

CR 2002/9

**Cour internationale
de Justice**

LA HAYE

**International Court
of Justice**

THE HAGUE

ANNÉE 2002

Audience publique

tenue le vendredi 1^{er} mars 2002, à 10 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président,

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

COMPTE RENDU

YEAR 2002

Public sitting

held on Friday 1 March 2002, at 10 a.m., at the Peace Palace,

President Guillaume presiding,

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

VERBATIM RECORD

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

Present: President Guillaume
 Vice-President Shi
 Judges Ranjeva
 Herczegh
 Fleischhauer
 Koroma
 Higgins
 Parra-Aranguren
 Kooijmans
 Rezek
 Al-Khasawneh
 Buergenthal
 Judges *ad hoc* Mbaye
 Ajibola
 Registrar Couvreur

Le Gouvernement de la République du Cameroun est représenté par :

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

comme agent;

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

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

comme coagents, conseils et avocats;

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

comme agent adjoint, conseil et avocat;

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

comme conseiller spécial et avocat;

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

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

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

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

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

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

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

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

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

comme conseils et avocats;

The Government of the Republic of Cameroon is represented by:

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

as Agent;

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

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

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as Special Adviser and Advocate;

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

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

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

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

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

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

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

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

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

comme conseils;

M. Pierre Semengue, général d'armée, contrôleur général des armées, ancien chef d'état-major des armées,

M. James Tataw, général de division, conseiller logistique, ancien chef d'état-major de l'armée de terre,

S. Exc. Mme Isabelle Bassong, ambassadeur du Cameroun auprès des pays du Benelux et de l'Union européenne,

S. Exc. M. Biloa Tang, ambassadeur du Cameroun en France,

S. Exc. M. Martin Belinga Eboutou, ambassadeur, représentant permanent du Cameroun auprès de l'Organisation des Nations Unies à New York,

M. Etienne Ateba, ministre-conseiller, chargé d'affaires a.i. à l'ambassade du Cameroun, à La Haye,

M. Robert Akamba, administrateur civil principal, chargé de mission au secrétariat général de la présidence de la République,

M. Anicet Abanda Atangana, attaché au secrétariat général de la présidence de la République, chargé de cours à l'Université de Yaoundé II,

M. Ernest Bodo Abanda, directeur du cadastre, membre de la commission nationale des frontières,

M. Ousmane Mey, ancien gouverneur de province,

Le chef Samuel Moka Liffafa Endeley, magistrat honoraire, *Barrister-at-Law*, membre du Middle Temple (Londres), ancien président de la chambre administrative de la Cour suprême,

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M. Francis Fai Yengo, ancien gouverneur de province, directeur de l'organisation du territoire, ministère de l'administration territoriale,

M. Jean Mbenoun, directeur de l'administration centrale au secrétariat général de la présidence de la République,

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

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

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

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

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

Mr. Ousmane Mey, former Provincial Governor,

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

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

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

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

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

M. Robert Tanda, diplomate, ministère des relations extérieures

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

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M. Guy Roger Eba'a,

M. Aristide Ezzo,

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Mme Lawrence Polirsztok,

Mme Mireille Jung,

M. Nigel McCollum,

Mme Tete Béatrice Epeti-Kame,

comme secrétaires de la délégation.

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

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

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Mr. Eithel Mbocka

Mr. Olinga Nyozo'o,

as Media Officers;

Ms René Bakker,

Ms Lawrence Polirsztok,

Ms Mireille Jung,

Mr. Nigel McCollum,

Ms Tete Béatrice Epeti-Kame,

as Secretaries.

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

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

as Co-Agents;

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

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

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comme conseils;

S. Exc. l'honorable Dubem Onyia, ministre d'Etat, ministre des affaires étrangères,
M. Maxwell Gidado, assistant spécial principal du président pour les affaires juridiques et
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M. I. Ayua, membre de l'équipe juridique du Nigéria,
M. F. A. Kassim, directeur général du service cartographique de la Fédération,
M. Alhaji S. M. Diggi, directeur des frontières internationales, commission nationale des frontières,
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M. K. M. Tumsah, assistant spécial du directeur général de la commission nationale des frontières
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M. Aliyiu Nasir, assistant spécial du ministre d'Etat, ministre de la Justice,

comme conseillers;

M. Chris Carleton, C.B.E., bureau hydrographique du Royaume-Uni,
M. Dick Gent, bureau hydrographique du Royaume-Uni,
M. Clive Schofield, unité de recherche sur les frontières internationales, Université de Durham,
M. Scott B. Edmonds, directeur des opérations cartographiques, *International Mapping Associates*,
M. Robert C. Rizzutti, cartographe principal, *International Mapping Associates*,

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Mr. Maxwell Gidado, Senior Special Assistant to the President (Legal and Constitutional Matters),
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Mme Coralie Ayad, secrétaire, cabinet D. J. Freeman, *Solicitors*, City de Londres,

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

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

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

comme personnel administratif.

Le Gouvernement de la République de Guinée équatoriale, qui est autorisée à intervenir dans l'instance, est représenté par :

S. Exc. M. Ricardo Mangué Obama N'Fube, ministre d'Etat, ministre du travail et de la sécurité sociale,

comme agent et conseil;

S. Exc. M. Rubén Maye Nsue Mangué, ministre de la justice et des cultes, vice-président de la commission nationale des frontières,

S. Exc. M. Cristóbal Mañana Ela Nchama, ministre des mines et de l'énergie, vice-président de la commission nationale des frontières,

M. Domingo Mba Esono, directeur national de la société nationale de pétrole de Guinée équatoriale, membre de la commission nationale des frontières,

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

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

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

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Mr. Bruce Daniel, International Mapping Associates,

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The Government of the Republic of Equatorial Guinea, which has been permitted to intervene in the case, is represented by:

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

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

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

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

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

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

as Technical Experts.

Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte. Avant d'inviter la délégation de la République fédérale du Nigéria à poursuivre ses plaidoiries, je souhaiterais vous préciser ce qui suit. Le Nigéria a fait tenir hier après-midi à la Cour, ainsi qu'à la Partie camerounaise, la copie sur cassette du montage audiovisuel qu'il désirait présenter à l'audience d'hier. Ainsi qu'il est d'usage en pareil cas, j'ai consulté les agents des Parties à ce sujet. La République du Cameroun m'a fait savoir qu'elle ne s'opposait pas à cette présentation. La Cour a décidé que le Nigéria pourrait produire le montage audiovisuel en question, au moment qui lui paraîtrait le plus opportun lors de ses plaidoiries. Je donne maintenant la parole au nom de la République fédérale du Nigéria au professeur Ian Brownlie.

Mr. BROWNLIE: Thank you, Mr. President.

POST-INDEPENDENCE BAKASSI

1. Mr. President, distinguished Members of the Court, it is a considerable honour for me to represent the Federal Republic of Nigeria in these proceedings. My task today is to examine the legal bases of Nigeria's title to the Bakassi Peninsula with particular reference to the post-independence period.

2. My agenda will consist of seven elements:

First: The bases of Nigerian title.

Second: The absence of evidence of a peaceful Cameroonian presence.

Third: A discussion of certain preliminary questions.

Fourth: A description of Bakassi and the Nigerian community living in the Bakassi, which numbers over 150,000.

Fifth: The reliance of Nigeria upon the doctrine of historical consolidation of title.

Sixth: An examination of the leading constituents of the evidence of Nigerian title and the relation of Bakassi to the Nigerian mainland.

And finally: The evidence of Cameroonian acquiescence.

3. References to documents and reports of Judgments will appear in the transcript.

4. And my argument begins with the legal situation at the time of independence.

5. As my colleague, Sir Arthur Watts, has pointed out, the title of Nigeria to Bakassi was originally a title vested in the Kings and Chiefs of Old Calabar. The original title of Old Calabar was not affected by the Anglo-German Treaty of 11 March 1913 and was eventually absorbed in the emerging entity of Nigeria. At the time of independence in 1960 the original title to Bakassi vested in Nigeria as the successor to Old Calabar.

6. The considerations advanced by the Attorney-General of Cross River State, and by Sir Arthur Watts, constitute a powerful and attractive affirmation of the original title of Nigeria to the Bakassi Peninsula, which original title subsisted at the time of independence.

7. In the light of this argument, based upon original title, the position of Nigeria involves three distinct but interrelated bases of title over the Bakassi Peninsula.

- (i) Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar, which title vested in Nigeria at the time of independence in 1960;
- (ii) peaceful possession by Nigeria, acting as sovereign, and an absence of protest by Cameroon; and
- (iii) manifestations of sovereignty by Nigeria together with acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula.

8. These three bases of title apply both individually and jointly. In particular, the title on the basis of historical consolidation, together with acquiescence, in the period since the independence of Nigeria, constitutes an independent and self-sufficient title to Bakassi. The evidence indicates two stages in the post-independence period.

9. Stage 1. From the time of independence until 1968 Nigeria had peaceful possession of the Bakassi Peninsula — peaceful possession of the Bakassi Peninsula — which continued to be administered as part of the Eastern Region of Nigeria. In 1968 there were acts of harassment by Cameroonian soldiers which were aimed at some of the Nigerian towns. However, Cameroon had no system of administration in place at that time or at any time thereafter.

10. Stage 2. From 1972 there were Cameroonian initiatives concerning the renaming of towns and villages, initiatives which were ineffective and which clearly indicated the absence of

any Cameroonian administration in the region. From 1972 onwards there were sporadic Cameroonian activities but at no stage did Cameroon exercise overall or exclusive control.

11. The specific characteristics of the situation can now be identified.

- (i) At least until 1968 Nigeria exercised peaceful possession in respect of Bakassi and Cameroon acquiesced in this status quo.
- (ii) At no stage did Cameroon exercise *peaceful* possession.
- (iii) The effective possession of Bakassi by Nigeria after independence confirmed the original title which subsisted as a consequence of the ineffectiveness and non-implementation of the 1913 Treaty in the Bakassi region.
- (iv) Quite apart from the proof of original title the effective possession of Nigeria is to be found in acts manifesting a continuous and peaceful display of sovereignty over the territory.

12. Thus far I have presented the analytical schema of the Nigerian bases of title. Before I advance further on the presentation of the case for Nigeria, it is necessary to establish a sense of context and general perspective.

The absence of evidence of a peaceful Cameroonian presence

13. Mr. President, these proceedings are based on a series of paradoxes, and one of these paradoxes is the absence of evidence of a Cameroonian presence in the Bakassi Peninsula. This involves a paradox, of course, because Cameroon is the claimant in these proceedings begun by unilateral Application.

14. In this context it is significant that the dispute did not substantially emerge until January 1994. This is confirmed by the contents of the Application, and, in particular, paragraphs 9 to 11, and 13.

15. The text of the Cameroonian Memorial is entirely compatible with this view: I refer here to paragraphs 1.19 to 1.35.

16. The conduct of Cameroon has been the subject of a preliminary examination in the Nigerian Counter-Memorial from pages 280 to 284. When in 1968 the Nigerian fishing port of Abana was attacked by Cameroonian security forces, the Nigerian Government promptly protested

the violation of Nigerian sovereignty (Ann. NC-M 206). A further episode of harassment in 1970 was also the subject of protest (Ann. NC-M 207). This activity by Cameroon was not accompanied by any assertion of sovereignty in response to the Nigerian protests.

17. In the period after Independence, the Bakassi Peninsula was administered as a part of Nigeria *à titre de souverain*, was inhabited by Nigerian nationals, and had exclusively Nigerian social and economic affiliations. In these proceedings Cameroon now claims that she has consistently exercised sovereignty in the region. But, if this were really the case, there would have been a series, a pattern, of protests in face of the Nigerian presence.

18. The incidence of protests confirms the view that the administration of the region by Nigeria after Independence was not contested by Cameroon until a considerable number of years had elapsed. The Nigerian presence was public in every way and involved the exercise of authority over a substantial population. In the event the first Cameroon protest was sent on 15 September 1969 (Counter-Memorial of Nigeria, Ann. NC-M 148). This refers to the building of a primary school by “the religious authorities of Nigeria” at “Abana, in Cameroun territory” — this refers to tab 15 in the judges’ folder. No reference is made to the extent of the Cameroon claim.

19. The next relevant item is the Cameroonian Note dated 13 October 1980 (Reply of Cameroon, Ann. RC 51.) The text is as follows:

“The Ministry of Foreign Affairs of the United Republic of Cameroon presents its compliments to the Embassy of the Federal Republic of Nigeria and has the honour to state that, on the 3rd to 4th July 1980, five Uniformed Nigerian Police Officers entered Jabane, a territory under the sovereignty of the United Republic of Cameroon, and arrested one Nigerian prisoner, who had escaped from the Nigerian Convict Prison, without the courtesy of alerting or even getting official clearance from the competent Cameroonian Authorities.”

And the Note continues:

“While stressing on the fact that this is only one of the several visits made by the Nigerian Security Officers to these frontier ports, without any courtesy of first obtaining official clearance, the Ministry would like to have in future, the cooperation of the Nigerian Authorities and cease in the continuation of such incidents, which could hamper the good neighbourhood relations that exist already between our brotherly countries.”

20. This appears to be the first Cameroonian Note directly related to the issue of sovereignty over Bakassi. “Jabane” is the designation used by Cameroon for Abana. The protest of 1980 is

given prominence in the list of protests which appears in the Reply of Cameroon, paragraphs 5.233 and 5.234.

21. The general picture receives further confirmation from the text of the Cameroonian Memorial.

22. First, until 1972 the Government of Cameroon acquiesced in the long-established Nigerian administration in the Bakassi region. From 1972 onwards, there were various Cameroon initiatives, and, in particular, project for the renaming of towns and villages, which clearly demonstrates the previous absence of a Cameroonian administration. On the ground, there were sporadic Cameroonian activities which did not result in the establishment of an effective Cameroon control in the region.

23. Secondly, at no stage did Cameroon exercise peaceful possession. From the time of Independence in 1960, until 1972, the Government of Cameroon failed to challenge the legitimate Nigerian presence in the region. In the years after 1972, in spite of a growing intrusiveness on the part of Cameroon, this late development of an expansionist policy (almost certainly related to the purposes of petroleum exploration) could not erase the effects of the earlier attitude of acquiescence.

24. Thirdly, this assessment receives general confirmation from the passages of the Cameroon Memorial which are concerned with "*structures administratives et actes d'administration*" at pages 490 to 496. In these passages no precise documents or data are related to any date earlier than 1968, and the other items, if they are given dates, are related to the years 1976 and later.

25. The key stages in the chronology are confirmed by the contents of the Cameroonian Reply.

26. A striking characteristic of the Cameroon Reply is that it avoids making any detailed comment upon the evidence of Cameroonian acquiescence set forth in the Nigerian Counter-Memorial at pages 267 to 280: I refer, in particular, to the Reply at page 312, paragraph 5.236. In another section of the Reply, at pages 92 to 94, Cameroon purports to examine the acts of acquiescence "alleged by Nigeria". In this section Cameroon avoids dealing with

specific issues of fact and law and instead resorts to abstract legal argument, ignoring the actual evidence.

27. Similarly, in the section of the Reply relating to “the role of protests”, at pages 94 to 97, there is an avoidance of an examination of the actual evidence presented by Nigeria. Moreover, the Reply makes a partial admission, when it states:

“It is true that the Cameroonian government has not always protested against the encroachments on its territory committed by the Nigerian authorities, or by individuals with the support of those authorities. However, negative legal consequences for Cameroon cannot be derived from its passivity in a limited number of cases.”

And it continues:

*“Firstly, the presentation of the facts by Nigeria is incorrect. Cameroon did indeed send a number of protest notes to the Nigerian government (see *infra*, for example, Chap. 5, paras. 5.233-5.234, and Chap. 11, paras. 11.94-11.99 and para. 11.216). Moreover, Cameroon defended its right over Bakassi and the Darak region, not only by diplomatic action at inter-governmental level but also by acts of authority manifesting its sovereignty.” (Emphasis added.) (Reply, pp. 94-95, para. 2.153.) [Translation provided by the Federal Republic of Nigeria revised by the Registry.]*

28. But these qualifications do not add up to very much. When one turns to pages 311 to 312 of the Reply, there is a list of “official protests” — “official protests” — by Cameroon “à l’occasion d’incidents sur Bakassi”. The list of seven protests covers the period from 1970 to 1994. Only one protest is earlier than 1980: only one protest is earlier than 1980. This relates to 1970 and concerns a maritime incident which took place at the entrance to the Rio del Rey, off Inua Abasi (see Reply of Cameroon, Ann. RC 20). The circumstances lying behind the alleged incident are obscure and the relevant Note raises no issue concerning title to Bakassi.

29. When the evidence is taken as a whole, it is clear that *at no stage* did Cameroon exercise peaceful possession and *at no stage* did Cameroon exercise control in the region as a whole.

30. The evidence of Cameroonian possession and control is very unimpressive at several levels.

31. The first element is the chronology. Thus Cameroon presents *no data earlier* than 1968, and very few items *before 1973*. The Cameroon data have been analysed in the Nigerian Counter-Memorial (pp. 264-267). This anomaly is confirmed and amplified by the content of the Cameroonian Reply, at pages 307 to 312.

32. It is very significant that Cameroon has not been able to produce any evidence of affiliations of the communities in Bakassi with Cameroon. Cameroon has not alleged that any Cameroonian nationals have been *displaced* as a consequence of Nigerian actions. No claim has been presented on behalf of Cameroonian nationals *resident in* the Bakassi region: I refer here to the conclusions of the Republic of Cameroon in the Memorial and again in the Reply.

33. In the passages in the Memorial in which some reference to Cameroonian nationals might have been expected, reference is made exclusively to communities of Nigerian origin "*résidant au Cameroun*": I refer to the Memorial, at page 490 (para. 4.433) and again at page 491 (para. 4.434).

34. The general *absence* of a Cameroonian presence emerges from the evidence produced by the respective Parties.

35. The Government of Cameroon is unable to produce any reliable evidence concerning the administration of justice in the Bakassi region. This is clear from a perusal of the Memorial, at pages 490 to 496 and the Reply, pages 307 to 312. No fact is alleged and no document invoked to prove the existence of a system of criminal justice.

36. In respect of the existence of a police presence, the Memorial confines itself to some general assertions as follows:

"In accordance with the system of deploying public services, and more particularly security services, throughout the Cameroonian territory, there are Gendarmerie and customs services at the administrative centre of the Division (Mundemba) and at the administrative centres of the Districts (Bamuso, Idabato, Ekondo Titi, Mundemba, Kombo Itindi). At the district level, such as in Idabato, there is only one gendarmerie unit." (Memorial, p. 493, para. 4.444.)

37. In the list of names, as on the graphic at tab 16 and now on the screen, only West Atabong, named Idabato by Cameroon, refers to a town in Bakassi. No dates are indicated in this passage and no document cited. And, of course, it is admitted by Cameroon that only one gendarmerie unit existed, although it is not clear *when* it existed.

38. The Reply of Cameroon makes no reference to the administration of justice or the presence of police in the Bakassi region: here I refer again to the Reply at pages 307 to 312.

39. The pleadings of Cameroon provide no adequate evidence of the exercise of *civil* jurisdiction in the Bakassi region. The relevant paragraphs in the Memorial, paragraphs 4.450

and 4.451, do not cite any documents to support the assertions made. The Reply, pages 307 to 312, makes no claims relating to the exercise of civil jurisdiction. The text of the Memorial, paragraph 4.451, refers to a customary court sited in Bamusso, which is not located in the Bakassi region. And no evidence is given to indicate that this court actually exercised jurisdiction over any part of Bakassi or its residents. There is also a reference in the pleading of Cameroon to a tribunal of first instance in Mundemba, but, once again, this town is not in the Bakassi region, as we have seen already.

40. The written pleadings of Cameroon contain no reference of any kind to the exercise of the following classes of acts of administration in the Bakassi Peninsula:

- (i) The use of currency.
- (ii) The exercise of authority by traditional rulers.
- (iii) The exercise of military jurisdiction.
- (iv) Participation in parliamentary elections.
- (v) Control of immigration.
- (vi) The exercise of ecclesiastical jurisdiction.
- (vii) Postal administration.
- (viii) The licensing of canoes.
- (ix) The grant of letters of administration.

41. In respect of the following categories of administration, the specific type is referred to but *no* documentary or other evidence is produced:

- (i) The jurisdiction of customary law courts.
- (ii) Maintenance of public order.
- (iii) The exercise of civil jurisdiction.
- (iv) Census taking.
- (v) Delimitation of electoral wards.
- (vi) Public education.
- (vii) Public works.
- (viii) Public health.
- (ix) The collection of customs duties.

42. Thus, in all, 18 significant forms of State activity are either not referred to by Cameroon or are asserted to exist but with no adequate proof.

43. A key aspect of the matter is the fact that Cameroon has not produced any evidence to suggest that the region is inhabited by nationals of Cameroon. This picture receives strong confirmation from the pattern of evidence relating to State activities and acts of administration, a pattern which, of course, includes *the absence* of a Cameroonian presence.

44. Mr. President, the various absences of Cameroonian activities are eloquent. The Cameroonian Reply fails to provide any contradiction of the evidence produced by Nigeria in the Counter-Memorial on the role of the traditional rulers in the administration of the Bakassi region.

45. Particularly striking is the weakness of the evidence of public education or the existence of churches with a Cameroonian provenance. In respect of schools the Cameroonian Reply offers no evidence but refers to paragraphs 4.452 to 4.456 of the Memorial (see the Reply, p. 307, para. 5.218).

46. In fact the only relevant statement in the Memorial is in paragraph 4.453 which reads as follows, in the translation provided by the Registry:

“Schools built by the Cameroonian Government, at both the primary and secondary levels, are also found in the Peninsula. The Catholic School in Mundemba, the Catholic School in Ekondo-Titi, and the Primary School in Bamuso might be mentioned as illustrations at the primary level, and at the secondary level, the Lycée in Mundemba (founded in 1975), the CES in Issangele (1992) and Bamuso (1992) as regards general education and the SAR in Mundemba as regards technical education (the SAR founded in Bamuso proved unviable).” (Para. 4.453.) [*Translation provided by the Federal Republic of Nigeria and revised by the Registry.*]

47. Mr. President, as can be seen on the graphic at tab 17, in fact none of these locations are in Bakassi and thus in the result Cameroon, in *two rounds* of written pleadings, has failed to provide evidence *of a single school run* by the Cameroonian authorities in the Bakassi region *with the exception* of a primary school referred to in a report dated 15 October 1988; which is in the Reply of Cameroon, Annex RC 180. The absence of reference to schools constitutes a powerful contradiction of the Cameroonian claim to sovereignty, more especially when the region concerned is populated, and the provision of schools is a normal aspect of life in Nigerian society. Moreover, the Reply of Cameroon has failed to respond to the evidence set forth in the Counter-Memorial, at pages 250 to 252, relating to public education.

48. And the picture is reinforced by the evidence relating to churches. Churches, like schools, form part of the fabric of life in the Bakassi towns and villages. The fabric of life is Nigerian in character, both at the level of official activity and at the social level. As in the case of education, so in the case of churches, the Cameroon pleadings provide *no evidence* of the existence of any churches affiliated with Cameroon: I refer to the Cameroon Memorial, pages 486 to 496, and the Reply, pages 307 to 312.

49. In sharp contrast Nigeria has provided evidence of the existence of churches in the main population centres in the Bakassi Peninsula. Thus Clan Heads with authority over the Bakassi towns provide reliable evidence of the creation of churches by authorities based in Nigeria or by individuals from Nigeria. The evidence of the Clan Heads confirms the existence of churches with exclusively Nigerian affiliations in the following towns: Archibong, Akwa (1955), Atabong West (*circa* 1940), Atabong East (*circa* 1940), Abana (*circa* 1950), and Ine Akpa Ikang (1993). And these places appear on tab 18 and are now on the screen. The details are set forth in the Nigerian Rejoinder and the Appendix at pages 195 to 213.

At no stage did Cameroon exercise peaceful possession

50. There is *no evidence* of a peaceful exercise of possession by Cameroon at any stage. In the first place there is a complete absence of evidence of the presence of Cameroon nationals going about their lawful business in the region. And in the second place, there is evidence that *when* a Cameroon presence appeared it involved *forcible intrusion* upon a *peaceful* status quo, a peaceful *Nigerian* status quo.

51. The forcible intrusions began in 1968 and increased in the period of 1970 to 1972. The towns and villages affected can be seen on the graphic in tab 19 and now on the screen. As Nigeria has recorded in her Rejoinder:

“Correspondence between Etubom Okon Ita, Etubom of the people of Atabong, and the Chiefs of local villages in Bakassi in 1968 reveals an interesting insight into their position in society. During the Nigerian civil war, a letter dated 5 April 1968 (Annex NC-M 151) from the Etubom to the Chiefs of Abana, Ine Odiong, Ine Atayo, Ine Akpak and Ine Atabong stated his concern that their villages had been taken over and occupied by Cameroonian soldiers and police acting under the orders of the Cameroonian Government, and that the villagers were being forced to change their nationality from Nigerian to Cameroonian. He requested the attendance of the Chiefs at the meeting to discuss the situation. This letter was followed by correspondence in

Efik (translations are also provided) in which the Etubom arranged the meeting and requested that the villages pay some of the cost of a visit by the Etubom and his lawyer, Barrister Anwan, to Lagos to bring the situation to the attention of the relevant Federal Authorities (Annex NC-M 152). It shows that the Etubom and his Chiefs were concerned by the appearance of Cameroonian soldiers and police and the threat that this constituted to their people, their society, their culture and their allegiances.” (Rejoinder of Nigeria, para. 3.103.)

52. Similar disturbances of the status quo, this time at Abana, were reported in a Nigerian aide-mémoire dated 19 December 1968, in the following terms:

“Reports from the Nigerian Ministry of Defence have indicated that some Cameroun soldiers have been molesting Nigerians (soldiers as well as civilians) along the border between the two countries. On the 11th December, 1968, for instance, Cameroun soldiers were said to have seized three Nigerian soldiers at Abana near Ikgang. The three Nigerian soldiers who were on a river patrol were taken to Cameroun Republic and their three rifles as well as a flying boat were confiscated. Reports have also been received that Nigerian villagers at Abana are being forced to sell their fish in the Cameroun and pay taxes to the Cameroun Republic.

2. The Nigerian Government would be very grateful if the Government of the Cameroun in the usual fraternal spirit could investigate these reports with a view to taking corrective measures so as to prevent any clashes between the soldiers of both countries along the border. Nigerian soldiers have been given strict orders not to retaliate. Urgent action will, therefore, be appreciated on the part of the Cameroun Government.” (Counter-Memorial of Nigeria, Vol. VIII, Ann. NC-M 206.)

53. In 1970 the Nigerian Government had occasion to protest about Cameroonian activities in Abana, a long-established town within Nigerian territory (Counter-Memorial of Nigeria, Ann NC-M 207). The Note recounts the sudden occupation of Abana by force, the closure of the school, and the detention of the teachers. Like the previous episode this conduct indicates the absence of any *pre-existing* Cameroonian administration or control.

54. From 1973 onwards the evidence suggests that the Government of Cameroon had decided to seek to change the Nigerian character of the Bakassi region and to attempt to create evidence of a certain level of Cameroonian presence in the region. As the Court will see, the Cameroonian presence was episodic and precarious.

55. A striking development which involved the period 1972 to 1975 was the appearance of Cameroonian legislation with the purpose of changing the names of towns in the Bakassi Peninsula. The measures concerned were as follows. Late in 1972 a Cameroonian official made proposals for the renaming of towns and villages in the so-called “Idabato District” (Counter-Memorial of Nigeria, Ann. NC-M 208). The outcome appears to have been a draft Prefectoral Order, dated 31 December 1973, purporting to change the names of the Nigerian towns

in the Bakassi region (Ann. NC-M 209). Finally, a definitive Prefectoral Order was promulgated in 1975 (Ann. NC-M 210).

56. Article 1 of the instrument is very significant.

“Article 1: The names of all the fishing settlements in Idabato District appearing in Column I in the following Schedule have changed to those appearing in Column II of the Schedule.”

57. The instrument provides unequivocal proof that until 1973 (at the earliest) there was no Cameroonian claim to administer the Bakassi region. Moreover, the claim to change the long-established Nigerian place names involves an egregious attempt to challenge the legal status quo (the exercise of Nigerian sovereignty) and the ethnic character of the towns (which was and remains Nigerian and Efik).

58. The Cameroonian incursions in the period 1972 and 1973 provoked strong protests from the traditional authorities in Calabar (that is the Etuboms' Council). A Petition of the Etuboms' Council dated 6 July 1973 reads (in part) as follows:

“PROTEST NOTICE AGAINST THE FORCEFUL EJECTION BY THE CAMEROONS GOVERNMENT OF NIGERIANS OF EFIK ORIGIN FROM LAND FORMERLY THE JURISDICTION OF THE OBONG OF CALABAR NOW BY LAW TERRITORY OF THE FEDERATION OF NIGERIA

The Etuboms' Council of Calabar, for and on behalf of His Highness the Obong of Calabar (now in traditional seclusion), crave the indulgence of His Excellency the Governor of South Eastern State of the Federation of Nigeria, through the good offices of the Honourable the Commissioner for Home Affairs and Social Welfare, to register this PROTEST to the Head of State of the Federal Military Government of the Federation of Nigeria against the conduct of the Cameroons Government which has, unilaterally, ejected the persons of Efik origin from the BAKASSI PENINSULA and the land adjacent to the AKPAYAFE RIVER which were formerly the natural jurisdiction of His Highness the Obong of Calabar and now part of the FEDERATION OF NIGERIA.

1. It has been authoritatively reported (*The Nigerian Chronicle*, Monday, 2 July 1973 — No. 124) that Nigerian fishermen living in five villages along the Nigerian/Cameroon border have been ejected and warned never to come back unless with Cameroon visa.” (Counter-Memorial of Nigeria, Ann. NC-M 211.)

59. In 1973 there was also a Petition from the Atabong Welfare Association based in Calabar, which complained of harassment from Cameroonian gendarmes. This is in tab 20. The Petition was addressed to the Honourable Commissioner for Home Affairs and Social Welfare of the South-Eastern State of Nigeria, representing the Military Governor of the State

(Counter-Memorial of Nigeria, Ann. NC-M 212). The key descriptions of the harassment are as follows:

“We count on His Excellency’s assistance and co-operation in freeing the Atabong and the entire Efiat people from humiliation and defilement in the hands of the Cameroun gendarmes and the oppressive and repressive measures being metted [*sic*] out to our people by the Camerouns Armed Forces stationed at Atabong Fishing Port.

The Atabong people, like all other South-Easterners, suffered much during the period of the Civil War but their sufferings today appear unjustified. We are treated like a people in a Police State, and virtually compelled to live in a military camp, being denied freedom of movement. Our wives are not treated as women since any gendarme can seize a woman’s wrapper on the road leaving her half-clad or naked if he likes the cloth. They enter a man’s house and rape the wife in the presence of the husband and get the husband beaten to the point of death at the slightest sign of protest. These beastly men have no regards for human dignity and their District Officers appear to have no powers over them. They beat one of our sons to death about a year ago, and as recently as January, 1973 they beat another of our sons almost to death and had carried him away to Camerouns his fate still unknown to us today.

These may sound like stories but they are daily occurrences at Atabong on the Bakasi Peninsula. There could have been several exhibits as proofs of these brutal acts if Atabong people had the chance of bringing victims to Calabar or Oron. People trying to bring up victims even on pretext of coming to the hospital for treatment have been intercepted and beaten up.”

60. In 1973 for the first time Cameroonians attempted to collect land rents from Atabong and other Nigerian towns. The inhabitants refused to pay and complained through their Chiefs to the Nigerian Embassy in Yaoundé (Counter-Memorial of Nigeria, Ann. NC-M 213). Their particular complaint was that no one “from time immemorial” had ever asked the inhabitants to pay land rent.

61. Further episodes of harassment by Cameroonians police and armed forces took place in 1974 and 1976 and are described in the Counter-Memorial at pages 272 to 279.

62. This picture is broadly replicated in the sphere of taxation. The evidence relating to taxation is of considerable importance and it reflects the political and social realities of the region. This being so, with your permission, Mr. President, I shall examine the evidence in some detail.

63. Of particular evidential value is the collection of tax from residents of the Bakassi Peninsula by the Cross River State of Nigeria (Calabar Tax Division) and Mbo Local Government (Akwa Ibom State). The evidence takes the form of the Nominal Roll of taxpayers who paid their taxes in Akpabuyo Tax District in Calabar Tax Division of South-Eastern State. Copies of this

information (both in manuscript and in typescript) and a selection of related individual tax receipts, relating to the fiscal year 1967 to 1968, can be found at Annexes NC-M 165 and NC-M 166 of the Counter-Memorial of Nigeria. This evidence was provided by the Office of the Governor of Cross River State.

64. The Bakassi towns involved are as follows and are on tab 21 (it can't be on the screen):

- Akwa Town
- Archibong Town
- Mben Mong
- Nwanyo
- Atabong, and
- Abana.

65. Evidence in the form of the Internal Revenue Stock and Distribution Register (Eastern Nigeria) establishes that, in the fiscal year 1969 to 1970, income tax was being collected in Abana on the Bakassi Peninsula (Counter-Memorial of Nigeria, Ann. NC-M 169, and Rejoinder of Nigeria, Ann. NR 59).

66. The taxable Population Register for Effiat Mbo Clan in Oron LGA (within Akwa Ibom State) for the year 1987 includes the Bakassi towns and villages of Ine Ekpo, Abana, Ine Atayo, Ine Akpak and Ine Odiong (Rejoinder of Nigeria, Ann. NR 60).

67. There can be no doubt that the imposition of taxes is recognized by tribunals as evidence of sovereignty. This Court accepted evidence of the imposition of local and other taxes as evidence of title in the *Minquiers and Ecrehos* case (*I.C.J. Reports 1953*, pp. 65, 69). Evidence of taxation was regarded as relevant by the Court in its Advisory Opinion concerning *Western Sahara* (*I.C.J. Reports 1975*, pp. 45-47, paras. 99-103), and also by the Court of Arbitration in the *Rann of Kutch* case (*ILR*, Vol. 50, p. 1 at p. 461).

68. The evidence available indicates that the inhabitants of the Bakassi region habitually paid taxes to the Nigerian authorities of the Cross River State and Akwa Ibom State. This appears from the following contemporary *Nigerian* report of an attempt by officials of Cameroon to collect taxes from residents of Archibong and Akwa in 1984. The report, addressed to Force Headquarters in Lagos, and dated 28 September 1984 reads, in material part, as follows:

“NIGERIAN/CAMEROON BORDER

I wish to bring the following incident to your notice for urgent attention.

2. On the 26th September, 1984 at 1500 hours, seven persons of Archibong and Akwa villages in Odukpani Local Government Area of Cross River State reported to the Police at Ikang with a document addressed to each of them by a Cameroonian Divisional Officer stationed at Isangele. A photo-copy of the said document is attached. These villages are just eight kilometres from Ikang town. From their names ‘Archibong’ and ‘Akwa’ which are Nigerians, I have the feeling that the villages are part of Nigeria. In a nutshell, the content of the document is an official invitation by the Cameroon government official.
3. The seven Nigerians who are recipients of this invitation are law abiding citizens and ordinarily reside in these villages. They have nothing to do whatsoever with the administration of the Cameroon government. It is hazard however that the invitation of the Nigerians to Isangele may be for the payment of taxes. But I will want it known that hitherto, these Nigerians pay their taxes to Nigeria authority. The villagers expressed surprise and fear at the invitation and regard it as a calculated attempt by Cameroon government to extend its influence and control over the area.

[This in 1984.]

4. Although I am not detailed in the geographical boundary, data of the area, but I am of the view that the presence of the Cameroon officials in these villages violates our territorial integrity.” (Rejoinder of Nigeria, Ann. NR 61.)

This Report was signed by the Commissioner of Police of Cross River State.

69. In spite of a *degree* of interference from Cameroon officials, the authorities of Cross River State have continued to exercise the power of taxation in the Bakassi region on a routine basis; I refer to tab 22 in the folder . Tax was collected by Cross River State and Akpabuyo Local Government Authority (LGA) between 1989 and 1994: I refer here to the receipts, “Minimum Income Tax Tickets” and “General Rate Tickets”, relating to Abana; in Annex NR 62 of the Rejoinder of Nigeria, for example.

70. The Effiat-Mbo Local Government Area imposed taxes on Bakassi villages in the area of its competence through its task force: I refer to the Register for General Rate Tickets issued in 1990 (Annex NR 63).

71. Recent information from the six Clan Heads having authority in the Bakassi towns confirms that the residents originally paid tax to Akpabuyo LGA, Mbo LGA and Okobo LGA. Since 1996, they have all paid taxes to the Bakassi LGA: I refer to the Nigerian Rejoinder (pp. 195-213), and also to tab 22 and the graphic on the screen.

72. The Cameroon Government accepts that the power to levy taxes is one of the most significant manifestations of title to territory: I refer to the Memorial at page 493, paragraph 4.446. In support of its assertion that this power has been exercised in the Bakassi region only two documents are produced. The first is a Poll Tax Roll for the fiscal year 1981-1982. In the text of the Memorial (p. 494, para. 4.448) this document (at Ann. MC 255) is used as the basis for the following assertion:

“The taxes levied in the various fisheries, particularly those at Idabato I, Idabato II, Jabane I, Jabane II, Naumsi Wan, Kombo a Mpungu, Forisane, Kombo a Ngonja, Kombo a Monjo, Kombo a Jane, Ine Akarika, Kombo a Kiase, Kombo Abedimo, Kombo a Billa, amounted to 9,450,000 FCFA for the 1980-1982 accounting period.” (Memorial of Cameroon, Ann. 255.)

73. Two points stand out. In the first place, no evidence is provided relating to the period 1960 to 1980. And, secondly, only seven of the places specified have been clearly identified by Cameroon as being *within* the Bakassi region: that is, Idabato I and II, Jabane I and II, Kombo Abedimo, Naumsi Wan, and Forisane. Some of these names are the Cameroonian locations for West and East Atabong, Abana and Ine Ikoi.

74. The Cameroon Reply invokes a *second* document, a list of tax collectors for the commune of Tiko for the year 1972 to 1973 (Ann. RC 34). The problem with this document, Mr. President, is that the commune of Tiko is not located in or anywhere near the Bakassi region, as can be seen on the graphic in tab 23 presently on the screen.

75. In the result there is only one document which refers, at least in part, to the taxation of towns and villages in Bakassi, and this relates to a single tax year, 1981-1982. This does not constitute evidence of a *pattern*, much less a *consistent* pattern, of State activity. Moreover, the fragmentary and unreliable evidence offered by Cameroon contrasts with the evidence of Nigerian tax collection since the 1960s.

76. The evidence supports the view that Cameroon efforts to collect taxes were episodic, deeply resented by the Nigerian inhabitants of Bakassi, and constituted no more than illegal acts of harassment. As the Clan Heads have indicated, the inhabitants have never paid taxes to Cameroon except in the consequence of threats of force.

77. The overall picture is affirmed by the chronology of the materials advanced on the part of Cameroon to support its claim to the Bakassi Peninsula. The passages devoted to evidence of acts

of administration in the Cameroon Memorial at pages 490 to 496, relate only to 1968 and later, and the majority of items relate to the years 1976 onwards.

78. The same picture emerges from the relevant section of the Cameroon Reply, at paragraphs 5.218 to 5.232. The content of this section can be analysed briefly.

79. *Paragraph 5.218.* This refers back to the relevant passages in the Memorial and includes the following passage:

“Les particularités géographiques (climat, relief) et humaines (présence de nombreux habitants d’origine nigériane) n’ont pas empêché le Cameroun d’exercer sa souveraineté de manière continue et pacifique dans l’ensemble de la péninsule.”

80. *Paragraph 5.219.* This makes the baseless assertion that Nigeria accepts that, at least since 1973, Cameroon had the intention to act *à titre de souverain* in Bakassi.

81. *Paragraph 5.220.* This repeats the same assertion.

82. *Paragraph 5.221.* This simply reaffirms the materials contained in the Memorial.

83. *Paragraph 5.222 and paragraphs 5.240 to 5.248.* Here, as evidence of acquiescence, Cameroon refers to an episode in which a local dispute between Otu and Eking was settled, allegedly in favour of Cameroon, in 1962. This argument is difficult to follow as a matter of principle. But in any event the evidence is worthless because the two locations referred to are outside and far to the north of the Bakassi region: I refer to the graphic in tab 24 which is presently on the screen.

84. *Paragraphs 5.223 to 5.225.* The items invoked relate to the period November 1968 to January 1969. The principal item is a document in English. It is an Economic Report for Ndian Division of Cameroon dated 30 November 1968 (Ann RC 17). This document refers to the Nigerian character of the region and affirms that “nearly all the settlers in the region are Nigerians and consequently speak Nigerian languages and use Nigerian currency”.

85. *Paragraph 5.226.* This refers to a report by a Cameroonian official dated 28 February 1969 (Ann RC 18). The text of the report makes it abundantly clear that Atabong and associated villages had not hitherto been willing to pay taxes to Cameroonian collectors because the population was Nigerian and did not recognize the region as a part of Cameroon.

86. *Paragraph 5.227.* The materials invoked here relate to 1971 (Ann. RC 28).

87. *Paragraph 5.228.* The materials invoked here relate to the year 1972 to 1973 (Ann. RC 34). However, they do not concern locations in Bakassi.

88. *Paragraph 5.229.* The item here relates to 1976 (Ann. RC 44), but once again the locations referred to are not in Bakassi.

89. *Paragraph 5.230.* The document invoked refers to locations which are not to be found in the Bakassi Peninsula (Ann. RC 126).

90. *Paragraph 5.231.* The documents referred to here relate to the year 1988: this is the document Annex RC 180 in the Reply of Cameroon. These documents confirm the absence of services, including the absence of posts and communications. Reference is also made in this Annex, but not in the text of the Reply, to the existence of a primary school. This is the first such reference in the documents produced by Cameroon, and the document is dated 15 October 1988, not long before these proceedings began.

91. *Paragraph 5.232.* The documents mentioned here are dated 28 September 1992 and 30 June 1994 (Ann. RC 197), and are purely programmatic in character.

92. In relation to the issue of local administration, the relevant passages of the Memorial of Cameroon have been analysed in the Counter-Memorial at page 264. It is there pointed out that there is an absence of proof of *actual acts* of administration. The Cameroon Reply does not add very much; I refer to pages 307 to 310. Thus, the materials relied upon by Cameroon in the context of the evidence of local administration demonstrate that there was *little or no reality* behind the legislation purporting to establish an administration.

93. In this context it is helpful to recall the "fundamental principle" propounded by Sir Gerald Fitzmaurice according to which "greater probative force" is "attributable to a State's acts and conduct than to its professions" (*British Year Book*, Vol. 32 (1955-1956), pp. 63-64). As Fitzmaurice points out, the Court in the *Minquiers* case laid stress on the concrete evidence "which relates directly to the possession of the . . . groups" (*I.C.J. Reports 1953*, p. 55.) Much of the Cameroonian evidence of administration is not concrete but abstract, as the documents I have analysed clearly demonstrate.

94. The importance of stability in boundary matters is often stressed and the Government of Nigeria has *its own major concerns* in this regard. The recognition of the political, social and

economic status quo in the Bakassi region by the Court will strongly militate in favour of the continuity and stability in the affairs of the region, including the adjacent Federal States of Nigeria.

95. I have now completed the analysis of the weakness of the *Cameroonian* claim to Bakassi and must soon turn to the positive case in support of Nigerian title.

96. However, it is necessary first of all to deal with certain preliminary questions.

The principle of *uti possidetis*

97. In her Memorial Cameroon has sought to invoke the principle *uti possidetis* in support of her case. The appropriate role of *uti possidetis* in these proceedings will be examined by my distinguished friend and colleague Professor Abi-Saab on Monday. As he will demonstrate, the principle of *uti possidetis* provides no assistance to the *Cameroonian* case.

The entitlement of Nigeria is not affected by the Maroua Declaration

98. The next preliminary question concerns the Maroua Declaration. In my submission the entitlement of Nigeria is not prejudiced by the Maroua Declaration.

99. In the period beginning in 1970 the Governments of Nigeria and Cameroon engaged in a series of bilateral meetings for the purpose of settling outstanding maritime boundary issues. The following instruments resulted from this series of talks:

- (a) Declaration of the Joint Nigeria-Cameroon Boundary Commission, Lagos, 23 October 1970 (Preliminary Objections of Nigeria, Ann. NPO 16).
- (b) Declaration of the Joint Nigerian-Cameroon Boundary Commission, Yaoundé, 4 April 1971 (Ann. NPO 19).
- (c) Declaration of the Joint Nigeria-Cameroon Boundary Commission at Lagos, 21 June 1971 (Ann. NPO 21).
- (d) Joint Communiqué, Heads of State Meeting at Garoua, 4 to 6 August 1972 (Ann. NPO 23).
- (e) Joint Communiqué, Heads of State Meeting at Kano, 1 September 1974 (Ann. NPO 24).

100. This sequence of meetings is significant in that it clearly establishes the consistent and constructive contacts between the two Governments, both at the Head of State level and at the level of experts.

101. The Government of Cameroon is now contending that the Declaration adopted by the Heads of State at Maroua on 1 June 1975 (Counter-Memorial of Nigeria, Ann. NC-M 143) is conclusive of the question of title to Bakassi. In the first place it was not binding legally upon Nigeria because, under the 1963 Constitution in force at the material time, General Gowon did not have the power to commit his Government without the approval of the Supreme Military Council, which constituted the Government of Nigeria. The pertinent legislation of the Military Administration of 1966 and 1967 did not abrogate the 1963 Constitution and in its several provisions reference is made to the 1963 Constitution as the *Grundnorm*. It is necessary to interject here the fact that the pertinent constitutional documents were supplied to the Court at the time of the filing of the Rejoinder.

102. In any event the same legislation required the publication of any decree made by the Supreme Military Council in the *Federal Gazette*. The so-called Maroua Declaration was not published in the *Federal Gazette* and thus lacked the force of law.

103. In the circumstances and in view of the series of important meetings involving the two Heads of State and General Gowon's earlier denial of the binding character of the chart signed by him at Yaoundé on the ground that it had not been approved by the Supreme Military Council, the President of Cameroon must have been aware by 1975 of the constitutional constraints under which General Gowon was exercising his authority.

104. In this context, the letter sent by General Gowon to President Ahidjo on 23 August 1974 (Rejoinder of Nigeria, Ann. NR 12)— nine months before the Maroua Declaration — is of substantial probative value. The Nigerian Head of State began by saying that he was writing "on the subject of the difficulties that arise from time to time in the border areas of Nigeria and Cameroun".

In paragraph three of the letter, General Gowon informed President Ahidjo:

"You will recall, Mr. President, that the important question of demarcating the borders between our two countries was discussed at length during our meeting in Garoua. I still believe that the function of the joint commission of experts established to delineate the international boundary between our two countries, was to make recommendations on the basis of their technical examination of the situation, for consideration by our two Governments. As a technical commission, their views and recommendations must be subject to the agreement of the two Governments which appointed them in the first place. You will also recall that I explained in Garoua that

the proposals of the experts based on the documents they prepared on the 4th April 1971, were not acceptable to the Nigerian Government. It has always been my belief that we can, both, together re-examine the situation and reach an appropriate and acceptable decision on the matter.”

105. In this letter, as the Court will readily appreciate, General Gowon was emphasizing the following points to President Ahidjo:

- (i) the question of boundary demarcation between Nigeria and Cameroon is an “important question”;
- (ii) the function of the commission of experts was to make recommendations for the consideration of the two governments;
- (iii) the proposals of the experts based on the documents they prepared on 4 April 1971 were not acceptable to the Nigerian Government;
- (iv) both governments must re-examine the situation and reach an appropriate agreement on the matter; and
- (v) that the arrangements which might be agreed between them were subject to the subsequent and separate approval of the “Nigerian Government”.

106. In the light of this sequence of meetings, and particularly in view of the terms of General Gowon’s letter, when President Ahidjo participated in the talks at Maroua, he must have appreciated the constitutional constraints under which General Gowon was acting. Under the Nigerian Constitution in force at the relevant time — June 1975 — executive acts were in general to be carried out by the Supreme Military Council or subject to its approval. States are normally expected to follow legislative and constitutional developments in neighbouring States which have an impact upon the inter-State relations of those States. Few limits can be more important than those affecting the treaty-making power.

107. The arrangements prevailing within Nigeria were familiar to President Ahidjo, as there had been a series of previous dealings with Nigeria. As the Court will readily recall, Article 46 of the Vienna Convention on the Law of Treaties provides as follows:

“1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

Even if there is a presumption that a Head of State is fully competent to commit his State, Article 46 shows that this presumption is rebuttable.

108. Both Cameroon and Nigeria are parties to the Vienna Convention which, in any event, represents the standard of general international law. In the circumstances President Ahidjo and his government would be familiar with the prevailing practice in the military government of Nigeria and it would have been “objectively evident” that General Gowon did not have *unrestricted* authority.

109. Cameroon suggests, in the Reply of Cameroon, paragraph 8.43, and in the first round of these hearings, that Nigeria’s denial that any international commitment resulted from the Maroua Declaration is inconsistent with Article 7 of the Vienna Convention on the Law of Treaties. In my submission, Cameroon is mistaken as to the significance of this Article.

Article 7 reads, in relevant parts, as follows:

“1. A person is considered as representing a State for [certain specified purposes] if:

(a) he produces appropriate full powers;

.....

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government, . . .”

110. This Article is solely concerned with the way in which a person’s function as a *State’s representative* is established. It does not deal with the separate question of the *extent* of his powers when exercising that *representative* function, which is the matter dealt with in Article 46.

111. Article 7 provides that a person’s *representative* capacity is normally established by the production of “full powers”. Despite its name, “full powers” is the name given to a *document*, being a document which concerns only the question of representative capacity. This is clear from Article 2.1 (c), which reads:

“(c) ‘full powers’ means a document emanating from the competent authority of a State designating a person or persons to represent the State for [certain specific purposes].”

112. Article 7, paragraph 2, does not provide that a Head of State necessarily and as a matter of substance possesses the fullest possible range of powers to commit his State; it only provides that he, like certain other high officials of State, because of his office, does not need to produce this particular documentary evidence of his *representative* capacity. His *representative* capacity, normally established by producing such a document, is evident from the office he holds. His *powers* as a representative are a separate matter.

113. The Government of Nigeria has at no stage, whether within the Federal Executive Council or the meetings of the Supreme Military Council, or of its successor, the Armed Forces Ruling Council, or the Provisional Ruling Council or any legislative body, accepted that Nigeria was bound by the Maroua Declaration. At a meeting between the two Heads of State on 7 to 9 August 1977, General Obasanjo informed President Ahidjo that Nigeria did not accept the Maroua Declaration. General Obasanjo also told President Ahidjo that, as Nigerian Head of State, he was a trustee of Nigerian property, both land and territorial waters, and he could not alienate them or give them away unconstitutionally. He explained that the Declaration had not been ratified by the Supreme Military Council, and was therefore regarded as a nullity by Nigeria. President Ahidjo asked what was therefore to be done. General Obasanjo replied that, since President Ahidjo was not prepared to renegotiate, the matter should be left to be dealt with by their successors, and the issue was left open.

114. It is also necessary to refer to the initialled Minutes of the meetings held in Yaoundé between 28 and 29 August 1991 and from 11 to 13 August 1993. In the minutes of the 1991 meeting the following passages appear:

“The Validity of the Maroua Declaration

“The Nigerian side underscored the importance of this matter and pointed out that the position of the Nigerian Government on this question is well known by the Cameroon Government. The Nigerian delegation indicated that as far as the Maroua Declaration is concerned, the Nigerian Government never ratified the agreement and consequently, in Nigeria’s view, it is not binding on Nigeria.

The Minutes continue:

“The Cameroonian side took note of the Nigerian position but stated in its view, that the said declaration is valid and the Cameroon Government has never been formally notified of the Nigerian position.

The Nigerian side underscored the necessity for the two countries to agree on a realistic framework for negotiations at the meeting scheduled for Abuja.”

Mr. President, if I could have just another five minutes, I will be at the end of a section. Thank you.

115. On page 4 of the Minutes of the 13 August 1993 meeting, the third and fourth paragraphs are very clear:

“As regards the Maritime Sector of the border, the Nigerian Delegation re-affirmed the non-recognition of the Maroua Declaration of 1975 on the ground that it was not ratified. The Cameroonian Delegation re-affirmed the validity of the Maroua Declaration. For her, the Declaration was a result of a long negotiation and detailed work by experts.

After a long and inconclusive discussion, which re-established the parallel positions of the two parties, it was agreed that the matter be submitted to the two Heads of Delegation for consideration.” (Preliminary Objections of Nigeria, Ann. NPO 55.)

It is clear from these Minutes that Nigeria has never accepted that she is bound by the Maroua Declaration.

116. Mr. President, the Declaration of Maroua must be assessed in the general context of the bilateral relations between Cameroon and Nigeria. In the relevant period, and since independence, Nigeria has considered Bakassi to be Nigerian.

117. In the light of the circumstances, and the general course of dealing between the two Governments in the period concerned, the Government of Cameroon, according to an objective test based upon the provisions of the Vienna Convention, either knew or, conducting itself in a normally prudent manner, should have known that General Gowon did not have the authority to make legally binding commitments without reference back to the Nigerian Government.

118. The Cameroon Government makes the claim, in somewhat obscure terms, that the Heads of State had concluded a binding agreement at Yaoundé II on 4 April 1971. I refer to the Memorial and the Reply (Memorial of Cameroon, pp. 130-131, paras 2.219-2.225; Reply of Cameroon, pp. 361-362, paras 8.10-8.12; and pp. 365-366, paras. 8.26-8.28). Nigeria does not accept this construction of the meeting at Yaoundé and it is contradicted by the terms of the letter from General Gowon to President Ahidjo dated 23 August 1974 (Rejoinder of Nigeria, Ann. NR 12). The language of the second Declaration of Yaoundé, which is Annex NPO 19 of the Preliminary Objections of Nigeria, makes it very clear that the meeting formed part of an ongoing

programme of meetings relating to the maritime boundary, and that the matter was subject to further discussion at subsequent meetings.

119. It is surely significant that the text of the Declaration makes no reference to a disposition of land territory. This construction of the transaction is confirmed by the text of the contemporaneous Joint Communiqué (Counter-Memorial of Nigeria, Ann. NC-M 145) and also by the internal Nigerian brief on the forthcoming meeting, dated 20 May 1975 (Counter-Memorial of Nigeria, Ann. NC-M 144). And it is to be noted that Professor Tomuschat in his speech referred to the Maroua Declaration exclusively in the context of the maritime boundary (CR 2002/6, p. 1).

120. In assessing the significance of the Maroua Declaration, it is necessary to see the episode in the general context of relations between the two States and the impressive evidence of a long existing Nigerian administration in the Bakassi Peninsula. Mr. President, there can be no presumption in favour of relinquishment of title to territory. More particularly, there can be no presumption that, as an incidental result of the series of meetings concerning the maritime boundary, Nigeria was surrendering a significant tract of territory which was in her lawful possession and populated by Nigerians.

Mr. President, that would be convenient, if you agree to break, to have the *pause café*.

Le PRESIDENT : Je vous remercie, Monsieur le professeur. La Cour suspend pour une dizaine de minutes.

L'audience est suspendue de 11 h 25 à 11 h 35.

Le PRESIDENT : Veuillez vous asseoir. Je donne à nouveau la parole au professeur Ian Brownlie au nom de la République fédérale du Nigéria.

Mr. BROWNLIE:

The United Nations Plebiscite of 1961

121. Mr. President, distinguished Members of the Court, in her Memorial Cameroon seeks to establish that the organization of the plebiscite in the Southern Cameroons was on the basis that the electoral district of Victoria South-West included the Bakassi Peninsula: I refer to the Memorial, paragraph 3.237, and map M16.

122. In the relevant passage Cameroon is asserting that the plebiscite relating to the Southern Cameroons encompassed the Bakassi Peninsula. The evidence, however, simply does not support this assertion.

123. There is no documentary evidence which indicates that the population of the Bakassi towns and villages took part in the United Nations plebiscite which decided the future status of the Southern Cameroons. Reference may be made to the following official documents (among others):

- (i) Report of the United Nations Commissioner for the Supervision of the Plebiscites in the Southern and Northern Parts of the Trust Territory of the Cameroons under United Kingdom Administration (United Nations doc. T/1556 dated 3 April 1961).
- (ii) Report on the Plebiscite held in the Southern Cameroons on 11 February 1961, by the Plebiscite Administrator, Mr. H. Childs.

124. There is no single item in these two reports which establishes that the plebiscite was held in Bakassi. In paragraph 99 of the report of 3 April 1961 there is a description of the plebiscite district known as Victoria South-West. In the description of this area reference is made to the Bakolle-Clan and other clans and to the Bambuka, Bota, Bimbia and Victoria Village Groups. As map M9 of the Cameroons Memorial indicates, none of these areas is sited in the Bakassi Peninsula. Map M9 does not show Bambuka, but there is no such settlement in the Bakassi region. The tribal affiliations of all these areas are not Efik, unlike the Bakassi people. (See E. Ardener, in Ardener, Ardener and Warmington, *Plantation and Village in the Cameroons*, London, 1960, p. 272 (and table, p. 412).)

125. The report of 3 April 1961 confirms that there were 13 polling stations in Victoria South-West. However, there is no evidence of the existence of polling stations in Bakassi. In addition, there is evidence from the Clan Heads with authority in respect of the Bakassi towns and villages that the inhabitants did not participate in the plebiscite — I refer to the Appendix, Nigerian Rejoinder, at pages 195 to 213.

126. The issue of the plebiscite is given prominence in the Cameroon Memorial (paras. 3.230-3.239 and 3.35) and it is necessary to keep the question in an appropriate *legal* perspective. The plebiscite held on 12 February 1961 in the Southern Cameroons, like other plebiscites, could not affect the alignment of the relevant boundaries as such, as Cameroon

recognizes elsewhere. I refer to the Cameroon Memorial, page 157, at paragraph 3.35. Nor could such a plebiscite present a conclusive impediment to a process of consolidation of title or, if such a process were beginning, to its development in the future.

127. When the question of the plebiscite is properly related to the development of title by consolidation, the absence of participation by the people of the Bakassi region is consistent with the overall picture of affiliation — political, social and economic — with the mainland of Nigeria.

128. These considerations provide the necessary context in which the speech of my friend, Malcolm Shaw, in the first round, is to be assessed (see CR 2002/1, pp. 63-65, paras. 12-18). Professor Shaw made reference to various official documents, including the Exchange of Notes of 29 May 1961 between the Federation of Nigeria and the United Kingdom — which in any event relates exclusively to the Northern Cameroons. Such documents do not assist Cameroon because they beg the question, which is whether Bakassi was included in Nigeria or not.

129. As I have pointed out already, the key United Nations reports on the plebiscite provide no evidence that the population of the Bakassi region participated in the plebiscite. Cameroon has invoked a map of Southern Cameroons produced by the United Nations, which includes the following disclaimer: “The boundaries shown on this map do not imply official endorsement or acceptance by the United Nations.” This is in the Memorial, map M16. Other United Nations maps of Southern Cameroons produced in the same year — 1960 — carry a similar disclaimer. In view of the proviso the maps would not be opposable to Nigeria and thus there would be no basis for a protest from Nigeria.

130. It is also necessary to recall the principle of international law according to which the evidence of maps can only have a corroborative or secondary role in relation to more reliable evidence, such as documentary evidence, and in this case, also the evidence of local knowledge and repute deriving from the Bakassi Clan Heads. This principle has been endorsed in the following decisions of this Court:

- (i) the Chamber of the Court in the *Frontier Dispute* case (*I.C.J. Reports 1986*, para. 56);
and
- (ii) the full Court in the case concerning *Kasikili/Sedudu Island* (*I.C.J. Reports 1999*, paras. 84 and 87).

131. Moreover, there can be no question of the United Nations graphic presently in issue having a primary role when it carries a strongly worded disclaimer, expressly relating to the depiction of boundaries.

The granting of oil exploration permits

132. In the Reply, the Government of Cameroon appears to rely upon the granting of oil licences as evidence of sovereignty in relation to the Bakassi Peninsula: I refer to the Reply, at pages 244 to 245 (paras 5.14-5.16). However, the Government of Cameroon provides no clarification of the legal position, which was that neither Nigeria nor Cameroon, in their practice, regarded the incidence of oil-related activities as conclusive of the issue of sovereignty.

133. The pertinent documents have been examined in the Nigerian Rejoinder, at paragraphs 3.264 to 3.274.

134. The records of meetings and the pattern of oil concessions in general have reflected the régime of what may be described as concerted indecision in relation to land territory. The offshore areas are resource-related. The Bakassi Peninsula is inhabited, has been inhabited for generations, and is the home of 156,000 Nigerians. If oil exploration on the mainland had been prejudicial to title, it would have also been prejudicial to the rights of a settled population of Nigerians.

135. The attitude of the two Parties is apparent from the fact that it was not uncommon for concession blocks to be unrelated in dimension to any claimed alignment. Thus immediately after independence, block OML 10, granted by Nigeria to Shell/BP, extended from the mainland of Nigeria across Bakassi and eastwards across the Rio del Rey into Cameroon, as can be seen on tab 25 and on the screen.

136. The licensing pattern in the Bakassi region is referred to in the Rejoinder. Existing wells have been capped and the onshore developments have been disappointing both in terms of oil and gas. The trend of opinion within the oil industry appears to be to the effect that exploration has been entirely without prejudice to the issue of sovereignty. Moreover, in view of the existence of the dispute relating to Bakassi, it is not surprising that the degree of activity on the Bakassi Peninsula was minimal when compared with the production offshore. Ninety-five per cent of Cameroonian oil comes from the offshore area.

137. In the Cameroon Reply the point is made that the granting of concessions in the disputed area by Cameroon did not lead to any protests on the part of Nigeria (p. 244, para. 5.16). The absence of protests is, of course, irrelevant given that the petroleum-related activities were inconclusive in the context of the incidence of title to territory.

138. In any event the Government of Cameroon expressly recognizes that it did not protest in response to Nigerian oil activities: I refer here to the Reply, paragraphs 9.114 and 9.115. Cameroon seeks to explain her silence by reference to the arrangements agreed at Abuja on 19 December 1991 (Preliminary Objections of Nigeria, Ann. NPO 54), according to which information would be given of any action that might cause a nuisance. This reasoning is unconvincing. There was no obligation to give notice of concessions. The fact is that activities might be pursued but without prejudice to questions of title and subject to the ultimate settlement of the dispute.

139. Existing oil activities which involve overflight and related operations are subject to the permission and co-operation of the local Nigerian security forces.

140. In the recent arbitration between Eritrea and Yemen relating to sovereignty over islands in the Red Sea the Tribunal, after an exhaustive examination of the complex concession history, arrived at certain conclusions which, so far as material for present purposes, were as follows:

“437. The offshore petroleum contracts entered into by Yemen, and by Ethiopia and Eritrea, fail to establish or significantly strengthen the claims of either party to sovereignty over the disputed islands.

.....

439. In the course of the implementation of the petroleum contracts, significant acts occurred under state authority which require further weighing and evaluation by the Tribunal.” (*ILR*, Vol. 114, p. 114.)

141. The principal conclusion is significant not least because the Court of Arbitration had devoted much effort to the examination of the granting of concessions. And yet the outcome was characterized by a degree of caution on the part of the Tribunal. With respect to the second of the conclusions formulated by the Tribunal, Cameroon has not provided any evidence of any such “significant acts”.

142. In the respectful submission of the Government of Nigeria the Court should regard the need for caution as *inevitably enhanced* in the case of an inhabited territory with a long history of administrative, economic, and social affiliations with Nigeria. In any case the attitude of the two Parties in the relevant period militates against the view that title was based upon the ebb and flow of exploration permits. It may be recalled that in the *Corfu Channel* case on the merits the Court took account of the 'attitude' of Albania in forming a view of the knowledge or otherwise of the presence of mines on the part of Albania (*I.C.J. Reports 1949*, pp. 19-20). In the very different circumstances of the present case, both parties displayed the same attitude in face of their knowledge of oil activities. There was in fact a complementarity of attitude, amply confirmed in the documents presented in the Counter-Memorial, to the effect that oil exploration and the issue of title to land territory were not coincident.

The reliance of Cameroon upon map evidence in relation to the Bakassi Peninsula

143. In the context of the Cameroon argument based upon acquiescence, considerable reliance is placed upon map evidence. I refer to the Memorial, at pages 258 to 321. In this respect the Cameroon Reply (p. 313, para. 5.239) relies upon the material presented in the Memorial. At the outset, it is to be emphasized that the legal context is the Nigerian claim to title based upon historical consolidation of title, either as an autonomous basis of title, or as a confirmation of the original title to the Bakassi Peninsula inherited by Nigeria at the time of independence.

144. It must follow that the map evidence prior to the independence of Nigeria in 1960 is not of direct relevance to the position in the period 1960 to 1995.

145. It must also follow that the map evidence can hardly be conclusive of the issue of sovereignty on the basis of historical consolidation of title. In this particular legal context, if there is a difference between the map evidence and the administrative and social status quo on the ground, it would be legally inappropriate, and incongruous on other grounds, to afford a decisive role, or indeed any role, to the map evidence.

146. Nigeria considers that map evidence cannot overrule the administrative status quo on the ground, and therefore many of the precedents concerning map evidence are simply not

applicable in the circumstances of this case. However, the following assessment by the Chamber in the *Frontier Dispute* case is particularly apposite:

“Whether in frontier delimitations or in international territorial conflicts, maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts.” (*I.C.J. Reports 1986*, p. 582, para. 54.)

147. It would be especially inappropriate to give priority to the map evidence in the present case. The map evidence, in so far as it relates to Bakassi, is not based upon direct knowledge of the situation on the ground. The maps are all *compiled* maps, repeating the assumptions of other map makers. There cannot be a focus upon the question of legal title to Bakassi in such circumstances. And this is particularly true when the Bakassi region represents a very minor feature on maps of small scale.

148. Against this background the map evidence presented by Cameroon can be analysed. Nineteen maps appear to support the Cameroon position, and the list is in the transcript (M11, M12, M13, M17, M20, M21, M51, M55, M57, M60, M71, M80, M81, M86, M87, M88, M89, M91 and M92).

149. All of these maps are compiled from other sources. Nearly all are of small scale. None of these maps was prepared by experts concerned with highly localized and specialized issues of sovereignty.

150. Of the maps relied upon by Cameroon, two, M11 and M80, are Cameroonian official maps of late date, 1976 and 1989, and are therefore self-serving. Three of the maps relied upon by Cameroon are maps published at or soon after the independence of Nigeria, M51, M17, and M20; in other words very early in the post-independence phase of historical consolidation.

151. Several of the maps relied upon by Cameroon emanate from the Federal Surveys of Nigeria, namely, M17, 1963; M60, 1968; M20, 1960; and M21, 1972. These maps are of very small scale with the exception of the Calabar sheet, M17, published in 1963. It is important for the

Court to note that the general indication of the boundary status quo on these maps is firmly contradicted by the *Gazetteer* published by the Director of Federal Surveys in 1965: I refer to the Annex NR 102 of the Rejoinder of Nigeria. Section IV of Volume II of the item concerned is devoted to Eastern Nigeria. The *Gazetteer* lists three locations in the Bakassi Peninsula: Abana, Hanley Point and Sandy Point; and these appear at tab 26 and are presently on the screen. Each location is described as a village and the co-ordinates are given.

152. It must be obvious that the *Gazetteer* reflects the political and social reality in the Bakassi Peninsula five years after independence and not the work of the compilers of small-scale maps. None of the villages listed in the *Gazetteer* as forming part of Eastern Nigeria are marked on the maps relied upon by Cameroon. The Government of Nigeria submits that the *Gazetteer* provides the expert evidence in this respect and not the maps.

153. In any event there are three maps favourable to the position of Nigeria: M18(a), the Administrative Map of Nigeria, 10th edition, of 1990, published by the Federal Survey (Lagos); M90, published by Cross River State in 1991; and M93(a), the map of Nigeria published in 1992.

154. Mr. President, I have now completed my consideration of various preliminary issues and must now move to the main stream.

The bases of Nigerian title to the Bakassi Peninsula

155. At this point it is necessary to recall once more the three bases of the Nigerian claim to title over the Bakassi Peninsula.

- (i) Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar, which title vested in Nigeria at the time of Independence in 1960.
- (ii) Effective administration by Nigeria, acting as sovereign, and an absence of protest on the part of Cameroon.
- (iii) Manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula.

156. These three bases of claim apply both individually and jointly.

157. For the sake of clarity it may be emphasized that the claims of Nigeria do not operate on the premise that the Bakassi Peninsula constitutes *terra nullius*, that is to say, territory available for occupation. The legal situation appears to the respondent State to be in certain respects similar to that obtaining in the *Minquiers and Ecrehos* case.

158. The essence of the matter is conveyed in the following two passages from the Judgment in that case:

“Both Parties contend that they have respectively an ancient or original title to the Ecrehos and the Minquiers, and that their title has always been maintained and was never lost. The present case does not therefore present the characteristics of a dispute concerning the acquisition of sovereignty over *terra nullius*.” (*I.C.J. Reports 1953*, p. 53.)

And then in a later passage: “What is of decisive importance, in the opinion of the Court, is . . . the evidence which relates directly to the possession of the Ecrehos and Minquiers groups.” (*Ibid.*, p. 57.)

159. The legal concept of historical consolidation of title is invoked by Nigeria as the principal basis of its claim to sovereignty over the Bakassi Peninsula. The principal elements of the concept are adumbrated by the editors of *Oppenheim's International Law* in the following terms:

“Consolidation of historic titles. Yet continuous and peaceful display is a complex notion when applied to the flexible and many-sided relationship of a state to its territory and in relation to other states. The many and varied factors which it may comprise were felicitously subsumed by Charles De Visscher under the convenient rubric of ‘consolidation by historic titles’; of which he says:

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

And *Oppenheim* continues:

“In an important examination of the criteria applied by tribunals to resolve territorial disputes, Munkman identified *inter alia* the following: recognition, acquiescence and preclusion; possession and administration; affiliations of inhabitants of disputed territory; geographical considerations; economic considerations; historical considerations. Of these several factors it has been said that: ‘Recognition is the primary way in which the international community has

sought to reconcile illegality or doubt with political reality and the need for certainty.” (Footnotes omitted.)

160. Charles De Visscher first formulated the principle of historical consolidation in 1953, in his work *Théories et Réalités en Droit International Public* (pp. 244-245). The principle was explained by De Visscher in his monograph *Les Effectivités du Droit International Public* in 1967:

“L’arrêt de la Cour internationale de Justice en l’affaire des Pêcheries (Royaume-Uni/Norvège) a donné sa pleine expression à la notion d’une effectivité par consolidation de titres historiques. Il a déclaré la méthode norvégienne de délimitation des eaux territoriales ‘consolidée par une pratique constante et suffisamment longue en face de laquelle l’attitude des gouvernements atteste que ceux-ci ne l’ont pas considérée comme contraire au droit international’. Plus large que la notion de la prescription acquisitive, fondée sur une fausse analogie avec le droit privé, la consolidation embrasse à la fois le cas d’une possession triomphant d’une possession adverse et celui d’une possession s’appliquant à un territoire dont l’appartenance antérieure à un autre Etat ne saurait être établie avec certitude.” (Pp. 107-108.)

161. Two subsidiary but significant points must also be brought into account.

162. In the first place, treaty-based titles can be modified by means of historical consolidation. A treaty-based title has no particular cachet as compared with other titles.

163. Thus, in his general course at the Hague Academy in 1983, Michel Virally described the legal position thus:

“d) *La consolidation des titres*

Face aux prétentions contradictoires à la souveraineté sur un territoire, s’appuyant sur des titres très divers et parfois difficiles à départager, la jurisprudence internationale, arbitrale et judiciaire, a toujours attaché la plus grande importance à l’exercice paisible et continu des compétences étatiques, c’est-à-dire à l’effectivité de l’autorité étatique, se manifestant dans la durée.”

And he continues:

“L’exercice continu de l’autorité étatique permet ainsi de consolider un titre qui, à lui seul, n’aurait pas permis d’acquérir la souveraineté territoriale (découverte, contiguïté), ou de purger un titre de son vice initial (conquête). Il peut prévaloir même sur un titre résultant d’un traité ou d’un autre acte juridique (affaire de l’île de Palmas, RSA, II, pp. 845 ss.).” (*Recueil des Cours*, Vol. 183 (1983-V), pp. 147-148.)

164. In an article published in 1957 Sir Gerald Fitzmaurice observed that a revision of a treaty could result from practice or conduct: the *British Year Book*, 1957, at page 225. “

165. In the second place, there is respectable authority for the view that evidence of administrative practice plays a significant role in situations in which title is uncertain. As the Chamber observed in the *Frontier Dispute* case:

“Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The *effectivités* can then play an essential role in showing how the title is interpreted in practice.” (*I.C.J. Reports 1986*, pp. 586-587, para. 63.)

166. Similar views were expressed by the Chamber in the *Land, Island and Maritime Frontier Dispute case (I.C.J. Reports 1992*, pp. 408-409, para. 80; p. 565, para. 345).

The elements of historical consolidation

167. I have now completed my rehearsal of the legal concept of historical consolidation and it is time to apply the concept to the case in hand. The elements which constitute the process of historical consolidation of title in relation to the Bakassi Peninsula are as follows:

- (i) The original title of the City States of Old Calabar.
- (ii) The attitude and ethnic affiliations of the population of the Bakassi Peninsula.
- (iii) The Efik and Effiat toponymy of the Bakassi towns and villages.
- (iv) The administration of Bakassi as part of Nigeria in the period 1913 to the date of Independence.
- (v) The exercise of authority over the towns and clans of Bakassi by traditional Rulers either based in Calabar or otherwise owing allegiance to Nigeria.
- (vi) The exercise of jurisdiction by customary law courts by virtue of Nigerian legislation.
- (vii) The long-established settlement of nationals of Nigeria in the region; and lastly
- (viii) Manifestations of sovereignty by Nigeria after Independence in 1960.

168. These elements are examined in detail in the Nigerian Rejoinder, at pages 90 to 175, and the Court is respectfully directed to the text of the Rejoinder.

169. For present purposes it is necessary to focus upon those components in the process of historical consolidation which speak with particular clarity of the social and political geography of the Bakassi Peninsula and which thus reflect its status as a Nigerian homeland. Accordingly, the principle of selection has been the existence of a permanent and substantial population of Nigerians in Bakassi, living under a Nigerian public order system, and with extensive affiliations with mainland Nigeria.

170. As a first step it is necessary to examine the system of local government administration in South-Eastern Nigeria after independence. I refer now the graphics which are under tab 27.

171. Prior to independence in 1960 the Bakassi Peninsula was under the administration of Akpabuyo Rural District Council and Ibaka Rural District Council. These were both within the Eastern Region. At independence, the northern half of Bakassi (including Archibong, Akwa and Ine Akpa Ikang) was administered by Akpabuyo Local Council, within the Calabar Division of the Eastern Region of Nigeria. The southern part of Bakassi (including Abana and East and West Atabong) was administered by Ibaka Local Council within the Eket Division of the Eastern Region.

172. As the graphic shows, the division of the region reflected the affiliations of the population, the Calabar Division representing the Efik group and the Eket Division representing the Effiat group.

173. In 1967, the northern part of Bakassi was administered by Akpabuyo County Council, within Calabar Division of the newly-created South-Eastern State. However the southern part of Bakassi was now being administered by Oron East County Council of Oron Division, also within South-Eastern State.

174. In 1976, the then South-Eastern State was renamed Cross River State. Cross River State was divided into Local Government Areas. The northern part of Bakassi was administered by Odukpani Local Government Area while the southern part of Bakassi was administered by Oron Local Government Area.

175. In 1987, Akwa Ibom State was created and the Local Government Areas were again reorganized. The northern part of Bakassi was now administered by Akpabuyo Local Government Area within Cross River State. The southern part of Bakassi was administered by two Local Government Areas within Akwa Ibom State: Effiat/Mbo Local Government Area and Okobo Local Government Area. Effiat Mbo Local Government Area administered, *inter alia*, Abana, Onosi, Ine Akpak and Ine Odiong. Okobo Local Government Area administered, *inter alia*, East and West Atabong.

176. In 1996 Bakassi Local Government Area was created as part of Cross River State. This Local Government Area extended to the whole of the peninsula, a situation which still obtains.

The system of public order

177. This completes my review of the local government administration, and within the framework of the concept of historical consolidation, I shall turn to the evidence relating to the system of public order in Bakassi. In the first place the Government of Cameroon is unable to produce any reliable evidence concerning the administration of justice in the Bakassi region. This is clear from a perusal of the Memorial, pages 490 to 496 and the Reply, pages 307 to 312. In the pleadings of Cameroon no fact is alleged and no document invoked to prove the existence of a system of criminal justice.

178. In contrast, there is reliable evidence to show that the Nigerian police based at Ikang police station were responsible for law and order in the Bakassi Peninsula over a long period (Rejoinder of Nigeria, pp. 123-128).

179. The pertinent evidence includes the evidence of the exercise of jurisdiction by the Customary Law Courts applying Nigerian legislation. The details are set out in the Rejoinder, at pages 113 to 114.

180. The system of public order based upon Nigerian institutions includes the authority of the Traditional Rulers of the region, based upon the system of clans and the institution of allegiance to the traditional leaders. The system of clans and Traditional Rulers forms an active and significant feature of contemporary local social organization. Thus, the system of Traditional Rulers is given repeated recognition and confirmation in modern legislation. Tab 28 is relevant at this point.

181. For example, in 1978 Cross River State promulgated the Traditional Rulers Law (Cross River State Edict No. 14 of 1978) which includes Archibong within the Efik Clan of Calabar Municipality. The Efik Clan included the following nine villages in Bakassi.

- Ine Nkan Okure No. 1
- Ine Nkan Okure No. 2
- Ine Utan
- Ine Utan Asuquo
- Ine Ikang
- Ine Akpa Ikang

- Ine Efiom
- Ine Ukpono, and
- Ine Ekoi.

182. In 1990, Akwa Ibom State adopted the Traditional Rulers Edict which made provision for the establishment of a traditional council in each local government area within the State. The schedule to this edict lists the following villages as within the area of Mbo Local Government:

- Abana Ntuen
- Onosi
- Akpa Nkanya
- Ine Odiong

and the following villages within the authority of Okobo Local Government Area:

- Ine Itung
- Aqua Ine Itung
- Ibiong Utan Itung
- Aqua Ine Ibekwe
- Ufot Ine Itung
- Ishie.

183. The appointment and official recognition in legislation of Village Heads within the Efik Clans confirms the existence of the authority of the Traditional Rulers in Bakassi. The pertinent official lists such as the Traditional Rulers Register (Odukpani Local Government) and the list of recognized Names of Clans, Villages and Village Heads contain an impressive number of Bakassi villages; I refer to Annex NR 16 of the Rejoinder of Nigeria.

184. The Cameroon Reply fails to provide any contradiction of the evidence produced by Nigeria in the Counter-Memorial on the role of the Traditional Rulers in the administration of the Bakassi region. In this context it is to be emphasized that at no stage have the Traditional Rulers recognized any claims to sovereignty made on behalf of Cameroon.

The affiliations of the population of Bakassi

185. I shall turn next to the affiliations of the population. The ninth edition of Oppenheim refers to the relevance of the “affiliations of inhabitants of disputed territory” (*Oppenheim*, Vol. I, pp. 709-710, para. 272.) On the operation of this factor Munkman observes:

“Where the territory is inhabited, the affiliations of the inhabitants will be of great — but, probably, because of the considerations militating in favour of the State in actual possession, secondary — importance. Where the administration is itself disputed and doubtful, the affiliations of the inhabitants will probably be decisive. In inhabited areas considerations of geography, strategy, etc. will usually be a very secondary consideration. Economic, historical, cultural and social factors, and considerations of convenience will usually correspond to the affiliations of the inhabitants. But these considerations, even if they do not all weigh on the same side, will probably only call for some adjustment of a boundary delimited primarily on the basis of the affiliations of the inhabitants.” (Munkman, *British Year Book*, Vol. 46 (1972-1973), p. 100; emphasis added.)

186. As the Attorney-General of Cross River State has explained, the majority of the fishermen and farmers living in the Bakassi Peninsula have for centuries belonged to the Efik and Effiat ethnic groups, which have always had strong links with the City States of Calabar. The principal mainland towns of the Efik which are located on the graphic are as follows; this is at tab 29, and is now on the screen:

- Calabar
- Ikang
- Itu, and
- Ikot Nakanda

187. The principal towns of the Effiat, which are also located on the graphic, are as follows:

- Uyo
- Eket
- Oron and
- Ikot-Ekpene

188. A particularly striking feature is the relation between Effiat villages in the Mbo Local Government Area of Akwa Ibom State and their affiliated villages in, what is now, the Bakassi Local Government Area. A table of such villages and their affiliates in Bakassi is set forth in the Rejoinder, at paragraph 3.76.

189. A further significant element in the pattern of association consists in the indigenous and ancient society known as Ekpe. This is described, from the outside as it were, in the section entitled "Societies" (paras. 48 *et seq.*) in the report by Mr. Anderson, Assistant District Officer, in Annex NR 13 (Rejoinder of Nigeria). The Ekpe Society represents the strongest traditional organization. Each main village has its own Ekpe house and the Ekpe Society has strong links with Calabar. Adherence to this Society is compatible with the practice of Christianity and co-exists with church membership. The Effiat ethnic group also use the Ekpe Society as a form of social administration.

190. It is very significant that Cameroon has not been able to produce any evidence of affiliations of the communities on Bakassi with Cameroon. Cameroon has not alleged that any Cameroonian nationals have been displaced as a consequence of Nigerian actions. No claim has been presented on behalf of Cameroonian nationals resident in the Bakassi region; I refer again to the Conclusions of the Republic of Cameroon in the Memorial and again in the Reply. Indeed, Cameroon has not produced any evidence of any Cameroonians living on Bakassi at any time.

Public education

191. Continuing my review of the various elements of historical consolidation, I would like to refer to four types of *effectivités*. My first subject is public education. The provision of public education is clearly an exercise of State functions constituting evidence of title. In the *Land, Island and Maritime Frontier Dispute*, the Chamber of the Court recognized that the provision of public education counted as an *effectivité*. (*I.C.J. Reports 1992*, pp. 397-399, paras. 60-62; pp. 542-543, para. 304). In the Report of the Court of Arbitration in the *Beagle Channel* case, the Tribunal refers to the provision of public education as a State activity "customarily associated with the existence of sovereignty" (*ILR*, Vol. 52, p. 222). It should be added that the provision of education also reflects the cultural characteristics of the permanent population which a system of education serves.

192. There is a substantial quantity of evidence of the Nigerian provenance of education in Bakassi. The relevant tab is tab 30.

193. From as early as 1893, there was a Methodist Church School in Archibong, but in the period prior to the 1960s, the people of Bakassi, if they were able to afford the cost of transport, tended to send their children to Duke Town Primary School in Calabar, which had first been established in 1846.

194. In the post-independence period pupils from the Bakassi towns and villages attended the Methodist Primary School at Ikang. Class attendance registers for the years 1961 to 1962, 1963, 1965 and 1967, include pupils from Archibong Town (Rejoinder of Nigeria, Anns. NR 72-75).

195. A Methodist School was established in 1968 at Atabong, and this was still functioning under the authority of the Nigerian Education and Examination Board in 1975 (Counter-Memorial of Nigeria, Ann. NC-M 183).

196. In a Note dated 15 September 1969, Cameroon protested when a primary school was established at Abana by the Catholic Mission based at Uyo (Counter-Memorial of Nigeria, Ann. NC-M 148). Whilst the school was not supported by public funds, the Government of Cameroon clearly regarded this development as evidence of a form of Nigerian State activity.

197. Nine schools in total were established on Bakassi *prior to 1994*. These were located in the following seven locations (see Counter-Memorial of Nigeria, Ann. NC-M 184).

- Archibong Town;
- Nkan Okure;
- Atabong West;
- Atabong East;
- Mbenmong;
- Nwanyo; and
- Abana Town.

198. In Annexes MC 317 and MC 322 of the Memorial of Cameroon there are two internal notes, which appear to be exactly the same but which are given two different dates on their cover sheet, 18 February 1992 and 18 December 1992 respectively. These show that even Cameroon recognizes the fact that these schools are Nigerian. And the notes state:

“the Community School, opened and directed by the Local Community of JABANA (Cameroun) [called Abana by the Efiks], receives subventions from AKPABUYO LOCAL GOVERNMENT, the State Commune of AKWA-BOM [sic] IN NIGERIA. Initially it was built of temporary materials and then in the process of being refurbished in permanent materials. The Teachers are all natives of NIGERIA.” (Counter-Memorial of Nigeria, Ann. NC-M 186.)

199. In September 1992 construction of a new primary school had begun at Abana under the auspices of Akpabuyo Local Government (Rejoinder of Nigeria, Ann. NR 76) and at Atabong West in September 1994 (Ann. NR 77).

200. The particularly impressive aspect of the educational picture is the fact that many individuals provide testimony that they received their education in Nigerian-created schools either in Bakassi or in Calabar. The Bakassi Chiefs state that primary education schools have existed on Bakassi for a long time. Etinyin Etim Okon Edet, the Clan Head of Abana, attests that he had attended the Abana Catholic Mission School from 1969. He submitted his report card for Elementary 1 (Ann. NR 78). He said his school only had grades Elementary 1, 2 and 3, after which he and others were sent to the mainland to continue their primary school education.

201. He remembers that his headmaster was called Mr. Friday Ebukanson. He also remembers his class teacher, Chief Nyong Etim Inyang. The Chief is still alive and is now the village head of Adak Uko on the Nigerian mainland. The Clan Head of Abana, His Royal Highness Etinyin Etim Okon Edet, was the Chairman of Akpabuyo Local Government under which the northern part of Bakassi was administered before it was made a separate local government in 1996. He constructed a primary school at Abana in 1992 and as Chairman of the local government he posted teachers to the school, and to other schools (Rejoinder of Nigeria, App., pp. 144-145).

202. His Royal Highness Ededem Archibong, the head of Archibong clan, stated that a primary school existed in Archibong Town for many years. A teacher named Samuel Udo still resides in Archibong Town. He stated that he came to the town in 1977, and, discovering that there was no functioning school, created one himself. It was run by the local community and received no funding or resources from either Nigeria or Cameroon. He ran this primary school from 1978 until 1994, when the Nigerian local government became involved in the administration. The primary school has about 500 pupils at present. A secondary school was also built in Archibong in 1993, and this has about 200 pupils. The Clan Head himself attended school in Calabar (Rejoinder of Nigeria, App., p. 145).

203. The Clan Head of Akwa affirmed that there is a community primary school in Nkan Okure which is run by the local people. This was reopened during the 1970s and has been approved by Akpabuyo LGA. There are currently four teachers and 150 pupils there (*ibid.*).

204. A secondary school was set up in West Atabong in 1995. It was funded by the local government. A primary school was also established by the LGA in 1994. The teachers of both schools are paid by Nigeria. Before then, there were community schools which were run by the churches. Isaac Boro also started a school in West Atabong in 1968 during the civil war. This was run by Amera Andem Ema, who is still alive today. He stated that he was never paid as a teacher, and that when Isaac Boro left, the community took over the running of the school. Eventually it was abandoned. The children then used to go to Ikang or to Calabar for their education. The Clan Head attended school in Calabar, where he stayed during term time and returned to West Atabong for the vacation (Rejoinder of Nigeria, App., pp. 145-146).

205. In relation to East Atabong the Clan Head reports that a primary school was set up in 1999. Prior to that there was a community school run by the local people. However, some attended the Isaac Boro school in West Atabong or the schools in Calabar or Ikang. The Chief himself attended school in Calabar.

206. In sharp contrast, in the two rounds of written pleadings Cameroon has failed to provide evidence of a single school run by the Cameroonian authorities in the Bakassi region, with the sole exception of the reference in Annex RC 180 to the Reply of Cameroon, in a document dated 15 October 1988, only five years prior to the Application in this case.

Taxation

207. I have already examined the evidence relating to the collection of tax from residents of the Bakassi Peninsula by Cross River State and Akwa Ibom State. The Nigerian authorities have collected tax as part of a consistent pattern of activity. The meagre and unreliable evidence offered by Cameroon contrasts with the evidence of tax collection by Nigeria since the 1960s.

Public health

208. I shall move next to the topic of public health. As in the case of education and taxation, the provision for public health is indicative of a permanent population enjoying the benefits of a mature system of administration. The relevant tab is 31.

209. Since 1959, the Nigerian authorities in Bakassi have established Health Centres for the benefit of the communities on Bakassi, and, indeed, these have often been built with the assistance of the local communities. These health centres are supplied with Nigerian funding, and the resident public health workers are trained in Nigeria. There are currently ten such health centres across the Bakassi Peninsula providing a wide range of health care and programmes (Counter-Memorial of Nigeria, Ann. NC-M 188). The following is a list of the foundation dates of some Health Centres (Ann. NC-M 184):

- Archibong was established in 1959;
- Mbenmong in 1960;
- Atabong West in 1968;
- Abana in 1991; and
- Atabong East in 1992.

210. Apart from health centres within the Bakassi region, the health centre at Ikang, on the Nigerian mainland, treats patients from Bakassi. Immunization records are available for the years 1986 to 1990 (Rejoinder of Nigeria, Ann. NR 82). Patients resident in Archibong and Atabong are listed in the attendance records. The antenatal clinic at the Ikang Health Centre is attended by women from Bakassi. These records dating from the period 1985 to 1999 include the following towns and villages on Bakassi: Archibong Town, Ine Ikan, Ine Ekpo, Ine Akpa Ikang, and Ine Utan (Ann. NR 83).

211. In the course of 1994, Cross River State made provision for the equipping of health centres in Archibong Town, Atabong West and Abana (Counter-Memorial of Nigeria, Ann. NC-M 189).

212. At no stage have the Cameroon authorities made provision for health care in the Bakassi region. In contrast, the provision of health care is part of a consistent pattern of Nigerian sovereignty, and, as the Court stated in the *Beagle Channel* arbitration, “the provision of public

medical services” as a State activity is “customarily associated with the existence of sovereignty” (*ILR*, 52, p. 222).

Census taking

213. Another State activity which marks the existence of a permanent population in which a State has a persistent interest is census taking. The taking of a census is a classic form of exercising sovereignty in respect of territory. In its Judgment in the *Minquiers and Ecrehos* case this Court took account of the visit of an official census enumerator to the two groups of islets as “evidence of the exercise of ordinary local administration” (*I.C.J. Reports 1953*, pp. 66, 69).

214. There was a population census of Nigeria in 1953, during the period of the Trusteeship. This included as part of Akpabuyo Rural District Council, as the area was then known, within Calabar Province, the following five villages located on the Bakassi Peninsula, as on tab 32.

- Ine Akpa Ikang
- Ine Ekoi
- Ine Nkan Okure
- Ine Utan and
- Ine Utan Asukquo (Counter-Memorial of Nigeria, Ann. NC-M 142).

215. There was also a population census in Nigeria in 1963, in which the Eastern Region phase included a return from Abana Ntuen within Ibaka Council (Counter-Memorial of Nigeria, Ann. NC-M 175). In 1991 the National Population Commission visited Abana and made a report, dated 14 November 1991, to the control centre, Mbo Local Government Area, in which they counted the number of buildings in the town and drew a sketch-map (Counter-Memorial of Nigeria, Ann. NC-M 176). They also sketched and delimited a number of Nigerian villages on Bakassi (Ann. NC-M 177). Population statistics available from the National Population Commission are based upon the 1991 Census (Rejoinder of Nigeria, Ann. NR 64). The most recent population figure for the Bakassi is 156,000.

216. Evidence provided by the Clan Heads exercising authority over the villages of the Bakassi establishes that the people took part in the census of 1953 and more recent censuses.

217. The pleadings of the Government of Cameroon contain a reference to a census conducted in the region by the Cameroon authorities, but no evidence is supplied (Memorial, p. 493, para. 4.443). The Cameroon Reply provides no information on the subject.

Other State activities

218. Mr. President, there are other State activities which are population-related and which are the subject of evidence presented in the Nigerian Rejoinder. These are as follows:

First: the use of Nigerian currency for both public and commercial purposes (Rejoinder, p. 102).

Second: the use of Nigerian passports by residents of Bakassi (Rejoinder, p. 158).

Third: the existence of a postal administration (Rejoinder, p. 159).

Fourth: participation in parliamentary elections (Rejoinder, pp. 140-141); and

Fifth: canoe licensing (Rejoinder, p. 160).

219. In contrast, there is no evidence that Cameroonian currency is in use, no evidence of the use of Cameroonian passports, no evidence of the existence at any time of a Cameroonian postal service, and no evidence that residents of Bakassi have taken part in parliamentary elections relating to Cameroon.

220. The provision of a postal administration is particularly redolent of sovereignty. International tribunals recognize that the existence of a postal administration constitutes significant evidence of title to territory (see the Report of the Court of Arbitration, *Beagle Channel* case (Argentina v. Chile), *ILR*, Vol. 52, p. 93). In this case the Court gave weight to the establishment of a postal service on Picton Island by Chile in 1905 (*ibid.*, p. 221, para. 166 (b)).

Economic links with the mainland

221. As the distinguished editors of *Oppenheim's International Law* observe: "In an important examination of the criteria applied by tribunals to resolve territorial disputes, Munkman identified *inter alia* the following . . . economic considerations." (9th ed., Vol. I, p. 710, para. 272.)

222. The editors, Sir Robert Jennings and Sir Arthur Watts, were describing the practical and evidential content of the concept of the consolidation of historic titles. In this connection it is not

unusual for the Court, and other tribunals, to take the economic usage of the local inhabitants into account.

223. In the Judgment in the Anglo-Norwegian *Fisheries* case the Court stated the following:

“Finally, there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage.” (*I.C.J. Reports 1951*, p. 133.)

224. In the *Rann of Kutch* arbitration, the President of the Tribunal gave particular legal significance to the use of grazing grounds by the inhabitants of Sind:

“With reference to Dhara Banni and Chhad Bet, I deem it established that, for well over one hundred years, *the sole benefits which could be derived from these areas were enjoyed by inhabitants of Sind*. It is not suggested that the grazing as such was subject to British taxation. Such limited evidence as there is on record seems, however, to justify the assumption that the task of maintaining law and order was discharged by the Sind authorities, it is not even suggested that the authorities of Kutch at any time viewed such a task as forming part of their duties.

.....

Whatever other Government functions were required with respect to these outlying grazing grounds, on which herds of cattle from time to time shepherded, were apparently undertaken by Sind.” (*ILR*, Vol. 50, p. 510; emphasis added.)

“At no time were these tax levies effective, as is evidenced by the small amounts recovered, which fell far short of the expenditure incurred in the collection. More significantly, the imposition of the levy was opposed, not only by the local villagers, but by the British Government authorities concerned . . . Taken in all, these activities by Kutch cannot be deemed to have constituted continuous and effective exercise of jurisdiction. By contrast, the presence of Sind in Dhara Bani and Chhad Bet comes as close to effective peaceful possession and display of Sind authority as may be expected in the circumstances. *Both the inhabitants of Sind who used the grazing grounds, and the Sind authorities, must have acted on the assumption that Dhara Banni and Chhad Bet were British territory.*” (*Ibid.*, pp. 510-511; emphasis added.)

225. The fishing communities long established on Bakassi have strong economic links with the mainland of Nigeria. Their building materials come from the mainland. They use Nigerian currency and sell their products in Nigerian markets. The towns and villages on Bakassi have names which are derived from towns and villages on the Nigerian mainland.

Conclusion

226. This concludes my survey of those elements in the process of historical consolidation which speak with particular clarity of the social and political geography of the Bakassi Peninsula.

These elements provide strong evidence of the existence of a permanent population of 156,000 Nigerians in Bakassi, living under a Nigerian public order system, and having extensive affiliations with mainland Nigeria.

227. A subsidiary aspect of the picture consists of the attempts by Cameroon, particularly from 1973 onward, to usurp the pre-existing peaceful possession of Nigeria. In this context the attempts by Cameroon in the period 1973 to 1975 to change the long-established place-names of Bakassi towns have a special resonance. Such attempts were unsuccessful, and thus in 1986 we find an official Cameroonian report complaining that the new names were not in use (Counter-Memorial of Nigeria, Ann. NC-M 224).

228. Other Cameroonian documents make rueful comments concerning the indifference of the population to Cameroonian efforts to intrude upon the Nigerian status quo.

The acquiescence of Cameroon in face of the peaceful exercise of sovereignty by Nigeria

229. It is now necessary to refer to the acquiescence of Cameroon in face of the peaceful exercise of sovereignty by Nigeria. As Nigeria indicated in the Counter-Memorial, acquiescence has three distinct roles. In the first place, acquiescence forms a very significant element in the process of historical consolidation of title itself. Thus its first (but by no means exclusive) role is played alongside the elements of historical consolidation reviewed above.

230. The second role of acquiescence is that of confirming a title on the basis of the peaceful possession of the territory concerned, that is to say, the effective administration of the Bakassi Peninsula by Nigeria, acting as sovereign, and an absence of protest on the part of Cameroon.

231. In the third place, acquiescence may be characterized as the main component of title.

232. The relevant jurisprudence of the Court is set forth in the Counter-Memorial, at pages 260 to 261 (paras. 10.124-10.127).

The evidence of acquiescence by Cameroon in face of the exercise of sovereignty by Nigeria

233. The evidence of acquiescence by Cameroon is set forth in Nigeria's Counter-Memorial, at pages 267 to 280. This examination of the evidence in a temporal sequence resulted in three conclusions, which were as follows.

234. *First*, until 1972 the Government of Cameroon acquiesced in the long-established Nigerian administration of the Bakassi region. From 1972 onwards, there were various Cameroon initiatives, and, in particular, the project for the renaming of villages, which clearly demonstrate the previous absence of a Cameroonian administration. On the ground there were sporadic Cameroonian activities which did not result in the establishment of effective or exclusive Cameroon control in the region.

235. *Secondly*, at no stage did Cameroon exercise peaceful possession. From the time of independence in 1960 until 1972 the Government of Cameroon failed to challenge the legitimate Nigerian presence in the region. In the years after 1972, in spite of a growing intrusiveness on the part of Cameroon, this late development of an expansionist policy could not erase the effects of the earlier attitude of acquiescence.

236. As I have already pointed out, a characteristic of the Cameroon Reply is that it avoids making any detailed comment upon the evidence of Cameroonian acquiescence set forth in the Counter-Memorial at pages 267 to 280. In another section of the Reply, at pages 92 to 94, Cameroon purports to examine the acts of acquiescence "alleged by Nigeria". In this section Cameroon avoids dealing with specific issues of fact and law.

Conclusions

237. In conclusion it is appropriate to focus upon certain significant points by way of emphasis.

238. In the first place I must recall the point I made earlier, when I emphasized that the claims of Nigeria do not operate on the basis that the Bakassi Peninsula constituted a *terra nullius* at any stage. I then drew an analogy with the *Minquiers and Ecrehos* case, which, I stated, was similar in certain respects.

239. At this stage, this analogy calls for a substantial qualification based upon a particular premise. The premise is as follows: suppose that, irrespective of the legal position prior to independence, Nigerian title were based upon a process of historical consolidation which began at the time of independence; the analogy then with the *Minquiers and Ecrehos* case would be in some important respects inappropriate.

240. In the *Minquiers and Ecrehos* case, the Court treated the two claimants as equal competitors in relation to proving title, and as equal competitors within the same time frame. In the present case, the legal framework is very different.

241. Nigeria had undisputed and peaceful possession of Bakassi for at least eight years after independence. In this situation Cameroon was a usurper State and not a peaceful competitor, like the United Kingdom and France in the circumstances of the *Minquiers and Ecrehos* case. Moreover, the Minquiers and Ecrehos groups did not have a permanent population, in contrast to the situation in Bakassi.

242. As the documents show, Cameroon was well aware of the Nigerian presence, and of the Nigerian response by way of protest, in face of Cameroonian initiatives involving the use of security forces.

243. In the light of these considerations, it must follow that Cameroonian activities intended to usurp the pre-existing Nigerian title were not activities exercised in good faith.

244. The status quo after the independence of Nigeria in 1960 involved Nigerian possession of Bakassi, and the presence of a permanent population with significant affiliations of a Nigerian character.

245. Moreover, Nigeria had the benefit of a clear priority of settlement, a factor given weight by the Tribunal in the *Honduras Borders* case, between Guatemala and Honduras (*RIAA*, II, p. 1307 at p. 1359). As I have pointed out already the significance of the affiliations of the inhabitants of disputed territory is recognized by the distinguished editors of *Oppenheim* (9th ed., Vol. I, pp. 709-710, para. 272).

246. And, in this context, a factor which should not be neglected is that a determination which reflects the affiliations of the inhabitants and the pattern of settlement in good faith is also a determination which militates in favour of stability.

247. Before concluding, Mr. President, I shall offer a brief reconnaissance of the first-round speech by my friend, Maurice Mendelson, with particular reference to the bases of Nigeria's claim and the role of *effectivités*. Professor Mendelson's speech was that of a lawyer who is in a hurry and had not enough time to examine the evidence. That difficulty, of course, cannot be laid at Nigeria's door. Worse, counsel for Cameroon complained that Nigeria had made "a point of piling

up evidence” of *effectivités* (CR 2002/4, p. 45, para. 23) and of “amassing one example after another”. One can only offer sympathy to an advocate who has such ruthless opponents. In any event, I ask the Court to note that counsel for Cameroon throughout his speech clearly accepts that Nigeria has produced more evidence of *effectivités* than Cameroon.

248. Professor Mendelson invokes the *Frontier Dispute* case as the basis for the argument that, in relation to a right derived from a legal title, such as a treaty, any evidence of *effectivités* can only be confirmatory (CR 2002/4, p. 35, para. 1). But this argument rests upon the two assumptions that there is a treaty-based title — that is a Cameroonian assumption — and that it cannot be changed even by lawful means. Nigeria’s claim is based upon historical consolidation and evidence of *effectivités* is perfectly compatible with this basis of title. And, in any event, Mr. President, a treaty-based title can be changed by lawful means.

249. Professor Mendelson states that Nigeria makes use of historical consolidation “*sotto voce*” but this is not true. Both in the Counter-Memorial and in the Rejoinder Nigeria spells out the basis of her claim very clearly. Moreover, in her Counter-Memorial Nigeria, in another episode of ruthlessness, piles up references to 11 authorities (Counter-Memorial, pp. 221-223).

250. Professor Mendelson pays little or no attention to historical consolidation of title, which is the basis of Nigeria’s claim but refers instead to the concept of prescription, which is generically distinct and has not been invoked by Nigeria. In his opinion, if Nigeria had invoked prescription, this would have eliminated many of Nigeria’s *effectivités* (CR 2002/4, p. 39, para. 10; pp. 51-52, para. 37). But this assertion is unfounded and in any event Nigeria has not relied upon prescription. Counsel for Cameroon cannot expect to reinvent Nigeria’s case in order to attack it.

In concluding, I wish to thank those who have assisted me in preparing this speech and, in particular, Christopher Hackford and David Lerer of D. J. Freeman.

This concludes my presentation this morning and I would thank the Court both for its courtesy and its patience.

The PRESIDENT: Thank you very much, Professor Brownlie. Ceci met un term à la séance de ce matin. La prochaine séance aura lieu lundi à 10 heures. La séance est levée.

L'audience est levée à 13 h 05.
