INTERNATIONAL COURT OF JUSTICE

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CASE CONCERNING THE LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA

(CAMEROON *v.* NIGERIA: EQUATORIAL GUINEA INTERVENING)

Geographical context ¾ Historical background ¾ Territories' changing status ¾ Principal relevant instruments for determination of the land and maritime boundary.

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Lake Chad area.

Boundary delimitation ¾ Relevant instruments (Milner-Simon Declaration, 1919; Thomson-Marchand Declaration, 1929-1930; Henderson-Fleuriau Exchange of Notes, 1931) ¾ Boundary delimited and approved by Great Britain and France ¾ Confirmation provided by demarcation work of Lake Chad Basin Commission, 1983 to 1991 ¾ Co-ordinates of Cameroon-Nigeria-Chad tripoint and Ebeji mouth.

Nigerian claims based on its presence in certain Lake Chad areas ¾ Nigerian argument based on historical consolidation of title ¾ Controversial theory which cannot replace modes of acquisition of title recognized by international law ¾ Nigerian argument that peaceful possession,

coupled with acts of administration, represents manifestation of sovereignty ¾ Cameroon the holder of a pre-existing title over the lake areas in question ¾ Test whether or not Cameroon manifestly acquiesced in transfer of its title to Nigeria ¾ No acquiescence by Cameroon to relinquishment of its title over the area in favour of Nigeria ¾ Sovereignty over settlements situated to the east of the boundary continues to lie with Cameroon.

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Land boundary from Lake Chad to the Bakassi Peninsula.

Relevant instruments of delimitation (Thomson-Marchand Declaration, Henderson-Fleuriau Exchange of Notes; British Order in Council, 1946; Anglo-German Agreements of 11 March and 12 April 1913) ¾ Court's task not to delimit the boundary de novo *nor to demarcate it, but to "specify definitively" the course of the boundary as fixed by the relevant instruments ¾ Dispute over interpretation or application of certain provisions of those instruments ¾ Examination of each disputed sector.*

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Bakassi Peninsula.

Anglo-German Agreement of 11 March 1913 ¾ Nigeria's arguments that Agreement defective: Preamble to General Act of Berlin Conference, 1885; no approval by German Parliament; Article 289 of Versailles Treaty, 1919 ¾ Arguments rejected.

Whether Great Britain entitled to transfer title over Bakassi under the Anglo-German Agreement of 11 March 1913 ¾ 1884 Treaty of Protection between Great Britain and Kings and Chiefs of Old Calabar ¾ Legal status of such treaties of protection ¾ Great Britain in a position in 1913 to determine its boundary in Nigeria with Germany, including in the southern part.

British mandate over territory of Cameroons ¾ Bakassi covered by terms of mandate ¾ Separate status of mandated territory preserved by British Order in Council of 1923 ¾ Territorial situation unchanged under trusteeship arrangements ¾ Boundary between Bakassi and Nigeria remained an international boundary.

Negotiations on maritime matters ¾ Nigeria had accepted at the time that it was bound by Articles XVIII to XXII of the Anglo-German Agreement of 11 March 1913 and had recognized Cameroonian sovereignty over Bakassi Peninsula ¾ Parties' common position also reflected in geographic pattern of their oil concessions up to 1991 ¾ Anglo-German Agreement valid and applicable in its entirety.

Other bases of Nigeria's claim to Bakassi ¾ Restatement of Court's findings regarding the theory of historical consolidation of title ¾ Historical consolidation cannot in any event give Nigeria title over Bakassi where its "occupation" of the peninsula is adverse to Cameroon's prior conventional title ¾ Nigeria unable to act à titre de souverain *before late 1970s, as it did not then regard itself as having title to Bakassi ¾ No sufficient evidence after late 1970s that Cameroon acquiesced in relinquishment of its title in favour of Nigeria ¾ Boundary delimited by Articles XVIII to XX of Anglo-German Agreement of 11 March 1913 ¾ Sovereignty over Bakassi lies with Cameroon.*

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Maritime boundary between Cameroon and Nigeria.

Nigeria's argument that Court must refuse to carry out in whole or part the delimitation requested by Cameroon because it affects areas claimed by third States and requirement of prior negotiation not satisfied ¾ Nigeria's eighth preliminary objection ¾ Protection afforded by Article 59 of the Statute may not always be sufficient, in particular in respect of maritime delimitations involving several States ¾ Court unable to rule on Cameroon's claims in so far as they may affect rights of Equatorial Guinea and Sao Tome and Principe ¾ Mere presence of those two States in Gulf of Guinea does not in itself preclude the Court's jurisdiction over maritime delimitation between the Parties ¾ Court's finding in its Judgment of 11 June 1998 that negotiations between Cameroon and Nigeria concerning the entire maritime delimitation had been conducted in the 1970s ¾ Articles 74 and 83 of 1982 Convention on the Law of the Sea do not require that judicial proceedings be suspended while new negotiations are conducted if a party alters its claim in the course of proceedings ¾ Those Articles do not preclude the Court from drawing the maritime boundary between Cameroon and Nigeria without prior simultaneous negotiations between those two States and Equatorial Guinea and Sao Tome and Principe.

Maritime boundary up to point G ¾ Boundary located to west of Bakassi Peninsula and not to east ¾ Relevant instruments (Anglo-German Agreement of 11 March 1913, Yaoundé II Declaration, 1971; Maroua Declaration, 1975) ¾ Nigeria's argument that Maroua Declaration not valid in international law because not ratified ¾ Maroua Declaration entered into force immediately on signature ¾ Nigeria's argument that its constitutional rules on treaty ratification had not been complied with ¾ Heads of State regarded as empowered to represent their States for purpose of performing all acts relating to conclusion of a treaty ¾ Letter of 23 August 1974 from Head of State of Nigeria to Head of State of Cameroon cannot be regarded as specific warning to Cameroon that Nigerian Government would not be bound by any commitment entered into by its

Head of State ¾ Yaoundé II and Maroua Declarations must be considered as binding and imposing a legal obligation on Nigeria ¾ Maritime delimitation must be considered as having been established on a conventional basis up to and including point G by Anglo-German Agreement of 11 March 1913 and Yaoundé II and Maroua Declarations.

Maritime boundary beyond point G ¾ Paragraph 1 of Articles 74 and 83 of 1982 Law of the Sea Convention concerning delimitation of the continental shelf and exclusive economic zone ¾ Parties' agreement that delimitation between their maritime areas to be effected by a single line ¾ So-called equitable principles/relevant circumstances method, involving first drawing an equidistance line then considering whether there are factors calling for adjustment or shifting of that line in order to achieve an "equitable result" ¾ Definition of Parties' relevant coastlines ¾ Equidistance line cannot be extended beyond point where it might affect rights of Equatorial Guinea ¾ Absence of circumstances which might require adjustment of equidistance line: configuration and length of relevant coastlines; presence of Bioko Island ¾ Parties' oil practice not a factor to be taken into account for purposes for maritime delimitation in this case ¾ Equidistance line represents an equitable result for delimitation of the area in which the Court has jurisdiction to rule.

Course of boundary of maritime areas.

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Cameroon's submissions on Nigeria's State responsibility and Nigeria's counter-claims regarding Cameroon's State responsibility.

Nigeria under an obligation expeditiously and without condition to withdraw its administration and military and police forces from areas of Lake Chad falling under Cameroonian sovereignty and from the Bakassi Peninsula ¾ Cameroon under an obligation expeditiously and without condition to withdraw any administration or military or police forces which may be present in areas along the land boundary from Lake Chad to the Bakassi Peninsula which pursuant to the Judgment fall within the sovereignty of Nigeria ¾ Nigeria under the same obligations as regards any administration or military or police forces which may be present in areas along the land boundary from Lake Chad to the Bakassi Peninsula which pursuant to the Judgment fall within the sovereignty of Cameroon ¾ Co-operation between the Parties in implementing the Judgment ¾ Cameroon's undertaking at the hearings in regard to protection of Nigerians living in the Bakassi Peninsula or the Lake Chad area ¾ Court takes note of that undertaking ¾ Cameroon's submissions seeking guarantees of non-repetition cannot be upheld ¾ Injury suffered by Cameroon by reason of the occupation of its territory sufficiently addressed by the very fact of the Judgment and of the evacuation of Cameroonian territory occupied by Nigeria ¾ Cameroon has not shown that Nigeria acted in breach of the provisional measures indicated in the Order of

11 March 1996 ¾ Boundary incidents ¾ Neither Party has sufficiently proved the facts which it alleges or their imputability to the other Party ¾ Rejection of Cameroon's submissions on Nigeria's State responsibility and of Nigeria's counter-claims.

JUDGMENT

Present: *President* GUILLAUME; *Vice-President* SHI; *Judges* ODA, RANJEVA, HERCZEGH, FLEISCHHAUER, KOROMA, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK, AL-KHASAWNEH, BUERGENTHAL, ELARABY; *Judges* ad hoc MBAYE, AJIBOLA; *Registrar* COUVREUR.

In the case concerning the land and maritime boundary between Cameroon and Nigeria,

between

the Republic of Cameroon,

represented by

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

as Agent;

Mr. Maurice Kamto, Dean, Faculty of Law and Political Science, University of Yaoundé II, member of the International Law Commission, *avocat* at the Paris Bar, *société d'avocats* Lysias,

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

as Co-Agents, Counsel and Advocates;

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

as Deputy Agent, Counsel and Advocate;

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

as Special Adviser and Advocate;

Mr. Michel Aurillac, former Minister, Honorary *conseiller d'Etat*, retired *avocat*,

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

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

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

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

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

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

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

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

Mr. Jean-Marc Thouvenin, Professor, University of Paris X-Nanterre, *avocat* at the Paris Bar, *société d'avocats* Lysias,

as Counsel and Advocates;

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

Mr. Jean-Pierre Mignard, *avocat* at the Paris Bar, *société d'avocats* Lysias,

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

as Counsel;

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

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

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

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

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

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

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

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

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

Mr. Ousmane Mey, former Provincial Governor,

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

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

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

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

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

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

as Advisers;

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

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

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

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

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

Mr. André Loudet, Cartographic Engineer,

Mr. André Roubertou, *ingénieur général de l'armement C.R.* (hydrographer),

as Experts;

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

as Translator-Interpreter;

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

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

Mr. Richard Penda Keba, Certified Professor of History, *cabinet* of the Minister of State for Justice, former *proviseur de lycées*,

as Research Assistants;

Mr. Boukar Oumara,

Mr. Guy Roger Eba'a,

Mr. Aristide Esso,

Mr. Nkende Forbibake,

Mr. Nfan Bile,

Mr. Eithel Mbocka,

Mr. Olinga Nyozo'o,

as Media Officers;

Ms Renée Bakker,

Ms Laurence Polirsztok,

Ms Mireille Jung,

Mr. Nigel McCollum,

Ms Tete Béatrice Epeti-Kame,

as Secretaries,

and

the Federal Republic of Nigeria,

represented by

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

as Agent;

Chief Richard Akinjide SAN, Former Attorney-General of the Federation, member of the English Bar, former member of the International Law Commission,

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

as Co-Agents;

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

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

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

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

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

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

as Counsel and Advocates;

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

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

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

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

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

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

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

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

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

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

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

Mr. Jalal Arabi, member, Nigerian Legal Team,

Mr. Gbola Akinola, member, Nigerian Legal Team,

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

as Counsel;

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

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

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

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

Colonel A. B. Maitama, Ministry of Defence,

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

as Advisers;

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

Mr. Dick Gent, United Kingdom Hydrographic Office,

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

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

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

Mr. Bruce Daniel, International Mapping Associates,

Ms Victoria J. Taylor, International Mapping Associates,

Ms Stephanie Kim Clark, International Mapping Associates,

Mr. Robin Cleverly, Exploration Manager, NPA Group,

Ms Claire Ainsworth, NPA Group,

as Scientific and Technical Advisers;

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

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

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

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

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

as Administrators,

Mr. Geoffrey Anika,

Mr. Mau Onowu,

Mr. Austeen Elewodalu,

Mr. Usman Magawata,

as Media Officers,

with, as State permitted to intervene in the case,

the Republic of Equatorial Guinea,

represented by

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

as Agent and Counsel;

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

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

H.E. Mr. Antonio Nzambi Nlonga, Attorney-General of the State,

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

H.E. Juan Oló Mba Nzang, former Minister of Mines and Energy,

as Advisers;

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

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

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

as Legal Experts;

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

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

as Technical Experts,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 29 March 1994 the Government of the Republic of Cameroon (hereinafter referred to as "Cameroon") filed in the Registry of the Court an Application instituting proceedings against the Government of the Federal Republic of Nigeria (hereinafter referred to as "Nigeria") concerning a dispute described as "relat[ing] essentially to the question of sovereignty over the Bakassi Peninsula". Cameroon further stated in its Application that the "delimitation [of the maritime boundary between the two States] has remained a partial one and [that], despite many attempts to complete it, the two parties have been unable to do so". Consequently, it requested the Court, "[i]n order to avoid further incidents between the two countries, . . . to determine the course of the maritime boundary between the two States beyond the line fixed in 1975".

In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately communicated to the Government of Nigeria by the Registrar.

3. On 6 June 1994 Cameroon filed in the Registry an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described in that Additional Application as "relat[ing] essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad". Cameroon also requested the Court, in its Additional Application, "to specify definitively" the frontier between the two States from Lake Chad to the sea, and asked it to join the two Applications and "to examine the whole in a single case". In order to found the jurisdiction of the Court, the Additional Application referred to the "basis of . . . jurisdiction . . . already . . . indicated" in the Application instituting proceedings of 29 March 1994.

4. On 7 June 1994 the Registrar communicated the Additional Application to the Government of Nigeria.

5. At a meeting held by the President of the Court with the representatives of the Parties on 14 June 1994 the Agent of Cameroon explained that his Government had not intended to submit a separate Application and that the Additional Application had instead been designed as an amendment to the initial Application; the Agent of Nigeria, for his part, declared that his Government did not object to the Additional Application being treated as an amendment to the initial Application, so that the Court might examine the whole in a single case.

6. By an Order of 16 June 1994 the Court indicated that it had no objection to such a procedure and fixed 16 March 1995 and 18 December 1995 respectively as the time-limits for the filing of the Memorial of Cameroon and the Counter-Memorial of Nigeria.

7. Pursuant to Article 40, paragraph 3, of the Statute, all States entitled to appear before the Court were notified of the Application.

8. Cameroon duly filed its Memorial within the time-limit prescribed for that purpose.

9. Within the time-limit fixed for the filing of its Counter-Memorial, Nigeria filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Accordingly, by an Order dated 10 January 1996 the President of the Court, noting that under Article 79, paragraph 3, of the Rules of Court the proceedings on the merits were suspended, fixed 15 May 1996 as the time-limit within which Cameroon might present a written statement of its observations and submissions on the preliminary objections.

Cameroon duly filed such a statement within the time-limit so prescribed, and the case became ready for hearing in respect of the preliminary objections.

10. Since the Court included upon the Bench no judge of the nationality of the Parties, each Party exercised its right under Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Cameroon chose Mr. Kéba Mbaye and Nigeria chose Mr. Bola Ajibola.

11. By a letter of 10 February 1996, received in the Registry on 12 February 1996, Cameroon made a request for the indication of provisional measures under Article 41 of the Statute. By an Order dated 15 March 1996 the Court, after hearing the Parties, indicated certain provisional measures.

12. The Court held hearings on the preliminary objections raised by Nigeria from 2 to 11 March 1998. In its Judgment of 11 June 1998 the Court found that it had jurisdiction to adjudicate upon the merits of the dispute and that Cameroon's requests were admissible. The Court rejected seven of the preliminary objections raised by Nigeria and declared that the eighth did not have an exclusively preliminary character, and that it would rule on it in the Judgment to be rendered on the merits.

13. By an Order of 30 June 1998 the Court fixed 31 March 1999 as the new time-limit for the filing of Nigeria's Counter-Memorial.

14. On 28 October 1998 Nigeria submitted a request for interpretation of the Judgment delivered by the Court on 11 June 1998 on the preliminary objections; that request became a new case, separate from the present proceedings. By Judgment dated 25 March 1999 the Court decided that Nigeria's request for interpretation was inadmissible.

15. On 16 November 1998 the Government of the Republic of Equatorial Guinea (hereinafter "Equatorial Guinea") requested a copy of the Memorial filed by Cameroon and of the maps produced to the Court by the Parties at the oral proceedings on the preliminary objections. The Parties were consulted in accordance with Article 53, paragraph 1, of the Rules of Court and informed the Court that they did not object to the communication to the Government of Equatorial Guinea of the documents requested by it. The documents in question were transmitted to Equatorial Guinea on 8 December 1998.

16. By an Order of 3 March 1999 the Court extended to 31 May 1999 the time-limit for the filing of the Counter-Memorial.

Nigeria duly filed its Counter-Memorial within the time-limit as thus extended. That pleading included counter-claims.

17. At a meeting held by the President of the Court with the Agents of the Parties on 28 June 1999 Cameroon indicated that it did not object to Nigeria's submission of the counter-claims set out in the Counter-Memorial, and the Parties agreed that a Reply and a Rejoinder were necessary in this case.

By an Order of 30 June 1999 the Court declared Nigeria's counter-claims admissible, decided that Cameroon should submit a Reply and Nigeria a Rejoinder and fixed 4 April 2000 and 4 January 2001 respectively as the time-limits for the filing of these two pleadings. In its Order the Court also reserved the right of Cameroon to present its views in writing a second time on the Nigerian counter-claims in an additional pleading which might be the subject of a subsequent Order.

The Reply and the Rejoinder were duly filed within the time-limits so fixed.

18. On 30 June 1999 the Republic of Equatorial Guinea filed in the Registry an Application for permission to intervene in the case pursuant to Article 62 of the Statute. According to that Application, the object of the intervention sought was to "protect the legal rights of the Republic of Equatorial Guinea in the Gulf of Guinea by all legal means available" and to "inform the Court of the nature of the legal rights and interests of Equatorial Guinea that could be affected by the Court's decision in the light of the maritime boundary claims advanced by the parties to the case before the Court". In its Application Equatorial Guinea further indicated that it "d[id] *not* seek to become a party to the case".

In accordance with the provisions of Article 83 of the Rules of Court, the Application for permission to intervene by Equatorial Guinea was immediately communicated to Cameroon and to Nigeria, and the Court fixed 16 August 1999 as the time-limit for the filing of written observations by those States. Each of the two States filed its observations within the time-limit so fixed, and those observations were transmitted to the opposing Party and to Equatorial Guinea. On 3 September 1999 the Agent of Equatorial Guinea informed the Court of the views of his Government on the observations made by the Parties; Equatorial Guinea noted that neither of the two Parties had objected in principle to the intervention, and it expressed the view that hearings were not necessary to decide whether the Application for permission to intervene should be granted.

By an Order of 21 October 1999 the Court, considering that Equatorial Guinea had sufficiently established that it had an interest of a legal nature which could be affected by any judgment which the Court might hand down for the purpose of determining the maritime boundary between Cameroon and Nigeria, authorized it to intervene in the case to the extent, in the manner and for the purposes set out in its Application. The Court further fixed the following time-limits for the filing of the written statement and the written observations referred to in Article 85, paragraph 1, of the Rules of Court: 4 April 2001 for the written statement of Equatorial Guinea and 4 July 2001 for the written observations of Cameroon and of Nigeria on that statement.

The written statement of Equatorial Guinea and the written observations of the Parties were duly filed within the time-limits so fixed.

19. By a letter of 24 January 2001 the Agent of Cameroon, referring to the above-mentioned Order of 30 June 1999, informed the Court that his Government wished to present its views in writing a second time on Nigeria's counter-claims and suggested that 4 July 2001 be fixed as the time-limit for the filing of that additional pleading. The Agent of Nigeria indicated in a letter of 6 February 2001 that his Government had no objection to that request. By an Order of 20 February 2001 the Court authorized the presentation by Cameroon of an additional pleading relating exclusively to the counter-claims submitted by Nigeria and fixed 4 July 2001 as the time-limit for the filing of that pleading.

Cameroon duly filed the additional pleading within the time-limit so fixed, and the case became ready for hearing.

20. At a meeting held by the President of the Court with the Agents of the Parties and of Equatorial Guinea on 12 September 2001 the three States expressed their agreement that the oral proceedings on the merits should open early in 2002; they also presented their views on the organization of those proceedings. The Court fixed 18 February 2002 as the date for the opening of the oral proceedings and adopted the schedule for them. By letters dated 24 September 2001 the Registrar informed the Parties and Equatorial Guinea of that decision.

21. By a letter of 8 January 2002 Cameroon informed the Court that it wished to be given the opportunity to reply orally, even if only briefly, to any observations Nigeria might make during its last round of oral arguments relating to the counter-claims it had submitted. Nigeria was duly informed of that request, which the Court decided to grant, the Agents of the Parties being so informed by letters from the Registrar dated 7 February 2002.

22. By a letter of 11 January 2002 Cameroon expressed the desire to produce further documents in accordance with Article 56 of the Rules of Court. As provided in paragraph 1 of that Article, those documents were communicated to Nigeria. By a letter of 29 January 2002 the Co-Agent of Nigeria informed the Court that his Government objected to the production of those new documents, on the grounds, *inter alia*, that Cameroon had not explained why the documents, although described as being "of great importance", "[had] not [been] submitted to the Court at the appropriate time, and in any event prior to the closure of the written procedure". That letter was communicated to the Agent of Cameroon, who, by a letter of 1 February 2002, explained *inter alia* that in the light of the argument developed in Nigeria's Rejoinder his Government had "found that a number of documents whose production it had not judged indispensable at the time of its Reply turned out to be more important than previously thought". The Court decided not to authorize the production of the documents, with the exception of those relating to events subsequent to Cameroon's Reply. The Court also decided to authorize Nigeria, if it so desired, to file documents in reply to the new documents produced by Cameroon and to present any observations on them during the oral proceedings. The Agents of the Parties were so informed by letters from the Registrar dated 7 February 2002.

23. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made available to the public at the opening of the oral proceedings. After consulting the Parties and Equatorial Guinea, the Court decided that the same should apply to the written statement of the intervening State and the written observations of the two Parties on that statement.

24. Public hearings were held from 18 February to 21 March 2002, at which the Court heard the oral arguments and replies of:

For Cameroon: H.E. Mr. Amadou Ali,
Mr. Maurice Kamto,
Mr. Alain Pellet,
Mr. Peter Y. Ntamark,
Mr. Malcolm N. Shaw,
Mr. Bruno Simma,
Mr. Jean-Pierre Cot,
Mr. Daniel Khan,
Mr. Joseph-Marie Bipoun Woum,
Mr. Michel Aurillac,
Mr. Christian Tomuschat,
Mr. Maurice Mendelson,
Mr. Jean-Marc Thouvenin,
Mr. Olivier Corten,
Sir Ian Sinclair.

For Nigeria: H.E. the Honourable Musa E. Abdullahi,
Mrs. Nella Andem-Ewa,
Sir Arthur Watts,
Mr. Ian Brownlie,
Mr. Georges Abi-Saab,
Alhaji Abdullahi Ibrahim,
Mr. Alastair Macdonald,
Mr. James Crawford,
Mr. Richard Akinjide.

For Equatorial Guinea: H.E. Mr. Ricardo Mangue Obama N'Fube,
Mr. David A. Colson,
Mr. Pierre-Marie Dupuy.

At the hearings questions were put by Members of the Court, to which replies were given orally and in writing. Each Party submitted its written comments, in accordance with Article 72 of the Rules of Court, on the other's written replies.

*

25. In its Application, Cameroon made the following requests:

"On the basis of the foregoing statement of facts and legal grounds, the Republic of Cameroon, while reserving for itself the right to complement, amend or modify the present Application in the course of the proceedings and to submit to the Court a request for the indication of provisional measures should they prove to be necessary, asks the Court to adjudge and declare:

(a) that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)*;

(c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;

(d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian Peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;

(e) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian Peninsula of Bakassi;

(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;

(e") that, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria.

(f) In order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions."

In its Additional Application, Cameroon made the following requests:

"On the basis of the foregoing statement of facts and legal grounds, and subject to the reservations expressed in paragraph 20 of its Application of 29 March 1994, the Republic of Cameroon asks the Court to adjudge and declare:

(a) that sovereignty over the disputed parcel in the area of Lake Chad is Cameroonian, by virtue of international law, and that that parcel is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)*, and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

(c) that the Federal Republic of Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, has violated and is violating its obligations under treaty law and customary law;

(d) that in view of these legal obligations, mentioned above, the Federal Republic of Nigeria has the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad;

(e) that the internationally unlawful acts referred to under *(a)*, *(b)*, *(c)* and *(d)* above involve the responsibility of the Federal Republic of Nigeria;

(e') that consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria.

(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. In the course of the written proceedings the following submissions were presented by the Parties:

On behalf of the Government of Cameroon,

in the Memorial:

"The Republic of Cameroon has the honour to request that the Court be pleased to adjudge and declare:

(a) That the lake and land boundary between Cameroon and Nigeria takes the following course:

— from the point at longitude 14° 04' 59"9999 E of Greenwich and latitude 13° 05' 00"0001 N, it then runs through the point located at longitude 14° 12' 11"7 E and latitude 12° 32' 17"4 N;

— 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.

(b) That in consequence, *inter alia*, sovereignty over the Peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(c) That the boundary of the maritime zones appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows the following course:

— from the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe to 'point 12', that boundary is determined by the 'compromise line' entered on British Admiralty Chart No. 3343 by the Heads of State of the two countries on 4 April 1971 (Yaoundé Declaration) and, from that 'point 12' to 'point G', by the Declaration signed at Maroua on 1 June 1975;

— from point G that boundary then swings south-westward in the direction which is indicated by points G, H, I, J and K represented on the sketch-map on page 556 of this Memorial and meets the requirement for an equitable solution, up to the outer limit of the maritime zones which international law places under the respective jurisdictions of the two Parties.

(d) That by contesting the courses of the boundary defined above under *(a)* and *(c)*, the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)* and its legal commitments concerning the demarcation of frontiers in Lake Chad and land and maritime delimitation.

(e) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian Peninsula of Bakassi, and by making repeated incursions, both civilian and military, all along the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.

(f) That the Federal Republic of Nigeria has the express duty of putting an end to its civilian and military presence in Cameroonian territory and, in particular, of effecting an immediate and unconditional withdrawal of its troops from the occupied area of Lake Chad and from the Cameroonian Peninsula of Bakassi and of refraining from such acts in the future;

(g) That the internationally wrongful acts referred to above and described in detail in the body of this Memorial involve the responsibility of the Federal Republic of Nigeria.

(h) That, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in a form to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon.

The Republic of Cameroon further has the honour to request the Court to permit it to present an assessment of the amount of compensation due to it as reparation for the damage it has suffered as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria, at a subsequent stage of the proceedings.

These submissions are lodged subject to any points of fact and law and any evidence that may subsequently be lodged; the Republic of Cameroon reserves the right to complete or amend them, as necessary, in accordance with the Statute and the Rules of Court."

in the Reply:

"The Republic of Cameroon has the honour to request that the Court be pleased to adjudge and declare:

(a) That the land boundary between Cameroon and Nigeria takes the following course:

— from the point at longitude 14° 04' 59"9999 east of Greenwich and latitude 13° 05' 00"0001 north, it then runs through the point located at longitude 14° 12' 11"7005 east and latitude 12° 32' 17"4013 north, in accordance with the Franco-British Declaration of 10 July 1919 and the Thomson-Marchand Declaration of 29 December 1929 and 31 January 1930, confirmed by the Exchange of Letters of 9 January 1931;

— thence it follows the course fixed by these instruments as far as the 'very prominent peak' described in paragraph 60 of the Thomson-Marchand Declaration 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.

(b) That, in consequence, *inter alia*, sovereignty over the Peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(c) That the boundary of the maritime zones appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows the following course:

— from the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe to ‘point 12’, that boundary is determined by the ‘compromise line’ entered on British Admiralty Chart No. 3433 by the Heads of State of the two countries on 4 April 1971 (Yaoundé Declaration) and, from that ‘point 12’ to ‘point G’, by the Declaration signed at Maroua on 1 June 1975;

— from point G that boundary then swings south-westward in the direction which is indicated by Points G, H with co-ordinates 8° 21’ 16” east and 4° 17’ 00” north, I (7° 55’ 40” east and 3° 46’ 00” north), J (7° 12’ 08” east and 3° 12’ 35” north) and K (6° 45’ 22” east and 3° 01’ 05” north), represented on the sketch-map R 21 on page 411 of this Reply and which meets the requirement for an equitable solution, up to the outer limit of the maritime zones which international law places under the respective jurisdictions of the two Parties.

(d) That in attempting to modify unilaterally and by force the courses of the boundary defined above under *(a)* and *(c)*, the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)* and its legal commitments concerning land and maritime delimitation.

(e) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian Peninsula of Bakassi, and by making repeated incursions, both civilian and military, all along the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.

(f) That the Federal Republic of Nigeria has the express duty of putting an end to its civilian and military presence in Cameroonian territory and, in particular, of effecting an immediate and unconditional withdrawal of its troops from the occupied area of Lake Chad and from the Cameroonian Peninsula of Bakassi and of refraining from such acts in the future.

(g) That the internationally wrongful acts referred to above and described in detail in the Memorial of the Republic of Cameroon and in the present Reply engage the responsibility of the Federal Republic of Nigeria.

(h) That, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in a form to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon.

The Republic of Cameroon further has the honour to request the Court to permit it to present an assessment of the amount of compensation due to it as reparation for the damage it has suffered as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria, at a subsequent stage of the proceedings.

The Republic of Cameroon also asks the Court to declare that the counter-claims of the Federal Republic of Nigeria are unfounded both in fact and in law, and to reject them.

These submissions are lodged subject to any points of fact and law and any evidence that may subsequently be lodged; the Republic of Cameroon reserves the right to supplement or amend them, as necessary, in accordance with the Statute and the Rules of Court."

in the additional pleading entitled "Observations of Cameroon by Way of Rejoinder":

"The Republic of Cameroon has the honour to request that it may please the International Court of Justice to adjudge and declare that the counter-claims of the Federal Republic of Nigeria, which appear to be inadmissible in light of the arguments put forward in the Rejoinder, in any event have no basis in fact or in law, and to reject them."

On behalf of the Government of Nigeria,

in the Counter-Memorial:

"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."

in the Rejoinder:

"For the reasons given herein, the Federal Republic of Nigeria, reserving the right to amend and modify these submissions in the light of any further pleadings in this case, respectfully requests that the Court should:

(1) *as to the Bakassi Peninsula*, adjudge and declare:

(a) that sovereignty over the Peninsula is vested in the Federal Republic of Nigeria;

(b) that Nigeria's sovereignty over Bakassi extends up to the boundary with Cameroon described in Chapter 11 of Nigeria's Counter-Memorial;

(2) *as to Lake Chad*, adjudge and declare:

(a) that the proposed 'demarcation' under the auspices of the Lake Chad Basin Commission, not having been ratified by Nigeria, is not binding upon it;

(b) that sovereignty over the areas in Lake Chad defined in paragraph 5.9 of this Rejoinder and depicted in Figs. 5.2 and 5.3 facing page 242 (and including the Nigerian settlements identified in paragraph 4.1 of this Rejoinder) is vested in the Federal Republic of Nigeria;

(c) 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;

(d) that in any event, the operation intended to lead to an overall delimitation of boundaries on Lake Chad is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon;

(3) *as to the central sectors of the land boundary*, adjudge and declare:

(a) that the Court's jurisdiction extends to the definitive specification of the land boundary between Lake Chad and the sea;

(b) that the mouth of the Ebeji, marking the beginning of the land boundary, is located at the point where the north-east channel of the Ebeji flows into the feature marked 'Pond' on the Map shown as Fig. 7.1 of this Rejoinder, which location is at latitude 12° 31' 45" N, longitude 14° 13' 00" E (Adindan Datum);

(c) that subject to the clarifications, interpretations and variations explained in Chapter 7 of this Rejoinder, the land boundary between the mouth of the Ebeji 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 terms of:

(i) paragraphs 2-61 of the Thomson-Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931;

(ii) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, section 6 (1) and the Second Schedule thereto;

(iii) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913; and

(iv) Articles XV to XVII of the Anglo-German Treaty of 11 March 1913;

(d) that the effect of the first two of those instruments, as clarified, interpreted or varied in the manner identified by Nigeria, is as set out in the Appendix to Chapter 8 and delineated in the maps in the Atlas submitted with this Rejoinder;

(4) *as to the maritime boundary,* adjudge and declare:

(a) that the Court lacks jurisdiction over Cameroon's maritime claim from the point at which its claim line enters waters claimed by or recognised by Nigeria as belonging to Equatorial Guinea, or alternatively that Cameroon's claim is inadmissible to that extent;

(b) that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is inadmissible, and that the parties are under an obligation, pursuant to Articles 74 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;

(c) in the alternative, that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is unfounded in law and is rejected;

(d) that, to the extent that Cameroon's claim to a maritime boundary may be held admissible in the present proceedings, Cameroon's claim to a maritime boundary to the west and south of the area of overlapping licences, as shown on Fig. 10.2 of this Rejoinder, is rejected;

(e) that the respective territorial waters of the two States are divided by a median line boundary within the Rio del Rey;

(f) that, beyond the Rio del Rey, the respective maritime zones of the parties are to be delimited in accordance with the principle of equidistance, to the point where the line so drawn meets the median line boundary with Equatorial Guinea at approximately 4° 6' N, 8° 30' E;

(5) *as to Cameroon's claims of State responsibility*, adjudge and declare:

that, to the extent to which any such claims are still maintained by Cameroon, and are admissible, those claims are unfounded in fact and law; and

(6) *as to Nigeria's counter-claims*, as specified in Part VI of the Counter-Memorial and in Chapter 18 of this Rejoinder, adjudge and declare:

that Cameroon bears responsibility to Nigeria in respect of each 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."

27. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Cameroon,

"Pursuant to the provisions of Article 60, paragraph 2, of the Rules of Court the Republic of Cameroon has the honour to request that the International Court of Justice be pleased to adjudge and declare:

(a) That the land boundary between Cameroon and Nigeria takes the following course:

— from the point designated by the co-ordinates 13° 05' north and 14° 05' east, the boundary follows a straight line as far as the mouth of the Ebeji, situated at the point located at the co-ordinates 12° 32' 17" north and 14° 12' 12" east, as defined within the framework of the LCBC and constituting an authoritative interpretation of the Milner-Simon Declaration of 10 July 1919 and the Thomson-Marchand Declarations of 29 December 1929 and 31 January 1930, as confirmed by the Exchange of Letters of 9 January 1931; in the alternative, the mouth of the Ebeji is situated at the point located at the co-ordinates 12° 31' 12" north and 14° 11' 48" east;

— from that point it follows the course fixed by those instruments as far as the 'very prominent peak' described in paragraph 60 of the Thomson-Marchand Declaration 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 from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs XVI to XXI of the Anglo-German Agreement of 11 March 1913.

(b) That in consequence, *inter alia*, sovereignty over the peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(c) That the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course:

— from the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe to point ‘12’, that boundary is confirmed by the ‘compromise line’ entered on British Admiralty Chart No. 3433 by the Heads of State of the two countries on 4 April 1971 (Yaoundé II Declaration) and, from that point 12 to point ‘G’, by the Declaration signed at Maroua on 1 June 1975;

— from point G the equitable line follows the direction indicated by points G, H (co-ordinates 8° 21’ 16” east and 4° 17’ north), I (7° 55’ 40” east and 3° 46’ north), J (7° 12’ 08” east and 3° 12’ 35” north), K (6° 45’ 22” east and 3° 01’ 05” north), and continues from K up to the outer limit of the maritime zones which international law places under the respective jurisdiction of the two Parties.

(d) That in attempting to modify unilaterally and by force the courses of the boundary defined above under *(a)* and *(c)*, the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)*, as well as its legal obligations concerning the land and maritime delimitation.

(e) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian peninsula of Bakassi, and by making repeated incursions throughout the length of the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.

(f) That the Federal Republic of Nigeria has the express duty of putting an end to its administrative and military presence in Cameroonian territory and, in particular, of effecting an immediate and unconditional evacuation of its troops from the occupied area of Lake Chad and from the Cameroonian peninsula of Bakassi and of refraining from such acts in the future.

(g) That in failing to comply with the Order for the indication of provisional measures rendered by the Court on 15 March 1996 the Federal Republic of Nigeria has been in breach of its international obligations.

(h) That the internationally wrongful acts referred to above and described in detail in the written pleadings and oral argument of the Republic of Cameroon engage the responsibility of the Federal Republic of Nigeria.

(i) That, consequently, on account of the material and moral injury suffered by the Republic of Cameroon reparation in a form to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon.

The Republic of Cameroon further has the honour to request the Court to permit it, at a subsequent stage of the proceedings, to present an assessment of the amount of compensation due to it as reparation for the injury suffered by it as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria.

The Republic of Cameroon also asks the Court to declare that the counter-claims of the Federal Republic of Nigeria are unfounded both in fact and in law, and to reject them."

On behalf of the Government of Nigeria,

"The Federal Republic of Nigeria respectfully requests that the Court should

1. *as to the Bakassi Peninsula,* adjudge and declare:

   (a) that sovereignty over the Peninsula is vested in the Federal Republic of Nigeria;

   (b) that Nigeria's sovereignty over Bakassi extends up to the boundary with Cameroon described in Chapter 11 of Nigeria's Counter-Memorial;

2. *as to Lake Chad,* adjudge and declare:

   (a) that the proposed delimitation and demarcation under the auspices of the Lake Chad Basin Commission, not having been accepted by Nigeria, is not binding upon it;

   (b) that sovereignty over the areas in Lake Chad defined in paragraph 5.9 of Nigeria's Rejoinder and depicted in Figs. 5.2 and 5.3 facing page 242 (and including the Nigerian settlements identified in paragraph 4.1 of Nigeria's Rejoinder) is vested in the Federal Republic of Nigeria;

(c) that in any event the process which has taken place within the framework of the Lake Chad Basin Commission, and which was intended to lead to an overall delimitation and demarcation of boundaries on Lake Chad, is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon;

3. *as to the central sectors of the land boundary*, adjudge and declare:

(a) that the Court's jurisdiction extends to the definitive specification of the land boundary between Lake Chad and the sea;

(b) that the mouth of the Ebeji, marking the beginning of the land boundary, is located at the point where the north-east channel of the Ebeji flows into the feature marked 'Pond' on the map shown as Fig. 7.1 of Nigeria's Rejoinder, which location is at latitude 12º 31' 45" N, longitude 14º 13' 00" E (Adindan Datum);

(c) that subject to the interpretations proposed in Chapter 7 of Nigeria's Rejoinder, the land boundary between the mouth of the Ebeji and the point on the thalweg of the Akpa Yafe which is opposite the midpoint of the mouth of Archibong Creek is delimited by the terms of the relevant boundary instruments, namely:

(i) paragraphs 2-61 of the Thomson-Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931;

(ii) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, (Section 6 (1) and the Second Schedule thereto);

(iii) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913; and

(iv) Articles XV to XVII of the Anglo-German Treaty of 11 March 1913; and

(d) that the interpretations proposed in Chapter 7 of Nigeria's Rejoinder, and the associated action there identified in respect of each of the locations where the delimitation in the relevant boundary instruments is defective or uncertain, are confirmed;

4. *as to the maritime boundary*, adjudge and declare:

(a) that the Court lacks jurisdiction over Cameroon's maritime claim from the point at which its claim line enters waters claimed against Cameroon by Equatorial Guinea, or alternatively that Cameroon's claim is inadmissible to that extent;

(b) that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is inadmissible, and that the parties are under an obligation, pursuant to Articles 74 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;

(c) in the alternative, that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is unfounded in law and is rejected;

(d) that, to the extent that Cameroon's claim to a maritime boundary may be held admissible in the present proceedings, Cameroon's claim to a maritime boundary to the west and south of the area of overlapping licenses, as shown in Fig. 10.2 of Nigeria's Rejoinder, is rejected;

(e) that the respective territorial waters of the two States are divided by a median line boundary within the Rio del Rey;

(f) that, beyond the Rio del Rey, the respective maritime zones of the parties are to be delimited by a line drawn in accordance with the principle of equidistance, until the approximate point where that line meets the median line boundary with Equatorial Guinea, i.e. at approximately 4º 6' N, 8º 30' E;

5. *as to Cameroon's claims of State responsibility*, adjudge and declare:

that, to the extent to which any such claims are still maintained by Cameroon, and are admissible, those claims are unfounded in fact and law; and,

6. *as to Nigeria's counter-claims* as specified in Part VI of Nigeria's Counter-Memorial and in Chapter 18 of Nigeria's Rejoinder, adjudge and declare:

that Cameroon bears responsibility to Nigeria in respect of each 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."

*

28. At the end of the written statement submitted by it in accordance with Article 85, paragraph 1, of the Rules of Court, Equatorial Guinea stated *inter alia*:

> "Equatorial Guinea's request is simple and straightforward, founded in the jurisprudence of the Court, makes good sense in the practice of the international community and is consistent with the practice of the three States in the region concerned: its request is that the Court refrain from delimiting a maritime boundary between Nigeria and Cameroon in any area that is more proximate to Equatorial Guinea than to the Parties to the case before the Court. Equatorial Guinea believes it has presented a number of good reasons for the Court to adopt this position."

29. At the end of the oral observations submitted by it with respect to the subject-matter of the intervention in accordance with Article 85, paragraph 3, of the Rules of Court, Equatorial Guinea stated *inter alia*:

> "[W]e ask the Court not to delimit a maritime boundary between Cameroon and Nigeria in areas lying closer to Equatorial Guinea than to the coasts of the two Parties or to express any opinion which could prejudice our interests in the context of our maritime boundary negotiations with our neighbours . . . Safeguarding the interests of the third State in these proceedings means that the delimitation between Nigeria and Cameroon decided by the Court must necessarily remain to the north of the median line between Equatorial Guinea's Bioko Island and the mainland."

*

* *

30. Cameroon and Nigeria are States situated on the west coast of Africa. Their land boundary extends from Lake Chad in the north to the Bakassi Peninsula in the south. Their coastlines are adjacent and are washed by the waters of the Gulf of Guinea.

Four States border Lake Chad: Cameroon, Chad, Niger and Nigeria. The waters of the lake have varied greatly over time.

In its northern part, the land boundary between Cameroon and Nigeria passes through hot dry plains around Lake Chad, at an altitude of about 300 m. It then passes through mountains, cultivated high ground or pastures, watered by various rivers and streams. It then descends in stages to areas of savannah and forest until it reaches the sea.

The coastal region where the southern part of the land boundary ends is the area of the Bakassi Peninsula. This peninsula, situated in the hollow of the Gulf of Guinea, is bounded by the River Akwayafe to the west and by the Rio del Rey to the east. It is an amphibious environment, characterized by an abundance of water, fish stocks and mangrove vegetation. The Gulf of Guinea, which is concave in character at the level of the Cameroonian and Nigerian coastlines, is bounded by other States, in particular by Equatorial Guinea, whose Bioko Island lies opposite the Parties' coastlines.

* *

31. The dispute between the Parties as regards their land boundary falls within an historical framework marked initially, in the nineteenth and early twentieth centuries, by the actions of the European Powers with a view to the partitioning of Africa, followed by changes in the status of the relevant territories under the League of Nations mandate system, then the United Nations trusteeships, and finally by the territories' accession to independence. This history is reflected in a number of conventions and treaties, diplomatic exchanges, certain administrative instruments, maps of the period and various documents, which have been provided to the Court by the Parties.

The delimitation of the Parties' maritime boundary is an issue of more recent origin, the history of which likewise involves various international instruments.

32. The Court will now give some particulars of the principal instruments which are relevant for purposes of determining the course of the land and maritime boundary between the Parties. It will later describe in detail and analyse certain of those instruments.

33. At the end of the nineteenth and the beginning of the twentieth centuries, various agreements were concluded by Germany, France and Great Britain to delimit the boundaries of their respective colonial territories. Thus the boundary between France and Great Britain was defined by the Convention between those two States Respecting the Delimitation of the Frontier between the British and French Possessions to the East of the Niger, signed at London on 29 May 1906 (hereinafter the "Franco-British Convention of 1906"), as supplemented by a Protocol of the same name dated 19 February 1910 (hereinafter the "Franco-British Protocol of 1910"). The Franco-German boundary was defined by the Convention between the French Republic and Germany for the Delimitation of the Colonies of French Congo and of Cameroon and French and German Spheres of Influence in the Region of Lake Chad, signed at Berlin on 15 March 1894, and by the Franco-German Convention Confirming the Protocol of 9 April 1908 Defining the Boundaries between the French Congo and Cameroon, signed at Berlin on 18 April 1908 (hereinafter the "Franco-German Convention of 1908"). The boundary between Great Britain and Germany was first defined by the Agreement between Great Britain and Germany respecting Boundaries in Africa, signed at Berlin on 15 November 1893, and supplemented by a further Agreement of 19 March 1906 respecting the Boundary between British and German Territories from Yola to Lake Chad (hereinafter the "Anglo-German Agreement of 1906"). The southern part of the boundary was subsequently redefined by two Agreements

concluded between Great Britain and Germany in 1913. The first of these Agreements, signed in London on 11 March 1913 (hereinafter, the "Anglo-German Agreement of 11 March 1913"), concerned "(1) The Settlement of the Frontier between Nigeria and the Cameroons, from Yola to the Sea and (2) The Regulation of Navigation on the Cross River" and covered some 1,100 km of boundary; the second, signed at Obokum on 12 April 1913 by Hans Detzner and W. V. Nugent representing Germany and Great Britain respectively (hereinafter the "Anglo-German Agreement of 12 April 1913"), concerned the Demarcation of the Anglo-German Boundary between Nigeria and the Cameroons from Yola to the Cross River and included eight accompanying maps.

34. At the end of the First World War, all the territories belonging to Germany in the region, extending from Lake Chad to the sea, were apportioned between France and Great Britain by the Treaty of Versailles and then placed under British or French mandate by agreement with the League of Nations. As a result it was necessary to define the limits separating the mandated territories. The first instrument drawn up for this purpose was the Franco-British Declaration signed on 10 July 1919 by Viscount Milner, the British Secretary of State for the Colonies, and Henry Simon, the French Minister for the Colonies (hereinafter the "Milner-Simon Declaration"). With a view to clarifying this initial instrument, on 29 December 1929 and 31 January 1930 Sir Graeme Thomson, Governor of the Colony and Protectorate of Nigeria, and Paul Marchand, *commissaire de la République française au Cameroun*, signed a further very detailed agreement (hereinafter the "Thomson-Marchand Declaration"). This Declaration was approved and incorporated in an Exchange of Notes dated 9 January 1931 between A. de Fleuriau, the French Ambassador in London, and Arthur Henderson, the British Foreign Minister (hereinafter the "Henderson-Fleuriau Exchange of Notes").

35. Following the Second World War, the British and French mandates over the Cameroons were replaced by United Nations trusteeship agreements. The trusteeship agreements for the British Cameroons and for the Cameroons under French administration were both approved by the General Assembly on 13 December 1946. These agreements referred to the line laid down by the Milner-Simon Declaration to describe the respective territories placed under the trusteeship of the two European Powers.

Pursuant to a decision taken by Great Britain on 2 August 1946 regarding the territories then under British mandate, namely the 1946 Order in Council Providing for the Administration of the Nigeria Protectorate and Cameroons (hereinafter the "1946 Order in Council"), the regions placed under its trusteeship were divided into two for administrative purposes, thus giving birth to the Northern Cameroons and the Southern Cameroons. The 1946 Order in Council contained a series of provisions describing the line separating these two regions and provided that they would be administered from Nigeria.

On 1 January 1960 the French Cameroons acceded to independence on the basis of the boundaries inherited from the previous period. Nigeria did likewise on 1 October 1960.

In accordance with United Nations directives, the British Government organized separate plebiscites in the Northern and Southern Cameroons, "in order to ascertain the wishes of the inhabitants . . . concerning their future" (General Assembly resolution 1350 (XIII) of 13 March 1959). In those plebiscites, held on 11 and 12 February 1961, the population of the Northern Cameroons "decided to achieve independence by joining the independent Federation of Nigeria", whereas the population of the Southern Cameroons "decided to achieve independence by joining the independent Republic of Cameroon" (General Assembly resolution 1608 (XV) of 21 April 1961).

36. As regards the frontier in Lake Chad, on 22 May 1964 the four States bordering the lake signed a Convention establishing the Lake Chad Basin Commission (hereinafter the "LCBC"). As the Court recalled in its Judgment of 11 June 1998 (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 304-305, paras. 64-65), the functions of the LCBC are laid down in Article IX of its Statute, as annexed to the 1964 Convention. Under the terms of this provision, the LCBC *inter alia* prepares "general regulations which will permit the full application of the principles set forth in the present Convention and its annexed Statute, and [to] ensure their effective application". It exercises various powers with a view to co-ordinating action by the member States regarding the use of the waters of the basin. According to Article IX, paragraph *(g)*, one of its functions is "to examine complaints and to promote the settlement of disputes". Over the years the member States of the LCBC have conferred certain additional powers on it. Thus, following incidents in 1983 among riparian States in the Lake Chad area, an extraordinary meeting of the LCBC was called from 21 to 23 July 1983 in Lagos (Nigeria), on the initiative of the Heads of State concerned, in order to give it the task of dealing with certain boundary and security issues. The LCBC has met regularly since to discuss these issues.

37. The question of the boundary in Bakassi and of sovereignty over the peninsula also involves specific instruments.

On 10 September 1884 Great Britain and the Kings and Chiefs of Old Calabar concluded a Treaty of Protection (hereinafter the "1884 Treaty"). Under this Treaty, Great Britain undertook to extend its protection to these Kings and Chiefs, who in turn agreed and promised *inter alia* to refrain from entering into any agreements or treaties with foreign nations or Powers without the prior approval of the British Government.

Shortly before the First World War, the British Government concluded two agreements with Germany, dated respectively 11 March and 12 April 1913 (see paragraph 33 above), whose objects included "the Settlement of the Frontier between Nigeria and the Cameroons, from Yola to the Sea" and which placed the Bakassi Peninsula in German territory.

38. The maritime boundary between Cameroon and Nigeria was not the subject of negotiations until relatively recently. Thus, apart from the Anglo-German Agreements of 11 March and 12 April 1913 in so far as they refer to the endpoint of the land boundary on the coast, all the legal instruments concerning the maritime boundary between Cameroon and Nigeria post-date the independence of those two States.

In this regard, the two countries agreed to establish a "joint boundary commission", which on 14 August 1970, at the conclusion of a meeting held in Yaoundé (Cameroon), adopted a declaration (hereinafter the "Yaoundé I Declaration") whereby Cameroon and Nigeria decided that "the delimitation of the boundaries between the two countries [would] be carried out in three stages", the first of these being "the delimitation of the maritime boundary".

The work of that commission led to a second declaration, done at Yaoundé on 4 April 1971 (hereinafter the "Yaoundé II Declaration"), whereby the Heads of State of the two countries agreed to regard as their maritime boundary, "as far as the 3-nautical-mile limit", a line running from a point 1 to a point 12, which they had drawn and signed on British Admiralty Chart No. 3433 annexed to that declaration.

Four years later, on 1 June 1975, the Heads of State of Cameroon and Nigeria signed an agreement at Maroua (Cameroon) for the partial delimitation of the maritime boundary between the two States (hereinafter the "Maroua Declaration"). By this declaration they agreed to extend the line of their maritime boundary, and accordingly adopted a boundary line defined by a series of points running from point 12 as referred to above to a point designated as G. British Admiralty Chart No. 3433, marked up accordingly, was likewise annexed to that Declaration.

* *

39. Having described the geographical and historical background to the present dispute, the Court will now address the delimitation of the different sectors of the boundary between Cameroon and Nigeria. To do so, the Court will begin by defining the boundary line in the Lake Chad area. It will then determine the line from Lake Chad to the Bakassi Peninsula, before examining the question of the boundary in Bakassi and of sovereignty over the peninsula. The Court will then address the question of the delimitation between the two States' respective maritime areas. The last part of the Judgment will be devoted to the issues of State responsibility raised by the Parties.

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* *

40. The Court will first address the issue of the delimitation of the boundary in the Lake Chad area. In its final submissions Cameroon requests the Court to adjudge and declare that in this area the boundary between the two Parties takes the following course:

> "from the point designated by the co-ordinates 13° 05' N and 14° 05' E, the boundary follows a straight line as far as the mouth of the Ebeji, situated at the point located at the co-ordinates 12° 32' 17" N and 14° 12' 12" E, as defined within the framework of the LCBC and constituting an authoritative interpretation of the Milner-Simon Declaration of 10 July 1919 and the Thomson-Marchand Declarations of 29 December 1929 and 31 January 1930, as confirmed by the Exchange of Letters of 9 January 1931; in the alternative, the mouth of the Ebeji is situated at the point located at the co-ordinates 12° 31' 12" N and 14° 11' 48" E".

In its final submissions, Nigeria, for its part, requests the Court to adjudge and declare:

> "*(a)* that the proposed delimitation and demarcation under the auspices of the Lake Chad Basin Commission, not having been accepted by Nigeria, is not binding upon it;
>
> *(b)* that sovereignty over the areas in Lake Chad defined in paragraph 5.9 of Nigeria's Rejoinder and depicted in figs. 5.2 and 5.3 facing page 242 (and including the Nigerian settlements identified in paragraph 4.1 of Nigeria's Rejoinder) is vested in the Federal Republic of Nigeria;
>
> *(c)* that in any event the process which has taken place within the framework of the Lake Chad Basin Commission, and which was intended to lead to an overall delimitation and demarcation of boundaries on Lake Chad, is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon".

Since Cameroon and Nigeria disagree on the existence of a definitive delimitation in the Lake Chad area, the Court will first examine whether the 1919 Declaration and the subsequent instruments which bear on delimitation in this area have established a frontier that is binding on the Parties. The Court will subsequently address the argument of Nigeria based on the historical consolidation of its claimed title.

* *

41. In support of its position, Cameroon argues generally that its boundary with Nigeria in Lake Chad was the subject of a conventional delimitation between France and the United Kingdom, the former colonial Powers, and of a demarcation under the auspices of the LCBC.

According to Cameroon, the boundary line in Lake Chad was established by the Milner-Simon Declaration of 1919. Article 1 of the "Description of the Franco-British frontier, marked on the [Moisel] map of the Cameroons, scale 1/300,000", annexed to that Declaration, stated that the frontier would 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" and that from there the frontier would be determined by "[a] straight line to the mouth of the Ebeji". The boundary line established by this Declaration was rendered more precise by the Thomson-Marchand Declaration of 1929-1930, the text of which was subsequently incorporated in the Henderson-Fleuriau Exchange of Notes of 1931. Accordingly, Cameroon claims that the boundary in Lake Chad was delimited by this latter instrument.

42. Cameroon also cites certain maps, which are claimed to confirm the course of the conventionally delimited boundary. In particular, Cameroon cites the Moisel map annexed to the Milner-Simon Declaration, the relevant sheet of which was published in 1912, and the map appended to the Thomson-Marchand Declaration, which, it argues, constitutes the official map annexed to the Henderson-Fleuriau Exchange of Notes of 1931 and has thus acquired the value of a "territorial title". Cameroon points out that these maps have "never been the subject of the slightest representation or objection from the United Kingdom or the Federal Republic of Nigeria" and that "[t]here exists no map, not even a Nigerian one, showing a boundary line as claimed by Nigeria in Lake Chad".

Cameroon contends that the line of the boundary was expressly incorporated in the Trusteeship Agreement for the Territory of Cameroon under French administration approved by the General Assembly of the United Nations on 13 December 1946 and was subsequently "transferred to Cameroon and Nigeria on independence by application of the principle of *uti possidetis*".

43. Cameroon further contends that changes in the physical characteristics of Lake Chad and of the Ebeji River cannot affect the course of the boundary line, for, "[b]y opting in this sector of the boundary to apply the technique of geographical co-ordinates joined by a straight line, the contracting parties protected the boundary line against natural variation in the configuration of the lake and its tributary river"; and that this desire to achieve a stable, definitive boundary despite hydrological variations is, moreover, borne out by prior agreements relative to the status of the islands in Lake Chad (Franco-British Convention of 1906 and Franco-German Convention of 1908). In any event, according to Cameroon, under Article 62, paragraph 2, of the Vienna Convention of 23 May 1969 on the Law of Treaties, a fundamental change of circumstances is not applicable to a treaty establishing a boundary.

44. Nor, in Cameroon's view, can the conventional delimitation in Lake Chad be called into question because there has been no effective demarcation of the boundary on the ground. Cameroon argues in that respect that Nigeria

> "has, in principle, recognized the international boundaries in Lake Chad that were established prior to its independence, and the matter of the determination of those lake frontiers had never been addressed prior to the border incidents that occurred in the Lake between Nigeria and Chad from April to June 1983".

Cameroon recalls that, following those incidents,

> "the Heads of State of the Member countries of the LCBC approved a proposal aimed at the convening, at the earliest possible time, of a meeting of the Commission at ministerial level, with a view to setting up a joint technical committee to be entrusted with the delimitation of the international boundaries between the four States which between them share Lake Chad",

and that the LCBC accordingly held an Extraordinary Session from 21 to 23 July 1983 in Lagos at which two technical sub-committees were formed: "a sub-committee responsible for border delimitation and a sub-committee responsible for security". Cameroon further states that "[t]he terminology employed by the parties [was] imprecise in places, as happens in such circumstances", but that "an examination of the mandate given to the Commissioners and experts charged with the operation leaves no room for doubt": it was "confined to the demarcation of the boundary, to the exclusion of any delimitation operation".

As evidence of this Cameroon cites the fact that the sub-committee responsible for border delimitation retained as working documents various bilateral conventions and agreements concluded between Germany, France and the United Kingdom between 1906 and 1931, including the Henderson-Fleuriau Exchange of Notes of 1931. Cameroon points out that the delimitation instruments thus relied on "were never disputed by the representatives of Nigeria throughout the proceedings, even at the highest level, in particular during the summits of Heads of State and Government", that "[t]he demarcation of boundaries in Lake Chad has been the subject of significant work over a good ten years" and that "[i]n this regard the riparian States of Lake Chad have co-operated at all levels: experts, Commissioners, Ministers, Heads of States — without the slightest reservation being raised as to the quality of work accomplished over a very substantial period". Cameroon emphasizes that, *inter alia*, the LCBC defined more precisely the co-ordinates of the tripoint in Lake Chad (which were fixed at 13° 05' 00"0001 latitude North and 14° 04' 59"9999 longitude East) and also defined those of the mouth of the Ebeji, as described in the Henderson-Fleuriau Exchange of Notes (fixing them at 12° 32' 17"4 North and 14° 12' 11"7 East). It further states that those co-ordinates were approved by the national Commissioners of Cameroon, Chad, Niger and Nigeria on 2 December 1988.

According to Cameroon, the overall validity of the demarcation works carried out under the auspices of the LCBC is to be addressed in the following terms:

> "The demarcation operation proper was at certain points criticized by the Nigerian representatives. However, those representatives ultimately declared themselves satisfied with the accuracy of these operations. All the works were approved unanimously by the experts, the Commissioners and the Heads of State themselves. At no time did the Nigerian representatives call into question the conventional delimitation or the instruments which decided it. It was only at the ratification stage that Nigeria made its opposition known."

Cameroon contends that Nigeria's refusal to ratify the result of the boundary demarcation work in Lake Chad in no way impugns the validity of the previous delimitation instruments; it simply demonstrates how far Nigeria has drawn back from the demarcation operation carried out by the LCBC.

45. For its part, Nigeria contends that the Lake Chad area has never been the subject of any form of delimitation. It argues that the Thomson-Marchand Declaration of 1929-1930 did not involve a final determination of the Anglo-French boundary in regard to Lake Chad but provided for delimitation by a boundary commission. Nigeria further points out that, according to the Note signed by the British Secretary of State, Henderson, the Thomson-Marchand Declaration "[was]

only the result of a preliminary survey" and that "the actual delimitation [could] now be entrusted to the boundary commission envisaged for this purpose by Article 1 of the Mandate". In Nigeria's opinion, it was thus clearly apparent from the 1931 Henderson-Fleuriau Exchange of Notes that in relation to Lake Chad, by contrast with other parts of the land boundary between the two Parties, these arrangements were "essentially procedural and programmatic" and it was only after the delimitation work had been carried out — which was not the case for Lake Chad — that there would be agreement.

According to Nigeria, the use in Article 1 of the "Description of the Franco-British frontier, marked on the [Moisel] map of the Cameroons, scale 1/300,000", annexed to the 1919 Milner-Simon Declaration, of the word "approximately", in relation to 14° 05' E, together with the fact that the mouth of the Ebeji has shifted through time, meant that the frontier in this area was still not fully delimited. Subsequent instruments did not, according to Nigeria, rectify these shortcomings; and the absence of a fully delimited frontier was one of several reasons why there was no demarcation of the frontier agreed to until this very day.

46. Nigeria further contends that the work of the LCBC involved both delimitation and demarcation of the boundary within Lake Chad and that it did not produce a result which was final and binding on Nigeria in the absence of a ratification of the documents relating to that work.

47. In sum, Cameroon contends that the boundary in the Lake Chad area runs from the point designated by the co-ordinates 13° 05' N and 14° 05' E in a straight line to the mouth of the Ebeji. It regards the governing instruments as the Milner-Simon Declaration of 1919, and the Thomson-Marchand Declaration of 1929-1930, as incorporated in the 1931 Henderson-Fleuriau Exchange of Notes. Nigeria, on the other hand, argues that there is not a fully delimited boundary in the Lake Chad area and that, through historical consolidation of title and the acquiescence of Cameroon, Nigeria has title over the areas, including 33 named settlements, depicted in figures 5.2 and 5.3 facing page 242 of its Rejoinder.

*

48. The Court recalls that in the late nineteenth and early twentieth centuries the colonial boundaries in the Lake Chad area had been the subject of a series of bilateral agreements entered into between Germany, France and Great Britain (see paragraph 33 above). After the First World War a strip of territory to the east of the western frontier of the former German Cameroon became the British Mandate over the Cameroons. It was thus necessary to re-establish a boundary, commencing in the lake itself, between the newly created British and French mandates. This was achieved through the Milner-Simon Declaration of 1919, which has the status of an international agreement. By this Declaration, France and Great Britain 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".

No definite tripoint in Lake Chad could be determined from previous instruments, on the basis of which it might be located either at 13° 00' or at 13° 05' latitude north, whilst the meridian of longitude was described simply as situated "35' east of the centre of Kukawa". These aspects were clarified and rendered more precise by the Milner-Simon Declaration, which provided:

> "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 would be determined as follows:
>
> 1. A straight line to the mouth of the Ebeji;
>
> . . . . . ."

The Moisel 1:300,000 map was stated to be the map "to which reference is made in the description of the frontier" and was annexed to the Declaration; a further map of the Cameroons, scale 1:2,000,000**,** was attached "to illustrate the description of the . . . frontier".

49. Article 1 of the Mandate conferred on Great Britain by the League of Nations confirmed the line specified in the Milner-Simon Declaration. It provided:

> "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 . . ."

The Court observes that the entitlement, by mutual agreement, to make modest alterations to the line, either by reason of any shown inaccuracies of the Moisel map or of the interests of the inhabitants, was already provided for in the Milner-Simon Declaration. This, together with the line itself, was approved by the Council of the League of Nations. These provisions in no way suggest a frontier line that is not fully delimited. The Court further considers that "delimitation on the spot

of this line . . . in accordance with the provisions of the said Declaration" is a clear reference to demarcation notwithstanding the terminology chosen. Also carried forward from the Milner-Simon Declaration was the idea of a boundary commission. The anticipated detailed demarcation by this Commission equally presupposes a frontier already regarded as essentially delimited.

50. Although the two Mandatory Powers did not in fact "delimit on the spot" in Lake Chad or the vicinity, they did continue in various sectors of the frontier to make the agreement as detailed as possible. Thus the Thomson-Marchand Declaration of 1929-1930 described the frontier separating the two mandated territories in considerably more detail than hitherto. The Declaration stated that "[t]he undersigned . . . [had] agreed to determine the frontier, separating [the said] territories, as . . . traced on the map annexed to [that] declaration and defined in the description also annexed [t]hereto". Some 138 clauses were specified. So far as the Lake Chad area was concerned the Declaration affirmed that the frontier began at the tripoint of the old British-French-German frontiers, 13° 05' latitude north and approximately 14° 05' longitude east. Then the frontier went in a straight line to the mouth of the Ebeji; and it then followed the course of that river, bearing on its upper part the names Lewejil, Labejed, Ngalarem, Lebeit and Ngada, as far as the confluence of the Rivers Kalia and Lebaiit.

This Declaration was approved and incorporated in the Henderson-Fleuriau Exchange of Notes of 1931 (see paragraph 34 above). As Fleuriau put it, the Declaration "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". The Court observes that this would facilitate the envisaged demarcation task given to the Commission. Fleuriau conceded that the Thomson-Marchand Declaration was "a preliminary survey only", thus implying that even more detail might one day be agreed between the parties. That the frontier was nonetheless in fact now specified in sufficient detail was affirmed by Henderson's Note in reply to Fleuriau, stating that the line described in the 1929-1930 Declaration "[did] in substance define the frontier in question".

That this Declaration and Exchange of Notes were preliminary to the future task of demarcation by a boundary commission does not mean, as Nigeria claims, that the 1931 Agreement was merely "programmatic" in nature.

The Thomson-Marchand Declaration, as approved and incorporated in the Henderson-Fleuriau Exchange of Notes, has the status of an international agreement. The Court acknowledges that the Declaration does have some technical imperfections and that certain details remained to be specified. However, it finds that the Declaration provided for a delimitation that was sufficient in general for demarcation.

51. Nigeria has argued that the boundary in this area had nonetheless remained undetermined for two important reasons: in the first place, the reference to the longitude as "approximately 14° 05' east" of Greenwich had not been made more precise; second, the meaning to be given to the words "the mouth of the Ebeji" was unclear in the light of the changes to the course of the river and the shrinking dimensions of the lake.

The Court observes that specific reference to the Thomson-Marchand Declaration of 1929-1930 and to the 1931 Henderson-Fleuriau Exchange of Notes was made in the Trusteeship Agreements for the territory of the Cameroons under British Administration, and for the territory of Cameroon under French Administration, each approved on 13 December 1946. Although the language of each is not entirely identical, they each take the boundary as being defined by the Milner-Simon Declaration "and determined more exactly" in the Thomson-Marchand Declaration, as incorporated in the Henderson-Fleuriau Exchange of Notes.

The Court notes that, whereas the Mandate had reserved to the two Mandatory Powers the right of joint minor modification, in the interests of the inhabitants or because of inaccuracies in the Moisel map attached to the Milner-Simon Declaration, under the Trusteeship Agreements that right was preserved only on the former ground. The implication is that any problems associated with inaccuracies of the Moisel 1:300,000 map were by 1946 regarded as having been resolved.

52. Despite the uncertainties in regard to the longitudinal reading of the tripoint in Lake Chad and the location of the mouth of the Ebeji, and while no demarcation had taken place in Lake Chad before the independence of Nigeria and of Cameroon, the Court is of the view that the governing instruments show that, certainly by 1931, the frontier in the Lake Chad area was indeed delimited and agreed by Great Britain and France.

Moreover, the Court cannot fail to observe that Nigeria was consulted during the negotiations for its independence, and again during the plebiscites that were to determine the future of the populations of the Northern and Southern Cameroons (see paragraph 35 above). At no time did it suggest, either so far as the Lake Chad area was concerned, or elsewhere, that the frontiers there remained to be delimited.

53. The Court is further of the view that the work of the LCBC, from 1983 to 1991, affirms such an interpretation.

It recalls that, as a consequence of incidents occurring in the Lake Chad area in 1983, the Heads of State of the member States of the LCBC had convened an extraordinary session of the Commission. The report of that session in 1983 indicates that there were two topics listed on the agenda: "border delimitation problems" and "security matters". This did not, however, signify an understanding by the members that the Commission's work was to make proposals on a non-delimited frontier, as is shown by the report itself. All substantive aspects contained within it refer to these agenda items as "demarcation" and "security". Indeed, the generalized agenda for the first of the two Sub-Committees which was established was entitled "Agenda for the Committee on Demarcation". There was envisaged an exchange of information and relevant documents on the boundary (item 1) and the establishment of a Joint Demarcation Team (item 3). Equally, the agenda for the Committee on Security included an item on the security of the demarcation team.

The Court observes that the following year, in November 1984, the "Sub-Commission Responsible for the Demarcation of Borders" agreed to adopt, as working documents, the various bilateral agreements and instruments which had been concluded in the years 1906 to 1931 between Germany, France and the United Kingdom. These were identified as the Franco-British Convention of 1906; the Franco-German Convention of 1908; the Franco-British Protocol of 1910 and the Henderson-Fleuriau Exchange of Notes of 1931. The Sub-Commission also addressed the following matters: "the actual demarcation of the borders", "aerial photography of the area", "ground survey and mapping".

The report submitted in 1985 by the current Chairman of the Council of Ministers of the LCBC to the Fifth Conference of Heads of State clearly indicated that the "border problems" arose from the absence of "demarcation", and referred expressly to the "technical specifications for the border demarcation" drawn up by the Sub-Commission. The Sixth Conference of Heads of State, in 1987, took a decision on "Border Demarcation", whereby the member States agreed to "finance the cost of the demarcation exercise". That decision further provided that the work would start "in March 1988". At a meeting held in March 1988 the experts of the LCBC member States accordingly adopted three documents concerning respectively: 1. "Technical Specifications for boundary demarcation, Aerial Photogrammetry and Topographical Mapping in the Lake Chad at a scale of 1/50,000"; 2. "General Conditions of the International Invitation for Tenders"; 3. "Applications for Tenders".

54. The Court is unable to accept Nigeria's contention that the LCBC was from 1983 to 1991 engaged in both delimitation and demarcation. The records show that, although the term "delimitation" was used from time to time, in introducing clauses or in agenda headings, it was the term "demarcation" that was most frequently used. Moreover, the nature of the work was that of demarcation.

The Court notes further that the LCBC entrusted to the *Institut géographique national-France International* (IGN-FI) the following tasks, specified in Article 5 of the Contract concluded with IGN-FI, as approved on 26 May 1988:

> "(i) Reconnaissance and marking out of the 21 points approached and the 7 boundary limit points.
>
> (ii) Placing of 62 intermediate markers: at a maximum of 5 km between them.
>
> (iii) Demarcation of the coordinates of the boundary markers and intermediate markers."

For the performance of this task there was passed to IGN-FI the "texts and documents concerning the delimitation of the boundaries in Lake Chad" (Contract, Art. 7) — namely, the legal instruments already listed in the 1984 Report of the Sub-Committee, with the addition of the Minutes signed on 2 March 1988 concerning the position of the northern limit of the border between Chad and Niger. IGN-FI completed its demarcation work in 1990, having set up two

principal beacons at each end of the border between Cameroon and Nigeria in Lake Chad (that is, at the tripoint and at the mouth of the Ebeji), as well as 13 intermediate beacons. The Report of the Marking Out of the Boundary completed by IGN-FI was then signed by the experts of each member State of the LCBC. During their Seventh Summit in February 1990, the Heads of State and Governments of the LCBC "took note of the satisfactory achievement" and "directed that the Commissioners should get the appropriate documents ready within three months and were authorized to sign on behalf of their countries". However, Nigeria declined to sign the Report, expressing dissatisfaction over *inter alia*, beacon-numbering, the non-demolition of a beacon, and the non-stabilization of GPS and Azimuth stations. These items were clearly matters of demarcation. Shortly thereafter, the national experts ordered additional beaconing work to complete the work of IGN-FI. After several attempts, the work of the LCBC was finally completed and, at their Eighth Summit on 23 March 1994, the Heads of State of the LCBC decided to approve the final demarcation report as signed by the national experts and the executive secretariat of the LCBC and referred to in the Minutes of the Summit as "the technical document on the demarcation of the international boundaries of Member States in Lake Chad". Those Minutes specified that "each country should adopt the document in accordance with its national laws", and that "the document should be signed latest by the next summit of the Commission". Nigeria has not done so. Cameroon accordingly acknowledges that it is not an instrument which binds Nigeria.

55. The Court observes that the LCBC had engaged for seven years in a technical exercise of demarcation, on the basis of instruments that were agreed to be the instruments delimiting the frontier in Lake Chad. The issues of the location of the mouth of the Ebeji, and the designation of the tripoint longitude in terms other than "approximate", were assigned to the LCBC. There is no indication that Nigeria regarded these issues as so grave that the frontier was to be viewed as "not delimited" by the designated instruments. The Court notes that, as regards the land boundary southwards from the mouth of the Ebeji, Nigeria accepts that the designated instruments defined the boundary, but that certain uncertainties and defects should be confirmed and cured. In the view of the Court, Nigeria followed this same approach in participating in the demarcation work of the LCBC from 1984 to 1990.

The Court agrees with the Parties that Nigeria is not bound by the Marking Out Report. Nonetheless, this finding of law implies neither that the governing legal instruments on delimitation were put in question, nor that Nigeria did not continue to be bound by them. In sum, the Court finds that the Milner-Simon Declaration of 1919, as well as the 1929-1930 Thomson-Marchand Declaration as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931, delimit the boundary between Cameroon and Nigeria in the Lake Chad area. The map attached by the parties to the Exchange of Notes is to be regarded as an agreed clarification of the Moisel map. The Lake Chad border area is thus delimited, notwithstanding that there are two questions that remain to be examined by the Court, namely the precise location of the longitudinal co-ordinate of the Cameroon-Nigeria-Chad tripoint in Lake Chad and the question of the mouth of the Ebeji.

*

56. Cameroon, while accepting that the Report of the Marking Out of the International Boundaries in the Lake Chad is not binding on Nigeria, nonetheless asks the Court to find that the proposals of the LCBC as regards the tripoint and the mouth of the Ebeji "constitut[e] an authoritative interpretation of the Milner-Simon Declaration and the Thomson-Marchand Declaration, as confirmed by the Exchange of Letters of 9 January 1931".

The Court cannot accept this request. At no time was the LCBC asked to act by the successors to those instruments as their agent in reaching an authoritative interpretation of them. Moreover, the very fact that the outcome of the technical demarcation work was agreed in March 1994 to require adoption under national laws indicates that it was in no position to engage in "authoritative interpretation" *sua sponte*.

57. This does not, however, preclude the Court, when called upon to specify the frontier, from finding work that has been done by others to be useful. According to the governing instruments, the co-ordinates of the tripoint in Lake Chad are latitude 13° 05' north and "approximately" longitude 14° 05' east. The Court has examined the Moisel map annexed to the Milner-Simon Declaration of 1919 and the map attached to the Henderson-Fleuriau Exchange of Notes of 1931. Following that examination, it reaches the same conclusions as the LCBC and considers that the longitudinal co-ordinate of the tripoint is situated at 14° 04' 59"9999 longitude east, rather than at "approximately" 14° 05'. The minimal difference between these two specifications confirms, moreover, that this never presented an issue so significant as to leave the frontier in this area "undetermined".

58. As for the specification of the frontier as it passes in a straight line from the tripoint to the mouth of the Ebeji, various solutions have been proposed by the Parties. This ending point of the straight line running from the tripoint was never described in the delimiting instruments by reference to co-ordinates. The map to illustrate the Anglo-French Declaration defining the Cameroons Boundary, annexed to the Exchange of Notes of 1931 probably shortly after their conclusion, shows a single stream of the Ebeji having its mouth on the lake just beyond Wulgo. The 1931 map states: "Note: The extent of the water in Lake Chad is variable and indeterminate."

Certainly since 1931 the pattern has generally been one of marked recession of the waters. The lake today appears to be significantly reduced from its size at the time of the Henderson-Fleuriau Exchange of Notes. The River Ebeji today has no single mouth through which it discharges its waters into the lake. Rather, it divides into two channels as it approaches the lake. On the basis of the information the Parties have made available to the Court, it appears that the eastern channel terminates in water that is short of the present Lake Chad. The western channel seems to terminate in a muddy area close to the present water line.

Cameroon's position is that the mouth of the Ebeji should be specified by the Court as lying on the co-ordinates determined for that purpose by the LCBC, that being an "authentic interpretation" of the Declaration and 1931 Exchanges. The Court has already indicated why the Report of the Marking Out of Boundaries by the LCBC is not to be so regarded. Cameroon asks the Court to find that "in the alternative, the mouth of the Ebeji is situated at the point located at the co-ordinates 12° 31' 12" N and 14° 11' 48" E". Thus Cameroon prefers, in its alternative argument, the "mouth" of the western channel, and bases itself on tests adduced by this Court in the

case concerning *Kasikili/Sedudu Island (Botswana/Namibia) (I.C.J. Reports 1999*, pp. 1064-1072, paras. 30-40) for identifying "the main channel". In particular, it refers to greater flow and depth of this channel. Nigeria, on the other hand, requests the Court to prefer the mouth of the longer, eastern channel as "the mouth" of the River Ebeji, finding support for that proposition in the *Palena* arbitration of 9 December 1966, which spoke of the importance of length, size of drainage area, and discharge (38 *International Law Reports (ILR)*, pp. 93-95).

59. The Court notes that the text of the Thomson-Marchand Declaration of 1929-1930, incorporated in 1931 in the Henderson-Fleuriau Exchange of Notes, refers to "the mouth of the Ebeji". Thus the task of the Court is not, as in the *Kasikili/Sedudu Island* case, to determine the "main channel" of the river but to identify its "mouth". In order to interpret this expression, the Court must seek to ascertain the intention of the parties at the time. The text of the above instruments as well as the Moisel map annexed to the Milner-Simon Declaration and the map attached to the Henderson-Fleuriau Exchange of Notes show that the parties only envisaged one mouth.

The Court notes that the co-ordinates, as calculated on the two maps, for the mouth of the Ebeji in the area just north of the site indicated as that of Wulgo are strikingly similar. Moreover these co-ordinates are identical with those used by the LCBC when, in reliance on those same maps, it sought to locate the mouth of the Ebeji as it was understood by the parties in 1931. The point there identified is north both of the "mouth" suggested by Cameroon for the western channel in its alternative argument and of the "mouth" proposed by Nigeria for the eastern channel.

60. On the basis of the above factors, the Court concludes that the mouth of the River Ebeji, as referred to in the instruments confirmed in the Henderson-Fleuriau Exchange of Notes of 1931, lies at 14° 12' 12" longitude east and 12° 32' 17" latitude north.

61. From this point the frontier must run in a straight line to the point where the River Ebeji bifurcates into two branches, the Parties being in agreement that that point lies on the boundary. The geographical co-ordinates of that point are 14° 12' 03" longitude east and 12° 30' 14" latitude north (see below, p. 50, sketch-map No. 1).

* *

62. The Court turns now to Nigeria's claim based on its presence in certain areas of Lake Chad. Nigeria has asked the Court to adjudge and declare that

> "the process which has taken place within the framework of the Lake Chad Basin Commission, and which was intended to lead to an overall delimitation and demarcation of boundaries on Lake Chad, is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon".

Thus Nigeria claims sovereignty over areas in Lake Chad which include certain named villages. These villages, according to the nomenclature used by Nigeria, are the following: Aisa Kura, Ba shakka, Chika'a, Darak, Darak Gana, Doron Liman, Doron Mallam (Doro Kirta), Dororoya, Fagge, Garin Wanzam, Gorea Changi, Gorea Gutun, Jribrillaram, Kafuram, Kamunna, Kanumburi, Karakaya, Kasuram Mareya, Katti Kime, Kirta Wulgo, Koloram, Logon Labi, Loko Naira, Mukdala, Murdas, Naga'a, Naira, Nimeri, Njia Buniba, Ramin Dorinna, Sabon Tumbu, Sagir and Sokotoram. Nigeria explains that these villages have been established either on what is now the dried up lake bed, or on islands which are surrounded by water perennially or on locations which are islands in the wet season only.

Nigeria contends that its claim rests on three bases, which each apply both individually and jointly and one of which would be sufficient on its own:

> "(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".

Among the components of the historical consolidation of its title over the disputed areas, Nigeria cites: (1) the attitude and affiliations of the population of Darak and the other Lake Chad villages, the Nigerian nationality of the inhabitants of those villages; (2) the existence of historical links with Nigeria in the area, and in particular the maintenance of the system of traditional chiefs and the role of the Shehu of Borno; (3) the exercise of authority by the traditional chiefs, which is claimed to be still an important element within the State structure of modern Nigeria; (4) the long settlement of Nigerian nationals in the area; and (5) the peaceful administration of the disputed villages by the Federal Government of Nigeria and the State of Borno.

Nigeria further contends that Cameroon's evidence of its State activities in the Lake Chad area has serious flaws; in particular, it contends that the greater part of that evidence relates only to the years 1982 to 1988, whereas the evidence regarding Nigerian activities covers a substantially longer period. Moreover, Cameroon supplied no evidence in regard to a substantial number of the villages claimed by Nigeria. Nigeria further notes that "many of the documents produced on behalf of Cameroon are entirely programmatic in content, involving the planning of census tours and so forth, in the absence of evidence that the events actually occurred". Nigeria further points out that any consideration of Cameroon's evidence regarding its State activities is bound to take account of the fact that it was only in 1994 that Cameroon first protested against the Nigerian administration of the villages, and that this silence on the part of Cameroon is of particular significance in light of the fact that Nigeria's State activities were entirely open and visible to all.

Finally, Nigeria contends that Cameroon acquiesced in the peaceful exercise of Nigerian sovereignty over the disputed areas and that that acquiescence constitutes a major element in the process of historical consolidation of title. It claims that Cameroon's acquiescence in Nigeria's

sovereign activities had a triple role. The first was the role that it played alongside the other elements of historical consolidation. Its second, and independent, role was 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. Thirdly, Nigeria contends that acquiescence may be characterized as the main component of title, that is, providing the essence and very foundation of title rather than a confirmation of a title necessarily anterior to and independent of the process of acquiescence. There can be no doubt, according to Nigeria, that in appropriate conditions a tribunal can properly recognize a title based on tacit consent or acquiescence.

As evidence of Cameroon's acquiescence in the exercise of Nigerian sovereignty over the disputed areas, Nigeria relies in particular on the fact that the settlement of these villages by Nigerian nationals openly carrying on peaceful activities, and Nigeria's peaceful administration of those villages, aroused no protest of any kind from Cameroon before April 1994, and that Cameroon's armed incursions in 1987, which disturbed the Nigerian administrative status quo and were repulsed by the Nigerian villagers and security forces, did not result in any claim to the area by Cameroon.

63. For its part, Cameroon contends that, as the holder of a conventional territorial title to the disputed areas, it does not have to demonstrate the effective exercise of its sovereignty over those areas, since a valid conventional title prevails over any *effectivités* to the contrary. Hence, no form of historical consolidation can prevail over a conventional territorial title in the absence of clear consent on the part of the holder of that title to the cession of part of its territory. Cameroon is accordingly only asserting *effectivités* as a subsidiary ground of claim, "an auxiliary means of support for [its] conventional titles". Thus, it contends that it has exercised its sovereignty in accordance with international law by peacefully administering the areas claimed by Nigeria and cites many examples of the alleged exercise of that sovereignty.

The establishment of Nigerian villages on the Cameroonian side of the boundary by private individuals followed by Nigerian public services must therefore, in Cameroon's view, be treated as acts of conquest which cannot found a valid territorial title under international law. Cameroon states that it has never acquiesced in the modification of its conventional boundary with Nigeria; it argues that acquiescence in a boundary change must, in order to bind a State, be the act of competent authorities and that in this regard the attitude of the central authorities must prevail over that of the local ones. Hence, according to Cameroon, once the Cameroonian central authorities became aware of the Nigerian claims, they proceeded to react so as to preserve the rights of Cameroon; they did so first in the context of the LCBC, then through a Note from the Cameroonian Ministry of Foreign Affairs dated 21 April 1994.

Finally, Cameroon claims that an estoppel has arisen which today prevents Nigeria from challenging the existing conventional delimitation. Thus it argues that, for very many years, including while the LCBC demarcation work was proceeding, Nigeria accepted the conventional delimitation of Lake Chad without any form of protest, thus adopting an attitude which clearly and

consistently demonstrated its acceptance of that boundary. Since Cameroon had relied in good faith on that attitude in order to collaborate in the demarcation operation, it would be prejudicial to it if Nigeria were entitled to invoke conduct on the ground that conflicted with its previous attitude.

64. The Court first observes that the work of the LCBC was intended to lead to an overall demarcation of a frontier already delimited. Although the result of the demarcation process is not binding on Nigeria, that fact has no legal implication for the pre-existing frontier delimitation. It necessarily follows that Nigeria's claim based on the theory of historical consolidation of title and on the acquiescence of Cameroon must be assessed by reference to this initial determination of the Court. During the oral pleadings Cameroon's assertion that Nigerian *effectivités* were *contra legem* was dismissed by Nigeria as "completely question-begging and circular". The Court notes, however, that now that it has made its findings that the frontier in Lake Chad was delimited long before the work of the LCBC began, it necessarily follows that any Nigerian *effectivités* are indeed to be evaluated for their legal consequences as acts *contra legem*.

65. The Court will now examine Nigeria's argument based on historical consolidation of title.

The Court observes in this respect that in the *Fisheries* case *(United Kingdom* v. *Norway) (I.C.J. Reports 1951,* p. 130) it had referred to certain maritime delimitation decrees promulgated by Norway almost a century earlier which had been adopted and applied for decades without any opposition. These decrees were said by the Court to represent "a well-defined and uniform system . . . which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States" (*ibid.*, p. 137). The Court notes, however, that the notion of historical consolidation has never been used as a basis of title in other territorial disputes, whether in its own or in other case law.

Nigeria contends that the notion of historical consolidation has been developed by academic writers, and relies on that theory, associating it with the maxim *quieta non movere*.

The Court notes that the theory of historical consolidation is highly controversial and cannot replace the established modes of acquisition of title under international law, which take into account many other important variables of fact and law. It further observes that nothing in the *Fisheries* Judgment suggests that the "historical consolidation" referred to, in connection with the external boundaries of the territorial sea, allows land occupation to prevail over an established treaty title. Moreover, the facts and circumstances put forward by Nigeria with respect to the Lake Chad villages concern a period of some 20 years, which is in any event far too short, even according to the theory relied on by it. Nigeria's arguments on this point cannot therefore be upheld.

66. Nigeria further states that the peaceful possession on which it relies, coupled with acts of administration, represents a manifestation of sovereignty and is thus a specific element of its other two claimed heads of title, namely: on the one hand, effective administration by Nigeria, acting as

sovereign, and the absence of protests; and, on the other, manifestations of sovereignty by Nigeria over Darak and the neighbouring villages, together with acquiescence by Cameroon in such sovereignty.

67. In this regard, it may be observed that the gradual settling of Nigerians in the villages was followed in turn by support provided by the Ngala Local Government in Nigeria, along with a degree of administration and supervision.

Setting aside evidence relating to the years including and after 1994, when the Court was seised of the case, the Court notes that from the early 1980s until 1993 reports were made to Ngala Local Government, which provided support for health clinics in villages and mobile health units, along with advice on disease control. Evidence of this nature has been submitted as regards Kirta Wulgo, Darak and Katti Kime. There is evidence of the provision of education funding by the Ngala Local Government in 1988 for the Nigerian village of Wulgo and its dependent settlements, and for Katti Kime, Darak, Chika'a and Naga'a and for Darak in 1991. In 1989 there was an education levy in Wulgo and its dependencies and in 1992 some funding provided for classrooms in Naga'a. The Court has been shown evidence relating to the assessment and collection of taxes in Wulgo and its dependencies in 1980-1981; and to payments made to Ngala Local Government by the Fisherman's Cooperative operating in the villages in question in 1982-4. Among the documents submitted to the Court is a copy of a decision in 1981 by the Wulgo Area Court in a case involving litigants residing in Darak.

Some of these activities — the organization of public health and education facilities, policing, the administration of justice — could normally be considered to be acts *à titre de souverain*. The Court notes, however, that, as there was a pre-existing title held by Cameroon in this area of the lake, the pertinent legal test is whether there was thus evidenced acquiescence by Cameroon in the passing of title from itself to Nigeria.

68. In this context the Court also observes that Cameroon's own activities in the Lake Chad area have only a limited bearing on the issue of title.

The Court has already ruled on a number of occasions on the legal relationship between *"effectivités"* and titles. In the *Frontier Dispute (Burkina Faso/Republic of Mali)*, it pointed out that in this regard "a distinction must be drawn among several eventualities", stating *inter alia* that:

> "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." (*I.C.J. Reports 1986*, p. 587, para. 63.) (See also *Territorial Dispute (Libyan Arab Jamahiriya/Chad), I.C.J. Reports 1994*, pp. 75-76, para. 38.)

It is this first eventuality here envisaged by the Court, and not the second, which corresponds to the situation obtaining in the present case. Thus Cameroon held the legal title to territory lying to the east of the boundary as fixed by the applicable instruments (see paragraph 53 above). Hence the conduct of Cameroon in that territory has pertinence only for the question of whether it acquiesced in the establishment of a change in treaty title, which cannot be wholly precluded as a possibility in law (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), I.C.J. Reports 1992*, pp. 408-409, para. 80). The evidence presented to the Court suggests that before 1987 there was some administrative activity by Cameroon in the island and lake-bed villages that were beginning to be established. There were yearly administrative visits from 1982 to 1985; the villages of Chika'a, Naga'a, Katti Kime and Darak participated in elections for the presidency of the Republic of Cameroon; administrative action was undertaken for the maintenance of law and order in Naga'a, Gorea Changi and Katti Kime. The 1984 census included 18 villages, among them Darak. Appointments of village chiefs were referred for approval to the Cameroon prefect. As for the collection of taxes by Cameroon, there is modest evidence relating to Katti Kime, Naga'a and Chika'a for the years 1983 to 1985.

69. It appears from the case file that the control of certain local Cameroonian officials over the area was limited. As Nigerian settlements, and the organization within them of village life, became supplemented from 1987 onwards by Nigerian administration and the presence of Nigerian troops, Cameroon restricted its protests to a few "incidents" (notably the taking over of the fisheries training station at Katti Kime), rather than to the evolving situation as such. There is some evidence however that Cameroon continued sporadically to seek to exercise some administrative control in these areas, albeit with little success in this later period.

Cameroon has put to the Court that it did not regard the activities of Nigeria in Lake Chad in the years 1984 to 1994 as *à titre de souverain*, because Nigeria was in those years fully participating in the work entrusted to the LCBC and its contractors, and agreed that they should work on the basis of the various treaty instruments which governed title. The Court cannot accept Nigeria's argument that the explanation given by Cameroon depends upon the supposition that the Report of Experts was binding upon Nigeria automatically. It depends rather upon the agreed basis upon which the demarcation work was to be carried out.

On 14 April 1994, Nigeria in a diplomatic Note, for the first time claimed sovereignty over Darak. Cameroon firmly protested in a Note Verbale of 21 April 1994, expressing "its profound shock at the presumption that Darak is part of Nigerian territory", and reiterating its own sovereignty. Shortly after, it also enlarged the scope of its Application to the Court.

70. The Court finds that the above events, taken together, show that there was no acquiescence by Cameroon in the abandonment of its title in the area in favour of Nigeria. Accordingly, the Court concludes that the situation was essentially one where the *effectivités* adduced by Nigeria did not correspond to the law, and that accordingly "preference should be given to the holder of the title" (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 587, para. 63).

The Court therefore concludes that, as regards the settlements situated to the east of the frontier confirmed in the Henderson-Fleuriau Exchange of Notes of 1931, sovereignty has continued to lie with Cameroon (see below, p. 57, sketch-map No. 2).

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71. Having examined the question of the delimitation in the area of Lake Chad, the Court will now consider the course of the land boundary from Lake Chad to the Bakassi Peninsula.

* *

72. In its Additional Application filed on 6 June 1994, Cameroon requested the Court "to specify definitively" the frontier between Cameroon and Nigeria from Lake Chad to the sea. According to Cameroon, the land boundary between Cameroon and Nigeria consists of three sectors, each of which is clearly delimited by a separate instrument.

73. The first such sector of the land boundary as referred to by Cameroon extends from the conventional mouth of the Ebeji as far as the "prominent peak" named by Cameroon as "Mount Kombon" (see below, p. 62, sketch-map No. 3, on which this sector is shown in orange). Cameroon asks the Court to hold that the Thomson-Marchand Declaration, incorporated in the Henderson-Fleuriau Exchange of Notes of 1931, delimits this sector and constitutes the legal basis upon which its future demarcation can be based.

74. The second sector runs from "Mount Kombon" to "pillar 64" as referred to in Article 12 of the Anglo-German Agreement of 12 April 1913 (see below, p. 62, sketch-map No. 3, on which this sector is shown in mauve). The sector of the boundary in question is claimed by Cameroon to have its legal basis in the British Order in Council of 2 August 1946, which described in detail the line dividing the northern and southern parts of what was then the mandated territory of the British Cameroons. According to Cameroon, the Order in Council reaffirmed the line decided upon earlier by the mandatory Power for reasons of administrative convenience, and confirmed subsequently by the relevant international organs, namely, the Permanent Mandates Commission and the Trusteeship Council. Cameroon claims that the internal line between the Northern and Southern Cameroons described in the Order in Council was *ipso facto* converted into the international boundary between Nigeria and Cameroon when the trusteeship régime was terminated following the plebiscites of 11 and 12 February 1961.

75. The third sector, running from pillar 64 to the sea (see below, p. 62, sketch-map No. 3, on which this sector is shown in brown), is said by Cameroon to have been delimited by the Anglo-German Agreements of 11 March and 12 April 1913, both agreements containing maps on which the boundary line is depicted (namely, the two sheets of map TSGS 2240 annexed to the 11 March Agreement, and sheets Nos. 5 to 8 of map GSGS 2700 annexed to the 12 April Agreement). Cameroon insists that its claim in relation to the entire course of this sector of the boundary, including the Bakassi Peninsula, can be resolved by the application "pure and simple" of the Anglo-German Agreements of 1913 and the annexed cartographic material.

76. With the exception of what it calls the "Bakassi provisions" of the Anglo-German Agreement of 11 March 1913, Nigeria, for its part, does not dispute the relevance and applicability of the four instruments invoked by Cameroon with respect to the course of these three sectors of the land boundary.

77. The question upon which the Parties differ is the nature of the task which the Court should undertake. The respective positions of the Parties on this point changed somewhat in the course of the proceedings. Thus, in its Additional Application, Cameroon requested the Court "to specify definitively the frontier between [it] and the Federal Republic of Nigeria from Lake Chad to the sea". Then, in its written pleadings and at the hearings, it requested the Court to confirm the course of the frontier as indicated in the delimitation instruments, emphasizing that, in requesting the Court "to specify definitively" the frontier between Cameroon and Nigeria, it had not requested the Court itself to undertake a delimitation of that frontier. It maintains those requests in its final submissions.

78. In the preliminary objections phase of the case, Nigeria, for its part, first argued that there was no territorial dispute between the Parties from Lake Chad to the Bakassi Peninsula. That preliminary objection having been rejected by the Court in its Judgment of 11 June 1998, Nigeria subsequently indicated a number of specific locations on the land boundary which, in its view, called for some form of consideration by the Court, either because the delimitation instruments themselves were "defective", or because they had been applied by Cameroon in a way which was "manifestly at variance" with their terms. While Nigeria accepts the application of the instruments concerned "in principle", it considers that, if the Court were merely to confirm these delimitation instruments, that would not resolve the differences between the Parties in regard to the course of the boundary, and there would be no guarantee that others would not arise in the future. Nigeria therefore asks the Court to "clarify" the delimitation in the areas in which the delimitation instruments are defective and to correct the boundary line claimed by Cameroon in the areas where Nigeria maintains Cameroon is not observing the clear terms of these instruments.

79. Cameroon also acknowledges that there are some ambiguities and uncertainties in the delimitation instruments in question. It admits further that there may be certain difficulties in demarcating the line delimited by these instruments, for instance because of changes in the location

of watercourses, swamps, tracks, villages or pillars referred to in those instruments, or because the location of a watershed requires detailed hydrological investigation. However, Cameroon insists that the Court cannot, on the pretext of interpreting them, modify the applicable texts, and it claims that this is precisely what Nigeria is requesting the Court to do.

80. Cameroon contends that a distinction must be maintained between, on the one hand, the concept of delimitation (being the process by which the course of a boundary is described in words or maps in a legal instrument) and, on the other, the concept of demarcation (being the process by which the course of the boundary so described is marked out on the ground). It points out that in the present case what the Court is being asked to do is to confirm the *delimitation* of the boundary and not to effect its *demarcation*. It considers that the correction of a number of "minor defects" in the instruments, the elimination of various uncertainties and the solution of any existing geographical difficulties are matters of demarcation. Cameroon considers these to be questions to be settled by the Parties in the light of the Court's decision on the delimitation of the boundary as a whole. At the start of the first round of oral argument, Cameroon accordingly declared itself willing to engage in a demarcation effort with Nigeria wherever this should prove to be necessary to render the course of the boundary more precise. In the second round of oral argument, Cameroon proposed to Nigeria that a demarcation body should be set up under the auspices of the Court or of the United Nations in order to undertake the demarcation of those boundary sectors as yet undemarcated, or in respect of which the Court's Judgment left some uncertainties, but made it clear that, if the Court considered that it should itself settle certain of the problems raised by Nigeria, it would have no objection to this.

81. Although it does not accept Cameroon's proposal for the establishment of a demarcation body, Nigeria agrees that purely technical matters should be settled at the demarcation stage. It claims, however, that the points of difficulty it has identified represent substantive delimitation issues. It believes that a detailed specification of the land boundary is necessary if future border problems are to be avoided and any eventual demarcation is to take place on a sound basis.

* *

82. The Court notes that Cameroon and Nigeria agree that the land boundary between their respective territories from Lake Chad onwards has already been delimited, partly by the Thomson-Marchand Declaration incorporated in the Henderson-Fleuriau Exchange of Notes of 1931, partly by the British Order in Council of 2 August 1946 and partly by the Anglo-German Agreements of 11 March and 12 April 1913. The Court likewise notes that, with the exception of the provisions concerning Bakassi contained in Articles XVIII *et seq.* of the Anglo-German Agreement of 11 March 1913, Cameroon and Nigeria both accept the validity of the four above-mentioned legal instruments which effected this delimitation. The Court will therefore not be required to address these issues further in relation to the sector of the boundary from Lake Chad

to the point defined *in fine* in Article XVII of the Anglo-German Agreement of March 1913. The Court will, however, have to return to them in regard to the sector of the land boundary situated beyond that point, in the part of its Judgment dealing with the Bakassi Peninsula (see paragraphs 193-225 below).

83. Independently of the issues which have just been mentioned, a problem has continued to divide the Parties in regard to the land boundary. It concerns the nature and extent of the role which the Court is called upon to play in relation to the sectors of the land boundary in respect of which there has been disagreement between the Parties at various stages of the proceedings, either on the ground that the relevant instruments of delimitation were claimed to be defective or because the interpretation of those instruments was disputed. The Court notes that, while the positions of the Parties on this issue have undergone a significant change and have clearly become closer in the course of the proceedings, they still appear unable to agree on what the Court's precise task should be in this regard.

84. The Parties have devoted lengthy arguments to the difference between delimitation and demarcation and to the Court's power to carry out one or other of these operations. As the Court had occasion to state in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (*I.C.J. Reports 1994*, p. 28, para. 56), the delimitation of a boundary consists in its "*definition*", whereas the demarcation of a boundary, which presupposes its prior delimitation, consists of operations marking it out on the ground. In the present case, the Parties have acknowledged the existence and validity of the instruments whose purpose was to effect the delimitation between their respective territories; moreover, both Parties have insisted time and again that they are not asking the Court to carry out demarcation operations, for which they themselves will be responsible at a later stage. The Court's task is thus neither to effect a delimitation *de novo* of the boundary nor to demarcate it.

85. The task which Cameroon referred to the Court in its Application is "*to specify definitively*" (emphasis added by the Court) the course of the land boundary as fixed by the relevant instruments of delimitation. Since the land boundary has already been delimited by various legal instruments, it is indeed necessary, in order to specify its course definitively, to confirm that those instruments are binding on the Parties and are applicable. However, contrary to what Cameroon appeared to be arguing at certain stages in the proceedings, the Court cannot fulfil the task entrusted to it in this case by limiting itself to such confirmation. Thus, when the actual content of these instruments is the subject of dispute between the Parties, the Court, in order to specify the course of the boundary in question definitively, is bound to examine them more closely. The dispute between Cameroon and Nigeria over certain points on the land boundary between Lake Chad and Bakassi is in reality simply a dispute over the interpretation or application of particular provisions of the instruments delimiting that boundary. It is this dispute which the Court will now endeavour to settle.

* *

86. For this purpose, the Court will consider in succession each of the points in dispute along the land boundary from Lake Chad to the Bakassi Peninsula, designating them as follows: (1) Limani; (2) the Keraua (Kirewa or Kirawa) River; (3) the Kohom River; (4) the watershed from Ngosi to Humsiki (Roumsiki)/Kamale/Turu (the Mandara Mountains); (5) from Mount Kuli to Bourha/Maduguva (incorrect watershed line on Moisel's map); (6) Kotcha (Koja); (7) source of the Tsikakiri River; (8) from Beacon 6 to Wamni Budungo; (9) Maio Senche; (10) Jimbare and Sapeo; (11) Noumberou-Banglang; (12) Tipsan; (13) crossing the Maio Yin; (14) the Hambere Range area; (15) from the Hambere Range to the Mburi River (Lip and Yang); (16) Bissaula-Tosso; (17) the Sama River. For the sake of clarity, these points will be dealt with according to their order of appearance along a north-south line following the course of the land boundary from Lake Chad towards the sea as indicated on the attached general sketch-map (see below, p. 62, sketch-map No. 3). Likewise, for the sake of convenience, the relevant paragraphs of the Thomson-Marchand Declaration and the 1946 Order in Council will be set out in full before the discussion of each point. In addition, wherever possible, the Court will accompany its decisions on the points in dispute with illustrative sketches or maps. Lastly it will address the question of pillar 64 and additional points on the land border that have been discussed by the Parties.

* *

Limani

87. Paragraphs 13 and 14 of the Thomson-Marchand Declaration determine the boundary as follows:

> "13. Thence going on and meeting the bed of a better defined stream crossing the marsh of Kulujia and Kodo as far as a marsh named Agzabame.
>
> 14. Thence crossing this marsh where it reaches a river passing quite close to the village of Limanti (Limani) to a confluence at about 2 kilometres to the north-west of this village."

88. Nigeria observes that between the Agzabame Marsh and the modern town of Banki, which lies 3 km north-west of Limani, the river referred to in paragraph 14 of the Thomson-Marchand Declaration in fact has four channels. Nigeria advocates following the southernmost channel. It claims that this channel, which does not appear on sheet "Ybiri N.W." of the 1:50,000 map of Nigeria prepared by the Directorate of Overseas Surveys (DOS), is shown on the aerial photograph of the area submitted by it. It contends that the southern channel of the river corresponds to the boundary line shown on a sketch-map signed in 1921 by French and British officials which fixed the provisional boundary some 300 m north of Limani and south of Narki. It points out that this channel does indeed flow to a confluence 2 km north-west of Limani, as stated in paragraph 14 of the Thomson-Marchand Declaration.

89. Cameroon acknowledges that "[t]he problem lies in determining the stream which flows out of the Agzabame marsh, passes quite close to Limani and flows to a confluence at 2 km to the north-west of this village". It argues that the boundary should follow the second channel from the north. According to Cameroon, Nigeria is inventing non-existent river channels, since the channel it proposes does not appear on its own maps; as for the 1921 sketch-map, it has no legal status and in any event confirms Cameroon's view. Finally, Cameroon points out that "[o]n the ground, the Lamido of Limani in Cameroon governs the inhabitants of Narki".

90. The Court notes that in the Limani area the interpretation of the Thomson-Marchand Declaration raises difficulties. The Declaration simply refers to "a river" in this area, whereas there are in fact several river channels between the Agzabame marsh and the "confluence at about 2 kilometres to the north-west [of the village of Limanti (Limani)]" (para. 14 of the Declaration).

A careful study of the wording of the Thomson-Marchand Declaration and of the map and other evidence provided by the Parties leads the Court to the following conclusions. In the first place, the Court observes that the second channel from the north, proposed by Cameroon as the course of the boundary, is unacceptable. That channel does not meet the requirements of paragraph 14 of the Declaration, on the one hand because its distance from the village of Limani precludes it from being regarded, in the context of paragraph 14 of the Declaration, as "passing quite close" to Limani and, on the other, because its confluence is situated to the north-north-east of the village and not to the "north-west".

The southern channel proposed by Nigeria poses other problems. Its immediate proximity to the village of Limani and its apparent correspondence with the sketch-map signed by French and British administrators in 1921 are not in doubt. However, this channel does not appear on any map. Moreover, a stereoscopic examination of the aerial photographs of the area shows that, while there is indeed a small watercourse running from the Ngassaoua River to the point indicated by Nigeria, it is very short and quickly peters out, well before the Agzabame marsh, which is incompatible with the wording of paragraph 13 of the Thomson-Marchand Declaration. This small watercourse also runs much closer to Narki than Nigeria suggests. The Court cannot therefore accept this channel either.

The Court notes, however, that the river has another channel, called Nargo on DOS sheet "Ybiri N.W.", reproduced at page 23 of the atlas annexed to Nigeria's Rejoinder, which meets the conditions specified in the Thomson-Marchand Declaration. This channel does indeed start from the Agzabame marsh, passes to the north of Narki and to the south of Tarmoa, runs not far from Limani and reaches a confluence which is about 2 km north-west of Limani. The Court therefore considers that this is the channel to which the drafters of the Thomson-Marchand Declaration were referring.

91. Accordingly, the Court concludes that the "river" mentioned in paragraph 14 of the Thomson-Marchand Declaration is the channel running between Narki and Tarmoa, and that from the Agzabame marsh the boundary must follow that channel to its confluence with the Ngassaoua River (see below, p. 64, sketch-map No. 4).

*

The Keraua (Kirewa or Kirawa) River

92. Paragraph 18 of the Thomson-Marchand Declaration determines the boundary as follows:

> "18. Thence following the Keraua as far as its confluence in the mountains with a river coming from the west and known by the 'Kirdis' inhabiting the mountains under the name of Kohom (shown on Moisel's map under the name of Gatagule), cutting into two parts the village of Keraua and separating the two villages of Ishigashiya."

93. Nigeria maintains that paragraph 18 of the Thomson-Marchand Declaration "is defective in that there are in this area two courses of the Keraua (now Kirawa) River, and the Thomson-Marchand Declaration provides no guidance as to which channel forms the boundary". In its opinion, the boundary should follow the eastern channel, which is continuous and well-defined, in contrast to the western channel, as shown by the 1:50,000 map included by it in its Rejoinder and by the 1963 aerial photographs. Nigeria denies that this is an artificial channel and adds that Moisel's map places on Nigerian territory two villages called Schriwe and Ndeba, corresponding to the present-day villages of Chérivé and Ndabakora, situated between the two channels.

94. Cameroon for its part asserts that "[t]he problem arises from the fact that Nigeria has dug an artificial channel in the vicinity of the village of Gange, changing the Kerawa's course and diverting its waters in order to move the riverbed and, as a consequence, the course of the boundary". Cameroon therefore maintains that the boundary should be the western channel, which is the normal course of the river, even though it has temporarily dried up as a result of the diversion of the waters. It adds that the village of Chérivé no longer exists on the ground and that Cameroon peacefully administers this area.

95. The Court notes that, in the area of the Keraua (Kirewa or Kirawa) River, the interpretation of paragraph 18 of the Thomson-Marchand Declaration raises difficulties, since the wording of this provision merely makes the boundary follow "the Keraua", whereas at this point that river splits into two channels: a western channel and an eastern channel. The Court's task is thus to identify the channel which the boundary is to follow pursuant to the Thomson-Marchand Declaration.

The Court has first examined Cameroon's argument that the course of the Keraua River has been diverted by Nigeria as a result of an artificial channel constructed by it in the vicinity of the village of Gange. The Court considers that Cameroon has provided no evidence of its assertions on this point. Nor has the cartographic and photographic material in the Court's possession enabled it to confirm the existence of works to divert the course of the river near Gange.

Neither can the Court accept Nigeria's argument that preference should be given to the eastern channel because it is broader and better defined than the western channel, since the aerial photographs of the area which the Court has studied show that the two channels are comparable in size.

The Court notes, however, that according to the Moisel map the boundary runs, as Nigeria maintains, just to the east of two villages called Schriwe and Ndeba, which are on the site now occupied by the villages of Chérivé and Ndabakora, and which the map places on Nigerian territory. Only the eastern channel meets this condition.

96. The Court accordingly concludes that paragraph 18 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the eastern channel of the Keraua River.

*

The Kohom River

97. Paragraph 19 of the Thomson-Marchand Declaration determines the boundary as follows:

> "19. Thence it runs from this confluence as far as the top of Mount Ngosi in a south-westerly direction given by the course of the Kohom (Gatagule) which is taken as the natural boundary from its confluence as far as its source in Mount Ngosi; the villages of Matagum and Hijie being left to France, and the sections of Uledde and of Laherre situated to the north of the Kohom to England; those of Tchidoui (Hiduwe) situated to the south of Kohom to France."

98. Nigeria contends that paragraph 19 of the Thomson-Marchand Declaration "is defective in that it assumes that the River Kohom has its source in Mount Ngossi", which it alleges is not the case. It explains that the drafters of the Thomson-Marchand Declaration were mistaken in believing the Kohom to be the Keraua (Kirawa) River tributary flowing north-easterly from Mount Ngosi, a mountain which, in Nigeria's view, is readily identifiable. It contends that this mistake derives from a sketch-map prepared in March 1926 by British and French colonial officials and used in the preparation of the Thomson-Marchand Declaration. According to Nigeria, "the river which rises on Mount Ngossi is the Bogaza River". Nigeria acknowledges that the Kohom is indeed a tributary of the Keraua, but one which rises well to the north. It therefore proposes that the boundary should follow the Kohom, as Nigeria has identified it, to its source "nearest to the point at which the Bogaza River makes its abrupt turn to the south-east", and then follow the course of the Bogaza to Mount Ngosi.

99. For its part, Cameroon maintains that the Ngosi is a mountain chain, not a single peak, and that both the Kohom and Bogaza Rivers have their sources there. Cameroon believes that "[t]he terms of the [Thomson-Marchand] Declaration are sufficiently clear to identify the river which the Kirdis (Matakams) call the Kohom in the area". It considers that this river lies to the north of the watercourse which Nigeria has identified as the Kohom.

100. The Court notes that the initial problem posed by paragraph 19 of the Thomson-Marchand Declaration consists in the identification of the course of the River Kohom, along which the boundary is to pass. After a detailed study of the map evidence available to it, the Court has reached the conclusion that, as Nigeria contends, it is indeed the River Bogaza which has its source in Mount Ngosi, and not the River Kohom. The question whether the text of the Thomson-Marchand Declaration must be taken as referring to a single Mount Ngosi or to the Ngosi Mountains in the plural is irrelevant here, since, irrespective of the course of the Kohom indicated by the Parties, that river does not have its source in the vicinity of Mount Ngosi. The Court's task is accordingly to determine where the drafters of the Thomson-Marchand Declaration intended the boundary to run in this area when they described it as following the course of a river called "Kohom".

101. In order to locate the course of the Kohom, the Court has first examined the text of the Thomson-Marchand Declaration, which has not provided a decisive answer. Thus the Court has been unable to find, on any of the maps provided by the Parties, a single one of the villages and localities mentioned in paragraph 19 of the Declaration. Likewise, the provision in paragraph 18 of the Declaration that the boundary is to follow the course of the River Kohom from its confluence "in the mountains" with the Keraua has not enabled the Court to identify the course of the Kohom, given in particular that neither the course proposed by Cameroon, nor that submitted by Nigeria, corresponds to such a description.

The Court has therefore had to have recourse to other means of interpretation. Thus it has carefully examined the sketch-map prepared in March 1926 by the French and British officials which served as the basis for the drafting of paragraphs 18 and 19 of the Thomson-Marchand Declaration. As Nigeria pointed out in its Rejoinder, this sketch-map does indeed show what the intention of the Parties was at the time, when they referred to the River Kohom. The sketch-map is particularly helpful, since it includes very clear indications in regard to the relief of the area and the direction of the river, which the Court has been able to compare with the maps provided by the Parties. The Court is able to determine, on the basis of this comparison, that the Kohom whose course the Thomson-Marchand Declaration provides for the boundary to follow is that indicated by Cameroon. In this regard, the Court notes first that the 1926 sketch-map indicates very clearly, just before the boundary turns sharply to the south, a tributary descending from Mount Kolika and flowing into the Kohom. Such a tributary is to be found on the river identified by Cameroon as the Kohom but not on that proposed by Nigeria. The Court would further observe that the 1926 sketch-map quite clearly indicates that the boundary passes well to the north of the Matakam Mountains, as does the line claimed by Cameroon, whereas that favoured by Nigeria passes well to the south of those mountains.

The Court notes, however, that the boundary line claimed by Cameroon in this area runs on past the source of the river which the Court has identified as the Kohom. Nor can the Court disregard the fact that the Thomson-Marchand Declaration expressly provides that the boundary must follow a river which has its source in Mount Ngosi. In order to comply with the Thomson-Marchand Declaration, it is therefore necessary to join the source of the River Kohom, as identified by the Court, to the River Bogaza, which rises on Mount Ngosi.

102. The Court accordingly concludes that paragraph 19 of the Thomson-Marchand Declaration should be interpreted as providing for the boundary to follow the course of the River Kohom, as identified by the Court, as far as its source at 13° 44' 24" longitude east and 10° 59' 09"

latitude north, and then to follow a straight line in a southerly direction until it reaches the peak shown as having an elevation of 861 m on the 1:50,000 map in Figure 7.8 at page 334 of Nigeria's Rejoinder and located at 13° 45' 45" longitude east and 10° 59' 45" latitude north, before following the River Bogaza in a south-westerly direction as far as the summit of Mount Ngosi (see below, p. 69, sketch-map No. 5).

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The watershed from Ngosi to Humsiki *(Roumsiki)*/Kamale/Turu (the Mandara Mountains)

103. Paragraphs 20 to 24 of the Thomson-Marchand Declaration determine the boundary as follows:

> "20. Thence on a line in a south-westerly direction following the tops of the mountain range of Ngosi, leaving to France the parts of Ngosi situated on the eastern slopes, and to England the parts situated on the western slopes, to a point situated between the source of the River Zimunkara and the source of the River Devurua; the watershed so defined also leaves the village of Bugelta to England and the village of Turu to France.
>
> 21. Thence in a south-south-westerly direction, leaving the village of Dile on the British side, the village of Libam on the French side to the hill of Matakam.
>
> 22. Thence running due west to a point to the south of the village of Wisik where it turns to the south on a line running along the watershed and passing by Mabas on the French side, after which it leaves Wula on the English side running south and bounded by cultivated land to the east of the line of the watershed.
>
> 23. Thence passing Humunsi on the French side the boundary lies between the mountains of Jel and Kamale Mogode 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."

104. Nigeria contends that paragraphs 20 to 24 of the Thomson-Marchand Declaration clearly delimit the boundary in the area by reference to a watershed line and that this line should therefore be followed, rather than the line proposed by Cameroon. It emphasizes the fact that the Cameroonian village of Turu, which the Thomson-Marchand Declaration places in Cameroonian territory, has expanded onto Nigerian territory. It also points out that Cameroon's road makes incursions into Nigerian territory and that map No. 6 produced by Cameroon in Volume II of its Reply moves the boundary between 500 and 800 m westwards into Nigerian territory throughout the sector.

105. For its part, Cameroon argues that the disagreement "is the result of a divergence in the marking of the watershed on the maps". Cameroon notes that the concept of a watershed is a complex one and that it is particularly difficult to determine such a line along steep escarpments, as is the case here. It contends that the boundary line it has drawn does indeed follow the watershed at least until the vicinity of Humsiki (or Roumsiki). From that point, the boundary must necessarily deviate from the watershed because, according to the Thomson-Marchand Declaration, it must cross Mount Kuli and leave the farmlands west of the village to Cameroon. Cameroon adds that the village of Turu is situated entirely on Cameroonian territory.

106. The Court notes that the problem in the area between Ngosi and Humsiki derives from the fact that Cameroon and Nigeria apply the provisions of paragraphs 20 to 24 of the Thomson-Marchand Declaration in different ways. In this sector of the boundary the Court's task is thus to determine the course of the boundary by reference to the terms of the Thomson-Marchand Declaration, that is to say by reference essentially to the crest line, to the line of the watershed and to the villages which are to lie to either side of the boundary. The Court will address this question section by section.

107. From Ngosi to Turu, the boundary follows the line of the watershed as provided by paragraph 20 of the Thomson-Marchand Declaration. On this point the Court notes that the watershed line proposed by Cameroon crosses a number of watercourses and thus cannot be accepted. The watershed line presented by Nigeria, which over the greater part of its length follows the road running southwards from Devura, appears more credible. The Court must, however, point out that that road remains throughout its length within Cameroonian territory. As regards the village of Turu, the Court recalls moreover that, while it may interpret the provisions of delimitation instruments where their language requires this, it may not modify the course of the boundary as established by those instruments. In the present case, the Parties do not dispute that the boundary follows the line of the watershed. That boundary line may not therefore be modified by the Court. Hence, if it should prove that the village of Turu has spread into Nigerian territory beyond the watershed line, it would be up to the Parties to find a solution to any resultant problems, with a view to ensuring that the rights and interests of the local population are respected.

108. From Turu to Mabas, the Parties disagree on the course of the boundary as described in paragraphs 21 and 22 of the Thomson-Marchand Declaration only at two points: one to the south of Wisik, where the Court sees no reason not to adopt the line indicated by Cameroon, and the other near Mabas. There, the line indicated by Cameroon crosses certain watercourses and therefore cannot be the watershed line. Nor does the line favoured by Nigeria appear suitable, since it passes through Mabas, whereas the Declaration provides that that village should remain entirely on the French side ("pass[es] by Mabas on the French side"/"*franchit Mabas, sur le coté français*"). Hence at this point the boundary must follow the watershed line, whilst leaving all of the village of Mabas on the Cameroonian side. Here too the Court considers that, where the road running south from Turu follows the boundary, it remains at all times on Cameroonian territory.

109. From Mabas to Ouro Mavoum, the line of the watershed has not been in issue between the Parties.

110. From Ouro Mavoum to the mountains of Jel, passing through Humunsi (Roumzou), the boundary follows the line proposed by Nigeria whilst leaving all of the road on Cameroonian territory. Thus the Court finds that the line proposed by Cameroon cannot be accepted: while that line does indeed correspond to the watershed line, paragraph 22 of the Thomson-Marchand Declaration places the boundary at this point not on that line, but along a line bounded by cultivated land lying "to the east of the line of the watershed".

111. From the mountains of Jel to Mogode, the boundary again follows the watershed line. The line indicated by Cameroon crosses numerous watercourses and must therefore be rejected. The line favoured by Nigeria appears to be more correct.

112. From Mogode to Humsiki (Roumsiki), the boundary continues to follow the watershed line, whilst leaving all of the road on Cameroonian territory. Here again the line proposed by Cameroon must be rejected, since it crosses numerous watercourses. The Nigerian line appears more suitable, provided that the road remains throughout on the Cameroonian side of the boundary and that the line leaves all of Humsiki to Cameroon.

113. Beyond Humsiki, the boundary continues to follow the line proposed by Nigeria. That line appears, moreover, more favourable to Cameroon than the one shown on its own maps, and in any event Cameroon has never challenged Nigeria's claims at this point on the boundary.

114. The Court concludes from the foregoing that in the area between Ngosi and Humsiki the boundary follows the course described by paragraphs 20 to 24 of the Thomson-Marchand Declaration as clarified by the Court.

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From Mount Kuli to Bourha/Maduguva (incorrect watershed line on Moisel's map)

115. Paragraph 25 of the Thomson-Marchand Declaration determines the boundary as follows:

> "25. Thence running due south between Mukta (British) and Muti (French) the incorrect line of the watershed shown by Moisel on his map being adhered to, leaving Bourha and Dihi on the French side, Madogoba Gamdira on the British, Bugela or Bukula, Madoudji, Kadanahanga on the French, Ouda, Tua and Tsambourga on the British side, and Buka on the French side."

116. Nigeria contends that paragraph 25 of the Thomson-Marchand Declaration, which provides for the boundary to follow "the incorrect line of the watershed"

> "is defective in that the requirement to follow a watershed line which is expressly admitted to be incorrect, shown on a 90 year old map which displays very little detail, can be interpreted in a number of ways".

Nigeria thus proposes simplifying the line up to the point where Moisel's line cuts the true watershed north of Bourha. That simplification is claimed to be justified by a *procès-verbal* of 1920, which provides for the boundary to follow the centre of a track running from Muti towards Bourha. South of Bourha, Nigeria proposes following the true watershed, leaving Bourha on Nigerian territory.

117. Cameroon, for its part, argues that the Thomson-Marchand Declaration "deliberately places the boundary along 'the incorrect line of the watershed' shown by Moisel on his map", and accordingly proposes adhering strictly to the transposition of Moisel's line onto a modern map and on the ground. It adds that the 1920 *procès-verbal* cited by Nigeria was mistranslated into English and that the French original provides no support whatsoever for Nigeria's position.

118. The Court notes that the text of paragraph 25 of the Thomson-Marchand Declaration provides quite expressly that the boundary is to follow "the incorrect line of the watershed shown by Moisel on his map". Since the authors of the Declaration prescribed a clear course for the boundary, the Court cannot deviate from that course.

The Court has carefully studied the Moisel map and has compared the data provided by it with those available on the best modern maps, and in particular sheet "Uba N.E." of the 1969 DOS 1:50,000 map of Nigeria and sheet NC-33-XIV-2c "Mokolo 2c" of the 1965 *Institut géographique national* (IGN) 1:50,000 map of Central Africa, both of which were provided to the Court by Nigeria. The Court observes that, while the Moisel map contains some errors in this area, it nonetheless provides certain objective criteria that permit the course of the "incorrect line of the watershed" to be readily transposed onto modern maps. The Court notes first that on the Moisel map the "incorrect line of the watershed" is clearly shown as remaining at all times to the east of the meridian 13° 30' longitude east. The Court further notes that a certain number of localities are indicated as lying either to the east or to the west of the incorrect line and must accordingly remain on the same side of the boundary after that line has been transposed onto modern maps.

The Court cannot accept the line presented by Cameroon as corresponding to a transposition of the "incorrect line of the watershed". That line lies throughout its length to the west of the meridian 13° 30' longitude east. Nigeria's transposition of the "incorrect line of the watershed" poses other problems. While it places this line at all times to the east of the meridian 13° 30' longitude east, it cannot, however, be accepted, since it consists of a series of angled lines, whereas the line on the Moisel map follows a winding course.

119. The Court accordingly concludes that paragraph 25 of the Thomson-Marchand Declaration should be interpreted as providing for the boundary to run from Mount Kuli to the point marking the beginning of the "incorrect line of the watershed", located at 13° 31' 47" longitude east and 10° 27' 48" latitude north, having reached that point by following the correct line of the watershed. Then, from that point, the boundary follows the "incorrect line of the watershed" to the point marking the end of that line, located at 13° 30' 55" longitude east and 10° 15' 46" latitude north. Between these two points the boundary follows the course indicated on the map annexed to this Judgment, which was prepared by the Court by transposing the "incorrect line of the watershed" from the Moisel map to the first edition of sheet "Uba N.E." of the DOS 1:50,000 map of Nigeria. From this latter point, the boundary will again follow the correct line of the watershed in a southerly direction.

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Kotcha (Koja)

120. Paragraphs 26 and 27 of the Thomson-Marchand Declaration determine the boundary as follows:

> "26. Thence the boundary runs through Mount Mulikia (named also Lourougoua).
>
> 27. Thence from the top of Mount Mulikia to the source of the Tsikakiri, leaving Kotcha to Britain and Dumo to France and following a line marked by four provisional landmarks erected in September 1920 by Messrs. Vereker and Pition."

121. According to Nigeria, paragraphs 26 and 27 of the Thomson-Marchand Declaration pose a problem in that only one of the four landmarks erected in 1920 referred to in those paragraphs is possibly identifiable today. It therefore proposes that, before arriving at that cairn, the boundary should follow the watershed, except in the vicinity of Kotcha, where the farmland lying on the Cameroonian side of the watershed line which is worked by farmers from Kotcha would be left to Nigeria, in order to take account of the fact that the Nigerian village of Kotcha has expanded to either side of that line.

122. Cameroon considers that the boundary line sought by Nigeria in the vicinity of Kotcha is contrary to the Thomson-Marchand Declaration and that the text of the Declaration should be respected. The remainder of the line proposed by Nigeria in this area, following the line of the watershed, is not contested by Cameroon.

123. The Court finds that, in the Kotcha area, the difficulty derives solely from the fact, as Nigeria recognizes, that the Nigerian village of Kotcha has spread over onto the Cameroonian side of the boundary. As the Court has already had occasion to point out in regard to the village of Turu, it has no power to modify a delimited boundary line, even in a case where a village

previously situated on one side of the boundary has spread beyond it. It is instead up to the Parties to find a solution to any resultant problems, with a view to respecting the rights and interests of the local population.

124. The Court accordingly concludes that the boundary in the Kotcha area, as described in paragraphs 26 and 27 of the Thomson-Marchand Declaration, follows the line of the watershed, including where it passes close to the village of Kotcha, the cultivated land lying on the Cameroonian side of the watershed remaining on Cameroonian territory.

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Source of the Tsikakiri River

125. Paragraph 27 of the Thomson-Marchand Declaration determines the boundary as follows:

> "27. Thence from the top of Mount Mulikia to the source of the Tsikakiri, leaving Kotcha to Britain and Dumo to France and following a line marked by four provisional landmarks erected in September 1920 by Messrs. Vereker and Pition."

126. Nigeria observes that the Tsikakiri River referred to in paragraph 27 of the Thomson-Marchand Declaration has three possible sources. It asserts that, contrary to Cameroon's contention, the boundary should be one of the southern tributaries, not the northern tributary, since only the southern tributaries originate at the crest line, as implied by the Declaration.

127. For its part, Cameroon asserts that the northern tributary is the true source of the Tsikakiri and the one to be taken into account. It contends that the spot indicated by an arrow on Figure 7.14 at page 344 of Nigeria's Rejoinder as the source of the southern tributary is nothing of the kind.

128. The Court notes that the interpretation of paragraph 27 of the Thomson-Marchand Declaration poses problems because the Tsikakiri River has more than one source, whereas the Declaration simply states that the boundary passes through "the source" of the Tsikakiri without providing any indication as to which source is to be chosen. The Court would first observe that, in terms of geographical theory, there exists no definition enabling the principal source of a river to be identified with full certainty where that river has several sources. However, the task of the Court is not to identify the "geographical" source of the Tsikakiri, but to identify the source through which the drafters of the Thomson-Marchand Declaration intended that the boundary should pass. Considering that the Thomson-Marchand Declaration delimited the boundary in general by means of a physical description of the terrain, it may reasonably be assumed that the drafters of the Declaration, in referring to the source of the Tsikakiri, intended to designate a point which could be readily identified, both on maps and on the ground. Thus the Court notes that one of the sources of the Tsikakiri stands out from the others. This is a source situated at 13° 16' 55" longitude east and 10° 02' 02" latitude north and having the highest elevation which is not proposed by either of the Parties.

129. The Court accordingly concludes that, in the area referred to in paragraph 27 of the Thomson-Marchand Declaration, the boundary starts from a point having co-ordinates 13° 17' 50" longitude east and 10° 03' 32" latitude north, which is located in the vicinity of Dumo. From there, the boundary runs in a straight line to the point which the Court has identified as the "source of the Tsikakiri" as referred to in the Declaration, and then follows that river (see below, p. 76, sketch-map No. 6).

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From Beacon 6 to Wamni Budungo

130. Paragraphs 33 and 34 of the Thomson-Marchand Declaration determine the boundary as follows:

> "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."

131. In respect of the course of the boundary from Beacon 6 to Wamni Budungo, Nigeria states that Beacons 6 and 8, through which the Thomson-Marchand Declaration provides for the boundary to pass, have not been found. Some traces of Beacon 7 are said to remain at its location. Citing paragraph 32 of the Thomson-Marchand Declaration, which refers to the "old British-German Frontier", it argues that an attempt should therefore be made to locate those beacons by reference to the 1906 Anglo-German Agreement, which served as the basis for fixing the course of the boundary in this area. Thus Annex I to that Agreement, which was drafted in 1903, contains a description of the method employed to determine the locations of the beacons. Paragraph 3 of the Annex provides:

> "[t]he line then follows the median line of the Faro up-stream, as far as the junction of the Mao Hesso with the main stream; and afterwards the median line of the Mao Hesso, as far as a post, No. 6, on the left bank of the Mao Hesso, about 3 km north-west of Beka. It then runs from the median line of the river at right angles to its course, to No. 6 post."

Paragraph 4 then goes on to explain:

> "From No. 6 post the line runs straight to a conspicuous rock, on a slight eminence on the road from Gurin to Karin. This rock has a boundary mark (No. 7) "D B" (Deutsch-British) cut into it. From this rock it runs straight to a post, No. 8, fixed on the road at the entrance to the pass through the Karin Hills, north of the village of Karin."

Nigeria claims that, pursuant to that method, Beacon 6 is situated on the left bank of the Mao Hesso about 3 km north-west of Beka, while Beacon 8 is situated at the intersection of the extension of the line joining Beacons 6 and 7 and the stream mentioned in paragraph 34 of the Thomson-Marchand Declaration.

132. For its part, Cameroon states that the problem in this area consists in identifying all of the beacons referred to in paragraphs 33 and 34 of the Thomson-Marchand Declaration, including Beacon 7, which Cameroon denies to be the one described by Nigeria, and identifying the summit of Wamni Range. Cameroon nevertheless stresses that this is a problem of demarcation, not delimitation.

133. The Court notes that the interpretation of paragraphs 33 and 34 of the Thomson-Marchand Declaration raises a problem in that those provisions describe the line of the boundary as passing through three beacons of which at least two have now disappeared.

The Court has studied most attentively the text of Annex I to the Anglo-German Agreement of 1906, as well as the cartographic material provided to it by the Parties, in order to discover the location of these beacons. The Court thus notes that the point indicated by Nigeria as corresponding to Beacon 6 and situated at 12° 53’ 15” longitude east and 9° 04’ 19” latitude north does indeed reflect the terms of the description of it given in the Agreement, since it lies on the left bank of the Mao Hesso 3 km to the north-west of the village of Beka. The Court likewise considers that the point indicated by Nigeria as corresponding to Beacon 7 and situated at 12° 51’ 55” longitude east and 9° 01’ 03” latitude north must be accepted. Although Nigeria has produced no evidence of Beacon 7 having been found at that point, its location does indeed correspond to the description in the 1906 Anglo-German Agreement, particularly in view of the fact that it is the only high ground in that area. As regards the location of Beacon 8, which is described as situated at the entrance to the pass through the Karin Hills on the road crossing the pass, and on the left bank of the Mao Youwai, it is the point proposed by Cameroon, located at 12° 49’ 22” longitude east and 8° 58’ 18” latitude north, which must be taken to be the correct one, since it satisfies both the conditions laid down by the 1906 Agreement and those in paragraph 34 of the Thomson-Marchand Declaration.

134. The Court accordingly concludes that paragraphs 33 and 34 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to pass through the points having the above-mentioned co-ordinates, which it has identified as corresponding to Beacons 6, 7 and 8 as referred to in those paragraphs (see below, p. 78, sketch-map No. 7).

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Maio Senche

135. Paragraph 35 of the Thomson-Marchand Declaration determines the boundary as follows:

> "35. Thence the frontier follows the watershed from the Mao Wari to the west and from the Mao Faro to the east, where it rejoins the Alantika Range, it 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."

136. Nigeria contends that the boundary in this sector must follow the watershed. It points out that the line claimed by Cameroon in this area displaces the boundary from the watershed which the boundary is to follow pursuant to paragraph 35 of the Thomson-Marchand Declaration, "thereby attributing to Cameroon the small village of Batou (Batodi Dampti) and some 1,200 hectares of land territory" (CN 2002/39, p. 21).

137. For its part, Cameroon maintains that "the representation of the watershed as it crosses the Alantika Range and the location of the village of Batou" is solely a problem of demarcation.

138. The Court notes that, in the Maio Senche area, covered by paragraph 35 of the Thomson-Marchand Declaration, the difficulty lies in identifying the line of the watershed, of which the two Parties have proposed differing cartographic representations.

139. The Court confirms that the boundary in the Maio Senche area follows the line of the watershed between the Benue and the Faro. Paragraph 35 of the Thomson-Marchand Declaration is quite clear on this point, which is indeed not disputed by the Parties. After studying the cartographic material provided to it by the Parties, the Court observes that it cannot accept the watershed line proposed by Cameroon, in particular because it follows the course of a river over the greater part of its length, which is incompatible with the concept of the line of a watershed. The watershed line passes, as Nigeria contends, between the basin of the Maio Senche and that of the two rivers to the south (see below, p. 80, sketch-map No. 8).

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Jimbare and Sapeo

140. Paragraphs 35 to 38 of the Thomson-Marchand Declaration determine the boundary as follows:

> "35. Thence the frontier follows the watershed from the Mao Wari to the west and from the Mao Faro to the east, where it rejoins the Alantika Range, it 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.

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, 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."

141. In regard to the course of that part of the land boundary described in paragraphs 35 to 38 of the Thomson-Marchand Declaration, Nigeria first notes that the wording of the Declaration is defective in many respects and proposes to clarify it. It contends that the Court should find that the south peak of the Alantika mountains is Hosere Bila, situated 2 km north of the source of the Mali River. It further points out that the Sassiri River referred to in paragraph 36 of the Thomson-Marchand Declaration does not flow from Hosere Bila but from the Balakossa Range lying further to the south, and that the river referred to in paragraph 36 is in fact the Leinde or Lugga. It adds that, south of Nananoua, the description of the boundary should be clarified and modified by the Court, since the text of paragraphs 37 and 38 of the Thomson-Marchand Declaration and the accompanying map are mutually contradictory. It explains that the intention of the British and French Governments had since 1920 been to attribute Jimbare to France and Sapeo to Great Britain. In this connection it points out that on 12 November 1920 a joint proposal to this effect had been signed by W. D. K. Mair, a British District Officer, and Captain Louis Pition, representing the French administration (hereinafter the "Mair-Pition Joint Proposal"), following a delimitation mission on the ground, that proposal being subsequently incorporated into a document signed on 16 October 1930 by R. Logan, British District Officer, and Lieutenant J. Le Brun, representing the French administration (hereinafter the "Logan-Le Brun *procès-verbal*"). Nigeria claims that this document, drawn up after the Thomson-Marchand Declaration was prepared but before it was signed, was intended to set out a solution on the ground to the difficulties created by the text of the Thomson-Marchand Declaration and that it has been respected since then by both Parties.

Nigeria contends that, while part of the proposals in the Logan-Le Brun *procès-verbal* were incorporated into the text of the Thomson-Marchand Declaration, the drafters forgot to amend also the part of the Declaration concerning Jimbare and Sapeo; as far as Sapeo was concerned, the proposals in the Logan-Le Brun *procès-verbal* were nonetheless shown on the 1931 map annexed to the Declaration. In Nigeria's view, it is the map which should therefore be followed and not the text of the Declaration, since this "does not accord with the extensive practice on the ground for the

past three quarters of a century". Thus it asserts that Sapeo was treated as Nigerian during the 1959 and 1961 plebiscites and that Nigeria is responsible for its administration. In Nigeria's view, the solution is therefore to construe the Thomson-Marchand Declaration in the light of the Mair-Pition Joint Proposal, of the Logan-Le Brun *procès-verbal* and of the well-established local practice. The new description based on the Logan-Le Brun *procès-verbal* would result in leaving all of the Balakossa Range to Cameroon and giving Nigeria the Sapeo plain on the southern side of Hosere Sapeo. It contends that the modified boundary line was moreover accepted by Cameroon in a letter dated 17 March 1979 to the "Prefect of Benue Department" from the Sub-Prefect of Poli Subdivision.

142. Cameroon agrees with Nigeria that the peak referred to in paragraph 35 of the Thomson-Marchand Declaration is Hosere Bila and that the rivers whose courses are to be followed in this area are indeed first the Leinde and then the Sassiri. Cameroon maintains, however, that south of Nananoua only the Thomson-Marchand Declaration should be used in order to establish the course of the boundary; it argues that, although the Mair-Pition Joint Proposal was submitted to France and Great Britain, it was not accepted by them and not incorporated in the Thomson-Marchand Declaration; the same applied to the Logan-Le Brun *procès-verbal*. As regards the 1979 letter, Cameroon observes that "[a mere sub-prefect] had not properly understood the true legal position". In Cameroon's view, the text of the Thomson-Marchand Declaration should therefore be adhered to.

143. The Court notes that the interpretation of paragraphs 35 to 38 of the Thomson-Marchand Declaration poses problems, since the description of the boundary therein appears both to contain a series of material errors and, in certain places, to contradict the representation of that boundary on the 1931 map appended to the Declaration.

The Court notes, however, that, as regards the area to the north of Nananoua as referred to in paragraph 36 of the Thomson-Marchand Declaration, the Parties agree that the rivers whose courses form the boundary are the Leinde and the Sassiri. Similarly, the cartographic representations of this section of the boundary proposed by the Parties correspond in every respect.

To the south of Nananoua, on the other hand, there is no agreement between Cameroon and Nigeria.

144. The Court will first address the Sapeo area. After carefully studying the maps provided by the Parties and the Logan-Le Brun *procès-verbal*, the Court finds that, as Nigeria claims, it is indeed the boundary described in that *procès-verbal* and not that described in the Thomson-Marchand Declaration which was transposed onto the 1931 map appended to the Declaration. The Court further notes that, in practice, Sapeo has always been regarded as lying in Nigerian territory. Thus Sapeo was regarded as Nigerian in the 1959 and 1961 plebiscites. While Cameroon has stated in its written pleadings that it regarded as "insufficient" the various items of evidence presented by Nigeria as proof of its administration of the village of Sapeo, it has however not seriously challenged them. Cameroon has also never claimed to exercise any form of administration over the village. The letter of 17 March 1979 from the Sub-Prefect of Poli Subdivision to the "Prefect of Benue Department" indicates that Cameroon was aware of Nigeria's

administration of Sapeo. The Court accordingly considers that in this area the Thomson-Marchand Declaration should be interpreted in accordance with the intention of its authors, as manifested on the map appended thereto and on the ground, namely so as to make the boundary follow the course described in the Logan-Le Brun *procès-verbal*.

145. Turning next to the situation in the Jimbare area, the Court notes that, contrary to what occurred in regard to Sapeo, the modification of the boundary provided for in the Logan-Le Brun *procès-verbal* was not transposed onto the 1931 map appended to the Thomson-Marchand Declaration in respect of the Jimbare area. The course of the boundary on the map is as described in the Declaration. The Court nonetheless takes the view that it is the course as described in the Logan-Le Brun *procès-verbal* which must also prevail here. As the Court has just found, the Logan-Le Brun course in effect corresponds to the intention of the authors of the Declaration throughout this region. In its Rejoinder Nigeria has moreover accepted this interpretation of the Thomson-Marchand Declaration, which is favourable to Cameroon, whilst the latter has not opposed it.

146. The Court accordingly concludes, first, that paragraphs 35 and 36 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to pass over Hosere Bila, which it has identified as the "south peak of the Alantika Mountains" referred to in paragraph 35, and then from that point along the River Leinde and the River Sassiri "as far as the confluence with the first stream coming from the Balakossa Range".

The Court further concludes that paragraphs 37 and 38 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the course described in paragraph 1 of the Logan-Le Brun *procès-verbal*, as shown by Nigeria in Figures 7.15 and 7.16 at pages 346 and 350 of its Rejoinder.

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Noumberou-Banglang

147. Paragraph 38 of the Thomson-Marchand Declaration determines the boundary as follows:

> "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, 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."

148. Nigeria considers that paragraph 38 of the Thomson-Marchand Declaration is also defective in that it describes the boundary as "going up a valley north-east and then south-east", whereas the only valley in the area runs north-west and then south-west. According to Nigeria, this error was noted in the 1930 Logan-Le Brun *procès-verbal* and rectified by a provision for the boundary to follow "the main course of the Mayo Namberu upstream to its source in a well-defined saddle approx. ½ mile to the east of the main summit of Hossere Banglang".

149. For its part, Cameroon stands by the definition of the boundary set out in paragraphs 37 and 38 of the Thomson-Marchand Declaration.

150. The Court notes that the final part of paragraph 38 of the Thomson-Marchand Declaration poses problems of interpretation in that it contains fundamental errors of a material nature. After examining the cartographic material provided by the Parties, the Court has thus reached the conclusion, as Nigeria contends, that there is no valley in the area running "north-east, then south-east", contrary to what is stated in the text of this paragraph. The Court will therefore endeavour to identify the course which the authors of the Thomson-Marchand Declaration intended the boundary to follow in this area.

The Court notes that in this regard only the part of the boundary situated to the south of the source of the Noumberou poses any problem.

To the north of that point, Cameroon and Nigeria agree that the boundary should follow the course of the Noumberou. The course of the boundary shown on the Cameroonian and Nigerian maps confirms that agreement.

However, to the south of the source of the Noumberou, the cartographic representations of the boundary presented by the Parties diverge.

151. The Court observes that, while the text of the Thomson-Marchand Declaration contains scant information enabling it to determine the precise course of the boundary in this sector, the description of it in the Logan-Le Brun *procès-verbal* is, however, far more detailed and enables such a determination to be made. The Court recalls that it has already had occasion to use the text of that *procès-verbal* in order to interpret the Thomson-Marchand Declaration, where it was clear that its terms corresponded to the intention of the authors of the Declaration (see paragraph 143 above). The Court has no doubt that this is again the case here. It notes in particular that the Logan-Le Brun *procès-verbal* and paragraph 38 of the Thomson-Marchand Declaration appear to make the boundary in this sector terminate at the same point. Thus the Logan-Le Brun *procès-verbal* provides that the boundary runs to Mount Tapare, situated "about a mile to the south of the source of the Mayo Kordo", whilst the English text of the Thomson-Marchand Declaration provides for the boundary to pass through a point "about a kilometre to the south of the source of the Kordo River". The French text of paragraph 38 omits the phrase "to the south of". The Court is bound moreover to note in this regard that the part of the boundary situated to the north of the source of the Noumberou, on which the Parties are in agreement, follows the boundary established by the Logan-Le Brun *procès-verbal*.

The Court considers that it is the boundary line proposed by Nigeria which is to be preferred. That is the line which runs most directly to Hosere Tapere, located at 12° 14' 30" longitude east and 8° 22' 00" latitude north, the point indicated by the Logan-Le Brun *procès-verbal* as the terminal for this section of the boundary. That line is moreover more favourable to Cameroon than the line shown on its own maps, and Cameroon has not opposed it.

152. The Court accordingly concludes that the final part of paragraph 38 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the course of the River Noumberou as far as its source, and then from that point to run in a straight line as far as Hosere Tapere as identified by the Court (see below, p. 86, sketch-map No. 9).

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Tipsan

153. Paragraphs 40 and 41 of the Thomson-Marchand Declaration determine the boundary as follows:

> "40. Thence along a line parallel to the Bare Fort Lamy Track and 2 kilometres to the west of this track, which remains in French territory.
>
> 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."

154. Both Nigeria and Cameroon agreed at the hearings that the description of the boundary set out in paragraphs 40 and 41 of the Declaration is clear.

Cameroon maintains, however, that there is a demarcation problem in this area, namely in identifying on the ground the features mentioned in those provisions. Specifically, it contends that there is a locality called Tipsan on Cameroonian territory some 3 km from the town of Kontcha.

Nigeria denies the existence of a village called Tipsan on the Cameroonian side of the boundary, claiming that the only place called Tipsan is an immigration post situated on Nigerian territory.

155. The Court observes that at the hearings the Parties agreed that the boundary must follow a line running parallel to the Fort Lamy-Baré road some 2 km to the west thereof, as paragraph 41 of the Thomson-Marchand Declaration provides. The Court takes note of that agreement.

However, the Court considers that, in order to remove any doubt, it should identify the terminal point of this section of the boundary — namely the point situated on the Mayo Tipsal "2 kilometres to the south-west of the point at which the road crosses said Mayo Tipsal" — as corresponding to the co-ordinates 12° 12' 45" longitude east and 7° 58' 49" latitude north.

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Crossing the Maio Yin

156. Paragraphs 48 and 49 of the Thomson-Marchand Declaration determine the boundary as follows:

> "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 Genderu 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, at the foot of which (in French Territory) is a spring impregnated with potash, which is well-known to all cattle-owners in the vicinity. This Hosere Gulungel has a magnetic bearing of 228 from the point (5 miles from Genderu Rest-house, which is known locally as 'Kampani Massa' on the main Kwancha-Banyo road where it (Hosere Gulungel) first comes into view. From this same point the magnetic bearing to Hosere Lowul is 11. The Salt lick of Banare lies in British Territory."

157. Nigeria considers that paragraphs 48 and 49 of the Thomson-Marchand Declaration are too vague, in particular in respect of the location of the precise point where the boundary crosses the Maio Yin; the Court should therefore identify that point.

158. In Cameroon's view, the two paragraphs of the Thomson-Marchand Declaration in question do not require any clarification by the Court; the two peaks and the straight line to be drawn between them, as well as the point at which the river is crossed, are identified in precise enough terms to make this simply a question of demarcation.

159. The Court observes that, while Nigeria did in its Counter-Memorial raise the question of the course of the boundary where it crosses the Maio Yin as described in paragraph 49 of the Thomson-Marchand Declaration, it did not return to this point in its Rejoinder, or at the hearings. Nor did Nigeria challenge Cameroon's argument that the problem in this area is merely one of demarcation. The Court accordingly considers that it is not necessary to specify the co-ordinates of the points through which, pursuant to the Declaration, the boundary is to pass in this area.

160. The Court accordingly confirms that the boundary in the area where it crosses the Maio Yin follows the course described in paragraphs 48 and 49 of the Thomson-Marchand Declaration.

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The Hambere Range area

161. Paragraphs 60 and 61 of the Thomson-Marchand Declaration determine the boundary as follows:

> "60. Thence the Frontier follows the watershed amongst these Hosere Hambere (or Gesumi) to the north of the sources of the Maio Kombe, Maio Gur and Maio Malam to a fairly prominent, pointed peak which lies on a magnetic bearing of 17° from a cairn of stones, 8 feet high, erected on the 15th September, 1920, on the south side of the above Banyo-Kumbo-Bamenda road at a point 1 mile from N'Yorong Rest-camp and 8½ miles from Songkorong village.
>
> 61. From this peak in the Hosere Hambere (or Gesumi), which is situated just to the east of the visible source of the Maio M'Fi (or Baban), the Frontier follows the watershed, visible all the way from the Cairn, between the Maio Malam to east (French) and the Maio M'Fi (or Baban) to west (British), till it cuts the Banyo-Kumbo-Bamenda road at the Cairn. This Cairn is immediately under the highest peak of the Hosere Nangban, which is shown on Moisel's map F 2 as Hosere Jadji, but Jadji is really the name of the Pagan head of N'Yorong village."

162. In respect of the sector of the boundary delimited by paragraphs 60 and 61 of the Thomson-Marchand Declaration, Nigeria asserts that the peak described therein as being "fairly prominent", which in the English version of the text is further described as "pointed", is "Itang Hill". It claims to have identified this peak as lying on a magnetic bearing of 17° from a point whose co-ordinates are 11° 11' 55" longitude east and 6° 24' 05" latitude north, where it claims to have located "with a fair degree of probability" the site of the cairn referred to in paragraph 60 of the Thomson-Marchand Declaration. As that peak is not however on the watershed, contrary to what is provided in paragraphs 60 and 61 of the Declaration, the boundary should, according to Nigeria, be drawn by connecting the crest line to Itang Hill north-east of this summit, and then by following the escarpment to the south-west of the Nigerian village of Sanya, where it would join the watershed line.

163. For its part, Cameroon argues that identifying the "fairly prominent" peak referred to in paragraph 60 of the Thomson-Marchand Declaration and in the 1946 Order in Council is purely a problem of demarcation. It further contends that the solution proposed by Nigeria could be intended to justify encroachments in the Tamnyar area by arbitrarily moving the watershed line and that no map shows a village called Sanya.

164. The Court notes that paragraphs 60 and 61 of the Thomson-Marchand Declaration raise problems of interpretation, since they provide for the boundary to pass over "a fairly prominent peak" without any further clarification (although in the English text of paragraph 60, that peak is further described as "pointed"), and the Parties have differing views as to the location of that peak.

165. The Court observes that paragraphs 60 and 61 contain a number of indications which are helpful in locating the "fairly prominent, pointed peak" referred to therein. First, those paragraphs state that the peak must be located on the watershed passing through the Hosere Hambere. Thus paragraph 60 provides that the peak is to be reached, coming from the east, by following "the watershed amongst these Hosere Hambere (or Gesumi)". The French text of paragraph 61 further provides that from the peak "la frontière *continue* de suivre la ligne de partage des eaux" [the boundary *continues* to follow the line of the watershed] (emphasis added by the Court). Moreover, the fact that the peak referred to in paragraph 60 must lie on the watershed passing through the Hosere Hambere has been accepted by Nigeria as a basic requirement for the course of the boundary in this sector. Secondly, paragraphs 60 and 61 make it clear that this peak lies on a "bearing" — described in the English text as "magnetic" — of 17° from a "cairn of stones" erected in 1920 and situated "on the south side of the . . . Banyo-Kumbo-Bamenda road", "immediately under the highest peak of the Hosere Nangban". Thirdly, paragraph 61 states that the line of the watershed from the peak separates the Mayo Malam and the Mayo M'Fi basins, and that it is visible from the cairn used to calculate the magnetic bearing of 17°. Fourthly, the English text of paragraph 61 further states that this peak is "situated just to the east of the visible source of the Maio M'Fi", while the French text omits the adverb "just".

166. The Court has studied with the greatest care the maps provided by the Parties, and in particular the course of the watershed running through the Hosere Hambere. On the basis of this study, it has concluded that the fairly prominent pointed peak referred to in paragraph 60 of the Thomson-Marchand Declaration is not Itang Hill as Nigeria contends.

Thus the Court observes that, while Itang Hill does indeed lie on a magnetic bearing of 17° (a true bearing of 8° after conversion) calculated from the point which Nigeria describes as corresponding to the site of the stone cairn referred to in paragraph 60 and located on a meridian lying to the east of that of the sources of the River M'Fi, it does not, however, satisfy any of the other criteria prescribed by paragraphs 60 and 61. Thus Itang Hill does not lie on the watershed running through the Hosere Hambere, which is located 2 km to the north. Moreover, at no time does the watershed between the Mayo Malam and the Mayo M'Fi come at all close to Itang Hill.

167. The Court notes, on the other hand, that following the line of the watershed through the Hosere Hambere from the east, in accordance with paragraph 60, brings one to a very prominent peak, Tamnyar, which satisfies the conditions laid down in the Thomson-Marchand Declaration and whose elevation is greater than that of Itang Hill. This peak is shown on Figure 7.37 reproduced at page 388 of Nigeria's Rejoinder as bearing the name Tamnyar and having an elevation of 5,968 feet, or approximately 1,820 m. In addition to the essential fact that the

watershed through the Hosere Hambere passes over the foothills of this peak, the Court notes that Tamnyar is also located on a meridian lying to the east of that of the sources of the M'Fi and that the watershed on which it lies does indeed, after turning to the south, become the watershed between the Mayo Malam and the Mayo M'Fi. The Court further notes that Tamnyar Peak lies on a bearing almost identical to that of Itang Hill.

168. The Court concludes from the foregoing that paragraph 60 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the line of the watershed through the Hosere Hambere or Gesumi, as shown on sheet NB-32-XVIII-3a-3b of the 1955 IGN 1:50,000 map of Cameroon, produced in the proceedings by Nigeria, as far as the foot of Tamnyar Peak, which the Court has identified as the "fairly prominent, pointed peak" referred to in the Declaration (see below, p. 94, sketch-map No. 10).

*

From the Hambere Range to the Mburi River (Lip and Yang)

169. The 1946 Order in Council determines the boundary from west to east as follows:

> "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."

170. According to Nigeria, the second part of the land boundary, as fixed by the 1946 Order in Council, must begin east of "Tonn Hill". It takes the view, contrary to what Cameroon claims, that the "fairly prominent, pointed peak" as referred to in the English text of paragraph 60 of the Thomson-Marchand Declaration and the "prominent peak" referred to in the Order in Council, which fixes the point where the boundary departs from this area in a westerly direction, are not identical. It points out that the peak specified in the Order in Council is not described as "pointed"; in its view, this peak is "Tonn Hill". The two sections of the boundary should accordingly be joined by drawing a line along the crest line from Itang Hill to Tonn Hill. Nigeria maintains that from that point the text of the Order in Council is ambiguous and defective in that it does not correspond to the local topography. Thus the Kumbo-Banyo road does not cross the river at Nyan (Yang) but 1¼ miles to the north and neither of the two streams in this area exactly matches the description given in the text and, in particular, neither has its source on the road near the source of the M'Fi. Nigeria states that a British colonial official, Dr. Jeffreys, carried out a survey on the ground in 1941 following tribal disputes; the boundary between British-mandated Northern and

Southern Cameroons was then fixed to the west of a cairn placed on the Bang-Yang track near Yang along a line different from that laid down in the 1946 Order in Council. The description of that line was subsequently confirmed in 1953 at a meeting in Yang between provincial officials and representatives of the local communities regarding the geographical boundaries applicable for purposes of tax collection in the area. Nigeria contends that it is this line which should be followed. To the east of the cairn placed on the Bang-Yang track, Nigeria proposes following the watershed up to Tonn Hill.

171. Cameroon maintains that the problem raised by Nigeria is merely one of demarcating the line described in the 1946 Order in Council. It contends that the "prominent" peak referred to in the Order in Council can only be the "fairly prominent, pointed peak" referred to in paragraph 60 of the Thomson-Marchand Declaration. At the hearings, it challenged the existence and validity of the "Jeffreys Boundary" relied upon by Nigeria. While stressing that the line of the boundary in this area is determined by the relevant provisions of the 1946 Order in Council, Cameroon stated that in its view the boundary "runs along the Maven River, then the Makwe River, then through the pillar set up by Jeffreys and then along a crest line to the fairly prominent, pointed peak known as Mount Kombon".

172. The Court notes that the interpretation of the Order in Council of 1946 raises two fundamental difficulties in the area between the "fairly prominent pointed peak" referred to in the Thomson-Marchand Declaration and the River Mburi. The first lies in joining up the lines prescribed by the two texts and, in particular, in identifying the peak described in the Order in Council as "prominent", without further clarification. The second consists in determining the course of the boundary beyond that point.

173. The Court has first sought to identify the "prominent peak", starting point for the sector of the boundary delimited by the Order in Council. The Court has placed particular emphasis on the issue of whether the "prominent peak" referred to in the Order in Council corresponds to the "fairly prominent, pointed peak" mentioned in paragraph 60 of the Thomson-Marchand Declaration, which the Court has already identified, or whether it is some other peak. Here too, the Court notes that the text of the Order in Council contains a certain amount of information regarding identification of the peak in question. Thus it states that the peak "marks the Franco-British frontier" and that it lies some 3.83 miles from a specific point close to the sources of the M'Fi on a true bearing of 100°. The Court finds, however, that, when transposed onto the maps in its possession, these data do not enable it to identify the location of the "prominent peak" referred to in the Order in Council. The Court observes in particular that the only peak identifiable by calculating a distance of 3.83 miles on a geographical bearing of 100° from the sources of the River M'Fi is Mount Kombon, indicated on Figure 7.37 in Nigeria's Rejoinder as having an elevation of 1,658 m. However, that peak is located far to the east of the former Franco-British frontier and can in no circumstances be regarded as marking that frontier. Nor does Mount Kombon lie on a crest line as prescribed by the Order in Council. Similarly, the criteria laid down by the Order in Council do not enable either Tonn Hill, or Itang Hill, or Tamnyar Peak, or any other specific peak, to be identified as the "prominent peak" over which it provides for the boundary to pass.

174. While unable to designate a specific peak, the Court has nonetheless been able to identify the crest line of which that peak must form part. Thus the 1946 Order in Council provides that the "prominent peak" over which the boundary is to pass lies along the crest of the mountains which mark the former Franco-British frontier. That crest line is readily identifiable. It begins at the point where the watershed through the Hosere Hambere turns suddenly to the south at the locality named Galadima Wanderi on Figure 7.37 in Nigeria's Rejoinder, then runs due south until it approaches the point named Tonn Hill on that same Figure. The intention of the drafters of the Order in Council was to have the boundary follow this crest line. As a result, what the Court has to do is to trace a line joining the peak referred to in paragraph 60 of the Thomson-Marchand Declaration, namely Tamnyar Peak, to that crest line. The watershed through the Hosere Hambere, on which Tamnyar Peak lies, extends naturally as far as the crest line marking the former Franco-British frontier, starting point of the sector of the boundary delimited by the 1946 Order in Council. It is thus possible to link the boundary sectors delimited by the two texts by following, from Tamnyar Peak, that watershed as represented on sheet NB-32-XVIII-3a-3b of the 1955 IGN 1:50,000 map of Cameroon, produced in the proceedings by Nigeria.

175. The Court then addressed the question of the course of the boundary from that crest line. The Court would begin by noting that it cannot interpret the Order in Council on the basis of a decision alleged to have been taken unilaterally by a British official in 1941, five years before the adoption of the Order, whose terms were not incorporated in the Order and which Nigeria itself recognizes that it has been impossible to locate. It is the Order in Council of 1946, and it alone, which secured international recognition by being transformed into an instrument of international delimitation when the Southern Cameroons under British mandate were incorporated into the newly independent Cameroon.

176. The Court observes that the 1946 Order in Council contains a great deal of information on the course of the boundary in this area. Thus it provides for the boundary to follow the River Mburi to its junction with a stream "about one mile north of the point where the new Kumbo-Banyo road crosses the River Mburi", a point which, according to the Order, is located "at Nyan". The Order adds that the boundary then follows this stream on a "general true bearing of 120°" as far as its source 1.5 miles away "near the source of the River Mfi". Finally, from there the boundary is required to follow a crest on "a true bearing of 100°" to the "prominent peak which marks the Franco-British frontier".

177. The Court has carefully studied the maps provided to it by the Parties. It notes that, while the topography of the area does not exactly correspond to the description of it in the Order in Council, the Court has nevertheless been able to locate on these maps a sufficient number of elements of that description to enable it to determine the course of the boundary. That course corresponds neither to the line claimed by Cameroon nor to that claimed by Nigeria.

178. The Court notes first that the names of the villages and rivers in the area vary greatly from one map to another. As Nigeria has pointed out, this is particularly true of the River Mburi, which is sometimes called the Manton or Mantu, sometimes the Ntem, and sometimes the Maven, and that its course changes according to the name given to it.

The Court next notes that the village of Yang does indeed correspond, as Nigeria contends, to that of Nyan referred to in the Order in Council, and that, as Nigeria stressed, the "new Kumbo-Banyo road" does not cross the River Mburi at Nyan, but to the north of Nyan. The Court notes, however, that there is, between the sources of the M'Fi and a point situated 1 mile north of Nyan, a river whose course corresponds to the description in the Order of the boundary to the east of Nyan: this is the river called Namkwer on the first edition of the sheet, "Mambilla S.W.", of the 1965 DOS 1:50,000 map of Nigeria, provided to the Court by Nigeria. This river, whose source is indeed in the immediate vicinity of the western sources of the River M'Fi, flows from its source on a general true bearing of 120°, over a distance slightly greater than 1.5 miles, to a point situated 1 mile north of Nyan, where it joins the River Mburi, as shown on sheet 11 of the third edition of the 1953 Survey Department 1:500,000 map of Nigeria, provided to the Court by Cameroon, and on the sketch-maps projected by Nigeria at the oral proceedings. Moreover, the source of the River Namkwer lies precisely on the crest line which, further east, marks the former Franco-British frontier and on which the "prominent peak" described in the Order in Council must be situated. It accordingly follows that the boundary to the east of Nyan follows the course of the River Namkwer and this crest line.

In respect of the section of the boundary lying west of Nyan, the Court would first note that the Parties agree on the point at which the boundary, following the River Mburi from the north as described in the Order in Council, should turn eastward. The Parties also agree that the boundary must follow the River Mburi, also here called the Maven or Ntem, for a distance of slightly more than 2 km to the point where it divides into two. The Court would next note that the Order in Council provides for the boundary to follow the course of the River Mburi to its junction with a watercourse which the Court has identified as the River Namkwer. However, only the northern branch of the River Mburi/Maven/Ntem joins the River Namkwer. Thus the boundary must follow this branch.

179. From all of the foregoing, the Court concludes that, from east to west, the boundary first follows the watershed line through the Hosere Hambere from Tamnyar Peak to the point where that line reaches the crest line marking the former Franco-British frontier. In accordance with the 1946 Order in Council, the boundary then follows this crest line southward, then west-south-west to the source of the River Namkwer and then follows the course of that river to its confluence with the River Mburi, 1 mile north of Nyan. From that point, the boundary follows the course of the River Mburi. It first runs northwards for a distance of approximately 2 km, and then takes a south-westerly course for some 3 km and then west-north-west along a stretch where the river is also called the Maven or the Ntem. Then, some 2 km further on, it turns to run due north where the River Mburi is also called the Manton or Ntem (see below, p. 94, sketch-map No. 10).

*

Bissaula-Tosso

180. The 1946 British Order in Council determines the boundary as follows:

> "thence 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."

181. Nigeria asserts that the 1946 Order in Council requires interpretation because the Akbang River has several tributaries. According to Nigeria, the southern tributary is the correct one, because it alone crosses the Kentu-Bamenda road, as required by the Order in Council. Nigeria further states that it has found the cairn described in the delimitation text at the spot which it proposes.

182. Cameroon maintains that Nigeria's interpretation of the Order in Council and of the maps is incorrect and that the Akbang lies further to the east than Nigeria claims. Further, it rejects Nigeria's claim that the cairn has been identified. According to Cameroon, the problem remains simply one of demarcation.

183. The Court notes that the problem in the Bissaula-Tosso area consists in determining which tributary of the River Akbang crosses the Kentu-Bamenda road and is thus the tributary which the Order in Council provides for the boundary to follow.

A study of the text of the 1946 Order in Council and of the maps available to the Court has led the Court to the conclusion that the River Akbang is indeed the river indicated by Nigeria and that it has two main tributaries, one to the north, the other to the south, as Nigeria claims. The question is then which of these tributaries is the one where the Order in Council provides for the boundary to run.

The Court observes that the northern tributary of the River Akbang cannot be the correct one. While it does flow close beside the Kentu-Bamenda road, it never crosses it, however, and could not do so, since in this area the road runs along the line of the watershed.

The Court finds, on the other hand, that the southern tributary of the Akbang does indeed cross the Kentu-Bamenda road as Nigeria claims. It is accordingly the course of the boundary proposed by Nigeria which must be preferred.

184. The Court therefore concludes that the 1946 Order in Council should be interpreted as providing for the boundary to run through the point where the southern tributary of the River Akbang, as identified by the Court, crosses the Kentu-Bamenda road, and then from that point along the southern tributary until its junction with the River Akbang.

*

The Sama River

185. The 1946 Order in Council determines the boundary as follows:

> "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 a straight line to the highest point of Tosso Mountain."

186. Nigeria observes that the relevant provisions of the 1946 Order in Council are defective inasmuch as they place the boundary along the Sama River; it claims that they fail to provide a clear indication of which tributary should be used in identifying the point where the river "divides into two". According to Nigeria, this tributary should be the southern tributary of the Sama River, since it is three times the length of the northern tributary, has a flow equal to that of the river itself upstream of the confluence, and empties into a T-junction in a larger valley.

187. According to Cameroon, on the other hand, "[t]he Parties have always looked to the northern tributary of the Sama as the course of the boundary".

188. The Court notes that the interpretation of the Order in Council poses problems in regard to the River Sama, since the river has two tributaries, and hence two places where it "divides into two" as the Order in Council prescribes, but the Order does not specify which of those two places is to be used in order to determine the course of the boundary.

The Court has begun by addressing Nigeria's argument that the southern tributary should be preferred because it is longer and has a greater flow and the point of division occurs in a larger valley. The Court observes that, while Nigeria's observations in regard to the length of the tributaries and the topography of the area are confirmed by the maps which it has presented, this is not, however, the case in respect of other maps. Thus the Court notes in particular that, on the Moisel map, the two tributaries are of the same length and size. Moreover, the Court has no information enabling the flow to be determined. The Court accordingly cannot accept Nigeria's argument.

Nor can the Court accept Cameroon's argument that the Parties have always in practice taken the northern tributary as determining the boundary. Cameroon has provided no evidence of this practice.

The Court considers, however, that a reading of the text of the Order in Council permits it to determine which tributary should be used in order to fix the boundary. The Court observes in this connection that, just as with the Thomson-Marchand Declaration, the Order in Council describes the course of the boundary by reference to the area's physical characteristics. Here again, the text of this description must have been drafted in such a way as to render the course of the boundary as readily identifiable as possible. The description of the boundary in the Order in Council starts from the north, and provides for it to run "up the River Sama to the point where it divides into two". Thus the inference is that the drafters of the Order in Council intended that the boundary should pass through the first confluence reached coming from the north. It is accordingly that confluence which must be chosen, as Cameroon contends.

189. The Court concludes from the foregoing that the Order in Council of 1946 must be interpreted as providing for the boundary to run up the River Sama to the confluence of its first tributary, that being the point, with co-ordinates 10° 10' 23" longitude east and 6° 56' 29" latitude north, which the Court has identified as the one specified in the Order in Council where the River Sama "divides into two"; and then, from that point, along a straight line to the highest point of Mount Tosso.

*

Pillar 64

190. Having initially expressed differing positions, Cameroon and Nigeria agreed at the hearings that pillar 64 lies north of the Gamana River and that the boundary described in the 1946 Order in Council must terminate at the intersection of the straight line joining pillars 64 and 65 with the median line of the Gamana River. The Court takes note of this agreement and therefore need no longer address this point.

*

Other points

191. At the hearings and in the written responses to the questions put by Members of the Court, a number of additional points concerning the boundary were discussed by Cameroon and Nigeria. Brief mentions were thus made of the village of Djarandoua, the confluence of the Benue and the Maio Tiel, Dorofi, the Obodu Cattle Ranch and pillar 103. No submissions were, however, presented by the Parties on these points. The Court is accordingly not required to adjudicate upon them.

* *

192. The Court accordingly concludes that, in the disputed areas, the land boundary between Cameroon and Nigeria from Lake Chad to the Bakassi Peninsula is fixed by the relevant instruments of delimitation specified in paragraphs 73 to 75 above as interpreted by the Court in paragraphs 87 to 191 of this Judgment.

*

* *

193. The Court will next address the issue of the boundary in Bakassi and the question of sovereignty over the Bakassi Peninsula. In its final submissions Cameroon asks the Court to adjudge and declare

> "*(a)* [t]hat the land boundary between Cameroon and Nigeria takes the following course:
>
> . . . . . .
>
> — thence [from Pillar 114 on the Cross River], as far as the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs XVI to XXI of the Anglo-German Agreement of 11 March 1913.
>
> *(b)* That, in consequence, *inter alia*, sovereignty over the peninsula of Bakassi . . . is Cameroonian."

Nigeria takes the contrary position. In its final submissions it requests that the Court should

> "(1) *as to the Bakassi Peninsula*, adjudge and declare:
>
> *(a)* that sovereignty over the Peninsula is vested in the Federal Republic of Nigeria;
>
> *(b)* that Nigeria's sovereignty over Bakassi extends up to the boundary with Cameroon described in Chapter 11 of Nigeria's Counter-Memorial".

194. Cameroon contends that the Anglo-German Agreement of 11 March 1913 fixed the course of the boundary between the Parties in the area of the Bakassi Peninsula, placing the latter on the German side of the boundary. Hence, when Cameroon and Nigeria acceded to independence, this boundary became that between the two countries, successor States to the colonial powers and bound by the principle of *uti possidetis*. For its part, Nigeria argues generally that title lay in 1913 with the Kings and Chiefs of Old Calabar, and was retained by them until the territory passed to Nigeria upon independence. Great Britain was therefore unable to pass title to Bakassi because it had no title to pass *(nemo dat quod non habet)*; as a result, the relevant provisions of the Anglo-German Agreement of 11 March 1913 must be regarded as ineffective.

Nigeria further claims that that Agreement is defective on the grounds that it is contrary to the Preamble to the General Act of the Conference of Berlin of 26 February 1885, that it was not approved by the German Parliament and that it was abrogated as a result of Article 289 of the Treaty of Versailles of 28 June 1919.

* *

195. Before addressing the question of whether Great Britain was entitled to pass title to Bakassi through the Anglo-German Agreement of 11 March 1913, the Court will examine these three arguments of Nigeria concerning the defectiveness of that Agreement.

As regards the argument based on the General Act of the Conference of Berlin, the Court notes that, having been raised very briefly by Nigeria in its Counter-Memorial, it was not pursued either in the Rejoinder or at the hearings. It is therefore unnecessary for the Court to consider it.

196. Nigeria further contends that, under contemporary German domestic legislation, all treaties providing for cession or acquisition of colonial territory by Germany had to be approved by Parliament. It points out that the Anglo-German Agreement of 11 March 1913 was not so approved. It argues that the Agreement involved the acquisition of colonial territory, namely the Bakassi Peninsula, and accordingly ought to have been "approved by the German Parliament, at least so far as its Bakassi provisions were concerned".

Cameroon's position was that "the German Government took the view that in the case of Bakassi the issue was one of simple boundary rectification, because Bakassi had already been treated previously as belonging de facto to Germany"; and thus parliamentary approval was not required.

197. The Court notes that Germany itself considered that the procedures prescribed by its domestic law had been complied with; nor did Great Britain ever raise any question in relation thereto. The Agreement had, moreover, been officially published in both countries. It is therefore irrelevant that the Anglo-German Agreement of 11 March 1913 was not approved by the German Parliament. Nigeria's argument on this point accordingly cannot be upheld.

198. In relation to the Treaty of Versailles, Nigeria points out that Article 289 thereof provided for "the revival of pre-war bilateral treaties concluded by Germany on notification to Germany by the other party". It contends that, since Great Britain had taken no steps under Article 289 to revive the Agreement of 11 March 1913, it was accordingly abrogated; thus Cameroon "could not have succeeded to the [Agreement] itself".

Cameroon argues that Article 289 of the Treaty of Versailles did not have any legal effect on the Agreement of 11 March 1913, because "the scope of this Article was limited to treaties of an economic nature in the broad sense of the term" — which in Cameroon's view was confirmed by the context of the Article, its position within the scheme of the Treaty, its drafting history and its object and purpose in light of the Treaty as a whole.

199. The Court notes that since 1916 Germany had no longer exercised any territorial authority in Cameroon. Under Articles 118 and 119 of the Versailles Treaty, Germany relinquished its title to its overseas possessions. As a result, Great Britain had no reason to include the Anglo-German Agreement of 11 March 1913 among the "bilateral treaties or conventions" which it wished to revive with Germany. Thus it follows that this argument of Nigeria must in any event be rejected.

* *

200. The Court now turns to the question of whether Great Britain was entitled to pass title to Bakassi through the Anglo-German Agreement of 11 March 1913.

In this regard, Cameroon contends that the Agreement of 11 March 1913 fixed the course of the boundary between the Parties in the area of the Bakassi Peninsula and placed the latter on the Cameroonian side of the boundary. It relies for this purpose on Articles XVIII to XXI of the said Agreement, which provide *inter alia* that the boundary "follows the thalweg of the Akwayafe as far as a straight line joining Bakasi Point and King Point" (Art. XVIII) and that "[s]hould 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" (Art. XX). Cameroon further states that, since the entry into force of the Agreement of March 1913, Bakassi has belonged to its predecessors, and that sovereignty over the peninsula is today vested in Cameroon.

201. Nigeria does not contest that the meaning of these provisions is to allocate the Bakassi Peninsula to Germany. It does, however, insist that these terms were never put into effect, and indeed were invalid on various grounds, though the other Articles of the Agreement of 11 March 1913 remained valid.

Nigeria contends that the title to sovereignty over Bakassi on which it relies was originally vested in the Kings and Chiefs of Old Calabar. It argues that in the pre-colonial era the City States of the Calabar region constituted an "acephalous federation" consisting of "independent entities with international legal personality". It considers that, under the Treaty of Protection signed on 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar, the latter retained 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. According to Nigeria, the Treaty only conferred certain limited rights on Great Britain; in no way did it transfer sovereignty to Britain over the territories of the Kings and Chiefs of Old Calabar.

Nigeria argues that, since Great Britain did not have sovereignty over those territories in 1913, it could not cede them to a third party. It followed that the relevant part of the Anglo-German Agreement of 11 March 1913 was "outwith the treaty-making power of Great Britain, and that part was not binding on the Kings and Chiefs of Old Calabar". Nigeria adds that the limitations on Great Britain's powers under the 1884 Treaty of Protection,

> "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".

In Nigeria's view, the invalidity of the Agreement of 11 March 1913 on grounds of inconsistency with the principle *nemo dat quod non habet* applied only, however, "to those parts of the Treaty which purport to prescribe a boundary which, if effective, would have involved a cession of territory to Germany", that is to say, essentially Articles XVIII to XXII. The remaining provisions of the Treaty were untainted by that defect and accordingly remained in force and fully effective; they were self-standing provisions, and their application was not dependent upon the Bakassi provisions, which, being in law defective, were to be severed from the rest of the Agreement.

202. In reply, Cameroon contends that Nigeria's argument that Great Britain had no legal power to cede the Bakassi Peninsula by treaty is manifestly unfounded.

In Cameroon's view, the treaty signed on 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar established a "colonial protectorate" and, "in the practice of the period, there was little fundamental difference at international level, in terms of territorial acquisition, between colonies and colonial protectorates". Substantive differences between the status of colony and that of a colonial protectorate were matters of the national law of the colonial Powers rather than of international law. The key element of the colonial protectorate was the "assumption of external sovereignty by the protecting State", which manifested itself principally through

> "the acquisition and exercise of the capacity and power to cede part of the protected territory by international treaty, without any intervention by the population or entity in question".

Cameroon further argues that, even on the hypothesis that Great Britain did not have legal capacity to transfer sovereignty over the Bakassi Peninsula under the Agreement of 11 March 1913, Nigeria could not invoke that circumstance as rendering the Agreement invalid. It points out that neither Great Britain nor Nigeria, the successor State, ever sought to claim that the Agreement was invalid on this ground; in this regard Cameroon states that,

> "[o]n the contrary, until the start of the 1990s Nigeria had unambiguously confirmed and accepted the 1913 boundary line in its diplomatic and consular practice, its official geographical and cartographic publications and indeed in its statements and conduct in the political field",

and that "[t]he same was true as regards the appurtenance of the Bakassi Peninsula to Cameroon". Cameroon further states that there is no other circumstance which might be relied on to render the Agreement of 11 March 1913 invalid.

Cameroon also contends that, in any event, the Agreement of 11 March 1913 forms an indivisible whole and that it is not possible to sever from it the provisions concerning the Bakassi Peninsula. It maintains that "there is a strong presumption that treaties accepted as valid must be interpreted as a whole and all their provisions respected and applied"; and that "parties cannot choose the provisions of a treaty which are to be applied and those which are not — they cannot 'pick and choose' —, unless there is a provision enabling them to act in that way".

203. The Court first observes that during the era of the Berlin Conference the European Powers entered into many treaties with local rulers. Great Britain concluded some 350 treaties with the local chiefs of the Niger delta. Among these were treaties in July 1884 with the Kings and Chiefs of Opobo and, in September 1884, with the Kings and Chiefs of Old Calabar. That these were regarded as notable personages is clear from the fact that these treaties were concluded by the consul, expressly as the representative of Queen Victoria, and the British undertakings of "gracious favour and protection" were those of Her Majesty the Queen of Great Britain and Ireland.

In turn, under Article II of the Treaty of 10 September 1884, "The King and Chiefs of Old Calabar agree[d] and promise[d] 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."

The Treaty with the Kings and Chiefs of Old Calabar did not specify the territory to which the British Crown was to extend "gracious favour and protection", nor did it indicate the territories over which each of the Kings and Chiefs signatory to the Treaty exercised his powers. However, the consul who negotiated and signed the Treaty, said of Old Calabar "this country with its dependencies extends from Tom Shots . . . to the River Rumby (on the west of the Cameroon Mountains), both inclusive". Some six years later, in 1890, another British consul, Johnston, reported to the Foreign Office that "the rule of the Old Calabar Chiefs extends far beyond the Akpayafe River to the very base of the Cameroon Mountains". The Court observes that, while this territory extends considerably eastwards of Bakassi, Johnston did report that the Old Calabar Chiefs had withdrawn from the lands east of the Ndian. Bakassi and the Rio del Rey lay to the west of the Ndian, an area referred to by Johnston as "their real, undoubted territory".

In the view of the Court Great Britain had a clear understanding of the area ruled at different times by the Kings and Chiefs of Old Calabar, and of their standing.

204. Nigeria has contended that the very title of the 1884 Treaty and the reference in Article I to the undertaking of "protection", shows that Britain had no entitlement to do more than protect, and in particular had no entitlement to cede the territory concerned to third States: "*nemo dat quod non habet*".

205. The Court calls attention to the fact that the international legal status of a "Treaty of Protection" entered into under the law obtaining at the time cannot be deduced from its title alone. Some treaties of protection were entered into with entities which retained thereunder a previously existing sovereignty under international law. This was the case whether the protected party was henceforth termed "*protectorat*" (as in the case of Morocco, Tunisia and Madagascar (1885; 1895) in their treaty relations with France) or "a protected State" (as in the case of Bahrain and Qatar in their treaty relations with Great Britain). In sub-Saharan Africa, however, treaties termed "treaties of protection" were entered into not with States, but rather with important indigenous rulers exercising local rule over identifiable areas of territory.

In relation to a treaty of this kind in another part of the world, Max Huber, sitting as sole arbitrator in the *Island of Palmas* case, explained that such a treaty

> "is not an agreement between equals; it is rather a form of internal organisation of a colonial territory, on the basis of autonomy of the natives . . . And thus suzerainty over the native States becomes the basis of territorial sovereignty as towards other members of the community of nations." (*RIIA*, Vol. II, pp. 858-859.)

The Court points out that these concepts also found expression in the *Western Sahara* Advisory Opinion. There the Court stated that in territories that were not *terra nullius*, but were inhabited by tribes or people having a social and political organization, "agreements concluded with local rulers . . . were regarded as derivative roots of title" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 39, para. 80). Even if this mode of acquisition does not reflect current international law, the principle of intertemporal law requires that the legal consequences of the treaties concluded at that time in the Niger delta be given effect today, in the present dispute.

206. The choice of a protectorate treaty by Great Britain was a question of the preferred manner of rule. Elsewhere, and specifically in the Lagos region, treaties for cession of land were being entered into with local rulers. It was precisely a reflection of those differences that within Nigeria there was the Colony of Lagos and the Niger Coast Protectorate, later to become the Protectorate of Southern Nigeria.

207. In the view of the Court many factors point to the 1884 Treaty signed with the Kings and Chiefs of Old Calabar as not establishing an international protectorate. It was one of a multitude in a region where the local Rulers were not regarded as States. Indeed, apart from the parallel declarations of various lesser Chiefs agreeing to be bound by the 1884 Treaty, there is not even convincing evidence of a central federal power. There appears in Old Calabar rather to have been individual townships, headed by Chiefs, who regarded themselves as owing a general allegiance to more important Kings and Chiefs. Further, from the outset Britain regarded itself as administering the territories comprised in the 1884 Treaty, and not just protecting them. Consul Johnston reported in 1888 that "the country between the boundary of Lagos and the German boundary of Cameroons" was "administered by Her Majesty's Consular Officers, under

various Orders in Council". The fact that a delegation was sent to London by the Kings and Chiefs of Old Calabar in 1913 to discuss matters of land tenure cannot be considered as implying international personality. It simply confirms the British administration by indirect rule.

Nigeria itself has been unable to point to any role, in matters relevant to the present case, played by the Kings and Chiefs of Old Calabar after the conclusion of the 1884 Treaty. In responding to a question of a Member of the Court Nigeria stated "It is not possible to say with clarity and certainty what happened to the international legal personality of the Kings and Chiefs of Old Calabar after 1885."

The Court notes that a characteristic of an international protectorate is that of ongoing meetings and discussions between the protecting Power and the Rulers of the Protectorate. In the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)* the Court was presented with substantial documentation of this character, in large part being old British State papers. In the present case the Court was informed that "Nigeria can neither say that no such meetings ever took place, or that they did take place . . . the records which would enable the question to be answered probably no longer exist . . ."

208. As to when the Kings and Chiefs ceased to exist as a separate entity, Nigeria told the Court it "is not a question susceptible of a clear-cut answer".

The Court notes in this regard that in 1885 Great Britain had established by proclamation a "British Protectorate of the Niger Districts" (which subsequently changed names a number of times), incorporating in a single entity the various territories covered by the treaties of protection entered into in the region since July 1884. The Court further notes that there is no reference to Old Calabar in any of the various British Orders in Council, of whatever date, which list protectorates and protected States. The same is true of the British Protected Persons Order of 1934, the Schedule to which refers to "Nigerian Protectorate and Cameroons under British Mandate". Nor is there any reference to Old Calabar in the Second Schedule to the British Protectorates, Protected States and Protected Persons Order in Council, 1949, though in the First Schedule there is a reference to the "Nigerian Protectorate".

Moreover, the Court has been presented with no evidence of any protest in 1913 by the Kings and Chiefs of Old Calabar; nor of any action by them to pass territory to Nigeria as it emerged to independence in 1960.

209. The Court thus concludes that, under the law at the time, Great Britain was in a position in 1913 to determine its boundaries with Germany in respect of Nigeria, including in the southern section.

* *

210. The Court will now examine the treatment, in the period 1913 to 1960, of the southern sector of the boundary as defined by the Anglo-German Agreement of 11 March 1913.

Cameroon contends that the mandate and trusteeship period, and the subsequent independence process, show recognition on the part of the international community of Cameroon's attachment to the Bakassi Peninsula.

Following the First World War, it was decided that the German colony of Cameroon should be administered in partitioned form by Britain and France under the framework of League of Nations mandate arrangements. Bakassi is said to have formed part of the area of the British Cameroons termed Southern Cameroons. This territorial definition is said to have been repeated in the trusteeship agreements which succeeded the mandates system after the Second World War. According to Cameroon, there was never any doubt in the minds of the British authorities that Bakassi formed part of the mandated and trusteeship territory of the Cameroons since Bakassi had formed part of German Cameroon pursuant to the Anglo-German Agreement of 11 March 1913. Moreover, although the British Cameroons Order in Council of 1923 established that the Northern and Southern Cameroons would be administered "as if they formed part of" Nigeria, Cameroon emphasized that this was merely an administrative arrangement which did not lead to the incorporation of these territories into Nigeria. Cameroon produces documentary evidence, British Orders in Council and maps which, it claims, evidence that Bakassi is consistently placed within the British Cameroons throughout this period.

Cameroon further recalls that the United Nations plebiscites, held on 11 and 12 February 1961, resulted in a clear majority in the Northern Cameroons voting to join Nigeria, and a clear majority in the Southern Cameroons voting to join Cameroon. It maintains that the process of holding the plebiscite meant that the areas that fell within the Northern and Southern Cameroons had to be ascertained. Cameroon points out that the map attached to the Report of the United Nations Plebiscite Commissioner shows that the Bakassi Peninsula formed part of the Victoria South West plebiscite district in the south-east corner of Cameroon. This would show that the peninsula was recognized by the United Nations as being a part of the Southern Cameroons. Cameroon also emphasizes the absence of protest by Nigeria to the proposed boundary during the independence process, and the fact that Nigeria voted in favour of General Assembly resolution 1608 (XV) by which the British trusteeship was formally terminated.

Cameroon further refers to the maritime negotiations between Nigeria and Cameroon since independence, which resulted in instruments under which Nigeria is said to have recognized the validity of the Anglo-German Agreement of 11 March 1913, the boundary deriving from it, and Cameroon's sovereignty over the Bakassi Peninsula. These instruments included the Nigerian Note No. 570 of 27 March 1962, the Yaoundé II Agreement of 4 April 1971, the Kano Agreement of 1 September 1974 and the Maroua Agreement of 1 June 1975.

Cameroon finally refers to its granting of permits for hydrocarbon exploration and exploitation over the Bakassi Peninsula itself and offshore, commencing in the early 1960s as well as to a number of consular and ambassadorial visits to the Bakassi region by Nigerian consuls and ambassadors, whose conduct in requesting permission and co-operation from the Cameroonian local officials and expressing thanks for it is said to corroborate Cameroon's claim to sovereignty over Bakassi.

211. Nigeria for its part argues that, at all times while the 1884 Treaty remained in force, Great Britain continued to lack power to give Bakassi away. As such, it claims that no amount of British activity in relation to Bakassi in the mandate or trusteeship periods could have severed Bakassi from the Nigeria protectorate. It draws additional support from the fact that, in practice throughout the period from 1913 to 1960, Bakassi was administered from and as part of Nigeria, and was never administered from or as part of Cameroon. Nigeria also asserts that there is no documentary evidence that the population of the Bakassi Peninsula participated in the United Nations plebiscite; the description of the Victoria South West plebiscite district in the Commissioner's Report does not refer to any areas situated in the Bakassi Peninsula.

Nigeria further denies the binding nature of the delimitation agreements referred to by Cameroon, in particular the Maroua Declaration, whose adoption, it claims, was never approved by the Supreme Military Council in contravention of Nigeria's constitutional requirements. It also denies the evidentiary value of the visits to the Bakassi region by Nigerian dignitaries referred to by Cameroon**,** on the basis that consular officials are not mandated to deal with issues of title to territory, nor to make assessments of questions of sovereignty, and, as such, their actions cannot be taken to impact upon these questions. Finally, on the issue of the granting of oil exploration permits and production agreements, Nigeria argues *inter alia* that "the area in dispute was the subject of competing exploration activities" and that "the incidence of oil-related activities was not . . . regarded [by the Parties] as conclusive of the issue of sovereignty".

212. The Court notes that after the First World War Germany renounced its colonial possessions. Under the Versailles Treaty the German possessions of Cameroon were divided between Great Britain and France. In 1922 Great Britain accepted the mandate of the League of Nations for "that part [of the former German colony] of the Cameroons which lay to the west of the line laid down in the [Milner-Simon] Declaration signed on the 10th July, 1919". Bakassi was necessarily comprised within the mandate. Great Britain had no powers unilaterally to alter the boundary nor did it make any request to the League of Nations for any such alteration. The League Council was notified, and did not object to, the British suggestion that it administer Southern Cameroon together with the eastern region of the Protectorate of Nigeria. Thus the British Order in Council of 26 June 1923 providing for the Administration of the Mandated Territory of the British Cameroons stipulated that British Cameroons lying southwards of the line described in the Schedule would be administered "as if it formed part of" the southern provinces of the Protectorate of Nigeria. The Court observes that the terminology used in the Order in Council preserved the distinctive status of the mandated territory, while allowing the convenience of a common administration. The Nigerian thesis must therefore be rejected.

When, after the Second World War and the establishment of the United Nations, the mandate was converted to a trusteeship, the territorial situation remained exactly the same. The "as if" provision continued in place, and again the Administering Authority had no authority unilaterally to alter the boundaries of the trusteeship territory. Thus for the entire period from 1922 until 1961 (when the Trusteeship was terminated), Bakassi was comprised within British Cameroon. The boundary between Bakassi and Nigeria, notwithstanding the administrative arrangements, remained an international boundary.

The Court is unable to accept Nigeria's contention that until its independence in 1961, and notwithstanding the Anglo-German Agreement of 11 March 1913, the Bakassi Peninsula had remained under the sovereignty of the Kings and Chiefs of Old Calabar. Neither the League of Nations nor the United Nations considered that to be the position.

213. Equally, the Court has seen no evidence that Nigeria thought that upon independence it was acquiring Bakassi from the Kings and Chiefs of Old Calabar. Nigeria itself raised no query as to the extent of its territory in this region upon attaining independence.

The Court notes in particular that there was nothing which might have led Nigeria to believe that the plebiscite which took place in the Southern Cameroons in 1961 under United Nations supervision did not include Bakassi.

It is true that the Southern Cameroons Plebiscite Order in Council, 1960 makes no mention of any polling station bearing the name of a Bakassi village. Nor, however, does the Order in Council specifically exclude Bakassi from its scope. The Order simply refers to the Southern Cameroons as a whole. But at that time it was already clearly established that Bakassi formed part of the Southern Cameroons under British trusteeship. The boundaries of that territory had been precisely defined in the "Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954", issued pursuant to the Nigeria (Constitution) Order in Council, 1951. That Proclamation, repeating the provisions of the Anglo-German Agreement of 11 March 1913, provided in particular: "From the sea the boundary follows the navigable channel of the River Akpa-Yafe; thence follows the thalweg of the aforesaid River Akpa-Yafe upstream to its confluence with the Rivers Akpa-Korum and Ebe." That the 1960 Order in Council applied to the Southern Cameroons as a whole is further confirmed by the fact, as noted in the Report of the United Nations Plebiscite Commissioner for the Cameroons under United Kingdom Administration, that the 26 "plebiscite districts" established by the 1960 Order in Council corresponded to the "electoral constituencies for the Southern Cameroons House of Assembly".

The United Nations map indicating the voting districts for the plebiscite also reflected the provisions of the Agreement of 11 March 1913 reiterated in the above-mentioned 1954 Proclamation.

The Court further observes that this frontier line was acknowledged in turn by Nigeria when it voted in favour of General Assembly resolution 1608 (XV), which both terminated the Trusteeship and approved the results of the plebiscite.

214. Shortly after, in Note Verbale No. 570 of 27 March 1962 addressed to Cameroon, Nigeria referred to certain oil licensing blocks. A sketch-map was appended to the Note, from which it is clear that the block "N" referred to lay directly south of the Bakassi Peninsula. The block was described as offshore Cameroon. The Note Verbale further stated "the boundary follows the lower courses of the Apka-Yafe River, where there appears to be no uncertainty, and then out into the Cross River estuary". Nigeria clearly regarded the Bakassi Peninsula as part of Cameroon. The Court further notes that this perception was reflected in all Nigerian official maps up until 1972.

This common understanding of where title lay in Bakassi continued through until the late 1970s, when the Parties were engaging in discussions on their maritime frontier. In this respect, Article XXI of the Anglo-German Agreement of 11 March 1913 provided:

> "From the centre of the navigable channel on a line joining Bakassi 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."

Article XXII provided that: "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."

In 1970 Cameroon and Nigeria decided to carry out a total delimitation and demarcation of their boundaries, starting from the sea. Under the terms of Article 2 of the Yaoundé I Declaration of 14 August 1970 and the agreement reached in the Yaoundé II Declaration of 4 April 1971 with its signed appended chart, it was agreed to fix the boundary in the Akwayafe estuary from point 1 to point 12 (see paragraph 38 above). Then, by declaration signed at Maroua on 1 June 1975, the two Heads of State "agreed to extend the delineation of the maritime boundary between the countries from Point 12 to Point G on the Admiralty Chart No. 3433 annexed to this Declaration" and precisely defined the boundary by reference to maritime co-ordinates (see paragraph 38 above). The Court finds that it is clear from each one of these elements that the Parties took it as a given that Bakassi belonged to Cameroon. Nigeria, drawing on the full weight of its experts as well as its most senior political figures, understood Bakassi to be under Cameroon sovereignty.

This remains the case quite regardless of the need to recalculate the co-ordinates of point B through an Exchange of Letters of 12 June and 17 July 1975 between the Heads of State concerned; and quite regardless whether the Maroua Declaration constituted an international agreement by which Nigeria was bound. The Court addresses these aspects at paragraphs 262 to 268 below.

Accordingly, the Court finds that at that time Nigeria accepted that it was bound by Articles XVIII to XXII of the Anglo-German Agreement of 11 March 1913, and that it recognized Cameroonian sovereignty over the Bakassi Peninsula.

215. In the view of the Court, this common understanding of the Parties is also reflected by the geographic pattern of the oil concessions granted by the two Parties up to 1991. While no precise offshore delimitation lines were adhered to in the grants made, their underlying assumption was that Cameroon had the right to the resources in those waters that depended on the land boundary in Bakassi as fixed in the Anglo-German Agreement of 11 March 1913. It is true, as Nigeria insists, that oil licensing "is certainly not a cession of territory". The Court finds, however, that the geographic pattern of the licensing is consistent with the understanding of the Parties,

evidenced elsewhere, as to pre-existing Cameroon title in Bakassi. Nor can this striking consistency (save for a very few exceptions) be explained by the contention that the Parties simply chose to deal with matters of oil exploitation in a manner wholly unrelated to territorial title.

216. In assessing whether Nigeria, as an independent State, acknowledged the applicability of the provisions of the Anglo-German Agreement of 11 March 1913 relating to Bakassi, the Court has also taken account of certain formal requests up until the 1980s submitted by the Nigerian Embassy in Yaoundé, or by the Nigerian consular authorities, before going to visit their nationals residing in Bakassi. This Nigerian acknowledgment of Cameroon sovereignty is in no way dependent upon proof that any particular official visit did in fact take place.

217. For all of these reasons the Court finds that the Anglo-German Agreement of 11 March 1913 was valid and applicable in its entirety. Accordingly, the Court has no need to address the arguments advanced by Cameroon and Nigeria as to the severability of treaty provisions, whether generally or as regards boundary treaties.

Equally, the Court has not found it necessary to pronounce upon the arguments of *uti possidetis* advanced by the Parties in relation to Bakassi.

* *

218. The Court now turns to further claims to Bakassi relied on by Nigeria. Nigeria advances "three distinct but interrelated bases of title over the Bakassi Peninsula":

> "(i) 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;
>
> (ii) peaceful possession by Nigeria, acting as sovereign, and an absence of protest by Cameroon; and
>
> (iii) manifestations of sovereignty by Nigeria together with acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula."

Nigeria particularly emphasizes that the title on the basis of historical consolidation, together with acquiescence, in the period since the independence of Nigeria, "constitutes an independent and self-sufficient title to Bakassi". Nigeria perceived the situation as comparable to that in the *Minquiers and Ecrehos* case, in which both parties contended that they retained an ancient title

(*I.C.J. Reports 1953*, p. 53) but the Court considered that "What is of decisive importance . . . is . . . the evidence which relates directly to the possession of the Ecrehos and Minquiers groups." (*Ibid.*, p. 57.) Nigeria also presents evidence of various State activities, together with other components of historic consolidation of title. It contends *inter alia* that Nigerian authorities had collected tax as part of a consistent pattern of activity, that Nigeria had established health centres for the benefit of the communities at Bakassi, often with the assistance of local communities, and that its health centre at Ikang on the other side of the Akwayafe treated patients from Bakassi. Nigeria also refers to a number of other miscellaneous State activities during the post-independence era, including the use of Nigerian currency for both public and commercial purposes or the use of Nigerian passports by residents of Bakassi.

219. Cameroon for its part argues that a legal treaty title cannot be displaced by what in its view amounts to no more than a number of alleged *effectivités*. It contends that after the conferral of the Mandate, Great Britain's administration of the region was carried out, not on behalf of the Kings and Chiefs of Old Calabar, nor on behalf of Nigeria, but as the mandatory Power under Article 22, paragraph 1, of the League Covenant acting on behalf of the international community and the inhabitants of the Southern Cameroons. Cameroon further denies the existence of historical consolidation as a separate basis of legal title. What Nigeria brings under this concept is, in Cameroon's view, nothing more than "the establishment of title by adverse possession, which has traditionally been labelled as 'acquisitive prescription'". Cameroon also contends that, in order to establish prescription, the acts of the State which does not hold title must be carried out in a sovereign capacity, under a claim of right, openly, peacefully, without protest or competing activity by the existing sovereign, and for a sufficiently long time. In Cameroon's view, if these criteria are applied to the evidence adduced by Nigeria, this would eliminate the whole of Nigeria's list of *effectivités*. Referring to the Judgment of the Chamber in the *Frontier Dispute (Burkina Faso/Republic of Mali)*, Cameroon finally maintains that, in a case of prescription, if there is a conflict of *effectivités*, "preference should be given to the holder of the title".

220. The Court first recalls its finding above regarding the claim to an ancient title to Bakassi derived from the Kings and Chiefs of Old Calabar. It follows therefrom that at the time of Nigeria's accession to independence there existed no Nigerian title capable of being confirmed subsequently by "long occupation" (see paragraph 212 above). On the contrary, on the date of its independence Cameroon succeeded to title over Bakassi as established by the Anglo-German Agreement of 11 March 1913 (see paragraphs 213-214 above).

Historical consolidation was also invoked in connection with the first of Nigeria's further claimed bases of title, namely peaceful possession in the absence of protest. The Court notes that it has already addressed these aspects of the theory of historical consolidation in paragraphs 62 to 70 above. The Court thus finds that invocation of historical consolidation cannot in any event vest title to Bakassi in Nigeria, where its "occupation" of the peninsula is adverse to Cameroon's prior treaty title and where, moreover, the possession has been for a limited period.

The Court cannot therefore accept this first basis of title over Bakassi relied on by Nigeria.

221. The Court will now deal with other aspects of the second and third bases of title advanced by Nigeria, and finds it convenient to deal with these interrelated matters together. Localities in Bakassi will be given either their Nigerian or their Cameroonian names as appropriate.

The Court finds that the evidence before it indicates that the small population of Bakassi already present in the early 1960s grew with the influx from Nigeria in 1968 as a result of the civil war in that country. Gradually sizeable centres of population were established. The Parties are in disagreement as to the total number of Nigerian nationals living in the peninsula today, but it is clear that it has grown considerably from the modest numbers reported in the 1953 and 1963 population censuses. Nor is there any reason to doubt the Efik and Effiat toponomy of the settlements, or their relationships with Nigeria. But these facts of themselves do not establish Nigerian title over Bakassi territory; nor can they serve as an element in a claim for historical consolidation of title, for reasons already given by the Court (see paragraphs 64-70).

222. Nigeria has relied before the Court, in considerable detail, often with supporting evidence, on many activities in Bakassi that it regards as proof both of settled Nigerian administration and of acts in exercise of sovereign authority. Among these acts are the establishment of schools, the provision of health facilities for many of the settlements and some tax collection.

It is true that the provision of education in the Bakassi settlements appears to be largely Nigerian. Religious schools were established in 1960 at Archibong, in 1968 at Atabong and in Abana in 1969. These were not supported by public funds, but were under the authority of the Nigerian examination and education authorities. Community schools were also established at Atabong East in 1968, Mbenonong in 1975 and Nwanyo in 1981. The schools established in Abana in 1992, and in Archibong and Atabong in 1993, were Nigerian government schools or State secondary schools.

There is evidence that since 1959 health centres have been established with the assistance of local communities receiving supplies, guidance and training for personnel in Nigeria. The ten centres include centres established at Archibong in 1959, Mbenonong in 1960, Atabong West in 1968, Abana in 1991 and Atabong East in 1992.

There was also some collection of tax, certainly from Akwa, Archibong, Moen Mong, Naranyo, Atabong and Abana.

Nigeria notes that Cameroon failed actively to protest these administrative activities of Nigeria before 1994 (save, notably, the building by Nigeria of a primary school in Abana in 1969). It also contends that the case law of this Court, and of certain arbitral awards, makes clear that such acts are indeed acts *à titre de souverain*, and as such relevant to the question of territorial title (*Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953*; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*; *Rann of Kutch, Arbitral Award*, 50 *ILR* 1; *Beagle Channel Arbitration*, 52 *ILR* 93).

223. The Court observes, however, that in none of these cases were the acts referred to acts *contra legem*; those precedents are therefore not relevant. The legal question of whether *effectivités* suggest that title lies with one country rather than another is not the same legal question as whether such *effectivités* can serve to displace an established treaty title. As the Chamber of the Court made clear in the *Frontier Dispute (Burkina Faso/Republic of Mali)*, where there is a conflict between title and *effectivités*, preference will be given to the former (*I.C.J. Reports 1986, Judgment*, pp. 586-587, para. 63).

In the view of the Court the more relevant legal question in this case is whether the conduct of Cameroon, as the title holder, can be viewed as an acquiescence in the loss of the treaty title that it inherited upon independence. There is some evidence that Cameroon attempted, *inter alia*, to collect tax from Nigerian residents, in the year 1981-1982, in Idaboto I and II, Jabare I and II, Kombo Abedimo, Naumsi Wan and Forisane (West and East Atabong, Abana and Ine Ikoi). But it engaged in only occasional direct acts of administration in Bakassi, having limited material resources to devote to this distant area.

However, its title was already established. Moreover, as the Court has shown above (see paragraph 213), in 1961-1962 Nigeria clearly and publicly recognized Cameroon title to Bakassi. That continued to be the position until at least 1975, when Nigeria signed the Maroua Declaration. No Nigerian *effectivités* in Bakassi before that time can be said to have legal significance for demonstrating a Nigerian title; this may in part explain the absence of Cameroon protests regarding health, education and tax activity in Nigeria. The Court also notes that Cameroon had since its independence engaged in activities which made clear that it in no way was abandoning its title to Bakassi. Cameroon and Nigeria participated from 1971 to 1975 in the negotiations leading to the Yaoundé, Kano and Maroua Declarations, with the maritime line clearly being predicated upon Cameroon's title to Bakassi. Cameroon also granted hydrocarbon licences over the peninsula and its waters, again evidencing that it had not abandoned title in the face of the significant Nigerian presence in Bakassi or any Nigerian *effectivités contra legem*. And protest was immediately made regarding Nigerian military action in 1994.

224. The Court considers that the foregoing shows that Nigeria could not have been acting *à titre de souverain* before the late 1970s, as it did not consider itself to have title over Bakassi; and in the ensuing period the evidence does not indicate an acquiescence by Cameroon in the abandonment of its title in favour of Nigeria.

For all of these reasons the Court is also unable to accept the second and third bases of title to Bakassi advanced by Nigeria.

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225. The Court accordingly concludes that the boundary between Cameroon and Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913, and that sovereignty over the peninsula lies with Cameroon.

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226. The Court will now turn to the maritime boundary between Cameroon and Nigeria.

In its Application filed on 29 March 1994 under Article 36, paragraph 2, of the Statute Cameroon requested the Court, "[i]n order to avoid further incidents between the two countries, . . . to determine the course of the maritime boundary between the two States beyond the line fixed in 1975". In its final submissions presented to the Court at the end of the oral proceedings on 21 March 2002, Cameroon maintained its request for the drawing of the maritime boundary, but it did so in a different form. Cameroon now requests that the Court confirm that "[t]he boundary of the maritime areas appertaining respectively to the Republic of Cameroon and the Federal Republic of Nigeria takes the following course", which Cameroon describes in detail in the two subparagraphs of paragraph *(c)* of its submissions.

Nigeria claims that the Court should refuse to carry out in whole or in part the delimitation requested by Cameroon, first, because the delimitation affects areas claimed by third States, and, secondly, because the requirement of prior negotiations has not been satisfied.

The Court must first deal with these arguments of Nigeria.

* *

227. Nigeria maintains that the Court cannot carry out the delimitation requested by Cameroon, since the prolongation of the maritime boundary between the Parties seawards beyond point G will rapidly run into maritime zones where the rights and interests of Cameroon and Nigeria will overlap those of third States. In this regard it recalls that its eighth preliminary objection was "that the question of maritime delimitation necessarily involves the rights and interests of third States and is to that extent inadmissible". It observes that the Court, in considering that preliminary objection in its Judgment of 11 June 1998, held that the objection did "not possess, in the circumstances of the case, an exclusively preliminary character" (*I.C.J. Reports 1998*, p. 325, para. 117).

228. Citing *inter alia* the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (*I.C.J. Reports 1985*, pp. 24-28, paras. 20-23), the Judgment of the Chamber of this Court in the *Frontier Dispute (Burkina Faso/Republic of Mali) (I.C.J. Reports 1986*, p. 578, para. 47) and the decision of the Arbitral Tribunal in the *Eritrea/Yemen Award (Second Phase)*, Nigeria contends that the Court has no jurisdiction over the Cameroon claim to the extent that it touches on or affects areas claimed by third States, and that the Court's lack of jurisdiction is not affected by whether or not the third State in question has intervened, unless it has intervened with a view to becoming a party to the proceedings and its intervention has been accepted on that basis.

229. Nigeria maintains in particular that the maritime delimitation line claimed by Cameroon encroaches on areas claimed by Equatorial Guinea. Accordingly, Nigeria states, if the Court were to uphold the line claimed by Cameroon vis-à-vis Nigeria, it would by clear and necessary implication be rejecting the claims of Equatorial Guinea concerning these areas. Nigeria argues that the Court must exclude from the scope of its Judgment in this case all those areas of the delimitation zone which overlap with Equatorial Guinea's claims, provided that those claims satisfy the test of being credible in law. It considers that all claims of Equatorial Guinea which are within a strict equidistance line satisfy this test of legal credibility, and that the Court therefore cannot in its Judgment draw a delimitation line beyond the tripoint equidistant from the coasts of Cameroon, Nigeria and Equatorial Guinea.

230. Nigeria further contends that, since Equatorial Guinea has not intervened as a party, the Court has no additional substantive jurisdiction over that State by reason of the intervention under Article 62 of the Statute. It adds that it is not enough to say, as Cameroon does, that a decision of the Court would not be binding on Equatorial Guinea or on Sao Tome and Principe, since such a judgment would nonetheless "create an impression of finality which would operate in practice as a kind of presumption". According to Nigeria, the role of a non-party intervener in a case before the Court is to inform the Court of its position, so that the Court may refrain from encroaching in its decision on credible claims of that third party, thus enabling it to safeguard those claims without adjudicating upon them.

231. Nigeria accordingly concludes that the Court lacks jurisdiction to deal with the maritime delimitation line claimed by Cameroon, to the extent that it impinges on areas claimed by Equatorial Guinea or by Sao Tome and Principe, or alternatively, that the maritime delimitation line claimed by Cameroon is inadmissible to that extent.

232. Cameroon for its part claims that no delimitation in this case can affect Equatorial Guinea or Sao Tome and Principe, as the Court's Judgment will be *res inter alios acta* for all States other than itself and Nigeria. Referring to the Judgment of the Court in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982*, p. 91, para. 130), Cameroon contends that most of the maritime boundary agreements that are already in force would never have come into being if it had not been possible for the States concerned to reach a bilateral

agreement on a maritime boundary without there being any prerequisite as to the participation of all such States as might potentially be involved in the area in question. It insists that in the present case there is no reason why the Court should not determine the respective rights of Cameroon and Nigeria without prejudging the rights, of whatever nature, of Equatorial Guinea and Sao Tome and Principe.

233. Cameroon states that it is not asking the Court to rule on the course of its maritime boundary with Equatorial Guinea or Sao Tome and Principe, or even to indicate the location of any tripoint where the borders of the Parties and the border of one or the other of these States meet. Indeed Cameroon agrees that the Court has no power to do so. Cameroon asks the Court to specify the course of the maritime boundary between the two Parties in these proceedings "up to the outer limit of the maritime zones which international law places under the respective jurisdictions of the two Parties". Cameroon argues that this will not amount to a decision by the Court that this outer limit is a tripoint which affects Equatorial Guinea or Sao Tome and Principe. Moreover, in accordance with Article 59 of the Statute, the Judgment will in any event not be opposable to those States as regards the course of their own boundaries. In support of its argument, Cameroon relies *inter alia* on the Judgment of the Chamber in the *Frontier Dispute (Burkina Faso/Republic of Mali)* (*I.C.J. Reports 1986*, p. 554) and on that of the Court in the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (*I.C.J. Reports 1994*, p. 6). Cameroon argues that the reasoning applied in those Judgments, which related to land boundaries, should be no different when maritime boundaries are involved. Cameroon contends that the effect of the Court's Judgment would be the same as a bilateral maritime delimitation treaty, which will not be opposable as such to third States, but by which the two parties to the treaty may agree to fix their maritime boundary up to a tripoint decided bilaterally, without the participation of the third State concerned.

234. Cameroon contends that it is not seeking to implicate third States; nor is it asking the Court to solve its problems with Equatorial Guinea or with Sao Tome and Principe at Nigeria's expense. Rather, it is asking it to take into account the entire geographic situation in the region, and in particular the disadvantage suffered by Cameroon as a result of its position in the centre of a highly concave coastline, which results in the claims of the adjoining States having a "pincer" effect upon its own claims. It is simply asking the Court "to move, as it were, the Nigerian part of the pincers in a way which reflects the geography".

235. Cameroon argues that non-party intervention cannot prevent the Court from fully settling the dispute before it:

> "[W]here the parties do not oppose the intervention and the latter is authorized, as in the present case, . . . the Court may (and must, in accordance with the mission incumbent upon it definitively to settle the disputes referred to it) proceed to a complete delimitation, whether or not the latter is legally binding on the intervening party . . ."

otherwise "the intervention régime would cease to have any point". Cameroon argues that the purpose of Equatorial Guinea's intervention is essentially to inform the Court with regard to the whole range of interests at stake in the area concerned and to enable it with full knowledge of the facts to undertake a complete and final delimitation. Nonetheless, in so doing, the Court will need to ensure that it does not prejudice the interests of the intervening State, the relevance of which it is for the Court to assess. Further, Cameroon contends that an intervening State cannot, by making fanciful claims, preclude the Court from ruling in its judgment on the area to which such claims relate.

236. Cameroon adds that there are several ways in which the rights of Equatorial Guinea could be protected, should the Court find this necessary, including by moving the delimitation line to take full account of those rights, by refraining from ruling on the delimitation in the area where there seems to be a problem, by making the line a discontinuous one, or by indicating the direction of the boundary without ruling on a terminal point. It emphasizes that the task of the Court should be to provide as complete a solution as possible to the dispute between the Parties.

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237. The Court would first observe that its finding in its Judgment of 11 June 1998 on the eighth preliminary objection of Nigeria that that preliminary objection did "not have, in the circumstances of the case, an exclusively preliminary character" (*I.C.J. Reports 1998*, p. 326, para. 118 (2)) requires it to deal now with the preliminary objection before proceeding further on the merits. That this is so follows from the provisions on preliminary objections adopted by the Court in its Rules in 1972 and retained in 1978, which provide that the Court is to give a decision

> "by which it shall either uphold the objection, reject it, or declare that the objection does not possess in the circumstances of the case, an exclusively preliminary character. If the Court rejects the objection or declares that it does not possess an exclusively preliminary character, it shall fix time-limits for the further proceedings." (Rules of Court, Art. 79, para. 7.)

(See *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 27-28, paras. 49-50; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 132-134, paras. 48-49; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment (I.C.J. Reports 1986*, p. 30, para. 40.) Since Nigeria maintains its objection, the Court must now rule on it.

238. The jurisdiction of the Court is founded on the consent of the parties. The Court cannot therefore decide upon legal rights of third States not parties to the proceedings. In the present case there are States other than the parties to these proceedings whose rights might be affected, namely Equatorial Guinea and Sao Tome and Principe. Those rights cannot be determined by decision of the Court unless Equatorial Guinea and Sao Tome and Principe have become parties to the proceedings. Equatorial Guinea has indeed requested — and has been granted — permission to intervene, but as a non-party intervener only. Sao Tome and Principe has chosen not to intervene on any basis.

The Court considers that, in particular in the case of maritime delimitations where the maritime areas of several States are involved, the protection afforded by Article 59 of the Statute may not always be sufficient. In the present case, Article 59 may not sufficiently protect Equatorial Guinea or Sao Tome and Principe from the effects — even if only indirect — of a judgment affecting their legal rights. The jurisprudence cited by Cameroon does not prove otherwise. In its decision in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, the Court did not deal with rights of third States; what was principally at issue there was the question of proportionality of coastline lengths in relation to the process of delimitation between the parties (*I.C.J. Reports 1982*, p. 91, para. 130). It follows that, in fixing the maritime boundary between Cameroon and Nigeria, the Court must ensure that it does not adopt any position which might affect the rights of Equatorial Guinea and Sao Tome and Principe. Nor does the Court accept Cameroon's contention that the reasoning in the *Frontier Dispute (Burkina Faso/Republic of Mali)* (*I.C.J. Reports 1986*, p. 554) and the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (*I.C.J. Reports 1994*, p. 6) in regard to land boundaries is necessarily transposable to those concerning maritime boundaries. These are two distinct areas of the law, to which different factors and considerations apply. Moreover, in relation to the specific issue of the tripoint, the Court notes that both Parties agree that it should not fix one. It is indeed not entitled to do so. In determining any line, the Court must take account of this.

In view of the foregoing, the Court concludes that it cannot rule on Cameroon's claims in so far as they might affect rights of Equatorial Guinea and Sao Tome and Principe. Nonetheless, the mere presence of those two States, whose rights might be affected by the decision of the Court, does not in itself preclude the Court from having jurisdiction over a maritime delimitation between the Parties to the case before it, namely Cameroon and Nigeria, although it must remain mindful, as always in situations of this kind, of the limitations on its jurisdiction that such presence imposes.

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239. The issue of prior negotiation between the Parties in relation to the maritime delimitation likewise was previously considered by the Court in its Judgment of 11 June 1998 on the preliminary objections of Nigeria, i.e., under the seventh preliminary objection of Nigeria. In relation to that objection, Nigeria had argued, *inter alia*, that the Court cannot properly be seised by

the unilateral application of one State in relation to the delimitation of an exclusive economic zone or continental shelf boundary if that State had made no attempt to reach agreement with the respondent State over that boundary, contrary to the provisions of Articles 74 and 83 of the United Nations Convention on the Law of the Sea of 10 December 1982. The Court rejected this argument, noting that,

> "in this case, it ha[d] 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".

The Court had, on the contrary, "been seised on the basis of declarations made under Article 36, paragraph 2", and those declarations "[did] not contain any condition relating to prior negotiations to be conducted within a reasonable time period" (*I.C.J. Reports 1998*, p. 322, para. 109).

240. Nigeria states that it accepts this decision, but argues that the Court's jurisdiction is a separate question from the substantive law applicable to the dispute. The Court's Judgment of 11 June 1998 was concerned only with the former question. As to the question of the substantive law applicable to the dispute, Nigeria argues that Article 74, paragraph 1, and Article 83, paragraph 1, of the United Nations Convention on the Law of the Sea require that the parties to a dispute over maritime delimitation should first attempt to resolve their dispute by negotiation. According to Nigeria, these provisions lay down a substantive rule, not a procedural prerequisite. Negotiation is prescribed as the proper and primary way of achieving an equitable maritime delimitation, and the Court is not a forum for negotiations.

241. Nigeria accepts that, to the extent that the dispute over the maritime boundary pertains to areas around point G and to the areas of overlapping licences, this requirement has been satisfied. However, it maintains that waters to the south of 4° and 3° latitude north and even 2°, have never been the subject of any attempt at negotiation with Nigeria or, as far as Nigeria is aware, with any other affected State. According to Nigeria, the first time that it had notice that Cameroon was departing from the status quo, and was claiming an "equitable line" beyond point G, was when it received Cameroon's Memorial. It contends that Cameroon made no prior attempt even to present its claim at diplomatic level. While Nigeria accepts the Court's finding in its 1998 Judgment that "Cameroon and Nigeria entered into negotiations with a view to determining the whole of the maritime boundary" (*I.C.J. Reports 1998*, p. 322, para. 110), it insists that those negotiations were not even remotely concerned with the line now claimed by Cameroon in any of its versions. Rather, these negotiations are said to have been directed to establishing the location of the tripoint between Cameroon, Nigeria and Equatorial Guinea, on the basis of an acceptance that there was a *de facto* maritime border in the area. Nigeria concludes that Cameroon's claim beyond the area of the overlapping licences, or to the extent that it concerns the areas to the west and south-west of Bioko, is inadmissible.

242. For its part, Cameroon contends that Nigeria is "resurrecting" the second branch of its seventh preliminary objection, which the Court rejected in its Judgment of 11 June 1998, and that Nigeria is attempting, in thinly disguised terms, to persuade the Court to reconsider that decision. It maintains that negotiation is only a first attempt towards achieving maritime delimitation, the next being, should that attempt fail, delimitation by a judicial or arbitral body. This is expressly recognized by paragraph 2 of Articles 74 and 83 of the United Nations Convention on the Law of the Sea, which stipulate that 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".

243. Cameroon argues that, while point G may be the last point on which there was agreement between the Parties in the delimitation of their maritime boundary, it was not the last point on which there were negotiations. It insists that, even if they proved to be unfruitful, there were in fact intense negotiations between the two States which, from the outset, focused on the entire maritime boundary, a fact which was acknowledged in the Court's Judgment of 11 June 1998, in which it found that *"Cameroon and Nigeria entered into negotiations with a view to determining the whole of the maritime boundary"* (*I.C.J. Reports 1998*, p. 322, para. 110; emphasis added by Cameroon). Cameroon says that a negotiated agreement concerning the entire boundary had proved impossible, and that Cameroon has acted in consequence by submitting the matter to the Court. It adds that, if the two Parties were not able to go further in the negotiations, it was because the bad faith displayed by Nigeria either ruined any hope of reaching a new agreement or removed in advance the value of any agreement which might have been arrived at. Cameroon insists that, since it was the conduct of Nigeria that led to this impasse, Nigeria cannot now take advantage of its own wrongful behaviour to prevent Cameroon from achieving full and final settlement of the dispute between the two States by bringing the matter before this Court. Cameroon concludes that, as the Parties have been unable to reach agreement, it is for the Court to substitute itself for them and to delimit the joint maritime boundary upon which they have been unable to agree beyond point G. It argues that for the Court to refrain from delimiting beyond point G would leave a major source of conflict between the two Parties. Such an abstention on the Court's part would also implicitly uphold the maritime division agreed upon by Nigeria and Equatorial Guinea in the Treaty of 23 September 2000, which Cameroon contends was concluded in utter disregard of its own rights. It adds that no provision of the Convention precludes the limits of the exclusive economic zone and the continental shelf of a coastal State from being determined by an international tribunal, at the express request of that State within the context of settlement of a dispute brought before it.

244. The Court noted in its Judgment of 11 June 1998 (*I.C.J. Reports 1998*, p. 321, para. 107 and p. 322, para. 110) that negotiations between the Governments of Cameroon and Nigeria concerning the entire maritime delimitation — up to point G and beyond — were conducted as far back as the 1970s. These negotiations did not lead to an agreement. However, Articles 74 and 83 of the United Nations Law of the Sea Convention do not require that delimitation negotiations should be successful; like all similar obligations to negotiate in international law, the negotiations have to be conducted in good faith. The Court reaffirms its finding in regard to the preliminary objections that negotiations have indeed taken place. Moreover, if, following unsuccessful

negotiations, judicial proceedings are instituted and one of the parties then alters its claim, Articles 74 and 83 of the Law of the Sea Convention would not require that the proceedings be suspended while new negotiations were conducted. It is of course true that the Court is not a negotiating forum. In such a situation, however, the new claim would have to be dealt with exclusively by judicial means. Any other solution would lead to delays and complications in the process of delimitation of continental shelves and exclusive economic zones. The Law of the Sea Convention does not require such a suspension of the proceedings.

245. As to negotiations with Equatorial Guinea and Sao Tome and Principe, the Court does not find that it follows from Articles 74 and 83 of the Law of the Sea Convention that the drawing of the maritime boundary between Cameroon and Nigeria presupposes that simultaneous negotiations between all four States involved have taken place.

The Court is therefore in a position to proceed to the delimitation of the maritime boundary between Cameroon and Nigeria in so far as the rights of Equatorial Guinea and Sao Tome and Principe are not affected.

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246. In order to do this, the Court will deal with Cameroon's claim on maritime delimitation, as well as with the submissions of Nigeria on the issue.

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247. The Court turns now to Cameroon's request for the tracing of a precise line of maritime delimitation. It will first address the sector of the maritime boundary up to point G.

248. According to Cameroon, the maritime boundary between Cameroon and Nigeria is divided into two sectors. The first, from the mouth of the Akwayafe River to point G fixed by the Maroua Declaration of 1 June 1975, is said to have been delimited by valid international agreements between the Parties. In relation to this sector, Cameroon asks the Court merely to confirm that delimitation, which it says that Nigeria is now seeking to reopen. The sector beyond point G remains to be delimited, and Cameroon requests the Court to fix the limits of the Parties' respective areas in this sector, so as to put a complete and final end to the dispute between them.

249. The delimitation of the first sector, from the mouth of the Akwayafe River to point G, is said by Cameroon to be based mainly on three international legal instruments, namely the Anglo-German Agreement of 11 March 1913, the Cameroon-Nigeria Agreement of 4 April 1971, comprising the Yaoundé II Declaration and the appended Chart 3433, and the Maroua Declaration of 1 June 1975.

250. Cameroon argues that the Anglo-German Agreement of 11 March 1913 fixes the point at which the maritime boundary is anchored to the land at the mouth of the Akwayafe, at the intersection of the thalweg of that river and a "straight line joining Bakassi Point and King Point". From the mouth of the Akwayafe, Cameroon invokes Article XXI of the Agreement, which provides that "the boundary shall follow the centre of the navigable channel of the Akwayafe River as far as the 3-mile limit of territorial jurisdiction", as well as Article XXII thereof, which states that the said limit shall be "taken as a line 3 nautical miles seaward of a line joining Sandy Point and Tom Shot Point".

251. Cameroon points out that in 1970 a Joint Commission was established, its first task being to delimit the maritime boundary between Cameroon and Nigeria. Its initial objective was to determine the course of the boundary as far as the 3-mile limit. Its work resulted in the Yaoundé II Declaration of 4 April 1971, under which the Heads of State of the two parties adopted a "compromise line" which they jointly drew and signed on British Admiralty Chart 3433. Starting from the straight line joining Bakassi Point and King Point, the line consisted of 12 numbered points, whose precise co-ordinates were determined by the Commission, meeting in Lagos pursuant to the Declaration, the following June. Cameroon contends that that Declaration represented an international agreement binding on both Parties and that this fact was later confirmed by the terms of the Maroua Declaration of 1 June 1975, which was likewise a binding international agreement (see paragraphs 252 and 253 below).

252. Thereafter, according to Cameroon, between 1971 and 1975 a number of unsuccessful attempts to reach agreement on the delimitation of further parts of the maritime boundary were made. It was only at the summit meeting held in Maroua from 30 May to 1 June 1975 that an agreement could be reached on the definitive course of the maritime boundary from point 12 to point G. The Joint Communiqué issued at the end of that meeting was signed by the Heads of State. Cameroon draws particular attention to the statement in the Communiqué that the signatories "have reached *full agreement* on the *exact course* of the maritime boundary" (emphasis added by Cameroon).

253. Cameroon accordingly maintains that the Yaoundé II Declaration and the Maroua Declaration thus provide a binding definition of the boundary delimiting the respective maritime spaces of Cameroon and Nigeria.

Cameroon argues that the signing of the Maroua Agreement by the Heads of State of Nigeria and Cameroon on 1 June 1975 expresses the consent of the two States to be bound by that treaty; that the two Heads of State manifested their intention to be bound by the instrument they signed; that no reservation or condition was expressed in the text, and that the instrument was not

expressed to be subject to ratification; that the publication of the Joint Communiqué signed by the Heads of State is also proof of that consent; that the validity of the Maroua Agreement was confirmed by the subsequent exchange of letters between the Heads of State of the two countries correcting a technical error in the calculation of one of the points on the newly agreed line; and that the reference to Yaoundé II in the Maroua Agreement confirms that the legal status of the former is no different from that of the latter.

Cameroon further argues that these conclusions are confirmed by the publicity given to the partial maritime boundary established by the Maroua Agreement, which was notified to the Secretariat of the United Nations and published in a whole range of publications which have widespread coverage and are well known in the field of maritime boundary delimitation. It contends that they are, moreover, confirmed by the contemporary practice of States, by the Vienna Convention on the Law of Treaties and by the fact that international law comes down unequivocally in favour of the stability and permanence of boundary agreements, whether land or maritime.

254. Nigeria for its part draws no distinction between the area up to point G and the area beyond. It denies the existence of a maritime delimitation up to that point, and maintains that the whole maritime delimitation must be undertaken *de novo*. Nonetheless, Nigeria does advance specific arguments regarding the area up to point G, which it is appropriate to address in this part of the Judgment.

255. In the first place, on the basis of its claim to sovereignty over the Bakassi Peninsula, Nigeria contends that the line of the maritime boundary between itself and Cameroon will commence in the waters of the Rio del Rey and run down the median line towards the open sea. Since the Court has already found that sovereignty over the Bakassi Peninsula lies with Cameroon and not with Nigeria (see paragraph 225 above), it is unnecessary to deal any further with this argument of Nigeria.

256. Nigeria further contends that, even if Cameroon's claim to Bakassi were valid, Cameroon's claim to a maritime boundary should have taken into account the wells and other installations on each side of the line established by the oil practice and should not change the status quo in this respect. Thus, Cameroon would have been justified in claiming at most a maritime boundary proceeding southwards, then south-westwards to the equidistance line between East Point (Nigeria) and West Point (Bakassi), and then along the equidistance line until it reached the maritime boundary with Bioko (Equatorial Guinea), at the approximate position longitude 8° 19' east and latitude 4° 4' north, while leaving a zone of 500 m around the Parties' fixed installations.

257. In relation to the Yaoundé II Declaration, Nigeria contends that it was not a binding agreement, but simply represented the record of a meeting which "formed part of an ongoing programme of meetings relating to the maritime boundary", and that the matter "was subject to further discussion at subsequent meetings".

258. Nigeria likewise regards the Maroua Declaration as lacking legal validity, since it "was not ratified by the Supreme Military Council" after being signed by the Nigerian Head of State. It states that under the Nigerian constitution in force at the relevant time — June 1975 — executive

acts were in general to be carried out by the Supreme Military Council or subject to its approval. It notes that States are normally expected to follow legislative and constitutional developments in neighbouring States which have an impact upon the inter-State relations of those States, and that few limits can be more important than those affecting the treaty-making power. It adds that on 23 August 1974, nine months before the Maroua Declaration, the then Head of State of Nigeria had written to the then Head of State of Cameroon, explaining, with reference to a meeting with the latter in August 1972 at Garoua, that "the proposals of the experts based on the documents they prepared on the 4th April 1971 were not acceptable to the Nigerian Government", and that the views and recommendations of the joint commission "must be subject to the agreement of the two Governments". Nigeria contends that this shows that any arrangements that might be agreed between the two Heads of State were subject to the subsequent and separate approval of the Nigerian Government.

Nigeria says that Cameroon, according to an objective test based upon the provisions of the Vienna Convention, either knew or, conducting itself in a normally prudent manner, should have known that the Head of State of Nigeria did not have the authority to make legally binding commitments without referring back to the Nigerian Government — at that time the Supreme Military Council — and that it should therefore have been "objectively evident" to Cameroon, within the meaning of Article 46, paragraph 2, of the Vienna Convention on the Law of Treaties that the Head of State of Nigeria did not have unrestricted authority. Nigeria adds that Article 7, paragraph 2, of the Vienna Convention on the Law of Treaties, which provides that Heads of State and Heads of Government "[i]n virtue of their functions and without having to produce full powers . . . are considered as representing their State", is solely concerned with the way in which a person's function as a State's representative is established, but does not deal with the extent of that person's powers when exercising that representative function.

259. Nigeria further states that since 1977, in bilateral summits between Heads of State and between boundary experts, it has confirmed that the Maroua Declaration was not ratified and was therefore not binding on Nigeria. It argues that it is clear also from minutes of meetings held in Yaoundé in 1991 and 1993 that Nigeria had never accepted that it was bound by the Maroua Declaration.

260. Cameroon rejects the argument of Nigeria that the Maroua Declaration can be regarded as a nullity by Nigeria on the ground that it was not ratified by Nigeria's Supreme Military Council. Cameroon denies that any communication was made during a 1977 meeting between the two Heads of State to the effect that the Declaration was not binding on Nigeria, and claims that it was not until 1978, some three-and-a-half years after the Declaration, that Nigeria announced its intention to challenge it. Cameroon argues that Nigeria has not shown that the constitution of Nigeria did in fact require the agreement to be ratified by the Supreme Military Council. In any event, invoking Article 7, paragraph 2, of the Vienna Convention on the Law of Treaties, Cameroon argues that as a matter of international law a Head of State is always considered as representing his or her State for the purpose of expressing the consent of the State to be bound by a treaty. Cameroon also maintains that, even if there was a violation of the internal law of Nigeria, the alleged violation was not "manifest", and did not concern a rule of internal law "of fundamental importance", within the meaning of Article 46, paragraph 1, of the Vienna Convention on the Law of Treaties.

261. The Court has already found that the Anglo-German Agreement of 11 March 1913 is valid and applicable in its entirety and that, in consequence, territorial title to the Bakassi Peninsula lies with Cameroon (see paragraph 225 above). It follows from these findings that the maritime boundary between Cameroon and Nigeria lies to the west of the Bakassi Peninsula and not to the east, in the Rio del Rey. It also follows from these findings that the maritime boundary between the Parties is "anchored" to the mainland at the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe River in accordance with Articles XVIII and XXI of the said Anglo-German Agreement.

262. It is apparent from the documents provided to the Court by the Parties that, irrespective of what may have been the intentions of its original signatories, the Yaoundé II Declaration was called into question on a number of occasions by Nigeria subsequently to its signature and to the Joint Boundary Commission meeting of June 1971, in particular at a Commission meeting of May 1972, and again at a meeting of the two Heads of State at Garoua in August 1972, where the Head of State of Nigeria, described it as "unacceptable". Moreover, the Head of State of Nigeria subsequently confirmed his position in the letter of 23 August 1974 to his Cameroonian counterpart (see paragraph 258 above).

However, it is unnecessary to determine the status of the Declaration in isolation, since the line described therein is confirmed by the terms of the Maroua Declaration, which refers in its third paragraph to "Point 12 . . . situated at the end of the line of the maritime boundary adopted by the two Heads of State on April 4, 1971". If the Maroua Declaration represents an international agreement binding on both parties, it necessarily follows that the line contained in the Yaoundé II Declaration, including the co-ordinates as agreed at the June 1971 meeting of the Joint Boundary Commission, is also binding on them.

263. The Court considers that the Maroua Declaration constitutes an international agreement concluded between States in written form and tracing a boundary; it is thus governed by international law and constitutes a treaty in the sense of the Vienna Convention on the Law of Treaties (see Art. 2, para. 1), to which Nigeria has been a party since 1969 and Cameroon since 1991, and which in any case reflects customary international law in this respect.

264. The Court cannot accept the argument that the Maroua Declaration was invalid under international law because it was signed by the Nigerian Head of State of the time but never ratified. Thus while in international practice a two-step procedure consisting of signature and ratification is frequently provided for in provisions regarding entry into force of a treaty, there are also cases where a treaty enters into force immediately upon signature. Both customary international law and the Vienna Convention on the Law of Treaties leave it completely up to States which procedure they want to follow. Under the Maroua Declaration, "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". In the Court's view, that Declaration entered into force immediately upon its signature.

265. The Court will now address Nigeria's argument that its constitutional rules regarding the conclusion of treaties were not complied with. In this regard the Court recalls that Article 46, paragraph 1, of the Vienna Convention provides that "[a] State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent". It is true that the paragraph goes on to say "unless that violation was manifest and concerned a rule of its internal law of fundamental importance", while paragraph 2 of Article 46 provides that "[a] violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith". The rules concerning the authority to sign treaties for a State are constitutional rules of fundamental importance. However, a limitation of a Head of State's capacity in this respect is not manifest in the sense of Article 46, paragraph 2, unless at least properly publicized. This is particularly so because Heads of State belong to the group of persons who, in accordance with Article 7, paragraph 2, of the Convention "[i]n virtue of their functions and without having to produce full powers" are considered as representing their State.

The Court cannot accept Nigeria's argument that Article 7, paragraph 2, of the Vienna Convention on the Law of Treaties is solely concerned with the way in which a person's function as a State's representative is established, but does not deal with the extent of that person's powers when exercising that representative function. The Court notes that the commentary of the International Law Commission on Article 7, paragraph 2, expressly states that "Heads of State . . . are considered as representing their State for the purpose of performing all acts relating to the conclusion of a treaty" (ILC Commentary, Art. 6 (of what was then the draft Convention), para. 4, *Yearbook of the International Law Commission*, 1966, Vol. II, p. 193).

266. Nigeria further argues that Cameroon knew, or ought to have known, that the Head of State of Nigeria had no power legally to bind Nigeria without consulting the Nigerian Government. In this regard the Court notes that there is no general legal obligation for States to keep themselves informed of legislative and constitutional developments in other States which are or may become important for the international relations of these States.

In this case the Head of State of Nigeria had in August 1974 stated in his letter to the Head of State of Cameroon that the views of the Joint Commission "must be subject to the agreement of the two Governments". However, in the following paragraph of that same letter, he further indicated: "It has always been my belief that we can, both, together re-examine the situation and reach an appropriate and acceptable decision on the matter." Contrary to Nigeria's contention, the Court considers that these two statements, read together, cannot be regarded as a specific warning to Cameroon that the Nigerian Government would not be bound by any commitment entered into by the Head of State. And in particular they could not be understood as relating to any commitment to be made at Maroua nine months later. The letter in question in fact concerned a meeting to be held at Kano, Nigeria, from 30 August to 1 September 1974. This letter seems to have been part of a pattern which marked the Parties' boundary negotiations between 1970 and 1975, in which the two Heads of State took the initiative of resolving difficulties in those negotiations through person-to-person agreements, including those at Yaoundé II and Maroua.

267. The Court further observes that in July 1975 the two Parties inserted a correction in the Maroua Declaration, that in so acting they treated the Declaration as valid and applicable, and that Nigeria does not claim to have contested its validity or applicability prior to 1977.

268. In these circumstances the Maroua Declaration, as well as the Yaoundé II Declaration, have to be considered as binding and as establishing a legal obligation on Nigeria. It follows that it is unnecessary for the Court to address Nigeria's argument regarding the oil practice in the sector up to point G (see paragraph 256 above). Thus the maritime boundary between Cameroon and Nigeria up to and including point G must be considered to have been established on a conventional basis by the Anglo-German Agreement of 11 March 1913, the Yaoundé II Declaration of 4 April 1971 and the Maroua Declaration of 1 June 1975, and takes the following course: starting from the straight line joining Bakassi Point and King Point, the line follows the "compromise line" jointly drawn at Yaoundé on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 appended to the Yaoundé II Declaration of 4 April 1971, and passing through 12 numbered points, whose precise co-ordinates were determined by the two countries' Joint Commission meeting in Lagos in June 1971; from point 12 on that compromise line the course of the boundary follows the line to point G specified in the Maroua Declaration of 1 June 1975, as corrected by the exchange of letters between the Heads of State of Cameroon and Nigeria of 12 June and 17 July 1975.

* *

269. The Court will now address the maritime boundary beyond point G, where no maritime boundary delimitation has been agreed. Cameroon states that this is a classic case of maritime delimitation between States with adjacent coasts which have been unable to reach agreement on the line to be drawn between their respective exclusive economic zones and continental shelves, although in this case the special circumstances of the geographical situation are particularly marked, and the Court is also required to take account of the interests of third States.

270. As regards the exercise of delimitation, Cameroon argues that the law on the delimitation of maritime boundaries is dominated by the fundamental principle that any delimitation must lead to an equitable solution. In support of this contention, it cites paragraph 1 of Articles 74 and 83 of the 1982 Law of the Sea Convention and a number of decisions of this Court or of arbitral tribunals. In particular, it cites the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 4), which, it claims, adopted equity as the applicable legal concept. It also quotes, *inter alia*, the Court's dictum in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)* (*I.C.J. Reports 1993*, p. 62, para. 54), where it is stated that "[t]he aim in each and every situation must be to achieve 'an equitable result'", as well

as a dictum of the Court of Arbitration to similar effect in the case concerning *Delimitation of the Continental Shelf (United Kingdom/France)* (United Nations *Reports on International Arbitration Awards (RIAA)*), Vol. XVIII, p. 57, para. 97). Cameroon also refers to the Court's most recent jurisprudence in the matter in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*, and in particular the Court's statement that it should "first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line". But Cameroon adds that it does not believe that the Court intended thereby to call into question its own previous jurisprudence establishing that "the fundamental principle . . . the essential purpose, the sole purpose, is to arrive at an equitable solution".

271. Cameroon accordingly concludes that there is no single method of maritime delimitation; the choice of method depends on the circumstances specific to each case. In support of this contention, it cites *inter alia* the dictum of the Chamber in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area* that

> "the most appropriate criteria, and the method or combination of methods most likely to yield a result consonant with what the law indicates, can only be determined in relation to each particular case and its specific characteristics" (*I.C.J. Reports 1984*, p. 290, para. 81).

Cameroon insists on the fact that the equidistance principle is not a principle of customary law that is automatically applicable in every maritime boundary delimitation between States whose coasts are adjacent, observing that, if a strict equidistance line were drawn, it would be entitled to practically no exclusive economic zone or continental shelf, despite the fact that it has a longer relevant coastline than Nigeria.

272. Citing the Court's case law and the approach adopted by the Arbitral Tribunal in the case concerning the *Delimitation of the Guinea and Guinea-Bissau Maritime Boundary* (*International Legal Materials (ILM)*, Vol. 25 (1986), p. 252), Cameroon contends that, because of the particular geography of the Gulf of Guinea, it is necessary to determine the relevant area within which the delimitation itself is to be undertaken, and that such an area may include the coastlines of third States. According to Cameroon, the relevant area in the present case consists of that part of the Gulf of Guinea bounded by a straight line running from Akasso in Nigeria to Cap Lopez in Gabon. Within that area, Cameroon has presented to Nigeria and to the Court what it calls an equitable line, subtended by "projection lines" connecting points on the "relevant coasts", a number of which are in fact situated in third States. It claims that this line represents an equidistance line adjusted to take account of the relevant circumstances so as to produce an equitable solution, and insists that this is not an attempt to "refashion geography". It adds that a single delimitation line of the maritime boundary is appropriate in this case and that Nigeria has accepted that this is so. The relevant circumstances to be taken into account according to Cameroon are the following: the overall situation in the Gulf of Guinea, where the continental shelves of Cameroon, Nigeria and Equatorial Guinea overlap, so that none of the three countries can lay claim, within the natural extension of the land territory of the other, to exclusive rights over the continental shelf;

Cameroon's legal right to a continental shelf representing the frontal projection of its coasts; the general configuration of Cameroon's and Nigeria's coasts, and in particular the concavity of Cameroon's coastline, which creates a virtual "enclavement" of Cameroon, and the change in direction of Nigeria's coast from Akasso; the relative lengths of the coastlines involved; the presence of Bioko Island opposite the coast of Cameroon. In relation to each of these circumstances, Cameroon cites jurisprudence which is claimed to support the delimitation line which it proposes.

273. As regards the first four of the above circumstances, Cameroon relies in particular on the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 4), the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (*I.C.J. Reports 1984*, p. 246), the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*I.C.J. Reports 1982*, p. 18), the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)* (*I.C.J. Reports 1993*, p. 38) and the Arbitral Award in the case concerning the *Delimitation of the Guinea and Guinea-Bissau Maritime Boundary* (*ILM*, Vol. 25 (1986), p. 252). It contends that in all of these cases the circumstances in question led the court or tribunal in question to make an adjustment of the equidistance line in order to achieve an equitable result — in some cases a very substantial one, amounting, as for example in the *Jan Mayen* case, to an actual "shifting" of the line (*I.C.J. Reports 1993*, p. 79, para. 90), and, in the *North Sea Continental Shelf* cases, to an increase of some 37.5 per cent in the area of continental shelf which equidistance alone accorded to Germany. Cameroon also cites the solution found by the Arbitral Tribunal in the case concerning the *Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon)* (*ILM*, Vol. 31 (1992), p. 1149) in order to overcome St. Pierre's enclavement and give it uninterrupted equitable access to the continental shelf.

274. In relation to the fifth circumstance, the presence opposite its coast of Bioko Island, which is part of Equatorial Guinea, but is closer to the coast of Cameroon than to that of Equatorial Guinea, Cameroon draws an analogy with the case concerning the *Delimitation of the Continental Shelf (United Kingdom/France)* (*RIAA*, Vol. XVIII, p. 3), in which the Court of Arbitration refused to attribute to the Channel Islands the full effect claimed by Great Britain and decided that they were an enclave lying totally within the French continental shelf.

Cameroon further contends, arguing *a contrario* from the Court's reasoning in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (*I.C.J. Reports 1985*, p. 42, para. 53), that "[t]he delimitation régime is not identical for an island State and for a dependent, isolated island falling under the sovereignty of a State". Arguing that Bioko should not necessarily be given its full effect, it insists that what must be avoided at all costs is a "radical and absolute cut-off of the projection of [Cameroon's] coastal front". In this regard it cites a dictum from the Award in the case concerning *Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon)*, in which the Arbitral Tribunal stated that "the delimitation must leave to a State the areas that constitute the natural prolongation or seaward extension of its coasts, so that the delimitation must avoid any cut-off effect of those prolongations or seaward extensions" (*ILM*, Vol. 31 (1992), p. 1167, para. 58).

275. On the basis of these arguments, Cameroon, in its final submissions, asks the Court to delimit as follows the maritime areas appertaining respectively to Cameroon and Nigeria beyond point G:

> — "from point G the equitable line follows the direction indicated by points G, H (co-ordinates 8° 21' 16" east and 4° 17' north), I (7° 55' 40" east and 3° 46' north), J (7° 12' 08" east and 3° 12' 35" north), K (6° 45' 22" east and 3° 01' 05" north), and continues from K up to the outer limit of the maritime zones which international law places under the respective jurisdiction of the two Parties".

276. Nigeria agrees that it is appropriate in the present case to determine a single maritime boundary, but it rejects Cameroon's line. It describes it as fanciful and constructed in defiance of the basic concepts and rules of international law. It criticizes both the line's construction and the "equitableness" of the result in light of the jurisprudence. It directs its criticism of the construction essentially to five points: the actual nature of the line; the relevant coasts used in its construction; the treatment of the islands in this construction; the definition of the area relevant to the delimitation; the method followed in the construction of the line.

277. In relation to the nature of the line proposed by Cameroon, Nigeria contends that this is not a "delimitation line" but an "exclusion line". The Cameroonian line is claimed to

> "pre-empt any delimitation between Nigeria and the two States whose coasts face its own with no intervening obstacle, i.e., Equatorial Guinea and Sao Tome and Principe, in areas that at each point are nearer to and more closely connected with the coasts of these three States than with the Cameroonian coastline".

In that sense it is claimed to be an exclusion line and hence incompatible with international law.

278. As regards relevant coasts, Nigeria, citing Articles 15, 74 and 83 of the 1982 Convention on the Law of the Sea, points out that the coasts to be taken into account in the construction of a maritime delimitation line must be "adjacent" or "opposite". Moreover, they must be coasts of the parties, and not those of a third State. In this regard Nigeria considers that the relevant coast of Nigeria is that running west from its boundary with Cameroon as far as Akasso (where it changes direction north-westwards, turning its back on the Gulf of Guinea), and that of Cameroon is the coast running east from the boundary between the two States and then south, as far as Debundsha Point, which marks the beginning of the blocking effect of Bioko Island. Moreover, according to Nigeria, Cameroon's line fails to take due account of the criterion of proportionality which, Nigeria claims, is in its own favour by a factor of between 1:1.3 and 1:3.2, depending on the precise points used.

279. As to the treatment of the islands, Nigeria begins by recalling the dictum of the Court in 1969 that "[t]here can never be any question of completely refashioning nature" (*North Sea Continental Shelf, I.C.J. Reports 1969*, p. 49, para. 91).

Nigeria contends that the Cameroonian line seeks radically to refashion the physical geography of the Gulf of Guinea by eliminating the important string of islands which cuts it into two almost centrally from top to bottom. Moreover, the existence of Bioko, an island substantial in area and population and the seat of the capital of the Republic of Equatorial Guinea, is totally ignored. In any event, according to Nigeria, Bioko cannot simply be treated as a relevant circumstance; it is a major part of an independent State, possessing its own maritime areas, on which the Court is not entitled to encroach. And the same is true, in Nigeria's view, further south, in regard to the archipelago of Sao Tome and Principe.

Nigeria contends that Cameroon's "equitable line" allows none of these islands any effect at all, taking account only of the mainland coasts, while, moreover, ignoring the impact upon the latter of the presence of Bioko (see paragraph 278 above). Citing the 1982 Convention on the Law of the Sea and the relevant jurisprudence, in particular paragraph 185 of the recent Judgment of the Court in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*, Nigeria insists that Cameroon's approach cannot be correct in law. Nigeria accepts that the islands may sometimes be given only partial effect, as occurred in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* regarding the Kerkennah Islands (*I.C.J. Reports 1982*, pp. 88-89, paras. 128-129). It also notes that a solution of enclavement may on occasion be adopted, as occurred in the Arbitral Award in the *Delimitation of the Continental Shelf (United Kingdom/France)* (*RIAA*, Vol. XVIII, p. 3), in regard to the Channel Islands. However, Nigeria points out that in both these cases the islands belonged to one of the parties to the delimitation, whereas here they belong to third States and hence their effects cannot be moderated, in the absence of some other relevant or special circumstance justifying this.

280. In relation to the third and fourth points, definition of the relevant area and method of construction of the line, Nigeria queries the very notion of what Cameroon calls "total relevant area", insisting that the only relevant area is that enclosed by the "relevant coasts" (see paragraph 278 above). It contends that, in reality, Cameroon is seeking to transform a gulf with five riparian States into one with only two: itself and Nigeria. Effectively, according to Nigeria, Cameroon seeks to compensate for the injustice of nature close to the coastline by appropriating extensive areas further out to sea. Nigeria observes that States' maritime areas are simply adjuncts to the land, representing the seaward projection and prolongation of the coastline generating them, and must accordingly be adjacent to, and "closely connected with", that coastline. Nigeria contends that it would be contrary to these principles to construct a line producing an area which dwindles away close to the coastline generating it, but then expands the further it goes from its coastline, displacing itself from its axis so as to take on a course lying closer to, and more directly linked with, other coastlines. It argues that the restrictions on a State's maritime areas close to the coast cannot be relieved by allocating spaces to it far out to sea.

Nigeria contends that it cannot be responsible for compensating Cameroon in the north-western sector for disadvantages it may possibly suffer as a result of its natural situation in the sectors to the east and to the south of Bioko, in particular as a result of the direction of Cameroon's coast at that point and of the existence of Bioko itself. Nigeria further states that Cameroon's rejection of any reliance on the criteria of appurtenance, equidistance and natural

prolongation are inconsistent with modern methods of delimitation. It points out that international tribunals generally start from an equidistance line, which is then adjusted to take into account other relevant circumstances. According to Nigeria, such circumstances do not normally include geographical disadvantage: international law does not refashion the geographical situation of States. Nigeria adds that, while the Court has in the past been sensitive to some geographical features which might have a significant distorting effect on the delimitation of maritime areas, these have always been minor geographical peculiarities specific to the underlying geographical situation of the States concerned. That underlying geographical situation has, on the other hand, always been taken as given and the Court has never considered that a State's maritime front in its entirety could be ignored or could be given anything other than its full effect.

281. As regards the equitable character of Cameroon's line, Nigeria argues that it is not the function of the Court to delimit the continental shelf by reference to general considerations of equity. It maintains that, according to the Court's jurisprudence, delimiting the continental shelf involves establishing the boundaries of an area already appertaining to a State, not determining *de novo* such an area. Delimitation in an equitable manner is not the same thing as awarding a just and equitable share of a previously undelimited area. After undertaking a detailed analysis of various cases relied on by Cameroon, in particular the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 1), the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (I.C.J. Reports 1982*, p. 18) and the decision of the Arbitral Tribunal in the case concerning the *Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon)* (*ILM*, Vol. 31 (1992), p. 1149), Nigeria concludes that nothing done in those cases can justify Cameroon's radical departure from the methods, rules and legal principles of maritime delimitation, in favour of a line which is not so much "equitable" as fanciful. According to Nigeria, these cases demonstrate the limitations of equity: it can be used to mitigate the effects of "minor features that might produce disproportionate results if the principle and method of equidistance were applied mechanically", but not in order completely to refashion nature.

282. Nigeria further argues that the Parties' conduct in respect of the granting and exploitation of oil concessions, leading to the establishment of *de facto* lines, plays a very important role in establishing maritime boundaries. It contends that, within the area to be delimited, the Court cannot redistribute the oil concessions established by the practice of Nigeria, Equatorial Guinea and Cameroon, and that it must respect the configuration of the concessions in its determination of the course of the maritime boundary. In Nigeria's view, international jurisprudence has never disregarded such practice in order to redistribute oil concessions, and this restrained approach is all the more understandable because the change in long-standing rights and oil concessions resulting from such a redistribution would create major difficulties and would not be in keeping with the equitable considerations which must be taken into account in delimitation.

According to Nigeria, Cameroon's line of delimitation completely disregards the substantial, long-standing practice, followed by Nigeria as well as by Cameroon, in respect of oil exploration and exploitation activity on the continental shelf, and would result in allotting to Cameroon a large number of concessions belonging to Nigeria or Equatorial Guinea, in which billions of dollars in infrastructure have been invested. Nigeria states that its oil concession practice is long established,

contending that, contrary to what Cameroon claims (see paragraph 283 below), it dates back to well before 1970, when, according to Cameroon, its maritime delimitation dispute with Nigeria arose. The existence of any areas of overlapping licences is moreover considered by Nigeria to be without effect on the evidentiary weight of oil practice. Nigeria states that its operations within the maritime areas now claimed by Cameroon have always been particularly significant and completely open; Cameroon never disputed them and lodged no protest until the date on which these proceedings were instituted. Nigeria concludes that its oil practice in the area was public, open and of long duration, and is therefore a basis for acquiescence and the establishment of vested rights. It denies that it failed in an obligation to inform Cameroon of this practice, and states that the information was in any event publicly available.

283. In reply to Nigeria's argument on the oil practice, Cameroon, for its part, maintains that the existence and limits of oil concessions have been given only limited significance in matters of maritime delimitation in international case law. This limited significance is said to accord with the essential nature of the concept of the continental shelf, over which coastal States have an inherent right which "does not depend on its being exercised" (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 19). Cameroon argues that the granting of oil concessions is a unilateral fait accompli, and not a legal fact that is opposable to another State.

In the area immediately south of point G, Cameroon claims that there are in fact areas of overlap of the concessions granted by Cameroon, Equatorial Guinea and Nigeria, and that, because of this, it cannot be said that there is any consensual line of oil practices forming a *de facto* line which could serve as a basis for delimitation. In the area further south of point G, Cameroon argues that there can be no question of a *de facto* line, since Cameroon refrained from granting any concessions there, due to the negotiations between the Parties and the present proceedings. According to Cameroon, Nigeria, by granting concessions in this area, has sought to present the Court with a fait accompli.

Moreover, Cameroon claims that Nigeria's description of the State practice in terms of oil concessions and the conclusions it draws therefrom are erroneous. Cameroon insists that, contrary to Nigeria's claim, the concessions cited by Nigeria are all (with the exception of concession OML 67) subsequent to 1990, well after the maritime delimitation dispute arose at the end of the 1970s, while three of them were even granted after the Application instituting proceedings was filed and therefore are of no relevance for purposes of settling the present dispute.

Further, Cameroon states that nothing can be inferred from its silence with regard to Nigerian concessions, since the Nigerian authorities never informed Cameroon, as they had promised to do, of new concessions and Nigeria itself has remained silent with respect to Cameroonian concessions, even when these encroached on zones which Nigeria appears to consider as its own.

284. Having dealt earlier with the nature, purpose and effects of Equatorial Guinea's intervention (see paragraphs 227-238 above), the Court will now briefly summarize Equatorial Guinea's arguments in regard to the course of the maritime boundary between Cameroon and Nigeria. Essentially, Equatorial Guinea requests the Court to "refrain from delimiting a maritime boundary between Nigeria and Cameroon in any area that is more proximate to Equatorial Guinea than to the Parties to the case before the Court", or from "express[ing] any opinion which could prejudice [Equatorial Guinea's] interests in the context of [its] maritime boundary negotiations with [its] neighbours". It asks that the boundary to be fixed by the Court should nowhere encroach upon the median line between its own coasts and those of Cameroon and Nigeria, which it regards as "a reasonable expression of its legal rights and interests that must not be transgressed in proceedings to which Equatorial Guinea is not a party". Equatorial Guinea stresses that, if the Court's decision in the present case were to involve such an encroachment, this would cause it "irreparable harm" and would "lead to a great deal of confusion", notwithstanding the protection afforded by Article 59 of the Court's Statute.

Equatorial Guinea has a number of specific criticisms of the "equitable line" proposed by Cameroon, of which, moreover, it claims it only became aware in December 1998. It contends that in prior negotiations Cameroon had always acknowledged that the median line represented the boundary between their respective maritime areas and that this had been confirmed by the two States' oil practice. However, according to Equatorial Guinea, Cameroon's equitable line not only encroaches upon the two countries' median line but also upon that between Equatorial Guinea and Nigeria and, moreover, fails to take account of the three States' very substantial oil practice. According to Equatorial Guinea, if the Court were to accept Cameroon's proposed line, there would no longer even be a maritime boundary between Equatorial Guinea and Nigeria, and hence no tripoint between the three countries, despite the fact that Cameroon, in prior negotiations with Equatorial Guinea, and in its own legislation, had always acknowledged that such a tripoint existed.

Equatorial Guinea further contends that to give effect to Cameroon's line would result in the complete enclavement of Bioko Island. Finally, Equatorial Guinea refers to the Treaty of 23 September 2000 delimiting its maritime boundary with Nigeria. While Equatorial Guinea recognizes that that Treaty cannot be binding on Cameroon *(res inter alios acta)*, it contends that, equally, Cameroon cannot seek to benefit from it. Hence, the fact that, under the Treaty, the maritime area allocated to Nigeria extends into waters lying on Equatorial Guinea's side of the median line is not a circumstance on which Cameroon is entitled to rely for purposes of its claim against Nigeria.

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285. The Court observes that the maritime areas on whose delimitation it is to rule in this part of the Judgment lie beyond the outer limit of the respective territorial seas of the two States. The Court further recalls that the Parties agree that it is to rule on the maritime delimitation in accordance with international law. Both Cameroon and Nigeria are parties to the United Nations

Law of the Sea Convention of 10 December 1982, which they ratified on 19 November 1985 and 14 August 1986 respectively. Accordingly the relevant provisions of that Convention are applicable, and in particular Articles 74 and 83 thereof, which concern delimitation of the continental shelf and the exclusive economic zone between States with opposite or adjacent coasts. Paragraph 1 of those Articles provides that such delimitation must be effected in such a way as to "achieve an equitable solution".

286. The Court also notes that the Parties agreed in their written pleadings that the delimitation between their maritime areas should be effected by a single line. As the Court had occasion to recall in its Judgment of 16 March 2001 in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*,

> "the concept of a single maritime boundary does not stem from multilateral treaty law but from State practice, and . . . finds its explanation in the wish of States to establish one uninterrupted boundary line delimiting the various — partially coincident — zones of maritime jurisdiction appertaining to them" (*I.C.J. Reports 2001*, para. 173).

In the present case, the Court's task is accordingly to determine, with effect from point G, a single line of delimitation for the coincident zones of jurisdiction within the restricted area in respect of which it is competent to give a ruling.

287. The Chamber formed by the Court in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* noted that the determination of such a line

> "can only be carried out by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of [the zones] to the detriment of the other, and at the same time is such as to be equally suitable to the division of either of them" (*I.C.J. Reports 1984*, p. 327, para. 194).

The Chamber then added that "preference w[ould] henceforth . . . be given to criteria that, because of their more neutral character, are best suited for use in a multi-purpose delimitation" (*I.C.J. Reports 1984*, p. 327, para. 194).

Likewise, after noting the link between the continental shelf and the exclusive economic zone, the Court stated in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case that

> "even though the present case relates only to the delimitation of the continental shelf and not to that of the exclusive economic zone, the principles and rules underlying the latter concept cannot be left out of consideration. As the 1982 Convention demonstrates, the two institutions — continental shelf and exclusive economic zone — are linked together in modern law." (*I.C.J. Reports 1985*, p. 33, para. 33.)

288. The Court has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are when a line covering several zones of coincident jurisdictions is to be determined. They are expressed in the so-called equitable principles/relevant circumstances method. This method, which is very similar to the equidistance/special circumstances method applicable in delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an "equitable result".

289. Thus, in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)*, the Court, which had been asked to draw a single maritime boundary, took the view, with regard to delimitation of the continental shelf, that

> "even if it were appropriate to apply . . . customary law concerning the continental shelf as developed in the decided cases, it is in accord with precedents to begin with the median line as a provisional line and then to ask whether 'special circumstances' require any adjustment or shifting of that line" (*I.C.J. Reports 1993, Judgment*, p. 61, para. 51).

In seeking to ascertain whether there were in that case factors which should cause it to adjust or shift the median line in order to achieve an "equitable result", the Court stated:

> "[i]t is thus apparent that special circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle. General international law, as it has developed through the case-law of the Court and arbitral jurisprudence, and through the work of the Third United Nations Conference on the Law of the Sea, has employed the concept of 'relevant circumstances'. This concept can be described as a fact necessary to be taken into account in the delimitation process." (*Ibid.*, p. 62, para. 55.)

In the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)* the Court further stated that

> "[f]or the delimitation of the maritime zones beyond the 12-mile zone it [would] first provisionally draw an equidistance line and then consider whether there [were] circumstances which must lead to an adjustment of that line" (*I.C.J. Reports 2001*, para. 230).

290. The Court will apply the same method in the present case.

Before it can draw an equidistance line and consider whether there are relevant circumstances that might make it necessary to adjust that line, the Court must, however, define the relevant coastlines of the Parties by reference to which the location of the base points to be used in the construction of the equidistance line will be determined.

As the Court made clear in its Judgment in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*,

> "[t]he equidistance line is the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured." (*I.C.J. Reports 2001*, para. 177.)

291. In the present case the Court cannot accept Cameroon's contention, on the one hand, that account should be taken of the coastline of the Gulf of Guinea from Akasso (Nigeria) to Cap Lopez (Gabon) in order to delimit Cameroon's maritime boundary with Nigeria, and, on the other**,** that no account should be taken of the greater part of the coastline of Bioko Island. First, the maritime boundary between Cameroon and Nigeria can only be determined by reference to points on the coastlines of these two States and not of third States. Secondly, the presence of Bioko makes itself felt from Debundsha, at the point where the Cameroon coast turns south-south-east. Bioko is not an island belonging to either of the two Parties. It is a constituent part of a third State, Equatorial Guinea. North and east of Bioko the maritime rights of Cameroon and Equatorial Guinea have not yet been determined. The part of the Cameroon coastline beyond Debundsha Point faces Bioko. It cannot therefore be treated as facing Nigeria so as to be relevant to the maritime delimitation between Cameroon and Nigeria (see below, p. 137, sketch-map No. 11).

292. Once the base points have been established in accordance with the above-mentioned principles laid down by the Court in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*, it will be possible to determine the equidistance line between the relevant coastlines of the two States. As the Court has already had occasion to explain, this equidistance line cannot be extended beyond a point where it might affect rights of Equatorial Guinea. This limitation on the length of the equidistance line is unavoidable, whatever the base points used. In the present case the Court has determined that the land-based anchorage points to be used in the construction of the equidistance line are West Point and East Point, as determined on the 1994 edition of British Admiralty Chart 3433. These two points, situated respectively at 8° 16' 38" longitude east and 4° 31' 59" latitude north and 8° 30' 14" longitude east and 4° 30' 06" latitude north, correspond to the most southerly points on the low-water line for Nigeria and Cameroon to either side of the bay formed by the estuaries of the Akwayafe and Cross Rivers. Given the configuration of the coastlines and the limited area within which the Court has jurisdiction to effect the delimitation, no other base point was necessary for the Court in order to undertake this operation.

293. The Court will now consider whether there are circumstances that might make it necessary to adjust this equidistance line in order to achieve an equitable result.

As the Court stated in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case:

> "the equidistance method is not the only method applicable to the present dispute, and it does not even have the benefit of a presumption in its favour. Thus, under existing law, it must be demonstrated that the equidistance method leads to an equitable result in the case in question." (*I.C.J. Reports 1985*, p. 47, para. 63.)

294. The Court is bound to stress in this connection that delimiting with a concern to achieving an equitable result, as required by current international law, is not the same as delimiting in equity. The Court's jurisprudence shows that, in disputes relating to maritime delimitation, equity is not a method of delimitation, but solely an aim that should be borne in mind in effecting the delimitation.

295. The geographical configuration of the maritime areas that the Court is called upon to delimit is a given. It is not an element open to modification by the Court but a fact on the basis of which the Court must effect the delimitation. As the Court had occasion to state in the *North Sea Continental Shelf* cases, "[e]quity does not necessarily imply equality", and in a delimitation exercise "[t]here can never be any question of completely refashioning nature" (*I.C.J. Reports 1969*, p. 49, para. 91). Although certain geographical peculiarities of maritime areas to be delimited may be taken into account by the Court, this is solely as relevant circumstances, for the purpose, if necessary, of adjusting or shifting the provisional delimitation line. Here again, as the Court decided in the *North Sea Continental Shelf* cases, the Court is not required to take all such geographical peculiarities into account in order to adjust or shift the provisional delimitation line:

> "[i]t 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" (*I.C.J. Reports 1969*, p. 50, para. 91).

296. Cameroon contends that the concavity of the Gulf of Guinea in general, and of Cameroon's coastline in particular, creates a virtual enclavement of Cameroon, which constitutes a special circumstance to be taken into account in the delimitation process.

Nigeria argues that it is not for the Court to compensate Cameroon for any disadvantages suffered by it as a direct consequence of the geography of the area. It stresses that it is not the purpose of international law to refashion geography.

297. The Court does not deny that the concavity of the coastline may be a circumstance relevant to delimitation, as it was held it to be by the Court in the *North Sea Continental Shelf* cases and as was also so held by the Arbitral Tribunal in the case concerning the *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, decisions on which Cameroon relies. Nevertheless the Court stresses that this can only be the case when such concavity lies within the area to be delimited. Thus, in the *Guinea/Guinea-Bissau* case, the Arbitral Tribunal did not address the disadvantage resulting from the concavity of the coast from a general viewpoint, but solely in connection with the precise course of the delimitation line between Guinea and Guinea-Bissau (*ILM*, Vol. 25 (1986), p. 295, para. 104). In the present case the Court has already determined that the coastlines relevant to delimitation between Cameroon and Nigeria do not include all of the coastlines of the two States within the Gulf of Guinea. The Court notes that the sectors of coastline relevant to the present delimitation exhibit no particular concavity. Thus the concavity of Cameroon's coastline is apparent primarily in the sector where it faces Bioko.

Consequently the Court does not consider that the configuration of the coastlines relevant to the delimitation represents a circumstance that would justify shifting the equidistance line as Cameroon requests.

298. Cameroon further contends that the presence of Bioko Island constitutes a relevant circumstance which should be taken into account by the Court for purposes of the delimitation. It argues that Bioko Island substantially reduces the seaward projection of Cameroon's coastline.

Here again Nigeria takes the view that it is not for the Court to compensate Cameroon for any disadvantages suffered by it as a direct consequence of the geography of the area.

299. The Court accepts that islands have sometimes been taken into account as a relevant circumstance in delimitation when such islands lay within the zone to be delimited and fell under the sovereignty of one of the parties. This occurred in particular in the case concerning the *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic* (*RIAA*, Vol. XVIII, p. 3), on which Cameroon relies. However, in that case, contrary to what Cameroon contends, the Court of Arbitration sought to draw a delimitation line and not to provide equitable compensation for a natural inequality.

In the present case Bioko Island is subject to the sovereignty of Equatorial Guinea, a State which is not a party to the proceedings. Consequently the effect of Bioko Island on the seaward projection of the Cameroonian coastal front is an issue between Cameroon and Equatorial Guinea and not between Cameroon and Nigeria, and is not relevant to the issue of delimitation before the Court.

The Court does not therefore regard the presence of Bioko Island as a circumstance that would justify the shifting of the equidistance line as Cameroon claims.

300. Lastly, Cameroon invokes the disparity between the length of its coastline and that of Nigeria in the Gulf of Guinea as a relevant circumstance that justifies shifting the delimitation line towards the north-west.

For its part, Nigeria considers that Cameroon fails to respect the criteria of proportionality of coastline length, which would operate rather in Nigeria's favour.

301. The Court acknowledges, as it noted in the cases concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* (*I.C.J. Reports 1984*, p. 336, paras. 221-222) and *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway) (I.C.J. Reports 1993*, p. 34, para. 68), that a substantial difference in the lengths of the parties' respective coastlines may be a factor to be taken into consideration in order to adjust or shift the provisional delimitation line. The Court notes that in the present case,

whichever coastline of Nigeria is regarded as relevant, the relevant coastline of Cameroon, as described in paragraph 291, is not longer than that of Nigeria. There is therefore no reason to shift the equidistance line in favour of Cameroon on this ground.

302. Before ruling on the delimitation line between Cameroon and Nigeria, the Court must still address the question raised by Nigeria whether the oil practice of the Parties provides helpful indications for purposes of the delimitation of their respective maritime areas.

303. Thus Nigeria contends that State practice with regard to oil concessions is a decisive factor in the establishment of maritime boundaries. In particular it takes the view that the Court cannot, through maritime delimitation, redistribute such oil concessions between the States party to the delimitation.

Cameroon, for its part, maintains that the existence of oil concessions has never been accorded particular significance in matters of maritime delimitation in international law.

304. Both the Court and arbitral tribunals have had occasion to deal with the role of oil practice in maritime delimitation disputes. In the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (I.C.J. Reports 1982*, p. 18), the Court examined for the first time the question of the significance of oil concessions for maritime delimitation. On that occasion the Court did not take into consideration "the direct northward line asserted as boundary of the Libyan petroleum zones" (*I.C.J. Reports* 1982, p. 83, para. 117), because that line had "been found . . . to be wanting in those respects [that would have made it opposable] to the other Party" *(ibid.)*; however, the Court found that close to the coasts the concessions of the parties showed and confirmed the existence of a *modus vivendi* (*ibid.*, p. 84, para. 119). In the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* the Chamber of the Court underlined the importance of those findings when it stressed that in that case there did not exist any *modus vivendi* (*I.C.J. Reports 1984*, pp. 310-311, paras. 149-152). In that case the Chamber considered that, notwithstanding the alleged coincidence of the American and Canadian oil concessions, the situation was totally different from the *Tunisia/Libya* case. In the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta* (*I.C.J. Reports 1985*, p. 13) the Court considered that the indications given by the parties could not be viewed as evidence of acquiescence (*ibid.*, pp. 28-29, paras. 24-25). As to arbitration, the Arbitral Tribunal in the *Guinea/Guinea Bissau* case declined to take into consideration an oil concession granted by Portugal (*ILM*, Vol. 25 (1986), p. 281, para. 63). The Arbitral Tribunal in the case concerning *Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon)* accorded no importance to the oil concessions granted by the parties (*ILM*, Vol. 31 (1992), pp. 1174-1175, paras. 89-91). Overall, it follows from the jurisprudence that, although the existence of an express or tacit agreement between the parties on the siting of their

respective oil concessions may indicate a consensus on the maritime areas to which they are entitled, oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account. In the present case there is no agreement between the Parties regarding oil concessions.

The Court is therefore of the opinion that the oil practice of the Parties is not a factor to be taken into account in the maritime delimitation in the present case.

305. The Court also sought to ascertain whether there were other reasons that might have made an adjustment of the equidistance line necessary in order to achieve an equitable result. It came to the conclusion that there were no such reasons in the present case.

306. The Court accordingly decides that the equidistance line represents an equitable result for the delimitation of the area in respect of which it has jurisdiction to give a ruling.

307. The Court notes, however, that point G, which was determined by the two Parties in the Maroua Declaration of 1 June 1975, does not lie on the equidistance line between Cameroon and Nigeria, but to the east of that line. Cameroon is therefore entitled to request that from point G the boundary of the Parties' respective maritime areas should return to the equidistance line. This Cameroon seeks to achieve by drawing a delimitation line at an azimuth of 270° from point G to a point situated at 8° 21' 16" longitude east and 4° 17' 00" latitude north. The Court, having carefully studied a variety of charts, observes that the point on the equidistance line which is obtained by following a loxodrome having an azimuth of 270° from point G is located at co-ordinates slightly different from those put forward by Cameroon. The Court accordingly considers that from point G the delimitation line should directly join the equidistance line at a point with co-ordinates 8° 21' 20" longitude east and 4° 17' 00" latitude north, which will be called X. The boundary between the respective maritime areas of Cameroon and Nigeria will therefore continue beyond point G in a westward direction until it reaches point X at the above-mentioned co-ordinates. The boundary will turn at point X and continue southwards along the equidistance line. However, the equidistance line adopted by the Court cannot be extended very far. The Court has already stated that it can take no decision that might affect rights of Equatorial Guinea, which is not a party to the proceedings. In these circumstances the Court considers that it can do no more than indicate the general direction, from point X, of the boundary between the Parties' maritime areas. The boundary will follow a loxodrome having an azimuth of 187° 52' 27" (see below, p. 142, sketch-map No. 12).

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308. The Court will now address Cameroon's submissions concerning Nigeria's State responsibility and Nigeria's counter-claims concerning Cameroon's State responsibility.

309. In this connection, Cameroon puts forward two separate series of submissions concerning, on the one hand, the Lake Chad area and the Bakassi Peninsula and, on the other, the remaining sectors of the land and maritime boundary.

310. In respect of the Lake Chad area, Cameroon states that Nigerian fishermen have over recent decades gradually settled on Cameroonian territory as the lake has receded. According to Cameroon, from the middle of the 1980s the Nigerian army made repeated incursions into the Cameroonian territory on which those fishermen had settled. Those incidents are alleged to have been followed by a full-scale invasion beginning in 1987, so that by 1994 a total of 18 villages and six islands were occupied by Nigeria and continue to be so occupied.

In respect of Bakassi, Cameroon states that before 1993 the Nigerian army had on several occasions temporarily infiltrated into the peninsula and had even attempted in 1990 to establish a "bridgehead" at Jabane, but did not maintain any military presence in Bakassi at that time; Cameroon, on the contrary, had established a sub-prefecture at Idabato, together with all the administrative, military and security services appertaining thereto. Then, in December 1993, the Nigerian armed forces are said to have launched an attack on the peninsula as part of a carefully and deliberately planned invasion; Nigeria subsequently maintained and advanced its occupation, establishing a second bridgehead at Diamond in July 1994. In February 1996, following an attack by Nigerian troops, the Cameroonian post at Idabato is alleged to have fallen into Nigeria's hands. The same fate is said to have subsequently befallen the Cameroonian posts at Uzama and Kombo a Janea. These Cameroonian territories are allegedly still occupied.

Cameroon contends that, in thus invading and occupying its territory, Nigeria has violated, and continues to violate, its obligations under conventional and customary international law. In particular, Cameroon claims that Nigeria's actions are contrary to the principle of non-use of force set out in Article 2, paragraph 4, of the United Nations Charter and to the principle of non-intervention repeatedly upheld by the Court, as well as being incompatible with Cameroon's territorial sovereignty.

Cameroon contends that these actions imputable to Nigeria are wrongful, and that Nigeria is accordingly under an obligation to "put an end to its administrative and military presence in Cameroonian territory and, in particular, to effect an immediate and unconditional evacuation of its troops from the occupied area of Lake Chad and from the Cameroonian peninsula of Bakassi". Cameroon states that Nigeria must "[refrain] from such acts in the future", that Nigeria's international responsibility is engaged and that none of the grounds of defence provided by international law can be upheld. Consequently, Cameroon claims that reparation is due to it "on account of the material and moral injury suffered".

311. For its part, Nigeria states that it was not only in peaceful possession of the Lake Chad area and the Bakassi region at the time of the alleged invasions but had been since independence. Its deployment of force is alleged to have been for the purpose of resolving internal problems and responding to Cameroon's campaign of systematic encroachment on Nigerian territory. Nigeria

claims to have acted in self-defence. It further contends that, even if the Court should find that Cameroon has sovereignty over these areas, the Nigerian presence there was the result of a "reasonable mistake" or "honest belief". Accordingly, Nigeria cannot be held internationally responsible for conduct which, at the time it took place, Nigeria had every reason to believe was lawful.

312. The Court will recall that in paragraphs 57, 60, 61 and 225 of the present Judgment it fixed the boundary between the two States in the Lake Chad area and the Bakassi Peninsula. Nigeria does not deny that Nigerian armed forces and a Nigerian administration are currently in place in these areas which the Court has determined are Cameroonian territory, adding in respect of the establishment of the municipality of Bakassi that, if the Court were to recognize Cameroon's sovereignty over such areas, there is nothing irreversible in the relevant arrangements made by Nigeria. The same reasoning clearly applies to other spheres of civil administration, as well as to military or police forces.

313. The Court has already had occasion to deal with situations of this kind. In the case concerning the *Temple of Preah Vihear*, it held that the temple was situated on territory falling under the sovereignty of Cambodia. From this it concluded that "Thailand [was] under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (*Merits, Judgment, I.C.J. Reports 1962*, p. 37).

More recently, in the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, the Court fixed the boundary between those two States along a course which allocated to Chad territories in which Libya had set up a civil administration and stationed military forces. Following that Judgment of 3 February 1994, the two States on 4 April 1994 signed an agreement with a view to implementing the Judgment; that agreement provided for Libya's evacuation of the territories in question, to be monitored by a group of observers to be established by the Security Council. The evacuation was completed on 31 May 1994.

314. The Court notes that Nigeria is under an obligation in the present case expeditiously and without condition to withdraw its administration and its military and police forces from that area of Lake Chad which falls within Cameroon's sovereignty and from the Bakassi Peninsula.

315. The Court further observes that Cameroon is under an obligation expeditiously and without condition to withdraw any administration or military or police forces which may be present in areas along the land boundary from Lake Chad to the Bakassi Peninsula which pursuant to the present Judgment fall within the sovereignty of Nigeria. Nigeria has the same obligation in regard to any administration or military or police forces which may be present in areas along the land boundary from Lake Chad to the Bakassi Peninsula which pursuant to the present Judgment fall within the sovereignty of Cameroon.

316. The Court further notes that the implementation of the present Judgment will afford the Parties a beneficial opportunity to co-operate in the interests of the population concerned, in order notably to enable it to continue to have access to educational and health services comparable to those it currently enjoys. Such co-operation will be especially helpful, with a view to the maintenance of security, during the withdrawal of the Nigerian administration and military and police forces.

317. Moreover, on 21 March 2002 the Agent of Cameroon stated before the Court that "over three million Nigerians live on Cameroonian territory, where, without any restriction, they engage in various activities, and are well integrated into Cameroonian society". He went on to declare that, "faithful to its traditional policy of hospitality and tolerance, Cameroon will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area". The Court takes note with satisfaction of the commitment thus undertaken in respect of these areas where many Nigerian nationals reside.

318. Cameroon, however, is not only asking the Court for an end to Nigeria's administrative and military presence in Cameroonian territory but also for guarantees of non-repetition in the future. Such submissions are undoubtedly admissible (*LaGrand (Germany* v. *United States of America)*, Judgment of 27 June 2001, paras. 117 *et seq.*). However, the Judgment delivered today specifies in definitive and mandatory terms the land and maritime boundary between the two States. With all uncertainty dispelled in this regard, the Court cannot envisage a situation where either Party, after withdrawing its military and police forces and administration from the other's territory, would fail to respect the territorial sovereignty of that Party. Hence Cameroon's submissions on this point cannot be upheld.

319. In the circumstances of the case, the Court considers moreover that, by the very fact of the present Judgment and of the evacuation of the Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon by reason of the occupation of its territory will in all events have been sufficiently addressed. The Court will not therefore seek to ascertain whether and to what extent Nigeria's responsibility to Cameroon has been engaged as a result of that occupation.

320. Cameroon further contends that Nigeria has failed to comply with the Order indicating provisional measures handed down by the Court on 15 March 1996 and has thereby breached its international obligations. Nigeria maintains that these claims are "without substance".

321. In its Judgment of 27 June 2001 in the *LaGrand* case *(Germany* v. *United States of America)*, the Court reached "the conclusion that orders on provisional measures under Article 41 [of the Statute] have binding effect" (*I.C.J. Reports 2001*, para. 109). However, 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" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 437, para. 101). Thus in the present case it is for Cameroon to show that Nigeria acted in violation of the provisional measures indicated in the Order of 15 March 1996.

322. In this case, the Court had already noted in the above Order that it was unable to form any "clear and precise" picture of the events taking place in Bakassi in February 1996 (*I.C.J. Reports 2001*, para. 38). The same is true in respect of events in the peninsula after the Order of 15 March 1996 was handed down. Cameroon has not established the facts which it bears the burden of proving, and its submissions on this point must accordingly be rejected.

323. Finally, Cameroon complains of various boundary incidents occurring not only in Bakassi and the Lake Chad area but also at sea and all along the land boundary between the two States between 1970 and 2001. Cameroon made clear in its Reply and at the oral proceedings that it was not seeking a ruling on Nigeria's responsibility in respect of each of these incidents taken in isolation. In its final submissions, Cameroon requests the Court to adjudge that "by making repeated incursions throughout the length of the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international . . . law" and that its responsibility is therefore engaged, notably because of the casualties inflicted.

Nigeria contends that these submissions cannot be ruled upon as a whole and that they must be addressed by considering the alleged incidents one by one. It asks the Court to reject the said submissions and, for its part, presents counter-claims concerning numerous incidents along the boundary which, according to Nigeria, engage Cameroon's State responsibility. Cameroon asks the Court to reject those submissions.

324. The Court finds that, here again, neither of the Parties sufficiently proves the facts which it alleges, or their imputability to the other Party. The Court is therefore unable to uphold either Cameroon's submissions or Nigeria's counter-claims based on the incidents cited.

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325. For these reasons,

THE COURT,

I. (A) By fourteen votes to two,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is delimited by the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye;

AGAINST: *Judge* Koroma; *Judge* ad hoc Ajibola;

(B) By fourteen votes to two,

Decides that the line of the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is as follows:

From a tripoint in Lake Chad lying at 14° 04' 59"9999 longitude east and 13° 05' latitude north, in a straight line to the mouth of the River Ebeji, lying at 14° 12' 12" longitude east and 12° 32' 17" latitude north; and from there in a straight line to the point where the River Ebeji bifurcates, located at 14° 12' 03" longitude east and 12° 30' 14" latitude north;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye;

AGAINST: *Judge* Koroma; *Judge* ad hoc Ajibola;

II. (A) By fifteen votes to one,

Decides that the land boundary between the Republic of Cameroon and the Federal Republic of Nigeria is delimited, from Lake Chad to the Bakassi Peninsula, by the following instruments:

(i) from the point where the River Ebeji bifurcates as far as Tamnyar Peak, by paragraphs 2 to 60 of the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

(ii) from Tamnyar Peak to pillar 64 referred to in Article XII of the Anglo-German Agreement of 12 April 1913, by the British Order in Council of 2 August 1946;

(iii) from pillar 64 to the Bakassi Peninsula, by the Anglo-German Agreements of 11 March and 12 April 1913;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judges* ad hoc Mbaye, Ajibola;

AGAINST: *Judge* Koroma;

(B) Unanimously,

Decides that the aforesaid instruments are to be interpreted in the manner set out in paragraphs 91, 96, 102, 114, 119, 124, 129, 134, 139, 146, 152, 155, 160, 168, 179, 184 and 189 of the present Judgment;

III. (A) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye;

AGAINST: *Judges* Koroma, Rezek; *Judge* ad hoc Ajibola;

(B) By thirteen votes to three,

Decides that sovereignty over the Bakassi Peninsula lies with the Republic of Cameroon;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye;

AGAINST: *Judges* Koroma, Rezek; *Judge* ad hoc Ajibola;

(C) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi follows the thalweg of the Akpakorum (Akwayafe) River, dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as the straight line joining Bakassi Point and King Point;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye;

AGAINST: *Judges* Koroma, Rezek; *Judge* ad hoc Ajibola;

IV. (A) By thirteen votes to three,

Finds, having addressed Nigeria's eighth preliminary objection, which it declared in its Judgment of 11 June 1998 not to have an exclusively preliminary character in the circumstances of the case, that it has jurisdiction over the claims submitted to it by the Republic of Cameroon regarding the delimitation of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria, and that those claims are admissible;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye;

AGAINST: *Judges* Oda, Koroma; *Judge* ad hoc Ajibola;

(B) By thirteen votes to three,

Decides that, up to point G below, the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course:

— starting from the point of intersection of the centre of the navigable channel of the Akwayafe River with the straight line joining Bakassi Point and King Point as referred to in point III (C) above, the boundary follows the "compromise line" drawn jointly at Yaoundé on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 (Yaoundé II Declaration) and passing through 12 numbered points, whose co-ordinates are as follows:

	Longitude	*Latitude*
point 1:	8° 30' 44" E,	4° 40' 28" N
point 2:	8° 30' 00" E,	4° 40' 00" N
point 3:	8° 28' 50" E,	4° 39' 00" N
point 4:	8° 27' 52" E,	4° 38' 00" N
point 5:	8° 27' 09" E,	4° 37' 00" N
point 6:	8° 26' 36" E,	4° 36' 00" N
point 7:	8° 26' 03" E,	4° 35' 00" N
point 8:	8° 25' 42" E,	4° 34' 18" N
point 9:	8° 25' 35" E,	4° 34' 00" N
point 10:	8° 25' 08" E,	4° 33' 00" N
point 11:	8° 24' 47" E,	4° 32' 00" N
point 12:	8° 24' 38" E,	4° 31' 26" N;

— from point 12, the boundary follows the line adopted in the Declaration signed by the Heads of State of Cameroon and Nigeria at Maroua on 1 June 1975 (Maroua Declaration), as corrected by the exchange of letters between the said Heads of State of 12 June and 17 July 1975; that line passes through points A to G, whose co-ordinates are as follows:

	Longitude	*Latitude*
point A:	8° 24' 24" E,	4° 31' 30" N
point A1:	8° 24' 24" E,	4° 31' 20" N
point B:	8° 24' 10" E,	4° 26' 32" N
point C:	8° 23' 42" E,	4° 23' 28" N
point D:	8° 22' 41" E,	4° 20' 00" N
point E:	8° 22' 17" E,	4° 19' 32" N
point F:	8° 22' 19" E,	4° 18' 46" N
point G:	8° 22' 19" E,	4° 17' 00" N;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye;

AGAINST: *Judges* Koroma, Rezek; *Judge* ad hoc Ajibola;

(C) Unanimously,

Decides that, from point G, the boundary line between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 270° as far as the equidistance line passing through the midpoint of the line joining West Point and East Point; the boundary meets this equidistance line at a point X, with co-ordinates 8° 21' 20" longitude east and 4° 17' 00" latitude north;

(D) Unanimously,

Decides that, from point X, the boundary between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 187° 52’ 27”;

V. (A) By fourteen votes to two,

Decides that the Federal Republic of Nigeria is under an obligation expeditiously and without condition to withdraw its administration and its military and police forces from the territories which fall within the sovereignty of the Republic of Cameroon pursuant to points I and III of this operative paragraph;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye;

AGAINST: *Judge* Koroma; *Judge* ad hoc Ajibola;

(B) Unanimously,

Decides that the Republic of Cameroon is under an obligation expeditiously and without condition to withdraw any administration or military or police forces which may be present in the territories which fall within the sovereignty of the Federal Republic of Nigeria pursuant to point II of this operative paragraph. The Federal Republic of Nigeria has the same obligation in respect of the territories which fall within the sovereignty of the Republic of Cameroon pursuant to point II of this operative paragraph;

(C) By fifteen votes to one,

Takes note of the commitment undertaken by the Republic of Cameroon at the hearings that, “faithful to its traditional policy of hospitality and tolerance”, it “will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area”;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judges* ad hoc Mbaye, Ajibola;

AGAINST: *Judge* Parra-Aranguren;

(D) Unanimously,

Rejects all other submissions of the Republic of Cameroon regarding the State responsibility of the Federal Republic of Nigeria;

(E) Unanimously,

Rejects the counter-claims of the Federal Republic of Nigeria.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this tenth day of October, two thousand and two, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Cameroon, the Government of the Federal Republic of Nigeria, and the Government of the Republic of Equatorial Guinea, respectively.

(Signed) Gilbert GUILLAUME,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge ODA appends a declaration to the Judgment of the Court; Judge RANJEVA appends a separate opinion to the Judgment of the Court; Judge HERCZEGH appends a declaration to the Judgment of the Court; Judge KOROMA appends a dissenting opinion to the Judgment of the Court; Judge PARRA-ARANGUREN appends a separate opinion to the Judgment of the Court; Judge REZEK appends a declaration to the Judgment of the Court; Judge AL-KHASAWNEH and Judge *ad hoc* MBAYE append separate opinions to the Judgment of the Court; Judge *ad hoc* AJIBOLA appends a dissenting opinion to the Judgment of the Court.

(Initialled) G.G.

(Initialled) Ph.C.

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