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Cour internationale
de Justice

LA HAYE

International Court
of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le mardi 5 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 Tuesday 5 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
Buergenthal
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
 Elaraby
 Judges *ad hoc* Mbaye
 Ajibola
 Registrar Couvreur

Le Gouvernement de la République du Cameroun est représenté par :

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

comme agent;

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

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

comme coagents, conseils et avocats;

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

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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,

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The Government of the Republic of Cameroon is represented by:

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

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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,

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

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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,

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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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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,

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

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M. Maxwell Gidado, assistant spécial principal du président pour les affaires juridiques et constitutionnelles, ancien *Attorney-General* et commissaire à la Justice, Etat d'Adamaoua,

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M. Alhaji S. M. Diggi, directeur des frontières internationales, commission nationale des frontières,

M. K. A. Adabale, directeur pour le droit international et le droit comparé, ministère de la justice,

M. A. B. Maitama, colonel, ministère de la défense,

M. Jalal Arabi, membre de l'équipe juridique du Nigéria,

M. Gbola Akinola, membre de l'équipe juridique du Nigéria,

M. K. M. Tumsah, assistant spécial du directeur général de la commission nationale des frontières et secrétaire de l'équipe juridique,

M. Aliyiu Nasir, assistant spécial du ministre d'Etat, ministre de la Justice,

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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,

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

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comme agent et conseil;

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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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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,

Mr. Antonio Nzambi Nlonga, Attorney-General,

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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. La séance est ouverte et je donne la parole, au nom de la République fédérale du Nigeria, à M. Alastair MacDonald.

Mr. MACDONALD: Merci Monsieur le président.

LAND BOUNDARY

1. Mr. President, distinguished Members of the Court, it is a great honour for me to address you for the first time, on behalf of the Federal Republic of Nigeria. As a land surveyor of long experience, much of which comes from several years spent making maps in African territories, including the then United Nations Trust Territory of Southern Cameroons, I approach the presentation of this part of Nigeria's case with a particular interest and enthusiasm.

2. My task this morning is twofold. First, I will explain to the Court three examples of defective boundary delimitation arising from the wording of the boundary instruments. Nigeria has chosen these examples to show the Court that there are complex geographical issues involved, which clearly need resolution before demarcation can proceed.

3. Secondly, I shall take the Court through three examples of serious misinterpretation of the same boundary instruments by Cameroon. My purpose here is to show that Cameroon, whilst vigorously pleading that the original boundary instruments should be the sole determinants of the boundary, has itself deviated from them to a significant extent, and with serious consequences for the location of the boundary.

4. Cameroon in effect is seeking to obtain a declaration from this Court that the 1931 Thomson-Marchand Declaration and the 1946 Order in Council, on their own, provide a satisfactory delimitation of the boundary in those parts to which they apply. But these instruments were prepared a long time ago, when there was a very limited understanding of the terrain. For the Court simply to endorse them in the abstract would be, I submit, completely unsatisfactory. There are disputes about the interpretation of the relevant instruments. These involve problems of the meaning of the instruments and their application on the ground. They are significant in terms of the areas involved and the number of people who live there. They will *not* be resolved by the Parties. Unless they *are* resolved by the Court, the boundary will not be specified definitively. Indeed, in these areas, it will not be specified at all.

5. Mr. President, I shall make considerable use of maps and contemporary cartographic technology this morning. As the Court will be aware, the use of digital mapping displayed by computer is commonplace in a wide variety of applications in today's world. This morning, I will be displaying composites merged from Nigerian and Cameroonian map sources so that I can give the Court a clearer picture of the relevant border area. I will project extracts of these composites at an enlarged scale so that the Court will find my arguments easier to follow. I will also display them in some cases in a three-dimensional format that will help to clarify the issues. The source material for all my graphics are the topographic maps already submitted to the Court in Nigeria's written pleadings.

Examples of defective delimitation

The "incorrect watershed"

6. Mr. President, distinguished Members of the Court, my first case of defective delimitation comes from the northern part of the boundary, located on the map on screen and at tab 50 of the judges' folder. It arises from Articles 24 and 25 of the 1931 Declaration, the text of which is also now on screen and at tab 50.

7. The challenge facing anyone interpreting this part of the Declaration is how to apply the instruction contained in Article 25 — and underlined in red on the text — to adhere to the *incorrect* line of the watershed shown on Moisel's map. Counsel for Cameroon¹, suggested that decisions such as this in the text were merely "unfortunate" and could be cured by a demarcation team. Mr. President, that is certainly not the case. To show why, may I take the Court through the complexities of this part of the 1931 Declaration?

8. Moisel's map is now on the screen and at tab 51. This German map series of Kamerun was produced in various editions between 1908 and 1913 and the later editions were used to illustrate the Milner-Simon Declaration of 1919. The Court will readily see that Moisel's understanding of the topography of the area between Humsiki and Burha, in the vicinity of Gili, was extremely limited. This lack of understanding is even more obvious if we compare his map with this modern composite — now on screen and also at tab 51 — taken from Nigerian and

¹CR 2002/2, p. 57, para. 25 (Khan).

Cameroon map sources at a scale of 1:50,000. Both map series were prepared from detailed aerial photography that gave a clear view of the complete topography.

9. Nigeria submits that the proper and logical way in which to interpret the boundary, from the reference to Moisel's incorrect watershed in Article 25, is as follows:

- (a) first, establish the cause of the error in Moisel's map;
- (b) second, define the extent of its effect on the line of the watershed;
- (c) third, transpose Moisel's incorrect line for this part of the watershed to the modern map, taking into account the difference in projections and the relative accuracies;
- (d) finally, use the transposed line to interpret the intentions behind the drafting of the 1931 Declaration.

10. I will then go on to compare this line with the line submitted to the Court by Cameroon on the maps in its Reply².

11. The error in Moisel's map can be easily detected by a comparison of the rivers on his map with those on the modern 1:50,000 maps of the area produced by the British Directorate of Overseas Surveys in 1969 and by the French *Institut Géographique National* in 1965.

12. Looking again at Moisel's map, at tab 52, we can see that he took the river whose tributaries rise in the high land south of Humsiki and which he called Waldocho, ran it southwards to the west of Schua and Gili and then, before reaching Burha, turned it to the east to join the catchment of the Benue River.

13. The copy of the 1913 edition displayed here is of the map signed by Viscount Milner and Mr. Simon and attached to the 1919 Declaration. The boundary defined by this instrument is represented by a green line and, in this area, is described thus: "thence a line south-westwards to the watershed between the basin of the Yedseram on the west and the basins of the Mudukwa and of the Benue on the east; thence this watershed to Mount Mulikia"³. Thus the green line can be taken as a contemporaneous interpretation of the watershed on Moisel's map — and one that was available to the draftsmen of the 1931 Declaration, when they inserted the instruction to remain with that watershed, even though they knew by then that it was incorrect.

²Reply of Cameroon, Vol. II, maps 7 and 8.

³Milner-Simon Declaration, Art. 1, para. 7.

14. In order to facilitate a comparison between Moisel's map and its modern counterpart, we now take the alignments of his Waldocho river and the green line and transpose them to the composite of modern Nigerian and Cameroon 1:50,000 maps, now on screen and at tab 52. We have allowed for the differences in projection of the two maps by adjusting these alignments slightly so that the positions of Burha and Humsiki coincide. If we examine the real course of the river whose headwaters start near Humsiki, we can see that, as with Moisel, it flows south past Schua. However, it then turns to the *west* near Gili and flows into Nigeria, where it is called the Diwu.

15. This river is part of the drainage system, now being displayed on screen, which runs into the Yedseram River flowing north to Lake Chad. The catchment area draining first to the east and then to the south consists of these streams, now displayed on screen, whose waters run into the Mayo Kébi and eventually reach the Atlantic Ocean. The true watershed between the two catchments runs along this orange line, now displayed on screen. It lies much further to the east than the line depicted on Moisel's map. The complete drainage pattern can be seen at tab 52.

16. Thus, Moisel's belief that the Waldocho headwaters were part of the catchment of the Kébi flowing to the Atlantic Ocean, rather than part of the catchment of the Yedseram flowing into Lake Chad, is the cause of his mistaken depiction of the watershed. It is now necessary to establish the extent of this incorrect line.

17. Returning to Moisel's map, at tab 53, it is now possible to display the true watershed that would have resulted if Moisel's Waldocho River had correctly followed across into the Diwu, flowing west into Nigeria. The resulting, and correct, watershed would have been the orange line, now displayed on the screen, and running up to 12 km to the east of the green line. The Court will now see that the "incorrect line of the watershed" starts at a point a little to the north-east of Humsiki and follows the green line southwards as far as a point about 5 km north-north-east of Burha where it meets up with the orange line.

18. Only part of this incorrect boundary is incorporated in the 1931 Declaration, however. Article 24 defines the boundary up to the point where it "crosses Mount Kuli". As the Court will see, at the top of the map, this section is shown, as precisely as is possible on Moisel's map, by a red line.

19. It is from Mount Kuli, southwards to the point north of Burha, that Article 25 and *its* reference to the incorrect line of the watershed apply. Thus, that part of the incorrect watershed, which needs to be transposed from Moisel's map onto modern mapping, is the remaining section of the green line now flashing on the screen.

20. To transpose the "incorrect line" from Moisel's map to the modern map — which is also at tab 53 — is not difficult using computer techniques. First, we identify the endpoints of the incorrect watershed on the modern mapping. At the northern end, the prominent Hossere Kilda, arrowed in the top part of the screen, is the modern name for Mount Kuli. At the southern end, we can simply take the point, now arrowed, that satisfies the two requirements that I established earlier on Moisel's map. It must lie on the true watershed, the orange line, and it must be at a distance of about 5 km from Burha.

21. We then take the incorrect section from Moisel's map and move it onto the modern map. Because of the discrepancies caused by projection differences, it will not fit precisely between the common endpoints that we have identified. We achieve a fit by adjusting the length of the line slightly. And this is a common cartographic adjustment process.

22. We now have as good a transposition of Moisel's incorrect line of the watershed onto the modern map as it is possible to get. It does, however, represent a quite arbitrary line and would be difficult to set out on the ground.

23. The line runs across the grain of the country in complex curves and there is no evidence that it has ever been set out on the ground or explained to the local populations. Furthermore, there exists a *procès-verbal*⁴ that goes into greater and more helpful detail than the eventual Thomson-Marchand Declaration and suggests that the boundary should follow the centre of a track running from Muti towards Burha but passing 2 km to the west of the latter. From this, it is reasonable to suggest that the draftsmen were aiming for a line that ran roughly in a straight line from Mount Kuli to the vicinity of Burha.

24. A series of graphics on screen and at tab 54 now provide a closer view. Between Hossere Kilda and a small hill just to the north-north-west of Muti, the local watershed appears to

⁴Rejoinder of Nigeria, Ann. NR 152.

have been accepted by both Parties as the boundary and does indeed approximate to the direction to Burha. This is now shown by a red line. The location of the Muti-Burha track is now no longer clear but it is possible to produce an alignment running close to the line from Muti to Burha and to the incorrect line of the watershed, by using the following hill features.

25. From the small hill north-north-west of Muti, the incorrect line is best interpreted by a line running to the spot height of 998 m, and to another spot height of 915 m, both in the Hossere Goulever, and then to the small hill of Hossere Paliroum.

26. Now the line runs to the unnamed hill, referred to as Hill A in Nigeria's Rejoinder⁵, before finally reaching the southern endpoint of the "incorrect line" on a small hill about 5 km north of Burha.

27. From this point, the boundary continues southwards along the true watershed leaving Burha to Cameroon and Madaguva to Nigeria, as required by the 1931 Declaration. And thence southwards along the true watershed towards Gandira, which falls a little way off the bottom of this map⁶.

28. Mr. President, this has been a complex presentation but it has been necessary to go into this detail in order to show the Court the dangers of relying solely on the terms of the 1931 Declaration and of accepting Cameroon's casual rejection of the seriousness of this and other defective situations.

29. Nigeria submits that Article 25 needs careful consideration and can only be properly interpreted at the delimitation stage — a task which is well outside the scope of a demarcation commission. Nigeria further submits that the logical approach that I have described fully reflects the intention behind Article 25 in a way that no other approach would do.

30. By contrast, Cameroon's interpretation, as evidenced by the maps submitted with its Reply⁷, is quite illogical, following for the most part a series of streams inside Nigeria. In no sense can this be taken as representing the line of a watershed, incorrect or otherwise, as required by Article 25. The next series of graphics on screen and at tab 55 show the Cameroon line, which first

⁵P. 339, para. 7.54.

⁶Rejoinder of Nigeria, pp. 373–375, paras. 7.137–7.144.

⁷Atlas, maps 7 and 8.

follows Nigeria's line for 9 km southwards from Hossere Kilda. In the vicinity of Muti, however, it then moves to the west of Moisel's incorrect watershed to follow a series of streams some 4 km inside Nigeria. It passes some 4 km to the west of Burha and follows yet another stream up onto the main watershed in the vicinity of Bana Hill.

31. From the vicinity of Muti, and to beyond Madaguva, no part of Cameroon's line can be remotely justified by the 1931 Declaration. Nigeria submits that, by contrast, there is a strong logical and cartographic argument in support of its own line and that this line fully meets the requirements of the 1931 Declaration.

32. Nigeria therefore requests the Court to endorse Nigeria's suggested interpretation of Article 25 as set out in specific detail in its Rejoinder⁸.

Itang Hill (Mount Kombon)

33. Mr. President, distinguished Members of the Court, I turn now to my second example of defective delimitation inherent in the 1931 Declaration. This concerns the area in which the 1931 Declaration and the 1946 Order in Council meet, which is located on the map on screen and at tab 56. The 1931 Declaration defines the boundary as it runs from the north-east to the meeting point whereas the 1946 Order brings the boundary from the west. The relevant parts of the texts are Articles 60 and 61 of the 1931 Declaration and are now on the screen and also at tab 56.

34. The Court will see that Article 60 contains a lot of information that will help to identify both the "fairly prominent, pointed peak" and the location of the cairn itself. Nigeria has put this information to good use in what is to follow.

35. Before I go on, Mr. President, will you allow me to remind the Court of counsel for Cameroon's dismissal of this example as of "truly minor significance"⁹. Nigeria cannot accept his lackadaisical approach for two reasons. For one thing he has made an error of truly *major* significance in displaying to the Court a map that misplaces Mount Kombon by some 18 km. His map¹⁰ is now on screen and at tab 57, and his position for Mount Kombon can be clearly seen in red. However, Mount Kombon lies to the north-west of Songkolong, in the arrowed position, and

⁸P. 340, para. 7.59.

⁹CR 2002/2, p. 70, paras. 27, 30 and 31 (Shaw).

¹⁰Tab 39 of the judges' folder for 19 Feb. 2002.

not to the north-*east* as he would have it. This can be confirmed by referring to the maps in Cameroon's own Reply¹¹. Professor Shaw goes on to suggest that the two boundary instruments, to which I have referred, "provide sufficient guidance for a demarcation arrangement to be put into place that would permit identification of the 'prominent peak' in question". Mr. President, that surely cannot be the case if they lead him to a position that is 18 km in error! This is just another example of the complete lack of appreciation by Cameroon of what the boundary instruments actually mean.

36. But more than that — counsel for Cameroon is wrong in his logic as well as in his geography. Mount Kombon and its relation to the main watershed is a complex and confusing one, as I will now demonstrate to the Court.

37. I will begin by illustrating the texts of Articles 60 and 61 on a vertical view of the area, now on screen and at tab 58. Article 60 brings the boundary from the north-east along the main watershed, between the Benue catchment in Nigeria and the Mbam catchment in Cameroon. It runs along the top of the Mambilla Escarpment to a point near the village of Tamnyar. From this point, the Article becomes defective, and I shall discuss this later.

38. Article 61 continues what has now become the obsolete Anglo-French boundary down the escarpment following the watershed — now that between the Malam and the M'fi Rivers — on which the cairn, referred to in Article 60, is situated. The orange line shows its course. Its description ends at the cairn itself, sited under the highest peak of Hosere Nangban, which is arrowed.

39. Nigeria has already established¹² that this part of the 1931 boundary was delimited by officers travelling along the roads — now marked by arrows — that ran along the base of the Mambilla Escarpment, rather than on foot along the top. It is obvious that the comfortable but distant view that this low-level route provided must inevitably have led to uncertainty at times. Nigeria submits that the choice of the "fairly prominent, pointed peak" as a point on the watershed was the result of observations from the plains without the benefit of on-the-spot inspection.

40. The result was a defective delimitation which I now propose to deal with as follows:

¹¹Vol. II, map 18.

¹²Rejoinder of Nigeria, pp. 355-356, para. 7.90.

- (a) first, I shall establish the identity of the “fairly prominent, pointed peak”;
- (b) second, I shall show that this peak does not lie on the main watershed as required by Article 60, which as a result is defective;
- (c) finally, I will suggest how the text should be interpreted in order to establish a boundary in line with the intention of the draftsmen.

41. I shall then consider the effect that this defective delimitation has on the junction with the section of boundary delimited by the 1946 Order in Council.

42. A series of graphics to illustrate my arguments is at tab 59.

43. The detail in Article 60 is more than sufficient to identify the prominent peak in question, by observation from the site of the cairn. The cairn itself lies on the now obsolete international boundary between the old British and French Cameroons and is now well inside Cameroon. Nigerian officials have thus not been able to visit it nor to view the boundary from that point. Nigeria has already explained how it identified the probable location of the cairn¹³ and it is possible to produce a view of the escarpment from this location, using existing mapping. Here it is. The direction of true north is indicated.

44. The magnetic bearing of 17° given in Article 60 can be corrected to true bearing by using the magnetic variation of 1931, which was 9° W. This means that the *true* bearing of the prominent peak from the cairn was then, and still is, 8° E. It is a simple procedure on the conventional map itself to draw the bearing of 8° and to determine which hill is on that bearing. This reveals that the bearing passes through this hill, which is called Itang by the local people but has been named Kombong on map 18 in Cameroon’s own Reply¹⁴. One can see why, when faced with this view of the escarpment, the officials charged with producing the text for the 1931 Declaration, described this hill as a “fairly prominent, pointed peak” and indeed it is the hill most suited to this description in the area concerned.

45. It can also be seen that it is very likely that they would have assumed that this peak lay on the main watershed and so drafted Article 60 as they did. Again, they would have assumed that, from the peak, the main watershed followed the orange line along the edge of the escarpment

¹³Rejoinder of Nigeria, p. 357, para. 7.93.

¹⁴Vol. II, map 18.

before turning down the ridge, which formed the watershed between the Malam and the M'fi, to reach the cairn they had built at the foot of Hossere Nangban. This assumption led to the drafting of Article 61.

46. Unfortunately for the officials, both the stream to the east of the hill and that to the west run well back into the Mambilla Plateau, so that Itang Hill is not on the main Benue-Mbam watershed referred to in Article 60, but on a short local watershed between two streams draining into the Mbam. As, with the aid of the graphics, we rise further up and now look down on the area from above, this becomes even clearer. The eastern stream has a complex pattern: some of the initial tributaries run north from the edge of the escarpment before joining together and turning to run south over that edge. If the boundary is to remain on the Benue-Mbam watershed *and* pass through Itang Hill — two requirements of Articles 60 and 61 — it can only do so if it arrives and departs by the same route, shown in orange. This is clearly a nonsensical result and the delimitation is thus defective. There are several possible ways of dealing with the problem and Nigeria argues that the choice of solution is one that must be made at delimitation and not at demarcation.

47. Nigeria believes that the correct way to overcome the problem is to apply the principle adopted in the *Argentine-Chile Frontier* case¹⁵. Thus the boundary should follow the main watershed to a point where it begins to move away from the expressly stipulated boundary peak of Itang Hill and then, from that point, it should follow a straight line to Itang Hill.

48. From Itang, I have already shown that the boundary would follow the edge of the escarpment to the Malam/M'fi watershed, stipulated by Article 61, and then continue on that watershed down the escarpment — along the orange line. It is now time to discuss *where*, on this line, the junction with the boundary defined by the 1946 Order in Council lies.

49. Article 60 refers to a “fairly prominent, pointed peak” which Nigeria submits is to be interpreted as Itang Hill. The 1946 Order in Council, which comes, at this point, from the west, ends its delimitation thus: “thence on a true bearing of 100° for three and five-sixths miles along the crest of the mountains to the prominent peak which marks the Franco-British frontier”.

¹⁵*Argentine-Chile Frontier Dispute* (1966), *ILR*, Vol. 38, p. 10 (commonly referred to as the *La Palena* arbitration).

50. This implies that the connection lies on the summit of a prominent, but not necessarily pointed, peak. Before it reaches this peak, the boundary passes along a “crest of the mountains”. Nigeria submits that this is the crest, now indicated with a second orange line on the screen, and that, after passing along the crest, the boundary defined by the 1946 Order meets that defined by the 1931 Declaration at the summit of Tonn Hill, now indicated. This summit *is* prominent, *is* on the Franco-British frontier, and *is* arrived at along “the crest of the mountains”. Thus, the use of the phrase “prominent peak” in the 1946 Order clearly leads us to this hill, Tonn, as the junction point between the two boundary instruments.

51. Returning to a vertical view, the boundary defined by the 1931 Declaration runs along the red line from Itang Hill to Tonn and that is where I shall halt my discussion of the boundary — at the point where the relevance of the 1931 Declaration ends and the 1946 Order takes over. I will explain how it continues to the west in my third example.

52. Mr. President, I have demonstrated to the Court that Articles 60 and 61 contain a defective delimitation for this part of the boundary. It is *not* an example of “truly minor significance” as Professor Shaw asserted. Neither is it an issue that can be left to a demarcation commission, as Mr. Khan wanted. It is clearly a problem of delimitation which needs resolution beforehand and the interpretation of the text, which Nigeria has submitted, resolves it in the best way possible and in accordance with international law. Nigeria therefore asks the Court to endorse this suggested interpretation, as set out in greater detail in its Rejoinder¹⁶.

Lip and Yang

53. Mr. President, distinguished Members of the Court, for my third example of defective delimitation, I shall move to the area of Lip and Yang, a little way to the west of Itang Hill, where the 1946 Order in Council applies. The relevant text is at tab 60.

54. At first sight, the text contains a mass of data that must surely define the boundary without any doubt. Unfortunately, it is impossible to find the right sequence of ground features that fit all the constraints. This has produced a defective delimitation which I will deal with as follows:
(a) first, I shall show how the 1946 Order does not match the topography;

¹⁶P. 359, para. 7.98.

- (b) second, I shall indicate which part of the Order is defective;
- (c) thirdly, I will explain the impact of a 1941 Agreement on the Inter-Regional Boundary, supervised by a colonial official, Dr. Jeffreys;
- (d) finally, I will show how the Order in Council line will, as a result, connect to the 1931 Declaration line.

55. I will then go on to compare Nigeria's line with that submitted to the Court by Cameroon in its Reply¹⁷.

56. A series of graphics at tab 61 illustrates my arguments.

57. On the left of the vertical view on screen, the Court will see the boundary line coming southwards — in red — down the Mburi River as far as a confluence where the boundary will turn to the east; and this point is now arrowed. Although the 1946 Order refers only to the Mburi River, there are other local names for this boundary river. Up to this point, it is also known as the Mantu or Manton. The branch that now carries the boundary to the east is also known as the Maven. Both Parties agree on the location of the boundary up to the point on the Mburi or Maven that is now arrowed. It is from here to the “crest of the mountains” in the west that difficulties arise.

58. The model on the screen now moves in — the enlarged view is also at tab 61 — to the area immediately to the north of Yang, which is in Cameroon. The relevant headwaters of the Mburi River are emphasized in yellow. The course of the Kumbo-Banyo road is also shown. The Court will see that the highlighted section of river contains the only headwater crossed by the Kumbo-Banyo road in the vicinity of Yang.

59. I will now take the Court through the topographic inconsistencies in that part of the text that is underlined in red in tab 60. Firstly, the Order requires that the Kumbo-Banyo road crosses the Mburi River at Yang (the modern name for Nyan) but none of the headwaters reach that village so the requirement cannot be met. The road does cross the Mburi at the point arrowed, 1¼ miles north of Yang. Accepting this apparently invalid position as the crossing point so that the discussion may proceed, we have two stream junction candidates that are now emphasized in

¹⁷Vol. II, map 18.

yellow. The 1946 Order requires that the junction is 1 mile north of the road crossing. The northern junction only $\frac{5}{8}$ mile to the north of the crossing and the stream goes in the wrong direction and is too short. It follows a valley on a true bearing of 133° not 120° , for a distance of $\frac{7}{8}$ mile not $1\frac{1}{2}$ miles. And at the head of this valley, one cannot be said to be “near” the source of the Mfi. That is $1\frac{1}{2}$ miles away across the valley of another tributary of the Mhuri River. However, one is close to the Kumbo-Banyo road.

60. The second stream candidate is immediately to the south of the road crossing, not 1 mile to the north, and is emphasized in yellow. This stream also goes in the wrong direction and is too long. It follows a valley on an average true bearing of 133° rather than 120° , the same as in the first case, and for a distance of $2\frac{1}{4}$ miles not $1\frac{1}{2}$ miles. At the head of this valley, however, one is closer to the source of the Mfi. However, one is $1\frac{1}{2}$ miles from the Kumbo-Banyo road.

61. Neither stream can be said to match the requirements of the Order in their entirety and the Order is therefore defective in this locality.

62. However, Nigeria has already explained to the Court¹⁸ that a more recent document has come to light referring to a meeting held at Yang on 13 August 1953 at which provincial officials and representatives of the local communities were present.

63. The record of the meeting, attended by the Touring Officer Southern Area, Adamawa Division, in the Northern Cameroons, refers to an enquiry held in 1941 by Dr. Jeffreys, then Senior District Officer at Bamenda in the Southern Cameroons, as a result of which he had “fixed the boundary, recognized by Government between the two provinces” (i.e., between Northern and Southern Cameroons, a boundary which is now the international boundary between Nigeria and Cameroon).

64. No copies of the Order made by Dr. Jeffreys were then available, but

“fortunately, a large cairn of stones on the main Bang-Yang path was accepted by both sides as one of the points in this boundary, the area in dispute lying to the west of this cairn between the path and the River Manton”.

65. The 1941 meeting had reached an agreement on a line from Yang running first to the west and then north to the Manton (i.e. the Mhuri) River, in these terms:

¹⁸Rejoinder of Nigeria, p. 363, para. 7.107, and Ann. NR 171.

“After much discussion both sides agreed that the Jeffreys Boundary ran as follows:

‘From the Cairn on the Bang-Yang path in a westerly direction for about 600 yards to a group of eight trees. From these trees in a northerly direction for about 100 yards to the head of the Mogog Stream. Following the Mogog Stream to its junction with the Maven Stream. Following the Maven Stream to the Manton River.’”

66. Professor Shaw sought¹⁹ to devalue the importance of the 1941 Jeffreys boundary and the agreement confirmed at the meeting of 13 August 1953. Yet Cameroon’s own evidence²⁰ apparently confirms that the “*réalité sur le terrain*” in this part of the boundary is dictated by “*le tracé des frontières depuis 1941 et un procès-verbal de réunion du 13 août 1953 réglant le litige de limites de terrain entre les communautés villageoises de Yang et de Bang*”. The relevant reference appears in the transcript.

67. This “*tracé des frontières*” enables the boundary to be followed from the site of the cairn north of Yang, referred to in the Jeffreys agreement — and now shown by a green triangle — as far as the Manton (or Mburi) River. The site of the cairn, though now marked by a single large stone, has been confirmed by means of interviews on the ground and its location fits the Jeffreys description. From the site of the cairn, the line — shown on screen in red — runs westerly to some trees, then northerly to the head of the Mogog stream, then down that stream to its confluence with the Maven and finally into the Manton River.

68. Looking at the wider picture, we now have the gap between the cairn at Yang and Tonn Hill to consider. The relevant part of the description in the 1946 Order reads as follows:

“thence along this unnamed stream on a general true bearing of 120° for one and a half miles to its source at a point on the new Kumbo-Banyo road, near the source of the River Mfi: thence on a true bearing of 100° for three and five-sixths miles along the crest of the mountains to the prominent peak which marks the Franco-British frontier”.

69. I have already shown that the first part of this description is defective. This also casts doubt on the validity of the bearing to and the distance along the crest of the mountains that is once again identified by the orange line used in my previous example. Nevertheless, the “crest of the mountains” remains a valid description of the feature along which the boundary must travel for its final stages to Tonn Hill.

¹⁹CR 2002/2, p. 67, para. 20.

²⁰Memorial of Cameroon, Ann. MC 258, p. 2153.

70. Thus, the boundary — in red — running westwards from Tonn Hill, follows the orange line as far as the point now arrowed. This leaves a gap of about 5.5 km between the cairn at Yang and the crest of the mountains. The two points both lie on the main watershed between the Benue catchment in Nigeria and the Mbam catchment in Cameroon and Nigeria submits that the intention of the draftsmen of the 1946 Order was to use this watershed to divide the two Regions of the Trust Territory along the route of the red line that now joins the cairn to the crest.

71. The line that I have indicated is the best possible interpretation of the various, and frequently conflicting, requirements of the 1946 Order in Council and of the intentions underlying it, in the light of the Jeffreys agreement.

72. By contrast, Cameroon's line — in blue — inexplicably follows the Maven River upstream to the point where that river turns to the south. From this point, it continues up the stream that flows past Bang, a Nigerian village with some local government offices, which Cameroon claims to be in its own territory. A little way beyond Bang, it switches to a ridge, used by the Kumbo-Banyo road, and follows this until it reaches the main watershed at a low col, now indicated on the screen. From here, it continues along the main watershed and never comes anywhere near any peak, pointed, prominent or otherwise. And it is of course a long way from the M'fi catchment. In no way can it be said to be following any crest of any mountains, nor do any of the streams it uses conform to the bearings and distances given in the Order in Council. This interpretation is fundamentally incorrect, impossible to understand and should be rejected by the Court.

73. This is a serious violation which could affect the lives and security of a large farming community living on intensively cultivated land. In all, some 33 km² of Nigerian land are claimed by Cameroon.

74. Nigeria therefore submits that the Court should endorse the line I have indicated as the best interpretation of the defective delimitation between the Maven (Mhuri) River and Tonn Hill: that interpretation is set out by Nigeria in its Rejoinder²¹.

²¹P. 364, para. 7.111.

Cameroon's misrepresentations of the boundary line

75. Mr. President, distinguished Members of the Court, I now turn to three examples where Cameroon's claim line, presented to the Court on the maps submitted in its Reply, shows a complete disregard for the provisions of the boundary instruments even though Cameroon is asking the Court to rule that these are the only documents that delimit the boundary.

76. I would like to remind the Court, before we go through these examples, that counsel for Cameroon made three points in his oral pleadings:

(a) First:

"If it turned out that some depictions on Cameroon's maps were in contradiction with any of the treaty provisions . . . Cameroon will not hesitate to bring its maps in accordance with the true state of the law as quickly as possible."²²

(b) Second: he later declined to comment on Nigeria's claims of misrepresentation and then said:

"Even if these allegations were correct, something which Cameroon strongly contests, . . ."²³

(c) Finally:

"Nigeria's cartographic representation of the boundary line does not only give a one-sided and highly disputable interpretation of certain stipulations of the Thomson-Marchand Declaration. In some instances it is even in clear contradiction with the express wording of the Declaration."²⁴

77. It would appear that Cameroon is willing to admit to mistakes but denies that Nigeria has discovered any. It goes further to claim that Nigeria's examples are one-sided and highly disputable. My examples will show the Court how false the Cameroon claims are.

78. The first of my examples is chosen to show the sheer illogicality of the Cameroon line. The next involves a very significant area of land where Cameroon's claim is based on the complete rejection of clearly worded text. The third concerns a long section of boundary where the simple term "watershed" has been wilfully misinterpreted. These are not areas where the relevant boundary instrument is difficult to interpret. The instructions are clear and precise but Cameroon has nevertheless deviated from the proper line, by significant amounts and in a manner that seems entirely without justification.

²²CR 2002/2, p. 52, para. 13 (Khan).

²³CR 2002/2, p. 56, para. 23 (Khan).

²⁴CR 2002/2, p. 59, para. 30 (Khan).

Maio Senche

79. My first example comes from the Alantika Mountains in the central part of the boundary, as located on screen and at tab 62. It does not involve very much land and it is in a remote area. Nevertheless, it is serious because it displays such a brazen disregard for the clear, unequivocal text of the 1931 Declaration. The text of the relevant Article 35 is on screen and at tab 62.

80. Mr. President, the text underlined in red is surely as clear an instruction to remain on the watershed as there could be.

81. However, the map on screen and at tab 63 shows a comparison of the Nigerian claim line with that of Cameroon. The Nigerian line in red follows the intricacies of the watershed. By contrast, the Cameroon line in blue cuts off a loop in the watershed by choosing to follow a Nigerian stream down into the basin of the Maio Senche— shown in yellow— and then, by another Nigerian stream, back up on to the watershed.

82. Mr. President, Nigeria rejects Cameroon's suggestion that this is "one-sided and highly disputable". There can be *no* dispute over Nigeria's line. Rather, it is Cameroon's blatant departure from the clear terms of the 1931 Declaration that is extremely difficult to understand or to forgive. It should be rejected outright by the Court in the manner requested by Nigeria in its Rejoinder²⁵.

Bissaula — Tosso

83. Mr. President, distinguished Members of the Court, my next example comes from further south along the boundary, in the vicinity of Bissaula, as located on screen and at tab 64. The relevant section of the 1946 Order is also now on screen and at tab 64.

84. At this point I must ask for the indulgence of the Court because I wish to trace the boundary in the opposite direction to that in which it is described in the 1946 Order, as it will be much easier to present my arguments in this direction. I must also point out that the mapping I will use will be displayed with north at the bottom. This produces a view in better sympathy with the direction of travel.

²⁵Pp. 381-382, para. 7.168.

85. On the map now on screen and at tab 65, let me identify the features mentioned in the Order in Council: Tosso Mountain, already referred to by my friend, Sir Arthur Watts, is well to the west. Kentu is an old settlement, shown on Moisel's map to the south of Bissaula, while Bamenda is an administrative centre well to the south in Cameroon. The so-called "road", now highlighted in yellow on the screen, is a long-established walking route used by myself in 1956, but more usually by traders between the highlands of Cameroon and the Nigerian low country around Bissaula and beyond. It is still in use today. This river highlighted in blue is named on Cameroon maps deposited with the Court as the Akbang, which flows into the Donga.

86. The boundary runs southwards from the River Donga along the Akbang and then branches off up this tributary — in red. Both Parties agree on the alignment as far as this point where the tributary splits in two. From here, Nigeria's line — in red — takes the southern branch, crosses the road at this point and then travels in a straight line towards Tosso Mountain. The Cameroon line — in blue — crosses the road further to the north. I will now move in closer to show the crossing points on the road in more detail. My arguments can also be followed on a series of graphics at tab 66.

87. I start at Bissaula and follow the road as it climbs up onto a ridge, which it follows towards the south. We will now see — in blue — the boundary alignment claimed by Cameroon. It comes up the northern branch to its source, which is under the crest of a ridge 150 m east of the road. Cameroon's claimed line then follows this ridge to the point where it crosses the road, before heading off in a straight line towards Tosso Mountain.

88. It is very clear from the model that Cameroon's claimed line does not, as it is required to do by the 1946 Order in Council, cross the road where the latter passes over a stream. In fact, the crossing point is the very opposite — high on the crest of a ridge. Again, it must be rejected.

89. If we now move further south, the Court will note that the road continues along the ridge without crossing a stream. Now we see — in red — the line claimed by Nigeria. The Nigerian line comes up the southern branch and crosses the road at a stream crossing — highlighted in blue — as it is required to do — the point is arrowed. The Court will note that this is the only point at which a stream of any sort crosses this road in this vicinity. From this unique crossing point, the boundary travels in a straight line towards Tosso Mountain.

90. Mr. President, distinguished Members of the Court, this may at first sight seem to be one of Cameroon's less extensive deviations from the clear language of the 1946 Order. However, if the Court examines this conventional map of the area, taken from Nigeria's Counter-Memorial²⁶, now on screen, we can follow the description in the 1946 Order from Mount Tosso. The Kentu-Bamenda road is highlighted in yellow. The blue line runs from Mount Tosso to the crossing point claimed by Cameroon whilst the red line runs to the point claimed by Nigeria. It is clear that a large triangle of land, amounting to about 75 km², is in dispute.

91. Nigeria once again rejects utterly the accusation that this is a "one-sided and highly disputable" interpretation. Nigeria's line meets the requirements of the 1946 Order in every respect and Nigeria requests the Court to rule that the correct position for the crossing point of the Kentu-Bamenda road is that point where the one and only stream crosses the road some 6 km south of the position claimed by Cameroon. It further requests the Court to endorse the submission set out in its Rejoinder²⁷.

Mandara Mountains

92. Finally, Mr. President, I wish to consider the Mandara Mountains, a long chain of high ground in the northern part of the boundary, where the boundary is defined by Articles 20 to 23 of the 1931 Declaration — and the relevant text is at tab 67. The boundary runs for the most part along the watershed of these mountains from Ngossi in the north to Humsiki in the south. It is a densely populated and cultivated area, farmed by people who are closely related across the boundary.

93. The location of the boundary is therefore particularly important and an understanding of the term "watershed" is crucial to interpreting the delimitation. I would like to remind the Court of two widely accepted definitions of "watershed", both of which Nigeria accepts. The *Oxford English Dictionary* gives this definition: "The line separating the waters flowing into different river basins; a narrow elevated tract of ground between two drainage areas," while *Le Grand Larousse de la langue française* gives a similar meaning: "Ligne de partage des eaux, crête plus

²⁶Atlas, Map 66.

²⁷P. 393, para. 7.196.

ou moins élevée à la rencontre de deux versants, qui constitue la limite séparant deux bassins hydrographiques.” Here, in the Mandara Mountains, and indeed throughout this case, these are the interpretations that Nigeria has placed on the word “watershed” whenever it appears in a boundary instrument.

94. Mr. President, why do I take time to explain to the Court the meaning of the word “watershed”, a term you are so familiar with? For this reason: after a challenge by Nigeria²⁸, Cameroon in its Reply defended its line in the southern part of these mountains — a line which runs for the greater part, half-way down the Nigerian escarpment — with these words:

“[L]a ligne de partage des eaux indiquée à l’article 23 de la Déclaration Thomson-Marchand peut être assimilée à une rupture de pente entre deux bassins hydrographiques et non nécessairement à une ligne topographique.”²⁹

And with these: *“[L]es cartes I.G.N. ne sont pas incorrectes et sont en tous points conformes aux dispositions des paragraphes 23 à 25 de la Déclaration Thomson-Marchand.”³⁰*

95. There is a clear dispute between the Parties on this point. It is not just a question of demarcation, that is, of locating a boundary description on the ground. It involves a point of principle.

96. As I say, for much of the length of the Mandara Mountains, the boundary follows a watershed. A motorable road, constructed by Cameroon, also follows the watershed, with occasional departures where the terrain makes it impossible to remain on it. In several places, these departures represent unauthorized and significant incursions into Nigerian territory. There are several large villages on or near the watershed, mostly established by Cameroon, and at one of these, Turu, serious encroachments have been made into Nigeria.

97. There can be no doubt that Articles 20 and 21 provide an unarguable definition of a watershed boundary from Ngossi as far as the hill of Matakam, which is nowadays known as Gilda.

98. Let me now illustrate the issues arising on this section of the border. A series of graphics at tab 68 illustrates my arguments. In this view on screen, Mr. President, you are looking south;

²⁸Counter-Memorial of Nigeria, p. 512, para. 19.9.

²⁹P. 211, para. 4.116.

³⁰P. 212, para. 4.118.

Nigeria appears on your right and Cameroon on your left. We start at Ngossi with Humsiki shown at the southern end and we will now move in closer to look at the Ngossi area in more detail.

99. Before going any further, let me explain to distinguished Members of the Court what they are seeing here. Nigeria's interpretation of the boundary line is the broken red line and, for the most part, it follows the watershed. Cameroon's interpretation is the broken blue line that, for long sections, follows a route well below the watershed. The road, which runs along the watershed for most of its length, is the double black line. Where the road encroaches onto Nigerian territory, the area of land between road and boundary is shaded yellow. The purple area shows where significant building development has occurred across the watershed into Nigerian territory at the Cameroon village of Turu. Other important settlements, which are situated on the boundary, will be marked by a collection of black squares. Major settlement names have been added to assist the Court to follow progress.

100. Here at Ngossi, which is arrowed, there is a significant encroachment by the Cameroonian road into Nigerian territory. There is also a Cameroon school sited near the road in the yellow area. Cameroon's claim line, as evidenced by the maps submitted to the Court in its Reply³¹, takes an even less justified course within Nigeria and below the watershed as shown by the blue line. The Court will note that this line crosses several streams, which are now arrowed, while running 500 m to the west of the watershed and some distance below it.

101. As we run southwards towards Turu, the road keeps sufficiently closely to the watershed to satisfy Nigeria. However, the Cameroon boundary line continues to run 500 m inside Nigeria.

102. At Turu itself, there is serious encroachment. Four hundred metres before the T-junction, the Cameroonian road strays onto the Nigerian side of the watershed and remains there through the settlement of Turu for a distance of 2.5 km. At its most intrusive, it is 500 m inside Nigeria. The Cameroon boundary line continues to run about 600 to 800 m to the west of the watershed and some way below it.

³¹Vol. II, maps 6 and 7.

103. Turu is a major settlement, and there are many Cameroon buildings, both government and private, which have been built on Nigerian land. Several are even on the western side of the road, as can be seen in three photographs that I would now like to show the Court. They were taken by telephoto lens by Nigerian officials from positions on the edge of the purple area and looking eastwards. The first shows a general view of the settlement in which the track running southwards is clearly visible and all the tin-roofed dwellings are Cameroonian and on the Nigerian side of the watershed. The second shows a Cameroon school well inside Nigeria, with the two hills in the middle ground defining the watershed and thus the boundary, while the third shows a large Cameroon Catholic church, again, well inside Nigeria, with the two rocky hillocks behind it defining the watershed and thus the boundary.

104. South of the Turu encroachment — and may I again remind the Court: Nigeria on the right, Cameroon on the left — the Cameroon maps now bring the boundary back to its correct position on the watershed, although there is a small incursion by the road into Nigerian territory before we reach Gilda Hill.

105. From Gilda Hill, past Mabas and on to Wula, some uncertainty creeps in. The relevant part of Article 22 of the 1931 Declaration reads: “Thence running due west to a point to the south of the village of Wisik where it turns to the south on a line running along the watershed and passing by Mabas on the French side, . . .”

106. While this might suggest that the boundary continues along the watershed — shown in orange — towards the Cameroon settlement of Mabas, there has been some adjustment to the border locally. Both the Cameroon map and local information from Nigerian sources agree that the boundary turns south-west from Gilda Hill and follows the course of a stream — highlit in yellow — for about 4 km before returning to the watershed as far as Mabas.

107. Beyond Mabas, the relevant part of Article 22 says: “passing by Mabas on the French side, after which it leaves Wula on the English side running south and bounded by cultivated land to the east of the line of the watershed”.

108. This clearly implies that the boundary moves away from the watershed south of Mabas and uses the edge of cultivated land instead, leaving Wula to Nigeria. The area concerned can now be seen on screen. Nigeria asserts that the Cameroon line, shown in red, is nowadays accepted as

the boundary as far as the T-junction some 12 km south of Mabas. Cameroon, by contrast, takes the boundary firstly along the watershed as far as a narrow col — now arrowed — south-east of Wula Hanko and then by a mountainous route to Humunsi, now known as Roumzou. This line completely ignores the requirement to be “bounded by cultivated land” and does not leave Wula to Nigeria.

109. The next section of the boundary, as far as Mogodé, is described by Article 23: “Then passing Humunsi on the French side the boundary lies between the mountains of Jel and Kamale [and] Mogodé on the French side and running along the watershed . . .”

110. The T-junction lies on the main watershed and the Nigerian boundary line now follows that again past Humunsi on the Cameroon side and as far as Yele, with few differences with Cameroon. Beyond Yele, the Cameroon claim line takes a big swing down the Nigerian escarpment — particularly well illustrated at the arrow north of Mogodé. There can be no justification for Cameroon placing its line so far beneath the watershed, in complete disregard of the phrase “running along the watershed” in Article 23.

111. Article 23 leaves Mogodé to Cameroon, but Cameroon makes an outrageous claim on its maps by again swinging the boundary down the escarpment to the west, reaching a maximum distance of 2 km inside Nigeria. The extent of this encroachment can be clearly seen at the point now arrowed.

112. Continuing beyond Mogodé — and may I once again remind the Court: Cameroon on the left, Nigeria on the right — there are minor incursions by the Cameroon road onto the Nigerian side of the watershed in the vicinity of Kama Hill and Hosere Piouo: these are shown in yellow. However, much more serious is the location of the Cameroon claim line, which continues to run about halfway down the Nigerian escarpment. Once again, this alignment cannot in any way be said to reflect the text of Article 23 and, in particular, that phrase “running along the watershed”. The incursion is at its worst to the north of Humsiki, where, at the arrowed point, it crosses a Nigerian valley 250 m in height below the watershed.

113. Mr. President, distinguished Members of the Court, from what you have just seen, you will be able to understand the degree of alarm that Nigeria feels at the unjustified and aggressive interpretation of the boundary by Cameroon in this sector and, in particular, at the gross violations

taking place at Turu, an issue that Cameroon has consistently ignored throughout these proceedings. This whole area is heavily populated and, once again, we are dealing with many peoples' lives and their security. Nigeria requests the Court to endorse the interpretation of the boundary that I have outlined as the one that faithfully follows the requirements of Articles 20 to 23 of the 1931 Declaration. It further requests the Court to endorse the relevant submissions set out in its Rejoinder³² both in respect of this whole section and of Turu itself.

114. That is the last of my examples for the Court this morning. I have shown you three examples of defective delimitation in the existing boundary instruments. From what I have said about Nigeria's methods, the Court can see that Nigeria has brought a fair and logical approach to arriving at the solutions to these difficult problems of interpretation, an approach that conforms to the requirements of international law.

115. I have also shown you three examples of cases where Cameroon, whilst encouraging the Court to consider only the original boundary instruments, has itself manifestly failed to observe these instruments by significant amounts and over significant distances.

116. I must make it clear that these are not the only cases. There are other places where the delimitation of the boundary is defective or where Cameroon has completely ignored the requirements of the boundary instruments on which it purports to rely and that it so earnestly seeks to have the Court uphold without qualification. The full list of these places can be found in Nigeria's Rejoinder³³. There is no sign that Cameroon has given any serious consideration to the interpretation of the boundary instruments or even that it understands their limitations.

117. Mr. President, that completes my topographical tour — which would not have been possible without the skilled help that I have received from Mr. Rocky Rizzutti and Mr. Bruce Daniel. May I now invite you to give the floor to Sir Arthur Watts — unless, that is, you would consider that this would be an opportune moment for the Court to rise for a well-earned break?

³²Pp. 371-372, para. 7.131 and p. 373, para. 7.136.

³³Pp. 321-322, para. 7.7 and p. 367, paras. 7.122-7.123.

The PRESIDENT: Thank you very much, Mr. Macdonald. La Cour va suspendre pour une dizaine de minutes.

L'audience est suspendue de 11 h 20 à 11 h 30.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise. I now give the floor to Sir Arthur Watts for the Federal Republic of Nigeria.

Sir Arthur WATTS: Thank you, Mr. President.

LAND BOUNDARY

1. Mr. President and Members of the Court, the Court has heard from Mr. Macdonald and myself about 12 of the locations along the land boundary where there are delimitation problems. Those twelve are about half of the total, and they are generally representative of the problem locations which Nigeria identified in its Rejoinder. The others are adequately explained in Nigeria's written pleadings.

2. Cameroon's response to the various problem locations, such as it is, is interesting. On the one hand they are so serious, so it is said, that they undermine the whole boundary; on the other hand many of them are, for another of Cameroon's counsel "really of truly minor significance"³⁴. Mr. President and Members of the Court, "minor" is a strange word to use in this context. Counsel for Cameroon applied it expressly to what he referred to as the Mount Kombon problem: counsel clearly did not know what he was referring to. Mr. Macdonald's presentation this morning has shown that, whatever the Mount Kombon problem might be, it is not "minor". And what about all the other areas? As the Court has seen, significant areas of land are affected by these delimitation difficulties. People — quite large numbers of them — live and work in those areas: boundary decisions which affect their lives are also far from "minor". Nigeria hopes that the Court will hear no more of these dismissive and patronizing Cameroonian attitudes.

3. There is another aspect to Cameroon's response to the particular areas raised by Nigeria. In respect of two of them, Cameroon has expressly accepted that there *can* be departures from the Thomson-Marchand Declaration and the 1946 Order in Council. In relation to boundary pillar 64,

³⁴CR 2002/2, p. 70, para. 27 (Shaw).

counsel for Cameroon in terms accepted Nigeria's suggested interpretation of what must have been intended by the drafters of the 1946 Order in Council: counsel said "Cameroon is quite happy to accept here Nigeria's interpretation"³⁵. So there is one clear matter which need trouble the Court no more, otherwise than to record and confirm the Parties' agreement reached in these proceedings.

4. The other area is the mouth of the Ebedji. The substance of Cameroon's explanations about that area were dealt with yesterday. What is important here is that Cameroon has been perfectly happy to see that part of the Thomson-Marchand Declaration given an appropriate interpretation. Nowhere in the record is there any suggestion that Cameroon objected to the Thomson-Marchand Declaration being interpreted. Indeed, Cameroon did not just want the text interpreted, but actually put forward an amendment which Cameroon has admitted in these proceedings departs from the terms of the Declaration: Cameroon admits that its supposed mouth of the River Ebedji is not located where there is any possible mouth of a river³⁶, even though the terms of the Declaration require the boundary to be at the "mouth" of the Ebedji.

5. So, when it suits Cameroon, *both* the boundary instruments affected by delimitation defects may be interpreted, and even amended. There is nothing special about the two locations chosen by Cameroon. Exactly the same considerations apply to the other problem locations to which Nigeria has drawn attention, and Cameroon cannot be heard to deny it.

6. Mr. President and Members of the Court, the locations to which Nigeria has drawn attention in this delimitation context are the *only* qualification — I must emphasize that, Mr. President — they are the *only* qualification upon Nigeria's acceptance of the four boundary instruments which delimit the boundary between Nigeria and Cameroon. They are, as Nigeria made very clear in its Rejoinder — and again yesterday was made clear by Nigeria's distinguished Co-Agent — the *only* qualification implicit in Nigeria's "in principle" acceptance of those four instruments. Moreover, in practice they only concern two of those instruments, the Thomson-Marchand Declaration and the 1946 Order in Council.

³⁵CR 2002/2, p. 70, para. 28 (Shaw).

³⁶CR 2002/2, p. 41, para. 83 (Cot).

7. There is no “long list”³⁷ of exceptions, or “myriad of issues”³⁸, as counsel for Cameroon expressed it to the Court. There is nothing open-ended about Nigeria’s attitude, as Cameroon would have the Court believe; in no way can Nigeria be said to have accepted the boundary instruments in one breath, and then to be rejecting them in the next. Mr. President and Members of the Court, *Nigeria accepts the four boundary instruments, subject only to the 22 specific matters which Nigeria has identified*. Nigeria cannot be clearer than that.

8. As Nigeria stated in its Rejoinder³⁹, the locations which give rise to genuine delimitation problems account for only some 210 km of the boundary’s length — out of a total length of some 1,800 km. It is thus very far from the truth to suggest, as counsel for Cameroon suggested, that Nigeria is asking the Court to examine “every kilometre” of the boundary⁴⁰.

9. It is quite wrong for Cameroon, as it must know very well, to try to characterize Nigeria’s attitude to the boundary as an attempt to undermine it *in toto*.

10. Cameroon’s position is all the more untenable given the Judgment of this Court in the preliminary objections phase of this case⁴¹. There, as the Court put it, Cameroon argued that what it saw as Nigeria’s challenge to the validity of the existing titles to Bakassi, Darak and Tipsan, “necessarily calls into question the validity as such of the instruments on which the course of the entire boundary . . . is based”⁴². That was Cameroon’s argument and the Court in terms *rejected* that argument. Moreover, the Court found that the existence of a boundary dispute in relation to Bakassi, Lake Chad and Tipsan, even when taken together with various alleged incidents along the boundary, did not “establish . . . the existence of a dispute concerning all of the boundary between Cameroon and Nigeria”⁴³ — that was a quote from what the Court said. So if what the Court referred to as “challenges to title” and actual “disputes” do not threaten the boundary as a whole, it

³⁷CR 2002/2, p. 61, para. 2 (Shaw).

³⁸CR 2002/2, p. 70, para. 27 (Shaw).

³⁹P. 296, para. 6.16.

⁴⁰CR 2002/1, p. 50, para. 28 (Pellet).

⁴¹*I.C.J. Reports 1996*, at para. 90.

⁴²*Ibid.*, para. 89.

⁴³*Ibid.*, para. 90.

is impossible to consider that requests for interpretation or clarification can have any such effect — especially when, for the most part, those requests are so far uncontested in any detail by Cameroon.

11. But Cameroon still persists with its argument that Nigeria is trying to undermine the boundary as a whole. The distinguished Co-Agent for Nigeria demonstrated yesterday that this general argument is wholly at variance with the realities along the land boundary. Let me now address some particular — and increasingly desperate — arguments which Cameroon has advanced in its attempt to justify its conclusion that the boundary as a whole is put at risk by Nigeria’s approach.

12. Thus the Court has been told that by raising points of detailed boundary delimitation Nigeria is trying to divert attention away from the main point of Cameroon’s case⁴⁴. The Court has also been told that Nigeria’s acceptance of the boundary instruments only “in principle” leaves “very little indeed” of its claim to be adhering to those instruments⁴⁵ — a remark made by counsel when referring to the Thomson-Marchand Declaration, but presumably of general application. Then again, the Court has been told that Nigeria’s approach amounted to Nigeria reserving the right to rewrite the boundary instruments whenever it suited Nigeria to do so⁴⁶. And, in case that is not enough, Nigeria’s approach is said to be in conflict with what are said to be certain applicable principles.

13. All this is wildly inaccurate. Let me address them in a little detail. The second and third can be disposed of quickly. The Parties agree that the land boundary stretches for something like 1,800 km. The locations, which in Nigeria’s submission give rise to delimitation problems affect, as I have already said, some 210 km of the boundary. So some 1,600 km of the boundary are unaffected — something approaching 90 per cent. Only Cameroon could regard that as “very little indeed”.

14. As for Nigeria reserving to itself the right to rewrite the boundary instruments whenever it chooses, counsel for Cameroon evidently does not read Nigeria’s pleadings. In them Nigeria has made it absolutely clear, more than once, that the deficiencies to which it has drawn attention are

⁴⁴CR 2002/1, p. 30, para. 20 (Ali); CR 2002/2, p. 53, para. 16 (Khan).

⁴⁵CR 2002/2, p. 50, para. 9 (Khan).

⁴⁶CR 2002/2, p. 21, para. 14 (Cot).

both limited and specific — 22 to be exact, and of those, two are already admitted by Cameroon to be legitimate, and a further nine are occasioned only by Cameroon's own failure to abide by clear and agreed boundary texts. Far from Nigeria seeking to avoid the boundary instruments as and when it chooses, Nigeria has done the exact opposite. If any avoidance is in question, it is on the part of Cameroon which steadfastly refuses to look at details.

15. As for Cameroon's fourth suggestion — I have not forgotten the first, Mr. President, but I am saving it for last — this was that Nigeria was somehow behaving in violation of certain applicable principles — and these seem to be principles of completeness⁴⁷, indivisibility⁴⁸, intangibility⁴⁹, and unchangeability⁵⁰. Quite where these principles come from is not clear: their academic ring is, however, unmistakable. But what do they amount to in practice?

16. To take first "completeness", we are told by counsel for Cameroon that "The first, and possibly the most important, principle applicable to the delimitation of any boundary is that every delimitation which has been effected as a result of a boundary agreement between States is to be presumed as effecting that delimitation over the entire length of the territory being delimited." So this "principle" in fact turns out to be no more than a "presumption". And as such it is obviously rebuttable.

17. But in any event, so far as the land boundary in this case is concerned, it seems to give rise to no problems. Nigeria accepts that the land boundary between Lake Chad and Bakassi is delimited by the four relevant boundary instruments, and Nigeria's qualification regarding the need for a specific and limited number of clarifications does not run counter to the completeness of those boundary instruments. Indeed, it does the opposite, for in a number of instances it is lacunae in the delimitation which Nigeria seeks to have filled by the Court's interpretation. The Court will recall, for example, the unfilled gaps to which I drew attention yesterday between the source of the River Sassiri and the "old boundary about Lapeo", and between there and the watershed on the Balkosa Mountains.

⁴⁷CR 2002/1, p. 51, para. 2 (Ntamark).

⁴⁸CR 2002/2, pp. 48-49, para. 6 (Khan).

⁴⁹CR 2002/2, p. 49, para. 7 (Khan).

⁵⁰CR 2002/2, p. 49, para. 8 (Khan).

18. This so-called principle of completeness is said by Cameroon to have particular relevance to boundary treaties. Treaties delimiting a frontier, it is said, establish a frontier which is permanent, definite and complete in the absence of clear proof to the contrary⁵¹. This is yet another example of Cameroon postulating a fine-sounding principle, without substantiating it or going to the trouble to examine its concrete application in any particular circumstances, let alone the particular circumstances of this case. But anyway, it is the so-called principle itself which is unfounded.

19. No treaty, not even a frontier treaty, is more permanent, definite and complete than its terms and applicable rules of international law allow. No treaty, by virtue solely of being a boundary treaty, is immune from the application of normal rules of international law which, for example, allow for a treaty to be varied expressly or by implication: no alleged presumption of permanence (the existence of which is in any event not established) protects even a boundary treaty from the normal operation of such rules — they are “permanent” only in the sense that they stand until they are lawfully changed. If a treaty is subject to some substantive defect affecting its validity or effect, it is not cured of that defect simply because it purports to establish a boundary; if a treaty is unclear so as to require interpretation, it still needs interpretation even if it is a boundary treaty; if a treaty, for whatever reason, only applies to part of a boundary, it does not suddenly establish a complete boundary just because it is a boundary treaty benefiting — so it is said — from some presumption of completeness. Being a boundary treaty is not some kind of immunization against the diseases of impermanence, invalidity, ambiguity, and incompleteness.

20. Let me now consider “indivisibility”. This is said to involve a State not being able to call in question any part of a boundary without destabilizing the whole boundary. Any such proposition, even when granted the accolade of “principle”, is patently incorrect. Many — probably most — boundary cases decided by international tribunals have involved the questioning of part only of a boundary, while leaving the rest intact. Tribunals have had no problems with that situation: this Court had no problems with it in the recent case concerning *Kasikili/Sedudu Island*⁵².

⁵¹Reply of Cameroon, para. 2.22.

⁵²*I.C.J. Reports 1999*.

21. As for “intangibility”, it appears to be a concept which is itself somewhat opaque. It is related to Nigeria’s statement in its Rejoinder of its unwillingness to say that it fully accepts a boundary delimitation when it knows or sincerely believes that that delimitation is defective on various grounds. That statement was made in a context which shows it to have been a general approach embracing the whole boundary, including Bakassi and Lake Chad. To take such a general statement and then pretend that it applies in all its aspects just to the sector governed by the Thomson-Marchand Declaration, and then to go on to conclude that that shows that Nigeria is raising a dispute which “goes far beyond questions of interpretation of certain provisions of the boundary régime” and “goes to the very heart of this régime”, is as far-fetched as it is wilfully misleading. As Nigeria has time and time again both said in its written pleadings, and demonstrated in these present hearings, so far as concerns the land boundary *all* the issues raised by Nigeria involve *only* imperfections or a lack of clarity in the boundary delimitation.

22. Finally, “immutability”. This is just another label for mischaracterizing Nigeria’s suggested interpretations of the boundary as attempts to rewrite them. I have already disposed of one aspect of the matter, and I will turn to another aspect of it in a moment.

23. Counsel for Cameroon cited the situation in the area around Narki as an example of a Nigerian “rewriting” of the Thomson-Marchand Declaration. It has to be said that his presentation of the matter is an unrecognizable caricature of Nigeria’s argument. This is not the place to take the Court through this location in detail: the position is set out fully and clearly in Nigeria’s Rejoinder⁵³. But I must just point out that Cameroon:

- (a) ignores the fact that aerial photography⁵⁴ shows there to be several waterways in the area, and at least three to the north and north-west of the town of Limanti, not just the two shown on Cameroon’s map⁵⁵;
- (b) Cameroon ignores the fact that, since the Thomson-Marchand Declaration does not indicate which of these is to be followed, its very terms are therefore defective;

⁵³Pp. 330-331, paras. 7.26-7.30.

⁵⁴Rejoinder of Nigeria, fig. 7.3, facing p. 330.

⁵⁵Judges’ folder, 19 Feb., doc. 27/4.

- (c) it ignores the fact that the Declaration requires the boundary to follow a river “quite close” to the town of Limanti, which Nigeria’s interpretation does, while Cameroon’s does not; and
- (d) it ignores the fact that the Declaration refers to the boundary following that river to a confluence which is about 2 km to the north-west of Limanti, which Nigeria’s interpretation does, but which Cameroon’s does not, preferring instead a confluence about 1 km due north of Limanti.

24. Cameroon seeks to suggest that Nigeria’s reason for its suggested interpretation of the boundary alignment is based on the existence and location of two well-established Nigerian villages. No, Mr. President: the location of villages is evidence in support of Nigeria’s interpretation, but Nigeria’s interpretation of the Declaration addresses the meaning to be given to the evident ambiguities in the actual terms of that Declaration — terms which Cameroon quotes but simply refuses to examine in relation to the features clearly shown to exist on the ground.

25. Let me now, at last, turn to the first point raised by Cameroon in its attempt to justify its conclusion that Nigeria is challenging the boundary *in toto*. This point calls for more thorough deconstruction.

26. It is said by Cameroon that Nigeria is trying to distract the Court from the main issue, namely — so Cameroon says — the confirmation of the boundary instruments. But Nigeria must remind the Court that Cameroon has put *two* matters in issue in these proceedings. Cameroon did indeed, even if only by necessary implication — and as it has subsequently explained — invite the Court to confirm the four relevant boundary instruments: but Cameroon’s Additional Application *also* invited the Court to “specify definitively” the land boundary. Indeed, that could be seen as Cameroon’s primary request to the Court.

27. Cameroon has never denied — and indeed it *cannot* deny — that its Additional Application used those words: let me remind the Court what Cameroon actually said.

28. Cameroon, in subparagraph (f) of paragraph 17 of its Additional Application, put the following request to the Court. In view *inter alia* of Nigeria’s attitude regarding

“the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea”.

29. The Court will have noted Cameroon's references to both "the exact course of that frontier" and the express request "to specify definitively" the frontier between the two States.

30. But in its Reply Cameroon sought to change its position. It appeared to blame Nigeria for introducing the request that the boundary should be specified definitively⁵⁶, but this was obviously just a face-saving attempt to cover its real purpose: this was to try to remove from the Court's consideration Cameroon's original request that the Court should "specify definitively" the land boundary between Lake Chad and Bakassi, and to leave the Court with only the more limited request that the Court should confirm the boundary as delimited in the relevant instruments.

31. Cameroon in these hearings has tried also to suggest that Nigeria had wrongly taken Cameroon's words out of their context. But, Nigeria took Cameroon's words precisely *in* their context. Cameroon complained of Nigeria's attitude towards "the exact course of the frontier", and referred to the instruments delimiting the boundary: and Cameroon then asked the Court to specify that boundary definitively. The context is absolutely clear: it shows that Cameroon originally asked for the boundary to be established with exactitude. Cameroon now obviously regrets having done so: and the revised language of its submissions in its Reply is an admission that its earlier language meant what Nigeria says it meant, namely that Cameroon had by that earlier language submitted to the Court *both* a request to confirm the relevant instruments *and* a request to specify the boundary definitively.

32. Now Cameroon wants to withdraw from the Court the second of those requests which it had originally put before the Court. But Cameroon has no right to do that. Once put before the Court by Cameroon, as the Applicant, the issue cannot be unilaterally withdrawn. That follows from the previous decision of this Court in the *Barcelona Traction* case⁵⁷, referred to yesterday by the distinguished Co-Agent for Nigeria.

33. Moreover, Cameroon seems to have forgotten what this Court has already found, that it has to deal with the specifics of the boundary delimitation. Let me recall exactly what the Court said in the preliminary objections⁵⁸ phase of these proceedings. In introducing Nigeria's fifth

⁵⁶See Rejoinder of Nigeria, pp. 297-298, paras. 6.19-6.20.

⁵⁷*I.C.J. Reports 1964.*

⁵⁸*I.C.J. Reports 1998.*

preliminary objection, the Court noted that “Cameroon requests that the Court” — and here the Court quoted Cameroon’s very words — “specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea” (para. 86). And then at the end of its treatment of that objection, the Court said that it “is seised with the submission of Cameroon which aims at a definitive determination of its boundary with Nigeria from Lake Chad to the sea” (para. 96). It is clear that the Court was in no doubt but that it was dealing with a case involving the details of the delimitation of the boundary, and that that was what Cameroon was asking it to do.

34. In truth, it is apparent that the Court has before it the two requests — first, the request for general confirmation that the relevant boundary instruments are indeed the instruments which govern the delimitation of the boundary, *and* the request that the Court should “specify definitively” that land boundary.

35. Nigeria has addressed *both* by — if I may wrap up both answers in a single statement — acknowledging that the four relevant boundary instruments govern the delimitation of the boundary, although in order for them to do so effectively a specific and limited number of deficiencies need to be clarified first.

36. Cameroon, however, has taken a different attitude. It has concentrated only on the first issue, the confirmation of the four boundary instruments. It disdains to get its hands dirty with boundary detail: as counsel said, “we deliberately do not intend to seek to rebut these allegations point by point”⁵⁹. As in other aspects of this case, Cameroon prefers to keep its distance from anything to do with detail: it prefers general abstractions, so-called principles, theoretical analyses, and so on. So — except only the one case where it is thought to suit Cameroon, at the mouth of the Ebedji — Cameroon avoids detailed discussion of the specific delimitation problems to which Nigeria has drawn attention.

37. That, of course, is a matter for Cameroon to decide for itself. But having put the matter of definitive boundary delimitation on the table, and being unable, in accordance with the jurisprudence of this Court, unilaterally to withdraw it from the Court, Cameroon lets its case — if it has one — go by default. A party whose arguments and evidence are inadequate inevitably

⁵⁹CR 2002/1, p. 33, para. 31 (trans.) (Pellet).

incurs the risk that on the merits its case may be found wanting⁶⁰. And this must be all the more so in respect of an aspect of the case — namely the definitive specification of the boundary — which that party had itself introduced, and where it is not a matter just of inadequate evidence or argument, but of none at all.

38. Cameroon, Mr. President and Members of the Court, is the Party which has spent so much time telling the Court that the boundary instruments have an almost sacred quality. They are, so Cameroon says, sufficient in themselves, and are to be observed as they stand. But then Cameroon itself must abide by those instruments. Nigeria noted, and invites the Court particularly to note, the words of counsel for Cameroon:

“If it turned out that some depictions on Cameroon’s maps were in contradiction with any of the treaty provisions determining the course of the boundary, this Court can be assured that Cameroon will not hesitate to bring its maps in accordance with the true state of the law as quickly as possible.”⁶¹

Presumably that applies not just to paper conduct — the maps — but to real conduct — activity on the ground.

39. Of course, Cameroon’s commitment is meaningless unless Cameroon is ready to discuss the cartographic and topographic details. But it is clear that Cameroon does not want to discuss the detail of all this. Generalities — pure verbiage — are what Cameroon prefers. So much so that Cameroon accuses Nigeria of diverting attention from the main Cameroon case by going into all this uncomfortable detail⁶² — uncomfortable for Cameroon, that is.

40. But it is, in fact, unavoidable that the boundary delimitation must get into detail: unlike Cameroon’s rhetoric, the boundary is on the ground, not in the clouds. Cameroon forgets that it was Cameroon, not Nigeria, which asked this Court to “specify definitively” the land boundary. And Nigeria welcomes such a definitive specification. Nigeria does not accept that Cameroon is now entitled to say that when it *said* “specify definitively” it really meant no more than “confirm generally”. Cameroon, having expressly put the definitive specification of the boundary before the Court, has no right in law now to seek to withdraw that issue from the Court.

⁶⁰Preliminary objections, *I.C.J. Reports 1998*, at para. 101.

⁶¹CR 2002/2, p. 52, para. 13 (Khan).

⁶²CR 2002/1, p. 30, para. 20 (Ali).

41. Mr. President and Members of the Court, Cameroon's failure to address the issue which it itself placed before the Court has led Cameroon to seek to justify its failure by mischaracterizing Nigeria's position in a number of ways. Thus Nigeria's wish to see the meaning of the boundary instruments clarified so as to give proper effect to the intentions of the Parties — that is, by the classic process of interpreting texts which are shown not to be clear, or which Cameroon's conduct has thrown into doubt — has been misrepresented by Cameroon as an attempt by Nigeria to rewrite the terms of the boundary instruments. This is far from being the case.

42. Nigeria seeks from the Court an interpretation of certain provisions in the relevant instruments. In those cases where Nigeria has drawn attention to Cameroon's conduct which departs from the terms of the instruments, Nigeria simply asks the Court to reaffirm the agreed texts, and to agree that it means what Nigeria contends that it means. In those other cases where Nigeria has drawn attention to evident defects in the sense of the delimitation language itself — that is, defects in the delimitation as such, as counsel for Cameroon put it — Nigeria asks the Court to interpret that text so as to make its meaning clear.

43. It is in the nature of interpretation that it results in language which is different from that of the text being interpreted. There would be no interpretation if the Court simply said that some given words meant those same words: one cannot usefully interpret an ambiguous term or phrase simply by repeating the very same word or phrase. Nigeria, accordingly, suggested to the Court the language which, in Nigeria's submission, the defective text was intended to bear and which it should be interpreted as bearing. Nigeria is in no way seeking to vary the substance of what the makers of the boundary instruments intended, but only to interpret the terms used in order the better to give expression to that intended substance.

44. Nor — to pick up another of Cameroon's mischaracterizations of Nigeria's position — is Nigeria unilaterally making boundary changes. Nigeria has not sought to do so. What Nigeria has done is to make *submissions* to the Court, supported by all necessary reasons, as to what the correct interpretation of the boundary instruments should be and how that interpretation might best be expressed in words. It is certainly within the competence of the Court to interpret the boundary instruments: Cameroon has not denied that.

45. Cameroon acknowledges that both Parties accept the boundary instruments, but differ in their interpretations: “that is their right” — so said counsel for Cameroon⁶³. Nigeria is entitled to make submissions to the Court about the correct interpretation. And so too, of course, can Cameroon: it has the choice of putting forward its own views, or it can continue to avoid discussing the practical issues and stay silent. In the light of the submissions presented by the Parties, it is of course, the Court which will decide.

46. Nigeria thought it would be convenient, and helpful, if its suggested formulations for a more accurate expression of the original intentions were embodied in the framework of the boundary instruments, so that their place in the overall pattern of the instrument would be apparent. But if, Mr. President and Members of the Court, that way of proceeding is not convenient, Nigeria would naturally have no objection to any other equivalent way of proceeding which might commend itself to the Court. For example, if the Court would think it more appropriate to confirm the boundary instruments while at the same time recording separately its conclusions as to how certain of their provisions are to be interpreted or understood, Nigeria would of course accept such an approach.

47. The fact is that we know more today than was known in 1929-1931 or 1946. It is true that in 1931 the United Kingdom and France thought that the Thomson-Marchand Declaration was sufficiently clear to make provision for demarcation. But that was 1931: today is 2002, and quite a lot more is now known of the local topography.

48. The question really is this: should we stay with an older text which can now be shown to be wrong? Our present case has several similarities with the *Argentina-Chile Frontier* case — the *La Palena* case⁶⁴, decided in 1966. There, the Court will recall, there had been an Arbitral Award in 1902 which delimited the boundary in terms of the line followed by a certain river. It then became apparent, in the light of more modern information, that while the original Arbitral Tribunal had assumed the river to have its source on a particular mountain, in fact its source was elsewhere. There was no question of it being thought right for the 1966 Tribunal simply to abdicate its functions and say that the original Award had said what it said, and that all the present Tribunal could do was say the same thing again. No, Mr. President and Members of the Court, the Tribunal

⁶³CR 2002/2, p. 33, para. 54.

⁶⁴1966, *ILR*, Vol. 38, p. 10.

in that case — presided over by Lord McNair — dealt with the question of interpretation as best it could in the light of the more accurate knowledge which was by then available.

49. What the *La Palena* case also demonstrates is that problems of delimitation are not avoided, as counsel for Cameroon seem to think, by the use in a delimitation of natural features — indeed, it is often the use of natural features, especially when imperfectly understood, which is the very cause of problems. The *La Palena* case itself involved a river: that did not help the parties, given that its course was misdescribed. The recent *Kasikili/Sedudu Island* case involved a river and an island, and that did not help the parties when they had to decide which side of the island the main channel of the river followed.

50. In our present case — and contrary to what counsel for Cameroon said⁶⁵ — most of the problem locations identified by Nigeria involve natural features — rivers, watersheds, hills, and so on. The use of such features in a delimitation does not help unless the delimitation is both clear and correct as to *which* river, watershed or hill is being referred to; equally, problems will remain if, even though the delimitation is clear and correct on such matters, a party — like Cameroon in this case — adopts as its boundary a line which is at variance with the features correctly used as part of the delimitation.

51. Whatever approach is adopted, Nigeria submits that the interests of accuracy and certainty, and thus of stability, would be best served if, where the interpretation of the boundary instruments is unclear, key points were identified by geographical co-ordinates. Counsel for Cameroon⁶⁶ observed that “there is no principle of international law requiring a frontier to be delimited exclusively in terms of geographical co-ordinates and it is quite common for frontiers to be delimited by reference to natural features such as watercourses, mountains, crest lines or watersheds, as in this case”. Counsel noted also that the lack of co-ordinates in the boundary instruments was “precisely one of the reasons which led the Court to find, in its 1998 Judgment, that it had jurisdiction to confirm the existing instruments”.

52. Counsel for Cameroon was being even-handed: he was partly right, and partly wrong. Nigeria agrees that there is no rule of international law which *requires* that boundaries be delimited

⁶⁵CR 2002/1, p. 75, para. 15 (Simma).

⁶⁶CR 2002/1, p. 46, para. 15; p. 29, para. 15 (English trans.).

exclusively in terms of geographical co-ordinates. But it helps, Mr. President, it helps — and there is equally no rule of international law which excludes it. It helps where a boundary follows a route which lacks distinctive natural features; it helps where natural features are not themselves very precise — which is presumably why Cameroon itself wants the mouth of the Ebedji delimited in terms of co-ordinates. The precision which is nowadays possible with the use of GPS technology is something which, for example, Mr. Thomson and Mr. Marchand could hardly have imagined.

53. But in Nigeria's submission counsel for Cameroon was wrong in saying that the absence of co-ordinates in the instruments was "precisely one of the reasons" why the Court held in its 1998 Judgment that it had jurisdiction. How does counsel know? The Court itself never gave that particular reason for deciding as it did.

54. Moreover, counsel is also wrong in suggesting that in 1998 the Court held that "it had jurisdiction to confirm the existing instruments" — as if the Court had at that stage already decided that all that was in issue in this part of the case was the confirmation of the existing instruments and not the definitive specification of the boundary. But that is *not* what the Court decided, and what it actually *said* was in the opposite sense. All that the Court *decided* was that Nigeria's fifth preliminary objection was rejected; and since that objection was that there was no dispute concerning "boundary delimitation as such", what the Court held was, in effect, that there was a dispute concerning "boundary delimitation as such". The Court said nothing about the dispute being about the "confirmation of the existing [boundary] instruments". Indeed, as I have already noted, the Court acknowledged that it was "seised with the submission of Cameroon which aims at a definitive determination of its boundary with Nigeria from Lake Chad to the sea" (para. 93) — a submission which aims at a definitive determination of its boundary with Nigeria.

55. If anything, therefore, Mr. President and Members of the Court, the Court has already accepted that the issue before the Court is indeed the issue which Cameroon itself put before the Court, namely, not merely the confirmation in general of the boundary instruments, but also the definitive specification of the boundary. In stating that Nigeria sees this as being the task put before the Court, let me emphasize that Nigeria is not asking the Court to assume functions which are properly left to demarcation. Nigeria accepts that at the demarcation phase a certain latitude has to be left to the demarcation team to ensure that, in marking the boundary on the ground, they

do so in a way which makes sense, given the immediate topography and the local population factors with which they are faced.

56. That kind of demarcation flexibility, however, is usually quite limited, both in territorial scope *and* in purpose. Thus, in the March 1913 Anglo-German Treaty a deflection of the delimited boundary up to 1¼ miles was permitted, but only so that farms were not separated from the villages to which they belonged⁶⁷. The Mandate for the British Cameroons allowed the Milner-Simon line to be “slightly modified”, but only by mutual agreement of the two Governments, and only “where an examination of the localities shows that it is undesirable . . . to adhere strictly to the line” either in the interests of the inhabitants or by reason of inaccuracies in the Moisel map⁶⁸.

57. It is a prerequisite for that kind of practical margin of appreciation that the delimitation which the demarcation team is applying on the ground is itself sufficiently clear. If, for example, there is uncertainty as to which of two rivers the boundary is to follow, it asks too much of the demarcation team to require them to take that decision: it is the delimitation which needs to be clarified, *before* the demarcation team can undertake its task.

58. The example of bifurcating rivers is, in fact, very much to the point. This Court did not dismiss the *Kasikili/Sedudu Island* case because it was only a demarcation problem: no — it was treated by the Court as fairly and squarely a problem of delimitation and interpretation. Similarly, in our present case, the two Parties have tried to deal with the mouth of the Ebedji over a period of several years, but have failed to reach agreement — and even if they had been able to reach agreement, as Cameroon contends, the point remains: an issue which the Parties have been discussing for several years is in no way the sort of technical issue which can properly be left to a demarcation team to resolve.

59. Counsel for Cameroon correctly said that matters “of a purely technical character” should be left for demarcation⁶⁹. Nigeria agrees. That is why the dozen problem places to which Nigeria has drawn the Court’s attention are *not* purely technical. They involve genuinely difficult cartographic issues, and sometimes substantial policy choices. They all involve the very terms of the

⁶⁷Counter-Memorial of Nigeria, Ann. NC-M 45, Art. 28.

⁶⁸Counter-Memorial of Nigeria, Ann. NC-M 51, Art. 1.

⁶⁹CR 2002/2, p. 55, para. 19.

old delimitations — they do involve the delimitation *as such*, and not just demarcation. There are no doubt lesser points as well, but they will properly arise at that later stage, as Nigeria has noted in its written pleadings⁷⁰.

60. And, Mr. President, those lesser points will be of such a kind as to be properly resolvable by a demarcation commission: *all* the potentially serious problems of interpretation will have been settled first by this Court's Judgment.

61. Let me remind the Court of Cameroon's attitude in this respect. Counsel for Cameroon⁷¹ regarded the task as one involving "a careful filling of certain lacunae and the elimination of some uncertainties", and he considered this to be a task which "can easily be entrusted to a boundary commission". Just to pause there for a moment, as a matter of principle demarcation is *not* about filling "lacunae" or eliminating "uncertainties": a proper delimitation should not leave any lacunae or uncertainties. And so far as present practicalities are concerned, Nigeria submits that it is manifestly clear that the kind of "lacunae" and "uncertainties" to which Nigeria has drawn attention are most certainly *not* the kind of thing to be left "easily" to a demarcation team.

62. But there is another aspect to the "ease" with which it is said a demarcation commission could pursue its task. Nigeria has suggested, as the Court will be aware, that a limited number of delimitations are defective, and has put forward what it suggests would be the correct interpretation of the defective provisions. How does counsel for Cameroon view these suggested interpretations? Nigeria, he says, gives "a one-sided and highly disputable interpretation of certain stipulations of the Thomson-Marchand Declaration"⁷². Presumably, therefore, a demarcation commission is, in Cameroon's view, to be left to grapple with these "highly disputable" matters. Their task, Mr. President, seems likely to be anything but "easy", by Cameroon's own admission.

63. Perhaps, indeed, that was what made counsel pause. For he went on to admit that a demarcation commission might not, after all, be able to deal with the "lacunae" and "uncertainties". What he said was this: "It may well be that common efforts to overcome difficulties in interpreting certain stipulations of the Thomson-Marchand Declaration may fail."

⁷⁰Rejoinder of Nigeria, p. 302, para. 6.27.

⁷¹CR 2002/2, p. 57, para. 25 (Khan).

⁷²CR 2002/2, p. 59, para. 30 (Khan).

64. Please note, Mr. President, “It may well be” — in other words, failure is quite likely: so much for the problems being “easily” resolvable by a demarcation commission. And when that failure to resolve the issues occurs, what does counsel suggest should happen then? — he says: “some of these issues may then have to be referred back to the Court for a definitive ruling. Cameroon is in agreement with such a solution.”

65. So Cameroon — officially, and formally, before this Court — is now contemplating that this Court, when it delivers its Judgment in this case, will not have finished it. Hitherto it has been Cameroon which has been complaining about how long this case has taken, but now we must consider coming back for more!

66. And Mr. President, allow me to stress what it is that Cameroon wants to come back to the Court for — “a definitive ruling”. But that is where Cameroon *started* in this case, with a request for a boundary to be “specified definitively”. And that is what Cameroon — and Nigeria — must get, in *these* proceedings, not at some future time when the demarcation commission gets into difficulties, as it would be bound to, over the very “lacunae” and “uncertainties” to which Nigeria is drawing attention. As this Court said in the *Barcelona Traction* case⁷³, the Respondent’s right to object to any attempt by the Applicant to withdraw a case is specifically “to enable it to ensure that the matter is finally disposed of for good”.

67. Before I conclude this pleading on the land boundary aspect of the case, there is one additional unfinished piece of business which I must address. It concerns a stretch of the boundary where there is no agreed delimitation, namely to the north and east of the Bakassi Peninsula. Now, although that is not part of the land boundary between Bakassi and Lake Chad, it is perhaps convenient to address this matter now.

68. As was explained at the end of last week, it is Nigeria’s submission that Articles XVIII to XXII of the Anglo-German Treaty of March 1913 are ineffective as an agreed delimitation of the boundary. Those Articles purported to delimit a boundary down the Akwayafe River, on the western side of the peninsula. Since in Nigeria’s submission those Articles are ineffective, the question arises — where does the boundary run?

⁷³*I.C.J. Reports 1964*, p. 20.

69. In principle, the answer is straightforward. The Treaty boundary follows the River Akwayafe southwards until it meets the northern limits of the territorial authority of the Kings and Chiefs of Old Calabar in 1913, for it is at that point that the 1913 Treaty became ineffective by reason of Great Britain's lack of competence to diminish the territorial interests of Old Calabar. Beyond that point, namely to the south of that point, no true territorial boundary was established in the Bakassi area by binding and effective international agreement — the provisions of the 1913 Treaty were ineffective, and the earlier Anglo-German agreements were only concerned with spheres of interest and not the limits of territorial sovereignty.

70. In the absence of effective agreements, one must have recourse to the customary boundary, which is the Rio del Rey. Historically, as Nigeria showed last week, the territorial authority of the Kings and Chiefs of Old Calabar extended at least as far east as that waterway.

71. In applying these general principles, the starting point is the last of the Articles of the 1913 Treaty which is untainted by the defect which renders the five Articles mentioned ineffective, and that is Article XVII: its terms are at tab 69 in the judges' folder. At the end of that Article the boundary is described as running "to a pillar on the bank of the River Akpakorum . . . , and thence by the shortest line to the thalweg of the River Akpakorum, known in its lower reaches as the Akwayafe (Akwajafe)".

72. The map on the screen now shows these features — and this map is also at tab 69 in the judges' folder. The River Akpakorum or Akwayafe is clearly shown, as is the location of the pillar referred to. However, the boundary on the River Akwayafe comes to an end at the point on the river at which the territorial authority of the Kings and Chiefs of Old Calabar began. The available evidence, which is set out in Nigeria's Counter-Memorial⁷⁴, shows that their authority extended at least as far up the river as various settlements in the neighbourhood of the present town of Archibong, and included the present towns of Akwa, Mbenmong and Nwanya, all of which are long-established Nigerian towns.

73. Accordingly, the point in the Akwayafe at which the boundary ends is a point to the north of these locations. To be specific, it is the point on the thalweg of that river which is opposite

⁷⁴Pp. 94-96, paras. 6.35-6.36.

the midpoint of the mouth of Archibong Creek. That creek, and the position of the thalweg opposite its midpoint, are being pointed out on the map now on the screen, and at tab 70 in the judges' folder.

74. The same principle which governed the determination of the point on the Akwayafe at which the operation of the 1913 Treaty came to an end applies also to the determination of the overland course of the boundary to the head of the Rio del Rey. Namely, it is a line which represents the limits of the territorial authority of the Kings and Chiefs of Old Calabar in 1913.

75. Accordingly, from the thalweg in the river opposite the midpoint in Archibong Creek the customary boundary runs to that midpoint in the creek, and then overland to the head of the Rio del Rey by way of a line which would retain as Nigerian the towns of Archibong, Akwa, Nwanyo, Mbenmong and Fumen, all of which are long-established Nigerian towns. But such a line leaves as Cameroonian the towns of Isangele, Itabina, Amoto and Odon.

76. In delimiting the boundary line more precisely, it is possible for the most part to use natural features. The limits of the territorial authority of the Kings and Chiefs of Old Calabar are conveniently represented by two principal inland waterways known as Archibong Creek and Ikankan Creek. This line is set out in appropriate geographical detail, including co-ordinates, in paragraph 11.8 of Nigeria's Counter-Memorial, and is illustrated on maps 36 and 39 in Nigeria's Counter-Memorial atlas. One of those maps is now on the screen, and at tab 70 in the judges' folder, so that the line of the boundary can be easily seen.

77. As is being pointed out on the map, that line takes the boundary along Archibong Creek, along the course of an identified tributary to its source, crosses overland to the left bank of Ikankan Creek, and then follows that bank of the creek to the head of the Rio del Rey. The location of the head of the Rio del Rey was fixed by the Anglo-German Agreement of 14 April 1893 as being "the point . . . where the two waterways, named Urüfian and Ikankan . . . meet"⁷⁵. Nigeria accepts that geographical location for this present purpose.

78. From there southwards the nature of the Rio del Rey affects the direction of the boundary line. It is in its upper reaches a complex waterway, with several channels. As the decision of the

⁷⁵Counter-Memorial of Nigeria, Ann. 27.

Court of Arbitration in the *Argentine-Chile Frontier* case⁷⁶ held, in the absence of clear evidence to the contrary there is a presumption that where a boundary has to follow a river and the river divides into two or more channels, and nothing is said about which channel is to be followed, the boundary will normally follow the major channel.

79. Furthermore, there is also a presumption that where a boundary is to follow a river, it is the midline of that river which constitutes the boundary — but that is a concept which, where fisheries or water-borne trading are important, translates to the middle of the navigable channel for so far upstream as navigation is possible, and thereafter the geographical middle of the river.

80. Accordingly, from the head of the Rio del Rey the boundary runs southwards to the sea, following the middle of the navigable channel of the main channel of that waterway, as is now being demonstrated on the map on the screen, which is at tab 70 in the judges' folder.

81. Mr. President, having in this way reminded the Court of the issue at the heart of this case — the question of title to the Bakassi Peninsula — this might be an opportune moment for the Court to look at the short video of Bakassi which Nigeria has prepared. If that would be convenient for the Court, might I now, in expressing my gratitude to the Court for the attention it has given me, invite you to call upon Mrs. Andem-Ewa to introduce this video.

Le PRESIDENT : Je vous remercie, sir Arthur. Je vais maintenant passer la parole à Mme Andem-Ewa pour la présentation de la vidéo cassette dont la projection avait été retardée. You have the floor.

Mrs. ANDEM-EWA: Thank you.

THE BAKASSI VIDEO

Introduction

1. Mr. President, distinguished Members of the Court, it is again an honour for me to appear before this distinguished body.

2. As you know, Nigeria prepared a short video relating to the Bakassi Peninsula. On Friday morning you kindly allowed us to show this video at a point where Nigeria considered it opportune

⁷⁶1966, *ILR*, Vol. 38, p. 10.

to do so. Mr. President, with your kind permission, we shall now play to the Court the video which I hope will give the distinguished judges a better understanding of the Bakassi area that I described in more detail last Thursday. A large number of similar images to these images on video were included in Volume XII of the Counter-Memorial and are also at tab 4 of the judges' folder.

Commentary over video presentation

3. This first bit of footage was taken on the way from Ikang to Archibong.

It shows some of the mangroves in the area and a number of fishermen going about their daily business.

You will also note the large expanses of water between the islands.

These, for instance, are woodcutters carrying wood home for smoking fish.

This is Akwa and its surrounding area in the north of the peninsula, which you can see is several metres above sea level. This shows the established rainforest of the area.

This is Archibong town and the mission bell. [Pause (Moving Jalal)] Next comes the Palaver House and the "efe Ekpe" (Ekpe shrine). The gentleman on the left is the chief of Akwa Town, an Ekpe title-holder and the Ekpe masquerade on the right symbolizes the Ekpe tradition. Here you see the centre of Archibong. It is clearly built on solid ground.

These are the primary and secondary schools in Archibong Town.

This is the health centre in Archibong. Here is another masquerade.

These are a few of the schoolchildren, who belong to the school you have just seen.

The footage now takes us along the creeks to Abana.

Here is Abana. Photographs of this town are under tab 3 of the judges' folder.

And this is East Atabong. The people seen here are awaiting the arrival of the visiting team. These are local townspeople demonstrating the local traditional dancing called "Ukwa".

And this is West Atabong, where you can see a substantial town with a substantial population. [Long Pause]

This is a gathering at the secondary school and civic centre in West Atabong. These are traditional rulers of West Atabong, amongst whom is an Etubom.

Mr. President, that concludes the video presentation.

4. I hope that this has assisted the Court in visualizing the Bakassi Peninsula.

5. This, Mr. President, concludes my brief presentation. This might be a convenient time to conclude Nigeria's presentation for today. I therefore would ask you, Mr. President, to call on Mr. Ian Brownlie first thing tomorrow morning to present Nigeria's arguments in relation to Lake Chad.

Thank you, Mr. President.

Le PRESIDENT : Je vous remercie beaucoup, Madame. Ceci met un terme à notre séance de ce matin. La prochaine séance aura lieu demain à 10 heures. La séance est levée.

L'audience est levée à 12 h 15.
