepts the delimitation of the boundary as set out in the Anglo-German Demarcation Agreement of 12 April 1913. In particular, and in relation to the Sector of the boundary now under consideration, Nigeria does not challenge the legal validity of that Agreement.

19.92 In accepting in principle the delimitation of the boundary by the instruments referred to, Nigeria again draws attention to the fact that in some places some technical uncertainties attach to the agreed delimitation of the boundary. These do not mean that the delimitation as such is in dispute or is rejected.

(iv) Sector 4: BP 114 to North of Bakassi

19.93 The extent of the boundary in this Sector is illustrated on Map 56 in the *Atlas*, points G-H.

19.94 The Demarcation Agreement of 12 April 1913 demarcated the boundary only as far South as BP 114, accepting in doing so the alignment of the boundary between BPs 107 and 114 as it resulted from the 1905-1906 demarcation. BP 114 is some 140 kms. (87 miles) North of Bakassi. Below that point, the boundary is still governed by the Treaty of 11 March 1913. Both those agreements built on earlier Anglo-German Agreements, at least in part.

19.95 In the Exchange of Notes of 29 April/7 May 1885 (NC-M 24: and see above, paragraphs 7.5 *et seq.*) Great Britain and Germany came to an arrangement whereby they would separate their respective spheres of influence and action in this part of Africa. The line of separation ran from the mouth of the Rio del Rey to its source, and then direct to the Old Calabar or Cross River, terminating after crossing that river at a point marked "Rapids" on a specified Chart. The southern

part of this line (concerning the Rio del Rey) is considered in Part I of this *Counter-Memorial* in the context of title to the Bakassi Peninsula. It is the more northerly part (up to the Cross River Rapids) which relates to the Sector of the boundary now under consideration.

19.96 It is, generally, to be noted that the Exchange of Notes did not purport to define a formal boundary, but rather to differentiate between the two States' respective spheres of influence (see above, Chapter 7, paragraphs 7.7-7.10). It is also to be noted that the terms of the Notes constituting this Exchange are not, as would be usual for an Exchange of Notes constituting a binding international agreement, in identical terms.

19.97 In a further Exchange of Notes of 27 July/2 August 1886 (NC-M 25: and see above, paragraphs 7.13-7.19) the two Governments extended into the interior, from the Cross River up to the area of Yola, the line set out in the 1885 Exchange of Notes.

19.98 Again it may be noted that the two Notes were not expressed in identical language.

19.99 The Anglo-German Agreement 1890 (NC-M 26: and see above, paragraphs 7.20-7.25) corrected an error in the description of the line used in the 1885 Exchange of Notes, which had erroneously assumed that the Rio del Rey was a river. Instead, the Agreement provided for a provisional line of demarcation from the head of the Rio del Rey Creek to the Cross River Rapids.

19.100 The line from the head of the Creek to the "Rapids" is, it should be noted, described as "a provisional line of demarcation". Article VI provides that all the lines of demarcation traced in, *inter alia*, Article IV are "subject to rectification by agreement between the two Powers, in accordance with local requirements"; and it was "specially understood that, as regards the boundaries traced in Article IV,

Commissioners shall meet with the least possible delay for the object of such rectification".

19.101 These three agreements, in establishing a line of division between German and British areas of action, started at the coast (at the mouth of the Rio del Rey) and prescribed a line going inland, via the head of the Rio del Rey, to the Cross River Rapids, and thence further northeast, to Yola. The subsequent agreements of March and April 1913 delimited the boundary in the opposite direction, from Yola towards the sea. The Demarcation Agreement of 12 April 1913 delimited the boundary as far south as BP 114 (above, paragraph 19.89). This pillar was located some 10 kms upstream of the Cross River Rapids referred to in the earlier agreements. Those earlier agreements had taken the line northwards from the Rapids by way of a straight line. The March 1913 Treaty instead followed a different route (as described in its Article XV), and the line southwards from BP 114 followed the thalweg of the Cross River down that River and past the Rapids previously referred to.

19.102 Those provisions of the March 1913 Treaty which concern title to the Bakassi Peninsula are considered in Part I of this *Counter-Memorial*. As there explained, those "Bakassi provisions" of the March 1913 Treaty were ineffective to transfer territorial sovereignty over Bakassi. It is, however, only those "Bakassi provisions" which were thus deficient, since it was only those provisions which were concluded by Great Britain in excess of the rights and powers at that time vested in it. The "Bakassi provisions" are severable from the other provisions of the Treaty, which can still be applied according to their terms (see above, paragraphs 8.55-8.56).

19.103 Accordingly the non-Bakassi provisions of the Treaty of 11 March 1913 were effective to delimit the boundary between the British and German Protectorates to the South and West of BP 114, and at the present time to delimit the boundary between Nigeria and Cameroon. That is also the position taken by Cameroon.

19.104 The Sector of the boundary here under consideration begins at BP 114 (of the April 1913 Demarcation Agreement). Although this pillar is not identified in Article XV of the March 1913 Treaty, it is (according to paragraph 21 of the April 1913 Demarcation Agreement) located at a bend in the Cross River at a point 2½ miles up-stream of Obokum, and that is also the point referred to in Article XV of the March 1913 Treaty where the boundary picks up the thalweg of the Cross River and from there continues its southwards course.

19.105 At the southern end of the present boundary Sector, and for the reasons given in Part I of this *Counter-Memorial*, the boundary to the North of the Bakassi Peninsula joins the thalweg of the Akpa Yafe (and thus the boundary described in the Treaty of 11 March 1913) at the point nearest to the mid-point of the mouth of Archibong Creek (see paragraph 11.8(1) above). That location on the Akpa Yafe falls within Article XVII of that Treaty.

19.106 Accordingly, the provisions of that Treaty relevant to the stretch between BP114 and the Northern limit of Bakassi are Articles XV to XVII.

19.107 On the basis already explained, and subject to the considerations noted above in paragraphs 18.54-18.57 and paragraphs 19.2-19.53, Nigeria in principle accepts, for the Sector presently under consideration, the delimitation of the boundary as set out in the relevant parts of the Treaty of 11 March 1913. In particular, and in relation to the Sector of the boundary now under consideration, Nigeria does not challenge the legal validity of that Treaty.

19.108 In accepting in principle the delimitation of the boundary by the Treaty referred to, Nigeria again draws attention to the fact that in some places some technical uncertainties attach to the agreed delimitation of the boundary. These do not mean that the delimitation as such is rejected or is in dispute.

F. Conclusions

19.109 Nigeria has, in principle, no dispute with Cameroon over the delimitation of the land boundary between Lake Chad and Bakassi. Nigeria agrees with Cameroon that the land boundary between the two States in that area is as described in the instruments relied on by Cameroon, the validity of which Nigeria does not question. But this is subject to serious qualifications to which Nigeria has felt it necessary to draw attention (paragraphs 19.2-19.53 above). Those qualifications have the result that those instruments cannot, as asserted by Cameroon, be regarded as the definitive specification of the land boundary between Lake Chad and Bakassi, as sought by Cameroon.

PART IV

CAMEROON'S MARITIME CLAIMS

CHAPTER 20

CAMEROON'S MARITIME CLAIM-LINE IN THE GULF OF GUINEA

A. Preliminary Issues

20.1 In this Part of its *Counter-Memorial*, Nigeria responds to the Cameroonian demand for the delimitation of the respective maritime zones of the parties, as set out in paragraph 20 (f) of the Cameroon *Application*, which claim has been specified and particularised as a claim to a particular line in Chapter 5 of its *Memorial* (hereafter referred to as Cameroon's claim-line). This Part is structured as follows:

(1) This Chapter deals first with the Court's response, in its judgment of 11 June 1998, on Preliminary Objections 7 and 8 dealing with the maritime boundary. It then goes on to clarify certain matters of fact, relating in particular to the present maritime claims of the parties, to the current state of negotiations with them and with Equatorial Guinea, and briefly to the existing economic and other interests of the parties in the Gulf of Guinea.

(2) Chapter 21 deals with the applicable law relating to the delimitation of the three maritime zones (territorial sea, continental shelf, exclusive economic zone) so far as it is relevant to this case.

(3) Chapter 22 deals with certain issues of the admissibility and ordering of Cameroon's claim, to the extent that these were reserved by the Court in its judgment of 11 June 1998.

(4) Chapter 23 then deals with the substance of Cameroon's maritime claim-line, showing that its line is not in accordance with international law.

B. The Court's Judgment on Preliminary Objections 7 and 8

20.2 Nigeria presented two preliminary objections in respect of the maritime boundary.

20.3 Preliminary Objection 7 raised two distinct questions. As to the maritime boundary as a whole, Nigeria had argued that the land boundary must be determined first, and that the maritime phase should accordingly be postponed. The Court accepted "that it will be difficult if not impossible to determine the delimitation of the maritime boundary between the Parties as long as the title over the Peninsula of Bakassi has not been determined".[296] But it noted that as a result of its decision, the Court had jurisdiction over the land boundary issues and that accordingly:

> "it becomes a matter for the Court to arrange the order in which it addresses the issues in such a way that it can deal substantively with each of them. That is a matter which lies within the Court's discretion and which cannot be the basis of a preliminary objection."[297]

20.4 The second aspect related only to the maritime boundary beyond Point G. Nigeria had pointed out that there had been no negotiations between the parties as to this sector of the maritime boundary, and that the first notice it had of Cameroon's maritime claim-line was when it received Cameroon's *Memorial*. Cameroon did not deny this fact. It argued rather that Articles 76 and 83 of the Law of the Sea Convention did not require any attempt to reach agreement, at least if it was clear that no agreement would be forthcoming. The Court reached no conclusion on the meaning of Articles 76 and 83. Instead it noted that:

> "in this case, it has not been seised on the basis of Article 36, paragraph 1, of the Statute, and, in pursuance of it, in accordance with Part XV of the United Nations Convention on the Law of the Sea relating to the settlement of disputes arising between the parties to the Convention with respect to its interpretation or application. It has been seised on the basis of declarations made under Article 36, paragraph 2, of the Statute, which declarations do not contain any condition relating to prior negotiations to be conducted within a reasonable time period. The second argument of Nigeria cannot therefore be upheld."[298]

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296 Preliminary Objections, Judgment of 11 June 1998, para. 106.

297 *ibid.*

298 *ibid.*, para. 109

Thus the Court reserved to a later phase of the case the issues of the meaning and effect of Articles 76 and 83. Whatever their meaning and effect may be, the Court has jurisdiction to determine them under Article 36 (2) of the Statute. The Court also noted that, despite the imprecision of the Cameroon claim,

> "there is a dispute on this subject between the Parties which, ultimately and bearing in mind the circumstances of the case, is precise enough for it to be brought before the Court".[299]

20.5 Preliminary Objection 8 related to the effect that any adjudication on the Cameroon claim-line would necessarily have on third parties, in particular Equatorial Guinea. As to this point the Court held that:

> "In order to determine where a prolonged maritime boundary beyond point G would run, where and to what extent it would meet possible claims of other States, and how its judgment would affect the rights and interests of these States, the Court would of necessity have to deal with the merits of Cameroon's request. At the same time, the Court cannot rule out the possibility that the impact of the judgment required by Cameroon on the rights and interests of the third States could be such that the Court would be prevented from rendering it in the absence of these States, and that consequently Nigeria's eighth preliminary objection would have to be upheld at least in part. Whether such third States would choose to exercise their rights to intervene in these proceedings pursuant to the Statute remains to be seen."[300]

It therefore held that the Nigerian preliminary objection "does not possess, in the circumstances of the case, an exclusively preliminary character".[301]

20.6 Nigeria returns to these issues in Chapter 22 below.

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299 *ibid.*, para. 110

300 *ibid.*, para. 116

301 *ibid.*, para. 117

C. The Position of the Maritime Claims and Legislation of the Parties

20.7 Nigeria claims, as it is entitled to do under international law, a 12 mile territorial sea, a continental shelf extending beyond the territorial sea out to 200 miles and beyond to the extent permitted by the United Nations Convention on the Law of the Sea, and an exclusive economic zone of 188 miles beyond the territorial sea. Attached to this *Counter-Memorial* are the texts of the relevant Nigerian legislation:

(1) Territorial Waters Act 1967 as amended (NC-M 336);

(2) Petroleum Act 1969 as amended (NC-M 337);

(3) Exclusive Economic Zone Act 1978 as amended (NC-M 338).

20.8 By contrast, Cameroon's maritime legislation is restricted to the Cameroon Merchant Marine Code of 1962 as amended by Law No 74 of 5 December 1974, which currently provides for a 50 mile territorial sea (NC-M 339).

20.9 Cameroon's legislation embodies a claim to a 50 mile territorial sea. That claim, originally made in 1974, has not been repealed. At the time of completion of this *Counter-Memorial*, the position has not changed.[302] Cameroon has not formally proclaimed an exclusive economic zone, and has no EEZ legislation.

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[302] The 50 mile territorial sea claim is still recorded as such, for example, in United Kingdom Hydrographic Office Notice 12/99, 'National Claims to Maritime Jurisdiction' issued on 1 January 1999, p.1-1. Cameroon has argued that under its Constitution the effect of its ratification of the Law of the Sea Convention was to repeal its territorial sea legislation to the extent of any inconsistency. But the relevant constitutional provision, modelled on the equivalent article of the French Constitution, does not invalidate legislation inconsistent with a treaty; it merely disapplies it on a basis of reciprocity, and such a procedure is wholly inappropriate to a claim to a territorial zone such as the territorial sea. The territorial sea has a status applicable *erga omnes*: it is a zone of territory and does not exist on a bilateral basis.

D. The state of negotiations between the various States concerned

20.10 Since the argument and judgment of the Court on the Preliminary Objections, there have been no negotiations between the parties with respect to Cameroon's maritime claim-line. Nor, to Nigeria's knowledge, have there been any negotiations on that line between Cameroon and Equatorial Guinea, or between Cameroon and São Tomé e Príncipe. This is surprising, given that for most of its length Cameroon's claim-line impinges on maritime territory claimed by those two States, as will now be illustrated.

20.11 Before turning to these illustrations, it should be stressed that graphic representations of Cameroon's claim-line in this *Counter-Memorial* have had to be based on the vague indications shown in its *Memorial*, and in particular on the sketch map, "La Délimitation Equitable", reprinted here as Fig. 20.1. That is a rough sketch-map. The island of Bioko, for example, has nothing like the dimensions or shape shown. The extent of the distortion can be seen from Fig. 20.2 which shows Cameroon's sketch-map superimposed on an actual map of the region. For the purposes of illustrating its impact on the neighbouring States, Nigeria has tried, as best as it can from the limited and approximate information given, to locate the Cameroon claim-line on a map. The result is necessarily very approximate. But the impact of Cameroon's claim-line on the other States in the region is clear enough. The impact of Cameroon's claim-line on Equatorial Guinea and on São Tomé e Príncipe can be seen from Fig. 20.3.[303] For about 80 per cent. of its length from Point G, that claim-line cuts into maritime zones claimed by the other two States.

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[303] The EEZ boundary claimed by São Tomé e Príncipe is based on its Law No. 1/98 on delimitation of the territorial sea and the exclusive economic zone (NC-M 340). Its archipelagic baselines were proclaimed in 1978 and amended in 1982. See United States Department of State, Office of the Geographer, "Limits in the Seas No. 98", *Archipelagic Straight Baselines: São Tomé and Príncipe* (Washington, 1983).

E. Nigeria's negotiations with Equatorial Guinea

20.12 Nigeria is negotiating with Equatorial Guinea on their respective maritime boundaries. The negotiations have been urgently sought by Equatorial Guinea with a view to resolving questions about the status of the Zafiro field, which is the subject of overlapping licences as between Nigeria and Equatorial Guinea (but not Cameroon). Details of relevant Nigerian concessions are set out below.

F. Relevant economic and other interests in the Gulf of Guinea

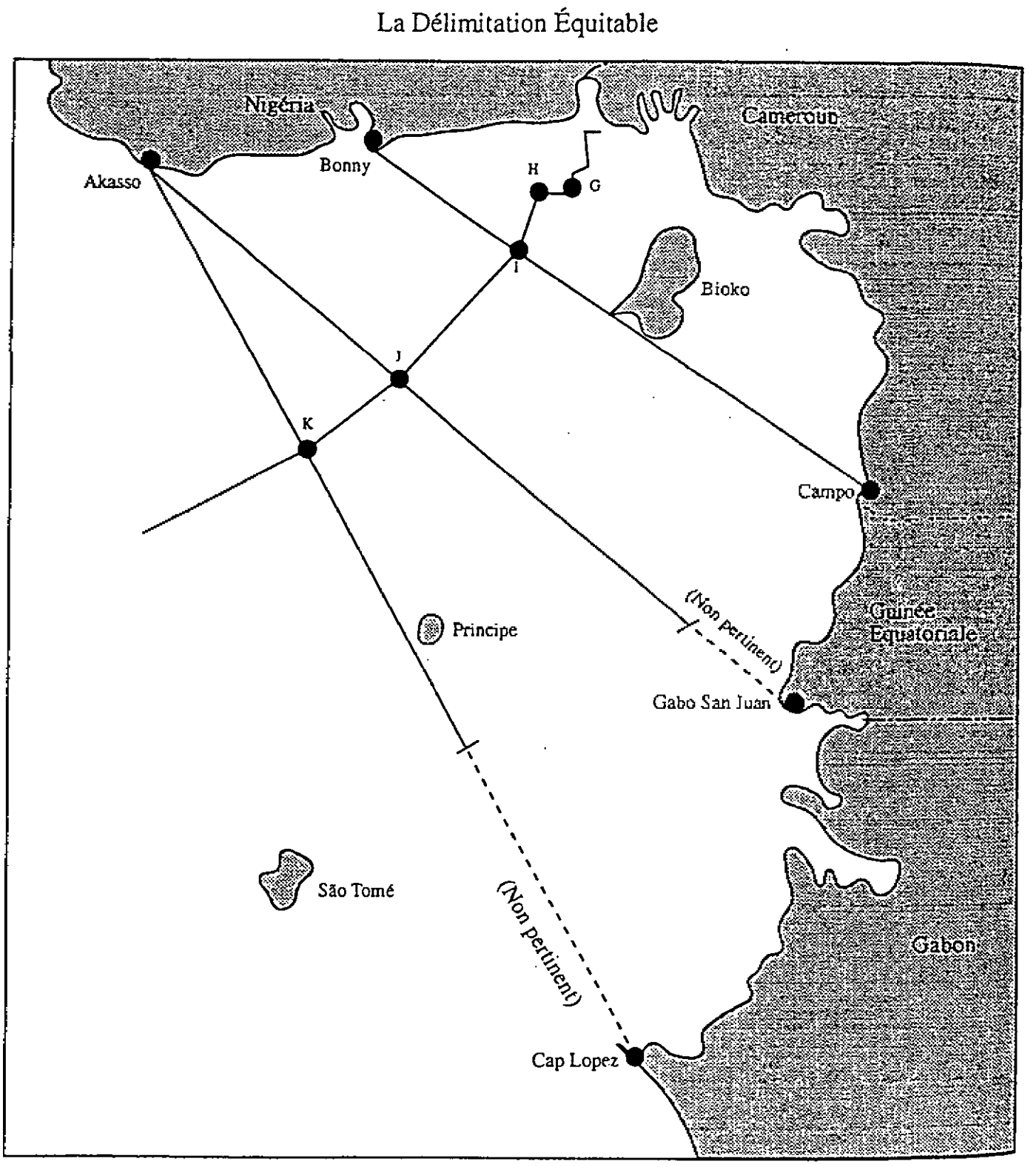
(i) Exploration and exploitation of continental shelf resources

20.13 Cameroon's claim-line as presented in its *Memorial* appears as if written on a clean slate. But there has been massive activity in the granting of concessions and in the exploration and exploitation of the continental shelf in the area in question, and the whole area is, with hardly any exceptions, the subject of concessions or licences granted by one or other coastal State. In the case of Nigeria, the relevant licences mostly date back several decades. They form a continuum throughout the area, from North to South.

20.14 On the Nigerian side, the current concessions (i.e. those apparently intersected by the Cameroon claim-line) are as follows:

Number of Concession	Current Holder(s)	Date of current concession (Date of initial concession)	Area (km^2)
OPL 230	Monipulo	10/91	464
OPL 98	NNPC/Addax	6/5/98 (March 1973)	587.97

Figure 20.1: Cameroon Memorial, "La Délimitation Equitable"



Source: Cameroon Memorial, p.556 (no previous provenance cited)

Figure 20.2: Cameroon Sketch-map superimposed on an accurate map of the region

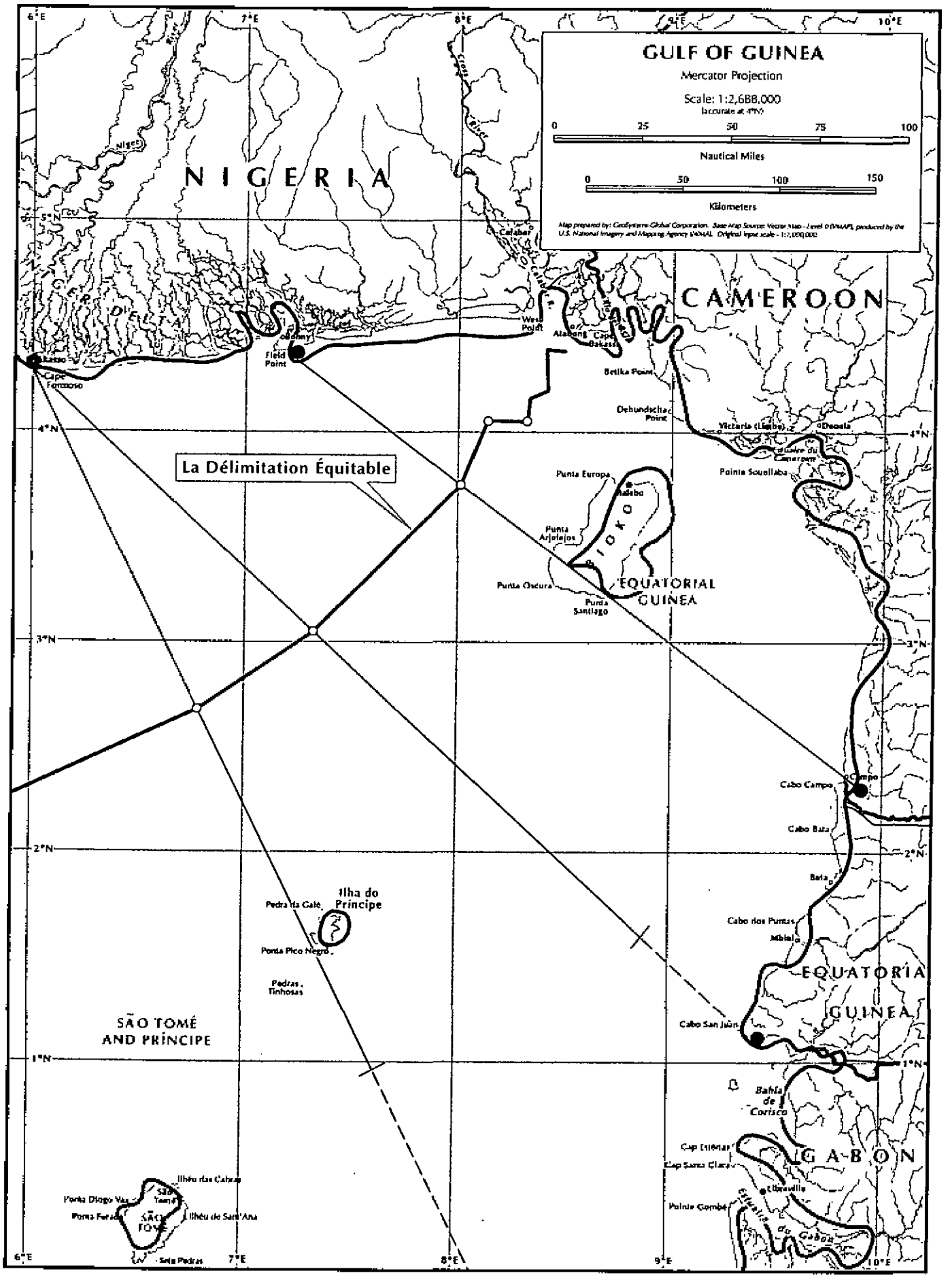
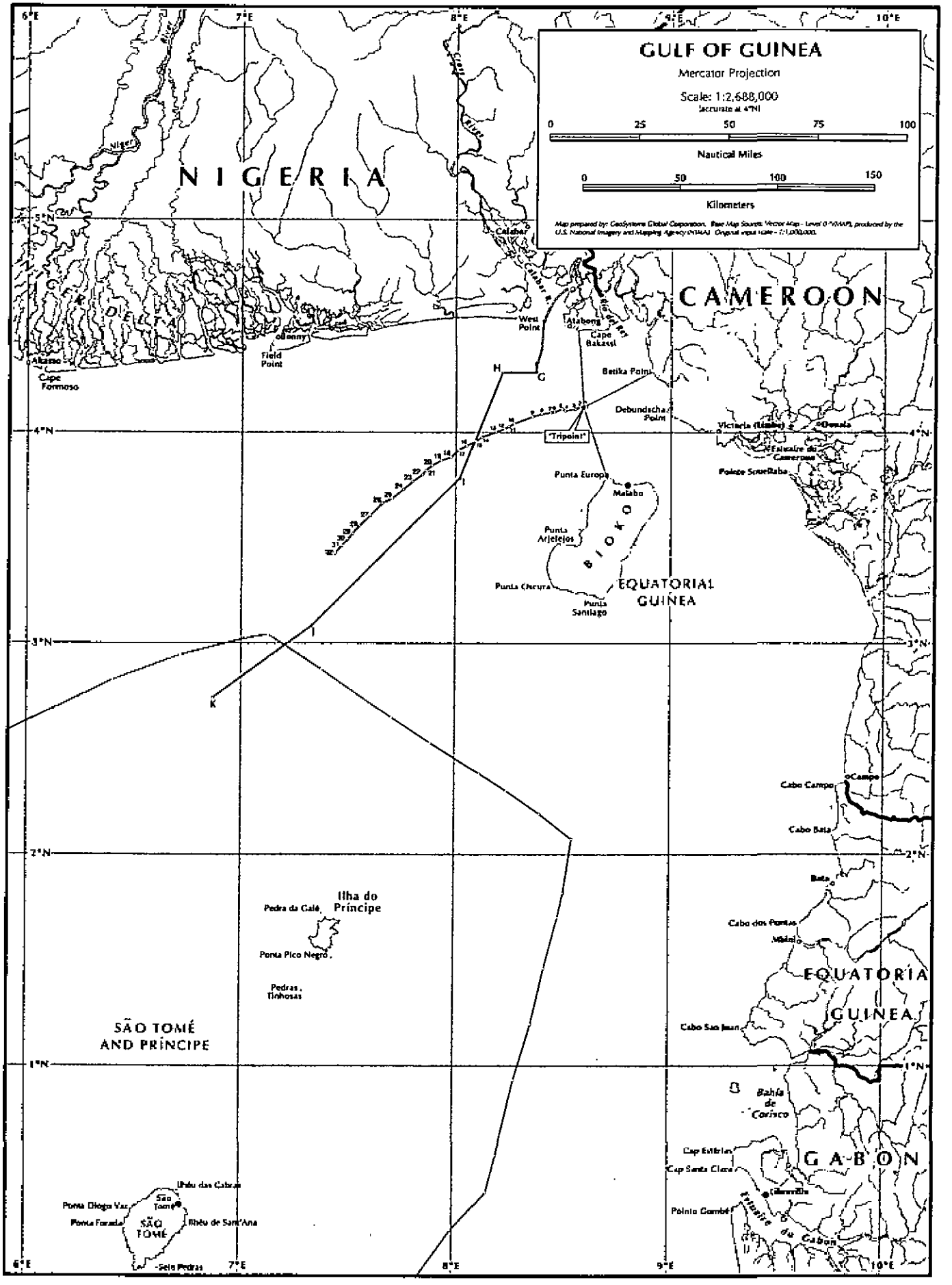


Figure 20.3: Impact of Cameroon Maritime Claim on Equatorial Guinea and São Tomé e Príncipe



Number of Concession	Current Holder(s)	Date of current concession (Date of initial concession)	Area (km^2)
OML 67	Mobil	12/68 (December 1961)	118.89
OPL 224	Oriental	21/09/90	309.854
OML 102	NNPC/Elf	01/07/91 (June 1974)	786.43
OPL 223	NNPC/Elf	23/04/93	744.47
OPL 222	NNPC/Elf	23/04/93	1312.85
OPL 221	NNPC/Mobil	26/02/91	2365.72

The co-ordinates of these concessions as at present in force are annexed (NC-M 341).

20.15 Apart from certain difficulties in the region immediately around Bakassi, there has never been any protest from Cameroon at the granting or extension of these concessions, or at subsequent exploration, drilling or exploitation.

20.16 Fig. 20.4 shows, approximately, the location of the Cameroon claim-line in relation to concessions granted by Nigeria or Equatorial Guinea so far as is known to Nigeria at present. It will be noted that there is significant overlap between certain Equatorial Guinea concessions and the Nigerian concessions OPL 223, 222 and 221. However the Cameroon claim-line appears to pass to the South of this area of overlap.

20.17 There are Cameroon concessions to the East of concessions OPL 230, OPL 98, OML 67, and OPL 224, with a certain degree of overlap. This is shown in Fig. 20.5.

(ii) Fisheries

20.18 Although commercial fisheries production represents only a small proportion of GDP in both Nigeria and Cameroon, there is a major interest in artisanal fishing in coastal areas. Both countries forbid commercial fishing within a certain distance from the coast (Nigeria, 5 nm; Cameroon, 2 nm), and in both countries, artisanal fisheries are a major source of employment. In Nigeria about 80 per cent. of the total annual catch of marine fish (approximately 160,000 mt. in 1996) derived from artisanal fishing, and it is estimated that more than 500,000 people are in full-time employment in fisheries in Nigeria, with almost as many employed on a part time basis. By comparison, the number in full-time employment in the commercial sector is small (approximately 2000 in 1996). But there is a major potential to increase commercial fisheries outside the artisanal zone, due to the decline in distant water fishing fleets in this region over the last decade. The current commercial fleet is about 200-300 trawlers, mostly involved in catching shrimp.

(iii) Navigation

20.19 Both parties have important interests in freedom of navigation in the region, both in relation to commercial ships and all forms of State ships (naval, customs, police, etc). Nigeria has a particular and long-standing concern about access to the port of Calabar and the Calabar River.

Figure 20.4: Map of existing Nigerian and Equatorial Guinean Oil Concessions in relation to Cameroon's Claim Line

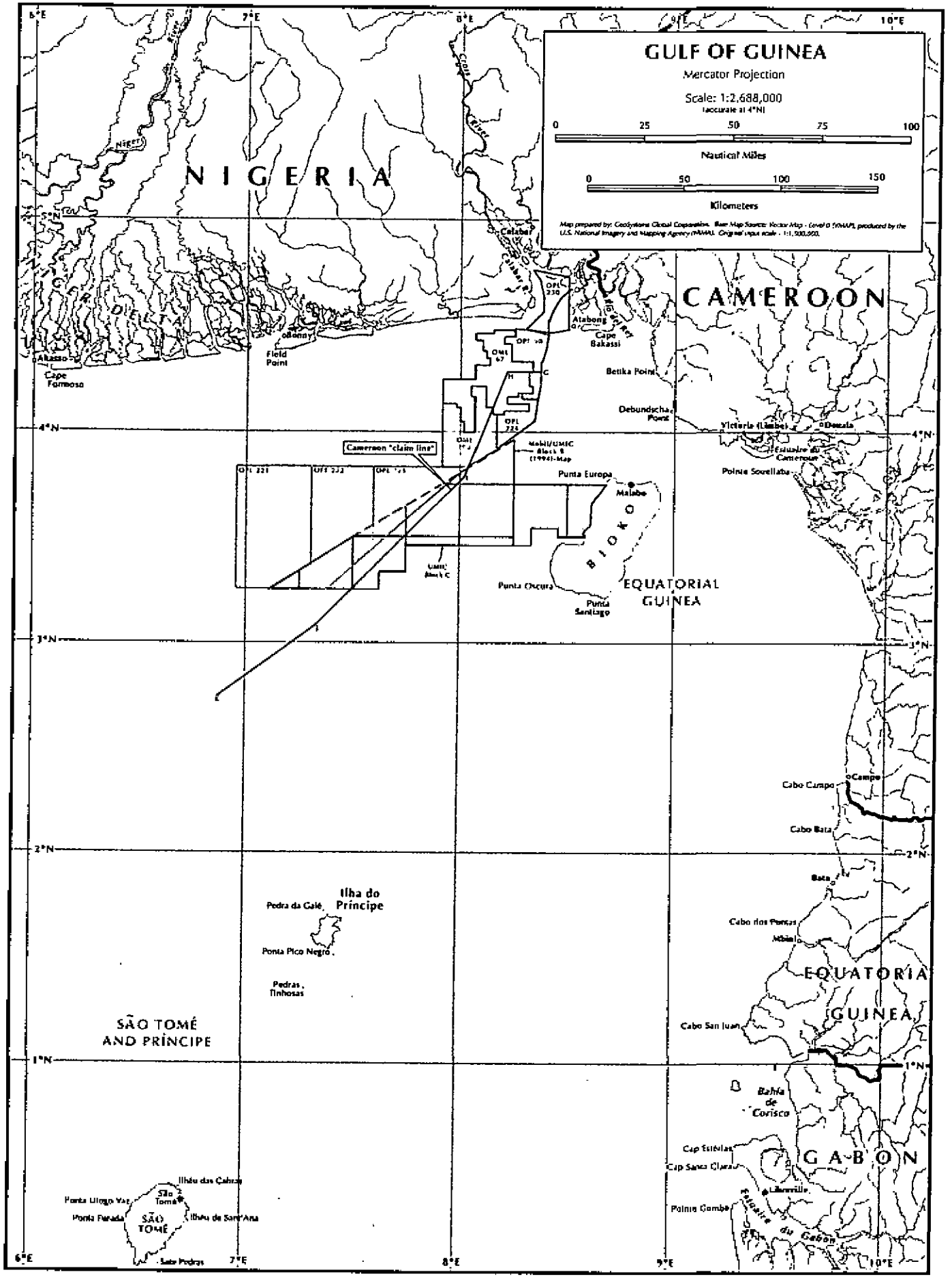
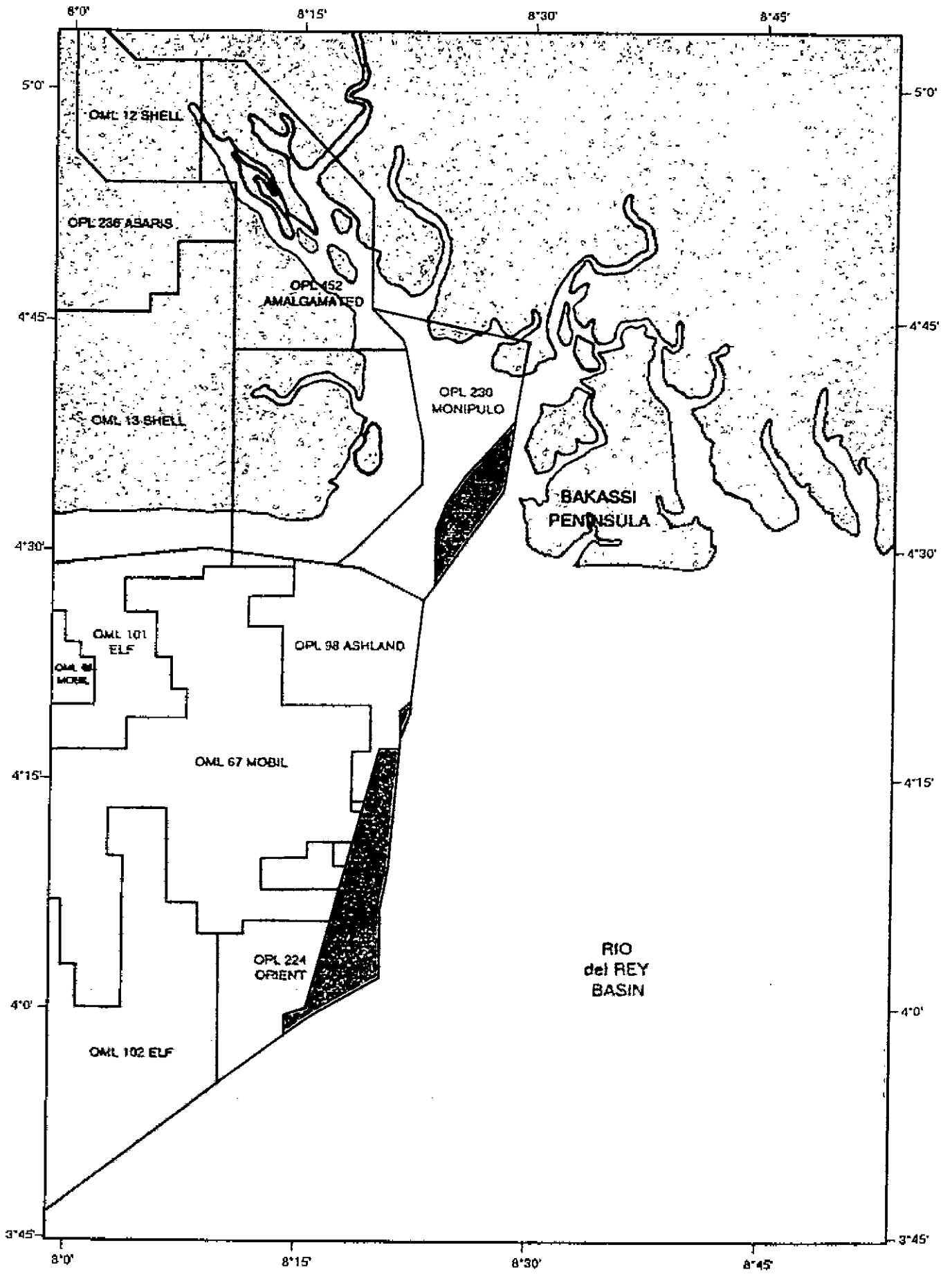


Figure 20.5: Existing Nigerian Concessions: Areas of Overlap



CHAPTER 21

THE APPLICABLE LAW AS RELEVANT TO THE PRESENT CASE

A. Introduction

21.1 Before turning in more detail to the circumstances of the present case, some remarks should be made as to the relevant legal principles, so far as concerns (A) the territorial sea; (B) the continental shelf; and (C) the exclusive economic zone. It is useful to do this by identifying the relevant principles in the form of ten propositions.

B. Delimitation of the Territorial Sea

(i) International law accords to each Coastal State, subject to the principle of equidistance, a territorial sea of up to 12 miles from the baseline.

21.2 This is so provided in Articles 2 and 3 of the United Nations Convention on the Law of the Sea ("the 1982 Convention"). Delimitation is governed by Article 15, which contrasts with Articles 76 and 83 in significant ways. The territorial sea is, of course, a zone of sovereignty, that sovereignty to be exercised in accordance with international law (Article 2). Again there is a clear contrast with the continental shelf and the EEZ.

C. Delimitation of the Continental Shelf

21.3 A number of specific propositions about continental shelf delimitation emerge from the cases. So far as they are relevant to the present case, they are as follows.

(ii) International law requires the parties, in the first instance, to attempt to reach agreement on the continental shelf

21.4 The rule which binds the parties as to the delimitation of the continental shelf between their adjacent coasts is Article 83 of the United Nations Convention on the Law of the Sea of 1982, which provides as follows:[304]

> "1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
>
> 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
>
> 3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
>
> 4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement."

21.5 It should be stressed that this is the applicable rule of *substantive* law, and it is in force for the parties. In the first instance the delimitation of the continental shelf between two States with adjacent coasts (as Nigeria and Cameroon have) is to be determined by agreement on the basis of international law in order to achieve an equitable solution. This requirement contrasts with the substantive rule (equidistance plus special circumstances) previously contained in the Geneva

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[304] Nigeria became a party to UNCLOS on 14 August 1986; Cameroon on 19 November 1985. UNCLOS entered into force on 16 November 1994.

Convention on the Continental Shelf, 1958, Article 6. Its meaning is to be derived by reference to successive decisions of the Court applying general international law on the delimitation of continental shelf boundaries. And those decisions themselves emphasise the primary need to attempt to reach an equitable result by agreement, as will now be seen.

21.6 This basic idea goes back, in terms of State practice, to the Truman Proclamation and, in terms of judicial decisions, to the *North Sea Continental Shelf* cases. The Court then referred to:

> "the ideas which have always underlain the development of the legal régime of the continental shelf in this field, namely:
>
> (a) the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it;
>
> (b) the parties are under an obligation to act in such a way that, in the particular case, and taking all the circumstances into account, equitable principles are applied,- for this purpose the equidistance method can be used, but other methods exist and may be employed, alone or in combination, according to the areas involved;
>
> (c) the continental shelf of any State must be the natural prolongation of its land territory and must not encroach upon what is the natural prolongation of the territory of another State."[305]

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[305] ICJ Reports 1969 p. 6 at p. 47 (para. 85). The Court noted that the negotiations actually held between the parties had not succeeded, but that further negotiations were to be held on the basis of the present Judgment: *ibid.* at p. 48 (para. 87).

21.7 Similarly, the Chamber in the *Gulf of Maine* case referred to:

> "the fact that for the delimitation of a maritime boundary - whether it concern[s] the territorial sea or the continental shelf or the exclusive economic zone - both conventional and customary international law accord priority over all others to the criterion that *this delimitation must above all be sought, while always respecting international law, through agreement between the parties concerned.* Recourse to delimitation by arbitral or judicial means is in the final analysis simply an alternative to direct and friendly settlement between the parties."[306] (emphasis added)

21.8 As noted above, the Court has not yet addressed Nigeria's argument (that negotiation is a substantive requirement, or at least a material pre-condition), which was put by Nigeria as part of its seventh Preliminary Objection.[307] Nigeria refers to what was said in relation to this matter in earlier pleadings, which it will not repeat here.[308]

21.9 It should be stressed that the rule that delimitation of the continental shelf should be determined in the first instance by agreement, which is clearly reflected in Article 83(1), is not the same as the general rule of admissibility requiring that there should be a dispute between the parties as to their respective rights. Very little in terms of exchanges between the parties is required in the Court's jurisprudence for the existence of a "dispute".[309] Article 83 (1) goes further than that and requires the parties in the first instance to attempt to resolve that dispute by agreement, i.e. to negotiate in good faith. This requires as a minimum that the parties should have notified their respective claims and made at least some effort to resolve them by negotiation. In fact, in all the earlier cases where the Court has been confronted with issues of maritime delimitation, there had been negotiations, in most cases extensive negotiations.

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[306] ICJ Reports 1984 p. 246 at p. 266 (para. 22)

[307] *See above, para. 20.04*

[308] See NPO, pp. 115-129; CR 98/2, 3 March 1998, pp. 41-44, 48-52; CR 98/5, 9 March 1998, pp. 51-59

[309] See, for example, the *Case concerning East Timor,* ICJ Reports 1995 p. 90

(iii) It is not the function of the Court to apportion the continental shelf by reference to general considerations of equity

21.10 This second cardinal principle was stated in no uncertain terms by the Court in the *North Sea Continental Shelf Cases*, and it has been adhered to ever since. As the Court said in that case:

> "Delimitation is a process which involves establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the determination *de novo* of such an area. Delimitation in an equitable manner is one thing, but not the same thing as awarding a just and equitable share of a previously undelimited area even though in a number of cases the results may be comparable, or even identical.
>
> More important is the fact that the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it,- namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised. To echo the language of the Geneva Convention, it is 'exclusive' in the sense that if the coastal State does not choose to explore or exploit the areas of shelf appertaining to it, that is its own affair, but no one else may do so without its express consent.
>
> It follows that even in such a situation as that of the North Sea, the notion of apportioning an as yet undelimited area, considered as a whole (which underlies the doctrine of the just and equitable share), is quite foreign to, and inconsistent with, the basic concept of continental shelf entitlement, according to which the process of delimitation is essentially one of drawing a boundary line between areas which already appertain to one or other of the States affected.

> The delimitation itself must indeed be equitably effected, but it cannot have as its object the awarding of an equitable share, or indeed of a share, as such, at all, -for the fundamental concept involved does not admit of there being anything undivided to share out. Evidently any dispute about boundaries must involve that there is a disputed marginal or fringe area, to which both parties are laying claim, so that any delimitation of it which does not leave it wholly to one of the parties will in practice divide it between them in certain shares, or operate as if such a division had been made. But this does not mean that there has been an apportionment of something that previously consisted of an integral, still less an undivided whole".[310]

21.11 Later decisions have referred to "that refashioning of geography" repudiated in the *North Sea Continental Shelf* cases,[311] and have refused to engage in such an exercise.

21.12 The position was usefully summarized by the Court in the *Libya/Malta* case, when it said that:

> "The normative character of equitable principles applied as a part of general international law is important because these principles govern not only delimitation by adjudication or arbitration, but also, and indeed primarily, the duty of Parties to seek first a delimitation by agreement, which is also to seek an equitable result. That equitable principles are expressed in terms of general application, is immediately apparent from a glance at some well-known examples: the principle that there is to be no question of refashioning geography, or compensating for the inequalities of nature; the related principle of non-encroachment by one party on the natural prolongation of the other, which is no more than the negative expression of the positive rule that the coastal State enjoys sovereign rights over the continental shelf off its coasts to the full extent authorized by international law in the relevant circumstances; the principle of respect due to all such relevant circumstances; the principle that although all States are equal before the law and are entitled to equal treatment, "equity does not necessarily imply equality" nor does it seek to make equal what nature

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[310] ICJ Reports 1969 p. 6 at pp. 22-23 (paras. 18-20)

[311] *Anglo-French Arbitration*, (1977) 18 UNRIAA 3 at p. 92 (para. 195). Similarly at pp. 113-114 (paras. 244-245), p. 116 (para. 249)

> has made unequal; and the principle that there can be no question of distributive justice."[312]

21.13 Similarly, in its most recent delimitation decision, in the *Jan Mayen* case, the Court, quoting with approval part of the passage from the 1969 judgment cited above, said:

> "judicial treatment of maritime delimitation does not involve the sharing-out of something held in undivided shares: Thus the law does not require a delimitation based upon an endeavour to share out an area of overlap on the basis of comparative figures for the length of the coastal fronts and the areas generated by them. The task of a tribunal is to define the boundary line between the areas under the maritime jurisdiction of two States; the sharing-out of the area is therefore the consequence of the delimitation, not vice versa."[313]

(iv) International law does not give special rights in the field of continental shelf delimitation to "geographically disadvantaged States"

21.14 There is a distinction in international law between land-locked States, i.e. States with no coast line at all, and the more diffuse category of States which are "geographically disadvantaged". Land-locked States have certain specific rights under the law of the sea, including the right to a flag and a qualified right of access to the sea.[314] But international law, and in particular the 1982 Convention, does not attempt to "correct" the effects of geography and history by a territorial or jurisdictional redistribution of maritime zones in favour of States which can be

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312 ICJ Reports 1985 p. 13 at pp. 39-40 (para. 46)

313 *Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen*, ICJ Reports 1993 p. 38 at pp. 66-67 (para. 64)

314 On the right to a flag and to freedoms of navigation see UNCLOS, Articles 17, 58 (1), 87 (1), 90. On access to the sea and transit, see Part X. In addition there is a limited right to an equitable share, on the basis of agreement, in any surplus of fisheries resources in adjacent EEZs: Articles 69, 82 (4). There are also various procedural and other provisions in relation to the administration of the Area, under Part XI.

described as "geographically disadvantaged". The very limited additional rights given to such States can be seen from the following review of the 1982 Convention.

21.15 The key provision is Article 70, entitled "Right of geographically disadvantaged States". This is contained in Part V of the Convention, which is entitled "The Exclusive Economic Zone". There is no equivalent provision in Part VI, on "The Continental Shelf". Article 70 (1) provides that:

> "1. Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62."

But the term is defined in a restricted way, by paragraph (2):

> "2. For the purposes of this Part, "geographically disadvantaged States" means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own."

It may be noted that Cameroon can claim an exclusive economic zone (although it has not expressly done so). It is therefore "geographically disadvantaged", for the purposes of Part V only if its geographical situation makes it dependent upon fishing in the EEZs of other States in the region "for adequate supplies of fish for the nutritional purposes of their populations or parts thereof". In fact there is no

history of Cameroonian dependence on fisheries outside its own waters, although there is a tradition of free movement of artisanal fishermen throughout the area.[315]

21.16 No issue arises in the present case as to the possible rights of Cameroon under Article 70. The point to be stressed however is the deliberate refusal of the drafters of the Convention to make any special provision for "geographically disadvantaged States" in respect of the basic entitlement to maritime zones. Rather than do this, they gave a rather limited entitlement to "participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources" of neighbouring EEZs. That right relates only to fisheries (but not continental shelf resources), and is significantly qualified by other provisions of Article 70. In addition, UNCLOS makes special provision for consideration of the interests of geographically disadvantaged States in relation to activities in the area beyond national jurisdiction.[316] When the drafters of the Convention wanted to make special provision for geographically disadvantaged States, they knew perfectly well how to do so. Indeed in respect of certain categories of States (for example, archipelagic States), special provision *was* specifically made for extended maritime claims.[317]

21.17 A leading study on the position of land-locked and geographically disadvantaged States traces the development of the 1982 Convention and concludes, based on that experience, that:

> "The case for special privileges for GDS [sc. geographically disadvantaged States] seems even less cogent than that of their land-locked allies."[318]

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315 See above, para. 20.18

316 See Articles 148, 152 (2), 160 (2) (k), 254, 266

317 See UNCLOS, Article 2 (1) & Part IV

318 S.C. Vasciannie, *Land-Locked and Geographically Disadvantaged States in the International Law of the Sea* (Oxford, Clarendon Press, 1990) at p. 32

In fact no such case for special privileges is recognised in international law in relation to maritime delimitation.

(v) In drawing continental shelf boundaries, international law does not refashion the geographical situation of the parties

21.18 A consistent theme in the case-law dealing with the delimitation of maritime zones is that it is not the function of the Court to "correct" apparent inequities arising from the accidents of history and geography, so as to refashion the political geography of the region concerned. It is true that the Court has been sensitive to minor geographical features which might have an unduly distorting effect by reference to the underlying geographical situation of the "general direction of the coast" or the length and direction of each State's coastal frontage. But those underlying situations are taken as given, and there is no example where the mainland coastal frontage of a State has been discounted or given anything less than its full effect.

21.19 As so often, the canonical statement of this position is in the following statement by the Court in the *North Sea Continental Shelf Cases*:

> "Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline. Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy. But in the present case there are three States whose North Sea coastlines are in fact comparable in length and which, therefore, have been given broadly equal treatment by nature except that the configuration of one of the coastlines would, if the equidistance method is used, deny to one of these States treatment equal or comparable to that given the other two. Here indeed is a case where, in a theoretical situation of equality within the same order, an

> inequity is created. What is unacceptable in this instance is that a State should enjoy continental shelf rights considerably different from those of its neighbours merely because in the one case the coastline is roughly convex in form and in the other it is markedly concave, although those coastlines are comparable in length. It is therefore not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result."[319]

21.20 This passage was quoted with approval by the Arbitral Tribunal in the *Anglo-French* case, in the following passage:

> "In short, it is disproportion rather than any general principle of proportionality which is the relevant criterion or factor. The equitable delimitation of the continental shelf is not, as this Court has already emphasized in paragraph 78, a question of apportioning or sharing out of the continental shelf amongst the States abutting upon it. Nor is it a question of simply assigning to them areas of the shelf in proportion to the length of their coastlines, for to do this would be to substitute for the delimitation of boundaries a distributive apportionment of shares. Furthermore, the fundamental principle that the continental shelf appertains to a coastal State as being the natural prolongation of its territory places definite limits on recourse to the factor of proportionality. As was emphasized in the *North Sea Continental Shelf* cases, there can never be a question of completely refashioning nature, such as by rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline; it is rather a question of remedying the disproportionality and inequitable effects produced by particular geographical configurations or features *in situations where otherwise the appurtenance of roughly comparable attributions of continental shelf to each State would be indicated by the geographical facts*. Proportionality, therefore is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf."[320]

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319 ICJ Reports 1969 p. 6 at pp. 49-50 (para. 91)

320 (1977) 18 UNRIAA p. 3 at p. 58 (para. 101) (emphasis added). See also *ibid.* at p. 61 (para. 108), referring to the Hurd Deep Fault Zone as merely "a fact of nature".

21.21 The passage from the 1969 judgment was also referred to with approval by the Court in the *Tunisia-Libya* case. There Libya had proposed ignoring the Tunisian island of Djerba as an "exceptional feature". The Court rejected the idea. As it said, Libya's observation had been made:

> "in a section of the argument devoted to the question, first raised in fact by Tunisia, of whether the one State or the other is favoured by nature, or the reverse, as regards its coastline; an argument which the Court does not consider to be relevant since, even accepting the idea of natural advantages or disadvantages, 'it is not such natural inequalities as these that equity could remedy'" [321]

21.22 The same principle was affirmed by a Chamber of the Court in the *Gulf of Maine* case. The Chamber remarked there that:

> "the Parties have repeatedly charged each other with trying to refashion nature or geography in the case of this or that feature of the area. It is not possible to accept the United States claim that the south-westward protrusion of the Nova Scotian peninsula from the Chignectou isthmus is an anomaly, a geographical distortion to be treated as such, and to be considered an irregular derogation from the general south-south-west/north-north-east trend of the eastern seaboard of the North American Continent. It is likewise not possible to accept Canada's claim that the existence of so substantial a peninsula as Cap Cod may be ignored because it forms a salient on the Massachusetts coast on the western side of the *Gulf of Maine*. The Chamber must recall that the facts of geography are not the product of human action amenable to positive or negative judgment, but the result of natural phenomena, so that they can only be taken as they are." [322]

21.23 In the *Libya-Malta* case, the Court, after referring to basic principles of continental shelf delimitation in a passage quoted already,[323] stressed that:

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321 ICJ Reports 1982 p. 18 at pp. 63-64 (para. 79)

322 ICJ Reports 1984 p. 246 at p. 271 (para. 37)

323 Above, para. 21.12

> "The nature of equity is nowhere more evident than in these well-established principles. In interpreting them, it must be borne in mind that the geography which is not to be refashioned means those aspects of a geographical situation most germane to the legal institution of the continental shelf: In a semi-enclosed sea like the Mediterranean, that reference to neighbouring States is particularly apposite, for, as will be shown below, it is the coastal relationships in the whole geographical context that are to be taken account of and respected."[324]

And the Court went on to add that:

> "The pertinent general principle, to the application of which the proportionality factor may be relevant, is that there can be no question of 'completely refashioning nature'; the method chosen and its results must be faithful to the actual geographical situation."[325]

(vi) In delimiting continental shelf boundaries, international law places special weight on the practice of the parties and on existing arrangements for the exploitation of the continental shelf

21.24 It is clear that the conduct of the parties in establishing *de facto* lines by such practices as the granting of oil concessions and exploration and exploitation permits can have major significance so far as their continental shelf boundaries are concerned. This is so, quite apart from the question whether such practices give rise to a tacitly accepted boundary or produce legal effects as a form of estoppel.

21.25 In particular, the Court paid very careful respect to this factor in the *Tunisia-Libya* case. It referred initially to:

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[324] ICJ Reports 1985 p. 13 at p. 40 (para. 47), citing ICJ Reports 1982 at p. 61 (para. 74)

[325] ICJ Reports 1985 p. 13 at p. 45 (para. 57)

> "the existence of a *de facto* line from Ras Ajdir at an angle of some 26° east of north, which was the result of the manner in which both Parties initially granted concessions for offshore exploration and exploitation of oil and gas. This line of adjoining concessions, which was tacitly respected for a number of years, and which approximately corresponds furthermore to the line perpendicular to the coast at the frontier point which had in the past been observed as a *de facto* maritime limit, does appear to the Court to constitute a circumstance of great relevance for the delimitation. Since this is a matter closely bound up with the practical method of delimitation, the Court will examine the nature and genesis of the line when it comes to that part of the Judgment."[326]

And it went on to reemphasize this "highly relevant" factor in a later passage, which is of sufficient importance to be quoted in full:

> "The circumstance alluded to in paragraph 113 above which the Court finds to be highly relevant to the determination of the method of delimitation is a circumstance related to the conduct of the Parties. *The Court has already considered the claims made by the Parties, each* in favour of a different line, unilaterally determined but, it is asserted, tacitly respected or accepted; both the ZV 45° line advanced by Tunisia as a recognized boundary of a fishing zone, and the direct northward line asserted as boundary of the Libyan petroleum zones, have been found by the Court to be wanting in those respects necessary to ensure their opposability to the other Party. On the other hand, the history of the enactment of petroleum licensing legislation by each Party, and the grant of successive petroleum concessions, during the period from 1955 up to the signing of the Special Agreement, shows that, as noted in paragraph 21 above, the phenomenon of actual overlapping of claims did not appear until 1974, and then only in respect of areas some 50 miles from the coast. A Tunisian enlarged concession of 21 October 1966 was bounded on the east by a 'stepped' line (a form apparently dictated by the grid/block system for grant of concessions) the eastern angles of which lay on a straight line at a bearing of approximately 26° on the meridian. In 1968 Libya granted a concession (No. 137) 'lying to the eastward of a line running south/southwest from the point 33° 55'N, 12° E to a point about one nautical mile offshore' the angle thereof viewed from Ras Ajdir being 26°; the western boundaries of subsequent Libyan concessions followed the same line, which, Libya has explained,

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326 ICJ Reports 1982 p. 18 at p. 71 (para. 96)

> 'followed the direction of the Tunisian concessions'. The result was the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims in the sense that exploration activities were authorized by one Party, without interference, or (until 1976) protests, by the other. The Court does not of course overlook the fact that the areas to which a legal claim was asserted by both Parties were more far-reaching; Libya claimed sovereign rights as far west as the meridian of Ras Ajdir, and Tunisia claimed as far as the ZV 45° line, and in 1974 adopted an equidistance line as south-eastern boundary of its concessions. The actual situation, however, was that which has just been described."[327]

The Court gave effect to the line in question, notwithstanding that it had not been established as an actual agreed line.[328]

21.26 In the subsequent *Application for Revision and Interpretation*, brought by Tunisia, the Court had occasion to emphasize that:

> "In other words, what the Court regarded as significant was not merely the fact that Libya had, apparently, limited its 1968 concession so as not to encroach on Tunisia's 1966 concession; it was the fact that *both* Parties had chosen to use as boundary of the permits or concessions granted by them a line corresponding, with whatever degree of approximation, to a line drawn from Ras Ajdir at 26° to the meridian. It was the conduct of Tunisia which was relevant, just as much as that of Libya, even though when the Tunisian permit was granted in 1966, there was no existing Libyan concession in the area. Thus the choice of a stepped south-eastern boundary corresponding approximately to a 26° line was an indication of what line Tunisia considered equitable. Similarly, the choice of Libya of the point 33° 55'N, 12° E as the point of origin for Concession No. 137 - that point being, it should be reiterated, at a bearing of 26° from Ras Ajdir - suggested that a 26° line was at that time also regarded by Libya as equitable, an interpretation confirmed by Libya's use of that line for Concessions NC 41 and NC 53."[329]

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327 ICJ Reports 1982 p. 18 at pp. 83-84 (para. 117)

328 *ibid.* at p. 85 (para. 121)

329 ICJ Reports 1985 p. 192 at p. 213 (para. 37)

21.27 In the *Gulf of Maine* case a Chamber of the Court rejected the argument that a de facto continental shelf boundary had arisen by the conduct of the parties in each granting concessions and not objecting to the other's grants of exploration licenses. Without in any way qualifying the position taken by the Court in the *Tunisia/Libya* case on this point, the Chamber distinguished that decision on a number of grounds:

(1) First, the facts were in dispute; the United States denied that it had acquiesced in the Canadian concessions, or that its own permits respected any particular line.[330]

(2) Secondly, the period of alleged acquiescence, even if proved, was too short (1965-1972), and overlapped with the period when the dispute had already arisen.[331]

(3) Thirdly, for at least part of this period it was clear there was no acquiescence. In November 1969 a United States note made it clear that no Canadian concessions in the disputed area would be recognised.[332] It had earlier (in 1965) granted exploration licenses beyond the alleged *de facto* line.[333]

(4) Fourthly, the activity in question was exploration, not exploitation - in the words of the United States, "it was confronted on Georges Bank with Canadian seismic exploration of minor importance, which involved neither drilling nor the extraction of petroleum".[334]

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330 ICJ Reports 1984 p. 246 at p. 310 (para. 149)
331 *ibid.* at p. 310-311 (para. 151)
332 *ibid.* at p. 308 (para. 142)
333 *ibid.* at p. 307 (para. 136)
334 *ibid.*

(5) Fifthly, there was no evidence of an earlier (e.g. pre-colonial) *modus vivendi* which had been subsequently accepted by the newly independent States when they began to grant petroleum concessions themselves.[335]

Thus the decision is to be understood as relating to the particular facts of that case, and it does not displace - indeed as a decision of a Chamber, could not displace - the clear position taken by the Court in 1982.

21.28 The facts of the present case were reviewed in Chapter 20, and will be discussed in more detail in Chapter 23. It is sufficient to note here that not one of the five factors held to be relevant on this point by the Chamber exists in the present case.[336]

21.29 In the *Libya/Malta* case, the Court also held that the history of the disputed area did not affect the matter. It noted that:

> "It is not argued by either Party that the circumstances in this case gave rise to 'the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims', which might be taken into account as indicating 'the line or lines which the Parties themselves may have considered equitable or acted upon as such', as the Court was able to find in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*I.C.J. Reports 1982*, p. 84, paras. 117-118). In its pleadings, however, Malta recounted how it had in 1965 informed Libya of its intention to delimit its continental shelf by means of a median line, and stated that until Libya made a counter-proposal in 1973, Libya remained silent in face of Malta's claim to such a delimitation; Malta contended that this pattern of conduct could be viewed 'either as a cogent reflection of the equitable character of Malta's position or as evidence of acquiescence by Libya in Malta's position or as precluding Libya, in law as in fact, from challenging the validity of Malta's position'. Malta referred also to the question of the

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335 ICJ Reports 1984 p. 246 at p. 310 (para. 150). The Court made the same distinction between seismic activities and "operations involving the actual appropriation or other use of the natural resources of the areas of the continental shelf which are in dispute" in the *Aegean Sea case* (Request for Indication of Interim Measures of Protection) ICJ Reports 1976 p. 3 at p. 10 (para. 30).

336 See below, para. 23.18, sub-paras. (iii) & (iv)

> northern boundaries of certain Libyan concessions, and the exemption of the licencees from the duty to carry out petroleum activities north of the median line, and contended that these also confirmed Malta's submission that 'by their conduct, the Parties have indicated that the median line is, to say the least, very relevant to the final determination of the boundary in the present case'. Libya disputes the allegation of acquiescence; it has also contended that Maltese petroleum concessions followed geomorphological features in a manner consistent with the 'exploitability criterion', which is denied by Malta. It also contended that Malta, at the time of the enactment of its 1966 Continental Shelf Act, implicitly recognized the significance of an area described as the 'rift zone' area, which Libya, as will be explained below, regards as significant for the delimitation; this contention Malta also rejects.
>
> 25. The Court has considered the facts and arguments, brought to its attention in this respect, particularly from the standpoint of its duty to 'take into account whatever indicia are available of the [delimitation] line or lines which the Parties themselves may have considered equitable or acted upon as such' (*I.C.J. Reports 1982*, p. 84, para. 118). It is however unable to discern any pattern of conduct on either side sufficiently unequivocal to constitute either acquiescence or any helpful indication of any view of either Party as to what would be equitable differing in any way from the view advanced by that Party before the Court. Its decision must accordingly be based upon the application to the submissions made before it of principles and rules of international law."[337]

Thus the conduct of the parties in that case was neither convergent nor unequivocal; moreover it related to proposals to delimit, or to paper concessions which had not been implemented by drilling, let alone exploitation and the development, in reliance on the concession, of a substantial infrastructure.

21.30 This distinction was evidently relevant for the Court of Arbitration in the *Saint-Pierre and Miquelon* case. It referred to certain exploration permits having been issued, and noted that:

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[337] ICJ Reports 1985 p. 13 at pp. 28-29 (paras. 24-25)

> "after reciprocal protests, no drilling was undertaken. In the present circumstances, the Court has no reason to consider the potential mineral resources as having a bearing on delimitation."[338]

21.31 To summarise, the mere unilateral granting of concessions, or seismic activity in disputed areas, are not enough to affect delimitation. But where areas are actually the subject of drilling and/or extraction processes, pursuant to concessions granted by a State, this is of the highest relevance to delimitation, especially where the activity in question occurs over a considerable period of time, and is not protested by neighbouring States. Concurrent, or relatively concurrent, activity by neighbouring States, even in the absence of a formal agreement, may be decisive of the legal position.

(vii) Proportionality of coastlines is relevant in assessing the equitable character of a delimitation but cannot be used as the basis for "sharing" shelf resources

21.32 Finally, it is appropriate to say a word about proportionality of coastal frontages, which is undoubtedly relevant as a factor in assessing the equitableness of a delimitation, and it may also be relevant, amongst other factors, in helping to select the technique of delimitation to be used. But the cases are unanimous in holding that it is not as such a criterion of apportionment, because that would involve notionally parcelling out amongst the claimants proportionate shares in an *a priori* undivided whole, which, as has been seen already, is untenable. In other words, proportionality is applied as a criterion only *ex post* not *ex ante*. It is a critical standard, and not, as such, a basis for apportionment.

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338 (1992) 95 ILR 645 at p. 677 (para. 89)

21.33 This was said very clearly, for example, by the Court in the *Libya/Malta* case, in a passage cited with approval in later decisions.[339] Thus it said that:

> "to use the ratio of coastal lengths as of itself determinative of the seaward reach and area of the continental shelf proper to each Party, is to go far beyond the use of proportionality as a test of equity, and as a corrective of the unjustifiable difference of treatment resulting from some method of drawing the boundary line. If such a use of proportionality were right, it is difficult indeed to see what room would be left for any other consideration; for it would be at once the principle of entitlement to continental shelf rights and also the method of putting that principle into operation. Its weakness as a basis of argument, however, is that the use of proportionality as a method in its own right is wanting of support in the practice of States, in the public expression of their views at (in particular) the Third United Nations Conference on the Law of the Sea, or in the jurisprudence. It is not possible for the Court to endorse a proposal at once so far-reaching and so novel. That does not however mean that the 'significant difference in lengths of the respective coastlines' is not an element which may be taken into account at a certain stage in the delimitation process"[340]

21.34 Even relative supporters of the proportionality principle, such as, for example, Judge Shahabuddeen, have referred to "the unchallenged proposition that proportionality is not in itself a direct principle of delimitation".[341]

D. Delimitation of the Exclusive Economic Zone

21.35 Article 74 of the 1982 Convention provides for the delimitation of the exclusive economic zone between States with opposite or adjacent coasts. It provides:

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339 e.g. in *Jan Mayen*, ICJ Reports 1993 at p. 69 (para. 69); and also by the Court of Arbitration in *St Pierre and Miquelon* (Canada/France) 1992, 95 ILR p. 645 at p. 669-670 (para. 89)

340 ICJ Reports 1985 p. 13 at pp. 45-46 (para. 58). See also at pp. 53-54 (paras. 74-75)

341 See the *Jan Mayen* case ICJ Reports 1993 at p. 167 (Judge Shahabuddeen, separate opinion)

> "1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
>
> 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
>
> 3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
>
> 4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement."

21.36 Again a number of specific propositions about EEZ delimitation can be identified, as follows.

(viii) International law does not *ipso jure* attribute an EEZ to a State

21.37 Thus Article 70 (2) of the Convention refers to "coastal States ... which can claim no exclusive economic zones of their own". This is to be contrasted with Article 76(1) of the Convention, which, following Article 1 of the 1958 Convention on the Continental Shelf, articulates the principle that every coastal State has a continental shelf, automatically and by operation of international law - the principle of *ipso jure* appurtenance of the continental shelf, which was affirmed by the Court in 1969 and has never been departed from.[342] Thus the continental shelf is "the natural prolongation of [the] land territory" of the coastal State, although of course

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[342] *North Sea Continental Shelf Cases*, ICJ Reports 1969 at p. 31 (para. 43)

this is "without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts" (Article 76 (1). (10)). No such doctrine is articulated in Article 56 or in other provisions of the Convention dealing with the EEZ. Moreover the proclamation of an EEZ entails substantive and procedural obligations on the coastal State under the Convention (see Articles 61, 62 and 75), obligations which are normally fulfilled pursuant to legislation specifically enacted for that purpose.

(ix) Delimitation of the EEZ is a legally distinct operation from delimitation of the continental shelf

21.38 Although they overlap (and in many cases coincide) it is still the case that the EEZ and the continental shelf are legally distinct areas and their delimitation is a legally distinct exercise. Thus the Court has held that it is not entitled to draw a single maritime boundary between two States in the absence of an express agreement between the parties to that effect.[343] It has also been held that such an express agreement has the effect of disapplying otherwise applicable rules relating to the continental shelf as such (e.g. Article 6 (1) of the Fourth Geneva Convention of 1958):

> "The purpose of the present proceedings is not, however, to obtain a delimitation of the continental shelf alone, as it might have been if they had taken place prior to the adoption by the two Parties of an exclusive fishery zone and the consequent emergence of the idea of delimitation by a single line. Their purpose is - and both Parties have abundantly emphasized the fact - to draw a single delimitation line for both the continental shelf and the superjacent fishery zone. It is doubtful whether a treaty obligation which is in terms confined to the delimitation of the continental shelf can be extended, in a manner that would manifestly go beyond the limits imposed by the strict criteria governing the interpretation of treaty instruments, to a field which is evidently much greater, unquestionably heterogeneous, and accordingly

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[343] *Jan Mayen*, ICJ Reports 1993 p. 38 at pp. 57-58 (paras. 42-44)

> fundamentally different. Apart from this formal, but important, consideration, there is the more substantive point that such an interpretation would, in the final analysis, make the maritime water mass overlying the continental shelf a mere accessory of that shelf. Such a result would be just as unacceptable as the converse result produced by simply extending to the continental shelf the application of a method of delimitation adopted for the 'water column' only and its fish resources."[344]

This does not mean that the same line may not be drawn, delimiting both continental shelf and EEZ; indeed there may even be a presumption in favour of such a line. But that is not the same thing as a single maritime boundary.

(x) Delimitation of the EEZ requires a prior attempt at agreement between the parties

21.39 In the same way as Article 83 does in relation to the continental shelf, Article 76 requires that delimitation of the EEZ "shall be effected by agreement on the basis of international law". There is no reason to give these words any different interpretation or effect than the same words in Article 83.

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[344] *Gulf of Maine*, ICJ Reports 1984 at pp. 301-302 (para. 119)

CHAPTER 22

THE ISSUES FOR THE COURT AT THIS STAGE OF THE PROCEEDINGS

A. Introduction

22.1 Before examining the substance of Cameroon's maritime claims, two important preliminary issues remain as a result of the Court's judgment of 11 June 1998. These relate, in different ways, to the issues which the Court should or can deal with at this stage of the proceedings in respect of the maritime boundary.

B. Priority of determination of the land boundary

22.2 As noted in Chapter 20, the Court held that the question whether it should deal first with the land boundary did not go to jurisdiction and was "a matter which lies within the Court's discretion".[345]

22.3 That discretion should, in Nigeria's respectful view, now be exercised so as to allow the Court to deal with the land boundary issues first.[346] The primacy of land over sea, and the need for a starting point on land for any maritime boundary, are elemental considerations, repeatedly reaffirmed in the Court's jurisprudence. The existence of a dispute over sovereignty of relevant features is a frequent obstacle to negotiations on maritime delimitation, and if a court or tribunal lacks jurisdiction to deal with the land boundary issues, its capacity to engage in maritime delimitation will be correspondingly affected.[347] Where a case is brought by special agreement, the parties may be able to avoid such difficulties, e.g. by specifying a starting point for the line by agreement which avoids the necessity to decide on disputed issues of land sovereignty.[348]

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[345] Preliminary Objections, Judgment of 11 June 1998, para. 106; above, para. 20.3

[346] See NPO, pp. 114-115; CR 98/2, 3 March 1998, pp. 46-48; CR 98/5, 9 March 1998, p. 56.

[347] As it was in the *Anglo-French Arbitration* with respect to the delimitation of the territorial sea between the Channel Islands and the French coast: see (1977) 18 UNRIAA p. 3 at pp. 22-24 (paras. 16-21), & *cf* also at p. 72 (para. 139)

[348] As in the *Gulf of Maine* case ICJ Rep. 1984, p. 265, (para. 20), p. 332, (para. 211)

22.4 Equally, the Court has jurisdiction over the land boundary. But this leaves unresolved an important question of legal logic and a fundamental issue of method. The Court cannot begin the task of maritime delimitation before determining the location of the land boundary. Nor can it proceed on the basis of a prejudgement as to the location of that boundary. The relevant considerations will be different if Cameroon's contentions are upheld than they will be if Nigeria's are upheld, and there may be other elements in the eventual judgment on the land boundary, especially relating to Bakassi, which are relevant for these purposes.

22.5 The need to definitively establish the land boundary between the parties, before embarking on issues of maritime delimitation, was emphasized by the Court in the *Tunisia/Libya case*. Referring to a Convention of 1910 which eventually established the land boundary between the two adjacent States after a period of some uncertainty, the Court said:

> "The Court regards the 1910 Convention as important for the consideration of the present case, because it definitively established the land frontier between the two countries: Both Parties have agreed in recognizing the relevance of the land boundary starting point; this only reinforces the significance of Ras Ajdir as a basic point of reference. In this sense the Court believes that the 1910 Convention constitutes a relevant circumstance for the delimitation of the continental shelf between the two Parties."[349]

It must be equally relevant that the parties to the present case have not so agreed.

22.6 Nigeria asks the Court to rule on this question at this stage. It is respectfully suggested that the parties are entitled to know the Court's position on a question which, even if it does not go to jurisdiction or admissibility, clearly involves a preliminary point of method, and which has already been fully argued. In the interests of the priority of issues and the economy of pleading in maritime

[349] ICJ Rep. (1982) p. 18 at p. 66 (para. 85).

delimitation only after the key element, the starting point of the maritime boundary, has been decided, it is appropriate to separate the two phases of the case. This would respect the basic principle that "legally a coastal State's rights over the continental shelf are both appurtenant to and directly derived from the State's sovereignty over the territory abutting on that continental shelf".[350] It has the further merit that it will allow the parties, immediately following the Court's judgment on the land boundary, to consider their respective positions and then to negotiate on the basis of that position - as is indeed required by the relevant substantive legal provisions, Articles 76 and 83 of the 1982 Convention.

C. The special position of Equatorial Guinea and São Tomé e Príncipe

22.7 A second issue arises at the stage at which the Court reaches the merits of Cameroon's maritime claim-line, to which Nigeria's Preliminary Objection 8 has been joined.[351] This concerns the lack of jurisdiction to rule on areas claimed by Cameroon which are also claimed by third States. The question has already been fully argued,[352] and Nigeria will accordingly only make one or two supplementary observations at this stage.

22.8 The first point to make is that the extent of physical encroachment of Cameroon's claim-line on areas claimed by Equatorial Guinea and São Tomé e Príncipe can be seen with reasonable precision from Figure 20.3 (above). Indeed for the great majority of its length from Point G, the Cameroon claim-line impinges at least as directly on those States as it does on Nigeria.

22.9 The extent of that impingement can also be illustrated in a different way. Significant areas to the *west* of the Cameroon claim-line are claimed, as against

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350 as the Court noted in the *Aegean Sea Case* ICJ Rep. (1978) p. 3 at p. 36 (para. 86)

351 See para. 20.5 above.

352 See NPO, Ch. 8; CR 98/2, 3 March 1998, pp. 52-61; CR 98/5, 9 March 1998, pp. 59-63

Nigeria, by Equatorial Guinea and, further south, by São Tomé e Príncipe.[353] Those disputed claims have not been resolved. What would be the implications for those third State claims of a determination that (unspecified) areas to the East of the Cameroon claim-line appertain to Cameroon? By upholding Cameroon's claim-line vis-à-vis Nigeria, the Court would by clear and necessary implication be rejecting the claims of Equatorial Guinea to these areas. It may be noted that there appears to be no precedent for a continental shelf off a State's coast being a discontinuous enclave. There is no doubt that, inshore off Bioko, the shelf pertains to Equatorial Guinea. If, a few miles further west it is held by the Court that a particular area pertains to Cameroon, it follows by necessary implication that the Equatorial Guinea continental shelf has terminated.

22.10 It should be stressed that the Court's decision in the *Libya/Malta* case, that it lacked jurisdiction to decide as between the parties on the delimitation of maritime areas claimed by a third State, still stands.[354] That decision was quite independent of the question whether Italy should have been allowed to intervene under Article 62 of the Statute to protect its legal interests.

D. Conclusions

22.11 For these reasons, which supplement those already presented to the Court, Nigeria:

(1) requests the Court to hold that the maritime delimitation phase of the case be deferred until after the determination of the land boundary;

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[353] There is no evidence that those areas are claimed by Equatorial Guinea or São Tomé e Príncipe (on the one hand) and Cameroon (on the other hand). But this is only because, to Nigeria's knowledge, Cameroon's claim has never been presented to them. It was developed, as far as the available diplomatic record shows, solely for the purposes of the present case.

[354] *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)* ICJ Rep. (1985) p. 13 at pp. 27-8 (paras. 22-23)

(2) is firmly of the opinion that the Court lacks jurisdiction to deal with Cameroon's claim-line, to the extent that it impinges on areas claimed by Equatorial Guinea and/or São Tomé e Príncipe, or at least that Cameroon's claim-line is inadmissible to that extent.

CHAPTER 23

MARITIME DELIMITATION: THE REBUTTAL OF CAMEROON'S CLAIM-LINE

A. Introduction

23.1 In this Chapter, Nigeria responds to the specific claim-line presented by Cameroon in its *Memorial*, that is to say, its claim-line beyond Point G. This involves the presentation of a series of objections based on the factual and legal considerations developed in the previous Chapters.

23.2 An initial point to be noted is that Cameroon only addresses the substance of the maritime boundary beyond Point G of the Maroua Declaration of 1975, which "essentially concerns the territorial waters".[355] At the time of Maroua, both parties claimed territorial seas extending beyond Point G, and, at least so far as its internal legislation is concerned, Cameroon still does.[356] Cameroon for its part professes to accept the maritime delimitation made by that Declaration, and claims a line beyond Point G, stretching first immediately westwards, then south-westward.

23.3 As the Court held in its Preliminary Objections judgment, there are important differences between maritime boundary cases brought under the Optional Clause or by specific agreement under Article 36 (1) of the Statute.[357] In the present case, Cameroon is the Applicant, and it is for Cameroon to assert and justify its claim. Nigeria has no similar onus. As noted already, it is Nigeria's position that Cameroon's maritime claim beyond Point G:

(1) should be postponed until the determination of the extent of the land territory of the Parties, on which it is dependent;

(2) should be determined in the first place by agreement, in accordance with the parties' clear and express obligations under Articles 76 and 83 of the 1982

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[355] MC, para. 5.66

[356] See above, para. 20.8

[357] Preliminary Objections, Judgment, 11 June 1998, para. 109

Convention, and on the basis of the land boundary as determined by the Court;

(3) in any event, in the circumstances of the present case, cannot be decided on because the claim presented by Cameroon necessarily and inevitably involves the rights of third States, specifically Equatorial Guinea and São Tomé e Príncipe, which have not consented to the jurisdiction of the Court.

23.4 In the circumstances, Nigeria does not formulate its own maritime claim vis-à-vis Cameroon in this *Counter-Memorial*. It is ready to negotiate with Cameroon, immediately following a judgment of the Court on the land boundary, with a view to achieving a maritime delimitation of the respective territorial sea, continental shelf and (as applicable) EEZ, in accordance with international law.

B. The Basis of Cameroon's Claim-Line: Affirmative Action at Nigeria's Expense

23.5 Before turning to an exposition of the reasons why Cameroon's claim-line is unfounded in international law, it is necessary first to summarise the basis on which Cameroon's claim-line emerges from its *Memorial*.[358]

23.6 Cameroon begins by observing that the geographical situation "combines some of the worst geographical anomalies examined in the maritime delimitation cases that the Court has seen".[359] It likens its situation to that of the Federal Republic of Germany in 1969, but this is of course inaccurate. In the *North Sea Continental Shelf* cases, the three States (a) did not ask the Court to draw a line; (b) brought their case by special agreement, and (c) accepted that their offshore continental shelf boundary was already determined by agreement with the United Kingdom.

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[358] MC, Chapter 5

[359] MC, para. 5.90A

The present case is different in all three respects; in particular, the position of the offshore State(s), a non-issue in the *North Sea* cases, is central to the present dispute.

23.7 Indeed this is effectively conceded by Cameroon in the following sections of its pleading. Cameroon defines "the relevant zone", i.e. the disputed area, as the whole area situated within 200 miles of the baselines of the two Parties, including Bioko and São Tomé e Príncipe, referred to inaccurately as the "three islands".[360] It should be observed that the "relevant area", on this definition, includes substantial land areas and territorial seas of two other States.

23.8 Cameroon then goes on to enumerate various geographical factors which are relevant to the delimitation of "the relevant area".[361] These include "[t]he immediate and dominating presence of the large island of Bioko only about 12 nautical miles off the coast of Cameroon", and its substantial "amputation effect" on waters which "otherwise would be Cameroonian", as well as ...

> "The presence further out at sea of the archipelago formed by the islands of Sao Tome, and Principe, ... It is notable that the three islands, Sao Tome, Principe and Bioko, are virtually arranged in a straight line in a South-West/ North-East direction at a 45° azimuth. Their configuration could hardly put Cameroon at a greater disadvantage."[362]
>
> "the three islands form a screen blocking the maritime coasts from all the coastal States of the region with the exception of Nigeria".[363]

In addition ...

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360 MC, para. 5.98, sub-para. (vi) and 5.99, sub-para. (x). In fact there are more than "three islands". Equatorial Guinea includes the islands of Annobon, Corisco, Elobey Grande and Elobey Chico. São Tomé e Príncipe is an archipelagic State which includes various islands within its proclaimed archipelagic baselines.

361 MC, para. 5.98

362 *ibid.*, point (vi)

363 MC, para. 5.99, point (x)

> "The fact that the coastline continues to turn on its axis along the bank of the Rio Muni in Equatorial Guinea, the land portion of that State's territory, thus adding an extra element which reduces the maritime rights of Cameroon."[364]

These are, no doubt, evident geographical facts, but several points have to be made. First, they have nothing to do with Nigeria; the "fault" is Bioko's, for being where it is. Secondly, references to "amputation" imply a pre-existing limb; references to the "maritime rights" of Cameroon being "reduced" imply that those rights were somehow pre-existent and larger. In short, the "maritime rights" of a State are to be determined in the abstract, without any reference to its geography.

23.9 Despite repeated protestations that it is dealing only with a bilateral situation, Cameroon goes on to present a "global" approach. It does so on the express basis that the disadvantages presented to it by the existence of Equatorial Guinea (both Bioko and the mainland of Rio Muni) and São Tomé e Príncipe can and should be corrected, in its favour, at the expense of Nigeria. This approach can be seen, clearly, in the following passages:

> "geographical peculiarities of the present case ... mean that the Court cannot avoid taking into account the existence and geographical situation of these [third] States, facts that can have an influence on what the equitable solution should be in the present case."[365]

> "Far from attempting to 're-create nature', a delimitation based on equitable principles should ... take into account all situations relevant to the zone, and the result should include a reasonable degree of proportionality between the continental shelf zones and the length of the coastlines concerned [viz, the coasts of all four States]. Such delimitations should also reflect and correct any distortion such as the blockage or 'amputation' effect caused by any island close to the coasts (Bioko), and adequately take into account the existence of islands situated further off."[366]

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[364] MC, para. 5.98, point (vii)

[365] MC, para. 5.104

[366] MC, para. 5.106

> "The line must also take into account the presence of the large island of Bioko, not to establish the rights of Cameroon in relation to Equatorial Guinea ... but rather to reflect the existence of that large island as a geographical fact, at the expense of Cameroun, in *a zone that should be equitably divided among all the States in the region*. Just as the modern Law of the Sea, fully applicable due to the ratification of the 1982 Convention by the Parties, requires an 'equitable solution' and not just an 'equitable line', a situation such as that existing in the present case requires *a global balancing of the equities, of the advantages and disadvantages between the different States of the littoral of the Bight of Biafra.*"[367] (emphasis added)

> "In this situation, in which Cameroon is disadvantaged not only due to a change in the direction of the coastline, but also due to the very marked general concavity of its coastline, it has in addition the extra drawback of the presence of a large island directly opposite its coasts and situated precisely in the axis of the change in direction of the coast; moreover Cameroon's access to oceanic resources is hindered by the presence of a small archipelago State further out at sea. That is a situation of a unique complexity which, as is shown above, brings together the most unfavourable elements of all the maritime boundary cases. Whatever the scenario, Cameroon is the coastal State that is disadvantaged."[368]

23.10 Cameroon consequently calls for a global distribution of the relevant maritime zones by reference to the primary criterion of the proportionality of all "relevant" coasts, although the numerical details of the adjustment are not provided, and the map in question is imprecise in the extreme. According to Cameroon:

> "This form of adjustment is certainly the most rational and balanced method, as well as the one most likely to lead to an equitable result, in this region with an exceptionally complex configuration and in which an extraordinary accumulation of unfavourable geographical elements contributes to put Cameroon at a severe disadvantage as compared with its neighbours."[369]

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[367] MC, para. 5.114

[368] MC, para. 5.115

[369] MC, para. 5.123

Cameroon asserts that "the proposed line represents an equitable result in so far as it implements reasonable proportionality between the two states affected",[370] but the passage from the Court's judgment of 1969, that Cameroon goes on to quote, refers to "the reasonable degree of proportionality ... between the extent of the continental shelf areas appertaining to the coastal State and the length of its coast measured in the general direction of the coastline".[371] In the present case, the Court has no idea what areas are divided by the line(s) proposed by Cameroon; indeed, the calculations on the basis of which this "proportionality" is tested are not disclosed.

23.11 This methodology calls for two preliminary comments.

First, it is as difficult for Nigeria as it would be for the Court to assess this methodology at the level of detail, because the details are not provided. Nigeria therefore calls on Cameroon to provide them in its Reply, and reserves the right to comment on points of detail in its Rejoinder.

Secondly, quite apart from issues of detail, the method proposed by Cameroon (the *only* method proposed by it) is globally unacceptable. Overall, Cameroon's line is based on a overt claim for affirmative action to redress the position where it is "the victim of strong geographical prejudice"[372] as a result, overwhelmingly, of the presence of third States.

23.12 It is Nigeria's position that, even if Cameroon's claim is admissible and within the Court's jurisdiction to decide (which, for the reasons stated in the preceding Chapter, is not the case), that claim is misconceived and does not accord with existing international law, or with long-standing arrangements in the area in question. The bases for these general objections will now be outlined.

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[370] MC, para. 5.134

[371] ICJ Rep. 1969 p. 6 at p. 54, para. 101 (D)(3)

[372] MC, para. 5.135.

C. The Basis of Cameroon's Claim-Line: a "maritime exclusion line" excluding Nigeria

23.13 Cameroon's misunderstanding of the Court's 1969 judgment, noted in paragraph 23.6 above, is of great significance. Maritime delimitation is precisely a form of delimitation of areas appurtenant to the coastal State. It is not a drawing of lines in the sea regardless of their effects, or of the areas thereby attributed to the States concerned. Although in some of the cases, the Court was authorized to draw a precise line, this was always with a view to identifying the areas of continental shelf which were to be attributed to the States concerned. But what is claimed by Cameroon is precisely a line, not an area of continental shelf or EEZ. It is entirely conceivable that most, if not all, points along or immediately to the east of that line would be held to appertain to other coastal states in the region, Equatorial Guinea or São Tomé e Príncipe. In such a case the implications of the Court having upheld Cameroon's claim-line as between Nigeria and Cameroon would be negated. This is not a case, such as was referred to by the Court in 1969, where maritime delimitation only applies to marginal and disputed areas ("only where there is a dispute and only in respect of the marginal areas involved").[373] The *whole area*, within a short distance beyond the coast, is in dispute, since it is claimed by other States (as well as by Nigeria vis-à-vis those States).

23.14 In other words, in this case the Court is not concerned with "the appurtenance of a given area" at all, but with the opposability to Nigeria of an arbitrary line, poorly designated by Cameroon and wholly unrelated to the practice of the parties or to any prior public claim of Cameroon. The effect of the Cameroon claim-line is not to attribute continental shelf or EEZ areas to Cameroon, since the areas to the east of the line may very well appertain, and indeed for the most part do actually appertain, to other coastal states in the region, or, at least, are claimed by them. The effect of the Cameroon claim-line is not to delimit maritime zones but to

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[373] ICJ Rep. 1969 at p. 32 (para. 46)

exclude Nigeria from their subsequent delimitation. It is not a maritime boundary but a maritime exclusion line.

23.15 As noted, this misconceives the function of the Court in maritime delimitation, and as one might expect the misconception has further implications for the way in which the Court is to perform its function. Here the comments of the Court in the *Tunisia/Libya* case are pertinent. Referring to the importance of proportionality (which is, after all, the primary criterion on which Cameroon relies), the Court noted that ...

> "it is clearly not possible for the Court to apply this concept, by way of touchstone of equitableness, to the method or methods it may indicate, unless it can arrive at a reasonably clear conception of the extent of the areas on each side of the eventual line ..."[374]

23.16 Again in the *Libya-Malta* case the Court took into account disproportionate coastal lengths in adjusting the median line in favour of Libya, and then checked the result by reference to the areas awarded. It said:

> "The relationship between the lengths of the relevant coasts of the Parties has of course already been taken into account in the determination of the delimitation line; if the Court turns its attention to the extent of the areas of shelf lying on each side of the line, it is possible for it to make a broad assessment of the equitableness of the result, without seeking to define the equities in arithmetical terms. The conclusion to which the Court comes in this respect is that there is certainly no evident disproportion *in the areas of shelf attributed to each of the Parties respectively* such that it could be said that the requirements of the test of proportionality as an aspect of equity were not satisfied."[375] (emphasis added)

23.17 In the present case, if Cameroon's claim-line is adopted, or anything in the same form, such criteria will be excluded, since the precise extent of Nigeria's maritime

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[374] ICJ Rep. 1982 at p. 78 (para. 108)

[375] ICJ Rep. 1985 p. 13 at p. 55 (para. 75)

zones will be, apparently, fixed, but literally nothing will be known about the extent of Cameroon's maritime zones. It will not be possible to test the outcome *post hoc* by reference either to coastal frontages or to areas awarded, since the effect of the decision will be purely unilateral.

D. In any event, Cameroon's Claim-Line lacks any basis in international law

23.18 In addition, and without in any way derogating from what has been said in the preceding Chapter on the issues of jurisdiction and admissibility of the Cameroon claim-line, that claim-line is unfounded in international law, *inter alia* for the following reasons.

(i) Encroachment on natural prolongation of Nigerian coastal front

In the *North Sea Continental Shelf* cases the Court laid down as a basic criterion for delimitation, that it should "leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other".[376] Yet the Cameroon line in its sideways movement from Point G westwards and then south-westwards radically interrupts the natural prolongation of Nigeria's land territory. It is excluded as an "equitable solution" on this ground alone. It may be added that the proposed claim-line also encroaches on the natural prolongation of Equatorial Guinea, as is evident from Figure 20.3 above.

[376] ICJ Rep. 1969 at p. 53 (para. 101)

(ii) Complete disregard of considerations of contiguity

The proposed Cameroon line beyond Point G is drawn in complete disregard for considerations of relative distance from the various States. For more than 80% of its length, the line is closer to *two* other States (Nigeria and Equatorial Guinea, or Nigeria and São Tomé e Príncipe, or Equatorial Guinea and São Tomé e Principle) or even to all three, than it is to Cameroon. For the remaining 20% of its distance it is closer to Nigeria than to Cameroon. In short the line flouts the notion that distance is a key criterion for the determination of the continental shelf. No doubt anticipating that criticism, Cameroon argues that "the 1982 Convention on the Law of the Sea ... dealt [the equidistance principle] a death-blow",[377] and refers to "[t]he principle according to which equidistance is not a constraining principle in international customary law".[378] Thus, according to Cameroon not merely is equidistance not a principle; there is actually a *principle* that it is not a principle! This is tantamount to denying the relevance of distance as a criterion in maritime delimitation, which is, of course, what the Cameroon claim-line actually does. The true position is quite otherwise. Although the Court held in 1969, and has consistently reaffirmed since, that equidistance is not required even *prima facie* (i.e. in the absence of special circumstances), nonetheless it has always affirmed that *distance* is relevant, and it has frequently begun with some form of equidistance line before seeking such modifications to it as may be required by the circumstances of the case. Thus, although equidistance *as such* is not required, the Court must be able to affirm that the areas awarded to a State pertain to it rather than to other States, and relative distance is highly relevant here. But if relative distance is a criterion for drawing the line (or even for checking a line already drawn on other grounds), the Cameroon claim-line fails.

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[377] MC, para. 5.69

[378] MC, para. 5.76

(iii) Complete failure to take into account the practice of States concerned in the Gulf of Guinea: I - Nigeria and Cameroon themselves

The Cameroon claim-line would require areas which are the subject of long-standing concessions, and of exploration and exploitation activity pursuant to those concessions, to be transferred from Nigeria, or respectively Equatorial Guinea, to Cameroon. No court or tribunal dealing with maritime delimitation has ever displaced long-standing, consistent arrangements of this character. The existing situation was outlined in Chapter 20. As far as Nigeria is aware, Cameroon has never at any stage protested against these arrangements. Indeed its own concession line very largely confirms them. The arrangements have not been in force for only a short period of time (as in the *Gulf of Maine*). They are not equivocal or disputed (as the Court held in *Libya/Malta*). They go back in many cases for decades, and the general arrangement they reflect has been the basis of all subsequent development in the relevant waters. Those arrangements by themselves show the long-term acceptance of the parties of a generally appropriate line for the purposes of petroleum exploration and exploitation in that area, *irrespective of the still continuing dispute over the Bakassi peninsula itself*.[379] But even if the line between the concessions is regarded as a merely *de facto* line based on the concordant practice of the parties - as the Court held to be true in the *Tunisia/Libya* case[380] - those arrangements have been progressively acted on for a considerable time, and they have resulted in a consolidated series of concessions, investments, of exploration and production which has been unprotested (except in the immediate area of Bakassi) by any party. It is, with respect, inconceivable that the Court should say that large areas affected by this settled pattern of arrangements, expectations and vested rights should now be effectively transferred to another State, with all the regulatory, fiscal and other consequences that would entail.

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[379] This is subject to the areas of minor overlap shown in Figure 20.5 above.

[380] Above, para. 21.25

(iv) Complete failure to take into account the practice of States concerned in the Gulf of Guinea II: - Nigeria and Equatorial Guinea

It is true that the arrangements mentioned in the preceding paragraph were made and acted on as between Nigeria and Cameroon in the offshore areas to the north and west of Bioko, and they did not directly involve Equatorial Guinea. However the position as between Nigeria and Equatorial Guinea is also well established, though more recently than in the case of the inshore areas. It is described in Chapter 21 above. There is no complete concordance between the concession areas granted for the purposes of exploration and exploitation by Nigeria and Equatorial Guinea. On the contrary, as shown in Figure 20.4 above, there is a substantial area of overlap, and there is an even more substantial area of overlapping claims. But the point for present purposes is that the Cameroon claim-line cuts right through this area, and bisects existing producing fields (the Zafiro field, in particular). Yet Cameroon has never previously made claims to these areas, has never notified them (as far as Nigeria is aware) to anyone. There is no record that it protested Equatorial Guinea's grants of concessions in this area, which are shown in Figure 20.4. Those grants are well known in the industry, and details of them are readily available from the various scouting services. There was, and is, nothing secret about them. Faced with these realities, the sudden Cameroon claim to these vested rights can only be described as out of touch with reality.

(v) Disproportionality of coastal fronts

There is a whole suite of problems associated with Cameroon's reliance on proportionality as the cardinal basis for delimitation. First, proportionality of attribution of continental shelf by reference to the relevant coastal lengths cannot provide, as Cameroon appears to think, the cardinal criterion for maritime delimitation. Rather it has a *ex post* function, as a basis for checking the equitable

character of a proposed delimitation.[381] Secondly, the relevant coastal fronts of Nigeria and of Cameroon depend of course on the question of sovereignty over Bakassi, which is in dispute in these proceedings. Thirdly, Cameroon has not bothered to tell the Court, except in vague and general terms, how long the relevant coastal fronts are. But it can be gleaned from the Cameroon *Memorial* that Cameroon wishes to count, as against Nigeria, areas of coastal frontage to the east of the strait between Bioko and Cameroon (a strait which is of course wholly territorial sea) all the way down to its boundary with Rio Muni. There is no sense in which areas of Cameroon's coastline further east and south of the strait are relevant coasts in terms of any delimitation with Nigeria. The Cameroon coastal frontage (leaving Bakassi to one side) for this purpose may be approximately designated as the area between Erong Point and Debunja Point. It is approximately 53 kilometres in length. It may be compared with the south-facing coastal frontage of Bakassi, approximately 21 km. in length, and the further long sector of relevant Nigerian coast, from West Point to Cape Formoso, which is approximately 246 km. in length. Fourthly, in applying these relative coastal frontages, even as a criterion for the equity of a proposed delimitation, it is necessary to know what is being delimited, but at present the Court does not know this, because the actual Cameroon claim to maritime territory vis-à-vis Nigeria has not been disclosed, no doubt because the line includes areas which certainly belong to other States.[382]

(vi) Attempts to redistribute maritime zones in the Gulf of Guinea on the basis of "global equity"

As already demonstrated, the "methodology" adopted in Cameroon's *Memorial*, to the limited extent that it is actually disclosed there, involves a frank and overt redistribution of maritime zones in the interests of Cameroon and contrary to the

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381 ICJ Rep. (1969) at p. 53 (para. 101, point (D)(3))

382 It seems clear that Cameroon has in mind an area, since it describes its claim as "modest": MC, para. 5.136. In the context of delimitation, a mere *line* cannot be modest.

interests, in particular, of the island States in the Bay of Biafra. This is perhaps the most emphatic example of an attempt to remake a geographical situation that has so far been avowed. It is based on a clear fallacy. The location of any State is a function of its social, political and legal history and of the interplay of various forces, indigenous and other. For the purposes of maritime delimitation, the geography of the world is a simple datum. As the Chamber felicitously put it in *Gulf of Maine*, geographical facts are "the result of natural phenomena, so that they can only be taken as they are".[383] For a State to treat itself as "victimised" by geographical facts and the reality of other States in close proximity to it is highly problematic, and courts and tribunals have consistently refused to correct much more important cases of "discrimination" or "victimisation" than the mere presence off-shore of populous islands belonging to other States. For example, the Court will not take into account such vital factors as the lack of land-based resources, poverty, underdevelopment, etc.[384] It is this sheer fact, the fact that some States have longer coastlines than others, or are located on concave coastlines, or are cut off by off-shore islands, that is the determining element. Cameroon seeks to reverse that fact by the device of maritime delimitation; its attempt is in principle unjustified.

E. The issue of enclaving

23.19 A concern which has been raised in several cases is the problem of potentially enclaving a State party to a delimitation, and where possible tribunals have sought to avoid doing so. In the *Guinea/Guinea-Bissau* arbitration, the Arbitral Tribunal referred to the general geographical area of the dispute, and said that:

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383 ICJ Rep. (1984) p. 246 at p. 271 (para. 37)

384 See e.g. *Libya/Malta*, ICJ Rep. (1985) at p. 41 (para. 50), cited with approval by the Court in *Jan Mayen*, ICJ Rep. (1993) at p. 74 (para. 80)

> "When in fact - as is the case here, if Sierra Leone is taken into consideration - there are three adjacent States along a concave coast line, the equidistance method has the other drawback of resulting in the middle country being enclaved by the other two and thus prevented from extending its maritime territory as far seaward as international law permits. In the present case, this is what would happen to Guinea, which is situated between Guinea-Bissau and Sierra Leone. Both the equidistance lines envisaged arrive too soon at the parallel of latitude drawn from the land boundary between Guinea and Sierra Leone which Guinea has unilaterally taken as its maritime boundary."[385]

23.20 Similarly, in the *St Pierre and Miquelon* case, the Tribunal declined to enclave the French islands, giving them a narrow projection or corridor out to the 200 mile limit. The Tribunal noted that ...

> "There is no foundation for claiming that the frontal projection of Saint Pierre et Miquelon in this area should end at the 12 mile limit of the territorial sea. On the other hand, such a seaward projection must not be allowed to encroach upon or cut off a parallel frontal projection of the adjacent segments the Newfoundland southern coast."[386]

23.21 Thus where possible maritime delimitation will be carried out in such a way as to avoid cutting off the land territory of one of the States, thereby enclaving it. However, that desideratum does not assist Cameroon in the present case, for the following reasons.

(1) In the *Guinea/Guinea-Bissau* arbitration the two states concerned, and others in the region, were located along an open coast the general direction of which was convex, although Guinea itself was located in a slight concave depression of the coast between its two neighbours. There was no question that all three States faced the open sea, and there were no off-shore islands

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385 (1986) 25 ILM 252 at para. 104. See also at para. 107. The Tribunal consisted of Judges Lachs (President), Bedjaoui and M'Baye.

386 (1992) 31 ILM 1145 at p. 1170 (para. 70)

beyond a few miles from the coast. Thus it was possible in that geographical context, without there being any question of refashioning geography, to exclude extreme claims by Guinea-Bissau which would have the effect of cutting off Guinea from any significant maritime zones.

(2) Similarly, in *St Pierre and Miquelon*, the Tribunal declined to enclave the French islands, any more than to allow them to cut off the frontal projection of the Newfoundland coast. The result was an unusual narrow projection seawards. However, once again the maritime coastal frontages there were open to the sea; there was no further island, let alone an island State, to the seawards directly opposite St Pierre and Miquelon, as there is in the case of Cameroon.[387] Nor was there any lengthy history of granting of concessions, exploration, drilling and extraction by Canada and other States to the south east, in the area of the narrow projection.[388]

(3) In the present case, by contrast, the problem is precisely the existence of a major off-shore State, Equatorial Guinea, and beyond that an archipelagic State, São Tomé e Príncipe. The existence of those States cannot be ignored, and yet the Court cannot determine as between Nigeria and Cameroon, what their legitimate claims are to be.

(4) Leaving aside for the moment issues relating to the Court's jurisdiction over third States which are not parties, the Court needs to be alert to the fact that in the present case the choice is not, as it was in the *Guinea/Guinea-Bissau* or *St Pierre and Miquelon* arbitrations, between enclaving and not enclaving the territories of one of the Parties. By comparison with its restricted position to the north of Bioko, Cameroon also has a coastal frontage to the

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387 As the Court of Arbitration said: "such a seaward projection must not be allowed to encroach upon or cut off a parallel frontal projection on the adjacent segments of the Newfoundland southern coast." See (1992) 95 ILR 645 at p. 672 (para. 70); see also at pp. 672-673 (paras. 72-73)

388 As noted above: paragraph 21.30

east and south of Bioko, down to its land border with Equatorial Guinea at Cape Campo. In short, looking at the matter globally, it is inevitable in the present geographical circumstances that a certain enclaving effect will occur: that is a simple corollary of the geographical situation of Cameroon vis-à-vis Equatorial Guinea. There is a question whether it is Cameroon or Equatorial Guinea that will be enclaved, but that is not a question to be determined in unilateral proceedings brought against Nigeria.

F. General Conclusion

23.22 In Chapter 21, the applicable law was summarized in the form of ten propositions, adopted in the 1982 Convention and in the case-law. It can be seen that Cameroon's general position on maritime delimitation in this case contradicts or at least disregards each and every one of those propositions:

(1) **International law accords to each coastal nautical, subject to the principle of equidistance, a territorial sea of up to 12 miles from the baseline.**

Cameroon's legislation still incorporates a claim to a 50 nm territorial sea.

(2) **International law requires the parties, in the first instance, to attempt to reach agreement on the continental shelf.**

Cameroon has made no attempt to negotiate or agree on its claim-line, of which Nigeria had no prior notice whatever before Cameroon's Memorial was filed.

(3) **It is not the function of the Court to apportion the continental shelf by reference to general considerations of equity.**

Cameroon seeks just such an apportionment.

(4) **International law does not give special rights in the field of continental shelf delimitation to "geographically disadvantaged States".**

Cameroon claims a special right to compensation in the context of maritime delimitation on the basis that it is the victim of geographical discrimination.

(5) **In drawing continental shelf boundaries, international law cannot refashion nature ignoring the geographical situation of the parties.**

Cameroon asks the Court effectively to ignore the geographical situation in the Gulf of Guinea and to refashion nature.

(6) **In delimiting continental shelf boundaries, international law places special weight on the practice of the parties and on existing arrangements for the exploitation of the continental shelf.**

Cameroon's claim-line wholly disregards the established, relatively concordant concessions practice of both itself and Nigeria.

(7) **Proportionality of coastlines is relevant in assessing the equitable character of a delimitation *ex post* but it cannot be used as the basis for "sharing" shelf areas and resources as an ab initio criterion.**

Cameroon relies on proportionality as the criterion for sharing out continental shelf resources between four States.

(8) International law does not attribute *ipso jure* to a State an EEZ.

Cameroon claims delimitation of an EEZ it has not yet formally claimed.

(9) Delimitation of the EEZ is a legally distinct operation from delimitation of the continental shelf.

Cameroon claims a single maritime boundary without the agreement of Nigeria.

(10) Delimitation of the EEZ requires a prior attempt at agreement between the parties.

There has been no such attempt.

23.23 To summarise, the underlying basis of the Cameroon claim, as avowed in its *Memorial*, is evidently the reconstitution of the geography of the Gulf of Guinea, whereby Nigeria's maritime rights, evidenced by long and public practice, would be truncated and Equatorial Guinea's maritime zones drastically reduced to the point of its becoming an enclave. It is clear that such a claim, never before advanced, never subjected to the test of negotiations with any neighbouring State, is inadmissible in these proceedings. But it is the *only* claim that Cameroon makes in its *Memorial*. It is not the function of Nigeria, in a case brought under the Optional Clause, to reformulate Cameroon's claim in a form which *might* - at least on the basis of some prior attempt at negotiation - be admissible.[389] As it stands,

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[389] In its *Memorial*, Cameroon remarks that "If an alternative line of demarcation is suggested, based upon the same principles of equity and proportionality, the Republic of the Cameroons reserves the right to explore it and explain it at the relevant time." (MC, para. 5.128)

It is unclear to what this refers. There have been no negotiations between the parties, and neither Party will have the right to "explore" and "explain" any solution decided on by the Court. That fact underlines the good sense of Articles 76 and 83 of the 1982 Convention which call for actual prior negotiations and a serious attempt at agreement between the parties on both continental shelf and EEZ claims.

for all the reasons given above, that claim is: (a) beyond the jurisdiction of the Court; (b) inadmissible in substance; and (c) unjustified in law and fact.

PART V

STATE RESPONSIBILITY

CHAPTER 24

CAMEROON'S ALLEGATIONS CONCERNING STATE RESPONSIBILITY

A. General

24.1 In its *Application* and *Additional Application*, Cameroon alleged that Nigeria bore international responsibility for certain conduct said to have occurred in the Lake Chad and Bakassi areas.

24.2 In the *Application* of 28 March 1994 Cameroon's allegation of Nigeria's international responsibility was formulated in paragraph 20(e') in the following terms:

> "(e') that the internationally unlawful acts referred to under (a), (b), (c), (d) and (e) above involve the responsibility of the Federal Republic of Nigeria;"

Paragraph (e") went on, consequentially, to refer to the matter of reparation.

24.3 In Cameroon's *Additional Application* of 6 June 1994, the paragraph alleging international responsibility on the part of Cameroon is paragraph 17(e). That sub-paragraph was formulated as follows:

> "(e) that the internationally unlawful acts referred to under (a), (b), (c) and (d) above involve the responsibility of the Federal Republic of Nigeria;".

Paragraph (e') went on, consequentially, to refer to the matter of reparation.

24.4 Cameroon, in its *Application* and *Additional Application*, referred to various matters which were said to give rise to international responsibility on the part of Nigeria only in very general and unspecific terms. In its *Memorial* of 16 March 1995 Cameroon gave more information about the various alleged incidents to which it had referred in its *Application* and *Additional Application*, and added information about certain other incidents both pre-dating and post-dating 29 March 1994 (the

date when Cameroon submitted to the Court its Application commencing the present proceedings).

24.5 In its *Observations* of 30 April 1996 on Nigeria's *Preliminary Objections* Cameroon added further information about previously mentioned incidents, again added further incidents (both pre-dating and post-dating 29 March 1994), and indicated the possibility that yet more examples might be presented at some future date.[390]

24.6 During the course of the *Oral Hearings* on Nigeria's *Preliminary Objections*, from 2 to 11 March 1998, Cameroon added yet further information about alleged incidents to which Cameroon had previously referred.

24.7 In its *Preliminary Objections*, Nigeria contended that there was no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions, and that accordingly all the issues of State Responsibility and reparation raised by Cameroon in this context should be declared inadmissible. In its Judgment of 11 June 1998 the Court rejected this Preliminary Objection.

24.8 Nigeria considered the meaning and scope of this part of the Court's Judgment unclear and a matter on which Nigeria and Cameroon did not agree. On 28 October 1998 Nigeria filed with the Court an *Application Requesting Interpretation*. In its Judgment of 25 March 1999 the Court declared Nigeria's *Application Requesting Interpretation* inadmissible.

24.9 In the light of the Court's Judgment of 25 March 1999 Nigeria will respond in this *Counter-Memorial* to Cameroon's allegations that Nigeria bears international responsibility for the incursions and incidents said to have occurred, irrespective of the date when those incursions and incidents are said to have occurred and irrespective of the date when Cameroon first made allegations about them in the

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[390] C.O., para. 6.04

course of the present proceedings. The Court even appears to have permitted Cameroon to present yet further allegations at unspecified future stages in these proceedings. Nigeria clearly cannot at the present stage respond to unknown future allegations, and if Cameroon puts forward any such allegations at some future date Nigeria reserves the right to seek the fullest further opportunity to respond properly to them.

B. Cameroon's *Application* of 29 March 1994

24.10 As already noted (paragraph 24.2) Cameroon's *Application* asserted in paragraph 20(e') that:

> "the internationally unlawful acts referred to under (a), (b), (c), (d) and (e) above involve the responsibility of the Federal Republic of Nigeria".

That paragraph was, like all the sub-paragraphs in paragraph 20 of Cameroon's *Application*, formulated "On the basis of the foregoing statement of facts and legal grounds". Those facts and legal grounds were solely concerned with the situation in the Bakassi area, and paragraph 20(e') must therefore be understood in that territorially limited sense.

24.11 As regards the reference back to (a) of paragraph 20 of Cameroon's *Application*, that paragraph makes no reference to any "internationally unlawful acts" by Nigeria: it merely asks the Court to adjudge and declare that Cameroon has sovereignty over the Bakassi Peninsula. No international responsibility of Nigeria arises under the terms of that paragraph.

24.12 Paragraph 20(b) of Cameroon's *Application* refers to Nigeria's alleged violation of the principle of respect for frontiers inherited from colonization (*uti possidetis juris*). For the reasons given previously in this *Counter-Memorial* and in

paragraphs 24.36-24.40 below, there has been no violation by Nigeria of any such principle. Furthermore, the root of Cameroon's complaint in this context is the application of principles of international law about title to territory, and disagreement about the application of a legal principle is not a basis for international responsibility. Accordingly, no international responsibility of Nigeria arises under the terms of that paragraph.

24.13 Paragraph 20(c) of Cameroon's *Application* refers to Nigeria's violation of its international obligations, under treaty and customary international law, by using force against Cameroon. Given that (see paragraph 24.10 above) Cameroon's *Application* was limited to events occurring in the Bakassi area, any use by Nigeria of force against Cameroon in that area involved no violation of Nigeria's international obligations, since

(1) the Bakassi area was at all material times and still is under the sovereignty of Nigeria, was and still is occupied and administered by Nigeria as of right, and any deployment of military forces in that area by Nigeria was a lawful exercise of its territorial sovereignty over that area; and

(2) Cameroon having admitted by its *Application* (and its *Memorial*) that its military forces were present in the Bakassi Peninsula, any Nigerian use of force against those forces was in exercise of Nigeria's inherent right of self-defence.

24.14 Paragraph 20(d) of Cameroon's *Application* refers to Nigeria having violated its obligations under international law, under treaty and customary international law, by reason of its military occupation of the Bakassi Peninsula. Since the Bakassi area was at all relevant times and still is under the sovereignty of Nigeria and occupied and administered by Nigeria as of right, there was no "military occupation" of that area by Nigeria (as that term is understood in international law), and the presence of Nigerian civilian and military authorities in that area was a

lawful exercise of Nigeria's sovereignty over it. Furthermore, the root of Cameroon's complaint in this context is the application of principles of international law about title to territory, and disagreement about the application of a legal principle is not a basis for international responsibility. Accordingly, no international responsibility of Nigeria arises under the terms of paragraph 20(d) of Cameroon's *Application*.

24.15 Paragraph 20(e) of Cameroon's *Application* refers not to any additional acts by Nigeria, but solely to certain consequences said to flow from "these breaches of legal obligation, mentioned above". This paragraph accordingly asserts no further allegedly unlawful acts for which Nigeria could be said to bear international responsibility.

C. Cameroon's *Additional Application* of 6 June 1994

24.16 Cameroon's *Additional Application* extended the scope of the proceedings so as to cover not only the Bakassi area (which had been the subject of the original *Application*) but also the Lake Chad area and the whole length of the land boundary between Lake Chad and Bakassi. As already noted (para. 24.3 above), paragraph 17(e) of Cameroon's *Additional Application* asserted that:

> "the internationally wrongful acts referred to under (a), (b), (c) and (d) above involve the responsibility of the Federal Republic of Nigeria;".

That paragraph was, like all the sub-paragraphs in paragraph 17 of Cameroon's *Additional Application*, formulated "On the basis of the foregoing statement of facts and legal grounds".

24.17 As regards the reference back to (a) of paragraph 17 of Cameroon's *Additional Application*, that paragraph makes no reference to any "internationally unlawful

acts" by Nigeria: it merely asks the Court to adjudge and declare that the disputed parcel in the area of Lake Chad belongs to Cameroon. Accordingly, no international responsibility on the part of Nigeria arises under the terms of that paragraph.

24.18 Paragraph 17(b) of Cameroon's *Additional Application* refers to Nigeria's alleged violation of the principle of respect for frontiers inherited from colonisation (*uti possidetis juris*). For the reasons given in paragraphs 24.12 above and 24.36-24.40 below, no international responsibility on the part of Nigeria arises under the terms of paragraph 17(b).

24.19 Paragraph 17(c) of Cameroon's *Additional Application* refers to Nigeria's violation of its international obligations, under treaty and customary international law, by occupying, with the support of its security forces, parcels of allegedly Cameroonian territory in the area of Lake Chad. Any use by Nigeria of force against Cameroon in that area involved no violation of Nigeria's international obligations, since the relevant parts of the Lake Chad area were at all material times and still are under the sovereignty of Nigeria and occupied and administered by Nigeria as of right, and any deployment of Nigerian forces in that area was a lawful exercise of Nigeria's territorial sovereignty over that area.

24.20 Paragraph 17(d) of Cameroon's *Additional Application* alleges a duty upon Nigeria, as a consequence of previously mentioned legal obligations, to withdraw its troops from allegedly Cameroonian territory in the area of Lake Chad. In other words this is a consequential submission, rather than an allegation of original wrongdoing: it does not allege any new unlawful conduct by Nigeria. But in any event, since the relevant parts of the Lake Chad area were at all relevant times and still are under the sovereignty of Nigeria and occupied and administered by Nigeria as of right, there is no such duty as is alleged upon Nigeria to withdraw its troops from its own territory, their presence in that area being in lawful exercise of Nigeria's sovereignty over it. Furthermore, the root of Cameroon's complaint in this context

is the application of principles of international law about title to territory, and disagreement about the application of a legal principle is not a basis for international responsibility.

24.21 It follows from this summary of Cameroon's *Application* and *Additional Application* that Cameroon's allegations of international responsibility on the part of Nigeria relate only to the following matters:

(1) violation of the principle *uti possidetis juris*;

(2) Nigerian use of force against Cameroon in the Bakassi area; and

(3) Nigeria's military occupation of the Bakassi Peninsula and its occupation (with the support of security forces) of parcels of territory in the area of Lake Chad.

In relation to sub-paragraphs (2) and (3), Cameroon's allegations concern both treaty law and customary international law.

D. Cameroon's *Memorial* of 16 March 1995

24.22 Cameroon's *Memorial* expanded upon the *Applications* in relation to Nigeria's alleged international responsibility. In its final submissions, in paragraph 9.1 of its *Memorial*, Cameroon asked the Court to adjudge and declare

> "(g) that the responsibility of the Federal Republic of Nigeria is engaged by the internationally wrongful matters referred to above and described in detail in the body of the present *Memorial*".

Thus Cameroon's contention that Nigeria bears international responsibility for certain acts is limited to those Nigerian acts which meet two conditions: they must be "referred to above", i.e. in the preceding sub-paragraphs of paragraph 9.1, *and* they must be "described in detail in the body of the present *Memorial*".

24.23 Of the six preceding sub-paragraphs, namely (a) to (f), sub-paragraphs (a) to (c) set out what Cameroon asserts to be the line of the land and maritime frontier: they do not refer to any acts by Nigeria, and therefore are not directly relevant to allegations of international responsibility for allegedly unlawful acts.

24.24 Sub-paragraph (d) alleges that Nigeria, in disputing that frontier line, has acted in violation of the principle of *uti possidetis juris* as well as of its legal obligations towards Cameroon regarding the demarcation of the frontier in Lake Chad and regarding the delimitation of the land and maritime frontier. The only "act" referred to in that sub-paragraph is that Nigeria disputes the frontier line referred to. Even if Nigeria were disputing the frontier line, doing so is not conduct for which a State is to be held internationally responsible. In so far as there is an admitted dispute about sovereignty over areas in Lake Chad and Bakassi, this inevitably has consequences as regards the drawing of the frontier, but the existence of a sovereignty dispute itself is not a matter giving rise to State responsibility on the part of Nigeria. As regards the consequences said to follow from the alleged Nigerian "act" of disputing the frontier line, there has been no violation by Nigeria of the principle of *uti possidetis juris*, for the reasons explained in paragraph 24.12 above, and paragraphs 24.36-24.40 below. There has similarly, for the reasons explained in Chapter 16, been no violation by Nigeria of any legal obligations regarding the demarcation of the frontier in Lake Chad. Nor, for the reasons explained in Chapters 18 and 19 and in Part IV, has there been any violation by Nigeria of any legal obligations regarding the delimitation of the land and maritime frontier. In any event, disagreement about the application of legal principles relating to the course to be taken by frontiers is not a basis for international responsibility.

24.25 Sub-paragraph (e) alleges that Nigeria has used force against Cameroon, and in particular has militarily occupied parcels of territory in the area of Lake Chad and Bakassi, has made repeated incursions, both military and civilian, all along the boundary between the two countries, and has thereby acted in violation of its obligations under international treaty and customary law.

24.26 Sub-paragraph (f) alleges, by implication, that Nigeria still has a civilian and military presence in Cameroon territory in Lake Chad and Bakassi.

24.27 Accordingly, the only acts by Nigeria which, if unlawful, are argued by Cameroon to give rise to international responsibility on the part of Nigeria, are those acts referred to in sub-paragraphs (e) and (f). As the latter is in effect a continuing version of (e), in substance the only acts still to be considered in this Part of the *Counter-Memorial* are those referred to in sub-paragraph (e), both as regards relevant treaty law and customary international law.

E. Cameroon's Allegations of Nigeria's International Responsibility: General

24.28 Cameroon has alleged that Nigeria bears international responsibility for three categories of matters:

(1) various incidents said to have occurred;

(2) non-compliance by Nigeria with its treaty obligations;

(3) non-compliance by Nigeria with the principle of *uti possidetis juris*.

The question of international responsibility said to arise as a result of the various incidents said by Cameroon to have occurred calls for detailed consideration of each alleged incident. This detailed consideration will be given in paragraphs 24.63-

24.564 below. Cameroon's allegations as to Nigeria's responsibility for treaty violations, and for non-compliance with the principle of *uti possidetis juris*, will be considered in the immediately following paragraphs.

F. Nigeria's Alleged Treaty Violations

24.29 In its *Application* and *Additional Application*, Cameroon has alleged, specifically, that:

(1) Nigeria, by using force against Cameroon, "has violated and is violating its obligations under international treaty law ..." (*Application*, paragraph 20(c));

(2) Nigeria, by militarily occupying Bakassi, "has violated and is violating the obligations incumbent upon it by virtue of treaty law ..." (*Application*, paragraph 20(d));

(3) Nigeria, by occupying parcels of territory in the area of Lake Chad, "has violated and is violating its obligations under treaty law ..." (*Additional Application*, paragraph 17(c)).

24.30 In its *Memorial* Cameroon has alleged specifically that by using force against Cameroon, and in particular by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Bakassi Peninsula, and by making repeated incursions all along the boundary between the two countries, "Nigeria has violated and is violating its obligations under international treaty law ..." (paragraph 9.1(e)).

24.31 In its *Applications* and the main body of its *Memorial* (and in particular Chapter 6), Cameroon principally cites in this context the following instruments:

- Article 2.4 of the United Nations Charter;

- Article 3.3 of the Charter of the Organization of African Unity;

- the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Sovereignty (General Assembly Resolution 2131 (XX), of 2 December 1965);

- the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (General Assembly Resolution 2625 (XXV), of 24 October 1970); and

- the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations (General Assembly Resolution 42/22, of 18 November 1987).

24.32 These instruments were cited by Cameroon in substance in the context of allegations that by its conduct Nigeria had:

- resorted to force against Cameroon, contrary to the prohibition against the use of force accepted as part of international law;

- infringed Cameroon's territorial sovereignty (including its territorial sea);

- intervened in Cameroon's affairs, contrary to the principle of non-intervention;

- militarily occupied Cameroonian territory; and

- failed to respect Cameroon's sovereignty.

24.33 While reserving its position as to whether some of the instruments relied on by Cameroon give rise to international legal obligations for Nigeria, Nigeria denies that its conduct has conflicted with the requirements of any of those instruments (or any equivalent rules of customary international law). In particular, and without prejudice to other reasons advanced elsewhere in this Chapter:

(1) Many of the land, lacustrine and maritime areas in which acts are alleged to have taken place which Cameroon regards as engaging the international responsibility of Nigeria are areas which have at all material times been (and still are) under the sovereignty of Nigeria and occupied and administered by Nigeria as of right. The presence of Nigerian civil and military authorities in those areas is thus a legitimate exercise of Nigeria's sovereignty. No acts or omissions by Nigeria in such areas can constitute violations of international treaty or customary law of the kind alleged by Cameroon.

(2) Since allegations of violations of international law represented by the instruments cited have to be proved by the Applicant, and not merely asserted, Cameroon, for the reasons to be explained in greater detail hereafter, has failed to substantiate by evidence the allegations it has advanced and has thus failed to satisfy the burden of proof which is incumbent upon it.

24.34 Even if the Court holds, contrary to the submissions of Nigeria, that title to the Bakassi and Lake Chad areas (or either of them) vests in Cameroon, it does not follow automatically that any Nigerian civil or military activity in those areas involves Nigeria's international responsibility. There is no established rule of customary international law that international responsibility is in all cases absolute. It is more in accordance with State and international judicial practice for international responsibility in appropriate cases to be essentially based on fault, requiring either intentional or negligent conduct on the part of the State if it is to be held internationally responsible for that conduct. In respect of State activity in

territory which it reasonably considers to be its own territory, even if later it is found to have been mistaken in that belief, honest belief and reasonable mistake serve to preclude international responsibility. Were it otherwise, every case involving a territorial or boundary dispute would at the same time be turned into a State responsibility case by virtue of normal State activity over many years, and even decades, by one side or the other in the disputed area.

24.35 Moreover, given that those areas in Bakassi and Lake Chad are subject to Nigeria's sovereignty, it follows that Nigeria is entitled to defend itself by taking proportionate action against incursions into its territory by foreign (i.e. Cameroon) military and civil authorities, and where necessary to take lawful countermeasures. Such essentially defensive actions in protection of long-established and clearly Nigerian settlements, and in defence of Nigerian territorial rights, are not directed against the territorial integrity or political independence of Cameroon. It is rather Nigeria's territorial integrity which is under threat from Cameroon's conduct.

G. Nigeria's Alleged Non-compliance with the Principle of *Uti Possidetis Juris*

24.36 In its *Application* and *Additional Application*, Cameroon has alleged, specifically, that:

(1) Nigeria "has violated and is violating the fundamental principle of respect for frontiers inherited from colonialization (*uti possidetis juris*)" (*Application*, paragraph 20(b) - an allegation which, in the context of the *Application*, is limited to the area of the Bakassi Peninsula); and

(2) Nigeria "has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*), ..." (*Additional Application*, paragraph 17(b) - an allegation which, in the context of the *Additional Application*, is limited to the area of Lake Chad).

24.37 For the reasons given above in Parts I, II and III (and in particular in Chapter 10), Nigeria denies that its conduct is in any way inconsistent with the principle *uti possidetis juris* so as thereby to give rise to any international responsibility on the part of Nigeria.

24.38 As it is expressed in Articles 1 and 3 of the Draft Articles on State Responsibility, adopted by the International Law Commission on first reading, international responsibility flows from a State's internationally wrongful conduct. To be internationally wrongful, a State's conduct must constitute a breach of an international obligation of the State.

24.39 In the first place, it must be observed that the principle of *uti possidetis juris* is just that - a "principle", and not a rule of law creating for successor States a specific legal obligation. Second, and in particular, the principle does not entail a legal obligation upon a successor State to respect pre-existing international frontiers, irrespective of such doubts and defects as attach to them. Where there are such doubts and defects, the pre-existing boundary applies for the successor State only subject to those doubts and defects. Were it otherwise, the successor State would inherit a better title to its frontier lands than its predecessor State had. For the reasons given above in Parts I, II and III Nigeria, in maintaining the position it does in relation to areas under its sovereignty, does so consistently with, and in no way in violation of, the principle of *uti possidetis juris*.

24.40 Moreover, a difference between States as to the proper application of a principle, or even a rule, of international law, does not itself give rise to any international responsibility for either of them.

H. Nigeria's Alleged Responsibility arising out of Alleged Incidents

24.41 Before considering in detail, so far as the facts given by Cameroon allow, the various alleged incidents advanced by Cameroon as a basis for asserting Nigeria's international responsibility, certain general issues need to be addressed.

(i) Adequacy of facts

24.42 Throughout the consideration of questions of Nigeria's alleged international responsibility for various events said to have occurred, it is important to bear in mind that it is for Cameroon, as the Applicant, to establish its case. It is for Cameroon to establish the necessary facts, and that they give rise to international responsibility on the part of Nigeria. The Court, in its Judgment on the Preliminary Objections, acknowledged that the questions whether the facts alleged by Cameroon were established or not, and whether the grounds (*semble*, of responsibility) relied upon by Cameroon were founded or not, were questions which belonged to the merits and were not prejudged by the decision on the Preliminary Objections. The Court, after holding that Cameroon's *Application* contained a sufficiently precise statement of the facts and grounds on which Cameroon based its claim, continued:

> "This observation does not, however, prejudge the question whether, taking account of the information submitted to the Court, the facts alleged by the Applicant are established or not, and whether the grounds it relies upon are founded or not. Those questions belong to the merits and may not be prejudged in this phase of the proceedings" (Judgment, para. 100).

24.43 In seeking to establish its argument that Nigeria bears international responsibility for various alleged incidents, Cameroon must show four things:

(1) first, Cameroon must show clearly *what* is alleged to have happened, i.e. it must give the full facts of the alleged incident;

(2) second, those facts must include a clear statement of *when* the alleged incident is said to have taken place;

(3) third, those facts must similarly include a clear statement of *where* the alleged incident is said to have taken place (especially in relation to any relevant boundary); and

(4) fourth, Cameroon must establish *why* Nigeria is thought to bear international responsibility for the incident.

24.44 It is thus still for consideration:

(1) whether, the facts alleged by Cameroon are, as a matter of evidence, adequately established; and

(2) whether, in so far as they are established, they are sufficient to satisfy the burden of proof resting upon Cameroon as the Applicant to make good the allegations which it puts forward; and

(3) whether, in so far as the facts are true and sufficient, they give rise to any international responsibility on the part of Nigeria.

(ii) Burden and standard of proof

24.45 Cameroon is the Applicant in these proceedings. It is Cameroon which alleges that Nigeria bears international responsibility for certain acts which are said to have occurred. The position adopted by the Court has been recently expressed thus:

> "Generally, in application of the principle *actori incumbit probatio* the Court will formally require the party putting forward a claim to

> establish the elements of fact and law on which the decision in its favour might be given."[391]

As the Court said in *Military and Paramilitary Activities in and against Nicaragua*:[392]

> "Ultimately ... it is the litigant seeking to establish a fact who bears the burden of proving it; and in cases where evidence may not be forthcoming, a submission may in the judgment be rejected as unproved ..." (at p. 437).

The Court cited that passage with approval in its Judgment in the Preliminary Objections phase of the present case, having previously said:

> "It is the applicant which must bear the consequences of an application that gives an inadequate rendering of the facts and grounds on which the claim is based." (at paragraph 101)

The principle is clear. As Nigeria will show, much of the evidence advanced by Cameroon in support of its allegations *is* inadequate, in that it is confused, contradictory, unclear and unauthoritative.

24.46 Particular mention should be made of the reliance by Cameroon on evidence taking the form of press reports or reports of radio broadcasts. The Court has acknowledged that in certain circumstances such reports are relevant evidence, but it has at the same time emphasised the need for particular caution in this area.

(1) In the *case Concerning United States Diplomatic and Consular Staff in Teheran*,[393] there had been extensive coverage of the events leading to the institution of the proceedings, and this material was available to the Court.

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391 Rosenne, *The Law and Practice of the International Court, 1920-1996* (1997), Vol. III, p. 1083

392 ICJ Reports 1984

393 ICJ Reports 1980

In concluding that it was satisfied that the allegations of fact on which the United States based its claims were well founded, the Court noted that:

> "The information available ... is wholly consistent and concordant as to the main facts and circumstances of the case" (at p. 9).

The volume of available media evidence and the world-wide notoriety of the circumstances to which it related, together with its consistency, justified reliance upon it.

(2) The need for caution was particularly apparent in *Military and Paramilitary Activities in and against Nicaragua*.[394] There the Court observed that:

> "in the present case the Court has before it documentary material of various kinds from various sources. A large number of documents have been supplied in the form of reports in press articles, and some also in the form of extracts from books ... . [T]he Court has been careful to treat them with great caution; even if they seem to meet high standards of objectivity, the Court regards them not as evidence capable of proving facts, but as material which can nevertheless contribute, in some circumstances, to corroborating the existence of a fact, i.e. as illustrative material additional to other sources of evidence ... .
>
> The Court has however to show particular caution in this area. Widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source." (at p. 40)

Those remarks carry particular weight in the context of press reports which do not indicate their sources, as is the case with many of the reports relied on by Cameroon.

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[394] ICJ Reports 1986

24.47 A separate question concerns the standard of proof which Cameroon must meet in discharging the general burden of proof which lies upon it. The allegation that a State is internationally responsible for violations of its international obligations is a serious matter, particularly where, as here, the allegation involves the use of force. The State making such an allegation must establish its case not merely on the balance of probabilities, but beyond reasonable doubt. In the *Corfu Channel Case*,[395] the Court was concerned with allegations about the laying of a minefield in Albanian waters, and the allegation that it had been laid by a particular State. In concluding that the evidence to support that allegation was insufficient, the Court said:

> "A charge of such exceptional gravity against a State would require a high degree of certainty that has not been reached here". (at p. 17)

(iii) Reasonable mistake and honest belief

24.48 There is a distinction between incursions knowingly made across a frontier into a neighbouring State, and incursions made as the result of a genuine and reasonable mistake as to where the frontier runs. Similarly, there is a distinction to be drawn between frontier incidents involving State transgressions across a known frontier, and State activities (civil or military) in territory which the State reasonably considers to be its own territory, even if later it is found by the Court to have been mistaken in that belief. As was implicitly noted by Nigeria during the oral hearings on the Preliminary Objections,[396] and as explained above at paragraph 24.34, honest belief and reasonable mistake can serve to preclude international responsibility. These considerations are very relevant to Nigerian military and civilian activities in Bakassi and Lake Chad.

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395 ICJ Reports 1949

396 CR 98/5, pp. 50-51

(iv) Self-defence

24.49 A *significant* number of the allegations made by Cameroon involve action allegedly taken by Nigeria in territory over which Nigeria asserts sovereignty, and in particular action by Nigerian forces in response to incursions into such Nigerian territory by Cameroonian forces. In such circumstances, the action taken by Nigerian forces, far from constituting conduct giving rise to international responsibility on the part of Nigeria, is conduct which is justified as an exercise of the inherent right of self-defence possessed by Nigeria along with every other State.

(v) Topographical difficulties

24.50 It is highly relevant to many of the alleged "incidents" , especially those said to have occurred along the long land boundary between Lake Chad and Bakassi, that in many areas the land boundary is undemarcated on the ground, is not even precisely delimited in the relevant instruments, and runs through difficult terrain. Certain inadequacies in the delimitation of the land boundary have been indicated in Chapters 18 and 19: such uncertainties have a part to play in understanding the realities of some of the so-called boundary incidents.

(vi) Context of incidents

24.51 Cameroon mentioned alleged boundary incidents in two quite different contexts, without clearly differentiating between them: first, *incidents said to demonstrate* that the frontier was in dispute, and second, those said to give rise to international responsibility. There is some overlap between these two categories, and some incidents may well be relevant in both contexts. As regards incidents tending to demonstrate that the frontier was in dispute, Nigeria has in effect acknowledged that even recent incidents might in principle be relevant to showing whether a frontier

is, and continues to be, in dispute. Nigeria, however, has denied that, in practice, the incidents cited by Cameroon showed that the frontier was disputed, and the Court broadly accepted Nigeria's contention that not every boundary incident implies a challenge to the boundary.[397] In so far as incidents may be invoked in the context of Nigeria's international responsibility (whether in addition to their invocation in the context of the alleged boundary dispute, or as self-standing "responsibility" incidents) the matter must, however, be viewed differently. International responsibility for discrete incidents has to be established separately for each incident.

(vii) Undue delay: extinctive prescription

24.52 A number of the incidents alleged by Cameroon to have occurred took place (so it is said) many years ago. International law accepts that claims may be barred because of the lapse of time in putting them forward. It is a matter both of equity and of practicality. It is neither equitable that States should be faced with the possibility of injustice as a result of being presented with "stale" claims,[398] nor is it practicable to expect respondent States to be able to obtain their own reliable evidence about incidents which are said to have occurred many years ago - particularly where, as with many of the incidents alleged by Cameroon, they are relatively trivial and localised and where there was no protest at the time. In international law the principle of extinctive prescription is applied flexibly. There is no specific time limit after which a claim is barred, and the period in any particular case depends upon the circumstances of that case. Delay in the first notification of a claim to the respondent State is particularly likely to prejudice the success of the claim.

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397 Judgment on the Preliminary Objections, para. 90

398 "The principle of prescription finds its foundation in the highest equity - the avoidance of possible injustice to the defendant": Ralston, Umpire, in the *Gentini* case (1903), UNRIAA, x, pp. 552-5

24.53 In the *Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Australia)*, [399] the Court:

> "recognize[d] that, even in the absence of any particular treaty provision, delay on the part of a claimant State may render an application inadmissible. It notes, however, that international law does not lay down any specific time-limit in that regard. It is therefore for the Court to determine in the light of the circumstances of each case whether the passage of time renders an application inadmissible." (at pp. 253-254)

The Court went on to find, on the facts of the case, that although there had been certain delays, they were in the circumstances not such as to render Nauru's *Application* inadmissible by passage of time. The Court added, however, that:

> "Nevertheless, it will be for the Court, in due time, to ensure that Nauru's delay in seising it will in no way cause prejudice to Australia with regard to both the establishment of the facts and the determination of the content of the applicable law" (at p. 255).

24.54 Nigeria will draw attention to the occurrence of unreasonable delay in the presentation or prosecution of claims in relation to each alleged incident which, in Nigeria's submission, is now barred by lapse of time.

(viii) Attribution

24.55 It is essential, if a State is to be held responsible for some incident, that it be established that the conduct from which responsibility is said to flow is attributable to that State under international law. In particular,

(1) the mere fact that an act has been committed by a person who is a member of a State's civil service or of its armed forces does not necessarily make the

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[399] ICJ Reports 1992, p. 240

State responsible for those acts: for that, it is necessary either that those acts be official and authorised acts of such persons, or that they be at least attributable to the State by virtue, for example, of having been performed in the ostensible performance of their official functions;

(2) the general rule is that "The conduct of a person or a group of persons not acting on behalf of the State shall not be considered as an act of the State under international law";[400]

(3) it is a question of fact in the light of the particular circumstances of each case whether the persons concerned were sufficiently closely associated with the State for their acts to be regarded as acts of the State rather than as the acts of private persons which cannot be attributed to the State and for which it bears no responsibility.

24.56 The Court has already acknowledged that:

> "not every incursion or incident alleged by Cameroon is necessarily attributable to persons for whose behaviour Nigeria's responsibility might be engaged" (Judgment on the Preliminary Objections, para. 90).

24.57 The relevant principles have been considered by the Court in *Military and Paramilitary Activities in and against Nicaragua*,[401] and in the *Case Concerning United States Diplomatic and Consular Staff in Teheran*.[402] In the former case the Court, in denying that the acts of the so-called 'contra' forces in Nicaragua could be attributed to the United States so as to make the United States responsible for such of those acts as were contrary to international law, said:

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400 Draft Articles on State Responsibility (adopted on first reading by the International Law Commission), Article 11.1

401 ICJ Reports 1986, p. 3.

402 ICJ Reports 1980, p. 3.

> "For this conduct to give rise to legal responsibility of the United States, it would in principle have to be proved that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed" (at p. 65).

In the latter case the Court, in considering the responsibility of Iran for the acts of rioters and other militants, said that for their acts to be regarded as acts of the State, it had to be:

> "established that, in fact, on the occasion in question the militants acted on behalf of the State, having been charged by some competent organ of the Iranian State to carry out a specific operation" (at p. 29).

24.58 It is apparent from the facts of a considerable number of the alleged incidents advanced by Cameroon as a basis for Nigeria's international responsibility, that they involve conduct by persons for whose behaviour Nigeria is in no way responsible. Nigeria will draw attention to these issues of non-attribution in relation to each alleged incident for which, in Nigeria's submission, Nigeria bears no responsibility by reason of the non-attributability of the conduct in question to Nigeria.

(ix) *Inconsistency of Cameroon's allegations*

24.59 It is a notable feature of Cameroon's allegations of Nigeria's international responsibility for various incidents that Cameroon's own treatment of them is inconsistent. It is inconsistent in three main respects.

(1) First, nowhere has Cameroon set out a comprehensive list of the incidents which it regards as giving rise to international responsibility on the part of Nigeria. Some lists of alleged incidents have been provided, for example at Annexes MC 362 and 363. These lists are not in terms stated to be comprehensive but, for example, Annex I to MC 362 would appear to be intended to be a summary of *all* the incidents caused by Nigeria over the

boundary (referring as it does to "*the* boundary incidents"). Yet there are alleged incidents which are not included in those lists but which are mentioned elsewhere in Cameroon's pleadings, so as to make it unclear whether Cameroon is still pursuing those non-listed incidents, or whether Cameroon, by not listing them, has recognised that they are insubstantial, or are insufficiently reliable to pursue, or have already been settled, or are for some other reason not a proper matter for international responsibility on the part of Nigeria.

(2) Second, some incidents are referred to in different terms in different places, associated with different details, so as to make it unclear precisely what the gravamen of the allegation against Nigeria really is.

(3) Third, and in particular, Cameroon's identification of places has been inadequate or inconsistent. In some instances no location for an incident has been given. In others a place name is identified, but its precise location is unclear (and often unknown, at least by the name used by Cameroon) to Nigeria. In yet others, a name and location are given but seem, on closer inspection, to misplace the intended site of an alleged incident.

I. Alleged Incidents

24.60 Against the background of those general observations, it is necessary (so far as the alleged incidents are identifiable from the limited details given by Cameroon) to deal with each of the specific incidents alleged by Cameroon to give rise to international responsibility on the part of Nigeria. These incidents are, in effect, those alleged by Cameroon to have occurred

(1) in the Bakassi area,

(2) in the Lake Chad area,

(3) along the land boundary between Lake Chad and Bakassi.

24.61 In this Chapter, Nigeria will deal comprehensively with the incidents in 82 successive sections, in an attempt to make up for Cameroon's inconsistently itemised identification of alleged incidents. Reference will be made to Cameroonian maps, where it is convenient to do so and they are adequate for the purpose in hand. This is without prejudice to Nigeria's position as to the accuracy of those maps.

24.62 It will be convenient for Nigeria to deal first with the incidents said to have occurred in the Bakassi and Lake Chad areas, since alleged incidents in those areas share the characteristic that Cameroon's allegations of State responsibility on the part of Nigeria for conduct said to have occurred in the Bakassi and Lake Chad areas are based on the assumption of Cameroon sovereignty over those areas. Nigeria rejects that assumption, and therefore also rejects all those parts of Cameroon's case which rely on it, including those parts based on various incidents alleged to have occurred in the Bakassi and Lake Chad areas. For the reasons given in Parts I and II of this *Counter-Memorial*, sovereignty over the relevant parts of those areas vested at all material times (and still vests) in Nigeria, which occupies and administers them as of right, and any manifestation of Nigerian State authority in those areas was (and continues to be) a lawful exercise of Nigeria's territorial sovereignty over them. Nigeria will nevertheless, and without prejudice to its position as to its sovereignty over the areas in question, respond to each incident which Cameroon alleges occurred in order to explain them and/or to show that the details given by Cameroon are insufficient to establish any international responsibility on the part of Nigeria.

J. Alleged Incidents in the Bakassi area referred to in Cameroon's *Applications* and *Memorial*

24.63 Cameroon's allegations of internationally wrongful conduct by Nigeria in the Bakassi area were made in Cameroon's *Application* of 28 March 1994. The references in that *Application* to alleged border incidents were collected together in Part A of NPO 84: that Annex is for convenience attached to this *Counter-Memorial* as NC-M 342. With only one exception, all those references are wholly vague and unspecific as to date, circumstances or location (other than an express or implied connection with the Bakassi area). The one exception is the reference in paragraph 9 of the *Application* to an incident said to have occurred on 21 December 1993 involving an alleged Nigerian invasion of the so-called Cameroon settlements of "Jabane" (Abana) and "Diamond". Apart from that one specifically identified alleged incident, there are in Cameroon's *Application* only generalised references in paragraph 9 to "frontier incidents [continuing] to occur in the disputed area", and to use of force and military occupation in paragraphs 20(c) and (d) - all these references of course being limited by the context of the *Application* to events said to have occurred in the Bakassi area.

24.64 In its subsequent pleadings, Cameroon purported to give more details about these alleged incidents in the Bakassi area. Those additional details are still very limited. Apart from such additional information as Cameroon provided, Cameroon also, in its *Memorial*, included (for example, in introducing a new section) several vague and/or general references to incidents having occurred, but since these references contain nothing specific in the way of detail they have been ignored for present purposes.

1. Incident of 16 May 1981

24.65 The first incident is said to have occurred on 16 May 1981. It is referred to in paragraphs 6.13 - 6.27 of Cameroon's *Memorial*. Cameroon claims that a military patrol of the Nigerian army violated Cameroon territory by penetrating into the Bakassi Peninsula as far as the Rio del Rey, where it opened fire on a craft of the Cameroon Navy. Cameroon alleges (paragraph 6.21) that the deaths of five Nigerian soldiers provided the Nigerian authorities with a pretext for exploiting the incident politically and for trying to put the blame on to Cameroon.

24.66 This distorts the true facts of this incident. It occurred on the Akpa Yafe, which is in Cross River State, Nigeria (see Map 5 in the *Atlas*). It took place on 16 May 1981. As Cameroon acknowledges, it was *Nigerian* nationals who were killed. On 23 May 1981, President Ahidjo of Cameroon wrote to President Shagari of Nigeria (NC-M 343). President Shagari responded by letter dated 25 May 1981 (NC-M 344) demanding:

(1) an unqualified apology;

(2) the bringing to justice of the perpetrators of the murders; and

(3) full reparation to the families of the dead Nigerian soldiers.

On 24 May 1981, Cameroon sent to Nigeria a Delegation led by a Minister in the Cameroon Foreign Ministry, to offer the regrets of President Ahidjo for the incident. Shortly thereafter, President Shagari summoned a meeting of Nigeria's National Security Council to consider the response made by Cameroon. The Nigerian Government was not satisfied with President Ahidjo's response. President Shagari sent an appropriate reply to President Ahidjo. Eventually, President Ahidjo made a full apology to President Shagari and offered compensation to the families of the victims. Copies of President Ahidjo's letter of 16 July 1981 to President

Shagari, and of the latter's response of 20 July 1981, are at NC-M 345 and 346. Compensation for the loss suffered by the families of the murdered Nigerian soldiers was paid by Cameroon: at NC-M 63 is a copy of the cheque.

24.67 It is abundantly clear that these circumstances give rise to no international responsibility whatsoever on the part of Nigeria. International responsibility for the incident rested wholly with Cameroon, as Cameroon acknowledged and for which Cameroon paid compensation.

2. Incident of 21 December 1993 (Abana and "Diamond Island")

24.68 In its *Application*, Cameroon stated (at paragraph 9) that:

> "on 21 December 1993, Nigeria committed an aggression against Cameroon by invading the Cameroonian localities of Jabane and Diamond Island in the Bakassi Peninsula".

The *Application* goes on to refer to "violent incidents which ensued", and to Nigeria "introducing armed troops on a massive scale to the disputed peninsula and conducting military activities there".

24.69 Despite the apparent specificity of this alleged incident:

(1) In the *Memorial*, Cameroon has not provided any information concerning the location of "Diamond Island"; it is not indicated on the maps appearing on pages 487 and 566 of Cameroon's *Memorial*, which Nigeria has used to identify other place names referred to by Cameroon.[403]

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[403] On a map extract appearing at page 377 of Annex O.C. 1 of Cameroon's *Observations* on Nigeria's *Preliminary Objections*, Cameroon has merely superimposed the word "Diamond" in the sea off the coast near West Atabong ("Idabato II" on the map); there is in fact no island at this location.

(2) There is no further mention of any such incident of 21 December 1993 in Cameroon's *Memorial*. Various other incidents said to have occurred at "Jabane" (Abana) or "Diamond Island" are referred to in Cameroon's *Memorial* (see below), but they involve either different dates or different circumstances, or both. It is thus noteworthy that the only incident specifically "identified" in Cameroon's *Application* was not thought, on reflection, to have been sufficiently reliable to have been worth pursuing in the *Memorial*.

24.70 Quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, the original brief allegation, unsubstantiated by any further details or evidence, is clearly insufficient as a basis for attributing international responsibility to Nigeria.

3. Infiltrations on and after 21 December 1993

24.71 Paragraph 6.30 of Cameroon's *Memorial* refers to:

> "Nigerian military preparations ... that include infiltrations into Cameroonian territory as of 21 December 1993".

24.72 In apparent support of this assertion, Cameroon cites MC 362. This contains an undated internal Cameroonian note, addressed to the Chief of General Staff of the Cameroonian Armed Forces from the Chief of General Staff of the Army. The front sheet of this Annex gives its date as 25 May 1994, but that is merely a date referred to in the heading of the note. The note encloses annexes which include Annex I, and the date appearing on Annex I (at page 2912) suggests that the note is dated on or after 31 May 1994. Thus neither the note nor its Annex is contemporaneous with the events to which it refers.

24.73 The note states that its Annex I summarises "the boundary incidents" caused by Nigeria: it is thus at best only second-hand, indirect evidence of the events referred to. It does appear to refer to incidents in Bakassi in December 1993, but no precise dates are given in the text as distributed. One line of the schedule in Annex I indicates that in December 1993, Nigerian troops "took possession" of the Abana and "Diamond" fisheries, expelling the civilian population, and shortly afterwards there occurred, so it is said, the "occupation of AKWA, MBEN MONG and the creek of OBIOBA",[404] where Cameroon patrols were fired upon. Another line of the schedule indicates that, during the same month, the Nigerian authorities "decided to send their forces to all parts of Bakassi on the pretext of protecting their allegedly threatened nationals".

24.74 This Annex, again despite its apparent specificity, is in fact almost wholly lacking in relevant information. No source is given for the assertions contained in the Annex, which is neither contemporaneous with, nor direct evidence of, the allegations made.

(1) The alleged "taking possession" of the Abana and "Diamond" fisheries and expulsion of the civilian population is put at some unspecified time in December -although one would have expected it to have been a sufficiently significant event (if it occurred) for its date to have been known and specified. Further, the fact that Cameroon did not apparently have that information suggests that there was no Cameroon presence in the area.

(2) The same may be said of the alleged occupation of Akwa, Mben Mong and Obioba Creek where Cameroon patrols were allegedly fired upon. That alleged event is merely said to have occurred "shortly after" the undated "taking possession" of the Abana and "Diamond" fisheries, and may

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[404] For convenience, English translations are used in this Chapter for these and other quotations from French original documents.

therefore have been in December 1993 or January (or perhaps even February) 1994.

(3) As stated in paragraph 24.69(1) above Cameroon has not indicated the precise location of "Diamond".

(4) Finally, the alleged sending by Nigeria of its forces to "all parts of Bakassi" ("toutes [*sic*] la zone de Bakassi") is unspecific, as to date, location and circumstances, and is in terms an assertion as to an internal decision said to have been taken by Nigeria, as distinct from actual conduct. This is in line with the assertion in paragraph 6.28 of Cameroon's *Memorial* that in early 1994 Nigerian armed forces embarked on a carefully prepared plan to take possession of the Bakassi Peninsula. There is no evidence offered as to these alleged internal decisions and plans being made within Nigeria, nor could there be, as those alleged events did not occur.

24.75 None of these incidents has been adequately identified, or established by sufficient evidence, whether direct or circumstantial. For these reasons, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

4. Incident of 28 December 1993

24.76 Paragraph 6.30 of Cameroon's *Memorial* claims that:

> "During the day of 28 December 1993, three Nigerian warships were apparently on constant patrol near the village of Jabane (Idabato Sub-Division), in the Bakassi Peninsula. Those ships carried upwards of a thousand uniformed men. An observation patrol was set up on

Diamond Island, while an engineer unit made preparations to land the bulk of the troops in the port of Jabane."

24.77 Although on its face this allegation seems specific, Nigeria notes that:

(1) Cameroon felt able only to say that the Nigerian vessels were "apparently" on patrol;

(2) while the naval patrol was specifically dated as being on 28 December 1993, no date is given in the *Memorial* for the despatch of the observation patrol or for the activities of the engineering unit;

(3) as stated in paragraph 24.69(1) above Cameroon has not indicated the precise location of "Diamond";

24.78 As evidence supporting these allegations, Cameroon cites the document at MC 329. This appears to be a note of some kind, internal to the Cameroon administration; it is dated 31 January 1994; it gives no indication of its provenance: i.e. it is anonymous. It refers in its heading to a note dated 5 January 1994, and suggests that that note was a report from the "Special Commissioner at Mundemba"[405] in which he "reports on the situation in his sector during the first fortnight of the month of January 1994". Despite the fact that it is specifically cited in the *Memorial* as the basis of the allegations, Cameroon has failed to include this report in Annex MC 329. The note annexed by Cameroon records that the "main point" of the report referred to was the presence on 28 December 1993 of patrolling warships and states that "they have started an observation patrol at Daimon [*sic*]". As regards the engineering unit, it simply reports that this unit "at Jabane" was being employed to build barracks out of permanent materials.

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[405] Mundemba is situated at some distance from the Bakassi Peninsula, approximately 35 kilometres northwest of Archibong (see Fig. 24.1)

24.79 This internal note is dated at the end of January 1994, over a month after the alleged December 1993 incident. It merely reports the contents of another note, but without indicating the original source of the information contained in it. Although Cameroon has not supplied the text, it would seem unlikely that the earlier note, cited as evidence of events said to have taken place in December 1993, says anything about those events: it relates only to the situation during the first fortnight of January 1994.

24.80 It has also to be observed that it would appear from MC 329 that in the first two weeks of January 1994, the *only* matters worthy of mention in an area which clearly included the Bakassi Peninsula were the patrols and the landing of a Nigerian engineering unit. This Cameroonian document thus throws serious doubt upon the other allegations by Cameroon as to incidents said to have occurred in that two week period.

24.81 These alleged incidents have not been adequately identified, nor have they been established by sufficient evidence. For these reasons, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

5. Incidents on 3, 4 and 5 January 1994

24.82 Cameroon's *Memorial* asserts, at paragraphs 6.31 to 6.33, that:

> "the Nigerians landed at Jabane on 3 January 1994 and that, as early as 4 January at 11 am, they occupied Diamond Island and hoisted their flag there. Having done likewise at Jabane, they set off to Idabato after deploying heavy weapons on the invaded territory ... Constant reinforcements were then to arrive in support of the Nigerian troops already on site ... On 5 January 1994, the Nigerian forces deployed

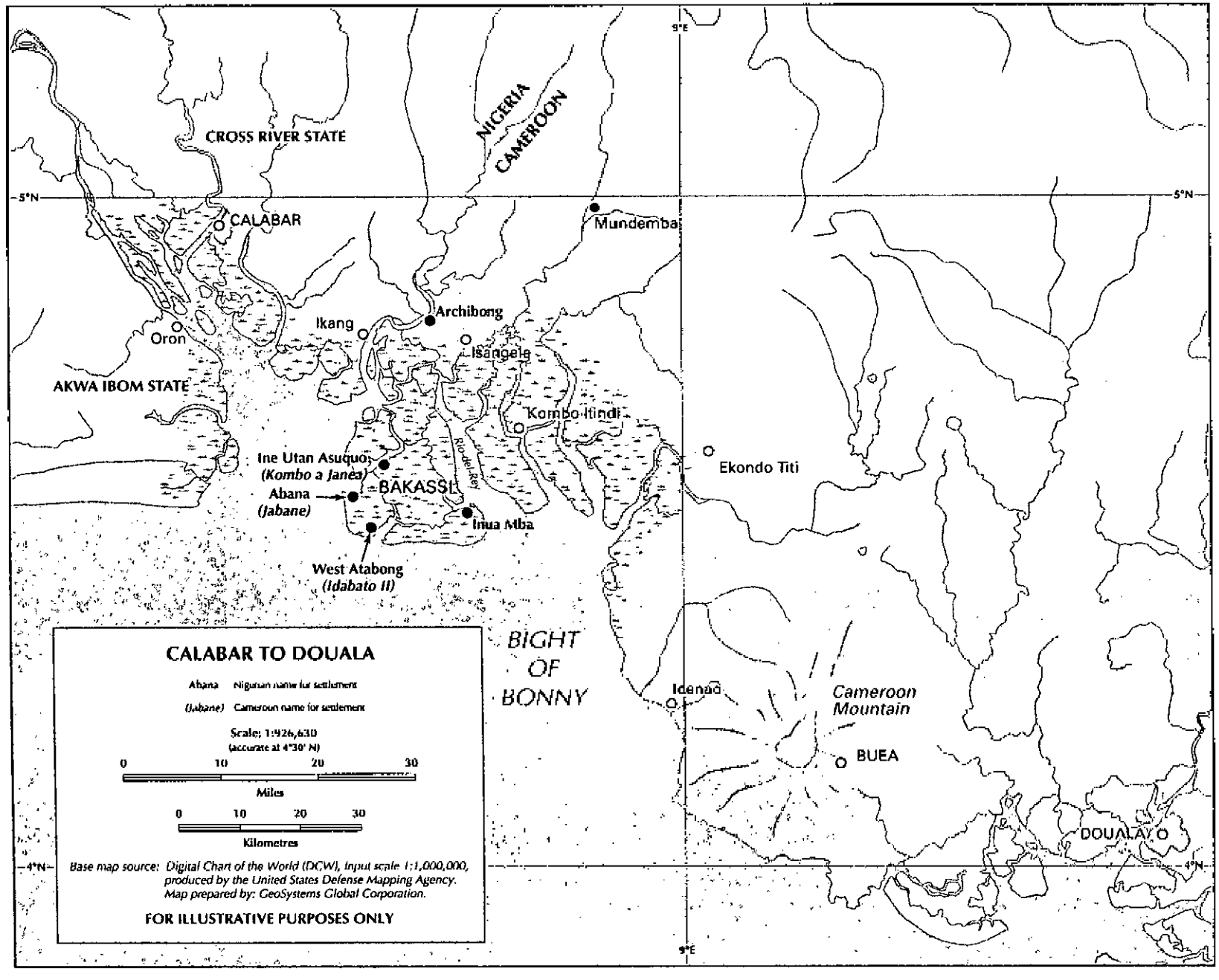

CROSS RIVER STATE
NIGERIA
CAMEROON
9°E
5°N
CALABAR
Mundemba
Archibong
Ikang
Oron
Isangele
AKWA IBOM STATE
Kombo Itindi
Rio del Rey
Ine Utan Asuquo
(Kombo a Janea)
Ekondo Titi
Abana
(Jabane)
BAKASSI
Inua Mba
West Atabong
(Idabato II)
BIGHT
OF
BONNY
Idenao
Cameroon
Mountain
BUEA
DOUALA
4°N
CALABAR TO DOUALA
Abana Nigerian name for settlement
(Jabane) Cameroon name for settlement
Scale: 1:926,630
(accurate at 4°30' N)
0 10 20 30
Miles
0 10 20 30
Kilometres
Base map source: Digital Chart of the World (DCW), Input scale 1:1,000,000, produced by the United States Defense Mapping Agency.
Map prepared by: GeoSystems Global Corporation.
FOR ILLUSTRATIVE PURPOSES ONLY

Figure 24.1

massively as far as Akwa ... 500 ... Nigerian soldiers [were] occupying the Cameroonian islands of the region."

24.83 As evidence for this alleged series of events, the Cameroon *Memorial* refers to MC 331, 332 and 334.

(1) MC 331 contains an internal Cameroonian document, namely the transcript of a telegraphic message dated 7 January 1994, from the "Chief of Frontier Post Idabato". The note does not say to whom it was addressed. It indicates that on 4 January 1994, the "Nigerian Navy" moved from Abana to "Diamond I", where they hoisted a flag. This is followed by the unspecific phrase "Then up to Idabato", and a reference to the planting of cannons and other arms "150 M from Headquarters". This report:

- says nothing about any Nigerians having landed at Abana on 3 January 1994;

- nor does it say anything about any occupation of "Diamond" (the precise location of which, in any event, has not been indicated by Cameroon);

- nor does it say anything about the Nigerians having "done likewise at Jabane" (which in terms of the *Memorial* appears to be a reference to Nigeria having occupied Abana and/or having raised the Nigerian flag there);

- nor does it say when the armaments referred to were placed.

Moreover, the sources for the information contained in this note are not given.

(2) MC 332 is referred to in the context of the assertion that Nigerian reinforcements constantly arrived. This Annex is a telegraphic message, apparently dated 7 January 1994. The author and addressee of the message are both identified in a cryptic manner; and even Cameroon does not say who they are on the front sheet of the Annex; i.e. it is anonymous. Moreover, it does not indicate the original sources of the information contained in it. As regards its content:

- it purports to set out a list of incidents occurring "between Cameroonians and Nigerians" from *1990 to 1993*, and thus on its face has nothing to do with the alleged arrival of reinforcements in January *1994*;

- and in fact *no reference whatever* is made in the note to any arrival of Nigerian troops at any time in 1994.

(3) MC 334 is cited (in the original French text of the *Memorial*) as evidence that 500 Nigerian soldiers were at the time occupying the Cameroonian islands of the region. MC 334 is said to be a report dated 6 January 1994 by Radio France Internationale. MC 334, however, is dated *7* January, not 6 January; and is an AFP report, not a report from Radio France Internationale. The report at MC 334 states that the information contained in it comes from other sources, without identifying them. Moreover, it refers to Nigerian troops occupying two islands, and makes no reference at all to a deployment "as far as Akwa". Nigeria notes, however, that there *is* a report dated 6 January 1994, by Radio France Internationale: it is at MC 330. The front sheet of the Annex, however, suggests that it comes from a summary of BBC world broadcasts. The report says that 500 soldiers have been occupying "Diamond Island and Djabane [*sic*] Island" since 3 January. No mention is made of any incidents in Akwa or any other place besides those two. Furthermore, although Cameroon refers to the report in the *Memorial* as if Radio France Internationale had been supplying an

independent account of an incident, the report is in fact based on an announcement made by the Deputy Foreign Minister of Cameroon.

24.84 It is also worth noting that, with one exception, the schedule of incidents appearing in Annex MC 362 (referred to in paragraph 24.59 above) does not mention any of these incidents which are now said to have taken place in January 1994.

24.85 Cameroon has failed to identify these alleged incidents adequately, or establish them by sufficient evidence, whether direct or circumstantial. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

6. Incidents of February 1994

24.86 Paragraph 6.34 of Cameroon's *Memorial* states that :

> "In the night of 18 to 19 February 1994, the Nigerian army launched all-out hostilities against the Cameroonian troops stationed at Idabato and Kombo Janea ... those amphibious attacks were repulsed with significant losses on the Nigerian side and at least one dead and one wounded among the Cameroonians. The following week was marked by Nigerian aerial reconnaissance flights over the zone."

24.87 Nigeria acknowledges that certain incidents took place in February 1994 in the Bakassi Peninsula. The facts, however, are not those suggested by Cameroon. As Nigeria has already pointed out in a Note to the United Nations Security Council dated 4 March 1994 (NC-M 347) it was *Cameroon* which launched attacks *on Nigeria* on 14, 18 and 19 February 1994, and not the other way round. Cameroon instigated these attacks despite the fact that a peaceful dialogue was proceeding in relation to certain concerns expressed by Cameroon. During these attacks, Nigerian

troops were obliged to defend themselves. However, in line with Nigeria's policy of restraint, the soldiers were ordered to cease fire as soon as the attack upon them had ceased. That it was Cameroon which was the aggressor during the course of these incidents was reflected for example in the AFP report dated 3 March 1994, which was annexed to Cameroon's *Observations* on Nigeria's *Preliminary Objections* (Annex OC 12).

24.88 On that basis alone, Nigeria denies that it bears any international responsibility for what occurred in mid-February 1994. But Cameroon, despite being the initiator of the attacks, has chosen to make specific allegations against Nigeria about certain selected aspects of the events. Those allegations are not borne out by the evidence adduced by Cameroon. As evidence supporting its allegations, Cameroon's *Memorial* refers to Annex MC 339. This annex appears to contain four separate telegraphic messages.

(1) The first is a note dated 19 February 1994 from the "Chief of Frontier Post National Security Idabato", which states that on 18 February at about 3 p.m. Nigerian Navy officers in flying boats attacked Cameroonian soldiers at "Kombo Janea" (apparently a reference to the Nigerian settlement of Ine Utan Asuquo). This document, referring to events said to have occurred during the afternoon, is not evidence of an incident said to have occurred during the night of 18/19 February.

(2) The note added that the Cameroonians successfully resisted the attack, in which one of them died, as did two Nigerians. Additionally, about eight Nigerian boats were sunk, each having contained approximately ten men. No original source for this information is given.

(3) The second note, from the same author and dated 25 February 1994, refers to an "unidentified Nigerian plane" making eight reconnaissance flights over "headquarters" all on the same day, 25 February 1994. The note does not

specify where "headquarters" is, nor does it give the source of its information. As the plane was "unidentified" (even after eight flights) it is not apparent on what basis it is assumed to have been Nigerian, or why responsibility for these alleged flights should be attributed to Nigeria.

(4) The third note, dated 20 February 1994, indicates that it is from the Chief of Frontier Police Post at "Idenau".[406] Referring to its source by the simple term "Information", the note states that on the night of 17/18 February 1994, there was an attack on Cameroon forces at the "disputed area at Idabato" by "Nigeria force [*sic*]", in which some Nigerians (but no Cameroonians) were killed. This report says nothing about, and is not evidence supporting, any incident which occurred on the night of 18/19 February 1994.

(5) The fourth note is dated 22 February 1994, but its author is not clearly identified. It refers to the "confrontations" which occurred in the Bakassi Peninsula on the night of 18 to 19 February 1994, stating that "first hand information" - the source of which is not identified - states that in the course of an exchange of fire between Nigerian forces "trying to occupy the peninsula" and Cameroonian forces, the Nigerian losses amounted to an estimated four boats of eight men each, and a pirogue. Rather surprisingly, considering Cameroon's claim to Bakassi, the note states that one of the four boats was recovered empty *in Nigeria*. This note

- does not mention where the incidents referred to took place,

- refers only to a single "exchange of fire" which took place on the night of 18/19 February 1994,

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[406] Idenao is situated at some distance from the Bakassi Peninsula, approximately 40 kilometres southeast of the mouth of the Rio del Rey (see Fig. 24.1). It is not clear why a frontier police post is located there.

- gives a very different account of estimated Nigerian losses from that contained in the note of 19 February 1994 referred to at (1) above, which suggested that the Nigerian boats sunk by Cameroon had in total contained approximately 80 men.

24.89 In Annex OC 1 of its *Observations* on Nigeria's *Preliminary Objections*, Cameroon provided certain other information. On page 359, there appears to be a suggestion that on 19 February 1994 at Akwa there was an attack by a Nigerian patrol on a Cameroonian patrol. A message dated 21 February 1994 is referred to, and this is apparently the document appearing on page 363, which seems to have been sent by the Head of Post at Ekondo Titi.[407] The note states that an attack took place in Bakassi during the night of 18/19 February 1994, but does not indicate where in Bakassi it took place. Akwa is only referred to later in the message, apparently in describing the location of certain Nigerian forces. Additionally, the note does not indicate the original source of the information contained in it.

24.90 Thus, in addition to Cameroon's misrepresentation of the context in which the alleged incidents occurred, none of them has been adequately identified, or established by sufficient evidence, whether direct or circumstantial. Quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

7. Cameroon's allegations concerning the occupation by Nigeria of parts of the Bakassi Peninsula since 1993 or 1994

24.91 Nigeria has demonstrated that Cameroon has failed satisfactorily to establish any individual incident which took place in the Bakassi Peninsula in 1993 or 1994.

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[407] Ekondo Titi is situated at some distance from the Bakassi Peninsula, approximately 40 kilometres to the East of the Rio del Rey (see Fig. 24.1).

However, it is appropriate to address Cameroon's general assertion that Nigeria has occupied parts of the Bakassi Peninsula. For the reasons to be given, this "occupation" involves no conduct by Nigeria which gives rise to international responsibility on its part.

24.92 In paragraph 2 of its *Application*, Cameroon states that Nigeria's troops are "occupying several Cameroonian localities in the Bakassi Peninsula". The paragraph implies that this occupation had been continuing "since the end of 1993". Paragraph 1.20 of Cameroon's *Memorial* refers to "the invasion of a part of the Bakassi Peninsula by Nigerian troops in December 1993 and January-February 1994". Paragraph 6.04 of the *Memorial* refers to "a continuous civil and military occupation" of the Bakassi Peninsula since 1994. Thus, although Cameroon is unable to specify exactly when it started,[408] it appears to be alleging an occupation by Nigeria of at least some part[409] of the Bakassi Peninsula, which occupation began either at the end of 1993 or the beginning of 1994.

24.93 In fact Nigeria can confirm that it currently occupies the Bakassi Peninsula; it has done so since its Independence in 1960. The extent of this occupation is set out in Chapter 10 of this *Counter-Memorial*. It has primarily taken the form of a Nigerian civil administration of the Peninsula. As indicated in paragraph 24.13, because sovereignty over the Bakassi Peninsula vested in and still vests in Nigeria, such manifestation of Nigerian State authority in the Peninsula was and is a lawful exercise of Nigeria's territorial sovereignty.

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[408] To illustrate this point: during the oral hearing of Nigeria's Preliminary Objections, Cameroon referred (CR 98/3, p.26) to "the invasion of the Bakassi Peninsula in February 1994"; at the same hearing (CR 98/4,p. 32), it referred to "the invasion of Jabane and Diamond Island by Nigerian troops from 21 December 1993 onwards".

[409] Nigeria notes that Cameroon has not been consistent concerning the geographical extent of this alleged occupation; see for example Paragraph 6.155 of the *Memorial* which, in detailing the extent of the Nigerian occupation, refers to the Nigerian military forces remaining in occupation of "the Jabane area of the Bakassi Peninsula", without any other part of Bakassi being referred to. However, the paragraph also refers to a map showing areas "occupied by the Nigerians". Although the location of this map is not identified, it appears to refer to the map appearing on page 600 of the *Memorial*, which indicates with shading the "area of Nigerian occupation". On this map, the *whole* of the Bakassi Peninsula is shaded, as well as a substantial area lying to the East of the peninsula.

24.94 In December 1993, Nigerian troops were deployed to certain locations in the Bakassi Peninsula. As explained in the Note to the President of the Security Council dated 4 March 1994 (NC-M 347), these troops were despatched to Abana and Atabong (which - as appears from the map on page 566 of the *Memorial* - Cameroon refers to as "Idabato") in order to avoid a violent clash between claimants to those settlements representing two Nigerian States, namely Akwa Ibom and Cross River (see Fig. 24.1). As the note states, this deployment had the desired effect. Cameroon annexed a French translation of this Note at Annex MC 344, yet failed to refer to this important aspect of its contents in Chapter 6 of the *Memorial*. However, it is clear that the Cameroonian press were, as early as 10 January 1994, fully aware of the reasons why these forces had been despatched to Bakassi (see article appearing in *Cameroon Tribune* at NC-M 348).

24.95 As explained in the Note of 4 March 1994 to the President of the Security Council, Cameroon expressed certain concerns in relation to this Nigerian troop movement. These concerns led to a peaceful dialogue between the two States at the beginning of 1994. However, whilst this dialogue was proceeding, Cameroonian forces launched several attacks on Nigerian settlements and military positions in Bakassi. A note from Akpabuyo Local Government to the Military Administrator at Calabar (NC-M 349) records that, in January 1994, Cameroonian forces attacked settlements in Bakassi and ordered inhabitants to vacate them. Furthermore, as stated at paragraph 24.87 above, Cameroon launched attacks on Nigerian troops on 14, 18 and 19 February 1994. Cameroon was fully aware of these attacks. In a Note dated 25 April 1994 (NC-M 350), Nigeria refers to the fact that, since December 1993, Cameroonian troops in Bakassi had embarked upon a systematic campaign against the Nigerians living in Bakassi, driving many of them out of Bakassi. Some of these attacks by Cameroon are the subject of a Nigerian counterclaim - see Chapter 25 below.

24.96 Faced with these and subsequent attacks by Cameroon, Nigeria was left with little choice but to maintain the presence of its military forces in the Bakassi Peninsula from February 1994 onwards.

8. Incident referred to in an AFP dispatch of 1 July 1970

24.97 The next two allegations were raised by Cameroon in paragraph 6.50 of its *Memorial*. The first one is presented by Cameroon by quoting from an AFP Report of 1 July 1970:

> "incidents have recently occurred at sea between Cameroonian fishing boats and Nigerian warships arresting them in Cameroonian waters."

24.98 Nigeria notes that Cameroon has not given any dates or locations in respect of these incidents, or any other details about them.

24.99 Turning to Cameroon's evidence, the AFP report referred to is annexed to the *Memorial* at MC 237. The source of the report is not identified, the report merely referring to "reliable sources"; these sources were in turn basing their reports on "a protest note from the Douala fishing fleet owners" (see Fig. 24.1 for the position of Douala), but the text of that note has not been produced, nor is its addressee identified.

24.100 Moreover, Cameroon has incorrectly reproduced the quotation from MC 237, without indicating that words have been omitted. The passage in fact refers to Cameroonian fishermen being searched "dans les eaux camerounaises *dou* [sic] *Internationales*" (emphasis added). Thus, the author of the report upon which the allegation is based was unsure whether the incidents referred to actually took place in Cameroonian waters, admitting that they may have occurred in *international* waters.

24.101 Nigeria also points out that these incidents occurred (so it is said) nearly 30 years ago. Cameroon has failed to draw attention to any protest by Cameroon about them, or to any attempts by Cameroon to raise the matter in bilateral meetings. Instead Cameroon has relied solely on a single vague and unconvincing press report. In these circumstances, and for the reasons given in paragraphs 24.52 to 24.54, any claim in respect of this alleged incident is now barred by lapse of time.

24.102 Not only can any such claim no longer be pursued, but in fact (and bearing in mind the Court's admonition to be cautious in attributing weight to press reports - above, paragraph 24.46), none of these alleged incidents has been adequately identified, or established by sufficient evidence. For these reasons, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

9. Incident of 16 June 1984

24.103 The second allegation in paragraph 6.50 of the *Memorial* relates to the "plundering of boatmen in Cameroonian territorial waters by Nigerian customs officials". A note from the General Delegation of the National Gendarmerie, dated 18 July 1984, is quoted thus:

> "During the day of 16 June 1984, a patrol of Nigerian customs officials entered our territorial waters and set up a post for checking on pirogues in a creek in the vicinity of the Rio del Rey; each pirogue travelling towards Cameroon was thoroughly checked, and the passengers obliged to contribute a sum of 1000 Nairas to secure their release."

24.104 A copy of the note quoted by Cameroon appears at Annex MC 270. Nigeria notes that:

(1) the text of the note reproduced by Cameroon is, once again, incomplete: it omits (without any indication of the omission) words in the original that indicate that the source of the report is not the Gendarmerie itself, but rather an unspecified "reliable source";

(2) neither the note nor the *Memorial* is specific as to the location of this incident;

(3) the note also states that incidents of the type referred to are imputed by other sources to Cameroonian gendarmes.[410]

24.105 In its *Observations* on Nigeria's *Preliminary Objections*, Cameroon indicates on page 387 of Annex OC 1 that on 16 June 1984 at "Rio del Rey", a provisional, and illegal, Nigerian customs post was installed, and states that "one Cameroonian boat" was illegally searched. This is clearly the same incident as originally cited in the *Memorial*: it has the same date, and in support Cameroon annexes at page 393 the same note which appears at Annex MC 270 of the *Memorial*.[411] However, by the time Cameroon came to assemble its *Observations* on Nigeria's *Preliminary Objections*, Cameroon was able only to say that *a single boat* had been stopped by the Nigerian customs officers, whereas the *Memorial* had indicated that many boats were involved. Furthermore, Cameroon's evident doubts about the incident are reflected in the fact that it is not listed in the chronological schedule of boundary incidents appearing in Annex MC 362 to the *Memorial*.

24.106 Cameroon's allegation concerns Nigerian activity "in a creek in the vicinity of the Rio del Rey". The Rio del Rey has many creeks; and there are creeks outside the

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410 The claim in paragraph 6.51 of the *Memorial* that the source of this imputation is "Nigerian propaganda" is not supported by the contents of the note.

411 Cameroon also annexes a note from the Compagnie Française de Prospection Sismique dated 5 July 1985. This note refers to an incident which allegedly took place in the Rio del Rey. However, the date of this alleged incident is said by the author to have been the same date as that of the note, 5 July 1985. The note therefore has nothing to do with the allegation contained in the *Memorial*.

Rio del Rey which can be regarded as in its vicinity (see Fig. 24.2). The Rio del Rey itself constitutes the boundary between Nigeria and Cameroon (see above, Chapter 11). The fact (even if proved) that Nigerian customs officials acted "in the vicinity of the Rio del Rey" is therefore not enough in itself to establish that they thereby encroached into Cameroon's territorial sea. In so far as they were acting on the Bakassi Peninsula, or in Nigerian waters off Bakassi or in the Rio del Rey, they were acting in lawful exercise of Nigeria's territorial sovereignty over those areas.

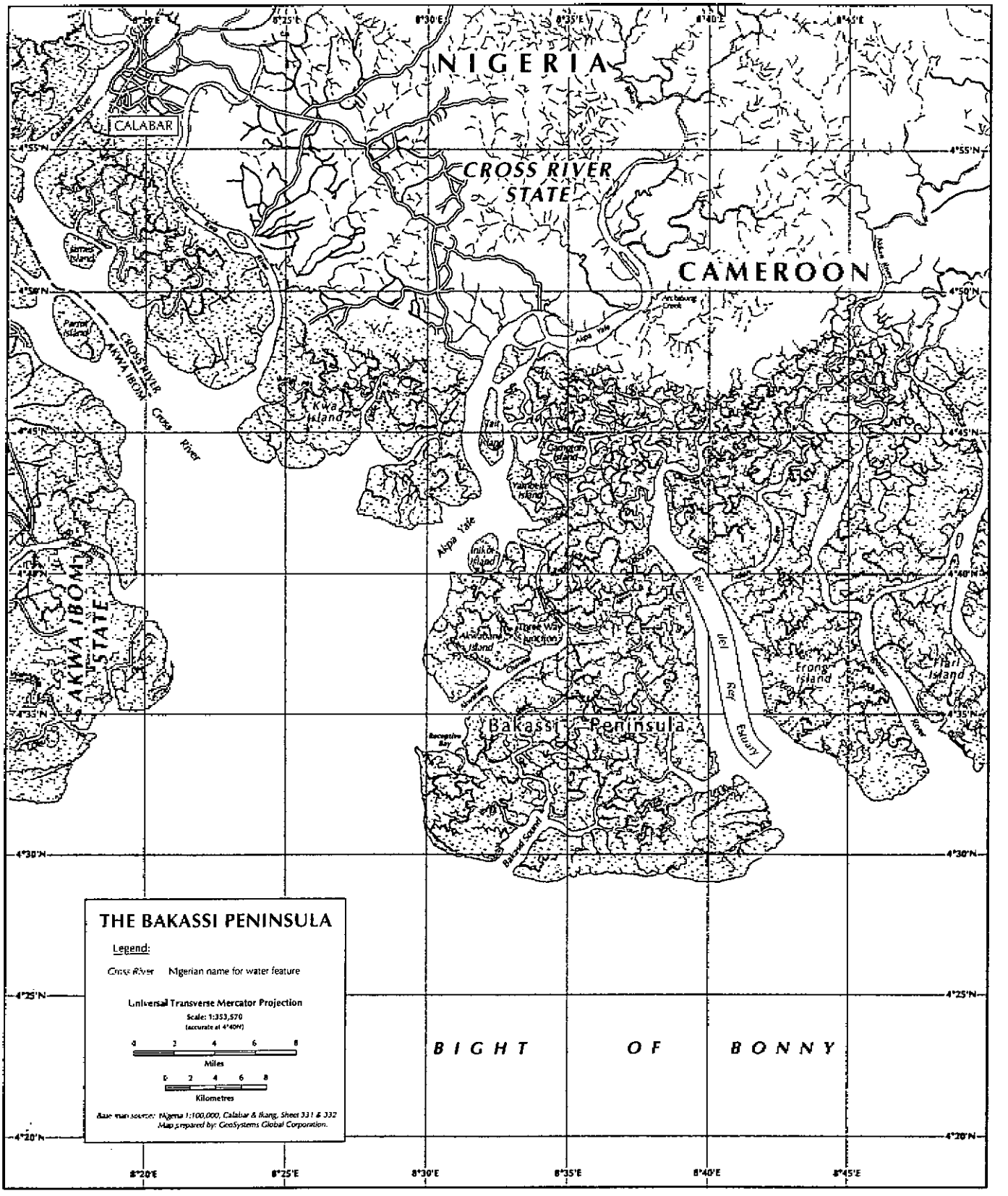
24.107 Cameroon's evidence for this incident consists solely of an internal gendarmerie report. Despite that report's assertion of a violation of Cameroonian territorial waters, Cameroon has provided no evidence that it protested about this matter at any time prior to the filing of its *Memorial* in this case, or otherwise brought it to the attention of the Nigerian government. The incident is said to have taken place in 1984: that is 11 years before Cameroon lodged its *Memorial* drawing Nigeria's attention to it for the first time. For the reasons given in paragraphs 24.52 to 24.54, any claim in respect of this alleged incident is now barred by lapse of time.

24.108 Not only is the claim now stale, but Cameroon has failed to identify this alleged incident adequately, or to establish it by sufficient evidence. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

10. Incidents referred to in a message dated 2 December 1985

24.109 The next two allegations are made in paragraph 6.52 of the *Memorial*. The first allegation concerns a "violation of Cameroonian territorial waters" (the second is dealt with in paragraph 24.118 *et seq.*). The only supporting document relied on is an internal Cameroonian note dated 2 December 1985 (a telegraphic message

Figure 24.2


NIGERIA
CALABAR
CROSS RIVER STATE
CAMEROON
AKWA IBOM STATE
Cross River
Kwa Island
Parrot Island
Inkit Island
Akwa Ibom Island
Bakassi Peninsula
Eronq Island
Pearl Island
Ikpe Ikot Ayan
Ikpe Ikot Eyo
Ikpe Ikot Ekpo
Ikpe Ikot Ibiok
Ikpe Ikot Ibuno
Ikpe Ikot Ekpene
Ikpe Ikot Ekpa

appearing at Annex MC 277). This note refers to an inquiry among the "Innua Mba" fishermen. This inquiry revealed that:

> "The Nigerian customs and maritime police regularly patrolled in our territorial waters."

24.110 No indication is given in the *Memorial* of when or where these patrols were said to have taken place.

24.111 Furthermore, the single internal document relied upon by Cameroon is based on a report two weeks earlier from a Sub-Prefecture, which in turn is based on the testimony of "colleagues", which in turn involved the reporting of the testimony of "Creek inhabitants". The note thus hardly constitutes reliable first-hand evidence.

24.112 In its *Observations* on Nigeria's *Preliminary Objections*, Cameroon becomes marginally more specific concerning the location of these incidents, by indicating at page 359 of Annex OC 1 that Cameroonian territory in the "Innua-Mba fishery" had been violated by elements of the Nigerian maritime police and customs. Nigeria presumes that this allegation is related to the one contained in the *Memorial*, since in support of its allegation Cameroon presents the same note dated 2 December 1985 which appeared at Annex MC 277 (page 368 of Annex OC 1).

24.113 The location belatedly referred to in the Cameroonian *Observations* has not - so far as Nigeria can tell - been properly identified. Cameroon does not indicate on the sketch maps appearing in Chapter 6 of the *Memorial* the location of the place it refers to as "Innua-Mba fishery". It seems from the legend appearing on page 359 of the *Observations* that on the map on that same page, Cameroon has in fact highlighted by the number "37" the location of "Kombo Abedimo", not "Innua-Mba". There is a settlement by the name of *Inua Mba* in Bakassi; but that settlement is located near the southeast corner of Bakassi, which corner is the

furthest point within the Peninsula from the place identified by Cameroon as "Kombo Abedimo" (see Fig. 24.3).

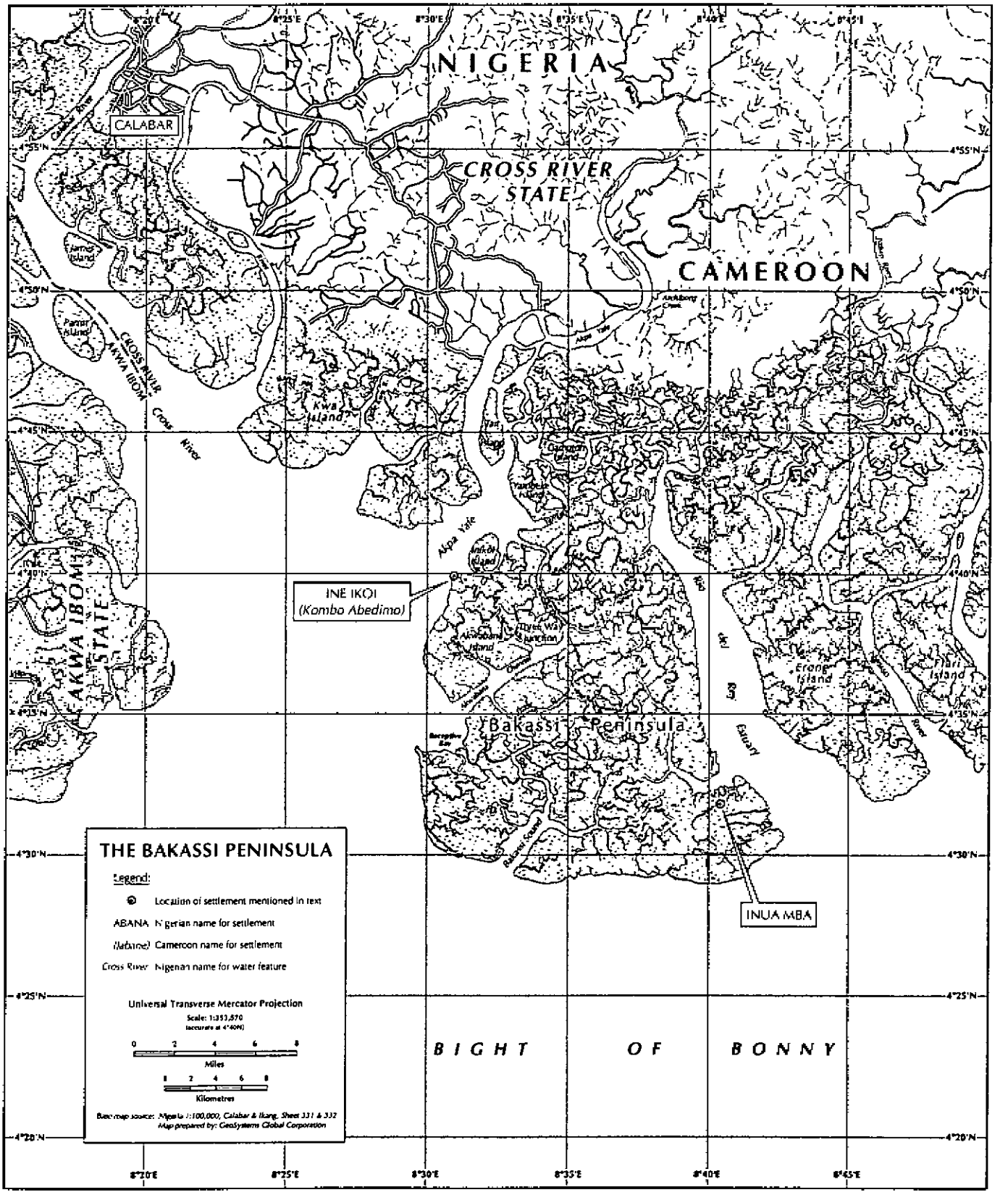
24.114 Although page 359 of the *Observations* suggests 19 November 1985 as a date for this incident, it seems that this date is merely the date on which - according to the note - certain Cameroonian officials visited the area.

24.115 Once again, the fact that Cameroon has not been able to provide any evidence that it protested about this matter at any time prior to the filing of its *Memorial* creates doubts as to the circumstances of its occurrence and raises a presumption that Cameroon thought the incidents either were too insubstantial to pursue or were otherwise not incidents for which Nigeria bore responsibility.

24.116 Cameroon's evidence for these incidents consists solely of an internal Cameroonian report. Despite that report's assertion of a violation of Cameroonian territorial waters, Cameroon has provided no evidence that it protested about this matter at any time prior to the filing of its *Memorial* in this case, or otherwise brought it to the attention of the Nigerian government. From the date of the report it is clear that these alleged incidents could not have taken place after 1985. They are thus alleged to have taken place ten years before Cameroon lodged its *Memorial* drawing Nigeria's attention to it for the first time. For the reasons given in paragraphs 24.52 to 24.54, any claim in respect of these alleged incidents is now barred by lapse of time.

24.117 Thus this claim, too, is now stale. In addition Cameroon has neither adequately identified the place where the alleged incidents occurred nor established them by sufficient evidence. For these reasons, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

Figure 24.3



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11. Incident of 27 June 1986

24.118 The second allegation referred to in paragraph 6.52 of Cameroon's *Memorial* concerns an alleged "violation of territorial waters by three Nigerian warships on 27 June 1986". An internal Cameroonian note is quoted which states that:

> "... three Nigerian warships did indeed pass through our territorial waters on 27.6.86.
>
> The reconnaissance having been effected, confirmation was given [to] us by the PECTEN oil company, operating in Cameroon. The visual inspection carried out confirms that the Nigerian patrol passed right through the Cameroonian oilfield and that it steered a course of 230° leaving the TOTAL and PECTEN platforms on its port side. Such manoeuvres are testified to be common in the zone."

24.119 The document from which Cameroon quotes is an internal Cameroonian report dated 25 July 1986, from the Commandant of the Second Military Region of Cameroon to the Cameroonian Minister Delegate of the Presidency in charge of Defence, appearing at Annex MC 280. However, Cameroon has once again quoted a document inaccurately - once again a key phrase has been left out of the quoted text, without any indication that an omission has occurred. This is the phrase which states that the warships allegedly passed "south of point G", and testifies that this was in an area that has *"never had its boundary defined by agreement"* (emphasis added). It is therefore difficult to see on what basis Cameroon claims that this incident took place in Cameroonian territorial waters.

24.120 It is also evident that the aerial reconnaissance was unable by itself to pinpoint a location for the alleged incident. Cameroon has had to rely upon information received from a private concern, the Pecten Oil Company.

24.121 Once again, the fact that Cameroon has not been able to provide any evidence that it protested about this matter, or otherwise raised it with the Nigerian authorities, at any time prior to the filing of its *Memorial* creates doubts as to the circumstances

of its occurrence and raises a presumption that Cameroon thought the incident was too insubstantial to pursue, or was otherwise not one for which Nigeria bore responsibility. Nigeria also notes that no incident of this date is referred to in the Schedules of Incidents appearing at Annexes MC 362 or MC 363. In any event, having allegedly occurred nearly 13 years ago, any claim in respect of this alleged incident is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.122 For these reasons, together with Cameroon's failure adequately to identify this incident, or establish it by sufficient evidence, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

12. Incident referred to in a note dated 27 August 1991

24.123 The next incident is referred to in paragraph 6.53 of the *Memorial*, which merely quotes from an internal Cameroonian document as follows:

> "It transpires from [a sea mission of the Cameroonian naval forces] that two light Raider-type craft painted green, armed and having each a crew of six uniformed men cast off from Jabane at the approach of the mission. Pursued as a dissuasive measure, they were accompanied back to the maritime boundary without contact or skirmish."

24.124 Nigeria notes that the presentation of this incident does not amount to an adequately specific allegation involving Nigeria's international responsibility:

(1) The date on which the incident is said to have occurred has not been specified in the *Memorial* (although the Annex relied on gives the date of the "mission" as 12 August 1991).

(2) No indication has been given concerning the identity of the vessel which set sail from Abana or its occupants.

(3) The mere fact that there were said to be six "uniformed" men on board is insufficient to establish that they were Nigerian officials or agents: Cameroon has thus failed to show that the alleged incident (minor as it was) was attributable to Nigeria.

(4) No information is provided regarding what the occupants of the vessel referred to are supposed to have done, so as to give rise to any international responsibility on Nigeria's part.

24.125 The *Memorial* indicates that the note quoted appears at Annex MC 311. This is a note from the Minister Delegate at the Presidency in charge of Defence to the President of the Republic, dated 27 August 1991. Once again, Cameroon has omitted words from its quotation without indicating that it has done so; the missing words, which should have appeared after the fifth word of the quote, indicate that - apparently contrary to expectations - there was *no* boat flying a foreign flag moored off Abana. The note also refers to the fact that *no* Nigerian flag was hoisted in Abana.

24.126 Not only has this alleged incident not been adequately identified, or established by sufficient evidence, but Cameroon has once again not been able to provide any evidence that it protested about this matter at any time prior to the filing of its *Memorial*. Nor it this incident referred to in the Schedules of Incidents appearing at Annexes MC 362 and 363. This creates doubts as to the circumstances of its occurrence, and raises a presumption that Cameroon thought the incident was too insubstantial to pursue, or was otherwise not one for which Nigeria bore responsibility.

24.127 For the foregoing reasons, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

13. Incident referred to in a note dated 16 April 1981

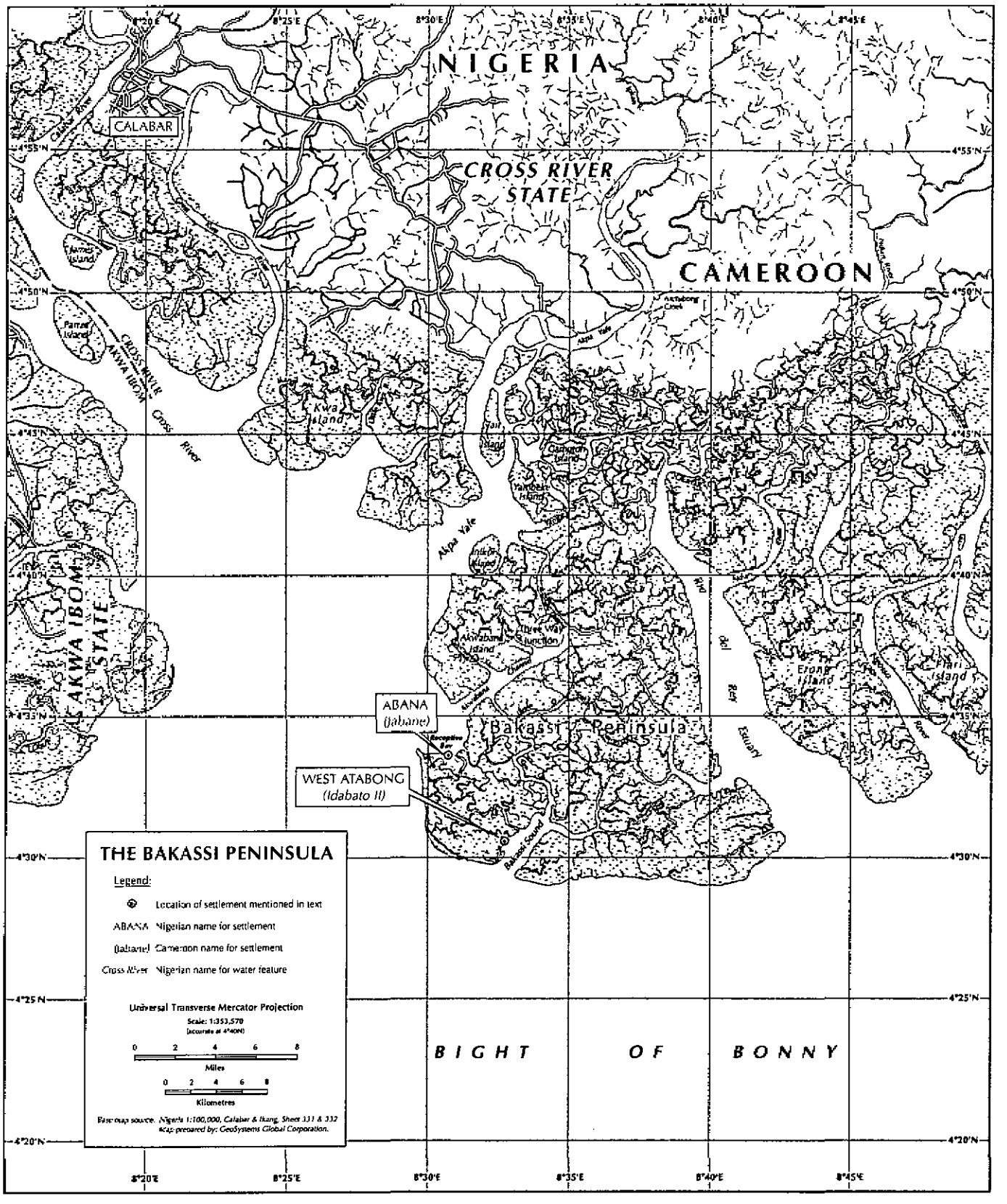
24.128 The next three allegations are referred to in paragraph 6.56 of Cameroon's *Memorial*. The first of these allegations relates to the "presence of Nigerian troops in Idabato" (see Fig. 24.4).

24.129 Cameroon's *Memorial* does not indicate any specific date for this allegation.

24.130 As evidence supporting this allegation, the *Memorial* refers to Annex MC 258. This appears to be a note dated 16 April 1981. The author of the note is not identified in the note or by Cameroon either in the *Memorial* or on the front sheet of the Annex. The note - which is said to be based upon "an occasional but credible source", which is also not identified - states that certain employees of "Bos et Kalis", charged with the task of prospecting for oil, "surprised" 20 armed "Nigerian soldiers" in *Abana* (see Fig. 24.4). However, the note states that these "soldiers" were wearing canvas shirts (apparently the type used by the Nigerian army) but camouflage trousers of the type worn by *the Cameroonian army*. The note then states that "*if our sources are to be believed*, these *pirates* fortunately showed no hostility or aggression" upon the arrival of the oil prospectors (emphasis added). The note also mentions that these "soldiers" had "apparently" disembarked at Abana from two *civilian* vessels, belonging to a man who was "formerly a businessman at Idabato".

- This note makes no mention of any soldiers having been in "Idabato" (Atabong), as alleged in the *Memorial*.

Figure 24.4



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- The note is very confused concerning the identity of these allegedly "Nigerian soldiers". It notes that they were merely wearing shirts of a *type* worn by Nigerian soldiers, while the trousers they were wearing actually identified them as *Cameroonian soldiers*. The note also refers to them as "pirates" and states that they arrived in civilian vessels - thereby suggesting that these men were not "soldiers" at all, let alone of the Nigerian army. Cameroon has failed to establish that this alleged incident was attributable to Nigeria.

- No indication is given concerning the original source of the information contained in the note; it merely states that it is based on an "occasional but credible source". Whatever source this was, it is clear that the author of the note was unsure of its credibility, and he indicates this doubt by using the expression "if our sources are to be believed" in the second paragraph of the note.

24.131 Once again, Cameroon has not provided any evidence that it protested about this matter, or otherwise brought it to the attention of the Nigerian authorities, at any time prior to the filing of its *Memorial*. Apart from the doubts which this creates about the occurrence of the incident, it raises a presumption that Cameroon thought the incident was too insubstantial to pursue, or was otherwise not one for which Nigeria bore responsibility. This presumption is further strengthened by the fact that the incident is not referred to in the Schedules appearing in Annexes MC 362 and MC 363.

24.132 This incident allegedly took place 18 years ago. Given the absence of protest about it, any claim in respect of it is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.133 For these reasons, and in addition to the absence of adequate identification of this incident, or sufficient evidence to establish it, and quite apart from the general

considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

14. Incidents referred to in a note dated 15 March 1984

24.134 The second allegation in paragraph 6.56 of Cameroon's *Memorial* involves the "presence of illegal patrols by elements of the Nigerian police at Jabane". This presence is said to be confirmed by a note dated 15 March 1984, which is quoted.

24.135 However, there is no indication that a copy of this document is annexed to the *Memorial*, and there is no annex bearing that date in the position where it would be expected to appear in the chronological order of the annexes. Nigeria is thus unable to comment on this note. Cameroon does not refer to any other evidence in support of this allegation.

24.136 Cameroon has not supplied the date or dates of these alleged patrols, although they must have been before 15 March 1984.

24.137 Cameroon, in paragraph 6.56 of its *Memorial*, has acknowledged that Nigeria had indicated previously that some incidents (presumably including this one, if indeed it occurred) had in fact been carried out not by Nigerian elements, but by Cameroonian gendarmes. Cameroon appears to have acknowledged that only *certain* of those incidents were carried out by Nigerian elements, thus implying that some of those incidents *were* carried out by Cameroonian gendarmes.

24.138 Cameroon has not shown that these alleged patrols were ever the subject of a protest by Cameroon, or were otherwise raised with the Nigerian authorities. Having allegedly taken place 15 years ago, any claim in respect of these alleged patrols is for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.139 Thus not only is the claim not adequately substantiated, but it is in any event now stale. Quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

15. Incident referred to in a message dated 29 September 1990

24.140 The third allegation in paragraph 6.56 of Cameroon's *Memorial* involves a quotation from a message dated 29 September 1990 from the "chief of the Idabato frontier post" (Annex MC 304). This allegedly "reveals that the Nigerian patrols are beginning to display audacity at Jabane". The quotation from the note states that:

> "... Nigerian police and Navy visits Jabane and even spend nights there for duty in Cameroon territory matters [*sic*] ..."[412]

24.141 No indication is given of the dates on which these visits are supposed to have taken place.

24.142 The last lines of the message, not quoted by Cameroon, state that the author was "not sure" that the Nigerians referred to are "authorised to visit or patrol" Abana fishing port. It is therefore evident that the author of the message considered it possible that the Nigerians were authorised to be present in Abana.

24.143 The lack of any date for this alleged incident, and Cameroon's evident uncertainty as to surrounding circumstances, render it inadequately identified, and insufficiently established by evidence. Quite apart from the general considerations referred to

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[412] It is apparent from the telegraphic message quoted that the quotation should have ended with a reference to "territorial waters", not "territory matters".

above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

16. Incident referred to in message dated 10 December 1990

24.144 The next series of allegations are referred to in paragraphs 6.57 and 6.58 of Cameroon's *Memorial*. Paragraph 6.57 quotes from a message dated 10 December 1990 said to be from the Prefect of Ndian Division, which states that:

> "... an armed Nigerian marine battalion has occupied Jabane ... And has hoisted the Nigerian flag, after lowering that of Cameroon ..."

24.145 Once again, the date of this alleged incident is not indicated

24.146 The message quoted appears at Annex MC 306.

- However, the message indicates that it is not in fact from the Prefect of Ndian, but from "Chef SPSN/SO Buea" - a reference which Cameroon does not further identify on the front sheet of the Annex, but which shows that the message originated at a considerable distance from Bakassi (see Fig. 24.1);

- additionally, the passage quoted in the *Memorial* misses out the opening phrase of the message, which reads "He [or "it"] replies to me" - no indication is given as to whom this refers. Thus, neither the author nor his immediate source are identified, let alone the original source of the information.

- Surprisingly, the document bears a manuscript endorsement, apparently a filing direction, dated *2 January 1990*.

24.147 Nigeria notes that the original source of the information contained in the document quoted has not been identified by Cameroon. The fact that it bears an endorsement pre-dating by nearly a year the date on the documents themselves also raises doubts.

24.148 The lack of any date for this alleged incident, and the inadequacy of the document cited in support of it, demonstrate Cameroon's failure properly to establish its allegation. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

17. Incident referred to in message dated 13 December 1990

24.149 Paragraph 6.58 of Cameroon's *Memorial* quotes from a message dated 13 December 1990, again said to be from the Prefect of Ndian. Cameroon states that "the extreme importance" of the message is evident from the fact that it was sent by the "flash" system. The message states that

> "Nigerian sailors lowered Cameroonian flag at Jabane ... Hoisted Nigerian flag in same locality ... Stationed a Nigerian warship with a strength of several battalions ..."

24.150 No dates for these alleged incidents have been given.

24.151 The document quoted appears at Annex MC 307.

- Once again, it is clear that this message dated 13 December 1990 is from "CSPSN/SO" in Buea (see Fig. 24.1), and not the Prefect of Ndian.

- The note appears to refer to the contents of a message which had been sent by the Prefect of Ndian, which appears to have merely been forwarding a

translation of an "SPSN Citation" dated 23 November 1990, which in turn was based on information coming from an unspecified source in "Idabado [*sic*]" (Atabong).

- Thus, whenever this incident allegedly did take place, and although it was first reported at least as early as 23 November, its "very urgent" message was not forwarded to Buea until 10 December, and not to Yaoundé until 13 December - at least three weeks after the incident. Nonetheless, in paragraph 6.58 of its *Memorial* Cameroon is at pains to point out the extreme importance of the message of 13 December 1990, as allegedly evidenced by it being sent under the "flash" system.

- The original message dated 23 November 1990 relied on information coming from *Atabong*, even though the incident is said to have taken place in *Abana*.

- This note also appears to have a manuscript filing endorsement dated *2 January 1990*.

24.152 Nigeria notes that the original source of the information contained in the document quoted has not been identified by Cameroon. The fact that it bears an endorsement pre-dating by nearly a year the date on the documents themselves also raises doubts.

24.153 Again Cameroon, by failing to specify a date for this alleged incident and by seeking to support it with inadequate documentary evidence, has failed properly to establish its allegation. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

18. Incident of 27 April 1991

24.154 The next incident, referred to in paragraph 6.58 of Cameroon's *Memorial*, is presented by Cameroon purely by quoting from a document which appears at MC 308. The document is described as "a note for the regional military commander", but is otherwise totally anonymous, particularly as regards the sender. The first part of the passage quoted states that:

> "During the day of 27 April 1991, the Idabato frontier post was informed of the presence of a Nigerian flag and a Nigerian signboard set up by the Nigerian commune of Mbo in the fishing port of Jabane, in Cameroonian territory. The Prefect immediately ordered an on-site visit ... On the way, the Cameroonian delegation fired two shots in the air."

24.155 The quotation in the original *Memorial* in French then continues:

> "Arrivé sur les lieux, la délégation a aperçu un navire nigérian qui s'éloignait, avec à son bord cinq officiers nigérians."[413]

24.156 Cameroon has substantially misquoted the original document. This part of the note in fact reads:

> "... sur les lieux quelques agents de la commune nigériane de Mbo rencontrés dans ce port ont été interpellés. Après leur audition, ils ont été immédiatement relaxés."[414]

24.157 The note also states that the Cameroonian gendarmes had confiscated the boats of the Nigerians to which the note refers.

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[413] This translates as: "Upon arrival, the delegation saw a Nigerian ship moving away with five Nigerian officers aboard."

[414] This translates as: "on the site some representatives of the Nigerian commune of Mbo found in the port were intercepted. After hearing them they were immediately released."

24.158 Neither Cameroon, nor the text of the note, gives any indication of which act, if any, Nigeria is supposed to be responsible for, nor why it is so responsible. The reference to "quelques agents de la commune nigériane de Mbo" suggests at least serious doubt about whether the persons concerned were acting as organs or agents of the Federal Republic of Nigeria, and about the capacity in which they were present.

24.159 The note relied upon by Cameroon is anonymous. It is apparent from the omission of the author's identity on the front sheet of Annex MC 308 that Cameroon is also unable to identify the author, let alone the original source of the information contained in the note.

24.160 Concerning the contents of the note:

- since the only people found at Abana were representatives of a Nigerian community nearby, who were released after questioning, the firing by the Cameroonians of two shots in the air and the seizure of the Nigerians' boat seem unjustified;

- although the matters reported in the note are said to have occurred on 27 April 1991, the note annexed is in fact dated 4 September 1991 - over four months later. This delay in internal reporting suggests that Cameroon did not treat the initial report seriously at all.

24.161 Once again, the fact that Cameroon has not been able to provide any evidence that it protested about this matter at any time prior to the filing of its *Memorial* casts doubt on the occurrence of the incident, and raises a presumption that Cameroon thought the incident was not substantial enough to pursue, or was otherwise not one for which Nigeria bore responsibility. In fact, it would seem that the matter can be summarised by two *further* words which have been omitted by Cameroon in reproducing the text of the note: "sans incident" - without incident.

24.162 The evidence cited in support of this alleged incident - itself insubstantial - is inadequate both as regards the circumstances of the alleged incident, and the basis upon which Nigeria is said to incur international responsibility. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

19. Incidents referred to in a note dated 29 October 1992

24.163 The next series of allegations is contained in paragraphs 6.59 to 6.62 of Cameroon's *Memorial*. Paragraph 6.59 states that "Nigerian elements continued their incursions into Jabane", and quotes "a note of 29 October 1992, from the Idabato frontier post", which was apparently written in English and reads:

> "Occasional clandestine visit [*sic*] to the area by the Nigerian military - and immigration officers."

24.164 Paragraph 6.60, suggests that "the message then gives extremely explicit particulars of the Nigerian attempts to establish a clandestine *effectivité* at Jabane", and continues its quotation:

> "concerning the clandestine visits to the area by the Nigerian forces, they continue to do so. A new development has however been noticed being the planting of two non fixed sign boards in the area.
>
> The first of them which is at the entrance reads:
>
> WELCOME TO ABANA CLAN
> AKAPABUYO LOCAL GOVERNMENT AREA
> FEDERAL REPUBLIC OF NIGERIA
>
> It is blue in colour, and the letters in white. The second is in the middle of the town and where our removed flag was formerly planted. This area shows signs of a recent fire disaster.

> Another is rumoured to be planted at the Beach, and what is actually written on it as [*sic*] not being [*sic*] cross checked yet, this would be repercuted [*sic*] immediately it is done.
>
> On the 27th of October 1992, the above officers as usual visited the area, but this time did not land. They later left and took the creek in the direction of Isanguele sub-Division."

24.165 However, Cameroon has failed to annex this document to the *Memorial*. This makes it impossible to assess the accuracy and context of the quotation in the *Memorial*. Additionally, as quoted, it gives no indication of the sources of its information.

24.166 Cameroon has not indicated the dates on which any of these incidents are said to have occurred. Furthermore:

- It appears that Cameroon is claiming that the alleged presence of two signboards in Abana indicates a visit by Nigerian military or Immigration Officers. There is no basis for this claim.

- Nigeria is unable to understand why Cameroon refers later on in paragraph 6.60, after the quotation, to the burning of signboards and a Cameroonian flag and the hoisting of a Nigerian flag, in terms which suggest that the quoted note referred to such events; in fact, the note (as quoted) does not refer to any of them.

24.167 A quotation in paragraph 6.62 from a message dated 5 May 1993 from the Cameroonian Minister of External Relations to the Nigerian Embassy in Yaoundé (appearing at Annex MC 325) states that:

> "a recent visit by the Cameroonian authorities to the village enabled two signs to be brought back that had been set up at Jabane reading: 'Welcome to Abana Clan Akpabuyo Local Government Area - *Cross River State* - Federal Republic of Nigeria'." (emphasis added)

24.168 This note was dated over six months after the date of the note quoted at paragraphs 6.59 and 6.60. Additionally, the wording on the sign referred to is not the same. It is thus unclear whether the same incident is being referred to. In any event:

- once again, dates have not been supplied for the incidents alleged;

- no source is given for the information contained in the later note;

- Cameroon does not quote, or even refer to, the second paragraph of the note, which states that it was written in response to a letter from the Government of the State of Cross River in Nigeria, which reported on an attempt by *Cameroon* to annex certain Nigerian villages in Akwa Ibom, and raids carried out by the *Cameroonian* authorities against the people of Abana;

- the matter in issue was insubstantial, and involved no material damage to Cameroon.

24.169 The absence of dates on which the alleged incidents are said to have occurred, and the incompleteness and lack of clarity of the documentary evidence relied on by Cameroon, demonstrate Cameroon's failure to establish its allegations. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

20. Incident referred to in a note dated 18 December 1992

24.170 The next alleged incident is referred to in paragraph 6.60 of Cameroon's *Memorial*. This paragraph alleges that "the Nigerian forces ... built a school at Jabane". A quotation in that paragraph, from what is described as a note dated 18 December 1992 from "a frontier post chief of South West Province", states that:

> "The community primary school, opened and run by the local community of Jabane, receives subsidies from the Akapabuyo local government ... the commune of Akwa-Ibom state in Nigeria ... Built of temporary materials, it is already being transformed into a permanent structure ... Teachers all from Nigeria ..."

24.171 There is no basis for the statement that the school was built by "Nigerian forces".

24.172 The note relied upon by Cameroon (MC 322) states that the school was opened by the local community of Abana. Similarly, the building of a school in Abana is also mentioned in the quotation from the note of 5 May 1993 from the Cameroonian Ministry of External Relations to the Nigerian Embassy in Yaoundé appearing in paragraph 6.62 of the *Memorial*, which states that in Abana

> "... the Nigerian community has even built a primary school."

This note thus accepts that the school was *not* built by "Nigerian forces"; nor does it attach any responsibility to Nigeria for the building of the school, although this would have been an obvious opportunity to have done so. It is also evident that Cameroon considers the local community of Abana to be "Nigerian" - Nigeria is also of this view.

24.173 The fact is that this was a Nigerian Government primary school built in a Nigerian town, Abana, to house the school which had previously operated out of a church hall (see paragraph 10.96 above, and footnote).

24.174 Once again Cameroon's own account of events is inaccurate, and insufficient to establish Nigeria's international responsibility. Quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62 above, Nigeria denies that it bears any international responsibility arising out of this matter.

21. Incidents referred to in a Message dated 23 June 1993

24.175 Paragraph 6.62 of Cameroon's *Memorial* appears to indicate that the two Notes quoted in that paragraph are merely brought as examples of protests against incursions already referred to. However, the Note dated 23 June 1993 from the Minister of External Affairs of Cameroon to the Nigerian Embassy (appearing at Annex MC 326) does refer to other incidents in the Bakassi Peninsula:

> "The settlement of Nigerians in Jabane is not only increasing on a daily basis, but this influx is going at a speed that tantamounts [*sic*] to a disguised annexation of Cameroon territory as testified by the several attempts to hoist the Nigerian flag on this territory and the change in name of that locality from Jabane to Abane by Nigerians. In line with this, Nigerians living in Jabane prevented a team sent by the Cameroon government to build a hospital in that locality ..."

24.176 (1) No date is given for any of the incidents being referred to.

(2) Furthermore, no explanation is given as to why these matters concern the responsibility of the Nigerian State, as they appear to have involved civilians.

24.177 As regards the alleged "change in the name" of "Jabane" to Abana by the Nigerian citizens there, it must be recalled that this settlement has always been called Abana, and it is only in the records of Cameroonian officials (and only relatively recently) that it has been referred to as "Jabane".

24.178 These alleged incidents have not been adequately identified, or established by sufficient evidence. Nor is it clear why Nigeria is thought to bear international responsibility for what appear to be acts by civilians. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

24.179 For the record, Nigeria also notes that the final page of the Note dated 23 June 1993 contains a Cameroonian proposal that Cameroonian law enforcement agents should be asked "to avoid taking any action that could harm the interests of Nigerian nationals within that region". This implicity recognizes that, previously, such Cameroonian agents had in fact been harming the interests of the Nigerians.

22. Incident of 21 January 1981

24.180 The next incident is referred to in paragraphs 6.66 to 6.70 of Cameroon's *Memorial*. The heading there refers to "the abduction of Mr Simon Esabe, the district chief of Idabato, and the members of his delegation on 21 January 1981 at Kombo Abedimo". Paragraph 6.67 states that on that date:

> "the chief of Idabato District, accompanied by a police inspector, four marines, three soldiers and *two civilians*, had undertaken an inspection tour of the fishing communities within his administrative unit. ..." (emphasis added)

24.181 Paragraph 6.69 states that:

> "Having reached Kombo Abedimo, the group found itself surrounded by *a score* ["*une vingtaine*"] of heavily armed Nigerian soldiers, who had disembarked from *four* motor pirogues. ..." (emphasis added)

24.182 A quotation in paragraph 6.69, apparently taken from one or other of the two notes referred to in paragraph 6.66 states that:

> "Our military were ordered to take no action and stay calm. The Nigerian soldiers shouted 'Hands up!' and they complied. The Nigerians thereupon succeeded in retrieving the weapons of the Cameroonian marines and soldiers. Everyone in the group, including the district chief, was stripped of his possessions and harassed.

> ... the man in charge of the Nigerian military, Lieutenant D. O. Alonge, ordered all members of the public present to disperse. A fifth pirogue also carrying soldiers drew alongside.
>
> The Cameroonians were all put on to a motor pirogue for Ikang. Before they set off, Lieutenant D. O. Alonge *hinted* [emphasis added] that his men would open fire upon the slightest response from the Cameroonian military.
>
> The hostages all spent the night of 21 to 22 January at Ikang police post in Nigeria ...
>
> They spent the night of 22/23 January 1981 at the army camp but still at Ikang.
>
> On 23 January, they were all taken blindfold in a military lorry to Calabar ...
>
> On 29 January 1981, they were handed over to the Cameroonian Consul in Calabar ..."

24.183 Paragraph 6.70 states that "the Nigerian military confiscated a number of weapons and items of equipment belonging to the Cameroonian administrative authority". A quotation in that paragraph, from the same note quoted in the previous paragraph, adds that:

> "Sums of money, tax slips in the possession of the District Chief, together with many other personal effects, were forcibly taken from them."

24.184 As indicated in the *Memorial*, these quotations all come from a note appearing at Annex MC 257. The document is dated 9 February 1981, but there is no clear indication of who the author is, and Cameroon also failed to identify the author on the Annex front-sheet. Additionally, no source is indicated for the information contained in the note.

24.185 There is also at least one part of the note which is not quoted by Cameroon in the text of the *Memorial*, but which is relevant. Preceding the section quoted was a

statement that the incident took place in "Ine-Ekoi" and not "Kombo Abedimo" (although the words "Kombo Abedimo" do appear in manuscript in the document, above the words "Ine-Ekoi"). Cameroon certainly considers these to be two separate places - this is evident from the legend appearing on page 359 of Annex OC 1 of Cameroon's *Observations* on Nigeria's *Preliminary Objections*, by which the two places are identified as separate locations on the map extract appearing on that page.

24.186 There is also a substantial discrepancy in the numbers of Nigerian soldiers alleged by Cameroon to have been involved. Whereas the *Memorial* refers to about 20, the note states that the *four motor pirogues* each carried *more than fifteen soldiers,* suggesting *at least 60 soldiers*.

24.187 Although not quoted by Cameroon in the text of the *Memorial*, Annex MC 257 also contains a second anonymous note, dated 12 February 1981. The note appears to refer to the same incident. However:

- the note states that according to some of the alleged victims of the abduction, the Nigerian military patrol consisted of *three boats* which were transporting *22 men* - not 60 *soldiers*;

- it adds that these boats were "civilian" boats and that the Nigerian patrol was commanded by a person of "souche Camerounaise" - *Cameroonian* stock. The identification of this group of men as a patrol of the Nigerian armed forces is thus seriously called into question;

- the third paragraph of the note, relating to conditions experienced by the abductees in Nigeria, begins with the phrase "If the source is to be believed", suggesting that there is some doubt concerning the reliability of Cameroon's sources of information.

24.188 In its *Observations* on Nigeria's *Preliminary Objections*, Cameroon appears to indicate at page 359 of Annex OC 1 that the abduction took place at *Ine-Ikoi*. At page 365 of the *Observations*, Cameroon annexes an anonymous telegraphic note, which appears to relate to the incident. The note states that "reliable sources" had revealed that the arrest took place in "Ine-Koi". The note also states that the entourage included only *one civilian*, not two.

24.189 The fact that Cameroon has not been able to provide any evidence that it protested about this alleged matter even once during the 14 years prior to the filing of its *Memorial* casts doubt on the circumstances of the occurrence. Moreover, it raises a presumption that Cameroon thought the incident was too insubstantial to be worth pursuing or was otherwise not one for which Nigeria bore any responsibility.

24.190 The matter now being complained of allegedly took place over 18 years ago. Given the absence of protest about it, any claim in respect of it is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.191 This alleged incident is thus stale, and supported only by contradictory and inadequate evidence. Quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

24.192 Before moving to the next incident, note should be taken of a statement contained in the last paragraph of the second note appearing in Annex MC 257:

> "L'opinion publique est en expectative quant aux mesures de réaction que va prendre notre gouvernement à l'égard de tels actes de provocation."[415]

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[415] This translates as: "Public opinion is expecting counter-measures from our government in the face of such acts of provocation."

24.193 It appears that this statement of Cameroonian policy may have been a precursor to the fatal attack on 16 May 1981 - just over three months later - by Cameroon on a Nigerian vessel on the Akpa Yafe, which flows past the settlement of Ine Ikoi.[416]

23. Incident of 6 March 1990

24.194 The next alleged incident is referred to in paragraphs 6.72 to 6.74 of Cameroon's *Memorial*, and relates - according to the heading - to the "arrest of three Cameroonian Policemen on 6 March 1990 at Jabane". Paragraph 6.72 of the *Memorial* states that:

> "On 6 March 1990, three Cameroonian policemen and their *drivers* on an official mission to Jabane in the Bakassi Peninsula were arrested by the Nigerian navy and abducted to Nigeria, initially to Calabar and then to Lagos, the capital" (emphasis added).

24.195 In paragraph 6.73, the policemen's names are given as Ndi Abang, Che Ephraim and Martin Fokoaom, and that of *the pilot* of the National Security patrol boat carrying them is given as Daniel Mesembe Mobela.

24.196 Paragraph 6.74 states that:

> "According to the report of the officials abducted, they were intercepted at sea off Jabane, in Cameroonian territorial waters, by several pirogues carrying a score or so of Nigerian military with their assault rifles pointed at the Cameroonians. The captive Cameroonian officials were first taken to Calabar in Nigeria and then transferred to Lagos, where they suffered ill-treatment (being underfed, and repeatedly harassed). On 2 May 1990 ... they were released as a result of negotiations conducted by the Embassy of Cameroon in Lagos. They returned to Idabato in poor health. Nigeria failed to give

[416] The May 1981 incident is referred to above at paras. 24.65 to 24.67.

them back the ammunition of the pistol that they had aboard their boat."

24.197 Although Cameroon has provided certain details of this incident:

(1) the precise position of the alleged arrest has not been identified; it is merely said to have occurred "off Jabane" in what Cameroon claims were "Cameroonian territorial waters"; and

(2) although paragraph 6.72 suggest that there were at least *two* "drivers" with the three policemen, Cameroon only names *one* "pilot" in paragraph 6.73.

24.198 On this occasion, Cameroon has referred to seven different documents, apparently in support of its allegations. According to the reference appearing at the end of paragraph 6.73, these documents appear in six different annexes, MC 296, MC 297, and MC 299 to MC 302.

24.199 Annex MC 296 contains what appear to be five separate documents, although two of them are copies of two of the other documents. The only one of these documents referred to in the *Memorial* would seem to be that set out on page 2494, which appears to be a telex of 20 March 1990 from the Minister of Territorial Administration to the Minister of External Relations: this is also the only document referred to on the front sheet of the Annex. This document refers to the alleged incident, stating that the arrest occurred in *Abana*, but then states that the Nigerian Navy had been on patrol in Cameroon's *territorial waters*. The note also mentions that the Cameroonian police officials were in uniform and that the boat they were in was also arrested. No source is given for the information contained in the note.

24.200 One of the other documents in Annex MC 296, at pages 2495 and 2496, is a telegraphic message sent by the General Delegate to the National Security Service. This message suggests that the arrest took place on *8 March* 1990.

24.201 Annex MC 297 contains a note dated 18 April 1990 from the "Chief of Private President's Defence Staff" to the Minister of Territorial Administration. This document merely records a request by the Governor of South West Province to make contact with authorities in Calabar for the purposes of having brought back to Cameroon the persons intercepted by *Nigerian River Police* on *8 March* 1990.

24.202 Annex MC 299 consists of an undated note from the Cameroonian Minister of External Relations to the (presumably Cameroonian) Delegate General for National Security. Although the front-sheet of the Annex claims that the note is dated 2 May 1990, this date only appears in the body of the note. The fact that the note refers to an event which was meant to have already taken place on 3 May 1990 suggests that it was written after that date. The note refers to its author and recipient having been informed - on 20 March that year by "MINAT" - of the arrest by the "Nigerian Marine" of three Cameroonian policemen, a driver and their patrol boat. The note also states that the writer has been informed of the release of those arrested and the boat by the Nigerian authorities on 2 May 1990.

24.203 Annex MC 300 consists of five pages which are difficult to read, and illegible in parts. It is also very difficult to determine which pages are the continuations of other pages (if any), although two are written in English, and the other three in French. In response to the illegibility of the Annex having been raised at page 171 of Nigeria's *Preliminary Objections*, Cameroon at page 574 of its *Observations* on Nigeria's *Preliminary Objections* indicated that a fresh copy of the annexed document had been produced with the *Observations*. Indeed, better copies of the five pages of the annex were reproduced in the same order at pages 661 to 666 of the *Observations*. However, in between these pages, at page 665 of the *Observations*, was a new page which did *not* form a part of Annex MC 300. The unexplained addition of this page does not make the order of the Annex much easier to comprehend.

24.204 From the six-page version of the annex appearing in the *Observations*, it would seem that parts of at least three and possibly four different documents have been included. The first page is a document in French, which is dated 7 May 1990, yet appears to bear the heading "Rapport du 6/05/90".[417] The document appears to have been written by one of the four persons referred to in paragraph 6.73 of the *Memorial* (see paragraph 24.195 above), but there is no indication as to which one since it is anonymous. It explains that on 6 March 1990, the four of them had been ordered by the "Head of Post" to go to "Idabato II" (West Atabong; see Fig. 24.5) and bring back a pirogue which had had an accident at sea on 4 March 1990. No further details are given concerning the identity of the pirogue or the nature of its accident. The document states that the four had been informed that the vessel had left "in the direction of Nigeria". They set off in pursuit with a whole range of weapons. They found the vessel at "Jabana [*sic*]".

24.205 Just when escorting the pirogue to the "Police Post", a (presumably different) boat met them at 0730h. The document states that the four Cameroonians then saw "some Nigerian sailors in Cameroonian territory"; it is not clear, but presumably they were in the other boat. The Cameroonians informed them that they were in Cameroonian territorial waters. Whilst they were talking to them, two more of "their pirogues" approached with more than 18 people with heavy arms; three were civilian pilots, the rest were sailors. "They began by threatening [the Cameroonians]", pointing their weapons at them. The author records a short conversation which took place, in which the Nigerians told the Cameroonians that "the essential thing from their point of view was that they were taking [the Cameroonians] to see their chief, who might perhaps have to let [the Cameroonians] go". The document then reads "We arrived at Oron beside their large vessel which was patrolling at sea". The document goes on to give details of the Cameroonians' transfer to Lagos via Calabar, which was completed on 9 March 1990.

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[417] The date is difficult to read: it could perhaps be "6/03/90".

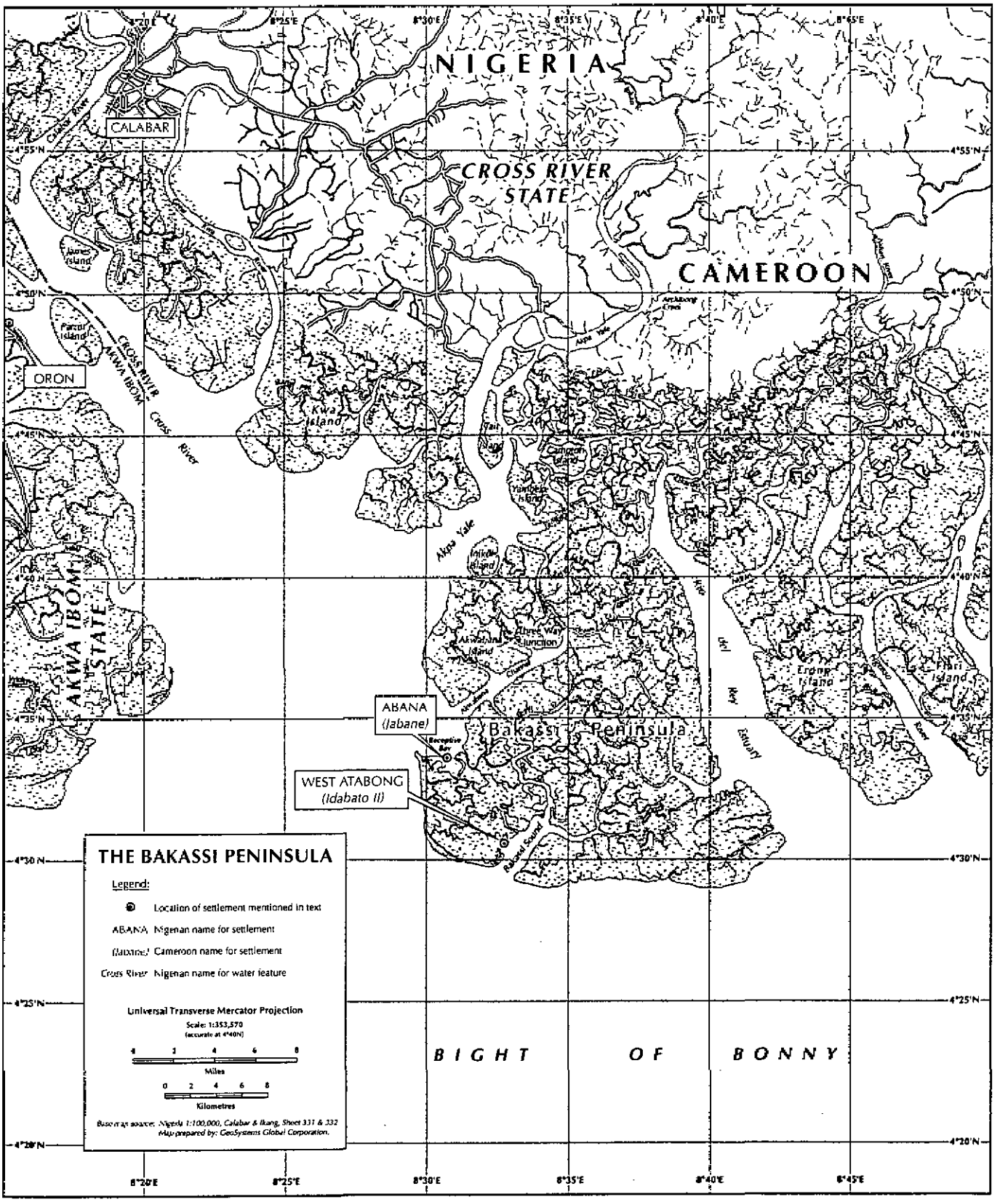
24.206 The next two pages of Annex MC 300, which are the only two written in English, appear to constitute a separate document. This document appears to be an account of the incident by Che Ephraim Ful, dated 8 May 1990. It refers to the mission to "escort" the boat which was involved in an accident on 4 March 1990, yet again without giving any further details of this boat or the accident. The document states that when the Cameroonians were "nearer to Jabana", they saw the boat. The author then records: "as we went closer, we encounter [*sic*] three flying boats with Nigeria [*sic*] Navy" - suggesting that they met the Nigerians *before* they recovered the boat.

24.207 Some discussion followed, during which the Nigerians told the Cameroonians that they were going to take them to Oron. There was then some argument. It was only after this that "[the Nigerians] eventually started arming their guns and pointed at [the Cameroonians] directly". The author states that "we followed them for we knew that we were in our territory".

24.208 The document then details the Cameroonians' transfer to Lagos via Oron and Calabar. It records that in Lagos they were interrogated. The only part of the document concerning the food received in Lagos states that in the first cell they were held in at Lagos "Food was always sent to us through the window". Later, the document details the Cameroonians' release and return to Cameroon.

24.209 The next two pages of the Annex appear to be another account of the incident, written on 7 May 1990 by Ndi Abang. This account, which is similar in many respects to the account appearing on the first page, states that the Cameroonians left "Idabato II" in pursuit of the pirogue which they were looking for, which had departed "in the direction of Nigeria". They found it at "Jabana". They met "Nigerian sailors" on board another pirogue as they were escorting it to the "Police Post". During discussions which followed, two further Nigerian pirogues arrived, and "they began to threaten [the Cameroonians] with their guns ... they had loaded their rifles and pointed them" at the Cameroonians. The author then states that "the

Figure 24.5



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discussions led us into a clash, whilst still at sea". He then "calmed [his] men" and they "were obliged to follow [the Nigerians] as far as Oron".

24.210 The account then details the Cameroonians' transfer to Lagos via Calabar, recording that some interrogation took place. It notes, unlike the other accounts in the annex, that over the night of 21 April 1990 they did not eat for 24 hours, as a result of an uprising in Lagos. It is also the only account which states that the Cameroonians "suffered ... from malnutrition". It also records that when they were released on 2 May 1990, the representative of the Cameroonian Ambassador mentioned how many Nigerian soldiers and police had been arrested in Cameroon and released without spending a week in custody.

24.211 The last page of the Annex is an undated account of the incident, signed by Fokou Martin. However, this account appears to be incomplete, as it begins by recounting the arrival of the Cameroonians in Lagos. It refers to the interrogations which took place there. Concerning the food in Lagos, the author merely states that the meals had been "mediocre", and that the Cameroonians had to eat with their hands.

24.212 The first page of Annex MC 301 is "Note No. 43/DGSN/1G.2". This note is dated 11 May 1990. It refers to an enclosure, described as a radio message dated 7 May 1990 from the Provincial Service of the South West National Security Office in Buea. This seems to be a reference to the document which appears on the following page, although the author is not evident on the face of that document. That document refers to the release of the three officers on 2 May 1990, and states that the "parties in question suffering bad treatment are all ill". No source is given for this information.

24.213 A Note of 14 May 1990 from "the Chief of Provincial Service of the National Security" appears at Annex MC 302. It claims to transmit the reports of the author's "colleagues" intercepted by a Nigerian patrol, and indicates that there are five enclosures. However, none of these enclosures appear in Annex MC 302 - the

remainder of the Annex consists of two notes, both of which are dated *after* 14 May 1990.

24.214 The seventh document referred to in paragraph 6.73 of Cameroon's *Memorial* is a note of 27 April 1990. This does not appear in any of the Annexes referred to by Cameroon in paragraph 6.73. However, by reference to the date supplied on its cover-sheet, it would appear that the document at Annex MC 298 is the one referred to. This is a telegraphic message which - according to the front sheet of the Annex - is dated 27 April 1990 and was sent by the Cameroonian Embassy in Lagos. However, it is evident from the first few lines of text that the message is in fact dated 2 May 1990. It refers to a decision by the Nigerian government to release the four Cameroonians on that day, and gives details of the "ceremony" which took place upon their release, which was attended by representatives of the Nigerian and Cameroonian governments. The message states that in response to a speech by a Nigerian representative the Cameroonian representatives drew the attention of the Nigerian authorities to the fact that Nigerian policemen who make incursions into Cameroonian waters have often been arrested and released swiftly afterwards without such cases being made public by the Cameroonian authorities.

24.215 The note also states that a Nigerian representative pointed out that the detained parties were "visibly in good condition". The note ends abruptly mid-sentence, suggesting that further pages are missing from the annex.

24.216 Nigeria also notes a further reference in Cameroon's pleadings to what might be intended to be this incident, since there are strong apparent similarities, although the alleged date of the incident is different by 3½ weeks, and the supporting documentation is insufficient. In its *Observations*, Cameroon indicates at page 372 of Annex OC 1 that on *2 April 1990* the Nigerian navy arrested at Abana a Cameroonian patrol, consisting of three policemen, a vessel and the pilot of the vessel. At page 374 is a Note dated 2 April 1990, from the Ministry of Foreign Affairs of Cameroon and addressed to the Nigerian Embassy in Yaoundé. It refers

to the incident, stating that the arrests had been carried out "*at* JABENE [*sic*]" by the Nigerian navy patrolling in Cameroonian *territorial waters*. However, the date of the incident is not indicated. The source of the information is also not apparent from the note.

24.217 None of the documents annexed to Cameroon's *Memorial* in alleged support of the incident said to have taken place on 6 March 1990 gives any details of exactly where "off Jabane" the arrest took place. Without supplying an exact position for the incident, Cameroon merely asserts that the incident took place in "Cameroonian territorial waters". The waters off Abana are, however, the waters of the Calabar estuary. Even assuming (but which Nigeria denies) that Cameroon did have title to Bakassi at the time of this incident, Cameroon acknowledges that the greater part of the Calabar estuary is, and was at the relevant time, under the territorial sovereignty of Nigeria. Thus, even on Cameroon's argument, this alleged incident may have taken place in Nigerian territorial waters. In these circumstances (and, according to Nigeria, in any event) the arrest of armed Cameroonian police officers in Nigerian territorial waters would have been a legitimate exercise of Nigeria's territorial sovereignty and Nigeria's right to self-defence.

24.218 In this regard it is noteworthy that the documents at Annex MC 300 indicate that the policemen had been pursuing a vessel which had been heading "in the direction of Nigeria".

24.219 Additionally, the telex dated 27 April 1990 which is annexed at MC 298 states that at the "ceremony" to mark the release of the policemen, the Cameroonian party drew the attention of the Nigerian authorities to the fact that:

> "Nigerian policeman who make incursions into Cameroonian waters have often been arrested and released swiftly afterwards without such cases being made public by the Cameroonian authorities, but treated and stopped at a local level."

This passage indicates three things. First of all, it shows that Cameroon considers that arrests such as the one being alleged should not be made public - it is therefore hard to understand why Cameroon chooses to make such an allegation the subject of a claim some years later against Nigeria at the International Court of Justice. Secondly, the statement implies, *a contrario*, that this was a case where Cameroonian soldiers were arrested in Nigerian waters, since otherwise there would have been no point in the comparison drawn (contemporaneously, by a Cameroon official involved) with the arrests of Nigerians in Cameroon waters. Finally, the statement clearly implies that "arrests" by one side of the other's personnel are not uncommon, and are dealt with at local level. Indeed, that was the point of the "ceremony" at which the statement was made.

24.220 The only documents produced by Cameroon in which the source of information is even reasonably clear are those appearing in Annex MC 300. However, even these documents, which contain the accounts of the arrested Cameroonians, are unreliable in material respects, and fail to support parts of Cameroon's allegation. In particular:

- they fail to give an indication of where exactly the Cameroonians were interrupted;

- they fail to give details concerning the precise nature of the original "mission" to recover a vessel;

- two of the accounts suggest that the Cameroonians were met by Nigerians after the vessel was recovered; however, that of Che Ephraim Ful states that this occurred *before* the vessel was recovered;

- two of the accounts state that two of the Nigerian boats arrived some time after the first one, whereupon their occupants began threatening the Cameroonians and pointing weapons at them; however, the account of Che Ephraim Ful states

that after all three boats were encountered, there was some discussion, then some argument, and only then did the Nigerians load and point their weapons;

- there is no mention in the documents of any "harassment" by the Nigerian authorities in Lagos;
- the documents provide different accounts of the way in which the Cameroonians were fed in Lagos; and only one of the accounts suggests that they suffered from "malnutrition".

24.221 Cameroon's evidence gives rise to further inconsistencies. For example:

- The earliest document annexed by Cameroon which relates to this alleged incident is dated 20 March 1990 - two weeks after the incident is said to have occurred. In these circumstances, the "MENTION" at the head of that note (appearing at page 2494 of Annex MC 296) suggesting that the message is "very urgent" is difficult to comprehend.

- In two of the notes appearing in Annex MC 296, the incident is said to have occurred on 8 March 1990, not 6 March 1990. That date is also referred to in the note appearing at Annex MC 297. At page 372 of Annex OC 1, the date is given as 2 April 1990.

- Although the *Memorial* suggests at paragraph 6.72 that the Cameroonian policemen were arrested by the Nigerian Navy, the note dated 18 April 1990 at Annex MC 297 suggests that they were intercepted by "a detachment of the Nigerian river police".

24.222 Finally, the fact that this incident is not listed in the Schedules appearing at Annexes MC 362 and MC 363 suggests that Cameroon does not consider this incident to be either a "boundary incident" or a "violation of Cameroon territory".

24.223 Having regard to the date of the incident, its isolated character, the discrepancies between the various accounts provided by Cameroon, the limited and fragmentary evidence available, the fact that the incident was evidently resolved (as other similar incidents had been) by the return of the soldiers to the other party, and to the fact that, even on the most serious version of the allegations made, no serious or long-term injury was suffered by the detainees, it is submitted that this incident hardly rises to the level of a significant cause of action involving State responsibility. But there is an even more fundamental problem, which is that Cameroon has not shown even so much, since it has produced no evidence that the arrest occurred in Cameroon waters - even on the assumption of the legal status of Bakassi made by Cameroon. In the absence of such evidence, there is no State responsibility claim at all. For all these reasons, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that the incident gave rise to international responsibility on its part. It was in any event an incident which, by Cameroon's own account, came to a satisfactory end with the release of the four persons concerned; Cameroon, neither then nor later, took any steps to reserve any rights which it might have had to pursue further any outstanding questions of international responsibility which might have existed, thereby demonstrating that it was treating the matter as closed.

24. Incident of April 1990

24.224 The next alleged incident is referred to in paragraph 6.75 of Cameroon's *Memorial*. Under a heading that reads "The abduction of the Cameroonian Sub-Prefect of Kombo Abedimo in April 1990", the paragraph refers to a note which mentions that:

> "... in April 1990, the Sub-Prefect of Kombo Abedimo, in the Bakassi Peninsula, was abducted with the rest of his group on the occasion of an administrative tour ... the Nigerian military responsible for the

> aggression tortured the Cameroonians before releasing them, a few days later."

24.225 Cameroon has not indicated either a precise date or a location for this incident.

24.226 The note relied upon by Cameroon in support of this allegation appears at Annex MC 362. This note was also referred to in paragraph 6.30 of the *Memorial*, and was analysed at paragraphs 24.72 to 24.74 above. As stated there, this note dates from either on or after 31 May 1994. The note states that its Annex I summarises "the boundary incidents" caused by Nigeria. What seems to be a reference to the present incident appears on the sixth row of the schedule at Annex I. The date indicated appears to be April 1990, although part of the date is cut off. The three-row description of the incident is similar to that given in paragraph 6.75 of the *Memorial*. There is however one significant difference: although the schedule indicates that Nigerian military personnel were responsible for the abduction, it does not indicate who was responsible for the torture which allegedly took place.

24.227 Concerning the evidence relied upon:

- the single document relied upon was compiled on or after 31 May 1994, over four years after the alleged incident;

- additionally, the schedule referring to the incident gives no sources for the information it contains;

- no indication is given as to various important elements in this allegation, such as the numbers of Cameroonians involved, the numbers of "Nigerian military" allegedly effecting the abduction, the circumstances of the alleged abduction, where the abducted persons were taken and subsequently held, the nature of the torture to which they were allegedly subjected, and the date and circumstances of their eventual release;

- the note at Annex MC 362 seems to indicate that Annex I of the note is intended as a summary of *all* the incidents which were caused by Nigeria over the boundary (referring as it does to "*the* boundary incidents"). However, several incidents have been alleged by Cameroon in its *Memorial*, which do not appear in the schedule at Annex I: this casts further doubt on the reliability of the schedule.

24.228 The fact that Cameroon has not been able to provide any evidence that it protested about this alleged matter at any time prior to the filing of its *Memorial* creates doubts about the events alleged, and raises a presumption that Cameroon regarded it as not important enough to pursue or as adequately dealt with at the local level, or as not otherwise one for which Nigeria bore any responsibility.

24.229 By failing to provide sufficient details as to the precise date, location and circumstances of the alleged abduction, Cameroon has failed to substantiate its claim that Nigeria bears international responsibility for this incident. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that it gives rise to any international responsibility on its part.

25. Incident of 27 November 1980

24.230 The next incident is referred to in paragraph 6.76 of Cameroon's *Memorial*. This paragraph merely quotes from a document dated 5 December 1980 which states that:

> "On 27 November 1980, once again, eight Nigerian soldiers in *gendarmerie-type* combat uniform and armed, burst into the village of Archibong.

> Not only did they gather the people together and hold working sessions, but they also ventured to harass them and went after a Cameroonian gamekeeper. In under two months, this is the second such act committed on our soil by armed Nigerian elements ..."

24.231 The document referred to appears at Annex MC 256. It was apparently sent by an anonymous author at the Ministry of Armed Forces to the Inspector General of the Armies "charged with co-ordination". However, there is no indication as to the source of the information contained in the document.

24.232 The lack of evidence of any protest having been made by Cameroon to Nigeria during the 15 years prior to the filing of the *Memorial* raises doubts about its occurrence. It also raises a presumption that Cameroon regarded it as too insubstantial to pursue or as adequately dealt with at the local level, or that the incident was one for which Cameroon does not consider Nigeria bears international responsibility. The strength of this presumption is increased by the fact that the schedules appearing at Annexes MC 362 and MC 363 do not refer to this incident at all.

24.233 The incident now being complained of allegedly took place nearly twenty years ago (November 1980). Given the absence of protest about it, any claim in respect of it is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.234 Apart from thus being stale, the incident itself is put forward by Cameroon without any significant supporting detail or evidence (as regards, for example, the nature of the "working sessions", the kind of "harassment" to which the Nigerian soldiers "ventured" to subject the people concerned (and the use of the term "ventured" suggests that the attempt was unsuccessful), and the circumstances involved in "going after" the Cameroonian gamekeeper). Quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62,

Nigeria denies that the incident alleged by Cameroon gives rise to any international responsibility on Nigeria's part.

26. Additional Incidents referred to in Paragraphs 6.126 and 6.136 of the *Memorial*

Paragraph 6.126

24.235 Paragraphs 6.126 and 6.136 of Cameroon's *Memorial* also refer, very briefly, to six or seven incidents not referred to elsewhere in the *Memorial*. Those referred to in paragraph 6.126 relate to

(1) "the murder of the French skipper of a trawler by Nigerian soldiers in 1968";

(2) "the intrusion of Nigerian police elements in the major Cameroonian fishing community of Abana" on 11 March 1984; and

(3) "Nigerian troops [which] patrolled as far as the Rio del Rey" on 19 March 1984.

24.236 Regarding incident (i), Cameroon's *Memorial* does not refer to any documentation in support of this allegation. Cameroon has failed to provide any information concerning the exact date or location of the incident, or an explanation as to why this incident is supposed to involve the international responsibility of Nigeria towards Cameroon.

24.237 For incidents (ii) and (iii), Cameroon relies on the same document which is annexed to its *Memorial* at MC 269, being a report dated 21 April 1984. It is not clear from the copy appearing in the *Memorial* who the author of the document is, and Cameroon fails to identify the author in the text of the *Memorial* and on the front-

sheet of the Annex. No source is given for the information contained in the report. Moreover, the note merely states that incident (ii) was carried out by Nigerian "Forces of Order" - without specifying which forces these were; and the description of both incidents in the report is no more detailed than the brief description in the *Memorial*.

Paragraph 6.136

24.238 Paragraph 6.136 refers, for the first time in the *Memorial*, to "unlawful Nigerian patrolling" in Cameroonian territory being noted in (i) March 1983, (ii) October to December 1992 and (iii) the spring and summer of 1993. No particulars of the alleged circumstances are given and no evidence is referred to, nor are locations or precise dates given.

24.239 As regards this group of alleged incidents referred to in paragraphs 6.126 and 6.136 of Cameroon's *Memorial*, four of them are said to have taken place in 1968, 1983 and 1984 (two incidents), that is at various dates between 31 and 15 years ago. The lack of evidence of any protest having been made by Cameroon to Nigeria during those periods casts serious doubts over the circumstances of the occurrences in question, and raises a strong presumption either that Cameroon regarded them as unimportant or as adequately dealt with at the local level, or that the incidents were ones for which Cameroon did not consider that Nigeria bore international responsibility.

24.240 Given the absence of protest about any of those four incidents, any claim in respect of them is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.241 In addition to some of those incidents being stale, all of them are put forward by Cameroon in the most cursory manner, with no serious attempt to explain what was

alleged to have occurred, what circumstances lead to a conclusion that Nigeria bears international responsibility towards Cameroon, or what (if any) material damage was suffered by Cameroon. Without any significant supporting detail or evidence, and given the passage of time, Cameroon has failed to present any case which Nigeria is called upon to answer. Quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that any of the alleged incidents gives rise to any international responsibility on its part.

K. Alleged incidents in the Lake Chad Area referred to in Cameroon's *Applications* and *Memorial*

27. General and Unspecific Alleged Incidents in the Lake Chad Area

24.242 Alleged incidents in the Lake Chad area which are said to give rise to international responsibility on the part of Nigeria have to be considered against the background set out in Part II of this *Counter-Memorial*. For the reasons there given, and as noted above in paragraph 24.62, Nigeria has sovereignty over many of the locations referred to by Cameroon, which it occupies and administers as of right.

24.243 Cameroon's allegations of internationally wrongful conduct by Nigeria in the Lake Chad area were made in Cameroon's *Additional Application* of 6 June 1994. The references in that *Application* to alleged border incidents were collected together in Part B of Annex 84 to Nigeria's *Preliminary Objections*: that Annex is for convenience attached to this *Counter-Memorial* as NC-M 351. All those references are vague and unspecific as to date, circumstances or location (other than an express or implied connection with the Lake Chad area). There is, in Cameroon's *Additional Application*, also one generalised reference in paragraph 17(c) to "the Federal Republic of Nigeria ... occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad".

24.244 In Chapter 6 of its *Memorial* Cameroon purported to give more details about these incidents in the Lake Chad area. This additional information is, however, very limited and is in places contradictory. Very little in the way of precise facts about alleged incidents has been provided, including such essential elements in relation to particular alleged incidents as the dates on which they occurred, the identity of the locations said to have been involved, the exact circumstances surrounding them, an assessment of their seriousness and the resultant material damage (if any) suffered by Cameroon, and the basis on which Nigeria is said to bear international responsibility for what was alleged to have occurred. Several of the locations referred to in the *Additional Application* are not even referred to in the *Memorial*.

24.245 Generally, the physical and legal situation in Lake Chad is explained in Part II of this *Counter-Memorial*. For the reasons there set out, Nigeria has sovereignty over many of the locations referred to by Cameroon. In presenting claims that Nigeria bears international responsibility in relation to events said to have taken place somewhere in the Lake Chad area, Cameroon cannot simply put forward generalised assertions based on unproved (and sometimes unstated) assumptions. Cameroon is also under an obligation to be specific as to the facts of each particular alleged event: this Cameroon has demonstrably failed to do.

24.246 In these circumstances, Cameroon has failed, in relation to incidents said to have occurred in the Lake Chad area, to present any case which Nigeria is called upon to answer: as Applicant, Cameroon has failed to satisfy the burden which rests upon it of making good the claims which it has advanced, and in consequence those claims have to be rejected.

28. Incident of 13 May 1989

24.247 Only one of the incidents alleged to have occurred in the Lake Chad area has been put forward by Cameroon with at least a colourable degree of particularity, such

that Nigeria is in a position to examine it further. This is the alleged incident of 13 May 1989, referred to in paragraph 6.88 of Cameroon's *Memorial*. According to its heading, the paragraph relates to "The abduction and detention of Cameroonian authorities and citizens in the region by Nigerian armed forces".

24.248 However, paragraph 6.88 particularises only a single incident, namely:

> "... the arrest and confiscation, on 13 May 1989, of a Cameroon fisheries boat at Blangoua, Lake Chad, by Nigerian military".

24.249 The *Memorial* states that this incident is mentioned in "the above-mentioned report of the Army Chief of Staff", but no cross-reference to a paragraph or annex is given. Part 3 of the Chapter only refers to one report *to* the Chief of Staff, in paragraph 6.81. However, Cameroon has not provided a reference in paragraph 6.81 to any of the *Memorial* annexes.

24.250 However, it may be that Annex MC 362, mentioned in paragraph 6.75, is being referred to. The fifth row of the schedule appearing at Annex I of that note appears to refer to the incident, giving its date merely as "May 1989". The inadequacies of this Annex are demonstrated above in paragraphs 24.72 to 24.74.

24.251 Apparently cross-referring to the same incident, paragraph 6.138 of the *Memorial* states that the incident took place on 13 May *1987*. This contradicts the details given in paragraph 6.88 of the *Memorial*.

24.252 The incident is apparently also referred to in Cameroon's *Observations* (at p. 209 of Annex OC 1), where the event is described as an incursion by the Nigerian police into the fishermen's encampment at *Blaram* and the illegal and irregular seizure of a Cameroonian fishing vessel at Blangoua. The map on page 209, whilst indicating the position of Blangoua, does not indicate the location of Blaram, and Nigeria is not familiar with any place bearing that name. In support of its

assertion, Cameroon annexes a document at page 211. The document is a Note dated 12 June 1989 from the Cameroonian Ministry of External Relations addressed to the Nigerian Embassy in Yaoundé. The Note states that on 13 May 1989 *at Blaram*, located *between* Blangoua and Kofia, *Nigerian police* seized a vessel which operated *from* the Blangoua fishing post. The vessel and its crew were then taken to "Dakak", which is presumably a misspelling of "Darak". The Note does not accuse the Nigerians of having made an incursion, makes no reference to any incidents having taken place in Blangoua, and lodges no protest (or reservation of rights) about the matter. No sources are given for the information contained in the document.

24.253 In respect of the evidence adduced by Cameroon:

(1) the two documents invoked by Cameroon in support of its allegations bear virtually no evidential value whatsoever, since neither Cameroon nor the documents specify the source of the information contained within them;

(2) the document appearing in the *Observations* does not support the allegation; indeed, regarding two material facts, it *contradicts* it:

- the Note does not state that there was an "incursion";

- it states that the incident took place not at Blangoua, but at "Blaram", the precise location of which has not been specified by Cameroon;

- it claims that the incident was carried out by Nigerian *police*, not Nigerian military.

24.254 Nigeria also notes that for many years now, Blangoua has been the base within Cameroon of the Joint Security patrol of the Lake Chad Basin Commission (see, for example, the Report of the meeting of the LCBC experts on Security held in August

1985 (NC-M 352), and a report of the meeting held on 13 September 1994 in connection with Security in the Lake Chad Basin (NC-M 353)). Thus, the presence of members of the Nigerian military in Blangoua should not have been a surprise to Cameroon.

24.255 It is also evident from the map appearing on page 209 of Cameroon's *Observations* that this incident is alleged to have occurred in close proximity to Cameroon's border with *Chad*, and nowhere near Nigeria.

24.256 This alleged incident has not been adequately established by sufficient evidence. The facts of the incident are unclear, Cameroon's supporting evidence is contradictory, and Cameroon's diplomatic communication about the matter did not constitute any protest or even reservation of rights. Quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that Cameroon has established any basis for attributing to Nigeria any international responsibility arising out of the alleged incident.

L. Land Boundary Incidents referred to in Cameroon's *Applications* and *Memorial*

29. Unspecific Alleged Incidents in Cameroon's *Additional Application*

24.257 In paragraph 6 of its *Additional Application*, Cameroon refers to an:

> "illegal and massive presence of Nigerian nationals which has been observed in various other parts of the territory of Cameroon along the boundary between the two countries, and more particularly in Baha ..., Kontcha ..., Nwa ...,and Akwaya ..."

24.258 These are the only references in either of Cameroon's two *Applications* to incidents which have allegedly taken place outside the Bakassi Peninsula and the Lake Chad area, and there is no reference to State responsibility in respect of such incidents

in the "Decisions Requested" by Cameroon in either Application.[418] The facts set out in Cameroon's *Additional Application* are manifestly insufficient to found any international responsibility on the part of Nigeria. Thus, for example:

(1) no details are given as to the dates of this alleged Nigerian "presence" in the places referred to;

(2) neither the nature of that "presence" nor its surrounding circumstances are described; and

(3) the "presence" is said only to be of Nigerian "nationals", which of itself does not establish any international responsibility on the part of Nigeria.

Moreover, while Cameroon is entitled subsequently, in particular in its *Memorial*, to adduce further information about incidents referred to in summary terms in the *Additional Application*, it is notable that "Baha" is not referred to at all in Cameroon's *Memorial*.

24.259 Cameroon has not, by the terms of its *Additional Application*, put forward any case in relation to the four localities referred to in paragraph 6 of its *Additional Application* which Nigeria is called upon to answer. Nor has Cameroon in either of its *Applications* asked for the Court to pronounce judgment in respect of any incidents outside of the Bakassi Peninsula and the Lake Chad area. Although it is therefore uncertain to what extent such incidents are within the scope of the present case Nigeria, whilst reserving its rights in that respect, will now take the opportunity (in Sections L and M below) to consider such incidents which have been subsequently alleged by Cameroon.

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[418] Although paragraph 17(e) of the *Additional Application* refers to Nigeria's responsibility for "internationally unlawful acts", it is clear from the context that this is a reference to matters referred to previously in paragraph 17, which matters solely concerned the Lake Chad area.

30. The Occupation of Tipsan by Nigeria

24.260 Paragraphs 6.91 to 6.93 of Cameroon's *Memorial* alleges that:

> "Nigeria ... occupies a part of Cameroonian territory near Kontcha, Faro and Deo Division in Adamaoua Province, in the centre of the country. ... the Cameroon-Nigeria frontier at Kontcha has been shifted to Typsan by the Nigerian army, which has established a border control post there ... the real frontier on the other hand, as materialized by stones left by the Germans, lies several miles to the west of Kontcha."

24.261 Cameroon relies on two documents in support of its contentions. These appear at Annexes MC 347 and 353, both of which are dated in 1994. Annex MC 347 contains a radio message which refers to a Nigerian police station at "Typsan". The document appearing at Annex MC 353 is a note dated 24 March 1994 from the Governor of Adamaoua Province to the Deputy Prime Minister responsible for Territorial Administration. Cameroon quotes that document at paragraph 6.94 as follows:

> "I have to report to you on the construction by Nigeria in 1994 of an emigration and immigration police post 6.5 km inside Cameroonian territory in the Typsan locality of the village of Kontcha, where a group of thirty Nigerians under the command of a Nigerian traditional chief has settled. ..."

24.262 Once again, Cameroon has misquoted a document; the document in fact states that the police post was constructed in *1984*. Thus, even if the police post had been set up in Cameroon, the documents produced by Cameroon were not written until ten years after the alleged incident, and it is difficult to understand how Cameroon come to regard the incident as a "fresh Nigerian encroachment" (*Memorial*, paragraph 6.95).

24.263 However, as Nigeria has already demonstrated at paragraphs 19.73 to 19.76 above:

(1) Contrary to Cameroon's assertions, the location of the Nigerian immigration post at Tipsan (the Nigerian spelling of "Typsan") is on the *Nigerian* side of the boundary as laid down by the Anglo-French Thomson-Marchand Declaration of 1929-1931.

(2) Since in the vicinity of Tipsan the boundary is defined by that Declaration, there is no basis upon which the boundary can be identified by reference to a German boundary marker.

24.264 As mentioned in paragraph 19.76 above, Cameroon is confused as to the geographical relationship between Tipsan and Kontcha. The essential elements of the situation (as shown on Map 73 of the *Atlas*) are:

(1) the village of Kontcha is in Cameroon territory: Nigeria accepts this;

(2) Tipsan is *not* part of Kontcha, as Cameroon seeks to suggest ("Typsan locality *of the village of Kontcha*" (*Memorial*, paragraph 6.94); and its protest concerning the occupation of Kontcha, not Tipsan (Annex MC 355)): indeed, Cameroon's confusion as to the relationship between the two is apparent from, for example (emphasis added as appropriate) its reference to "the occupation of Cameroonian territory *near* Kontcha" (*Memorial*, paragraph 6.91); its apparent reference to this same matter as involving the setting up of a police post "*one kilometre* from the town of Kontcha" - i.e. not *in* Kontcha (Annex OC 1 to Cameroon's *Observations* on Nigeria's *Preliminary Objections*); and the statement in one of the documents exhibited in support of that contention at page 305 of the same Annex OC 1 that the border "has been brought back to the river Tipsan, *3 kilometres from Kontcha*".

(3) the boundary as prescribed by the Thomson-Marchand Declaration runs along the River Tipsan (as explained in paragraph 19.74 above);

(4) that boundary river runs *between* Kontcha and the Nigerian Tipsan Immigration Post of which Cameroon complains;

(5) Nigeria's Tipsan Immigration Post is located approximately half a kilometre on the *Nigerian* side of the boundary.

24.265 In the Note from the Cameroonian Ministry of External Relations to the Nigerian Embassy dated 11 April 1994 - quoted at paragraph 6.95 of the *Memorial* and appearing at MC 355 - no mention is made of the alleged establishment of a Nigerian Police Post in Cameroon. There is merely a reference to "Nigerian nationals" having "occupied" Kontcha, without any suggestion that these nationals were anything other than civilians.

24.266 As shown in paragraphs 24.261 and 24.262 above, Cameroon's own documentary evidence shows that Cameroon has known that the Nigerian Immigration Post was constructed at the latest in 1984. During the fifteen years which have elapsed since then there has been no protest about its construction. The Cameroonian Note of 11 April 1994 (referred to in the preceding paragraph) not only made no protest about the post, but did not even mention it. Given this absence of protest for at least 15 years, any claim in respect of its establishment is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.267 Not only is any such claim now stale, it is wholly without merit. Nigeria incurs no international responsibility arising out of the establishment of an Immigration Post within Nigeria's boundary with Cameroon as laid down in the relevant international instrument.

31. Incident of 29 May 1989 "at Kolofata"

24.268 Paragraphs 6.96 to 6.99 of the *Memorial* appear under a heading which reads: "Abduction of a Cameroonian citizen by three Nigerian policemen at Kolofata on 29 May 1989". Paragraph 6.96 refers to an incident which occurred "near the locality of Kolofata". Paragraph 6.97 states that:

> "A Cameroonian national, Mr Ali Alhadgi Abduraman, was stopped by three Nigerian policemen who have not been identified. Those foreign officials seized the Cameroonian citizen in Cameroonian territory and took him by force to the Nigerian police station of Banki, on the other side of the border."

24.269 In support of its allegation, Cameroon refers to a single document, which appears at Annex MC 290. Paragraph 6.98 and the front sheet of the Annex indicate that the document is a radio message from the sub-prefect of Kolofata. However, it appears from the heading of the message that the document was in fact an internal Cameroonian message *addressed to* the sub-prefect of Kolofata, amongst others, and that it was sent by the "Special Commissioner ... Amchide". The document, dated 30 May 1989, refers to the entry into Cameroonian territory "at Amchide-Kolofata" of three armed Nigerian Police "who could not be identified". It mentions the arrest, stating that it concerned a stolen car which had been sold to Mr. Abduraman by a Nigerian, Ibrahim Adamu. The message then states that the Cameroonian population of Kanuri arrested Adamu and brought him "to this station". The author did not release Adamu until the release of the Cameroonian citizen by the Nigerian Police. The message finishes with the phrase "incident closed locally".

24.270 It is apparent that:

(1) the date of the alleged arrest is not indicated in the document;

(2) according to the note, the arrest took place in Amchide (although this place is not referred to specifically in the text of the *Memorial*);

(3) there is a risk of confusion between Amchide, a Nigerian town lying North of the border at Banki, and a place called "Am Chidé" shown on Cameroon's IGN maps as lying southwest of Banki, within Cameroon (see, for example, the map extract appearing on page 235 of Cameroon's *Observations*);

(4) the original source of information concerning the arrest of the Cameroonian is not identified; and

(5) as at the date of the note, the matter was already "closed locally".

24.271 Although this incident is said to have occurred some ten years ago, it has never been the subject of any protest by Cameroon. This in itself raises a strong presumption either that the incident never took place, or that Cameroon regarded it as unimportant or as adequately dealt with at the local level, or that the incident was not one for which Cameroon considered Nigeria bore any responsibility. In addition, the incident is not referred to in MC 362 or 363 (which purport to list chronologically alleged frontier violations by Nigeria), and, as stated, was regarded by the relevant Cameroonian authorities at the time as having been "closed locally". These considerations lend credence to the conclusion that Cameroon has already treated the incident as not worth pursuing further.

24.272 In such circumstances, and in the light of the various uncertainties and contradictions in the account of the alleged incident given by Cameroon, and the fact that the matter was already resolved locally by May 1989, the incident has not been adequately established by Cameroon so as to give rise to any present international responsibility on the part of Nigeria.

32. Incident of 6 July 1992

24.273 Paragraphs 6.100 and 6.101 of Cameroon's *Memorial* are presented under a heading which refers to "the arrest of four Cameroonian citizens by the Nigerian police at Mandur Yang". Paragraph 6.100 refers to a message dated 12 August 1992 from the Chief of the National Security Provincial Service of North West Province which reads:

> "Four compatriots of the border village of Mandur Yang were taken into detention and held at Lip in Nigeria on 6 July 1992, when cultivating their fields."

24.274 Paragraph 6.101 then states that:

> "After the intercession of the Sub-Prefect of Nwa with the appropriate Nigerian authorities, the Cameroonians were released after six days of arbitrary detention in Nigeria. The Sub-Prefect concludes his report thus:
>
> > 'The persons concerned returned to Cameroonian territory without incident, but a reaction is feared from the Cameroonian populations.' "

24.275 In support of this allegation, Cameroon refers to Annex MC 320. This Annex consists of three documents. The first two documents are the same message, which appears to be the message which is quoted in the *Memorial*. However, although the *Memorial* states that this message is dated 12 August 1992, the document is in fact dated 7 September 1992. Additionally, there is no indication in the document of who its author is.[419]

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[419] The document also appears at p. 319 of Annex OC 1 of the Cameroonian *Observations* on Nigeria's *Preliminary Objections*. However, no further information is given in that Annex to assist identification of the document.

24.276 Correspondence which *was* actually dated 12 August 1992 and originated from the "Chief of the National Security Provincial Service of the North-West" is *referred to* in the heading and the first paragraph of the anonymous, undated message; however, Cameroon has failed to include a copy of this "correspondence" in the Annex. The message states that the "correspondence" had "made known the interception and imprisonment of four compatriots by the Nigerian Police at Mandur-Yang". The next sentence in the message is the one quoted in paragraph 6.100 of the *Memorial*. However, it is apparent that, once again, that quotation is not complete. The relevant sentence reads:

> "*On the basis of this note, it appears that* four compatriots of *the said border village* were taken into detention and held at Lip in Nigeria on 6 July 1992, when cultivating their *field at Magob-Yang* ... (emphasis added)

24.277 In other words, the sentence relied upon by Cameroon

(1) is itself merely the opinion of an anonymous author as to the conclusion to be drawn from the contents of some other correspondence, which correspondence has not been produced by Cameroon;

(2) indicates that only one field was being cultivated by the Cameroonians, not several "fields"; and

(3) that this single field was located - and therefore the arrest apparently took place - in Magob-Yang, a location which is not referred to by Cameroon at all in the *Memorial*, and the exact position of which is not made clear by Cameroon anywhere.[420]

[420] The location of Mandur Yang itself is only very approximately indicated on pp. 565 and 600 of the *Memorial*.

24.278 The message also states that the arrest followed a land dispute between "the parties in question" and one of their relatives, a Cameroonian resident at the Nigerian town of Lip, who purported to claim lands "on Cameroonian territory" which had belonged to his grandparents.

24.279 The other document appearing at Annex MC 320 is a note which is difficult to read. It appears to be dated 2 December 1992, and to have been written by the Minister of Territorial Administration. It refers to an alleged arrest of five months earlier, but noticeably gives no indication whatsoever of where the arrest took place, not even whether it took place in Cameroon or Nigeria.

24.280 This incident is said to have occurred in July 1992. Cameroon has not shown that it was ever the subject of any protest at the inter-governmental level. The document at MC 320, however, states that the Sub-Prefect of Nwa spoke with the authorities of the municipality of Sadauna at Ngembu, and that that intercession resulted in the resolution of the matter by securing the release of the persons concerned. From the information provided by Cameroon, it is apparent that this whole matter arose out of what was essentially a local private dispute between individuals involving a claim to land. It was resolved in the appropriate manner, namely by local discussion. By not raising the matter in any way with the Nigerian Government, Cameroon acknowledged that it was an essentially local dispute which had been dealt with satisfactorily at the local level.

24.281 This alleged incident is not referred to in the list of incidents appearing at Annex MC 362, although in the schedule of incidents appearing at Annex MC 363 there is an entry which relates to an incident which took place on the same date as that of the incident now under discussion, 6 July 1992. However, that entry records the facts differently, in that it indicates that the incident took place at "*Ayang-Nwa*", and that four men, *one woman and a baby* were detained - and no mention is made of persons being held at Lip for any period of time.

24.282 Cameroon's account of the facts of this alleged incident is imprecise, inconsistent, and unsubstantiated by reliable evidence. This, together with the absence of any protest by Cameroon, the apparent local and private nature of the matter, the resolution of the affair through local discussions, and the absence of any evidence of material damage suffered by Cameroon, deprives this alleged incident of any basis for asserting Nigeria's international responsibility. Quite apart from the considerations referred to above, particularly in paragraph 24.48, Nigeria denies that this alleged incident gives rise to any international responsibility on Nigeria's part.

33. Incident at "Mbelogo" on 26 January 1994

24.283 Paragraphs 6.104 to 6.107 of Cameroon's *Memorial* appear under the heading "Arrest of a Nigerian census taker at Mbelogo on 26 January 1994". Paragraphs 6.104 and 6.105 refer to a message dated 21 January 1994 in which the Sub-Prefect of Furu-Awa reports on:

> "the arrest in the border village of Mbelogo of a Nigerian census taker, Mr Garba Makeri, who was acting with the complicity of a Cameroonian citizen named Elias Ngong. The Nigerian official was carrying a tax assessment register with the names of Cameroonian citizens living at Mbelogo. ... The Subprefect states that the village of Mbelogo is constantly coveted by Nigeria ..."

24.284 If the arrest is alleged to have taken place on 26 January 1994, it is difficult to understand how it came to be referred to in a document which precedes that date by five days.

24.285 Paragraph 6.106 refers to a message dated 26 January 1994 from the same Sub-Prefect, which states that:

> "This arrest reveals the hegemonic ambition of our western neighbour, which wishes ... to occupy Cameroonian territory and then make out that it was a mistake on the part of its forces of law and order. ..."[421]

24.286 In support of its allegations, Cameroon refers to two annexes, MC 335 and 336. MC 335 consists of the message dated 21 January 1994 from the Sub-prefect of Furu-Awa, referred to in paragraph 6.104. That message refers to an arrest, although the date of the arrest is not clear. Nor is it clear where the arrest took place. Indeed, there is no reference in the document to the census taker having even visited "Mbelogo", although that place is mentioned in the message in other contexts.

24.287 The document at Annex MC 336 is the one which is quoted at paragraph 6.106 of the *Memorial*. However, contrary to the assertion in paragraph 6.106 and the front sheet of the Annex, this document was not written by the Sub-Prefect of Furu-Awa. It is in fact a note from the Prefect at Wum which refers to a report by that Sub-Prefect, which report may be the one appearing in MC 335. Once again, the text of the message has been wrongly quoted in the *Memorial*: the quoted paragraph begins "The analysis of this report reveals ..."; not (as stated in the *Memorial*) "This arrest reveals ...". The note does refer to the arrest, stating that it took place at "Mbelogo", even though the note on which it is apparently based does not indicate where the arrest took place. It fails to specify the date on which the arrest took place.

24.288 "Mbelogo" is in fact the *Nigerian* village called *Mberogo* which is situated to the northeast of Mount Tosso, in Nigerian territory and near the Nigerian town of Tosso. Its position at approximately latitude 6° 55' 09" N and longitude 10° 13'

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[421] The last five words of the quote appearing here are a justified variation of the Court's translation of the *Memorial*.

12" E is indicated on Map 75 of the *Atlas*.[422] It is apparent that Cameroon is not at all sure that "Mbelogo" is part of Cameroon - the note of the Sub-Prefect states that it is a "disputed area" which is "considered a 'NO MAN'S LAND' (Neutral)".

24.289 Cameroon's confused perception of the boundary in this area is further demonstrated by the fact that the same note suggests that it can be "clearly be seen that Mbelogo *and even Tosso* are parts of Cameroon" (emphasis added). This despite the several maps relied upon by Cameroon (including Maps M63 and M66 of the *Memorial* and that on page 331 of OC 1) which show Tosso clearly within Nigeria. The location of Tosso in Nigeria is also evident from the discussion of the boundary in the area of Bissaula-Tosso at paragraph 19.15 *et seq.* above, and from the accompanying maps (Maps 65 and 66 in the *Atlas*). Cameroon's perception and its uncertain basis is most clearly illustrated by the document appearing in Annex MC 361, which is a note dated 13 May 1994 from the Prefect of Wum. It states that:

> "... many Nigerian villages in Taraba State ... are on Cameroonian territory if the declarations of Furu-Awa, who are vested with the German pillars separating us are anything to reckon with. MUBI, a Nigerian town on whom Furu-Awa relies economically is said to be on Cameroonian soil. ...
>
> ... most sensitive is the case of MBELOGO, a quarter under Furu-Awa, said to be neutral between the countries but located on Cameroonian territory. It is being administered as a quarter under TOSO [*sic*] in NGEMBO local Government Area. ...

It is difficult to crosscheck this information due to communication difficulties. We believe it is *90% true* and factual." (emphasis added)

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[422] Nigeria notes that at p. 331 of Annex OC 1 of the Cameroonian *Observations*, Cameroon has very roughly indicated the position of "Mbelogo" by superimposing its name on the map in an incorrect position, erroneously showing it to be lying within Cameroon.

24.290 It is thus evident that, at least as late as the date of the alleged incident, Cameroon's claim on "Mbelogo" and other villages in the same area were based on the assertions of "the Furu-Awa", whose credibility is expressly doubted by the author. The reference to "German pillars" also calls Cameroon's position into question: Mberogo and Tosso are adjacent to a section of the boundary which is based upon the former internal boundary created by the British between Northern and Southern Cameroons, and not the former Anglo-German boundary.[423]

24.291 Cameroon's uncertainty about this alleged incident as a basis for a claim that it involves Nigeria's international responsibility is demonstrated by Cameroon's omission of this incident from its schedules of Nigeria's alleged frontier violations given in MC 362 and MC 363.

24.292 There is no basis in this incident for asserting any international responsibility on the part of Nigeria. The facts as presented by Cameroon are unclear, and not established by reliable evidence. Cameroon has failed to show precisely where "Mbelogo" is located, and that it is located in Cameroon. Even Cameroon's own evidence reveals confusion and uncertainty on this point: and in fact, the place referred to by Cameroon as "Mbelogo" is the *Nigerian* village of Mberogo, so that the presence in that village of a Nigerian census-taker is entirely justified and cannot give rise to any international responsibility on the part of Nigeria.

34. Incident of 26 September 1994 at "Mbelogo"

24.293 Paragraph 6.108 of Cameroon's *Memorial* refers to a message from the Governor of North West Province to the Deputy Prime Minister of Cameroon dated 27

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[423] Further difficulties concerning Cameroon's perception of the position of the boundary in this area are raised below at paras. 24.297, 24.304 and 24.305.

September 1994 which reports on "a very serious incident", described in the *Memorial* as follows:

> "Two Cameroonian gendarmes on patrol at Mbelogo had intercepted two Nigerian military who were unlawfully present in Cameroonian territory. After arresting them, the Cameroonian gendarmes were set upon by a mob and handcuffed, while their weapons and ammunition were stolen."

24.294 Paragraph 6.109 adds that:

> "The patrol's weaponry ... was not returned by the Nigerians."

24.295 In support of this allegation, Cameroon refers to two Annexes. The first, MC 371, is the message dated 27 September 1994 referred to in paragraph 6.108. The information in the message is said to be based on unidentified "sources" in the Gendarmerie. Contrary to what is implied by the text of the *Memorial*, the message

(1) does not indicate the number of Cameroonian gendarmes or Nigerians involved;

(2) refers to the apprehended Nigerians as "border police", not "military";

(3) does not indicate that the Cameroonians were handcuffed at any time; and

(4) does not indicate that the gendarmes' weapons and ammunition were stolen.

24.296 The second Annex, MC 372, contains a report dated 2 October 1994 from the Commander of the Furu-Awa Gendarmerie Brigade. Part of the report is quoted in paragraph 6.108. However, several parts of the report have been omitted from the quotation; these parts deserve further examination. It is evident that although

"assigned routinely to patrol service" the Cameroonian gendarmes had been given "*special* directives and orders" (not, as misquoted once again in the *Memorial*, mere "orders"). These were orders and directives "to halt for a while in the village of Mbelogo with a view to try to surprise an escaped person named Elias NGONG" - the person referred to in paragraph 6.104 of the *Memorial* in the context of the previous alleged incident. The report also states that after arresting two Nigerian *migration officials* (not military), they proceeded to attempt to arrest Ngong and his elder brother, which attempt failed. Only then, on the way back to Furu-Awa, were the gendarmes attacked by "the population of Tosso".

24.297 The report records that a short time after the gendarmes had been led away, "the village Chief" and the Commander of the Cameroonian Brigade "went in civilian clothes to TOSSO (Nigeria) in order to obtain details concerning the precise position of the two gendarmes". The report also refers to a Mr. Jonathan Tempe, described as "the village chief" and "the highest traditional authority in Furu-Awa", the Cameroonian district in which Cameroon claims "Mbelogo" is located. Certain actions of this Cameroonian official are described by the author, including meetings he held with Nigerian officials from "Mobi" and Tosso. Mr Tempe, however, was clearly of the opinion that "Mbelogo" was Nigerian, as the report states that "nothing can convince him that MBELOGO is not Nigerian territory". He also "organise[d] meetings with the Chief of TOSSO to block any action carried out by the Gendarmerie in this part of the territory".

24.298 This last phrase quoted from the report indicates that at the time of the incident alleged, an official representing Cameroon - having recognised that "Mbelogo" was Nigerian - had in fact *invited* Nigerian officials to take steps to intervene in the territory under his charge, which was apparently the whole of the Cameroonian district of Furu-Awa. Thus, even if "Mbelogo" was in Cameroon's Furu-Awa district, the presence of Nigerian officials in this district was approved by the local Cameroonian authority.

24.299 Nowhere does the report state that the Cameroonians' weapons and ammunition were stolen and not returned to them.

24.300 Another document annexed by Cameroon, not referred to in the text of the *Memorial* describing this incident but apparently referring to the same incident, appears at MC 370. It is an anonymous note dated 27 September 1994. However, the fourth and fifth paragraphs of the note indicate that the gendarmes were *not* attacked by the people of Tosso, but by the people of "Mbelogo".

24.301 Cameroon refers to this incident again at page 331 of Annex OC 1 of its *Observations* on Nigeria's *Preliminary Objections*. However, no mention is made there of the alleged arrest of the Nigerian police/military by Cameroonian gendarmes. Instead, it describes the incident as:

> "Attacks perpetrated by Nigerian police against Cameroonian gendarmes, with the assistance of farmers from the Nigerian village of Tosso".

24.302 This description of the alleged incident is difficult to reconcile with the account in the *Memorial*, which states that the gendarmes were attacked by local inhabitants, at a time when the Nigerian officials (referred to here as "police") were under arrest.

24.303 Cameroon exhibits two further documents in support of its allegation, at pages 338 and 339 of Annex OC 1. The first is a Note dated 30 November 1994 from the Cameroonian Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé. This Note refers to the incident, stating that the Nigerian officials were "Border Police". This document also suggests - unlike the documents referred to in the *Memorial* - that elements of the Nigerian "Border Police" assisted the inhabitants of Tosso in their attack on the gendarmes. It is not clear if these Police are supposed to be others than those arrested by the gendarmes; whatever its meaning,

the Note refers to the Police assisting the villagers, and not - as stated on page 331 of Annex OC 1 - the reverse. In any event, this Note gives no indication of the sources upon which it is based.

24.304 The second document is a note dated 9 October 1994 from the Divisional Officer of Furu-Awa to the Prefect of Menchum. This document notes that as of the date of its writing, the two gendarmes were hospitalised in Nigeria. The note states that the incident involved the people of Tosso crossing the River Gamana "which at the moment is considered as the boundary". This phrase also shows that Cameroon is in error as regards the position of the boundary in this area. The River Gamana is not the boundary in this area. Indeed, even the Cameroonian map extract appearing on page 331 of OC 1 shows the River Gamana running through Nigerian territory in this area. The maps accompanying paragraph 19.15 *et seq.* above (Maps 65 and 66 of the *Atlas*) show the same. The note of 9 October 1994 also states that "the people of Tosso" were blamed for the incident and charged with paying for the treatment of the gendarmes, suggesting that their attack was not endorsed by Nigerian authorities. Furthermore, there is no suggestion in this document that Nigerian Border Police or any Nigerian officials took part in the attack. The note also does not indicate the source of its "reliable information".

24.305 As has already been explained at paragraph 24.288 above, the place called "Mbelogo" by Cameroon is in fact the village called *Mberogo* which is near Tosso: this village is Nigerian, lying on the Nigerian side of the boundary with Cameroon. Significantly - in view of the erroneous reference to the River Gamana in the Note dated 9 October 1994 (see paragraph 24.304 above) - Mberogo lies to the South of the River Gamana, between the river and the boundary with Cameroon. The incident therefore involved Cameroonian gendarmes entering Nigerian territory and arresting Nigerian migration officials going about their duties in Nigeria on behalf of Nigeria. Thus it is an incident for which Cameroon, not Nigeria, bears responsibility. Accordingly, this incident is also the subject of a Nigerian Counterclaim (see paragraph 25.61 below).

24.306 As with the preceding incident concerning "Mbelogo" (incident 34), Cameroon has failed clearly to explain the facts on which it relies and to support them with adequate, reliable and consistent evidence. Moreover, Cameroon is evidently confused as to the location of the boundary in the area and in particular as to the precise whereabouts of "Mbelogo" in relation to the boundary, and has failed to appreciate that the village of Mberogo is in Nigeria. In these circumstances there is no basis in this incident for asserting any international responsibility on the part of Nigeria, and Nigeria denies that any such responsibility exists.

35. "Area of Nigerian Occupation" in Faro-et-Deo and Menchum

24.307 On pages 565 and 600 of its *Memorial*, Cameroon exhibits a map which, *inter alia*, purports to indicate by shading certain areas which are described in the map legend as "Area of Nigerian occupation". Two of the areas shown with shading are substantial parts of what Cameroon indicates to be the Faro-et-Deo and Menchum Divisions of Cameroon.

24.308 The area of shading in the Menchum division represents, according to the map's scale, an area which measures approximately 50 kilometres across in some places. However, nowhere else in Chapter 6 of the *Memorial* is there any reference to a "Nigerian occupation" of any part of the Menchum division.

24.309 The shaded area in Faro-et-Deo Division indicates an area which in places measures over 40 kilometres across. However, nowhere else in Chapter 6 of the *Memorial* is there any reference to a "Nigerian occupation" of any part of the Faro-et-Deo Division, apart from the allegation concerning the "occupation" of the single village of Tipsan; and as explained in paragraphs 24.263 and 24.264 above, Tipsan is in fact within Nigeria, not Cameroon.

24.310 These generalised assertions of an alleged Nigerian occupation of parts of Cameroon are unspecific and unsubstantiated by any evidence whatsoever, and are not developed (or even referred to) in other relevant parts of Cameroon's pleadings. They are demonstrably insufficient as a basis for any serious claim that Nigeria bears international responsibility, and Nigeria denies that they establish any such responsibility.

M. Alleged Incidents referred to in Annex OC 1 of Cameroon's *Observations* on Nigeria's *Preliminary Objections*

24.311 Nigeria's Sixth Preliminary Objection was that there was no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions. In its *Observations* on Nigeria's *Preliminary Objections*, Cameroon included 16 paragraphs which were said to relate to the Sixth Preliminary Objection. One of those paragraphs, paragraph 6.05, read as follows:

> "At the present stage in the proceedings it suffices to indicate that Cameroon has listed a series of incidents all along the boundary of the zone from Lake Chad to the sea (see "Catalogue of Incidents" - Annex OC 1). These incidents consist either of incursions by the Nigerian armed forces or police into Cameroonian territory, or of boundary violations followed by the occupation of parcels of Cameroonian territory by Nigerian civil populations then supported by the armed forces of their country. ..."

24.312 Several of the alleged incidents referred to in Annex OC 1 were not mentioned in any of Cameroon's other pleadings. They will, nevertheless, be dealt with here in the following paragraphs. Even at this stage, however, it should be noted that - contrary to Cameroon's contention cited above - several of these allegations make no reference *whatsoever* to the Nigerian armed forces or police.

24.313 The subheadings that follow reflect the localities and dates supplied by Cameroon in relation to each of the allegations contained in Annex OC 1; an English translation of the allegation follows each subheading.

36. Darak - 26.06.1987

24.314 The legend on page 198 of OC 1 reads at item 1:

> "Repeated incursions by the political and administrative officials and by the Nigerian forces at DARAK.
>
> A strident claim made by the political authorities in Nigeria on this Lake Chad island situated in Cameroonian territory."

24.315 The map extract on page 198 shows a place called "Darack" at a position the co-ordinates of which are difficult to determine using the information available in the extract. It appears to be lying at approximate latitude 12° 58' N. However, the Darak known to Nigeria is located at approximate latitude 12° 53' N, and longitude 14° 19' E.

24.316 The legend refers to a radio message from the Prefect of Mora to the Governor of the Far North, dated 27 June 1987, which document is exhibited on page 200. The source of the information contained in the message is not revealed; the message merely refers to "information coming to our attention". The message refers to a visit of several Nigerian officials on 26 June 1987 to "Darack [*sic*], an island in the Lake".

24.317 Thus, amongst other considerations, the single document produced by Cameroon in support of its allegations:

(1) is an internal Cameroonian message containing information from an unspecified source;

(2) refers to a single visit to Darak by Nigerian officials, and not to "repeated incursions"; and

(3) originates with the Prefecture of Mora, a town lying approximately 160 kilometres South of Lake Chad, in a Department which is entirely separated from the Lake by the Department of Logone-et-Chari (see, for example, the Map at page 407 of Cameroon's *Memorial*).

24.318 Moreover, for the reasons explained in Part II above, Darak is a village over which Nigeria has sovereignty. Visits by Nigerian officials to Darak do not therefore involve any question of Nigeria's international responsibility.

24.319 Accordingly, not only has Cameroon failed to provide adequate or reliable evidence of wrongful conduct by Nigeria such as to give rise to international responsibility on Nigeria's part, and also failed to include this alleged incident in Annex MC 362 (purporting to list alleged Nigerian frontier violations), but Cameroon is seeking to attribute international responsibility to Nigeria for acts by Nigerian officials in a location over which Nigeria has sovereignty. In the circumstances Nigeria denies that the alleged incident involves Nigeria's international responsibility, since Cameroon has failed to show any basis on which any such responsibility could be said to exist.

37. Hile Alifa - 1987

24.320 The legend on page 198 of OC 1 reads at item 2:

> "Incursions by Nigerian armed forces who raised the Nigerian flag in place of Cameroon's in the Cameroonian villages in the district of HILE-ALIFA: TCHIKA, BARGARAM and NAGA"

24.321 (1) Cameroon has not given a specific date for this alleged incident.

(2) Cameroon's account of the circumstances is cursory.

(3) Cameroon has provided contradictory information concerning the location of this alleged incident. The map appearing on page 198 suggests that the incident alleged took place either in or very near the village of Hile Alifa. However, as indicated in the map at Annex 7 of Cameroon's *Additional Application*, Bargaram is a location quite distinct from Hile Alifa, lying some distance to the West of the latter. Additionally, the places in Lake Chad which are known as Chika'a and Naga'a lie between seven and ten kilometres North of Hile Alifa (see Map 42 of the *Atlas*).

24.322 The legend refers to a radio message from the Prefect of Kousseri to the Governor of the Far North Province dated 7 July 1987. This appears to be the document exhibited at page 202. The author does not indicate the source of his information concerning the alleged incident. Although the message refers to Nigerian soldiers having set up their flag at the three places indicated by Cameroon, there is no reference in the message whatsoever to Cameroonian flags having been replaced by the Nigerian flags.

24.323 In so far as the incident may have taken place within Lake Chad, Nigeria refers to what is said in Part II above as regards Nigeria's sovereignty over locations within Lake Chad.

24.324 This incident allegedly occurred some 12 years ago. Even taken at face value, Cameroon has shown no evidence of substantial damage to material Cameroonian interests. Not only is Cameroon's account of the alleged incident cursory and confused, without any clear and precise indication of the date, surrounding circumstances and location of this alleged incident, but Cameroon has not shown it to have been the subject of any protest to Nigeria.

24.325 In all the circumstances Cameroon has failed to discharge the burden which rests upon it in such matters, and Nigeria denies that Cameroon has established any basis for holding Nigeria internationally responsible for the conduct said to have taken place.

38. Faransa - 19.12.1984

24.326 The legend on page 198 of OC 1 reads at item 3:

> "Repeated incursions by Nigerian soldiers onto the Cameroonian island in Lake Chad named FARANSA, where they several times replaced the Cameroonian flag with the Nigerian one."

24.327 Nigeria is not aware of a place called "Faransa". Although Cameroon indicates its position by superimposing the word "Faransa" on the map extract at page 198, it is not possible to identify its precise location from the extract shown.

24.328 The Legend refers to "Verbal Note No. 1628/DIPL/1/S2" of 23 February 1985. A Note matching this description, written by the Cameroonian Ministry of Foreign Affairs and addressed to the Nigerian Embassy in Yaoundé appears at page 204. The Note states that "for the second consecutive time two Nigerian soldiers took down and carried away, on 19 December 1984, the Cameroonian flag" which had been raised in "Faransa".

24.329 This single document advanced in support of Cameroon's allegation, written over two months after the date of the alleged incident

(1) does not state the source of the information contained within it;

(2) does not explain the circumstances surrounding the alleged incident; and

(3) makes no reference to replacing a Cameroonian flag with a Nigerian one.

24.330 In so far as the incident may have taken place within Lake Chad, Nigeria refers to what is said in Part II above as regards Nigeria's sovereignty over locations within Lake Chad.

24.331 This alleged incident is now some 15 years old. Although it was the subject of a diplomatic Note from Cameroon dated 23 February 1985, that Note was not in terms a "protest" against the act which had allegedly occurred but rather a request to the Nigerian authorities to put an end to such acts in the future. The term "protest" is not used, nor does the Note even "reserve Cameroon's rights" in the matter. There is no evidence that the Note was ever followed up by Cameroon: and the incident is not referred to in MC 362 and MC 363, which purport to list Nigerian frontier violations. Even if the Note were to be regarded as constituting a protest, events have shown that it would have been a mere "paper protest", and as such not sufficient to keep alive indefinitely a claim in relation to the matter to which it relates. In short, after the passage of over 14 years since the note was sent, any claim in respect of the matters referred to in it is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time, an outcome reinforced by the non-inclusion of the incident in MC 362 and MC 363.

24.332 Given the foregoing considerations, and in particular the uncertainty over the identification of the location where the incident is alleged to have taken place, the absence of any effective protest on the part of Cameroon, the passage of some 15 years since the incident took place, and (in so far as the incident might have taken place within Lake Chad) the considerations set out in Part II above, Cameroon has failed to establish any basis on which Nigeria is to be held internationally responsible for the alleged incident, and Nigeria denies any such responsibility.

39. Kofia - 19.05.1989

24.333 The legend on page 205 of OC 1 reads at item 4:

> "Repeated incursions by the Nigerian Police forces, fishermen and agriculturalists into the Cameroonian villages in the area of Lake Chad, in particular:
>
> KOFIA
> KUMBELO
> BULARAM
> KINSAYAKU
> WAKEME
>
> Public claim to these villages made by the authorities of the Nigerian Government."

24.334 (1) The Cameroonian map extract appearing on page 205 of the *Observations* is intended to show the locations relevant to the incident. However, it appears that Cameroon has only identified the location of *one* of the five villages referred to in the legend on page 205, namely Kofia.

(2) The same map extract shows the boundary between Cameroon and Chad along the River Chari. The boundary is indicated by a series of crosses appearing at intervals along the river. It is clear from this map that Kofia is in *Chad*, not Cameroon (see Fig. 24.6).

24.335 In support of this allegation, Cameroon refers to two documents. The first document is a Note dated 8 March 1990, appearing on page 207, which was addressed to the Nigerian Embassy in Yaoundé by the Cameroonian Ministry of External Relations. The Note states that on 19 November 1989, Nigerian Police carried out an incursion "off the Island of Kofta [*sic*]".

24.336 It is evident that:

(1) even assuming that "Kofta" is meant to read "Kofia", this document makes no reference whatsoever to the other four locations specified on page 205;

(2) the document specifies a single incursion, not "repeated incursions";

(3) the document does not refer to any incident which took place on 19 May 1989 (which is the date given for this incident in the table at page 205 of OC 1); and

(4) the document does not refer to incursions by fishermen and agriculturalists.

24.337 Furthermore the note was written nearly four months after the date of the alleged incident referred to, and does not indicate the source of its information.

24.338 The second document relied upon by Cameroon is described as a message from the Governor of the Far North dated 29 October 1987. This is presumably the document exhibited on page 208. However, there is no indication that this document was written by the Governor of the Far North. Indeed, although barely legible, the stamp appearing by the signature on the document seems to refer to "internal security". The message refers to an "attached extract" of a Nigerian newspaper relating to "the Nigerian claim to the Cameroonian villages of Kofia, Kumbelo, Bularam, Kinsayaku and Wakeme". However, Cameroon has not exhibited this newspaper extract. The message then states that the five villages mentioned "have just been officially recognised by the authorities of the Government of the State of Borno [in Nigeria] as being Cameroonian entities". The message then states that according to the Nigerian newspaper, "the Nigerian occupiers, who in large measure are agriculturalists and fishermen, have followed the falling waters of Lake Chad into Cameroonian territory". The message adds



Figure 24.6

Extracted from page 205 of Cameroon's Observations

that the police chief for the Nigerian State of Borno had "denied the claim that five Nigerian border villages have been occupied by Cameroonian gendarmes".

24.339 The document exhibited by Cameroon does not refer to any incident which took place on 19 May 1989; in fact, it pre-dates that date by more than two years.

24.340 Additionally, the message dated 29 October 1987:

(1) makes no reference to Nigerian police making an incursion into Cameroon;

(2) relies upon a Nigerian newspaper as the source of some of its information, and fails to exhibit the relevant extract of the newspaper;

(3) describes the "Nigerian occupiers" allegedly referred to in the Nigerian newspaper as "agriculturalists and fishermen"; and

(4) states that, far from claiming them, the Nigerian authorities in Borno are said to have expressly recognised the five villages referred to by Cameroon on page 205 as being Cameroonian.

24.341 In so far as the incidents may have taken place within Lake Chad, Nigeria refers to what is said in Part II above as regards Nigeria's sovereignty over locations within Lake Chad.

24.342 In support of its allegations, Cameroon relies to a large extent upon extracts from a Nigerian newspaper. This calls for two comments. First, Cameroon has failed to produce a copy of, or to identify, the newspaper extracts on which it relies; second, for the reasons explained in paragraph 24.46 above, particular caution has to be exercised in relying on material appearing in press reports.

24.343 In part the allegations made by Cameroon concern the activities of "agriculturalists and fishermen". Cameroon has failed to show any basis on which the conduct of such persons is to be attributed to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.344 Although the incident was the subject of a diplomatic Note from Cameroon dated 8 March 1990, that Note, like the Note relied upon by Cameroon in the last-mentioned incident, was not in terms a "protest" against the act which had allegedly occurred. The term "protest" is not used, nor does the Note even "reserve Cameroon's rights" in the matter. There is no evidence that the Note was ever followed up by Cameroon: it constitutes at most a mere "paper protest", and as such is not sufficient to keep alive indefinitely a claim in relation to the matter to which it relates.

24.345 Given the foregoing considerations, and in particular the doubts about the locations and dates where the incidents are alleged to have taken place, the inadequacy of the evidence relied upon by Cameroon to substantiate its allegations, the absence of any grounds for attributing to Nigeria a substantial part of the acts complained of, the absence of any effective protest on the part of Cameroon, and (in so far as the incident might have taken place within Lake Chad) the considerations set out in Part II above, Cameroon has failed to establish any basis on which Nigeria may be held internationally responsible for the alleged incident, and Nigeria denies any such responsibility.

40. Blangoua - 13.05.1989

24.346 The legend on page 209 of OC 1 reads at item 5:

> "Incursion by the Nigerian police into the fishermen's encampment at BLARAM in Cameroonian territory and illegal and irregular seizure of a Cameroonian fishing vessel at BLANGOUA".

24.347 This allegation has already been examined in relation to the allegation contained in paragraph 6.88 of the *Memorial* (see above, paragraph 24.247 *et seq.*).

41. Dambore - 04.03.1995

24.348 The legend on page 212 of OC 1 reads at item 6:

> "Launching by the Nigerian forces of expeditions against the fishermen, in relation to small barrages put up in Cameroonian territory in the Doumbas (El Beid)"

24.349 The "Nigerian forces" referred to by Cameroon have not been identified.

24.350 The map extract appearing on page 212 indicates two places with the name "Dambore", both of which are identified by additions to the printed map. One addition is in manuscript by the large "6", and the other one uses superimposed print near the bottom of the extract, approximately three centimetres to the right of "Fotokol".

24.351 In support of its allegation, Cameroon refers in the legend to two documents. The first is a report dated 22 March 1995. This appears to be the document exhibited on pages 214 to 217, which is a report by the Commandant of the Gendarmerie Brigade at Fotokol, identified as a report "on the incident which occurred on 4 March 1995, between the Cameroonian and Nigerian fishermen". The opening paragraph of the report refers to the "ethnic clash" which occurred "between the Cameroonian Arab fishermen and the Bornoese fishermen from Nigeria". The report then details the background to the clash, which relates to certain illegal fishing practices along the El-Beit (Ebeji) River, which practices involved the construction of barrages. The report states that on 3 March 1994, the "fisher chief of Wulgo" learned that certain fishermen had installed such barrages at an area *in*

Nigeria called Lelenowa. He and "a number of fishermen decided to go and destroy them". They informed the Nigerian Police detachment at Wulgo, "which accompanied them".

24.352 On 4 March 1995, the Chief of the Nigerian Fishermen "and his aides" arrived at Lelenowa. There was an argument, after which the son of the village Chief of Damboré hit a Nigerian fisherman with a stick, which led to a "pitched battle" in which Cameroonians and Nigerians were wounded. The Nigerian police intervened and the fishermen dispersed, but the "Arab fishermen" (presumably the Cameroonian Arabs referred to at the beginning of the report) "decided to go to Lelenowa". On the way they met a Cameroonian fisherman, and beat him.

24.353 The report continues to state that information which had been gathered "did not enable one to establish that Bornoese Cameroonians had taken part on the Nigerian side" and that the (presumably Cameroonian) Arabs "claimed that they had clashed with the Cameroonians and not the Nigerians". Despite these claims, the author of the report insists on referring to the incident as a "border incident", but does go on to note that the incident would not have taken place if the Fishery Authorities at Damboré had properly dealt with the illegal fishing activities.

24.354 Thus, the report suggests that:

(1) the alleged incident took place at Lelenowa, a place which the report confirms to be in Nigeria;

(2) the argument only escalated to physical violence once the son of an (apparently Cameroonian) village Chief hit a Nigerian fisherman, on Nigerian territory;

(3) the only involvement of "Nigerian forces" other than civilians was the *presence* of Nigerian police "on the scene", i.e. on Nigerian territory - it is

evident that they did not participate in the violence and did not enter Cameroon; and

(4) the author of the report was unable to gather the information necessary to categorise the incident as a "border incident", which appears to have been his objective, despite his lack of supporting evidence.

24.355 The second document relied upon by Cameroon is described in the legend on page 212 as "1034/SPSN/EN/DARG/B1 du 12.10.92". This seems to be a reference to the document exhibited on page 218 which bears this reference number. However this document is dated 12 *November* 1992 (although the text is barely legible). This document refers to another letter, which is said to have concerned "exactions by Nigerian soldiers from Cameroonians".

24.356 The document is irrelevant to the incident for which it is cited. It is dated over two years *before* the date of the alleged incident.

24.357 In any event:

(1) it makes no mention of Dambore or Lelenowa; and

(2) it makes no reference to "expeditions" against fishermen or, for that matter, to any fishermen.

24.358 Although not referred to by Cameroon in the legend on page 212, Cameroon has produced five other documents in the section of OC.1 relating to "Dambore". Only two of those documents make any reference to the alleged incident. The first appears on pages 220 and 221, and is a radio message dated 18 December 1995 together with its front sheet. This message, written two and a half months after the date of the alleged incident, is difficult to comprehend. However, the document is primarily concerned with the visit to the Dambore region of a mixed Cameroon-

Nigeria commission to gather information from Nigerian sources about various essentially private disputes among fishermen. It makes only a passing reference to the "border incident of 4/3/95 Dambore".

24.359 The other relevant document appears on pages 225 to 228 and is a report by the Commandant of the Gendarmerie Brigade at Fotokol that bears three different dates: 15, 17 and 20 March 1995. This seems to relate to the same incident of 4 March 1995 mentioned in the legend. The first paragraph of the preamble indicates that there was uncertainty concerning the location of "the incident", and that it was not clear to the author whether it took place on Nigerian territory or Cameroonian territory. The report states that an inspection at the relevant locations was undertaken by representatives from the Nigerian and Cameroonian authorities on 14 March 1995.

24.360 The conclusions of the report, labelled "Constatations", are very revealing. The author appears to endorse the Nigerian report that the "incident" took place on Nigerian territory. He goes on to suggest that another commission be appointed to "determine the exact site of the incident", and at the same time inform the Cameroonian fishermen of Dambore of their territorial limit. These "observations" suggest that the author of the report did not feel that there was any evidence worth mentioning which placed the "incident" in Cameroon, and indeed seems to acknowledge that it was the Cameroonians who had not stayed within their border. Significantly, this report was written before the report appearing on page 214, which was dated 22 March 1994. By the time the latter report was written - by the same author - the author is able to state that the incident took place in Lelenowa, in Nigeria.

24.361 Of great interest is the sketch map on page 228, which relates to the report on pages 225 to 227. This sketch map indicates that Dambore itself is in fact in *Nigeria*.[424]

24.362 It is impossible to see in Cameroon's account of this incident, and its supporting documentation, any circumstance which could give rise to international responsibility on Nigeria's part, and Nigeria denies that the incident gives rise to any such responsibility. Apart from problems arising from Cameroon's failure properly to identify the location to which Cameroon is referring and the irrelevance of one of the principal documents relied on by Cameroon, it is apparent that the incident involves no wrongful acts by persons whose conduct is attributable to Nigeria. The incident involved essentially a dispute among local fishermen, and did not take place in Cameroon but in Nigeria. Rather than showing any incursion by Nigeria into Cameroon territory, the incident relates to events taking place on Nigerian territory, over the enquiries into which the local Nigerian and Cameroonian authorities co-operated.

42. Waza Park - 09.04.1980

24.363 The legend on page 229 of OC 1 reads at item 7:

> "Murder of Mr. Mahamat ABAKOURA, Park Ranger, by Nigerian poachers - Messrs BOUKAR MAIBOUNDOUGA, MADUDAWA and ALBEYINE NDJIDA"

24.364 The allegation merely refers to "Nigerian poachers". In support of this allegation, Cameroon refers to a Note dated 21 August 1980. This appears to be the Note on pages 231 and 232, from the Cameroonian Minister of Foreign Affairs to the

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[424] The map also indicates a subsidiary location within Cameroon labelled "POINT de pêche (Village Damboré)".

Nigerian Embassy in Yaoundé. This Note suggests that the murder was perpetrated by *one* person, who is described as a "citizen" ("resortissant").

24.365 Cameroon has failed to show any basis on which the conduct of "Nigerian poachers" or a "citizen", by which is presumably meant private individuals, is to be attributed to Nigeria (as to which see above, paragraph 24.55 *et seq.*). Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

43. Djibrili, Zanga & Assigassia - 05.12.1980 & 07.12.1980

24.366 The legend on page 235 of OC 1 reads at item 8:

> "5.12.1980 Expedition against Cameroonian herdsmen led by M.J. GAZUM (Divisional Police officer of Gwozo in Nigeria), which seized 300 cattle.
>
> 7.12.1980 Repetition of the same operation at DJIBRILI by an expedition led by ALI DAPSHIMA (Police officer of BAMA)."

24.367 One of the places referred to, Assigassia, is in fact partly within Nigeria.

24.368 In support of the allegation, Cameroon refers to a note from the Governor of the North dated 22 May 1981. This note refers to the incidents, stating that the incursions had been carried out by the Nigerian police under the "pretext" that cattle which had been stolen in Nigeria were to be found in those villages. The note also mentions that the Sub-Prefect of Koza lodged protests with the Nigerian Police, "who recognised their error and apologised".

24.369 (1) This document, which is dated over five months after the date of the alleged incident, does not specify the source of the information concerning the incident contained within it.

(2) No explanation is given as to why the author of this note considered that the search for stolen cattle was a "pretext".

(3) According to the note, the matter was taken up locally, and the local Nigerian police officer is said to have apologised for the incident.

24.370 Taking the Cameroonian allegations at face value, these incidents involved essentially localised cattle-theft problems. The matter was - appropriately - dealt with locally, and settled. Cameroon has provided no evidence of any protest about the incidents having been made by Cameroon to the Nigerian Government, and the incidents are not included in MC 362 or MC 363 (which listed alleged Nigerian frontier violations), thus reinforcing the view that the incidents are seen by Cameroon as involving local problems satisfactorily dealt with at the local level.

24.371 Moreover, the incidents are alleged to have occurred in 1980, i.e. nearly 20 years ago. Given this passage of time, and the failure of Cameroon to lodge any protest with the Nigerian Government, any claim in respect of these incidents is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.372 In these circumstances, Cameroon has failed to establish any basis on which Nigeria may be held internationally responsible for the alleged incidents, and Nigeria denies any such responsibility.

44. Dawaza - 04.05.1981

24.373 The legend on page 240 of OC 1 reads at item 9:

> "Armed band coming from Nigeria carries off 84 cattle and is intercepted at ZINA (MAZERA Canton at KOUSSERI). Following the battle, we count: three (03) dead and five (05) arrests on the Nigerian side, and one (01) dead on the Cameroonian side."

24.374 The allegation merely refers to an "armed band coming from Nigeria". There is nothing to indicate that the members of this group were anything other than private individuals. Furthermore, there is no indication that they were citizens of any particular country, including Nigeria.

24.375 Furthermore, it is evident from the sketch map on page 240 that both Dawaza (actually labelled "Dawaya") and Zina are located very near Cameroon's border with *Chad*, and nowhere near Cameroon's border with Nigeria. In the circumstances, it is not clear how Cameroon are able to determine that the armed band originated in Nigeria.

24.376 In support of its allegation, Cameroon referred to a note from the Governor of the North dated 22 May 1981. This appears to be the document at pages 242 to 244 which is the same document as that appearing at page 237 in relation to the previous incident. The seven-line description of the present incident also fails to indicate the nationality of the members of the armed band. Furthermore, no indication is given of the source of the information concerning the incident.

24.377 Cameroon has failed to show any basis on which the conduct of this "armed band", apparently a group of private individuals, is to be attributed to Nigeria (as to which see above, paragraph 24.55 *et seq.*). Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

24.378 Moreover, the incidents are alleged to have occurred in 1981, i.e. some 18 years ago. Given this passage of time, and the failure of Cameroon to lodge any protest with the Nigerian Government, any claim in respect of these incidents is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time. Cameroon, it is to be noted, has not included these incidents in MC 362 and MC 363 (which purport to list Nigerian frontier violations).

24.379 In the circumstances as they appear from the allegations made by Cameroon, and in particular since the acts in question are not attributable to Nigeria, and any claim in respect of them is in any event barred by lapse of time, Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

45. Karanchi - 07.02.1990

24.380 The legend on page 245 at OC 1 reads, at item 10:

> "Arrest of two (02) Cameroonian gendarmes who were then taken to MADAGALI (NIGERIA) before successfully escaping to Cameroon."

24.381 This allegation does not specify who is supposed to have actually arrested the gendarmes, or give any details as to the circumstances of their alleged arrest.

24.382 In support of its allegation, Cameroon refers to a note from the Head of the "CENER Centre" dated 25 February 1993. It would appear that the document being referred to is that exhibited on page 247, although the date on the document is not clear. That document refers to the alleged incident, stating that the gendarmes were apprehended by the "population of the village of Karanchi-Wuba", a village within the Prefecture of Madagali - i.e. within Nigeria. The note states that the gendarmes "had been pursuing a Nigerian cyclist as far as the border

village of Karanchi", and that "in retaliation the villagers intercepted them". However, the gendarmes, "profiting from the complicity of the Chief of the village", were able to escape.

24.383 Thus the note:

(1) indicates that the gendarmes were apprehended by private citizens, and thus there appears to be no basis upon which Nigeria could be held responsible for this alleged incident;

(2) does not say where the gendarmes were intercepted, and in any case does not state that they were intercepted in Karanchi;

(3) in so far as the statement that they were apprehended by the villagers of Karanchi-Wuba implies that that was where they were intercepted, that village is in Nigeria and no violation of Cameroon territory was involved; and

(4) appears to indicate that the Chief of the Nigerian village was instrumental in ensuring that the gendarmes were able to return to Cameroon.

24.384 The section of Annex OC 1 relating to "Karanchi" contains two further documents which Cameroon has not referred to in the legend. One of them, at page 249, is a note of a telephone message dated 8 February 1990 addressed to "the Director General". This message states that the gendarmes had been apprehended only after they had "strayed across the frontier". Thus, the entire incident took place within Nigeria, and the Cameroonian gendarmes had in fact committed an *incursion into Nigeria*. Although the message states that "Nigerian soldiers" were involved, the message is superseded by the note of 28 February 1990, by which date it was evident that only private citizens were involved.

24.385 The other document, exhibited at page 248, is a message from the "Director General CENER" to the "Head of CER, Maroua". The date is not legible, and although no source is mentioned, its contents appear to be based on the message dated 8 February 1990 appearing at page 249.

24.386 Again, Cameroon has produced no evidence that it ever protested to the Nigerian Government about this incident, nor is it included in MC 362 or MC 363 (purporting to list Nigerian frontier violations). Indeed, on the facts as presented by Cameroon, it is clear that there was no violation of the frontier by Nigeria, but rather a violation of Nigerian territory by Cameroon.

24.387 In any event, the acts complained of were allegedly the acts of villagers and not of the Nigerian authorities. Cameroon has failed to show any basis on which the conduct of private villagers is to be attributed to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.388 For the foregoing reasons, Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

24.389 The only border incident which has been proved by Cameroon's presentation of evidence is an incursion by Cameroonian gendarmes into Nigeria. The incident is accordingly the subject of a Nigerian Counterclaim: see paragraph 25.75 below.

46. Bourrha - March 1980

24.390 The legend on page 250 of OC 1 reads at item 11:

> "Clashes between Cameroonian and Nigerian border villages as a result of the creation by Nigerian citizens, on Cameroonian territory, of agricultural plantations. Traders held to ransom by the Nigerian security forces when they went to the market at MUBI."

24.391 The allegation suggests that the clashes between border villages and the creation of plantations were the responsibility of private citizens. In these circumstances, there would appear to be no basis upon which Nigeria could be held responsible for the alleged incident.

24.392 Furthermore

(1) Cameroon has not supplied a precise date for this incident;

(2) no explanation is given concerning the nature of the "clashes"; and

(3) Mubi is in Nigeria, not Cameroon (see, for example, map extract on page 250).

24.393 In support of its allegation, Cameroon refers to two documents. The first is a Note dated 10 March 1980. This is the document appearing on page 252, which is a Note from the Cameroonian Embassy to the Nigerian Ministry of External Affairs. The note states that it is written in response to a Note dated 4 March 1980 from the Nigerian Ministry of External Affairs, concerning a "Land dispute" between Nigerians in the Mubi Local Governement area and the Traditional chief of "Baurha".

24.394 Thus:

(1) the matter at hand is referred to as a "Land dispute": there is no indication of "clashes";

(2) the matter was apparently raised in the first instance by Nigeria, not Cameroon; and

(3) the Cameroonian Note contains no reference to the creation of agricultural plantations in Cameroon by Nigerians, or traders being held to ransom.

24.395 The second document referred to is an "Information Note" dated 25 February 1980. This is apparently the document exhibited on page 253. There is no indication as to the author of the document. The note states that according to a "reliable informer" certain Nigerians had complained about taxes that they had to pay to a Cameroonian official, the Lamido of Bourha, and in doing so had told the Governor of Yola in Nigeria that the land where they cultivated their food was Nigerian territory. This apparently led to a visit to the spot by a Nigerian local government representative and others. They investigated the position of the boundary, which according to the people of Bourha was represented by "a stone basin".

24.396 This document is irrelevant to the incident in relation to which it is cited since it does not refer to any incident whatsoever as having occurred in March 1980 - the note actually predates that month.

24.397 Moreover:

(1) it does not refer to any clashes between Nigerians and Cameroonians;

(2) there is also no reference in it to traders being held to ransom at Mubi.

24.398 Yet again, Cameroon has produced no evidence that it ever protested to the Nigerian Government about this incident, nor is it included in MC 362 or MC 363 (purporting to list Nigerian frontier violations).

24.399 Moreover, the incidents are alleged to have occurred in 1980, i.e. some 19 years ago. Given this passage of time, and the failure of Cameroon to lodge any protest with the Nigerian Government, any claim in respect of these incidents is, for the reasons given in paragraphs 24.52 - 24.54, now barred by lapse of time.

24.400 In the circumstances as they appear from the allegations made by Cameroon, and in particular since clashes between villages are not attributable to Nigeria, since the evidence is either inadequate or unreliable (or both), since the only conduct alleged on the part of Nigerian authorities is conduct taking place within Nigeria (in the Nigerian village of Mubi), and any claim in respect of them is in any event barred by lapse of time, Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

47. Dourbeye - 06.05.1985

24.401 The legend on page 250 of OC 1 reads at item 12:

"Overflight over Cameroonian territory by a Nigerian bomber."

24.402 In support of its allegation, Cameroon refers to a Note dated 22 May 1985. This Note, from the Cameroonian Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé, appears on page 257. Although it contains a brief mention of the alleged incident, it provides insufficient evidence to found a claim of State responsibility. It barely contains any more information concerning the incident than that which is supplied by Cameroon on page 250. Thus, for example, the source of the information is not provided, nor are the reasons why the aircraft was thought to be Nigerian, nor are any details about the aircraft, its flight path, altitude, etc.

24.403 Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations. This is consistent with the tenor of the Note of 22 May 1985 from the Cameroonian Ministry of Foreign Affairs, which does not in terms "protest" against the alleged overflight, and the fact that Cameroon has provided no evidence that that Note was ever followed up by later diplomatic action. The Note, in effect, was again a mere paper protest. As such it is not sufficient to keep alive indefinitely a claim in

relation to the matter to which it relates. Given that the incident is alleged to have occurred in 1985, i.e. 14 years ago, it has, for the reasons given in paragraphs 24.52-24.54, now become barred by lapse of time.

24.404 For the foregoing reasons, Nigeria denies any international responsibility arising out of the incident alleged by Cameroon.

48. Doumo - 29.01.1982

24.405 The legend on page 250 of OC 1 reads at item 13:

"Incursions by three (03) Nigerian hunters."

24.406 There is no indication that these "Nigerian hunters" were anything other than private citizens. In these circumstances, there would appear to be no basis upon which Nigeria could be held responsible for this alleged incident.

24.407 In support of its allegation, Cameroon refers to a document described as a note of protest from the Prefect of Benoué to the Secretary of the Government of Mubi. It appears that the document appearing on page 259 and 260 is being referred to, although it is not at all clear on the face of the document who precisely is the author of that document. Although the note refers to the incident alleged by Cameroon, no source is given for the information concerning that incident. It is clear from the body of the document that it is not a "protest note" at all. The final paragraph indicates that the purpose of the note was to request the Nigerian authorities to apprehend the "guilty parties", and hand them over to Cameroon. Indeed, this indicates that Cameroon did not consider Nigeria to be responsible for the incident.

24.408 A further document, not referred to by Cameroon, appears in the section of OC 1 relating to Doumo. This is an anonymous "Information Bulletin" dated 3 February 1982, appearing on page 261. Although this document also refers to the incident, it serves only to confirm that the hunters involved were private citizens, the actions of whom cannot be attributed to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.409 Once more, Cameroon has produced no evidence that it ever protested to the Nigerian Government about this incident, nor is it included in MC 362 or MC 363 (purporting to list Nigerian frontier violations).

24.410 Moreover, the incident is alleged to have occurred in 1982, i.e. some 17 years ago. Given this passage of time, and the failure of Cameroon to lodge any protest with the Nigerian Government, any claim in respect of these incidents is, for the reasons given in paragraphs 24.52 - 24.54, now barred by lapse of time.

24.411 In the circumstances as they appear from the allegations made by Cameroon, and in particular since the acts in question are not attributable to Nigeria, and any claim in respect of them is in any event barred by lapse of time, Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

49. Mbillassi - 16.10.1962

24.412 The legend on page 262 of OC 1 reads at item 14:

> "Intimidation of Cameroonian peasants by a Nigerian policeman and eight (08) Dogaris from the Lamidate of MALABOU (Nigeria) over a territorial dispute (pasture and fields of millet in the Cameroonian irrigated areas)."

24.413 Before even examining Cameroon's evidence, it must be noted that Cameroon's allegation concerns an incident said to have taken place over 36 years ago, only two years after Nigeria's independence. There is no evidence that Cameroon has protested concerning this incident at any time. In these circumstances, and for the reasons given in paragraphs 24.52-24.54, any claim in respect of this alleged incident is now barred by lapse of time.

24.414 In any event, Cameroon's evidence is entirely unsatisfactory. In support of its allegation, Cameroon relies on two internal documents. The first is a letter dated 20 April 1962 from the Prefect of Benoué. This appears to be a reference to the document which appears on pages 264 and 265. However, the date on the face of the document is incomplete. That note acknowledges that unspecified "intimidations", occurred against the background of a "permanent boundary dispute". The second document referred to, dated 8 May 1977, appears on pages 266 to 273. This document contains no reference to the alleged incident of 1962.

24.415 Cameroon has failed to substantiate any basis for international responsibility on the part of Nigeria in respect of what is a manifestly stale claim, concerning what is essentially alleged to have been a local land dispute, and supported by wholly unsatisfactory evidence. Nigeria denies any such responsibility arising out of this alleged incident.

50. Ouro Dalam - 16.05.1981

24.416 The legend on page 262 of OC 1 reads at item 15:

> "Attack on the village by Nigerian bandits. Murder of Mr. SANOU BOUDJI."

24.417 The fact that Cameroon refers to the attackers as "bandits" suggests that they were in fact private citizens, acting independently of any authority. Accordingly, there appear to be no grounds upon which to attribute the incident to Nigeria.

24.418 In support of its allegation, Cameroon refers to two documents. The first is a letter dated 10 July 1982 from the Prefect of Benoué. This appears to be the document found on pages 275 and 276. However, the letter, which was written 14 months after the alleged incident, only refers to the incident in passing, and gives no source for the information concerning the incident.

24.419 The second document referred to by Cameroon in the Legend is a letter from the same Prefect dated 2 December 1981. Cameroon has failed to include a copy of this letter - which was dated seven months after the alleged incident - in this section of Annex OC 1. However, it appears that the document exhibited on page 283 is being referred to. Paragraph 2 of the letter refers to the alleged incident, but only in passing. It gives the date of the incident as *15* May 1981, and states that the attackers only *probably* came from Nigeria.

24.420 There are two further documents contained in the section relating to "Ouro-Dalam" which were not referred to by Cameroon in the legend. They appear on pages 277 and 278. However, neither of these internal documents make any reference to "Ouro-Dalam", nor to any events said to have taken place in 1981.

24.421 Cameroon has produced no evidence that it ever protested to the Nigerian Government about this incident, nor is it included in MC 362 or MC 363 (purporting to list Nigerian frontier violations).

24.422 In any event, Cameroon has failed to show any basis on which the conduct of "bandits" is to be attributed to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.423 Moreover, the incident is alleged to have occurred in 1981, i.e. some 18 years ago. Given this passage of time, and the failure of Cameroon to lodge any protest with the Nigerian Government, any claim in respect of this incident is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.424 In the circumstances as they appear from the allegations made by Cameroon, and in particular since the evidence cited in support of the allegation is inadequate, since the acts in question are not attributable to Nigeria, and any claim in respect of them is in any event barred by lapse of time, Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

51. Ouro-Garga - 16.11.1984

24.425 The legend on page 279 of OC 1 reads at item 16:

> "Arrest of three (03) customs officers who had crossed the border at OURO GARGA, in pursuit of a smuggler."

24.426 In support of its allegation, Cameroon refers to a Note dated 27 April 1985. This Note, from the Cameroonian Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé, appears on page 281. The Note refers to the incident, which is said to have occurred at "Houro Garba". Contrary to the allegation on page 279, the Note states that only *one* of the customs officers was arrested; no explanation is given as to why only one of the three officers was arrested. The Note, dated over five months after the alleged incident, gives only a cursory account of the incident, and does not refer to any direct evidence for the information contained in it.

24.427 Nigeria draws attention to the fact that as indicated on the map extract on page 279 of OC 1, Ouro Garga is on the eastern edge of an area which, in the rainy season, is subject to inundation on either side of the River Mao Tiel, which river is the

border in that area. Consequently there are times when the precise line of the boundary is obscured by rising water levels.

24.428 Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations. This is consistent with the tenor of the Note of 27 April 1985 (five months after the date of the alleged incident) from the Cameroonian Ministry of Foreign Affairs, and the fact that Cameroon has provided no evidence that that Note was ever followed up by later diplomatic action. The Note, in effect, was once again a mere paper protest, and as such is not sufficient to keep alive indefinitely a claim in relation to the matter to which it relates. Given that the incident is alleged to have occurred in 1984, i.e. 15 years ago, it has, for the reasons given in paragraphs 24.52-24.54, now become barred by lapse of time.

24.429 For the foregoing reasons Nigeria denies any international responsibility arising out of the incident alleged by Cameroon.

52. Wouro Djaouro Oumarou- 27.04.1981

24.430 The legend on page 279 of OC 1 reads at item 17:

> "Abduction by three (03) Nigerian policemen of Mr. Alhadji BOUBA GOL (Cameroonian) who was then taken to GURIN (Nigeria) and imprisoned there. Following vehement protests by the Cameroonian authorities, the Nigerian authorities recognised the facts, released the victim, and gave him back the 340 nairas that had been extorted from him, this by letter No. FLG/S:69/Vol 1/54 of 28.05.1981."

24.431 The name "Wouro Djaouro Oumarou" does not appear on the map extract shown on page 279, and Nigeria is not aware of its location. It would appear that the large "17" superimposed on the map merely indicates the location of Touroua

(which is also the name of the district in which, according to Cameroon, the town is located).

24.432 In support of its allegation, Cameroon refers to a note by the Prefect of Benoué dated 2 December 1981. This document appears on pages 283 to 285, and refers to the incident at page 283. However, the document is dated seven months after the incident, and contains no details concerning the source of the information contained within it. Furthermore, this note indicates that the background to the alleged incident concerned the domestic affairs of the arrested man, whose two wives had had an argument. The note also claims that on 28 May 1981, a Nigerian official had written to Cameroonian officials, denouncing the arrest and promising to take disciplinary steps against the policeman involved. This suggests that even if the arrest did take place, it was not sanctioned by the Nigerian authorities.

24.433 Once again, Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations. Nor has Cameroon produced any evidence that it ever protested to the Nigerian Government about this incident.

24.434 The incident itself clearly involved the domestic affairs of a local individual. The detailed circumstances surrounding the incident are not at all clear from the evidence made available by Cameroon, and while it appears that it may have involved one or more Nigerian officials, the precise circumstances of their involvement have not been made clear by Cameroon. There is, in any event, a strong suggestion that the acts in question were not authorised by the Nigerian authorities. Overall, this once more appears to have been an essentially local affair with its origins in a private dispute, which was satisfactorily settled at the time between the local Nigerian and Cameroonian authorities.

24.435 Moreover, the incident is alleged to have occurred in 1981, i.e. some 18 years ago. Given this passage of time, and the failure of Cameroon to lodge any protest with

the Nigerian Government, any claim in respect of this incident is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.436 For the foregoing reasons, particularly the essentially private and local character of the incident, and the fact that any claim in respect of it is now barred by lapse of time, Nigeria denies that the incident alleged by Cameroon gives rise to any international responsibility on the part of Nigeria.

53. Beka - 08.09.1981

24.437 The legend on page 279 of OC 1 reads at item 18:

> "Nigerian citizens not recognising the authority of the Lamido who is trying to settle a dispute within their community in Cameroon."

24.438 This allegation concerns the activities of private citizens. There is no basis upon which their failure to "recognise authority" can be attributed to Nigeria.

24.439 In support of its allegation, Cameroon refers to a note from the Prefect of Benoué dated 2 December 1981. This is a document appearing on pages 287 to 289. It is the same document as that which appeared on page 283, in relation to the previous incident. The present incident is referred to on page 288 of the note. Although the relevant Nigerian citizens were resident in Beka, there is no indication as to where the "incident" actually took place. Beka is referred to as a "Nigerian colony".

24.440 No source is given for the information contained in this document, which is dated three months after the "incident".

24.441 Cameroon has produced no evidence that it ever protested to the Nigerian Government about this incident, nor is it included in MC 362 or MC 363 (purporting to list Nigerian frontier violations).

24.442 In any event, Cameroon has failed to show any basis on which the conduct of the Nigerian citizens in question is to be attributed to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.443 Moreover, the incident is alleged to have occurred in 1981, i.e. some 18 years ago. Given this passage of time, and the failure of Cameroon to lodge any protest with the Nigerian Government, any claim in respect of this incident is, for the reasons given in paragraphs 24.52 to 24.54, now barred by lapse of time.

24.444 In the circumstances as they appear from the allegations made by Cameroon, and in particular since the acts in question are not attributable to Nigeria, and any claim in respect of them is in any event barred by lapse of time, Nigeria denies any international responsibility arising out of the incident alleged by Cameroon.

54. Laro - 18.01.1979

24.445 The legend on page 290 of OC 1 reads at item 19:

> "Exploitation of ["roniers"] palm forestry in Cameroonian territory by Nigerian Citizens."

24.446 Although the nature of the "exploitation" is not specified, Cameroon states that it was carried out by Nigerian citizens, i.e. Nigerians acting as private individuals. In these circumstances, there is no basis for any claim that Nigeria is responsible for the alleged incident.

24.447 In support of its allegation Cameroon refers to a number of documents. It is not necessary to examine these in detail or to point out numerous inadequacies in them as evidence of the allegation made by Cameroon, since none of the documents provides evidence of activity by other than private individuals, or gives reasons why their conduct should be attributable to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.448 Furthermore, Cameroon has produced no evidence that it ever protested to the Nigerian Government about this incident, nor is it included in MC 362 or MC 363 (purporting to list Nigerian frontier violations).

24.449 Finally, the incident is alleged to have occurred in 1979, i.e. 20 years ago. Given this passage of time, and the failure of Cameroon to lodge any protest with the Nigerian Government, any claim in respect of this incident is, for the reasons given in paragraphs 24.52 and 24.54, now barred by lapse of time.

24.450 In the circumstances as they appear from the allegations made by Cameroon, and in particular since the acts in question are not attributable to Nigeria, and any claim in respect of them is in any event barred by lapse of time, Nigeria denies any international responsibility arising out of the incident alleged by Cameroon.

55. Kontcha (Zone of Lake Typsan), Bondjokoura - 28.03.1993, 17.03.1987 & 04.05.1988

24.451 The legend on page 290 of OC 1 reads at item 20:

> "Creation of a Nigerian village and an emi-immigration post by the Nigerian authorities on the bank of the river TYPSAN, about six and a half (6.5) kilometres from the Cameroon-Nigeria border, in Cameroonian territory, and about one (1) kilometre from the town of KONTCHA. This emi-immigration post, with a Nigerian customs post

attached, still exists in Cameroonian territory. Repeated overflights of Cameroonian territory (Kontcha area) by combat aircraft of the 'Nigerian Air Force'."

24.452 Although the Legend presents this as a single paragraph, the fact that three dates are indicated on page 290 in relation to this location suggests that there are three separate incidents being referred to.

24.453 Concerning the creation of the emi-immigration post, Cameroon has, for the reasons explained above in paragraph 24.260 *et seq.* (and in paragraphs 19.73-19.76), misunderstood and misapplied the terms of the Thomson-Marchand Declaration 1929-1931 which delimit the boundary in the area of Tipsan and Kontcha. As explained in those earlier paragraphs, the Nigeria-Cameroon boundary in this area follows the course of the River Tipsan which runs *between* Tipsan and Kontcha, and the Nigerian immigration/emigration control post at Tipsan is on the Nigerian side of that boundary. The creation by Nigeria of an immigration/emigration post on its territory at Tipsan can in no way afford Cameroon any basis for claiming that Nigeria's international responsibility is thereby engaged.

24.454 As regards the separate incidents said by Cameroon to have occurred in this area on 17 March 1987 and 4 May 1988, they both concern alleged overflights by Nigerian aircraft. In connection with these overflights Cameroon refers in its legend to two Notes from the Cameroonian Minister of Foreign Affairs to the Nigerian Embassy in Yaoundé. The first, appearing on page 306, is dated 10 April 1987, and refers to an overflight of Kontcha which allegedly took place on 17 March 1987. The Note does not give significant details as to the circumstances of the alleged overflight. Furthermore, the precise location of the "overflight" has not been identified. Although the village of Kontcha is referred to, it has been seen elsewhere that Cameroon's conception of the location of the boundary and of the geographical extent of Kontcha is confused, even going so far as to consider Tipsan

to be part of Kontcha. Accordingly, in the absence of specific flight details, it is unsafe to assume that an alleged overflight of Kontcha involved flight over Cameroonian territory.

24.455 The second Note, dated 1 June 1988 (appearing on page 308), refers to another overflight by "unidentified" aircraft of the Nigerian armed forces on the night of 3/4 May 1988 "in the area of Kontcha". This, on its face, is even more vague as to the location of the alleged overflight, and even greater caution is called for in assuming there to have been any overflight of Cameroon territory.

24.456 Neither Note identifies the source of the information contained in it, or otherwise provides significant or direct evidence in support of Cameroon's allegations. Cameroon has submitted no evidence to show that either Note was followed up later by further diplomatic action: they remain 'paper protests'.

24.457 For the reasons given, Cameroon's allegation concerning the establishment of the Nigerian Immigration/Emigration Post at Tipsan is manifestly unfounded, based as it is on a serious misunderstanding as to where the boundary in that area runs. Tipsan is in Nigeria, and the creation there of a Post by Nigeria is an exercise of Nigerian sovereignty in that location, and cannot give rise to any international responsibility on the part of Nigeria.

24.458 As regards the alleged overflying incidents of 1987 and 1988, it is notable that they are not included in MC 362 or MC 363 (purporting to list Nigerian frontier violations). Given Cameroon's confusion as to the location of the boundary in the area of Kontcha, the proximity of Kontcha to the boundary, and the evidence of Cameroon's sometimes expansive notion of the extent of Kontcha village (see above, paragraph 24.264(2)), allegations, now over 10 years old, of overflights of Cameroon territory in the neighbourhood of Kontcha have to be treated with great caution. In short, Cameroon has failed to adduce adequate evidence to establish

any international responsibility on the part of Nigeria in respect of the alleged incidents.

24.459 For the foregoing reasons Nigeria denies that any of the incidents alleged by Cameroon give rise to international responsibility on the part of Nigeria.

56. Dorofi, Kanyaka, Hore Taram Foulbe - Multiple Occurrences

24.460 The legend on page 309 of OC 1 reads at item 21:

> "Effective creation of a Nigerian village on Cameroonian territory, by the Nigerian authorities. Illegal construction of Nigerian schools in 1993, in the Cameroonian villages of KANYAKA and HORE TARAM FOULBE."

24.461 (1) No indication is given of when the "Nigerian village" was supposed to have been "created".

(2) Cameroon refers to three separate villages as the "locality" of the incident, but in the legend it refers to the "effective creation" of only *one* village, without identifying which of those three (if any) is being referred to.

(3) The map extract on page 309 shows Kanyaka to be *in Nigeria*.

(4) The word "effective" used in the legend is rather vague and suggests that Cameroon does not consider that Nigeria was directly responsible for the creation of the village.

24.462 In support of its allegation, Cameroon refers to a single document, which is a note dated 7 June 1995 from the Chief of the village of Dorofi to the Chief of the District of Mayo Darle. This would appear to be the document exhibited on page

311. However, it is not clear from the face of that document what office the author held, if any. The note is difficult to understand in places. However, it is clear that there is no reference in the note to the three places referred to in the allegation on page 309 (although the word "Dorofi" has been added in manuscript at the top of the document). Although the note seems to refer to construction which took place on Cameroonian territory, there is no reference to a village having been "effectively created" by the Nigerian authorities. There is also no reference whatsoever to the construction of any schools.

24.463 The evidence in support of Cameroon's allegation is wholly inadequate to substantiate it. It comes nowhere near the standard of proof needed to establish international responsibility on the part of Nigeria, and Nigeria denies that Cameroon's allegation gives rise to any such responsibility.

57. Atta - 07.07.1985

24.464 The legend on page 312 of OC 1 reads at item 22:

> "Arrest of two (2) Nigerian policemen (Messrs Emmanuel ATEB and SUNDEY MAME), who had in their possession two handguns of the 'SAVAGE' trademark, model 69, and no. 299045."

24.465 In support of its allegation, Cameroon refers to a Note dated 14 September 1985, from the Cameroonian Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé, which appears on page 314. The note refers to the arrest. However, it merely states that it took place in the "area of Atta". There is no indication of the precise location of the arrest, other than the claim that it took place in "Cameroonian territory". However, as is evident from the map extract on page 312, Atta is near the border. Therefore, several places in Nigeria are "in the area of Atta".

24.466 Additionally, this single document produced by Cameroon, which is dated over two months after the alleged incident, gives no details of the sources of its information, and gives no information as to the circumstances surrounding the arrest.

24.467 Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations. This is consistent with the tenor of the Note of 14 September 1985 from the Cameroonian Ministry of Foreign Affairs, and the fact that Cameroon has provided no evidence that that Note was ever followed up by later diplomatic action. The Note was in no sense a protest. It did not use that term, it did not "reserve Cameroon's rights", and in substance it was merely a notification to Nigeria that an arrest had taken place. It is not sufficient to keep alive a claim in relation to the matter to which it refers. Given that the incident is alleged to have occurred in 1985, i.e. 14 years ago, it has, for the reasons given in paragraphs 24.52-24.54, now become barred by lapse of time.

24.468 For the foregoing reasons Nigeria denies any international responsibility arising out of the incident alleged by Cameroon.

58. Sam Faam Ntim - January 1988

24.469 The legend on page 312 of OC 1 reads at item 23:

> "Some Nigerian citizens (Messrs. Abel BADU; Phiup FUNYIN; Nicodemus LUNCHI; Jonathan NENWEL; Abdulai BADU; Georges BADU; Jonathan FENYA; Simnwi BAVEN; Joseph JUMBU) illegally create plantations in Cameroonian territory and destroy Cameroonian plantations along the river MANTUNG."

24.470 The allegation specifically refers to Nigerian citizens, i.e. Nigerians acting as private individuals. In these circumstances, there is no basis for attributing their actions to Nigeria so as to make Nigeria responsible for the incident.

24.471 In support of its allegation Cameroon refers to a number of documents. It is not necessary to examine these in detail or to point out numerous inadequacies in them as evidence of the allegation made by Cameroon, since none of the documents provides evidence of activity by other than private individuals, or gives reasons why their conduct should be attributable to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.472 Furthermore, Cameroon has produced no evidence that it ever protested to the Nigerian Government about this incident, nor is it included in MC 362 or MC 363 (purporting to list Nigerian frontier violations).

24.473 The circumstances as they appear from the allegations made by Cameroon do not give rise to any international responsibility on the part of Nigeria, in particular since the acts in question are not attributable to Nigeria. Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

59. Mandur-Yang - 06.07.1992

24.474 The legend on page 312 of OC 1 reads at item 24:

> "Illegal arrests of four (04) Cameroonian peasants at MANDUR-YANG by Nigerian policemen."

24.475 This allegation is related to the allegation advanced in paragraphs 6.100 and 6.101 of the *Memorial*, and the document referred to also appears at *Memorial* Annex MC 320. These allegations are analysed at paragraph 24.273 *et seq.* above.

24.476 For the reasons there set out, Nigeria denies that this allegation gives rise to any international responsibility on the part of Nigeria.

60. Bitui Lus - 03.04.1995

24.477 The legend on page 312 of OC 1 reads at item 25:

> "Exploitation of agricultural plantations in Cameroonian territory (villages of BITUI and LUS in the District of NWA) by Nigerian farmers from the village of ANTERE, along the border river DONGA MANTUM."

24.478 The "exploitation" is alleged to have been carried out by Nigerian farmers. Accordingly, there is no basis upon which Nigeria can be held responsible for this alleged incident.

24.479 Once more, although Cameroon refers to a document in support of its allegation, it is not necessary to examine it in detail or to point out numerous inadequacies in it as evidence of the allegation made by Cameroon, since it provides no evidence of activity by other than private individuals, or gives reasons why their conduct should be attributable to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.480 Furthermore, Cameroon has produced no evidence that it protested to the Nigerian Government about this incident.

24.481 The circumstances as they appear from the allegations made by Cameroon do not give rise to any international responsibility on the part of Nigeria, in particular since the acts in question are not attributable to Nigeria. Nigeria accordingly denies any international responsibility arising out of the incident alleged by Cameroon.

61. Ntong - 26.02.1979 & 02.03.1979

24.482 The legend on page 324 of OC 1 reads at item 26:

> "Incursions of armed groups of Nigerians from the border Village of WAN-SAH against the farmers of the village of NTONG (Cameroon), in the course of which the wife of the Chief of the village of NTONG and two Cameroonians were molested."

24.483 In its allegation, Cameroon refers to the perpetrators of the incident merely as "armed groups". There is nothing to suggest that they were anything other than private citizens coming from a particular border village. There is no basis upon which Nigeria can be held responsible for their conduct.

24.484 In support of this allegation, Cameroon refers to a Note from the Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé dated 21 July 1979, which appears on page 326. This Note confirms that the incident only concerned the inhabitants of a Nigerian village. The Note, incidentally, makes no reference to these inhabitants being armed.

24.485 Thus both the principal Cameroon allegation and the Note from the Cameroon Ministry of Foreign Affairs agree in treating this incident as one involving only private individuals. Cameroon gives no reason why their conduct should be attributable to Nigeria (as to which see above, paragraph 24.55 *et seq.*).

24.486 Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations. This is consistent with the tenor of the Note of 21 July 1979 from the Cameroonian Ministry of Foreign Affairs, and the fact that Cameroon has provided no evidence that that Note was ever followed up by later diplomatic action. The Note was not a protest: it did not use that term, it did not "reserve Cameroon's rights", and in substance it was merely a notification to Nigeria that the incident had taken place

and a request that these private activities should be brought to an end. It is at best no more than a mere "paper protest", which is not sufficient to keep alive indefinitely a claim in relation to the matter to which it refers. Given that the incident is alleged to have occurred in 1979, i.e. 20 years ago, it has, for the reasons given in paragraphs 24.52-24.54, now become barred by lapse of time.

24.487 For the foregoing reasons, in particular since the acts in question are not attributable to Nigeria and any claim is in any event time-barred, Nigeria denies any international responsibility arising out of the incident alleged by Cameroon.

62. Abonshie - 07.05.1993

24.488 The legend on page 328 of OC 1 reads at item 27:

> "Attack on two Cameroonian citizens (Messrs DESCO EYEBO and EKIOKA GWANDA) by four (04) bandits coming from Nigeria."

24.489 The allegation refers to the perpetrators as "bandits", indicating that they were individuals acting without authority. Additionally, although the bandits are said to have come *from* Nigeria, Cameroon does not allege that the bandits were actually Nigerian. There is no basis upon which Nigeria can be held responsible for their conduct.

24.490 In any event, the document relied on by Cameroon, in support of this allegation (a note from the Governor of the North West dated 27 July 1993, which appears on page 330) is cursory - only five lines long - and contains hardly any information concerning the incident.

24.491 As with many of the previous alleged incidents, Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations.

24.492 Since this incident involved only private individuals, and Cameroon gives no reason why their conduct should be attributable to Nigeria (as to which see above, paragraph 24.55 *et seq.*), Nigeria denies that this incident gives rise to any international responsibility on the part of Nigeria.

63. Lebo - 12.07.1984

24.493 The legend on page 331 of OC 1 reads at item 28:

> "Arrest in Cameroonian territory of the Chief of the Village of LEBO, Mr. AGWA SIMON, by Nigerian security Agents."

24.494 Although this allegation is presented in the legend (and the cover-sheet on page 332) in respect of a place called "Lebo", the description of the incident does not suggest that the incident actually took place there, but rather that the arrested person was the Chief of that village. In this case, Cameroon has not identified where the incident is alleged to have taken place.

24.495 In support of its allegation, Cameroon refers to a Note dated 8 March 1985 from the Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé, which appears on page 333.

(1) This Note refers to the arrest of the village chief. However, it does not say where the arrest is said to have taken place, it merely alleges that it took place on Cameroonian territory.

(2) Furthermore, this Note was written eight months after the date of the alleged incident, and does not indicate the source of the information contained within it or provide direct evidence of the allegation, or explain the surrounding circumstances.

24.496 In the section of Annex OC 1 relating to Lebo, Cameroon has exhibited a further document, which is not referred to in the legend. This is the document appearing on pages 334 to 336, which is a communication dated 21 January 1994 from the Sub-Prefect of Furu-Awa to the Prefect at Menchum. The document, which is dated nearly ten years after the alleged incident, contains no reference to the alleged arrest of Mr. Agwa.

24.497 Cameroon did not regard this incident as sufficiently important to be worth including in MC 362, listing alleged Nigerian frontier violations. Although Cameroon raised the matter of the alleged seizure of Mr. Agwa in a Note of 8 March 1985 from the Cameroonian Ministry of Foreign Affairs, Cameroon has provided no evidence that that Note was ever followed up by later diplomatic action. In the absence of any follow-up action, Cameroon's Note can be seen to have been no more than a "paper protest", which is not sufficient to keep alive indefinitely a claim in relation to the matter to which it refers. Given that the incident is alleged to have occurred in 1984, i.e. 15 years ago, it has, for the reasons given in paragraphs 24.52-24.54, now become barred by lapse of time.

24.498 Moreover, the evidence submitted by Cameroon is inadequate to establish the circumstances of the alleged incident. That fact, coupled with the time which has passed since the incident is said to have occurred and since the Cameroon Ministry of Foreign Affairs' Note of 8 March 1985, with no evidence of any further action on the part of Cameroon since then, involves the failure on Cameroon's part adequately to establish its claim that international responsibility for the incident rests with Nigeria. Nigeria accordingly denies any such international responsibility.

64. Mbelego - 26.09.1994

24.499 The legend on page 331 of OC 1 reads at item 29:

> "Attacks perpetrated by Nigerian police against Cameroonian gendarmes, with the assistance of the farmers of the Nigerian village of TOSSO. Confiscation of two Cameroonian weapons (one FAL rifle, and an automatic pistol)."

24.500 This alleged incident appears to be the same as that referred to in paragraphs 6.108 and 6.109 of the *Memorial*. The incident is dealt with in paragraph 24.293 *et seq.* above.

65. Akwaya - 23.03.1993

24.501 The legend on page 342 of OC 1 reads at item 30:

> "Overflight of AKWAYA by an aircraft of the Nigerian army charged with drawing up the geographical map of the MATENE LOCAL GOVERNMENT and the area of OBUDU CATTLE RANCH."

24.502 In support of its allegation, Cameroon refers to two documents. The first is a Telex dated 5 May 1993. This would appear to be the document exhibited on pages 343 and 344, although the date on that document has been added in manuscript. The document, sent by "DIPLOCAM" to "MINDEF", consists almost entirely of a quotation from a message of 23 March 1993 sent by the Governor of the South West Province. The quotation, which is illegible in places, appears to state that the population of the "District of Akwaya" had been "wondering" about a small plane of unknown origin overflying "several times a day". It continues by stating that "it seems from a human source that this plane comes from the neighbouring country (Nigeria) on a topographical mission...". This message quoted in the Telex:

(1) does not state the date upon which the incident took place;

(2) suggests that the overflight took place in the "District of Akawaya" - however, the precise location of the overflight is not identified;

(3) states that the plane was said to be of unknown origin - it was only an unspecified "human source" which had indicated (or, more precisely, had "seemed" to indicate) that the plane had come from Nigeria;

(4) gives no information about the type of plane, or its flight patterns, even though it was said to have been overflying "several times a day", thus affording ample opportunity for observation;

(5) in any event, makes no reference whatsoever to the plane having belonged to the Nigerian Army;

(6) makes no reference to the place called "Obudu"; and

(7) gives no indication of the source of any of the information contained within it.

24.503 The second document referred to is a Note dated 18 May 1993 from the Cameroonian Ministry of External Relations to the Nigerian Embassy, appearing on page 345. The Note refers to an overflight of the Akwaya Sub-Division which took place in the last week of *April 1993*, and states that "after verification", it was proven that the aircraft was from Nigeria, and was carrying out a topographical survey. The last paragraph of the Note suggests that the overflight was the result of some misunderstanding concerning the "geographical realities" of the region.

24.504 This document

(1) states that the incident took place in April 1993 - if this were the case, it would have occurred *after* the date of the message from the Governor of the South West dated 23 March 1993 which was referred to in the Telex at page 343;

(2) states that it had been "verified" that the aircraft was Nigerian - however, it is not clear whether that verification went beyond the assertions of the unidentified "human source" referred to in the Telex at page 343;

(3) does not state anywhere that the plane belonged to the Nigerian Army, but merely states that it was "from Nigeria";

(4) does not say on what basis it was thought to have been conducting a topographical survey; and

(5) suggests that the overflight was the result of a misunderstanding, which was related to the geography of the area.

24.505 Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations. It was clearly a minor "incident", involving no military or other threat (still less, material damage) to Cameroon.

24.506 Moreover, Cameroon has failed to produce any evidence to show that the aircraft involved was anything to do with the Nigerian Army (or other arm of Government). There could be many explanations for a flight of the kind described by a "small plane" of admittedly "unknown origin", even if it did originate from Nigeria (which itself is not established by reliable evidence).

24.507 In these circumstances Cameroon has failed adequately to establish its claim that international responsibility for the incident rests with Nigeria. Nigeria accordingly denies any such international responsibility.

66. Nsanakang - Multiple Occurrences

24.508 The legend on page 340 of OC 1 reads at item 31:

> "Nigerian forestry exploitation in Cameroonian territory."

24.509 There is no indication that this "exploitation" was carried out by anyone other than private individuals; there is no basis upon which Nigeria is to be held responsible for their conduct.

24.510 Additionally,

(1) Cameroon has not provided specific dates upon which this "exploitation" is said to have occurred; and

(2) Cameroon has not indicated precisely where this "exploitation" is said to have occurred: the forestry "exploited" was presumably in the vicinity of - rather than in - the village of Nsanakang.

24.511 The evidence adduced by Cameroon in support of this allegation is self-evidently inadequate as a basis on which to establish Nigeria's international responsibility.

24.512 Moreover, by making it clear that the conduct complained of was that of private individuals, and without providing any reason why their conduct should be attributed to Nigeria, Cameroon has failed to show that the matter raised in

Cameroon's allegation is a matter for which Nigeria bears international responsibility. Nigeria accordingly denies any such international responsibility.

67. Matene - 27.10.1986

24.513 The legend on page 340 of OC 1 reads at item 32:

> "Nigerian citizens are crossing the river MAGWI and are invading the village of MATENE (48 km. inside Cameroon), destroying Cameroonian habitations and taking hostages to Nigeria, including ANYA Emmanuel; AIE Martin, his wife and his two children; Martin KOVELI; Michel ASOA; ABU M; Mrs Brigitt AMU AKWO. The Nigerian attackers, led by the Chief of the village of ARIA OGBASHI, came from the village of OKWA (Nigeria)."

24.514 Since this attack is alleged to have been carried out by "Nigerian citizens", there is no basis upon which Nigeria is to be held responsible for their conduct.

24.515 On the map extract appearing on page 340, Cameroon has indicated with a large "32" the location of the Cameroonian village of Matene (as opposed to the Nigerian village of Matene, which is located nearby). It is evident that Matene is in fact approximately *5 kilometres* from the boundary, not 48 kilometres.

24.516 Although Cameroon refers to two documents in support of its allegation, it is not necessary to examine them in detail or to point out numerous inadequacies in them as evidence of the allegation made by Cameroon, since they provide no evidence of activity by other than private individuals, and give no reasons why their conduct should be attributable to Nigeria (as to which see above, paragraph 24.55 *et seq.*). Nevertheless Nigeria observes that the second of these documents (a Note from the Nigerian Embassy in Yaoundé to the Cameroonian Ministry of Foreign Affairs dated 26 June 1987, appearing on page 353) states that as at its date, the villages of Matene and Okwa had "had their differences resolved". It goes on to point out

that some difficulties arose out of the attempts by the Cameroonian Chief of Matene to impose a levy on villagers from Okwa (a Nigerian village). The Note also suggests that the attack by Okwa villagers in October 1986 was merely a reaction to an earlier attack on Okwa by the Cameroonians of Matene on 29 July 1986 - in other words, the alleged incident was a consequence of an attack by Cameroonians on a Nigerian village.

24.517 As with many of the previous alleged incidents, Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations. It was evidently the result of an inter-village squabble.

24.518 Since this incident involved only private individuals, and Cameroon gives no reason why their conduct should be attributable to Nigeria, Nigeria denies that this incident gives rise to any international responsibility on the part of Nigeria.

68. Dadi & Badje - Multiple Occurrences

24.519 The legend on page 341 of OC 1 reads at item 33:

> "Occupation of cultivated areas in Cameroonian territory by Nigerian farmers, the Cameroonian farmers having been chased away."

24.520 The occupation is said to have been carried out by "Nigerian farmers". There is no basis upon which Nigeria can be held responsible for their conduct.

24.521 There is therefore no need to examine in detail the defects in Cameroon's allegation or the document submitted by Cameroon in support of it. It is sufficient to note that it confirms that those concerned were Nigerian farmers.

24.522 Since this incident involved only private individuals, and Cameroon gives no reason why their conduct should be attributable to Nigeria (as to which see above, paragraph 24.55 *et seq.*), Nigeria denies that this incident gives rise to any international responsibility on the part of Nigeria.

69. Archibong - 27.11.1980

24.523 The legend on page 359 of OC 1 reads at item 34:

> "Attack by eight (08) armed Nigerian soldiers who molested the population and attempted to arrest a Cameroonian game keeper."

24.524 It is apparent that this alleged incident is the same one as that referred to in paragraph 6.76 of the *Memorial*. The Note appearing on page 361 also appears at Annex MC 256. The incident and document are dealt with in paragraph 24.230 *et seq.* above.

70. Akwa - 19.02.1994

24.525 The legend on page 359 of OC 1 reads at item 35:

> "Attack on a Cameroonian patrol by a Nigerian patrol. Outcome: 1 dead and 1 wounded on the Cameroonian side"

24.526 This allegation and the document referred to (a message dated 21 February 1994) are dealt with above, in the context of the incidents of February 1994 referred to in the *Memorial* (see paragraph 24.86 *et seq.* above).

71. Ine-Ikoi - 21.01.1981

24.527 The legend on page 359 of OC 1 reads at item 36:

> "Abduction of Chief of IDABATO District and his suite"

24.528 This allegation is related to that contained in paragraphs 6.66 to 6.70 of the *Memorial*. Accordingly, the allegation and the document referred to (dated 26 January 1981) are dealt with at paragraph 24.180 *et seq.* above.

72. Kombo A Bedimo - 19.11.1985

24.529 The legend on page 359 of OC 1 reads at item 37:

> "Visit to the INNUA-MBA fishery by the Sub Prefect of KOMBO A BEDIMO, where Cameroonian territory was violated by elements of the Nigerian maritime police and customs"

24.530 This allegation is apparently related to one of the allegations contained in paragraph 6.52 of the *Memorial*; accordingly, it is dealt with at paragraph 24.109 *et seq.* above.

73. Kombo A Janea - 18.02.1994

24.531 The legend on page 369 of OC 1 reads at item 38:

> "The Nigerian navy attacks the Cameroonian positions. Outcome: 1 dead and 1 wounded on the Cameroonian side"

24.532 In support of this allegation, Cameroon refers to a message dated 19 February 1994, which appears on page 371. However, this is the same document as that appearing at Annex MC 339 of the *Memorial*, which was referred to in paragraph 6.34 of the *Memorial*, in relation to the incidents of February 1994. Accordingly, this allegation and the document are dealt with above (see paragraph 24.86 *et seq.*).

74. Jabane - 02.04.1990

24.533 The first section of the legend on page 372 of OC 1 reads:

> "The Nigerian navy arrests a Cameroon patrol on an official mission to JABANE: three (03) policemen, one (01) vessel and the pilot of the vessel."

24.534 This allegation is related to the allegation contained in paragraphs 6.72 to 6.74 of the *Memorial*; accordingly, the allegation is dealt with in paragraph 24.194 *et seq.* above.

75. Jabane - 16.05.1991

24.535 The second section of the legend on page 372 of OC 1 reads:

> "Protest following frequent incursions by the Nigerian police at JABANE"

24.536 Although the date of the protest is given, Cameroon has not indicated the date or dates on which the "frequent incursions" are alleged to have occurred.

24.537 The document relied upon by Cameroon, a Note dated 16 May 1991, from the Cameroonian Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé,

appears at page 375. The Note refers to "the *continuing presence* at Jabane of Nigerian police from the Federal State of Akwa Ibom" (emphasis added). It makes no other reference to Nigerian police, or "frequent incursions" by them. The Note fails to specify the date or period during which the "continuing presence" occurred. The allegation is said to be based on "information from the Cameroonian South West Province", without elaborating on the precise source.

24.538 Cameroon has failed to identify this incident with the necessary particularity, and the supporting evidence relied on is inadequate to substantiate the allegation with sufficient certainty. Accordingly, and quite apart from the general considerations referred to above, particularly in paragraphs 24.48 and 24.62, Nigeria denies that they give rise to any international responsibility on its part.

76. Jabane - 28.12.1993

24.539 The third section of the legend on page 372 of OC 1 reads:

> "Three Nigerian war vessels placed on permanent patrol at JABANE with more than 1,000 uniformed men aboard."

24.540 This allegation is related to allegations contained in paragraph 6.30 of the Memorial. Additionally, the document relied upon by Cameroon (a Note dated 31 January 1994 appearing at page 376) is the same as the document appearing in Annex MC 329 of the *Memorial*. These allegations and Annex are dealt with at paragraph 24.76 *et seq.* above.

77. Diamond - 28.12.1993

24.541 The legend on page 377 of OC 1 reads at item 40:

"Installation of an observation patrol at DIAMOND".

24.542 Although no document is referred to by Cameroon, Cameroon have exhibited at page 379 a document which relates to this allegation. That document is the same one as that appearing on page 376 - as already mentioned, this document was annexed to the *Memorial* as Annex MC 329, and is dealt with above in relation to the allegation analysed at paragraph 24.76 *et seq.*

78. Idabato - 01.09.1984

24.543 The first section of the legend on page 380 of OC 1 reads:

"Illegal policing of a Cameroonian pirogue by Nigerian customs men"

24.544 In support of its allegation, Cameroon refers to a "Verbal Protest Note" dated 7 August 1985. This appears to be the note exhibited on pages 382 and 383, which was sent by the Cameroonian Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé. However, that Note is not a Note of Protest, as it merely recounts an incident said to have occurred. The incident which is referred to is the interception of a Cameroonian vessel at "Forisane Fishery", which is "situated between Ekondo-Titi and Idabato" - in other words, not in "Idabato" (Atabong) itself.

24.545 Thus, the single document relied upon by Cameroon makes no reference to any incident having taken place at "Idabato"; and Cameroon has failed to identify the location of "Forisane Fishery" (although it appears from the map on page 380 of OC 1 that there is a place which Cameroon calls "Forisane" located over 15

kilometres to the east of "Idabato"). In any event, the Note does not identify the source of the information contained within it.

24.546 Cameroon did not regard this incident as sufficiently important to be worth including in MC 362 or MC 363, listing alleged Nigerian frontier violations.

24.547 Although Cameroon raised the alleged incident in the Cameroonian Ministry of Foreign Affairs' Note Verbale of 7 August 1985, Cameroon has provided no evidence that that Note was ever followed up by later diplomatic action. In the absence of any such further action, Cameroon's Note can be seen to have been no more than a "paper protest", which is not sufficient to keep alive indefinitely a claim in relation to the matter to which it refers. Given that the incident is alleged to have occurred in 1985, i.e. 14 years ago, it has, for the reasons given in paragraphs 24.52-24.54, now become barred by lapse of time.

24.548 Given in particular the factual inadequacy of Cameroon's allegation and the evidence submitted in support of it, and in view also of the time which has passed since the incident is said to have occurred and since the Cameroon Ministry of Foreign Affairs' Note of 7 August 1985, with no evidence of any further action on the part of Cameroon since then, Cameroon has failed adequately to establish that Nigeria bears international responsibility for the incident. Nigeria accordingly denies any such international responsibility.

79. Idabato - 30.12.1993

24.549 The second section of the legend on page 380 of OC 1 reads:

> "The Nigerian army deploys a contingent of 500 soldiers at IDABATO"

24.550 In support of this allegation, Cameroon refers to a Note dated 4 January 1994 from the Cameroon Ministry of External Relations to the Nigerian Embassy in Yaoundé. This Note (at page 384) refers to the deployment on 30 December 1993 of 500 soldiers in "Ida-Bato Sub-Division" in the South-West Province of Cameroon. Apart from that general indication as to the region in which the soldiers were said to have been deployed, the Note does not provide any information as to the specific location of the alleged deployment or any information as to the circumstances surrounding it (and although the Note adds certain other allegations, these do not directly relate to the alleged deployment on 30 December), or refer to any direct evidence for the allegations made in the Note.

24.551 In fact, the circumstances associated with Nigerian troop deployments in Bakassi at around this time are known. They are set out above, in paragraph 24.91 *et seq.* (and in particular, paragraph 24.94). They show that various Nigerian troop movements at that time were a lawful exercise of Nigeria's territorial sovereignty over Bakassi, and in no way a violation of any Cameroonian rights.

24.552 Accordingly, quite apart from the inadequacies of the Note relied upon by Cameroon as evidence substantiating the allegation made, and the general considerations referred to above (particularly in paragraphs 24.48 and 24.62), Nigeria denies that this alleged incident gives rise to any international responsibility on the part of Nigeria.

80. Idabato - 17-18.02.1994

24.553 The third section of the legend on page 380 of OC 1 reads:

"The Nigerian Army attacks IDABATO"

24.554 This allegation is related to the one contained in paragraph 6.34 of the *Memorial*. Additionally, the document referred to, a message dated 20 February 1994 which appears on page 386, also appears at Annex MC 339 of the *Memorial*. The allegation and the document are dealt with above in paragraph 24.86 *et seq.*

81. Rio del Rey - 16.05.1981 & 05.07.1985

24.555 The first section of the legend on page 387 of OC 1 reads:

> "A Nigerian military patrol violates Cameroonian territory by penetrating into the Bakassi Peninsula as far as the Rio del Rey. It attacks a vessel of the Cameroonian navy. Our sailors reply and repel the attackers."

24.556 Cameroon has supplied two dates which are four years apart in respect of this incident. Nigeria assumes that Cameroon is alleging that an incident took place on each of those dates which can be described in the way set out in the legend.

24.557 The Rio del Rey is a large body of water, and Cameroon has failed to indicate precisely where within it these alleged incidents took place.

24.558 In support of its allegations, Cameroon refers to two documents. The first, a Note dated 17 May 1981, appears on pages 389 and 390. It is apparent that the incident referred to, which took place on 16 May 1981, is the one referred to by Cameroon in paragraphs 6.13 to 6.27 of the *Memorial*. This allegation is dealt with above in paragraph 24.65 *et seq.*, where it is demonstrated that Cameroon was in fact responsible for that incident.

24.559 The second document, exhibited on pages 391 and 392, is a Note dated 2 December 1985 from the Cameroonian Ministry of Foreign Affairs addressed to the Nigerian

Embassy in Yaoundé. The Note alleges that a vessel of the Nigerian fleet had patrolled the waters of the Rio del Rey on 5 July 1985.

24.560 However:

(1) the Note is dated five months after the alleged incident, and contains no indication of the source of the information contained within it or any direct evidence to support the assertions made in it;

(2) makes no reference to any Nigerians "penetrating into the Bakassi Peninsula";

(3) gives no details of the circumstances surrounding the alleged incident;

(4) makes no reference to an attack on a vessel of the Cameroonian navy; and

(5) makes no reference to Cameroonian sailors repelling the "attackers".

24.561 Cameroon did not regard this incident as sufficiently important to be worth including in MC 362, listing alleged Nigerian frontier violations. Although Cameroon raised the alleged incident in the Cameroonian Ministry of Foreign Affairs' Note of 2 December 1985, Cameroon has provided no evidence that that Note was ever followed up by later diplomatic action. In the absence of any such further action, Cameroon's Note can be seen to have been no more than a "paper protest", which is not sufficient to keep alive indefinitely a claim in relation to the matter to which it refers. Given that the incident is alleged to have occurred in 1985, i.e. 14 years ago, any claim in respect of it has, for the reasons given in paragraphs 24.52-24.54, now become barred by lapse of time.

24.562 In addition, Cameroon's allegation and the evidence submitted in support of it is factually inadequate to establish Nigeria's international responsibility for the alleged

incident. In view also of the time which has passed since the incident is said to have occurred and since the Cameroon Ministry of Foreign Affairs' Note of 7 August 1985, with no evidence of any further action on the part of Cameroon since then, Cameroon has failed to make good its claim that Nigeria bears international responsibility for the incident. Nigeria accordingly denies any such international responsibility.

82. Rio del Rey - 16.06.1984

24.563 The second section of the legend on page 387 of OC 1 reads:

> "Installation of a provisional, and illegal, Nigerian Customs control post. A Cameroonian boat thus illegally searched is named 'KALU AND BROS'."

24.564 This allegation is related to an earlier allegation contained in paragraph 6.50 of the *Memorial*. Both the allegation and the documents annexed in OC 1 are dealt with above in paragraph 24.103 *et seq*.

N. Conclusions

24.565 Nigeria has carefully considered all of Cameroon's allegations of international responsibility on the part of Nigeria.

(1) As regards those allegations which concern alleged violations of Nigeria's treaty obligations, or obligations under customary international law, or which concern the alleged violation by Nigeria of the principle of *uti possidetis juris*, Nigeria has shown that it has in no way acted in violation of any obligations incumbent upon it under international law.

(2) As regards those allegations which arise out of specific incidents said by Cameroon to have occurred in circumstances giving rise to international responsibility on the part of Nigeria, Nigeria has shown that, on careful examination, none of Cameroon's allegations of international responsibility has been substantiated by Cameroon, upon whom, as the Applicant, the burden of establishing its allegations falls. In particular, *all* the allegations advanced by Cameroon reveal one or more of the following characteristics:

- they are confused and unclear as to central elements of the allegations being made (for example, as regards the date or location of the incident in question);

- they are supported (if at all) by documentary evidence which is inadequate, contradictory, or ambiguous, or all three;

- they concern Nigerian conduct in areas (particularly in Bakassi and Lake Chad) which were at all material times (and still are) subject to Nigerian sovereignty and which Nigeria occupies and administers as of right;

- they concern incidents in respect of which any international claim against Nigeria is now barred by lapse of time;

- they concern actions of persons whose conduct is not attributable to Nigeria;

- they concern incidents of an essentially insubstantial nature, occasioning no material damage to Cameroon;

- they concern incidents which have already been resolved at the appropriate local level.

24.566 For the reasons set out in this Chapter, Nigeria denies that the matters alleged by Cameroon give rise to any international responsibility on the part of Nigeria, and submits that Cameroon's claims of State responsibility on the part of Nigeria are unfounded in fact and law.

PART VI

NIGERIAN COUNTER-CLAIMS

CHAPTER 25

PARTICULARS OF THE NIGERIAN COUNTER-CLAIMS

A. Introduction

25.1 Under Article 80 (2) of the Court's Rules, a counter-claim "shall be made in the Counter-Memorial of the party presenting it, and shall appear as part of the submissions of that party".

25.2 In its *Application*, *Additional Application* and *Memorial*, Cameroon cited an increasing number and variety of "incidents" along the border and, at least with respect to some of these, it has also brought in issue the international responsibility of Nigeria.[425] The position of Nigeria with respect to these "claims" is set out above: see Chapter 24.

25.3 In principle, it is undesirable to confuse boundary or territorial disputes on the one hand and claims to State responsibility on the other. The resolution of boundary disputes has always been one of the most important functions of the Court, contributing both to settled relations between the two States concerned and, more generally, to eliminating threats to international peace and security. The Court continues to have on its docket many boundary cases, from different parts of the world. But very few boundary disputes referred to the Court have sought to add issues of State responsibility, and in the handful of cases where this has been done, the Court has never actually had occasion to deal with issues of State responsibility, which were withdrawn in the course of the proceedings.[426]

25.4 In the present case, Cameroon has sought to set a new pattern in this matter, one which is calculated only to make the eventual resolution of disputed boundaries more difficult. As noted during the oral hearings of its Preliminary Objections, Nigeria would have preferred to keep the issues before the Court to the essential

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425 *Application*, para. 20 (e') (Bakassi only); *Additional Application*, para. 17 (e) (Lake Chad only); *Memorial*, Chapters 6-7 (miscellaneous incidents along the border)

426 See for example *Anglo-Norwegian Fisheries Case*, ICJ Reports 1951 p. 116

and important ones, involving the location of the boundary in the various sectors.[427] It does not believe that the farrago of accusations of minor incidents, many of them old and stale, which characterises Cameroon's pleading, adds anything of substance to the issues before the Court.

25.5 However, the parties are and must be in a position of equality before the Court in all respects, and as will be demonstrated, there are many cases in which incursions are occurring along the border from the Cameroon side and for which Cameroon is internationally responsible. Therefore, Cameroon having advanced its State responsibility claims, Nigeria maintains the following counter-claims.

25.6 In compliance with Article 80 of the Rules, Nigeria accordingly brings counter-claims with respect to the matters set out below.[428] It reserves, to the same extent as has been (or in future may be) allowed to the Applicant, the right to present additional facts and legal considerations in respect of the incidents concerned and the damages resulting therefrom and to present evidence of additional incidents.[429]

25.7 In addition, Nigeria reserves the right to call upon the Court to "specify definitively" the course of the land boundary in case significant local disputes or disagreements may be identified in the course of the proceedings.[430]

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427 CR 98/2, pp. 37-38

428 Among the various incidents on record, only those which are not obviously stale, which are reasonably well documented, which were not resolved by local mediation or by some other means have been included in this Counter-Claim.

429 Judgment of the Court on Preliminary Objections, para. 100; Judgment on the Request for Interpretation, para. 15

430 See below, paragraph 26.5

B. The Bakassi Peninsula

25.8 As demonstrated in Part I above, Nigeria's administration of the fishing villages in Bakassi since 1960 has been, for the most part, continuous and accepted by the inhabitants. However, especially in the period since 1993, a series of incidents has occurred involving, *inter alia*, Cameroonian military attacks on ordinary fishermen and on fishing villages in the region, with consequent injury and loss. Particulars of these incidents follow. Nigeria reserves the right to provide further evidence in respect of each of these incidents in subsequent pleadings.

25.9 A Nigerian Protest Note dated 31 March 1977 (NC-M 354) states that:

> "At about 2.00 p.m. on that day [November 2 1976] a group of Cameroun gendarmes attacked Ufok Akpa Ikong and set the village ablaze. Fishing [equipment] and other properties of the fishermen were destroyed during the rampage and before retreating back into Cameroun, the [gendarmes] took Mr. Edet Asuquo with them."

25.10 A letter dated 3 October 1991 from the Department of State Services at Calabar to the Military Governor of Cross River State relates an incident which took place on 24 September 1991 when:

> "seven armed Cameroun gendarmes from Isangele Division in Western Cameroun visited Ntakaba Village in the riverine area of Akpabuyo Local Government Area and carried out illegal tax drive. They were led by their tax agent - Okon Mathew.
>
> During the illegal tax drive, the inhabitants of Ntakaba numbering about five hundred, refused to yield to the Gendarmes' demand. They argued that they have paid their taxes to the old Odukpani Local Government Area since they are all Nigerians living in Nigerian territory. When all efforts to force them to pay tax to the Camerounian Authority failed, the Gendarmes subjected them to severe beatings and house to house looting of their fish, fishing nets and other fishing materials worth about N100,000.00 (One hundred thousand Naira).

> The Gendarmes later left after the looting with a promise to reinforce and re-visit the Village in no distant date. This development has instilled fear in the villagers ..." (NC-M 355)

25.11 A Nigerian Protest Note dated 26 April 1993 states that reports have been received that Cameroonian gendarmes have been harassing Nigerian citizens living in Bakassi:

> "On the 26th February, 1993 at Abana in Mbo Local Government Area of Akwa Ibom State, about one hundred gendarmes invaded the Fishing settlements in the area and harassed and terrorised the Nigerian inhabitants." (NC-M 356)

25.12 A further Nigerian Protest Note dated 5 July 1993 protests about a Cameroonian military operation involving the Cameroonian Armed Forces stating:

> "This incident took place on the 27th June, 1993 at about 0800 hours with Military Helicopters fitted with rockets and several Naval boats attacked Nigerian Merchant Boats resulting in the sinking of twenty-three (23) such Nigerian boats without warning." (NC-M 357)

25.13 An internal official letter dated 30 January 1994 from Akpabuyo LGA to the Military Administrator of Cross River State relates the following two incidents:

(1) "On 17th January 1994, about 300 Camerounian gendarmes invaded and set ablaze Sandy Abana/Ikot Uka (named by the [Camerounian] Authorities as Charles fishing port) at about 1600 hours, and the inhabitants have no other option than [to flee] to Akwa Ine Akpa Ikang fishing port."

(2) "On 18th January 1994, Camerounian soldiers were said to have invaded Ijaw and Andoni fishing ports, harassed innocent citizens particularly the women and children. They visited Akwa Ine Akpa Ikang and warned inhabitants of the area to vacate the village before 0700 hours on 20th January 1994." (NC-M 349)

25.14 A note from the Nigerian Ministry of Foreign Affairs dated 7 February 1996 states:

> "On Saturday 3rd February, 1996, some elements of the Cameroon military forces launched an unprovoked attack on Nigeria's position in the Bakassi Peninsula. The Cameroon soldiers shelled the Nigerian position continuously for about four hours, resulting in considerable destruction of property, loss of life and injuries.
>
> ...
>
> It would be recalled that this is not the first time that Cameroonian soldiers have resorted to this type of aggression against Nigeria." (NC-M 358)

25.15 A Record of the audience granted to the Cameroonian Special Envoy by the Nigerian Head of State on 8 February 1996 mentions (NC-M 359, paragraph 7) that "the Head of State expressed that he was shocked to learn about the incident involving Cameroonian soldiers shelling the position of the Nigerian troops continuously for 4-5 hours. He said that there was no justification for the Cameroonian attack ...".

25.16 The incident provoked an exchange of correspondence with the United Nations. On 26 February 1996, Nigeria's Foreign Affairs Minister, Chief Tom Ikimi, sent a letter to the President of the Security Council which stated:

> "I wish to confirm that since the historic meeting in Kara, the Nigerian Government troops have made no attacks whatsoever on the Cameroonian positions in the Bakassi ... On the contrary, it is the Nigerian population in the Bakassi that have continued to be the victims of intimidation, harassment and attacks by Cameroonian soldiers. Cameroonian helicopter gunships have been invading the area and firing at Nigerian positions." (NC-M 360)

25.17 This incident was also referred to in an open letter from the Nigerian Minister for Foreign Affairs to his Cameroonian counterpart dated June 1996. This states:

> "I would like to observe that you specifically mentioned [in a letter of 19 June 1996] the shooting incident of February 3, 1996, which you know very well was provoked by some overzealous Cameroonian troops in their aggression and attacks on Nigerian positions in the Bakassi Peninsula."

It continues:

> "Ironically, you decided to remain silent on Cameroon's unprovoked attacks on Nigerian troops which took place on February 17, 18 and 19 1996 ... Curiously you again elected to be silent on yet other acts of Cameroonian aggression against Nigerian troops, like those which occurred in April 21, 22 and 23, to May 1 1996. If these attacks were not in utter contravention of the provisional measures of the ICJ, and the calls by the international community for restraint, one wonders what else they were." (NC-M 361)

25.18 A cable dated 1 February 1997 containing the full text of a message addressed to Mr. W. Stocker, regional delegate and Head of Mission of the International Committee of the Red Cross, states that Nigeria would like to place on record that:

> "between 16 and 28 November, 22-24 December 1996 respectively, the Cameroonian army shot at and captured over 40 fishermen and traders around Archibong [East] Atabong Creeks within Nigerian Territory. These innocent civilians were taken to Ekondo-Titi (a military base), allegedly for espionage and placed under custody ... as prisoners of war." (NC-M 362)

25.19 Again, evidently a series of incidents was involved, forming a consistent pattern.

25.20 A Nigerian Protest Note dated 25 March 1998 records that:

> "On Thursday, 19 March, 1998, a Cameroonian helicopter mounted with General Purpose Machine Gun attacked Nigerian troops and civilians in Archibong, Abana in the Bakassi [Peninsula] as well as Ikang environ. As a result of this incident, five (5) soldiers, twenty (20) market women and eighteen (18) school children casualties were recorded.

> The Ministry [of Foreign Affairs] further wishes to inform that the Cameroon Armed Forces and Gendarmes have of recent provoked Nigerian troops beyond tolerable limits. On their part, the Nigerian troops restrained themselves from being drawn into hostilities with the Cameroon Armed Forces out of respect for the ICJ ruling of 15 March, [1996], on interim measures towards peaceful resolution of the conflict." (NC-M 363)

25.21 A Nigerian Protest Note dated May 14 1998 sets out the events of 6 April, 18 April and 20 April 1998, when Cameroonian military units attacked Nigerian civilians in a series of hostile unprovoked acts:

> "On Monday 6 April, 1998 between 1200 and 1300 Hours, four rockets were fired into military area, and the civilian settlement at Utang Iyak GR 6108 and Moses Fishing Port GR 5912 respectively. The exploded shells destroyed houses at the creeks and wounded five (5) fishermen and twelve (12) women traders;
>
> At about 1455 Hours on the same day, another rocket was fired into West Atabong Area, destroying two (2) houses and killing two children;
>
> A further attack in this place at 1700 Hours the same day wounded one fisherman, Mr Asukwo Udo, within the area of Edem Abasi;
>
> Between 1030 and 1235 Hours on Saturday April 18, 1998, persistent firing came from hostile Creek towards civilian and military locations at East Atabong, leaving twenty-one civilian[s] and soldiers seriously wounded and
>
> On Monday April 20, 1998, at about 1600 Hours unprovoked attacks resulted in the death of one of the three (3) civilians who were fishing at Akwa Ine Itung Creek. The other two civilians were seriously wounded." (NC-M 364)

25.22 The 6 April attack is also documented by way of an internal military cable which states:

> "Four en[emy] rockets fired at own mil[itary] loc[ation] and civilian settlement on 6 Apr 98 at about 1300 Hrs. ... Utang Iyak and Moses

> Fishing Port, destroyed 2 houses, wounded 5 fishermen and 12 women traders. ... West Atabong, 2 houses destroyed and 2 children killed. ... Edem Abasi Creek, en[emy] troops fired and wounded some fishermen." (NC-M 365)

25.23 There is a letter from Bakassi LGA to the Military Administrator of Cross River State dated 10 April 1998 (NC-M 366), which also reports on the 6 April 1998 attack, and includes a report from an official who visited the site. Witness statements from the witnesses and a death certificate for one of the casualties are at NC-M 367 to NC-M 369.

25.24 At NC-M 370 there is a signed witness statement and death certificate for the attack on 20 April 1998. Three Nigerian fishermen were fishing in waters off Ine Odiong, on the southeast coast of Bakassi, and were blown onshore by freak weather. The Cameroonians fired on them indiscriminately, killing one and injuring the other two. In relation to further attacks by Cameroonian forces during February and March 1998, see also the medical report, signed witness statements, death certificates and compensation claims at NC-M 371 to NC-M 373.

25.25 A Nigerian Protest Note dated 15 April 1999 states that:

> "on 25th February 1999, twenty-five (25) Nigerian fisherman, who were on a fishing expedition in the Nigerian territorial waters within the Bakassi axis, claimed that they were forcibly harassed and chased away by Cameroonian gendarmes." (NC-M 374)

These fishermen also had their engine boats, fishing nets and other valuables seized by the gendarmes.

25.26 With respect to each of these incidents referred to in paragraphs 25.9 to 25.25, Nigeria claims a declaration that they engage the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the parties, then to be awarded by the Court in a subsequent phase of the case.

C. Lake Chad

25.27 As demonstrated in Part II above, Nigeria's administration of its villages in Lake Chad has been peaceful and continuous.

25.28 However, there have been a number of incidents at Kirta Wulgo, a settlement which falls within Nigeria even on the basis of the unratified IGN demarcation.

25.29 A letter dated 8 March 1985 from the Military Governor's Office at Maiduguri, Borno State, to the Chief of Staff at Lagos, states that on 15 February 1985 some Cameroonian officials paid a visit to the Ngala Local Government Area of Nigeria.

> "The officials were led by the Sous Prefect of Kousouri. They were conducted round the area ... by two Camerounian nationals residing in Kirta Wulgo Gana.
>
> Three days later after their first visit to the area (i.e. 18/2/85) the same officials paid another visit to the area and appointed a Bulama for Kirta Wulgo." (NC-M 375)

25.30 Kirta Wulgo is a settlement which is, on any view, in Nigerian territory. Its location can be seen from the *Atlas,* Map 42: its coordinates, taken by GPS reading, are 12°47.63' North, 14°07.14' East.

25.31 The letter continues:

> "On the 23rd of the same month, the Camerounian soldiers hoisted a flag in the Village. The officials gathered the people and urged them to co-operate with the newly appointed Bulama and further informed them that the village is part of Cameroun. They warned the people that anybody who disobeyed orders from the Camerounian Government would be sacked from the area ... In addition ... the Camerounians have gone as far as collecting taxes from Nigerian citizens. The amount ranges from N30-N120 with no receipts." (NC-M 375)

25.32 This information was sent by telegram from the Ministry of External Affairs in Lagos to the Nigerian Embassy in Yaoundé on 26 March 1985. This telegram states:

> "In view of urgency of matter FMGS [Federal Military Government's] concern conveyed to Cameroonian Embassy by Note Verbale. In the Note, FMG invites attention to danger posed by encroachment of Cameroonian soldiers into Nigerian territory and impresses upon Cameroon Government to desist from laying claim on Kirta Wulgo or any village on Nigerian territory in the spirit of good neighbourly relations between the countries." (NC-M 376)

25.33 An internal report from police operations in Maiduguri to the Nigerian Police in Lagos (NC-M 377) states that Cameroonian police came to Kirta Village on 30 June 1986 for a tax collection drive where they demanded the sum of 40 Naira from each adult. The Cameroonian Police claimed that the area in which the villagers were living was within the Cameroon Republic. The villagers refusing to yield to these demands, the Cameroonian Police left with the promise that they would come back on unscheduled dates, and anybody who failed to pay the tax would be arrested and taken to Kasari.

25.34 A letter dated 2 July 1986 from Ngala Local Government Area to the Military Governor's Office in Maiduguri repeats this information. It states that the Bulama of Kirta Wulgo had stated that one of the traditional rulers of Cameroon is harassing Nigerians, forcing them to pay a levy of 40 Naira each. It states that:

> "... about five (5) Camerounian officials went to the settlement called Kirta at the shores of the Lake Chad on Monday 30/6/86 around 2.00 p.m. and demanded 40.00 [Naira] from all taxable adults as Haraji. However our people refused to dance to their tune as they are not citizens of Cameroun. The Camerounians threatened the Villagers with shot guns and pistols but they showed no fear instead they too confronted the Camerounians with their local weapons. The Camerounians sensing the dangers inherent they absconded leaving a warning that they will go back and notify their authority to send a team of armed security agents to surround the settlement to intimidate

them so as to make the collection of the levy easy for them." (NC-M 378)

25.35 By a letter dated 4 May 1987 from Ngala Local Government Area to the Military Governor's Office in Maiduguri:

> "the village Head of Wulgo indicated that about (25) twenty five armed Camerounian Soldiers together with some twenty two civilians have occupied about 16 Villages at the Shores of the Lake Chad which are believed to be within our territory. The Camerounians went to the area in four vehicles, this happened on Saturday 2nd May, 1987. The Camerounian people have even hoisted their National Flag at both Doro Kirta and Kirta Wulgo." (NC-M 379)

25.36 A telex dated 6 May 1987 (NC-M 380) states that further information received from the joint patrol (which included representatives from Nigeria, Cameroon and Chad) reveals that about 200 Cameroonian soldiers with six vehicles arrived at Doro Kirta, hoisted the Cameroonian national flag and started writing down the names of the inhabitants of the area.

25.37 A further telex from Maiduguri to Lagos (NC-M 381) states that the allegation was investigated by a team including the Chairman of Ngala Local Government Area and a Lieutenant of the 21st Armoured Brigade. This team found the Cameroonian flag hoisted at Wulgo Kirta. The team then went on to Doro Kirta where the flag had already been removed by Nigerian soldiers, but were informed that Cameroonian soldiers had come back to Doro Kirta with artillery guns on 6 May 1987, combed the bush and gave orders that any Nigerian soldier sighted should be shot. The Cameroonians had already removed some Bulamas from the villages and substituted them with other people of their choice.

25.38 It was against the background of this succession of incidents that Nigeria sent a Protest Note dated 8 May 1987, in which it stated that:

> "reports have reached the [Nigerian] Ministry [of External Affairs] concerning intrusion by Camerounian soldiers and agents into some border villages in Ngala Local Government Area of Borno State in the Federal Republic of Nigeria. The reports also indicate that this has not been the first time such incidents have occurred. Reports further state that not only were the Nigerian nationals molested, but their villages were also occupied by the Camerounian soldiers and agents, the Nigerian flags in the villages were pulled down and burnt, and the Cameroon flag was hoisted in their place, even on Nigerian territory." (NC-M 382)

25.39 With respect to each of the incidents referred to in paragraphs 25.29 to 25.38, Nigeria claims a declaration that it engages the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the parties, then to be awarded by the Court in a subsequent phase of the case.

D. The Central Sector of the Land Boundary

25.40 On the face of the *Application* (paragraph 20) and the *Additional Application* (paragraph 17), it seems clear that issues of State responsibility in relation to the boundary sector North of the Bakassi Peninsula and South of Lake Chad are excluded from both *Applications*. Nonetheless, to the extent that the Court may hold that State responsibility claims in relation to an infringement of a disputed boundary are sufficiently connected with claims for the delimitation of that boundary, then Nigeria is entitled to bring its own counter-claims under Article 80 with respect to the central boundary sector.[431] Moreover it is entitled, as a minimum, to bring counter-claims in relation to any incidents or matters occurring at any time prior to the filing of its *Counter-Memorial*, quite apart from any

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[431] This does not in any way prejudice the position of Nigeria in relation to the scope of Cameroon's *Applications*. On their proper interpretation Cameroon's *Applications* invoke incidents of State responsibility only in Bakassi and Lake Chad, and the *Additional Application* limits itself in the central land sector to questions of delimitation. The Court has held that the "dispute" as to the central sector is within its jurisdiction and is part of the case. Since Cameroon treats boundary delimitation and State responsibility issues in relation to boundary incidents as closely related, it cannot object to Nigeria bringing State responsibility counterclaims under Article 80 of the Rules in relation to that sector.

allowance the Court may make to both parties to continue to present further incidents occurring subsequently as bases for State responsibility claims.[432]

25.41 In fact there have been a series of incidents involving official Cameroon claims to areas in the region of the boundary, or at least official support by Cameroon gendarmes and local authorities for claims made by individuals, often in the context of land disputes. Along a poorly delimited, and largely undemarcated, boundary of this length, the occurrence of some incidents is only to be expected. It must be stressed that no-one, on either side, is in a position to specify definitively the geographical coordinates of this boundary, and the relevant treaties certainly do not do so. Accordingly, in formulating these counter-claims, Nigeria limits itself (a) to those cases where in its view it is clear that the relevant incidents have involved an incursion into areas indisputably Nigerian; (b) to cases which have not been locally and peaceably resolved, and which are not otherwise stale; and (c) to those cases where loss or damage, over and above the mere assertion of a boundary dispute or claim, can be seen to have occurred.

25.42 Particulars of these claims follow. Nigeria reserves the right to provide further evidence in respect of each of these in subsequent pleadings. A sketch map showing the locations of these incidents can be found at Map 76 in the *Atlas*.

(i) Tipsan

25.43 The position with respect to the international boundary in the area of Kontcha and Tipsan is dealt with in Chapter 19 above. It is shown there that in accordance with the relevant instruments, the town of Kontcha is in Cameroon, while Tipsan is clearly in Nigeria. *Atlas* Map 77 shows quite clearly the position of the boundary and the location of Tipsan, the River Tipsan and Kontcha.

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[432] Judgment on the *Request for Interpretation*, paras. 14-15

25.44 On 9 August 1998, the Chief of Kontcha in Cameroon, Abubakar Ibrahim, invited *Jauro* Umar of the village of Tipsan to his palace. The Chief of Kontcha told the *Jauro* that Tipsan was in Cameroonian territory and that he did not want to see Nigerian officials (immigration, police, game guards, hospital staff etc.) in the village any longer. He ordered all the inhabitants of Tipsan to leave and move to Bospan, a village three kilometres from the border into Nigeria. He also stated that the Cameroonian people wanted to invade and attack the Nigerians, but the Chief of Kontcha had managed to prevent that. Furthermore he ordered that the *Jauro* was not to collect taxes from the villagers in Tipsan again (NC-M 383).

25.45 A later internal memorandum states that the villagers were ordered to relocate to Panpeni, about ten kilometres from the border (NC-M 384).

25.46 This is only the most recent example of Cameroon laying claim to Tipsan. Documents exhibited by Cameroon reveal that, in March 1993,[433] a François-Roger N'Nang sent a letter to the Minister of Foreign Affairs at Yaoundé, in which he stated that the Cameroon-Nigeria border at Kontcha had been brought back to the river Tipsan, three kilometres from Kontcha, whereas the cairn of stones demarcating the boundary left behind by the Germans fixed the boundary nine kilometres from Kontcha. Cameroon is therefore claiming six kilometres of Nigerian territory.

25.47 A further Cameroonian document dated 10 March 1994[434] states that the Nigerian Government has set up an emigration/immigration police station in Tipsan, which is said to be five kilometres inside Cameroon territory.

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433 This date stems from information in Cameroon's *Observations* on Nigeria's *Preliminary Objections* (Annex OC 1 p. 305 and NC-M 385), but the letter produced as proof is undated. The information in the letter is *ex facie* wrong and unreliable anyway: this was not an area where German pillars or cairns ever existed.

434 Annex MC 346, NC-M 386

25.48 Another Cameroonian document dated 24 March 1994[435] states that Nigeria has constructed an emigration/immigration post 6.5 kilometres into Cameroonian territory in the hamlet of Tipsan, where 30 Nigerian soldiers have been installed by the Nigerian Chief. Again this letter refers to a cairn of stones set up to mark the frontier by the German colonials, but again this is erroneous. It bears repeating that this was not a German international border at any stage of Cameroon's history.

25.49 Cameroon sent a Protest Note on 19 June 1996 regarding the construction of buildings in Tipsan. Cameroon in this letter reaffirms its claim to Kontcha, which Nigeria does not claim and has never claimed. A second Protest Note of 24 January 1997 protests at "the Nigerian military occupation of Tipsan, a Cameroonian locality in the Faro and Deo Division". A further Protest Note of 15 April 1997 states that on 16 December 1996, Nigeria "occupied the Cameroonian locality of Tipsan" (NC-M 388 to NC-M 390).

(ii) Maduguva

25.50 The area around Maduguva in Nigeria has been an area where Cameroon has been making incursions into and claims over Nigerian territory. Map 78 in the *Atlas* shows the international boundary as the watershed, and the villages of Guri, Maduguva and Gaddamayo, together with adjoining farmlands, clearly within Nigerian sovereign territory.

25.51 There appear to have been three incidents associated with the Maduguva/Burha area. The first, dated from 1980, is raised in Cameroon's *Observations* on Nigeria's *Preliminary Objections*. Due to uncertainties about the demarcation of the boundary, it was agreed that the area in question was to be treated as no-man's-land, until such time as the authorities agreed a definitive demarcation of

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435 Annex MC 353, NC-M 387

the border in the area. This was a sensible local resolution of the difficulty and it is mentioned here only by way of background to the following events.

25.52 The second matter is referred to in a letter dated 23 April 1986 (NC-M 391) from the Directorate of Internal Security to the State Director of Security at Yola, Adamawa State, referring in turn to a further letter of 17 April 1986. According to this letter, the Lamido (or Chief) of Burha in Cameroon had broken the "standstill" agreement earlier arrived at, and had authorised his people to enter Nigerian territory and confiscate farmlands belonging to the people of Guri. The Chief of Burha had claimed that Maduguva, Jilingwa and Micha were part of his land, and therefore part of Cameroonian territory. The Chief of Burha had allowed Nigerians to harvest these farmlands, provided they pay 20 large sacks of guinea corn to him. If they failed to do so, the Chief threatened to wait until their crops were ripe and then destroy them by letting his cattle and horses graze on the land, thereby causing economic hardship to the Nigerian farmers. Cameroonians had, with the sanction of the Chief of Burha, destroyed the trees and crops on Nigerian farmlands and planted their own crops instead.

25.53 Furthermore in the village of Gaddamayo, one kilometre from Maduguva, Cameroonian soldiers had infiltrated into the village and harassed the Nigerian people, particularly the vehicle owners.

25.54 In the event that these lands were to be successfully taken over by the Chief of Burha, about 3,000 Nigerians would be displaced.

25.55 The third matter is set out in a letter dated 4 June 1997 signed by a number of citizens of Guri to the Emir of Mubi and copied to a number of local officials (NC-M 392). It states that in April 1997, the people of Cameroon seized Nigerian land including a settlement called Tsukwatha, which the Chief of Burha claims belonged to his father, and took away most of the farmlands which belong to the local people. This letter states that there was a small settlement on the Micha

mountain, and there is a cairn of stones left there by the "white people" to mark the boundary. The letter sets out the names of 63 Nigerian farmers who were arrested, those who were to be arrested, those who had the farms seized by Cameroonians and those who were arrested and jailed, all on the orders of the Chief of Burha.

25.56 Finally there is a letter from the Chairman of Mubi North LGA to the Permanent Secretary for Political and Security Affairs of Adamawa State dated 24 September 1998, which states that:

> "... Camerounian [nationals] of Burha in Cameroun Republic have encroached into the Nigerian Territory. The Camerounians are harassing and intimidating People of Maduguva Village in Nigeria. Similarly they were seen planting trees on Nigerian soil. They were also [spotted] patrolling the planted trees on the 22nd September, 1998 ..." (NC-M 393).

25.57 To the extent that the events recounted in these documents involve support by Cameroon officials and gendarmes for the land claims of the Lamido of Burha, or to the extent that the Lamido of Burha was himself acting on behalf of Cameroon in seeking to convert a private dispute over land tenure into a claim to sovereignty over territory, there is a basis for a claim of State responsibility on the part of Nigeria.

(iii) Tosso/Mberogo

25.58 The area of Tosso/Mberogo is shown at Map 79 in the *Atlas*. It can be seen that the two villages clearly belong to Nigeria. Nonetheless they have been the subject of incidents and incursions from Cameroon.

25.59 A Nigerian Protest Note to Cameroon dated 4 October 1976 states:

> "on the 4th of May, 1976, sixteen policemen and soldiers from the Republic of Cameroun crossed the border into Nigerian villages of Tosso, Bissaula and Mbererogo under the pretext that they were trying to locate the boundary demarcation between Nigeria and Cameroun. On their arrival in these villages, they started to question the local chiefs who refused to cooperate with them because they knew that the presence of those armed policemen and soldiers was a prelude to the arrival of Cameroun Government tax officials who had previously harassed the Nigerians living on the border and forced them to pay tax to the Cameroun Government.
>
> No sooner had these sixteen policemen and soldiers left than another group of armed soldiers numbering about forty arrived in the area, harassed the people and demanded them to pay tax and if they refused to abide by the soldiers' demand, they would have all their huts burnt down to ashes. This group of soldiers then immediately hoisted the Cameroun flag at the village of Bissaula and that of Lebo and proceeded to Mbererogo village where they looted the houses of two prominent people, in the persons of Docte Bamgsama and Aliyu Dunyi while Danfulani Chidawa and Danladi Kurma were beaten and kicked with army boots for failing to give the soldiers goats and chickens they demanded." (NC-M 394)

25.60 This event is now rather old, and if it were an isolated case would not warrant bringing a claim at this stage. But subsequent events make it clear that it is not an isolated event but an aspect of a longer running dispute.

25.61 Thus on 26 September 1994, two Cameroonian gendarmes, Paul Massango and Ngomdandi Manretoing, entered Mberogo armed with an assault rifle and a sub-machine gun as well as several rounds of ammunition. They there arrested two Nigerian officials, Dantata Asura (a tax collector) and Adamu Dauda (an Immigration Officer). Cameroon admits to this attack at paragraph 6.108 of its *Memorial*, though it refers to Mberogo as "Mbelogo". This attack is further evidenced in the documents exhibited by Cameroon at Annexes MC 370, 371 and 372 of the *Memorial*, which also appear at NC-M 395. The fact that Cameroon tendered these official documents in evidence can reasonably be taken as an

admission by Cameroon of their contents. The presence of two armed gendarmes in Mberogo on that date was also admitted by Cameroon in a Note dated 30 November 1994 from the Cameroon Ministry of Foreign Affairs to the Nigerian Embassy in Yaoundé (which Note appears at NC-M 396 and at page 338 of Annex OC 1 of Cameroon's Observations on Nigeria's Preliminary Objections).

25.62 In a report by Police Commissioner Oyakhire, Military Administrator of Taraba State, it is said that on 16 February 1995 (NC-M 397), Cameroonian gendarmes renewed their attacks on Nigerians in Mberogo Village, which compelled the villagers to flee from their homes to safety.

25.63 Further, in the same report, Police Commissioner Oyakhire revealed that in June 1995 (NC-M 398) the Brigade Commander of the gendarmes at Furu-Awa in Cameroon wrote a letter to the Nigerian immigration Officers in Tosso and warned them to leave Mberogo, a Nigerian village, within twenty-four hours.

(iv) Okwa/Matene

25.64 In its *Observations* on Nigeria's *Preliminary Objections*, Cameroon discloses a Note dated 28 January 1987,[436] in which it alleges that on 27 October 1986, Nigerians from the village of Okwa invaded the Cameroonian village of Matene, set fire to houses in the area and destroyed some crops. The Nigerian Protest Note in reply (NC-M 399) states that the dispute between the two villages:

> "arose out of the attempts by Chief Kakwa Kunu, head of Matene village, to impose a levy of N100 on Okwa villagers who crossed a 1912 beacon, which he claimed was the [boundary] between Nigeria and Cameroun, to reap the products of the 50 kilometre-wide belt of forest [separating] the two communities. ... The Matene villagers [launched] an attack on Okwa village on July 29, 1986, across the

[436] Annex OC 1, page 350

> "Mawam Okwa" stone, which the two communities had all along recognised as the boundary between them, burning down 80 huts and kidnapping two men and two children back to Matene."

25.65 Clearly Cameroon should bear State responsibility for a violent attack by its own officers, which it discloses in its own pleadings. A map of the area appears as Map 80 in the *Atlas*, based on a Russian map of the area, and with the relevant villages marked in English.

25.66 With respect to each of the incidents mentioned in paragraphs 25.44-25.65, Nigeria claims a declaration that they engage the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the parties, then to be awarded by the Court in a subsequent phase of the case.

E. Other cases

25.67 These specific cases unfortunately do not exhaust the roster of incidents in which Cameroon gendarmes or other officials have made claims to areas along the border on the Nigerian side, or have harassed the Nigerian population. Further claims are set out in various diplomatic Notes sent by Nigeria to Cameroon, and details are given below.

25.68 A Protest Note dated 18 January 1971 states that 19 Nigerian citizens, including an Inland Revenue official, Mr Etim Okon, were arrested on 3 September 1970 on the Nigerian side of the border near Atabong. They were subjected to severe maltreatment and taken to Buea; where they were incarcerated for two months. Furthermore, the note reveals that their property was confiscated by members of the Cameroon military patrol who distributed it amongst themselves. (NC-M 400)

25.69 In 1975, Cameroonians from the area of Saam crossed the border at Mayo Gertugal into the area of Barup in Nigeria, settled down, built houses and established farms. Since then they have claimed that the area belongs to the Republic of Cameroon and have refused to be assessed for tax, backing their resistance with violence. On 27 August 1975, two Nigerian Police Constables, in the area on a tax assessment exercise were manhandled and forced to sign a declaration accepting responsibility for starting troubles. The Ward Head of Barup Village was abducted, tied up and taken to Nwa in Cameroon. (NC-M 401)

25.70 A situation report dated 11 January 1982 reveals that the Village Head of Atabong was beaten up and his two houses in Atabong were set on fire by the Cameroonian authorities because he had not paid them money which they had demanded. The same report notes that there had been previous complaints about gendarmes molesting Nigerian citizens on Bakassi. (NC-M 402)

25.71 A letter dated 20 December 1982 from the Secretary of the State Government to the Ministry of Foreign Affairs refers to the molestation of Nigerian fishermen by Cameroonian gendarmes. It states that for the past three months Cameroonian gendarmes have been molesting Nigerian fishermen in the villages of Atabong, Abana and Inua Mba, forcibly seizing smoked fish and fishing materials, like canoes and nets, and extorting money. Nigerians who have refused to pay have been subjected to "all forms of inhuman treatments in detention camps". (NC-M 403)

25.72 On 8 October 1984 three armed Cameroon soldiers crossed Bua Village in Borno State and arrested 12 Nigerians with their commercial vehicle. They were detained for eight hours and released on payment of 100 Naira each. (NC-M 404)

25.73 In October 1984 a Cameroonian by the name of Mr Simon Ndongmu claimed the Village of Mubi-Toso, which is in Nigeria. He paraded himself as the head of the Village and collected taxes on behalf of the Cameroon Government. Cameroon

authorities also built a block of two classrooms in Labo Village and provided medical facilities in the area. (NC-M 405)

25.74 On 18 June 1985 some armed Cameroonian soldiers, under the guise of looking for armed bandits, crossed into Borno State through Jilbe control posts and entered the Nigerian town of Kuma, where they illegally conducted a house-to-house search. (NC-M 406)

25.75 On 8 February 1990 two armed Cameroonian gendarmes, Haman Adama and David Kwameni, entered Nigeria near the village of Karanchi. This armed incursion is evidenced by documents appearing at pages 247 and 249 of Annex OC 1 of Cameroon's Observations on Nigeria's Preliminary Objections which also appear at NC-M 407. The fact that Cameroon tendered these official documents in evidence can reasonably be taken as an admission by Cameroon that the incident took place.

25.76 A military cable from Calabar to Abuja from March 1994 reveals that at 1030 hours on 28 February 1994, 125 Cameroonian soldiers invaded the Nigerian settlement of Ine Ekpo on the Bakassi Peninsula. The soldiers drove away the villagers from the village. (NC-M 408)

25.77 A letter dated 9 May 1994 from the Cross River State Director of Security to the Director General reveals an incident where a Nigerian soldier, not on duty, was shot and killed by Cameroonian soldiers. (NC-M 409)

25.78 A military report dated 27 July 1995 states that on 26 July 1995, a civilian boat *en route* from Oron in Nigeria to Cameroon carrying 15 passengers capsized near Atabong West. The Chief of West Atabong, assisted by members of the Nigerian army, quickly organised a rescue mission. While the rescuers were in the course of bringing the drowning people to the village, Cameroonian soldiers in a flying boat attacked them and fired at them with their guns. This incident followed an

earlier attack on 24 July 1995 when Cameroonian soldiers raided Nigerian fishermen near West Atabong, beat them up and carried away their fishing materials. The document also reports incessant extortion and harassment by the Cameroonian soldiers. (NC-M 410)

25.79 With respect to each of the incidents referred to in paragraphs 25.68-25.78, Nigeria claims a declaration that they engage the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the parties, then to be awarded by the Court in a subsequent phase of the case.

PART VII

CONCLUSIONS AND SUBMISSIONS

CHAPTER 26

CONCLUSIONS AND SUBMISSIONS

26.1 Before setting out the submissions of the Federal Republic of Nigeria, certain formal reservations need to be made.

26.2 In its *Additional Application*, Cameroon asks the Court:

> "to adjudge and declare ...
>
> ...
>
> (f) That, in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of the Federal Republic of Nigeria in regard to the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea."

26.3 In the Submissions contained in its *Memorial*, Cameroon asked the Court to determine that the land boundary follows a line described by reference to the provisions of certain instruments. For the reasons already given, those provisions do not, of themselves, specify definitively the actual course of the boundary. Nor would the process of applying those instruments *in situ* be one of mere demarcation, due to the significant difficulties of interpretation and application that have actually arisen at various points along the boundary, as well as the existence in certain localities of well-established local agreements.[437]

26.4 Cameroon having defined the issue in terms of Article 17(f) of its *Application* - and the Court having held, by reference to an alleged dispute over Tipsan, that the whole boundary is in dispute[438] - it is in Nigeria's view not open to Cameroon now to say that all it asks the Court to do is to make a declaration in terms of

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[437] For details see above, Chapter 19

[438] See the Judgment of 11 June 1998 at paras. 92-94

particular instruments, without reference to the actual boundary *in situ*. There is however a risk that Cameroon will resile from the position taken in its *Application*, and the effect of the *ne ultra petita* rule might then present a difficulty. Against that contingency, Nigeria accordingly asks the Court (pursuant to Article 80 of the Rules, if necessary) to specify definitively the course of the boundary from the mouth of the River Ebeji to the sea.

26.5 Nigeria reserves the right to ask the Court to specify definitively the course of the boundary *in situ*, to the extent that it may emerge in subsequent pleadings that Cameroon does not accept that course, as described in more detail by Nigeria. In other words, it reserves the right to ask the Court, to the extent that further differences of opinion arise between the parties in the course of the pleadings, to resolve those differences by interpreting and applying the relevant instruments, so as to allow the boundary to be subsequently fixed *in situ* by ordinary process of demarcation.

SUBMISSIONS

For the reasons given herein, the Federal Republic of Nigeria, reserving the right to amend and modify these submissions in the light of the further pleadings in this case, respectfully requests that the Court should:

(1) as a preliminary matter decide to deal with the issues relating to the land boundary.

(2) as to Lake Chad, adjudge and declare:

that sovereignty over the areas in Lake Chad defined in Chapter 14 of this *Counter-Memorial* (including the Nigerian settlements identified in paragraph 14.5 hereof) is vested in the Federal Republic of Nigeria;

that the proposed "demarcation" under the auspices of the Lake Chad Basin Commission, not having been ratified by Nigeria, is not binding upon it;

that outstanding issues of the delimitation and demarcation within the area of Lake Chad are to be resolved by the Parties to the Lake Chad Basin Commission within the framework of the constitution and procedures of the Commission.

(3) as to the central sectors of the land boundary:

acknowledging that the parties recognise that the boundary between the mouth of the Ebeji River and the point on the thalweg of the Akpa Yafe which is opposite the mid-point of the mouth of Archibong Creek is delimited by the following instruments:

(a) paragraphs 3-60 of the Thomson/Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931;

(b) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, section 6(1) and the Second Schedule thereto;

(c) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913;

(d) Articles XV-XVII of the Anglo-German Treaty of 11 March 1913; and

acknowledging further that uncertainties as to the interpretation and application of these instruments, and established local agreements in certain areas, mean that the actual course of the boundary cannot be definitively specified merely by reference to those instruments;

affirm that the instruments mentioned above are binding on the parties (unless lawfully varied by them) as to the course of the land boundary.

(4) as to the Bakassi Peninsula, *adjudge and declare:*

that sovereignty over the Peninsula (as defined in Chapter 11 hereof) is vested in the Federal Republic of Nigeria;

(5) as to the maritime boundary, *adjudge and declare:*

(a) that the Court lacks jurisdiction to deal with Cameroon's claim-line, to the extent that it impinges on areas claimed by Equatorial Guinea and/or São Tomé e Príncipe (which areas are provisionally identified in Figure 20.3 herein), or alternatively that Cameroon's claim is *inadmissible to that extent; and*

(b) that the parties are under an obligation, pursuant to Articles 76 and 83 of the United Nations Law of the Sea Convention, to negotiate in good faith with a view to agreeing on an equitable delimitation of their respective maritime zones, such delimitation to take into account, in particular, the need to respect existing rights to explore and exploit the mineral resources of the continental shelf, granted by either party prior to 29 March 1994 without written protest from the other, and the need to respect the reasonable maritime claims of third States;

(6) as to Cameroon's claims of State responsibility, *adjudge and declare* that those claims are unfounded in fact and law; and

(7) as to Nigeria's counter-claims as specified in Part VI of this *Counter-Memorial*, *adjudge and declare* that Cameroon bears responsibility to Nigeria

in respect of those claims, the amount of reparation due therefor, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment.

21 May 1999

Alhaji Abdullahi Ibrahim OFR, SAN.
Honourable Attorney-General of the Federation
and Minister of Justice,
Agent of the Federal Republic of Nigeria