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Friday 22 February 2002 at 10 a.m.

18 Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte et je donne la parole pour la République du Cameroun au professeur Maurice Mendelson.

M. MENDELSON : Merci, Monsieur le président.

I. LA FRONTIÈRE TERRESTRE

7. Bakassi

f) *La reconnaissance et l'acceptation par le Nigéria de la souveraineté camerounaise sur la péninsule de Bakassi*

1. Introduction

1. Monsieur le président, Madame et Messieurs de la Cour, vous avez déjà pu entendre un certain nombre d'interventions au cours desquelles vous a été exposée la façon dont la communauté internationale a, par l'entremise de ses organisations, reconnu l'appartenance de la presqu'île de Bakassi au Cameroun méridional puis à la République du Cameroun; elle l'a fait par la mise en place des régimes des mandats et de la tutelle sur le Cameroun méridional, ainsi que par leur supervision, par l'organisation d'un plébiscite et, enfin, par la confirmation des résultats de celui-ci. Au cours de ma plaidoirie de ce matin, je traiterai un thème quelque peu différent : je me concentrerai plus particulièrement sur la reconnaissance et l'acceptation par le Nigéria lui-même de la souveraineté camerounaise sur la presqu'île de Bakassi. Je n'aborderai ni les matériaux cartographiques, sur lesquels s'est exprimé hier mon ami le professeur Cot, ni la question des traités de délimitation maritime conclus entre le Nigéria et le Cameroun, qui présupposaient l'existence d'une frontière passant à l'ouest de la presqu'île. Cette question fera l'objet d'une plaidoirie distincte présentée par mon ami et confrère, M. Thouvenin, que vous entendrez immédiatement après la mienne. Les interventions de M. Cot et de M. Thouvenin confirment néanmoins, si je puis m'exprimer ainsi, la thèse que je me propose de vous soumettre.

2. Je ne m'attarderai pas sur la distinction entre reconnaissance et acquiescement, dans la mesure où la différence entre ces deux termes est sans incidence sur la question qui nous intéresse ici. De la même façon, l'acceptation et la confirmation par des instances et des fonctionnaires nigérians attestent de ce qu'était le point de vue du Nigéria à l'époque, qu'elles aient ou non constitué une reconnaissance expresse — ce qui a parfois été le cas. Il existe d'ailleurs, comme

nous le verrons, une certaine manière de chevauchement entre ces notions et l'un des thèmes qui ont fait l'objet de ma plaidoirie d'hier, les effectivités du Cameroun.

3. Monsieur le président, la reconnaissance par le Nigéria du titre du Cameroun et son acquiescement à celui-ci ne sont naturellement pas une condition nécessaire pour que vous

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tranchiez en faveur d'une souveraineté camerounaise sur la presqu'île de Bakassi. En effet, si, comme il le revendique, le Cameroun détient un titre conventionnel valable, il s'agit là d'un élément suffisant en soi. Du reste, l'exercice effectif d'une souveraineté sur la presqu'île par les prédécesseurs en titre du Cameroun et par le Cameroun lui-même, incontesté pendant des dizaines d'années, jusqu'à ce que le Nigéria s'engage dans une politique d'expansion et d'agression, constituerait un autre élément susceptible de fonder votre décision. Mais même si la reconnaissance ne constitue pas une condition nécessaire, elle n'en demeure pas moins une condition suffisante. Cette proposition s'appuie sur un précédent, constitué par l'arrêt rendu en l'affaire du *Temple de Préah Vihéar*, dans lequel la Cour a fondé sa décision relative à la «frontière de la carte» sur le fait que «[l]es deux parties ont par leur conduite reconnu la ligne et, par là même, ... sont effectivement convenues de la considérer comme étant la frontière»[1]. Ce prononcé a été invoqué dans l'affaire, plus récente, du *Différend territorial (Jamahiriya arabe libyenne/Tchad)*[2]. Nul ne semble en effet contester que, si le Nigéria reconnaissait la souveraineté camerounaise sur la presqu'île, la question dont nous débattons n'aurait plus lieu d'être, puisqu'une telle reconnaissance est naturellement opposable à l'Etat qui en est l'auteur : je me réfère plus particulièrement aux paragraphes 10.187 à 10.190 du contre-mémoire du Nigéria[3]. Cela étant dit, je porterai maintenant mon attention sur le comportement affiché du côté nigérian, lequel constitue à nos yeux une acceptation, expresse ou tacite, de la souveraineté camerounaise sur la presqu'île.

2. La reconnaissance par le Nigéria avant le plébiscite organisé au Cameroun méridional et immédiatement après

4. Je commencerai par examiner la reconnaissance nigériane au cours des périodes ayant précédé le plébiscite organisé au Cameroun méridional et immédiatement suivi celui-ci. Je

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[1] *C.I.J. Recueil 1962*, p. 33.

[2] *C.I.J. Recueil 1994*, p. 23, par. 45.

[3] CMN, vol. I, p. 280-282.

n'abuserai pas de la patience de la Cour en répétant ce qui figure déjà dans les pièces écrites, ni ce que mon ami, M. Shaw, a exposé dans sa plaidoirie. Si vous me le permettez, je mettrai simplement en lumière trois points.

5. Tout d'abord, le Nigéria, qui figurait incontestablement parmi les parties intéressées, était à ce titre parfaitement informé de la situation et, vous vous en doutez, fut consulté par les autorités britanniques et même par les Nations Unies dès le milieu des années cinquante, et plus particulièrement à partir de 1958. Les informations qui lui étaient communiquées concernaient les frontières du Cameroun méridional et le découpage en districts de plébiscite, parmi lesquels figurait
20 la presqu'île de Bakassi — autant d'éléments que le Nigéria ne pouvait donc manquer d'ignorer. A cela s'ajoute que les frontières avaient déjà été précisées dans les *Orders in Council* britanniques qui avaient défini les limites du Nigéria lui-même.

6. En deuxième lieu, même s'il est vrai que, pendant une partie de la période qui nous occupe, le Nigéria se trouvait encore sous administration britannique, il s'agissait déjà d'un Etat en formation — un Etat *in statu nascendi*. Le Nigéria avait été préparé à l'indépendance, dans la mesure où il avait bénéficié, entre autres choses, d'un certain degré d'autonomie au moment opportun. Il semble raisonnable de supposer que cet Etat en devenir qui était, nous l'avons vu, pleinement associé au processus d'accession à l'indépendance, jouissait au moins d'une personnalité et d'une capacité juridiques suffisantes pour pouvoir participer à la définition de ses propres frontières et, en conséquence, reconnaître celles de ses voisins. A ce propos, il est peut-être important de souligner que le Nigéria ne fut soumis à aucune contrainte.

7. J'insisterai en troisième lieu sur le fait que quatre mois et demi après son accession à l'indépendance, le 1er octobre 1960, et après le plébiscite organisé au Cameroun méridional, le Nigéria, comme le montrent les pièces du Cameroun[4], continuait à être informé des événements en cours alors qu'il était déjà indépendant, et qu'il ne formula aucune objection à la frontière proposée avec le Cameroun, y compris pour la partie incluant la presqu'île de Bakassi. Nous avons déjà vu que le Nigéria indépendant avait voté en faveur de la résolution 1608 (XV) de l'Assemblée générale, qui mettait fin au régime de la tutelle britannique. Là encore, la frontière faisait partie

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[4] MC, vol. I, p. 249-258, par. 3.254-3.276; RC, vol. I, p. 89-91, par. 2.140-2.144.

intégrante de cette décision. En soutenant dans sa duplique[5] que ces démarches ont entraîné «des modifications de statut et enclenché un processus de succession d'Etats» et «ne portent pas sur des questions locales», le Nigéria se montre non seulement vague mais peu convaincant de surcroît.

8. Tous ces éléments constituent une reconnaissance et un acquiescement les plus incontestables qui soient et même s'il s'agissait du seul exemple en ce sens, le Cameroun estime qu'il suffirait à empêcher le Nigéria de contester cette frontière. Mais il y en a d'autres — car j'aborderai maintenant la question des visites effectuées par les consuls et ambassadeurs.

b) ***Visites de consuls et d'ambassadeurs***

9. L'un des premiers exemples en est celle effectuée en février 1969 dans la presqu'île de Bakassi par le consul nigérian à Buéa (dans la province du Sud–Ouest du Cameroun). Un rapport du *District Officer* de l'arrondissement de Bamousso daté du 20 mars 1969[6] relate la coopération du consul avec les forces de police camerounaises, qui enquêtaient alors sur l'implication alléguée de soldats nigérians dans un incendie criminel à Ine-Odiong, dans la presqu'île de Bakassi. Le consul entra tout d'abord en rapport avec les autorités locales à Bamousso, au Cameroun, et procéda à sa mission accompagné de fonctionnaires camerounais locaux. Lorsque le bateau du groupe arriva à destination, il dut rebrousser chemin à cause d'obstacles naturels. L'enquête fut totalement confiée à l'unité mobile de la police camerounaise qui était stationnée à Atabong, sur la presqu'île. Cet incident témoigne à la fois de la reconnaissance, par le Nigéria, de la presqu'île de Bakassi en tant que territoire camerounais, et de l'exercice, par le Cameroun, de pouvoirs de police dans cette région, et ce à une époque où, comme nous l'avons vu hier, nos adversaires prétendent que le Cameroun acquiesçait à l'exercice, par le Nigéria, de sa souveraineté sur la presqu'île !

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10. L'annexe 38 à la réplique[7] contient des informations sur une autre visite, qui date du mois de novembre 1974. Le consul général nigérian à Buéa — M. John Onochie à l'époque — écrivit au gouverneur de la province du Sud–Ouest en l'informant de son intention d'effectuer une «tournée des passeports» dans les provinces Sud–Ouest et Nord–Ouest du Cameroun et en lui communiquant son itinéraire, lequel comprenait les localités d'Idabato

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[5] Vol. I, p. 181-182, par. 3.316.

[6] RC, annexe 18, p. 281

[7] Vol. IV, p. 461.

(Atabong) et de Jabane (Abana), toutes deux situées, comme nous le savons, sur la presqu'île de Bakassi. Il poursuivait sa lettre en priant le gouverneur de faire en sorte que son «administration [lui] prête son assistance, comme c'est l'usage, aux fins du bon déroulement de cette visite». Cette demande prouve en soi, très clairement, que le Nigéria reconnaissait la souveraineté du Cameroun sur la presqu'île. Mais elle constitue également une preuve implicite, dans la mesure où il n'existe aucune raison qu'un agent consulaire du Nigéria effectue une tournée en territoire nigérian.

11. Le Nigéria ne peut pas davantage prétendre que l'un de ses fonctionnaires ait commis, à cette occasion, une erreur isolée. La preuve en est qu'à l'annexe 49 de la réplique du Cameroun[8], nous avons une notification émanant d'un autre consul général, M. E. U. Akang, qui, en 1980, informe le gouverneur de la province du Sud-Ouest de son intention de se rendre dans les arrondissements d'Idabato et de Bamousso, y compris dans la localité d'Idabato elle–même, dans le département du Ndian, qui se trouve au Cameroun. Ce qu'il est également intéressant d'observer dans cette correspondance, c'est qu'il y est expressément déclaré que le but de cette visite est de «[délivrer] des passeports aux Nigérians résidant dans la région, ou [de renouveler] ceux qui ont expiré». Monsieur le président, ce fait est doublement important. Tout d'abord, si les pêcheurs de Bakassi avaient été en territoire nigérian, ils n'auraient pas eu besoin de passeports — à moins,
22 bien sûr, qu'ils n'aient eu l'intention de voyager, ce dont nous n'avons aucune preuve. Si les Nigérians de Bakassi avaient besoin de passeports, c'est en fait parce qu'ils étaient déjà à l'étranger, au Cameroun. En second lieu, s'il est normal qu'un consul délivre ou renouvelle à l'étranger des passeports à ses compatriotes, il n'est pas normal qu'il le fasse dans son propre pays, duquel le Nigéria a, par la suite, prétendu que Bakassi faisait partie. Des fonctions identiques ont également été remplies, durant ces tournées, dans d'autres endroits que le Nigéria a toujours reconnus comme appartenant au Cameroun, ce qui renforce mon argument.

12. En 1983, un autre consul général, M. E. A. Otuokon, se rend dans ces villages — les détails de cette tournée figurent aux annexes 78 et 80 de la réplique[9]. Et sa lettre du 16 février 1983 contient la phrase suivante : «Etant donné que la tournée inclut les territoires parsemés de cours d'eau du département du Ndian, je saurais gré à Son Excellence d'avoir l'amabilité de faire en sorte

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[8] Vol. IV, p. 547.

[9] Vol. V, p. 705 et 715.

que la marine mette à la disposition de moi-même et de mon entourage un bateau pour ce voyage envisagé.» On ne fait pas une telle demande à un gouvernement étranger lorsque l'on se trouve sur son propre territoire. Les propos qu'il tient en arrivant à ces villages sont encore plus intéressants, comme on peut le constater en lisant le rapport adressé au préfet du Ndian par le chef de district d'Idabato, qui figure à l'annexe 82[10]. A Idabato, en réponse à un discours de bienvenue, le consul général du Nigéria dit à ses compatriotes que «vivant sur le sol camerounais, ils [doivent] s'en tenir strictement aux frontières établies par les maîtres coloniaux. En leur qualité d'étrangers» poursuivit-il, ils doivent «se conformer aux lois du Cameroun et obéir aux autorités constituées». Il y déclare également que l'une de ses missions est de fournir à la population nigériane les documents «qui leur permettront de mener leurs activités économiques [la pêche] et de voyager partout sans encombre». Il prononce des déclarations similaires à Kombo Abedimo et Jabane, où il aurait expressément dit que «Jabane se [trouve] sur le sol camerounais», malgré le mécontentement suscité par ses propos parmi la population de Jabane, essentiellement nigériane.

13. Des événements semblables eurent lieu à l'occasion d'une visite effectuée par un autre consul, l'année précédente, en 1982[11]. Il ressort clairement d'une lettre de remerciement très chaleureuse adressée par celui-ci au gouverneur de la province du Sud-Ouest (reproduite à l'annexe 265 du mémoire)[12] qu'il était satisfait de la tournée.

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14. Notre réplique contient des documents attestant d'autres tournées. Au risque de vous ennuyer, je dois signaler encore une visite — non pas, cette fois, celle d'un consul général nigérian, mais celle de l'ambassadeur du Nigéria auprès du Cameroun, S. Exc. M. A. Yusufari. Dans une lettre du 26 novembre 1986, un fonctionnaire consulaire nigérian informe le Cameroun de l'intention de l'ambassadeur d'effectuer sa première tournée dans le département du Ndian[13]. L'itinéraire joint à ce courrier passe par Idabato, ainsi que par d'autres villes dont le Nigéria reconnaît, même aujourd'hui, qu'elles font effectivement partie du Cameroun. La lettre se termine ainsi : «Il serait souhaitable que, comme à l'accoutumée, vous apportiez votre aide et votre

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[10] Vol. V, p. 725.

[11] RC, vol. V, annexe 70, p. 661.

[12] Vol. VI, p. 2195.

[13] RC, vol. VI, annexe 149, p. 149.

coopération afin que la tournée envisagée soit un succès.» Le Nigéria affirme maintenant que rien ne prouve que la visite à Idabato ait effectivement eu lieu[14]. Naturellement, la question n'est pas là. Ce qu'il faut retenir de cette lettre, c'est qu'un ambassadeur se rend en visite officielle à l'étranger, et non pas dans son pays. Encore moins demande-il la «coopération» d'un Etat étranger pour se rendre dans telle ou telle région de son propre pays. Que la visite ait été effectuée ou non — et il est vrai que vous ne disposez d'aucune preuve à cet égard — est tout à fait hors sujet.

15. Toutes les visites et demandes de visite dont il est fait état dans les pièces du Cameroun constituent selon nous une preuve très solide de son titre. Comment le Nigéria répond-il à cela ? Premièrement, il nous dit que : «Tout bien considéré, les hypothèses acceptées par les consuls reposaient sur une erreur fondamentale...» Tout comme, sans aucun doute, cela avait déjà été le cas pour les nombreuses autorités britanniques à l'époque du mandat et du régime de tutelle, autorités que le Nigéria accuse, en désespoir de cause, de se tromper aussi, comme nous l'avons vu hier. Si erreur il y avait, il s'agissait certainement, pour reprendre les termes du Nigéria, d'une erreur «fondamentale», et même énorme — d'une erreur, qui plus est, commise non pas par un, mais par au moins quatre consuls, auxquels s'ajoutent, semble-t-il, un ambassadeur et ses subordonnés. Il ne s'agissait pourtant pas là d'une erreur, bien évidemment : cela confirme simplement une vérité que le Nigéria a fini par trouver gênante. Deuxièmement — cela semble être son argument principal —, le Nigéria cite abondamment des extraits de doctrine pour montrer que les consuls n'exercent que des fonctions purement administratives, qu'ils «n'ont pas pour
24 mandat de s'occuper de questions de titres territoriaux», et qu'«en l'espèce, les fonctionnaires consulaires n'étaient nullement habilités, que ce soit de manière expresse ou tacite, à se prononcer sur des questions de souveraineté»[15].

16. Monsieur le président, le Nigéria ne semble pas avoir examiné avec suffisamment d'attention la façon dont le Cameroun a plaidé sa thèse. Le Cameroun n'a pas soutenu que les consuls avaient le pouvoir de reconnaître au Cameroun un titre territorial — ce n'est évidemment pas le cas. (Bien que, incidemment, nous ne dirions pas forcément la même chose au sujet des ambassadeurs.) En réalité, ce que le Cameroun soutient au paragraphe 5.266 de sa réplique, c'est

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[14] DN, par. 3.322.

[15] DN, vol. I, p. 182-184, par. 3.317-3.321.

que : «Jusqu'au milieu des années 1980, les autorités diplomatiques et consulaires ont donc confirmé, par une pratique administrative régulière, l'accord des deux Etats sur l'appartenance de la péninsule de Bakassi à la République du Cameroun.»[16] Il ne s'agit pas ici de reconnaissance de la part de qui que ce soit. Ce qu'affirme le Cameroun, c'est que la conduite de ces autorités confirme ce que nous tenons d'autres preuves soumises à la Cour, parmi lesquelles celles relatives au processus qui devait aboutir à l'unification du Cameroun méridional et du Cameroun. Monsieur le président, il n'est tout simplement pas crédible de prétendre que tous ces fonctionnaires, pris d'une fantaisie personnelle, se seraient totalement écartés de leur mission sans en informer leur gouvernement. Par exemple, lorsqu'ils s'acquittaient de leurs fonctions consulaires normales, en délivrant ou en renouvelant des passeports nigérians à leurs concitoyens de la presqu'île, ils ne les imprimaient pas, à priori, à leur domicile sur la presse de leurs enfants, mais les obtenaient du ministère nigérian compétent. Plus généralement, on ne peut tout simplement pas imaginer qu'ils aient pu organiser ces visites, demander l'aide de fonctionnaires locaux camerounais, les en remercier, et même confirmer à titre officiel, en s'adressant à leur propre population, l'appartenance de Bakassi au Cameroun, tout cela sans obtenir l'autorisation de leurs supérieurs au Nigéria, ni même sans les en informer. Leur conduite est parfaitement conforme à la thèse du Cameroun concernant la souveraineté sur la presqu'île, mais est absolument contraire à l'analyse juridique et factuelle de la question par le Nigéria.

c) ***La lettre de M. Elias***

17. J'en viens enfin à une lettre adressée en 1972 au ministère nigérian des affaires extérieures par le procureur général de la fédération du Nigéria, M. Taslim Olawale Elias. Un
25 extrait de cette lettre extrêmement importante a été publié dans le quotidien nigérian *The News*; il est reproduit à l'annexe 350 du mémoire[17] et figure également dans vos dossiers sous le n° 72/7 *f)*, accompagné d'une traduction en français effectuée par le Greffe.

18. Les membres de cette Cour se rappelleront, mieux que quiconque, que M. Elias fut l'un des plus éminents spécialistes du droit international que l'Afrique ait jamais produit. Il occupa

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[16] Vol. I, p. 319 [en français dans le texte].

[17] Vol. VII, p. 2851.

plusieurs fonctions importantes au service de son pays, notamment celle de président de la Cour suprême. Il reçut de multiples distinctions universitaires et écrivit un grand nombre d'ouvrages importants. Enfin, et surtout, il siégea de 1976 à 1991 au sein de cette Cour, dont il fut le président de 1982 à 1985. C'est pourquoi la conclusion que M. Elias expose dans sa lettre mérite le plus grand respect. Elle est d'autant plus digne de foi que les témoignages de ce genre, «contraires aux propres intérêts de leur auteur» (comme on les qualifie souvent), sont considérés comme figurant au rang des preuves les plus convaincantes.

19. Si vous le permettez, j'aimerais vous lire quelques courts extraits de cette lettre. M. Elias commence ainsi :

> «Le Nigéria a le devoir d'honorer certains traités antérieurs à l'indépendance et autres conventions internationales héritées de la Grande-Bretagne en vertu de l'échange de notes du 1er octobre 1960 entre [le Nigéria] et le Royaume-Uni relatif aux obligations conventionnelles. Les conventions pertinentes à la présente question, qui sont obligatoires pour le Nigéria et qui doivent être lues en bloc, indiquent que la presqu'île appartient au Cameroun, car la frontière internationale tracée le long du thalweg de la rivière Akpayafé place la presqu'île de Bakassi du côté camerounais de la frontière».

M. Elias cite ensuite un certain nombre de traités, ainsi que l'ordonnance rendue en conseil. Il souligne l'absence de la presqu'île sur les cartes administratives du Nigéria, et signale qu'une note diplomatique adressée en 1962 à l'ambassade du Cameroun par le ministère nigérian des affaires extérieures, à laquelle était jointe une carte dressée par le service cartographique nigérian, reconnaissait la presqu'île de Bakassi comme faisant partie du Cameroun. Mon ami M. Thouvenin reviendra tout à l'heure sur cette note diplomatique (qui figure à l'annexe MC 229, vol. 5, p. 1881). Après avoir passé en revue ces différents éléments, M. Elias déclare que «le principe de bonne foi dans les relations internationales exige que le Nigéria ne renie pas sa parole d'honneur, attestée par la note de 1962.»

20. Monsieur le président, Madame et Messieurs les Membres de la Cour, tel est exactement le sentiment du Cameroun.

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21. Je vous remercie de votre attention. Monsieur le président, je vous prie de bien vouloir donner maintenant la parole à M. Jean-Marc Thouvenin.

Le PRESIDENT : Je vous remercie, Monsieur Mendelson. Et je donne maintenant la parole à M. Jean-Marc Thouvenin.

Mr. THOUVENIN: Thank you, Mr. President.

I. THE LAND BOUNDARY

7. Bakassi

(g) *Recognition of the validity of the 1913 Treaty and of the appurtenance of the Bakassi Peninsula to Cameroon: maritime aspects*

1. Mr. President, Members of the Court, it is a very great honour for me to appear before the Court for the first time, in order to present certain of the arguments of the Republic of Cameroon.

2. It will be my task to demonstrate that, throughout the maritime negotiations between Nigeria and Cameroon since independence, and through the resulting agreements, Nigeria has recognized the validity of the 1913 Treaty, the boundary deriving from it, and Cameroon's sovereignty over the Bakassi Peninsula.

3. Mr. President, "One cannot begin to delimit maritime zones until the basepoint from which they are to be drawn has been determined." That is what Professor Crawford told the Court on 3 March 1998, in the preliminary objections phase (CR 98/2, p. 46). Quite. And indeed, Nigeria and Cameroon entered into the most meticulous negotiations regarding the delimitation of their maritime boundary. They even adopted agreements, which demonstrates that both States considered, at least for a while, that the southern boundary between them had been fully established. Moreover, as we shall see, they were equally convinced that that boundary ran west of Bakassi.

4. This is what is apparent in particular from four relevant instruments, which I shall review in turn: the Nigerian Note of 1962, which has just been mentioned, followed by the agreements of 4 April 1971, the Kano Agreement and the Maroua Agreement.

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I. The Nigerian Note No. 570 of 27 March 1962 acknowledged that the Bakassi Peninsula belonged to Cameroon

5. I shall begin with the Note Verbale No. 570 of 27 March 1962, complemented by a further Note of the same year (Memorial of Cameroon, Ann. 229). A copy of that Note is reproduced in the judges' folders as document No. 73; the quality is mediocre. A translation by the Registry has

also been provided. Cameroon has naturally referred to it in its written pleadings (Memorial of Cameroon, p. 161, para. 3.46, p. 127, para. 2.214, p. 503, para. 5.17; Reply of Cameroon, p. 304, para. 5.206, p. 305, para. 5.209). For its part, Nigeria devoted a few lines to the Note, without truly discussing its significance (Rejoinder of Nigeria, pp. 436-437, paras. 10.16-10.17). Yet it undoubtedly has a valid place in the debate.

6. Mr. President, the Note was addressed by Nigeria's Ministry of Foreign Affairs to the Embassy of Cameroon in Lagos. Its purpose was to draw certain conclusions from the attachment of the Southern Cameroons to the Republic of Cameroon, a very recent event at the time, since the referendum of 11 February 1961 had just been held. The new question which Nigeria then faced was to determine the course of the maritime boundary between itself and Cameroon. From that standpoint, the 1962 Note Verbale officially expressed Nigeria's position, on the one hand by describing the then situation in objective terms and on the other by submitting certain claims which Nigeria considered that it was entitled to make.

7. As for the situation, the Note first drew Cameroon's attention to three oil prospection blocks established in 1959, called "L", "M" and "N". As you can see from the sketch-map appended to the Note Verbale, which you see behind me and which has also been reproduced in the judges' folders as document No. 73, block "N", the most easterly one, constituted the maritime projection of the Bakassi Peninsula directly southwards. The Note stated that block "N" is now off shore the Cameroon Republic", and that consequently it had "reverted" to Cameroon. The conclusion is obvious: in the view of the Nigerian Ministry, there was no doubt, in 1962, that Bakassi was now in Cameroonian territory.

8. The import of this is far from being trivial, for the Court has already recognized the evidential value of similar correspondence, in particular in 1953 in the *Minquiers and Ecrehos* case. To quote the relevant extracts from the Judgment of the Court:

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> "By his Note of June 12th, 1820, to the Foreign Office... the French Ambassador in London transmitted a letter... in which the Minquiers were stated to be '*possedés par l'Angleterre*', and in one of the charts enclosed the Minquiers group was indicated as being British... it was not a proposal or a concession made during negotiations, but a statement of facts transmitted to the Foreign Office by the French Ambassador, who did not express any reservation in respect thereof. This statement must therefore be considered as evidence of the French official view at the time."

(*Minquiers and Ecrehos* case, *Judgment of 17 November 1953, I.C.J. Reports 1953,* p. 71).

9. Mr. President, the Note Verbale of 1962 similarly reflected Nigeria's official view, the view it then held, that Bakassi had been under Cameroonian sovereignty since the referendum.

10. The Note also stated that, in Nigeria's view, at least at the time, the land boundary indeed ran west of Bakassi. The Nigerian Ministry of Foreign Affairs wrote: "the boundary follows the lower course of the Akwayafe River, where there appears to be no uncertainty, and then out into the Cross River estuary".

11. These words quite clearly confirm the validity of the 1913 Treaty, which established that the boundary followed the course of the Akwayafe. Furthermore, the language is not dissimilar to that of Minister Ihlen, to which the Permanent Court gave decisive weight in the *Eastern Greenland* case (*Legal Status of Eastern Greenland*, 5 April 1933, *P.C.I.J.*, *Series A/B*, *No. 53*, p. 22). In the course of a conversation which became famous, the Norwegian Minister for Foreign Affairs, Mr. Ihlen, told his Danish counterpart that his country would make "no difficulties" respecting the settlement of the issue of sovereignty over Eastern Greenland (*ibid.*, p. 36). The Court found that this declaration was binding on Norway (*ibid.*, p. 73). Mr. President, even more evidently here, the Note Verbale of 1962, being not a conversation but a written instrument, an official diplomatic instrument affirming the absence of doubt regarding the course of the boundary — "no uncertainty" — is opposable to Nigeria, and precludes Nigeria from challenging it.

12. Lastly, the Note, which is indeed instructive, provides the information that Nigeria was perfectly satisfied with the then situation. This is what can be deduced from its statement of its claims.

13. On the same sketch-map as earlier, projected here once again, the Court will see that the line of equidistance between the two countries runs to the east of the line separating prospection blocks "M" and "N". What lies between those two lines — the triangle coloured light grey on the sketch-map — might therefore come under Nigerian jurisdiction, were the line of equidistance to be chosen as the maritime boundary. This was precisely the position adopted by the Nigerian Ministry of Foreign Affairs in 1962. It stated that the line of equidistance was, in its view, the

"correct boundary" and consequently claimed the portion shaded grey on the sketch-map as being "rightly within Nigeria's jurisdiction".

14. The Court will note that this means, *a contrario*, that what lies east of the line of equidistance was not claimed to be "within Nigeria's jurisdiction". Yet what lies to the east is Bakassi.

II. The Agreement of 4 April 1971

15. The first maritime agreement came into being nine years later, on 4 April 1971, in Yaoundé. It was on that date that the Heads of State of Nigeria and Cameroon officially fixed the first segment of their maritime boundary. We shall now show another sketch-map showing the resultant line, found in the judges' folder as document No. 74. The agreement was concluded between the Heads of State directly, at a time when the work of the experts of the Joint Boundary Commission set up in 1970 was making no progress[18].

16. However, there can be no doubt as to the existence of this agreement. The signatures of the Heads of State were apposed at the foot of the frontier line drawn on 4 April 1971 on British Admiralty Chart No. 3433, already projected yesterday by my friend Jean-Pierre Cot. Furthermore, the Yaoundé II Declaration refers to the agreement in paragraph 4, sub-paragraph 1. To quote from this: "The two Heads of State agree to regard as the boundary the compromise line which they have plotted by joint agreement on British Admiralty Chart No. 3433". The Agreement was concluded, it was further noted, "in accordance with the Anglo-German Treaty of 1913" (Memorial of Cameroon, Ann. 242).

17. The Agreement has two effects.

(a) ***The Agreement of 4 April 1971 constitutes a recognition of the validity of the 1913 Treaty***

18. First, it recognizes the validity of the 1913 Treaty in respect of Bakassi. It is indeed evident that, in concluding the Agreement "in accordance with the Anglo-German Treaty of 1913" (the wording used in the declaration), Cameroon and Nigeria voluntarily placed themselves under the authority of that Treaty and quite simply applied the Treaty.

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[18]On the work of the Joint Boundary Commission, see case concerning *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections,* Judgment of 11 June 1998, *I.C.J. Reports 1998*, pp. 301-302, paras. 52-53; and Memorial of Cameroon, pp. 507-513, paras. 5.18-5.31.

19. This is all the more indisputable in that the very purpose of the Agreement was to interpret and to apply in practical terms Article XXI of the 1913 Treaty (for the negotiations, see Memorial of Cameroon, pp. 508-513, paras. 5.22-5.31).

(b) ***The Agreement of 4 April 1971 also represents a recognition that the line established under the 1913 Treaty was the boundary with Cameroon***

20. Second, and in any event, the Agreement of 4 April 1971 also represents a recognition that the line established under the 1913 Treaty was the border with Cameroon. There can be no doubt — to echo the words of the Court in the case concerning *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* — that:

> "The fixing of a frontier depends on the will of the sovereign States directly concerned. There is nothing to prevent the Parties from deciding by mutual agreement to consider a certain line as a frontier, whatever the previous status of that line." (Judgment of 3 February 1994, *I.C.J. Reports 1994*, p. 23, para. 45.)

(c) ***The Agreement of 4 April 1971 is opposable to Nigeria***

21. Nigeria is well aware, particularly by reason of this Agreement of 4 April 1971, that its contention that the 1913 Treaty is partially invalid and that there is no conventional boundary in the Bakassi area is unsustainable. It is therefore only to be expected that it disputes the significance of the Agreement (Rejoinder of Nigeria, p. 84, para. 3.38).

22. Its arguments in this respect are twofold. First, the Yaoundé II Declaration: "formed part of an ongoing programme of meeting relating to the maritime boundary, and (that) the matter was subject to further discussion" *(ibid.)*. Obviously, we do not read the Declaration in the same way. Paragraph 4, sub-paragraph 1, which I have just read, records the agreement of the Heads of State. Sub-paragraph 2 contains an instruction to the experts of the Joint Boundary Commission, namely "the application of the 1958 Geneva Conventions on the Law of the Sea for the demarcation of the *remainder* of the maritime boundary" (emphasis added).

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23. It follows from this wording that discussions were to be held only on the *remainder* of the maritime boundary, and certainly not on the line already adopted. There was no question, ever, of reopening the Agreement between the Heads of State.

24. Nigeria's second argument is based on a letter from General Gowon written on 23 August 1974 (Rejoinder of Nigeria, Ann. 12). The Nigerian Head of State said in that letter that in 1972 he had rejected certain proposals of the experts dating from 4 April 1971. It will be noted that the letter relates exclusively, according to its own words, to proposals of the experts. There is therefore no point in discussing it, since it is clear that it does not refer to the Agreement as issue here.

III. The Kano Agreement

25. Mr. President, before concluding my statement with the Maroua Agreement, we note that the Kano Agreement can also be seen as an instrument recognizing that the Bakassi Peninsula belongs to Cameroon.

26. This Agreement came into being in 1974, at a time when the negotiations on the maritime boundary had been in the doldrums since 1971. A noteworthy advance had been recorded back in June 1971 with the adoption of an additional segment based on the principle of equidistance. What you see now is a sketch-map of this line, which is also found in the judges' folder as document No. 75. The Lagos Declaration of 21 June 1971 took note of this. I would merely point out that its text (the text of the Lagos Declaration) does not distance itself from the 1913 Treaty or from the Agreement of 4 April 1971. It refers to them explicitly (Memorial of Cameroon, Ann. 243).

27. The line was eventually rejected by the Nigerian authorities, on the grounds of disagreements (Memorial of Cameroon, Ann. 243) which, it must be emphasized, had nothing to do with the 1913 Treaty or the Agreement of 4 April 1971, and even less to do with the appurtenance of the Bakassi Peninsula to Cameroon. On those points, consensus remained complete.

28. On 1 September 1974 therefore, the Heads of State of Cameroon and Nigeria adopted the Kano Declaration. That Declaration prohibited any oil prospection activities in a corridor 4 km wide which you can now see in green on the sketch-map, and which is also shown on the sketch-map found in the judges' folder as document No. 76. We would simply note that,

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a contrario, the Declaration recognizes the lawfulness of the oil operations carried out to the west of the corridor by Nigeria and to the east by Cameroon.

29. Now, to the east lies Bakassi and its surrounding waters. In other words, at that time Nigeria had no doubt whatsoever that Bakassi belonged to Cameroon.

IV. The Maroua Agreement

30. Nor did Nigeria have any doubts when the Maroua Agreement was concluded in 1975 (Memorial of Cameroon, Ann. 250); the result will now be projected for you behind me, the sketch-map being found as document No. 77. The agreement has already been discussed in the written pleadings and I shall dwell on it only briefly, in order to show that it constitutes recognition of the validity of the Agreement of 4 April 1971 and, consequently, of the appurtenance of Bakassi to Cameroon.

31. The Maroua Agreement records the agreement of the two Heads of State to prolong the maritime boundary beyond a point 12 defined as being "situated at the limit of the maritime boundary adopted by the two Heads of State on 4 April 1971".

32. The wording clearly confirms that the compromise line of 4 April 1971, which, as we have seen, confirms without the shadow of a doubt that Bakassi is in Cameroon, was indeed "adopted" and that this position should be maintained.

V. Conclusion

33. Mr. President, the 1913 Treaty has always been valid, all the clauses of it, and the same applies to the 1971 and 1975 Agreements. They are the expression, in treaty terms, of the appurtenance of the Bakassi Peninsula to Cameroon.

34. Nigeria seeks to evade the legal consequences of this. It will be for the Court to decide but, in contrast, it will be recalled that in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, the evidence against Honduras, with regard to its boundary with El Salvador, amounted to much less than agreements, being merely the "basis" which it had accepted for years regarding the general course of its frontier (Judgment of 11 September 1992, *I.C.J. Reports 1992*, p. 405, para. 72; emphasis added).

35. Mr. President, in this case, there is quite clearly a basis which had long been accepted by each side, and by others, that Bakassi belongs to Cameroon. But there is more than this: there are

33 proper agreements, and Cameroon simply requests the Court to confirm the consequences of such agreements.

36. Mr. President, Members of the Court, I thank you very much for your attention and request you to give the floor to Professor Bipoun Woum.

The PRESIDENT: Thank you, Professor Thouvenin, and I now give the floor to Professor Bipoun Woum.

Mr. BIPOUN WOUM: Thank you, Mr. President.

I. THE LAND BOUNDARY

7. Bakassi

Summary of the argument on Bakassi and the land boundary

Mr. President, Members of the Court,

1. It is now my task to wind up the argument and to present to you the essence of Cameroon's position in this case with respect to the land boundary in general, and the Bakassi Peninsula in particular.

2. I find it somewhat difficult to perform this exercise because, frankly speaking, at the close of long and complex pleadings, we still have not understood Nigeria's legal position. Nigeria's case seems to us just as incomprehensible as before. It slips between our fingers, like an eel.

3. Nigeria accepts the instruments of delimitation, but, as it were, conditionally. "In principle", it says. We fear that this principle may mask a desire to evade Nigeria's treaty obligations, whenever these threaten its interests or interfere with its plans.

4. Nigeria's approach is insidious. It does not directly attack the delimitation agreements, for lack of any legal ground for doing so. It undermines them from within, tries to weaken them, to highlight their imperfections, to throw doubt on their accuracy, their authority, their legal effect. It

34 does this so that it can then propose "amendments", which are simply adjustments of the boundary in its favour. In so doing, it is implementing a policy in regard to the boundary which is literally revisionist.

5. To this, I would add that Nigeria seeks to exclude the application of the relevant instruments at the two ends of the land boundary: in Lake Chad and on the Bakassi Peninsula. It

puts forward fallacious arguments and concocted findings to justify the unjustifiable: the use of force to expel the Cameroonian authorities and annex areas which it covets, setting itself up there as master.

6. We expect Nigeria to provide a clearer explanation of its rights and intentions, so that the legal debate can be honestly conducted between us and so that the Court may peacefully settle this dispute in possession of all the facts. Good faith is not just a vague precept governing international relations "in principle". It is an obligation on everyone, and above all on the two Parties to this dispute. It is in this spirit that Cameroon has set out its position on the land boundary.

7. At the end of this first week, Cameroon's arguments regarding the land boundary seem to me clear, I would almost say obvious. This boundary has been determined by instruments whose validity brooks no discussion: the two Parties recognize the relevance of those instruments, despite a certain unwarranted reticence (to which I shall revert in a moment) on the part of Nigeria regarding the Anglo-German Agreement of 11 March 1913.

8. For each sector of the boundary, Cameroon has clearly indicated which legal instruments were applicable, while at the same time emphasizing that the only real problems associated with the implementation of those relating to the two sectors at the northern and southern ends of the boundary are due solely to complications arising out of the occupation of those areas by Nigeria: Lake Chad in the north and Bakassi in the south.

9. It is apparent, at the close of Cameroon's various arguments concerning the land boundary, that, in reality, that boundary is perfectly well delimited by the instruments referred to above. In the final analysis, what Cameroon is asking of the Court is to confirm that delimitation.

10. I feel sure, Mr. President, Cameroon is sure, that the Court will do so and that it will not

35 (because this is not its role) become involved in rewriting the relevant conventional instruments as Nigeria is asking it to do, with the sole aim of securing amendment of the texts in a manner which suits it.

11. It is for this reason that, in its argument, Cameroon has refrained from replying to Nigeria's suggestions for a modification of the valid instruments delimiting the boundary.

12. On the other hand, Cameroon must voice its concern here at Nigeria's stated approach to the important question of demarcation, which may arise once the Court has delivered its judgment

in this case. On this point, allow me, if you will, Mr. President, Members of the Court, to refer you to the introductory remarks by the Agent of Cameroon.

13. In recapitulating sector by sector and relying on the recognized instruments, Mr. President, Members of the Court, Cameroon reiterates, at the close of this round of oral argument on the land boundary, its request for a confirmation of that boundary as follows:

(1) From Lake Chad to the "very prominent peak" described in paragraph 60 of the Thomson-Marchand Declaration, and better known under the usual name of "Mount Kombon": the boundary was defined by the Milner-Simon Declaration of 10 July 1919, as clarified by the Thomson-Marchand Declaration of 31 January 1930 annexed to the exchange of notes between Henderson and De Fleuriau of 9 January 1931;

(2) From Mount Kombon to pillar 64: this part of the boundary was defined by the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, more precisely in Section 61, of that Order. It was later confirmed by the Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation 1954;

(3) From pillar 64 to the mouth of the Akwayafe: this part of the boundary was precisely determined on the ground by the Joint Demarcation Commission set up after the signing of the Agreement of 11 March 1913; this Commission carried out to the letter the tasks assigned to it, which concluded in the signing of the Obokum Agreement of 12 April 1913: it thus complements the Agreement of 11 March and, together with that Agreement, constitutes the relevant instrument for the delimitation of the boundary in this sector.

36 14. The sector of the boundary extending from the Cross River to the sea is that bordering the Bakassi Peninsula, which I am now going to discuss in particular, as part of this summary of Cameroon's positions regarding the land boundary.

15. Specifically with respect to Bakassi, I hardly need to remind you that it was the invasion of this Cameroonian peninsula by Nigerian armed forces at the end of December 1993 which was the immediate reason why Cameroon brought the matter before the Court on 29 March 1994; that invasion thus made manifest Nigeria's policy of occupying Cameroonian territory by force.

16. Mr. President, during their oral argument, a number of Cameroon's counsel have highlighted the fact that, unlike many other regions in Africa, the boundary between Cameroon and

Nigeria is today delimited by the clearest and most precise of instruments. But it may be said that the sector of the boundary bordering the Bakassi Peninsula and, more specifically, the legal status of that Peninsula itself, are, beyond any doubt, the points which have been the subject of the most readily comprehensible and stabilizing provisions capable of being incorporated in a boundary treaty.

17. Thus, under the Agreement of 11 March 1913, the signatories clearly located Bakassi on the Cameroonian side; subsequently, they took good care to guarantee the conventional permanence of that location by safeguarding it against any problem of future interpretation which might arise from any subsequent (natural or artificial) reorientation of the lower course of the Akwayafe; lastly, they took into account the social problem of the transborder mobility of riparian populations, a far-seeing precaution, bearing in mind how much the absence of similar provisions in other treaties of the same kind has been a source of boundary instability based on ethnic irredentism in various regions of Africa.

18. In the course of oral argument, Cameroon has already emphasized the desire of the parties to the Agreement to protect that stability of its provisions, by allowing for the possible effects of any unforeseeable subsequent change in natural factors such as the hydrography of the area.

19. But the same concern is also apparent in the manner, wholly admirable for the period, in
37 which the immediate social implications of the Agreement which had just been signed were dealt with, implications to which the provisions of Articles XXVI, XXVII, XXVIII and XXIX of the Agreement are entirely devoted.

20. Among other things, those provisions regulated:

— the fate of the fishing rights of the indigenous population of the Bakassi Peninsula in the Cross River estuary;

— the question of the economic integrity of the villages situated along the boundary: under the Agreement, farms were not to be separated from the villages of which they formed part, the two Governments having been authorized, if need be, to deviate very slightly from the boundary for this purpose;

— equality of navigation and fishing rights for the benefit of the population on both banks.

21. To crown what might well be called, Mr. President, the social policy of the signatories of the Agreement of 11 March 1913, Article XXVII provided that, in the six months following the date of the demarcation of the boundary, the indigenous peoples living close to the boundary line could, if they wished, cross it in order to settle on the other side, also being given the freedom to take with them their movable property and crops.

22. Rather than contriving to exclude Bakassi from the benefit of the provisions of the Agreement of 11 March 1913, Nigeria ought instead to try to seek inspiration from it in order to perpetuate, together with Cameroon, the happy and peaceful cohabitation of the communities in the peninsula, as so wisely and presciently envisaged by the authors of the Agreement.

23. From the point of view of Cameroon, Mr. President, such an enterprise certainly merits a great deal of consideration and even admiration. And Nigeria's feats of imagination in inventing all sorts of artifices for the purpose of circumventing the law and facts relating to Bakassi have patently failed.

24. An example of this is the mirage of a sovereign "Old Calabar" with its kings opportunely enhanced in stature, yet hitherto curiously invisible on the international stage, and who, as pointed out here last Wednesday by my colleague Bruno Simma, never manifested themselves at the time when the issues relating to Bakassi were being discussed (including the title of sovereignty over the peninsula) or in the negotiations leading to the Moor-Puttkammer Agreement of 1901, or indeed later.

38 25. Ultimately, all these facts merely serve to confirm Cameroon's position regarding the sector of the boundary bordering on Bakassi:

— from pillar 114 on the Cross River to 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 XVI to XXI of the Anglo-German Agreement of 11 March 1913;

— consequently, Mr. President, Members of the Court, sovereignty over the Bakassi Peninsula is indisputably Cameroonian.

Cameroon will now embark upon its oral argument relating to the maritime boundary and, for this purpose, I would ask you, Mr. President, to give the floor to Professor Alain Pellet.

Thank you for your attention.

The PRESIDENT: Thank you, Professor. I will now give the floor to Professor Alain Pellet.

Mr. PELLET: Mr. President, Members of the Court,

II. THE MARITIME BOUNDARY

8. The law applicable and the task of the Court

1. The Cameroon team will now address the other aspect of the boundary dispute that has been submitted to you, that relating to the maritime boundary.

2. And, since we are specifically addressing this topic for the first time during this oral phase, I wish to begin by mentioning the names of two of the members of our team who had worked more particularly on this aspect of the case and who are no longer with us: Jean Gateaud, who died in 1999, and Keith Highet, who passed away the following year. I pay tribute to their memory as a friend. More recently, another of our cartographers, Mr. Rozo, became seriously ill; he also is in our thoughts.

3. Mr. President, in this opening speech I will offer some general considerations regarding the way in which Nigeria deals with these issues of maritime delimitation; and I will endeavour to summarize some general aspects of the law applicable and to explain what in our view the Court's task is in this regard.

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1. The two boundary sectors

4. As I argued before you last Monday, this task differs greatly depending on the sector concerned. One, which runs from the mouth of the Akwayafe to point G fixed by the Maroua Declaration of 1 June 1975, has already been delimited by agreement between the Parties. As in the case of the land boundary, therefore, it is for the Court merely to confirm that delimitation, which Nigeria is seeking to reopen. Beyond point G, by contrast, Nigeria has deliberately shirked the obligation incumbent on it to negotiate with a view to arriving at an equitable delimitation. Furthermore, by its attitude both during the negotiations on the maritime delimitation and outside them — and I am thinking particularly of the invasion of the Bakassi Peninsula — Nigeria has made any negotiation impossible. Thus, absent agreement, Members of the Court, it is for your distinguished Court to fix the limits of the Parties' respective areas, so as to put a complete and final end to the dispute between them. Here, more than ever, judicial settlement "is simply an

alternative to a direct and friendly settlement... between the parties" (case of the *Free Zones*, *Order of 19 August 1929, P.C.I.J. Series A No.* 22, p. 13).

5. In spite of protests by Cameroon (see, *inter alia*, Reply of Cameroon, p. 343, paras. 7.01-7.04; p. 387, para. 9.01; and p. 395, para. 9.26), Nigeria persists in devoting a single section of its Rejoinder to "the maritime boundary" (see Rejoinder of Nigeria, Vol. II, Part IV, pp. 415-527), without drawing any distinction, obvious though it is, between the two sectors to which I have just referred. It requires no great genius to understand why: to admit that the first sector of the maritime boundary has been delimited — if only to dispute the line — would amount to acknowledging Cameroon's title to Bakassi, as Jean-Marc Thouvenin demonstrated so well just now.

6. In deciding to place the land boundary (and hence the starting point of the maritime boundary) in the Rio del Rey, the Federal Republic of Nigeria shows a baffling loss of memory: it deliberately forgets Article XVIII of the London Treaty of 11 March 1913, which places the

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starting point of the maritime boundary between Cameroon and Nigeria at the intersection of a straight line joining Bakassi and King Points to the thalweg of the Akwayafe [start of projection of map 78 — maritime delimitation as far as point G]. It forgets the lengthy negotiations which made it possible, from the end of the 1960s to 1975, to delimit this maritime boundary, first as far as point 12 by Yaoundé Agreement II of 4 April 1971, as clarified by the Ngoh-Coker Declaration of 21 June 1971, then as far as point G, by the Maroua Agreement of 1975. The result of these negotiations can be seen on the map projected behind me and which appears in the judges' folder under reference No. 78.

7. It is not for me to describe in detail the circumstances in which these various agreements were concluded, still less to describe their content — Cameroon has done so very fully in its written pleadings (see, *inter alia*, Memorial of Cameroon, pp. 500-529, paras. 5.06-5.5.62, and Reply of Cameroon, pp. 359-384, paras. 8.01-8.87) and my colleagues Maurice Kamto, Christian Tomuschat and Maurice Mendelson will return to them later to the extent necessary to reply to the Rejoinder.

8. Let me confine myself to adding that Nigeria also forgets that the various maritime zones between States whose coasts are opposite or adjacent to each other are in any case not subject to the

application of the same legal rules, as the Court has recently forcefully recalled (see Judgment of 16 March 2001, case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, para. 174). The rules laid down for States, whether in Article 12 of the 1958 Geneva Convention on the Territorial Sea or Article 15 of the Montego Bay Convention, which are moreover drafted in almost identical terms and are "to be regarded as having a customary character" (*ibid.*, para. 176), are not the same as those applicable to the delimitation of their exclusive economic zones and continental shelves under Articles 74 and 83 of the 1982 United Nations Convention, to which Cameroon and Nigeria became parties in 1985 and 1986 respectively.

9. I would add here that Nigeria persists in raising a major issue with Cameroon over the point by again returning in its Rejoinder to the matter of the breadth of the Cameroonian territorial sea (Rejoinder of Nigeria, pp. 432-433, paras. 10.5 and 10.6).

41 10. It is perfectly true that the Law of 5 December 1974 — the Cameroonian Law of 5 December 1974 — fixes that breadth at 50 nautical miles. That Law had been enacted before the signature of the United Nations Convention on the Law of the Sea in 1982, at a time when the negotiations for the Convention had only just begun, and the positions and practice of States were particularly anarchic. Since then the 12-mile rule prescribed by Article 3 of the Convention has quickly acquired customary validity and is obligatory for all States — *a fortiori* for Cameroon, which, as I have said, has ratified the Convention and whose monist-inspired Constitution confers upon "duly ratified or approved treaties or agreements . . . an authority superior to that of Statute law, contingent in the case of each treaty or agreement on its application by the other party" (Art. 45). And the United Nations has made no mistake on this point: contrary to what Nigeria contends in its Rejoinder (p. 432, para. 10.5), the Law of the Sea Division indeed lists Cameroon among the States with a territorial sea breadth of 12 nautical miles; pursuant to (and consequent upon) the Constitutional Law of 1996 so amending the 1972 Constitution — as can be seen from document No. 79 in the judges' folder (www.un.org/Depts/los/LEGISLATIONAND TREATIES/status.htm).

11. As for the condition of reciprocity, it is met in this case because Nigeria (a "dualist" country, if I am not mistaken) set the breadth of its own territorial sea at 12 nautical miles in 1998.

I note incidentally that it was only then that Nigeria brought its law into line with the Law of the Sea Convention (which it had ratified in 1986); previously, the breadth of its own territorial sea had been 30 miles (see Section 2 of the Decree of 1 January 1998, amending the Territorial Waters Act of 8 April 1967 — Counter-Memorial of Nigeria, Ann. 336). Thus it ill behoves Nigeria to criticize Cameroon, a State claiming "constitutional monism" (and is thus immediately bound in its domestic law by a duly ratified and published treaty) for its similar action, when Cameroon itself had been bound since ratification under its domestic law. Since Nigeria refers to the case law of the French *Conseil constitutionnel* — for which, of course, I can hardly blame it! — I venture to remind it that the *Conseil constitutionnel* has a somewhat strict idea of reciprocity and takes the view that this condition of reciprocity is met as soon as the other States parties have actually ratified the treaty in question (see decision No. 92-308 of 9 April 1992, *Traité sur l'Union européenne, C.C. Reports*, 1992, p. 59, para. 16). And do I need to recall the words of the Permanent Court: "From the standpoint of International Law and of the Court which is its organ, municipal laws are merely facts . . ." (*Certain German Interests in Polish Upper Silesia*, Judgment of 25 May 1926, *P.C.I.J., Series A, No. 7*, p. 19)? — which in any event could not prevail before you over the clear wording of a conventional provision in force.

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12. Moreover, and to give this particularly artificial point its quietus, on 17 April 2000 the National Assembly of Cameroon passed a Law, No. 2000/2, relating to its maritime areas which repeals the Law of 1974 and by its Article 4 sets the breadth of Cameroon's territorial sea at 12 nautical miles (see Written Observations of the Republic of Cameroon on the intervention by Equatorial Guinea, Ann. ODGE 2). Members of the Court, the text of this Law, published in the *Official Journal of the Republic of Cameroon*, can be found in your folder under reference No. 80. I observe in passing that the Law moreover in fact deliberately refrains from taking a position on issues relating to the dispute before us. Unlike Nigeria, Cameroon is not seeking to confront your distinguished Court with a *fait accompli*.

13. The purpose of all this, Mr. President, is to state something quite obvious — but Nigeria quite often compels us to plead the obvious: at all events, the maritime boundary between the two Parties includes *two* quite distinct sectors, not one only, as Nigeria affects to believe. As we see it, one of these sectors is delimited, the other is not. And if, against all reason, the delimitation

agreements of 1971 and 1975 were to be treated as mere scraps of paper, there would still be *two* maritime sectors, subject to separate rules of the law of the sea: the territorial sea, up to 12 nautical miles from the baselines, the continental shelf and the exclusive economic zone beyond. One cannot treat them as undifferentiated, as Nigeria persists in doing — absolutely not! as my friend Malcolm Shaw would say.

14. On the other hand I note, Mr. President, that the Parties are in agreement in asking you to rule on a single line of delimitation between their respective continental shelves and exclusive economic zones (see Memorial of Cameroon, p. 548, para. 5.107; Reply of Cameroon, pp. 389-392, paras. 9.08-9.19, and Rejoinder of Nigeria, p. 433, para. 10.7), as they themselves have moreover begun to do as far as point G.

43 **2. The role of equidistance**

15. In both cases, whether the territorial sea or the continental shelf (or the exclusive economic zone) is involved, equidistance has a role to play. But a differing role.

16. I will not spend long on what ought to be decided on the improbable assumption that you were to take the view that the agreements concluded between the Parties as far as point G should not be implemented; that seems so unrealistic. It is enough to say in this connection that, as far back as 1962, Nigeria demonstrated its conviction that the equidistance principle was applicable, without any need to invoke the "special circumstances" referred to in Article 12 of the Geneva Convention on the Territorial Sea, to which it was a party.

17. Doubtless, when he approved the 1971 "compromise line", the Cameroonian Head of State agreed to take into consideration the Nigerian claim of "free access" to the Cross and Calabar Rivers. It is also this concern that explains the line adopted at Maroua three years later. However, when they proceed by way of agreement, States may depart from general international law. This is what they did on that occasion; but it is very doubtful whether there is in this desire for free access to certain ports a "special circumstance" within the meaning of Article 15 of the current Convention on the Law of the Sea, the more so because all vessels enjoy a right of innocent passage within the Cameroonian territorial sea (see the case of *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Judgment of 16 March 2001, para. 223). And

even if it were a special circumstance, it would be at least balanced by other "*very* special circumstances" resulting from the general configuration of the coasts and the particular features of the Bight of Biafra region, which are also relevant beyond point G, and to which Dean Kamto will return. Taking a "swings and roundabouts" approach, this would lead at worst for Cameroon to a return to an equidistance line, which corresponds moreover to Nigeria's stated position in 1962, as Professor Thouvenin has just explained. Furthermore, I repeat, this median line which, under Article 15 of the United Nations Convention on the Law of the Sea, should be departed from only if "it is *necessary* . . ." — and I stress "necessary" — "to delimit the territorial seas . . . in a way which is at variance therewith", is more favourable to Cameroon than the one resulting from the agreements in force. But, as we have found on several occasions, Nigeria is happy to "bat for the other team".

44 18. The operation of equidistance beyond point G is more interesting.

19. Drafted in the same terms, Articles 74 and 83 of the Montego Bay Convention, which make no mention of equidistance, embody — following your jurisprudence, moreover — the cardinal principle of the need to arrive at an "equitable solution".

20. It certainly does not follow that equidistance has no role to play in delimitation of the exclusive economic zone or of the continental shelf of States with opposite or adjacent coasts. And your Judgment of 16 March 2001 in the *Qatar/Bahrain* case opportunely made the point that

> "the equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated" (para. 231).

And you added that the proper approach was thus to "draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line" (para. 230).

21. I do not believe that, in so stating, the Court intended to call into question its previous jurisprudence, with which these statements are directly in line, as can be seen from its citations — very convincing ones, it seems to me — from several of its previous Judgments in the paragraphs preceding those that I have just quoted; neither do I think — indeed still less so — that the Court intended to go back on the fundamental principle that the essential purpose, the sole purpose, is to arrive at an equitable solution. Immediately after stating that it might be proper "to begin the

process of delimitation by a median line provisionally drawn", as it had said in its Judgment of 14 June 1993 in the *Jan Mayen* case (*I.C.J. Reports 1993*, p. 62, para. 53, also cited in the Judgment of 16 March 2001, para. 228), the Court

> "recalls first that in its Judgment in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* it [the Court] declared as follows:
>
> > '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) (para. 233.)"

45 22. It could equally well have referred to the Judgment of 1993 itself, in which it (the Court) stated that "[t]he aim in each and every situation must be to achieve 'an equitable result' (*I.C.J Reports 1993,* p. 62, para. 54), as is established by your settled case law (see, *inter alia*, Judgments of 20 February 1969, *North Sea Continental Shelf, I.C.J. Reports 1969* , p. 49, para. 90, or p. 50, para. 92; of 24 February 1982, *Tunisia/Libya Continental Shelf, I.C.J. Reports 1982,* p. 59, para. 70 or p. 79, para. 110; of 12 October 1984 (Chamber), *Delimitation of the Maritime Boundary in the Gulf of Maine Area, I.C.J. Reports 1984,* pp. 312-313, paras. 157-158, and p. 315, paras. 162-163; of 3 June 1985, *Libya/Malta Continental Shelf, I.C.J. Reports 1985,* pp. 38-39, paras. 44-45; see also the Arbitral Awards of 14 February 1985, case concerning *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, RGDIP,* 1985, p. 521, para. 88, or p. 525, para. 102 [*ILM*, Vol. 25 (1986), pp. 289, 294]; or of 10 June 1992, case concerning the *Delimitation of Maritime Areas between Canada and the French Republic (St Pierre and Miquelon), RGDIP*, 1992, p. 692, para. 38) [ILM, vol. 31 (1992), p. 1163], and is never merely the application of the customary rule reflected by Article 74, paragraph 1, and Article 83, paragraph 1, of the 1982 Convention on the Law of the Sea.

23. There is not the slightest doubt that the law of maritime delimitations remains governed by the search for such an equitable solution. In that context equidistance is a starting point, not an exclusive rule that can be implemented in isolation, without regard for the circumstances of the case in point. In some cases equidistance may be a sufficient manifestation of equity; in others it will require adjustment in order to give full expression to that equity and to secure an equitable

solution. That is the position in the present case, as Cameroon has constantly asserted ever since its seisin of the Court.

24. Moreover, I note with satisfaction that Nigeria itself does not dispute this. On page 490 of its Rejoinder it writes: *"Thus international tribunals* — while rejecting a rule of equidistance as a matter of general international law — *generally start from a median or equidistance line which is then adjusted to take into account other relevant circumstances."* Nigeria also notes that: *"It is true that the case for a median or equidistance line as a starting point* is stronger for opposite than for adjacent coasts . . ." — it is Nigeria who says this (para. 12.23; emphasis added). We could not put it better, Mr. President! But why does Nigeria take no account here of the correct and judicious

46 principles that it cites and continue to advocate — at least ostensibly, I will return to this — the rigid application of equidistance as a principle of delimitation, when it can be no more than a methodological convenience, and the relevant circumstances here are clearly against the drawing of a median line?

25. The equitable line that Cameroon proposes seems to us to meet this requirement. Dean Kamto will return to this in more specific terms in a few minutes, or perhaps on Monday, and will show what the relevant circumstances are which in the present case require adjustment to correct the inequitable effects of equidistance pure and simple.

Mr. President, I still have a good 15 to 20 minutes of argument. I do not know whether you think this is a suitable point for a break.

The PRESIDENT: Professor, the Court will adjourn the sitting for about ten minutes. Thank you.

The Court adjourned from 11.25 to 11.45 a.m.

The PRESIDENT: Please be seated. The sitting is resumed, and I give the floor again to Professor Alain Pellet.

Mr. PELLET: Thank you very much, Mr. President.

3. The Parties' submissions and the task of the Court

26. Before ending this introductory speech presenting Cameroon's position on the maritime delimitation, I wish to draw the Court's attention to a peculiarity in Nigeria's argument: after some ten years of written pleadings, Nigeria insists that it still does not know the extent of Cameroon's claims: *"Nigeria still does not know what is Cameroon's maritime claim."* (Rejoinder of Nigeria, p. 422, para. 9.9.) The sentence is in italics in the text. This is all the more paradoxical in that Nigeria, for its part, has finally made up its mind to state its own claims, very late (for the first time in its Rejoinder), grudgingly, and in a way that is, to say the least, ambiguous.

27. With your permission, Mr. President, let us begin with:

47 (a) ***The scope of the Cameroonian submissions***

28. These are set out in paragraph 13.1 *(c)* of the Reply (pp. 591-592).

29. As is shown by map 78 in the judges' folder, already projected a short time ago, these submissions relate to two sectors [project map 78 again]. As far as point G, you are requested to note that "the "boundary of the maritime zones appertaining respectively to the Republic of Cameroon and the Federal Republic of Nigeria" follows the course fixed by the agreements (often called "declarations" — but this does not affect their conventional nature in any way) of Yaoundé II of 4 April 1971 and Maroua of 1 June 1975. These instruments precisely define the geographical co-ordinates of points 1 to 12 and A to G of the maritime boundary between the Parties, albeit bearing in mind that the Yaoundé II agreement was supplemented by the Joint Commission's Lagos declaration of 21 June 1971, commonly known as the "Ngoh-Coker declaration" (Memorial of Cameroon, Book V, Ann. 243; the Maroua Declaration is reproduced in Annex 251, Book VI, of the Memorial of Cameroon).

30. Moreover, it would seem that Nigeria's criticisms are not directed at this part of Cameroon's submissions, but rather that its unfortunate insistence on treating the two maritime delimitation sectors as a single unit prevents it from "particularizing" its claim. What Nigeria complains of relates in reality to the maritime boundary between the Parties beyond point G. Nigeria criticizes us because the initial map prepared by cartographers in our team (Memorial of Cameroon, p. 556) does not match the co-ordinates in the submissions in the Reply which I mentioned a moment ago and which are illustrated by map R 21 in the Reply as amended.

31. As the Republic of Cameroon acknowledged in a letter to the Registrar on 22 February 2001, there were unfortunate errors of cartographic transposition, for which we apologized to the Court and to Nigeria, who, I might state in passing, has also made mistakes in its cartography; it has corrected them, without our seeking to take advantage of them (see, for example, the letter from D. J. Freeman of 28 September 1999 regarding map 79 in the atlas annexed to the Counter-Memorial; the letter from the Agent of Nigeria of 15 March 2001 relating
48 to the figures in paragraph 11.16 of the Rejoinder, or the letter from D. J. Freeman of 28 January 2002 enclosing a corrected version of a map also appearing in the Rejoinder).

32. That said, the amended map R 21 [project amended map R 21 ("Equitable line") — document No. 81), which is projected behind me and accordingly reproduced as No. 81 in the judges' folder, transposes, this time correctly, the geographical co-ordinates of the equitable line as these are given in the submissions in the Reply. This, then, is map R 21, No. 81 in your folder. Moreover, it is the submissions that define the scope of the dispute (see Judgment of 21 March 1984, *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, I.C.J. Reports 1984,* p. 19, para. 29) and the submissions in the Reply are as precise as they can be, and Nigeria could not reasonably have any doubt as to their scope. The maps accompanying the Parties' written or oral pleadings — possibly in sometimes excessive numbers in recent years — are purely illustrative in nature: if Nigeria's counsel find the illustrations submitted by Cameroon not to their liking, I invite them to confine themselves to the written submissions in the Reply; they alone have legal force.

33. But let them at least do so, Mr. President! Cameroon has noted, with some astonishment — that is an understatement — that Nigeria, for the requirements of its arguments, has taken the liberty purely and simply of inventing certain Cameroonian submissions.

34. The most brazen illustration of this strange technique is doubtless supplied by the placing — *by Nigeria* — of a point "L", to be added to point K on the equitable line and which, if I have not misunderstood, *Nigeria* has decided represents the terminal point of Cameroon's claims. My friend and colleague Maurice Kamto will return to this.

35. I would nevertheless point out that it seemed reasonable to us, Members of the Court, not to ask you to fix a terminal point for the maritime boundary, in particular out of a concern to

safeguard third-party rights in their entirety (especially the rights of Sao Tome and Principe, which has not intervened in the case and therefore has not stated its point of view), even if those rights are not threatened by the equitable line proposed by Cameroon, as I will establish this coming Monday. Moreover, it is customary in maritime delimitation cases of this type for the Court or the arbitration tribunal to refrain from fixing the exact point where the maritime boundary separating two States ends (see, for example, the Judgment of 24 February 1982, *Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1982,* p. 94, para. 133 C. 3, or the Arbitral Award of 14 February 1985, *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, RGDIP*, 1985, p. 535, para. 130.3 *(c)*, [*ILM*, Vol. 25 (1980), p. 252]).

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36. In any event, there was never any question of a point "L" on our side. Reckoning from point "K", it seems to the Republic of Cameroon that it would be necessary and sufficient for you to indicate a general direction and to rely for the rest on the rules and principles of the Montego Bay Convention, which Cameroon and Nigeria have ratified. To my knowledge there is no dispute between them in this respect, and it is for each of the Parties to determine the extension of their respective maritime jurisdictions in a seaward direction pursuant to Articles 57 and 76 of the 1982 United Nations Convention on the Law of the Sea.

37. Allow me, Mr. President, to point out one last paradox: Nigeria, as I have said, claims not to know the extent of Cameroon's maritime claims. At the same time, however, it presumes to know them better than we and does not hesitate to adapt the Cameroonian submissions to suit itself and to change them in what it believes to be its best interests. Once again, the Republic of Cameroon does not ask the Court to fix the outer limit of the Parties' respective maritime zones, but, reckoning from point "K", to indicate the direction that the limit of those zones should take. Neither does it ask Nigeria to take its place in formulating its submissions.

(b) ***The Nigerian submissions***

38. On the other hand, Mr. President, we would like to know exactly what the submissions of the Nigerian Party are in this matter.

39. Nevertheless we can say that the Rejoinder is an advance in this respect relative to the Counter-Memorial. In the latter Nigeria had expressly refused to disclose to the Court the course

of the maritime boundary that it considered justified (Counter-Memorial of Nigeria, pp. 603-604, para. 23.3) — on very weak grounds, as Cameroon had in its Reply (Reply of Cameroon, pp. 351-355, paras. 7.27-7.42). Our objections seem to have been heard in part, because in its Rejoinder Nigeria ventures to describe the line that it prefers and asks the Court to adjudge and declare:

> "(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 boundary with Equatorial Guinea at approximately 4° 6' N, 8° 30' E" (Rejoinder of Nigeria, p. 765, para. 4; see also p. 527, para. 13.44.2).

40. I referred a short time ago to the view that should be taken of "any equidistance" on which Nigeria relies. I will not return to this now.

41. Moreover, we should not be surprised that Nigeria affects to start the maritime boundary between the two States at the Rio del Rey: the contrary position would have amounted to an admission, which Nigeria could not make, regarding Cameroon's title to the Bakassi Peninsula. It is nonetheless revealing that this submission by Nigeria is, to say the least, lacking in assurance and obscured rather than substantiated by the reasoning underlying it, despite the extreme caution by which it is characterized.

42. This caution shows itself first in the disproportionate brevity of the arguments put forward: four pages (six paragraphs and a map), whereas Nigeria devotes over 100 pages to rebutting the line proposed by Cameroon. Moreover, our opponents show clearly that they are not deceived themselves by that relocation of the boundary line from the Akwayafe to the Rio del Rey: to be sure, they submit an illustrative map, figure 13.9, appearing after page 524 of the Rejoinder, which shows a convenient sandbank, which, as we pointed out just now, they claim to have recently discovered and which avoids too absurd a line; however, Nigeria takes the precaution of also referring — in *this* section devoted to defending the Nigerian line — to figure 13.8, which claims to represent the "oil practice line" (Rejoinder of Nigeria, p. 522*bis*) and which should doubtless be regarded as representing the true boundary that Nigeria is proposing to you.

43. Dean Kamto and Professor Mendelson will give details later of the serious criticism to which the Nigerian position, which is neither well-founded in law nor in accordance with the facts (at the "critical date" in any event), exposes itself in this regard; for the concessions on which

51 Nigeria relies are for the most part recent and overlap those granted by Cameroon or Equatorial Guinea beyond point G. The issue that I would like to bring out is different: in order to rebut Cameroon's equitable line, Nigeria does not rely, at least as its main argument, on the equidistance principle (except in an attempt to persuade you to fix a tripoint — but we will have an opportunity to return to this); its principal, its sole concern, Members of the Court, is to present you with what it is endeavouring to submit to you as the fait accompli of oil concessions — meaning its own, for it shows scant concern for those granted by Cameroon or Equatorial Guinea — as is shown, for example, by the extraordinary figure 10.5 in the Rejoinder (p. 446*bis*), which claims to show the zone where Nigerian and Equatorial Guinean concessions overlap, but which shows only the Nigerian concessions, to the exclusion of those granted by the intervening State.

44. Moreover, after describing its oil operations in the region (of Bakassi, not of Rio del Rey) (Rejoinder of Nigeria, pp. 434-441, paras. 10-11-10.22) and submitting as an Annex a "cartographic history of the concessions" ("Licensing History Maps", pp. 457 *et seq.*), the sources of which are moreover not shown with the requisite precision, Nigeria seeks to attack Cameroon by claiming that the latter's proposed equitable line conflicts not with the line of the oil concessions between the two countries, but to that of their actual operations (see Rejoinder of Nigeria, pp. 510-523, paras. 13.14-13.37), that is to say wells, boreholes, etc. But these are operations which Nigeria has contrived to render impossible for Cameroon and Equatorial Guinea. Then comes Nigeria's real "hidden submission": the line separating the two States' maritime zones is the extreme limit of its oil operations — it, Nigeria's, operations — which, moreover, it succeeded in imposing on Equatorial Guinea by the treaty of 23 September 2000; we will have an opportunity to come back to this:

> "even on the basis of Cameroon's unjustified claim to the Bakassi Peninsula, the maximum claim line that Cameroon could advance would involve delimiting the respective maritime zones of the Parties beyond the Cross River Estuary in the manner shown in Fig. 18.8 [the one I just mentioned figuring the 'Oil Practice Line']. The effect is to maintain, on each side of the line so drawn, all wells and installations ["all wells and installations, Mr. President, not all oil licences] which were drilled or

constructed under licenses or permits granted by either party . . ." (Rejoinder of Nigeria, p. 527, para. 13.45.)

52 45. However, it is not for me to discuss the validity of this claim; my learned colleagues will be responsible for that. But we wanted to bring out what seem to us obviously to represent Nigeria's real submissions: it wishes to retain, in their entirety, "all wells and installations" that it has succeeded in forcing on the region, even totally unlawfully, in defiance of the maxim *ex injuria jus non oritur*. The line that Nigeria would like you to adopt, Members of the Court, is that resulting from its "oil imperialism". This line is marked not on map 13.9 in the Rejoinder (Rejoinder of Nigeria, p. 524*bis*), but on map 13.8 (p. 522*bis*), for which maps 13.5 to 13.7 represent the preliminaries, but not the justification.

Dean Maurice Kamto will return to this key point later. Now I would be grateful, Mr. President, if you would give him the floor so that he can show the Court which instruments are relevant to the delimitation of the first sector of the maritime boundary, from the Akwayafe to point G.

Thank you very much, Mr. President, Members of the Court, for your attention.

The PRESIDENT: Thank you, Professor. I now give the floor to Dean Maurice Kamto.

Mr. KAMTO:

II. THE MARITIME BOUNDARY

9. The first maritime sector (from the mouth of the Akwayafe to point G)

1. Mr. President, Members of the Court, it falls to me to present to the Court the course of the maritime boundary between Cameroon and Nigeria and to state why, in the opinion of the Republic of Cameroon, the equitable line it proposes is the best possible course in the light of treaty law and customary law, as well as the practice of international courts.

2. As my colleague and friend Professor Pellet has just said, the maritime boundary can be divided into two sectors: the first has been clearly delimited by means of international agreements which are valid, although disputed by Nigeria; the second remains to be delimited. I wish now to speak of the first sector.

53 3. The first sector of the maritime boundary between Cameroon and Nigeria runs from the mouth of the Akwayafe to point G. The course of this first sector is based mainly on three

international legal instruments: the Anglo-German Agreement of London of 11 March 1913, the Cameroonian-Nigerian Agreement of 4 April 1971, comprising the Yaoundé II Declaration and the appended Chart 3433, and the Cameroonian-Nigerian Agreement of 11 June 1975, known as the Maroua Declaration. The relevant document underpinning these various agreements is the British Admiralty Chart [projection of map No. 1], found in the judges' folder as document No. 82 and showing the estuary of the Calabar and Akwayafe rivers and its southern approaches on a scale of 1:50,000. This was the map, the version published in 1970, used by the negotiators of the Yaoundé II and Maroua Declarations to draw the lines between points 1 and 12, then between points A and G, the lines respectively defined under those agreements. The topography of the coastline shown on this chart has changed little since then, and recent surveys, carried out for navigational purposes, have not concerned themselves with it.

4. The Yaoundé II and Maroua Agreements, post-colonial agreements between the independent Cameroon and Nigeria, were the fruit of long negotiations, and in its Memorial Cameroon presented the full history and a detailed analysis of the salient stages of these negotiations[19] and I shall refrain from covering the ground again.

5. Allow me, however, at this stage, to highlight one oddity in Nigeria's approach: the course of the maritime boundary established by the bilateral agreement of 23 September 2000 between Nigeria and Equatorial Guinea — which agreement, I would remind you, is in no way opposable to Cameroon — starts from a hypothetical point I[20]. In its Rejoinder, Nigeria nonetheless boldly locates the maritime boundary between Cameroon and itself in the Rio del Rey and explains with apparent serenity that the course of this imaginary boundary "follows the equidistance line south-westwards until it meets the tripoint with Equatorial Guinea, [at approximately latitude 4° 6' N, longitude 8° 30' E]"[21]; stating that the result is equitable because "the equity of an outcome reached" "is" "a general matter of impression"[22].

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[19]Memorial of Cameroon, pp. 500-529, paras. 5.06-5.62.

[20]Rejoinder of Nigeria, fig. 13.

[21]Rejoinder of Nigeria, p. 524, para. 13.40.

[22]Rejoinder of Nigeria, p. 524, para. 13.41.

6. This is all stated on page 524 of Nigeria's Rejoinder. Yet three pages previously, in the same Rejoinder, sketch-map 13.8 [projection No. 2], found in the judges' folder as document No. 83, shows a red line marked "Oil Practice Line", starting at an admittedly undefined point, but this time from the mouth of the Akwayafe and not the Rio del Rey. That line, which Nigeria devotes eight pages to defending as the *de facto* line[23] abruptly jumps from the Akwayafe — the sketch-map we have just seen — to the Rio del Rey [projection No. 3]. This is the new line proposed by Nigeria; the sketch-map is found in the judges' folder as document No. 84. It is flagrant, Mr. President, Members of the Court: Nigeria is torn and ensnared in its own contradictions, and we too are baffled. I can only say that its position recalls that of Buridan's ass, which according to fable died of hunger and thirst because it was unable to choose between a bucket of water and a bundle of hay. And Cameroon asks the question: which line does Nigeria say should be considered as the course of the maritime boundary between the two countries? The "Oil Practice Line"? Or the one which starts from the Rio del Rey?

7. Well then, let us talk about the famous line from the Rio del Rey, to which Nigeria devotes a total of three pages out of the 528 in Volume II of its Rejoinder. Nigeria explains that the line, prima facie, follows the equidistance line out in the direction of Bioko, until it meets the Equatorial Guinea-Bakassi equidistance line; it adds that a relevant factor, "a substantial sand island, not shown on earlier charts", which can be seen at the mouth of the Rio del Rey within 12 miles of the coast, affects the equidistance line and prompts it, i.e., Nigeria, to turn that line south-westwards[24].

What an admirable concern for fairness. But it's all smoke and mirrors! Artfully, Nigeria conjures up in the Rio del Rey, where it, Nigeria, is not physically present, an island — a

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substantial sand island — which we Cameroonians, who have a permanent presence in the area, have never seen and which nobody knows about since it has never been marked on any map; a *substantial* island which cannot be seen with the naked eye, but only by means of satellite photography. This is awesomely improbable, to say the least.

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[23]Rejoinder of Nigeria, pp. 516-517, paras. 13.23-13.25.

[24]Rejoinder of Nigeria, pp. 523-524, para. 13.39.

8. Mr. President, the Republic of Cameroon holds steadfastly to its international undertakings, it respects the commitments undertaken today and those contained in the colonial agreements which it inherited; it has always contended that the maritime boundary between the Federal Republic of Nigeria and itself starts from the mouth of the Akwayafe and it has never changed its position on this subject.

9. This line has a clearly defined starting point, namely the intersection of the straight line running from Bakassi Point in Cameroon to King Point in Nigeria, and the centre of the navigable channel of the Akwayafe. This point was not conjured up from nowhere, Mr. President; nor is it a creation of Cameroon; it is defined by Article XVIII of the Anglo-German Agreement of London of 11 March 1913, which locates the landwards starting point of the maritime boundary at the intersection of the thalweg of this watercourse and of a "straight line joining Bakassi Point to King Point".

10. Article XXI of the London Agreement provides that, from this point in the "centre" of the navigable channel, the boundary goes "as far as the 3-mile limit of territorial jurisdiction". Article XXII of the same Agreement provides that the baseline forming the starting point for calculating the breadth of the territorial sea, fixed at 3 nautical miles, is the line linking the extremities of the Akwayafe estuary, and the Parties to the 1913 Agreement agreed to define it as "a line joining Sandy point and Tom Shot Point". The 1913 London Agreement was thus the first treaty instrument to establish the bases for delimiting the maritime boundary between Cameroon and Nigeria and to begin the task of delimitation.

11. It was no easy task to draw the line defined by that Agreement, which, under the positive law of the sea of the time, represented the line separating the territorial sea of the territory of Cameroon from that of the territory of Nigeria.

I. From the mouth of the Akwayafé to point 12

12. Shortly after the independence of both countries, Nigeria, through the intermediary of its Ministry of Foreign Affairs, addressed to Cameroon its Note No. 570 of 27 March 1962. In that

56 Note, on the subject of which Professor Jean-Marc Thouvenin has addressed the Court, and to

which was appended a sketch-map[25], which has already been shown [projection No. 4] and which appears in the judges' folder as document No. 85, in that Note Nigeria unilaterally, without consulting Cameroon, drew a line showing the maritime boundary between the two countries in the territorial sea as far as the 3-mile limit fixed under the 1913 Agreement.

13. Members of the Court, there is no need to dwell excessively on the decisive character of this Note as proof of the "Cameroonness" of Bakassi. Professor Thouvenin covered that sufficiently a few moments ago, and I shall not reopen the subject.

14. On the other hand, Mr. President, I would emphasize that this Note showed a line which quite visibly started from the landwards starting point of the maritime boundary as defined under the 1913 Agreement, i.e., as I have just stated, from the intersection of the straight line joining Bakassi Point in Cameroon and King Point in Nigeria, and the centre of the navigable channel of the Akwayafe. In other words, whatever it claims today, Nigeria held the 1913 Agreement to be valid, and considered it to be the first legal instrument initiating the process of delimiting the maritime boundary between Cameroon and itself. Let us take a look at the course of line A/B, as shown on the sketch-map appended to the 1962 Note [projection No. 5], and found in the judges' folder as document No. 86. This is actually a transposition from the sketch-map appended to the 1962 Note, transposed so as not to modify the coastal front; the broken line represents the line appended to the 1962 Note, which went as far as point 12 approximately. This map shows the course of the A/B line running to the west of the line which was to emerge from the work on Yaoundé II and much closer to the line proposed at the time by the experts, but eventually abandoned by the Heads of State in favour of a compromise line running further east. Admittedly, this is only a sketch-map, which is not to scale, and there are no co-ordinates for the line drawn on it. Unquestionably, it is somewhat imprecise, a fact of which Nigeria was aware, since Nigeria itself referred to an "arbitrary line" in the letter appended to the Note. However it is plain,

57 Mr. President, that that line was more advantageous to Cameroon than the line accepted today, and that Nigeria then considered this A/B line to be "the correct boundary" between the two countries.

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[25]Memorial of Cameroon, Ann. 229.

15. What then happened to make Nigeria — Nigeria who drew this line unilaterally, Nigeria who complains that Cameroon took no action on its Note relating to the line, Nigeria who nonetheless applied the course of the line without hearing Cameroon's views or securing its consent — what made Nigeria, I ask, challenge today the line negotiated and fixed by a succession of agreements which it signed, agreements which are more favourable to Nigeria than the 1962 line? There is a mystery here which Nigeria will doubtless endeavour to elucidate, Members of the Court. I fear however that Nigeria may be tempted by the absurd, meaning the temptation which prompts it to request the Court to disregard the agreements which Nigeria has formally concluded and which are binding upon it, in order to award it a boundary conjured up from nowhere, lacking any legal basis or historical reference.

16. After the episode of the 1962 Note (No. 570), it appeared necessary to both countries to take a concerted approach to delimiting their maritime boundary. In the early 1970s, the authorities of both countries decided to address the task of delimiting their joint maritime boundary exhaustively and thoroughly. To that end, they set up a joint commission under the "Yaoundé I" Declaration of 14 August 1970. After several meetings of the commission, the outcome of which was that experts from each country maintained markedly conflicting positions, the Heads of State of Cameroon and Nigeria settled the matter in the Cameroonian capital on 4 April 1971, by adopting "a compromise line" which they jointly drew on British Admiralty Chart 3433[26], which I projected at the beginning of my statement and which, I recall, is found in the judges' folder as document No. 82. This "compromise line" runs from point 1, at the mouth of the Akwayafe, to point 12 out at sea, passing through the successive intermediary points from 2 to 11. Chart 3433, to which I have just referred, shows very clearly that point 1, the starting point of the maritime boundary, was situated in the centre of the navigable channel of the Akwayafe, in accordance with Article XXI of the London Agreement of 1913.

58 17. This Chart No. 3433 (found in the judges' folder as document No. 82) [projection again], the chart on which is drawn the line linking point 12 to point 13, and point 13 to point 20, this being the continuation of the line drawn up by the experts, clearly shows the consequence of the

[26]Yaoundé II Declaration, Memorial of Cameroon, Ann. 242.

concession made to Nigeria by Cameroon. The westward shift of the line between point 12 and point 20 is particularly striking. It makes plain the concession that was made between point 1 and point 12 in relation to the equidistance line. Mr. President, there is no other explanation for the lateral shift between point 12 and point 13, and for the course followed up to point 20: it is the result of an application of the principles laid down in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone. This line apportioned, in an equal manner, the maritime areas of Cameroon and Nigeria beyond the compromise line. However, the segment from point 12 to point 20 was not validated by the Heads of State.

18. Members of the Court, the first segment of the maritime boundary from the mouth of the Akwayafe to point 12 was thus fixed on the basis of a compromise which was, once again, very favourable to Nigeria and which disregarded the general rules of the law of the sea of that time. This segment has not been modified since then, and the co-ordinates of the 12 points defining its course were given in the Lagos Declaration of 21 June 1971 adopted at the conclusion of the meeting of the Joint Commission charged with delimiting the boundary between the two countries.

II. From point 12 to point G

19. Mr. President, the delimitation of the maritime boundary between point 12 and point 20, as drawn up by the experts, having been abandoned because it did not suit the Nigerian Party[27], the prolongation of the maritime boundary from point 12 seawards up to "point G", situated approximately 17.7 nautical miles from the baselines, proved difficult.

20. Until July 1974, it was not possible to reach any agreement between both Parties regarding the prolongation of the boundary southwards from point 12. Nigeria persisted in refusing a line based on equidistance. Once again, it demanded a compromise line which would be more favourable than a line of strict equidistance. After all, having obtained such a compromise up to point 12, there was no reason to stop when everything was going so well. However, Nigeria's

59 concern to have access to the port of Calabar without passing through Cameroonian territorial waters prompted the two countries to adopt a provisional solution whereby their respective claims were frozen and "a corridor extending for 2 km on either side of the line joining the Fairway

[27]Memorial of Cameroon, pp. 516-517, para. 5.41-5.42.

landing buoy to buoys Nos. 1, 2 and 3 as shown on Chart 3433"[28] was defined in what became known as the Kano Declaration of 1 September 1974, signed by President Ahidjo of Cameroon and General Gowon of Nigeria. In this no-man's land "all prospecting operations for oil" were "prohibited"[29].

21. It is important to note that the buoys referred to were those marking the navigable channel of the Cross/Calabar Rivers[30]. And, taking a close look at the sketch-map drawn on the basis of Chart 3433 and the buffer zone thus defined [projection No. 6] (document No. 87) it appears that this too, Mr. President, was favourable to the interests of Nigeria. In effect, it is essentially located to the east of the line resulting from the line adopted in application of the 1958 Geneva Convention by the Joint Commission in June 1971. However, the Kano arrangement was not aimed at the definition of an enduring régime, and was not directed at the delimitation of the maritime boundary.

22. The prolongation of the maritime boundary southwards from point 12 was effected less than one year later, at the conclusion of a summit meeting between Cameroon and Nigeria in May-June 1975. It was during that meeting that President Ahidjo and General Gowon "reached *full agreement* on the *exact course* of the maritime boundary" (emphasis added), as expressed in the joint communiqué published at the end of the meeting[31]. I lay emphasis on the words "full agreement" and "exact course", since they dismiss any doubts as to the intention of the Parties and the nature and purpose of the Maroua Agreement which Nigeria has taken it upon itself to challenge. Next Monday, Professor Tomuschat will establish the legal validity of this Agreement, which was complemented by an exchange of letters, on 12 June and 17 July 1975[32], in which President Ahidjo and General Gowon agreed to correct a trivial factual error concerning the co-ordinates of point B on the line running from point 12 to point G.

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23. As the provisions of the Maroua Agreement make clear, the explicit objective of the Agreement was to extend "the delineation of the maritime boundary between the two Countries

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[28]Memorial of Cameroon, p. 527.

[29]Kano Declaration, Memorial of Cameroon, Ann. 246.

[30]See Chart 3433, Memorial of Cameroon, Ann. 242.

[31]Memorial of Cameroon, Ann. 250.

[32]Memorial of Cameroon, Ann. 251.

from point 12 to point G". It defines the actual co-ordinates of the eight points along the line, namely points A, A1, B (corrected by the exchange of letters to which I have just referred), then points C, D, E, F and G.

24. Mr. President, similarly to the course of the boundary up to point 12, the line of the Maroua Agreement is a compromise line, one which — and this is no surprise — is once again in Nigeria's favour. The Maroua meeting was a success only because, once again, Cameroon agreed to make concessions to Nigeria. The line agreed by the Heads of State runs east of the equidistance line which had been fixed by the experts in June 1971 and signed by the heads of delegation of the two countries respectively, namely Oluwole Coker for Nigeria and Jean-Claude Ngoh for Cameroon. Allow me to recall, Mr. President, that in 1971 Cameroon conceded to Nigeria part of its territorial sea, that is to say a parcel of its territory. And allow me to say, Members of the Court, that again in 1975 it was Cameroon which ceded afresh to Nigeria another parcel of its territorial sea, then part of its continental shelf and its exclusive economic zone, as well as the strategic channel of the Akwayafe which might have given its own vessels easier access to the west and north-west flank of its Bakassi Peninsula. And I pass over the fact that control of this channel would also have allowed it to control access to the Nigerian ports of the south-east, in particular Calabar. In both cases, in 1971 and in 1975, Cameroon relinquished its sovereignty over part of its territorial sea, and its sovereign rights over its continental shelf and its exclusive economic zone, as well as over the substantial oil resources, not to mention the fishing resources, of that zone; it relinquished them, Members of the Court, for Nigeria's benefit, and did so out of consideration for that country's concerns, and in the interests of good neighbourly relations with Nigeria.

25. When Cameroon emphasizes that it has constantly made concessions to Nigeria throughout the process of delimitation of the maritime boundary between the two countries, it does not seek commiseration, it merely wishes to establish the reality of the situation which the Court must consider. Not only did Cameroon make a concession on paper, not only did it facilitate

61 access by Nigerian vessels to the ports of Calabar by ceding to Nigeria the navigable channel of the Cross River, it also accepted the adverse consequences stemming from the Maroua Agreement in regard to oil prospection.

For example, on 27 May 1976, it gave back the Kita-Marine hydrocarbon well No. 1 which had been drilled by Elf Serepca in 1972 [projection No. 7] (doc. No. 89). It gave back this oil well, which had revealed the presence of oil and gas, at a time when it had barely discovered its own first oilfields, whereas Nigeria was already a major oil exporter. The logical conclusion, Mr. President, is that Nigeria, which did not refuse the returned well, thus acknowledged, at least implicitly, that the Maroua line constitutes the maritime boundary between the two countries. For why else would such restitution have taken place except on grounds of compliance with the said boundary?

III. Confirmation of the conventional delimitation by State practice

26. Mr. President, Members of the Court, it is the whole of this maritime boundary, painstakingly delimited by agreement from point 1 to point G, which Nigeria now seeks to challenge today in the name of an ill-considered territorial claim over the Bakassi Peninsula, and, as mentioned just now, by seeking to rely on the "fait accompli" of the "oil concessions", in defiance of its own treaty undertakings.

27. The Federal Republic of Nigeria claims, both in its Counter-Memorial[33] and in its Rejoinder[34], to describe the present situation as regards oil concessions, which it contends represents the conduct of the Parties. It does so in a partial and in some respects erroneous manner, and its Rejoinder, rather than correcting and clarifying its Counter-Memorial in this regard, perpetuates the inaccuracy.

28. In its Reply, Cameroon points out that, in its Counter-Memorial[35] Nigeria presents a table of the concessions granted and, in Annex 341 to that Counter-Memorial, states the present co-ordinates of some of those concessions, yet without giving the source of Annex 341, which has

62 the air of a tailor-made, composite document[36]. Nigeria does not provide that information in its Rejoinder either. Instead, with respect to sketch-maps R 24 and R 25 produced by Cameroon in its Reply and showing both "the limit of the operations" of the Cameroonian petroleum companies and

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[33]Counter-Memorial of Nigeria, Vol. II, paras. 20.3-20.17.

[34]Rejoinder of Nigeria, Vol. II, pp. 435-441, paras. 10.11-10.22.

[35]Para. 20.14.

[36]Reply of Cameroon, p. 428, para. 9.107.

the areas of overlap of the concessions, it states that "there are no Cameroon installations in the southern area of overlapping licenses, shown in blue on the map"[37].

29. Members of the Court, Nigeria is seeking to conceal the truth on at least three points:

30. To begin with, after indicating that a series of offshore blocks, lettered from A to N, was designated in 1959, it adds: "the most easterly of these, Block N, was never granted"[38]. It does not say by whom this block was not granted, thereby giving the impression that it is a Nigerian block which it has refrained from granting. Mr. President, Nigeria knows perfectly well that this Block N, situated off Bakassi, is a Cameroonian block, a fact it actually acknowledges in its Note Verbale of 1962, which is referred to several times. Further, it is also aware that this Block was long since granted by Cameroon, as it corresponds more or less to Block 17 named Kita Eden on the sketch-map entitled Figure 10.1 in Nigeria's Rejoinder — where the limit of Cameroon's operations is indicated by a broken red line — and faces Nigeria's Block OPL 98, which Nigeria itself says is the former Block M, granted in September 1961. This statement, quietly slipped by our opponents into their Rejoinder, reflects Nigeria's desire to take advantage of that 1962 Note, while at the same time denying it — though without so admitting — because it provides the strongest possible confirmation that Nigeria has always recognized Cameroon's title to Bakassi.

31. Secondly, on the issue of whether its oil concessions in the delimited part of the maritime boundary are of long standing or not, Nigeria persists, at the conclusion of this paragraph of its Rejoinder, in expressing its perplexity at Cameroon's contention that the Nigerian oil concessions in this area are recent, stating that, on the contrary, the area in question "has been the subject of licensing, relinquishment, relicensing etc. over more than 40 years"[39].

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32. Yet this same Nigeria reluctantly concedes just before, in paragraph 10.15 of its Rejoinder: "It is true that many concessions currently in force were granted in the last 10 years, as shown in the table in Nigeria's Counter-Memorial". I stress the word "many", as Nigeria goes on to say: "But in most cases . . . these were re-issues or re-grants after long-established licence areas

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[37]Rejoinder of Nigeria, p. 435, para. 10.110.

[38]Rejoinder of Nigeria, p. 436, para. 10.16.

[39]Rejoinder of Nigeria, pp. 463-437, para. 10.16.

had been relinquished or exchanged"[40]. In passing, I would point out that Nigeria cites only two examples to illustrate the word "most", in this case Blocks OPL 98 and OPL 230, and, in reality, Nigeria would be hard put to it to quote any other examples. More seriously, even the two examples chosen do not illustrate what Nigeria claims, because the two blocks in question do not confirm Nigeria's assertion on the ground. Block OPL 230 no longer exists, since it was replaced in 1999 by concession OML 114. According to the maps prepared by Petroconsultants (later IHS), which we consulted and which Nigeria itself cites, neither Block OPL 230 in the past nor concession OLM 114 today encroaches on the 1975 Maroua line. Where Block OPL 98 is concerned, according to the map of the limit of the oil concessions, of which I have just given the reference, Nigeria claims that it only slightly encroaches upon this 1975 line at its south-eastern end. In reality, if one refers to any map of the oil concessions of Nigeria South East drawn up by IHS, the former Petroconsultants, reference body for petroleum operations, it is clear that concession OPL 98 also scrupulously respects the Maroua line.

33. It is obvious, Mr. President, that, for Cameroon as for Nigeria, the present configuration of oilfield grants is the result of a succession of grants, reissues and partial or total re-grants. However, we cannot agree with Nigeria when it claims that Cameroon's practice has been to create *de facto* overlaps with the Nigerian oilfield. In fact, above point G — the first sector of the maritime boundary, that which this presentation addresses — all of the maps produced by the international bodies regarded as authoritative in the petroleum world (I quoted Petroconsultants/IHS a moment ago) contradict this claim.

34. Thirdly, in footnote 23 on page 437 of its Rejoinder, Nigeria discreetly states:

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> "It is true that a small wedge-shaped area of former Block N remained mostly unlicensed until 1970. This was the area referred to in Nigeria's *note verbale* of 27 March 1962 (Ann. MC 229): there is no record of Cameroon replying to that note. The small area in question was licensed by Nigeria in 1970, as can be seen from the 1970 map in the Appendix to this Chapter."

35. I would recall, Mr. President, that Cameroon has already observed that Nigeria makes much of Cameroon's silence in regard to Nigerian petroleum initiatives in the maritime area in question, but neither has Nigeria itself ever objected to Cameroon's activities in the area, including

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[40]Rejoinder of Nigeria, p. 436, para. 10.15.

in what it claims to be the areas of overlapping concessions. But, above all, Cameroon would draw the Court's attention to an implicit admission by Nigeria in that footnote 23. At the time when, in 1970, the two countries were in negotiation with a view to fixing the starting point of the maritime boundary as determined by the 1913 London Agreement and deciding the course of that boundary up to the limit of 3 nautical miles determined by the Agreement, Nigeria was simultaneously issuing licences for areas which were the subject of those negotiations.

36. Yet I would remind you that, during the negotiations in question, Nigeria categorically opposed the application of the equidistance line — a line close to the "arbitrary" one of 1962 — which Cameroon claimed under the positive law of the time, but had to abandon in favour of the famous "compromise line" of 1971. It would behove Nigeria particularly ill today, Mr. President, to accuse Cameroon of not having reacted to this famous Note of 1962, proposed in haste by Nigeria, in reality because it had already, in 1959-1960, granted exploration and exploitation licences in the area.

37. That said, what is the precise situation in regard to oil concessions in this first sector, where the maritime boundary between the two countries is clearly delimited, and by treaty at that?

38. Mr. President, in electing not to reply to Cameroon's arguments presented on the basis of a distinction between the maritime boundary up to point G, then beyond point G, Nigeria adopts a confused approach, failing to distinguish as between the practice of the two States in the first sector and in the second.

39. In its Reply[41] Cameroon has shown that, in the sector running from the mouth of the
65 Akwayafe to point G, the practice of the two Parties as regards oil concessions up to 1990 — in other words after what may be regarded as the critical date in this maritime dispute which first arose at the end of the 1960s — respected the boundary line up to point G.

40. Invoking the famous Note of March 1962 in support of its argument on the long-standing nature of its oil concessions, Nigeria writes: "In the light of this document and of the maps annexed to it, it is baffling how Cameroon can describe this area as the subject of 'recent' Nigerian concessions." And repeating an assertion already made in the previous paragraph of its Rejoinder,

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[41]Reply of Cameroon, pp. 428-438, para. 9.108-110.

it adds: "Rather it has been the subject of a process of licensing, relinquishment; relicensing etc. over more than 40 years."[42]

41. On the basis of the maps produced by the "scouting services" of the specialized bodies, in other words the services which collect and sell petroleum information, Cameroon maintains, Mr. President, that, notwithstanding that the present configuration of the limits of the licences and concessions may be the result of a succession of grants and re-grants of the blocks or licences, the overlaps alleged by Nigeria — if such there are — are very recent. Moreover, it was not possible for Nigeria to grant licences with very precise eastern limit co-ordinates, contrary to what is intimated by its written pleadings. Further, a more reflective attitude would naturally have led Nigeria only to grant blocks in this area whose eastern limits were situated on or within the boundary between the two countries, as Cameroon has done on its side, pending the judgment of your Court. Nigeria's practice in this respect, and the overlapping to which it has led, can only be seen as a manifest desire to dispute a boundary delimited by treaty. And naturally Cameroon cannot accept this.

42. In this connection, the major oil operators seem much more cautious and perhaps also more concerned to respect the law in this regard than our opponents. So it is not surprising, Mr. President, to note that the present dispute between the two countries has led the major oil companies operating in the area, such as Shell, Elf, Mobil, to abandon the Nigerian oilfield situated
66 in this border area. Today, the only companies present there are small ones, unknown in the international petroleum world, new arrivals on the scene and for the most part Nigerian in origin — and with good reason — the sole exception being Addax, which succeeded Ashland and which maintains small-scale production there.

43. At all events, Cameroon, for its part, has respected the Maroua line, the one fixed by the 1975 Agreement. In fact, the same could be said of Nigeria until recently. To avoid any ambiguity, Cameroon would like to state that the oil "fait accompli" cannot in any way prevail over a conventional delimitation of maritime boundaries — as is clearly established by the positive law of the sea. What the Chamber of the Court said of the *"effectivités"* in the case concerning the

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[42]Rejoinder of Nigeria, pp. 436-437, para. 10.16.

Frontier Dispute (Burkina Faso/Republic of Mali)[43] on the subject of the delimitation of the land boundary, and which was amply cited by my colleagues Professors Shaw and Mendelson yesterday, may be transposed to the maritime boundary: in relation to that boundary, the Montego Bay Convention, in its Articles 74 and 83, provides in this connection that "delimitation [. . .] shall be effected by agreement on the basis of international law [. . .] in order to achieve an equitable solution". While these provisions in no way preclude delimitation by a competent body in the event of the failure of the negotiations, they nevertheless give priority to delimitation by agreement. And this is the case of the maritime boundary delimited by an agreement between Cameroon and Nigeria up to "point G". The results of such a delimitation cannot be eroded or called into question by the practice of one of the Parties — a practice all the more questionable in light of its divisive nature.

44. In effect, Mr. President, Nigeria invokes a "long-standing activity and acquiescence by both parties"[44] and takes it upon itself to defend both its own interests and those of the oil companies, which are also a matter of concern to Cameroon. In this connection, it writes:

> "As to the maritime areas, however, the Parties (and licensees claiming through them) have engaged in a long and uninterrupted course of practice over nearly 40 years, involving the drilling in the disputed area of over 400 wells each representing a total of several billion dollars of drilling and other forms of exploitation and use of the spaces concerned" (*ibid.*, p. 424, para. 9.14).

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45. I do not know whether, in speaking on behalf of private parties — namely, "licensees claiming rights through (the Parties)" — Nigeria is seeking to substitute itself for them by means of diplomatic action, which can in any event have no place in these proceedings. At all events, Nigeria is here seeking to set opinions and erroneous facts against the rules of conventional and customary law. Any purported oil exploration and exploitation licences, wrongfully issued by Nigeria in the area concerned, cannot confer upon that State any legal title in the area, notably on Cameroon's continental shelf. And your Court cannot allow facts to override conventional law, in this case the Yaoundé II and Maroua Agreements of 1975.

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[43] *I.C.J. Reports 1986*, pp. 586-587, para. 68.

[44] Rejoinder of Nigeria, p. 425, para. 9.15.

46. But Nigeria has flung in every possible argument imaginable. Doubtless aware of the weakness of the argument of overlapping oil concessions, it also invokes the lateness of Cameroon's claims. In paragraph 10.17 of its Rejoinder it writes:

> "If, in fact, Cameroon had entertained claims to the extended areas covered by Nigeria's deep water licenses, the time to say so was in the 1960s and 1970s, when the groundwork for so much subsequent development was being laid down — and not *en revanche*, on 16 March 1995, the date of Cameroon's Memorial . . . It should also be noted that Nigeria was uninterruptedly a party to the Optional Clause from 3 September 1965, without any relevant reservation." (Rejoinder of Nigeria, p. 437, para. 10.17.)

47. Mr. President, that is a temporal argument, conveying the notion of a time-bar on claims. Cameroon does not consider it necessary to express a position on this point, notwithstanding its doubts as to the existence of a time-bar of this kind with respect to maritime delimitation. In reality, Nigeria is doing whatever it can to conceal the truth. But it is betrayed by its own dates: it was quite simply not possible, either for the oil companies or for the two States Parties to this case, to foresee in the 1960s and 1970s the future boom in the development of deep-sea oil operations.

68 The state of oil technology, which means that deep-sea oil exploration can currently be conducted offshore, did not permit this then. It is thus quite wrong to say that the groundwork for subsequent development was already being laid down at that time. It is the extraordinary potential of current offshore exploration techniques that has attracted the interest of all the coastal States and led to an ever-increasing number of disputes; and no one can reproach Cameroon for defending its interest in the light of the new perspectives thus opened up.

48. Finally, to substantiate the notion that the — ultimately quite recent — overlaps of the Nigerian licences and concessions with Cameroon's oilfield were acquiesced in by Cameroon, Nigeria states that Cameroon's activity remained confined within the "limit of operations"[45]. It then produces a series of 41 diagrams on eight sheets inserted between pages 460 and 461 of its Rejoinder.

49. Mr. President, Nigeria is patently confusing the "limit of operations" with the maritime boundary. But this confusion is actually of little significance because Nigeria itself acknowledges that there is consistent practice in the concessions which respects the line. Thus, in this case,

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[45]Rejoinder of Nigeria, para. 10.17.

Nigeria's "oil practice line" and Cameroon's "limit of oil operations" both follow the course of the maritime boundary up to point G and virtually coincide with that boundary, as is clear from the sketch-map being shown now (slide No. 8) (reference No. 88). The three lines, Nigeria's "oil practice line", Cameroon's "oil operations" line and, in the middle, the maritime boundary as established by the Maroua Agreement of 1975, follow the same course and, in reality, coincide.

50. As for the series of diagrams produced by our opponents, Nigeria confirms that they are the product of a compilation assembled from a number of sources. The use of such a method casts doubt on the reliability, and hence the relevance, of those diagrams. They have the look of what a very revealing English expression terms "self-serving evidence"; all the more so because Nigeria itself states that the diagrams generally correspond to the maps published by the Nigerian authorities and because we don't know how the alleged compilation was done, while the sources
69 cited often vary and do not all have the same credibility. The detailed maps produced by IHS Petroconsultants, which is an authority in this field, are nevertheless clear enough in the presentation of the respective oilfields of Nigeria, Cameroon, and Equatorial Guinea, the State intervening in this case. One has only to consider, in particular, the maps of May 1996 and June-July 2001 to appreciate the unreliability of the illustrations produced by Nigeria. Those maps have been annexed and Nigeria has produced them.

51. Mr. President, the overlap of the line produced by the delimitation agreements with concession OPL 230 granted by Nigeria results from a later redefinition of the limits of that concession — as I have already said — and as Nigeria itself acknowledges. It writes: "It is true that many concessions currently in force were granted in the last 10 years", even if, in the following part of the sentence, it seeks to mitigate the effect of this statement by adding "in most cases (including OPL 98 and the western part of OPL 230) these were re-issues or re-grants after long-established license areas had been relinquished or exchanged"[46]. Moreover, in referring to "the western part of OPL 230", Nigeria recognizes *a contrario* that the "eastern part", which is claimed to overlap the maritime boundary with Cameroon, was only established quite recently. It follows that this redefinition, for which Nigeria at no time cites any date or pertinent legal texts in

[46]Rejoinder of Nigeria, p. 36, para. 10.15.

its Rejoinder, is of no relevance and can in no way call into question a line established by agreement. Moreover, the eastern limit of concession OPL 98 (NNPC/Addax), established in 1973 and redefined in 1998, confirms this boundary, since it follows the maritime boundary determined by the Maroua Agreement from point D to point G — yet further evidence of Nigeria's belief as to the binding nature of that line.

52. In conclusion, Mr. President, Members of the Court, Cameroon would recall:

— that the maritime boundary is determined in the first sector by the London Agreement of 1913, the Yaoundé Agreement of 4 April 1971 and the Maroua Agreement of 1 June 1975;

— that the "fait accompli" of the oil concessions has no effect on this conventional delimitation;

70 — that the oil practice of Cameroon and Nigeria in the area confirms that delimitation.

53. The Republic of Cameroon could, were it opportunistically inclined, have followed Nigeria in challenging the Maroua Agreement, which was concluded at the highest level by the Heads of State. But Cameroon is a country which remains faithful to its international obligations, even when they are not necessarily favourable to it, all the more so as it remains convinced, Mr. President, of the legal validity of that Agreement.

54. This is why I would ask you, Mr. President, to give the floor, on Monday now probably, to Professor Christian Tomuschat, so that he can demonstrate this to you. Thank you for your kind attention.

The PRESIDENT: Thank you, Professor Kamto. It is not my intention to give the floor to any further speakers this morning, and we will resume our sitting on Monday at 10 a.m. The sitting is therefore now closed.

The Court rose at 1.10 p.m.